

SENATE BILL 320

By Norris

AN ACT to amend Tennessee Code Annotated, Title 4, Chapter 29, Part 2; Title 38, Chapter 7 and Title 68, Chapter 1, Part 11, relative to post-mortem examination.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 4-29-237(a), is amended by deleting subdivision (53).

SECTION 2. Tennessee Code Annotated, Section 38-7-101, is amended by deleting the section and substituting instead the following:

This part shall be known and may be cited as the "Post-Mortem Examination Act."

SECTION 3. Tennessee Code Annotated, Section 38-7-102, is amended by deleting the section and substituting instead the following:

As used in this part:

(1) "Autopsy" means an examination and dissection of a dead body by a forensic pathologist for the purposes of:

- (A) Determining the cause, mechanism, or manner of death;
- (B) Determining the seat of disease;
- (C) Confirming the clinical diagnosis;
- (D) Identifying the deceased; or
- (E) Educating medical professionals and students;

(2) "Chief Medical Examiner" means a forensic pathologist who is certified in forensic pathology by the American Board of Pathology and who holds a certificate of competency in forensic pathology;

(3) "Child" means a person of one (1) year of age and up to, but not including, eighteen (18) years of age;

(4) "Commissioner" means the commissioner of the department of health;

(5) "County medical examiner" means a physician licensed under § 63-6-201 or § 63-9-104 and appointed by a county mayor before January 1, 2017;

(6) "Department" means the department of health;

(7) "External examination" means an inspection or examination of a body prior to or without an internal examination or autopsy;

(8) "Forensic pathologist" means a physician licensed under § 63-6-201 or § 63-9-104 employed at a NAME accredited facility in Tennessee, who has unlimited license to practice medicine and surgery in Tennessee, who is certified in forensic pathology by the American Board of Pathology or who, prior to 2006, has completed a training program in forensic pathology that is accredited by the Accreditation Council on Graduate Medical Education or its international equivalent or has been officially qualified for examination by the American Board of Pathology;

(9) "Infant" means a person of less than one (1) year of age;

(10) "Investigation" means an inquiry or exploration, whether slight or extensive, into a case, detail, or subject, whether by voice, written, electronic, telephone, visual, laboratory study, other means, or combination of means;

(11) "Medicolegal death investigator" means a licensed emergency medical technician (EMT), paramedic, nurse, physician assistant, or a person registered by or a diplomat of the American Board of Medicolegal Death Investigators;

(12) "NAME" means the National Association of Medical Examiners;

(13) "Post-mortem official" means the chief medical examiner, a county medical examiner, a medicolegal death investigator, or a forensic pathologist; and

(14) "Unattended death" means the death of a person not under the care of a healthcare provider authorized to sign a death certificate within the last six (6) months, whether or not in the physical presence of the healthcare provider.

SECTION 4. Tennessee Code Annotated, Section 38-7-103, is amended by deleting the section and substituting instead the following:

The department is authorized and empowered to create and maintain a post-mortem examination division or service. The division or service shall have as its functions the investigation and certification of certain deaths as defined in this part and the keeping of full and complete records of all reports of investigations, external examinations, and autopsy examinations made pursuant to the provisions of this part. The commissioner, acting for the state and with the approval of the governor, shall appoint a chief medical examiner to direct the division or service and such other personnel as the commissioner may find appropriate to the enforcement of the duties and powers of this part. The commissioner is authorized and empowered to spend such funds as may be appropriated for the enforcement of this part and to promulgate rules through the department, to establish fees, to establish guidelines for death investigations and forensic autopsies, and other costs and services associated with this part.

SECTION 5. Tennessee Code Annotated, Section 38-7-104, is amended by deleting the section and substituting instead the following:

(a) The chief medical examiner shall be appointed to a five-year term and may serve unlimited consecutive terms.

(b) In addition to administrative, professional, and technical duties, the duties of the chief medical examiner shall include developing and providing initial training and regular continuing forensic medical education to all county medical examiners and medicolegal death investigators. The chief medical examiner may lecture to medical and law school classes, law enforcement officers, and other investigators.

