

By: Wentworth

S.B. No. 312

A BILL TO BE ENTITLED

AN ACT

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; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 49.01, Code of Criminal Procedure, is amended to read as follows:

Art. 49.01. DEFINITIONS. In this chapter [~~article~~]:

(1) "Autopsy" means a post mortem examination of the body of a person, including an external examination of the body [~~X-rays~~] and an examination of the internal organs [~~and structures after dissection~~], to determine the cause and manner of death or the nature of any pathological changes that may have contributed to the death or to obtain information or material for evidentiary or identification purposes. The forensic pathologist or physician performing the autopsy may limit the individuals in attendance at the examination and may vary the extent of the examination. The examination may include:

(A) radiographs;

(B) a microscopic examination;

(C) retention of an organ part or whole organ;

(D) an anthropologic examination;

(E) a dental examination;

(F) any other procedure considered necessary by

1 the examining forensic pathologist or physician; or

2 (G) at the discretion of the medical examiner,
3 the medical examiner's designee, or the justice of the peace, as
4 appropriate, an in-person examination of the scene of death or
5 injury or an examination of the scene through reports or
6 photographs related to the injury or death.

7 (1-a) "Forensic pathologist" means a physician who is
8 board certified in anatomic and forensic pathology by the American
9 Board of Pathology.

10 (2) "Inquest" means an investigation into the cause
11 and circumstances of the death of a person, and a determination,
12 made with or without a formal court hearing, as to whether the death
13 was caused by an unlawful act or omission. The term includes each
14 level of investigation, from rudimentary information gathering to a
15 complete autopsy examination and formal hearing.

16 (3) "Inquest hearing" means a formal court hearing
17 held to determine whether the death of a person was caused by an
18 unlawful act or omission and, if the death was caused by an unlawful
19 act or omission, to obtain evidence to form the basis of a criminal
20 prosecution.

21 (4) "Institution" means any place where health care
22 services are rendered, including a hospital, clinic, health
23 facility, nursing home, extended-care facility, out-patient
24 facility, foster-care facility, and retirement home.

25 (5) "Physician" means a practicing doctor of medicine
26 or doctor of osteopathic medicine who is licensed by the Texas
27 [~~State Board of~~] Medical Board [~~Examiners~~] under Subtitle B, Title

3, Occupations Code.

SECTION 2. Section 1, Article 49.25, Code of Criminal Procedure, is amended to read as follows:

Sec. 1. OFFICE AUTHORIZED. Subject to the provisions of this Article [~~Act~~], the Commissioners Court of any county having a population of more than one million [~~and not having a reputable medical school as defined in Articles 4501 and 4503, Revised Civil Statutes of Texas,~~] shall establish and maintain the office of medical examiner, and the Commissioners Court of any county may establish and provide for the maintenance of the office of medical examiner. Population shall be according to the last preceding federal census.

SECTION 3. Subsection (b), Section 1-a, Article 49.25, Code of Criminal Procedure, is amended to read as follows:

(b) There may be only one chief medical examiner in a medical examiners district, although the chief medical examiner [~~he~~] may employ, within the district, necessary staff personnel, including deputy medical examiners. When a county becomes a part of a medical examiners district, the effect is the same within the county as if the office of medical examiner had been established in that county alone. A [~~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. Section 2, Article 49.25, Code of Criminal Procedure, is amended to read as follows:

Sec. 2. APPOINTMENTS AND QUALIFICATIONS. (a) The commissioners court shall appoint the chief medical examiner, who

1 serves ~~[shall serve]~~ at the pleasure of the commissioners court.

2 The chief medical examiner must be:

3 (1) board certified in anatomic and forensic pathology
4 by the American Board of Pathology; and

5 (2) [No person shall be appointed medical examiner
6 unless he is] a physician licensed by the Texas [State Board of]
7 Medical Board [Examiners. To the greatest extent possible, the
8 medical examiner shall be appointed from persons having training
9 and experience in pathology, toxicology, histology and other
10 medico-legal sciences].

11 (b) The chief medical examiner shall devote the ~~[so much of~~
12 ~~his]~~ time and energy ~~[as is]~~ to perform ~~[in the~~
13 ~~performance of]~~ the duties conferred by this Article.

