

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND TWELFTH LEGISLATURE

SECOND REGULAR SESSION
January 8, 1986 to April 16, 1986

SECOND SPECIAL SESSION
May 28, 1986 to May 30, 1986

AND AT THE

THIRD SPECIAL SESSION
October 17, 1986

PUBLISHED BY THE DIRECTOR OF REVISOR OF STATUTES IN
ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Co., Inc.
Augusta, Maine

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
SECOND REGULAR SESSION
of the
ONE HUNDRED AND TWELFTH LEGISLATURE
1985

air search and rescue plan by those state agencies which are designated in the plan to play an assisting role in emergencies.

A. The commissioner shall delegate his authority for overall coordination of air search and rescue efforts to the Director of the Division of Aeronautics within the Department of Transportation.

B. The Director of the Division of Aeronautics shall communicate and coordinate directly with the Air Search Mission Coordinator, an official of the Maine Wing Civil Air Patrol, who is involved in coordinating and controlling the specific air search operations conducted under the air search and rescue plan.

C. The Director of the Division of Aeronautics shall communicate and coordinate with state agencies who have agreed to offer mutual support in implementing the cooperative action plan for air search and rescue, when the assistance is needed in searching for missing persons.

Effective July 16, 1986.

CHAPTER 611

H.P. 859 - L.D. 1218

AN ACT to Amend the Medical Examiner Act and
Related Provisions.

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

Sec. 1. 22 MRSA §2705, sub-§4 is enacted to read:

4. Amendment by the Office of the Chief Medical Examiner. Completions or amendments to certificates of death in medical examiner cases, as defined in section 3025, shall be as provided in section 2842, subsection 4.

Sec. 2. 22 MRSA §2842, sub-§3, as amended by PL 1979, c. 538, §1, is further amended to read:

3. Medical certificate by medical examiner. When a death occurs 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 of the time he is notified of the death, unless the remains must be held longer before release to complete studies or investigation.

The medical examiner shall be responsible for the identity of the deceased and the time, date, place, cause, manner and circumstances of death on the death certificate. Entries may be left "pending" if further study is needed. Notwithstanding section 2706, subsection 4, this information for which the medical examiner is responsible may be made available to the general public by the Office of the Chief Medical Examiner.

Sec. 3. 22 MRSA §2842, sub-§4 is enacted to read:

4. Correction of errors on death statistic records filed under chapter 711. Certificates of death in medical examiner cases, as defined in section 3025, may be completed or amended at any time by means of forms provided by the department to the Office of Chief Medical Examiner. Either the Chief Medical Examiner or the medical examiner assigned to the case may sign the forms. The medical examiner assigned shall submit the form to the Office of the Chief Medical Examiner for filing with the State Registrar of Vital Statistics. These forms may be filed at any time after death and need not include a summary description of the evidence in support of the completion or amendment.

Sec. 4. 22 MRSA §3022, as amended by PL 1979, c. 538, §2, is repealed and the following enacted in its place:

§3022. Office of Chief Medical Examiner

1. Appointment and qualifications of the Chief Medical Examiner. There is created, in the Department of Attorney General, the Office of Chief Medical Examiner for the State. The Chief Medical Examiner shall be appointed by the Governor for a term of 7 years and until his successor is appointed and qualified. The Chief Medical Examiner shall possess a degree of doctor of medicine or doctor of osteopathy, be licensed to practice in the State and be expert in

the specialty of forensic pathology. Expertise in the specialty of forensic pathology may be established either by certification in forensic pathology by the American Board of Pathology or the American Osteopathic Board of Pathology, or by successful completion of an examination to test expertise in forensic pathology designed for the State by acknowledged experts in the field selected by the Governor. Any vacancy in the Office of the Chief Medical Examiner shall be filled by appointment by the Governor for a full term of 7 years. The Chief Medical Examiner may hire, subject to the Personnel Law, necessary office and laboratory personnel in order to carry out the proper functioning of his office.

. 2. Appointment and qualifications of the Deputy Chief Medical Examiner. The Chief Medical Examiner may 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.

