

## 1 HOUSE BILL NO. 45

2 INTRODUCED BY K. DUDIK

3 BY REQUEST OF THE DEPARTMENT OF JUSTICE

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5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING MEDICAL EXAMINER LAWS; REVISING  
6 LAWS RELATED TO APPOINTMENT AND SUPERVISION OF THE STATE AND ASSOCIATE MEDICAL  
7 EXAMINERS; REVISING QUALIFICATIONS OF ASSOCIATE MEDICAL EXAMINERS; PROVIDING FOR  
8 DEPUTY MEDICAL EXAMINERS; REVISING WHEN CERTAIN AUTOPSIES MUST BE PERFORMED BY THE  
9 STATE OR DEPUTY MEDICAL EXAMINERS; AND AMENDING SECTIONS 44-3-201, 44-3-203, 46-4-103, AND  
10 46-4-122, MCA."

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12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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14 **Section 1.** Section 44-3-201, MCA, is amended to read:

15 **"44-3-201. State medical examiner.** A state medical examiner must be appointed by and serves at the  
16 pleasure of the attorney general. The state medical examiner must be a physician licensed to practice medicine  
17 in Montana. Once appointed, the state medical examiner is supervised by the director of the laboratory of  
18 criminalistics. Medical examiners are to be free from undue personal, professional, or political influences as they  
19 objectively pursue and report the facts and opinions of their death investigations."

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21 **Section 2.** Section 44-3-203, MCA, is amended to read:

22 **"44-3-203. Associate medical examiners -- qualifications.** Associate medical examiners must be  
23 physicians pathologists licensed to practice in Montana, must be board-certified in forensic pathology, and may  
24 continue their private practice during their appointment. Associate medical examiners are appointed by,  
25 supervised by, and serve at the pleasure of the state medical examiner."

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27 **NEW SECTION. Section 3. Deputy state medical examiner.** Deputy state medical examiners are  
28 hired and supervised by the state medical examiner. Deputy state medical examiners must be physicians licensed  
29 to practice medicine in Montana and must have successfully completed an anatomic pathology residency and  
30 a forensic pathology fellowship.

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**Section 4.** Section 46-4-103, MCA, is amended to read:

**"46-4-103. Autopsy -- when conducted, scope.** (1) If in the opinion of the coroner an autopsy is advisable, the coroner shall order one performed on any dead human body for which the death requires an inquiry and shall retain a medical examiner or associate medical examiner to perform it. Performance of autopsies is within the discretion of the coroner except that the county attorney or attorney general may require one. Consent of the family or next of kin of the deceased is not required for an autopsy that is ordered by the coroner, county attorney, or attorney general. In ordering an autopsy, the coroner, county attorney, or attorney general shall order the body to be exhumed if it has been interred.

(2) The right to conduct an autopsy includes the right to retain specimens the medical examiner performing the autopsy considers necessary.

(3) The state of Montana shall pay any expenses incurred whenever an autopsy or investigation is initiated at the request of the state medical examiner or attorney general. The county shall pay any expenses incurred whenever an autopsy, investigation, or inquiry is initiated at the request of the county attorney or county coroner.

(4) If a county does not provide a morgue or other facility for postmortem examination, the county coroner may order the use of a funeral home or an appropriate hospital facility for the examination.

(5) Autopsies performed under this section on a decedent whose death is under investigation and who has made an anatomical gift or on whose behalf an anatomical gift has been made must be performed in accordance with 72-17-217 and 72-17-218.

(6) An autopsy must be performed by the state medical examiner or a deputy state medical examiner whenever the death occurred:

(a) while the decedent was incarcerated in a prison or confined to a correctional or detention facility owned or operated by the state or a political subdivision of the state; or

(b) while the decedent was being pursued, apprehended, or taken into custody by, or while in the custody of, any law enforcement agency or peace officer.

(7) The state of Montana shall pay any expenses related to autopsies performed under subsection (6)."

**Section 5.** Section 46-4-122, MCA, is amended to read:

**"46-4-122. Human deaths requiring inquiry by coroner.** The coroner shall inquire into and determine

1 the cause and manner of death and all circumstances surrounding a human death:

2 (1) that was caused or is suspected to have been caused:

3 (a) in any degree by an injury, either recent or remote in origin; or

4 (b) by the deceased or any other person that was the result of an act or omission, including but not  
5 limited to:

6 (i) a criminal or suspected criminal act;

7 (ii) a medically suspicious death, unusual death, or death of unknown circumstances, including any fetal  
8 death; or

9 (iii) an accidental death; or

10 (c) by an agent, disease, or medical condition that poses a threat to public health;

11 (2) whenever the death occurred:

12 (a) while the deceased was incarcerated in a prison or ~~jail~~ or confined to a correctional or detention  
13 facility owned and operated by the state or a political subdivision of the state;

14 (b) while the deceased was ~~in the custody of, being pursued, apprehended, or was being taken into the~~  
15 custody by or while in the custody of, a any law enforcement agency or a peace officer;

16 (c) during or as a result of the deceased's employment;

17 (d) less than 24 hours after the deceased was admitted to a medical facility or if the deceased was dead  
18 upon arrival at a medical facility; or

19 (e) in a manner that was unattended or unwitnessed and the deceased was not attended by a physician  
20 at any time in the 30-day period prior to death;

21 (3) if the dead human body is to be cremated or shipped into the state and lacks proper medical  
22 certification or burial or transmit permits; or

23 (4) that occurred under suspicious circumstances."  
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25 **NEW SECTION. Section 6. Codification instruction.** [Section 3] is intended to be codified as an  
26 integral part of Title 44, chapter 3, part 2, and the provisions of Title 44, chapter 3, part 2, apply to [section 3].

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