

BILL ANALYSIS

C.S.S.B. 1086
By: Campbell
Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties note that when a child dies under suspicious circumstances, the child's parents can be prohibited from seeing the child's body and saying goodbye until after the body has undergone an autopsy. C.S.S.B. 1086 seeks to protect a parent's right to view the body of the parent's deceased child.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.S.B. 1086 amends the Code of Criminal Procedure to entitle a parent of a deceased child, defined by the bill as a person younger than 18 years of age, whose death occurred at a hospital or other institution to view the child's body, if practicable, before the body is examined by a justice of the peace or the medical examiner, as applicable, for the county in which the death occurred. The bill prohibits a parent of a deceased child whose death did not occur at a hospital or other institution from viewing or otherwise having contact with the child's body after a justice of the peace or medical examiner assumes control over the body unless the parent first obtains the consent of the justice of the peace or medical examiner or a person acting on behalf of the justice of the peace or medical examiner. The bill requires the parental viewing of a deceased child whose death did not occur at a hospital or other institution to be supervised by a physician, registered nurse, or licensed vocational nurse or by the justice of the peace or the medical examiner or a person acting on behalf of the justice of the peace or medical examiner. The bill prohibits a person from removing a medical device from the child's body or otherwise altering the condition of the body for purposes of conducting a viewing under the bill's provisions unless the person first obtains the consent of the justice of the peace or medical examiner or a person acting on behalf of the justice of the peace or medical examiner.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 1086 may differ from the engrossed in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial

differences between the engrossed and committee substitute versions of the bill.

SENATE ENGROSSED

SECTION 1. Chapter 49, Code of Criminal Procedure, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. PARENTAL RIGHT TO VIEW DECEASED CHILD

Art. 49.51. DEFINITIONS. In this subchapter:

(1) "Child" means a person younger than 18 years of age.

(2) "Department" means the Department of Family and Protective Services.

(3) "Prosecuting attorney" means a county attorney, district attorney, or criminal district attorney.

Art. 49.52. PARENTAL RIGHT TO VIEW DECEASED CHILD ABSENT COURT ORDER. (a) A parent of a deceased child is entitled to view the child's body before an autopsy is performed, if practicable, unless a prosecuting attorney or the department obtains a court order to prevent or postpone the viewing under Article 49.53.

(b) A viewing under this article may be supervised by a physician, registered nurse, or licensed vocational nurse.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Chapter 49, Code of Criminal Procedure, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. PARENTAL RIGHT TO VIEW DECEASED CHILD

Art. 49.51. DEFINITIONS. In this subchapter:

(1) "Child" means a person younger than 18 years of age.

(2) "Parent" has the meaning assigned by Section 160.102(11), Family Code.

Art. 49.52. PARENTAL RIGHT TO VIEW DECEASED CHILD. (a) Except as provided by Subsection (b), a parent of a deceased child whose death occurred at a hospital or other institution is entitled to view the child's body, if practicable, before the body is examined by a justice of the peace or the medical examiner, as applicable, for the county in which the death occurred.

(b) A parent of a deceased child whose death did not occur at a hospital or other institution may not view or otherwise have contact with the child's body after a justice of the peace or medical examiner described by Subsection (a) assumes control over the body under Subchapter A or B, as applicable, unless the parent first obtains the consent of the justice of the peace or medical examiner or a person acting on behalf of the justice of the peace or medical examiner.

(c) A viewing under Subsection (b) must be supervised by a physician, registered nurse, or licensed vocational nurse or by the justice of the peace or the medical examiner or a person acting on behalf of the justice of the peace or medical examiner.

(d) A person may not remove a medical device from the child's body or otherwise alter the condition of the body for purposes of conducting a viewing under this article unless the person first obtains the consent of the justice of the peace or medical examiner

or a person acting on behalf of the justice of the peace or medical examiner.

No equivalent provision.

Art. 49.53. COURT ORDER TO PREVENT OR POSTPONE VIEWING.

(a) Not later than 24 hours after receiving notice of the death of a child, a prosecuting attorney may file in a county or district court an application for an order to prevent the child's parent from viewing the child's body until after an autopsy is performed if the parent is a suspect in the death of the child.

(b) The department may file, within the 24-hour period required by Subsection (a), an application under this article instead of the prosecuting attorney if:

(1) before the child's death, the department had an open investigation of an allegation of abuse or neglect involving:

(A) the deceased child; or

(B) another child, if the parent of the deceased child is the person responsible for the care, custody, or welfare of that other child; or

(2) the parent of the deceased child is the person responsible for the care, custody, or welfare of another child and after the child's death the department takes any action to protect the other child.

(c) On a request that is made by the prosecuting attorney or the department and submitted with an application under this article, the court may issue a temporary ex parte order postponing the viewing until a hearing can be held under Subsection (d).

(d) Not later than 24 hours after an application is filed under this article, the court shall conduct a hearing and rule on the application.

(e) At the close of the hearing, if the court finds that there is substantial evidence that the viewing would interfere with the investigation of the parent by the applicable law enforcement agency or by the department, the court shall issue an order to prevent the parent from viewing the child's body until after an autopsy is performed.

(f) If an application is not timely filed or an order is not timely issued in accordance with this article, the parent may not be prevented from viewing the child's body in accordance with Article 49.52.

SECTION 2. This Act takes effect
September 1, 2015.

SECTION 2. Same as engrossed version.