

AMENDED IN ASSEMBLY JUNE 22, 2016

AMENDED IN SENATE APRIL 26, 2016

AMENDED IN SENATE APRIL 13, 2016

AMENDED IN SENATE MARCH 28, 2016

SENATE BILL

No. 1189

Introduced by Senators Pan and Jackson

February 18, 2016

An act to amend Sections 27491.4, 27491.41, 27491.43, 27491.46, 27491.47, and 27520 of, and to add Section 27522 to, the Government Code, relating to autopsies.

LEGISLATIVE COUNSEL'S DIGEST

SB 1189, as amended, Pan. Postmortem examinations or autopsies: forensic pathologists.

Existing law requires a county coroner to inquire into and determine the circumstances, manner, and cause of certain deaths. Existing law either requires or authorizes a county coroner, under certain circumstances, to perform, or cause to be performed, an autopsy on a decedent. Existing law imposes certain requirements on a postmortem examination or autopsy conducted at the discretion of a coroner, medical examiner, or other agency upon an unidentified body or human remains.

Existing law authorizes the board of supervisors of a county to consolidate the duties of certain county offices in one or more of specified combinations, including, but not limited to, sheriff and coroner, district attorney and coroner, and public administrator and coroner. Existing law authorizes the board of supervisors of a county to abolish the office of coroner and provide instead for the office of medical examiner, as specified, and requires the medical examiner to be a

licensed physician and surgeon duly qualified as a specialist in pathology.

This bill would require that a forensic autopsy, as defined, be conducted by a licensed physician and surgeon. The bill would require that the results of a forensic autopsy ~~and the cause and manner of death~~ be determined by a licensed physician and surgeon. *The bill would require the manner of death to be determined by the coroner or medical examiner of a county. The bill would require, if a licensed physician and surgeon conducts a forensic autopsy, the coroner to consult with the licensed physician and surgeon in the determination of the manner of death.*

The bill would require, for health and safety purposes, that all persons in the autopsy suite ~~have current bloodborne pathogen training~~ *be informed of the risks presented by bloodborne pathogens and be informed that they should wear personal protective equipment, as specified.* The bill would ~~provide that police and other law enforcement personnel who have completed the specified training may require that only individuals who are directly involved in the investigation of the death of the decedent~~ *be allowed into the autopsy suite at the discretion of the forensic pathologist, but would permit individuals to be in the autopsy suite for educational and research purposes at the discretion of the coroner, in consultation with any licensed physician and surgeon conducting an autopsy.* The bill would prohibit law enforcement personnel directly involved ~~with the care and custody in the death of~~ an individual who died due to involvement of law enforcement activity from being involved with any portion of the postmortem examination or being inside the autopsy suite during the performance of the autopsy. The bill would define a postmortem examination for this purpose to be the external examination of the body where no manner or cause of death is determined.

The bill would require specified materials that are in the possession of law enforcement and are related to a death that is incident to law enforcement activity to be made available to the forensic pathologist prior to the completion of the investigation of the death.

The bill would specify that these provisions shall not be construed to limit the practice of an autopsy for educational or research purposes.

By imposing additional duties upon local officials and law enforcement agencies, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

The bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 27491.4 of the Government Code is
2 amended to read:
3 27491.4. (a) For purposes of inquiry the coroner shall, within
4 24 hours or as soon as feasible thereafter, where the suspected
5 cause of death is sudden infant death syndrome and, in all other
6 cases, the coroner may, in his or her discretion, take possession of
7 the body, which shall include the authority to exhume the body,
8 order it removed to a convenient place, and make or cause to be
9 made a postmortem examination, or cause to be made an autopsy
10 thereon, and make or cause to be made an analysis of the stomach,
11 stomach contents, blood, organs, fluids, or tissues of the body. The
12 detailed medical findings resulting from an inspection of the body
13 or autopsy by an examining licensed physician and surgeon shall
14 be either reduced to writing or permanently preserved on recording
15 discs or other similar recording media, shall include all positive
16 and negative findings pertinent to establishing the cause of death
17 in accordance with medicolegal practice and this, along with the
18 written opinions and conclusions of the examining licensed
19 physician and surgeon, shall be included in the coroner’s record
20 of the death. The coroner shall have the right to retain only those
21 tissues of the body removed at the time of the autopsy as may, in
22 his or her opinion, be necessary or advisable to the inquiry into
23 the case, or for the verification of his or her findings. ~~No person~~
24 *Only individuals who are directly involved in the investigation of*
25 *the death of the decedent* may be present during the performance
26 ~~of an autopsy without the express consent of the licensed physician~~
27 ~~and surgeon who is conducting the autopsy.~~