3. Certification and completion of reports of deaths. The Office of Chief Medical Examiner shall be responsible for certification and completion of reports of deaths identified as medical examiner cases by section 3025. This shall be accomplished by examination of bodies and useful objects and by investigation and inquiry into the circumstances surrounding the deaths. The Office of Chief Medical Examiner may compile and preserve records and data relating to criminal prosecution, public health, public safety and vital statistics, as these relate to his responsibilities.

4. Judgments of the medical examiners. Judgments of the medical examiners as to the identity of the deceased and as to the cause, manner, date, time and place of death shall be made with reasonable care based on a preponderance of the evidence.

5. Custodian of records. The Chief Medical Examiner shall be the custodian of the records of the Office of Chief Medical Examiner. Copies of those

records not declared confidential in subsection 8 shall be available upon written request.

6. Certificate as evidence. Notwithstanding any other provision of law or rule of evidence, the certificate of the Chief Medical Examiner, under seal of the State, shall be received in any court as prima facie evidence of any fact stated in the certificate or documents attached thereto. The certificate under the seal shall be presumed to be that of the Chief Medical Examiner. A facsimile of the signature of the Chief Medical Examiner imprinted on any certificate described in the preceding sentence shall have the same validity as his written signature and shall be admissible in court.

7. Medical records provided. In any medical examiner case, upon oral or written request of the medical examiner, any individual, partnership, association, corporation, institution or governmental entity which has rendered treatment pertaining to the medical examiner case shall forthwith provide the medical examiner with all medical records pertaining to the person and the treatment provided.

8. Certain information confidential. When in the custody of a medical examiner, contents of suicide notes, reproductions of medical reports and reports compiled by the police incorporated into the file, communications with the Department of Attorney General, death certificates and any amendments made thereto, except for the information for which the medical examiner is responsible, as listed in the section 2842, subsection 3, and reports pertaining to cases under investigation by the Attorney General's office shall be confidential.

9. Release of medical examiner's reports. State, county and local agencies and institutions, public and private, in possession of reports of the Office of the Chief Medical Examiner shall not release them, but shall refer all the requests to the Office of the Chief Medical Examiner. The Office of the Chief Medical Examiner need not release medical examiner reports to the public until a next of kin has been contacted.

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

Sec. 5. 22 MRSA §3023, as amended by PL 1979, c. 538, §3, is further amended to read:

§3023. Medical examiners; appointment; jurisdiction

The Chief Medical Examiner shall appoint medical examiners, who shall have state-wide statewide jurisdiction and shall serve at the pleasure of the Chief Medical Examiner and subject to his control and the regulations promulgated by him. The Chief Medical Examiner may in his discretion make temporary appointments when he deems it in the public interest. The medical examiners shall be learned in the science of medicine and anatomy, licensed as physicians in the this State of Maine and bona fide residents of the this State of Maine. Each medical examiner before entering upon the duties of his office shall be duly sworn to the faithful performance of his duty.

The Chief Medical Examiner may in his discretion make temporary appointments when he deems 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 residents of the State nor take an oath of office.

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 their 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. 6. 22 MRSA §3025, as repealed and replaced by PL 1979, c. 538, §5, is repealed and the following enacted in its place:

§3025. Medical examiner case

1. Circumstances of death constituting medical examiner case. A medical examiner case exists when remains are found which may be human and raise suspicion that death has occurred under any of the following circumstances:

- A. Violence or poisoning;
- B. Suddenly when the person is in apparent good health and has no specific natural disease sufficient to explain death;
- C. During diagnostic or therapeutic procedures under circumstances indicating gross negligence

or when clearly due to trauma or poisoning unrelated to the ordinary risks of those procedures;

D. Death when the person is in custody pursuant to an arrest, confined in a state correctional facility, county institution, facility or local lockup, unless clearly certifiable by an attending physician as due to specific natural causes;

E. Death while the person is a patient or resident of a facility of the Department of Mental Health and Mental Retardation or residential care facility maintained or licensed by the Department of Human Services, unless clearly certifiable by an attending physician as due to specific natural causes;

