

Section 101

History of the Office of Coroner

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Section 101.1 Introduction

For 900 years it has been the function of the coroner to monitor the honesty and integrity of other public officials in the English-speaking world. The modern coroner performs the same function, but in the narrower area of death investigation. The death of any human being is too important to be left merely to the police, the prosecutors, the judges, and the physicians. In Indiana, we elect a public official to supervise the process of determining the cause of death. The Indiana coroner is the heir to the tradition going back nine centuries to the officials who represented the interests of the king. They were called coroners because they represented the crown.

Section 101.2 England Before the Normans

Ancient peoples lived in what is now England, so ancient that we know them only from their monuments. These people were worshipping at Stonehenge when Hammurabi wrote his code. They were followed by the Celtic peoples who came from the European continent where they had developed a rich culture. For a couple of centuries, the Romans occupied England, but they withdrew as the western Empire fell into disarray and finally collapsed before the invading waves of tribes from the east. Some of these tribal peoples migrated from the continent to England: they were called the Angles, the Jutes and the Saxons. To greatly simplify history, let us note that the Saxons came to dominate. They were a Germanic people (the Saxons of eastern Germany are of the same origin), and the Anglo-Saxon language sounded more like German than English. Over the course of centuries of Saxon settlement, geographic England became a land of Saxon kingdoms which occasionally would unite to fight the invading Vikings and which occasionally would quarrel among themselves. We know a great deal more about the ancient Saxons than about the more ancient civilizations of Europe. The Saxons were literate and they left written records in addition to physical artifacts.

Saxon law was not terribly sophisticated. The blood feud was the basis of Saxon legal concepts: injuries to oneself or one's family must be avenged by taking the blood of the wrong-doer. Society was ordered by the relationship of lord and vassal: the vassal owed a duty to protect the lord and to avenge his wrongful death.

When a family member was killed, the law-abiding Saxon was required to seek physical revenge or to seek compensation for the loss. Certain exceptions applied. If a man was killed while committing theft, his family could not lawfully seek revenge. If a man killed another while honorably defending his feudal lord, no one could take vengeance against him. No one could take vengeance against a man who killed another while defending a close female relative (men, of course, could defend themselves except for the feudal lord who everybody else had to defend). The Catholic Church, as a benevolent institution, favored the system of economic compensation for wrongful death over physical violence to extract vengeance.

Saxon England had decentralized government on the shire or county level. Saxon kings were of the nobility, but were not hereditary. They were elected by the wigan or council of elders. The shires were subdivided into units of administration called hundreds.

Most Anglo-Saxon law was customary. A few kings had issued "dooms" defining penalties for crimes, but generally there was no written law and no lawyers. Saxon crimes included treason, homicide, wounding, assault, rape, and theft. Treason resulted in a death penalty, but homicides generally required only compensation (unless the family members decided to kill the person who killed their relative instead). Thieves were especially disfavored: the thief and his entire family could be condemned to slavery. Incompetent thieves stupid enough to be caught in the act could simply be killed. There was no imprisonment for crime, and jails were simply pre-trial holding facilities.

Saxon courts did not actually have judges, but were presided over by the "hundred reeve" (obviously for the hundred court) or the "shire reeve" (the sheriff) for the county court. Decisions were made by "suitors," lay people who comprised the court in kind of a combined judge and jury. Their decisions were based on their general understanding of customary law. These courts met about every six months and disposed of all their business at one time. There was no system of appeal, but complaints about the disposition of cases could be taken to the king if the king felt like hearing them.

There were also "seignorial courts," that is, courts presided over by the lord of the manor to judge his underlings. The top of this pyramid was the Curia Regis, the king's court. All of this was to change as the result of a single military action. In 1066, William, Duke of Normandy, invaded Saxon England and defeated the Saxons under King Harold. On December 25, 1066, William became William I, King of England. We know him as William the Conqueror. Without knowing it (or probably even caring), he was responsible for the creation of the English language and the Common Law system (with a few centuries allowed for the development of both).

Section 101.3

What the Normans Changed

The Norman kings replaced the Saxon institutions with their own. The wigan was replaced by the Magna Curia or Great Council composed of the king and all the important nobles who had been given grants of land by the king and all the major bishops and other religious leaders. This body, over the course of centuries, grew into the House of Lords.

Norman kings appointed the sheriff or shire reeve who was directly responsible to the king and the Exchequer (the revenue office that collected taxes). Likewise, the king appointed judges to decide disputes in the name of the king. Later, the kings appointed coroners to watch the judges and the sheriffs.

The Normans firmly established the feudal system in England. Land was held by grant from the king in exchange for military and other services. Nobles who were granted their land by the king in turn granted land to their vassals in exchange for military and other services which allowed them to meet their obligations to the king. This feudal Ponzi scheme bottomed out with the individual knight who held his own manor which produced sufficient income to support his military and other obligations to his lord.

The king also had another court: the Lesser Curia composed of his personal advisers. From this household court, the king appointed judges to supervise the shires, the collection of taxes, and the punishment of offenders. These judges traveled around the shires and when they were in session they superseded the local sheriff's jurisdiction (since the king learned not to trust the local sheriff to turn over all the taxes he collected).

Starting in 1195, the king appointed a local subject to administer justice by taking custody of the criminally accused until the king's judges (who were circuit riders) could arrive to hold trials. This system was recognized formally by the Statute of Winchester in 1285. By 1344, these local justices, by then called "justices of the peace," had the power to try felonies and breaches of the peace.

Henry II, a great-grandson of William the Conqueror, ruled England from 1154 to 1189 and began the major legal reforms that led to the modern legal system. The king simply announced that he owned all the land in England and that therefore he had jurisdiction over all land disputes. To ensure his dominance over his vassals, he appointed his own judges to hear land dispute cases directly rather than let the cases be decided by the local lords. This court eventually came to be called the Court of Common Pleas (which it is still called in

more familiar places like Ohio).

Criminal cases were handled differently. Theoretically, the king himself heard really important criminal cases, labeling them Pleas of the Crown. Obviously, the king could not really hear all the cases in the entire country, so he delegated that job to justices appointed to a court that took the name King's Bench (which, of course, is called Queen's Bench in London today where it still holds criminal trials). King's Bench became very powerful, exercising jurisdiction over other royal officials and finally became an appellate court to review decisions of the Court of Common Pleas. The king also created a Court of Exchequer of Pleas (for tax cases), and a Chancery Court to exercise "equity" jurisdiction. This so-called "Court of the King's Conscience" had the power to create extraordinary remedies, to do what was right and just rather than follow the exact letter of the law.

Henry II and the kings who followed him were always concerned about the activities of their local officials, especially the sheriffs. Henry II conducted a famous Inquest of Sheriffs and fired all but seven of the sheriffs in England. Previously, Henry I and Stephen had appointed county "justiciars" to reduce the power of the sheriffs, but the justiciars then themselves became too powerful and Henry II fired them, too. The regents who ruled for the juvenile Richard I (1189-1199) devised a system whereby each county court selected four local men to make duplicate lists of pleas of the crown and other matters to be brought to the attention of the royal justices. These four were also supposed to make preliminary inquiries in criminal cases and to place their reports at the disposal of the justices. If the sheriff neglected to inquire into things the king might need to know, these four men would investigate and record matters on their own official rolls. The four officials were called "coroners" because they represented the crown. The king hoped to check the growing power of the sheriffs by the watchfulness of his coroners. The present traditional power of the coroner to arrest the sheriff originated in the Twelfth Century.

Until Henry VIII, church courts had jurisdiction over offenses against religion and morals, family law, and the personal possessions (as opposed to land) of deceased persons (another traditional function assumed by coroners). By the Reformation, they had lost their criminal jurisdiction and their other powers were assumed by the Court of Chancery. The ultimate court of appeal became the High Court of Parliament of the House of Lords. Appeals from King's Bench (and later the other courts) went to them sitting as the "Law Lords."

By the 15th Century, there had been a number of remedial measures to reform criminal justice. Several acts provided punishment for jurors who returned false verdicts. Townships that failed to discover and arrest murderers were made to pay heavy fines to the crown. Coroners were punished if they failed to hold inquests.

By the 16th Century, the importance of the coroner's office was fading, taken over by the justice of the peace who acted as judge, policeman and administrator. The office of coroner had become an elective office, and was on its way to developing its modern form: the coroner was the publicly elected officer who investigated deaths (and, for traditional reasons, still observed other public officers to keep them honest). The coroner who functioned primarily as a death investigator was the concept of the office which was transferred to the American colonies and the new United States.

Section 101.4

American Courts Develop from Colonial Courts

American colonial courts generally followed the English model, using justices of the peace who were not required to be legally trained. A few states today still use "J.P.'s" without legal training to hear minor cases, such as traffic offenses. In many colonies, the traditional role of the king and his council as the highest court was assumed by his royal representative, the colonial governor.

American colonial courts generally combined the functions of law and equity instead of having separate courts as in England. Likewise, because colonial judges lacked the formal training required in England, rules of evidence and court procedures in America were not as formal and had much more flexibility. Even after the revolution, the American legal system tended to be run by lay (that is, not formally trained) personnel. Lawyers were usually trained as apprentices, and legal teaching and research materials were not readily

available in frontier days. A person could become a lawyer simply by passing the state bar examination (and without any formal education) in most states well into the 20th Century.

By the late 19th Century, the United States (at least in the east) had a formally organized bar and, as one might expect, developed a more formal, complex, and inflexible system of law and procedure. Early in the century, American courts still looked to English precedents for guidance, but after the Civil War there was a large enough body of American law (and firms like West Publishing willing to publish it for the convenience of the legal profession) to permit American judges to refer to their own historical cases rather than those of England.

Section 101.5
Some Resources for Anglo-American Legal History

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Section 102

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Section 102.1

Qualification for Office

§ 102.1.1

Term of Office

The coroner serves a term of four years and may not serve more than eight years in any twelve year period.

Constitution of the State of Indiana, Article 6, Section 2. There shall be elected, in each county by the voters thereof, at the time of holding general elections, a Clerk of the Circuit Court, Auditor, Recorder, Treasurer, Sheriff, Coroner, and Surveyor, who shall, severally, hold their offices for four years; and no person shall be eligible to the office of Clerk, Auditor, Recorder, Treasurer, Sheriff, or Coroner more than eight years in any period of twelve years.

§ 102.1.2

Coroner Candidate Must Reside in County for One Year

To be a candidate for the office of coroner, the person must have lived in the county for at least one year.

IC 3-8-1-20. A candidate for the office of county auditor, recorder, treasurer, sheriff, coroner, or surveyor must have resided in the county for at least one (1) year before the election, as provided in Article 6, Section 4 of the Constitution of the State of Indiana.

§ 102.1.3

Coroners Elected Every Four Years

Coroners are elected every four years at the same time as other county officers.

IC 3-10-2-13. The following public officials shall be elected at the general election before their terms of office expire and every four (4) years thereafter:

- (1) Clerk of the circuit court.
- (2) County auditor.
- (3) County recorder.
- (4) County treasurer.
- (5) County sheriff.
- (6) County coroner.

- (7) County surveyor.
- (8) County assessor.
- (9) County commissioner.
- (10) County council member.
- (11) Township trustee.
- (12) Township board member.
- (13) Township assessor.
- (14) Judge of a small claims court.
- (15) Constable of a small claims court.

§ 102.1.4

Coroner Must Reside in County

- Coroner must live within the county and forfeits office by moving out of county.
- Term of office is 4 years and until a successor is qualified.

IC 36-2-14-2. (a) A county coroner must reside within the county as provided in Article 6, Section 6 of the Constitution of the State of Indiana. The coroner forfeits office if the coroner ceases to be a resident of the county.

(b) The term of office of the county coroner under Article 6, Section 2 of the Constitution of the State of Indiana is four (4) years and continues until a successor is elected and qualified.

OAG (1970 Op.Atty.Gen. No. 5.) Anyone completing the eighth year of holding office as county auditor, recorder, treasurer, sheriff, coroner, surveyor and clerk of circuit court is completely barred from holding that office during any part of the remaining four years in that twelve year period.

§ 102.1.5

Governor Commissions Coroner

The Governor of Indiana issues commissions to coroners.

IC 36-2-14-3. The governor shall commission each county coroner.

OAG (1989 Op.Atty.Gen. No. 89-4.) If a person is entitled to compensation for both offices, then that person cannot serve both as a town board member and as a coroner because a person cannot hold more than one “lucrative office” at a time.

