

1-1 By: Wentworth S.B. No. 312
1-2 (In the Senate - Filed November 21, 2008; February 11, 2009,
1-3 read first time and referred to Committee on Jurisprudence;
1-4 April 20, 2009, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 5, Nays 0; April 20, 2009,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 312 By: Wentworth

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the regulation and certification of medical examiners
1-11 and the conduct of autopsy and inquest investigations by justices
1-12 of the peace and medical examiners; providing penalties.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Article 49.01, Code of Criminal Procedure, is
1-15 amended to read as follows:

1-16 Art. 49.01. DEFINITIONS. In this chapter [~~article~~]:

1-17 (1) "Autopsy" means a post mortem examination of the
1-18 body of a person, including an external examination of the body
1-19 [~~X-rays~~] and an examination of the internal organs [~~and structures~~
1-20 ~~after dissection~~], to determine the cause and manner of death or the
1-21 nature of any pathological changes that may have contributed to the
1-22 death or to obtain information or material for evidentiary or
1-23 identification purposes. The forensic pathologist or physician
1-24 performing the autopsy may limit the individuals in attendance at
1-25 the examination and may vary the extent of the examination. The
1-26 examination may include:

1-27 (A) radiographs;

1-28 (B) a microscopic examination;

1-29 (C) retention of an organ part or whole organ;

1-30 (D) an anthropologic examination;

1-31 (E) a dental examination;

1-32 (F) any other procedure considered necessary by
1-33 the examining forensic pathologist or physician; or

1-34 (G) at the discretion of the medical examiner,
1-35 the medical examiner's designee, or the justice of the peace, as
1-36 appropriate, an in-person examination of the scene of death or
1-37 injury or an examination of the scene through reports or
1-38 photographs related to the injury or death.

1-39 (1-a) "Forensic pathologist" means a physician who is
1-40 board certified in anatomic and forensic pathology by the American
1-41 Board of Pathology.

1-42 (2) "Inquest" means an investigation into the cause
1-43 and circumstances of the death of a person, and a determination,
1-44 made with or without a formal court hearing, as to whether the death
1-45 was caused by an unlawful act or omission. The term includes each
1-46 level of investigation, from rudimentary information gathering to a
1-47 complete autopsy examination and formal hearing.

1-48 (3) "Inquest hearing" means a formal court hearing
1-49 held to determine whether the death of a person was caused by an
1-50 unlawful act or omission and, if the death was caused by an unlawful
1-51 act or omission, to obtain evidence to form the basis of a criminal
1-52 prosecution.

1-53 (4) "Institution" means any place where health care
1-54 services are rendered, including a hospital, clinic, health
1-55 facility, nursing home, extended-care facility, out-patient
1-56 facility, foster-care facility, and retirement home.

1-57 (5) "Physician" means a practicing doctor of medicine
1-58 or doctor of osteopathic medicine who is licensed by the Texas
1-59 [~~State Board of~~] Medical Board [~~Examiners~~] under Subtitle B, Title
1-60 3, Occupations Code.

1-61 SECTION 2. Section 1, Article 49.25, Code of Criminal
1-62 Procedure, is amended to read as follows:

1-63 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 serves ~~[shall serve]~~ at the pleasure of the commissioners court. The chief medical examiner must be:

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

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

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

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

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

(b) A deputy medical examiner must:

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

(2) 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. Section 4, Article 49.25, Code of Criminal Procedure, is amended to read as follows:

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

SECTION 7. Section 5, Article 49.25, Code of Criminal Procedure, is amended to read as follows:

Sec. 5. OFFICES; ACCREDITATION REQUIRED. (a) The commissioners court shall:

(1) provide the chief medical examiner and the chief medical examiner's ~~[his]~~ staff with adequate office space; and

(2) ~~[shall]~~ provide laboratory facilities or make arrangements for the use of existing laboratory facilities in the county, if ~~[so]~~ requested by the chief medical examiner.

(b) Each office of medical examiner must:

(1) submit an application for accreditation

inspection to the National Association of Medical Examiners or another equivalent accreditation organization designated by the Department of Public Safety of the State of Texas not later than the second anniversary of the date on which the office is established; and

(2) be accredited by the National Association of Medical Examiners or the designated organization not later than the second anniversary of the date the application for accreditation inspection is submitted under Subdivision (1).

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

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

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

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

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

(C) placed in law enforcement custody;

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

(A) is killed;

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

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

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

(a-2) If a 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 death or during the preceding year, the medical examiner may waive the medical examiner's authority to further investigate the case. If the medical examiner waives the authority to further investigate the case, the attending physician shall certify the cause of death.

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

(c) In making such investigations and holding such inquests, the chief medical examiner or an authorized deputy medical examiner may administer oaths and take affidavits. In the absence of next of kin or legal representatives of the deceased, the chief medical examiner or authorized deputy medical examiner shall take charge of the body and all property found with it.

