

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1533

H. P. 1151

House of Representatives, March 22, 1979

Referred to the Committee on State Government. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Joyce of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-NINE

AN ACT to Revise the Medical Examiner System.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 22 MRSA § 2842, sub-§ 3 is amended to read:

3. Medical certificate by medical examiner. When a death occurs ~~without medical attendance under circumstances which make it a medical examiner case as defined in section 3025,~~ or when inquiry as to the cause of death is required by law, the medical examiner shall complete and sign the medical certification and verify or provide the date of death within 24 hours ~~after death of the time he is notified of the death, unless the remains must be held longer before release to complete studies or investigation.~~

Sec. 2. 22 MRSA § 3022, 2nd ¶, as enacted by PL 1977, c. 59, § 1, is amended to read:

The Chief Medical Examiner is authorized to select one or more of the medical examiners to serve as deputy chief medical examiners. **The Deputy Chief Medical Examiner shall serve at the pleasure of the Chief Medical Examiner and if salaried shall be unclassified.** In the event of his temporary absence, the Chief Medical Examiner, or if he is unavailable, the Attorney General, may designate one of the deputy chief medical examiners to serve as Acting Chief Medical Examiner. The Acting Chief Medical Examiner shall have all of the powers and responsibilities of the Chief Medical Examiner.

Sec. 3. **22 MRSA § 3023**, as enacted by PL 1967, c. 534, § 2, is amended by adding at the end a new paragraph to read:

The Chief Medical Examiner may retain official consultants to serve the various needs of the office. These consultants shall possess a high degree of integrity and be learned in the fields. They need not reside within the State nor take an oath of office. They shall serve at the pleasure of the Chief Medical Examiner.

Sec. 4. **22 MRSA § 3024**, first ¶, as repealed and replaced by PL 1977, c. 59, § 2, is amended to read:

The salary of the Chief Medical Examiner of the State of Maine shall be set by the Governor. Other **nonsalaried** medical examiners shall, **upon the submission of their completed report to the Chief Medical Examiner**, be paid a fee of \$30 for an inspection and view and ~~shall receive an additional \$20 if a scene visit other than to a funeral home or hospital was required.~~ **Travel** expenses are to be calculated at the state mileage rate.

Sec. 5. **22 MRSA § 3025**, as amended by PL 1973, c. 567, § 20, is repealed and the following enacted in its place:

§ 3025. Medical examiner case

1. Causes of death constituting medical examiner case. A medical examiner case exists when remains are found indicating a human has died and that death is suspected of resulting from:

- A. Violence of any kind;**
- B. Any cause where the death occurs suddenly while the person is in apparent good health;**
- C. Any cause when there is no attending physician capable of certifying the death as due to natural causes;**
- D. Poisoning, either chronic or acute;**
- E. Disease, injury or a toxic agent related to employment;**
- F. Diagnostic or therapeutic procedures under circumstances indicating gross negligence or unforeseen clearly traumatic causes;**
- G. Any cause while the person is in custody or confinement, unless clearly certifiable by an attending physician as due to natural causes;**
- H. Disease or pathological process constituting a threat to public health;**
- I. Any cause when the death is not known to have been properly certified, including, but not limited to, any body brought into the State without proper certification, and any buried remains uncovered other than under an exhumation order;**

J. In the case of a child under the age of 3 years, any cause, including sudden infant death syndrome, unless the death is clearly due to a specific natural cause; or

K. Any cause when a body already certified, but not yet buried or cremated, is suspected of having been improperly certified as to the cause or manner of death.

2. Attendance by physician. A medical examiner case exists whether or not the deceased had been attended by a physician or was a patient in a hospital for any time immediately preceding death and regardless of the time between the cause and the death.

3. Transplant operations. No operation for the transplant of an organ or a portion thereof shall take place, when the donor's death occurs under circumstances indicating a medical examiner case, without the approval of a medical examiner. Any doctor performing a transplant operation where the donor has died under these circumstances shall note the condition of the vital organs in the region of surgery and shall include this notation in a written report of the operation and manner in which death was pronounced, the report to be given to the medical examiner upon his request. The medical examiner may choose to be present during the removal of the donated organ.