OAG (1988 Op.Atty.Gen. No. 88-12.) An elected county coroner is a county constitutional officer under Const. Art. 6, § 2 entitled to compensation and a local health officer is a statutory officer under IC 16-1-7-27 entitled to compensation. Since the Indiana Constitution, Article 2, Sec. 9 prohibits holding more than one “lucrative office,” the same person cannot serve as county coroner and county health officer at the same time.

Section 102.2

Coroner’s Bonds and Compensation

§ 102.2.1

Coroner’s Compensation

Coroners who are physicians are entitled to 1½ times the compensation of non-physicians.

IC 36-2-14-15. When fixing the compensation of county officers under this title, the county fiscal body shall fix:

- (1) compensation for the coroner as if he is licensed to practice as a physician in Indiana; and
- (2) compensation for the coroner as if he is not licensed to practice as a physician in Indiana.

The compensation fixed under subdivision (1) must be one and one-half (1 ½) times that fixed under subdivision (2). The county fiscal body shall then determine whether or not the coroner is a licensed physician and shall fix his compensation in the proper amount.

OAG (1968 Op.Atty.Gen. No. 36.) A licensed veterinarian is a "physician" within the meaning of the statute and is entitled to one and one-half times the base salary for a county coroner.

OAG (1965 Op.Atty.Gen. No. 30.) A chiropractor is a "physician" within the meaning of the statute and is entitled to one and one-half times the base salary for a county coroner.

§ 102.2.2

County Executive Approves Coroner's Bond

The county executive must approve the coroner's bond.

IC 5-4-1-8. (a) The official bonds of officers, if sufficient, shall be approved as follows:

- (1) Of county officers required to give bonds, by the clerk of the circuit court unless otherwise specified in this section.
 - (2) Of county sheriff, county coroner, county recorder, county auditor, county treasurer, and clerk of the circuit court, by the county executive.
 - (3) Of county assessor, township trustee, and township assessor, by the county auditor.
 - (4) Of city officers, except the executive and members of the legislative body, by the city executive.
 - (5) Of members of the board of public works or of the board of public works and safety in cities, by the city legislative body.
 - (6) Of clerk-treasurer and marshal of a town, by the town legislative body.
 - (7) Of a controller of a solid waste management district established under IC 13-21 or IC 13-9.5 (before its repeal) by the board of directors of the solid waste management district.
- (b) A person who approves an official bond shall write the approval on the bond. (c) A bond must be approved before it is filed.

§ 102.2.3

Coroner's Individual Surety Bond

The coroner must file a personal surety bond unless the county fiscal body buys a blanket bond or insurance coverage for all county officials.

IC 5-4-1-18. (a) Except as provided in subsection (b), the following city, town, county, or township officers and employees shall file an individual surety bond:

- (1) City judges, controllers, clerks, and clerk-treasurers.
 - (2) Town judges and clerk-treasurers.
 - (3) Auditors, treasurers, recorders, surveyors, sheriffs, coroners, assessors, and clerks.
 - (4) Township trustees and assessors.
 - (5) Those employees directed to file an individual bond by the fiscal body of a city, town, or county.
- (b) The fiscal body of a city, town, county, or township may by ordinance authorize the purchase of a blanket bond or a crime insurance policy endorsed to include faithful performance to cover the faithful performance of all employees, commission members, and persons acting on behalf of the local government unit including those officers described in subsection (a).
- (c) The fiscal bodies of the respective units shall fix the amount of the bond of city controllers, city clerk-treasurers, town clerk-treasurers, Barrett Law fund custodians, county treasurers, county sheriffs, circuit

court clerks, township trustees, and conservancy district financial clerks as follows:

(1) The amount must equal fifteen thousand dollars (\$15,000) for each one million dollars (\$1,000,000) of receipts of the officer's office during the last complete fiscal year before the purchase of the bond, subject to subdivision (2).

(2) The amount may not be less than fifteen thousand dollars (\$15,000) nor more than three hundred thousand dollars (\$300,000).

County auditors shall file bonds in amounts of not less than fifteen thousand dollars (\$15,000), as fixed by the fiscal body of the county. The amount of the bond of any other person required to file an individual bond shall be fixed by the fiscal body of the unit at not less than eight thousand five hundred dollars (\$8,500).

(d) A controller of a solid waste management district established under IC 13-21 or IC 13-9.5 (before its repeal) shall file an individual surety bond in an amount:

(1) fixed by the board of directors of the solid waste management district; and

(2) that is at least fifteen thousand dollars (\$15,000).

(e) Except as provided under subsection (d), a person who is required to file an individual surety bond by the board of directors of a solid waste management district established under IC 13-21 or IC 13-9.5 (before its repeal) shall file a bond in an amount fixed by the board of directors.

(f) In 1982 and every four (4) years after that, the state examiner shall review the bond amounts fixed under this section and report to the general assembly whether changes are necessary to ensure adequate and economical coverage.

(g) The commissioner of insurance shall prescribe the form of the bonds or crime policies required by this section, in consultation with the commission on public records under IC 5-15-5.1-6.

Section 102.3

The Coroner and the Sheriff

§ 102.3.1

Coroner to Act as Deputy Sheriff of Supreme Court

The county coroner may be required to act as a deputy to the Sheriff of the Supreme Court.

IC 33-15-7-7. Such sheriff of the Supreme Court may require the coroner of any county to act as such deputy where the sheriff thereof is interested.

§ 102.3.2

Coroner's Attachment or Levy in Civil Cases

On rare occasions, the coroner might have to perform the sheriff's civil duties for attachment or levy of an execution. In such a case, the court will ordinarily issue an explicit order advising the coroner of exactly what to do.

IC 34-34-1-5. (a) This section applies when a sheriff or coroner of a county in Indiana:

(1) seizes upon real estate or an interest in real estate by virtue of a writ of attachment; or

(2) levies upon real estate or an interest in real estate by virtue of an execution issued to the sheriff or coroner from any court other than the court of the county in which the sheriff or coroner resides.

(b) At the time of the seizure or levy, the sheriff or coroner shall file with the clerk of the circuit court of the county a written notice setting forth:

- (1) the names of the parties to the proceedings upon which the writ of attachment or execution is founded; and
- (2) a description of the land seized or levied upon.

The notice shall be recorded, as provided for in section 4 [IC 34-34-1-4] of this chapter.

(c) The sheriff or coroner shall state, in the return to the attachment or execution, that notice has been filed. The sheriff or coroner is allowed a fee of fifty cents (\$0.50) to be taxed as costs for making and filing the notice. However, the sheriff or coroner is not required to file the notice until the attachment or execution plaintiff provides the money to pay the clerk for filing and recording the notice.

§ 102.3.3

Coroner Acting as Sheriff

The coroner performs the duties of the sheriff if the sheriff is unable to perform and has no chief deputy.

IC 36-2-14-4. The coroner shall perform the duties of the county sheriff only in cases in which the sheriff:

- (1) is interested or incapacitated from serving; and
- (2) has no chief deputy who may perform his duties.

OAG (1978 Op.Atty.Gen. No. 78-22.) The coroner performs the duties of the sheriff (when there is no chief deputy) when (a) the sheriff's personal interest or involvement with some aspect of his official duties would render his performance of those duties a conflict of interest, or otherwise a breach of the public trust; (b) when the sheriff becomes mentally or physically disabled, or is absent, to the extent that he is unable to discharge his duties; and, (c) when there is a vacancy in the office of sheriff.

§ 102.3.4

Sheriff's Duties

In the event that the coroner must function as the sheriff, the coroner must perform the following duties.

IC 36-2-13-5. (a) The sheriff shall:

- (1) arrest without process persons who commit an offense within his view, take them before a court of the county having jurisdiction, and detain them in custody until the cause of the arrest has been investigated;
- (2) suppress breaches of the peace, calling the power of the county to his aid if necessary;
- (3) pursue and jail felons;
- (4) execute all process directed to him by legal authority;
- (5) serve all process directed to him from a court or the county executive;
- (6) attend and preserve order in all courts of the county;
- (7) take care of the county jail and the prisoners there; and
- (8) take photographs, fingerprints, and other identification data as he shall prescribe of persons taken into custody for felonies or misdemeanors.

(b) A person who:

- (1) refuses to be photographed;
- (2) refuses to be fingerprinted;
- (3) withholds information; or
- (4) gives false information;

as prescribed in subsection (a)(8), commits a Class C misdemeanor.

§ 102.3.5

Protection of Prisoners in Sheriff's Custody

In the event that the coroner must function as the sheriff, the coroner must operate the jail and protect the inmates.

IC 36-2-13-13. (a) Whenever the sheriff has reason to believe that a prisoner in his custody is in danger of being unlawfully killed, he shall order all persons with whom he can directly communicate to assist him in protecting the prisoner. If the sheriff remains unable to protect the prisoner, he shall notify the governor and ask for the aid of the state in protecting the prisoner.

(b) A sheriff who unlawfully kills a prisoner in his custody, or unlawfully permits such a prisoner to be killed, forfeits his office. The governor shall issue a proclamation declaring the office of the sheriff vacated.

(c) The person who forfeited the office may petition the governor to be reinstated as sheriff. The petition must:

(1) show that the person did everything in his power to protect the life of the prisoner and carried out the duties of his office pertaining to the protection of prisoners; and

(2) be filed with the governor not more than fourteen (14) days after the date on which the governor declares the office of the sheriff vacated.

If, after a hearing, the governor finds that the person did carry out the duties of his office, he may reinstate him in office and issue to him a certificate of reinstatement. A person who files a petition under this subsection shall give notice to both the prosecuting attorney of the county and the attorney general.

§ 102.3.6

Coroner Can Arrest Sheriff

The coroner can arrest the sheriff and takes custody of the jail and prisoners while the sheriff is in custody.

IC 36-2-14-5. A warrant for the arrest of the county sheriff shall be served by the coroner or any other person to whom it may be legally directed. The coroner, who shall commit the sheriff to the county jail, has custody of the jail and its prisoners during the imprisonment of the sheriff.

OAG (1985 Op.Atty.Gen. No. 15.) Under IC 36-2-14-5, the coroner has custody of the jail and its prisoners whenever the sheriff is imprisoned in the jail (even though there is chief deputy to perform all other duties).

§ 102.3.7

Coroner Absent or Incapacitated

In the event that both the sheriff and the coroner are incapacitated (for example, if both officers had a personal interest in the outcome of a lawsuit pending before the court), the county commissioners can appoint an “elisor” to perform those functions until the incapacitated officer is again able to serve.

IC 33-4-2-11. If, at any time there shall be no sheriff nor coroner to attend, or if the sheriff and coroner shall both be incapacitated from serving, the board of county commissioners shall have power to appoint an elisor to serve during the pendency of the matter in which such officer may be disabled from serving.

Section 102.4

Coroner’s Investigative Jurisdiction

[See also, Section 104, Statutory Rules for Death Investigation.]

§ 102.4.1

Coroner’s Investigative Jurisdiction

In cases where there is doubt about which county should be the place of trial in a criminal case, the coroner and law enforcement officers of the county where the crime is discovered have primary jurisdiction for the investigation.

IC 33-14-6-2. (a) Where the place of trial for commission of an offense, as determined under IC 35-32-2-1, would potentially require a choice between or among counties, then as between or among the coroners and law enforcement officers of those counties, the coroner and law enforcement officers of the county where the offense is discovered have jurisdiction to investigate the offense.

(b) This section may be modified by agreement between or among the prosecuting attorneys of the counties involved.

Note: If remains of a deceased arrive in Indiana accompanied by an out-of-state death certificate, but the Indiana coroner believes the death to be suspicious, the Indiana coroner appears to have jurisdiction to investigate the death. However, there has been no Indiana appellate case on this issue and there is no specific statutory authority. Before beginning such an investigation, the coroner should consult the prosecuting attorney and the coroner's own attorney. [See also, Section 104, Statutory Rules for Death Investigation, and Section 105, Coroner's Inquest.]

Note: If a case arises where one coroner wishes to order an autopsy, but the coroner in the county where the body is physically located does not, there is no statutory or case law guidance in Indiana. The most reasonable remedy seems to be negotiation among the coroners and the prosecuting attorneys of the respective counties.

Alternatively, the coroner who wishes to order the autopsy may do so, may convene a formal inquest and may issue subpoenas, but these actions will, of course, result in lengthy and expensive litigation if the other parties resist the action. [See also, Section 104, Statutory Rules for Death Investigation, and Section 105, Coroner's Inquest.]

§ 102.4.2

Coroner's Arrest Powers

A coroner has the power to arrest the sheriff, and has the same arrests powers as the sheriff when performing the duties of the sheriff.

