

SUBJECT: Autopsy requirements for children who die suddenly

COMMITTEE: Juvenile Justice and Family Issues — committee substitute recommended

VOTE: 8 ayes — Goodman, Pickett, Isett, P. King, Morrison, Naishtat, A. Reyna, E. Reyna
0 nays
1 absent — Truitt

WITNESSES: None

BACKGROUND: Sudden Infant Death Syndrome (SIDS) is the sudden and unexpected death of an apparently healthy infant 12 months old or younger whose death remains unexplained after the performance of an adequate post-mortem investigation including an autopsy, investigation of the scene and circumstances of the death, and exploration of the medical history of the infant and family.

In 1977, the Legislature enacted a law requiring the Texas Department of Health (TDH) to pay the reasonable cost of an autopsy performed on a child two years old or younger who “dies suddenly or is found dead and if the cause of death is unknown.” This includes a child whose death is ruled to be due to SIDS. TDH determined that the reimbursement amount was \$300.

In 1995, the Legislature amended Family Code, sec. 264, to establish a child fatality review team committee and local child fatality review teams. The teams are charged with developing a state coordinating system to investigate child fatalities. If notified of the death of a child under age six, a county medical examiner or justice of the peace must hold an inquest to determine whether the death was unexpected or was the result of abuse or neglect and must notify the appropriate local law enforcement agency. If the death is ruled unexpected, the agency must investigate, and the investigation must include an autopsy.

Also in 1995, the Legislature amended Code of Criminal Procedure, art. 49.04(a), to conform with the Family Code changes. Under art. 49.10(g), the county commissioners court must pay a reasonable fee to a physician performing an autopsy on the order of the justice of the peace.

In December 1998, Attorney General Dan Morales ruled in Letter Opinion 98-122 that in the case of these irreconcilable statutes, the later legislation prevails. Therefore, the Family Code statute supersedes TDH's obligation to review and authorize payment of claims for the cost of an autopsy performed on a child who dies of SIDS.

DIGEST:

CSHB 1387 would amend Health and Safety Code, sec. 673 to require a county to perform an autopsy on a child 12 months old or younger who dies suddenly or is found dead if the cause is unknown. The bill would specify that an autopsy is mandatory and that the state must reimburse the county \$500 for the cost of the autopsy if the primary cause of the child's death is SIDS. After completion of the autopsy, the child's parents or legal guardian would have to be notified of the results.

CSHB 1387 would require TDH to adopt rules that define SIDS and describe the method for obtaining reimbursement for the cost of an autopsy.

The bill would amend the Code of Criminal Procedure to require a justice of the peace to conduct an inquest into the death of a child under age six if an inquest is required by Family Code, chapter 264. It also would amend the Family Code to require a medical examiner or justice of the peace to notify local law enforcement officials if the child's death is determined to be the result of abuse or neglect.

The bill would take effect September 1, 1999, and apply to deaths on or after that date.

**SUPPORTERS
SAY:**

CSHB 1387 would preserve the original intent of the 1977 legislation. It would clarify that an autopsy must be performed on any child under age six who dies unexpectedly. For children 12 months old or younger who die suddenly, TDH would have to reimburse counties for the required autopsy only if the primary cause of death was SIDS.

Lowering the age of a child for whom an autopsy must be performed would reflect the national scientific definition of SIDS. The bill also would increase the reimbursement rate from \$300 to \$500 to focus more state funds on SIDS deaths. With more information on child fatalities, the state could figure out why children are dying for no apparent reason. This information could lead to ways to prevent such deaths.

CSHB 1387 also would address the problem of unfunded mandates. Currently, counties are responsible for autopsies of children under age six. This bill would allow counties to be reimbursed by the state for the cost of conducting autopsies on SIDS deaths. Federal Child Fatality Justice Grants also are available to reimburse counties for the costs of autopsies on children.

OPPONENTS
SAY:

Parents should be able to choose whether an autopsy is performed on their deceased child. The state has no right to order an autopsy simply because a child dies. An autopsy can cause even more grief for parents who have lost a child.

CSHB 1387 would not remedy the problem of an unfunded mandate on counties. It would require the state to reimburse counties only for autopsies in deaths that are attributed to SIDS. About 2,500 children under the age of 12 months die in Texas each year, but only 250 of those deaths are attributed to SIDS. This means that the state would have to reimburse counties for only one-tenth of autopsies conducted on children in this age group. In addition, TDH would have to pay only \$500 of the cost of an autopsy, but an autopsy on a child costs about \$1,100.

NOTES:

The committee substitute added the provision specifying that the state would reimburse counties for \$500 of the cost of an autopsy rather than for the “reasonable costs” of an autopsy.

The Legislative Budget Board fiscal note estimates that CSHB 1387 would cost the state \$265,678 in general revenue during fiscal 2000-01 and each biennium thereafter. An item in the Article 11 “wish list” in the House-passed version of HB 1 by Junell, the general appropriations bill for fiscal 2000-01, would provide \$132,839 each year of the biennium for autopsies on children who die of SIDS.