1 (b) In any case in which the coroner knows, or has reason to
2 believe, that the deceased has made valid provision for the
3 disposition of his or her body or a part or parts thereof for medical
4 or scientific purposes in accordance with Chapter 3.5 (commencing
5 with Section 7150) of Part 1 of Division 7 of the Health and Safety
6 Code, the coroner shall neither perform nor authorize any other
7 person to perform an autopsy on the body unless the coroner has
8 contacted or attempted to contact the physician last in attendance
9 to the deceased. If the physician cannot be contacted, the coroner
10 shall then notify or attempt to notify one of the following of the
11 need for an autopsy to determine the cause of death: (1) the
12 surviving spouse; (2) a surviving child or parent; (3) a surviving
13 brother or sister; (4) any other kin or person who has acquired the
14 right to control the disposition of the remains. Following a period
15 of 24 hours after attempting to contact the physician last in
16 attendance and notifying or attempting to notify one of the
17 responsible parties listed above, the coroner may authorize the
18 performance of an autopsy, as otherwise authorized or required
19 by law.

20 (c) Nothing in this section shall be deemed to prohibit the
21 discretion of the coroner to cause to be conducted an autopsy upon
22 any victim of sudden, unexpected, or unexplained death or any
23 death known or suspected of resulting from an accident, suicide,
24 or apparent criminal means, or other death, as described in Section
25 27491.

26 SEC. 2. Section 27491.41 of the Government Code is amended
27 to read:

28 27491.41. (a) For purposes of this section, “sudden infant
29 death syndrome” means the sudden death of any infant that is
30 unexpected by the history of the infant and where a thorough
31 postmortem examination fails to demonstrate an adequate cause
32 of death.

33 (b) The Legislature finds and declares that sudden infant death
34 syndrome (SIDS) is the leading cause of death for children under
35 age one, striking one out of every 500 children. The Legislature
36 finds and declares that sudden infant death syndrome is a serious
37 problem within the State of California, and that public interest is
38 served by research and study of sudden infant death syndrome,
39 and its potential causes and indications.

1 (c) (1) To facilitate these purposes, the coroner shall, within
2 24 hours, or as soon thereafter as feasible, cause an autopsy to be
3 performed in any case where an infant has died suddenly and
4 unexpectedly.

5 (2) However, if the attending licensed physician and surgeon
6 desires to certify that the cause of death is sudden infant death
7 syndrome, an autopsy may be performed at the discretion of the
8 coroner. If the coroner causes an autopsy to be performed pursuant
9 to this section, he or she shall also certify the cause of death.

10 (d) The autopsy shall be conducted pursuant to a standardized
11 protocol developed by the State Department of Health *Care*
12 Services. The protocol is exempt from the procedural requirements
13 pertaining to the adoption of administrative rules and regulations
14 pursuant to Article 5 (commencing with Section 11346) of Chapter
15 3.5 of Part 1 of Division 3 of Title 2 of the Government Code. The
16 protocol shall be developed and approved by July 1, 1990.

17 (e) The protocol shall be followed by all ~~licensed physicians~~
18 ~~and surgeons~~ *coroners* throughout the state when conducting the
19 autopsies required by this section. The coroner shall state on the
20 certificate of death that sudden infant death syndrome was the
21 cause of death when the ~~licensed physician and surgeon's~~ *coroner's*
22 findings are consistent with the definition of sudden infant death
23 syndrome specified in the standardized autopsy protocol. The
24 protocol may include requirements and standards for scene
25 investigations, requirements for specific data, criteria for
26 ascertaining cause of death based on the autopsy, and criteria for
27 any specific tissue sampling, and any other requirements. The
28 protocol may also require that specific tissue samples must be
29 provided to a central tissue repository designated by the State
30 Department of Health *Care* Services.