IC 35-33-1-3. A coroner has the authority to arrest any person when performing the duties of the sheriff under IC 36-2-14-4 and authority to arrest the sheriff under IC 36-2-14-5.

Section 102.5

Coroner's Mileage Reimbursement

§ 102.5.1

Coroner's Mileage Reimbursement

Coroners and their deputies may use their own vehicles and receive the same mileage allowance as state employees if authorized by the county executive. Coroners and their deputies may not receive both mileage and a county vehicle.

IC 36-2-7-5. (a) The following persons may use their own conveyances when necessary for the performance of their official duties, and are entitled to a sum for mileage at a rate determined by the county fiscal body:

- (1) The county surveyor, if authorized by the county executive to use his own conveyance.
- (2) The county coroner, if authorized by the county executive to use his own conveyance.
- (3) A deputy or other employee of the county surveyor or county coroner, if authorized by the county

executive to use his own conveyance.

(4) A deputy or other employee of the county assessor, if engaged in field work and authorized by the assessor to use his own conveyance.

An assessing team is entitled to only one (1) sum for mileage under subdivision (4).

(b) The county executive may not make a mileage allowance under subsection (a)(1), (a)(2), or (a)(3) if the executive furnishes and maintains a vehicle for the officer or deputy in question.

(c) A person seeking compensation under this section must file an itemized claim with the county executive each month under IC 36-2-6.

OAG (1955 Op.Atty.Gen. No. 20). Counties can furnish vehicles for coroners. If the county furnishes a vehicle, then the coroner cannot receive reimbursement for the use of his own vehicle. If the county vehicle were temporarily not available, then the coroner could get reimbursement for using his own vehicle.

Section 102.6 Property on Dead Bodies

§ 102.6.1

Money Found on Dead Bodies

County Treasurer must deliver decedent's money to proper persons within one year, after deducting expenses for coroner's investigation and funeral. Unclaimed money goes to the county general fund.

IC 36-2-10-21. (a) Within one (1) year after the county treasurer receives money from the county coroner under IC 36-2-14-11, the treasurer shall deliver it to any person legally entitled to receive it, but the treasurer may retain as much as is needed to pay the expenses of the coroner's investigation and the funeral of the deceased. The treasurer shall report amounts retained and paid by the county treasurer under this subsection to the county executive for its approval.

(b) If money held by the treasurer under subsection (a) is not claimed within one (1) year after the county treasurer receives it, the county treasurer shall credit the sum of money to the county general fund.

§ 102.6.2

Property of the Deceased

The coroner must attempt to find persons entitled to money or property found on deceased. If there is no claimant to the money, the coroner must deliver it to the county treasurer. If there is no claimant for the property, the coroner must deliver it to the sheriff for sale.

IC 36-2-14-11. (a) This section applies to money or other personal property:

(1) owned by a deceased person whose death is subject to a coroner's investigation; or

(2) found:

(A) on a body; or

(B) at the scene of death.

(b) If money or personal property is not claimed by a person entitled to them, the coroner shall do the following:

(1) Take possession of the property.

(2) Publish, in accordance with IC 5-3-1, a description of the deceased and the name of the deceased if known.

(3) Make a reasonable search to find a person who is entitled to the money or other personal property.

(c) If, after complying with subsection (b), the coroner does not know of a person entitled to the money, the coroner shall deliver the money to the county treasurer for deposit in the county general fund.

(d) If, after complying with subsection (b), the coroner does not know of a person entitled to the personal property other than money that has an intrinsic value, the coroner shall deliver the personal property to the sheriff for sale at any auction that the sheriff conducts under law. The sheriff shall deposit the receipts from the auction of the personal property in the county general fund.

§ 102.6.3

Civil Action Against Coroner for Property on Dead Bodies

County treasurer must sue coroner for nondelivery of money or property found on a decedent.

IC 36-2-10-22. If the county coroner finds money and does not deliver it to the treasurer, as required by IC 36-2-14-11, the treasurer shall, in the county treasurer's own name, bring a civil action against the coroner to collect it.

§ 102.6.4

Unclaimed Bodies in Lake and Marion Counties

In Lake and Marion Counties (that is, counties above 400,000 population) the coroner may order burial or cremation of unclaimed bodies in his custody by contract and the county auditor must pay for the disposal of the body if the deceased was indigent.

IC 36-2-14-16. (a) This section applies to each county having a population of more than four hundred thousand (400,000).

(b) For purposes of this section, a body is unclaimed if:

(1) a person cannot be located to take custody of the body; or

(2) there is a person to take custody of the body, but that person cannot or will not assume financial responsibility for disposition of the body.

(c) Except as provided in IC 20-12-29.5, the coroner may order the burial or cremation of any unclaimed body left in the coroner's custody.

(d) If the deceased died without leaving money or other means necessary to defray the funeral expenses, the coroner may contract with a funeral director licensed under IC 25-15 to dispose of the body. The necessary and reasonable expenses for disposing of the body shall be paid by the county auditor upon the order of the coroner.

Section 102.7 Coroner's Deputies

§ 102.7.1

Deputy's Bond and Oath

Deputy coroners must take the same oath and give the same bond as the coroner who appoints them.

IC 36-2-16-2. (a) A deputy appointed under this chapter may be required to give a bond, in accordance with IC 5-4-1, for the proper discharge of his duties as a deputy.

(b) A deputy appointed under this chapter shall take the oath required of the officer who appointed him.

OAG (1980 Op.Atty.Gen. No. 80-3) Deputies take the same oath, may perform all the same duties, must obey the same regulations, and are subject to the same penalties as the officials who appointed them.

§ 102.7.2

Deputy Can Perform Coroner's Duties

A deputy coroner can perform all the duties of the coroner.

IC 36-2-16-3. (a) A deputy appointed under this chapter may perform all the official duties of the officer who appointed him and is subject to the same regulations and penalties as the officer.

(b) The officer appointing the deputy is responsible for all the official acts of the deputy.

§ 102.7.3

Coroner's Deputies and Employees

Coroners may appoint deputies and clerical personnel if authorized by the county fiscal body.

IC 36-2-16-7. The county coroner may appoint the number of deputies and clerical employees authorized by the county fiscal body.

Section 102.8
Commission on Forensic Sciences

§ 102.8.1

Commission on Forensic Sciences

The Indiana Commission on Forensic Sciences has been inactive since 1993. The following statute is still valid, but the commission is not currently operational.

Note: Many Indiana statutes relating to death investigation contain references to “medical examiners” because they are related to the following statute. Because the Commission on Forensic Sciences is not an active agency, Indiana does not actually have the “medical examiners” referred to in the statutes. The function of the non-existent statutory “medical examiners” is performed by properly qualified pathologists retained by the individual county coroners.

IC 4-23-6-1. A commission is hereby created which shall be known as the "commission on forensic sciences." It shall consist of five (5) members appointed by the governor; one (1) shall be a pathologist, one (1) shall be a person engaged in police work, one (1) shall be a coroner and one (1) shall be a lawyer. The state health commissioner shall be the fifth member of the commission and shall serve as its secretary. In making the appointments, the governor may consult with, but shall not be bound by, the recommendation of organizations representing such categories of appointees. In the first instance one (1) of the members shall be appointed for a term of one (1) year, one (1) of the members shall be appointed for a term of two (2) years, one (1) of the members shall be appointed for a term of three (3) years and one (1) of the members shall be appointed for a term of four (4) years. Thereafter, each member shall serve until his successor is appointed and has qualified. Members of the commission may be removed, by the governor for cause and any vacancy shall be filled by appointment from the proper category and for the unexpired term. The members shall elect one (1) of their number to serve as chairman for a period of one (1) year.

IC 4-23-6-2. The membership of the commission shall be appointed not later than July 31, 1959, and the commission shall hold its organization meeting upon call of its secretary within ten (10) days after its members are appointed.

IC 4-23-6-3. The commission shall meet at least once in each two-month period. A majority shall constitute a quorum for the transaction of business and a per diem of ten dollars [\$10.00] per day, and actual expenses incurred shall be allowed to each member for his attendance.

IC 4-23-6-4. The objectives of the commission shall be to promote in the state of Indiana scientific

information and services in pathology, immunology, radiology, photography, psychiatry, dentistry, anthropology and other forensic sciences.

IC 4-23-6-5. The power of the commission shall be as follows;

- (a) To establish and maintain a scientific laboratory for research experimentation. The commission shall not duplicate adequate facilities for experimentation, research or information which are available to the citizens of the state.
- (b) To appoint an administrative director who shall be a physician and should be a pathologist certified by the American Board of Pathology and to select and appoint or accept the loan of such other personnel as it deems necessary to carry out its purposes.
- (c) To establish and maintain a system of records and to collect data pertinent to the objectives of the commission.
- (d) To correlate information concerning forensic science facilities and make this information available to coroners, law enforcement officers, attorneys and others.
- (e) To contract from time to time for the services or opinion of experts in connection with a particular problem or a program of research.
- (f) To engage in research and experimentation consistent with the objectives of the commission.
- (g) To establish and maintain a forensic sciences library either alone or in cooperation with any other agency of the state, the use of which shall be available to any interested persons.
- (h) To engage in and foster programs of information in forensic sciences to interested groups.
- (i) To establish from time to time and to promulgate a schedule of reasonable fees and to collect the same for the services of the commission. The considerations in formulating such a schedule shall be:
 - (1) Uniformity,
 - (2) Recovery of at least a portion of the cost of furnishing the major services of the commission, and
 - (3) Availability of the services without burdensome expense to the officers, agencies and others in need of the services. All moneys received by the commission pursuant to this subsection shall be paid to the commission, which shall give a proper receipt for the same, and shall at the end of each month, report to the auditor of the state the total amount received by it under the provisions of this subsection, from all sources, and shall at the same time, deposit the entire amount of such receipts with the state treasurer, who shall place them to the credit of a special fund to be created and known as the "forensic sciences commission laboratory expense fund." The commission shall, by its chairman from time to time, certify to the auditor of state any necessary laboratory expenses incurred by the commission, and the auditor shall issue his warrant for the same, which shall be paid out of any funds so collected and hereby appropriated to the commission. Provided, however, that payments made by the auditor of the state from the "forensic sciences commission laboratory expense fund" created herein shall be limited so as not to exceed the amounts allotted from this fund by the state budget committee.
- (j) To accept gifts and grants of money, services or property and to use the same for any given purpose consistent with the objectives of the commission.
- (k) To use the services and facilities of the state board of health and hospitals, colleges and universities and other agencies supported in whole or in part by public funds.
- (l) To establish and maintain such branch offices as it deems necessary.
- (m) To cooperate with any state or local agency or with any hospital, college or university in any scientific program consistent with the objectives of the commission.

IC 4-23-6-6. (a) The commission on forensic sciences shall promulgate and adopt rules in accordance with IC 4-22-2 to:

- (1) create a medical examiner system to aid, assist, and complement the coroner in the performance of his duties by providing medical assistance in determining causes of death; and
- (2) establish minimum and uniform standards of excellence, performance of duties, and maintenance of

- records to provide information to the state regarding causes of death for cases investigated. The commission shall also adopt any other rules that are necessary to carry out the provisions of this section.
- (b) The commission shall establish five (5) medical examiner districts within the state, taking into consideration population, geographical size of the area covered, availability of trained personnel, death rate by both natural and unnatural causes, and similar related factors. No county may be divided in the creation of a district.
- (c) A district medical examiner shall be appointed by the commission for each district from nominees who are physicians licensed to practice in Indiana. Nominees must reside in the district they are nominated for, and a preference shall be given to practicing physicians in pathology.
- (d) The district medical examiner may appoint as many physicians as associate medical examiners as may be necessary to provide service within the district. The associate examiners shall be licensed to practice in Indiana with a preference to practicing pathologists.
- (e) District and associate medical examiners may engage in the private practice of medicine or surgery in addition to their duties as medical examiners.
- (f) The district and associate medical examiners shall, at the request of coroners in their districts:
- (1) provide medical assistance in investigating deaths;
 - (2) provide or contract for laboratory facilities for performing autopsies and investigations;
 - (3) provide for the keeping of reports of all investigations and examinations; and
 - (4) provide other functions which may be specified in rules adopted by the commission.
- (g) A district or associate medical examiner who performs a medical examination or autopsy under the direction of a coroner is immune from civil liability for performing the examination or autopsy. The commission shall, by its chairman from time to time, certify to the auditor of state any necessary laboratory expenses incurred by the commission, and the auditor shall issue his warrant for the same, which shall be paid out of any funds so collected and hereby appropriated to the commission.

