STATE OF OKLAHOMA

1st Session of the 52nd Legislature (2009)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1965 By: Benge

COMMITTEE SUBSTITUTE

(Office of the Chief Medical Examiner - providing for independent Office - Chief Administrative Officer - location of Office and laboratory - Board of Medicolegal Investigations – codification - effective date)

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 51 O.S. 2001, Section 24A.5, as last amended by Section 34, Chapter 16, O.S.L. 2006 (51 O.S. Supp. 2008, Section 24A.5), is amended to read as follows:

Section 24A.5 All records of public bodies and public officials shall be open to any person for inspection, copying, or mechanical reproduction during regular business hours; provided:

1. The Oklahoma Open Records Act, Sections 24A.1 through 24A.28 of this title, does not apply to records specifically required by law to be kept confidential including:

a. records protected by a state evidentiary privilege such as the attorney-client privilege, the work product immunity from discovery and the identity of informer privileges,

b. records of what transpired during meetings of a public body lawfully closed to the public such as executive sessions authorized under the Oklahoma Open Meeting Act, Section 301 et seq. of Title 25 of the Oklahoma Statutes,

c. personal information within driver records as defined by the Driver's Privacy Protection Act, 18 United States Code, Sections 2721 through 2725, or

d. information in the files of the ~~Board of Medicolegal Investigations~~ Office of the Chief Medical Examiner obtained pursuant to Sections 940 and 941 of Title 63 of the Oklahoma Statutes that may be hearsay, preliminary unsubstantiated investigation-related findings, or confidential medical information.

2. Any reasonably segregable portion of a record containing exempt material shall be provided after deletion of the exempt portions; provided however, the Department of Public Safety shall

not be required to assemble for the requesting person specific information, in any format, from driving records relating to any person whose name and date of birth or whose driver license number is not furnished by the requesting person. The Oklahoma State Bureau of Investigation shall not be required to assemble for the requesting person any criminal history records relating to persons whose names, dates of birth, and other identifying information required by the Oklahoma State Bureau of Investigation pursuant to administrative rule are not furnished by the requesting person.

3. Any request for a record which contains individual records of persons, and the cost of copying, reproducing or certifying each individual record is otherwise prescribed by state law, the cost may be assessed for each individual record, or portion thereof requested as prescribed by state law. Otherwise, a public body may charge a fee only for recovery of the reasonable, direct costs of record copying, or mechanical reproduction. Notwithstanding any state or local provision to the contrary, in no instance shall the record copying fee exceed twenty-five cents ($0.25) per page for records having the dimensions of eight and one-half (8 1/2) by fourteen (14) inches or smaller, or a maximum of One Dollar ($1.00) per copied page for a certified copy. However, if the request:

a. is solely for commercial purpose, or

b. would clearly cause excessive disruption of the essential functions of the public body,

then the public body may charge a reasonable fee to recover the direct cost of record search and copying; however, publication in a newspaper or broadcast by news media for news purposes shall not constitute a resale or use of a record for trade or commercial purpose and charges for providing copies of electronic data to the news media for a news purpose shall not exceed the direct cost of making the copy. The fee charged by the Department of Public Safety for a copy in a computerized format of a record of the Department shall not exceed the direct cost of making the copy unless the fee for the record is otherwise set by law.

Any public body establishing fees under this act shall post a written schedule of the fees at its principal office and with the county clerk.

In no case shall a search fee be charged when the release of records is in the public interest, including, but not limited to, release to the news media, scholars, authors and taxpayers seeking to determine whether those entrusted with the affairs of the government are honestly, faithfully, and competently performing their duties as public servants.

The fees shall not be used for the purpose of discouraging requests for information or as obstacles to disclosure of requested information.

4. The land description tract index of all recorded instruments concerning real property required to be kept by the county clerk of

any county shall be available for inspection or copying in accordance with the provisions of the Oklahoma Open Records Act; provided, however, the index shall not be copied or mechanically reproduced for the purpose of sale of the information.

