

1 HOUSE BILL NO. 45

2 INTRODUCED BY K. DUDIK

3 BY REQUEST OF THE DEPARTMENT OF JUSTICE

4
 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~~ POSTMORTEM EXAMINATIONS
 9 MUST BE PERFORMED BY THE STATE OR DEPUTY MEDICAL EXAMINERS; AND AMENDING SECTIONS
 10 44-3-201, 44-3-203, 46-4-103, 46-4-110, AND 46-4-122, MCA."

11
 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13
 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 ~~AND BE BOARD-CERTIFIED IN FORENSIC PATHOLOGY.~~ Once appointed, the state medical examiner is
 18 supervised by the director of the laboratory of criminalistics. Medical examiners are to be free from undue
 19 personal, professional, or political influences as they objectively pursue and report the facts and opinions of their
 20 death investigations."

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

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

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

1 ~~a forensic pathology fellowship~~ BE BOARD-CERTIFIED OR ELIGIBLE TO BE BOARD-CERTIFIED IN FORENSIC PATHOLOGY.
 2 BOARD CERTIFICATION IS REQUIRED WITHIN 5 YEARS OF ELIGIBILITY.

3
 4 **Section 4.** Section 46-4-103, MCA, is amended to read:
 5 **"46-4-103. Autopsy POSTMORTEM EXAMINATION -- when conducted, scope.** (1) If in the opinion of the
 6 coroner ~~an autopsy~~ A POSTMORTEM EXAMINATION is advisable, the coroner shall order one performed on any dead
 7 human body for which the death requires an inquiry and shall retain a medical examiner or associate medical
 8 examiner to perform it. Performance of ~~autopsies~~ POSTMORTEM EXAMINATIONS is within the discretion of the
 9 coroner except that the county attorney or attorney general may require one. Consent of the family or next of kin
 10 of the deceased is not required for ~~an autopsy~~ A POSTMORTEM EXAMINATION that is ordered by the coroner, county
 11 attorney, or attorney general. In ordering ~~an autopsy~~ A POSTMORTEM EXAMINATION, the coroner, county attorney,
 12 or attorney general shall order the body to be exhumed if it has been interred.

13 (2) The right to conduct ~~an autopsy~~ A POSTMORTEM EXAMINATION includes the right to retain specimens
 14 the medical examiner performing the ~~autopsy~~ POSTMORTEM EXAMINATION considers necessary.

15 (3) The ~~state of Montana~~ DEPARTMENT OF JUSTICE shall pay any expenses incurred whenever ~~an autopsy~~
 16 A POSTMORTEM EXAMINATION or investigation is initiated at the request of the state medical examiner or attorney
 17 general. The county shall pay any expenses incurred whenever ~~an autopsy~~ A POSTMORTEM EXAMINATION,
 18 investigation, or inquiry is initiated at the request of the county attorney or county coroner.

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

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

24 (6) (A) ~~An autopsy~~ A POSTMORTEM EXAMINATION must be performed by the state medical examiner or a
 25 deputy state medical examiner whenever the death occurred:

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

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

30 (B) IF A DEATH UNDER SUBSECTION (6)(A) OCCURRED WHILE THE DECEDENT WAS UNDER MEDICAL CARE, A STATE

1 OR DEPUTY STATE MEDICAL EXAMINER MUST BE CONSULTED AND THE NEED FOR FURTHER EXAMINATION DETERMINED ON
 2 A CASE-BY-CASE BASIS.

3 (7) The ~~state of Montana~~ DEPARTMENT OF JUSTICE shall pay any expenses related to autopsies
 4 POSTMORTEM EXAMINATIONS performed under subsection (6)."

5

6 **SECTION 5. SECTION 46-4-110, MCA, IS AMENDED TO READ:**

7 **"46-4-110. Powers of coroner.** In the performance of duties under this chapter, the coroner may:

8 (1) pronounce the fact of death of any human being under circumstances in which the coroner has a duty
 9 to inquire pursuant to 46-4-122;

10 (2) certify and amend death certificates as considered necessary in circumstances under which the
 11 coroner has a duty to inquire pursuant to 46-4-122;

12 (3) issue subpoenas pursuant to 46-4-112;

13 (4) order ~~autopsies~~ postmortem examinations as provided in 46-4-103;

14 (5) conduct examinations and tests as considered necessary to determine the cause, manner, and
 15 circumstances of death and identification of a dead human body as provided in 46-4-101 and 46-4-113;

16 (6) order a dead human body to be disinterred or removed from its place of disposition, with or without
 17 the consent of the next of kin, under circumstances in which the coroner has a duty to inquire pursuant to
 18 46-4-122;

19 (7) conduct inquests pursuant to 46-4-201; and

20 (8) order cessation of any activity by any person or agency, other than the law enforcement agency
 21 having jurisdiction, that may obstruct or hinder the orderly conduct of an inquiry or the collection of information
 22 or evidence needed for an inquiry."

23

24 **Section 6.** Section 46-4-122, MCA, is amended to read:

25 **"46-4-122. Human deaths requiring inquiry by coroner.** The coroner shall inquire into and determine
 26 the cause and manner of death and all circumstances surrounding a human death:

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

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

29 (b) by the deceased or any other person that was the result of an act or omission, including but not

30 limited to:

- 1 (i) a criminal or suspected criminal act;
- 2 (ii) a medically suspicious death, unusual death, or death of unknown circumstances, including any fetal
3 death; or
- 4 (iii) an accidental death; or
- 5 (c) by an agent, disease, or medical condition that poses a threat to public health;
- 6 (2) whenever the death occurred:
- 7 (a) while the deceased was incarcerated in a prison or ~~jail~~ or confined to a correctional or detention
8 facility owned and operated by the state or a political subdivision of the state;
- 9 (b) while the deceased was ~~in the custody of,~~ being pursued, apprehended, or ~~was being~~ taken into the
10 custody by or while in the custody of, ~~a any~~ law enforcement agency or a peace officer;
- 11 (c) during or as a result of the deceased's employment;
- 12 (d) less than 24 hours after the deceased was admitted to a medical facility or if the deceased was dead
13 upon arrival at a medical facility; or
- 14 (e) in a manner that was unattended or unwitnessed and the deceased was not attended by a physician
15 at any time in the 30-day period prior to death;
- 16 (3) if the dead human body is to be cremated or shipped into the state and lacks proper medical
17 certification or burial or transmit permits; or
- 18 (4) that occurred under suspicious circumstances."

19

20 **NEW SECTION. Section 7. Codification instruction.** [Section 3] is intended to be codified as an
21 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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