(c) The chief medical examiner shall have jurisdiction to order an investigation or autopsy for any death reported pursuant to § 38-7-109 and may delegate investigative authority to a forensic pathologist.

SECTION 6. Tennessee Code Annotated, Section 38-7-105, is amended by deleting the section and substituting instead the following:

(a) The county mayor or county executive shall appoint a medicolegal death investigator for their respective county, and the appointment shall be subject to approval by the chief medical examiner.

(b) If it is not possible to obtain an acceptance as a medicolegal death investigator from a qualified individual in a county, the county mayor or county executive shall appoint a medicolegal death investigator from another county. A medicolegal death investigator, when temporarily unable to perform the duties of the office, shall have the authority to deputize another county medicolegal death investigator to act as county medicolegal death investigator during the absence. If a medicolegal death investigator fails to deputize another county medicolegal death investigator when temporarily unable to perform the duties of the office or if the medicolegal death investigator becomes permanently unable to perform the duties of the office, the county mayor or county executive shall notify the chief medical examiner and shall appoint another medicolegal death investigator.

(c) If the county has appointed a county medical examiner before January 1, 2017, the county medical examiner shall perform the duties of the medicolegal death investigator until such time as this position expires or the county mayor appoints a medicolegal death investigator.

(d) If the county has an elected coroner, the coroner may serve as the medicolegal death investigator for the county; provided, that the coroner meets the qualifications for a medicolegal death investigator as defined in § 38-7-102.

(e) County medical examiners and medicolegal death investigators shall be required to receive initial training and regular continuing forensic medical education through the chief medical examiner or designee and to operate according to the death investigation guidelines adopted by the chief medical examiner.

(f) A county medical examiner or a medicolegal death investigator may be suspended or removed from office by the county mayor upon recommendation from the chief medical examiner for good cause, which includes, but is not limited to, neglect, refusal, or malfeasance in the performance of the duties of a county medical examiner or medicolegal death investigator, criminal conduct, or behavior that is unethical in nature or that is in violation of a relevant code of professional responsibility.

SECTION 7. Tennessee Code Annotated, Section 38-7-106, is amended by deleting the section and substituting instead the following:

All autopsies shall be performed by a forensic pathologist at a facility accredited by NAME. All facilities must maintain accreditation and operate pursuant to NAME guidelines. A facility shall provide evidence of accreditation to the chief medical examiner and shall immediately notify the chief medical examiner of any changes in accreditation status.

SECTION 8. Tennessee Code Annotated, Section 38-7-107, is amended by deleting the section and substituting instead the following:

(a) The chief medical examiner or a designated forensic pathologist may order or perform an autopsy on the body of any person whose death occurs under the circumstances outlined in § 38-7-109. When a forensic pathologist decides to order an autopsy, the forensic pathologist shall notify the district attorney general and the chief medical examiner. The chief medical examiner or the district attorney general may order an autopsy in such cases on the body of a person in the absence of a determination made by a forensic pathologist or if a forensic pathologist has decided not to order an autopsy. The authority ordering the autopsy shall notify the next of kin about the impending autopsy if the next of kin is known or reasonably ascertainable. The sheriff or other law enforcement agency of the jurisdiction shall serve process containing such notice within twenty-four (24) hours.

(b) Death investigations, external examinations, and ancillary testing shall be conducted at the discretion of the chief medical examiner or a designated forensic pathologist assigned to the case under investigation.

(c) Death investigations, external examinations, autopsies, and ancillary testing may be performed over the objections of the next of kin. If a forensic pathologist decides to order an autopsy over the objections of the next of kin, the next of kin may petition the chief medical examiner for review of the decision.

(d) The forensic pathologist in charge of the case shall complete a cause of death for the death certificate in all cases where the body is autopsied or examined under this part and no death certificate has been issued.

(e) If the next of kin of the deceased disputes the cause and manner of death recorded on a death certificate issued pursuant to subsection (d), within thirty (30) days

of the issuance of the death certificate the next of kin may file a request with the chief medical examiner to correct the findings and conclusions on the cause and manner of death.

