

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

No. 1969

H.P. 1371

House of Representatives, March 23, 1999

An Act to Revise Certain Provisions of the Medical Examiner Act.

Reference to the Committee on Criminal Justice suggested and ordered printed.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative McALEVEY of Waterboro.
Cosponsored by Senator O'GARA of Cumberland.

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

2
4 **Sec. 1. 22 MRSA §3022, sub-§1**, as repealed and replaced by PL 1987, c. 329, §2, is amended to read:

6 **1. Appointment and qualifications of the Chief Medical Examiner.** There is created, in the Department of the Attorney
8 General, the Office of Chief Medical Examiner for the State. The
10 Chief Medical Examiner ~~shall-be~~ is appointed by the Governor for
12 a term of 7 years and until ~~his~~ the Chief Medical Examiner's
14 successor is appointed and qualified. The Chief Medical Examiner
16 ~~shall~~ must possess a degree of doctor of medicine or doctor of
18 osteopathy, be licensed to practice in the State and be expert in
20 the specialty of forensic pathology. Expertise in the specialty
22 of forensic pathology may be established either by certification
24 in forensic pathology by the American Board of Pathology or the
26 American Osteopathic Board of Pathology or by successful
28 completion of an examination to test expertise in forensic
30 pathology designed for the State by acknowledged experts in the
32 field selected by the Governor. Any vacancy in the Office of
34 Chief Medical Examiner ~~shall~~ must be filled by appointment by the
36 Governor for a full term of 7 years. The Chief Medical Examiner
38 may hire, subject to the Civil Service Law, necessary office and
40 laboratory personnel to carry out the proper functioning of ~~his~~
42 the Chief Medical Examiner's office.

26 **Sec. 2. 22 MRSA §3022, sub-§8**, as amended by PL 1991, c. 339,
28 §1, is repealed and the following enacted in its place:

30 **8. Certain records confidential.** The following records in
32 the possession or custody of any medical examiner or the Office
34 of Chief Medical Examiner are not public records within the
36 meaning of Title 1, section 402, subsection 3 and are
38 confidential:

36 A. Medical records relating to any medical examiner case;

38 B. Law enforcement agency reports or records relating to
40 any medical examiner case;

40 C. Communications with the Department of the Attorney
42 General relating to any medical examiner case;

44 D. Communications with the office of any district attorney
46 relating to any medical examiner case;

46 E. Death certificates and any amendments made to the
48 certificates, except for the information for which the
50 medical examiner is responsible, as listed in section 2842,
52 subsection 3, and not ordered withheld by the Attorney

2 General relating to any medical examiner case or missing
3 person:

4 F. Report documents, as defined in section 3035, subsection
5 2, photographs and transparencies, histological slides,
6 videotapes and other similar items relating to any medical
7 examiner case:

8
9 G. Written or otherwise recorded communications that
10 express or are evidence of suicidal intent obtained under
11 section 3028, subsections 4 and 5; and

12 H. Mechanical or electronic data computations relating to
13 medical examiner cases.

14
15 **Sec. 3. 22 MRSA §3022, sub-§9, as repealed and replaced by PL**
16 **1987, c. 329, §2, is repealed.**

17
18 **Sec. 4. 22 MRSA §3022, sub-§10, as repealed and replaced by PL**
19 **1987, c. 329, §2, is amended to read:**

20
21 **10. Cooperation with research requests.** The Office of
22 Chief Medical Examiner shall cooperate with research requests by
23 supplying abstracted data ~~and copies of reports~~ to interested
24 persons and agencies consistent with the available resources of
25 the office.

26
27 **Sec. 5. 22 MRSA §3022, sub-§11, as enacted by PL 1991, c. 339,**
28 **§2, is repealed.**

29 **Sec. 6. 22 MRSA §3022, sub-§§12, 13 and 14 are enacted to read:**

30
31 **12. Access to or dissemination of confidential records.**
32 **Except as specified in subsections 10 and 13, access to or**
33 **dissemination of records made confidential under subsection 8 is**
34 **limited to:**

35
36 A. A criminal justice agency for the purpose of the
37 administration of criminal or juvenile justice;

38
39 B. A person for whom the Chief Medical Examiner determines
40 access is necessary or desirable to carry out a duty under
41 this chapter;

42
43 C. A person when the Chief Medical Examiner determines it
44 necessary or desirable to allow for the harvesting of a
45 decedent's organs and other tissues;

46
47
48

2 D. A person when authorized or required under any state or
federal law, rule or regulation; and

4 E. A person pursuant to a court order.

6 As used in this subsection "person" means a natural person,
8 including a public servant, and a corporation, partnership,
unincorporated association or any other nonhuman legal entity,
10 including any governmental unit.