5. A public body must provide prompt, reasonable access to its records but may establish reasonable procedures which protect the integrity and organization of its records and to prevent excessive disruptions of its essential functions.

6. A public body shall designate certain persons who are authorized to release records of the public body for inspection, copying, or mechanical reproduction. At least one person shall be available at all times to release records during the regular business hours of the public body.

SECTION 2. AMENDATORY 63 O.S. 2001, Section 933, is amended to read as follows:

Section 933. A. The Office of the Chief Medical Examiner of the State of Oklahoma is ~~hereby~~ established ~~to be operated under the control and supervision of the Board~~. The Office shall ~~be~~:

1. Remain independent and autonomous from all other agencies in this state;

2. Be directed by the Chief Medical Examiner, and the Chief Medical Examiner may employ ~~such other~~ staff members ~~as the Board shall specify~~ necessary to effectively carry out the functions of

this Office, except as provided for in subsection B of Section 934 of this title;

3. Obtain approval by the Legislature before closing any satellite office; and

4. Promulgate rules necessary to effectively implement the provisions of this act.

SECTION 3. AMENDATORY 63 O.S. 2001, Section 934, is amended to read as follows:

Section 934. A. 1. The ~~Board of Medicolegal Investigations~~ Governor shall appoint a Chief Medical Examiner who shall be a physician licensed to practice in Oklahoma and a diplomate of the American Board of Pathology or the American Osteopathic Board of Pathology in forensic pathology.

2. The Chief Medical Examiner shall serve at the pleasure of the ~~Board~~ Governor. In addition to the duties prescribed by law, the Chief Medical Examiner may teach in any medical school in this state and conduct special classes for law enforcement officers.

B. 1. The Governor shall appoint a Chief Administrative Officer to manage the administrative functions of the Office of the Chief Medical Examiner.

2. The Chief Administrative Officer shall serve at the pleasure of the Governor and shall have the training and experience necessary for the administration of the Office as determined by the Governor

in consultation with the Chief Medical Examiner. The duties of the Chief Administrative Officer shall include:

a. the establishment of written professional qualification requirements for each staff position related to the investigation of deaths including but not limited to forensic pathologists, chemists, investigators, and the position of chief investigator,

b. the formulation and recommendation of rules for approval or rejection by the Chief Medical Examiner,

c. the establishment of policy and procedures for background checks of all prospective employees of the Office, and

d. supervision of the activities of the Office.

SECTION 4. AMENDATORY 63 O.S. 2001, Section 935, as last amended by Section 5, Chapter 269, O.S.L. 2008 (63 O.S. Supp. 2008, Section 935), is amended to read as follows:

Section 935. The Chief Medical Examiner shall be directly responsible to the ~~Board~~ Governor for the performance of the duties provided for in this act and for the administration of the office of the Chief Medical Examiner. The Chief Medical Examiner may~~, however,~~ delegate specific duties to the Chief Administrative Officer and to competent and qualified deputies who may act for the Chief Medical Examiner within the scope of the express authority

granted by the Chief Medical Examiner~~, subject, however, to such rules as the Board may prescribe~~.

SECTION 5. AMENDATORY 63 O.S. 2001, Section 936, is amended to read as follows:

Section 936. ~~The Board shall provide for a central office and shall see that there is maintained~~ The Office of the Chief Medical Examiner shall maintain access to a laboratory suitably equipped with facilities for performance of the duties imposed by this act. The Office shall be located in close proximity to the Oklahoma State Bureau of Investigations Forensics Science Center and the University of Central Oklahoma Forensic Science Institute. The Office is authorized to contract with independent third parties for the effective utilization of all available resources and programs.

