FIRST ENGROSSMENT

Sixty-first
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2168

Introduced by

Senators J. Lee, Hogue, Warner

Representatives Delmore, Kreidt, Nathe

A BILL for an Act to create and enact section 23-01-05.5 of the North Dakota Century Code, relating to the confidentiality of autopsy reports; to amend and reenact sections 11-19.1-01, 11-19.1-03, 11-19.1-04, 11-19.1-06, 11-19.1-07, 11-19.1-08, 11-19.1-10, 11-19.1-11, 11-19.1-13, 11-19.1-15, 11-19.1-17, 11-19.1-18, 11-19.1-19, 11-19.1-20, and 23-01-05.4 of the North Dakota Century Code, relating to the powers and duties of the coroner and state forensic examiner; to repeal chapter 11-19 and section 11-19.1-05 of the North Dakota Century Code, relating to the county coroner and the appointment of an assistant coroner; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-19.1-01 of the North Dakota Century Code is amended and reenacted as follows:

11-19.1-01. Definitions. ~~The following words and phrases when~~ As used in this chapter ~~have the meanings ascribed to them in this section except in those instances when~~, unless the context ~~clearly indicates a different meaning~~ otherwise requires:

1. "Autopsy" means the inspection or dissection of a ~~dead~~ deceased human body ~~for the purpose of inquiring into the cause of death~~ and retention of organs, tissue, or fluids for diagnostic, educational, public health, or research purposes.
2. "Casualty" means death arising from accidental or unusual means.
3. "City" means a city organized under the laws of this state.
4. "Physician" includes physicians and surgeons licensed under ~~the provisions of~~ chapter 43-17~~, as amended~~.
5. "~~Suspicious~~ Reportable circumstances" ~~means the existence of~~ includes one or more of the following factors:
   a. ~~Self-inflicted~~ Obvious or suspected homicidal, suicidal, or accidental injury;

b. Firearm injury;

c. Severe, unexplained injury;

d. ~~Pedestrian driveway~~ Occupant or pedestrian motor vehicle injury;

e. An injury to a ~~child which is not witnessed by the individual responsible for the child at the time the injury occurred~~ minor;

f. ~~Inadequate supervision~~ Fire, chemical, electrical, or radiation;

g. ~~Malnutrition or delay in seeking medical care~~ Starvation;

h. ~~Confinement~~ Unidentified or skeletonized human remains;

i. ~~Bathtub or bucket drowning~~ Drowning;

j. Suffocation, smothering, or strangulation;

k. Poisoning or illegal drug use;

l. Prior child abuse or neglect assessment concerns;

m. Open child protection service case on the victim;

n. Victim is in the custody of the department of human services, county social services, ~~or the division of juvenile services~~ the department of corrections and rehabilitation or other correctional facility, or law enforcement;

o. Unexplained death or death in an undetermined manner;

p. Suspected sexual assault; or

q. Any other suspicious factor.

SECTION 2. AMENDMENT. Section 11-19.1-03 of the North Dakota Century Code is amended and reenacted as follows:

11-19.1-03. Appointment of coroner~~, term, assistant~~ - Term - Vacancy. The ~~coroner shall be appointed by the~~ board of county commissioners shall appoint a coroner for a term of ~~two~~ five years. The board shall notify the state forensic examiner in writing of any appointment under this section. If ~~such~~ the office ~~shall become~~ of coroner becomes vacant by death, resignation, expiration of the term of office, or otherwise, or ~~when~~ if the coroner becomes permanently unable to perform the duties of office, the board of county commissioners shall appoint a ~~person with the qualifications as hereinafter set forth~~ qualified individual to fill ~~such~~ the vacancy, who shall give and take the oath of office as prescribed for coroners. If the duly appointed, qualified, and acting coroner is absent temporarily from the county~~, or when on duty with the armed services of the United States, or the state militia, or~~

~~with the American red cross,~~ or ~~when~~ is unable to discharge the duties of office for any ~~other~~ reason, ~~such~~ the coroner may appoint ~~a person~~ an individual with the qualifications of coroner to act in the coroner's absence~~, service,~~ or disability, upon taking the prescribed oath for coroners.

