



Report on the State Medical Examiner's Office 2015

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Executive Summary

In late 2014, it became apparent that the State Medical Examiner's Office was not functioning well on an administrative level. Dr. Kemp, appointed as State Medical Examiner upon Dr. Dale's retirement in the spring of 2015, resigned within three weeks of the appointment to take a position out of state. At that point it was decided to re-organize the Medical Examiner's Office to a truly state-wide office. Until that re-organization could be accomplished, an interim plan was invoked in which Medical Examiners were brought into Montana to perform autopsies or bodies were transported out of state for those services.

Due to the very small number of newly trained pathologists each year (30-40), it was difficult to lure qualified applicants away from current employment. After several attempts, competitive salaries were increased and appropriate support staff was promised in order to attract applicants. At this writing, the State Medical Examiner's Office is stable and consists of three Medical Examiners (two in Missoula and one in Billings) and two Autopsy / Administrative Assistants (one each in Missoula and Billings).

Expenses (staff salaries and benefits, outside laboratory testing) associated with the State Medical Examiner's Office are the responsibility of the Forensic Science Division of the Department of Justice. Fees are charged to coroners for autopsy services by the ME Office. However, those revenues are sent directly to the State General Fund.

The Office is working to establish consistent charging of autopsy fees state-wide. For explanations of future revenues and expenses, please refer to the "State-wide Impact of ME Office Revenues/Expenses" section of the full report.

The Department of Justice has prepared recommendations for improvements to the following MCAs associated with the structure of the Office and when autopsies are to be performed on in-custody deaths.

- 44-3-201. State medical examiner.
- 44-3-203. Associate medical examiners -- qualifications.
- 44-3-215. Deputy state medical examiner.
- 46-4-103. Autopsy -- when conducted, scope.
- 46-4-122. Human deaths requiring inquiry by coroner.

***The net impact of the re-organization of the State Medical Examiner's Office will be
A REDUCTION IN THE OVERALL COST TO THE STATE.***

Definitions

Medical examiners (MEs) are physicians licensed to practice forensic pathology.

Dieners are temporary, part-time autopsy assistants that play very limited roles during an autopsy.

NAME is the National Association of Medical Examiners – this organization also accredits medical examiner offices.

SWGMDI is the Scientific Working Group for Medicolegal Death Investigation; a national group of experts in the field.

Background

For the past 10 years, medical examiner services in Montana have been covered primarily by two state-employed medical examiners and one private forensic pathologist. Drs. Gary Dale and Walter Kemp worked for the state in Missoula. Dr. Tom Bennett worked in Billings as an Associate State Medical Examiner and billed counties directly for his services.

Around 1999 Dale appointed Bennett as an Associate State Medical Examiner per MCA 44-3-211. Due to concerns about Bennett's previous autopsies of babies in Iowa, Dale instructed Bennett to have those autopsies referred to Dale. This instruction was ignored almost immediately and their relationship was strained from there on. Kemp was hired as a state-employed Deputy Medical Examiner in 2005.

In late 2014, Dale announced his plan to retire in mid-April 2015. In the winter of 2015, as progress was made towards filling Dale's pending vacancy, a variety of options were considered for various possible losses of autopsy services throughout the state. The most drastic of which, loss of all autopsy services, was the one the state was eventually faced with when Kemp left Montana for a position in North Dakota on July 1 and Bennett's appointment as Associate State Medical Examiner was not renewed. Around that time, the *Interim Plan* was implemented. It involved transporting bodies to autopsy facilities out-of-state and bringing in forensic pathologists to perform autopsies in Montana.

Additionally, a plan for re-organizing the State Medical Examiner's Office to create a truly state-wide office was developed and implemented. This included a State Medical Examiner who will hire and supervise two Deputy Medical Examiner's, one of which to be stationed in Billings. Additionally, Autopsy/Administrative Assistant positions were established, one each for Missoula and Billings. The body of this report provides background information for the decisions made in the re-organization of the Office as well as for the implementation and costs associated with the *Interim Plan*.

Timeline of Events

Dec 22, 2014	Dale indicated his pending retirement to be in mid-April
Feb 25, 2015	Posted State ME vacancy at budgeted \$181,600
March 27	State ME Interviews
April 9	Kemp appointed to succeed Dale as State ME
April 10	Posted Deputy ME vacancy at the budgeted \$156,700
April 17	Dale's last day
May 4	Kemp indicated his pending resignation. Last day July 1.
May 12	No qualified Dep ME applicants at advertised rate.
May 13	Re-Posted both ME vacancies at \$236,000 for State ME and \$201,000 for Dep ME (<i>see Medical Examiner Pay below</i>)
June 3	Hosted Dr. Oeberst in Missoula for State ME position
June 12	Hosted Dr. Gofton in Missoula for State ME position
June 19	Offered Dr. Oeberst State ME position.
June 24	Notified Coroners, Sheriffs and County Attorneys that Bennett's Appointment as Associate State ME would not be renewed and would end on June 30.
June 25	Interim plan implemented (<i>see Interim Plan and Costs on page 4</i>)
July 7	Hosted Dr. Prashar in Missoula for Dep ME position. Declined offer.
July 17	Hosted Dr. Warren in Missoula for Dep ME position. Declined offer.
Aug 1	Hosted Dr. Bucholz in Billings for Dep ME position. Declined offer.
August 31	Dr. Oeberst starts
Sept 4	Hosted Dr. Kurtzman in Billings
Sept 25	Offered Dr. Kurtzman Chief Dep ME in Billings
Oct 10	Hosted Dr. Mourtzinis in Missoula
Oct 22	Offered Dr. Mourtzinis Dep ME in Missoula
Nov 4	Autopsy Assistant starts in Missoula
Dec 1	Dr. Kurtzman starts in Billings
Dec 7	Begin screening applicants for Autopsy Assistant in Billings
Jan 4	Dr. Mourtzinis starts in Missoula

Working Conditions

The working conditions in place in early 2015 evolved over the course of more than 15 years. In Billings, Bennett had access to an experienced Autopsy Assistant for virtually all autopsies. The Medical Examiners in Missoula had very sporadic access to dieners. The small pool of dieners consisted of a retired coroner and a few students from the University of Montana who had interests in physical anthropology. Autopsy work is physically demanding and requires standing for hours in extensive personal protective gear in a room with foul odors while struggling to maneuver bodies; more and more of which are obese. Full-time autopsy assistants are recommended and are standardly available in ME offices nation-wide. In fact, multiple candidates were reluctant to interview before the decision was made to provide those assistant positions.

