
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: SB 1163 **Hearing Date:** April 24, 2018
Author: Galgiani
Version: April 16, 2018
Urgency: No **Fiscal:** Yes
Consultant: GC

Subject: *Postmortem Examination or Autopsy: Unidentified Body or Human Remains:
Medical Examiner: Attending Physician and Surgeon*

HISTORY

Source: Author

Prior Legislation: SB 1189 (Pan), Ch. 787, Stats. 2016
SB 1066 (Galgiani), Ch. 437, Stats. 2014

Support: California Public Defenders Association

Opposition: None known

PURPOSE

The purpose of this bill is to require that all postmortem examinations and autopsies conducted upon an unidentified human body or human remains be conducted by an attending physician and surgeon or chief medical examiner who is a board-certified forensic pathologist.

Existing law makes it the duty of a coroner to inquire into and determine the circumstances, manner, and cause of deaths under prescribed conditions, including deaths under such circumstances as to afford a reasonable ground to suspect that the death was caused by the criminal act of another and if the surviving spouse of the deceased requests the coroner to do so in writing. (Pen. Code, § 27520, et seq.)

Existing law makes a postmortem examination or autopsy conducted at the discretion of a coroner, medical examiner, or other agency upon an unidentified human body or human remains subject to certain specified provisions of law. (Pen. Code, § 27521, subd. (a).)

This bill would require a postmortem examination or autopsy upon an unidentified body or human remains to only be conducted by an attending physician and surgeon or chief medical examiner who is a board-certified forensic pathologist.

This bill would require an agency tasked with the exhumation of a body or skeletal remains of a deceased person that has suffered significant deterioration or decomposition, where the

circumstances surrounding the death afford a reasonable basis to suspect that the death was caused by or related to the criminal act of another, to perform the exhumation under the direction of a board-certified forensic pathologist and would authorize that board-certified forensic pathologist to retain the services of an anthropologist.

This bill would allow the postmortem examination or autopsy of an unidentified body or remains to include a full body x-ray.

Existing law requires a postmortem examination or autopsy to include certain procedures, including, but not limited to, a dental examination that is authorized to be conducted by a qualified dentist as determined by the coroner. (Pen. Code, § 27521, subd. (b)(2).)

This bill would instead provide that the dental examination is authorized to be conducted by a qualified dentist as determined by the coroner, medical examiner, or attending physician and surgeon.

Existing law authorizes the use of an electronic image system during an autopsy at the sole discretion of a coroner, medical examiner, or other agency tasked with performing an autopsy, except as specified. (Pen. Code, § 27521, subd. (d)(1).)

Existing law requires a coroner, medical examiner, or other agency tasked with performing a postmortem examination or an autopsy to, among other things, submit dental charts and dental X-rays and the final report of investigation to the Department of Justice, as specified. (Pen. Code, § 27521, subd. (g).)

Existing law, unless the coroner, medical examiner, or other agency performing a postmortem examination or autopsy determines the body of the unidentified deceased person has suffered significant deterioration or decomposition, prohibits the jaws from being removed until immediately before the body is cremated or buried and requires the coroner, medical examiner, or other agency to retain the jaws and other tissue samples for a specified period of time. (Pen. Code, § 27521, subd. (f).)

This bill would additionally apply those above-described provisions to an attending physician and surgeon.

Existing law prohibits the body of an unidentified deceased person from being cremated or buried until the jaws and other tissues samples are retained for future possible use. (Pen. Code, § 27521, subd. (f).)

This bill would require the appropriate samples of tissue and bone be retained by an attending physician and surgeon or a chief medical examiner who is a board-certified forensic pathologist for future possible use, including, but not limited to, identification purposes.

This bill would, for an unidentified body or human remains, require that appropriate samples of tissue and bone be taken before the unidentified body or human remains are cremated or buried, as specified.

This bill would define “attending physician and surgeon” for the purposes of these provisions as a physician and surgeon licensed to practice medicine in this state performing a postmortem examination or autopsy, as specified.

COMMENTS

1. Need for This Bill

According to the author:

In current law, it is the duty of the coroner to determine cause of death and to decide whether to conduct an autopsy upon an unidentified body or human remains. This bill would require an autopsy upon an unidentified body or human remains to only be conducted by an attending physician and surgeon or chief medical examiner who is a board-certified forensic pathologist. The bill would also require an agency tasked with the exhumation of a body or skeletal remains of a deceased person that has suffered significant deterioration or decomposition, where the circumstances surrounding the death afford a reasonable basis to suspect that the death was caused by the criminal act of another, to perform the exhumation under the direction of a board-certified forensic pathologist and would authorize that board-certified forensic pathologist to retain the services of an anthropologist.