SECTION 9. Tennessee Code Annotated, Section 38-7-108, is amended by deleting the section and substituting instead the following:

(a) Upon request of the chief medical examiner, a district attorney general may petition a circuit or criminal court judge to order a body disinterred and an autopsy performed when a person's death occurred under the circumstances outlined in § 38-7-109 and the person was interred before an autopsy could be performed. The petition shall set forth the district attorney general's belief that the death in question was subject to post-mortem examination or autopsy as provided by this part and the reasons that actuate the district attorney general's belief as to the circumstances of the death. The petition may be presented during a term of court or in vacation and either in the county in which it is claimed that the death occurred or in any other county of a judicial district, and the judge shall have the power and authority to pass upon the petition in any county of the judge's district. When known or reasonably ascertainable, a copy of the petition shall be served upon the next of kin of the deceased.

(b) Upon the presentation of the petition to the judge, the judge shall be authorized to consider the petition and, in the exercise of sound judicial discretion, either make or deny an order authorizing the disinterment and an autopsy to be performed upon the body of the deceased. The cost of disinterment and autopsy shall be paid by the state as provided in § 38-1-104.

SECTION 10. Tennessee Code Annotated, Section 38-7-109, is amended by deleting the section and substituting instead the following:

(a) Any physician, undertaker, law enforcement officer, district attorney, or first responder, as defined in § 29-34-203, having knowledge of the death of any person under any of the following circumstances shall immediately notify the county medical examiner or medicolegal death investigator of the county in which the death occurred or in which the body was found, and any other person having knowledge of the death of any person under any of the following circumstances shall immediately notify law enforcement:

- (1) Death resulting from homicide or suspected homicide;
- (2) Death resulting from violence or trauma;
- (3) Death resulting from accidents;
- (4) Death resulting from suicide;
- (5) Sudden death, when in apparent good health;
- (6) Sudden unexpected infant and child death;
- (7) Deaths of persons in custody of law enforcement, prisons, or other penal institutions;
- (8) Death by disease, injury, or toxic agent resulting from employment;
- (9) Death by a disease thought to be virulent or contagious, which may constitute a public health hazard;
- (10) Death where neglect or abuse of extended care residents is suspected or confirmed;
- (11) Death where the identity of the person is unknown or unclear;
- (12) Death in a suspicious, unusual, or unnatural manner;
- (13) Death where the body is to be cremated, dissected, or buried at sea;

(14) When a dead body is brought into the state without proper medical certification or there is reason to believe either that the death was not investigated properly or the death certificate was inadequate;

(15) Death resulting from the use of alcohol, poisons, toxins, controlled substances, or other drugs;

(16) Fetal death due to injury to the mother or which occurs in an unattended environment where the physician or other healthcare provider authorized to sign a death certificate is unaware of complications;

(17) Any maternal death known or suspected to be related to the circumstances of pregnancy or delivery;

(18) Death resulting from chemical, electrical, radiation, or thermal injury, including environmental heat or cold exposure;

(19) When anatomical material suspected of being part of a human body is discovered;

(20) Any unattended death;

(21) If the body is not claimed; or

(22) Any death in which there is doubt as to whether or not it should be reported.

(b) If the medicolegal death investigator or the county medical examiner cannot be reached, the chief medical examiner or a forensic pathologist shall be notified of the death.

(c) Whenever a death occurs under the circumstances as set forth in this section, law enforcement officials shall secure the scene and shall ensure that the body is not handled, disturbed, or moved from its position or location without approval from a post-mortem official except to preserve the body from loss, destruction, or to obtain

access to another body. Post-mortem officials shall have unobstructed access to examine the body, to obtain a specimen of blood or other bodily fluids from the body, and to remove the body.

(d) No body subject to post-mortem examination as provided by this part shall be embalmed without approval by a post-mortem official.