§ 102.8.2 Coroner to Attend Meetings of Commission on Forensic Sciences

The coroner must attend meetings when invited by the Commission on Forensic Sciences. [Note that although the Commission on Forensic Sciences is still technically in existence, it has been inactive since 1993.]

IC 36-2-14-14. (a) The coroner or his representative shall, when invited, attend meetings of the commission on forensic sciences for consultation on matters concerning the interests of the commission, the office of coroner, or both. The expenses of the coroner or his representative shall be paid from the general fund of the county that the coroner serves, but may not exceed the statutory amount per day for meals and lodging and a sum for mileage at a rate determined by the county fiscal body.

Section 102.9

Indiana State Coroners Training Board

§ 102.9.1

Indiana State Coroners Training Board

The Indiana State Coroners Training Board sets standards for continuing education and training.

IC 4-23-6.5-1. As used in this chapter, “board” refers to the coroners training board established by section 3 [IC 4-23-6.5-3] of this chapter.

IC 4-23-6.5-2. As used in this chapter, “fund” refers to the coroners training and continuing education fund

established by section 9 [IC 4-23-6.5-9] of this chapter.

IC 4-23-6.5-3. The coroners training board is established.

IC 4-23-6.5-4. (a) The board consists of seven (7) members. The board must include the following:

- (1) The commissioner of the state department of health or the commissioner's designee.
- (2) The chairman of the commission on forensic sciences or the chairman's designee.
- (3) The superintendent of the state police department or the superintendent's designee.
- (4) Four (4) county coroners appointed by the governor, who shall consider appointing coroners who are women or members of minority groups.

(b) Not more than two (2) of the county coroner members of the board may be from the same political party.

IC 4-23-6.5-5. (a) The commissioner of the state department of health or the commissioner's designee shall serve as chairman of the board.

(b) The board shall annually elect a vice chairman from among the members of the board.

IC 4-23-6.5-6. The board shall meet at least two (2) times each year.

IC 4-23-6.5-7. The board shall adopt rules under IC 4-22-2 for the following:

- (1) Standards for continuing education and training for county coroners.
- (2) Mandatory training and continuing education requirements for deputy coroners.
- (3) Minimum requirements for continuing education instructors approved by the board.
- (4) The necessary administration of this chapter.

IC 4-23-6.5-8. (a) The coroners training and continuing education fund is established for the purpose of providing money for the purposes under Section 9 [IC 4-23-6.5-9] of this chapter. The fund shall be administered by the board.

(b) Expenses of administering the fund shall be paid from money in the fund. The fund consists of gifts, grants, and amounts deposited under IC 16-37-1-9.

(c) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested.

(d) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

IC 4-23-6.5-9. The board may use the fund for the following purposes:

- (1) Training equipment and supplies necessary to operate the fund.
- (2) Aid to approved training programs that have met the minimum requirements of the board.
- (3) Travel, regional conferences, and other expenses actually incurred in connection with the member's duties.
- (4) Any other purpose that the board determines is necessary to carry out the provisions of this chapter.

§102.9.2

Coroners Training Board Rule One

All deputy coroners must complete mandatory training.

Indiana Administrative Code

TITLE 207 CORONERS TRAINING BOARD

Rule 1. Definitions.

207 IAC 1-1-1. The definitions in this rule apply throughout this article.

207 IAC 1-1-2. "Board" means the coroners training board created by IC 4-23-6.5-3 to establish standards

for the following:

- (1) Continuing education and training for county coroners.
- (2) Mandatory training and continuing education requirements for deputy coroners.
- (3) Minimum requirements for continuing education instructors approved by the board.

207 IAC 1-1-3. "Deputy coroner" means a part-time or full-time person appointed by a county coroner for purposes of providing medicolegal investigation and endorsed by a county coroner to be authorized to certify a cause of death.

Rule 2. Mandatory Minimum Training Requirements for Deputy Coroners.

207 IAC 1-2-1. All deputy coroners shall successfully complete the appropriate minimum basic training course and externship prescribed by the board and described in 207 IAC 1-3.

207 IAC 1-2-2. The minimum basic training course and externship shall be taken at any board- approved school or program utilizing board-approved:

- (1) instructors;
- (2) curriculum;
- (3) attendance requirements;
- (4) equipment; and
- (5) facilities.

207 IAC 1-2-3. Any deputy coroner described in section 1 of this rule who fails to:

- (1) attend the required basic training course within one (1) year of the date of his or her employment; and
- (2) successfully complete the externship and the written test within twelve (12) months of attending the basic training course;

shall not act as deputy coroner.

207 IAC 1-2-4. The chairman of the board shall require uniformly of all persons attending the board-approved basic training course a minimum of eighty percent (80%) on all written examinations and a passing score on the externship administered on a pass/fail basis. Failure to attain a passing score on all written examinations and on the externship shall constitute a failure of the course. A person failing to achieve a passing score may apply to the chairman, or the chairman's designee, to retake any examination or extern ship previously failed, but a request for a retake of an examination by a person already employed as a deputy coroner will not be accepted unless endorsed by the coroner employing the deputy coroner.

207 IAC 1-2-5. The board, through its chairman, shall certify all deputy coroners it deems have completed the minimum training course and externship.

Rule 3. Minimum Curriculum, Externship, and Attendance.

207 IAC 1-3-1. The requirement for the minimum basic training course necessary to satisfy the mandate contained in 207 IAC 1-2 for all deputy coroners, whether employed on a part- time or full-time basis, shall consist of not less than forty (40) hours of classroom and practical training. The subject matter covered shall be approved by the board prior to the beginning date of each basic training course.

207 IAC 1-3-2. The extern ship necessary to satisfy the mandate contained in 207 IAC 1-2 for all deputy coroners, whether employed on a part-time or full-time basis, shall be approved by the board prior to the beginning date of the externship.

207 IAC 1-3-3. All persons required under 207 IAC 1-2 to participate in the minimum basic training course and externship shall attend all sessions of the approved course and extern ship. Absence from any portion of the training and externship may disqualify a deputy coroner from certification at the discretion of the board.

Section 102.10

Child Fatality Review Teams

[Effective January 1, 2002]

§ 102.10.1**Child Fatality Review Teams**

Counties may establish a county child fatality review team for the purpose of reviewing sudden, unexpected or unexplained deaths of children.

IC 12-13-15-1. As used in this chapter, "child" means an individual less than sixteen (16) years of age.

IC 12-13-15-2. As used in this chapter, "emergency medical services" means the provision of emergency ambulance services or other services, including extrication and rescue services, utilized in serving an individual's need for immediate medical care in order to prevent loss of life or aggravation of physiological or psychological illness or injury.

IC 12-13-15-3. As used in this chapter, "local child fatality review team" refers to a county or regional child fatality review team established under this chapter.

IC 12-13-15-4. As used in this chapter, "mental health provider" means any of the following:

- (1) A registered nurse or licensed practical nurse licensed under IC 25-23.
- (2) A clinical social worker licensed under IC 25-23.6-5.
- (3) A marriage and family therapist licensed under IC 25-23.6-8.
- (4) A psychologist licensed under IC 25-33.
- (5) A school psychologist licensed by the Indiana state board of education.
- (6) An individual who claims to be a mental health provider.

IC 12-13-15-5. (a) A county may establish a county child fatality review team for the purpose of reviewing the death of a child that is:

- (1) sudden;
- (2) unexpected; or
- (3) unexplained.

(b) The legislative body of a county (as defined in IC 36-1-2-9) must determine by majority vote whether the county will establish a local child fatality review team.

(c) If a county elects not to establish a county child fatality review team, the county may join with one (1) or more other counties that have not established a county child fatality review team and form a regional child fatality review team.

(d) To establish a regional child fatality review team as described in subsection (c), the legislative body of each county comprising the region must cast a majority of votes in favor of establishing a regional child fatality review team.

IC 12-13-15-6. A child fatality review consists of determining:

- (1) whether similar future deaths could be prevented; and
- (2) agencies or resources that should be involved to adequately prevent future deaths of children.

IC 12-13-15-7. (a) A local child fatality review team consists of the following members:

- (1) A coroner or deputy coroner from the area served by the local child fatality review team.
- (2) A representative from a:
 - (A) corporation (as defined in IC 16-22-8-2);
 - (B) local health department established under IC 16-20-2; or
 - (C) multiple county health department established under IC 16-20-3;from the area served by the local child fatality review team.

- (3) A physician residing or practicing medicine in the area served by the local child fatality review team.
 - (4) A representative of law enforcement from the area served by the local child fatality review team.
 - (5) A representative from an emergency medical services provider doing business in the area served by the local child fatality review team.
 - (6) A director of an office of family and children from the area served by the local child fatality review team or the director's designee.
 - (7) A representative of the prosecuting attorney from the area served by the local child fatality review team.
 - (8) A pathologist with forensic experience who is licensed to practice medicine in Indiana.
 - (9) A representative from a fire department or volunteer fire department (as defined in IC 36-8-12-2) from the area served by the local child fatality review team.
- (b) If a local child fatality review team is established in one (1) county, the legislative body that voted to establish the local child fatality review team under section 5 of this chapter shall:
- (1) adopt an ordinance for the appointment and reappointment of members of the local child fatality review team; and
 - (2) appoint members to the local child fatality review team under the ordinance adopted.
- (c) If a local child fatality review team is established in a region, the county legislative bodies that voted to establish the local child fatality review team under section 5 of this chapter shall:
- (1) each adopt substantially similar ordinances for the appointment and reappointment of members of the local child fatality review team; and
 - (2) appoint members to the local child fatality review team under the ordinances adopted.

IC 12-13-15-8. A local child fatality review team may have additional members from the following categories:

- (1) A representative of a hospital located in the county or region served by the local child fatality review team.
- (2) A mental health provider providing services in the county or region served by the local child fatality review team.
- (3) A representative from a juvenile or a probate court in the county or region served by the local child fatality review team.
- (4) Other representatives requested to serve by the members of the local child fatality review team.

IC 12-13-15-9. (a) Any member of a local child fatality review team may serve as chairperson. The chairperson shall be elected by the members of the local child fatality review team at the first meeting of the local child fatality review team.

(b) The local child fatality review team shall meet at the call of the chairperson.

(c) The local child fatality review team chairperson shall determine the agenda for each meeting.

IC 12-13-15-10. (a) Except as provided in subsection (b), meetings of a local child fatality review team are open to the public.

(b) Meetings of a local child fatality review team that involve confidential records or identifying information regarding the death of a child that is confidential under state or federal law shall be held as executive sessions.

(c) If an executive session is held under subsection (b), each individual who:

- (1) attends a meeting of the local child fatality review team; and
- (2) is not a member of the local child fatality review team;

shall sign a confidentiality statement prepared by the division. The local child fatality review team shall keep all confidentiality statements signed under this subsection.

IC 12-13-15-11. Members of a local child fatality review team and individuals who attend a meeting of a local child fatality review team as an invitee of the chairperson:

- (1) may discuss among themselves confidential matters that are before the local child fatality review team;
- (2) are bound by all applicable laws regarding the confidentiality of matters reviewed by the local child fatality review team; and
- (3) except when acting:
 - (A) with malice;
 - (B) in bad faith; or
 - (C) with negligence;are immune from any civil or criminal liability that might otherwise be imposed as a result of sharing among themselves confidential matters that are before the local child fatality review team.

IC 12-13-15-12. The division shall provide training to local child fatality review teams.

Section 103

Records and Reports

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Section 103.1

Public Records in General

§ 103.1.1

Public Records – Definitions

This statute applies to all public records in Indiana.

IC 5-14-3-2. As used in this chapter:

"Copy" includes transcribing by handwriting, photocopying, xerography, duplicating machine, duplicating electronically stored data onto a disk, tape, drum, or any other medium of electronic data storage, and reproducing by any other means.

"Direct cost" means one hundred five percent (105%) of the sum of the cost of:

- (1) the initial development of a program, if any;
- (2) the labor required to retrieve electronically stored data; and
- (3) any medium used for electronic output;

for providing a duplicate of electronically stored data onto a disk, tape, drum, or other medium of electronic data retrieval under section 8(g) [IC 5-14-3-8(g)] of this chapter, or for reprogramming a computer system under section 6(c) [IC 5-14-3-6(c)] of this chapter.

"Electronic map" means copyrighted data provided by a public agency from an electronic geographic information system.

"Enhanced access" means the inspection of a public record by a person other than a governmental entity and that:

- (1) is by means of an electronic device other than an electronic device provided by a public agency in the office of the public agency; or
- (2) requires the compilation or creation of a list or report that does not result in the permanent electronic storage of the information.

