

SENATE BILL NO. 331

INTRODUCED BY FRANKLIN, DOHERTY, YELLOWTAIL, STRIZICH, REAM,
ELLIOTT, WYATT, WEEDING, GALVIN, WILLIAMS, BIANCHI,
MANNING, T. BECK

IN THE SENATE

FEBRUARY 8, 1991 INTRODUCED AND REFERRED TO COMMITTEE
 ON JUDICIARY.

 FIRST READING.

FEBRUARY 23, 1991 COMMITTEE RECOMMEND BILL
 DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 25, 1991 PRINTING REPORT.

 SECOND READING, DO PASS.

FEBRUARY 26, 1991 ENGROSSING REPORT.

 THIRD READING, PASSED.
 AYES, 41; NOES, 9.

 TRANSMITTED TO HOUSE.

IN THE HOUSE

MARCH 4, 1991 INTRODUCED AND REFERRED TO COMMITTEE
 ON JUDICIARY.

 FIRST READING.

MARCH 26, 1991 COMMITTEE RECOMMEND BILL BE
 CONCURRED IN AS AMENDED. REPORT
 ADOPTED.

APRIL 6, 1991 SECOND READING, CONCURRED IN.

 ON MOTION, RULES SUSPENDED. BILL
 PLACED ON THIRD READING THIS DAY.

 THIRD READING, CONCURRED IN.
 AYES, 96; NOES, 1.

 RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 17, 1991 RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 18, 1991

THIRD READING, AMENDMENTS
CONCURRED IN.

APRIL 19, 1991

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *Senate* BILL NO. *331*
 2 INTRODUCED BY *Trenton Shultz*
 3 *Yellowtail* *Beau* *Chatt* *Wright*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE
 5 PROVISIONS RELATED TO THE DUTIES OF COUNTY CORONERS AND
 6 JURORS IN CORONER'S INQUESTS; TO PROVIDE FOR THE DUTIES OF A
 7 CORONER IN INQUIRIES AND INQUESTS, INCLUDING THE POWER TO
 8 SEARCH AND SEIZE AND TO SUBPOENA; TO REQUIRE REPORTING OF
 9 ALL FETAL DEATHS; AMENDING SECTIONS 3-15-203, 7-4-2911,
 10 7-4-2915, 44-3-404, 46-4-101, 46-4-103, 46-4-201, 46-4-202,
 11 46-4-205, AND 46-4-206, MCA; AND REPEALING SECTIONS
 12 7-4-2912, 7-4-2916, 44-3-403, 46-4-102, AND 46-4-204, MCA."

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

14 NEW SECTION. Section 1. Coroner's authority to seize
 15 and preserve evidence. (1) A county coroner may enter any
 16 room, dwelling, building, or other place in which he has
 17 probable cause to believe that a dead human body or evidence
 18 of the circumstances of a death that requires investigation
 19 may be found. If refused entry, a coroner who is
 20 investigating a death pursuant to his authority may apply to
 21 a judge authorized to issue search warrants for a warrant to
 22 enter the premises and to search for and seize evidence of
 23 the cause of a death, including a dead human body.

24 (2) The application for a search warrant must:

1 (a) state facts sufficient to show probable cause that
2 a human body or evidence of the circumstances of death is
3 present in the place to be searched;

4 (b) particularly describe the place to be searched; and

5 (c) particularly describe the things to be seized.

6 (3) To preserve evidence of the cause of death, a
7 coroner may:

8 (a) place under his custody and control any dwelling,
9 building, item, vehicle, aircraft, railroad engine or train,
10 vessel, enclosure, or open area for a period of not more
11 than 10 days; and

12 (b) forbid entrance by an unauthorized person into any
13 area specified in subsection (3)(a).

14 (4) A person may not enter an area that is restricted
15 pursuant to subsection (3) without the permission of the
16 coroner or the law enforcement agency having jurisdiction if
17 there is also a criminal investigation in progress.

18 NEW SECTION. Section 2. Powers of coroner. In the
19 performance of his duties under this chapter, the coroner
20 may:

21 (1) pronounce the fact of death of any human being
22 under circumstances in which he has a duty to inquire
23 pursuant to [section 4];

24 (2) certify and amend death certificates as considered
25 necessary in circumstances under which he has a duty to



1 inquire pursuant to [section 4];
 2 (3) issue subpoenas pursuant to [section 7];
 3 (4) order autopsies as provided in 46-4-103;
 4 (5) conduct examinations and tests as considered
 5 necessary to determine the cause, manner, and circumstances
 6 of death and identification of a dead human body as provided
 7 in 46-4-101 and [section 8];
 8 (6) order a dead human body to be disinterred or
 9 removed from its place of disposition, with or without the
 10 consent of the next of kin, under circumstances in which he
 11 has a duty to inquire pursuant to [section 4];
 12 (7) conduct inquests pursuant to 46-4-201; and
 13 (8) order cessation of any activity by any person or
 14 agency that may obstruct or hinder the orderly conduct of an
 15 inquiry to the collection of information or evidence needed
 16 for an inquiry.

17 NEW SECTION. Section 3. Inquiry defined. For the
 18 purposes of [sections 1 through 8], an inquiry by a county
 19 coroner is an informal examination of a death and its
 20 attendant circumstances to determine whether:
 21 (1) an inquest, which is a formal inquiry, should be
 22 held;
 23 (2) the reporting physician should certify the death;
 24 (3) any further action or examination should be made
 25 concerning a death; or

1 (4) there is anything unusual or remarkable about a
 2 death that warrants further action by the county attorney or
 3 the law enforcement agency that has jurisdiction.

4 NEW SECTION. Section 4. Human deaths requiring inquiry
 5 by coroner. The coroner shall inquire into and determine the
 6 cause and manner of death and all circumstances surrounding
 7 a human death:
 8 (1) that was caused or is suspected to have been
 9 caused:
 10 (a) in any degree by an injury, either recent or remote
 11 in origin; or
 12 (b) by the deceased or any other person that was the
 13 result of an act or omission, including but not limited to:
 14 (i) a criminal or suspected criminal act;
 15 (ii) a medically suspicious death, unusual death, or
 16 death of unknown circumstances, including any fetal death;
 17 or
 18 (iii) an accidental death;
 19 (c) by an agent, disease, or medical condition that
 20 poses a threat to public health;
 21 (2) whenever the death occurred:
 22 (a) while the deceased was incarcerated in a prison or
 23 jail or confined to a correctional or detention facility
 24 owned and operated by the state or a political subdivision
 25 of the state;

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

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

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

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

11 (3) if the dead human body is to be cremated or lacks
12 proper medical certification or burial or transmit permits;
13 or

14 (4) that occurred under suspicious circumstances.

15 NEW SECTION. Section 5. Inquiry report. The coroner
16 shall make a full report of the facts discovered in all
17 human deaths requiring an inquiry under the provisions of
18 [section 4]. The report must be made in triplicate on a form
19 provided by the division of forensic science of the
20 department of justice. The coroner and the medical examiner
21 shall each retain one copy and shall deliver the other copy
22 to the county attorney. If the coroner orders an autopsy
23 during the course of an inquiry, he shall also provide the
24 medical examiner with a copy of the autopsy report. The
25 forms must be completed and distributed as provided in this

1 section as promptly as practicable.

2 NEW SECTION. Section 6. Reporting fetal deaths. A
3 licensed nurse, a midwife, a physician's
4 assistant-certified, an emergency medical technician, a
5 birthing assistant, or any other person who assists in the
6 delivery that occurs outside a licensed medical facility of
7 a fetus that is believed or declared to be dead shall report
8 the death by the earliest means available to the coroner of
9 the county in which the death occurred.