Autopsies in Billings are performed at the morgue in the St. Vincent Hospital. That facility should be considered inadequate (barely enough cooler space for 3 bodies, an old, small, single station autopsy suite). Autopsies in Missoula are performed at the morgue in the Forensic Science Division building. The facility is adequate (cooler space for 6 bodies and an autopsy suite with two stations, though it would be difficult to perform two autopsies at once).

Autopsies in both locations would be performed at any time; days, nights, weekends, holidays, etc. Again, though this practice evolved over many years is not a sustainable practice. In many discussions with ME offices nation-wide, all offices had specific work hours. Autopsies were conducted during regular business hours and either 5 or 6 days per week. Some very large offices with a large number of MEs, could stagger schedules to be open 7 days per week, but this was rare. With very rare exception and only under critical circumstances, is it necessary to conduct autopsies outside of these parameters.

Medical Examiner Pay

The State ME position was advertised at the budgeted amount of \$181,600. There were very few applicants. Kemp took the position at the advertised rate.

The Deputy ME position was advertised at the budgeted amount of \$156,700. No acceptable candidates were developed.

From the Montana 2014 draft biennial market analysis (see Reference 1) for the State ME position, the market midpoint was \$236,000.

In order to attract appropriately qualified candidates, the State ME position was advertised at \$236,000 and the Dep ME position was advertised at \$201,000 (85% of State ME pay).

Staffing/Facility Recommendations

Partially in response to the 2009 NAS report on improving forensic sciences (see Reference 2), SWGDMI addressed the issue of autopsy facilities and populations served in 2013. Based on the recommended autopsy rate of 1 per 1,000 population and the NAME recommended number of autopsies performed per Medical examiner, SWGDMI recommends that for a state the size and population of Montana, there should be two morgue facilities, each with two medical examiners and staff (see Reference 3).

Autopsy Statistics

SWGDMI recommendations (see Reference 4) – Based on autopsy rates of offices working at a recommended level of autopsy performance, 1 autopsy per 1,000 population is considered a best case

scenario for ensuring that autopsies are performed at a level that meets public health, public safety, justice as well as quality assurance needs. Autopsy facilities nationwide averaged 0.7 autopsies per 1,000 population.

Per NAME Accreditation Standards (see Reference 5), for offices in which Medical Examiners perform functions other than autopsies (as is the case in MT), each Medical Examiner should be performing no more than 250 autopsies per year.

MT data – From the Bureau of Vital Statistics, there were 8451 deaths in MT in 2012. From these, 538 autopsies were performed for a rate of 6.3%; slightly below the national average. The Missoula Office performed 293 autopsies from the 5,768 deaths reported in western MT for a rate of 5%. The Pathologist in Billings performed 245 autopsies from the 2,673 deaths reported in eastern MT for a rate of 9%.

As the population grows and ages, more autopsies may be necessary. With increases in drug usage and drug related deaths, more autopsies may be necessary. The State ME Office is monitoring the situation and offering external exams, when appropriate, as a time- and cost-saving alternative to full autopsies.

Autopsy Charges

Charges for autopsies by Dr. Bennett were made directly to the eastern county coroners. Concerns about western county coroners not having the same financial burden prompted the State ME to begin charging for their autopsy services in 2000. The State ME office charged \$950 per autopsy with those funds being forwarded to the State General Fund. The amount of the autopsy charges likely reflected those charges by Bennett at the time. At the end of his tenure, Dr. Bennett charged counties \$1,500 per autopsy, however charges from the State ME Office had not changed.

During the Interim Plan when bodies were being shipped out of state, those facilities charged from \$1,455 - \$1,800 per autopsy.

Starting in fiscal year 2017, the State Medical Examiner's Office plans on charging \$1,500 per autopsy state-wide which would generate an additional \$528,650 annually for a total annual revenue to the state of \$811,750.

Given the number of autopsies performed in 2012 per the Bureau of Vital Statistics, increasing the autopsy fees to \$1500 state-wide would bring in the \$1500 for all autopsies previously performed by Dr. Bennett (245 x \$1500 = \$367,500) and an additional \$550 for each autopsy performed out of the Missoula office (298 x \$550 = \$161,150) for an increase of \$528,650 annually and a total annual revenue to the state of \$811,750.