31 (f) The State Department of Health *Care* Services shall establish
32 procedures and protocols for access by researchers to any tissues,
33 or other materials or data authorized by this section. Research may
34 be conducted by any individual with a valid scientific interest and
35 prior approval from the State Committee for the Protection of
36 Human Subjects. The tissue samples, the materials, and all data
37 shall be subject to the confidentiality requirements of Section
38 103850 of the Health and Safety Code.

39 (g) The coroner may take tissue samples for research purposes
40 from infants who have died suddenly and unexpectedly without

1 consent of the responsible adult if the tissue removal is not likely
2 to result in any visible disfigurement.

3 (h) A coroner or licensed physician and surgeon shall not be
4 liable for damages in a civil action for any act or omission done
5 in compliance with this section.

6 (i) No consent of any person is required prior to undertaking
7 the autopsy required by this section.

8 SEC. 3. Section 27491.43 of the Government Code is amended
9 to read:

10 27491.43. (a) (1) Notwithstanding any other law, except as
11 otherwise provided in this ~~section~~ *section*, in any case in which
12 ~~the licensed physician and surgeon, coroner,~~ before *the* beginning
13 *of* an autopsy, dissection, or removal of corneal tissue, pituitary
14 glands, or any other organ, tissue, or fluid, has received a certificate
15 of religious belief, executed by the decedent as provided in
16 subdivision (b), that the procedure would be contrary to his or her
17 religious belief, the coroner shall ~~not perform~~ *neither perform, nor*
18 *order the performance of,* that procedure on the body of the
19 decedent.

20 (2) If, before beginning the procedure, the coroner ~~or licensed~~
21 ~~physician and surgeon~~ is informed by a relative or a friend of the
22 decedent that the decedent had executed a certificate of religious
23 belief, the ~~licensed physician and surgeon~~ *coroner* shall ~~not perform~~
24 ~~the procedure,~~ *order an autopsy to be performed,* except as
25 otherwise provided in this section, for 48 hours. If the certificate
26 is produced within 48 hours, the case shall be governed by this
27 section. If the certificate is not produced within that time, the case
28 shall be governed by the other provisions of this article.

29 (b) Any person, 18 years of age or older, may execute a
30 certificate of religious belief which shall state in clear and
31 unambiguous language that any postmortem anatomical dissection
32 or that specified procedures would violate the religious convictions
33 of the person. The certificate shall be signed and dated by the
34 person in the presence of at least two witnesses. Each witness shall
35 also sign the certificate and shall print on the certificate his or her
36 name and residence address.

37 (c) Notwithstanding the existence of a certificate, the coroner
38 may at any time cause an autopsy to be performed or any other
39 procedure if he or she has a reasonable suspicion that the death

1 was caused by the criminal act of another or by a contagious
2 disease constituting a public health hazard.

3 (d) (1) If a certificate is produced, and if subdivision (c) does
4 not apply, the coroner may petition the superior court, without fee,
5 for an order authorizing an autopsy or other procedure or for an
6 order setting aside the certificate as invalid. Notice of the
7 proceeding shall be given to the person who produced the
8 certificate. The proceeding shall have preference over all other
9 cases.

10 (2) The court shall set aside the certificate if it finds that the
11 certificate was not properly executed or that it does not clearly
12 state the decedent's religious objection to the proposed procedure.

13 (3) The court may order an autopsy or other procedure despite
14 a valid certificate if it finds that the cause of death is not evident,
15 and that the interest of the public in determining the cause of death
16 outweighs its interest in permitting the decedent and like persons
17 fully to exercise their religious convictions.

18 (4) Any procedure performed pursuant to paragraph (3) shall
19 be the least intrusive procedure consistent with the order of the
20 court.

21 (5) If the petition is denied, and no stay is granted, the body of
22 the deceased shall immediately be released to the person authorized
23 to control its disposition.

24 (e) In any case in which the circumstances, manner, or cause
25 of death is not determined because of the provisions of this section,
26 the coroner may state on the certificate of death that an autopsy
27 was not conducted because of the provisions of this section.

