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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

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**Bill No:** AB 2457                      **Hearing Date:** June 14, 2016  
**Author:** Bloom  
**Version:** May 16, 2016  
**Urgency:** No                                      **Fiscal:** No  
**Consultant:** JRD

**Subject:** *Autopsy: Electronic Image Systems*

## HISTORY

Source: Author

Prior Legislation: SB 1196 (Runner) -- Chapter 45, Statutes of 2008

Support: California State Coroners' Association

Opposition: None known

Assembly Floor Vote: 79 - 0

## PURPOSE

*The purpose of this bill is to allow coroners to use an electronic imaging system during an autopsy, unless there is a reasonable suspicion to believe the death was caused by a criminal act, as specified.*

*Existing law* requires coroners to determine the manner, circumstances and cause of death in the following circumstances:

- Violent, sudden or unusual deaths;
- Unattended deaths;
- When the deceased was not attended by a physician, or registered nurse who is part of a hospice care interdisciplinary team, in the 20 days before death;
- When the death is related to known or suspected self-induced or criminal abortion;
- Known or suspected homicide, suicide or accidental poisoning;
- Deaths suspected as a result of an accident or injury either old or recent;
- Drowning, fire, hanging, gunshot, stabbing, cutting, exposure, starvation, acute alcoholism, drug addiction, strangulation, aspiration, or sudden infant death syndrome;
- Deaths in whole or in part occasioned by criminal means;
- Deaths associated with a known or alleged rape or crime against nature;
- Deaths in prison or while under sentence;
- Deaths known or suspected as due to contagious disease and constituting a public hazard;
- Deaths from occupational diseases or occupational hazards;
- Deaths of patients in state mental hospitals operated by the State Department of State Hospitals;

- Deaths of patients in state hospitals serving the developmentally disabled operated by the State Department of Development Services;
- Deaths where a reasonable ground exists to suspect the death was caused by the criminal act of another; and
- Deaths reported for inquiry by physicians and other persons having knowledge of the death.

(Government Code § 27491.)

*Existing law* requires the coroner or medical examiner to sign the certificate of death when they perform a mandatory inquiry. (Government Code § 27491(a).)

*Existing law* allows the coroner or medical examiner discretion when determining the extent of the inquiry required to determine the manner, circumstances and cause of death. (Government Code § 27491(b).)

*Existing law* requires the coroner or medical examiner to conduct an autopsy at the request of the surviving spouse or other specified persons when an autopsy has not already been performed. (Government Code § 27520(a).)

*Existing law* allows the coroner or medical examiner discretion to conduct an autopsy at the request of the surviving spouse or other specified persons when an autopsy has already been performed. (Government Code § 27520(b).)

*Existing law* specifies that the cost of autopsies requested by the surviving spouse or other specified persons are borne by the requestor. (Government Code § 27520(c).)

*Existing law* requires that discretionary autopsies include the following:

- All available finger and palm prints;
- Dental examination;
- Collection of tissue including hair sample and DNA sample, if necessary;
- Notation and photographs of significant marks, scars, tattoos and personal effects;
- Notation of observations pertinent to the time of death; and
- Documentation of the location of the remains.

(Government Code § 27521(a) and (b).)

*Existing law* allows for the use of full body X-rays in conducting a discretionary autopsy. (Government Code § 27521 (c).)

*This bill*, except as specified, would authorize a coroner, medical examiner, or other agency required to perform an autopsy in a death under those prescribed conditions to use an electronic image system, including, but not limited to, an X-ray computed tomography scanning system, to fulfill specified postmortem examination or autopsy requirements.

*This bill* states that a coroner cannot use an electronic imaging system to conduct an autopsy in any investigation where the circumstances surrounding the death afford a reasonable basis to suspect that the death was caused by or related to the criminal act of another and it is necessary

to collect evidence for presentation in a court of law. If the results of an autopsy performed using electronic imaging provides the basis to suspect that the death was caused by or related to the criminal act of another, and it is necessary to collect evidence for presentation in a court of law, then a dissection autopsy shall be performed in order to determine the cause and manner of death.

*The bill* would allow an autopsy to be conducted using an X-ray computed tomography scanning system without regard to the existence of a properly-executed certificate of religious belief.

#### RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several years this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In December of 2015 the administration reported that as "of December 9, 2015, 112,510 inmates were housed in the State's 34 adult institutions, which amounts to 136.0% of design bed capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is 1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 2015." (Defendants' December 2015 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).) One year ago, 115,826 inmates were housed in the State's 34 adult institutions, which amounted to 140.0% of design bed capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants' December 2014 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).)

While significant gains have been made in reducing the prison population, the state must stabilize these advances and demonstrate to the federal court that California has in place the "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee's consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;

- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

## COMMENTS

### 1. Need for This Legislation

According to the author:

Existing law requires coroners to perform post mortem dissection in certain cases prescribed by law or in cases where the autopsy on a decedent is requested by specified relatives. Current law also provides a coroner with certain discretionary authority to perform an autopsy during a postmortem examination. The legislation would allow the coroner, if he/she deems it adequate, to perform digital imaging in lieu of a full autopsy.

In 2015, the Los Angeles County Board of Supervisors authorized the purchase of a digital imaging device to be used by the Los Angeles Medical Examiner-Coroner in cases where an autopsy is needed or mandated by law.

A digital imaging device can be used in cases where, at the request of the family of the deceased, the device be used instead of an autopsy through dissection. AB 2457 would specify that digital imaging can be used, at the discretion of the coroner or medical examiner, to perform an autopsy in California.

AB 2457 would add subsection (d) to Government Code 27521 to authorize the use of an electronic imaging system, including, but not limited to, an X-ray computed tomography scanning system, to fulfill the requirements of a discretionary postmortem examination.

### 2. Electronic Imaging Systems for Autopsies

Electronic imaging systems, such as computer tomography (CT), magnetic resonance imaging (MRI) and X-ray computed tomography scanning have been used increasingly in recent years to assist coroners and medical examiners performing autopsies. In certain cases, these systems can help the coroner determine the cause of death without performing a post-mortem dissection of the deceased. This can be especially helpful in cases where the deceased or the deceased's surviving spouse or next of kin have religious objections to the post mortem dissections common in traditional autopsies. This bill would allow coroners and medical examiners to use these electronic imaging systems during the performance of an autopsy requested by a surviving spouse or next of kin.

This bill would also allow coroners, medical examiners and other agencies tasked with performing an autopsy to utilize electronic imaging systems to assist in the performance of a mandatory inquest. Existing law requires coroners and others to perform an autopsy when there is reason to believe the death was caused by a criminal act, either by another or by the deceased. This bill would not allow electronic imaging systems to be the *sole* method by which these mandatory autopsies are performed, but would allow them to be used during these autopsies.

There are two reasons for this: (1) electronic imaging systems as a method for performing autopsies have not been ruled admissible as evidence by any court of law;<sup>1</sup> and (2) the current electronic imaging system technology has been shown to be unreliable in determining certain causes of death.

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<sup>1</sup> For scientific evidence and expert testimony, the court will conduct either a *Daubert* or *Frye* style hearing – depending on whether the case is before federal or state court, respectively) to determine the reliability of the particular type of evidence before the court. (see *Daubert v. Merrell Dow Pharms., Inc.* (1993) 509 U.S. 579; *People v. Leahy* (1994) 8 Cal.4th 587.) To date, no federal or California court has ruled on the admissibility of autopsies performed using an electronic imaging system.