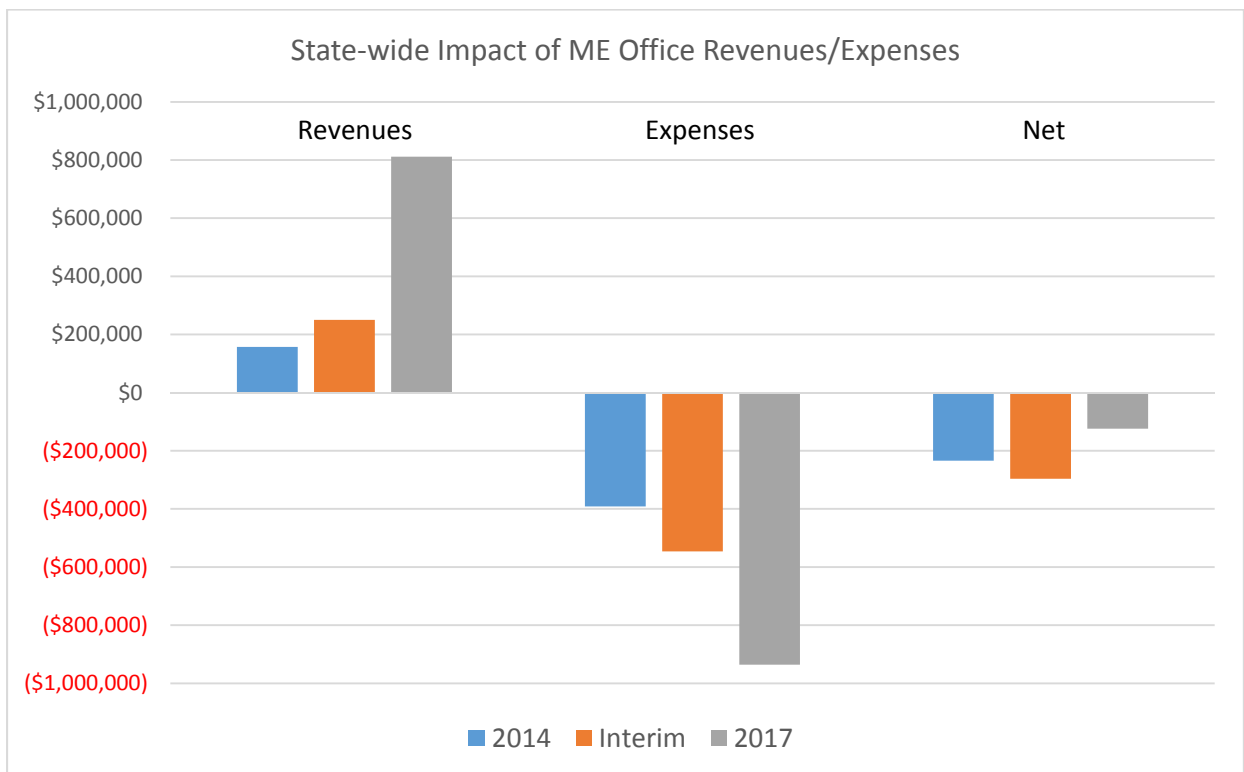
Interim Plan

When the state was faced with a lack of Medical Examiners, the two options available were to transport bodies out of state and to bring licensed Medical Examiners into Montana to perform autopsies; both options were used. Between June 26 and December 31, 39 bodies were transported out of state to medical examiner offices in Seattle and Kent, WA, Idaho Falls, ID and Rapid City, SD. There were three medical examiners who became licensed to practice forensic pathology in Montana. They traveled to Missoula and performed 113 autopsies between July 7 and Nov 20, 2015.

State-wide Impact of ME Office Revenues/Expenses

Expenses (staff salaries and benefits, outside laboratory testing) associated with the State Medical Examiner's Office are the responsibility of the Forensic Science Division of the Department of Justice. Fees are charged to coroners for autopsy services by the ME Office. However, those revenues are sent directly to the State General Fund.

In the table below, revenues, expenses and the net difference are presented for three time periods; before (2014), during (Jun – Dec, 2015) and after (2017) the Interim period. 2017 information is presented to reflect the anticipated revenues that will result from anticipated increases to charges for autopsy services state-wide. The net difference associated with the data anticipated for 2017 show that though costs will have been increased due to the re-organization and staffing of the State ME Office, revenues will increase leading to a smaller overall cost to the state.



Revenue estimation for 2017 is likely a low estimate. Revenues depicted for 2017 reflect the impact of increased autopsy fees and are based on the last available data for autopsies state-wide, 2012.

Revenues depicted in the chart for the Interim period are those that have been billed. At this writing, \$184,000 have been collected.

Costs associated with the Interim period include the payout for Dr. Dale which occurred in FY2015 and was covered by vacancy savings within FSD. The remaining costs associated with this period will be included in a supplemental request of the budget office which will include a request to fully fund all positions within the re-organized State Medical Examiner's Office.

***The net impact of the re-organization of the State Medical Examiner's Office will be
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Applicable Legislation

MCA 44-3-201 through 214

MCA 46-4-101 through 123

MCA 61-7-112

Recommendations for Improved Legislation

44-3-201. State medical examiner. A state medical examiner must be appointed by and serves at the pleasure of the attorney general. Once appointed, the state medical examiner is supervised by the director of the laboratory of criminalistics. The state medical examiner must be a physician licensed to practice medicine in Montana and be board-certified in forensic pathology.

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

44-3-215. Deputy state medical examiner. Deputy state medical examiners are hired by and supervised by the state medical examiner. Deputy state medical examiners must be physicians licensed to practice medicine in Montana and have successfully completed an anatomic pathology residency and forensic pathology fellowship.

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 will be performed by the state medical examiner or a deputy state medical examiner whenever the death occurred:

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

(b) while the deceased was in the custody of, or was being taken into the custody of, a law enforcement agency or a peace officer;

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

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

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

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

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

(i) a criminal or suspected criminal act;

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

(iii) an accidental death; or

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

(2) whenever the death occurred:

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

~~—(b) while the deceased was in the custody of, or was being taken into the custody of, a law enforcement agency or a peace officer;~~

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

References

- (1) [http://hr.mine.mt.gov/Portals/21/docs/HRResources/CompensationReference/Market Analysis 2014/2014 Market Spreadsheet Biennial.xlsx](http://hr.mine.mt.gov/Portals/21/docs/HRResources/CompensationReference/Market%20Analysis%202014/2014%20Market%20Spreadsheet%20Biennial.xlsx)
- (2) Strengthening Forensic Science in the United States. 2009 *The National Academies Press* Chapter 9 Medical Examiner Systems: Current and Future Needs
- (3) J. R. Gill, et. al. State Medical Examiner Systems, 2013: Staffing, Autopsies, Strengths, Limitations, and Needs. *Acad Forensic Pathol* 2014 4(1):24-31
- (4) Regional Medicolegal Autopsy and Death Investigation Centers – Construction, Staffing and Costs. System Infrastructure Committee of SWGDMI September 17, 2013 <http://swgmdi.org/images/si6.facilityconstruction.published.9-17-13.pdf>
- (5) NAME Inspection and Accreditation Policies and Procedures Manual (2014) <https://netforum.avectra.com/public/temp/ClientImages/NAME/9b95da84-095a-4823-af04-ee62aac4d13a.pdf>

Appendix: Media Coverage

Wall Street Journal:

States' Shortage of Forensic Pathologists Delays Autopsies

Nation faces scant supply of medical examiners, particularly in rural areas

<http://www.wsj.com/articles/states-shortage-of-forensic-pathologists-delays-autopsies-1444689715>

When a 58-year-old man collapsed and died at a convenience store in eastern Montana in August, his corpse had to be driven 300 miles to neighboring South Dakota for an autopsy.

The reason: There was no one in Montana to examine the body, a situation that highlights the nation's scant supply of forensic pathologists, particularly in rural areas.

"You just drive like crazy," said Terry Bullis, coroner for Montana's Big Horn County, noting the trip and autopsy took five days. "Any time you have an unembalmed body, deterioration can begin—the quicker you can get things done, the better it is for the family."

No one was available in Montana because the state's chief medical examiner left July 1, and a contractor had his position effectively eliminated amid questions over his work. The contractor had been the only forensic pathologist in the eastern half of the state.