10 NEW SECTION. Section 7. Subpoenaing of witnesses and
11 documents. (1) In an inquiry or inquest, a coroner may:

12 (a) issue subpoenas for witnesses as provided in
13 46-4-203; and

14 (b) issue subpoenas commanding the production of books,
15 records, papers, documents, and other objects as may be
16 necessary and proper to the inquiry or inquest.

17 (2) Any material subpoenaed pursuant to subsection
18 (1)(b) is confidential criminal justice information, as
19 defined in 44-5-103, and public access to the information
20 may be obtained only in accordance with 44-5-303. However,
21 any material produced at an inquest is public information.

22 (3) Disobedience of a subpoena issued under 46-4-203 or
23 this section is punishable in the same manner as
24 disobedience of a subpoena issued by a justice of the peace
25 as provided in Title 3, chapter 10, part 4.

1 NEW SECTION. Section 8. Examinations and tests. The
 2 coroner may direct a properly qualified expert to conduct
 3 any test or examination that he reasonably believes is
 4 necessary to determine the cause, manner, and circumstances
 5 of a death or to identify a dead human body. The coroner may
 6 also require examination by the next of kin or any other
 7 person when necessary to identify a dead human body.

8 Section 9. Section 3-15-203, MCA, is amended to read:

9 "3-15-203. Fees in courts not of record and coroner's
 10 inquests. (1) A jury panel member, in both civil and
 11 actions, criminal actions, shall--receive and coroner
 12 inquests is entitled to a fee of \$12 per day for attendance
 13 before a court not of record and a mileage allowance, as
 14 provided in 2-18-503, for traveling each way between his
 15 residence and the court. A jury panel member selected for a
 16 case shall--receive is entitled to an additional \$13 per day
 17 while serving.

18 (2) In civil actions, the jurors' fees must be paid by
 19 the party demanding the jury and taxed as costs against the
 20 losing party.

21 (3) ~~Jurors-in-coroner's-inquests-shall-receive-a-fee-of~~
 22 ~~\$7-50-per-day-~~

23 (4) A juror who is excused from attendance upon his own
 24 motion on the first day of his appearance in obedience to
 25 notice or who has been summoned as a special juror and not

1 sworn in the trial of the case shall forfeit per diem and
 2 mileage."

3 Section 10. Section 7-4-2911, MCA, is amended to read:

4 "7-4-2911. Duties of county coroner. The county coroner
 5 shall:

6 (1) ~~The coroner must~~ hold inquests as provided in Title
 7 46, chapter 4, parts 1 and 2;

8 (2) inquire into the cause, manner, and circumstances
 9 of all human deaths as required in [section 4] and establish
 10 the identity of the deceased person;

11 (3) provide decent disposal of an unclaimed dead human
 12 body and unclaimed parts of bodies believed to be human;

13 (4) maintain records of inquiries as required by good
 14 practice and by law;

15 (5) as soon as practicable upon identifying a dead
 16 human body, provide for notifying the next of kin of the
 17 deceased of the fact of death in any death into which he is
 18 making an inquiry;

19 (6) preserve evidence involving any human death,
 20 pursuant to his authority, including placing under his
 21 control, to the extent necessary, any personal and real
 22 property that may be related to or involved in the death;

23 (7) witness and certify deaths that are the result of a
 24 judicial order;

25 (8) inquire into any human death when no physician or

1 surgeon licensed in the state will sign a death certificate;

2 (9) notify the county attorney and the law enforcement
3 agency having jurisdiction of all deaths requiring inquiry
4 pursuant to [section 3]; and

5 (2)(10) In in the cases specified in 25-3-205, the
6 coroner must discharge the duties of sheriff. If acting as
7 sheriff, the coroner is allowed the same salary as sheriff
8 or the same fees as constable for like services."

9 Section 11. Section 7-4-2915, MCA, is amended to read:

10 "7-4-2915. Dead Custody and disposition of bodies to be
11 held pending investigation. (1) In the course of an inquiry
12 authorized under the provisions of [section 4], the coroner
13 may take custody of a dead human body and cause it to be
14 removed from the site of death to a facility designated by
15 the coroner.

16 (2) A dead human body in the custody of a county
17 coroner shall must be held until such-time-as the coroner,
18 after consultation with appropriate law enforcement
19 officials and the county attorney, establishes that it is
20 not necessary to hold the body to determine the reasonable
21 and true cause of death or that the body is no longer
22 necessary to assist any local investigations.

23 (3) If the identity of a dead human body is unknown or
24 if those entitled to custody of a body do not claim it, the
25 coroner shall take custody of the body even if the

1 circumstances of the death do not otherwise require an
2 inquiry by the coroner.

3 (4) A dead human body in the custody of the coroner may
4 be released by him to the custody of a person who is
5 entitled to custody or to a funeral home.

6 (5) The coroner must release to a funeral home a dead
7 human body that is not designated to be released to a
8 specific funeral home by the deceased prior to death, by the
9 deceased's next of kin, or by a friend of the deceased who
10 will take financial responsibility for the disposition of
11 the body. The coroner shall rotate the release of bodies to
12 funeral homes in a manner that is fair and equitable. The
13 coroner may not release a body to a funeral home if the
14 funeral home has requested in writing by December 1 of the
15 preceding year that it does not wish to participate in the
16 release of bodies under this section."

17 Section 12. Section 44-3-404, MCA, is amended to read:

18 "44-3-404. Criminal penalty. A person is guilty of a
19 misdemeanor and may be fined not more than \$500 or
20 imprisoned in the county jail for not more than 1 year, or
21 both, if he:

22 (1) purposely fails to report or conceals a death,
23 including a fetal death;

24 (2) refuses to make available prior medical or other
25 information in a death investigation; or

1 (3) without an order from the coroner or state medical
2 examiner, purposely touches, removes, or disturbs a corpse,
3 its clothing, or anything near the corpse under
4 ~~investigation-with-the--intent--to--alter--the--evidence--or~~
5 ~~circumstances-surrounding-the-death; or~~

6 (4) knowingly or purposely disobeys a cessation order
7 of a coroner."

8 Section 13. Section 46-4-101, MCA, is amended to read:

9 "46-4-101. Jurisdiction -- death and cause of death in
10 different counties. (1) The coroner of the county where a
11 dead human body is found has jurisdiction if:

- 12 (a) the place of death is unknown;
- 13 (b) the dead human body was shipped into the county
14 without proper permits; or
- 15 (c) the death occurred while the deceased was in
16 transit in the state.

17 (2) When death occurs as a direct result of acts or
18 events which that occurred in another county, the coroner of
19 either the county shall have where the death occurred or
20 the dead human body was found has jurisdiction. If a
21 ~~conflict-of--jurisdiction--should--arise--or--should--said~~
22 ~~coroners-fail~~ coroner that has jurisdiction of a death fails
23 to act, the coroner-of-the-county-where-the-death-occurred
24 ~~shall--have--the--primary~~ state medical examiner has
25 jurisdiction.

1 (3) A county coroner has primary jurisdiction in the
2 county in which he is appointed or elected to serve;
3 however, a qualified coroner may serve in another county
4 upon the request of the coroner or county attorney of that
5 county. A coroner may travel to another county to inquire
6 into a death pursuant to [section 4]."

7 Section 14. Section 46-4-103, MCA, is amended to read:

8 "46-4-103. Autopsy -- when conducted, record, scope.

9 (1) If in the opinion of the coroner an autopsy is
10 advisable, he shall order one performed on any dead human
11 body for which the death requires an inquiry and shall
12 retain a medical examiner or associate medical examiner to
13 perform it. Performance of autopsies is within the
14 discretion of the coroner except that the county attorney or
15 attorney general may require one. Consent of the family or
16 next of kin of the deceased is not required for an autopsy
17 that is ordered by the coroner, county attorney, or attorney
18 general. In ordering an autopsy the coroner, county
19 attorney, or attorney general shall order the body to be
20 exhumed if it has been interred.