28 (f) A coroner shall not be liable for damages in a civil action
29 for any act or omission taken in compliance with the provisions
30 of this section.

31 SEC. 4. Section 27491.46 of the Government Code is amended
32 to read:

33 27491.46. (a) The coroner shall have the right to retain
34 pituitary glands solely for transmission to a university, for use in
35 research or the advancement of medical science, in those cases in
36 which the coroner has required an autopsy to be performed pursuant
37 to this chapter, and during a 48-hour period following such autopsy
38 the body has not been claimed and the coroner has not been
39 informed of any relatives of the decedent.

1 (b) In the course of any autopsy, the coroner may cause to be
 2 removed the pituitary gland from the body for transmittal to any
 3 public agency for use in manufacturing a hormone necessary for
 4 the physical growth of persons who are, or may become,
 5 hypopituitary dwarfs, if the coroner has no knowledge of objection
 6 to the removal and release of the pituitary gland having been made
 7 by the decedent or any other person specified in Section 7151.5
 8 of the Health and Safety Code. Neither the coroner nor the medical
 9 examiner authorizing the removal of the pituitary gland, nor any
 10 hospital, medical center, tissue bank, storage facility, or person
 11 acting upon the request, order, or direction of the coroner or
 12 medical examiner in the removal of the pituitary gland pursuant
 13 to this section, shall incur civil liability for the removal of the
 14 pituitary gland in an action brought by any person who did not
 15 object prior to the removal of the pituitary gland, nor be subject
 16 to criminal prosecution for removal of the pituitary gland pursuant
 17 to the authority of this section.

18 Nothing in this subdivision shall supersede the terms of any gift
 19 made pursuant to Chapter 3.5 (commencing with Section 7150)
 20 of Part 1 of Division 7 of the Health and Safety Code.

21 SEC. 5. Section 27491.47 of the Government Code is amended
 22 to read:

23 27491.47. (a) Notwithstanding any other law, the coroner may,
 24 in the course of an autopsy, authorize the removal and release of
 25 corneal eye tissue from a body within the coroner’s custody, if all
 26 of the following conditions are met:

- 27 (1) The autopsy has otherwise been authorized.
- 28 (2) The coroner has no knowledge of objection to the removal
 29 and release of corneal tissue having been made by the decedent or
 30 any other person specified in Section 7151 of the Health and Safety
 31 Code and has obtained any one of the following:
 - 32 (A) A dated and signed written consent by the donor or any
 33 other person specified in Section 7151 of the Health and Safety
 34 Code on a form that clearly indicates the general intended use of
 35 the tissue and contains the signature of at least one witness.
 - 36 (B) Proof of the existence of a recorded telephonic consent by
 37 the donor or any other person specified in Section 7151 of the
 38 Health and Safety Code in the form of an audio recording of the
 39 conversation or a transcript of the recorded conversation, which
 40 indicates the general intended use of the tissue.

1 (C) A document recording a verbal telephonic consent by the
2 donor or any other person specified in Section 7151 of the Health
3 and Safety Code, witnessed and signed by no fewer than two
4 members of the requesting entity, hospital, eye bank, or
5 procurement organization, memorializing the consenting person's
6 knowledge of and consent to the general intended use of the gift.

7 The form of consent obtained under subparagraph (A), (B), or
8 (C) shall be kept on file by the requesting entity and the official
9 agency for a minimum of three years.

10 (3) The removal of the tissue will not unnecessarily mutilate
11 the body, be accomplished by enucleation, nor interfere with the
12 autopsy.

13 (4) The tissue will be removed by a licensed physician and
14 surgeon or a trained transplant technician.

15 (5) The tissue will be released to a public or nonprofit facility
16 for transplant, therapeutic, or scientific purposes.

17 (b) Neither the coroner nor medical examiner authorizing the
18 removal of the corneal tissue, nor any hospital, medical center,
19 tissue bank, storage facility, or person acting upon the request,
20 order, or direction of the coroner or medical examiner in the
21 removal of corneal tissue pursuant to this section, shall incur civil
22 liability for the removal in an action brought by any person who
23 did not object prior to the removal of the corneal tissue, nor be
24 subject to criminal prosecution for the removal of the corneal tissue
25 pursuant to this section.