There are about 500 practicing board-certified forensic pathologists in the U.S., less than half the amount needed, based on the number of autopsies that have to be done, according to the National

Commission on Forensic Science. The longstanding problem has persisted as the number of new professionals barely keeps pace with retirements.

“There is a shortage,” said David Fowler, vice president of the National Association of Medical Examiners. “It’s not glamorous, it’s not attractive and it doesn’t pay much.”

The commission, formed by the U.S. Justice Department in 2013 to improve the state of forensic sciences, approved recommendations in August to increase the number of forensic pathologists, including raising salaries, introducing student-loan forgiveness, and increasing exposure to the profession in medical schools.

The prospect of taking on medical-school debt to get a job that pays less than similar positions elsewhere isn’t a big draw. Pathologists who work for hospitals and other private institutions make an average of \$335,000 a year against \$185,000 for medical examiners, the commission says.

Training programs for forensic pathologists are undersubscribed, and the number getting board-certified each year has remained roughly between 20 and 40 over the last 10 years, according to the American Board of Pathology, far below the number needed to make a significant dent in the shortage. The average age in the field is 55.

The shortage has contributed to backlogs. The understaffed Massachusetts medical examiner’s office didn’t complete more than 40% of its autopsy reports in fiscal 2014, causing potential delays in court cases and insurance claims by families.

Even though the state provided funding to hire more medical examiners, the office couldn’t find any, in part because of “the limited number of forensic pathologists nationwide,” Henry Nields, chief medical examiner, told legislators earlier this year.

In some rural areas, the nearest forensic pathologist could be as far away as the next state, as has been the case in Wyoming for years, adding costs and delays. Edward McAuslan, a retired coroner, said bodies from Fremont County, where he presided, were sent to Colorado.

The shortage also means that some autopsies are performed by people who aren’t forensic pathologists at all, said John Fudenberg, Clark County Coroner in Nevada and former president of the International Association of Coroners and Medical Examiners.

“You wouldn’t go to a family practice doctor to get heart surgery,” said Mr. Fudenberg.

Montana has begun to fill its void by hiring a new state medical examiner and a deputy, and has plans to hire one more deputy. The state medical examiner’s salary was raised by \$55,000 to \$236,000 to attract a candidate.

“For the first time ever, Montana will then have three full-time medical examiners working together as state employees,” said John Barnes, a spokesman for Montana Attorney General Tim Fox, who oversees the medical examiner.

Montana Medical Examiner Gary Dale resigned this spring, upset that Thomas Bennett, a contractor based in Billings since 1998, continued to conduct autopsies of children for county coroners, years after he asked Dr. Bennett and the coroners to stop because of past controversial cases, according to emails and letters released by the state. Walter Kemp, who succeeded Dr. Dale, resigned this summer due to the same “unworkable situation.”

In August, Montana released a review critical of Dr. Bennett’s work. The state also said the use of such contractors would be discontinued.

Dr. Bennett said the findings were “flawed and incomplete,” and that missives from Dr. Dale were motivated by “personal animosity.” Dr. Dale declined to comment.

Coroners took the warnings about Dr. Bennett “under advisement,” said Mr. Bullis, also the Montana Coroners Association spokesman, but kept using him because he was “very good and very prompt.”

The alternative would have been to send bodies to western Montana. “Most of the time the coroners in eastern Montana don’t have time to transfer a body 400 miles to 600 miles,” he said.

Missoulian:

Controversial forensic pathologist no longer to work for county coroners

http://missoulian.com/butte/news/local/controversial-forensic-pathologist-no-longer-to-work-for-county-coroners/article_d739b101-efd9-51b1-b317-6e2df98fa1f3.html

A forensic pathologist with a problematic record will no longer conduct autopsies for county coroners as an associate medical examiner, according to the Montana Attorney General's Office.

Thomas Bennett served as associate medical examiner in Montana since 1998 and appears to be a factor in the resignations of the state's chief medical examiners. Gary Dale resigned in April; Walter Kemp left on July 1 and mentioned Bennett's "un-appointment" in his letter of resignation.

Court records show Dale, as head medical examiner, repeatedly asked Bennett to stop conducting autopsies on children. Bennett had left Iowa as chief medical examiner after numerous authorities called into question his conclusions that infant deaths were caused by shaken baby syndrome.

Bennett conducted autopsies for coroners in eastern Montana through his private practice in Billings, Forensic Medicine and Pathology.

In recent correspondence, officials in the Attorney General's Office notified Bennett that his appointment would come to a close July 1. The State Medical Examiner's Office will hire a state employee to do autopsies in eastern Montana, and counties will no longer pay a fee for service to a pathologist appointed as an associate.

Last week, chief of staff Mike Milburn said the medical examiners' concerns about Bennett's work on children came to a head last September. After a lengthy evaluation, the Attorney General's Office decided to restructure the State Medical Examiner's Office.

Now, forensic pathologists who do autopsies for coroners will be under direct supervision by the state medical examiner, Milburn said. The change means Bennett's practice will no longer perform autopsies for county coroners.

The departure appears to address one of Dale's major concerns. But it was a long time in coming.

The former medical examiner had requested Bennett refrain from doing autopsies on children more than a decade ago, when Bennett first began working in Montana, records show.

Bennett apparently refused to comply with the head examiner, who is appointed by the attorney general. The Billings doctor continued to do child autopsies through the administrations of four attorneys general.

Dale declined to answer questions for this story. Kemp was in the middle of a move last week and unavailable for an interview.

However, correspondence that is part of a court record shows that Dale repeatedly demanded Bennett refrain from doing autopsies on children. In a letter from 2000, Dale said he had reviewed three deaths Bennett "opined were ... due to 'shaken-slammed baby syndrome.'"

"It is my opinion that your continuing to conduct postmortem examinations of unexplained deaths of infants unnecessarily risks both wrongful prosecution of a caretaker and jeopardizes prosecution of the perpetrator if you are to encounter a truly injured child," Dale said in the letter.

In a 2005 letter, Dale informed county coroners and attorneys that any examinations of children by Bennett "are done so outside his appointment as an associate state medical examiner."

"Prior to coming to Montana in 1998, Dr. Bennett rendered problematic opinions regarding alleged non-accidental traumatic infant deaths in Iowa," Dale said. "Despite verbal and three written ... instructions by me to 'refrain from conducting Montana coroner-requested autopsies on children,' Dr. Bennett has continued to perform these examinations."

