

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND TWENTIETH LEGISLATURE
FIRST REGULAR SESSION
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TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
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13. Access to certain information by certain persons. Unless a medical examiner case is under investigation by the Department of the Attorney General or the office of a district attorney and the Attorney General or the district attorney determines that there is a reasonable possibility that release or inspection interferes with a criminal investigation or prosecution by the disclosure:

A. Items identified in subsection 8, paragraphs F and G may be inspected and copies obtained, upon payment of any required fee under section 3035, by:

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

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

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

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

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

14. Access to report documents. Report documents, as defined in section 3035, subsection 2, in the possession or custody of a medical examiner or the Office of the Chief Medical Examiner constitute investigative information. Release and inspection are governed by Title 16, section 614. Release and inspection are also contingent upon the person's request specifying a specific decedent or decedents and the payment of any required fee under section 3035.

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

Sec. 6. 22 MRSA §3022, as amended by PL 1997, c. 643, Pt. G, §1, is further amended by adding at the end a new paragraph to read:

As used in subsections 10, 12, 13 and 14, "person" means a natural person, including a public servant, or a corporation, partnership, unincorporated association or other legal entity, including a governmental unit.

See title page for effective date.

CHAPTER 222

H.P. 1258 - L.D. 1705

An Act to Make Certain Technical and Clarifying Changes to the Medical Examiner Act

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

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

1. Appointment and qualifications of the Chief Medical Examiner. There is created, in the Department of the Attorney General, the Office of Chief Medical Examiner for the State. The Chief Medical Examiner ~~shall be~~ is appointed by the Governor for a term of 7 years and until ~~his~~ the Chief Medical Examiner's successor is appointed and qualified. The Chief Medical Examiner ~~shall~~ must 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 Chief Medical Examiner ~~shall~~ must be filled by appointment by the Governor for a full term of 7 years. The Chief Medical Examiner may hire, subject to the Civil Service Law, necessary office and laboratory personnel to carry out the proper functioning of ~~his~~ the Chief Medical Examiner's office.

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

§3023. Medical examiners; appointment; jurisdiction

The Chief Medical Examiner shall appoint medical examiners, who ~~shall~~ have statewide jurisdiction and ~~shall~~ serve at the pleasure of the Chief Medical Examiner ~~and, subject to his the Chief Medical Examiner's control and the regulations promulgated rules 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.

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

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

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

§3024. Salaries; fees; expenses

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

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

The Chief Medical Examiner, ~~using his discretion,~~ may, in an unusual circumstance, ~~to be as~~

determined by ~~him~~ the Chief Medical Examiner, prescribe a special fee for the service of a medical examiner or for any consultant service ~~which he deems the Chief Medical Examiner determines~~ necessary.

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

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

If the Chief Medical Examiner or employees of ~~his that~~ office, ~~at their discretion,~~ provide expert opinion or testimony relating to Maine medical examiner cases on behalf of private litigants, the Chief Medical Examiner may, ~~at his discretion,~~ set a reasonable fee for these services, preparation leading to them and expenses incurred in providing them. All fees, charges or other receipts ~~shall~~ must be credited to the General Fund. Medical examiners and consultants who serve the State on a fee per case basis are excluded from this paragraph and may make private ~~arrangements~~ arrangements for these services.

Sec. 4. 22 MRSA §3025, sub-§1, ¶A, as repealed and replaced by PL 1985, c. 611, §6, is repealed and the following enacted in its place:

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

Sec. 5. 22 MRSA §3025, sub-§2, as repealed and replaced by PL 1985, c. 611, §6, is amended to read:

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

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

4. Questionable cases and cases that may constitute exceptions. All questionable cases ~~shall~~ must 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 must~~ 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 must~~ 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~~ the attending physician will enter as ~~his~~ the attending physician's diagnosis.

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

§3026. Reports of death

1. Persons suspecting medical examiner case.

Any person who ~~has become~~ becomes aware of a suspected medical examiner case shall immediately notify a law enforcement officer, ~~medical 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.

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

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

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

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

§3027. Procedure at scene of death

1. Movement or alteration of body prohibited.

Except as otherwise provided in this section:

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

B. In any medical examiner case in which ~~non-eriminal violence physical injury attributable to noncriminal conduct~~ is suspected; or in which any ~~violence physical injury~~ by motor vehicle, including vehicular manslaughter, is suspected, ~~no a person shall may not~~ move or alter the body or any objects at the scene of death prior to the arrival, 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

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

2. Preservation or removal of body. In any medical examiner case ~~where in which~~ the body is in danger of being 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 retention or preservation of the body prior to the arrival or authorization of the medical examiner or ~~the~~ Office of ~~the~~ Chief Medical Examiner, ~~provided that such~~. The person shall first, whenever if practicable, exactly mark the location and position of the body.

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

~~whenever~~ if practicable, exactly mark the location and position of the body.

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:

- (1) The incident causing the death did not occur in the medical facility;
- (2) The body is transported to a secure place in the same condition as when death occurred; and
- (3) The only alterations are the disconnecting of fixed medical equipment.

