

FIRE DEATH AUTOPSIES

House Bill 5238 as passed by the House Second Analysis (1-15-99)

**Sponsor: Rep. Gerald Law
Committee: Health Policy**

THE APPARENT PROBLEM:

Reportedly, 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. However, unlike a death by smoke inhalation where the body may be intact and able to be visually examined, a badly charred body cannot be accurately visibly inspected to identify bullet holes, stab wounds, or other trauma. 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 ruled initially to have died accidentally from the fires but were in fact 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 was 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 where 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.

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, therefore impeding a full and complete investigation. For several years, 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 autopsy 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. Currently, the act requires written documentation of an autopsy. The bill would specify that the person who had performed the autopsy would be the one to have to put the required information in writing. The bill would also 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.

Under the bill, a county medical examiner or his or her designee could perform an autopsy on a person who had died as a result of injuries sustained in a fire if he or she received a written request from a law

enforcement agency or prosecuting attorney investigating the death. If an autopsy was not performed, the county medical examiner would have to explain in writing within 48 hours of receiving the written autopsy 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.

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. The bill would establish a procedure by which a relative or friend of the deceased could petition a court to stop an autopsy from being performed. However, if the court found that a compelling public necessity existed, the autopsy would be allowed to be done, but the person doing the autopsy would have to use the least intrusive procedure allowed under the circumstances. Under the bill, 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.

MCL 52.202, 52.203, and 52.205

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

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. All too often, a fire is set after the commission of a crime in order to cover up a murder. Because a victim may still be alive when a fire is set, a test that shows that a person was initially alive may not be enough to rule out foul play. The Department of State Police cites many cases where deaths initially ruled to be accidental have been 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. This requirement would still give discretion to medical examiners, yet may encourage careful preliminary examinations to be made, thereby decreasing incidents in which an initial ruling declares a death as accidental when in fact it may be a murder.

For:

One complaint of law enforcement investigators is that some medical examiners are too quick to declare a fire death as an accident. 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. In some cases, a body has had to be exhumed after investigators 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 will most likely result in more careful and thorough initial examinations.

Further, law enforcement officials have expressed a desire to see an appeal process be written into the bill similar to what is being provided to medical examiners for objections based on religious grounds. The House-passed version of 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 allowed 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 would model 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.

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.