

HOUSE BILL REPORT

SB 5300

As Passed House - Amended:
April 9, 2019

Title: An act relating to providing coroners with additional subpoena duces tecum authority.

Brief Description: Providing coroners with additional subpoena duces tecum authority.

Sponsors: Senators Padden, Liias, Pedersen and Van De Wege.

Brief History:

Committee Activity:

Civil Rights & Judiciary: 3/6/19, 3/22/19 [DPA].

Floor Activity:

Passed House - Amended: 4/9/19, 96-0.

**Brief Summary of Bill
(As Amended by House)**

- Authorizes a coroner, in the course of an active or ongoing death investigation, to request that the superior court issue a subpoena for the production of documents or other records.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: Do pass as amended. Signed by 14 members: Representatives Jinkins, Chair; Thai, Vice Chair; Dufault, Assistant Ranking Minority Member; Goodman, Graham, Hansen, Kilduff, Kirby, Klippert, Orwall, Shea, Valdez, Walen and Ybarra.

Staff: Cece Clynch (786-7195).

Background:

County Coroner.

The county coroner is an elected position whose primary function is death investigations. In a county with a population of 250,000 or more, the county legislative authority may, upon majority vote at an election called by the county legislative authority, adopt a system under which a medical examiner may be appointed to replace the office of the coroner.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The coroner is responsible for making determinations with respect to the cause, manner, and mechanism of death in those cases falling under his or her jurisdiction. The jurisdiction of the coroner extends to the bodies of all deceased persons who come to their death in a variety of circumstances set forth in statute, including:

- suddenly, when in apparent good health without medical attendance within the 36 hours preceding death;
- where circumstances indicate the death was caused by unnatural or unlawful means; or
- when death occurs under suspicious circumstances.

At his or her discretion, a coroner may hold an inquest if the coroner suspects that the death was unnatural, violent, resulted from unlawful means, resulted from suspicious circumstances, or was a suicide or homicide. When the coroner determines to hold an inquest, he or she notifies the superior court to provide persons to serve as a jury. At the coroner's request, the superior court must schedule a courtroom in which the inquest may be convened, as well as a bailiff, reporter, and any security deemed reasonably necessary by the coroner. Statute provides for situations in which the court cannot make a courtroom available.

Coroners are authorized to issue subpoenas for witnesses and must summon and examine as witnesses every person who, in the opinion of the coroner or the jury, has any knowledge of the facts. A witness served with a subpoena may be compelled to attend and testify, or be punished by the coroner for disobedience, in the same manner as a district judge may punish for disobedience of a subpoena.

Contempt of Court.

Superior court and district court judges may impose sanctions for contempt of court.

Contempt of court is any intentional:

- disorderly conduct toward a judge that impairs the court's authority or interrupts judicial proceedings;
- disobedience of any lawful judgment, decree, order, or process of the court;
- refusal, without lawful authority, by a witness to appear, be sworn, or answer a question; or
- refusal, without lawful authority, to produce a court record, object, or other document.

Sanctions imposed for contempt of court may be either punitive or remedial. Punitive sanctions are imposed to punish a past contempt of court. A prosecuting or city attorney, on his or her own initiative or at the request of an aggrieved person or judge, must file an action to impose a punitive sanction. After a hearing, the court may impose a punitive sanction of a fine of up to \$5,000, imprisonment in jail for not more than 364 days, or both.

Remedial sanctions are imposed to coerce performance with a court order. A court may initiate a proceeding to impose a remedial sanction on its own motion or on the motion of an aggrieved person. Remedial sanctions include coercive imprisonment, a forfeiture not to exceed \$2,000 for each day the contempt continues, or other orders to ensure compliance.

In addition a judge presiding in an action may immediately and summarily impose either a remedial or punitive sanction for a contempt of court committed in the judge's presence in order to preserve order in the court and preserve the dignity of the court. Punitive sanctions that may be imposed under these circumstances include a fine of up to \$500, imprisonment in jail for up to 30 days, or both.

Court Rules.

Civil Rule 45 is the superior court rule governing subpoenas for appearance, production of documents or tangible things, and for inspection of premises. The rule prescribes the form to be used, the manner of service, provides protections for persons subject to subpoenas, and sets forth the duties of a person responding to a subpoena. Civil Rule 45 provides that failure, without adequate excuse, to obey a subpoena may be deemed a contempt of the court from which it was issued. The courts of limited jurisdiction have a similar rule, Civil Rule for Courts of Limited Jurisdiction 45.

Summary of Amended Bill:

In the course of an active or ongoing death investigation, a coroner may request that the superior court issue subpoenas for production of documents or other records and command each person to whom the subpoena is directed to produce and permit inspection and copying of documentary evidence or tangible things in the possession, custody, or control of that person at a specified time and place. A subpoena for production must substantively comply with the requirements of Civil Rule 45. A subpoena for production may be joined with a subpoena for testimony, or it may be issued separately.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This will help coroners and medical examiners get more accurate information during a death investigation. This provision could avoid the need for inquests in some circumstances. It includes a provision that provides for judicial review by requiring that the coroner request the superior court to issue the subpoena. It seems very reasonable. Both Senator Padden and Representative Walen are due thanks for sponsoring this bill and its companion. Determination of the cause and manner of death is key. Inquests are formal, time-consuming, and can be very costly. Some entities and providers sometimes balk at providing coroners with records. A subpoena issued by the court to obtain records will be helpful to obtain records that may assist in the determination with respect to mental processes and time of death. These records might include medical records, bank records, mental health records, and rental contracts. There is court oversight provided in this bill, which will prevent any abuse. For the most part, medical providers are willing to cooperate with requests from the coroners, but sometimes they get hooked on Health Insurance Portability

and Accountability Act requirements. In other instances, railroads have allowed coroners to view videos but not keep them.

