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AUTOPSIES OF FIRE DEATHS

House Bill 4084

Sponsor: Rep. Gerald Law

**Committee: Criminal Law and
Corrections**

Complete to 2-10-99

A SUMMARY OF HOUSE BILL 4084 AS INTRODUCED 1-28-99

House Bill 4084 would amend Public Act 181 of 1953, which establishes the office of county medical examiner, to require a county medical examiner or his or her designee to investigate the death of any individual who died from injuries received in a fire.

Current law requires a medical examiner or his or her designee to investigate instances of certain listed suspicious deaths. Deaths suspected to have been caused by a fire would be added to the both the list of types of deaths that are to be reported immediately to the county medical examiner or his or her deputy and the list of deaths that are to be investigated. If the county medical examiner or deputy county medical examiner deems further examination necessary, an autopsy can be performed.

In cases of apparent fire deaths, the bill would allow the investigating law enforcement agency or prosecuting attorney to make a written request asking the county medical examiner or his or her designee to perform an autopsy. After receiving such a request, the county medical examiner would have 48 hours to either perform or order the performance of an autopsy, or to explain why an autopsy was unnecessary. Such an explanation would have to be provided, in writing, to the party who requested the autopsy and would have to indicate that the death had been caused by the fire and an autopsy was not required to determine other possible causes of death. If the party making the request disagreed with the medical examiner's decision not to perform an autopsy, the party could file a petition asking a court to review the decision. 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 hours 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.

The bill would add a further religious exemption to generally prevent an autopsy from being performed in contravention of the deceased person's religious beliefs. (Note: Current law allows for limited investigation of certain deaths -- if an investigation into a death is required solely because deceased had no medical attention during the 48 hours immediately preceding his or her death and the lack of medical attendance was based upon a sincerely held religious conviction, then removal of the body to a morgue is not required unless there is evidence of other

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conditions requiring further investigation.) Under the bill, an autopsy could not be performed if a friend or relative of the deceased person 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" for the autopsy. (A "compelling public necessity" would exist where the autopsy was needed either for a law enforcement agency to conduct a criminal investigation, or to determine the cause of a person's death in order to protect against an immediate and substantial threat to the public health.) In such cases, the autopsy could not be performed until 48 hours after the decision was made finding that such a necessity existed. During this period, a friend or relative of the deceased could petition a court to prevent the autopsy and would have to notify the county medical examiner of the petition in writing. If the court determined that a compelling public necessity existed, the autopsy would be allowed -- however, the autopsy would be restricted to the use of the least intrusive procedure possible under the circumstances.

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 specify that the written report is to be signed by the individual who performed the autopsy.

MCL 52.202, 52.203, and 52.205

Analyst: W. Flory

■ 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.