



Lisa Sandberg

Bill Analysis
Legislative Service Commission

Sub. H.B. 235

126th General Assembly
(As Passed by the House)

Reps. Wagner, Distel, Flowers, Harwood, Kearns, McGregor, Seitz, Wolpert, Willamowski, Barrett, Blessing, Chandler, Coley, Collier, Combs, Domenick, D. Evans, Fende, Gibbs, Hoops, Hughes, Law, Perry, Raussen, Reidelbach, Schaffer, Schneider, Taylor, Uecker

BILL SUMMARY

- Excludes preliminary autopsy and investigative notes and findings, and photographs of a decedent, made by the coroner or anyone acting under the coroner's direction or supervision and suicide notes in coroner's records from being public records and includes as public records the detailed descriptions of the observations written during the progress of an autopsy and the conclusions drawn from those observations that are filed in the office of the coroner.
- Permits coroners to hire deputy coroners as independent contractors.
- Requires the State Medical Board to adopt a rule including a coroner's investigator among the individuals competent to recite the facts of a deceased person's medical condition to a physician so the physician may pronounce the person dead without personal examination.
- Requires a coroner's certification of death in certain cases, prohibits physicians not acting as coroners from certifying the cause of death that does not occur under natural circumstances, makes related changes in the Death and Fetal Death Certificate Law, and provides criminal penalties for certain violations.
- Authorizes a coroner to submit evidence to the Bureau of Criminal Identification and Investigation for help in determining whether a death resulted from criminal activity and requires the Bureau to assist in the evaluation of that evidence.
- Defines "autopsy" for purposes of the Coroner's Law.

- Precludes causes of actions against coroner office employees for requesting, ordering, or performing an autopsy in good faith under authority of the Coroner's Law.
- Eliminates the prohibition against a coroner practicing as an attorney in this state.

CONTENT AND OPERATION

County coroners

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 (hereinafter referred to as "nonnatural deaths"). 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.)

Coroner's records as public records

Existing law

Existing 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 the representative of either requests 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.)

Under current law, the coroner's office must provide a copy of a public record to anyone who requests it in writing and pays a "transcript" fee of 15¢ per 100 words, but not less than \$1 (R.C. 313.10).

Operation of the bill

The bill *excludes* the following, if in a coroner's office, from being public records: preliminary autopsy and investigative notes and findings made by the coroner or anyone acting under the coroner's direction or supervision; photographs

of a decedent made by the coroner or anyone acting under the coroner's direction or supervision; suicide notes; and medical and psychiatric records obtained under R.C. 313.091 (also excluded under existing law) (R.C. 313.10(A)(2)).

However, the coroner must provide any photograph or suicide note in the coroner's records to any of the following persons who makes a written request as next of kin of a decedent who is the subject of the photograph or suicide note (R.C. 313.10(C)):

(1) The surviving spouse;

(2) If there is no surviving spouse, or if the surviving spouse has died without having requested the photograph or suicide note, any child of the decedent over 18 years of age, with each such child having an independent right to make the request;

(3) If there is no surviving spouse or child over 18, or if the surviving spouse and all children over 18 have died without having made a request, the parents of the decedent, with each parent having an independent right to make a request;

(4) If there is no surviving spouse, child over 18, or parent of the decedent, or if all have died without having made a request, the siblings of the decedent, whether of the whole or the half blood, with each having an independent right to make a request.

In addition, the coroner, in his or her discretion, may allow the use of the photographs of a decedent for medical education purposes (R.C. 313.10(A)(3)).

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)(1)).

The bill redesignates the transcript fee as a "record retrieval and copying" fee and changes the fee to 25¢ per page or a minimum of \$1 (R.C. 313.10(B)).

Deputy coroners, investigators, and other employees of a coroner

Deputy coroners

Existing law permits the coroner to appoint (hire as a county employee) deputy coroners (who must be licensed physicians), pathologists (as deputy coroners), and any necessary technicians. The bill permits a coroner to contract, without competitive bidding, for the services of deputy coroners. It also specifically provides that pathologists "serving as deputy coroners" and

"technicians" must receive salaries fixed by the coroner and payable from the county treasury and that the coroner may appoint as such employees a person who is an associate or employee of the coroner or deputy coroner in private practice. The bill also permits pathologists appointed as deputy coroners to perform autopsies. (R.C. 313.05 and 325.17.)

Clerks 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, custodians, and investigators and to prescribe their duties. (The coroner of any county may hire an official stenographer.) The bill permits any coroner, regardless of whether the county maintains a coroner's office, laboratory, or morgue, to employ such personnel. (R.C. 313.05(A)(3).)

Investigator's assistance in pronouncing death

Under existing law, 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 requires the Medical Board to add to this list coroner's investigators, who are not required by the Coroner's Law to be holders of a medical license or certificate. (R.C. 4731.053(B); O.A.C. Rule 4731-14-01.)

Certification of cause of death

Existing law

Under existing 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. 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.)

Operation of the bill

The bill allows a funeral director or other person in charge of the final disposition of remains to present a death certificate or "fetal death certificate" (added by the bill) to the decedent's attending physician or the coroner, as under existing law, or to the "medical examiner" (see **COMMENT 1**). (R.C. 3705.16(B).)