Sec. 6. 22 MRSA § 3026, as amended by PL 1973, c. 604, § 1, is repealed and the following enacted in its place:

§ 3026. Reports of death

1. Persons suspecting medical examiner case. Any person who has become aware of a suspected medical examiner case shall immediately notify a law enforcement officer, medical examiner or the Office of the Chief Medical Examiner.

2. Law enforcement officers suspecting medical examiner case. Any law enforcement officer who has become aware of a suspected medical examiner case shall immediately notify a medical examiner or the Office of the Chief Medical Examiner.

3. Medical examiners suspecting medical examiner case. Any medical examiner who has become aware of a death involving violence, or in which violence is suspected, shall immediately notify the appropriate law enforcement agency. The agency shall notify the district attorney for the district in which the body is located.

4. Cases involving criminal violence. Any law enforcement officer or medical examiner who has become aware of a death involving criminal violence, or in which criminal violence is suspected, other than by motor vehicle, shall immediately notify the Attorney General and the Chief Medical Examiner.

Sec. 7. 22 MRSA § 3027, as enacted by PL 1967, c. 534, § 2, is repealed and the following enacted in its place:

§ 3027. Procedure at scene of death**1. Except as otherwise provided in this section:**

A. In any medical examiner case no person shall move or alter the body or any objects at the scene of death prior to the arrival, or without the express authorization, of the medical examiner or Office of the Chief Medical Examiner;

B. In any medical examiner case in which noncriminal violence is suspected, or in which any violence by motor vehicle is suspected, no person shall move or alter the body or any objects at the scene of death prior to the arrival, or without the express authorization, of the district attorney for the district in which the body is located or his authorized representative; and

C. In any medical examiner case in which criminal violence other than by motor vehicle is suspected, no person shall move or alter the body or any objects at the scene of death prior to the arrival, or without the express authorization, of the Attorney General or his authorized representative.

2. Preservation or removal of body. In any medical examiner case where the body is in danger of being destroyed or lost, or the location of the body renders it a serious threat to the safety or health of others, any person may take whatever steps are reasonably necessary for the retention or preservation of the body prior to the arrival or authorization of the medical examiner or Office of the Chief Medical Examiner, provided that such person shall first, whenever practicable, exactly mark the location and position of the body.

In any medical examiner case where criminal violence other than by motor vehicle is not suspected, and the presence of the body is likely to cause hardship or outrage, and a medical examiner or the Office of the Chief Medical Examiner cannot be reached in a reasonable period of time, the district attorney for the district in which the body is located, or his authorized representative, may authorize removal of the body by the law enforcement officer in charge of the scene, provided that the officer shall first, whenever practicable, exactly mark the location and position of the body.

A. When death occurs in a medical facility such as a hospital or an ambulance, the body may be removed to a mortuary under the following conditions:

- (1) The incident causing the death did not occur in the medical facility;**
- (2) The body is transported to a secure place in the same condition as when death occurred; and**
- (3) The only alterations are the disconnecting of fixed medical equipment.**

3. Procedures. Before removal of the body as provided in subsection 2, the law enforcement officer shall whenever possible arrange for photographs, measurements and a record of the location and position of the body.

Where the death is suspected of involving criminal violence other than by motor vehicle, the procedure in this subsection shall be undertaken with the supervision of an authorized representative of the Attorney General.

In all medical examiner cases in which criminal violence other than by motor vehicle is suspected, the procedure in this subsection may be waived concurrently by the Chief Medical Examiner and the Attorney General or his authorized representative.

In all other medical examiner cases the procedure in this subsection may be waived concurrently by the medical examiner and the district attorney for the district in which the body is located or his authorized representative.

Sec. 8. 22 MRSA § 3028, as amended by PL 1973, c. 567, § 20, is repealed and the following enacted in its place:

§ 3028. Investigation; autopsy

1. Authority to conduct investigation. The medical examiner shall have authority to conduct an investigation of the cause and manner of death in a medical examiner case. He shall immediately proceed to the scene and, subject to the authority of the Attorney General, assume custody of the body for the purposes of the investigation, and shall retain custody until the investigation has been completed or until the Chief Medical Examiner has assumed charge of the case.