21 ~~{2}-A-full-record-of-the-facts-found-shall-be-made-on-a~~
22 ~~form--provided--by--the--division--of--forensic--science--in~~
23 ~~triplicate--the--coroner-and-medical-examiner-retaining-one~~
24 ~~copy-and-delivering-the-other-to-the-county-attorney.~~

25 ~~{3}~~(2) The right to conduct an autopsy shall include

1 includes the right to retain such specimens as the medical
2 examiner performing the autopsy ~~deems~~ considers necessary.

3 ~~(4)~~(3) The state of Montana shall pay any expenses
4 incurred whenever an autopsy or investigation is initiated
5 at the request of the state medical examiner or attorney
6 general. The county shall pay any expenses incurred whenever
7 an autopsy ~~or~~, investigation, or inquiry is initiated at the
8 request of the county attorney or county coroner.

9 (4) If a county does not provide a morgue or other
10 facility for post-mortem examination, the county coroner may
11 order the use of a funeral home or an appropriate hospital
12 facility for the examination."

13 Section 15. Section 46-4-201, MCA, is amended to read:

14 "46-4-201. Inquest -- definition, when held, how
15 conducted. (1) An inquest is a formal inquiry into the
16 causes of and circumstances surrounding the death of any
17 person and is conducted by the coroner before a coroner's
18 jury.

19 (2) The Except when criminal charges have been filed or
20 are reasonably certain to be filed, the coroner shall may
21 hold an inquest only--if--requested if he considers it
22 necessary. A coroner shall hold an inquest, notwithstanding
23 pending criminal charges, if ordered to do so by the county
24 attorney of the county in which death occurred, by the
25 attorney general, or by the county attorney of the county in

1 which the acts or events causing death occurred. However,
2 when if the death of any person occurs in a jail or penal
3 institution, while a person is being taken into custody or
4 is in the custody of a peace officer, or from the use of a
5 firearm by a peace officer, except where criminal charges
6 have been or will be filed, the county attorney shall direct
7 order the coroner to hold an inquest.

8 (3) If an inquest is held, the proceedings ~~shall be~~ are
9 public. The coroner shall conduct the inquest with the aid
10 and assistance of the county attorney. Such The coroner
11 shall, and the county attorney may, examine each witness,
12 after which the witness may be examined by the jurors. The
13 inquest is to be held in accordance with this part.

14 (4) (a) A coroner who also serves as a peace officer
15 may not conduct an inquest into the death of a person who:

16 (i) died in a jail or penal institution;

17 (ii) died while in the custody of a peace officer; or

18 (iii) was killed by a peace officer.

19 (b) If a coroner is disqualified under subsection
20 (4)(a), the county attorney shall request a qualified
21 coroner of a neighboring county to conduct the inquest. The
22 expenses of a coroner fulfilling the request, including
23 salary, must be paid by the requesting county."

24 Section 16. Section 46-4-202, MCA, is amended to read:

25 "46-4-202. Summoning and swearing in of jurors --

1 instructions. (1) For holding such an inquest, the coroner
2 must shall summon a jury of at least 6 but not more than
3 nine 12 persons qualified by law to serve as jurors and
4 selected from a list that is furnished to the coroner
5 annually by the county clerk of court.

6 (2) ~~When six or more of the jurors attend, they~~ The
7 jury selected by the coroner must be sworn by the coroner to
8 inquire who the person was and when, where, and by what
9 means he came to his death and into the circumstances
10 attending his death and to render a true verdict thereon, on
11 the death according to the evidence offered to them or
12 arising from the inspection of the body.

13 (3) The coroner must shall instruct the jurors as to
14 their duties."

15 Section 17. Section 46-4-205, MCA, is amended to read:
16 "46-4-205. Verdict of jury -- form. After inspecting
17 the body and, if the coroner considers it necessary, the
18 death scene and hearing the testimony, the jury must shall
19 render its verdict, which ~~shall~~ must be by majority vote,
20 and certify the same in writing signed by ~~them and setting~~
21 each juror. The verdict must set forth:

- 22 (1) who the deceased person is;
23 (2) when, and where, ~~and by what means~~ he came to his
24 death;
25 (3) if he came to his death by criminal means; and

1 (4) if he was killed or his death was occasioned by the
2 act of another by criminal means, who committed the act, if
3 known. If the jury finds that the death was not by criminal
4 means, that fact must be stated on the verdict form."

5 Section 18. Section 46-4-206, MCA, is amended to read:
6 "46-4-206. Recording and filing of testimony and
7 proceedings. Testimony before a coroner's jury must be given
8 under oath. The testimony of the witnesses examined and
9 proceedings before the coroner's jury must be reduced to
10 writing recorded and transcribed by a competent stenographer
11 appointed by the coroner ~~or under his direction and~~
12 ~~forthwith filed by him with the inquisition. The record of~~
13 the inquest and the verdict of the jury must be filed by the
14 coroner in the office of the clerk of the district court of
15 the county in which the inquest was held. The coroner must
16 ~~order the inquest proceedings recorded and transcribed by a~~
17 ~~qualified stenographer. Such recording and transcribing~~
18 ~~expenses shall~~ The expenses of recording and transcribing
19 must be paid by the county upon claims duly rendered and
20 certified to by the coroner in the same manner as other
21 claims against the county are paid."

22 NEW SECTION. Section 19. Codification instruction.
23 [Sections 1 through 8] are intended to be codified as an
24 integral part of Title 46, chapter 4, and the provisions of
25 Title 46, chapter 4, apply to [sections 1 through 8].

LC 1523/01

1 NEW SECTION. Section 20. Repealer. Sections 7-4-2912,
2 7-4-2916, 44-3-403, 46-4-102, and 46-4-204, MCA, are
3 repealed.

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

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INTRODUCED BY FRANKLIN, DOHERTY, YELLOWTAIL, STRIZICH, REAM,
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ALL FETAL DEATHS; AMENDING SECTIONS 3-15-203, 7-4-2911,
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of the circumstances of a death that requires investigation
may be found. If refused entry, a coroner who is
investigating a death pursuant to his authority may apply to
a judge authorized to issue search warrants for a warrant to
enter the premises and to search for and seize evidence of

the cause of a death, including a dead human body.

(2) The application for a search warrant must:

(a) state facts sufficient to show probable cause that
a human body or evidence of the circumstances of death is
present in the place to be searched;

(b) particularly describe the place to be searched; and

(c) particularly describe the things to be seized.

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coroner may:

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building, item, vehicle, aircraft, railroad engine or train,
vessel, enclosure, or open area for a period of not more
than 10 days; and

(b) forbid entrance by an unauthorized person into any
area specified in subsection (3)(a).

(4) A person may not enter an area that is restricted
pursuant to subsection (3) without the permission of the
coroner or the law enforcement agency having jurisdiction if
there is also a criminal investigation in progress.

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performance of his duties under this chapter, the coroner
may:

(1) pronounce the fact of death of any human being
under circumstances in which he has a duty to inquire
pursuant to [section 4];

1 (2) certify and amend death certificates as considered
2 necessary in circumstances under which he has a duty to
3 inquire pursuant to [section 4];

4 (3) issue subpoenas pursuant to [section 7];

5 (4) order autopsies as provided in 46-4-103;

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7 necessary to determine the cause, manner, and circumstances
8 of death and identification of a dead human body as provided
9 in 46-4-101 and [section 8];

10 (6) order a dead human body to be disinterred or
11 removed from its place of disposition, with or without the
12 consent of the next of kin, under circumstances in which he
13 has a duty to inquire pursuant to [section 4];

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

15 (8) order cessation of any activity by any person or
16 agency, OTHER THAN THE LAW ENFORCEMENT AGENCY HAVING
17 JURISDICTION, that may obstruct or hinder the orderly
18 conduct of an inquiry to the collection of information or
19 evidence needed for an inquiry.

