

SB 269 INTRODUCED BY KOLSTAD, RASMUSSEN, MANNING, ET AL.
GENERALLY REVISE LAW ON CORONERS

2/02 INTRODUCED
2/02 REFERRED TO JUDICIARY
2/13 HEARING
2/16 TABLED IN COMMITTEE

1 *Senate* BILL NO. *262*
 2 INTRODUCED BY *David P. Manning*
 3 *Richard Manning* *Nancy P. Pritchard* *Harvey*
 4 *Ruffey* *Director* *by* *Colin M. Ball* *Beck*
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE
 6 STATUTES RELATING TO COUNTY CORONERS; DEFINING AND PROVIDING
 7 PENALTIES FOR THE OFFENSES OF FAILING TO REPORT A DEATH AND
 8 FOR UNLAWFUL RELEASE OF A DECEASED'S IDENTITY; PROVIDING FOR
 9 THE DUTIES AND POWERS OF A CORONER; EXPANDING SUBPOENA
 10 POWERS; AMENDING SECTIONS 7-4-2911, 7-4-2915 THROUGH
 11 7-4-2917, 46-4-101, 46-4-103, 46-4-201, 46-4-202, 46-4-205,
 12 AND 46-4-206, MCA; AND REPEALING SECTIONS 7-4-2912,
 13 46-4-102, AND 46-4-204, MCA."

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

15 NEW SECTION. Section 1. Failing to report a death.

16 (1) (a) A person commits the offense of failing to report a
 17 death if he knows or reasonably should have known of a human
 18 death that requires inquiry by the coroner as provided in
 19 [section 6] and fails to immediately report the death or
 20 suspected death to the coroner whom he reasonably believes
 21 has jurisdiction to inquire into the death.

22 (b) A person convicted of the offense of failing to
 23 report a death shall be fined an amount not to exceed \$500
 24 or be imprisoned in the county jail for a term not to exceed
 25 6 months, or both.

1 (2) In addition to the offense of failing to report a
 2 death as provided in subsection (1), a person failing to
 3 report a death for the purpose of avoiding or hindering an
 4 inquiry or other official proceeding or investigation into a
 5 death commits the offense of tampering with or fabricating
 6 physical evidence as provided in 45-7-207.

7 NEW SECTION. Section 2. Unlawful release of identity.

8 (1) Except as provided in subsection (2), a person commits
 9 the offense of unlawful release of the identity of a
 10 deceased if a death occurs under circumstances requiring
 11 inquiry by the coroner as provided in [section 6] and the
 12 person releases the name of the deceased or releases facts
 13 that disclose the identity of the deceased without the
 14 consent of the coroner.

15 (2) The following circumstances do not constitute
 16 unlawful release of the identity of a deceased:

17 (a) release of the name of the deceased by members of
 18 the deceased's family;

19 (b) release of the name of a deceased by the operator
 20 of a medical or nursing facility if the deceased died in the
 21 facility and his designated next of kin have been notified
 22 or if the deceased provided in writing that there are no
 23 next of kin to be notified;

24 (c) communications to and among the coroner, medical,
 25 law enforcement and other emergency services personnel,



1 members of the clergy, and morticians and funeral home
2 directors and their employees, necessary for the conduct of
3 their official duties and employment;

4 (d) notification of the next of kin of a death in
5 person, by telephone, or other means by a law enforcement
6 officer, member of the clergy, or medical practitioner; and

7 (e) reporting an execution of a sentence of death
8 occurring under the provisions of 46-19-103.

9 (3) A person convicted of the offense of unlawful
10 release of the identity of a deceased shall be fined an
11 amount not to exceed \$500 or be imprisoned in the county
12 jail for a term not to exceed 6 months, or both.