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

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

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

In all other medical examiner cases the procedure in this subsection may be waived concurrently by the medical examiner and the district attorney for ~~his~~ the district attorney's authorized representative.

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

9. Autopsy of child. In the case of a child under the age of 3 years, when death occurs without medical attendance or, if attended, without a specific natural cause, the medical examiner 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.

10. Chief Medical Examiner; jurisdiction. The Chief Medical Examiner may assume jurisdiction over a medical examiner case; and may recertify the

death; when ~~he~~ the Chief Medical Examiner finds that it is in the public interest ~~for him~~ to do so. ~~He~~ The Chief Medical Examiner shall include ~~his~~ the reasons for so doing in the record.

Sec. 10. 22 MRSA §3029, sub-§§2 and 3, as enacted by PL 1979, c. 538, §9, are amended to read:

2. Petition for order of exhumation. The district attorney or Attorney General may, under the circumstances enumerated in 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.

3. Report of findings. The medical examiner, Chief Medical 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.

Sec. 11. 22 MRSA §3032, as amended by PL 1985, c. 611, §9, is further 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 consistent with this chapter as ~~he may deem~~ the Chief Medical Examiner determines necessary. ~~A copy of the rules and any amendments thereto shall be filed in the office of the Secretary of State. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.~~

Sec. 12. 22 MRSA §3033, as amended by PL 1979, c. 538, §10, is repealed and the following enacted in its place:

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

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

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

B. A pathologist performing an autopsy at the request of a medical examiner or the Chief Medical Examiner may not be held liable for damages for any injury or damage that results

from the performance of the autopsy unless it can be shown that the injury or damage resulted from the gross negligence of the pathologist; and

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

See title page for effective date.

CHAPTER 223

S.P. 609 - L.D. 1785

An Act Concerning Disabled Hunters, Trappers and Anglers

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

Sec. 1. 12 MRSA §7035, sub-§21 is enacted to read:

21. Disabled hunter, trapper and angler advisory committee. The commissioner shall establish a disabled hunter, trapper and angler advisory committee composed of 4 disabled persons, a licensed physician, a representative of state agencies that work on disability issues, 2 statewide organizations representing hunters, trappers or anglers, and one interested person. The purpose of the advisory committee is to advise the commissioner on applications for a special permit under section 7076, subsection 16 and to provide recommendations to the commissioner on ways to promote and enhance access to hunting, fishing and trapping opportunities in this State for disabled persons. The commissioner shall meet with the advisory committee at least twice a year, once during the month of January, February or March and once during the month of July, August or September, to review applications for special permits to accommodate permanent physical disabilities provided for in section 7076, subsection 16 but may meet more often as the commissioner determines necessary. The commissioner may, within existing budgeted resources, reimburse advisory committee members for mileage or other expenses related to their attending meetings of the advisory committee.

Sec. 2. 12 MRSA §7076, sub-§16 is enacted to read:

16. Special permits to accommodate permanent physical disabilities. The commissioner may issue a special permit to a person with a permanent

physical disability that includes special authorization that allows that person to hunt, trap or fish at times or in a manner otherwise prohibited by chapters 701 to 721 in order to enhance access to hunting, trapping and fishing opportunities. No laws or rules may be waived except as are necessary to effect this subsection. A permit may be issued under this subsection only if:

A. The applicant provides the commissioner with a letter signed by a licensed physician clearly stating the nature of that person's disability, the permanence of the disability and the extent to which the disability affects that person's ambulatory ability or endurance; use of one or both hands, arms or legs; or sight or hearing;

B. The commissioner determines that the permanent physical disability prevents that person from safely accessing hunting, trapping or fishing opportunities at the times or in the manner allowed by chapters 701 to 721 or by rules adopted pursuant to those chapters; and

C. The person meets all other requirements for issuance of that permit and related licensing requirements and is not otherwise ineligible for that permit.

Prior to making a determination of eligibility under this subsection, the commissioner or the commissioner's agent shall meet with the applicant in person at a location chosen by the commissioner to discuss the applicant's needs. Each applicant's disability and needs must be reviewed in consultation with the disabled hunter, trapper and angler advisory committee established in section 7035, subsection 21 and a determination made regarding the special authorization that may be made to enhance the applicant's access to fishing, hunting and trapping opportunities. A permit issued under this subsection must be signed by the commissioner and include a clear and specific description of the activities authorized by that permit. The disabled person shall carry the permit whenever that person is hunting, trapping or fishing, and the permit must be presented to a game warden or other law enforcement officer upon request. No laws or rules may be waived except as are necessary to effect this subsection.

The commissioner may not authorize any special exception that endangers public safety and may authorize only the minimum special exceptions necessary to overcome the applicant's disability and allow that applicant to safely hunt, trap or fish. A permit issued under this subsection may not authorize a person to exceed the allowable bag or size limits for any fish or wildlife species; to fish for or take a fish or wildlife species for which a license is not otherwise issued; to fish for, trap or hunt a fish or wildlife