2. Investigation by law enforcement officer. Where death is not suspected to be the result of criminal violence, the medical examiner may elect not to proceed to the scene, or the Chief Medical Examiner may elect not to dispatch a medical examiner to the scene. If either so elect, the law enforcement officer in charge of the scene shall investigate the scene and remove the body in accordance with the instructions of the medical examiner or Office of the Chief Medical Examiner. The officer shall make a report of the investigation available to the medical examiner or Office of the Chief Medical Examiner.

3. Assistance of law enforcement agency. The medical examiner, or the pathologist as described in subsection 9, may request the assistance and use of the facilities of the law enforcement agency having jurisdiction over the case for the purposes of photographing, fingerprinting or otherwise indentifying the body. That agency shall provide the medical examiner or pathologist with a written report of the steps taken in providing the assistance.

4. Possession of useful objects. Except as otherwise directed by the Attorney General, his deputies, or his assistants, the medical examiner may direct that a law enforcement officer at the scene take possession of all objects which in the medical examiner's opinion may be useful in establishing the cause and manner of death.

5. Requests for objects. Any person having possession of any object or objects, as described in subsection 4, shall at the request of the medical examiner

give that object or objects to a law enforcement officer. Original written or recorded material that might express suicidal intent shall be sent to the Office of the Chief Medical Examiner.

6. **Examination of body.** In all cases except those requiring a report on a body already disposed of and not to be exhumed for examination, the medical examiner shall conduct a thorough examination of the body.

7. **Written report.** Upon completing his investigation, the medical examiner shall submit a written report of his findings to the Chief Medical Examiner on forms provided for that purpose. The medical examiner shall retain one copy of the report.

8. **Autopsy.** If, in any medical examiner case, in the opinion of the medical examiner, the Chief Medical Examiner, the district attorney for the district in which the death has occurred or the Attorney General, it is advisable and in the public interest that an autopsy be made, the autopsy shall be conducted by the Chief Medical Examiner or by such pathologist as the Chief Medical Examiner may designate. That person shall make a complete report of the findings of the autopsy and shall transmit the report to the medical examiner and the Office of the Chief Medical Examiner, retaining one copy thereof.

9. **Autopsy of child.** In the case of a child under the age of 3 years, when death occurs without medical attendance or, if attended, without a specific natural cause, the medical examiner shall order an autopsy. The autopsy may be waived by the Chief Medical Examiner, provided he includes the reason for the waiver in the record.

10. **Chief medical examiner; jurisdiction.** The Chief Medical Examiner may assume jurisdiction over a medical examiner case, and may recertify the death, when he finds that it is in the public interest for him to do so. He shall include his reasons for so doing in the record.

11. **Final release of body.** In any medical examiner case the body shall not be finally released for embalming or burial except by order of the medical examiner in charge of the case, or by the Chief Medical Examiner.

Sec. 9. 22 MRSA § 3029, as amended by PL 1973, c. 567, § 20, is repealed and the following enacted in its place:

§ 3029. Body buried without inquiry

1. **Notification of district attorney or Attorney General.** If in any medical examiner case:

A. **The body is buried:**

- (1) Without inquiry or examination by the medical examiner;
- (2) Before the inquiry or examination has been completed to the satisfaction of the medical examiner; or

(3) Without an autopsy if such was advisable pursuant to section 3028; and

B. The body is required for that inquiry, examination, completion or autopsy, the medical examiner shall notify the district attorney, for the district in which the body was found, or the Attorney General.

2. Petition for order of exhumation. The district attorney or Attorney General may, under the circumstances enumerated in subsection 1, and if he finds it to be in the public interest, petition a Justice of the Superior Court for an order of exhumation.

3. Report of findings. The medical examiner, Chief Medical Examiner or pathologist who completes the inquiry, examination or autopsy shall report his findings to the justice and to the Office of the Chief Medical Examiner.