SECTION 3. AMENDMENT. Section 11-19.1-04 of the North Dakota Century Code is amended and reenacted as follows:

11-19.1-04. Eligibility ~~for office~~. ~~No person shall be eligible for the office of county coroner except a physician who has been duly licensed to practice as such in this state and who is in good standing in the profession.~~

1. Subject to the qualifications, training, and continuing education requirements determined by the state forensic examiner, the following individuals are eligible to serve as coroner:
   a. A physician licensed under chapter 43-17;
   b. An advanced practice registered nurse or registered nurse licensed under chapter 43-12.1;
   c. A physician assistant licensed under chapter 43-17; and
   d. Any other individual determined by the state forensic examiner to be qualified to serve as coroner.
2. The coroner may appoint assistant or deputy coroners subject to the qualifications, training, and continuing education requirements determined by the state forensic examiner.

SECTION 4. AMENDMENT. Section 11-19.1-06 of the North Dakota Century Code is amended and reenacted as follows:

11-19.1-06. ~~Persons~~ Individuals authorized to act ~~where no resident physician~~ in absence of coroner. In ~~such~~ those counties in which ~~no physician is residing or~~ a coroner does not reside or is not available, the duties of coroner ~~as herein provided~~ must be performed by the sheriff, the state highway patrol, or any special agent of the bureau of criminal investigation. The sheriff, the state highway patrol, or special agent shall call upon the nearest ~~physician~~ coroner or deputy coroner from an adjacent county to investigate the medical cause of death of all coroner cases within said county. ~~Where~~ In those situations in which, because of distance or adverse conditions, a ~~physician~~ coroner is not available, the sheriff, the state

highway patrol, or special agent shall ~~have~~ request the state forensic examiner or the forensic examiner's designee ~~called in~~ to investigate and certify as to the medical cause of death.

SECTION 5. AMENDMENT. Section 11-19.1-07 of the North Dakota Century Code is amended and reenacted as follows:

11-19.1-07. ~~Death to be reported to coroner by physician or persons discovering body - Penalty - Notice to state health officer - Right to autopsy~~ Reports of death - Death of minor.

1. Any person who discovers the ~~dead~~ deceased human body~~,~~ or acquires the first knowledge of the death of any ~~person~~ individual, and any physician with knowledge that ~~a person~~ an individual died as a result of criminal or violent means, ~~casualty, suicide, accidental death, or~~ died suddenly when in apparent good health in a suspicious or unusual manner, or died as the result of any other reportable circumstance, shall notify immediately ~~notify~~ the office of coroner or any law enforcement officer of the known facts concerning the time, place, manner, and circumstances of ~~such~~ that death, and any other information ~~which~~ that may be required pursuant to this chapter. Any person who violates ~~the provisions of~~ this section ~~shall be~~ is guilty of a class B misdemeanor.
2. Any person who discovers the ~~dead~~ deceased human body ~~of,~~ or acquires the first knowledge of the death of~~,~~ any minor who has received or is eligible to receive a ~~certificate of live~~ birth record, when the minor died suddenly when in apparent good health, shall notify immediately ~~notify~~ law enforcement and the office of coroner of the known facts concerning the time, place, manner, and circumstances of the death. The death of a minor must be reported to the department of human services as provided under chapter 50-25.1. The coroner shall take custody of the body and immediately ~~notify the state's attorney of the county in which the body was discovered. Within twenty-four hours of the notice of a death that occurs under suspicious circumstances, the state's attorney shall~~ consult with a law enforcement agency ~~and the state department of health~~. The law enforcement agency shall investigate the death and notify the state's attorney of the findings. The coroner shall notify the state ~~health officer~~ forensic examiner of each such death, and shall provide the state ~~health officer~~ forensic examiner the information

concerning the death as the state ~~health officer shall require~~ forensic examiner requires. The coroner or the coroner's medical deputy shall notify the parent or guardian of a child under the age of one year of the right to the performance of an autopsy, at state expense, as provided by this chapter.

