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PROHIBIT USE OF AUTOPSY PHOTOS

House Bill 5417 (Substitute H-3) First Analysis (4-30-98)

Sponsor: Rep. Rose Bogardus
Committee: Judiciary

THE APPARENT PROBLEM:

On December 12, 1996, a young woman, Amanda Siner, died in a drunk driving accident. She was, according to her mother, a bright student, a much requested babysitter, a good friend, a responsible worker, and a sweet human being. Given the manner of her death, an autopsy was performed and photos were taken as part of that autopsy. Her family was, not surprisingly, devastated. Later, the pain of their loss was increased when the family discovered that the photos taken as part of the autopsy were being used in a court-ordered "morgue tour." The court had ordered people who had been arrested for drunk driving to attend this tour. The viewing of autopsy photos was part of the judge's sentencing and was intended to shock or frighten the viewers into refraining from driving while intoxicated.

The family was and is outraged by the use of their daughter's body by the courts as a public resource without their consent or knowledge. They were even more upset when they found that they had no recourse against the medical examiner for releasing the photos of their daughter. As a result of this incident, legislation has been offered to both help to prevent others from having to face the shock and horror that Amanda Siner's family was forced to face and to provide means of recourse for others whose loved ones could be used in this fashion without their permission.

THE CONTENT OF THE BILL:

The bill would amend the Public Health Code to generally prohibit the release or publication of any autopsy photographs that identified the decedent by name, face, or other identifying physical feature. An autopsy photograph would include not only photos, but would also include videotape, film, digital images, or other images of a deceased made or obtained during an autopsy that was performed in Michigan.

The release or publication of autopsy photos that identified the decedent would be allowed if the decedent's parent, surviving spouse, guardian, personal representative, or next of kin provided written authorization. If none of these individuals could be identified or located following a diligent and good faith effort, an individual charged by law with the responsibility for burial or cremation of the decedent's body could provide written permission for the release or publication of the photos. Furthermore, release or publication would be allowed for the following:

- 1) For purposes directly related to the investigation or prosecution of a criminal case upon the written authorization of a prosecuting attorney.
- 2) For purposes directly related to a civil case and authorized by the court.
- 3) Where required for the health department to carry out its lawful duties.
- 4) Where necessary for the purpose of providing legitimate teaching of only medical or public health officials.

A decedent's parent, surviving spouse, guardian, personal representative, or next of kin who was injured by a violation of the bill's provisions could bring an action to recover \$1,000 or actual damages, whichever was greater, along with costs and reasonable attorney fees.

MCL 333.2855a

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

House Bill 5417 (4-30-98)

For:

Grieving families should not have to deal with the tragedy of the death of a loved one and have to worry about making certain that the medical examiner is publicly displaying photos of the deceased. It is little enough to ask that the family of the deceased be asked permission before autopsy photos are released or made public. The alleged value of the uses of these photos is outweighed by the rights of the family members, who deserve the right to decide how photos of their loved ones may be used. The deceased should be treated with dignity and respect and the determination as to what is an appropriate amount of respect and dignity should be, first and foremost, left to the deceased's surviving family members.

Although there are those who may not mind the use of autopsy photos of their loved ones for teaching purposes, the lack of a law like the one proposed prevents people who do have objections to the use of such photos from having a say in the matter.

Against:

The bill is an excessive response to an unfortunate but isolated situation. Although the shock and anger of the decedent's parents is understandable, the events do not necessitate the creation of a law, particularly a law as broad as the one which is proposed. According to the Michigan Association of Medical Examiners, autopsy photos are used in a wide variety of teaching settings including teaching police, emergency response personnel, firefighters, doctors and other medical professionals. Another use of autopsy photos has been in driver's education courses and Mothers and Students Against Drunk Driving meetings -- according to some, use of such photos is one of the most effective and low cost means of deterring drinking and driving.

By prohibiting the use of these photos without permission of the deceased's next-of-kin or other representative, the bill will interfere with all of these uses. It is impractical, if not impossible, to ask the permission of the next-of-kin of every deceased person in Michigan. Some of the photos used in these teaching settings are quite old and the next of kin would be virtually impossible to track down. At the very least, the exemptions should be expanded to include the use of such photos for the training of police officers. The Department of State Police uses such photos as part of its training for officers to

prepare them for attending accident scenes and autopsies.

Furthermore, the bill lacks an adequate definition of autopsy. By some standards an autopsy starts with the first photo of the accident scene and could thereby extend to accident scene photos.

Against:

Two competing interests are set at odds by this bill -- the interest of the family of the deceased to avoid seeing or hearing about photos of their relative, and the public interest of making certain that the potential teaching value of these photos is not reduced or eliminated. If these photos serve the purpose of saving a single life, it would seem that their use should be protected.

This bill is based upon a single unlikely event -- that the deceased whose photos were used would be identified. But if this bill is passed a further, albeit also unlikely, event could occur: a family member could refuse to allow the use of an autopsy photo and that photo could have been the one that convinced a person not to drink and drive, or it could have provided a view of an injury that allowed a physician to later identify and heal a similar injury saving another patient's life. By allowing the grief of some families to limit the use of autopsy photos, it should be recognized that the law could end the valuable uses that these photos have had in saving lives through teaching and as a deterrent against drunk driving.

Against:

The bill is inadequate and might not have prevented the occurrence which led to its introduction. According to testimony before the Judiciary Committee, the people who viewed the woman's autopsy photos were aware of the decedent's identity because the photos were identified by reference to time and place of the accident. The bill would only apply to photos that identified the decedent by name, face, or other identifying physical features; photos that were identifiable because of the information about how and when the decedent died would not be subject to the bill's provisions.

POSITIONS:

A representative of the American Civil Liberties Union testified in support of the bill. (4-28-98)

The Michigan Association of Broadcasters does not support the bill. (4-29-98)

The Michigan Association of Medical Examiners opposes the bill. (4-28-98)

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.