

Legislative Analysis



COUNTY MEDICAL EXAMINERS: CLARIFY DUTIES

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House Bill 4893 (Substitute H-1)

Sponsor: Rep. Mary Valentine

Committee: Health Policy

First Analysis (10-29-09)

BRIEF SUMMARY: The bill would:

- Clarify the duties of a county medical examiner, including circumstances under which portions of a deceased person's body may be retained.
- Allow a county medical examiner to dispose of those retained portions of a body as medical waste when no longer needed.
- Make numerous technical and editorial changes.

FISCAL IMPACT: House Bill 4893 has no cost implications for the Michigan Department of Community Health, but could have cost implications for county governments. County medical examiner costs may be reduced with new language providing clarification regarding practices related to disposal of retained body portions.

THE APPARENT PROBLEM:

The bill addresses issues raised in a recent court case involving the Oakland County medical examiner (ME). In brief, an elderly woman died after falling in a nursing home. The woman's daughter suspected that her mother may have been the victim of physical abuse, and a law enforcement investigation ensued and an autopsy was conducted.

The autopsy included the removal of the woman's brain. According to testimony presented to the committee, components of an autopsy involve not only an examination of the exterior of a body, but also an extensive internal examination. In addition, many specimens are collected for future testing and include blood, urine, eye fluid, and tissues from the brain, heart, and other organs. Sometimes, an entire organ needs to be retained. For example, the brain is so soft that it can take about two weeks for it to firm up enough for a proper forensic examination and tissue sampling. If a criminal investigation is initiated, these samples, including any organs, must be retained until such time as determined to no longer be necessary.

It has long been the practice of medical examiners across the nation to dispose of any retained samples or organs as medical waste when no longer needed to determine cause of death, conditions contributing to death, manner of death, or as evidence in a criminal investigation. The samples are not returned to the family for a variety of reasons, including the fact that the deceased has been interred (cremated or buried) weeks, months, or years before the samples are no longer needed. Also, some of the samples are microscopic – being only a few cells – and so destroyed as a convenience to the family

who may not know what to do with a slide containing a loved one's blood sample or liver tissue.

In the present case, the organs removed for the autopsy were placed back into the deceased's body, with the exception of the brain, and the body released to the daughter for cremation. It wasn't until several months later, after obtaining a copy of the autopsy report, that the daughter learned her mother's brain had been removed, retained, and subsequently incinerated by the medical examiner without her knowledge.

The question at the heart of the lawsuit that followed was whether the daughter had a property right under Michigan law to her mother's brain. The federal appeals court hearing the case has remanded the case with instructions to certify the question of state law to the Michigan Supreme Court.

Meanwhile, legislation has been offered that would clarify the duties of medical examiners in the state and that would specifically grant them authority to dispose, as medical wastes, any samples collected when retention is no longer necessary.

THE CONTENT OF THE BILL:

The bill would amend Public Act 181 of 1953, which creates the office of county medical examiner and prescribes the power and duties of county medical examiners.

Clarification of duties. The bill would make numerous revisions to make the act more readable. Some of the changes having a more substantive effect are as follows:

- Currently, after a medical examiner views the body and makes a personal inquiry into the cause and manner of death, the medical examiner or a deputy may have the dead body removed to the public morgue. The bill instead would specify that if after examining the body and investigating the cause and manner of the death, the county medical examiner considers a further examination necessary, he or she (not the deputy) may cause the body to be removed to the public morgue. (Underlining denotes new language.)
- Instead of designating a "person" to do certain allowable tasks, the bill would allow a county medical examiner to designate a medical examiner investigator to complete those tasks.
- Currently, a county medical examiner or a designee may perform an autopsy. A written report regarding the condition of the body and the cause and manner of death must be included in the report. The bill would clarify that the person performing the autopsy must subscribe (sign) the report.
- Currently, a county medical examiner is authorized to retain, as long as may be necessary, any portion of the body believed by the medical examiner necessary for the detection of any crime. The bill would delete the underlined language and

instead allow a county medical examiner to retain any portion of the body considered necessary to establish the cause of death, the conditions contributing to death, or the manner of death, or as evidence of any crime. Upon determining that retention of the portions of the body were no longer necessary under this provision, the county medical examiner could dispose of the retained body portions in the manner prescribed for medical waste under Part 138 of the Public Health Code.

MCL 52.205

BACKGROUND INFORMATION:

The case referenced in the analysis is Waeschle v Oakland County Medical Examiner, Docket No. 08-2228. The case was filed in the United States Court of Appeals for the Sixth Circuit and decided August 14, 2009.

ARGUMENTS:

For:

As discussed earlier, it can take a significant amount of time for some organs to firm up enough for proper examination or for toxicology reports to become available. A criminal investigation and prosecution can take years to complete. Therefore, it has been the industry practice to dispose of samples collected during autopsies once they are no longer needed. Typically, these samples, which may include whole organs, are incinerated.

First, the bill is needed to clarify that samples may be collected and retained to establish the cause of death, conditions contributing to death, manner of death, and/or as evidence of a crime. Currently, the act regulating medical examiners only speaks to the detection of a crime.

Most importantly, the bill would address the question of a medical examiner's right to dispose of the retained samples. Under the bill, it would be clear that an ME could dispose of those samples under the provisions of law regulating medical wastes. Thus, the bill would affect autopsies going forward and protect counties from unnecessary and costly litigation regarding who has legal authority to dispose of those samples.

Against:

Some decedents or their families may wish to be buried or cremated with all their body parts included, even if it can't be done all at the same time. At the very least, people should be educated as to what an autopsy involves and given the opportunity to decide whether to take responsibility for some or all of the retained samples when no longer needed or to allocate that responsibility to the medical examiner.

Response:

The issue of simply giving people a choice of how to dispose of the retained samples is not so simple. Some of the retained samples are no more than tissues on a slide. Or it could be an organ in formaldehyde. Receiving these samples weeks, months, or years

after the loved one died could be very upsetting for the families. In addition, would they know how to properly and safely dispose of the returned body parts? Could they afford additional costs to have those parts cremated or buried with the body? And, it could be burdensome for the ME to keep current contact information so to notify the family when the samples were ready to be returned. What if the family member moved without leaving forwarding information or was also deceased by time the samples no longer needed to be retained? Would the ME have to keep those samples indefinitely? The industry practice of disposing of the samples as medical wastes has been in force for decades and should be allowed to continue.

POSITIONS:

The Department of Community Health indicated support for the bill. (10-20-09)

A representative of the Michigan Association of Medical Examiners testified in support of the bill. (10-20-09)

A representative of the Michigan Association of Counties (MAC) and the National Association of Medical Examiners testified in support of the bill. (10-20-09)

A representative of the Office of Oakland County Medical Examiner testified in support of the bill. (10-20-09)

A representative of Oakland County testified in support of the bill. (10-20-09)

The medical examiners for the Counties of Allegan, Muskegon, Livingston, Barry, Eaton, and Shiawassee indicated support for the bill. (10-20-09)

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■ 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.