

SENATE BILL REPORT

SB 5300

As Reported by Senate Committee On:
Law & Justice, February 7, 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].

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.