SECTION 6. AMENDMENT. Section 11-19.1-08 of the North Dakota Century Code is amended and reenacted as follows:

11-19.1-08. Records of coroner's office. ~~It is the duty of the~~ The coroner ~~to~~ shall keep ~~a~~ full and complete ~~record and to fill in the cause of death upon the death certificate in all cases coming under the coroner's jurisdiction~~ records. All records must be kept in the office of the coroner~~,~~ if the coroner maintains an office as coroner~~, and if~~. If the coroner maintains no separate office, ~~then~~ the records must be kept in the office of the recorder of the county, unless the board of county commissioners designates a different official~~, and~~. The records must be properly indexed, stating the name, if known, of every deceased ~~person~~ individual, the place where the body was found, date of death, cause of death, and all other available information required by this chapter. The report of the coroner and the detailed findings of the autopsy, if one was performed, must be attached to the report of every case. The coroner ~~shall~~ promptly shall deliver or cause to be delivered to the state's attorney of the county in which a death occurred copies of all necessary records relating to every death in which the coroner or state's attorney determines further investigation advisable. The sheriff of the county, the police of the city, or the state highway patrolmen on duty in that county in which the death occurred may be requested to furnish more information or make further investigation by the coroner or the coroner's deputy. The state's attorney may obtain from the office of the coroner copies of records and other information necessary for further investigation. ~~All~~ Except for a report of death and autopsy reports, which may be used and disclosed only as authorized by subsection 4 of section 11-19.1-11, all records of the coroner ~~shall become and remain~~ are the property of the county and are public records.

SECTION 7. AMENDMENT. Section 11-19.1-10 of the North Dakota Century Code is amended and reenacted as follows:

11-19.1-10. ~~Dead~~ Deceased human bodies to be held pending investigation. All ~~dead~~ deceased human bodies in the custody of the coroner ~~shall~~ must be held until such time as the coroner after consultation with the state's attorney, the police department of the city, the

state highway patrolmen on duty in that county, or the sheriff has reached a decision that it is not necessary to hold the ~~dead~~ body longer to enable the coroner to decide on a diagnosis, giving a reasonable and true cause of death, or that the ~~dead~~ body is no longer necessary to assist any one of ~~the above-named~~ those officials in their duties~~, but no dead body shall be held longer than twelve hours from the time the coroner was notified without embalming~~.

SECTION 8. AMENDMENT. Section 11-19.1-11 of the North Dakota Century Code is amended and reenacted as follows:

11-19.1-11. ~~Coroner may perform autopsy~~ Autopsies - Notice of results.

1. The coroner or the coroner's medical deputy, if the coroner deems it necessary, may take custody of the ~~dead~~ deceased human body for the purpose of autopsy. When the coroner does not deem an autopsy necessary, the sheriff ~~and~~ or state's attorney may direct an autopsy be performed.
2. The autopsy must be performed by the state forensic examiner or by the state forensic examiner's authorized pathologist at a facility approved by the state forensic examiner.
3. Upon the death of a ~~child~~ minor whose cause of death is suspected by the ~~child's~~ minor's parent or guardian or the coroner or the coroner's medical deputy to have been the sudden infant death syndrome, the coroner or the coroner's medical deputy, after consultation with the parent or guardian, shall take custody of the ~~dead~~ body and shall arrange for the performance of the autopsy by ~~a qualified~~ the state forensic examiner or a pathologist designated by the state forensic examiner, unless the county coroner, sheriff, state's attorney, and the parent or guardian all agree that an autopsy is unnecessary. The parents or guardian and the state health officer ~~shall~~ must be promptly notified of the results of that autopsy.
4. A report of death, an autopsy report, and any working papers, notes, images, pictures, photographs, or recordings in any form are confidential but the coroner may use or disclose these materials for purposes of an investigation, inquest, or prosecution. The coroner may disclose a copy of the report of death in accordance with the authority of the state forensic examiner under section 23-01-05.5 and may disclose an autopsy photograph or other visual image or

video or or audio recording subject to limitations in section 44-04-18.18. The coroner shall disclose a copy of the autopsy report to the state forensic examiner.

SECTION 9. AMENDMENT. Section 11-19.1-13 of the North Dakota Century Code is amended and reenacted as follows:

11-19.1-13. Cause of death - Determination. The cause of death, the manner of death, and the mode in which the death occurred~~, as delivered by the coroner and incorporated in the coroner's verdict,~~ must be incorporated in the death certificate filed with the registrar of vital statistics of this state. The term "sudden infant death syndrome" may be entered on the death certificate as the principal cause of death only if the child is under the age of one year and the death remains unexplained after a case investigation that includes a complete autopsy of the infant at the state's expense, examination of the death scene, and a review of the clinical history of the infant.