In September 2014, the issue came to a head at the Attorney General's Office.

Last week, Attorney General Tim Fox said the department spent the better part of a year sorting through complicated and long-standing issues in the State Medical Examiner's Office.

"It's been something that we're still in some respects trying to get our arms around," Fox said.

However, he also said his team is putting into place a different model for autopsies conducted by the medical examiner, a structure designed to fix the previous lack of accountability, communication and peer review.

In the past, the head medical examiner designated an associate, but the associate worked, as needed, for county coroners. Going forward, the forensic pathologists who do autopsies for coroners will be state employees and report to the head medical examiner.

"Then, you have a very clear power to hire and to fire," Fox said. "You have a chief state medical examiner who has very clear supervisory responsibilities over deputy medical examiners."

The attorney general has appointed Jaime Oeberst of Kansas as the incoming state medical examiner. She will hire two deputy medical examiners; one will work with her in Missoula and the other will work in Billings.

"We hope to have everyone on board and be fully operational this fall," Fox said.

Dale's concerns appear to have forced at least one of the changes he sought: Bennett will no longer do autopsies on children (or adults) for the state.

On June 24, the state informed Bennett his appointment would end.

In early May, Kemp may not have known such a change was around the corner when he announced he had taken another job.

Kemp, who served as deputy medical examiner under Dale, stated in his letter that he was taking a position at the University of North Dakota School of Medicine. However, he also said he was a native Montanan who had wanted to practice forensic pathology in his home state.

"I am leaving an unworkable situation, and moving into a very acceptable alternative position, but if the situation in Montana were different, I would never have been looking at other positions," Kemp said in his resignation letter.

The letter is not dated; the Attorney General's Office said it is from June 3.

In the letter, Kemp notes the three pathologists he appointed as associates would be "un-appointed" upon his departure.

"This step was done by Dr. Dale with his departure and was recognized as appropriate by the Attorney General's Office, in that I was required to re-appoint Dr. Bennett. I will leave that to the next incoming pathologist to re-appoint them," Kemp wrote.

In his letter, Dale had said his planned retirement in 2018 meant he would not be suited to lead the state through upcoming changes — with funding he anticipated the Montana Department of Justice wouldn't seek until the 2017 legislative session.

According to Phil Kinsey, who oversees the medical examiner, Kemp appeared excited about his new position as an associate professor, and the state did not attempt to retain him.

"We're all disappointed that Dr. Dale and Dr. Kemp have left," Fox said. "They admirably served the state for many years, and it's a loss."

After difficulty in recruiting a deputy and evaluating a market salary assessment, the state increased the pay for both positions, from \$186,000 to \$236,000 for the chief and from \$157,000 to \$201,000 for the deputy.

Bennett did not speak with the Missoulian last week. His phone number returned a call, but the line quickly disconnected; subsequently, no one answered Bennett's phone number.

Fox said he did not believe any of Bennett's work on children would result in wrongful convictions because Dale and Kemp would have alerted the Attorney General's Office of any such cases.

The office did review some cases; officials declined to discuss any findings in detail due to legal constraints.

In Iowa, a couple was released from prison and exonerated of felony charges in 1998 after a judge found "false or misleading forensic evidence," according to the National Registry of Exonerations, a project of the University of Michigan School of Law. Bennett had declared the death a homicide.

Other child cases Bennett deemed homicides also came under fire. At least two court orders call his actions into question, including a Montana Supreme Court order in a felony assault conviction that cited his "problematic history." (The court was addressing controversy around Bennett as a possible expert witness.)

Former Attorney General Joe Mazurek is now deceased. Gov. Steve Bullock did not address the reason Bennett was allowed to conduct infant autopsies during his tenure as attorney general.

"As Attorney General, Steve Bullock agreed with the policy put in place by the state medical examiner, which precluded the state medical examiner's appointee, Dr. Bennett, from working on certain cases involving infants and young children," said spokesman Dave Parker in a statement.

Chief Justice Mike McGrath, who also previously was attorney general, declined to comment through his assistant in the Montana Supreme Court.

"I spoke with the chief, and he has no comment," said judicial assistant Lorrie Cole. "It wouldn't be ethical for him to comment."

In a deposition, however, Bennett admitted he had continued to do autopsies on children because he had run the matter past his "friend" McGrath. McGrath told him he did not work for the state medical examiner, Bennett said.

A lawyer in Georgia took the deposition last August and provided it to the Missoulian.

As a forensic pathologist, Bennett testifies as an expert witness in wrongful death cases on behalf of automobile manufacturers. James Butler of Butler, Wooten, Cheeley and Peak, took the deposition after hearing Bennett testify multiple times.

Missoulian:

Montana autopsies to be outsourced to other states in July

http://missoulian.com/helena/news/local/montana-autopsies-to-be-outsourced-to-other-states-in-july/article_9d1c33bd-cc80-5186-a255-219063aa002a.html

MISSOULA -- With the resignation of the only two state forensic medical examiners qualified to assist county coroners, Montana will outsource its autopsies to other states during the coming weeks.

That means shipping bodies to Seattle and Rapid City for autopsies.

"It will be a minor inconvenience for those involved, but we are trying to make it as seamless and easy as we can," said Mike Milburn, deputy chief of staff in the Montana Attorney General's Office.

Dr. Gary Dale, former chief medical examiner for the Montana State Crime Lab in Missoula, retired in mid-April but stayed on temporarily to assist the acting medical examiner, Dr. Walter Kemp.

Now Kemp has resigned, effective July 1.

As of July 2, there will be no forensic medical examiner in the state qualified to assist coroners with autopsies.

The bodies of those who die under suspicious circumstances in the western part of the state will be driven by a coroner to Seattle. Bodies in the eastern part of the state will be transported to South Dakota for autopsy.

The state has hired a new medical examiner, who will start in mid-August, and will have a temporary medical examiner assist the lab with some autopsies intermittently, Milburn said.

Milburn said he considers the transition an inconvenience, but not unusual. Wyoming, for example, has no state pathologist and outsources all its autopsies to other states, he said.

"We have never had to do this before," he said. "But other states do."

Southern Alaska is another example, he said. Coroners there send bodies to Seattle for autopsy.