SECTION 6. AMENDATORY 63 O.S. 2001, Section 937, is amended to read as follows:

Section 937. The Chief Medical Examiner shall appoint medical examiners for each county of the state. Each medical examiner so appointed shall be a Doctor of Medicine or Osteopathy and Surgery, shall hold a valid license to practice his profession in Oklahoma, and shall hold office at the pleasure of the ~~Board~~ Governor. In the event there is no qualified person in the county or no person willing to serve as a medical examiner, or in the event the medical examiner is absent from the county in which he serves, or is ill or disqualified by personal interest, the Chief Medical Examiner may ~~in~~

~~his discretion~~ appoint as a medical examiner for ~~such~~ the county a qualified person from another county, or may direct a medical examiner from another county to perform the duties of a medical examiner in both counties. Nothing in this section or act shall prohibit or restrict the Chief Medical Examiner from ~~appointing a medical examiner and~~ directing ~~him~~ a medical examiner to cross a county line. A medical examiner shall not be precluded from holding other public offices created by the laws of the state.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 937.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

The Office of the Chief Medical Examiner and any employee thereof shall not receive compensation of any kind from any organ, eye, or tissue recovery organization except as otherwise provided for by law.

SECTION 8. AMENDATORY 63 O.S. 2001, Section 941a, is amended to read as follows:

Section 941a. Within three (3) hours after the death of any person who is at the time of death attended by a licensed medical or osteopathic physician, the body of the deceased shall be released, upon demand, to the person legally entitled to the custody thereof, or his representative, unless:

1. A release is signed by the person legally entitled to the custody of the body; or

2. The attending physician has notified the Chief Medical Examiner of the State of Oklahoma, or his designee, of the need for further investigation into the cause of death, or has notified the appropriate district attorney of such need; or

3. The laws of this state or the regulations of the ~~Board of Medicolegal Investigations~~ Office of the Chief Medical Examiner require additional information or examination that cannot be obtained or completed within the above period of time.

SECTION 9. AMENDATORY 63 O.S. 2001, Section 947, is amended to read as follows:

Section 947. A. The certification of death of any person whose death is investigated under this act shall be made by the Chief Medical Examiner, his designee, or the medical examiner who conducted the investigation, upon a medical examiner death certificate provided by the State Registrar of Vital Statistics. Such death certificates shall be valid only when signed by a duly appointed medical examiner, the Chief Medical Examiner, or his designee. Copies of all ~~such~~ certificates shall be forwarded immediately upon receipt by the State Registrar of Vital Statistics to the Office of the Chief Medical Examiner.

B. Any certification of death by an attending physician may be referred by the State Registrar of Vital Statistics to the Chief Medical Examiner for investigation and the amending of the original certificate of death by the filing of a medical examiner death

certificate by the medical examiner or Chief Medical Examiner when the death is determined by the Chief Medical Examiner to be one properly requiring investigation under Section 938 of this title.

C. Medical examiner death certificates will not be required in cases investigated solely for the purpose of issuing a permit for transport of a body out of state.

D. The ~~Board of Medicolegal Investigations~~ Office of the Chief Medical Examiner shall not charge a fee for out-of-state shipment of human remains whenever the Office of the Chief Medical Examiner has not been required to conduct an investigation of the death.

SECTION 10. AMENDATORY 63 O.S. 2001, Section 948, as amended by Section 1, Chapter 559, O.S.L. 2004 (63 O.S. Supp. 2008, Section 948), is amended to read as follows:

Section 948. A. For each investigation or partial investigation in which the medical examiner is relieved by the Chief Medical Examiner or a designee, the medical examiner shall receive compensation for ~~such~~ services as provided in the rules approved and promulgated by the ~~Board of Medicolegal Investigations~~ Office of the Chief Medical Examiner, from funds appropriated to the ~~Board of Medicolegal Investigations~~ Office of the Chief Medical Examiner. Where, in the opinion of the Chief Medical Examiner, it is necessary to designate a consultant pathologist to perform an autopsy, such pathologist shall be entitled to a reasonable fee. Such fees shall

be payable from funds appropriated to the ~~Board of Medicolegal Investigations~~ Office of the Chief Medical Examiner.

