

# HOUSE BILL No. 4161

February 14, 1989, Introduced by Reps. Berman, Leland, Miller, Gubow, Honigman and DeMars and referred to the Committee on Public Health.

A bill to amend sections 2855 and 10202 of Act No. 368 of the Public Acts of 1978, entitled as amended

"Public health code,"

section 2855 as amended by Act No. 3 of the Public Acts of 1982 and section 10202 as amended by Act No. 158 of the Public Acts of 1982, being sections 333.2855 and 333.10202 of the Michigan Compiled Laws; and to add sections 2854, 2854a, 2856, 2857, 2858, and 2859.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Section 1. Sections 2855 and 10202 of Act No. 368 of the  
2 Public Acts of 1978, section 2855 as amended by Act No. 3 of the  
3 Public Acts of 1982 and section 10202 as amended by Act No. 158  
4 of the Public Acts of 1982, being sections 333.2855 and 333.10202  
5 of the Michigan Compiled Laws, are amended and sections 2854,  
6 2854a, 2856, 2857, 2858, and 2859 are added to read as follows:

1 SEC. 2854. FOR THE PURPOSES OF SECTIONS 2854A TO 2859:

2 (A) "COMPELLING PUBLIC NECESSITY" MEANS 1 OR MORE OF THE  
3 FOLLOWING:

4 (i) THAT AN AUTOPSY IS ESSENTIAL TO THE CRIMINAL INVESTIGA-  
5 TION OF A HOMICIDE, AS DESCRIBED IN CHAPTER XLV OF THE MICHIGAN  
6 PENAL CODE, ACT NO. 328 OF THE PUBLIC ACTS OF 1931, BEING SEC-  
7 TIONS 750.316 TO 750.329 OF THE MICHIGAN COMPILED LAWS, OF WHICH  
8 THE DECEDENT IS THE VICTIM.

9 (ii) THAT THE COUNTY MEDICAL EXAMINER OR LOCAL HEALTH OFFI-  
10 CER HAS DETERMINED THAT DISCOVERY OF THE CAUSE OF DEATH OF THE  
11 DECEDENT IS NECESSARY TO MEET AN IMMEDIATE AND SUBSTANTIAL THREAT  
12 TO THE PUBLIC HEALTH AND THAT AN AUTOPSY IS ESSENTIAL IN ORDER TO  
13 DETERMINE THE CAUSE OF DEATH.

14 (iii) THAT THE NEED FOR AN AUTOPSY IS ESTABLISHED UNDER SEC-  
15 TION 2859.

16 (B) "FRIEND" MEANS AN INDIVIDUAL WHO, PRIOR TO THE  
17 DECEDENT'S DEATH, MAINTAINED REGULAR CONTACT WITH THE DECEDENT  
18 AND IS FAMILIAR WITH THE DECEDENT'S ACTIVITIES, HEALTH, AND RELI-  
19 GIOUS BELIEFS.

20 (C) "SURVIVING RELATIVE" MEANS AN INDIVIDUAL WHO IS THE NEXT  
21 OF KIN OF THE DECEDENT AS DEFINED IN SECTION 10201 OR THE LEGAL  
22 GUARDIAN OF THE DECEDENT.

23 SEC. 2854A. TO BE ELIGIBLE TO ACT AS THE DECEDENT'S FRIEND  
24 UNDER SECTIONS 2856 TO 2859, THE FRIEND SHALL PRESENT AN AFFIDA-  
25 VIT TO THE INDIVIDUAL REQUESTING THE AUTOPSY AT THE TIME THE  
26 FRIEND OBJECTS TO THE AUTOPSY UNDER SECTION 2856 OR AS SOON AS  
27 PRACTICABLE AFTER THE OBJECTION. THE AFFIDAVIT SHALL STATE THE

1 FACTS AND CIRCUMSTANCES UPON WHICH THE INDIVIDUAL CLAIMS HE OR  
2 SHE IS A FRIEND, THE FACTS AND CIRCUMSTANCES UPON WHICH THE INDI-  
3 VIDUAL CLAIMS THE AUTOPSY IS CONTRARY TO THE RELIGIOUS BELIEFS OF  
4 THE DECEDENT, AND THAT HE OR SHE WILL ASSUME RESPONSIBILITY FOR  
5 THE LAWFUL DISPOSITION OF THE BODY OF THE DECEDENT.

6 Sec. 2855. (1) An autopsy shall not be performed upon the  
7 body of a deceased individual ~~except~~ IF PROHIBITED UNDER SEC-  
8 TIONS 2856 TO 2859. AN AUTOPSY SHALL BE PERFORMED ONLY by a phy-  
9 sician who has been granted written consent to perform the  
10 autopsy by ~~whichever 1 of the following individuals~~ AN INDIVID-  
11 UAL WHO assumes custody of the body for purposes of burial ~~—~~  
12 AND IS A parent, surviving spouse, guardian, or next of kin of  
13 the deceased individual or by an individual charged by law with  
14 the responsibility for burial of the body. If 2 or more of those  
15 individuals assume custody of the body, the consent of 1 is  
16 sufficient. This section shall not prevent the ordering of an  
17 autopsy by a medical examiner or a local health officer UNLESS AN  
18 AUTOPSY IS PROHIBITED UNDER SECTIONS 2856 TO 2859.