"Facsimile machine" means a machine that electronically transmits exact images through connection with a telephone network.

"Inspect" includes the right to do the following:

- (1) Manually transcribe and make notes, abstracts, or memoranda.
- (2) In the case of tape recordings or other aural public records, to listen and manually transcribe or duplicate, or make notes, abstracts, or other memoranda from them.
- (3) In the case of public records available:
 - (A) by enhanced access under section 3.5 [IC 5-14-3-3.5] of this chapter; or
 - (B) to a governmental entity under section 3(c)(2) [IC 5-14-3-3(c)(2)] of this chapter; to examine and copy the public records by use of an electronic device.
- (4) In the case of electronically stored data, to manually transcribe and make notes, abstracts, or memoranda or to duplicate the data onto a disk, tape, drum, or any other medium of electronic storage.

"Investigatory record" means information compiled in the course of the investigation of a crime.

"Patient" has the meaning set out in IC 16-18-2-272(d).

"Person" means an individual, a corporation, a limited liability company, a partnership, an unincorporated association, or a governmental entity.

"Provider" has the meaning set out in IC 16-18-2-295(a) and includes employees of the state department of health or local boards of health who create patient records at the request of another provider or who are social workers and create records concerning the family background of children who may need assistance.

"Public agency" means the following:

(1) Any board, commission, department, division, bureau, committee, agency, office, instrumentality, or authority, by whatever name designated, exercising any part of the executive, administrative, judicial, or legislative power of the state.

(2) Any:

(A) county, township, school corporation, city, or town, or any board, commission, department, division, bureau, committee, office, instrumentality, or authority of any county, township, school corporation, city, or town;

(B) political subdivision (as defined by IC 36-1-2-13); or

(C) other entity, or any office thereof, by whatever name designated, exercising in a limited geographical area the executive, administrative, judicial, or legislative power of the state or a delegated local governmental power.

(3) Any entity or office that is subject to:

(A) budget review by either the state board of tax commissioners or the governing body of a county, city, town, township, or school corporation; or

(B) an audit by the state board of accounts.

(4) Any building corporation of a political subdivision that issues bonds for the purpose of constructing public facilities.

(5) Any advisory commission, committee, or body created by statute, ordinance, or executive order to advise the governing body of a public agency, except medical staffs or the committees of any such staff.

(6) Any law enforcement agency, which means an agency or a department of any level of government that engages in the investigation, apprehension, arrest, or prosecution of alleged criminal offenders, such as the state police department, the police or sheriff's department of a political subdivision, prosecuting attorneys, members of the excise police division of the alcoholic beverage commission, conservation officers of the department of natural resources, and the security division of the state lottery commission.

(7) Any license branch staffed by employees of the bureau of motor vehicles commission under IC 9-16.

(8) The state lottery commission, including any department, division, or office of the commission.

(9) The Indiana gaming commission established under IC 4-33, including any department, division, or office of the commission.

(10) The Indiana horse racing commission established by IC 4-31, including any department, division, or office of the commission.

"Public record" means any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, used, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics.

"Standard-sized documents" includes all documents that can be mechanically reproduced (without mechanical reduction) on paper sized eight and one-half (8 ½) inches by eleven (11) inches or eight and one-half (8 ½) inches by fourteen (14) inches.

"Trade secret" has the meaning set forth in IC 24-2-3-2.

"Work product of an attorney" means information compiled by an attorney in reasonable anticipation of litigation and includes the attorney's:

- (1) notes and statements taken during interviews of prospective witnesses; and
- (2) legal research or records, correspondence, reports, or memoranda to the extent that each contains the attorney's opinions, theories, or conclusions.

This definition does not restrict the application of any exception under section 4 [IC 5-14-3-4] of this chapter.

Althaus v. Evansville Courier Co., 615 N.E.2d 441 (Ind.App.1993) Where a police officer, who was apparently in good health, was found dead under apparently suspicious, unusual, or unnatural circumstances, the documents created as a result of the autopsy were "investigatory records" subject to the discretion of the coroner to release or withhold them from a newspaper.

Evansville-Vanderburgh County Dept. of Health v. Evansville Printing Corp., 332 N.E.2d 829 (1975) Death certificates are "public records" under the Hughes Anti-Secrecy Act (since repealed) because the records were required to be made by statute (IC 16-1-17-1 et seq.).

§ 103.1.2

Records Not to Be Disclosed

The following records may not be disclosed by any public agency unless there is another state or federal statute which specifically requires disclosure or there is a court order requiring disclosure.

IC 5-14-3-4. (a) The following public records are excepted from section 3 of this chapter and may not be disclosed by a public agency, unless access to the records is specifically required by a state or federal statute or is ordered by a court under the rules of discovery:

- (1) Those declared confidential by state statute.
- (2) Those declared confidential by rule adopted by a public agency under specific authority to classify public records as confidential granted to the public agency by statute.
- (3) Those required to be kept confidential by federal law.
- (4) Records containing trade secrets.
- (5) Confidential financial information obtained, upon request, from a person. However, this does not include information that is filed with or received by a public agency pursuant to state statute.
- (6) Information concerning research, including actual research documents, conducted under the auspices of an institution of higher education, including information:
 - (A) concerning any negotiations made with respect to the research; and
 - (B) received from another party involved in the research.
- (7) Grade transcripts and license examination scores obtained as part of a licensure process.
- (8) Those declared confidential by or under rules adopted by the supreme court of Indiana.
- (9) Patient medical records and charts created by a provider, unless the patient gives written consent under IC 16-39.
- (10) Application information declared confidential by the twenty-first century research and technology fund board under IC 4-4-5.1.
- (11) A photograph, a video recording, or an audio recording of an autopsy, except as provided in IC 36-2-14-10.

(b) Except as otherwise provided by subsection (a), the following public records shall be excepted from section 3 of this chapter at the discretion of a public agency:

- (1) Investigatory records of law enforcement agencies. However, certain law enforcement records must be made available for inspection and copying as provided in section 5 of this chapter.
- (2) The work product of an attorney representing, pursuant to state employment or an appointment by a public agency:
 - (A) a public agency;

- (B) the state; or
 - (C) an individual.
- (3) Test questions, scoring keys, and other examination data used in administering a licensing examination, examination for employment, or academic examination before the examination is given or if it is to be given again.
- (4) Scores of tests if the person is identified by name and has not consented to the release of his scores.
- (5) The following:
- (A) Records relating to negotiations between the department of commerce, the Indiana development finance authority, the film commission, the Indiana business modernization and technology corporation, or economic development commissions with industrial, research, or commercial prospects, if the records are created while negotiations are in progress.
 - (B) Notwithstanding clause (A), the terms of the final offer of public financial resources communicated by the department of commerce, the Indiana development finance authority, the film commission, the Indiana business modernization and technology corporation, or economic development commissions to an industrial, a research, or a commercial prospect shall be available for inspection and copying under section 3 of this chapter after negotiations with that prospect have terminated.
 - (C) When disclosing a final offer under clause (B), the department of commerce shall certify that the information being disclosed accurately and completely represents the terms of the final offer.
- (6) Records that are intra-agency or interagency advisory or deliberative material, including material developed by a private contractor under a contract with a public agency, that are expressions of opinion or are of a speculative nature, and that are communicated for the purpose of decision making.
- (7) Diaries, journals, or other personal notes serving as the functional equivalent of a diary or journal.
- (8) Personnel files of public employees and files of applicants for public employment, except for:
- (A) the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;
 - (B) information relating to the status of any formal charges against the employee; and
 - (C) information concerning disciplinary actions in which final action has been taken and that resulted in the employee being disciplined or discharged.
- However, all personnel file information shall be made available to the affected employee or his representative. This subdivision does not apply to disclosure of personnel information generally on all employees or for groups of employees without the request being particularized by employee name.
- (9) Minutes or records of hospital medical staff meetings.
- (10) Administrative or technical information that would jeopardize a record keeping or security system.
- (11) Computer programs, computer codes, computer filing systems, and other software that are owned by the public agency or entrusted to it and portions of electronic maps entrusted to a public agency by a utility.
- (12) Records specifically prepared for discussion or developed during discussion in an executive session under IC 5-14-1.5-6.1. However, this subdivision does not apply to that information required to be available for inspection and copying under subdivision (8).
- (13) The work product of the legislative services agency under personnel rules approved by the legislative council.
- (14) The work product of individual members and the partisan staffs of the general assembly.
- (15) The identity of a donor of a gift made to a public agency if:
- (A) the donor requires nondisclosure of his identity as a condition of making the gift; or
 - (B) after the gift is made, the donor or a member of the donor's family requests nondisclosure.
- (16) Library or archival records:
- (A) which can be used to identify any library patron; or
 - (B) deposited with or acquired by a library upon a condition that the records be disclosed only:

- (i) to qualified researchers;
- (ii) after the passing of a period of years that is specified in the documents under which the deposit or acquisition is made; or
- (iii) after the death of persons specified at the time of the acquisition or deposit.

However, nothing in this subdivision shall limit or affect contracts entered into by the Indiana state library pursuant to IC 4-1-6-8.

(17) The identity of any person who contacts the bureau of motor vehicles concerning the ability of a driver to operate a motor vehicle safely and the medical records and evaluations made by the bureau of motor vehicles staff or members of the driver licensing advisory committee. However, upon written request to the commissioner of the bureau of motor vehicles, the driver must be given copies of the driver's medical records and evaluations that concern the driver.

(18) School safety and security measures, plans, and systems, including emergency preparedness plans developed under 511 IAC 6.1-2-2.5.

(c) Notwithstanding section 3 of this chapter, a public agency is not required to create or provide copies of lists of names and addresses, unless the public agency is required to publish such lists and disseminate them to the public pursuant to statute. However, if a public agency has created a list of names and addresses, it must permit a person to inspect and make memoranda abstracts from the lists unless access to the lists is prohibited by law. The following lists of names and addresses may not be disclosed by public agencies to commercial entities for commercial purposes and may not be used by commercial entities for commercial purposes:

- (1) A list of employees of a public agency.
- (2) A list of persons attending conferences or meetings at a state institution of higher education or of persons involved in programs or activities conducted or supervised by the state institution of higher education.
- (3) A list of students who are enrolled in a public school corporation if the governing body of the public school corporation adopts a policy:
 - (A) prohibiting the disclosure of the list to commercial entities for commercial purposes; or
 - (B) specifying the classes or categories of commercial entities to which the list may not be disclosed or by which the list may not be used for commercial purposes.

A policy adopted under subdivision (3) must be uniform and may not discriminate among similarly situated commercial entities.

(d) Nothing contained in subsection (b) shall limit or affect the right of a person to inspect and copy a public record required or directed to be made by any statute or by any rule of a public agency.

(e) Notwithstanding any other law, a public record that is classified as confidential, other than a record concerning an adoption, shall be made available for inspection and copying seventy-five (75) years after the creation of that record.

(f) Notwithstanding subsection (e) and section 7 of this chapter:

- (1) public records subject to IC 5-15 may be destroyed only in accordance with record retention schedules under IC 5-15; or
- (2) public records not subject to IC 5-15 may be destroyed in the ordinary course of business.

Heltzel v. Thomas, 516 N.E.2d 103 (Ind.App.1987) A coroner's investigation is one done by a "law enforcement agency" under IC 36-2-14-6 and is exempt from the disclosure requirements of the Access to Public Records Act (IC 5-14-3-4). Because the investigation reports contained matters which might not be disclosable because it was possible that they contained criminal matters not yet charged, the coroner's decision to withhold the reports was reasonable.

§ 103.1.3

Denial of Disclosure of Public Records

Persons denied disclosure of public records improperly can sue to compel public officials to disclose the records.

IC 5-14-3-9. (a) A denial of disclosure by a public agency occurs when the person making the request is physically present in the office of the agency, makes the request by telephone, or requests enhanced access to a document and:

- (1) the person designated by the public agency as being responsible for public records release decisions refuses to permit inspection and copying of a public record when a request has been made; or
- (2) twenty-four (24) hours elapse after any employee of the public agency refuses to permit inspection and copying of a public record when a request has been made;

whichever occurs first. (b) If a person requests by mail or by facsimile a copy or copies of a public record, a denial of disclosure does not occur until seven (7) days have elapsed from the date the public agency receives the request.

(c) If a request is made orally, either in person or by telephone, a public agency may deny the request orally. However, if a request initially is made in writing, by facsimile, or through enhanced access, or if an oral request that has been denied is renewed in writing or by facsimile, a public agency may deny the request if:

- (1) the denial is in writing or by facsimile; and
- (2) the denial includes:
 - (A) a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and
 - (B) the name and the title or position of the person responsible for the denial.