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

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

Sec. 6a. ORGAN TRANSPLANT DONORS; NOTICE; INQUESTS. (a) When death occurs to an individual designated a prospective organ donor for transplantation by a licensed physician under circumstances requiring the chief medical examiner of the county in which death occurred, or the chief medical examiner's authorized deputy medical examiner, to hold an inquest, the chief medical examiner, or a member of the chief medical examiner's ~~[his]~~ staff, shall ~~[will]~~ be ~~[so]~~ notified by the administrative head of the facility in which the prospective donor is located ~~[transplantation is to be performed]~~.

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

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

(1) 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

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

SECTION 10. Subsection (b), Section 7, Article 49.25, Code of Criminal Procedure, is amended to read as follows:

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

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

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

SECTION 12. Section 9, Article 49.25, Code of Criminal Procedure, is amended to read as follows:

Sec. 9. AUTOPSY. (a) If the cause of death ~~is~~ ~~[shall be]~~ determined beyond a reasonable doubt as a result of the investigation, the medical examiner shall prepare ~~[file]~~ a report on the investigation ~~[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) If in the opinion of the medical examiner an 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 ~~[such]~~ is requested by the district attorney or criminal district attorney, or county attorney where there is no district attorney or criminal district attorney, the autopsy shall be ~~[immediately]~~ performed by the chief medical examiner or a duly authorized deputy medical examiner. In ~~[those]~~ cases where a complete autopsy is considered ~~[deemed]~~ unnecessary by the medical examiner to ascertain the cause of death, the medical examiner may perform a limited autopsy or external inspection of the body that may include ~~[involving the]~~ taking ~~[of]~~ blood samples or any other samples of body fluids, tissues, or organs~~[, in order]~~ to ascertain the cause of death or whether a crime has been committed.

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

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

(e) 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) On ~~[In performing an autopsy the medical examiner or authorized deputy may use the facilities of any city or county hospital within the county or such other facilities as are made available. Upon]~~ completion of the autopsy, the medical examiner shall prepare ~~[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) ~~[(b)]~~ A medical examination on an unidentified person shall include the following information to enable a timely and accurate identification of the person:

(1) all available fingerprints and palm prints;
(2) dental charts and radiographs (X-rays) of the person's teeth;

(3) ~~[frontal and lateral]~~ facial photographs with scale indicated;

(4) notation ~~[and photographs, with scale indicated,]~~ of a significant scar, mark, tattoo, or item of clothing or other personal effect found with or near the body;

(5) notation of any identified antemortem medical conditions; and

(6) notation of observations pertinent to the estimation of time of death~~[, and]~~

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

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

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

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

(i) A medical examiner performing an autopsy of a deceased person may 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. After completing the examination or testing on the organ or organ part, the medical examiner shall:

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

(2) dispose of the organ or organ part as a hazardous

biological specimen; or

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

(j) A medical examiner may not be 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) Except as provided by Subsection (l), a medical examiner may not perform 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) A medical examiner may 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) If the medical examiner performs the autopsy despite receipt of a notarized affidavit under Subsection (k), the medical examiner shall:

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

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

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

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

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

(4) the cause or manner of death of the deceased person is not apparent after a diligent investigation by the medical examiner; or

(5) the autopsy is required by law.

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

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

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

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

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

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

(d) The ~~[It shall be the duty of the]~~ medical examiner shall ~~[to]~~ determine whether or not, from all the circumstances surrounding the death, an examination ~~[autopsy]~~ is necessary prior to issuing a certificate under ~~[the provisions of]~~ this section.

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

(f) A medical examiner is not required to perform an

examination ~~[No autopsy shall be required by the medical examiner]~~
 as a prerequisite to cremation ~~if the [in case] death was [is]~~
 caused by ~~[the] pestilential or highly infectious diseases [of~~
~~Asiatic cholera, bubonic plague, typhus fever, or smallpox]~~.

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

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

SECTION 14. Section 10a, Article 49.25, Code of Criminal
 Procedure, is amended to read as follows:

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

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

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

(2) ~~[unless]~~ the time requirement is waived in writing
 by the county medical examiner or, in counties without ~~[not having]~~
 a county medical examiner, a justice of the peace.

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

SECTION 15. Section 11, Article 49.25, Code of Criminal
 Procedure, is amended to read as follows:

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

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

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

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

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

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

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

SECTION 16. 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 17. 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 18. Section 13, Article 49.25, Code of Criminal

Procedure, is repealed.

SECTION 19. 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.

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

(b) A medical examiner's office may 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) Notwithstanding Sections 2 and 3, Article 49.25, Code of Criminal Procedure, as amended by this Act, a person serving as the chief medical examiner or a deputy medical examiner for a medical examiners district or county in this state on the effective date of this Act 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.

(b) Notwithstanding Section 5, Article 49.25, Code of Criminal Procedure, as amended by this Act, 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 is not required to obtain accreditation by the National Association of Medical Examiners or an equivalent organization designated by the Department of Public Safety of the State of Texas before September 1, 2013.

SECTION 21. This Act takes effect September 1, 2009.

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