

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: March 13, 1998 Revised: _____

Subject: Medical Examiners

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Gomez</u>	<u>Miller</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

In Florida, when a person dies under certain circumstances, such as a suspicious or violent death, the district medical examiner is responsible for determining the cause of death. In *any case* in which the district medical examiner has a duty to determine the cause of death, he or she also has the statutory authority “to perform, or have performed, whatever autopsies or laboratory examinations he [or she] deems necessary in the public interest.” s. 406.11(2)(a), F.S. The CS amends this statute by narrowing its scope.

The CS provides that a district medical examiner has the authority to conduct autopsies and laboratory examinations deemed necessary *and* in the public interest *to identify the deceased, to determine the cause or manner of death of the deceased, or to obtain evidence required for forensic examination*. The effect is to narrow what constitutes public interest by tying that phrase to the district examiners’ statutory mission: to determine identification, cause, or manner of death.

The CS prohibits medical examiners from retaining or furnishing body parts, except under certain limited instances. It provides for suspension and removal of a medical examiner for retaining or furnishing body parts. The CS also contains provisions related to suspension and discipline of medical examiners and allowing the Medical Examiners Commission to adopt certain rules.

This CS substantially amends the following sections of the Florida Statutes: 406.06, 406.075, and 406.11.

II. Present Situation:

A. District medical examiners investigate unknown cause of death

In Florida, when a person dies under certain statutorily specified circumstances, the district medical examiner is responsible for determining the cause of death. s. 406.11(1), F.S. Some examples of the circumstances triggering a medical examiner's investigation and autopsy include: when a person dies of criminal violence; by accident; in police custody; and in any suspicious or unusual circumstances. s. 406.11(1)(a), F.S.

In those cases in which the district medical examiner has a duty to determine cause of death, he or she "shall make or have performed such examinations, investigations and autopsies as he shall deem necessary or as shall be requested by the state attorney." s. 406.11(1), F.S. Further, in *any case* in which the district medical examiner has a duty to determine the cause of death, he or she also has the statutory authority "to perform, or have performed, whatever autopsies or laboratory examinations he deems necessary in the public interest." s. 406.11(2)(a), F.S.

There are 24 district medical examiners in Florida. For the most part, the 24 districts track Florida's 20 judicial circuits. The Medical Examiners Commission nominates and the Governor appoints the district medical examiner for three-year terms. s. 460.06(1)(a), F.S. The district medical examiners appoint associate medical examiners to assist with the caseload. s. 460.06(2), F.S.

B. The Medical Examiner's Commission oversees medical examiners; suspension powers

The Medical Examiners Commission oversees the district medical examiners. The Commission is composed of nine members. The Governor appoints seven of the Commission's members as follows: two active district medical examiners; a funeral director; a state attorney; a public defender; a sheriff; and a county commissioner. The two other Commission members are the Attorney General or a designee and the Deputy Assistant Secretary of the Department of Health or a designee. Joan E. Wood, M.D., the District Six Medical Examiner, is the Commission's current Chairperson. The Commission is within the Florida Department of Law Enforcement (FDLE). The FDLE provides the Commission with staff and resources.

The Commission is authorized to adopt rules and regulations so as to "ensure minimum and uniform standards of excellence, performance of duties, and maintenance of records." s. 406.04, F.S. The Commission is also authorized to remove or suspend a district or associate medical examiner for any of a number of statutorily enumerated grounds. Some examples of the grounds for disciplinary action include: failure to comply with the medical examiners' statutory provisions or commission rules; conviction of a crime relating to the medical examiner's duties or ability to perform duties; and material misrepresentation of data upon which an opinion or conclusion as a medical examiner is based. s. 406.075, F.S.

C. Cornea statute authorizes donation by district medical examiners; Organ donations authorized in statute

Upon request of an eye bank, district medical examiners have the authority to donate the cornea of a decedent who is under the jurisdiction of the medical examiner. s. 732.9185(1), F.S. The statute authorizes cornea donations unless the medical examiner knows of an objection by the decedent's next of kin. s. 732.9185(1)(b), F.S. Further, a medical examiner may not be held "liable in any civil or criminal action for failure to obtain consent of the next of kin." s. 732.9185(2), F.S.