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7 jurisdiction.

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13 caused:

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

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

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20 death of unknown circumstances, including any fetal death;
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22 (iii) an accidental death;

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

25 (2) whenever the death occurred:

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

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

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

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

12 (e) in a manner that was unattended or unwitnessed and
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14 the 30-day period prior to death;

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18 (4) that occurred under suspicious circumstances.

19 NEW SECTION. Section 5. Inquiry report. The coroner
20 shall make a full report of the facts discovered in all
21 human deaths requiring an inquiry under the provisions of
22 [section 4]. The report must be made in triplicate on a form
23 provided by the division of forensic science of the
24 department of justice. The coroner and the medical examiner
25 shall each retain one copy and shall deliver the other copy

1 to the county attorney. If the coroner orders an autopsy
2 during the course of an inquiry, he shall also provide the
3 medical examiner with a copy of the autopsy report. The
4 forms must be completed and distributed as provided in this
5 section as promptly as practicable.

6 NEW SECTION. Section 6. Reporting fetal deaths. A
7 licensed nurse, a midwife, a physician's
8 assistant-certified, an emergency medical technician, a
9 birthing assistant, or any other person who assists in the
10 delivery that occurs outside a licensed medical facility of
11 a fetus that is believed or declared to be dead shall report
12 the death by the earliest means available to the coroner of
13 the county in which the death occurred.

14 NEW SECTION. Section 7. Subpoenaing of witnesses and
15 documents. (1) In an inquiry or inquest, a coroner may:

16 (a) issue subpoenas for witnesses as provided in
17 46-4-203; and

18 (b) issue subpoenas commanding the production of books,
19 records, papers, documents, and other objects as may be
20 necessary and proper to the inquiry or inquest.

21 (2) Any material subpoenaed pursuant to subsection
22 (1)(b) is confidential criminal justice information, as
23 defined in 44-5-103, and public access to the information
24 may be obtained only in accordance with 44-5-303. However,
25 any material produced at an inquest is public information.

1 (3) Disobedience of a subpoena issued under 46-4-203 or
2 this section is punishable in the same manner as
3 disobedience of a subpoena issued by a justice of the peace
4 as provided in Title 3, chapter 10, part 4.

5 NEW SECTION. Section 8. Examinations and tests. The
6 coroner may direct a properly qualified expert to conduct
7 any test or examination that he reasonably believes is
8 necessary to determine the cause, manner, and circumstances
9 of a death or to identify a dead human body. The coroner may
10 also require examination by the next of kin or any other
11 person when necessary to identify a dead human body.

12 Section 9. Section 3-15-203, MCA, is amended to read:
13 "3-15-203. Fees in courts not of record and coroner's
14 inquests. (1) A jury panel member, in both civil and
15 actions, criminal actions, shall--receive and coroner
16 inquests is entitled to a fee of \$12 per day for attendance
17 before a court not of record and a mileage allowance, as
18 provided in 2-18-503, for traveling each way between his
19 residence and the court. A jury panel member selected for a
20 case shall--receive is entitled to an additional \$13 per day
21 while serving.

22 (2) In civil actions, the jurors' fees must be paid by
23 the party demanding the jury and taxed as costs against the
24 losing party.

25 (3) ~~jurors-in-coroner's-inquests-shall-receive-a-fee-of~~

1 ~~\$7-50-per-day~~

2 (4) A juror who is excused from attendance upon his own
3 motion on the first day of his appearance in obedience to
4 notice or who has been summoned as a special juror and not
5 sworn in the trial of the case shall forfeit per diem and
6 mileage."

7 Section 10. Section 7-4-2911, MCA, is amended to read:

8 "7-4-2911. Duties of county coroner. The county coroner
9 shall:

10 (1) ~~The coroner must~~ hold inquests as provided in Title
11 46, chapter 4, parts 1 and 2;

12 (2) inquire into the cause, manner, and circumstances
13 of all human deaths as required in [section 4] and establish
14 the identity of the deceased person;

15 (3) provide decent disposal of an unclaimed dead human
16 body and unclaimed parts of bodies believed to be human;

17 (4) maintain records of inquiries as required by good
18 practice and by law;

19 (5) as soon as practicable upon identifying a dead
20 human body, provide for notifying the next of kin of the
21 deceased of the fact of death in any death into which he is
22 making an inquiry;

23 (6) IF NO LAW ENFORCEMENT AGENCY HAS JURISDICTION OF
24 THE CASE, preserve evidence involving any human death,
25 pursuant to his authority, including placing under his

1 control, to the extent necessary, any personal and real
 2 property that may be related to or involved in the death;

3 (7) witness and certify deaths that are the result of a
 4 judicial order;

5 (8) inquire into any human death when no physician or
 6 surgeon licensed in the state will sign a death certificate;

7 (9) notify the county attorney and the law enforcement
 8 agency having jurisdiction of all deaths requiring inquiry
 9 pursuant to [section 3]; and

10 ~~(2)(10) in in~~ the cases specified in 25-3-205, the
 11 coroner--must discharge the duties of sheriff. If acting as
 12 sheriff, the coroner is allowed the same salary as sheriff
 13 or the same fees as constable for like services."

14 **Section 11.** Section 7-4-2915, MCA, is amended to read:

15 **"7-4-2915. Dead Custody and disposition of bodies to-be**
 16 **held pending investigation. (1) In the course of an inquiry**
 17 **authorized under the provisions of [section 4], the coroner**
 18 **may take custody of a dead human body and cause it to be**
 19 **removed from the site of death to a facility designated by**
 20 **the coroner.**

21 (2) A dead human body in the custody of a county
 22 coroner shall must be held until such-time-as the coroner,
 23 after consultation with appropriate law enforcement
 24 officials and the county attorney, establishes that it is
 25 not necessary to hold the body to determine the reasonable

1 and true cause of death or that the body is no longer
 2 necessary to assist any local investigations.

3 (3) If the identity of a dead human body is unknown or
 4 if those entitled to custody of a body do not claim it, the
 5 coroner shall take custody of the body even if the
 6 circumstances of the death do not otherwise require an
 7 inquiry by the coroner.

8 (4) A dead human body in the custody of the coroner may
 9 be released by him to the custody of a person who is
 10 entitled to custody or to a funeral home.

11 (5) The coroner must release to a funeral home a dead
 12 human body that is not designated to be released to a
 13 specific funeral home by the deceased prior to death, by the
 14 deceased's next of kin, or by a friend of the deceased who
 15 will take financial responsibility for the disposition of
 16 the body. The coroner shall rotate the release of bodies to
 17 funeral homes in a manner that is fair and equitable. The
 18 coroner may not release a body to a funeral home if the
 19 funeral home has requested in writing by December 1 of the
 20 preceding year that it does not wish to participate in the
 21 release of bodies under this section."

22 **Section 12.** Section 44-3-404, MCA, is amended to read:

23 **"44-3-404. Criminal penalty.** A person is guilty of a
 24 misdemeanor and may be fined not more than \$500 or
 25 imprisoned in the county jail for not more than 1 year, or

1 both, if he:

2 (1) purposely fails to report or conceals a death,
3 including a fetal death;

4 (2) refuses to make available prior medical or other
5 information in a death investigation; or

6 (3) without an order from the coroner or state medical
7 examiner, purposely touches, removes, or disturbs a corpse,
8 its clothing, or anything near the corpse under
9 investigation--with--the--intent--to--alter--the--evidence--or
10 circumstances-surrounding-the-death; or

11 (4) knowingly or purposely disobeys a cessation order
12 of a coroner."

