ENROLLED SENATE
BILL NO. 668

BY: BROWN of the SENATE

and

BASTIN and COTNER of the HOUSE

AN ACT RELATING TO AUTOPSY; AMENDING 21 O.S. 1991, SECTION 1154 AND 22 O.S. 1991, SECTION 751, WHICH RELATE TO AUTOPSY AND MEDICAL EXAMINER'S REPORTS; AUTHORIZING CERTAIN PERSONS TO RETAIN SPECIMENS; GRANTING CERTAIN IMMUNITY; PROVIDING CERTAIN EXCEPTIONS; DIRECTING THE STATE BOARD OF HEALTH, THE STATE BOARD OF MEDICAL LICENSURE AND SUPERVISION AND THE STATE BOARD OF OSTEOPATHIC EXAMINERS TO PROMULGATE RULES AND REGULATIONS FOR DISPOSAL OF HUMAN TISSUE; STATING PENALTY FOR FAILURE TO COMPLY WITH RULES AND REGULATIONS; REQUIRING MEDICAL EXAMINER'S REPORT TO BE ADMITTED WITHOUT TESTIMONY; REQUIRING CERTAIN NOTICE TO BE GIVEN; PROVIDING EXCEPTION; AND PROVIDING FOR CODIFICATION.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 21 O.S. 1991, Section 1154, is amended to read as follows:

Section 1154. A. Autopsy means a post mortem dissection of a dead human body in order to determine the cause, seat or nature of disease or injury and includes, but is not limited to, the retention of tissues for evidentiary, identification, diagnostic, scientific and therapeutic purposes.

B. An autopsy may be performed on the dead body of a human being in the following cases:

~~1st.~~ 1. In cases authorized by positive enactment of the Legislature;

~~2nd.~~ 2. Whenever the death occurs under circumstances in which the medical examiner is authorized as provided in Title 63 of the Oklahoma Statutes to conduct such autopsy; or

~~3rd.~~ 3. Whenever consent is given to a licensed physician to conduct an autopsy on the body of a deceased person by whichever one of the following assumes custody of the body for purposes of burial: Father, mother, husband, wife, child, guardian, next of kin, or in the absence of any of the foregoing, a friend, or a person charged by law with the responsibility for burial. If two (2) or more such persons assume custody of the body, the consent of one of them shall be deemed sufficient.

C. 1. Any physician or hospital authorized to perform an autopsy pursuant to this section, whether by statutory authority or by consent from a person entitled to assume custody of the body for burial, shall be and is authorized to retain such tissue and specimens as the examining physician deems proper. Such tissue and specimens may be retained for examination, dissection or study in

furtherance of determining the cause of death, or for evidentiary, diagnostic, or scientific purposes. Except with regard to medical examiners and the Office of the Chief Medical Examiner, this provision shall not apply if a person entitled to assume custody of the body for burial notifies the physician or hospital performing the autopsy prior to said autopsy of any objection to the retention of tissue and specimens obtained from the autopsy.

2. No physician or hospital authorized to perform an autopsy pursuant to this section shall be subject to criminal or civil liability for the retention, examination, dissection, or study of tissue and specimens obtained from said autopsy under existing laws regarding the prevention of mutilation of dead bodies.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1169 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. The State Board of Health is hereby directed to immediately promulgate rules and regulations for the proper disposition of human tissue by medical facilities over which the Board has jurisdiction.

B. The State Board of Medical Licensure and Supervision and the State Board of Osteopathic Examiners shall immediately promulgate rules and regulations for the proper disposition of human tissue by physicians, their employees or agents.

C. The State Board of Health, the State Board of Medical Licensure and Supervision and the State Board of Osteopathic Examiners shall cooperatively establish uniform rules and regulations so as to provide consistency for the proper disposition of human tissue.

D. Any person violating any rule or regulation established pursuant to subsections A or B of this section relating to the disposition of human tissue shall, upon conviction, be fined an amount not to exceed Ten Thousand Dollars ($10,000.00).

SECTION 3. AMENDATORY 22 O.S. 1991, Section 751, is amended to read as follows:

Section 751. A. At any preliminary hearing, a report of the findings of the laboratory of the Oklahoma State Bureau of Investigation, the medical examiners report of investigation or autopsy report, or a laboratory report from a forensic laboratory operated by the State of Oklahoma or any political subdivision thereof, which has been made available to the accused by the office of the district attorney at least five (5) days prior to the preliminary hearing, with reference to all or any part of the evidence submitted, when certified as correct by the persons making the report shall~~, when offered by the state or the accused,~~ be received as evidence of the facts and findings stated, if relevant and otherwise admissible in evidence. If such report is deemed relevant by the state or the accused, the court shall admit such report without the testimony of the person making the report, unless the court, pursuant to subsection C of this section, orders such person to appear.

B. When any alleged controlled dangerous substance has been submitted to the laboratory of the Bureau for analysis, and such analysis shows that the submitted material is a controlled dangerous substance, the distribution of which constitutes a felony under the laws of this state, no portion of such substance shall be released to any other person or laboratory absent an order of a district court. The defendant shall additionally be required to submit to the court a procedure for transfer and analysis of the subject material to ensure the integrity of the sample and to prevent the material from being used in any illegal manner.

C. For purposes of the medical examiner's report of investigation or autopsy report, or a laboratory report from a forensic laboratory operated by the State of Oklahoma or any political subdivision thereof:

1. The court, upon motion of the state or the accused, shall order the attendance of any person preparing a report submitted as evidence in the preliminary hearing, when it appears there is a substantial likelihood that material evidence not contained in said report may be produced by the testimony of any person having prepared a report.

2. The motion shall be filed and notice of the hearing on the motion to order the attendance of the medical examiner shall be given to the medical examiner's office. The hearing shall be held and, if sustained, an order issued not less than five (5) days prior to the time when the testimony shall be required.

3. If within five (5) days prior to the preliminary hearing or during a preliminary hearing a motion is made pursuant to this subsection requiring a person having prepared a report to testify, the court may hear a report or other evidence but shall continue the preliminary hearing until such time notice of the motion and hearing is given to the medical examiner's office, the motion is heard, and, if sustained, testimony ordered can be given.

Passed the Senate the 18th day of May, 1992.

President of the Senate

Passed the House of Representatives the 25th day of May, 1992.

Speaker of the House of Representatives