

**STORAGE NAME:** h1329.leps

**DATE:** April 9, 1998

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
LAW ENFORCEMENT AND PUBLIC SAFETY  
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

**BILL #:** HB 1329

**RELATING TO:** Medical Examiners

**SPONSOR(S):** Rep. Roberts-Burke & Others

**COMPANION BILL(S):** S 0122(s), CS/S 0562(c)

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

- (1) LAW ENFORCEMENT AND PUBLIC SAFETY
  - (2)
  - (3)
  - (4)
  - (5)
- 

I. SUMMARY:

Under s. 406.11, F.S., the district medical examiner presently has a duty to determine the cause of death, and to perform whatever autopsies or laboratory examinations he/she deems necessary in the public interest.

The bill requires notification and approval of the next of kin if the procedure of the medical examiner on a dead human body is primarily for medical research.

The bill provides an effective date.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

**Responsibilities of a Medical Examiner in Performing Examinations**

**Section 406.11, F.S.**, authorizes the district medical examiner to determine the cause of death of an individual if the cause of death occurs under any of the circumstances listed in the statute. In addition to determining the cause of death, the medical examiner is to perform examinations he or she deems necessary, or are requested by the state attorney.

The medical examiner also has the authority to "perform, or have performed, whatever autopsies or laboratory examinations he or she deems necessary in the public interest." s. 406.11(a), F.S.

**Section 406.075, F.S.**, provides that a medical examiner may be disciplined (even removed) for violating the Medical Commission's rules.

**Next of Kin's Right to be Notified of Examinations performed on Decedent's Body**

There is currently no statutory requirement that the next of kin be notified before an examination on a dead human body takes place. In fact, there is no definition of "next of kin" in Chapter 406 of the Florida Statutes.

The Florida Supreme Court has upheld the constitutionality of a statute (s. 732.9185, F.S.) that authorizes a medical examiner, at the request of an eye bank, to donate the cornea of a decedent without the notification of the next of kin. However, the medical examiner may not proceed if he/she knows of an objection by the next of kin. State v. Powell, 497 So.2d at 1190 (Fla 1996). The court cited the extreme importance of weighing public interest against the rights of the next of kin and to limit intrusions on a dead body without permission of the next of kin to those instances in which the public interest is the greatest, and the impact on the next of kin is the least. Id.

Likewise, the court has asked the legislature to address this policy question and balance the needs of society with the individual concerns of the next of kin. Id.

**Rights of Next of Kin to Control Use of Decedent's Body**

The Supreme Court of Florida has specifically noted that the next of kin have no property right in the remains of a decedent. However, the next of kin do have a limited right to possess the body for burial purpose. Id.

Florida is one of the few states that adhere to the Impact Doctrine. This requires some degree of physical injury to the plaintiff before recovery is possible in tort actions. However, under Florida Law, the absence of physical impact does not bar a claim for the negligent mishandling of a dead body. Gonzalez v. Metropolitan Dade County Public Health Trust, 651 So.2d 673 (Fla. 1995).

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In situations where the decedent's next of kin has specifically requested that the body not be used for research purposes, the court has determined that the family member had a right to recover, in tort, for the willful, wanton, and malicious actions of the medical examiner in proceeding despite the objection. Kirker v. Orange County, 519 So.2d 682 (Fla.App 5 Dist. 1988).

**What happens to unclaimed bodies?**

After a certain period of time, unclaimed bodies are sent, after determination of death, to the State of Florida Anatomical Board (located at the University of Florida Health Science Center). After forty-eight hours elapses, the body may be used for medical research purposes, and then cremated. ss. 245.06, 245.07, F.S.

**B. EFFECT OF PROPOSED CHANGES:**

The bill amends **s. 406.11, F.S.**, to provide that a medical examiner obtain notification and receive approval of the next of kin when an examination is performed on a dead human body primarily for the purposes of medical research.

Thus, under the bill, if the medical examiner wishes to removing a decedent's body part for research purposes, he/she would be required to notify the next of kin to obtain approval.

**C. APPLICATION OF PRINCIPLES:**

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

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(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

S. 406.11, F.S.

E. SECTION-BY-SECTION RESEARCH:

**Section 1:** The bill amends **s. 406.11, F.S.**, to provide that a medical examiner obtain notification and receive approval of the next of kin when an examination is performed on a dead human body primarily for the purposes of human research.

**Section 2:** The bill provides an effective date.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

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B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The mandates provision does not apply.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce revenue raising authority.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce state tax shared with counties and municipalities.

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V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON LAW ENFORCEMENT AND PUBLIC SAFETY:

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