F. Death suspected of being due to a threat to the public health when the authority of the medical examiner is needed to adequately study the case for the protection of the public health;

G. Death suspected of not having been certified, including, but not limited to, bodies brought into the State and any buried remains uncovered other than by legal exhumation;

H. Deaths suspected of being medical examiner cases which have been certified by other than medical examiners or the equivalent of a medical examiner, including, but not limited to, bodies brought into the State under those circumstances;

I. Sudden infant death syndrome deaths and all other deaths of children under the age of 18 unless clearly certifiable by an attending physician as due to specific natural causes unrelated to abuse or neglect;

J. Whenever human or possibly human remains are discovered not properly interred or disposed of, for which the responsibility to do so cannot be readily determined; or

K. Any cause when there is no attending physician capable of certifying the death as due to natural causes. When a person dies who is under the care of a religious practitioner who uses prayer and spiritual means of healing, the fact that the deceased has been under such religious care does not warrant suspicion of foul play or investigation beyond that warranted by the other facts of the case.

2. Attendance by physician. A medical examiner case exists whenever the death is wholly or in part ascribable to violence or poisoning, regardless of whether the deceased had been attended by a physician, was a patient in a hospital, survived for considerable time or died with the terminal natural causes consequent to and following from the injury or poisoning.

3. Transplant operations. No operation for the transplant of an organ or a portion of any organ may take place, when the donor's death occurs under circumstances indicating a medical examiner case, without approval of the medical examiner. Any doctor performing a transplant operation when 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, with 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.

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

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

Sudden natural deaths in the elderly who have not had previous specific symptoms or who were not under treatment by a physician for the specific natural cause that is considered to be the cause of death shall be reported to the Office of the Chief Medical Examiner. Those cases may be referred back to the attending physician by the Chief Medical Examiner for certification of the death, even though the attending physician has not treated the patient for the specific natural disease that he will enter as his diagnosis as required in section 2842, subsection 2.

5. Delayed reports. When a death has occurred that falls under this law as a medical examiner case and the body has already been released for final disposition, the case may be accepted and the body ordered held for examination by a medical examiner; but

no exhumation may take place when the body has been finally interred, except pursuant to section 3029.

Sec. 7. 22 MRSA §3028, sub-§§1, 3, 5 and 11, as enacted by PL 1979, c. 538, §8, are amended to read:

1. Authority to conduct investigation. The medical examiner shall have authority to conduct an investigation ~~of and inquiry into~~ the cause ~~and~~, manner and circumstances of death in a medical examiner case. He shall, if deemed necessary, 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.

3. Assistance of law enforcement agency. The medical examiner, or the pathologist as described in subsection 9 8, 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 identifying the body. That agency shall provide the medical examiner or pathologist with a written report of the steps taken in providing the assistance.

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. The Chief Medical Examiner may elect to accept copies in place of originals.

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. No medical examiner may release a body without first ensuring that the case has been reported to the Office of Chief Medical Examiner.

Sec. 8. 22 MRSA §§3028-A, 3028-B and 3028-C are enacted to read:

§3028-A. Disposal of unidentified remains

Whenever unidentified human skeletal remains are recovered, the Chief Medical Examiner may store the

remains, release them to an educational institution, inter them in an appropriate resting place or have them cremated. Ashes of remains cremated may be disposed of in any appropriate manner. Human skeletal remains uncovered in a cared-for cemetery or known to be Indian remains are excluded from the operation of this section.

§3028-B. Retention of body fragments and body fluids

A medical examiner or his designated pathologist may retain body fragments or body fluids for evidence, further study or documentation.

§3028-C. Disposal of nonsubstantial fragments and fluids; disposal of substantial fragments

1. Disposal of nonsubstantial body fragments and body fluids. Body fragments or body fluids retained for evidence, further study or documentation, or those which have been recovered after the body has been released from the custody of the medical examiner, may be disposed of according to the practices of the laboratory responsible for analysis, by the Office of the Chief Medical Examiner, or by the medical examiner or pathologist retaining those fragments or fluids, unless claimed in writing by the person responsible for burial.

