

## **BILL ANALYSIS**

Senate Research Center

C.S.S.B. 312  
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Jurisprudence  
4/18/2009  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The statutes regarding the medical examiner system in Texas have served for half a century with only occasional amendments. During that time, the practice of medicine, forensic sciences, and the criminal justice system have continued to change, making statutory updates necessary in order to ensure higher quality forensic investigations by medical examiners and justices of the peace in the state.

C.S.S.B. 312 amends current law relating to the regulation and certification of medical examiners and the conduct of autopsy and inquest investigations by justices of the peace and medical examiners and providing penalties.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Article 49.01, Code of Criminal Procedure, to define "forensic pathologist" and to redefine "autopsy," "inquest," and "physician."

SECTION 2. Amends Section 1, Article 49.25, Code of Criminal Procedure, as follows:

Sec. 1. New heading: OFFICE AUTHORIZED. Redesignates Act as Article. Deletes existing text relating to a county not having a reputable medical school as defined in Articles 4501 and 4503, Revised Civil Statutes of Texas.

SECTION 3. Amends Section 1-a(b), Article 49.25, Code of Criminal Procedure, to authorize only one chief medical examiner, rather than one medical examiner, in a medical examiners district, although the chief medical examiner is authorized to employ, within the district, necessary staff personnel, including deputy medical examiners. Provides that a district medical examiner, rather than the district medical examiner, has all the powers and duties within the district that a medical examiner who serves in a single county has within that county.

SECTION 4. Amends Section 2, Article 49.25, Code of Criminal Procedure, as follows:

Sec. 2. APPOINTMENTS AND QUALIFICATIONS. (a) Creates this subsection from existing text. Requires the commissioners court to appoint the chief medical examiner, who serves at the pleasure of the commissioners court. Requires the chief medical examiner to be board certified in anatomic and forensic pathology by the American Board of Pathology (ABP) and to be a physician licensed by the Texas Medical Board (TMB). Deletes existing text prohibiting a person from being appointed medical examiner unless he is a physician licensed by the Texas State Board of Medical Examiners and requiring to the greatest extent possible that the medical examiner be appointed from persons having training and experience in pathology, toxicology, histology, and other medico-legal sciences.

(b) Makes nonsubstantive and conforming changes.

SECTION 5. Amends Section 3, Article 49.25, Code of Criminal Procedure, as follows:

Sec. 3. ASSISTANTS. (a) Creates this subsection from existing text. Authorizes the chief medical examiner, subject to the approval of the commissioners court, to employ the deputy medical examiners, medical, dental, or anthropologic consultants, scientific experts, trained technicians, officers, and employees necessary to properly perform the duties imposed by this Article on the chief medical examiner. Makes nonsubstantive changes.

(b) Requires a deputy medical examiner to be board certified in anatomic and forensic pathology or to have satisfactorily completed accredited residency and fellowship training programs in anatomic and forensic pathology, and not later than the third anniversary of the date the training programs were completed, obtain board certification in anatomic and forensic pathology.

SECTION 6. Amends Section 4, Article 49.25, Code of Criminal Procedure, to make conforming changes.

SECTION 7. Amends Section 5, Article 49.25, Code of Criminal Procedure, as follows:

Sec. 5. New heading: OFFICES; ACCREDITATION REQUIRED. (a) Creates this subsection from existing text. Makes conforming changes.

(b) Requires each office of medical examiner to submit an application for accreditation inspection to the National Association of Medical Examiners (NAME) or another equivalent accreditation organization designated by the Department of Public Safety of the State of Texas (DPS) not later than the second anniversary of the date on which the office is established, and be accredited by NAME or the designated organization not later than the second anniversary of the date the application for accreditation inspection is submitted under this subsection.

SECTION 8. Amends Section 6, Article 49.25, Code of Criminal Procedure, as follows:

Sec. 6. DEATH INVESTIGATIONS. (a) Makes conforming and nonsubstantive changes. Requires a chief medical examiner, or the chief medical examiner's duly authorized deputy medical examiner, to hold inquests with or without a jury in the county in which the office is established in certain cases. Sets forth the circumstances under which an inquest is required.

(a-1) Requires the attending physician or physicians, or the superintendent or general manager of the hospital or institution in which the deceased died, if a physician is unable to certify the cause of death to a reasonable degree of medical probability, to report the inability to the medical examiner of the county in which the death occurred and request an inquest. Makes nonsubstantive changes.

(a-2) Authorizes a medical examiner to waive the medical examiner's authority to further investigate the case if the medical examiner determines after performing an inquest that the death is due to natural causes and the deceased person was attended by a physician at the time of the death or during the preceding year. Requires the attending physician to certify the cause of death if the medical examiner waives the authority to further investigate the case.

(b) Makes conforming changes.

(c) Makes conforming changes.