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

14 "7-4-2911. Duties of county coroner. The county
15 coroner shall:

16 (1) inquire into the cause, manner, and circumstances
17 of death and into the identity of a deceased person as
18 required by [section 6];

19 (2) conduct or cause to be conducted autopsies on dead
20 human bodies as he considers necessary;

21 ~~{1}~~(3) ~~The--coroner--must~~ hold inquests as provided in
22 Title 46, chapter 4, parts 1 and 2;

23 (4) provide decent disposal of all unclaimed human
24 bodies and of all unclaimed parts of bodies believed to be
25 human;

1 (5) maintain such records of inquiries as may be
2 required by good practice and by the attorney general or the
3 state medical examiner;

4 (6) when necessary, notify the deceased's next of kin
5 of the fact of death, or cause notification to be given, in
6 all deaths into which he is making an inquiry;

7 (7) preserve evidence involved in any human death
8 falling under his authority, including placing under his
9 control, to the extent he considers necessary, personal and
10 real property that may be related to or involved in such
11 death;

12 (8) certify deaths that are the result of a judicial
13 order;

14 (9) notify the county attorney and the law enforcement
15 agency having jurisdiction when a death is or may have been
16 the result of a criminal offense; and

17 ~~{2}~~(10) ~~in~~ in the cases specified in 25-3-205, the
18 coroner--must discharge the duties of sheriff. If acting as
19 sheriff, the coroner is allowed the same salary as sheriff
20 or the same fees as constable for like services."

21 NEW SECTION. Section 4. Powers of coroner. In the
22 performance of his duties, the coroner may:

23 (1) conduct examinations and inquiries that include
24 but are not limited to entering any room, dwelling,
25 building, land, or other place where he has reasonable cause

1 to believe that a dead human body or evidence of the
2 circumstances of a human death may exist;

3 (2) pronounce the fact of death of any human being
4 under circumstances in which he has the duty to inquire
5 under [section 6];

6 (3) certify and amend death certificates as considered
7 necessary in deaths in which he has the duty to inquire
8 under [section 6];

9 (4) appoint deputy coroners as provided in 7-4-2901;

10 (5) administer oaths;

11 (6) issue subpoenas as provided in [section 7];

12 (7) order and cause autopsies to be performed as
13 provided in 46-4-103;

14 (8) conduct examinations and tests as considered
15 necessary to determine the cause, manner, and circumstances
16 of death and the identification of a dead human body as
17 provided in [section 9];

18 (9) take custody of a dead human body and cause it to
19 be removed to a facility he has designated as provided in
20 7-4-2915;

21 (10) order a dead human body to be disinterred or to be
22 removed from its place of disposition, with or without the
23 consent of the next of kin, if it is known or suspected that
24 the circumstances of the death require inquiry by the
25 coroner;

1 (11) conduct inquests when he considers it necessary
2 under 46-4-201 or when ordered to do so by the county
3 attorney or attorney general; and

4 (12) order cessation of any activity by any person or
5 agency that may obstruct or hinder the orderly conduct of an
6 inquiry or the collection of information or evidence needed
7 for an inquiry. Failure to obey a cessation order of the
8 coroner constitutes the offense of obstructing a peace
9 officer or other public servant as provided in 45-7-302.

10 NEW SECTION. Section 5. Inquiry defined. An inquiry
11 by a coroner is an informal examination of a death and its
12 attendant circumstances to determine whether:

13 (1) an inquest, which is a formal inquiry, should be
14 held;

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

16 (3) any further action or examination should be made
17 concerning the death; or

18 (4) there is nothing unusual or remarkable about the
19 death to warrant further action.

20 NEW SECTION. Section 6. Human deaths requiring
21 inquiry by coroner. The coroner shall inquire into and
22 determine the cause and manner of death and all
23 circumstances surrounding a death:

24 (1) that was caused or is suspected to have been
25 caused;

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

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

6 (i) a criminal or suspected criminal act, including
7 but not limited to homicide or death caused by poisoning,
8 gunshot, drug addiction, asphyxiation, stabbing,
9 strangulation, sexual intercourse without consent, suicide,
10 hanging, cutting, crimes against nature, criminal violence,
11 criminal abortion, child abuse or neglect, or any other type
12 of abuse or neglect;

13 (ii) medically suspicious or unusual deaths, including
14 but not limited to exposure, asphyxiation, starvation,
15 sudden infant death syndrome, acute alcoholism, aspiration,
16 poisoning by toxic agent, self-induced abortion, any fetal
17 death unattended by a physician, or the sudden death of a
18 person in apparent good health; or