13 **Section 13.** Section 46-4-101, MCA, is amended to read:

14 "46-4-101. Jurisdiction -- death and cause of death in
15 different counties. (1) The coroner of the county where a
16 dead human body is found has jurisdiction if:

17 (a) the place of death is unknown;

18 (b) the dead human body was shipped into the county
19 without proper permits; or

20 (c) the death occurred while the deceased was in
21 transit in the state.

22 (2) When death occurs as a direct result of acts or
23 events which that occurred in another county, the coroner of
24 either the county shall--have where the ACTS OR EVENTS
25 CAUSING death occurred or--the--dead--human--body--was--found has

1 jurisdiction. ~~If a conflict-of-jurisdiction-should-arise-or~~
2 ~~should-said-coroners-fail~~ coroner that has jurisdiction of a
3 death fails to act, the coroner--of--the--county--where--the
4 death-occurred-shall-have-the-primary state medical examiner
5 has jurisdiction.

6 (3) A county coroner has primary jurisdiction in the
7 county in which he is appointed or elected to serve;
8 however, a qualified coroner may serve in another county
9 upon the request of the coroner or county attorney of that
10 county. A coroner may travel to another county to inquire
11 into a death pursuant to [section 4]."

12 **Section 14.** Section 46-4-103, MCA, is amended to read:

13 "46-4-103. Autopsy -- when conducted, record, scope.

14 (1) If in the opinion of the coroner an autopsy is
15 advisable, he shall order one performed on any dead human
16 body for which the death requires an inquiry and shall
17 retain a medical examiner or associate medical examiner to
18 perform it. Performance of autopsies is within the
19 discretion of the coroner except that the county attorney or
20 attorney general may require one. Consent of the family or
21 next of kin of the deceased is not required for an autopsy
22 that is ordered by the coroner, county attorney, or attorney
23 general. In ordering an autopsy the coroner, county
24 attorney, or attorney general shall order the body to be
25 exhumed if it has been interred.

~~(2) A full record of the facts found shall be made on a form provided by the division of forensic science in triplicate, the coroner and medical examiner retaining one copy and delivering the other to the county attorney.~~

~~(2)~~ (2) The right to conduct an autopsy shall include includes the right to retain such specimens as the medical examiner performing the autopsy deems considers necessary.

~~(3)~~ (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 or, 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 post-mortem examination, the county coroner may order the use of a funeral home or an appropriate hospital facility for the examination.

Section 15. Section 46-4-201, MCA, is amended to read:

"46-4-201. Inquest -- definition, when held, how conducted. (1) An inquest is a formal inquiry into the causes of and circumstances surrounding the death of any person and is conducted by the coroner before a coroner's jury.

(2) ~~The~~ Except when criminal charges have been filed or are reasonably certain to be filed, the THE coroner shall

may SHALL hold an inquest only if requested if he considers it necessary. A coroner shall hold an inquest, notwithstanding pending criminal charges, if ordered ONLY IF REQUESTED to do so by the county attorney of the county in which death occurred by the attorney general, or by the county attorney of the county in which the acts or events causing death occurred. However, when if the death of any person occurs in a jail or penal institution, while a person is being taken into custody or is in the custody of a peace officer, or from the use of a firearm by a peace officer, except where criminal charges have been or will be filed, the county attorney shall direct order the coroner to hold an inquest.

(3) If an inquest is held, the proceedings shall be are public. The coroner shall conduct the inquest with the aid and assistance of the county attorney. Such The coroner shall, and the county attorney may, examine each witness, after which the witness may be examined by the jurors. The inquest is to be held in accordance with this part.

(4) (a) A coroner who also serves as a peace officer may not conduct an inquest into the death of a person who:

(i) died in a jail or penal institution;

(ii) died while in the custody of a peace officer; or

(iii) was killed by a peace officer.

(b) If a coroner is disqualified under subsection

1 (4)(a), the county attorney shall request a qualified
 2 coroner of a neighboring county to conduct the inquest. The
 3 expenses of a coroner fulfilling the request, including
 4 salary, must be paid by the requesting county."

5 **Section 16.** Section 46-4-202, MCA, is amended to read:

6 "46-4-202. Summoning and swearing in of jurors --
 7 instructions. (1) For holding such an inquest, the coroner
 8 must shall summon a jury of at least 6 but not more than
 9 nine 12 persons qualified by law to serve as jurors and
 10 selected from a list that is furnished to the coroner
 11 annually by the county clerk of court.

12 (2) ~~When six or more of the jurors attend, they~~ The
 13 jury selected by the coroner must be sworn by the coroner to
 14 inquire who the person was and when, where, and by what
 15 means he came to his death and into the circumstances
 16 attending his death and to render a true verdict ~~thereon, on~~
 17 the death according to the evidence offered to them or
 18 arising from the inspection of the body.

19 (3) The coroner ~~must shall~~ instruct the jurors as to
 20 their duties."

21 **Section 17.** Section 46-4-205, MCA, is amended to read:

22 "46-4-205. Verdict of jury -- form. After inspecting
 23 VIEWING the body ~~and, if the coroner considers it necessary,~~
 24 the death scene BY VIDEOTAPE, PHOTOGRAPHS, OR SLIDE
 25 TRANSPARENCIES and hearing the testimony, the jury must

1 shall render its verdict, which ~~shall must~~ be by majority
 2 vote, and certify the same in writing signed by them ~~and~~
 3 setting each juror. The verdict must set forth:

4 (1) who the deceased person is;

5 (2) when and where, and by what means he came to his
 6 death;

7 (3) if he came to his death by criminal means; and

8 (4) if he was killed or his death was occasioned by the
 9 act of another by criminal means, who committed the act, if
 10 known. If the jury finds that the death was not by criminal
 11 means, that fact must be stated on the verdict form."

12 **Section 18.** Section 46-4-206, MCA, is amended to read:

13 "46-4-206. Recording and filing of testimony and
 14 proceedings. Testimony before a coroner's jury must be given
 15 under oath. The testimony of the witnesses examined and
 16 proceedings before the coroner's jury must be reduced to
 17 writing recorded and transcribed by a competent stenographer
 18 appointed by the coroner or under his direction and
 19 forthwith filed by him with the inquisition. The record of
 20 the inquest and the verdict of the jury must be filed by the
 21 coroner in the office of the clerk of the district court of
 22 the county in which the inquest was held. The coroner must
 23 order the inquest proceedings recorded and transcribed by a
 24 qualified stenographer. Such recording and transcribing
 25 expenses shall The expenses of recording and transcribing

1 must be paid by the county upon claims duly rendered and
2 certified to by the coroner in the same manner as other
3 claims against the county are paid."

4 NEW SECTION. Section 19. Codification instruction.
5 [Sections 1 through 8] are intended to be codified as an
6 integral part of Title 46, chapter 4, and the provisions of
7 Title 46, chapter 4, apply to [sections 1 through 8].

8 NEW SECTION. Section 20. Repealer. Sections 7-4-2912,
9 7-4-2916, 44-3-403, 46-4-102, and 46-4-204, MCA, are
10 repealed.

-End-

1 SENATE BILL NO. 331

2 INTRODUCED BY FRANKLIN, DOHERTY, YELLOWTAIL, STRIZICH, REAM,

3 ELLIOTT, WYATT, WEEDING, GALVIN, WILLIAMS, BIANCHI,

4 MANNING, T. BECK

5

6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE
7 PROVISIONS RELATED TO THE DUTIES OF COUNTY CORONERS AND
8 JURORS IN CORONER'S INQUESTS; TO PROVIDE FOR THE DUTIES OF A
9 CORONER IN INQUIRIES AND INQUESTS, INCLUDING THE POWER TO
10 SEARCH AND SEIZE AND TO SUBPOENA; TO REQUIRE REPORTING OF
11 ALL FETAL DEATHS; AMENDING SECTIONS 3-15-203, 7-4-2911,
12 7-4-2915, 44-3-404, 46-4-101, 46-4-103, 46-4-201, 46-4-202,
13 46-4-205, AND 46-4-206, MCA; AND REPEALING SECTIONS
14 7-4-2912, 7-4-2916, 44-3-403, 46-4-102, AND 46-4-204, MCA."