19 (2) This section ~~shall~~ DOES not apply to a department of  
20 anatomy in a school of medicine in this state, or to an autopsy,  
21 postmortem, or dissection performed pursuant to and under the  
22 authority of any other law.

23 (3) A local health officer may order an autopsy if IT IS NOT  
24 PROHIBITED UNDER SECTIONS 2856 TO 2859 AND AN AUTOPSY IS neces-  
25 sary to carry out the functions vested in a local health depart-  
26 ment by this code.

1 (4) A physician, including a medical examiner, performing an  
2 autopsy ~~pursuant to~~ UNDER subsection (1), (2), or (3) may  
3 remove, retain, or use the pituitary gland of the deceased indi-  
4 vidual if the removal, retention, or use of the pituitary gland  
5 is for purposes of medical research, education, or therapy, and  
6 the physician is unaware of any direction made by the deceased  
7 individual before death or of an objection made by the next of  
8 kin of the deceased individual that a part of the deceased  
9 individual's body not be removed.

10 (5) If consent for the performance of the autopsy is  
11 required ~~pursuant to~~ UNDER subsection (1), the physician shall  
12 obtain consent from the same individual for the removal, reten-  
13 tion, or use of the pituitary gland of the deceased individual  
14 ~~pursuant to~~ UNDER subsection (4).

15 (6) Except for a reasonable charge related to the actual  
16 costs incurred and incident to removing and handling the pitu-  
17 itary gland, the removed pituitary gland shall be submitted,  
18 without charge, to hospitals, medical education or research  
19 institutions, or to individuals or organizations for the purpose  
20 of treating another human being. The hospital, medical education  
21 or research institution, or other individual or organization  
22 receiving the gland shall agree to furnish the gland, or a hor-  
23 mone produced from the gland, without charge.

24 SEC. 2856. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IN  
25 THE ABSENCE OF A COMPELLING PUBLIC NECESSITY, AN AUTOPSY SHALL  
26 NOT BE PERFORMED OVER THE OBJECTION OF A SURVIVING RELATIVE OR  
27 FRIEND OF THE DECEDENT THAT AN AUTOPSY IS CONTRARY TO THE

1 RELIGIOUS BELIEFS OF THE DECEDENT OR IF THERE IS OTHERWISE REASON  
2 TO BELIEVE THAT AN AUTOPSY IS CONTRARY TO THE RELIGIOUS BELIEFS  
3 OF THE DECEDENT.

4 SEC. 2857. AN AUTOPSY PERFORMED UNDER THIS PART SHALL BE  
5 THE LEAST INTRUSIVE PROCEDURE CONSISTENT WITH THE COMPELLING  
6 PUBLIC NECESSITY.

7 SEC. 2858. (1) IF A SURVIVING RELATIVE OR FRIEND OF THE  
8 DECEDENT HAS OBJECTED TO AN AUTOPSY UNDER SECTION 2856 OR THERE  
9 IS OTHERWISE REASON TO BELIEVE THAT AN AUTOPSY IS CONTRARY TO THE  
10 RELIGIOUS BELIEFS OF THE DECEDENT AND THE COUNTY MEDICAL EXAMINER  
11 BELIEVES, PURSUANT TO HIS OR HER INVESTIGATION UNDER SECTION 2 OF  
12 ACT NO. 181 OF THE PUBLIC ACTS OF 1953, BEING SECTION 52.202 OF  
13 THE MICHIGAN COMPILED LAWS, THAT A COMPELLING PUBLIC NECESSITY AS  
14 DEFINED IN SECTION 2854(A)(i) OR (ii) EXISTS, AN AUTOPSY MAY BE  
15 PERFORMED AFTER NOTICE OF THE INTENT TO PERFORM AN AUTOPSY IS  
16 GIVEN TO THE SURVIVING RELATIVE OR FRIEND, OR WHEN 48 HOURS HAVE  
17 ELAPSED, WHICHEVER IS LATER. HOWEVER, AN OBJECTING PARTY MAY  
18 INSTITUTE LEGAL PROCEEDINGS TO HAVE THE PROPRIETY OF THE AUTOPSY  
19 UNDER ALL CIRCUMSTANCES DETERMINED BY A COURT.

