

FIRE DEATH AUTOPSIES

House Bill 4084 (Substitute H-1) First Analysis (3-18-99)

Sponsor: Rep. Gerald Law
**First House Committee: Criminal Law
and Corrections**
Second House Committee: Health Policy

THE APPARENT PROBLEM:

Public Act 181 of 1953 establishes the office of county medical examiner and regulates investigations of suspicious deaths. Under the act, a medical examiner or his or her designee must investigate the cause of death in cases involving a death by violence, an unexpected death, a death after having an abortion, and the death of a person who had not received medical attendance within the previous 48 hours. If the medical examiner feels that a further examination is necessary, he or she may perform an autopsy.

It is reported, however, that up to half of fire victims are not autopsied; instead, their deaths are ruled accidental and attributed to smoke inhalation or injuries caused by the fires. This situation causes a problem for law enforcement officers because a fire is often set to cover up a murder. Investigators maintain that autopsies need to be done more frequently in cases of fire deaths because, unlike a death by smoke inhalation where the body may be intact and able to be visually examined, injuries inflicted by bullet holes, stab wounds, or other trauma cannot be easily detected on a badly charred body by a visual inspection. Similarly, though blood tests and other tests can determine if a person was dead or alive before the fire started, law enforcement officers argue that quite often a person is incapacitated by the perpetrator before a fire is set, and that only a full autopsy will confirm if the person died only as a result of the fire, or if the fire was set to cover up a crime.

The Department of State Police (DSP) cites several cases in point in which victims were initially ruled to have died accidentally from the fires but autopsies later revealed they had been murdered. In one of the cases, a pathologist called the death of a woman accidental when a partial medical examination revealed soot in the trachea. However, when a full

autopsy was ordered after the fire had been determined to be arson, it was found that the woman had been beaten by her husband and rendered incapacitated before the fire had been set. In several other cases in which the deaths had also initially been ruled as accidental, autopsies subsequently revealed that the victims had in fact died from bullet wounds. In a case in which the body of a female fire victim was exhumed, it was found that the husband had poisoned his wife and then set fire to the house to cover up the murder.

Currently, an autopsy may be performed if requested by a law enforcement agency or prosecutor's office, but law enforcement agencies have complained that the requests are often ignored or refused. Once a death is ruled accidental, the body is released to the family and may be buried or cremated before the law enforcement team investigating the incident has time to uncover signs of foul play, thereby impeding a full and complete investigation. For more than a decade, legislation has been explored to require county medical examiners to do autopsies on fire victims. Medical examiners maintain that autopsies are not needed in all fire deaths, and so would result in unnecessary costs to the counties. Others point out that such a legislative mandate could raise Headlee implications. As a compromise, it has been proposed that if a county medical examiner denies a request on the part of law enforcement officials to do an autopsy on a victim of a fire, that he or she put into writing the reasons for denying the request.

In a related matter, it has been pointed out that Michigan is one of the few states that does not provide a legal exemption to an autopsy based on religious beliefs. A number of faiths and ethnic groups, including the Jewish and Muslim faiths, prohibit

autopsies. For example, in the Jewish religion, burial in a Jewish cemetery may be denied if the deceased had undergone an autopsy. It has been proposed that Michigan provide a religious exemption to autopsies similar to what other states offer.

THE CONTENT OF THE BILL:

The bill would amend Public Act 181 of 1953, which regulates the investigations of suspicious deaths by county medical examiners, to require a county medical examiner or his or her designee to investigate the case of a person who has died from injuries received in a fire and to add a death from injuries caused by a fire to the list of types of deaths that must be reported immediately to the county medical examiner or his or her deputy.

The bill would allow a law enforcement agency or prosecuting attorney investigating a fire-related death to request a medical examiner or his or her designee to perform an autopsy. If an autopsy was not performed, the county medical examiner would have to explain in writing within 48 hours of receiving the written request that the death was caused by the fire and that an autopsy was not required to determine other possible causes of death.