12 13. Access to certain information by next of kin. Unless
14 the medical examiner case is under investigation by the
16 Department of the Attorney General or the office of a district
18 attorney and the Attorney General or the district attorney
20 determines that the criminal investigation or prosecution will be
22 harmed by such disclosure, a next of kin of the deceased, as
defined under section 2843-A, may inspect and obtain a copy, upon
payment of any required fee under section 3035, of a report or
other item identified in subsection 8, paragraphs F and G. The
Chief Medical Examiner may provide the original of the item
described in subsection 8, paragraph G to the next of kin or
another person to whom that item is addressed or directed.

24 14. Testing for HIV. Notwithstanding Title 5, chapter 501,
26 the Chief Medical Examiner, in any medical examiner case, may
test for the human immunodeficiency virus and may disclose the
test result as authorized under subsection 12.

28 Sec. 7. 22 MRSA §3023, as amended by PL 1985, c. 611, §5, is
30 further amended to read:

32 **§3023. Medical examiners; appointment; jurisdiction**

34 The Chief Medical Examiner shall appoint medical examiners,
36 who shall have statewide jurisdiction and shall serve at the
38 pleasure of the Chief Medical Examiner and, subject to his the
40 Chief Medical Examiner's control and the regulations promulgated
42 adopted by him the Chief Medical Examiner. The medical examiners
shall must be learned in the science of medicine and anatomy,
licensed as physicians in this State and bona fide residents of
this State. Each medical examiner before entering upon the
duties of his the office shall must be duly sworn to the faithful
performance of his the medical examiner's duty.

44 The Chief Medical Examiner may in--his--discretion make
46 temporary appointments when he deems the Chief Medical Examiner
48 determines it is in the public interest. Temporary medical
examiners shall serve on a case-by-case basis and must be
licensed as physicians by the State, but do not need to be
50 residents of the State nor or take an oath of office.

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

8
9 **Sec. 8. 22 MRSA §3024**, as amended by PL 1997, c. 24, Pt. PP,
10 §1, is further amended to read:

11
12 **§3024. Salaries; fees; expenses**

13 The salary of the Chief Medical Examiner of the State of
14 ~~Maine~~ must be set by the Governor. Other nonsalaried medical
15 examiners, upon the submission of their completed report to the
16 Chief Medical Examiner, must be paid a fee of \$70 for an
17 inspection and view and are entitled to receive travel expenses
18 to be calculated at the mileage rate currently paid to state
19 employees pursuant to Title 5, section 8. An additional fee of
20 \$50 may be authorized by the Chief Medical Examiner for payment
21 to other nonsalaried medical examiners for visits to death scenes
22 other than hospitals.

23 The fees for autopsies performed by pathologists, at the
24 request of a medical examiner or the Chief Medical Examiner,
25 shall must be set by the Chief Medical Examiner at a level which
26 shall ~~provide~~ that provides reasonable payment for necessary
27 costs and a reasonable fee in light of prevailing rates for the
28 services of a pathologist in Maine the State.

29 The Chief Medical Examiner, ~~using his discretion,~~ may, in an
30 unusual circumstance, ~~to be~~ as determined by him the Chief
31 Medical Examiner, prescribe a special fee for the service of a
32 medical examiner or for any consultant service ~~which he deems~~ the
33 Chief Medical Examiner determines necessary.

34 The Chief Medical Examiner, ~~using his discretion,~~ may
35 authorize any other expenses necessary to carry out his the Chief
36 Medical Examiner's duties.

37 All compensation and expenses authorized by this chapter
38 shall must be paid from the funds of the State appropriated by
39 the Legislature for this purpose.