Retirement, resignation

In total, the State Crime Lab performs autopsies on about 500 individuals each year, Milburn said.

Unattended or suspicious deaths are split evenly between the western and eastern parts of the states.

Kemp and Dale declined to comment on their joint departure, but said they would be happy to discuss the matter later in July, after Kemp starts his new position as an associate professor at the University of North Dakota School of Medicine in Grand Forks.

In his letter of resignation, Kemp cited serious concerns about his employment at the crime lab, but said he is proud of his service to the people of Montana.

"I believe I have provided excellent service to the state of Montana in my almost 10 years here," he wrote. "I have never been satisfied with the status quo, and always sought to improve the work that I was doing."

Kemp said he will retire with approximately 400 hours of unpaid comp time.

In fact, before officials could hire Kemp's replacement, the state had to raise the pay for the position by \$55,000 a year -- 40 percent more than the state medical examiner and deputy state medical examiner currently earn.

Additionally, Kemp said that he and Dale worked on the autopsies alone, with no technical assistance.

But he isn't leaving the crime lab because of unpaid hours or lack of technical support, he said.

"In my opinion, as there have been no sincere efforts made to retain Dr. Dale or I, or address our concerns with the current situation regarding forensic pathology services in Montana, it is my impression that our services are not considered vital to the state," Kemp wrote in his resignation letter.

"Briefly, my reasons for leaving are based upon my professional code of ethics and my concerns regarding nontechnical support for the medical examiner's office," he continued.

Kemp and his wife are both from Montana, and he said he had no desire to leave the state, but considered the current working conditions "unworkable."

"To be clear," he wrote, "I am extremely grateful that an academic position is available to me, and I look forward to my upcoming position, but do not equate this with me wanting to leave Montana. As a native Montanan who wanted nothing more than to return to his home state and practice forensic pathology, I am leaving an unworkable situation and moving into a very acceptable alternative position.

"But if the situation in Montana were different, I would never have been looking at other locations."

Milburn said that Kemp and Dale's workload was "less than average," compared to a national scale, and confirmed that the state would be adding additional personnel to assist the new chief medical examiner and her deputy.

Officials are also using the transition to appoint a new deputy forensic medical examiner in Billings. Those autopsies were previously contracted out to non-state employees.

The transition has been announced to coroners across the state, who have reported some trepidation about the new system. But Milburn said transferring bodies to other states won't delay autopsies.

"In the short term, there is always that question, that nervousness of how is this all going to work," he said.

Missoulian:

Missoula County sees little change with autopsies conducted out of state

http://missoulian.com/news/local/missoula-county-sees-little-change-with-autopsies-conducted-out-of/article_fc9ec1e8-0049-5c05-8724-a26c299a62bd.html

As of last week, just one body from Missoula County had been transported out of state for an autopsy, according to Capt. Mike Dominick in the Missoula County Sheriff's Office.

"There's no change to the end result, other than that we don't have the close working relationship with the medical examiners that we've had in the past," Dominick said.

Two state medical examiners resigned in short succession this year, and the Montana attorney general has appointed a new head examiner, Jaime Oeberst. Oeberst will step into the position in the middle of August.

As part of the change, Attorney General Tim Fox is putting a new structure in place for the State Medical Examiner's Office (see related story).

In the meantime, county coroners all across Montana are sending bodies out of state for autopsies.

Mike Milburn, chief of staff for the attorney general, said an out-of-state pathologist would be in Montana to help out late last week and through the weekend as well. The state brought on Rob Kurtzman of Grand Junction, Colorado.

"It is an inconvenience. It will be hard on the families involved. But right now, it's working very well," Milburn said of the temporary solution.

The quick departure of Gary Dale and then Walter Kemp disappointed the Missoula County Sheriff's Office, Dominick said. He described both men as hard working, available at all hours, and "tremendous assets" to the community.

The sheriff's office has had a close working relationship with both Dale and Kemp, who served as a deputy before taking over for Dale this spring.

Dominick said Dale in particular was adept at explaining the complexities of forensic pathology to lay people.

The captain figured Kemp had "tons of Ph.D.s": "Willy Kemp is the smartest guy in the room."

"It's a big loss for us. We're very sad to see them go," Dominick said.

In the meantime, though, he said little has changed for the people of Missoula County. He said the 12 deputy coroners might do a bit more follow-up with a person's doctor to try to determine cause of death before sending a body to a pathologist in Seattle.

"We haven't had that close working relationship with the doctors that we had before, but he seemed very competent," Dominick said.

The transport that took place happened quickly. Dominick said the body of a baby was transported in the morning, the doctor in Washington called him with results in the afternoon, and the body returned to Missoula the same night.

The bottom line cost for Missoula County will remain the same, he said. Missoula County will continue to pay the same price for autopsies, \$950, and the state will reimburse the county for anything over that amount.

Last week, Kurtzman was working in Missoula, Dominick said. He estimated Missoula County requests a few autopsies every month, anywhere from two to five.

He's looking forward to having a permanent state medical examiner.

"Hopefully, we'll develop just as good a relationship as we had with Dr. Dale and Dr. Kemp. That's what we're really hoping for," Dominick said.

Missoulian:

State medical examiner moves past forensic pathologist controversy, but fallout still possible

http://missoulian.com/news/local/state-medical-examiner-moves-past-forensic-pathologist-controversy-but-fallout/article_555cf1b9-8807-56f5-987c-27acb445f461.html

A forensic pathologist whose work on infant autopsies came under fire earlier this year has had a wide footprint in Montana.

Dr. Thomas Bennett of Billings was thrust into the limelight because of his flawed autopsies on children.

However, his work in Montana extends far beyond those autopsies and autopsy reviews he conducted at the behest of county coroners.

A newly restructured State Medical Examiner's Office in Missoula will no longer require the services of contracted pathologists such as Bennett. The Montana Attorney General's Office made the change after the resignation in April of the longtime, Missoula-based state medical examiner – and the subsequent departure in July of his deputy.

Both resignations were linked to Bennett.

Last week, the new state medical examiner was continuing to implement changes to revamp the office.

Bennett's future in Montana isn't clear. The doctor closed out his contract work for county coroners with a marred record, and with his expert testimony on the witness stand called into question.

A criminal law professor at the University of Montana said it's possible old cases may be compromised as a result, but the state generally has relaxed rules for the admission of expert testimony — and allows testimony many consider "junk science."

