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Model Post-Mortem Examinations Act

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

And by it Approved

at its

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With Prefatory Note and Comments

The Committee which acted for the National Conference of Commissioners on Uniform State Laws in preparing the Model Post-Mortem Examinations Act was as follows:

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MODEL POST-MORTEM EXAMINATIONS ACT PREFATORY NOTE

The purpose of the Model Post-Mortem Examinations Act is to provide a means whereby greater competence can be assured in determining causes of death where criminal liability may be involved. Experience has shown that many elected coroners are not well trained in the field of pathology, and the Act would set up in each state an Office headed by a trained pathologist, this Office to have jurisdiction over post-mortem examinations for criminal purposes. The Office would in general supersede the authority of Coroner's Offices in this field.

The proposed Post-Mortem Examination Office would be controlled by an honorary commission of disinterested persons aware of the problems involved. It would be under a duty to cooperate with all law enforcement agencies in the state, to set up regional and local offices as needed, and to develop a suitable laboratory as well as to make use of other laboratories already in existence.

The Act is drafted as a Model Act rather than a Uniform one since the problem will be different in different states, particularly with respect to the constitutional status of the Coroner's Office.

MODEL POST-MORTEM EXAMINATIONS ACT Section 1. [*Commission*

on Post-Mortem Examinations.] The Commission on Post-Mortem Examinations is hereby established. The members of the Commission shall be the [Attorney General], the [Superintendent of State Police], the [State Commissioner of Public Health], the [Dean of the Medical School of the State University] [or other university], and the [Dean of the Law School of the State University] [or other university]. The Commission shall elect one of its members as Chairman and one as Vice-Chairman. Members of the Commission shall receive no compensation but they shall be repaid their actual expenses incurred in service on the Commission. The Commission shall meet at least once each year, and oftener as its duties require.

Comment

Since this section is merely suggestive as to the type of Commission membership desired, it seems unnecessary to name others who might be preferred as members in particular states. The officials here named may be designated by other titles in some states, and other officials may be substituted in any state which prefers to do so. The membership, however, is designed to indicate the type of Commission that ought to be established. It seemed unnecessary to fix terms for the Commissioners, since all are to serve *ex officio*.

Section 2. [*Office of Post-Mortem Examinations.*] The Office of Post-Mortem Examinations is hereby established, to be operated under the control and supervision of the Commission. The Office shall be directed by a Chief Medical Examiner, and may employ such assistant medical examiners, pathologists, toxicologists, laboratory technicians, regional medical examiners and other staff members as the Commission may specify. The Commission shall in advance of appointments specify the qualifications required for each position in terms of education, experience and other relevant considerations. Staff members other than the Chief Medical Examiner shall be named by the Chief Medical Examiner, subject to such rules as the Commission may prescribe, [provided that such rules shall conform to the Civil Service laws of this State].

Section 3. [*Chief Medical Examiner.*] The Chief Medical Examiner shall be a citizen of the United States and a physician licensed in this [or another] state who has had a minimum of two years postgraduate training in pathology. He shall be named by the Commission to serve for such term and at such salary as the [Commission] [General Assembly] may fix. He may as part of his duties teach Medical or Law School classes, conduct special classes for police investigators, and engage in other activities related to the work of his office to such extent and on such terms as may be

authorized by the Commission. Similar authorizations may be given to other members of the staff. He shall serve as Secretary of the Commission.

Comment

It is basic to any properly organized medico-legal investigative system that the head of the Office be a person of the highest mental and moral caliber, with the best obtainable professional training in medicine and pathology, devoting full time to his duties and dedicated to the discreet and wholly impartial acquisition of post-mortem evidence. Whenever possible he and his principal assistants should keep abreast of medical advances by affiliation with a medical school and should to the extent of their abilities aid in the development of their professional field by contributions to medical literature and by teaching medical and law students in their special medico-legal field. They should also assist in the more immediately practical task of training police investigators in related techniques of their work.

Section 4. [*Deaths To Be Investigated.*] The Office of Post-Mortem Examinations shall investigate all human deaths of the types listed herewith:

- (a) Violent deaths, whether apparently homicidal, suicidal, or accidental, including but not limited to deaths due to thermal, chemical, electrical or radiational injury, and deaths due to criminal abortion, whether apparently self-induced or not;
- (b) Sudden deaths not caused by readily recognizable disease;
- (c) Deaths under suspicious circumstances;
- (d) Deaths of persons whose bodies are to be cremated, dissected, buried at sea, or otherwise disposed of so as to be thereafter unavailable for examination;
- (e) Deaths of inmates of public institutions not hospitalized therein for organic disease;
- (f) Deaths related to disease resulting from employment or to accident while employed;
- [(g) Deaths related to disease which might constitute a threat to public health.]