40 If the Chief Medical Examiner or employees of his that
41 ~~office, at their discretion,~~ provide expert opinion or testimony
42 relating to Maine medical examiner cases on behalf of private
43 litigants, the Chief Medical Examiner may, ~~at his discretion,~~
44 set a reasonable fee for these services, preparation leading to them

2 and expenses incurred in providing them. All fees, charges or
3 other receipts shall must be credited to the General Fund.
4 Medical examiners and consultants who serve the State on a fee
5 per case basis are excluded from this paragraph and may make
6 private arrangements arrangements for these services.

7 **Sec. 9. 22 MRSA §3025, sub-§1, ¶A**, as repealed and replaced by
8 PL 1985, c. 611, §6, is repealed and the following enacted in its
9 place:

10 A. Death is suspected of having been caused by any type of
11 physical injury, including poisoning, regardless of whether
12 the suspected manner of death is homicide, suicide or
13 accident;

14 **Sec. 10. 22 MRSA §3025, sub-§2**, as repealed and replaced by PL
15 1985, c. 611, §6, is amended to read:

16 **2. Attendance by physician.** A medical examiner case exists
17 under the circumstances identified in subsection 1, paragraph A
18 whenever the death is wholly or in part ascribable to violence-~~or~~
19 poisoning ~~physical injury~~, regardless of whether the deceased had
20 been attended by a physician, was a patient in a hospital,
21 survived for considerable time or died with from the terminal
22 natural causes consequent to and following from the ~~injury-~~or~~~~
23 poisoning ~~physical injury~~.

24 **Sec. 11. 22 MRSA §3025, sub-§4**, as amended by PL 1987, c. 296,
25 §3, is further amended to read:

26 **4. Questionable cases and cases that may constitute**
27 **exceptions.** All questionable cases shall must be reported.
28 Acceptance of any questionable case is to be determined by the
29 Chief Medical Examiner unless acceptance is specifically ordered
30 by the Attorney General or district attorney having jurisdiction.

31 Deaths due to the consequences of long-term alcohol use,
32 long-term exposure to environmental or occupational toxins or
33 long-term exposure to carcinogens shall must be reported, but
34 need not be accepted.

35 Sudden natural deaths in the elderly who have not had previous
36 specific symptoms or who were not under treatment by a physician
37 for the specific natural cause that is considered to be the cause
38 of death shall must be reported to the Office of the Chief
39 Medical Examiner. Those cases may be referred back to the
40 attending physician by the Chief Medical Examiner for
41 certification of the death, even though the attending physician
42 has not treated the patient for the specific natural disease that
43 he the attending physician will enter as his the attending
44 physician's diagnosis.

2 **Sec. 12. 22 MRSA §3026**, as repealed and replaced by PL 1979,
c. 538, §6, is amended to read:

4 **§3026. Reports of death**

6 **1. Persons suspecting medical examiner case.** Any person
8 who has-~~become~~ becomes aware of a suspected medical examiner case
shall immediately notify a law enforcement officer, ~~--medical~~
10 ~~examiner~~ or the Office of the Chief Medical Examiner. As used in
this subsection, "person" has the meaning set out in section
12 3022, subsection 12.

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

18 **3. Medical examiners suspecting medical examiner case.** Any
20 medical examiner who has-~~become~~ becomes aware of a death
~~involving--violence~~ caused by physical injury, or in which
22 ~~violence~~ physical injury is the suspected cause, shall
immediately notify the Office of Chief Medical Examiner and the
24 appropriate law enforcement enforcement agency. The agency shall
notify the district attorney for the district in which the body
26 is located.

28 **4. Cases involving or suspected of involving physical**
injury attributable to criminal conduct. Any law enforcement
30 officer or medical examiner who has-~~become~~ becomes aware of a
death involving ~~criminal-violence~~ physical injury attributable to
32 criminal conduct, or in which ~~criminal-violence~~ physical injury
attributable to criminal conduct is suspected, other than by
34 ~~motor-vehicle~~ vehicular manslaughter, in addition to complying
with the notification requirements in subsection 3, shall
36 immediately notify the Attorney General and ~~the Chief Medical~~
~~Examiner~~.