There are over 25,000 missing and unidentified persons in the California Attorney General's repository of cold cases. Clarifying and updating the law in regards to how to handle investigations and autopsies involving unidentified bodies will also help provide closure to families with missing loved ones.

With the advancements of science and technology, this bill is necessary to ensure the most accurate information is kept on file in cases of unidentified human remains. In many cases a body can be identified with much less than what was once necessary and required by law. This bill will provide transparency and confidence in the process when an unidentified body or human remains are found.

Until a few years ago, the only identification process available was to consider the body of evidence gathered from the skeleton, the teeth, and the circumstances, then make a conclusion. Now, however, DNA matching provides positive identification much more readily (usually). There are two types of DNA: *nuclear DNA* and *mitochondrial DNA (mtDNA)*. Nuclear DNA is in the nucleus of the cell and it decays as the flesh decays. MtDNA is in the mitochondria, or the wall, of the cell. It survives for a long time and can be recovered from bones.

Having a forensic pathologist direct the exhumation in the case where the circumstances surrounding the death affords a reasonable basis to suspect that the death was caused by or related to the criminal act of another, helps to ensure maximum recovery and protection of the human skeletal remains; skeletal analysis helps to identify the victim and determine how the victim may have died. Because of the nature of the cases that they work on--victims

that are badly decomposed, skeletonized, or when body parts are missing--the forensic pathologist or anthropologist is often the victim's last chance for identification and justice.

2. Medical Examiners

Unlike coroners, medical examiners must possess medical backgrounds. A medical examiner is a medical doctor responsible for examining bodies post mortem to determine cause of death. Coroners have the authority to convene a county to determine a cause of death, and often consult medical examiners to complete examinations. Medical examiners responsibilities may include investigating sudden or unnatural deaths, performing forensic medicine and pathology consultations, counseling families regarding manners and cause of death, testifying in courts, conducting physical examinations and laboratory tests, conducting inquests and serving subpoenas for witnesses.

Currently, the Board of Supervisors can create an independent medical examiner of its own volition. This bill provides that the medical examiner must be allowed to operate independently from any other county agency or official in the conduct of autopsies however, the board may still supervise the conduct of the medical examiner. SB 1303 requires six counties to change their sheriff-coroner investigations including San Joaquin, Riverside, Contra Costa, Kern, Stanislaus, and Sonoma.

SB 1163 would require postmortem examinations and autopsies be performed by an attending physician and surgeon or chief medical examiner who is a board-certified forensic pathologist.

3. Shortage of Forensic Pathologists

According to the National Commission on Forensic Science, there are less than 600 forensic pathologists currently in the U.S., with a need of as many as 1,200.¹ In August of 2015, the commission voted to adopt a recommendation to increase the number, retention, and quality of board-certified forensic pathologists. In response, the National Institute of Justice released a new grant solicitation entitled "Strengthening the Medical Examiner Coroner System" which supports forensic pathology fellowships and provides resources necessary to achieve accreditation.² It is unclear if the number of forensic pathologists has increased since efforts in 2015.

One possible concern for this bill is whether there are enough board-certified forensic pathologists to conduct the volume of postmortem examinations and autopsies in California that this bill would require.

¹ "National Commission on Forensic Science," 2017, 180.

² National Research Council (U.S.), National Research Council (U.S.), and National Research Council (U.S.), *Strengthening Forensic Science in the United States*.

4. Argument in Support

According to the California Public Defenders Association:

In 2009, the National Academy of Sciences prepared a report entitled “Strengthening Forensic Science: A Path Forward.” The report examined a number of forensic disciplines and made recommendations for improving the quality and reliability of the work done by forensic scientists. One chapter of the report was entitled “Medical Examiner and Coroner Systems: Current and Future Needs.” In that chapter the authors of the report examined the existing coroner-medical examiner systems throughout the country and made a number of important recommendations. Specifically, the committee recommended that existing coroner systems be replaced with medical examiners; all medical examiner officers should be accredited and autopsies should only be performed by board certified forensic pathologists. The NAS committee believed it was critical these recommendations be adopted in order to ensure the reliability of death investigations conducted in this country.

Senate Bill 1163 would require postmortem examinations and autopsies be performed by an attending physician and surgeon or chief medical examiner who is a board-certified forensic pathologist. Further, this bill would require an agency tasked with the exhumation of a body or skeletal remains of a deceased person that has suffered significant deterioration caused by or related to the criminal act of another, to perform the exhumation under the direction of a board-certified forensic pathologist and would authorize that board-certified forensic pathologist to retain the services of an anthropologist. In other words, this requires autopsies and other duties conducted by coroners and medical examiners in this state to be performed only by licensed physicians who have the necessary training and education.

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