(d) Authorizes a medical examiner to subpoena medical records, law enforcement records, or other types of records required to perform the duties imposed under this section.

SECTION 9. Amends Section 6a, Article 49.25, Code of Criminal Procedure, as follows:

Sec. 6a. ORGAN TRANSPLANT DONORS; NOTICE; INQUESTS. (a) Makes conforming and nonsubstantive changes.

(b) Makes conforming changes.

(c) Authorizes a medical examiner, subject to the procedures and requirements established by Section 693.002 (Removal of Body Part or Tissue From Decedent Who Died Under Circumstances Requiring an Inquest), Health and Safety Code, to determine before or after the medical examiner examines the body of the deceased that the release of organs or tissues for transplant purposes will likely hinder the determination of the cause or manner of death or compromise an evidentiary aspect of the examination, and based on the determination, prohibit or limit the extent of the organ or tissue removal.

SECTION 10. Amends Section 7(b), Article 49.25, Code of Criminal Procedure, to make conforming and nonsubstantive changes.

SECTION 11. Amends Section 8, Article 49.25, Code of Criminal Procedure, to make conforming and nonsubstantive changes.

SECTION 12. Amends Section 9, Article 49.25, Code of Criminal Procedure, as follows:

Sec. 9. AUTOPSY. (a) Requires the medical examiner, if the cause of death is determined, rather than shall be determined, beyond a reasonable doubt as a result of the investigation, to prepare a report on the investigation, rather than file a report thereof, setting forth specifically the cause of death and file the report with the district attorney or criminal district attorney, or in a county in which there is no district attorney or criminal district attorney with the county attorney of the county in which the death occurred.

(b) Requires that an autopsy be performed by the chief medical examiner or a duly authorized deputy medical examiner if in the opinion of the medical examiner the autopsy is necessary to determine the cause or manner of death, to better determine any pathological or injurious process present, or to obtain evidence for a potential legal proceeding or for identification purposes, or if the autopsy is requested, rather than such is requested, by the district attorney or criminal district attorney, or county attorney where there is no district attorney or criminal district attorney. Authorizes medical examiner to perform a limited autopsy or external inspection of the body in cases where a complete autopsy is considered unnecessary by the medical examiner to ascertain the cause of death.

(c) Creates this subsection from existing text. Makes nonsubstantive changes.

(d) Provides that the extent of an autopsy is solely at the discretion of the medical examiner.

(e) Provides that a medical examiner is not required to notify or seek any approval from a deceased person's next of kin to perform an autopsy or any other type of examination related to an autopsy.

(f) Creates this subsection from existing text. Requires the medical examiner, on completion of the autopsy, to prepare a report, rather than file a report, setting forth the findings in detail and file the report with the office of the district attorney or criminal district attorney of the county, or if there is no district attorney or criminal district attorney, with the county attorney of the county.

(g) Redesignates existing Subsection (b) as Subsection (g). Deletes existing text related to requiring a medical examination on an unidentified person to include certain facial photographs, and photographs, with scale indicated, of significant markings or items, and precise documentation of the location of burial of the remains. Adds text requiring that a medical examination on an identified person

include notation of any identified antemortem medical conditions. Makes nonsubstantive changes.

(h) Redesignates existing Subsection (c) as Subsection (h). Adds text related to using specimens from the body for DNA characterization and comparison for a medical examination on an unidentified person. Deletes existing text related to using hair specimens with roots for a medical examination on an unidentified person. Makes nonsubstantive changes.

(i) Authorizes a medical examiner performing an autopsy of a deceased person, to retain an organ or part of an organ if the medical examiner determines that retaining the organ or organ part is necessary for further examination and testing. Requires the medical examiner, after completing the examination or testing on the organ or organ part, to retain the organ or organ part as required by law or by published professional or accreditation or standards; dispose of the organ or organ part as a hazardous biological specimen; or release the organ or organ part to the funeral establishment or crematory under Subsection (m)(2) (relating to a requirement that under certain circumstances the medical examiner release to the funeral establishment or crematory any organ or organ part retained by the medical examiner).

(j) Prohibits a medical examiner from being required to perform an autopsy on a person whose death resulted from a highly infectious disease or a chemical or radiological agent that presents a hazard to the medical examiner, the medical examiner's staff, or the public.

(k) Prohibits a medical examiner, except as provided by Subsection (l), from performing an autopsy on a deceased person if the medical examiner receives before the performance of the autopsy a notarized affidavit signed by the person before the person's death that states the person's objection for religious reasons to the performance of an autopsy on the person after the person's death.

(l) Authorizes a medical examiner to perform an autopsy on a deceased person following receipt of a notarized affidavit under Subsection (k) if the chief medical examiner determines a compelling public necessity exists to perform the autopsy on the deceased person despite the objection.