B. The Office of the Chief Medical Examiner (OCME) shall store biological specimens in the control of the OCME for the potential purpose of independent analyses in matters of civil law, only upon receipt of a written request for ~~such~~ storage and payment of a storage fee. The fee shall be paid by the person requesting storage to the Office of the Chief Medical Examiner. The ~~Board~~ Office shall promulgate rules establishing a fee for storage of ~~such~~ biological specimens which shall not exceed One Hundred Dollars ($100.00) per year. All fees collected pursuant to the provisions of this subsection shall be deposited to the credit of the Office of the Chief Medical Examiner Toxicology Laboratory Revolving Fund.

C. 1. The Office of the Chief Medical Examiner (OCME) is authorized to perform drug screens on specimens in the custody of the OCME, provided the request is made by an agency or party authorized to receive such information. The OCME may limit drug screens within the technical and physical capabilities of the OCME.

2. The authorization for drug screens shall apply only to specimens from cases already within the jurisdiction of the OCME and only when the analyses are deemed by the Chief Medical Examiner or Deputy Chief Medical Examiner not to conflict with any investigation of the case by the state.

3. The ~~Board of Medicolegal Investigations~~ Office of the Chief Medical Examiner shall establish a fee for drug screen services by rule. All fees collected pursuant to the provisions of this subsection shall be deposited to the Chief Medical Examiner Toxicology Laboratory Revolving Fund.

SECTION 11. AMENDATORY Section 2, Chapter 559, O.S.L. 2004 (63 O.S. Supp. 2008, Section 948.1), is amended to read as follows:

Section 948.1 A. The ~~Board of Medicolegal Investigations~~ Office of the Chief Medical Examiner may establish a fee schedule for forensic services, permits and reports rendered to members of the public and other agencies.

1. No fee schedule may be established or amended by the ~~Board~~ Office except during a regular legislative session. The ~~Board~~ Office shall comply with the Administrative Procedures Act for adoption of rules and establishing or amending any ~~such~~ fee schedule.

2. Except as otherwise specified in this section, the ~~Board~~ Office shall charge fees only within the following ranges:

a. permit for cremations that occur within the state: One Hundred Dollars ($100.00) to Two Hundred Dollars ($200.00),

b. forensic science service: One Hundred Dollars ($100.00) to Three Thousand Dollars ($3,000.00),

c. report copies: Ten Dollars ($10.00) for report of investigation, including toxicology, and Twenty Dollars ($20.00) for an autopsy report, including toxicology,

d. x-rays: Fifteen Dollars ($15.00) each,

e. microscopic slides, Hematoxilyn and Eosin (H&E): Ten Dollars ($10.00) each,

f. special stains: Fifteen Dollars ($15.00) each, and

g. photographs: Twenty-five Dollars ($25.00) per computer diskette (CD).

B. The ~~Board~~ Office shall base the fee schedule for forensic science services, permits and reports upon reasonable costs of review, investigation and forensic science service delivery; provided, however, the fee schedule shall be within the ranges specified in subsection A of this section. The ~~Board~~ Office shall continue a system of basic and continuing educational service and training for all personnel who render forensic science services in order to ensure uniform statewide application of the rules of the ~~Board~~ Office. The ~~Board~~ Office shall consider the reasonable costs associated with such training and continuing education in setting the forensic science service fees.

C. The ~~Board~~ Office may exempt by rule any agency or class of individuals from the requirements of the fee schedule if the ~~Board~~ Office determines that the fees would cause an unreasonable economic

hardship or would otherwise hinder or conflict with ~~an agency's~~ the responsibilities of an agency.

D. All statutory fees currently in effect for permits or forensic science services administered by the Chief Medical Examiner ~~and the Board of Medicolegal Investigations~~ within the jurisdiction of the Office of the Chief Medical Examiner shall remain in effect until such time as the ~~Board~~ Office acts to implement new schedules pursuant to the provisions of this act.

SECTION 12. AMENDATORY 63 O.S. 2001, Section 949, as amended by Section 1, Chapter 190, O.S.L. 2004 (63 O.S. Supp. 2008, Section 949), is amended to read as follows:

Section 949.