19 (iii) accidental deaths, including but not limited to
20 deaths caused by drowning, exposure, or biting; and

21 (c) by an agent, disease, or medical condition that
22 may constitute a threat to public health;

23 (2) whenever the death occurred:

24 (a) while the deceased was incarcerated in a prison,
25 jail, or facility owned or operated by the state or any

1 political subdivision of the state;

2 (b) while the deceased was in the custody of a law
3 enforcement agency or officer;

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

6 (d) while the deceased was undergoing a medical
7 therapeutic or diagnostic procedure or while he was under
8 the influence of anesthesia;

9 (e) 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 (f) unattended or unwitnessed as provided in [section
13 8];

14 (3) if the body is to be cremated or lacks proper
15 medical certification or burial or transit permits; or

16 (4) that occurred under any suspicious circumstances.

17 NEW SECTION. Section 7. Subpoenas -- investigative
18 powers of coroner. (1) In an inquiry or inquest a coroner
19 may:

20 (a) issue subpoenas for witnesses as provided in
21 46-4-203; and

22 (b) issue subpoenas commanding the production of such
23 books, records, papers, documents, and other objects as may
24 be necessary and proper for the inquiry or inquest. The
25 materials subpoenaed under this subsection (1)(b) are not

1 public documents or open to public inspection unless
2 disclosure is ordered by a court of competent jurisdiction
3 or an inquest is held.

4 (2) A person aggrieved by a subpoena issued pursuant
5 to 46-4-203 or this section may, within 10 days of service,
6 file a motion in district court to dismiss the subpoena or,
7 in the case of a subpoena issued under subsection (1)(b), to
8 limit its scope. The motion must be granted if the subpoena
9 was improperly issued or, in the case of a subpoena issued
10 under subsection (1)(b), if it is overly broad in its scope.

11 (3) Disobedience of a subpoena issued under 46-4-203
12 or subsection (1)(b) shall be punished in the same manner as
13 and with the same penalties as disobedience of a subpoena
14 issued by a justice of the peace as provided in Title 3,
15 chapter 10, part 4.

16 NEW SECTION. Section 8. Attended, unattended, and
17 unwitnessed deaths. (1) (a) (i) An attended death is a death
18 that occurs as a result of an illness or condition being
19 treated by a physician if the deceased was seen by the
20 attending physician within 15 days prior to death or the
21 deceased was a patient in a hospital or skilled nursing care
22 facility at the time of death.

23 (ii) A death is considered an unattended death if it
24 occurs as a result of an illness or condition but more than
25 15 days has elapsed since the deceased was last seen by his

1 attending physician.

2 (b) An unwitnessed death is the death of a person at
3 which no one is physically present with the person at the
4 time of death.

5 (2) Unless the attending physician was present at the
6 time of death, the body of a deceased in an attended death
7 must be examined by the attending physician or his designee
8 at the place of death to ascertain with reasonable certainty
9 whether the death resulted from the disease or condition for
10 which the deceased was being treated.

11 (3) An unattended death must be reported to the
12 coroner for inquiry. The coroner may authorize the attending
13 physician to certify the cause of death. To certify the
14 cause of an unattended death, the attending physician or
15 another physician acting for him who has access to the
16 deceased's medical history must view the body at the place
17 of death to ascertain with reasonable certainty whether the
18 death resulted from the disease or condition for which the
19 deceased was being treated.

20 (4) An unwitnessed death must be reported to the
21 coroner for inquiry. The person in charge of the
22 disposition of the body after an unwitnessed death may not
23 remove the body from the place of death without the consent
24 of the coroner. If the unwitnessed death is an attended
25 death, the body may be removed from the place of death

1 without the coroner if the attending physician has viewed
2 the body at the place of death and is willing to sign a
3 medical certification of death.