(m) Requires the medical examiner, if the medical examiner performs the autopsy despite the receipt of a notarized affidavit under Subsection (k), to use the least invasive means possible in the performance of the autopsy, and notwithstanding Subsection (i), release to the funeral establishment or crematory any organ or organ part retained by the medical examiner, except as required by law or by published professional or accreditation standards.

(n) Defines "compelling public necessity."

**SECTION 13.** Amends Section 10, Article 49.25, Code of Criminal Procedure, as follows:

**Sec. 10. DISINTERMENTS AND CREMATIONS.** (a) Creates this subsection from existing text. Adds text authorizing the medical examiner to cause a body that has been interred and on which an inquest should have been held to be disinterred for the purpose of holding the inquest. Deletes existing text authorizing the medical examiner to cause a body to be disinterred for the purpose of holding such inquest when a body upon which an inquest ought to have been held has been interred.

(b) Creates this subsection from existing text. Prohibits a body on which an inquest is authorized by this Article from being cremated unless an examination is performed on the body as provided in this Article or a certificate that the examination was not necessary is furnished by the medical examiner.

- (c) Creates this subsection from existing text. Makes conforming and nonsubstantive changes.
- (d) Creates this subsection from existing text. Makes conforming and nonsubstantive changes.
- (e) Requires the owner or operator of a crematory requesting authorization to cremate a body to provide the medical examiner with a legible and properly completed death certificate.
- (f) Creates this subsection from existing text. Adds text providing that a medical examiner is not required to perform an examination as a prerequisite to cremation if the death was caused by pestilential or highly infectious diseases. Deletes existing text requiring that no autopsy be required by the medical examiner as a prerequisite to cremation in case death is caused by certain pestilential diseases.
- (g) Creates this subsection from existing text. Makes nonsubstantive changes.
- (h) Creates this subsection from existing text.

SECTION 14. Amends Section 10a, Article 49.25, Code of Criminal Procedure, as follows:

Sec. 10a. New heading: WAITING PERIOD BETWEEN DEATH AND CREMATION.

- (a) Creates this subsection and subdivisions from existing text. Makes conforming changes.
- (b) Creates this subsection from existing text. Authorizes the commissioner of state health services, rather than the commissioner of public health, in a public health disaster, to designate other communicable diseases for which cremation within 48 hours of the time of death is authorized.

SECTION 15. Amends Section 11, Article 49.25, Code of Criminal Procedure, as follows:

- Sec. 11. RECORDS. (a) Creates this subsection from existing text. Makes nonsubstantive changes.
- (b) Creates this subsection from existing text.
- (c) Creates this subsection from existing text. Deletes existing text requiring that copies of all records be promptly delivered to the proper district, county, or criminal district attorney in any case where further investigation is advisable. Provides that a photograph or x-ray of a body taken during a medical examiner investigation, rather than an autopsy, is excepted from required public disclosure in accordance with Chapter 552 (Public Information), Government Code, but is subject to disclosure under certain circumstances.

SECTION 16. Amends Section 12, Article 49.25, Code of Criminal Procedure, to make conforming and nonsubstantive changes.

SECTION 17. Amends Section 14(a), Article 49.25, Code of Criminal Procedure, to provide that a person commits an offense if the person knowingly violates this Article or knowingly provides false information to a medical examiner in the performance by the medical examiner of an investigation under this Article.

SECTION 18. Repealer: Section 13 (relating to the use of a forensic anthropologist), Article 49.25, Code of Criminal Procedure.

SECTION 19. Amends Article 49.25, Code of Criminal Procedure, by adding Sections 13A and 13B, as follows:

Sec. 13A. FEES. Authorizes a medical examiner to charge reasonable fees for services provided by the medical examiner's office under this Article, including cremation approvals, court testimonies, consultations, and depositions.

Sec. 13B. EDUCATION AND RESEARCH. (a) Authorizes a medical examiner to use photographs taken during a death investigation for educational or teaching purposes.

(b) Authorizes a medical examiner's office to engage in educational and research activities that do not interfere with the performance of the duties imposed on the office under this Article.

SECTION 20. (a) Provides that a person serving as the chief medical examiner or deputy medical examiner for a medical examiners district or county in this state on the effective date of this Act, notwithstanding Sections 2 and 3, Article 49.25, Code of Criminal Procedure, as amended by this Act, is not required to be board certified in anatomic and forensic pathology by ABP in anatomic and forensic pathology to continue to hold that position of chief medical examiner or deputy medical examiner for that district or county.

(b) Provides that the office of a medical examiner that was established on or before the effective date of this Act for a medical examiners district or county in this state, notwithstanding Section 5, Article 49.25, Code of Criminal Procedure, as amended by this Act, is not required to obtain accreditation by NAME or an equivalent organization designated by DPS before September 1, 2013.

SECTION 21. Effective date: September 1, 2009.