38 **Sec. 13. 22 MRSA §3027**, as repealed and replaced by PL 1979,
40 c. 538, §7, is amended to read:

42 **§3027. Procedure at scene of death**

44 **1. Movement or alteration of body prohibited.** Except as
otherwise provided in this section:

46 A. In any medical examiner case ~~no~~ a person shall may not
48 move or alter the body or any objects at the scene of death
prior to the arrival, or without the express authorization,
50 of the medical examiner or Office of the Chief Medical
Examiner;

2 B. In any medical examiner case in which ~~noncriminal~~
3 ~~violence~~ physical injury attributable to noncriminal conduct
4 is suspected, or in which any violence by motor vehicle,
5 including vehicular manslaughter, is suspected, ~~no~~ a person
6 shall may not move or alter the body or any objects at the
7 scene of death prior to the arrival, or without the express
8 authorization, of the district attorney for the district in
9 which the body is located or ~~his~~ the district attorney's
10 authorized representative; and

12 C. In any medical examiner case in which ~~criminal-violence~~
13 physical injury attributable to criminal conduct other than
14 ~~by-motor-vehicle~~ vehicular manslaughter is suspected, ~~no~~ a
15 person shall may not move or alter the body or any objects
16 at the scene of death prior to the arrival, or without the
17 express authorization, of the Attorney General or ~~his~~ the
18 Attorney General's authorized representative.

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

30 In any medical examiner case ~~where-criminal-violence~~ in which
31 physical injury attributable to criminal conduct other than ~~by~~
32 ~~motor-vehicle~~ vehicular manslaughter is not suspected, and the
33 presence of the body is likely to cause hardship or outrage, and
34 a medical examiner or the Office of the Chief Medical Examiner
35 ~~cannot~~ can not be reached in a reasonable period of time, the
36 district attorney for the district in which the body is located,
37 or ~~his~~ the district attorney's authorized representative, may
38 authorize removal of the body by the law enforcement officer in
39 charge of the scene, ~~provided that the,~~ The officer shall first,
40 ~~whenever~~ if practicable, exactly mark the location and position
41 of the body.

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

48 (1) The incident causing the death did not occur in
49 the medical facility;

50

2 (2) The body is transported to a secure place in the
same condition as when death occurred; and

4 (3) The only alterations are the disconnecting of
6 fixed medical equipment.

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

12 ~~Where~~ When the death is suspected of involving ~~eriminal-vielence~~
physical injury attributable to criminal conduct other than by
14 ~~meter--vehiele~~ vehicular manslaughter, the procedure in this
subsection shall must be undertaken with the supervision of an
16 authorized representative of the Attorney General.

18 In all medical examiner cases in which ~~eriminal-vielence~~ physical
injury attributable to criminal conduct other than by--~~meter~~
20 ~~vehiele~~ vehicular manslaughter is suspected, the procedure in
this subsection may be waived concurrently by the Chief Medical
22 Examiner and the Attorney General or ~~his~~ the Attorney General's
authorized representative.

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

30 **Sec. 14. 22 MRSA §3028, sub-§2,** as repealed and replaced by PL
1991, c. 97, §1, is amended to read:

32 **2. Investigation by law enforcement officer.** When death is
34 not suspected to be the result of ~~eriminal--vielence~~ physical
injury attributable to criminal conduct, the medical examiner may
36 elect not to proceed to the scene, or the Chief Medical Examiner
may elect not to dispatch a medical examiner to the scene. If the
38 medical examiner elects not to proceed to the scene, or the Chief
Medical Examiner elects not to dispatch a medical examiner to the
40 scene, the law enforcement officer in charge of the scene shall:

42 A. Investigate ~~and-photograph-the-scene~~ , take photographs
and take possession of useful objects as directed by the
44 medical examiner or the Office of the Chief Medical Examiner
pursuant to subsection 4;

46 B. ~~Take possession of all objects that in the opinion of~~
~~the medical examiner or Office of the Chief Medical Examiner~~
48 ~~may be useful in establishing the cause, manner and~~
50 ~~circumstances of death;~~

2 C. Remove the body in accordance with the instructions of
4 the medical examiner or the Office of the Chief Medical
Examiner; and

6 D. Make a report of the investigation available to the
8 medical examiner or the Office of the Chief Medical Examiner.

10 **Sec. 15. 22 MRSA §3028, sub-§§9 and 10**, as enacted by PL 1979,
c. 538, §8, are amended to read:

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

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

26 **Sec. 16. 22 MRSA §3028-D** is enacted to read:

28 **§3028-D. Disposal of identified dead bodies without connection**
30 **to this State and unidentified dead bodies**

32 Whenever an identified dead body that is not a deceased
resident of this State, or an unidentified dead body, is the
34 subject of a medical examiner case and, notwithstanding
reasonable inquiry by the Chief Medical Examiner, no next of kin,
36 other person or governmental unit is willing to take
responsibility for disposition of the body, the Chief Medical
38 Examiner may assume responsibility for proper disposition. Any
necessary expenses incurred by the Chief Medical Examiner must be
40 paid by the Department of Human Services.