SECTION 10. AMENDMENT. Section 11-19.1-15 of the North Dakota Century Code is amended and reenacted as follows:

11-19.1-15. Notice of next of kin, disposition of personal belongings - Disposition of body when next of kin cannot be found. The coroner of the county ~~where~~ in which a death is discovered shall take charge of the case and ~~notify~~ ensure that relatives or friends of the deceased ~~person~~ individual, if known, are notified as soon as possible ~~by telephone, telegram, or otherwise~~, giving details of the death and disposition of the deceased ~~person~~ individual. If the relatives or friends of the deceased are unknown, the coroner shall dispose of the personal effects and body in the following manner:

1. After using such clothing as may be necessary in the burial of the body, the remaining personal effects of the deceased ~~shall~~ must be turned over to ~~the public administrator~~ law enforcement for appropriate disposition ~~of such personal property in accordance with the laws, regulations, and policies governing the office of the public administrator~~.
2. The remains ~~shall~~ must be:
   a. Disposed of in accordance with ~~the provisions of~~ section 23-06-14; or
   b. Buried in accordance with the laws governing the burial of indigent persons within this state.

SECTION 11. AMENDMENT. Section 11-19.1-17 of the North Dakota Century Code is amended and reenacted as follows:

11-19.1-17. Application. ~~This~~ The requirements of this chapter ~~applies~~ apply to every county in this state ~~having a population of eight thousand or more, and chapter 11-19 and section 11-10-02 are not applicable to such counties. This chapter does not apply to counties having a population of less than eight thousand and such counties are governed by chapter 11-19 and section 11-10-02, except that coroners shall be appointed in these counties according to section 11-19.1-03, these counties shall pay coroner's fees to other counties under subsection 1 of section 11-19.1-16, and these counties are subject to sections 11-19.1-18 through 11-19.1-20~~.

SECTION 12. AMENDMENT. Section 11-19.1-18 of the North Dakota Century Code is amended and reenacted as follows:

11-19.1-18. State forensic examiner - Authority - Costs.

1. The state forensic examiner may order an autopsy and exercise all powers and authority bestowed upon the office of the coroner and, at any time, may assume jurisdiction over a deceased human body. Whenever requested to do so by the local coroner, acting coroner, or the local state's attorney, the state forensic examiner or the examiner's designee shall assume jurisdiction over a ~~dead~~ deceased human body for purposes of investigating the cause of death, the manner of death, and the mode in which the death occurred. ~~The state forensic examiner may exercise all powers and authority bestowed upon the office of the coroner. The cost of performing an autopsy, investigation, or inquiry remains with the county, except for an autopsy, investigation, or inquiry resulting from the death of a patient or resident of the state hospital or any other state residential facility or an inmate of a state penal institution.~~
2. Except for the cost of an autopsy performed by the state forensic examiner or the examiner's designee and for the cost of an autopsy, investigation, or inquiry that results from the death of a patient or resident of the state hospital or any other state residential facility or an inmate of a state penal institution, all costs with respect to the autopsy, the transporting of the body for autopsy, and the costs of the investigation or inquiry are the responsibility of the county.

SECTION 13. AMENDMENT. Section 11-19.1-19 of the North Dakota Century Code is amended and reenacted as follows:

11-19.1-19. ~~State forensic examiner -~~ Required reports to state forensic examiner. ~~The~~ On the form and in the manner prescribed by the state forensic examiner, the coroner or any ~~person~~ individual acting as coroner shall report to the state forensic examiner every death ~~that occurs:~~

~~1. As a result of violence or casualty;~~

~~2. Suddenly when in apparent good health;~~

~~3. In a suspicious or unusual manner; or~~

~~4. Involving a patient or resident of the state hospital or any other state residential facility or an inmate of a state, county, or city penal institution~~ of which the coroner is notified or which the coroner investigates.

SECTION 14. AMENDMENT. Section 11-19.1-20 of the North Dakota Century Code is amended and reenacted as follows:

11-19.1-20. State forensic examiner - Required consultation. The coroner or any ~~person~~ individual acting as a coroner shall actively consult with the state forensic examiner in every death involving an inmate of a state, county, or city penal institution; death involving a child under the age of one when in apparent good health; and death that the coroner or acting coroner believes may have resulted from an accident, a suicide, or a homicide, under suspicious circumstances, or as a result of child abuse or neglect.