The Florida Supreme Court upheld the cornea statute against a challenge on the grounds that the provisions that did not require next of kin approval were *unconstitutional*. *State v. Powell*, 497 So. 2d 1188, 1191 (Fla. 1986) (emphasis supplied). Consequently, district medical examiners are not required to obtain the permission of next of kin to provide an eye bank with a decedent's cornea.

Part X of chapter 732 is entitled "Anatomical Gifts." The chapter outlines the organ donation process, and provides legislative intent encouraging and aiding the "development of medical research and facilitating premortem and postmortem authorization for donations of tissue and organs." s. 732.910, F.S. Section 732.912, F.S., specifies that a person may make an organ donation by will or that a decedent's family may authorize a donation. Section 732.912(2), F.S., contains a prioritized list of relatives who may make such and authorization.

D. "Next of Kin" is not defined in statutes

Section 406.11(2)(b), F.S., provides that the Medical Examiners Commission shall adopt rules for the notification of the next of kin that an investigation is being conducted. Pursuant to this authority, the Commission has required that medical examiners:

(e) ensure that the next of kin is notified that the medical examiner's office is investigating the death, when this can be done without hindering the legal purpose of the investigation and the identification and location of the next of kin is readily available. The contact with the next of kin, or the attempt to contact, shall be documented in the medical examiner's case file, whether such contact or attempt to contact is made by the medical examiner's office or through other persons or agencies such as hospital personnel, law enforcement agencies, funeral homes or friends of the deceased; and

(f) promptly notify the next of kin, authorized funeral home, or other representative when the body can be released, provided the identification and location of the next of kin or representative is known.

“Next of kin” is not defined in the rule or statutes. It is a term that often appears in the Florida Statutes, although surprisingly, it is only formally defined in the chapter on guardianship. There, next of kin “means those persons who would be heirs of law of the ward or alleged incapacitated person if such person were deceased and includes the lineal decedents. . . .” s. 744.102(12), F.S. According to the FDLE, the medical examiners use the definition of “legally authorized person” contained in the chapter on funeral directors when determining who is “next of kin.” That definition follows:

‘Legally authorized person’ means, in the priority listed, the decedent, when written inter vivos authorizations and directions are provided by the decedent, the surviving spouse, son or daughter who is 18 years of age or older, parent, brother or sister 18 years of age or over, grandchild who is 18 years of age or older, or grandparent; or any person in the next degree of kinship. In addition, the term may include, if no family exists or is available, the following: the guardian of the dead person at the time of death; the personal representative of the deceased; a public health officer; the medical examiner, county commission or administrator acting under chapter 245, or other public administrator; a representative of a nursing home or other health care institution in charge of final disposition; or a friend or other person not listed in this subsection who is willing to assume the responsibility as authorized person.

s. 470.002(18), F.S.

E. Unclaimed dead bodies sent to anatomic board; prohibitions against sales

The state’s anatomic board is located at the University of Florida Health Science Center. s. 245.13, F.S. With some exceptions, Florida Statutes require that the anatomic board be notified of any unclaimed dead human bodies for educational and research use. ss. 245.06, 245.07, F.S. Medical examiners may hold such bodies until after completion of their investigation for cause of death. s. 245.06, F.S.

It is unlawful for any person to “sell or buy” any dead body or body parts. s. 245.16, F.S. With certain exceptions, it is also unlawful to “transmit or convey” a dead body or body parts to any place outside this state. *Id.* Selling or transmitting a dead body or body part is a criminal offense punished as a first-degree misdemeanor. *Id.* Medical examiners are exempted from the transmitting prohibition only to the extent that they are doing so pursuant to a lawful investigation. *Id.*

Chapter 873 is entitled “Sale of Anatomical Matter.” The chapter currently contains two provisions which prohibit sales; it does not contain any provisions authorizing sales. The sale and purchase of human organs and tissues is a criminal offense punished as a second-degree felony. s. 873.01, F.S. No exception is provided for medical examiners.