Comment

See Comment under Section 5.

Section 5. [*Autopsies.*] Autopsies shall be conducted by the Office of Post-Mortem Examinations in cases in which, in the judgment of the Chief Medical Examiner, the public interest requires an autopsy, and in such cases an autopsy is hereby authorized. In determining whether the public interest requires an autopsy the Chief Medical Examiner shall take into account but shall not be bound by requests therefore from private persons or from public officials, except that the prosecuting Attorney of the affected [district] [county] shall have the right to require an autopsy.

Comment

It is obvious that few of the investigations here called for will result in autopsies. Where the circumstances of death are clearly and authoritatively explained the Medical Examiner's investigation will be a quick one, often by communication with the attending physician only. Relatives of the deceased will not be disturbed. But such investigations will uncover the occasional case in which the facts call for further inquiry.

The deaths included in Section 4 are in general those in connection with which there may be criminal prosecutions or civil legal proceedings. Among them are those in which the cause and manner of death may not be readily recognizable or the manner of disposal of the body may be an effort to conceal the true cause and manner of death. Item (g) is bracketed because the considerations of public health and safety involved may be deemed to fall within the province of other public agencies.

It seems wise to make the conduct of autopsies specifically a matter within the discretion of the Chief Medical Examiner, to avoid vindictive civil law suits charging the Office with improper handling of dead bodies.

Section 6. [*Cooperative Action.*] (a) All law enforcement officers, [prosecuting attorneys,] [coroners] and other officials shall cooperate fully with the Office of Post-Mortem Examinations in making the investigations and conducting the autopsies herein

provided for. Such officials and all physicians, undertakers, embalmers and other persons shall promptly notify the Office of the occurrence of all deaths coming to their attention which under this Act are subject to investigation by the Office, and shall assist in making dead bodies and related evidence available to the Office for investigations and autopsies. In cases of apparent homicide, or suicide, or of accidental death the cause of which is obscure, the scene of the event shall not be disturbed until authorization by the Medical Examiner is given. In conducting his investigation the Medical Examiner shall take possession of any objects or writings which in his opinion may be useful in establishing the cause of death, and deliver them to the appropriate law enforcement officials.

(b) Any physician, undertaker or embalmer who willfully fails to comply with this section shall be guilty of a misdemeanor and upon conviction shall be fined not less than [\$50.00] and not more than [\$500.00].

Comment

Close cooperation between the Office of Post-Mortem Examinations and all police and prosecuting agencies is obviously necessary if the work of the Office is to be done effectively. Such cooperation in the ordinary case is assured by the fact that the police and prosecuting officers are anxious to secure the type of expert assistance that the Office will afford. But there may be instances where for special reasons cooperation will be lacking. Some of the provisions of Section 6 are included to clarify the duties of these officials, and of other persons having special information, in such situations. These are modeled after provisions in the Maryland Act, Section 5.

The office of coroner is included in brackets for those states in which, because it is a constitutional office, it cannot be abolished by this act.

Section 7. [*Laboratories.*] The Office of Post-Mortem Examinations shall maintain a laboratory or laboratories suitably equipped with medical, scientific and other facilities for performance of the duties imposed by this act. Laboratories may be maintained in collaboration with [the State Police Department], [State University Medical School, and] any other agencies in the state which have facilities that can be usefully employed in performing the duties of the Office. The manner of compliance with this section shall be in the discretion of the Commission.

Comment

The medico-legal laboratory should be a flexible organization ready and able to handle investigations with all the tools of modern science including chemistry, microscopy, photography, x-ray, bacteriology and pathology. The laboratory should be able to help direct the course of an investigation by indicating the weapon, vehicle or material to be sought, or to halt a fruitless search for the assailant when it is shown that a death is suicidal or accidental. The most efficient and economical method for the creation of such a laboratory is to combine the personnel and equipment of an adequate police laboratory with those of the medico-legal investigator, not necessarily by consolidation in the same building but by making talent and equipment mutually available. An affiliation with a medical school is desirable in order that the medical personnel of the laboratory be acquainted with modern advances in medicine and so that the specialized knowledge of injury and disease acquired through the work of the laboratory will be made available for the common good. Where such laboratories now exist the state is spared the expense of experts to bolster the testimony of its own officials, and in criminal prosecutions the defense can rely on unbiased medical evidence. In states with extensive territory and large populations two or more laboratories, partially duplicating each other, may be necessary to give adequate service.