15

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

17 NEW SECTION. **Section 1.** Coroner's authority to seize
18 and preserve evidence. (1) A county coroner may enter any
19 room, dwelling, building, or other place in which he has
20 probable cause to believe that a dead human body or evidence
21 of the circumstances of a death that requires investigation
22 may be found. If refused entry, a coroner who is
23 investigating a death pursuant to his authority may apply to
24 a judge authorized to issue search warrants for a warrant to
25 enter the premises and to search for and seize evidence of

There are no changes in this bill,
and will not be reprinted. Please
refer to yellow copy for complete
text.

HOUSE STANDING COMMITTEE REPORT

March 26, 1991
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March 26, 1991
Page 1 of 2

(4) If Senate Bill No. 51 is passed and approved and if it includes a section that amends 46-4-206, then that section of Senate Bill No. 51 is void.

Renumber: subsequent section

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 331 (third reading copy -- blue) be concurred in as amended.

Signed: 
Bill Strizich, Chairman

Carried by: Rep. Strizich

And, that such amendments read:

1. Page 14, line 10.

Strike: "from the use of a firearm"

Insert: "is caused"

2. Page 15, line 10.

Following: "selected"

Insert: "at random"

Following: "list"

Insert: "of eligible jurors"

3. Page 15, line 22.

Following: "form."

Insert: "The jury may view the body, and the county attorney may require the jury to view the body. The jury shall review the death scene and may do so by videotape, photographs, or slide transparencies."

4. Page 15, lines 24 and 25.

Strike: "BY VIDEOTAPE, PHOTOGRAPHS, OR SLIDE TRANSPARENCIES"

5. Page 17.

Following: line 7

Insert: "NEW SECTION. Section 20. Coordination instruction.

(1) If Senate Bill No. 51 is passed and approved and if it includes a section that amends 46-4-201, then that section of Senate Bill No. 51 is void.

(2) If Senate Bill No. 51 is passed and approved and if it includes a section that amends 46-4-202, then that section of Senate Bill No. 51 is void.

(3) If Senate Bill No. 51 is passed and approved and if it includes a section that amends 46-4-205, then that section of Senate Bill No. 51 is void.

SENATE BILL NO. 331

INTRODUCED BY FRANKLIN, DOHERTY, YELLOWTAIL, STRIZICH, REAM,
ELLIOTT, WYATT, WEEDING, GALVIN, WILLIAMS, BIANCHI,
MANNING, T. BECK

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE
PROVISIONS RELATED TO THE DUTIES OF COUNTY CORONERS AND
JURORS IN CORONER'S INQUESTS; TO PROVIDE FOR THE DUTIES OF A
CORONER IN INQUIRIES AND INQUESTS, INCLUDING THE POWER TO
SEARCH AND SEIZE AND TO SUBPOENA; TO REQUIRE REPORTING OF
ALL FETAL DEATHS; AMENDING SECTIONS 3-15-203, 7-4-2911,
7-4-2915, 44-3-404, 46-4-101, 46-4-103, 46-4-201, 46-4-202,
46-4-205, AND 46-4-206, MCA; AND REPEALING SECTIONS
7-4-2912, 7-4-2916, 44-3-403, 46-4-102, AND 46-4-204, MCA."

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

NEW SECTION. Section 1. Coroner's authority to seize and preserve evidence. (1) A county coroner may enter any room, dwelling, building, or other place in which he has probable cause to believe that a dead human body or evidence of the circumstances of a death that requires investigation may be found. If refused entry, a coroner who is investigating a death pursuant to his authority may apply to a judge authorized to issue search warrants for a warrant to enter the premises and to search for and seize evidence of

the cause of a death, including a dead human body.

(2) The application for a search warrant must:

(a) state facts sufficient to show probable cause that a human body or evidence of the circumstances of death is present in the place to be searched;

(b) particularly describe the place to be searched; and

(c) particularly describe the things to be seized.

(3) To preserve evidence of the cause of death, a coroner may:

(a) place under his custody and control any dwelling, building, item, vehicle, aircraft, railroad engine or train, vessel, enclosure, or open area for a period of not more than 10 days; and

(b) forbid entrance by an unauthorized person into any area specified in subsection (3)(a).

(4) A person may not enter an area that is restricted pursuant to subsection (3) without the permission of the coroner or the law enforcement agency having jurisdiction if there is also a criminal investigation in progress.

NEW SECTION. Section 2. Powers of coroner. In the performance of his duties under this chapter, the coroner may:

(1) pronounce the fact of death of any human being under circumstances in which he has a duty to inquire pursuant to [section 4];

1 (2) certify and amend death certificates as considered
2 necessary in circumstances under which he has a duty to
3 inquire pursuant to [section 4];

4 (3) issue subpoenas pursuant to [section 7];

5 (4) order autopsies as provided in 46-4-103;

6 (5) conduct examinations and tests as considered
7 necessary to determine the cause, manner, and circumstances
8 of death and identification of a dead human body as provided
9 in 46-4-101 and [section 8];

10 (6) order a dead human body to be disinterred or
11 removed from its place of disposition, with or without the
12 consent of the next of kin, under circumstances in which he
13 has a duty to inquire pursuant to [section 4];

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

15 (8) order cessation of any activity by any person or
16 agency, OTHER THAN THE LAW ENFORCEMENT AGENCY HAVING
17 JURISDICTION, that may obstruct or hinder the orderly
18 conduct of an inquiry to the collection of information or
19 evidence needed for an inquiry.

20 NEW SECTION. Section 3. Inquiry defined. For the
21 purposes of [sections 1 through 8], an inquiry by a county
22 coroner is an informal examination of a death and its
23 attendant circumstances to determine whether:

24 (1) an inquest, which is a formal inquiry, should be
25 held;

1 (2) the reporting physician should certify the death;

2 (3) any further action or examination should be made
3 concerning a death; or

4 (4) there is anything unusual or remarkable about a
5 death that warrants MAY WARRANT further action by the county
6 attorney or the law enforcement agency that has
7 jurisdiction.

8 NEW SECTION. Section 4. Human deaths requiring inquiry
9 by coroner. The coroner shall inquire into and determine the
10 cause and manner of death and all circumstances surrounding
11 a human death:

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

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

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

18 (i) a criminal or suspected criminal act;

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

22 (iii) an accidental death;

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

25 (2) whenever the death occurred:

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

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

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

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

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

15 (3) if the dead human body is to be cremated or lacks
 16 proper medical certification or burial or transmit permits;
 17 or

18 (4) that occurred under suspicious circumstances.

19 NEW SECTION. Section 5. Inquiry report. The coroner
 20 shall make a full report of the facts discovered in all
 21 human deaths requiring an inquiry under the provisions of
 22 [section 4]. The report must be made in triplicate on a form
 23 provided by the division of forensic science of the
 24 department of justice. The coroner and the medical examiner
 25 shall each retain one copy and shall deliver the other copy

1 to the county attorney. If the coroner orders an autopsy
 2 during the course of an inquiry, he shall also provide the
 3 medical examiner with a copy of the autopsy report. The
 4 forms must be completed and distributed as provided in this
 5 section as promptly as practicable.

6 NEW SECTION. Section 6. Reporting fetal deaths. A
 7 licensed nurse, a midwife, a physician's
 8 assistant-certified, an emergency medical technician, a
 9 birthing assistant, or any other person who assists in the
 10 delivery that occurs outside a licensed medical facility of
 11 a fetus that is believed or declared to be dead shall report
 12 the death by the earliest means available to the coroner of
 13 the county in which the death occurred.

