

BILL ANALYSIS

S.B. 312
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Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

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.

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.

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

S.B. 312 amends the Code of Criminal Procedure to clarify that there may be only one chief medical examiner, rather than one medical examiner, in a medical examiners district and makes conforming changes to reflect that clarification in provisions relating to medical examiners. The bill authorizes the chief medical examiner to employ deputy medical examiners within the district. The bill requires the chief medical examiner to be board certified in anatomic and forensic pathology by the American Board of Pathology, rather than be appointed, to the greatest extent possible, from persons having training and experience in pathology, toxicology, histology, and other medico-legal sciences.

S.B. 312 authorizes the chief medical examiner to employ medical, dental, or anthropologic consultants, in addition to deputy medical examiners, scientific experts, trained technicians, officers, and employees necessary to properly perform the duties imposed on the chief medical examiner. The bill requires a deputy medical examiner to be board certified in anatomic and forensic pathology or 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.

S.B. 312 requires a chief medical examiner, rather than any medical examiner, to hold death inquests with or without a jury in the county in which the office is established in certain cases. The bill adds the following to the cases in which the chief medical examiner or an authorized deputy medical examiner is required to hold such inquests: when a person dies within twenty-four hours after the person is placed in law enforcement custody, when a person dies as a result of medical treatment or therapy, when an unidentified person dies, or when a person dies who has not been attended during the preceding year by a duly licensed and practicing physician. The bill specifies that a chief medical examiner or an authorized deputy medical examiner is

required to hold inquests with or without a jury in a case in which a person dies who has been attended immediately preceding the person's death by a duly licensed and practicing physician or physicians who are unable to certify to a reasonable degree of medical probability the cause of death, rather than certify with certainty the cause of death and makes a technical correction. The bill removes from those cases a case in which a person dies who has not been attended by a licensed and practicing physician, and the local health officer or registrar required to report the cause of death does not know the cause of death.

S.B. 312 authorizes a medical examiner who determines after performing an inquest that the death of a person is due to natural causes to waive the medical examiner's authority to further investigate the case if the deceased person was attended by a physician at the time of death or during the preceding year. The bill requires the attending physician to certify the cause of death if the medical examiner waives the authority to further investigate a case. The bill authorizes a medical examiner to subpoena medical records, law enforcement records, or other types of records required to perform the duties imposed on medical examiners under state law.

S.B. 312 requires the administrative head of the facility in which a prospective organ transplant donor is located, rather than the facility in which the transplantation is to be performed, to notify the chief medical examiner or a member of the chief medical examiner's staff when an individual designated a prospective organ donor for transplantation dies under circumstances requiring the chief medical examiner or an authorized deputy to hold an inquest. The bill authorizes a medical examiner, subject to provisions governing the removal of a body part or tissue from a decedent who died under circumstances requiring an inquest, 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, to prohibit or limit the extent of the organ or tissue removal.

S.B. 312 adds the specification that an autopsy be 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 to the requirement that a chief or deputy perform an autopsy if, in the opinion of the medical examiner, an autopsy is necessary. The bill removes the specification that the autopsy be performed immediately from the requirement that the chief or deputy perform an autopsy if the medical examiner considers it necessary for certain reasons or if the autopsy is requested by a certain county or district attorney. The bill authorizes a medical examiner to perform an external inspection of the body that may include taking blood samples or any other samples of bodily fluids, tissues, or organs, in cases where a complete autopsy is considered unnecessary, to ascertain the cause of death or whether a crime has been committed. The bill provides that the extent of an autopsy is solely at the discretion of the medical examiner. The bill 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.

S.B. 312 removes the authority of a medical examiner or authorized deputy to use the facilities of any city or county hospital within the county or any other facility made available in performing an autopsy. The bill removes the specification that the facial photographs required to be included in a medical examination of an unidentified person be frontal and lateral photographs. The bill removes from the information required to be included in the medical examination of an unidentified person photographs of a significant scar, mark, tattoo, or item of clothing or personal effect found with or near the body, and precise documentation of the location of burial of the remains. The bill specifies that notation of any identified antemortem medical conditions, rather than antemortem conditions, be included in the medical examination of an unidentified person. The bill authorizes a medical examination on an unidentified person to include specimens from the body for DNA characterization and comparison, rather than hair specimens with roots.

S.B. 312 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 part is necessary for further examination and testing. The bill 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 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. The bill 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.

S.B. 312 prohibits a medical examiner 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. The bill authorizes a medical examiner to perform an autopsy on a deceased person following receipt of such a notarized affidavit if the chief medical examiner determines a compelling public necessity to perform the autopsy on the deceased person despite the objection. The bill requires a medical examiner who performs an autopsy despite receipt of a notarized affidavit to use the least invasive means possible in the performance of the autopsy and 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.

S.B. 312 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. The bill specifies that a medical examiner is not required to perform an examination if the death was caused by pestilential or highly infectious diseases, rather than by pestilential diseases of Asiatic cholera, bubonic plague, typhus fever, or smallpox. The bill specifies that the body of a deceased person is not subject to the prohibition against the cremation of a body within 48 hours after the time of death if the death certificate indicates death was caused by pestilential or highly infectious diseases, rather than by pestilential diseases of Asiatic cholera, bubonic plague, typhus fever, or smallpox.

S.B. 312 removes the requirement that copies of all investigated death records be promptly delivered to the proper district, county, or criminal district attorney in any case where further investigation is advisable. The bill clarifies that photographs or x-rays of a body taken during a medical examiner investigation, rather than during an autopsy, are excepted from required public disclosure. The bill makes it a Class B misdemeanor for a person who knowingly provides false information to a medical examiner in the performance by the medical examiner of a death investigation.

S.B. 312 authorizes a medical examiner to charge reasonable fees for services provided by the medical examiner's office under state law, including cremation approvals, court testimonies, consultations, and depositions. The bill authorizes a medical examiner to use photographs taken during a death investigation for educational or teaching purposes. The bill 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 state law.

S.B. 312 provides that a person serving as the chief medical examiner or a deputy medical examiner for a medical examiners district or county in Texas on the effective date of the bill is not required to be board certified in anatomic and forensic pathology by the American Board of Pathology to continue to hold that position of chief medical examiner or deputy medical examiner for that district or county.

S.B. 312 redefines the term "autopsy" to include an external examination of the body, rather than x-rays, to remove an examination of the internal structures after dissection, and specifies that the

term includes a post mortem examination of the body of a person to obtain information or material for evidentiary or identification purposes. The bill authorizes the forensic pathologist or physician performing an autopsy to limit the individuals in attendance at the examination and to vary the extent of the examination and authorizes the examination to include radiographs; a microscopic examination; retention of an organ part or whole organ; an anthropologic examination; a dental examination; any other procedure considered necessary by the examining forensic pathologist or physician; or, at the discretion of the medical examiner, the medical examiner's designee, or the justice of the peace, as appropriate, an in-person examination of the scene of death or injury or an examination of the scene through reports or photographs related to the injury or death. The bill provides that the term "inquest" includes each level of investigation, from rudimentary information gathering to a complete autopsy examination and formal hearing. The bill defines "forensic pathologist" and "compelling public necessity."

S.B. 312 repeals Section 13, Article 49.25, Code of Criminal Procedure.

EFFECTIVE DATE

September 1, 2009.