



**House
Legislative
Analysis
Section**

Olds Plaza Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

AUTOPSIES: COUNTY OF DEATH

**House Bill 4439 with committee
amendment
First Analysis (11-17-93)**

**Sponsor: Rep. Kirk A. Profit
Committee: Judiciary**

THE APPARENT PROBLEM:

Under the county medical examiners act (Public Act 181 of 1953), when an autopsy is required, it must be performed in the county in which the body is "found." This requirement can create substantial expenses where there is a major medical center, because of the relatively high numbers of crime and accident victims who 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 who may later be called to testify in court on autopsy findings. Pathologists at major medical centers that provide trauma care to many out-of-county residents, such as those in Ann Arbor and Grand Rapids, may frequently be called upon to testify outside their home counties, presenting a burdensome requirement for people with medical, teaching, and research responsibilities.

Reports are that counties with medical centers used to have policies which explicitly discouraged or even prohibited the ordering of autopsies on bodies of people who died as a result of injuries received outside the county. Some county medical examiners routinely would perform only perfunctory examinations in such cases, sending the bodies back to the county where the fatal injury occurred for medical examiner autopsies.

In 1989, however, the attorney general ruled (OAG No. 6565) that county medical examiners must perform all of their lawful duties (including autopsies) with respect to bodies of dead people in that county, regardless of where the dead person lived or had received fatal injuries. This exacerbated problems both for the counties housing medical centers and for the medical centers themselves. Counties must bear the financial costs of increased numbers of investigations and autopsies, while the work schedules of medical center staff are disrupted when they are called to

testify in court after an autopsy. Legislation has been proposed to resolve this problem.

THE CONTENT OF THE BILL:

The bill would amend the county medical examiner's act (Public Act 181 of 1953) to allow county medical examiners to enter into agreements that, under certain circumstances, would let them transfer responsibility for dead bodies from one county to another, or, failing such agreements, would require one county to reimburse another for the costs of a medical examiner's investigation.

More specifically, two county medical examiners could agree that the body of someone who had suffered from violence in one county ("the county of origin") and who had died during or after a medical transfer to the other county (the county in which the body was "found") was the responsibility of the medical examiner of the "county of origin" (defined in the bill as the county in which violent or suspicious circumstances occurred which resulted in someone's death).

If such an agreement were reached, the county medical examiner for the county of origin would be responsible for arranging, supervising, and paying for the body to be moved back to a morgue in the county of origin. The medical examiner for the county to which the body had been taken would be responsible for getting the relevant hospital records to the medical examiner for the county of origin.

If an agreement were not reached, the medical examiner of the county where the body was "found" would have to proceed as though the violence or suspicious circumstances that resulted in the death had occurred in his or her county. However, the county of origin would have to reimburse the county where the body was found for the costs of the examination if death had occurred during the

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medical transfer, in the hospital emergency room, or within 24 hours after admission to the hospital (unless the hospital had performed major surgery involving general anesthesia).

County medical examiners could not charge more for examinations of medical transfers than they would for examinations of county residents.

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

BACKGROUND INFORMATION:

The attorney general said, in part, "*the county medical examiner of a county in which an individual dies is obligated to perform all of the statutory duties with respect to the body of that deceased person, including an autopsy, irrespective of the county or state in which the deceased person had resided or may have sustained his or her injury*" and "*the Legislature has not authorized a county medical examiner, either prior or subsequent to performing an examination or autopsy upon the body of a deceased person as to the cause and manner of death, to seek financial reimbursement from the county in which the deceased person either resided or sustained injuries which were causally connected with the death.*" (OAG No. 6565, 1989)

FISCAL IMPLICATIONS:

Fiscal information is not available. (11-16-92)

ARGUMENTS:

For:

The increased autopsy load of medical centers is the result both of more sophisticated medical transportation (such as helicopter ambulance services) and of organ transplant programs that use brain dead organ donors. More sophisticated medical transportation has meant that many severely injured crime and accident victims now survive long enough to be taken to major medical centers -- often not in the county in which the injuries were sustained -- for treatment. Such cases

may involve highway crashes, in which a surviving driver may be charged with negligent homicide or manslaughter. Or the case may be a homicide, including child abuse cases, in which the victim survives long enough to be transferred to the medical center. But organ transplant programs also result in increased autopsy loads because of the practice of using severely injured brain dead organ donors, transported to medical centers from other states and countries, for organ "harvest" (particularly kidneys, hearts, and livers).

When such patients die, the required autopsy typically is performed by a hospital pathologist who also is a deputy medical examiner. Since one of the important criteria in the ordering of an autopsy is the likelihood of someone being charged and prosecuted for the death, when prosecution occurs it requires the presence in court of the pathologist who performed the autopsy to testify as to the cause of death and the pertinent findings of the autopsy. In fact, pathologists often must make two court appearances, one for the preliminary hearing and another for circuit court testimony if the accused person is bound over for trial. Although pathologists do recognize their legal obligations, the amount of time needed for court appearances can be disruptive not only of their medical duties but also of their teaching and research schedules. And the amount of time needed for legal conferences and preparations obviously is lengthened if the pathologist also has to travel long distances, as can be the case with out-of-county cases.

Prior to the availability of rapid transfer of severely injured patients to major medical centers in other counties, the deaths would have taken place where the violent act had occurred, and the county in which the violence occurred would have been responsible for the autopsy and the prosecution. It only makes sense to allow some way for such cases to be transferred back to the county in which death otherwise would have taken place, thereby reducing the burdens on medical center staff and the counties in which such centers are located.

Against:

It is poor public policy to allow county medical examiners to shift autopsy responsibilities to the county in which the fatal injuries occurred. 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 a death occurs at a major medical center, the center

benefits (for example, by increasing teaching opportunities for staff pathologists) and the county also, presumably, benefits economically from the presence of the medical center. 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 adequate forensic capabilities and the ability to absorb transportation and autopsy costs.

Response:

The bill would ensure that counties would not have to pay out-of-the-ordinary fees for out-of-county autopsies, while at the same time making the findings of sophisticated forensic work available to local medical examiners.

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.

POSITIONS:

The Prosecuting Attorneys Association of Michigan supports the bill. (11-16-93)

The Michigan Association of Medical Examiners supports the bill, but would prefer that it not authorize prosecutors to order examinations. (11-16-93)

The Michigan Association of Counties does not have a position on the bill at this time. (11-16-93)