42 **Sec. 17. 22 MRSA §3029, sub-§§2 and 3**, as enacted by PL 1979,
c. 538, §9, are amended to read:

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

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

6 Sec. 18. 22 MRSA §3032, as amended by PL 1985, c. 611, §9, is
further amended to read:

8
10 **§3032. Rules**

12 The Chief Medical Examiner is authorized and empowered to
14 carry into effect this chapter, and, in pursuance thereof, to
16 make and enforce such reasonable rules consistent with this
chapter as ~~he may deem~~ the Chief Medical Examiner determines
necessary. A copy of the rules and any amendments thereto shall
must be filed in the office of the Secretary of State.

18 Sec. 19. 22 MRSA §3033, as amended by PL 1979, c. 538, §10,
is further amended to read:

20
22 **§3033. Limitation on liability of medical examiners and
pathologists**

24 Notwithstanding any other provision of law, ~~no a~~ a medical
26 examiner ~~shall may not~~ be held liable for damages for any injury
or damage ~~which that~~ results from the exercise and discharge of
28 any of his the medical examiner's official duties, unless it can
be shown that ~~sueh~~ the injury or damage resulted from gross
negligence on the part of the medical examiner. Notwithstanding
30 any other provision of law, ~~no a~~ a pathologist, performing an
autopsy at the request of a medical examiner or the Chief Medical
32 Examiner, ~~shall may not~~ be held liable for damages for any injury
or damage ~~which that~~ results from the performance of the autopsy,
34 unless it can be shown that ~~sueh~~ the injury or damage resulted
from the gross negligence of the pathologist. Notwithstanding
36 any other provision of law, ~~no a~~ a professional consultant, who at
the request of the medical examiner or Chief Medical Examiner
38 conducts an examination and renders a report as part of the
record, ~~shall may not~~ be held liable for damages for any injury
40 or damage ~~which that~~ results from the performance of the
examination unless it can be shown that ~~sueh~~ the injury or damage
42 resulted from the gross negligence of the consultant.

44
46 **SUMMARY**

48 This bill amends the Medical Examiner Act to do the
following.

2 1. Confidentiality of records in the possession or custody
of any medical examiner of the Office of Chief Medical Examiner
is comprehensively addressed. In addition to incorporating those
4 records currently made confidential, it significantly broadens
current law by including communications with the office of a
6 district attorney relating to any medical examiner case, report
documents, as defined, photographs and transparencies,
8 histological slides, videotapes and other like items relating to
any medical examiner case and mechanical or electronic data
10 computations relating to medical examiner cases.

12 2. Access to or dissemination of records made confidential
is expressly addressed and "person" is defined for those
14 purposes. Each provision authorizing access or dissemination
reflects current practice.

16 3. Testing for HIV when determined necessary by the Chief
18 Medical Examiner and disclosure of test results are expressly
authorized notwithstanding current law governing the testing for
20 HIV and the disclosure of the results of those tests.

22 4. In the medical examiner case context the term "violence"
has been replaced with the more readily understandable phrase
24 "physical injury."

26 5. The reporting requirements of suspected medical examiner
cases have been clarified, including the definition of "person".

28 6. The procedures for investigations by law enforcement
30 officers have been clarified.

32 7 A new section has been added to allow the Chief Medical
Examiner to assume responsibility for proper disposition of dead
34 bodies of identified nonresidents or of unidentified residents
that are the subject of medical examiner cases when no other
36 person or governmental unit is willing to take responsibility for
disposition. The necessary expenses incurred by the Chief
38 Medical Examiner are to be paid by the Department of Human
Services.

40 8. Finally, this bill makes grammatical changes and
42 corrects gender-specific language.