(Opposed) None.

Persons Testifying: Senator Padden, prime sponsor; Timothy Davidson, Washington Association of Coroners and Medical Examiners and Cowlitz County Coroner's Office; Warren McLeod, Washington Association of Coroners and Medical Examiners and Lewis County Coroner's Office; and Dan Blasdel, Washington Association of Coroners and Medical Examiners.

Persons Signed In To Testify But Not Testifying: None.

SENATE BILL REPORT

SB 5300

As Amended by House, April 9, 2019

Title: An act relating to providing coroners with additional subpoena duces tecum authority.

Brief Description: Providing coroners with additional subpoena duces tecum authority.

Sponsors: Senators Padden, Liias, Pedersen and Van De Wege.

Brief History:

Committee Activity: Law & Justice: 1/31/19, 2/07/19 [DP].

Floor Activity:

Passed Senate: 2/20/19, 45-0.

Passed House: 4/09/19, 96-0.

Brief Summary of Bill

- Authorizes a coroner to request the superior court to issue a subpoena to produce records during a death investigation.
- Requires subpoenas to comply with superior court Civil Rule 45.
- Authorizes contempt of court for failure to obey a subpoena without an adequate excuse.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Padden, Ranking Member; Holy, Kuderer, Salomon and Wilson, L..

Staff: Melissa Burke-Cain (786-7755)

Background: Coroners and medical examiners have the same legal authority, duties, and responsibilities. Coroners take jurisdiction over human remains and conduct death scene investigations if the cause and manner of death appears suspicious or is unknown. In larger counties, the legislative authority appoints a medical examiner who has forensic pathology training. Smaller counties elect their coroner. Coroners administer the county coroner's office and arrange for forensic pathology services when needed.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Laboratory tests, autopsy results, and other information about the deceased assist the coroner's determination of the cause and manner of death. Coroners may hold an inquest if the coroner suspects that a person's death was unnatural, violent, or resulted from unlawful means. The purpose of an inquest is to determine the cause of death, but not who may have caused the death. Current state law authorizes coroners to obtain the deceased person's medical records. Coroners may issue subpoenas for witnesses to testify and provide documentary evidence at an inquest. An inquest jury hears evidence and renders a verdict on the cause of death.

Civil Rule 45 (CR 45) is a court rule governing subpoenas. Subpoenas are procedural court orders. A subpoena for records requires a person to provide documentary evidence to the requester. A witness subpoena requires a person to appear and give sworn testimony at a particular place and time. CR 45 explains the court's authority to require a person to comply with the subpoena, sets notice requirements, and explains the duty to obey the court's order. A court may find a person in contempt for failure to comply with the court's order. The court may impose sanctions when it finds a person in contempt of court.

Summary of Bill: Coroners may request the superior court to issue a subpoena to produce records during an on-going or active death investigation. The subpoena must comply with superior court CR 45's requirements. The subpoena requires a person to produce documents, records, and tangible things for inspection and copying at a specific time and place. The court may issue a combined subpoena to produce records and to appear as a witness for testimony. Any person who fails to comply with the subpoena without an adequate excuse is subject to contempt of court.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: The bill allows coroners to get the information they need to conduct death investigations. Information is fundamental to our mission. When coroners do not have the information they need, the decision about manner and cause of death is delayed. Delays affect surviving family members. If a decision is delayed, the family cannot apply for life insurance or social security benefits. That may mean the family goes without income for a protracted period of time. Coroners encounter a lack of cooperation from those who hold important records. The information can be obtained during an inquest, but gaining access to records during the investigation may avoid the need to conduct an inquest. Inquests can be time consuming and costly proceedings; unnecessary inquests result in additional delay. The following examples illustrates the issues. An individual left his hotel one evening to drive to the bank to deposit his paycheck. He did not return. The next morning his car was found with his body inside. The bank's electronic deposit record would help narrow the time interval between the bank action and the body being discovered because it would show when he deposited the check. The bank refused to

provide the information. As another example, mental health counselors refuse to provide records of patients who have committed suicide. The records would be helpful to answer questions from the surviving family members. In the situation of a pedestrian hit by a train, a video of the event is in the railroad's possession. The video could indicate what happened; did the pedestrian commit suicide by jumping onto the tracks or was he just not paying attention and did not see the train. Coroners use external examination of the scene, toxicology reports, and autopsy results to determine the cause of death. The manner of death may be more difficult to determine. In those cases, it may be very helpful to have other records or videos, if available, to make the determination. It also helps coroners to fulfill their duty to the decedent's family to provide answers about what happened to their loved one. The bill requires the court to issue the subpoena for records which will ensure the subpoena request is valid and the process upholds our system of checks and balances. The records of a death investigation are retained in perpetuity. Under current law, the coroner may be allowed to view a video, but not be provided with a copy of it during their investigation. Potentially, if questions arise after a coroner renders the decision on the cause or manner of death, there is no record to show what the coroner relied upon in making the decision. Having subpoena duces tecum authority would allow records relied upon to be retained after the coroner completes the investigation.

Persons Testifying: PRO: Senator Mike Padden, Prime Sponsor; Dr. Timothy Davidson, Cowlitz County Coroner and WACME President; Warren McLeod, Lewis County Coroner; Dan Blasdel, Washington Association of Coroners and Medical Examiners.

Persons Signed In To Testify But Not Testifying: No one.

EFFECT OF HOUSE AMENDMENT(S):

- Deletes a sentence authorizing a coroner to enforce noncompliance with a superior court-issued subpoena for production of documents in the same manner as a subpoena for testimony issued by a district court judge.