Meanwhile, coroners in eastern Montana have sought after Bennett's pathology services. Greg Kirkwood, president of the Montana Coroners Association, said coroners valued Bennett's efficient work, and he will recommend the doctor's private services to families.

Kirkwood said Bennett delivered results much faster than did the State Medical Examiner's Office in Missoula.

An independent review of six of Bennett's infant autopsies requested by the Montana Attorney General's Office in April cited errors in each case, but Kirkwood said experts are often paid to seek particular conclusions.

"He's always been very professional. He always, in my opinion, did quality work," said Kirkwood, president of the coroners association.

Bennett did not respond to requests for an interview. Earlier, however, he said the Attorney General's Office did not provide the reviewer with complete information on the autopsies in question.

Records show the Billings pathologist testified on behalf of both prosecutors and defendants in the state, and in civil and criminal trials.

Since 2006, the Office of the State Public Defender paid Bennett and his practice in Billings nearly \$160,000 for work across Montana. Chief public defender Bill Hooks earlier said he believed Bennett had provided the bulk of the expert testimony for his office over the years.

"There aren't a lot of forensic experts available in Montana," Hooks said.

From roughly 2007 through 2012, the doctor offered forensic testimony in Montana court cases more than 100 times, including nine federal disputes, according to a list of his appearances. The list was provided to the Missoulian by a lawyer who requested it of Bennett during a deposition.

In March, former state medical examiner Gary Dale signed an affidavit that said he believed Bennett had "testified falsely under oath."

UM professor Jeff Renz, who has called on the Attorney General's Office to widen its review of Bennett's autopsies beyond those on infants, said if the lie is material to the outcome, the prosecutor must disclose it to the defense in future cases.

However, he also said just because someone lies in one case doesn't mean they lied in an earlier case. And he said the subject at hand must be material to a case in order for it to be reopened.

"If you take away Bennett's testimony and can't say there's proof beyond a reasonable doubt, that is a scenario for reopening a past conviction," Renz said.

That scenario also may be rare.

Hooks declined to address whether he believed any of the public defender's cases might be compromised because of Bennett's testimony.

Even if outlandish, testimony that professionals offer as experts in court is admissible in Montana and other states. Renz said Montana lets juries sort out differing theories, and in doing so, it lets parties pay the price.

"When you keep the bar so low, you get trials, civil trials that are simply battles of experts. And it's expensive," Renz said.

Federal standards are higher and, according to Renz, set more appropriately.

In a recent case in Georgia, Bennett testified in a deposition that a toddler killed in a fiery car crash died of a rare injury – diffuse axonal injury – before the flames reached his body, according to court documents in *Walden v. Chrysler*.

Witnesses, though, including a woman who tried to rescue the boy from a car window, saw the child waving his arms, and heard him screaming and crying.

The defense never put Bennett on the stand because he was not a credible witness, said lawyer Jim Butler, who represents the Walden family.

Butler wrote the following in a court document: "Bennett regularly testifies on behalf of automobile manufacturers that victims of fuel-fed fires were killed not by the fires but by 'DAI' before the fires reached them."

The lawyer grew disgusted with the antics and has grilled Bennett in depositions to reveal his background.

In *Walden*, the jury awarded the family \$120 million for the full value of life and \$30 million for pain and suffering, Butler said. The trial judge reduced the verdicts to \$30 million for the value of life and \$10 million for pain and suffering.

The case is being appealed.

Yellowstone County Attorney Scott Twito said he doesn't anticipate old cases in Montana being reopened due to one individual's work. In Billings, he said, it's common practice to get a second opinion in cases, and law enforcement officers don't rely on one pathologist's opinion but on multiple professionals.

"And I've probably done as many homicides as anybody in the state," Twito said in an earlier interview.

The vast majority of autopsies Bennett did in Yellowstone County were on adults, he said, and he believes the pathologist did good work and generated reports quickly.

At the same time, Twito said he's pleased Attorney General Tim Fox has reorganized the State Medical Examiner's Office with a deputy examiner who will work in Billings, a hub for the region. He described the change as "a long time coming."

"Oftentimes, what gets lost in all of this is our state is gigantic as far as geography. But we are also over a million people now, and that's a lot of autopsies and suspicious deaths occurring," Twito said.

The National Association of Medical Examiners has cited a "significant shortage" of certified forensic pathologists across the country.

With a population of roughly 1 million, Montana should have four full-time, board-certified forensic pathologists "to optimize opportunities for public health and public safety," said NAME president Marcus Nashelsky.

"NAME recommends an individual forensic pathologist's annual autopsy number not exceed 250, with 325 as an upper limit of acceptable," Nashelsky said in an email. "In my opinion, 250 is the right number for best practice.

"At some point, one person performing too many autopsies will degrade the excellence of each examination."

Dr. Jaime Oeberst, Montana's new head medical examiner, said she anticipates the caseload at the office to be well within accreditation standards, the ratio recommended by NAME, once all staff are hired.

Ultimately, the office will be comprised of three pathologists and two assistants, she said. Of those, one pathologist and one assistant will work in Billings.

One pathologist will begin work in Billings in December, and another candidate has been offered the job as the second pathologist in Missoula. She anticipates the office will be fully staffed by January.

"I think that's the first and biggest step to getting the system started," Oeberst said.

Drs. Gary Dale and Walter Kemp, the forensic pathologists and former state examiners whose concerns catalyzed the change in the State Medical Examiner's Office, have stayed mostly mum since their departures. Their letters of resignation and other correspondence revealed the issues they raised.

Time will tell if more fallout is in the offing because of the work of one pathologist. In a city outside Billings, one family believes the 2012 death of their 41-year-old loved one may not be suicide, and they are pursuing a private investigation (see related story).

In the autopsy report, Bennett described the man's head wound as consistent with being self-inflicted, and he is among numerous county and state law enforcement officials who reviewed the case.

The Montana Attorney General's Office has not directly addressed whether it will widen its review of Bennett's work to include adult cases.

"The Attorney General's Office would review individual medical cases whenever it's deemed necessary," Anastasia Burton, deputy communications director, said in an earlier statement. "We will continue to take all steps we believe to be appropriate and necessary, and work to implement our plan for accountability, quality, and improved stakeholder community in state autopsy services."

According to a deposition, Bennett also does work for coroners in Idaho, Wyoming, North Dakota and South Dakota.