14 SECTION 5. Section 3, Article 49.25, Code of Criminal
15 Procedure, is amended to read as follows:

16 Sec. 3. ASSISTANTS. (a) The chief medical examiner may,
17 subject to the approval of the commissioners court, employ the
18 ~~[such]~~ deputy medical examiners, medical, dental, or anthropologic
19 consultants, scientific experts, trained technicians, officers,
20 and employees ~~[as may be]~~ necessary to properly perform ~~[the proper~~
21 ~~performance of]~~ the duties imposed by this Article on ~~[upon]~~ the
22 chief medical examiner.

23 (b) A deputy medical examiner must:

24 (1) be board certified in anatomic and forensic
25 pathology; or

26 (2) have satisfactorily completed accredited
27 residency and fellowship training programs in anatomic and forensic

1 pathology and, not later than the third anniversary of the date the
2 training programs were completed, obtain board certification in
3 anatomic and forensic pathology.

4 SECTION 6. Section 4, Article 49.25, Code of Criminal
5 Procedure, is amended to read as follows:

6 Sec. 4. SALARIES. The commissioners court shall establish
7 and pay the salaries and compensations of the chief medical
8 examiner and the chief medical examiner's ~~[his]~~ staff.

9 SECTION 7. Section 6, Article 49.25, Code of Criminal
10 Procedure, is amended to read as follows:

11 Sec. 6. DEATH INVESTIGATIONS. (a) A chief ~~[Any]~~ medical
12 examiner, or the chief medical examiner's ~~[his]~~ duly authorized
13 deputy medical examiner, shall ~~[be authorized, and it shall be his~~
14 ~~duty, to]~~ hold inquests with or without a jury in the ~~[within his]~~
15 county in which the office is established~~[,]~~ in the following
16 cases:

17 (1) [1.] When a person dies ~~[shall die]~~ within
18 twenty-four hours after the person is:

19 (A) admitted ~~[admission]~~ to a hospital or
20 institution;

21 (B) confined ~~[or]~~ in prison or in jail; or

22 (C) placed in law enforcement custody;

23 (2) [2.] When any person:

24 (A) is killed;

25 (B) ~~[or]~~ from any cause dies an unnatural death,
26 except under sentence of the law;

27 (C) ~~[or]~~ dies in the absence of one or more good

witnesses; or

(D) dies as a result of medical treatment or therapy;

(3) ~~[3.]~~ When the body or a body part of a person is found and ~~[7]~~ the cause or circumstances of death are unknown~~[, and:~~

~~[(A) the person is identified; or~~

~~[(B) the person is unidentified];~~

(4) ~~[4.]~~ When the circumstances of the death of any person ~~[are such as to]~~ lead to suspicion that the person died ~~[he came to his death]~~ by unlawful means;

(5) ~~[5.]~~ When any person commits suicide, or the circumstances of the person's ~~[his]~~ death ~~[are such as to]~~ lead to suspicion that the person ~~[he]~~ committed suicide;

(6) ~~[6.]~~ When a person dies who has not ~~[without having]~~ been attended during the preceding year by a duly licensed and practicing physician~~[, and the local health officer or registrar required to report the cause of death under Section 193.005, Health and Safety Code, does not know the cause of death. When the local health officer or registrar of vital statistics whose duty it is to certify the cause of death does not know the cause of death, he shall so notify the medical examiner of the county in which the death occurred and request an inquest];~~

(7) ~~[7.]~~ When the person is a child ~~[who is]~~ younger than six years of age and the death is reported under Chapter 264, Family Code; ~~[and]~~

(8) When an unidentified person dies; and

(9) ~~[8.]~~ When a person dies who has been attended

1 immediately preceding the person's ~~[his]~~ death by a duly licensed
 2 and practicing physician or physicians~~[7]~~ and the ~~[such]~~ physician
 3 or physicians ~~[are not certain as to the cause of death and]~~ are
 4 unable to certify to a reasonable degree of medical probability
 5 ~~[with certainty]~~ the cause of death as required by Section 193.005
 6 ~~[193.004]~~, Health and Safety Code.