Sec. 10. 22 MRSA § 3033, as enacted by PL 1977, c. 59, § 4, is amended by adding at the end the following new sentence:

Notwithstanding any other provision of law, no professional consultant, who at the request of the medical examiner or Chief Medical Examiner conducts an examination and renders a report as part of the record, shall be held liable for damages for any injury or damage which results from the performance of the examination unless it can be shown that such injury or damage resulted from the gross negligence of the consultant.

Sec. 11. 32 MRSA § 1404 is amended to read:

§ 1404. Medical examiner case; no embalming until case determined

~~No~~ When a person has died under circumstances which constitute a medical examiner case as defined in Title 22, section 3025, no person shall inject into any cavity or artery of the body ~~of any person who has died from violence, by the action of chemical, thermal, or electrical agents, or following abortion, or suddenly when not disabled by recognizable disease~~ any fluid or substance, until a legal certificate as to the cause of death **has been obtained from the medical examiner ~~has been obtained~~, or until legal investigation has determined the cause of death, or written permission to embalm such body has been given by the medical examiner. If a criminal cause of death is alleged or suspected, no fluid or other substance shall be injected into a body until the cause of death is legally established or until an autopsy has been performed.**

Sec. 12. 32 MRSA § 1405, 2nd ¶, last sentence beginning with the words "For said certificate" as amended by PL 1971, c. 56, is further amended to read:

For said certificate the medical examiner shall receive a fee of ~~\$10~~ \$15 payable by the person requesting same.

Sec. 13. 32 MRSA § 1405, as last amended by PL 1977, c. 232, § 5, is further amended by adding at the end the following new paragraph:

No body shall be released for burial at sea, or for dissection except for an organ transplant, without a certificate from a medical examiner as provided for by this section with respect to cremation.

Sec. 14. Appropriation. The following funds shall be appropriated from the General Fund to carry out the purposes of this Act.

1979-80

ATTORNEY GENERAL,
DEPARTMENT OF

Office of the Chief Medical Examiner

\$26,000

STATEMENT OF FACT

The purpose of this bill is to revise the medical examiner system and to conform certain related statutes to that revision. The primary sections are sections 5 through 9.

Section 5 replaces the current Title 22, section 3025 with a more systematic definition of what constitutes a medical examiner case. Section 3025, subsection 3, seeks to facilitate organ transplants from persons dying under circumstances constituting medical examiner cases because of the fact that damaged organs which might be important to medical examiner investigations are not viable for transplant. The subsection seeks only to provide the medical examiner with information regarding the condition of the area from which the organ is removed, and to allow the medical examiner to veto transplants in special situations.

Section 6 establishes a reporting system that eliminates the involvement of town officials and involves medical examiners at an earlier stage of investigations.

Section 7 clarifies the circumstances under which a body may be removed. It also defines the roles of the district attorneys and the Attorney General with respect to scene investigations. Subsection 2 is designed to permit the movement of a body in a medical facility in order to free needed equipment for other use.

Section 8 defines the scope of the medical examiner investigation and permits the election by the medical examiner or Chief Medical Examiner not to proceed to a scene where such visit reasonably appears to be unnecessary. Examination of the body is nevertheless required in every case. The circumstances under which an autopsy may be performed give concurrent authorization to the parties enumerated in subsection 8. The handling of potential evidence is left by subsection 5 to law enforcement officers in order to avoid chain of custody problems.

Section 9 establishes the procedure for an exhumation when circumstances dictate that one is necessary.

The remaining sections are amended to enable the Chief Medical Examiner's Office to function consistently with the revisions discussed in this bill. Certain fees are increased and the liability of consultants is explicated to encourage the participation in the medical examiner system of highly qualified professionals. The appropriation of \$26,000 represents the anticipated additional revenue needed for the fee increase in section 4. Currently Maine averages 1,700 medical examiner cases per year, of which 80% require scene visits. Some 1,360 annual scene visits, at \$20 additional each, will require the funds requested. It is anticipated that improved communications between law enforcement officers, medical examiners, and the Office of the Chief Medical Examiner will reduce somewhat the number of scene visits as a percentage of the total number of medical examiner cases.

The system is believed to be in need of the revisions made in this bill because of its varying levels of success in different regions of the State. Greater consistency is seen as the crucial step in making the system work.