A. 1. a. The Office of the Chief Medical Examiner 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. The full report and detailed findings of the autopsy, if any, shall be a part of the record in each case.

b. The Chief Medical Examiner shall track and forward, within seventy-two (72) hours after the examination, demographic information on sudden, unexpected and nontraumatic infant deaths including, but not limited

to, Sudden Infant Death Syndrome (SIDS), to the Oklahoma SIDS Coordinator at the State Department of Health and the SIDS Foundation of Oklahoma. As used in this subparagraph, "Sudden Infant Death Syndrome (SIDS)" means the sudden, unexpected death of an apparently healthy infant less than one (1) year of age which remains unexplained following a complete medicolegal analysis and death scene investigation. The Chief Medical Examiner shall follow up with further notification upon final determination of a cause of death. Such notification shall be for statistical reporting purposes only.

2. The office shall promptly deliver to each district attorney having jurisdiction of the case, copies of all records relating to a death for which further investigation may be advisable. Any district attorney or other law enforcement official may, upon request, obtain copies of ~~such~~ records or other information deemed necessary ~~to~~ for the performance of ~~such district attorney's or other law enforcement official's~~ official duties.

B. No report, findings, testimony, or other information of a medical examiner shall be admitted in evidence in any civil action in any court in this state, except under the following circumstances:

1. Certified copies of reports pertaining to the factual determinations of views and examination of or autopsies upon the bodies of deceased persons by the Chief Medical Examiner, a medical examiner, consultant pathologist, or anyone under their supervision or control may be admitted in evidence in any civil case in a court of competent jurisdiction in this state by stipulation of all parties in the case;

2. If a party refuses to stipulate to admission, the reports may be requested by any party seeking to admit the records as evidence. The request shall be made to the Office of the Chief Medical Examiner, who shall furnish same;

3. The party seeking admission of the reports shall then serve interrogatories concerning the facts to be answered under oath by the person preparing the records. The interrogatories and answers thereto shall be subject to the rules of evidence and may be admissible in evidence in any civil case in a court of competent jurisdiction. Objections to the interrogatories shall be made by any party in accordance with law just as if the interrogatories had been served on the objecting party. Cross interrogatories shall be submitted and shall be answered and admitted in evidence in the same manner as interrogatories;

4. The taking of depositions shall then be allowed pursuant to the provisions of Section 3230 of Title 12 of the Oklahoma Statutes; provided, however, depositions shall take place at the Office of the

Chief Medical Examiner, a medical examiner, consultant pathologist, or anyone under their supervision or control whose testimony is sought, unless all parties, including the medical examiner, agree the deposition can be taken elsewhere;

5. No other testimony of the Chief Medical Examiner, a medical examiner, consultant pathologist, or anyone under their supervision and control shall be admitted in evidence in any civil action in any court of this state, unless timely application is made to the court by an interested party or litigant and timely notice of the application is given to the medical examiner. After a hearing, the court, for good cause shown, may order the appearance of the Chief Medical Examiner, a medical examiner, consultant pathologist, or anyone under their supervision and control for the purpose of testifying and may order that a subpoena be issued for that appearance; provided, however, that such order by the court shall be the exception and not the rule; and

6. The cost of the records or certified copies thereof shall be paid by the party requesting same. The reasonable fee charged by the Chief Medical Examiner, a medical examiner, consultant pathologist, or anyone under their supervision and control for answering interrogatories or cross interrogatories, submitting to depositions, or providing testimony shall be paid by the party submitting same. This fee shall be in place of any other witness fee allowed by law.

C. Certified copies of reports and findings, exclusive of hearsay evidence, may be admitted in evidence in preliminary hearings and criminal trials by stipulation.

D. Certified copies of reports of investigations by a medical examiner, laboratory reports and/or autopsy reports may be furnished to the next of kin or others having need for them upon written statement and payment of a reasonable fee set by the ~~Board of Medicolegal Investigations~~ Office of the Chief Medical Examiner.