7 (a-1) If a physician is unable to certify the cause of death
 8 to a reasonable degree of medical probability, ~~[In case of such~~
 9 ~~uncertainty]~~ the attending physician or physicians, or the
 10 superintendent or general manager of the hospital or institution in
 11 which the deceased ~~[shall have]~~ died, shall ~~[so]~~ report the
 12 inability to the medical examiner of the county in which the death
 13 occurred~~[7]~~ and request an inquest.

14 (a-2) If a medical examiner determines after performing an
 15 inquest that the death is due to natural causes and the deceased
 16 person was attended by a physician at the time of death or during
 17 the preceding year, the medical examiner may waive the medical
 18 examiner's authority to further investigate the case. If the
 19 medical examiner waives the authority to further investigate the
 20 case, the attending physician shall certify the cause of death.

21 (b) The inquests authorized and required by this Article
 22 shall be held by the chief medical examiner of the county in which
 23 the death occurred.

24 (c) In making such investigations and holding such
 25 inquests, the chief medical examiner or an authorized deputy
 26 medical examiner may administer oaths and take affidavits. In the
 27 absence of next of kin or legal representatives of the deceased, the

1 chief medical examiner or authorized deputy medical examiner shall
2 take charge of the body and all property found with it.

3 (d) A medical examiner may subpoena medical records, law
4 enforcement records, or other types of records required to perform
5 the duties imposed under this section.

6 SECTION 8. Section 6a, Article 49.25, Code of Criminal
7 Procedure, is amended to read as follows:

8 Sec. 6a. ORGAN TRANSPLANT DONORS; NOTICE; INQUESTS.

9 (a) When death occurs to an individual designated a prospective
10 organ donor for transplantation by a licensed physician under
11 circumstances requiring the chief medical examiner of the county in
12 which death occurred, or the chief medical examiner's authorized
13 deputy medical examiner, to hold an inquest, the chief medical
14 examiner, or a member of the chief medical examiner's ~~[his]~~ staff,
15 shall ~~[will]~~ be ~~[so]~~ notified by the administrative head of the
16 facility in which the prospective donor is located ~~[transplantation~~
17 ~~is to be performed]~~.

18 (b) When notified pursuant to Subsection (a) of this
19 Section, the chief medical examiner or the chief medical examiner's
20 deputy medical examiner shall perform an inquest on the deceased
21 prospective organ donor.

22 (c) Subject to the procedures and requirements established
23 by Section 693.002, Health and Safety Code, a medical examiner may:

24 (1) determine before or after the medical examiner
25 examines the body of the deceased that the release of organs or
26 tissues for transplant purposes will likely hinder the
27 determination of the cause or manner of death or compromise an

1 evidentiary aspect of the examination; and

2 (2) based on the determination, prohibit or limit the
3 extent of the organ or tissue removal.

4 SECTION 9. Subsection (b), Section 7, Article 49.25, Code
5 of Criminal Procedure, is amended to read as follows:

6 (b) A person investigating the ~~[a]~~ death of an unidentified
7 person ~~[described by Subdivision 3(B) of Section 6(a)]~~ shall report
8 the death to the missing children and missing persons information
9 clearinghouse of the Department of Public Safety and the national
10 crime information center not later than the 10th working day after
11 the date the investigation began.

12 SECTION 10. Section 8, Article 49.25, Code of Criminal
13 Procedure, is amended to read as follows:

14 Sec. 8. REMOVAL OF BODIES. When any death under
15 circumstances set out in Section 6 of this Article occurs ~~[shall~~
16 ~~have occurred]~~, the body shall not be disturbed or removed from the
17 position in which it is found by any person without authorization
18 from the chief medical examiner or an authorized deputy medical
19 examiner, except for the purpose of preserving the ~~[such]~~ body from
20 loss or destruction or maintaining the flow of traffic on a highway,
21 railroad, or airport.

