



H.B. 471

125th General Assembly
(As Introduced)

Reps. Flowers, Combs, Aslanides, Seitz, Webster

BILL SUMMARY

- Exempts certain coroner records from being public records.
- Permits coroners to hire deputy coroners and investigators as independent contractors, among other personnel changes in the Coroner's Law.
- Designates coroner investigators as law enforcement officers for purposes of the Revised Code and as peace officers for purposes of receiving training at approved peace officer training schools and certain other purposes.
- Requires the State Medical Board to adopt a rule permitting a coroner's investigator to recite facts to a physician, so the physician can pronounce a person dead without personal examination.
- Makes changes regarding death certification in the Death and Fetal Death Certificate Law.
- Adopts a definition of "autopsy" for the Coroner's Law.
- Precludes causes of actions against coroner office personnel for requesting the performance of, ordering the performance of, or performing such an autopsy in good faith under authority of the Coroner's Law.

CONTENT AND OPERATION

Coroners' records

Background

Coroners are elected county officials who are licensed physicians and must be notified when a person dies in any suspicious or unusual manner or suddenly when in apparent good health, by criminal or other violent means, by suicide, by sudden infant death syndrome, or by casualty. The coroner, or any person the coroner designates, then can take charge of the dead body and may perform an autopsy. The coroner must determine the cause of death (both medically and legally). A dead body in the coroner's custody must be held until the coroner, after consultation with the appropriate law enforcement official, decides it is no longer necessary to hold the body. (R.C. 313.01, 313.02, 313.12, 313.121, 313.13, 313.131, and 313.15--not in the bill.)

Changes made by the bill

Additional exclusions and inclusion. Current law declares the coroner's records (those made personally by the coroner or by someone acting under the coroner's direction or supervision) to be public records. If the coroner, a deputy coroner, or their representatives request to inspect and receive a copy of a deceased person's medical or psychiatric records (e.g., from a physician or hospital), those records while in the coroner's office's possession are *not* public records. (R.C. 313.091--not in the bill; R.C. 313.10.)

The bill additionally *excludes* the following from being public records of a coroner--if in the coroner's records: preliminary autopsy and investigative notes and findings (including those made by the coroner or individuals acting under the coroner's direction or supervision); photographs of a decedent made by the coroner or any such individual; and suicide notes. However, the photographs and suicide notes may be made available, upon written request, to the surviving spouse, parents, and adult children of the decedent who is their subject. In addition, the coroner, in his or her discretion, may allow the use of the photographs for medical education purposes. (R.C. 313.10(A) and (B).)

On the other hand, the bill explicitly *includes* as a public record the detailed descriptions of the observations written during the progress of an autopsy and the conclusions drawn from those observations filed in the coroner's office (R.C. 313.10(A)).

Fees for copies. Under current law, if a person requests a copy of a public record of a coroner (1) in writing and (2) accompanied by payment of a

"transcript" fee, the person is entitled to receive the copy. That fee (unchanged by the bill) is 15¢ per hundred words or a minimum fee of \$1. The bill redesignates the fee as a "record retrieval and copying" fee. (R.C. 313.10(B).)

Deputy coroners, investigators, and other employees of a coroner

Deputy coroners

Current law permits the coroner to appoint (hire as a county employee) deputy coroners (who must be licensed physicians), pathologists (who must be deputy coroners), and any necessary technicians. The coroner also may appoint the following support staff: secretaries and an official stenographer. The bill additionally permits a coroner to contract for the services of *deputy coroners*, without any competitive bidding. (R.C. 9.36, 313.05, and 325.17.)

Investigators and other personnel

Some, but not all, counties maintain a coroner's office, laboratory, and morgue, and current law specifically permits the coroners of these counties to appoint clerks, stenographers, custodians, and investigators and to prescribe their duties.¹ The bill permits any coroner, regardless of whether the county maintains a coroner's office, laboratory, or morgue, to employ such personnel. It also explicitly provides that any *investigator* of a coroner's office may be employed as a county employee on a part-time or full-time basis. And, in addition to employing investigators on these bases, the bill permits a coroner to employ investigators as independent contractors. (R.C. 313.05.)