4 NEW SECTION. Section 9. Examinations and tests. (1)
5 The coroner may conduct any examinations and tests he
6 considers necessary to determine the cause, manner, and
7 circumstances of death or to identify a dead human body.
8 Such examinations and tests may include but are not limited
9 to:

10 (a) photography;

11 (b) x-rays;

12 (c) removal and examination of body hair, fecal
13 matter, urine, blood, vitreous fluids, fingerprints,
14 palmprints, and footprints; and

15 (d) examination of appropriate dental records and
16 foreign bodies or substances found in, on, or in the
17 vicinity of the human body.

18 (2) In the conduct of such examinations and tests, the
19 coroner may engage experts and may provide for visual
20 examinations of the deceased by next of kin, friends, or
21 other persons he considers necessary.

22 Section 10. Section 7-4-2915, MCA, is amended to read:

23 "7-4-2915. Dead Custody and disposition of dead bodies
24 to-be-held-pending-investigation. (1) In the course of an
25 inquiry, the coroner may take custody of a dead human body

1 and cause it to be removed from the site of death to a
2 facility he has designated.

3 (2) A dead body in the custody of a county coroner
4 shall be held until such time as the coroner, after
5 consultation with appropriate law enforcement officials and
6 the county attorney, establishes that it is not necessary to
7 hold the body to determine the reasonable and true cause of
8 death or that the body is no longer necessary to assist any
9 local investigations.

10 (3) If the identity of a deceased is unknown or if
11 those entitled to custody of a body do not claim it, the
12 coroner shall take custody of the body even if the
13 circumstances of death do not otherwise require inquiry by
14 the coroner.

15 (4) A human body in the custody of the coroner may be
16 released by him to the custody of a person entitled to
17 custody or released to a funeral home.

18 (5) A body not designated to be released to a specific
19 funeral home by the decedent prior to death, by the
20 decedent's next of kin, or by a friend of the decedent who
21 will take financial responsibility for the decedent's
22 disposition or funeral must be designated to a funeral home
23 by the coroner. In making such designations to funeral
24 homes, the coroner shall rotate designations among all
25 licensed funeral homes in the county in a fair and equitable

1 manner. The coroner may not designate a body to any funeral
 2 home that has requested in writing, by December 1 of the
 3 preceding year, not to be so designated."

4 Section 11. Section 7-4-2916, MCA, is amended to read:

5 "7-4-2916. Removal-of-a-dead-body Notification of
 6 death -- release of custody of body. {1}-If-a-county-does
 7 not-provide-a-morgue-or-morgue-facilities-for-the-use-of-the
 8 county--coroner,--the--coroner--may--use--existing--hospital
 9 facilities-for-such-purposes;

10 {2} The person lawfully entitled to custody of the
 11 deceased person's remains shall be notified of the death as
 12 soon as is practicable, and at this that time the coroner
 13 shall may obtain permission to release the body to a funeral
 14 home at the completion of the coroner's inquiry.

15 {3} A-post-mortem-examination-may-be--conducted--at--a
 16 funeral-home-when-so-ordered-by-the-county-coroner."

17 Section 12. Section 7-4-2917, MCA, is amended to read:

18 "7-4-2917. Disposition of property of deceased --
 19 suicide note. (1) Any property found with or on the body of
 20 a decedent under circumstances requiring inquiry or any
 21 suicide note composed or purportedly composed by a decedent
 22 in the custody of the county coroner shall be held-untill
 23 such-time-as inventoried, described, and recorded by the
 24 coroner and released as provided in subsection (3) unless
 25 the coroner or the county attorney establishes that it is

1 not necessary to hold such property or note to determine the
 2 true cause of death, to assist any investigating agency, or
 3 to be used as evidence in any related criminal court action.
 4 When it is no longer necessary to hold such property or
 5 note, it must be released as provided in subsection (3).

6 (2) For the purposes of this section, "investigating
 7 agency" means any county attorney, the state medical
 8 examiner, and any law enforcement agency of this state and
 9 any political subdivision of this state having jurisdiction
 10 of the death.

11 (3) When-such Upon release, the property or note is-no
 12 longer--needed--for--evidentiary-purposes,--it shall be given
 13 upon-written-request to the personal representative of the
 14 decedent appointed under Title 72 or, if no personal
 15 representative is appointed, to the decedent's family or
 16 whoever in the discretion of the county attorney should
 17 receive the property or the note."