(e) When a death is reported pursuant to the circumstances outlined in § 38-7-109, it is the duty of the county medical examiner, or the medicolegal death investigator, in the county in which the death occurred or where the body was found to immediately make an investigation of the circumstances of the death and report the preliminary findings to the forensic center providing post-mortem examination services for the county. A forensic pathologist or the designee of a forensic pathologist receiving the preliminary report shall accept or deny jurisdiction over the death and shall record and report the findings pursuant to guidelines established by the chief medical examiner.

(f) Any person who violates a provision of this section commits a Class E felony.

SECTION 11. Tennessee Code Annotated, Section 38-7-110, is amended by deleting the section and substituting instead the following:

(a) The county medical examiner or the medicolegal death investigator shall conduct investigations of deaths occurring under the circumstances outlined in § 38-7-109 when authorized to do so by a forensic pathologist. The county medical examiner may make pronouncements of death and may recommend to the forensic pathologist that an autopsy be ordered.

(b) Upon a determination by a forensic pathologist that a body or the remains thereof fall under the jurisdiction of the chief medical examiner, the county medical examiner or medicolegal death investigator shall notify law enforcement and take legal custody of the body. The county medical examiner or medicolegal death investigator

shall take into custody any items accompanying the body that have not been confiscated by law enforcement.

(c) When an autopsy is ordered by the district attorney general, the district attorney shall notify the chief medical examiner. The chief medical examiner shall perform the autopsy or, alternatively, shall designate a forensic pathologist to perform the autopsy.

SECTION 12. Tennessee Code Annotated, Section 38-7-112, is amended by deleting the section and substituting instead the following:

(a) The records of the division of post-mortem examination, the records of the county medical examiner, or transcripts of the records certified by the chief medical examiner or a designee of the chief medical examiner, and the reports of the toxicology laboratory examinations performed by the testing laboratory or transcripts of the reports certified by the director of the testing laboratory or the director's duly appointed representative shall be received as competent evidence in any court of this state of the facts and matters contained in the records or reports.

(b) The reports of a forensic pathologist, toxicological and autopsy reports, medical records of deceased persons, and photographs, video recordings, audio recordings, and other images of deceased persons shall be considered protected health information under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) (42 U.S.C. § 1320d et seq.).

(c) Law enforcement investigative reports shall not be public records.

(d) Nothing in this section shall be construed as limiting the right of any defendant in any criminal proceeding to obtain discovery of any report of a county medical examiner, toxicological report, or autopsy report as provided in Rule 16 of the Tennessee Rules of Criminal Procedure.

(e) Nothing in this section shall prevent the chief medical examiner or a designee of the chief medical examiner from carrying out training efforts or such person's statutory responsibilities.

SECTION 13. Tennessee Code Annotated, Section 38-7-113, is amended by deleting the section and substituting instead the following:

A person who in good faith performs a medical examination or an autopsy under this part is immune from civil or criminal liability in performing the authorized service.

SECTION 14. Tennessee Code Annotated, Section 38-7-117, is amended by deleting the section and substituting instead the following:

(a) When the chief medical examiner has jurisdiction over the body of the deceased and an anatomical gift has been or might be made of a part of the body of the deceased, no procurement organization shall procure the gift unless authorized to do so under an agreement established in subsection (b).

(b) The commissioner or a designee shall enter into an agreement with a procurement organization before the recovery of an anatomical gift from a body under the jurisdiction of the chief medical examiner.

(c) In the event that a forensic pathologist denies recovery of an anatomical gift, the procurement organization may request the chief medical examiner to reconsider the denial and to permit the recovery to proceed.

(d) An individual licensed under title 63 or any individual or facility licensed under title 68 shall provide any medical records, laboratory test results, x-rays, diagnostic results, and other information about a donor or prospective donor whose body is under the jurisdiction of the chief medical examiner, upon request by a post-mortem official for the preservation of an anatomical gift.

(e) If an anatomical gift has been or might be made of a part of the body of the deceased, and the body is under the jurisdiction of the chief medical examiner and a post-mortem examination is not required, or a forensic pathologist determines that a post-mortem examination is required but that the recovery of the part that is the subject of an anatomical gift will not interfere with the examination, the forensic pathologist and procurement organization shall cooperate in the timely removal of the part from the deceased for the purpose of transplantation, therapy, research, or education.