(d) A person who has been denied the right to inspect or copy a public record by a public agency may file an action in the circuit or superior court of the county in which the denial occurred to compel the public agency to permit the person to inspect and copy the public record. Whenever an action is filed under this subsection, the public agency must notify each person who supplied any part of the public record at issue:

- (1) that a request for release of the public record has been denied; and
- (2) whether the denial was in compliance with an informal inquiry response or advisory opinion of the public access counselor.

Such persons are entitled to intervene in any litigation that results from the denial. The person who has been denied the right to inspect or copy need not allege or prove any special damage different from that suffered by the public at large.

(e) The court shall determine the matter de novo, with the burden of proof on the public agency to sustain its denial. If the issue in de novo review under this section is whether a public agency properly denied access to a public record because the record is exempted under section 4(a) [IC 5-14-3-4(a)] of this chapter, the public agency meets its burden of proof under this subsection by establishing the content of the record with adequate specificity and not by relying on a conclusory statement or affidavit.

(f) If the issue in a de novo review under this section is whether a public agency properly denied access to a public record because the record is exempted under section 4(b) [IC 5-14-3-4(b)] of this chapter:

- (1) the public agency meets its burden of proof under this subsection by:
 - (A) proving that the record falls within any one (1) of the categories of exempted records under section 4(b) of this chapter; and
 - (B) establishing the content of the record with adequate specificity and not by relying on a conclusory statement or affidavit; and
- (2) a person requesting access to a public record meets the person's burden of proof under this subsection by proving that the denial of access is arbitrary or capricious.

(g) The court may review the public record in camera to determine whether any part of it may be withheld under this chapter.

(h) In any action filed under this section, a court shall award reasonable attorney fees, court costs, and other reasonable expenses of litigation to the prevailing party if:

- (1) the plaintiff substantially prevails; or
- (2) the defendant substantially prevails and the court finds the action was frivolous or vexatious.

The plaintiff is not eligible for the awarding of attorney's fees, court costs, and other reasonable expenses if

the plaintiff filed the action without first seeking and receiving an informal inquiry response or advisory opinion from the public access counselor, unless the plaintiff can show the filing of the action was necessary because the denial of access to a public record under this chapter would prevent the plaintiff from presenting that public record to a public agency preparing to act on a matter of relevance to the public record whose disclosure was denied.

(i) A court shall expedite the hearing of an action filed under this section.

Althaus v. Evansville Courier Co., 615 N.E.2d 441(Ind.App. 1993) If coroner's records are not covered by one of the conditions in the autopsy statute and are not otherwise related to a criminal investigation, they are not "investigatory records" and are subject to disclosure on request. Under these conditions, denial of access is arbitrary and capricious.

Section 103.2 Motor Vehicle Reports

§ 103.2.1

Motor Vehicle Accident Reports

Law enforcement officers (including coroners) must file motor vehicle accident investigation reports with ISP within 24 hours.

IC 9-26-2-2. A law enforcement officer shall forward a written report of each accident investigated under section 1 of this chapter to the state police department within twenty-four (24) hours after completing the investigation. The report must contain, if possible, the following information:

- (1) The name and address of the owner and operator of each vehicle involved in the accident.
- (2) The license number and description of each vehicle involved in the accident.
- (3) The time and place the accident occurred.
- (4) The name and address of each person injured or killed in the accident.
- (5) The name and address of each witness to the accident.

§ 103.2.2

Motor Vehicle Accident Report Forms

ISP supplies the proper motor vehicle accident report forms.

IC 9-26-3-1. (a) The state police department shall prepare and, upon request, supply to police departments, coroners, sheriffs, and other appropriate agencies or individuals forms for accident reports required under this article.

(b) The forms must be appropriate with respect to the persons required to make the reports and the purposes to be served. The written reports to be made by persons involved in accidents and by investigating officers must require sufficiently detailed information to disclose with reference to a traffic accident the causes, locations, and conditions then existing and the persons and vehicles involved.

§ 103.2.3

Coroner Must Report Motor Vehicle Accident Death

Coroners must notify ISP "immediately" of traffic accident deaths.

IC 9-26-4-1. The coroner or other official performing similar functions shall immediately notify the state police department upon learning of the death of an individual in the coroner's jurisdiction as the result of a traffic accident.

§ 103.2.4**Coroner Must Report Motor Vehicle Deaths Monthly**

Coroners must file monthly reports of traffic deaths with ISP.

IC 9-26-4-2. In addition to the notification required by section 1 of this chapter, the coroner or other official performing similar functions shall report in writing to the state police department, on or before the tenth day of each month, the following:

- (1) The death of an individual within the coroner's jurisdiction during the preceding month as the result of an accident involving a motor vehicle.
- (2) The circumstances of the accident.

§ 103.2.5**Confidential Motor Vehicle Reports**

Motor vehicle accident reports made by persons other than law enforcement officers (including coroners) are confidential.

IC 9-26-3-4. (a) This section does not apply to an accident report filed by a law enforcement officer or filed by a coroner or similar officer under IC 9-26- 4-2.

(b) Except as provided in subsection (c), each required accident report and supplemental report is without prejudice to the reporting individual and is for the confidential use of the state police department or other state agencies having use of the records for accident prevention purposes.

(c) The state police department may disclose the identity of a person involved in an accident when the person's identity is not otherwise known or when the person denies being present at the accident.

(d) A report may not be used as evidence in a trial, civil or criminal, arising out of an accident. However, the state police department shall, upon the demand of a:

- (1) person who has, or claims to have, made a report; or
- (2) court;

furnish a certificate showing that a specified accident report has or has not been made to the state police department solely to prove a compliance or a failure to comply with the requirement that a report be made to the state police department.

§ 103.2.6**Accident Report Fee**

Coroners may collect a fee for providing copies of motor vehicle accident reports.

IC 9-29-11-1. (a) The main department, office, agency, or other person under whose supervision a law enforcement officer carries on the law enforcement officer's duties may charge a fee that is fixed by ordinance of the fiscal body in an amount not less than three dollars (\$3) for each report.

(b) The fee collected under subsection (a) shall be deposited in the following manner:

(1) If the department supplying a copy of the accident report is the state police department, in a separate account known as the "accident report account". The account may be expended at the discretion of the state police superintendent for a purpose reasonably related to the keeping of accident reports and records or the prevention of street and highway accidents.

(2) If the department supplying a copy of the accident report is the sheriff, county police, or county coroner, in a separate account known as the "accident report account". The account may be expended at the discretion of the chief administrative officer of the entity that charged the fee for any purpose reasonably related to the keeping of accident reports and records or the prevention of street and highway accidents.

(3) If the department supplying a copy of the accident report is a city or town police department, in the local law enforcement continuing education fund established by IC 5-2-8-2.

Section 103.3 Coroner's Records

§ 103.3.1

Coroner's Public Records

Coroners must make available for public inspection:

- Identifying information
- Location where body was found
- Name of person reporting death and to which agency
- Names of public officials or government employees present and name of person pronouncing death
- Autopsy information
- Where the body was taken and who made the decision
- Coroner's verdict and report

Coroners and deputies must treat law enforcement records as confidential.

Definition of "Autopsy" There is no Indiana statute which specifically defines the word "autopsy" and there is no Indiana appellate case which specifically defines the word "autopsy." Webster's New Twentieth Century Dictionary, 2d Ed., Simon and Schuster, Cleveland: 1979, defines "autopsy" as "post-mortem examination; examination and dissection of the body after death to discover the cause of death, damage done by disease, etc." Courts generally use the "plain meaning" of words when making decisions about the exact meaning intended by legislative bodies when they write statutes. Given the dictionary definition, read in conjunction with the Indiana statutes governing death investigations [see generally, Section 104, Statutory Rules for Death Investigation], it seems likely that Indiana courts would give a very broad construction the word "autopsy" to include virtually any sort of investigative examination of the dead body from the pathologist's dissection to the use of other experts such as odontologists, anthropologists, entomologists, and the like who can offer scientific expertise relating to the cause and manner of death. However, because there is no developed Indiana law on this exact topic, coroners should consult counsel for advice in individual cases. [See also Section 204.7, News Media concerning release of public information.]

Note: Information may be released, of course, pursuant to a court order. If the coroner believes that the release of such information would be improper, the remedy is to seek the advice of counsel and appeal the court order.

Note: Release of information by experts employed as a part of the coroner's investigation is probably immune from liability, but there has been no Indiana appellate decision on this issue and there is no specific statute. Before making an independent release of information about a coroner's case, experts should seek the advice of counsel.

IC 36-2-14-18. (a) Notwithstanding IC 5-14-3-4(b)(1), when a coroner investigates a death, the office of the coroner is required to make available for public inspection and copying the following:

- (1) The name, age, address, sex, and race of the deceased.
- (2) The address where the dead body was found, or if there is no address the location where the dead body was found and, if different, the address where the death occurred, or if there is no address the location where the death occurred.
- (3) The name of the agency to which the death was reported and the name of the person reporting the death.
- (4) The name of any public official or governmental employee present at the scene of the death and the

name of the person certifying or pronouncing the death.

(5) Information regarding an autopsy (requested or performed) limited to the date, the person who performed the autopsy, where the autopsy was performed, and a conclusion as to:

- (A) the probable cause of death;
- (B) the probable manner of death; and
- (C) the probable mechanism of death.

(6) The location to which the body was removed, the person determining the location to which the body was removed, and the authority under which the decision to remove the body was made.

(7) The records required to be filed by a coroner under section 6 of this chapter and the verdict and the written report required under section 10 of this chapter.

(b) A county coroner or a coroner's deputy who receives an investigatory record from a law enforcement agency shall treat the investigatory record with the same confidentiality as the law enforcement agency would treat the investigatory record.

(c) Notwithstanding any other provision of this section, a coroner shall make available a full copy of an autopsy report, other than a photograph, video recording, or audio recording of the autopsy, upon the written request of the next of kin of the decedent or of an insurance company investigating a claim arising from the death of the individual upon whom the autopsy was performed. The insurance company is prohibited from publicly disclosing any information contained in the report beyond that information that may otherwise be disclosed by a coroner under this section. This prohibition does not apply to information disclosed in communications in conjunction with the investigation, settlement, or payment of the claim.

Suggested Form for Release of Public Information

<p>Office of the Coroner of _____ County, Indiana _____, Coroner</p> <p>Date:</p> <p style="text-align: center;">Coroner's Investigation of Death</p> <p>This information is made available for public inspection and copying pursuant to IC 36-2-14-18.</p> <ol style="list-style-type: none"> 1. Identifying information <ul style="list-style-type: none"> Name of deceased: Age of deceased: Address of deceased: Sex of deceased: Race of deceased: 2. Location information <ul style="list-style-type: none"> Address or location where body was found: Address of location where death occurred (if different from above): 3. Report of death information <ul style="list-style-type: none"> Name of agency to which death was reported: Name of person reporting the death: 4. Death scene information

<p>Name(s) of public officials and/or government employees present at the scene of death:</p> <p>Name of the person certifying or pronouncing death:</p> <p>5. Autopsy information</p> <p>Was an autopsy requested: <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Was an autopsy performed: <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If an autopsy was performed:</p> <p> Name of person performing the autopsy:</p> <p> Where the autopsy was performed:</p> <p> Conclusions of the autopsy:</p> <p> Probable cause of death:</p> <p> Probable manner of death:</p> <p> Probable mechanism of death:</p> <p>6. Removal of body information</p> <p> Location to which the body was removed:</p> <p> Person determining the location to which the body was removed:</p> <p> Authority under which the decision to remove the body was made:</p>
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§ 103.3.2

Coroner to Provide Autopsy Report

Coroners must provide copies of autopsy reports to next of kin upon written request and to insurance companies investigating claims. Insurance companies must keep the reports confidential.

IC 10-1-7-4. (a) The superintendent of state police shall designate staff responsible for the operation of the clearinghouse.