The bill would also establish a procedure by which a law enforcement agency or prosecuting attorney could petition a court for a review of the county medical examiner's decision not to perform an autopsy if it was believed that an autopsy would contribute materially to the investigation. Such a petition would have to be filed within 24 hours after oral or written notice of the medical examiner's decision had been received or within 24 after expiration of the 48-hour limit. After a petition was filed, the court would have to hold a hearing on the issue within 48 hours. If the court determined that an autopsy would "contribute materially" to the investigation, it could order the medical examiner to perform an autopsy and transmit the results to the petitioner within 24 hours after the performance of the autopsy and the completion of any necessary tests.

Further, the bill would create a religious exemption to prohibit an autopsy from being performed on a deceased person if the autopsy was contrary to the person's religious beliefs. Under the bill, an autopsy could not be performed if the next of kin informed the

county medical examiner that an autopsy would be contrary to the deceased's religious beliefs. However, the medical examiner could perform an autopsy in spite

of such objections if he or she or his or her deputy determined that there was a "compelling public necessity". A "compelling public necessity" to perform an autopsy would exist if the autopsy was necessary in order for a law enforcement agency to conduct a criminal investigation, or if the autopsy was necessary to determine the cause of a person's death in order to protect against an immediate and substantial threat to the public health. However, even under these circumstances, the autopsy could not be performed for at least 48 hours after the medical examiner made the determination of a compelling public necessity.

During the 48-hour time period, the deceased's next of kin could petition a court to enjoin the autopsy, but would have to inform the medical examiner in writing of the petition. The court would have to conduct a hearing on the petition within 48 hours of the petition's filing. If the court found a compelling public necessity for an autopsy, the autopsy would be allowed, but it would have to be done using the least intrusive procedure allowed under the circumstances. "Next of kin" would be defined as the spouse of the deceased person or a relative that fell within the third degree of consanguinity as determined by the civil law method. ("Consanguinity" refers to relationships by ancestry or descent, e.g. blood relatives. Third degree consanguinity extends to uncles, aunts, nephews, nieces, great-grandparents, and great-grandchildren.)

Finally, the bill makes a clarification regarding who is required to sign an autopsy report. Under current law, it is not clear whether the county medical examiner is required to sign the report or whether the individual who performed the autopsy must sign the report. The bill would clarify that the person who had performed the autopsy would be the one to sign the autopsy report.

MCL 52.202, 52.203, and 52.205

BACKGROUND INFORMATION:

House Bill 4084 is nearly identical to House Bill 5238 that was introduced in the 1997-1998 legislative session and was passed by the House.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would create indeterminate costs to counties. The amount of the costs would depend on the number of deaths caused by fire that are not currently being investigated by county medical examiners. (3-15-98)

ARGUMENTS:**For:**

All too often, a fire is set after the commission of a crime in order to cover up criminal activities. Because of the effect that a fire has on a body, it is very important that victims of fires be autopsied to rule out criminal activity. For example, because a victim may still be alive when a fire is set, a test that shows that a person was alive before the fire began may not be enough to rule out foul play.

The Department of State Police cites many cases in which deaths initially ruled to be accidental were later found to be murder after a complete autopsy was performed. If a body is badly burned, an autopsy is the only mechanism to discover if there is a bullet wound, stab wound, or other trauma. The bill would be a significant step in the right direction by requiring that a medical examiner substantiate in writing that an autopsy was not deemed necessary to determine a cause of death other than from injuries sustained in the fire. This requirement would still give discretion to medical examiners as to whether a full autopsy was warranted, yet at the same time would encourage careful preliminary examinations to be made, thereby decreasing incidents in which an initial ruling declared a death as accidental when in fact it may have been the result of violence.