III. Effect of Proposed Changes:

A. Provisions clarifying medical examiners duties

In any case in which the district medical examiner has a duty to determine the cause of death, he or she also has the statutory authority “to perform, or have performed, whatever autopsies or laboratory examinations he deems necessary *in the public interest.*” s. 406.11(2)(a), F.S. The CS amends this section. The CS provides that a district medical examiner has the authority to conduct autopsies and laboratory examinations he deems necessary *and* in the public interest *to identify the deceased, to determine the cause or manner of death of the deceased, or to obtain evidence required for forensic examination.* The effect is to narrow what constitutes public interest by tying that phrase to the district examiners’ statutory mission: to determine identification, cause, or manner of death.

The CS adds the phrase “for that purpose” to qualify the medical examiner’s duties. s. 406.11(1), F.S. The effect is to provide that medical examiners shall make or have performed, examinations, investigation, and autopsies for the *purpose* of determining the cause of death.

B. Provisions prohibiting medical examiners from retaining or furnishing body parts

The CS provides that the district medical examiner may not “retain or furnish any body part of a deceased person for research or other purpose without notification and approval of the next of kin.” However, the CS provides that a medical examiner may retain or furnish body parts as follows without notification and approval:

- ▶ in conjunction with any criminal matter or preservation of forensic evidence or a determination of the identity of the deceased, the cause, or manner of death, or the presence of disease;
- ▶ as provided in chapter 873 (sale of anatomical matter);
- ▶ as provided in part X of chapter 732 (organ donations and cornea statute); and
- ▶ as provided in chapter 406 (medical examiners).

The CS contains some terms that are not defined. “Next of kin” and “body parts” are not defined and this could cause confusion in interpretation.

C. Provisions allowing for suspension and discipline of medical examiners

The CS provides that the Governor may suspend a medical examiner for violating the provision relating to retaining or furnishing body parts. The CS adds retaining or furnishing body parts to the list of grounds which may serve as a basis for disciplinary action, including suspension and removal by the Medical Examiners Commission.

The CS amends the section in chapter 406 which outlines the disciplinary proceedings for district and associate medical examiners by providing that the Medical Examiners Commission may

reprimand or place a medical examiner on probation. Currently, the Commission only has the authority to suspend or remove.

This CS amends the disciplinary proceedings section by deleting references to the “district or associate” medical examiners, and leaving only the reference to “medical examiners.” It is not clear whether the intent of this deletion is to restrict the Commission’s oversight to district medical examiners by referring to medical examiners generically. References to “district and associate” medical examiner appear in other parts of chapter 406 and are not changed.

This CS also amends the disciplinary proceedings section by adding negligence or failure to perform within the level of care of a reasonably prudent medical examiner to the grounds which may serve as a basis for discipline.

The CS provides that the Medical Examiners Commission may temporarily suspend a medical examiner who is unable to carry out his or her duties “by reason of the use of alcohol, drugs, narcotics, chemicals, or any other type of materials.” The Commission may reinstate the medical examiner if he or she shows the commission that he or she is undergoing treatment and is able to resume work. This provision does not provide for permanent removal.

D. Provision allowing Commission rulemaking

The CS authorizes the Medical Examiners Commission to adopt rules incorporating by reference “practice parameters or guidelines or standards of conduct relating to investigations or the performance of autopsies.” The effect will be to allow the Commission to adopt rules by referencing existing guidelines or standards. However, once the practice parameters, guidelines, or standards are adopted, aggrieved or interested parties may challenge the underlying rule. *See* chapter 120.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Chapter 406, which currently allows a medical examiner to perform whatever autopsies or laboratory examinations he or she deems necessary *in the public interest*, has come under criticism in the wake of revelations that a district medical examiner in Gainesville severed the head of a murder victim and turned it over to an anthropologist for research purposes. *The Gainesville Sun*, Feb. 18, 1997, p. 1A. The medical examiner did not inform the murder victim's mother before allowing the body to be cremated. *Id.* The victim's mother did not learn of the medical examiner's actions for many years. *Id.* According to FDLE, the Medical Examiners Commission has met several times in the past year to consider updating a 1987 Ethical Advisory Committee report which contains standards followed by district medical examiners. The victim's mother has been present and participated at several of these meetings. Also, according to FDLE, this CS is the consensus work product of all interested parties.

VIII. Amendments:

None.