



Senate Fiscal Agency  
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BILL ANALYSIS

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Senate Bill 1289 (as passed by the Senate)  
Sponsor: Senator Tom George  
Committee: Judiciary

Date Completed: 6-14-04

### **RATIONALE**

Public Act 322 of 2003, which took effect on March 31, 2004, amended the Public Health Code to prohibit a person from publicly displaying an autopsy photograph of a deceased human being that identifies the decedent. The prohibition does not apply if the public display of an autopsy photo is authorized by a specified individual or is for a purpose allowed by the Act, including the investigation or prosecution of a criminal case, upon written authorization by the prosecuting attorney having jurisdiction. Some people believe that use of autopsy photographs also should be allowed upon the request of a law enforcement agency for use in a criminal investigation.

### **CONTENT**

**The bill would amend the Public Health Code to prohibit the "public dissemination" rather than "public display" of autopsy photographs; specify that the prohibition would not apply if the public dissemination were to a law enforcement agency as part of a criminal investigation; and provide that a photograph released under the bill would not be subject to disclosure under the Freedom of Information Act (FOIA).**

The Code prohibits a person from displaying an autopsy photograph of a deceased human being that identifies the decedent by name, face, or other identifying physical features. The prohibition does not apply if the public display of an autopsy photo is authorized by a specified individual or is one of the following:

- For a purpose directly related to the investigation or prosecution of a criminal case, upon written authorization by the prosecuting attorney having jurisdiction.
- Authorized by a court for a purpose directly related to the proceedings in a civil case.
- Required for a health department to carry out its lawful duties.
- Necessary for legitimate research or teaching of medical, public health, or public safety personnel or students enrolled at a postsecondary educational institution.

The bill would refer to "public dissemination", rather than "public display", and would add to that list of exemptions dissemination pursuant to a request of a law enforcement agency as part of and directly related to a criminal investigation. An autopsy photograph received by a law enforcement agency for a criminal investigation would be confidential, would not be subject to disclosure under FOIA, and could not be disclosed to any person except for law enforcement purposes.

Currently, "public display" means knowingly to communicate, exhibit, or display in open view or to distribute to members of the public or in a public manner, whether or not for commercial purposes, through any medium of communication including the Internet or a computer, computer network, computer program, or computer system. Under the bill, "public dissemination" also would include disseminating, as well as communicating, exhibiting, displaying, or distributing.

MCL 333.2855a

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

The exceptions to the prohibition against the public display of autopsy photographs may not be broad enough to allow for their use in some criminal investigations. While the exceptions accommodate the need for the photographs in a criminal investigation when authorized by the prosecuting attorney, there reportedly have been complaints that law enforcement personnel in southeastern Michigan have not been able to gain access to autopsy photographs at a point in a criminal investigation before the prosecutor is involved. By authorizing the release of autopsy photographs to police, upon their request and strictly for use in a criminal investigation, the bill would give law enforcement agencies access to evidence that could be needed before prosecutorial involvement.

### **Supporting Argument**

Police records generally are available under FOIA after the completion of an investigation. In order to ensure that autopsy photographs were not released for public dissemination pursuant to a FOIA request for records in a closed investigation, the bill would exclude autopsy photos from disclosure under FOIA.

Legislative Analyst: Patrick Affholter

## **FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Bethany Wicksall

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.