

# MAINE STATE LEGISLATURE

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# 126th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2013

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Legislative Document

No. 884

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S.P. 309

In Senate, March 5, 2013

### An Act To Improve Death Investigations

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Submitted by the Department of the Attorney General pursuant to Joint Rule 204.  
Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT  
Secretary of the Senate

Presented by Senator GERZOFKY of Cumberland.  
Cosponsored by Representative GRAHAM of North Yarmouth.

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

2 **Sec. 1. 22 MRSA §3023, first ¶**, as amended by PL 2001, c. 222, §2, is further  
3 amended to read:

4 The Chief Medical Examiner shall appoint medical examiners, who have statewide  
5 jurisdiction and serve at the pleasure of the Chief Medical Examiner, subject to the Chief  
6 Medical Examiner's control and the rules adopted by the Chief Medical Examiner. The  
7 medical examiners must be learned in the science of medicine and anatomy, licensed as  
8 physicians in this State and ~~bona fide~~ residents of this State. Each medical examiner  
9 before entering upon the duties of the office must be duly sworn to the faithful  
10 performance of the medical examiner's duty.

11 **Sec. 2. 22 MRSA §3023-A** is enacted to read:

12 **§3023-A. Medicolegal death investigators; appointment; jurisdiction**

13 The Chief Medical Examiner may appoint persons who are not physicians as  
14 medicolegal death investigators, who have statewide jurisdiction and serve at the pleasure  
15 of the Chief Medical Examiner, subject to the Chief Medical Examiner's control and rules  
16 adopted by the Chief Medical Examiner. Medicolegal death investigators must meet the  
17 certification and training requirements established by the Chief Medical Examiner and  
18 must be residents of this State. Medicolegal death investigators may be employees of the  
19 Office of the Chief Medical Examiner or serve on a fee-for-service basis as determined  
20 by the Chief Medical Examiner. A medicolegal death investigator before entering upon  
21 the duties of the office must be duly sworn to the faithful performance of the medicolegal  
22 death investigator's duty.

23 **Sec. 3. 22 MRSA §3024, first, 3rd and last ¶¶**, as amended by PL 2001, c.  
24 222, §3, are further amended to read:

25 The salary of the Chief Medical Examiner of the State must be set by the Governor.  
26 Other nonsalaried medical examiners and nonsalaried medicolegal death investigators,  
27 upon the submission of their completed report to the Chief Medical Examiner, must be  
28 paid a fee of up to \$70 for an inspection and view and are entitled to receive travel  
29 expenses to be calculated at the mileage rate currently paid to state employees pursuant to  
30 Title 5, section 8. An additional fee of \$50 may be authorized by the Chief Medical  
31 Examiner for payment to other nonsalaried medical examiners and nonsalaried  
32 medicolegal death investigators for visits to death scenes other than hospitals.

33 The Chief Medical Examiner may, in an unusual circumstance as determined by the  
34 Chief Medical Examiner, prescribe a special fee for the service of a medical examiner or  
35 medicolegal death investigator or for any consultant service the Chief Medical Examiner  
36 determines necessary.

37 If the Chief Medical Examiner or employees of that office provide expert opinion or  
38 testimony relating to Maine medical examiner cases on behalf of private litigants, the  
39 Chief Medical Examiner may set a reasonable fee for these services, preparation leading  
40 to them and expenses incurred in providing them. All fees, charges or other receipts must

1 be credited to the General Fund. Medical examiners, medicolegal death investigators and  
2 consultants who serve the State on a fee per case basis are excluded from this paragraph  
3 and may make private arrangements for these services.

4 **Sec. 4. 22 MRSA §3028, sub-§1**, as amended by PL 2001, c. 291, §1, is further  
5 amended to read:

6 **1. Authority to conduct investigation.** The medical examiner or ~~the person~~  
7 ~~expressly authorized by the Chief Medical Examiner~~ medicolegal death investigator has  
8 authority to conduct an investigation and inquiry into the cause, manner and  
9 circumstances of death in a medical examiner case. The medical examiner or ~~authorized~~  
10 ~~person~~ medicolegal death investigator shall, if it is determined necessary, immediately  
11 proceed to the scene and, subject to the authority of the Attorney General, assume  
12 custody of the body for the purposes of the investigation, and shall retain custody until  
13 the investigation has been completed or until the Chief Medical Examiner has assumed  
14 charge of the case.

15 **Sec. 5. 22 MRSA §3028, sub-§2**, as amended by PL 2001, c. 291, §2, is further  
16 amended to read:

17 **2. Investigation by law enforcement officer.** When death is not suspected to be the  
18 result of physical injury attributable to criminal conduct, the medical examiner may elect  
19 not to proceed to the scene, or the Chief Medical Examiner may elect not to dispatch a  
20 medical examiner or ~~the person expressly authorized by the Chief Medical Examiner~~  
21 ~~under subsection 4~~ medicolegal death investigator to the scene. If the medical examiner  
22 elects not to proceed to the scene, or the Chief Medical Examiner elects not to dispatch a  
23 medical examiner or ~~authorized person~~ medicolegal death investigator to the scene, the  
24 law enforcement officer in charge of the scene shall:

25 A. Investigate, take photographs and take possession of useful objects as directed by  
26 the medical examiner, ~~authorized person~~ medicolegal death investigator or the Office  
27 of Chief Medical Examiner pursuant to subsection 4;

28 C. Remove the body in accordance with the instructions of the medical examiner,  
29 ~~authorized person~~ medicolegal death investigator or the Office of Chief Medical  
30 Examiner; and

31 D. Make a report of the investigation available to the medical examiner, ~~authorized~~  
32 ~~person~~ medicolegal death investigator or the Office of Chief Medical Examiner.