22 SECTION 11. Section 9, Article 49.25, Code of Criminal
23 Procedure, is amended to read as follows:

24 Sec. 9. AUTOPSY. (a) If the cause of death is ~~[shall be]~~
25 determined beyond a reasonable doubt as a result of the
26 investigation, the medical examiner shall prepare ~~[file]~~ a report
27 on the investigation ~~[thereof]~~ setting forth specifically the cause

1 of death and file the report with the district attorney or criminal
2 district attorney, or in a county in which there is no district
3 attorney or criminal district attorney with the county attorney, of
4 the county in which the death occurred.

5 **(b)** If in the opinion of the medical examiner an autopsy is
6 necessary to determine the cause or manner of death, to better
7 determine any pathological or injurious process present, or to
8 obtain evidence for a potential legal proceeding or for
9 identification purposes, or if the autopsy ~~[such]~~ is requested by
10 the district attorney or criminal district attorney, or county
11 attorney where there is no district attorney or criminal district
12 attorney, the autopsy shall be ~~[immediately]~~ performed by the chief
13 medical examiner or a duly authorized deputy medical examiner. In
14 ~~[those]~~ cases where a complete autopsy is considered ~~[deemed]~~
15 unnecessary by the medical examiner to ascertain the cause of
16 death, the medical examiner may perform a limited autopsy or
17 external inspection of the body that may include ~~[involving the]~~
18 taking ~~[of]~~ blood samples or any other samples of body fluids,
19 tissues, or organs~~[, in order]~~ to ascertain the cause of death or
20 whether a crime has been committed.

21 **(c)** If ~~[In]~~ the identity ~~[case]~~ of a body of a human being
22 ~~[whose identity]~~ is unknown, the medical examiner may authorize the
23 ~~[such]~~ investigative and laboratory tests and processes ~~[as are]~~
24 required to determine the ~~[its]~~ identity and ~~[as well as]~~ the cause
25 of death.

26 **(d)** The extent of an autopsy is solely at the discretion of
27 the medical examiner.

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

4 (f) On ~~[In performing an autopsy the medical examiner or~~
5 ~~authorized deputy may use the facilities of any city or county~~
6 ~~hospital within the county or such other facilities as are made~~
7 ~~available. Upon]~~ completion of the autopsy, the medical examiner
8 shall prepare ~~[file]~~ a report setting forth the findings in detail
9 and file the report with the office of the district attorney or
10 criminal district attorney of the county, or if there is no district
11 attorney or criminal district attorney, with the county attorney of
12 the county.

13 (g) [(b)] A medical examination on an unidentified person
14 shall include the following information to enable a timely and
15 accurate identification of the person:

- 16 (1) all available fingerprints and palm prints;
- 17 (2) dental charts and radiographs (X-rays) of the
18 person's teeth;
- 19 (3) ~~[frontal and lateral]~~ facial photographs with
20 scale indicated;
- 21 (4) notation ~~[and photographs, with scale indicated,]~~
22 of a significant scar, mark, tattoo, or item of clothing or other
23 personal effect found with or near the body;
- 24 (5) notation of any identified antemortem medical
25 conditions; and
- 26 (6) notation of observations pertinent to the
27 estimation of time of death~~[, and~~

1 ~~[(7) precise documentation of the location of burial~~
2 ~~of the remains]~~.

3 (h) [(e)] A medical examination on an unidentified person
4 may include the following information to enable a timely and
5 accurate identification of the person:

6 (1) full body radiographs (X-rays); and

7 (2) ~~[hair]~~ specimens from the body for DNA
8 characterization and comparison ~~[with roots]~~.

9 (i) A medical examiner performing an autopsy of a deceased
10 person may retain an organ or part of an organ if the medical
11 examiner determines that retaining the organ or organ part is
12 necessary for further examination and testing. After completing
13 the examination or testing on the organ or organ part, the medical
14 examiner shall:

15 (1) retain the organ or organ part as required by law
16 or by published professional or accreditation standards;

17 (2) dispose of the organ or organ part as a hazardous
18 biological specimen; or

19 (3) release the organ or organ part to the funeral
20 establishment or crematory under Subsection (m)(2).

21 (j) A medical examiner may not be required to perform an
22 autopsy on a person whose death resulted from a highly infectious
23 disease or a chemical or radiological agent that presents a hazard
24 to the medical examiner, the medical examiner's staff, or the
25 public.

