



**House
Legislative
Analysis
Section**

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LOCATION OF AUTOPSY

House Bill 4416 with committee amendments
First Analysis (5-3-89)

RECEIVED

Sponsor: Rep. Kirk A. Profit
Committee: Judiciary

MAY 23 1989

Mich. State Law Library

THE APPARENT PROBLEM:

Under Public Act 181 of 1953, when an autopsy is required, that autopsy must be performed in the county in which the body was found. This requirement can create problems where there is a major medical center, because of the relatively high numbers of crime and accident victims that are taken there for treatment and subsequently die there (which for the purposes of the statute is the same as the body being found there). The required autopsy typically is performed by a hospital pathologist who also is a deputy medical examiner and may later be called to testify in court on autopsy findings. Pathologists at places such as the University of Michigan Hospital may frequently be called to testify outside their county, a burdensome and disruptive requirement for people with medical, teaching, and research responsibilities. It has been suggested that the law be changed so that a medical examiner may send a body to be autopsied in the county in which the cause of death occurred, rather than the death itself.

THE CONTENT OF THE BILL:

The bill would amend Public Act 181 of 1953 to require a county medical examiner to take certain steps when the body of a person who had died violently or as the result of any suspicious circumstances had been found, and the violence or suspicious circumstances had occurred outside the county. The examiner would have to do three things:

- take charge of the body;
- notify the county medical examiner for the county in which the violence or suspicious circumstances occurred; and,
- either have the body transported to a morgue in the county in which the cause of death occurred (the morgue would be designated by the examiner for that county) or enter into an agreement with that other county for the autopsy to be performed by the examiner for the county in which the body was found. The agreement could include provision for payment of reasonable costs associated with the autopsy, including the costs of presenting testimony or evidence.

If a body was sent to the county in which the cause of death occurred, that county's medical examiner would be responsible for the body as if it had been found within his or her own county. The county to which the body was transported would be responsible for the reasonable costs of transporting the body.

At present, a prosecuting attorney or the attorney general may order a county medical examiner or deputy to investigate the circumstances surrounding any death believed to have occurred in the county. Under the bill, the prosecutor or attorney general could require that the investigation include an autopsy or specific medical tests or both.

MCL 52.205 and 52.207

FISCAL IMPLICATIONS:

Fiscal information is not available. (5-2-89)

ARGUMENTS:

For:

The bill would relieve pathologists at major medical centers of the burdensome demand to testify frequently at out-of-town locations. Instead of a crime or accident victim's autopsy having to be performed where the person died, the autopsy could be performed in the county where the crime or accident occurred, and that county's medical examiner would then be responsible for any later court appearances that became necessary. Repeated disruptions of teaching schedules, research responsibilities, and medical duties thus could be avoided.

The bill offers flexibility for varying circumstances by placing the decision on where the autopsy should be done with the medical examiner for the county where the death occurred, and by allowing the medical examiner to enter into certain autopsy agreements with other counties. Since those agreements explicitly could include reimbursement provisions for the reasonable costs of an autopsy and related court appearances, the bill would provide a mechanism by which the autopsy could be performed at the hospital where the death occurred, but financial responsibility would be lodged with the county where the criminal investigation was going forward.

Against:

In allowing a county medical examiner to shift autopsy responsibilities to the county where the fatal injuries occurred, the bill proposes a poor public policy. An autopsy is best done promptly at the place where the death occurred, rather than at some time and place more removed from the death. When the death occurs at a major medical center, that center presumably could provide greater expertise than would be available in, for example, the rural area from where the dying person had been flown in a helicopter ambulance. The major medical centers whom the bill would serve benefit their communities economically, but the bill would allow their local medical examiners to shift the medical and financial responsibilities for autopsies to counties that may lack both forensic capability and the ability to absorb transport and autopsy costs.

Against:

The bill would allow elected officials — prosecutors and the attorney general — to make medical decisions on ordering autopsies or specific postmortem tests. Such decisions are best left to apolitical medical experts.

Response: There are occasions where the prosecutor has a better grasp of the criminal aspects of a case than people in the medical community, and thus is in a better position to determine whether an autopsy or certain tests are warranted.

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Against:

A committee amendment, evidently meant to authorize a prosecutor to order an autopsy in the county where he or she will be prosecuting a case, may fail to achieve that aim. The existing authority to order an investigation applies when the death occurred in the same county where the prosecutor has jurisdiction. The bill would not alter this structure, which means that if the death occurred in a county other than where the crime occurred, the prosecutor would not be able to order an autopsy.

POSITIONS:

The Prosecuting Attorneys Association of Michigan supports the bill. (5-2-89)

The Michigan Association of Medical Examiners does not have a formal position on the bill at this time, but opposed similar legislation last session. The association does, however, oppose allowing a county prosecutor to order that an autopsy be performed. (5-2-89)