This is important, because once a decision is reached, the body is released to the family, and may be cremated or buried before police or fire investigators have completed their investigation of the fire. One complaint of law enforcement investigators is that some medical examiners are too quick to declare a fire death as an accident. In several cases, a body had to be exhumed after investigators later found evidence to suggest foul play. The hope is that the requirement to document in writing why an autopsy would not be needed to determine other possible causes of death would result in more careful and thorough initial examinations. Further, the bill would leave an investigator recourse if his or her request for an autopsy was denied. Since the denial of an autopsy could impede a thorough investigation, an appeal

process should be established so that a court could decide whether or not an autopsy would be prudent.

For:

Reportedly, Michigan is one of the few states that does not provide a religious exemption to an autopsy. Several faiths and cultures prohibit autopsies, and these beliefs should be respected. At times, little if anything may be learned from an autopsy, and family members should have a right to say no. The bill is modeled on a New York state law, and would prohibit an autopsy from being performed if it would be contrary to the deceased's religious beliefs. This should decrease the likelihood of an unwarranted autopsy being performed. Yet, if there were a compelling necessity for the autopsy, the bill would provide a mechanism by which a medical examiner could appeal the denial. If a court decided that an autopsy was justified, a medical examiner could perform an autopsy, but would have to use the least intrusive procedures possible. Further, the time frames specified in the bill would ensure that the matter was resolved in a timely fashion, yet would also give the family time to contact religious leaders for special consideration or exemptions to religious prohibitions due to the circumstances.

Response:

The purpose of an autopsy is to determine the exact cause of death. Often, foul play cannot be determined without an autopsy, as many murders can be made to look accidental. Unfortunately, if too much time passes before an autopsy is performed, evidence pointing to a murder may be lost due to dissipation. Under the bill, if a family member objected to an autopsy based on religious beliefs, up to four days could pass before a medical examiner could do an autopsy under the "compelling public necessity" provision. Representatives from the Office of the Wayne County Medical Examiner and the Wayne County Office of the Prosecuting Attorney have expressed concerns that the length of time afforded for the appeal process would "unduly interfere with the ability of the medical examiner to conduct the timely forensic procedures necessary . . . [t]his is particularly true in cases where there is a likelihood that the evidence would dissipate." It is recommended that the decision whether or not to do an autopsy based on compelling public necessity be left to the medical examiner's expertise.

Further, in his testimony before the committee, the Wayne County Chief Medical Examiner testified that

all the medical examiners in Wayne County have policies to refrain from performing autopsies in cases of religious objections unless the family reconsiders their objections. He pointed out that autopsies are only done in the first place if a medical examiner could not testify in court with a medical certainty as to the cause of death. In those cases, he stated the medical examiners still do not perform an autopsy until the family understands and withdraws the objection. Often, religious leaders are brought in to help resolve the situation. However, though the appeal process would bring similar results, the delay due to the length of time allowed for the proceedings could result in a loss of evidence. Further, requiring a medical examiner to use the least intrusive method in disputed cases could impede an examiner's ability to perform an appropriate autopsy.

Rebuttal:

The problem with autopsies being done over the religious objections of family members appears to be more prevalent in out-state counties in which religious and ethnic groups who are opposed to autopsies are smaller in number; in those areas there may be less awareness of and sensitivity to their concerns. It is believed that this legislation would standardize responses to religious objections across the state. Perhaps a compromise could be reached by shortening the timeframe for a family to file a petition and for the court's response.

POSITIONS:

The Department of State Police supports fire death autopsies, but is neutral on the religious exemption. (5-11-99)

The Michigan Jewish Council supports the bill. (3-11-99)

The Michigan Arson Prevention Committee supports the bill. (3-11-99)

The City of Detroit/Arson Section supports the bill. (3-11-99)

The Office of the Wayne County Medical Examiner is concerned with aspects of the religious exemption. (3-11-99)

The Michigan Association of Chiefs of Police oppose the bill as written. (3-16-99)

Analyst: S. Stutzky

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.