(b) The staff's duties include the following:

- (1) Creation and operation of an intrastate network of communication designed for the speedy collection and processing of information concerning missing children.
- (2) Creation and operation of a central data storage, retrieval, and information distribution system designed for the exchange of information on missing children within and outside Indiana. The system must be capable of interacting with:
 - (A) the Indiana data and communication system under IC 5-2-5-12; and
 - (B) the National Crime Information Center.
- (3) Development of appropriate forms for the reporting of missing children that may be used by law enforcement agencies and private citizens to provide useful information about a missing child to the clearinghouse.
- (4) Cooperation with the following agencies concerning the location of missing children:
 - (A) State and local public and private nonprofit agencies involved with the location and recovery of missing persons.
 - (B) Agencies of the federal government.
 - (C) State and local law enforcement agencies within and outside Indiana.
- (5) Coordinate efforts to locate missing children with the agencies listed in subdivision (4).
- (6) Operation of the toll-free telephone line created under section 5(a) [IC 10-1-7-5(a)] of this chapter.
- (7) Publishing and updating, on a quarterly basis, a directory of missing children.
- (8) Compiling statistics on missing children cases handled by the clearinghouse, including the number of

cases resolved each year.

[See also, Section 104.3, Coroner's Investigation of Death, for record keeping and disclosure requirements under IC 36-2-14-6, and Section 105.4, Coroner's Verdict and Report, for record keeping and disclosure requirements under IC 36-2-14-10.]

§ 103.3.2

Autopsy Records

Audio, video and photographic records of autopsies in the custody of physicians are confidential and may be released only under the special circumstances of the statute.

IC 16-39-7.1-1. This chapter applies to a physician.

IC 16-39-7.1-2. Except as provided in section 3 of this chapter, a photograph, a video recording, or an audio recording of an autopsy in the custody of a physician is confidential.

IC 16-39-7.1-3. (a) A surviving spouse may:

- (1) view and copy a photograph or video recording; and
- (2) listen to and copy an audio recording;

of the deceased spouse's autopsy. If there is no surviving spouse, the surviving parents shall have access to the records under this subsection. If there is no surviving spouse or parent, an adult child shall have access to the records.

(b) Upon making a written request, a unit (as defined in IC 36-1-2-23), the state, an agency of the state, the federal government, or an agency of the federal government, while in performance of their official duty, may:

- (1) view and copy a photograph or video recording; and
- (2) listen to and copy an audio recording;

of an autopsy. Unless otherwise required in the performance of their duties, the identity of the deceased must remain confidential.

(c) The physician having custody of a photograph, a video recording, or an audio recording of an autopsy may allow the use of the photograph, video recording, or audio recording of the autopsy for training or educational purposes if all information that identifies the individual on whom the autopsy was performed is removed from the photograph, video recording, or audio recording.

(d) The physician having custody of a photograph, a video recording, or an audio recording of an autopsy may not permit a person to:

- (1) view and copy a photograph or video recording; and
- (2) listen to and copy an audio recording;

of an autopsy without a court order.

IC 16-39-7.1-4. (a) A court, upon a showing of good cause, may issue an order authorizing a person to:

- (1) view or copy a photograph or video recording; and
- (2) listen to or copy an audio recording;

of an autopsy, and may prescribe any restrictions or stipulations that the court considers appropriate.

(b) In determining good cause, the court shall consider:

- (1) whether the disclosure is necessary for the public evaluation of governmental performance;
- (2) the seriousness of the intrusion into the family's right to privacy;
- (3) whether the disclosure of the photograph, video recording, or audio recording is by the least intrusive means available; and
- (4) the availability of similar information in other public records, regardless of form.

(c) In all cases, the viewing, copying, listening to, or other handling of a photograph or video or audio recording of an autopsy must be under the direct supervision of the physician who is the custodian of the

record.

IC 16-39-7.1- 5. (a) A surviving spouse shall be given:

- (1) reasonable notice of the petition filed with the court to view or copy a photograph or video recording of an autopsy or a petition to listen to or copy an audio recording;
- (2) a copy of the petition filed with the court to view or copy a photograph or video recording of an autopsy or a petition to listen to or copy an audio recording; and
- (3) reasonable notice of the opportunity to be present and heard at any hearing on the matter.

(b) If there is no surviving spouse, the notice under this section must be given to the deceased's parents, and if the deceased has no living parent, the notice must be given to the adult children of the deceased.

IC 16-39-7.1- 6. (a) A provider who:

- (1) is the custodian of a photograph, a video recording, or an audio recording of an autopsy; and
- (2) knowingly or intentionally violates this section;

commits a Class D felony.

(b) A person who knowingly or intentionally violates a court order issued under this section commits a Class D felony.

Audio, video and photographic records of autopsies in the custody of coroners are confidential and may be released only under the special circumstances of the statute.

IC 36-2-14-10. (a) After viewing the body, hearing the evidence, and making all necessary inquiries, the coroner shall draw up and sign his verdict on the death under consideration. The coroner shall also make a written report giving an accurate description of the deceased person, his name if it can be determined, and the amount of money and other property found with the body. The verdict and the written report are subject to inspection and copying under IC 5-14-3-3.

(b) Except as provided in subsections (c), (d), and (e), a photograph, video recording, or audio recording of an autopsy in the custody of a medical examiner is declared confidential for purposes of IC 5-14-3-4(a)(1).

(c) A surviving spouse may:

- (1) view and copy a photograph or video recording; and
- (2) listen to and copy an audio recording;

of the deceased spouse's autopsy. If there is no surviving spouse, the surviving parents shall have access to the records under this section. If there is no surviving spouse or parent, an adult child shall have access to the records.

(d) Upon making a written request, a unit (as defined in IC 36-1-2-23), the state, an agency of the state, the federal government, or an agency of the federal government, while in performance of their official duty, may:

- (1) view and copy a photograph or video recording; and
- (2) listen to and copy an audio recording;

of an autopsy. Unless otherwise required in the performance of their duties, the identity of the deceased must remain confidential.

(e) The coroner or the coroner's designee having custody of a photograph, a video recording, or an audio recording of an autopsy may allow the use of the photograph, video recording, or audio recording of the autopsy for training or educational purposes if all information that identifies the individual on whom the autopsy was performed is removed from the photograph, video recording, or audio recording.

(f) The coroner or the coroner's designee having custody of a photograph, a video, or an audio recording of an autopsy may not permit a person to:

- (1) view or copy the photograph or video recording; and
- (2) listen to or copy the audio recording;

of an autopsy without a court order.

(g) A court, upon a showing of good cause, may issue an order authorizing a person to:

- (1) view or copy a photograph or video recording; and
 - (2) listen to or copy an audio recording;
- of an autopsy, and may prescribe any restrictions or stipulations that the court considers appropriate.
- (h) In determining good cause under subsection (g), the court shall consider:
- (1) whether the disclosure is necessary for the public evaluation of governmental performance;
 - (2) the seriousness of the intrusion into the family's right to privacy;
 - (3) whether the disclosure of the photograph, video recording, or audio recording is by the least intrusive means available; and
 - (4) the availability of similar information in other public records, regardless of form.
- (i) In all cases, the viewing, copying, listening to, or other handling of a photograph, video recording, or audio recording of an autopsy must be under the direct supervision of the coroner, or the coroner's designee, who is the custodian of the record.
- (j) A surviving spouse shall be given:
- (1) reasonable notice of the petition filed with the court to view or copy a photograph or video recording of an autopsy or a petition to listen to or copy an audio recording;
 - (2) a copy of the petition filed with the court to view or copy a photograph or video recording of an autopsy or a petition to listen to or copy an audio recording; and
 - (3) reasonable notice of the opportunity to be present and heard at any hearing on the matter.
- (k) If there is no surviving spouse, the notice under subsection (j) must be given to the deceased's parents, and if the deceased has no living parent, the notice must be given to the adult children of the deceased.
- (l) A coroner or coroner's designee who:
- (1) is the custodian of a photograph, a video recording, or an audio recording of an autopsy; and
 - (2) knowingly or intentionally violates this section;
- commits a Class D felony.
- (m) A person who knowingly or intentionally violates a court order issued under this section commits a Class D felony.

Section 103.4 Coroner's Access to Records

§ 103.4.1

Coroner Authorized to Access Hospital Records

A coroner conducting a death investigation is an "authorized person" who may examine hospital records.

IC 34-6-2-15. "Authorized persons", for purposes of IC 34-43-1, include:

- (1) the patient;
- (2) a person authorized by the patient to request the records, if the authorization was made in writing not more than sixty (60) days before the date of the request for the records;
- (3) physicians or other professionals within the hospital;
- (4) a person entitled to request health records under IC 16-39-1-3;
- (5) a coroner who is investigating a death under IC 36-2-14-6; and
- (6) any other person designated by order of a court of competent jurisdiction.

§ 103.4.2

Disclosure of Patient's Mental Health Record

Any disclosure of a mental patients' records is restricted in detail by the following statute. Coroners have access to mental patients' records if necessary to perform their duties.

IC 16-39-2-6. (a) Without the consent of the patient, the patient's mental health record may only be disclosed

as follows:

- (1) To individuals who meet the following conditions:
 - (A) Are employed by:
 - (i) the provider at the same facility or agency;
 - (ii) a managed care provider (as defined in IC 12-7-2-127(b)); or
 - (iii) a health care provider or mental health care provider, if the mental health records are needed to provide health care or mental health services to the patient.
 - (B) Are involved in the planning, provision, and monitoring of services.
- (2) To the extent necessary to obtain payment for services rendered or other benefits to which the patient may be entitled, as provided in IC 16-39-5-3.
- (3) To the patient's court appointed counsel and to the Indiana protection and advocacy services commission.
- (4) For research conducted in accordance with IC 16-39-5-3 and the rules of the division of mental health, the rules of the division of disability, aging, and rehabilitative services, or the rules of the provider.
- (5) To the division of mental health for the purpose of data collection, research, and monitoring managed care providers (as defined in IC 12-7-2-127(b)) who are operating under a contract with the division of mental health.
- (6) To the extent necessary to make reports or give testimony required by the statutes pertaining to admissions, transfers, discharges, and guardianship proceedings.
- (7) To a law enforcement agency if any of the following conditions are met:
 - (A) A patient escapes from a facility to which the patient is committed under IC 12-26.
 - (B) The superintendent of the facility determines that failure to provide the information may result in bodily harm to the patient or another individual.
 - (C) A patient commits or threatens to commit a crime on facility premises or against facility personnel.
 - (D) A patient is in the custody of a law enforcement officer or agency for any reason and:
 - (i) the information to be released is limited to medications currently prescribed for the patient or to the patient's history of adverse medication reactions; and
 - (ii) the provider determines that the release of the medication information will assist in protecting the health, safety, or welfare of the patient.

Mental health records released under this clause must be maintained in confidence by the law enforcement agency receiving them.
- (8) To a coroner or medical examiner, in the performance of the individual's duties.
- (9) To a school in which the patient is enrolled if the superintendent of the facility determines that the information will assist the school in meeting educational needs of a person with a disability under 20 U.S.C. 1400 et seq.
- (10) To the extent necessary to satisfy reporting requirements under the following statutes:
 - (A) IC 12-10-3-10.
 - (B) IC 12-17-2-16.
 - (C) IC 12-24-17-5.
 - (D) IC 16-41-2-3.
 - (E) IC 31-33-5-4.
 - (F) IC 34-30-16-2.
 - (G) IC 35-46-1-13.
- (11) To the extent necessary to satisfy release of information requirements under the following statutes:
 - (A) IC 12-24-11-2.
 - (B) IC 12-24-12-3, IC 12-24-12-4, and IC 12-24-12-6.
 - (C) IC 12-26-11.
- (12) To another health care provider in a health care emergency.
- (13) For legitimate business purposes as described in IC 16-39-5-3.

- (14) Under a court order under IC 16-39-3.
- (15) With respect to records from a mental health or developmental disability facility, to the United States Secret Service if the following conditions are met:
- (A) The request does not apply to alcohol or drug abuse records described in 42 U.S.C. 290dd-2 unless authorized by a court order under 42 U.S.C. 290dd-2(b)(2)(c).
 - (B) The request relates to the United States Secret Service's protective responsibility and investigative authority under 18 U.S.C. 3056, 18 U.S.C. 871, or 18 U.S.C. 879.
 - (C) The request specifies an individual patient.
 - (D) The director or superintendent of the facility determines that disclosure of the mental health record may be necessary to protect a person under the protection of the United States Secret Service from serious bodily injury or death.
 - (E) The United States Secret Service agrees to only use the mental health record information for investigative purposes and not disclose the information publicly.
 - (F) The mental health record information disclosed to the United States Secret Service includes only:
 - (i) the patient's name, age, and address;
 - (ii) the date of the patient's admission to or discharge from the facility; and
 - (iii) any information that indicates whether or not the patient has a history of violence or presents a danger to the person under protection.
- (16) To the statewide waiver ombudsman established under IC 12-11-13, in the performance of the ombudsman's duties.
- (b) After information is disclosed under subsection (a)(15) and if the patient is evaluated to be dangerous, the records shall be interpreted in consultation with a licensed mental health professional on the staff of the United States Secret Service.
- (c) A person who discloses information under subsection (a)(7) or (a)(15) in good faith is immune from civil and criminal liability.

