

MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

FIRST REGULAR SESSION-2001

Legislative Document

No. 1645

H.P. 1213

House of Representatives, March 15, 2001

An Act to Address Confidentiality of Records in the Medical Examiner Act.

(AFTER DEADLINE)

Submitted by the Department of the Attorney General and approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

Reference to the Committee on Judiciary suggested and ordered printed.

Millicent M. MacFarland

MILLICENT M. MacFARLAND, Clerk

Presented by Representative LaVERDIERE of Wilton.
Cosponsored by Senator RAND of Cumberland.

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

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4 **Sec. 1. 22 MRSA §3022, sub-§8**, as amended by PL 1991, c. 339, §1, is repealed and the following enacted in its place:

6 **8. Certain information confidential.** The following records in the possession or custody of a medical examiner or the Office of the Chief Medical Examiner are not public records within the meaning of Title 1, section 402, subsection 3 and are confidential:

12 A. Medical records relating to a medical examiner case;

14 B. Law enforcement agency reports or records relating to a medical examiner case;

16 C. Communications with the Department of the Attorney General relating to a medical examiner case;

18 D. Communications with the office of a district attorney relating to a medical examiner case;

20 E. Death certificates and amendments made to the certificates, except for the information for which the medical examiner is responsible, as listed in section 2842, subsection 3, and not ordered withheld by the Attorney General relating to a medical examiner case or missing person;

22 F. Report documents, as defined in section 3035, subsection 2, photographs and transparencies, histological slides, videotapes and other like items relating to a medical examiner case;

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

26 H. Mechanical or electronic data compilations relating to a medical examiner case.

28 **Sec. 2. 22 MRSA §3022, sub-§9**, as repealed and replaced by PL 1987, c. 329, §2, is repealed.

30 **Sec. 3. 22 MRSA §3022, sub-§10**, as repealed and replaced by PL 1987, c. 329, §2, is amended to read:

32 **10. Cooperation with research requests.** The Office of Chief Medical Examiner shall cooperate with research requests by supplying abstracted data ~~and copies of reports~~ to interested

2 persons and agencies consistent with the available resources of
the office.

4 **Sec. 4. 22 MRSA §3022, sub-§11**, as enacted by PL 1991, c. 339,
§2, is repealed.

6 **Sec. 5. 22 MRSA §3022, sub-§§12, 13 and 14** are enacted to read:

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

14 **A. A criminal justice agency for the purpose of the**
administration of criminal or juvenile justice;

16 **B. A person for whom the Chief Medical Examiner determines**
18 **access is necessary or desirable to carry out a duty under**
this Act;

20 **C. A person for whom the Chief Medical Examiner determines**
22 **access is necessary or desirable to allow for the harvesting**
of a decedent's organs and other tissues;

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

28 **E. A person pursuant to a court order.**

30 **Access to or dissemination of records as provided under**
32 **paragraphs A to C can be done as a matter of course by the Chief**
Medical Examiner unless the Attorney General directs otherwise.

34 **13. Access to certain information by certain persons.**
36 **Unless a medical examiner case is under investigation by the**
Department of the Attorney General or the office of a district
38 **attorney and the Attorney General or the district attorney**
determines that there is a reasonable possibility that release or
40 **inspection interferes with a criminal investigation or**
prosecution by the disclosure:

42 **A. A copy of a report or other items identified in**
44 **subsection 8, paragraphs F and G may be inspected and**
obtained, upon payment of any required fee under section
46 **3035, by:**

48 **(1) A next of kin of the deceased, as defined under**
section 2843-A. The Chief Medical Examiner may provide
the original of the items described in subsection 8,

2 paragraph G to the next of kin or other person to whom
3 that item is addressed or directed;

4 (2) An insurer that may be responsible for payment of
5 benefits as a result of a death if relevant to the
6 payment obligation;

8 (3) An attorney representing the estate of the
9 decedent or the decedent's property if relevant to the
10 representation; and

12 (4) An attorney representing a person or a person's
13 estate and exploring a possible civil action against
14 the estate of the decedent if relevant to the
15 representation; and

16 B. A person may inspect and obtain a copy of communications
17 identified in subsection 8, paragraphs C and D, except work
18 product as defined in Rule 16(b)(3) of the Maine Rules of
19 Criminal Procedure, as long as the communications would
20 otherwise be open to inspection and release if in the
21 possession or custody of the Department of the Attorney
22 General or the office of a district attorney.

24 As used in this subsection and subsections 10 and 12, "person"
25 means a natural person, including a public servant, and a
26 corporation, partnership, unincorporated association or other
27 nonhuman legal entity, including a governmental unit.

30 **14. Testing for HIV.** Notwithstanding Title 5, chapter 501,
31 the Chief Medical Examiner in a medical examiner case may test
32 for the human immunodeficiency virus and may disclose the test
33 result as authorized under subsection 12.

36 **SUMMARY**

38 This bill amends the Medical Examiner Act as follows.

40 1. Confidentiality of records in the possession or custody
41 of a medical examiner of the Office of Chief Medical Examiner is
42 comprehensively addressed. In addition to incorporating those
43 records currently made confidential, the bill significantly
44 broadens current law by including as confidential communications
45 with the office of a district attorney relating to a medical
46 examiner case, report documents, as defined, photographs and
47 transparencies, histological slides, videotapes and other like
48 items and mechanical or electronic data compilations relating to
49 a medical examiner case.

50

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

6 3. Finally, testing for HIV when determined necessary by
the Chief Medical Examiner and disclosure of test results are
8 expressly authorized notwithstanding current law governing the
testing for HIV and the disclosure of the results of those tests.