14 NEW SECTION. Section 7. Subpoenaing of witnesses and
 15 documents. (1) In an inquiry or inquest, a coroner may:

16 (a) issue subpoenas for witnesses as provided in
 17 46-4-203; and

18 (b) issue subpoenas commanding the production of books,
 19 records, papers, documents, and other objects as may be
 20 necessary and proper to the inquiry or inquest.

21 (2) Any material subpoenaed pursuant to subsection
 22 (1)(b) is confidential criminal justice information, as
 23 defined in 44-5-103, and public access to the information
 24 may be obtained only in accordance with 44-5-303. However,
 25 any material produced at an inquest is public information.

1 (3) Disobedience of a subpoena issued under 46-4-203 or
 2 this section is punishable in the same manner as
 3 disobedience of a subpoena issued by a justice of the peace
 4 as provided in Title 3, chapter 10, part 4.

5 NEW SECTION. Section 8. Examinations and tests. The
 6 coroner may direct a properly qualified expert to conduct
 7 any test or examination that he reasonably believes is
 8 necessary to determine the cause, manner, and circumstances
 9 of a death or to identify a dead human body. The coroner may
 10 also require examination by the next of kin or any other
 11 person when necessary to identify a dead human body.

12 **Section 9.** Section 3-15-203, MCA, is amended to read:

13 "3-15-203. Fees in courts not of record and coroner's
 14 inquests. (1) A jury panel member, in both civil and
 15 actions, criminal actions, shall--receive and coroner
 16 inquests is entitled to a fee of \$12 per day for attendance
 17 before a court not of record and a mileage allowance, as
 18 provided in 2-18-503, for traveling each way between his
 19 residence and the court. A jury panel member selected for a
 20 case shall--receive is entitled to an additional \$13 per day
 21 while serving.

22 (2) In civil actions, the jurors' fees must be paid by
 23 the party demanding the jury and taxed as costs against the
 24 losing party.

25 (3) ~~jurors-in-coroner's-inquests-shall-receive-a-fee-of~~

1 ~~\$7.50-per-day~~

2 ~~{4}~~ A juror who is excused from attendance upon his own
 3 motion on the first day of his appearance in obedience to
 4 notice or who has been summoned as a special juror and not
 5 sworn in the trial of the case shall forfeit per diem and
 6 mileage."

7 **Section 10.** Section 7-4-2911, MCA, is amended to read:

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 9 shall:

10 (1) ~~The coroner must~~ hold inquests as provided in Title
 11 46, chapter 4, parts 1 and 2;

12 (2) inquire into the cause, manner, and circumstances
 13 of all human deaths as required in [section 4] and establish
 14 the identity of the deceased person;

15 (3) provide decent disposal of an unclaimed dead human
 16 body and unclaimed parts of bodies believed to be human;

17 (4) maintain records of inquiries as required by good
 18 practice and by law;

19 (5) as soon as practicable upon identifying a dead
 20 human body, provide for notifying the next of kin of the
 21 deceased of the fact of death in any death into which he is
 22 making an inquiry;

23 (6) IF NO LAW ENFORCEMENT AGENCY HAS JURISDICTION OF
 24 THE CASE, preserve evidence involving any human death,
 25 pursuant to his authority, including placing under his

1 control, to the extent necessary, any personal and real
2 property that may be related to or involved in the death;

3 (7) witness and certify deaths that are the result of a
4 judicial order;

5 (8) inquire into any human death when no physician or
6 surgeon licensed in the state will sign a death certificate;

7 (9) notify the county attorney and the law enforcement
8 agency having jurisdiction of all deaths requiring inquiry
9 pursuant to [section 3]; and

10 +2}(10) in in the cases specified in 25-3-205, the
11 coroner--must discharge the duties of sheriff. If acting as
12 sheriff, the coroner is allowed the same salary as sheriff
13 or the same fees as constable for like services."

14 **Section 11.** Section 7-4-2915, MCA, is amended to read:

15 "7-4-2915. Dead Custody and disposition of bodies to-be
16 held pending investigation. (1) In the course of an inquiry
17 authorized under the provisions of [section 4], the coroner
18 may take custody of a dead human body and cause it to be
19 removed from the site of death to a facility designated by
20 the coroner.

21 (2) A dead human body in the custody of a county
22 coroner shall must be held until such-time-as the coroner,
23 after consultation with appropriate law enforcement
24 officials and the county attorney, establishes that it is
25 not necessary to hold the body to determine the reasonable

1 and true cause of death or that the body is no longer
2 necessary to assist any local investigations.

3 (3) If the identity of a dead human body is unknown or
4 if those entitled to custody of a body do not claim it, the
5 coroner shall take custody of the body even if the
6 circumstances of the death do not otherwise require an
7 inquiry by the coroner.

8 (4) A dead human body in the custody of the coroner may
9 be released by him to the custody of a person who is
10 entitled to custody or to a funeral home.

11 (5) The coroner must release to a funeral home a dead
12 human body that is not designated to be released to a
13 specific funeral home by the deceased prior to death, by the
14 deceased's next of kin, or by a friend of the deceased who
15 will take financial responsibility for the disposition of
16 the body. The coroner shall rotate the release of bodies to
17 funeral homes in a manner that is fair and equitable. The
18 coroner may not release a body to a funeral home if the
19 funeral home has requested in writing by December 1 of the
20 preceding year that it does not wish to participate in the
21 release of bodies under this section."

22 **Section 12.** Section 44-3-404, MCA, is amended to read:

23 "44-3-404. Criminal penalty. A person is guilty of a
24 misdemeanor and may be fined not more than \$500 or
25 imprisoned in the county jail for not more than 1 year, or

1 both, if he:

2 (1) purposely fails to report or conceals a death,
3 including a fetal death;

4 (2) refuses to make available prior medical or other
5 information in a death investigation; or

6 (3) without an order from the coroner or state medical
7 examiner, purposely touches, removes, or disturbs a corpse,
8 its clothing, or anything near the corpse under
9 investigation--with--the--intent--to--alter--the--evidence--or
10 circumstances-surrounding-the-death; or

11 (4) knowingly or purposely disobeys a cessation order
12 of a coroner."

13 **Section 13.** Section 46-4-101, MCA, is amended to read:

14 "46-4-101. Jurisdiction -- death and cause of death in
15 different counties. (1) The coroner of the county where a
16 dead human body is found has jurisdiction if:

17 (a) the place of death is unknown;

18 (b) the dead human body was shipped into the county
19 without proper permits; or

20 (c) the death occurred while the deceased was in
21 transit in the state.

22 (2) When death occurs as a direct result of acts or
23 events which that occurred in another county, the coroner of
24 either the county shall--have where the ACTS OR EVENTS
25 CAUSING death occurred or-the-dead-human-body-was-found has

1 jurisdiction. ~~If a conflict-of-jurisdiction-should-arise-or~~
2 ~~should-said-coroners-fail~~ coroner that has jurisdiction of a
3 death fails to act, the coroner--of--the--county--where--the
4 death-occurred-shall-have-the-primary state medical examiner
5 has jurisdiction.

6 (3) A county coroner has primary jurisdiction in the
7 county in which he is appointed or elected to serve;
8 however, a qualified coroner may serve in another county
9 upon the request of the coroner or county attorney of that
10 county. A coroner may travel to another county to inquire
11 into a death pursuant to [section 4]."

12 **Section 14.** Section 46-4-103, MCA, is amended to read:

13 "46-4-103. Autopsy -- when conducted, record, scope.