26 (k) Except as provided by Subsection (l), a medical examiner
27 may not perform an autopsy on a deceased person if the medical

1 examiner receives before the performance of the autopsy a notarized
2 affidavit signed by the person before the person's death that
3 states the person's objection for religious reasons to the
4 performance of an autopsy on the person after the person's death.

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

10 (m) If the medical examiner performs the autopsy despite
11 receipt of a notarized affidavit under Subsection (k), the medical
12 examiner shall:

13 (1) use the least invasive means possible in the
14 performance of the autopsy; and

15 (2) notwithstanding Subsection (i), release to the
16 funeral establishment or crematory any organ or organ part retained
17 by the medical examiner, except as required by law or by published
18 professional or accreditation standards.

19 (n) In this section, "compelling public necessity" means:

20 (1) a criminal homicide investigation in which the
21 deceased person is the victim;

22 (2) an immediate and substantial threat to public
23 health;

24 (3) the death of a child under 12 years of age for
25 which the cause of death is not apparent and neglect or a threat to
26 public health was suspected;

27 (4) the cause or manner of death of the deceased person

1 is not apparent after a diligent investigation by the medical
2 examiner; or

3 (5) the autopsy is required by law.

4 SECTION 12. Section 10, Article 49.25, Code of Criminal
5 Procedure, is amended to read as follows:

6 Sec. 10. DISINTERMENTS AND CREMATIONS. (a) ~~The [When a~~
7 ~~body upon which an inquest ought to have been held has been~~
8 ~~interred, the]~~ medical examiner may cause a body that has been
9 interred and on which an inquest should have been held ~~[it]~~ to be
10 disinterred for the purpose of holding the ~~[such]~~ inquest.

11 (b) A ~~[Before any]~~ body on ~~[, upon]~~ which an inquest is
12 authorized by ~~[the provisions of]~~ this Article may not ~~[, can]~~ be
13 ~~[lawfully]~~ cremated unless ~~[,]~~ an examination is ~~[autopsy shall be]~~
14 performed on the body ~~[thereon]~~ as provided in this Article ~~[,]~~ or a
15 certificate that the examination ~~[no autopsy]~~ was not necessary is
16 ~~[shall be]~~ furnished by the medical examiner.

17 (c) Before a ~~[any]~~ dead body may ~~[can]~~ be ~~[lawfully]~~
18 cremated, the owner or operator of the crematory shall demand and be
19 furnished with a certificate, signed by the medical examiner of the
20 county in which the death occurred stating ~~[showing]~~ that:

21 (1) an examination ~~[autopsy]~~ was performed on the
22 ~~[said]~~ body; or

23 (2) an examination on the body ~~[that no autopsy~~
24 ~~thereon]~~ was not necessary.

25 (d) The ~~[It shall be the duty of the]~~ medical examiner shall
26 ~~[to]~~ determine whether or not, from all the circumstances
27 surrounding the death, an examination ~~[autopsy]~~ is necessary prior

1 to issuing a certificate under ~~[the provisions of]~~ this section.

2 (e) The owner or operator of a crematory requesting
3 authorization to cremate a body shall provide the medical examiner
4 with a legible and properly completed death certificate.

5 (f) A medical examiner is not required to perform an
6 examination ~~[No autopsy shall be required by the medical examiner]~~
7 as a prerequisite to cremation if the ~~[in case]~~ death was ~~[is]~~
8 caused by ~~[the]~~ pestilential or highly infectious diseases ~~[of~~
9 ~~Asiatic cholera, bubonic plague, typhus fever, or smallpox]~~.

10 (g) All certificates furnished to the owner or operator of a
11 crematory by any medical examiner, under the terms of this Article,
12 shall be preserved by the ~~[such]~~ owner or operator until the second
13 anniversary of ~~[such crematory for a period of two years from]~~ the
14 date of the body's cremation ~~[of said body]~~.

15 (h) A medical examiner is not required to perform an autopsy
16 on the body of a deceased person whose death was caused by a
17 communicable disease during a public health disaster.