2. Disposal of substantial body fragments. The Chief Medical Examiner may dispose of substantial fragments of bodies that have been retained for evidence, further study or documentation or that have been recovered after the rest of the body has been finally released, in accordance with section 3028-A, unless claimed by the person responsible for burial.

Sec. 9. 22 MRSA §3032, as enacted by PL 1967, c. 534, §2, is amended to read:

§3032. Rules

The Chief Medical Examiner is authorized and empowered to carry into effect this chapter, and in pursuance thereof, to make and enforce such reasonable rules and regulations consistent with this chapter as he may deem necessary. A copy of such regulations the rules and any amendments thereto shall be filed in the office of the Secretary of State. Complete directions as to the nature, character and extent of the investigation to be made, in cases where medical examiners are involved, together with appropriate forms for the required reports and

instructions for the medical examiners' use shall be promulgated by the Chief Medical Examiner by proper rule and regulation.

Sec. 10. 32 MRSA §1404, as amended by PL 1979, c. 538, §11, is further amended to read:

§1404. Medical examiner case; no embalming until release

When a person has died under circumstances which constitute a medical examiner case as defined in Title 22, section 3025, no person shall may inject into any cavity or artery of the body any fluid or substance, or submerge the body in or place, pour or spray on the body any preservative, deodorant, insecticide, cosmetic or other chemical until a legal certificate as to the cause of death has been obtained from the medical examiner, or until legal investigation has determined the cause of death, or written permission to embalm do so 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. 11. 32 MRSA §1405, 2nd ¶, as amended by PL 1979, c. 538, §12, is further amended to read:

The body of a deceased person shall not be cremated within 48 hours after his decease unless he died of a contagious or infectious disease and in no event shall the body of a deceased person be cremated, buried at sea, used by medical science or removed from the State until the person, firm or corporation in charge of the cremation disposition has received a certificate from a duly appointed medical examiner that he has made personal inquiry into the cause and manner of death and is satisfied that no further examination or judicial inquiry concerning the same is necessary. This certificate, a certified copy of the death certificate and a burial transit permit when presented by the authorized person as defined in Title 22, section 2846, shall be sufficient authority for cremation, burial at sea, use by medical science or removal from the State and the person, firm or corporation in charge of cremation the disposition shall not refuse to cremate or otherwise dispose of the body solely because these documents are presented by such an authorized person. Such The certificate shall be retained by the person, firm or

corporation in charge of the cremation or disposition for a period of 3 15 years. For ~~said~~ the certificate, the medical examiner shall receive a fee of \$15 payable by the person requesting same.

Sec. 12. 32 MRSA §1405, 4th ¶, as enacted by PL 1979, c. 538, §13, is repealed.

Effective July 16, 1986.

CHAPTER 612

S.P. 853 - L.D. 2153

AN ACT to Amend the State Subsurface Waste Water Disposal Laws.

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

Sec. 1. 22 MRSA §42, sub-§3, as amended by PL 1983, c. 796, §8, is further amended to read:

3. Plumbing and subsurface waste water disposal. The department shall adopt minimum rules relating to plumbing and subsurface sewage disposal systems and the installation and inspection thereof consistent with Title 30, ~~sections 3221 to 3225~~ chapter 215, subchapter X, and Title 32, sections 3301 to 3507 chapter 49, but this does not preempt the authority of municipalities under Title 30, section 1917, to adopt more restrictive ordinances; and shall hold hearings on the first Tuesday of February of each year for the purpose of considering changes in the rules pertaining to plumbing and subsurface sewage disposal systems and the installation and inspection thereof. These rules may regulate the location of water supply wells to provide minimum separation distances from subsurface sewage disposal systems. The department may require a deed covenant or deed restriction when determined necessary.

Any person who violates the rules adopted under this subsection, or who violates a municipal ordinance adopted pursuant to Title 30, section 3221, or uses a subsurface sewage waste water disposal system not in compliance with rules applicable at the time of installation or modification shall be penalized in ac-