33 **Sec. 6. 22 MRSA §3028, sub-§3**, as amended by PL 2001, c. 291, §3, is further  
34 amended to read:

35 **3. Assistance of law enforcement agency.** The medical examiner, the ~~person~~  
36 ~~expressly authorized by the Chief Medical Examiner~~ medicolegal death investigator or  
37 the pathologist as described in subsection 8; may request the assistance and use of the  
38 facilities of the law enforcement agency having jurisdiction over the case for the purposes  
39 of photographing, fingerprinting or otherwise identifying the body. That agency shall  
40 provide the medical examiner, ~~authorized person~~ medicolegal death investigator or  
41 pathologist with a written report of the steps taken in providing the assistance.

1           **Sec. 7. 22 MRSA §3028, sub-§4**, as amended by PL 2001, c. 291, §4, is further  
2 amended to read:

3           **4. Possession of useful objects.** Except as otherwise directed by the Attorney  
4 General, the Attorney General's deputies or assistants, the medical examiner, the ~~person~~  
5 ~~expressly authorized by the Chief Medical Examiner~~ medicolegal death investigator or  
6 the Office of Chief Medical Examiner may direct that a law enforcement officer at the  
7 scene make measurements, take photographs and take possession of all objects that in the  
8 opinion of the medical examiner, ~~authorized person~~ medicolegal death investigator or the  
9 Office of Chief Medical Examiner may be useful in establishing the cause, manner and  
10 circumstances of death. For these same purposes, the medical examiner, ~~authorized~~  
11 ~~person~~ medicolegal death investigator or the Office of Chief Medical Examiner may  
12 direct that a law enforcement officer take possession of any objects or specimens that  
13 have been removed from the victim at the scene or elsewhere while under medical care.

14           **Sec. 8. 22 MRSA §3028, sub-§5**, as amended by PL 2001, c. 291, §5, is further  
15 amended to read:

16           **5. Requests for objects.** Any person having possession of any object or objects, as  
17 described in subsection 4, shall at the request of the medical examiner or ~~the person~~  
18 ~~expressly authorized by the Chief Medical Examiner~~ medicolegal death investigator give  
19 that object or objects to a law enforcement officer, to the medical examiner, to the  
20 ~~authorized person~~ medicolegal death investigator or to the Office of Chief Medical  
21 Examiner. Medical personnel and institutions turning over any objects or specimens that  
22 have been removed from the victim while under medical care are immune from civil or  
23 criminal liability when complying with this subsection. Original written or recorded  
24 material that might express suicidal intent must be sent to the Office of the Chief Medical  
25 Examiner. The Chief Medical Examiner may elect to accept copies in place of originals.

26           **Sec. 9. 22 MRSA §3028, sub-§6**, as amended by PL 2011, c. 182, §1, is further  
27 amended to read:

28           **6. Examination of body.** In all cases, the medical examiner or ~~the person expressly~~  
29 ~~authorized by the Chief Medical Examiner~~ medicolegal death investigator shall conduct a  
30 thorough examination of the body except in those cases when the body has already been  
31 disposed of and is not being exhumed or when the Chief Medical Examiner or Deputy  
32 Chief Medical Examiner determines, after review of available records and known  
33 circumstances, that the report of the death of the decedent may be certified and completed  
34 without examining the body.

35           **Sec. 10. 22 MRSA §3028, sub-§7**, as repealed and replaced by PL 2003, c. 510,  
36 Pt. B, §7, is amended to read:

37           **7. Written report.** Upon completing an investigation, the medical examiner or ~~the~~  
38 ~~person expressly authorized by the Chief Medical Examiner~~ medicolegal death  
39 investigator shall submit a written report of the investigator's findings to the Chief  
40 Medical Examiner on forms provided for that purpose. The investigator shall retain one  
41 copy of the report.

1 If an investigator reports suspected abuse, neglect or exploitation to the Chief Medical  
2 Examiner, the Chief Medical Examiner, by reporting that information to the department  
3 on behalf of the investigator, fulfills the medical examiner's mandatory reporting  
4 requirement under section 3477 or 4011-A.

5 **Sec. 11. 22 MRSA §3033, sub-§1, ¶¶B and C**, as enacted by PL 2001, c. 222,  
6 §12, are amended to read:

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

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

16 **Sec. 12. 22 MRSA §3033, sub-§1, ¶D** is enacted to read:

17 D. A medicolegal death investigator may not be held liable for damages for any  
18 injury or damage that results from the exercise and discharge of any of the  
19 medicolegal death investigator's official duties unless it can be shown that the injury  
20 or damage resulted from gross negligence on the part of the medicolegal death  
21 investigator.

## 22 SUMMARY

23 This bill allows the Chief Medical Examiner to appoint qualifying persons who are  
24 not physicians as medicolegal death investigators with the authority to go to death scenes  
25 and conduct investigations and inquiries into the cause, manner and circumstances of  
26 death in medical examiner cases. Medicolegal death investigators may be employees of  
27 the Office of the Chief Medical Examiner or serve on a fee-for-service basis as  
28 determined by the Chief Medical Examiner.