18 SECTION 13. Section 10a, Article 49.25, Code of Criminal
19 Procedure, is amended to read as follows:

20 Sec. 10a. WAITING PERIOD BETWEEN DEATH AND CREMATION.

21 (a) The body of a deceased person shall not be cremated within 48
22 hours after the time of death as indicated on the regular death
23 certificate, unless:

24 (1) the death certificate indicates death was caused
25 by ~~[the]~~ pestilential or highly infectious diseases; ~~[of Asiatic~~
26 ~~cholera, bubonic plague, typhus fever, or smallpox,]~~ or

27 (2) [unless] the time requirement is waived in writing

1 by the county medical examiner or, in counties without ~~[not having]~~
2 a county medical examiner, a justice of the peace.

3 (b) In a public health disaster, the commissioner of state
4 ~~[public]~~ health services may designate other communicable diseases
5 for which cremation within 48 hours of the time of death is
6 authorized.

7 SECTION 14. Section 11, Article 49.25, Code of Criminal
8 Procedure, is amended to read as follows:

9 Sec. 11. RECORDS. (a) The medical examiner shall:

10 (1) keep full and complete records properly indexed
11 that include~~[, giving]~~ the name if known of every person whose death
12 is investigated, the place where the body was found, the date, and
13 the cause and manner of death;~~[,]~~ and

14 (2) ~~[shall]~~ issue a death certificate.

15 (b) The full report and detailed findings of the autopsy, if
16 any, shall be a part of the record.

17 (c) ~~[Copies of all records shall promptly be delivered to~~
18 ~~the proper district, county, or criminal district attorney in any~~
19 ~~case where further investigation is advisable.]~~ The records are
20 subject to required public disclosure in accordance with Chapter
21 552, Government Code, except that a photograph or x-ray of a body
22 taken during a medical examiner investigation ~~[an autopsy]~~ is
23 excepted from required public disclosure in accordance with Chapter
24 552, Government Code, but is subject to disclosure:

25 (1) under a subpoena or authority of other law; or

26 (2) if the photograph or x-ray is of the body of a
27 person who died while in the custody of law enforcement.

SECTION 15. Section 12, Article 49.25, Code of Criminal Procedure, is amended to read as follows:

Sec. 12. TRANSFER OF DUTIES OF JUSTICE OF PEACE. When the commissioners court of any county establishes ~~[shall establish]~~ the office of medical examiner, all powers and duties of justices of the peace in the ~~[such]~~ county relating to the investigation of deaths and inquests ~~[shall]~~ vest in the office of the medical examiner. Any subsequent General Law pertaining to the duties of justices of the peace in death investigations and inquests ~~[shall]~~ apply to the medical examiner in the county ~~[such counties as]~~ to the extent not inconsistent with this Article, and all laws or parts of laws otherwise in conflict with this Article ~~[herewith]~~ are ~~[hereby]~~ declared ~~[to be]~~ inapplicable to this Article.

SECTION 16. Subsection (a), Section 14, Article 49.25, Code of Criminal Procedure, is amended to read as follows:

(a) 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 17. Section 13, Article 49.25, Code of Criminal Procedure, is repealed.

SECTION 18. Article 49.25, Code of Criminal Procedure, is amended by adding Sections 13A and 13B to read as follows:

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

1 Sec. 13B. EDUCATION AND RESEARCH. (a) A medical examiner
2 may use for educational or teaching purposes photographs taken
3 during a death investigation.

4 (b) A medical examiner's office may engage in educational
5 and research activities that do not interfere with the performance
6 of the duties imposed on the office under this Article.

7 SECTION 19. Notwithstanding Sections 2 and 3, Article
8 49.25, Code of Criminal Procedure, as amended by this Act, a person
9 serving as the chief medical examiner or a deputy medical examiner
10 for a medical examiners district or county in this state on the
11 effective date of this Act is not required to be board certified in
12 anatomic and forensic pathology by the American Board of Pathology
13 to continue to hold that position of chief medical examiner or
14 deputy medical examiner for that district or county.

15 SECTION 20. This Act takes effect September 1, 2009.