26 (c) This section shall not be construed to interfere with the
27 ability of a person to make an anatomical gift pursuant to the
28 Uniform Anatomical Gift Act (Chapter 3.5 (commencing with
29 Section 7150) of Part 1 of Division 7 of the Health and Safety
30 Code).

31 SEC. 6. Section 27520 of the Government Code is amended
32 to read:

33 27520. (a) The coroner shall cause to be performed an autopsy
34 on a decedent, for which an autopsy has not already been
35 performed, if the surviving spouse requests him or her to do so in
36 writing. If there is no surviving spouse, the coroner shall cause an
37 autopsy to be performed if requested to do so in writing by a
38 surviving child or parent, or if there is no surviving child or parent,
39 by the next of kin of the deceased.

1 (b) The coroner may cause to be performed an autopsy on a
2 decedent, for which an autopsy has already been performed, if the
3 surviving spouse requests him or her to do so in writing. If there
4 is no surviving spouse, the coroner may cause an autopsy to be
5 performed if requested to do so in writing by a surviving child or
6 parent, or if there is no surviving child or parent, by the next of
7 kin of the deceased.

8 (c) The cost of an autopsy requested pursuant to either
9 subdivision (a) or (b) shall be borne by the person requesting that
10 it be performed.

11 SEC. 7. Section 27522 is added to the Government Code, to
12 read:

13 27522. (a) A forensic autopsy shall only be conducted by a
14 licensed physician and surgeon. The results of a forensic autopsy
15 shall only be determined by a licensed physician and surgeon.

16 (b) A forensic autopsy shall be defined as an examination of a
17 body of a decedent to generate medical evidence for which the
18 cause ~~and manner~~ of death is determined.

19 (c) For purposes of this section, a postmortem examination shall
20 be defined as the external examination of the body where no
21 manner or cause of death is determined.

22 (d) *For purposes of this section, the manner of death shall be*
23 *determined by the coroner or medical examiner of a county. If a*
24 *forensic autopsy is conducted by a licensed physician and surgeon,*
25 *the coroner shall consult with the licensed physician and surgeon*
26 *in the determination of the manner of death.*

27 ~~(d)~~

28 (e) For health and safety purposes, all persons in the autopsy
29 suite shall ~~have current bloodborne pathogen training~~ *be informed*
30 *of the risks presented by bloodborne pathogens and that they should*
31 *wear* personal protective equipment in accordance with the
32 requirements described in Section 5193 of Title 8 of the California
33 Code of Regulations or its successor.

34 ~~(e)~~

35 (f) (1) ~~Police and other law enforcement personnel who have~~
36 ~~completed training as described in subdivision (d) may~~ *Only*
37 *individuals who are directly involved in the investigation of the*
38 *death of the decedent shall be allowed into the autopsy suite at the*
39 *discretion of the forensic pathologist. suite.*

1 (2) ~~Notwithstanding paragraph (1), if~~ *If* an individual dies due
2 to the involvement of law enforcement activity, law enforcement
3 personnel directly involved ~~with the care and custody in the death~~
4 of that individual shall not be involved with any portion of the
5 postmortem examination, nor allowed inside the autopsy suite
6 during the performance of the autopsy.

7 (3) *Notwithstanding paragraph (1), individuals may be permitted*
8 *in the autopsy suite for educational and research purposes at the*
9 *discretion of the coroner and in consultation with any licensed*
10 *physician and surgeon conducting an autopsy.*

11 ~~(f)~~
12 (g) Any police reports, crime scene or other information, videos,
13 or laboratory tests that are in the possession of law enforcement
14 and are related to a death that is incident to law enforcement
15 activity shall be made available to the forensic pathologist prior
16 to the completion of the investigation of the death.

17 ~~(g)~~
18 (h) This section shall not be construed to limit the practice of
19 an autopsy for educational or research purposes.

20 SEC. 8. If the Commission on State Mandates determines that
21 this act contains costs mandated by the state, reimbursement to
22 local agencies and school districts for those costs shall be made
23 pursuant to Part 7 (commencing with Section 17500) of Division
24 4 of Title 2 of the Government Code.