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 a nonnatural death or nonnatural fetal death occurs to certify the cause of death unless (1) the death was reported to the coroner, deputy coroner, medical examiner, or deputy medical examiner and (2) that individual, after a preliminary examination, declined to assert jurisdiction with respect to the death or fetal death. A physician other than the coroner in the county where the death or fetal death occurs, or a deputy coroner, medical examiner, or deputy medical examiner serving in an equivalent capacity, may certify the cause of death only when the death occurs under natural circumstances. (R.C. 3705.16(B).)

In a separate provision, the violation of which is a crime, the bill again requires that the coroner of the county in which the death or fetal death occurs, or a deputy coroner, medical examiner, or deputy medical examiner serving in an equivalent capacity, certify the cause of a nonnatural death unless the death was reported to the coroner, deputy coroner, medical examiner, or deputy medical examiner and that person, after a preliminary examination, declined to assert jurisdiction with respect to the death or fetal death. The bill prohibits a physician other than the coroner of the county in which the death or fetal death occurs, or a deputy coroner, medical examiner, or deputy medical examiner serving in an equivalent capacity, from certifying any death or fetal death that occurs under any circumstances other than natural. The bill also prohibits a person, in a case in which the cause of death is nonnatural, from knowingly presenting a death or fetal death certificate for the purpose of obtaining certification of the cause of death to any physician other than the coroner of the county in which the death or fetal death occurs, or to a deputy coroner, medical examiner, or deputy medical examiner in the county serving in an equivalent capacity, unless the death or fetal death was reported to the coroner, deputy coroner, medical examiner, or deputy medical examiner and, after a preliminary examination, that individual declined to assert jurisdiction with respect to the death or fetal death. The penalty for a violation of any of these provisions is a fine of not more than \$1,000, incarceration

for a term of not more than one year, or both. (R.C. 3705.29(E), (F), and (G) and 3705.99(B).)

The bill also prohibits a person, with intent to defraud or knowing that the person is facilitating a fraud, from certifying a cause of death or obtaining or attempting to obtain a certification of the cause of death or fetal death in violation of the provisions described in the immediately preceding paragraph. The penalty for these fraud-related crimes is a fine of not more than \$10,000, incarceration for a term of not more than five years, or both. (R.C. 3705.29(H) and 3705.99(A).) (See **COMMENT 2**.)

BCII assistance

The bill authorizes the coroner to submit any evidence gathered during an investigation of a death to the Bureau of Criminal Identification and Investigation (BCII) for assistance in determining whether the death resulted from criminal activity and requires the BCII to assist in the evaluation of the evidence (R.C. 313.08(D)).

Autopsy provisions

Definition of autopsy

Existing law does not contain a definition of "autopsy." The bill defines "autopsy" for use in the Coroner's Law as the external and internal examination of the body of a deceased person, including, but not limited to, gross visual inspection and 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 (R.C. 313.123(A)).

Medical waste

The bill provides that retained tissues, organs, blood, other bodily fluids, gases, or any other specimens from an autopsy are medical waste that must be disposed of in accordance with applicable federal and state laws, including the Public Health Council's protocol rules for autopsies adopted under R.C. 313.122 (R.C. 313.123(C)).

Performance of autopsies by deputy coroners

Existing law states that pathologists appointed as deputy coroners must assist in doing autopsies. The bill authorizes them to perform autopsies. (R.C. 313.05(A)(1).)

Cause of action preclusion

The bill provides that a cause of action does not lie against an employee of a coroner's office for requesting, ordering, or performing an autopsy in good faith under the authority of the Coroner's Law (R.C. 313.123(D)).

Sheriff or coroner as attorney

The bill eliminates the prohibition in existing law against a coroner practicing as an attorney in any court of the state. However, it prohibits the coroner of a county with a population of more than 175,000 who elects not to engage in the private practice of medicine pursuant to R.C. 325.15 from practicing as an attorney during the period in which the coroner may not engage in the private practice of medicine (see **COMMENT 3**). (R.C. 4705.01.)

COMMENT

1. The bill refers to medical examiners and deputy medical examiners, but neither existing law nor the bill defines the terms. However, in Summit County, which has an alternative form of county government, the medical examiner performs the functions of the coroner.

2. R.C. 3705.29(H), new in the bill, prohibits the fraudulent certification of a cause of death "in violation of the prohibition of division (E)" of the section. Division (E) *requires* the coroner, deputy coroner, medical examiner, or deputy medical examiner to certify the cause of death in certain cases. It does not explicitly *prohibit* anything, although failure to certify as required might be regarded as an implicit prohibition.

3. R.C. 325.15 provides that a coroner in a county with a population of more than 175,000 may not engage in the private practice of medicine unless, before taking office, the coroner notifies the board of county commissioners of the intention to engage in that private practice. The coroner must elect to engage or not to engage in the private practice of medicine before the commencement of each new term of office. A coroner in a county with a population of more than 175,000 who engages in the private practice of medicine but who intends not to engage in the private practice of medicine during the coroner's next term of office must so notify the board of county commissioners before the term commences. A

coroner who elects not to engage in the private practice of medicine may engage in the private practice of medicine, without any reduction in salary, for six months for the purpose of concluding the affairs of the coroner's private practice.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	05-03-05	p. 736
Reported, H. Judiciary	06-14-05	p. 950
Passed House (89-6)	10-05-05	pp. 1684-1685

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