The bill also makes a coroner's investigator a "peace officer" for purposes of all provisions of the Arrest and Citation Law that use that term, and a "law enforcement officer" for purposes of all sections of the Revised Code that use that term (R.C. 2901.01(A)(11)(n) and 2935.01(B)). An investigator, thus, could file affidavits with a court or a prosecuting attorney to cause the arrest or prosecution of a person charged with an offense, possibly serve an arrest warrant, and possibly make a forcible entry under specified circumstances in executing an arrest warrant (R.C. 2935.09, 2935.10, and 2935.12--not in the bill). Coroner's investigators would *not*, however, have warrantless arrest authority or fresh pursuit authority (R.C. 2935.03--not in the bill). Further, coroner's investigators as "peace officers" would be covered by the Criminal Code's provisions providing enhanced penalties for perpetrators of felonious assault, aggravated assault, or assault when the victim

¹ Note that the coroner of any county has authority under current law, as mentioned above, to hire an official stenographer.

of the offense is a peace officer (R.C. 2903.11, 2903.12, and 2903.13--not in the bill).

As a "law enforcement officer," a coroner's investigator would be eligible to obtain training at *the Ohio Peace Officer Training Academy* (R.C. 109.79--not in the bill). And, the bill also generally requires an approved *peace officer training school* to permit a coroner's investigator to attend its basic training program and, if it is satisfactorily completed, to receive a certificate recognizing that completion. But, neither the Ohio Peace Officer Training Academy nor a peace officer training school need accept a coroner's investigator if the county has not paid the requisite tuition and certification costs in their entirety.

The bill *does not require* a coroner's investigator to receive a peace officer training certificate *as a condition of being employed* as an investigator. But, if a coroner's investigator carries a firearm in the course of official duties, the investigator is required by the bill to annually successfully complete a firearms requalification program approved by the Ohio Peace Officer Training Commission or, otherwise, be ineligible to continue to carry the firearm (R.C. 109.73(A)(13), 109.751, 109.77, and 109.801).²

Investigator's assistance in pronouncing death

The bill provides that a coroner's investigator must be included among the individuals who are competent to recite the facts of a deceased person's medical condition to a physician so that the physician may pronounce the person dead without personally examining the body (R.C. 4731.053(B)).

Currently, the State Medical Board must adopt rules to establish standards to be met and procedures to be followed by a physician with respect to the delegation of the performance of a medical task to a person who is not licensed or otherwise specifically authorized by the Revised Code to perform the task. A current Medical Board rule permits a physician to pronounce death without personally examining a body if a competent observer listed in the rule recites the facts of the decedent's present medical condition to the physician and the physician is satisfied that death has occurred. The list of competent observers currently includes physicians, registered nurses, licensed practical nurses, EMTs, paramedics, physician assistants, chiropractors, and podiatrists--if they have a current license or certificate issued under Ohio law. The bill thus requires the Medical Board to add coroner's investigators (who need not be medical license or

² *The bill includes coroner's investigators as "peace officers" for purposes of the Ohio Peace Officer Training Commission Law, a definition distinct from the "peace officer" definition mentioned above (R.C. 109.71(A)(20)).*

certificate holders) to this list in its rules. (R.C. 4731.053(B); O.A.C. Rule 4731-14-01.)

Certification of cause of death

Current law

Under current law, the funeral director or other person in charge of the final disposition of the remains in each human death (including fetal deaths) occurring in Ohio must register that death with the local registrar of vital statistics of the district where the death occurred.³ The funeral director or that other person then must present the death certificate to "the physician or coroner" for certification of the cause of death (in this context, the physician apparently means the attending physician of the decedent). The physician or coroner must sign the "medical" death certificate within 48 hours after the death. A coroner generally must satisfy this requirement by signing in the coroner's own hand, but, under certain circumstances, the signing can be accomplished by the coroner using a signature stamp. (R.C. 3705.16.)