In an earlier letter, he defended his work, and said conclusions among experts may differ based on evolving medical theories. He also said he had performed numerous autopsies for the Shodair Children's Hospital, St. Vincent HealthCare, and Billings Clinic.

Last week, a spokeswoman from Shodair said Bennett did not do work for the Helena hospital. A representative from the Billings Clinic said the clinic used his "non-forensic autopsy" services on a limited basis.

St. Vincent did not respond to requests for comment.

Missoulian:

Restoring order in wake of shakeup: Montana's new medical examiner charts ambitious course

http://missoulian.com/helena/news/local/restoring-order-in-wake-of-shakeup-montana-s-new-medical/article_e26886e6-dbf4-5bf8-8436-090a97825460.html

MISSOULA -- Dr. Jaime Oeberst is determined to carry out Attorney General Tim Fox's vision of a reformed and restructured state medical examiner's office after years of backlogs and ethical controversies.

"She's managed a medical examiner's office that, frankly, is larger than anything we have in Montana," Fox said of Oeberst, who led death investigations at Kansas' largest county forensics lab and also served as district coroner. "We needed to have someone that promotes accountability and meets the expectations of our customers, the coroners and sheriffs. We'll be working toward that goal and looking forward."

Oeberst took over Montana's top forensic pathology job about a month ago. In addition to rebuilding an expanded state medical examiner's office along an outline created by Fox and funded by the Legislature, she arrived with her own goals: to standardize investigations by coroners statewide, to write operating procedures and quality control protocols for autopsies, and to earn national accreditation.

"I plan on starting from scratch," she said. "But first it's important to get familiar with the system and the people I'm working with."

County coroners, elected officials who usually have limited medical training, conduct death investigations and decide which cases to forward to the crime lab for further study, usually involving people who died violent or unexplained deaths.

Dr. Gary Dale, who led the medical examiner's office for more than 20 years, resigned in April. His longtime deputy, Dr. Walter Kemp, took over until he also resigned in June, forcing the state's coroners to temporarily send bodies to Washington or South Dakota for autopsies.

Both Dale and Kemp cited ethical concerns as their reason for leaving and did so at the peak of an internal debate with the former attorney general, Gov. Steve Bullock, and current Attorney General Tim Fox over autopsies performed by Dr. Thomas Bennett, a state-appointed associate medical examiner with a history of problematic child death cases in Iowa. Eastern Montana coroners, often frustrated with long transport times to Missoula, turned to Bennett's private practice in Billings, where he performed autopsies for a fee and often provided results faster than the clogged state crime lab.

Under the new system championed by Fox, medical examiners will be state employees who report directly to Oeberst, blocking contractors like Bennett from doing official autopsies for coroners.

Oeberst, who is board-certified, will oversee the work of two deputy medical examiners -- one at the state crime lab in Missoula who must still be hired and one at a new satellite office in Billings who will start Dec. 1 -- as well as two assistants. The structure is similar to Oeberst's three-pathologist team at the Sedgwick County Regional Forensic Science Center in Kansas, where they performed about 900

autopsies a year for the state's largest city and many surrounding rural counties. Montana coroners request about 500 autopsies a year.

Oeberst admits forensic pathology wasn't her first career choice. After graduating from the University of California-Berkeley in her home state, she aspired to become a surgeon, notoriously one of the most difficult medical specialties to master.

"After my first year of clinical I realized that what I really found rewarding about medicine was interacting with other professionals as opposed to patient contact," she said.

While still studying at Wake Forest School of Medicine, Oeberst worked cases for a small North Carolina coroner's office where she did it all: processed crime scenes, examined bodies and testified in court. After a one-year fellowship in Dallas, she became a Sedgwick County deputy medical examiner in 2000, and later led death investigations at the center.

Dr. Timothy Rohrig, the director of the Sedgwick County Regional Forensic Science Center, expects Oeberst to pursue improvements to Montana's system with tact and skill.

"She did it here," Rohrig said, noting he became director of the Wichita-based lab around the same time as Chief Medical Examiner Dr. Mary Dudley and her new deputy, Oeberst, arrived. "There's been a lot of changes in forensic sciences since the late '90s. She came here right when things were starting to move fast and she helped us move forward."

Forensic sciences evolved rapidly as more governments shifted lab work into professional, scientific settings and out of police departments, where questions had been raised about the quality and independence of results. Later, like many labs nationwide, decreased funding, increased case loads and turnover led to backlogs, which local officials said Oeberst managed with thoughtful prioritization until new staff could be hired.

As deputy and chief medical examiner, Rohrig said Oeberst also strengthened frayed relationships with funeral homes, coroners and law enforcement officials from dozens of counties who sometimes had strong personalities.

"There was a little bit of coaching. Maybe every now and then, a shove," he said. "She collaborated with them and got them to buy in on why we needed to make changes rather than do things the way they'd been doing them for 20 years."

Oeberst said her priorities center on working with coroners to develop guidelines and standard forms for death investigations.

"You can't do autopsies in a vacuum," she said. "There are a lot of places that have been very good at sending typed materials with pictures and all that kind of stuff, but then others I don't get anything. What I would like is if you looked at the paperwork from any given case you can't tell where it came from other than by the coroner's name signed at the bottom."

President of the Montana Coroners Association, Greg Kirkwood, said he is eager to work with Oeberst and expects his colleagues to carefully consider how to implement her suggestions while maintaining their independence. Although encouraged by the opening of a satellite office in Billings, he worries whether having pathologists work as government employees will limit their hours and if state leaders will commit the funding needed to keep the expanded office running smoothly.

Nola Foulston, who served as Sedgwick County District Attorney for 24 years, said she enjoyed working with Oeberst, in part, because of her commitment to “a 24/7 job.” It was common, she said, to reach a crime scene at 3 a.m. to find Oeberst already there.

“She had a very keen sense of what her responsibilities were,” Foulston said. “Jaime is not going to cut corners and she isn’t going to tell you what you want to hear. She’s going to tell you what you need to know.”

Although murders and other violent crimes are the most high-profile component of a medical examiner’s job, Oeberst said autopsies also are critical to identifying outbreaks of infectious diseases, such as the flu, and identifying hereditary conditions that might help a relative receive appropriate treatments sooner.

“That’s probably, for me, one of the more rewarding aspects,” she said. “To be able to cross that bridge and help the living as well as taking care of the deceased people.”