(f) If the chief medical examiner or a designee of the chief medical examiner is required to be present at a removal procedure pursuant to an agreement entered into under subsection (b), the procurement organization requesting the recovery of the part shall, upon request, reimburse the chief medical examiner or designee for the additional costs incurred in complying with subsection (b).

SECTION 15. Tennessee Code Annotated, Section 38-7-118, is amended by deleting the section and substituting instead the following:

(a) A post-mortem official acting under the authority of the chief medical examiner or performing an investigation pursuant to a court order or an order of a district attorney general is authorized to obtain, upon written request, or may subpoena through the appropriate district attorney general, all medical or hospital records maintained by individuals licensed under title 63 or by individuals and facilities licensed under title 68 that pertain to a case under investigation.

(b) A post-mortem official acting under the authority of the chief medical examiner or performing an investigation pursuant to a court order or an order of a district attorney general is authorized, through the appropriate district attorney general, to obtain, by judicial subpoena or through a court order in accordance with § 33-3-105, all

records maintained by facilities licensed under title 33 that pertain to a case under investigation.

(c) As used in this section, “case under investigation” means any time during which a post-mortem official conducts an investigation into a death reported under the circumstances listed in § 38-7-109.

(d) A post-mortem official may obtain, upon written request, evidence held by law enforcement officials relating to a case under investigation unless release of the evidence would jeopardize a criminal investigation.

SECTION 16. Tennessee Code Annotated, Section 38-7-119, is amended by deleting the section and substituting instead the following:

The body or remains of any dead human subject to an autopsy or pathology examination pursuant to this part shall be delivered to the next of kin as soon as practicable after the completion of the autopsy or pathology examination.

SECTION 17. Tennessee Code Annotated, Title 38, Chapter 7, Part 1, is amended by adding the following as a new section:

(a) It is an offense for a post-mortem official to contract with or grant authorization to an unauthorized person or an external entity to photograph, videotape, or otherwise capture visual images or audio recordings in whatever form of a deceased human body, a human autopsy, or a body immediately prior to, during, or immediately following an autopsy.

(b) To the extent that a post-mortem official is a covered entity under the privacy regulations promulgated pursuant to the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) (42 U.S.C. § 1320d et seq.), nothing in this section shall be construed to preempt any provisions of those regulations that provide greater protection of the deceased’s privacy than does this section.

(c)

(1) A violation of subsection (a) is a Class A misdemeanor punishable by fine only.

(2) A violation of subsection (a) is a Class A misdemeanor punishable by fine or imprisonment if a post-mortem official receives compensation or other thing of value as an inducement to violate this section.

SECTION 18. Tennessee Code Annotated, Section 38-7-201, is amended by deleting the section in its entirety.

SECTION 19. Tennessee Code Annotated, Section 68-1-1102, is amended by deleting subsections (e)—(i) and substituting instead the following:

(e) In the case of every sudden, unexplained death of an infant under one (1) year of age, the attending physician or coroner shall notify the county medical examiner or medicolegal death investigator, who shall coordinate the death investigation.

(f) The county medical examiner or medicolegal death investigator shall inform the parent or legal guardian of the child, if an autopsy is authorized.

(g) The county medical examiner or medicolegal death investigator shall ensure that the body is sent for autopsy to a certified child death pathologist as defined in § 68-1-1101. Parents or legal guardians who refuse to allow an autopsy based on the grounds of religious exemption shall personally file a petition for an emergency court hearing in the general sessions court for the county in which the death occurred.

(h) The county medical examiner or medicolegal death investigator shall contact the appropriate local law enforcement personnel and conduct a death scene investigation in accordance with § 38-7-101. The investigation shall be initiated within twenty-four (24) hours of the time the local law enforcement personnel are contacted by the county medical examiner or medicolegal death investigator.

(i) The county medical examiner or medicolegal death investigator shall send a copy of the death scene investigation to the forensic pathologist conducting the autopsy.

SECTION 20. This act shall take effect January 1, 2017, the public welfare requiring it.