Section 8. [*Rules and Regulations.*] The Commission may promulgate rules and regulations necessary or appropriate to carry out effectively the provisions of this Act.

Comment

As with other administrative offices and agencies a great many detailed practices and procedures must be worked out by a post-mortem examinations office if its job is to be done competently and efficiently. It is better for these to be formalized as regularly issued rules and regulations than to be left to the uncontrolled discretion of each individual functionary who happens to be in office. If the Model State Administrative Procedure Act should be in effect in a jurisdiction which adopts the present Act, this section would tie in with provisions of that Act.

Section 9. [*Records and Reports.*] The Office of Post-Mortem Examinations shall keep full and complete records, properly indexed, giving the name, if known of every person whose death is investigated, the place where the body was found, the date, cause and manner of death, and all other relevant information concerning the death, and shall issue a death certificate. The full report and detailed findings of the autopsy, if any, shall be a part of the record in each case. The Office shall promptly deliver to the [prosecuting attorney] of each [county] [district] having criminal jurisdiction over the case copies of all records relating to every death as to which further investigation may be advisable. Any [prosecuting attorney], [sheriff], [chief of police] or [enumerate other law enforcement officials] may upon request secure copies of such records or other information deemed necessary by him to the performance of his official duties. Private persons may obtain copies of records upon such conditions and payment of such fees as may be prescribed by the Commission, provided no person with a legitimate interest therein shall be denied access thereto.

Comment

The provisions of this section are largely modeled after similar provisions in Section 7 of the Maryland Act.

Section 10. [*Records as Evidence.*] The records of the Office of Post-Mortem Examinations, or transcripts thereof certified by the Chief Medical Examiner, are admissible in evidence in any court of this state, except that statements by witnesses or other persons and conclusions upon extraneous matters are not hereby made admissible. The person preparing a report or record given in evidence hereunder may be subpoenaed as a witness, in any civil or criminal case, by any party to the cause.

Comment

This section is modeled after a similar provision contained in Section 7 of the Maryland act. It is designed to make Office records, based on official investigations, and transcripts thereof, available in evidence without invasion of the main body of the Hearsay Rule as it applies to extra-judicial statements made by witnesses or other persons. This will permit the use in evidence of a high type of hearsay which would be admitted anyway in many states under the "official records" exception. The final sentence will take care of the right to confrontation which is in some states interpreted to include the makers of official reports admitted as evidence, and in other situations the

examiner preparing a report or record will be subject to the same liability to be subpoenaed as any other witness.

Section 11. (*Alternative Sections*)

(A) Section 11. [*Coroners.*] The office of coroner is abolished. The duties of the coroner's office covered by this Act are transferred to the Office of Post-Mortem Examinations, and all other duties of the officer are transferred to [fill in to fit the local situation].

(B) Section 11. [*Duties of Coroners.*] The duties of the coroner's office covered by this Act are transferred to the Office of Post-Mortem Examinations. The coroners shall hereafter perform such duties as may be assigned to them under the rules and regulations promulgated by the Commission on Post-Mortem Examinations.

Comment

The difficulty in drafting this section obviously arises from the fact that in some states the coroner is a constitutional officer whose office cannot be abolished by a mere statute. In states where the office is statutory only, the alternative section (A) might be used, to be completed by provisions fitting the law of each individual state. In states where the office is a constitutional one, the alternative section (B) might be used. A third alternative (C) might be a standard repealer clause, in which each state would merely enumerate sections of its statutes to be repealed. (See Section 14.) In some states a constitutional amendment may be necessary to validate parts of this Act.

Section 12. [*Short Title.*] This Act may be cited as the Model Post-Mortem Examinations Act.

Section 13. [*Severability.*] If any provision or application of this Act is held invalid, such invalidity shall not affect other provisions or application of the Act which can be given effect without the invalid provisions or application, and to this end the provisions of this Act are declared to be severable.

Section 14. [*Repeals.*] The following acts and parts of acts are hereby repealed:

Section 15. [*Time of Taking Effect.*] This Act shall take effect

NOTE: The National Association of Medical Examiners (NAME) has prepared a Model Law for Official Medical-Legal Investigation of Death, contained in *Standards for Inspection and Accreditation of a Modern Medicolegal Investigation System*, Second Edition, February 1988, which is available from NAME, 1402 South Grand Boulevard, St. Louis, Missouri, 63104, telephone (314) 577-8298.

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