



NATIONAL COMMISSION ON FORENSIC SCIENCE

NIST
National Institute of
Standards and Technology
U.S. Department of Commerce

Recommendation to the Attorney General Model Legislation for Medicolegal Death Investigation Systems

Subcommittee
Medicolegal Death Investigation
Status
Adopted by the Commission

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Action by Attorney General	[dd/mm/yy]

Commission Action

On January 9, 2017, the Commission voted to adopt this Recommendation by a more than two-thirds majority affirmative vote (90% yes, 0% no, 10% abstain).

Note: This document includes recommendations developed and adopted by the National Commission on Forensic Science and proposes specific acts that the Attorney General could take to further the goals of the Commission. The portion of the document directly labeled "Recommendations" represents the formal recommendations of the Commission. Information beyond that section is provided for context. This document does not necessarily represent the views of the Department of Justice or the National Institute of Standards and Technology. The National Commission on Forensic Science is a Federal Advisory Committee established by the Department of Justice. For more information, please visit: <https://www.justice.gov/ncfs>.

Overview

The 1954 Postmortem Examinations Act was an early model medical examiner act; no equivalent model coroner act exists. The 1954 act is so obsolete that it provides little guidance for either modern medical examiner or coroner legislation and needs to be updated. Model legislation would assist State governments to improve the quality of their medicolegal death investigation statutory framework and their ability to conduct adequate medicolegal death investigations.

Recommendation

The National Commission on Forensic Science requests that the Attorney General of the United States advocate and provide financial support for the drafting of model medicolegal death investigation legislation by the Uniform Law Commission.

Background

Medicolegal death investigations consist of medical examiner, coroner systems, and a mixture of the two.¹⁻⁶ Medical examiner systems are typically headed by forensic pathologists and coroner systems are typically headed by elected (sometimes appointed) individuals with diverse backgrounds and qualifications. Where coroner systems are components of county governments, medical examiner systems can be State, regional/district, county, or city agencies. They may be administratively independent or located in law enforcement or public health agencies.

In 1954, the National Commission on Uniform State Laws (now the Uniform Law Commission) drafted a Model Postmortem Examinations Act that was adopted by several states, generally with significant modifications.⁷⁻⁹ This model legislation is now very dated—it was simplistic and unsophisticated compared with modern statutes. The 2009 National Research Council of the National Academy of Sciences noted these shortcomings and called for new model medical examiner legislation to be drafted. Today, legislation varies widely between states. Jurisdictions could learn from each other's best legislation, and legislative language should be developed to address needs in other areas. Given that the current national landscape is heterogeneous, consisting of medical examiner, coroner systems, mixed systems, and other systems, the legislative needs for these systems may differ. State legislatures should use model legislation to ensure jurisdictions are held accountable to the framework outlined below. Regardless of system structure, model medicolegal death investigation legislation should benefit all systems in providing high-quality medicolegal death investigative services to better support the public through the public health, public safety, and criminal justice systems.

Model legislation is statutory language developed as guidance to States that may be adopted as is or modified to fit the needs of the jurisdiction. *Uniform* laws, by contrast, are to be adopted without modification, so that the law in one state matches the law in another. This is particularly important for such things as commercial transactions. We believe that model legislation should be drafted in this area, because we do recognize that different systems may be appropriate for different jurisdictions and that uniform legislation would be unworkable.

The Uniform Law Commission (ULC) is the predominant, but not exclusive, legislative drafting organ in the United States. The Uniform Law Commission provides states with nonpartisan, well-conceived, and well-drafted legislation that brings clarity and stability to critical areas of state statutory law. It is a nonprofit unincorporated association comprised of state commissioners from each state, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. Since 1892, it has produced more than 300 acts. Perhaps the best-known project that the ULC has developed is the Uniform Commercial Code (UCC), produced as a joint venture between the ULC and the American Law Institute (ALI). Since the 1954 Postmortem Examinations Model Act, the ULC has twice considered the drafting of model medicolegal death investigation legislation but did not follow through.

An example where model legislation may help is in research.¹⁰ Research in forensic pathology is inhibited by legal statutes, and specific legislation may permit or foster research, e.g. Cal. Gov. Code Sec. 27491.41 mandates autopsies, specific protocols, and expressly permits research and

removes normal procedural requirements for the research. Model legislation could significantly enhance research in medicolegal death investigation, forensic pathology, and traumatic injury. There are numerous areas of specifically needed authorization that would assist jurisdictions, such as subpoena power; numerous areas of areas of significant variation, such as whether or not records are public; and numerous areas where states could use guidance, such as in the case of organ retention. Model legislation would bring greatly needed uniformity and best practices to light.

This model legislation in a medicolegal jurisdiction should include the following:

Mission / Purpose

Jurisdiction

- Death notification
- Jurisdictional scope and waiver
- Independence of operation
- Cross-jurisdictional disputes

Structure

- Qualifications of the chief medicolegal officer (e.g., chief medical examiner or coroner)
- Governing commission or body
- Advisory board
- First-responder designation
- Requirement for accreditation
- Staff credentialing and certification

Operations

- Telephonic inquiry
- Death investigation, including scene investigation ¹¹
 - Evidence collection, handling, and retention
 - Medications/drug seizure and destruction
- Postmortem inspections
- Autopsies
- Death certification
- Ancillary support
- DNA sample retention
- Organ and tissue procurement; liaison with Organ Procurement Organizations (OPOs) and Tissue Banks
- Organ and tissue retention, notification, and disposition
- Disease and injury surveillance and reporting
- Identifications/missing persons
- Mass-fatality planning

Administration

- Credentialing of personnel
- Records retention and release

- Subpoena power
- Office information management system
- Electronic death-registration system
- Family Notification and communication
- Public-health reporting
- Policy and payment for testimony by prior staff

Other

- Death Review Teams
- Good-faith immunity for investigation, death certification, and testimony
- Good-faith immunity for organ retention and organ and tissue harvest
- Grief counseling/provision of social services
- Research policy, including good-faith immunity
- Challenge and appeals to death-certification rulings
- Objections to autopsy

The contemplated legislation would not dictate operational issues of procedures and practice, but rather would articulate the policy framework and the limitations of practice, and define the permissions and expectations of practice.

References

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