14 (1) If in the opinion of the coroner an autopsy is
15 advisable, he shall order one performed on any dead human
16 body for which the death requires an inquiry and shall
17 retain a medical examiner or associate medical examiner to
18 perform it. Performance of autopsies is within the
19 discretion of the coroner except that the county attorney or
20 attorney general may require one. Consent of the family or
21 next of kin of the deceased is not required for an autopsy
22 that is ordered by the coroner, county attorney, or attorney
23 general. In ordering an autopsy the coroner, county
24 attorney, or attorney general shall order the body to be
25 exhumed if it has been interred.

1 ~~{2}~~--A full record of the facts found shall be made on a
 2 form provided by the division of forensic science in
 3 triplicate, the coroner and medical examiner retaining one
 4 copy and delivering the other to the county attorney.

5 ~~{3}~~(2) The right to conduct an autopsy shall include
 6 includes the right to retain such specimens as the medical
 7 examiner performing the autopsy deems considers necessary.

8 ~~{4}~~(3) The state of Montana shall pay any expenses
 9 incurred whenever an autopsy or investigation is initiated
 10 at the request of the state medical examiner or attorney
 11 general. The county shall pay any expenses incurred whenever
 12 an autopsy or, investigation, or inquiry is initiated at the
 13 request of the county attorney or county coroner.

14 (4) If a county does not provide a morgue or other
 15 facility for post-mortem examination, the county coroner may
 16 order the use of a funeral home or an appropriate hospital
 17 facility for the examination."

18 **Section 15.** Section 46-4-201, MCA, is amended to read:

19 "46-4-201. Inquest -- definition, when held, how
 20 conducted. (1) An inquest is a formal inquiry into the
 21 causes of and circumstances surrounding the death of any
 22 person and is conducted by the coroner before a coroner's
 23 jury.

24 (2) ~~The Except when criminal charges have been filed or~~
 25 ~~are reasonably certain to be filed, the~~ THE coroner shall

1 may SHALL hold an inquest only if requested if he considers
 2 it necessary. A coroner shall hold an inquest,
 3 notwithstanding pending criminal charges, if ordered ONLY IF
 4 REQUESTED to do so by the county attorney of the county in
 5 which death occurred, ~~by the attorney general,~~ or by the
 6 county attorney of the county in which the acts or events
 7 causing death occurred. However, when if the death of any
 8 person occurs in a jail or penal institution, while a person
 9 is being taken into custody or is in the custody of a peace
 10 officer, or from the use of a firearm IS CAUSED by a peace
 11 officer, except where criminal charges have been or will be
 12 filed, the county attorney shall direct order the coroner to
 13 hold an inquest.

14 (3) If an inquest is held, the proceedings shall be are
 15 public. The coroner shall conduct the inquest with the aid
 16 and assistance of the county attorney. Such The coroner
 17 shall, and the county attorney may, examine each witness,
 18 after which the witness may be examined by the jurors. The
 19 inquest is to be held in accordance with this part.

20 (4) (a) A coroner who also serves as a peace officer
 21 may not conduct an inquest into the death of a person who:

- 22 (i) died in a jail or penal institution;
- 23 (ii) died while in the custody of a peace officer; or
- 24 (iii) was killed by a peace officer.

25 (b) If a coroner is disqualified under subsection

1 (4)(a), the county attorney shall request a qualified
2 coroner of a neighboring county to conduct the inquest. The
3 expenses of a coroner fulfilling the request, including
4 salary, must be paid by the requesting county."

5 **Section 16.** Section 46-4-202, MCA, is amended to read:

6 "46-4-202. **Summoning and swearing in of jurors --**
7 **instructions.** (1) For holding such an inquest, the coroner
8 must shall summon a jury of at least 6 but not more than
9 nine 12 persons qualified by law to serve as jurors and
10 selected AT RANDOM from a list OF ELIGIBLE JURORS that is
11 furnished to the coroner annually by the county clerk of
12 court.

13 (2) ~~When six or more of the jurors attend, they~~ The
14 jury selected by the coroner must be sworn by the coroner to
15 inquire who the person was and when, where, and by what
16 means he came to his death and into the circumstances
17 attending his death and to render a true verdict thereon, on
18 the death according to the evidence offered to them or
19 arising from the inspection of the body.

20 (3) The coroner must shall instruct the jurors as to
21 their duties."

22 **Section 17.** Section 46-4-205, MCA, is amended to read:

23 "46-4-205. **Verdict of jury -- form.** THE JURY MAY VIEW
24 THE BODY, AND THE COUNTY ATTORNEY MAY REQUIRE THE JURY TO
25 VIEW THE BODY. THE JURY SHALL REVIEW THE DEATH SCENE AND MAY

1 DO SO BY VIDEOTAPE, PHOTOGRAPHS, OR SLIDE TRANSPARENCIES.
2 After inspecting VIEWING the body and, if the coroner
3 considers it necessary, the death scene BY VIDEOTAPE,
4 PHOTOGRAPHS, OR SLIDE TRANSPARENCIES and hearing the
5 testimony, the jury must shall render its verdict, which
6 ~~shall~~ must be by majority vote, and certify the same in
7 writing signed by them ~~and setting~~ each juror. The verdict
8 must set forth:

9 (1) who the deceased person is;

10 (2) when and where, ~~and by what means~~ he came to his
11 death;

12 (3) if he came to his death by criminal means; and

13 (4) if he was killed or his death was occasioned by the
14 act of another by criminal means, who committed the act, if
15 known. If the jury finds that the death was not by criminal
16 means, that fact must be stated on the verdict form."

17 **Section 18.** Section 46-4-206, MCA, is amended to read:

18 "46-4-206. **Recording and filing of testimony and**
19 **proceedings.** Testimony before a coroner's jury must be given
20 under oath. The testimony of the witnesses examined and
21 proceedings before the coroner's jury must be reduced to
22 writing recorded and transcribed by a competent stenographer
23 appointed by the coroner or under his direction and
24 forthwith filed by him with the inquisition. The record of
25 the inquest and the verdict of the jury must be filed by the

1 coroner in the office of the clerk of the district court of
 2 the county in which the inquest was held. ~~The coroner must~~
 3 ~~order the inquest proceedings recorded and transcribed by a~~
 4 ~~qualified stenographer. Such recording and transcribing~~
 5 ~~expenses shall~~ The expenses of recording and transcribing
 6 must be paid by the county upon claims duly rendered and
 7 certified to by the coroner in the same manner as other
 8 claims against the county are paid."

9 NEW SECTION. Section 19. Codification instruction.
 10 [Sections 1 through 8] are intended to be codified as an
 11 integral part of Title 46, chapter 4, and the provisions of
 12 Title 46, chapter 4, apply to [sections 1 through 8].

13 NEW SECTION. SECTION 20. COORDINATION INSTRUCTION. (1)
 14 IF SENATE BILL NO. 51 IS PASSED AND APPROVED AND IF IT
 15 INCLUDES A SECTION THAT AMENDS 46-4-201, THEN THAT SECTION
 16 OF SENATE BILL NO. 51 IS VOID.

17 (2) IF SENATE BILL NO. 51 IS PASSED AND APPROVED AND IF
 18 IT INCLUDES A SECTION THAT AMENDS 46-4-202, THEN THAT
 19 SECTION OF SENATE BILL NO. 51 IS VOID.

20 (3) IF SENATE BILL NO. 51 IS PASSED AND APPROVED AND IF
 21 IT INCLUDES A SECTION THAT AMENDS 46-4-205, THEN THAT
 22 SECTION OF SENATE BILL NO. 51 IS VOID.

23 (4) IF SENATE BILL NO. 51 IS PASSED AND APPROVED AND IF
 24 IT INCLUDES A SECTION THAT AMENDS 46-4-206, THEN THAT
 25 SECTION OF SENATE BILL NO. 51 IS VOID.

1 NEW SECTION. Section 21. Repealer. Sections 7-4-2912,
 2 7-4-2916, 44-3-403, 46-4-102, and 46-4-204, MCA, are
 3 repealed.

-End-