

SUBJECT: Removal of body parts from decedents during inquest

COMMITTEE: Public Health — favorable, with amendments

VOTE: 5 ayes — Berlanga, Hirschi, Glaze, Maxey, McDonald

0 nays

0 present, not voting

4 absent — Coleman, Delisi, Janek, Rodriguez

SENATE VOTE: On final passage, March 9 — 29-0

WITNESSES: *(On almost identical bill, HB 1046 by R. Lewis):*

For — Sue Nelson; Alfred Gilchrist, Texas Medical Association; Charles Andrews, M.D., Steve Montgomery, Harris-Methodist Health System

Against — Robert C. Bux, Bexar County Medical Examiner; Emil Farge, M.D., Bess Beliveaux, Lions Eye Bank; Suzanne Dana, M.D., Travis County Medical Examiner

BACKGROUND: The Health and Safety Code permits medical examiners to remove certain body parts or tissue proven to be clinically usable for transplants or other treatment if the decedent died under circumstances requiring an inquest, if appropriate consent is given and if the removal will not interfere with the autopsy.

Consent needs to be obtained from the decedent's spouse, adult children (if there is no spouse), parents (if there are no spouse or adult children) or siblings (if there are no spouse, adult children or parents). A medical examiner cannot remove an organ or tissue without consent if a person authorized to grant consent is known and available within four hours after death is pronounced. If a person authorized to give consent is not known and available within that time frame and the medical examiner determines that no reasonable likelihood exists that the authorized person can be contacted, the medical examiner can permit organ or tissue removal.

**DIGEST:**

SB 351, as amended, would require under certain circumstances the release of organs or tissue from decedents subject to an inquest. (Consent would still be required for the removal of tissue or organs pursuant to existing law.)

SB 351 would require the organs to be released in a timely manner for transplantation if no autopsy is required or when an autopsy is required but the medical examiner determines that the removal would not interfere with the investigation or autopsy.

If the medical examiner was considering withholding one or more organs of a potential donor for any reason, the medical examiner would be required to be present during the removal of the organs and could request a biopsy or deny removal. If the medical examiner denied removal of the organs, the medical examiner would be required to explain to the organ procurement organization in writing the reasons for the denial.

If the medical examiner was required to be present at the hospital to examine the decedent prior to organ removal, the organ procurement organization would, on request, have to reimburse the county for actual costs incurred, not to exceed \$1,000. The payments would be applied to cover the medical examiner's costs and to facilitate the timely procurement of organs and would be required to be deposited to the county's general fund.

At the medical examiner's request, the health care professional removing the organs could be required to file a report with the medical examiner describing the condition of the organs removed and their relationship, if any, to the cause of death.

This bill would take immediate effect with approval by two thirds of the membership of each house.

**SUPPORTERS  
SAY:**

SB 351 would help meet the needs of the hundreds of Texans waiting for an organ or tissue transplant. Nationally it is estimated that about 38,000 are waiting at any given time for an organ or tissue transplant, and of those

about 2,000 will die waiting. About 80 percent of all potential donors are in the jurisdiction of medical examiners.

SB 351 would facilitate the timely removal and transplantation of organs and tissue from decedents subject to a medical examiner inquest. Existing law does not clearly define a medical examiner's duty to release donor organs. Provisions similar to SB 351 are being used in Tarrant County and have resulted in reducing the number of medical examiner refusals for donation and have worked well for both the medical examiners and organ procurement organizations.

SB 351 would clearly leave the decision for organ removal in the hands of the medical examiner. Medical examiners would still retain the right to refuse organ or tissue removal in cases requiring autopsies. Requirements to notify the organ procurement organization of a denial or to be present at an organ removal are reasonable. The medical examiner would also be given the authority to charge the requesting procurement organization, and the payments would be deposited in the county's general fund would eliminate any unintended financial incentives or influences on medical examiner decisionmaking.

SB 351 would leave intact existing consent requirements and thereby continue to protect a family member's desires to prohibit the removal of body parts from their dead husband, child or parent. Experience has shown that in many cases of tragedy, however, family members are glad to consent to the release of a body part to help another person who is alive but dying.

Placing the provisions of SB 351 in statute instead of allowing for separate negotiated agreements throughout the state between medical examiners offices and organ procurement organizations would facilitate organ procurement by a establishing an effective, uniform statewide standard.

**OPPONENTS  
SAY:**

SB 351 would unnecessarily intrude on and complicate a medical examiner's duties and would allow organ procurement organizations to dictate the performance of medical examiners' duties.

A medical examiner's first duty is to determine the cause of death, *not* to facilitate the procurement of organs and tissues for donation. When organs and tissues can be removed and transplanted in a timely fashion, most medical examiners are happy to comply, but sometimes a medical examiner must wait to make sure no additional information is forthcoming or is requested from the Department of Public Safety or local law enforcement. SB 351 could create situations in which organs and tissues are released for donation that later are found to be essential in a thorough autopsy or determination of death.

Medical examiners do not have the time and should not be placed in the position of explaining in writing their medical and forensic decisions to an organ procurement organization when an organ or tissue was not removed. Payment provisions in the bill would not adequately compensate medical examiners for additional time spent in following this and other requirements in the bill.

Medical examiners are not the problem in the scarcity of donor organs and tissues. The problem is inadequate public education about the opportunity to donate organs and tissues. Public education has been proven as the best way to increase the availability of donor organs and tissues.

Current law adequately governs the relationship between organ procurement organizations and the medical examiners. Requirements or procedures in addition to existing statute should be left to agreements negotiated between the two entities to allow for local variations in the performance of medical examiner duties.

OTHER  
OPPONENTS  
SAY:

SB 351 could be taking advantage of victims of crime or accidents to be the source of organs or tissues for others. Medical examiners could be pressured to release certain organs or tissues without an adequate search to receive family consent in order to satisfy a compelling need for an organ by someone in the community.

NOTES:           The committee amendment would remove the provision requiring the medical examiner to analyze organs in a timely manner and release the organs if necessary prior to the completion of the autopsy. It would add a provision that would allow organs to be removed if the removal would not interfere with the autopsy.