



**House
Legislative
Analysis
Section**

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THE APPARENT PROBLEM:

The Public Health Code prohibits autopsies unless they are performed by a physician who has received written consent from a relative of the deceased who assumes custody of the body, or unless performed by a medical examiner or local health officer for a compelling public reason, as, for example, when there is some suspicion about the cause of death. Many claim that autopsies are nevertheless performed when there is no compelling reason, either because no one has asked the next of kin, or because of a misunderstanding between the deceased's family and the medical examiner. Charges have also been lodged that pituitary glands and corneas have been removed without the consent of next of kin, and against the religious beliefs of the deceased. It is felt that the code should be amended to prohibit a county medical examiner from performing an autopsy if — according to relatives or friends of the deceased — there was reason to believe that an autopsy would be contrary to the religious beliefs of the deceased. The same provisions should apply to the removal of pituitary glands and corneas.

THE CONTENT OF THE BILL:

House Bill 5567 would amend the Public Health Code to prohibit a county medical examiner from performing an autopsy if the next of kin or a friend of the decedent claimed, or there was otherwise reason to believe, that an autopsy would be contrary to the religious beliefs of the decedent. The only exception would be if an autopsy was required by "a compelling public necessity," including if it were essential to the criminal investigation of a homicide, or the county medical examiner had determined that discovery of the cause of death of the decedent was necessary to meet an immediate and substantial threat to the public health. If neither of these situations existed, but the county coroner still believed that there was a "compelling public necessity," for an autopsy, then the coroner or a local health officer could apply — as soon as practicable — to the circuit court for an authorization order for an autopsy. The proceeding would have preference over all other cases in the court and would be determined summarily upon the petition and oral or written proof offered by the parties. If the petition was denied, and no stay was granted by the court, the body would be immediately released for burial to the surviving relative or friend.

If the relative or friend objected and the coroner believed there was a "compelling public necessity" (relative to a criminal investigation or a public health threat) an autopsy could be performed after notice of the intent to perform the autopsy was given to the surviving relative or friend, or when 48 hours had elapsed, whichever was longer. The court could dispense with the waiting period upon ex parte motion if it determined that the delay could prejudice the accuracy of the autopsy, or that the objecting party was a suspect in the homicide of the decedent. An objecting party could, however, institute legal proceedings to have a court determine the propriety of the autopsy. To be

NO AUTOPSIES UNLESS PUBLIC NECESSITY

House Bills 5567 and 5568 as introduced
First Analysis (6-9-88)

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Sponsor: Rep Maxine Berman
Committee: Public Health

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eligible to act as the friend of a decedent under the bill, the objecting party would be required to present an affidavit to the individual requesting the autopsy at the time of the objection, or as soon as practicable after the objection. The affidavit would state the facts and circumstances upon which the individual claimed to be a friend, upon which he or she claimed that the autopsy was contrary to the religious beliefs of the decedent, and that he or she would assume responsibility for the lawful disposition of the body.

Under the bill, the same restrictions against autopsies would apply to the removal of the pituitary glands and corneas of the decedent.

All autopsies performed under the provisions of the bill would have to be by the least intrusive procedure consistent with the compelling public necessity.

MCL 333.2855 et al.

House Bill 5568 would amend Public Act 151 of 1953 to require compliance with the changes proposed in House Bill 5567.

MCL 52.205

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would involve possible minimal court costs for local health departments, which cannot be determined at present. (6-8-88)

ARGUMENTS:

For:

Unless there are obviously suspicious circumstances surrounding a death, there is no reason why the deceased's wishes or religious beliefs should not be followed. The bill would help clarify all present restrictions in the act, first by giving precedence to the religious beliefs of the deceased, and second by requiring county medical examiners to follow prescribed procedures in applying for court permission before performing an autopsy over the objections of family members, and by granting a surviving relative or friend the right to institute legal proceedings.

POSITIONS:

The Department of Public Health has no position on the bill. (6-8-88)

The Department of State Police has no position on the bill. (6-8-88)

H.B. 5567 & 5568 (6-9-88)