Senate Research Center

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S.B. 1086

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Criminal Justice

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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current law does not provide protection for parents to view and say goodbye to their deceased child. Interested parties note that when a child dies under suspicious circumstances, the parents can be prohibited from seeing the body and saying goodbye until after the body has undergone an autopsy, without any process.

S.B. 1086 protects a parent's right to view their deceased child's body unless a prosecuting attorney or the Department of Family and Protective Services (DFPS) obtains a court order to prevent or postpone the viewing. The bill establishes a process for DFPS or a prosecuting attorney to obtain a court order. The bill further ensures that this action is taken when the parent is a suspect and the prosecuting attorney and DFPS can obtain enough evidentiary support for a court order.

As proposed, S.B. 1086 amends current law relating to a parent's right to view the body of a deceased child before an autopsy is performed.

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 Chapter 49, Code of Criminal Procedure, by adding Subchapter D, as follows:

SUBCHAPTER D. PARENTAL RIGHT TO VIEW DECEASED CHILD

Art. 49.51. DEFINITIONS. Defines "child," "department," and "prosecuting attorney."

Art. 49.52. PARENTAL RIGHT TO VIEW DECEASED CHILD ABSENT COURT ORDER. (a) Entitles a parent of a deceased child to view the child's body before an autopsy is performed, if practicable, unless a prosecuting attorney or the Department of Family and Protective Services (DFPS) obtains a court order to prevent or postpone the viewing under Article 49.53.

(b) Authorizes a viewing under this article to be supervised by a physician, registered nurse, or licensed vocational nurse.

Art. 49.53. COURT ORDER TO PREVENT OR POSTPONE VIEWING. (a) Authorizes a prosecuting attorney, not later than 24 hours after receiving notice of the death of a child, to file in a county or district court an application for an order to prevent the child's parent from viewing the child's body until after an autopsy is performed if the parent is a suspect in the death of the child.

(b) Authorizes DFPS, within the 24-hour period required by Subsection (a), to file an application under this article instead of the prosecuting attorney if:

(1) before the child's death, DFPS had an open investigation of an allegation of abuse or neglect involving the deceased child or another child, if the parent of the deceased child is the person responsible for the care, custody, or welfare of that other child; or

(2) the parent of the deceased child is the person responsible for the care, custody, or welfare of another child and after the child's death DFPS takes any action to protect the other child.

(c) Authorizes the court, on a request that is made by the prosecuting attorney or DFPS and submitted with an application under this article, to issue a temporary ex parte order postponing the viewing until a hearing can be held under Subsection (d).

(d) Requires the court, not later than 24 hours after an application is filed under this article, to conduct a hearing and rule on the application.

(e) Requires the court, at the close of the hearing, if the court finds that there is substantial evidence that the viewing would interfere with the investigation of the parent by the applicable law enforcement agency or by DFPS, to issue an order to prevent the parent from viewing the child's body until after an autopsy is performed.

(f) Prohibits the parent from being prevented from viewing the child's body in accordance with Article 49.52 if an application is not timely filed or an order is not timely issued in accordance with this article.

SECTION 2. Effective date: September 1, 2015.