SECTION 15. AMENDMENT. Section 23-01-05.4 of the North Dakota Century Code is amended and reenacted as follows:

23-01-05.4. Department to employ state forensic examiner - Qualifications - Duties. The state department of health may employ and establish the qualifications and compensation of the state forensic examiner. The state forensic examiner must be a ~~licensed~~ physician who is board-certified or board-eligible in forensic pathology, who is licensed to practice in this state, and who is in good standing in the profession. The state forensic examiner shall:

1. Exercise all authority conferred upon the coroner under chapter 11-19.1 and any other law;
2. Consult with local coroners on the performance of their duties as coroners;

~~2.~~ 3. Conduct investigations into the cause of death of and perform autopsies on any ~~dead~~ deceased human body whenever requested to do so by the acting local county coroner or the local state's attorney;

~~3.~~ 4. Provide training and educational materials to local county coroners, law enforcement, and any other person the state forensic examiner deems necessary; ~~and~~

5. Maintain complete records of the cause, manner, and mode of death necessary for accurate health statistics and for public health purposes; and

~~4.~~ 6. Perform other duties assigned by the state health officer.

SECTION 16. Section 23-01-05.5 of the North Dakota Century Code is created and enacted as follows:

23-01-05.5. Autopsy reports - Confidential - Exceptions.

1. As used in this section:

   a. "Autopsy report" means the report of the forensic examiner or the examiner's designee on the post-mortem examination of a deceased individual to determine the cause and manner of death, including any written analysis, diagram, photograph, or toxicological test results.

   b. "Report of death" means the official findings on the cause of death and manner of death issued by the state forensic examiner, the examiner's designee, county coroner, or pathologist performing an autopsy ordered by a county coroner or by the state forensic examiner and which is the face page of the autopsy report identifying the decedent and stating the cause of death and manner of death.

2. An autopsy report and any working papers and notes relating to an autopsy report are confidential and may be disclosed only as permitted by this section. The report of death is a public record subject to disclosure under section 44-04-18.

3. Subject to the limitations on the disclosure of an autopsy photograph or other visual image or video or audio recording of an autopsy required under section 44-04-18.18, any working papers and notes relating to a final autopsy report may be disclosed pursuant to a court order and as otherwise expressly provided by law.

4. The state forensic examiner or the examiner's designee shall disclose a copy of the autopsy report:
   a. To any county coroner, including a coroner in any state or Canadian province, with jurisdiction over the death, and the coroner may use or disclose these records for purposes of an investigation, inquest, or prosecution.
   b. To any state's attorney or criminal justice agency, including a prosecutor or criminal justice agency of the United States, any state, or any Canadian province, with jurisdiction over an investigation of the death and the state's attorney or criminal justice agency may use or disclose these records for the purposes of an investigation or prosecution.
   c. To workforce safety and insurance if the death is related to the decedent's work, and to any other workers' compensation or other similar program, established by law, that provides benefits for work-related injuries or illness without regard to fault if there is no criminal investigation.
   d. To the child fatality review panel if there is no active criminal investigation.
   e. In accordance with a court order.
5. The state forensic examiner or the examiner's designee upon request shall disclose a copy of the autopsy report to:
   a. The decedent's personal representative and to the decedent's spouse, child, or parent, upon proof of the relationship, if there is no active criminal investigation.
   b. A physician or hospital who treated the deceased immediately prior to death if there is no active criminal investigation.
   c. An insurance company upon proof that the decedent's life was covered by a policy issued by the company if there is no active criminal investigation.
   d. The food and drug administration, the national transportation safety board, the occupational health and safety administration, and any other federal or state agency with authority to obtain an autopsy report to investigate a death resulting from the decedent's type of injury or illness.
   e. A professional or research organization collecting data to initiate or advance death investigation standards, after the identifiers necessary to create a

limited data set under title 45, Code of Federal Regulations, part 164, section 514, subsection e have been removed from the report.

6. The forensic examiner, the examiner's designee, any county coroner or county medical coroner, and any public employee who, in good faith, discloses autopsy findings, an autopsy report, or other information relating to an autopsy report or cause of death to a person who the public official or employee reasonably believes is entitled to that information under this section is immune from any liability, civil or criminal, for making that disclosure. For the purposes of any proceeding, the good faith of any public employee who makes a disclosure under this section is presumed.

SECTION 17. REPEAL. Chapter 11-19 and section 11-19.1-05 of the North Dakota Century Code are repealed.