E. 1. In a case in which possible SIDS is determined as the cause of death of an infant less than one (1) year of age, the medical examiner shall explain to the newly bereaved family that support services are available and can be rendered more efficiently if the family signs a waiver to allow release of confidential information. The medical examiner shall provide such waiver to the family for signatures.

2. The medical examiner shall document receipt of the signed waiver form and shall forward such documentation to the State Department of Health and the SIDS Foundation of Oklahoma, along with information related to the possible SIDS death including, but not limited to, the ~~infant's~~ name, date of birth, date of death, and race of the infant, ~~parents'~~ the names, address, and phone number of the parents.

3. As used in this subsection, "possible SIDS" means the sudden unexpected, nontraumatic death of an apparently healthy infant less than one (1) year of age.

SECTION 13. AMENDATORY 63 O.S. 2001, Section 950, is amended to read as follows:

Section 950. In the event it is necessary or advisable to perform an autopsy under the provisions of this act in some place other than the laboratories of the Chief Medical Examiner, ~~said~~ the examiner may authorize payment of a reasonable fee for the use of an appropriate place for the performing of an autopsy, which payment shall be made upon a claim and submitted to the ~~Board of Medicolegal Investigations~~ Office of the Chief Medical Examiner.

SECTION 14. AMENDATORY 63 O.S. 2001, Section 951, is amended to read as follows:

Section 951. The Chief Medical Examiner, his designee, or a medical examiner shall be authorized to transport bodies of deceased persons of whose death he is officially informed to an appropriate place for autopsy or for the performance of scientific tests; provided that, after ~~said~~ the autopsy ~~shall have been~~ is performed or ~~such~~ tests made, the bodies of ~~such~~ deceased persons shall be returned to the county from which they were brought, or, when so authorized by the district attorney of ~~said~~ the county and upon request of the nearest relative of the deceased or other person who may be responsible for burial, the body may be transported to some

place other than ~~said~~ the county. The Chief Medical Examiner or ~~his~~ a designee may authorize payment for the services in transporting the body to the place designated for autopsy, which shall be submitted upon a claim filed with the ~~Board of Medicolegal Investigations~~ Office of the Chief Medical Examiner.

SECTION 15. AMENDATORY 63 O.S. 2001, Section 954, is amended to read as follows:

Section 954. A. The ~~Board of Medicolegal Investigations~~ Office of the Chief Medical Examiner is authorized to accept grants, gifts, fees, or funds from persons, associations, corporations, or foundations for any purpose ~~authorized by the Board~~.

B. There is ~~hereby~~ created in the State Treasury a revolving fund for the Office of the Chief Medical Examiner to be designated the "Chief Medical Examiner Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all moneys received from:

1. Laboratory analysis fees pursuant to the provisions of Section 1313.2 of Title 20 of the Oklahoma Statutes;

2. Grants, gifts, fees or funds from persons, associations, corporations, or foundations pursuant to this section;

3. Document fees pursuant to the Oklahoma Open Records Act, Section 24A.1 et seq. of Title 51 of the Oklahoma Statutes; and

4. Cremation, burial at sea, or other recognized means of dissolution permit fees pursuant to Section 1-329.1 of this title.

All monies accruing to the credit of ~~said~~ the fund are ~~hereby~~ appropriated and may be budgeted and expended by the Office of the Chief Medical Examiner for the duties imposed ~~upon the Board of Medicolegal Investigations~~ by law. Expenditures from ~~said~~ the fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

SECTION 16. REPEALER 63 O.S. 2001, Section 931, as amended by Section 1, Chapter 410, O.S.L. 2005 (63 O.S. Supp. 2008, Section 931), is hereby repealed.

SECTION 17. REPEALER 63 O.S. 2001, Section 932, is hereby repealed.

SECTION 18. This act shall become effective November 1, 2009.

52-1-7216 CJB 02/26/09