20 (2) A COURT, UPON EX PARTE MOTION, MAY DISPENSE WITH THE  
21 WAITING PERIOD REQUIRED UNDER SUBSECTION (1) IF THE COURT DETER-  
22 MINES THAT THE DELAY MAY PREJUDICE THE ACCURACY OF THE AUTOPSY OR  
23 IF THE OBJECTING RELATIVE OR FRIEND IS A SUBJECT OF A CRIMINAL  
24 INVESTIGATION IN THE HOMICIDE OF THE DECEDENT.

25 SEC. 2859. (1) IF A SURVIVING RELATIVE OR FRIEND OF THE  
26 DECEDENT HAS OBJECTED TO AN AUTOPSY UNDER SECTION 2856 OR THERE  
27 IS OTHERWISE REASON TO BELIEVE THAT AN AUTOPSY IS CONTRARY TO THE

1 RELIGIOUS BELIEFS OF THE DECEDENT, AND THE COUNTY MEDICAL  
2 EXAMINER DOES NOT ASSERT THAT A COMPELLING PUBLIC NECESSITY AS  
3 DEFINED IN SECTION 2854(A)(i) OR (ii) EXISTS, BUT THE COUNTY MED-  
4 ICAL EXAMINER DOES BELIEVE, PURSUANT TO HIS OR HER INVESTIGATION  
5 UNDER SECTION 2 OF ACT NO. 181 OF THE PUBLIC ACTS OF 1953, BEING  
6 SECTION 52.202 OF THE MICHIGAN COMPILED LAWS, THAT ANOTHER COM-  
7 PELLING PUBLIC NECESSITY EXISTS BECAUSE OF EXTRAORDINARY CIRCUM-  
8 STANCES OF THE CASE, AN AUTOPSY MAY BE PERFORMED ON THE BODY OF  
9 THE DECEDENT IF A COURT GRANTS A PETITION IN A SPECIAL PROCEEDING  
10 AS PROVIDED IN SUBSECTION (2).

11       (2) IF CIRCUMSTANCES AS DESCRIBED IN SUBSECTION (1) EXIST,  
12 THE COUNTY MEDICAL EXAMINER OR LOCAL HEALTH OFFICER MAY INSTITUTE  
13 A SPECIAL PROCEEDING, WITHOUT FEE, IN THE CIRCUIT COURT PETITION-  
14 ING FOR AN ORDER AUTHORIZING AN AUTOPSY ON THE DECEDENT. THE  
15 PROCEEDING SHALL BE INSTITUTED AS SOON AS PRACTICABLE, BROUGHT ON  
16 BY AN ORDER TO SHOW CAUSE ON NOTICE TO THE SURVIVING RELATIVE OR  
17 FRIEND, OR IF NO SURVIVING RELATIVE OR FRIEND IS KNOWN TO THE  
18 COUNTY MEDICAL EXAMINER OR LOCAL HEALTH OFFICER, THEN TO ANOTHER  
19 INTERESTED PARTY AS THE COURT MAY DIRECT, RETURNABLE AT THE EAR-  
20 LIEST POSSIBLE TIME. THE PROCEEDING SHALL HAVE PREFERENCE OVER  
21 ALL OTHER CASES IN THE COURT AND SHALL BE DETERMINED SUMMARILY  
22 UPON THE PETITION AND ORAL OR WRITTEN PROOF THAT IS OFFERED BY  
23 THE PARTIES. THE COURT SHALL GRANT THE RELIEF SOUGHT IN THE  
24 PETITION IF IT FINDS THAT THE PETITIONER HAS ESTABLISHED A COM-  
25 PELLING PUBLIC NECESSITY FOR THE AUTOPSY UNDER ALL CIRCUMSTANCES  
26 OF THE CASE. IF THE PETITION IS DENIED, AND NO STAY IS GRANTED  
27 BY THE COURT OR THE APPELLATE DIVISION, THE BODY SHALL BE

1 IMMEDIATELY RELEASED FOR BURIAL TO THE SURVIVING RELATIVE OR  
2 FRIEND.

3       Sec. 10202. (1) In any case in which an autopsy is to be  
4 done by a county medical examiner or a county medical examiner  
5 causes an autopsy to be done, the cornea of the deceased person  
6 may be removed by a person authorized by the county medical  
7 examiner.

8       (2) Removal under subsection (1) may be made only under the  
9 following circumstances:

10       (a) An autopsy has already been authorized by the county  
11 medical examiner AND IS NOT PROHIBITED UNDER SECTIONS 2856 TO  
12 2859.

13       (b) The county medical examiner does not have knowledge of  
14 an objection by the next of kin of the decedent to the removal of  
15 the cornea.

16       (c) The removal of the cornea will not interfere with the  
17 course of any subsequent investigation or autopsy or alter  
18 ~~post mortem~~ POSTMORTEM facial appearance.

19       Section 2. This amendatory act shall not take effect unless  
20 Senate Bill No. \_\_\_\_\_ or House Bill No. 4162 (request  
21 no. 00887'89 a) of the 85th Legislature is enacted into law.