

MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

FIRST REGULAR SESSION-2001

Legislative Document

No. 1705

H.P. 1258

House of Representatives, March 20, 2001

**An Act to Make Certain Technical and Clarifying Changes to 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 Health and Human Services suggested and ordered printed.

Millicent M. MacFarland

MILLICENT M. MacFARLAND, Clerk

Presented by Representative KANE of Saco.
Cosponsored by Senator LONGLEY of Waldo.

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4 **Sec. 1. 22 MRSA §3022, sub-§1**, as repealed and replaced by PL 1987, c. 329, §2, is amended to read: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

28 **Sec. 2. 22 MRSA §3023**, as amended by PL 1985, c. 611, §5, is
30 further amended to read:

30 **§3023. Medical examiners; appointment; jurisdiction**

32 The Chief Medical Examiner shall appoint medical examiners,
34 who shall have statewide jurisdiction and shall serve at the
36 pleasure of the Chief Medical Examiner and, subject to ~~his~~ the
38 Chief Medical Examiner's control and the ~~regulations-premulgated~~
40 rules adopted by him the Chief Medical Examiner. The medical
42 examiners shall ~~shall~~ must be learned in the science of medicine and
44 anatomy, licensed as physicians in this State and bona fide
46 residents of this State. Each medical examiner before entering
48 upon the duties of ~~his~~ the office shall ~~shall~~ must be duly sworn to the
50 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
50 examiners shall serve on a case-by-case basis and must be
52 licensed as physicians by the State, but do not need to be
54 residents of the State ~~nor~~ or take an oath of office.

2 The Chief Medical Examiner may retain official consultants
to serve the various needs of the office. These consultants
4 shall must possess a high degree of integrity and be learned in
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
Medical Examiner.

8 **Sec. 3. 22 MRSA §3024**, as amended by PL 1997, c. 24, Pt. PP,
§1, is further amended to read:

10 **§3024. Salaries; fees; expenses**

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

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

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

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

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

44 If the Chief Medical Examiner or employees of ~~his~~ that
46 ~~office, at their discretion,~~ provide expert opinion or testimony
relating to Maine medical examiner cases on behalf of private
48 litigants, the Chief Medical Examiner may, ~~at his discretion,~~ set
a reasonable fee for these services, preparation leading to them
50 and expenses incurred in providing them. All fees, charges or

2 other receipts shall must be credited to the General Fund.
3 Medical examiners and consultants who serve the State on a fee
4 per case basis are excluded from this paragraph and may make
private ~~arrangements~~ arrangements for these services.

6 **Sec. 4. 22 MRSA §3025, sub-§1, ¶A**, as repealed and replaced by
7 PL 1985, c. 611, §6, is repealed and the following enacted in its
8 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. 5. 22 MRSA §3025, sub-§2**, as repealed and replaced by PL
15 1985, c. 611, §6, is amended to read:

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

26 **Sec. 6. 22 MRSA §3025, sub-§4**, as amended by PL 1987, c. 296,
27 §3, is further amended to read:

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

36 Deaths due to the consequences of long-term alcohol use,
37 long-term exposure to environmental or occupational toxins or
38 long-term exposure to carcinogens shall must be reported, but
need not be accepted.

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

2 **Sec. 7. 22 MRSA §3026**, as repealed and replaced by PL 1979,
c. 538, §6, is amended to read:

4
6 **§3026. Reports of death**

8 **1. Persons suspecting medical examiner case.** Any person
10 who ~~has-beeome~~ becomes aware of a suspected medical examiner case
12 shall immediately notify a law enforcement officer, ~~medical~~
14 ~~examiner~~ or the Office of the Chief Medical Examiner. As used in
this subsection, "person" means a natural person, including a
public servant, and a corporation, partnership, unincorporated
association or any other nonhuman legal entity, including any
governmental unit.

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

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

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

40 **Sec. 8. 22 MRSA §3027**, as repealed and replaced by PL 1979,
42 c. 538, §7, is amended to read:

44 **§3027. Procedure at scene of death**

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

50 A. In any medical examiner case ~~no~~ a person shall may not
move or alter the body or any objects at the scene of death

2 prior to the arrival, or without the express authorization,
of the medical examiner or Office of the Chief Medical
Examiner;

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

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

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

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

46
48 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:

50

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

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

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

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

16 ~~Where~~ When the death is suspected of involving ~~criminal-violence~~
physical injury attributable to criminal conduct other than by
18 ~~motor-vehicle~~ vehicular manslaughter, the procedure in this
subsection shall must be undertaken with the supervision of an
authorized representative of the Attorney General.

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

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

34 **Sec. 9. 22 MRSA §3028, sub-§2,** as repealed and replaced by PL
1991, c. 97, §1, is amended to read:

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

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

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

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

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

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

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

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

30 **Sec. 11. 22 MRSA §3029, sub-§§2 and 3**, as enacted by PL 1979,
32 c. 538, §9, are amended to read:

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

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

44 **Sec. 12. 22 MRSA §3032**, as amended by PL 1985, c. 611, §9, is
46 further amended to read:

48 **§3032. Rules**

50 The Chief Medical Examiner is authorized and empowered to
carry into effect this chapter, and, in pursuance thereof, to

2 make and enforce such reasonable rules consistent with this
chapter as ~~he may deem~~ the Chief Medical Examiner determines
4 necessary. ~~A copy of the rules and any amendments thereto shall~~
be ~~filed in the office of the Secretary of State.~~ Rules adopted
6 pursuant to this section are routine technical rules as defined
in Title 5, chapter 375, subchapter II-A.

8 **Sec. 13. 22 MRSA §3033**, as amended by PL 1979, c. 538, §10,
is repealed and the following enacted in its place:

10 **§3033. Limitation on liability of certain persons appointed**
12 **or retained**

14 **1. Additional immunities.** In addition to all existing tort
immunities enumerated in the Maine Tort Claims Act:

16 A. A medical examiner may not be held liable for damages
18 for any injury or damage that results from the exercise and
discharge of any of the medical examiner's official duties,
20 unless it can be shown that the injury or damage resulted
from gross negligence on the part of the medical examiner;

22 B. A pathologist performing an autopsy at the request of a
24 medical examiner or the Chief Medical Examiner may not be
held liable for damages for any injury or damage that
26 results from the performance of the autopsy unless it can be
shown that the injury or damage resulted from the gross
28 negligence of the pathologist; and

30 C. A professional consultant, who at the request of a
32 medical examiner or the Chief Medical Examiner conducts an
examination and renders a report, may not be held liable for
34 damages for any injury or damage that results from the
performance of the examination unless it can be shown that
36 the injury or damage resulted from the gross negligence of
the consultant.

38 **SUMMARY**

40 This bill amends the Medical Examiner Act as follows.

42 1. It makes grammatical changes and corrects
44 gender-specific language.

46 2. It replaces, in the context of medical examiner cases,
the term "violence" with the more readily understandable phrase
48 "physical injury."

50 3. It clarifies the reporting requirements of suspected
medical examiner cases by including the definition of "person."

2 4. It clarifies the procedures for investigations by law
enforcement officers.

4

6 5. It clarifies that the current rule-making authorization
delegated to the Chief Medical Examiner has been assigned the
category of routine technical rules under the Maine Revised
8 Statutes, Title 5, chapter 375, subchapter II-A.

10 6. It modifies the limitation on civil liability of certain
persons permanently or temporarily appointed or retained under
12 the Medical Examiner Act to make clear that all such persons,
while undertaking their duties, are each an "employee" for the
14 purposes of the Maine Tort Claims Act.