Changes made by the bill

The bill requires a coroner or a deputy coroner, or a "medical examiner or a deputy medical examiner serving in an equivalent capacity" to a coroner or a deputy coroner, in the county where certain deaths occur to make the certification of the cause of death unless (1) the death has been *reported* to the coroner, deputy coroner, medical examiner, or deputy medical examiner and (2) that individual, after a preliminary examination, *declines* to assert jurisdiction with respect to the death.⁴ A physician *other* than a coroner, deputy coroner, medical examiner, or deputy medical examiner cannot certify the manner of any death as other than

³ *"Fetal death" means death prior to the complete expulsion or extraction from its mother of a product of human conception of at least 20 weeks of gestation, which after such expulsion or extraction does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles (R.C. 3705.01(B)(1)--not in the bill).*

⁴ *Neither the bill nor the Revised Code defines or describes who a medical examiner or deputy medical examiner is. While other states use that term, Ohio law uses the term "coroner." These references may need further clarification.*

The deaths to which this requirement refers are those when a person dies in any suspicious or unusual manner or suddenly when in apparent good health, by criminal or other violent means, by suicide, by sudden infant death syndrome, or by casualty (R.C. 313.12--not in the bill).

natural. The bill relatedly makes it a crime for a physician *other than* those four categories of physicians (a) to knowingly certify the cause of death in cases listed in Footnote 4 without the report and declination mentioned in (1) and (2) above or (b) to knowingly certify the manner of any death as other than natural. Those crimes are punishable by a fine of not more than \$1,000 or incarceration for a term of not more than one year, or both. (R.C. 3705.16(B), 3705.29(E) and (F), and 3705.99(B).)⁵

Under the bill, the latter criminal penalties also apply if a person knowingly presents a death certificate (including a fetal death certificate) to obtain a certification of the cause of death in cases listed in Footnote 4 to a physician other than a coroner, deputy coroner, medical examiner, or deputy medical examiner in the county in which the death occurs, unless the death has been reported to the coroner, deputy coroner, medical examiner, or deputy medical examiner and, after a preliminary examination, that individual has declined to assert jurisdiction with respect to the death. The bill also makes it a crime, with distinct penalties as described below, for a person, with intent to defraud or knowing that the person is facilitating a fraud, to certify a cause of death in violation of the prohibitions described in the immediately preceding paragraph, or to obtain or attempt to obtain a certification of the cause of death in violation of the prohibition described in the immediately preceding sentence. The penalty for these fraud-related crimes is a fine of not more than \$10,000 or incarceration for a term of not more than five years, or both. (R.C. 3705.29(G) and (H) and 3705.99(A) and (B).)

Autopsy provisions

Definition of autopsy

Current law does not contain a specific definition of "autopsy," so that word must be interpreted according to its common usage (R.C. 1.42--not in the bill). The Merriam-Webster's Collegiate Dictionary (11th Ed.) defines "autopsy" as "an examination of a body after death to determine the cause of death or the character and extent of changes produced by disease . . . [;] a critical examination, evaluation, or assessment of someone or something past."

⁵ Under the bill too, the funeral director or other person in charge of the final disposition of remains could present a death certificate to the decedent's attending physician (existing law), the coroner (existing law), or to a "medical examiner" serving in an equivalent capacity to a coroner, for the certification of the cause of death. Existing law's signing requirements for coroners are extended by the bill to those medical examiners. (R.C. 3705.16(B).)

The bill specially defines the word "autopsy" for use in the Coroner's Law as follows (R.C. 313.123(A)):

... the external and internal examination of the body of a deceased person by a pathologist, another qualified physician, *or a person who is not a pathologist or another qualified physician but who was performing those examinations in good standing on or before the effective date of this section*, including, but not limited to, gross visual inspection and surgical dissection of the body and its internal organs, photographic or narrative documentation of findings, microscopic, radiological, toxicological, chemical, or other laboratory analyses performed in the discretion of the examining individual upon tissues, organs, blood, other bodily fluids, gases, or any other specimens and the retention for diagnostic and documentary purposes of tissues, organs, blood, other bodily fluids, gases, or any other specimens as the examining individual considers necessary to establish and defend against challenges to the cause and manner of death of the deceased person. (Italics added.)⁶

Autopsy waste

The bill provides that retained tissues, organs, blood, other bodily fluids, gases, or any other specimens from an autopsy must be considered autopsy waste that must be disposed of in accordance with applicable federal and state laws, including the Public Health Council's protocol rules for autopsies (R.C. 313.123(B); R.C. 313.122--not in the bill).

Cause of action preclusion

The bill provides that a cause of action does not lie against employees of a coroner's office for (1) requesting the performance of, (2) ordering the performance of, or (3) performing an autopsy (as defined above) in good faith under the authority of the Coroner's Law (R.C. 313.123(C)).

⁶ *It is not clear what the italicized language attempts to accomplish.*

HISTORY

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Introduced	04-22-04	p. 1786

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