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

19 "46-4-101. Jurisdiction -- death and cause of death in
 20 different counties. (1) Except as provided in subsections
 21 (2) and (3), the coroner of the county in which the death
 22 occurred has jurisdiction over an inquiry into the death.

23 (2) The coroner of the county where a human body is
 24 found has jurisdiction if:

25 (a) the place of death is unknown;

1 (b) the dead body was shipped into the state; or

2 (c) the death occurred while the deceased was in
3 transit in the state.

4 (3) When death occurs as a direct possible result of
5 acts or events which that occurred in another county, the
6 coroner of either the county shall have where the acts or
7 events occurred has primary jurisdiction--if-a-conflict-of
8 jurisdiction-should-arise-or, but should said coroners that
9 coroner fail to act, the coroner of the county where the
10 death-occurred body was found shall--have has the primary
11 jurisdiction."

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 and performed on any dead
16 human body whose death requires an inquiry. The coroner
17 shall retain a medical examiner or pathologist licensed to
18 practice medicine in the state to perform it. Performance of
19 autopsies is within the discretion of the coroner except
20 that the county attorney or attorney general may require
21 one. Consent of the deceased's family or next of kin is not
22 required for an autopsy ordered by the coroner, county
23 attorney, or attorney general.

24 (2) In ordering an autopsy the coroner shall order the
25 body to be exhumed if it has been interred.

1 ~~(2)~~(3) A full record of the facts found shall be made
2 on a 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)~~(4) The right to conduct an autopsy shall include
6 the right to retain such specimens as the medical examiner,
7 coroner, or pathologist performing the autopsy deems
8 considers necessary.

9 ~~(4)~~(5) (a) The state of Montana shall pay any expenses
10 incurred whenever an autopsy or investigation is initiated
11 at the request of the state medical examiner or attorney
12 general.

13 (b) The county shall pay any expenses incurred
14 whenever an autopsy or investigation is initiated at the
15 request of the county attorney or county coroner. These
16 expenses include but are not limited to transportation of
17 the body to and from the place of autopsy and use of the
18 facilities for the performance of the autopsy."

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

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

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

1 may hold an inquest only--if--requested-to-do-so when he
 2 determines it necessary. A coroner shall hold an inquest,
 3 notwithstanding pending criminal charges, if ordered to hold
 4 one by the attorney general, by the county attorney of the
 5 county in which death occurred, or by the county attorney of
 6 the county in which the acts or events causing death
 7 occurred.

8 (b) ~~However, when~~ If the death of any person occurs in
 9 a jail or penal institution or from the use of a firearm by
 10 a peace officer, except where criminal charges have been or
 11 will be filed, the county attorney shall ~~direct~~ order the
 12 coroner to hold an inquest.

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

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

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

24 (b) If a coroner is disqualified under subsection
 25 (4)(a), the county attorney shall request a qualified

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

4 Section 16. Section 46-4-202, MCA, is amended to read:
 5 "46-4-202. Summoning and swearing in of jurors --
 6 instructions. (1) ~~For holding such inquest, the coroner must~~
 7 ~~summon--a~~ A coroner's jury of not more than nine persons
 8 qualified by law to serve as jurors consists of at least 6
 9 but not more than 12 jurors selected from a list furnished
 10 to the coroner annually by the clerk of the district court.

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

17 (3) The coroner must instruct the jurors as to their
 18 duties."

19 Section 17. Section 46-4-205, MCA, is amended to read:
 20 "46-4-205. Verdict of jury -- form. After inspecting
 21 the body, if considered necessary by the coroner, and
 22 hearing the testimony, the jury must render its verdict,
 23 which. The verdict shall be by majority vote, and. The jury
 24 shall certify the same verdict in writing, signed by all of
 25 them, and--setting The verdict shall set forth who the

1 deceased person is, when, where, and by what means he came
2 to his death, and if he was killed or his death occasioned
3 by the act of another by criminal means, who committed the
4 act."

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

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

21 NEW SECTION. Section 19. Repealer. Sections 7-4-2912,
22 46-4-102, and 46-4-204, MCA, are repealed.

-End-