§ 103.4.3

Death Certificate Charge

Local health departments may charge for death certificates with \$1 of the charge going to the coroners continuing education fund.

IC 16-37-1-9. (a) A local health department may make a charge under IC 16-20-1-27 for each certificate of birth, death, or stillbirth registration.

(b) If the local department of health makes a charge for a certificate of death under subsection (a), a one dollar (\$1) coroners continuing education fee must be added to the rate established under IC 16-20-1-27. The local department of health shall deposit any coroners continuing education fees with the county auditor within thirty (30) days after collection. The county auditor shall transfer semiannually any coroners continuing education fees to the treasurer of state.

(c) Notwithstanding IC 16-20-1-27, a charge may not be made for furnishing a certificate of birth, death, or stillbirth registration to a person or to a member of the family of a person who needs the certificate for one (1) of the following purposes:

- (1) To establish the person's age or the dependency of a member of the person's family in connection with:
 - (A) the person's service in the armed forces of the United States; or
 - (B) a death pension or disability pension of a person who is serving or has served in the armed forces of the United States.
- (2) To establish or to verify the age of a child in school who desires to secure a work permit.

§ 103.4.4

Child Protection Service Reports

Coroners have access to child protection service reports if necessary for their investigation of a death.

IC 31-33-7-4. (a) The local child protection service shall make a written report of a child who may be a victim of child abuse or neglect not later than forty-eight (48) hours after receipt of the oral report required of individuals by IC 31-33-5-4.

(b) Written reports under this section must be made on forms supplied by the administrator. The written reports must include, if known, the following information:

- (1) The names and addresses of the following:
 - (A) The child.
 - (B) The child's parents, guardian, custodian, or other person responsible for the child's care.
- (2) The child's age and sex.
- (3) The nature and apparent extent of the child's injuries, abuse, or neglect, including any evidence of prior:
 - (A) injuries of the child; or
 - (B) abuse or neglect of the child or the child's siblings.
- (4) The name of the person allegedly responsible for causing the injury, abuse, or neglect.
- (5) The source of the report.
- (6) The person making the report and where the person can be reached.
- (7) The actions taken by the reporting source, including the following:
 - (A) Taking of photographs and x-rays.
 - (B) Removal or keeping of the child.
 - (C) Notifying the coroner.
- (8) The written documentation required by IC 31-34-2-3 if a child was taken into custody without a court order.
- (9) Any other information that:
 - (A) the director requires by rule; or
 - (B) the person making the report believes might be helpful.

IC 31-33-7-5. A copy of the written report of the local child protection service shall immediately be made available to:

- (1) the appropriate law enforcement agency;
- (2) the prosecuting attorney; and
- (3) in a case involving death, the coroner for the coroner's consideration.

IC 31-33-7-6. Upon receiving a written report under section 5(3) [IC 31-33-7-5(3)] of this chapter, the coroner shall:

- (1) accept a report for investigation; and
- (2) report the coroner's findings to:
 - (A) the appropriate law enforcement agency;
 - (B) the prosecuting attorney;
 - (C) the local child protection service; and
 - (D) the hospital if the institution making the report is a hospital.

§ 103.4.5

Child Protection Service Reports Confidential

Coroners have access to child protection service reports if necessary for their investigation of a death.

IC 31-33-18-2. The reports and other material described in section 1 [IC 31-33-18-1] of this chapter shall be made available only to the following:

- (1) Persons authorized by this article.
- (2) A legally mandated public or private child protective agency investigating a report of child abuse or neglect or treating a child or family that is the subject of a report or record.

- (3) A police or other law enforcement agency, prosecuting attorney, or coroner in the case of the death of a child who is investigating a report of a child who may be a victim of child abuse or neglect.
- (4) A physician who has before the physician a child whom the physician reasonably suspects may be a victim of child abuse or neglect.
- (5) An individual legally authorized to place a child in protective custody if:
 - (A) the individual has before the individual a child whom the individual reasonably suspects may be a victim of abuse or neglect; and
 - (B) the individual requires the information in the report or record to determine whether to place the child in protective custody;
- (6) An agency having the legal responsibility or authorization to care for, treat, or supervise a child who is the subject of a report or record or a parent, guardian, custodian, or other person who is responsible for the child's welfare.
- (7) An individual named in the report or record who is alleged to be abused or neglected or, if the individual named in the report is a child or is otherwise incompetent, the individual's guardian ad litem or the individual's court appointed special advocate, or both.
- (8) Each parent, guardian, custodian, or other person responsible for the welfare of a child named in a report or record and an attorney of the person described under this subdivision, with protection for the identity of reporters and other appropriate individuals.
- (9) A court, upon the court's finding that access to the records may be necessary for determination of an issue before the court. However, access is limited to in camera inspection unless the court determines that public disclosure of the information contained in the records is necessary for the resolution of an issue then pending before the court.
- (10) A grand jury upon the grand jury's determination that access to the records is necessary in the conduct of the grand jury's official business.
- (11) An appropriate state or local official responsible for the child protective service or legislation carrying out the official's official functions.
- (12) A foster care review board established by a juvenile court under IC 31-34-21-9 (or IC 31-6-4-19 before its repeal) upon the court's determination that access to the records is necessary to enable the foster care review board to carry out the board's purpose under IC 31-34-21.
- (13) The community child protection team appointed under IC 31-33-3 (or IC 31-6-11-14 before its repeal), upon request, to enable the team to carry out the team's purpose under IC 31-33-3.
- (14) A person about whom a report has been made, with protection for the identity of:
 - (A) any person reporting known or suspected child abuse or neglect; and
 - (B) any other person if the person or agency making the information available finds that disclosure of the information would be likely to endanger the life or safety of the person.

Section 104

Statutory Rules for Death Investigation

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Section 104.1

Leaving Scene of Common Carrier Vehicle Accidental Death

A common carrier (*e.g.*, a train, a commercial bus) can leave the scene of a fatal accident to complete its scheduled run if the body is left with an agent of the common carrier.

IC 8-2-4-1. When any person shall have come to his death by violence or casualty caused by a collision with a train, car or other conveyance of any common carrier, it shall be lawful for such train, car or conveyance to proceed on its journey before the arrival of the coroner and the holding of an inquest, if the body of such person be left in charge of a member of the crew of such train, car or other conveyance, or of some other agent of such common carrier

OAG (1942 Op.Atty.Gen. p. 71) An Opinion of the Attorney General rendered under a previous identical version of this statute says that, before the coroner arrives, the body may be moved sufficiently to allow the common carrier to proceed.

Section 104.2

Case Referral to Coroner Mandatory

Attending physicians and local health officers must report deaths from other than natural causes to the coroner, and the coroner must report on the death certificate not more than 3 days after the inquest.

IC 16-37-3-7. (a) If the circumstances suggest that the death was caused by other than natural causes, the following individual shall refer the case to the coroner for investigation:

(1) The attending physician.

(2) If there is no attending physician or the attending physician has failed to refer the case to the coroner, the local health officer.

(b) The coroner shall report a death coming under the coroner's supervision upon official death certificate blanks to the health officer having jurisdiction not more than three (3) days after the inquest is held. Another person may not report the death.

Carrigg v. State, 696 N.E.2d 392 (Ind. App. 1998). Compliance with the statutes requiring that coroner be notified of every death not caused by natural causes and that coroner conduct investigation into cause of death is not element of reckless homicide.

IC 16-37-3-8. (a) Except as provided in subsection (c), payment for autopsies the cost of an autopsy requested by a party other than the local health official of the county in which the individual died must be made by the party requesting the autopsy.

(b) Except as provided in subsection (c), payment for the cost of an autopsy required by the local health officer

shall be made from funds appropriated to the local health department.

(c) Except as provided in IC 4-24-4-1, if:

- (1) an individual who is a resident of Indiana dies in an Indiana county:
 - (A) in which at least one (1) air ambulance provider is located; and
 - (B) of which the individual is not a resident; and
- (2) an autopsy is performed on the individual:
 - (A) in the county in which the individual died; and
 - (B) under the authority of the county coroner in the discharge of the coroner's duties;the county coroner shall bill the county in which the incident occurred that caused the death of the individual on whom the autopsy was performed for the cost of the autopsy.

IC 36-2-14-20. (a) Except as provided in subsection (b) and IC 4-24-4-1, if:

- (1) an individual who is a resident of Indiana dies in an Indiana county:
 - (A) in which at least one (1) air ambulance provider is located; and
 - (B) of which the individual is not a resident; and
- (2) an autopsy is performed on the individual:
 - (A) in the county in which the individual died; and
 - (B) under the authority of the county coroner in the discharge of the coroner's duties;the county coroner shall bill the county in which the incident occurred that caused the death of the individual on whom the autopsy was performed for the cost of the autopsy, including the physician fee under section 6(d) of this chapter.

(b) Except as provided in subsection (a) and IC 4-24-4-1, payment for the costs of an autopsy requested by a party other than the:

- (1) county prosecutor; or
- (2) county coroner;

of the county in which the individual died must be made by the party requesting the autopsy.

Section 104.3

Coroner's Investigation of Death

- Coroners must investigate deaths.
- When coroner is notified of suspicious or unexplained death, he must notify law enforcement and the law enforcement agency must assist in the death investigation.
- Coroner must issue death certificate within 72 hours, even if cause of death is unknown. A supplemental report may be filed when cause of death is established.
- Death scenes may not be disturbed until the coroner has photographed them.
- If the coroner requires it or the prosecuting attorney requests it, the coroner must employ a board certified pathologist to perform or supervise an autopsy.
- Under special circumstances, corroborated by two witnesses and upon certification by two physicians, close family members may request that no autopsy be performed.

IC 36-2-14-6. (a) Whenever the coroner is notified that a person in the county:

- (1) has died from violence;
- (2) has died by casualty;
- (3) has died when apparently in good health;
- (4) has died in an apparently suspicious, unusual, or unnatural manner; or
- (5) has been found dead;

he shall, before the scene of the death is disturbed, notify a law enforcement agency having jurisdiction in that area. The agency shall assist the coroner in conducting an investigation of how the person died and a medical

investigation of the cause of death.

(b) The coroner shall file with the person in charge of interment a coroner's certificate of death within seventy-two (72) hours after being notified of the death. If the cause of death is not established with reasonable certainty within seventy-two (72) hours, the coroner shall file with the person in charge of interment a coroner's certificate of death, with the cause of death designated as "deferred pending further action". As soon as he determines the cause of death, the coroner shall file a supplemental report indicating his exact findings with the local health officer having jurisdiction, who shall make it part of his official records.

(c) If this section applies, the body and the scene of death may not be disturbed until the coroner has photographed them in the manner that most fully discloses how the person died. However, a coroner or law enforcement officer may order a body to be moved before photographs are taken if the position or location of the body unduly interferes with activities carried on where the body is found, but the body may not be moved from the immediate area and must be moved without substantially destroying or altering the evidence present.

(d) When acting under this section, if the coroner considers it necessary to have an autopsy performed or is requested to do so by the prosecuting attorney of the county, he shall employ a physician:

(1) certified by the American board of pathology; or

(2) holding an unlimited license to practice medicine in Indiana and acting under the direction of a physician certified by the American board of pathology;

to perform the autopsy. The physician performing the autopsy shall be paid a fee of at least fifty dollars (\$50) from the county treasury. A coroner may employ the services of the medical examiner system, provided for in IC 4-23- 6-6, when an autopsy is required, as long as this subsection is met.

(e) If:

(1) at the request of:

(A) the decedent's spouse;

(B) a child of the decedent, if the decedent does not have a spouse;

(C) a parent of the decedent, if the decedent does not have a spouse or children;

(D) a brother or sister of the decedent, if the decedent does not have a spouse, children, or parents;
or

(E) a grandparent of the decedent, if the decedent does not have a spouse, children, parents, brothers, or sisters;

(2) in any death, where two (2) or more witnesses who corroborate the circumstances surrounding death are present; and

(3) two (2) physicians who are licensed to practice medicine in the state and who have made separate examinations of the decedent certify the same cause of death in an affidavit within twenty-four (24) hours after death;

an autopsy need not be performed. The affidavits shall be filed with the circuit court clerk.

OAG (1987 Op.Atty.Gen. No. 10.) Even if a grand jury has failed to indict, a coroner who has filed his certificate of death by designating "deferred pending further action," may have a coroner's inquest into the cause of death. If the coroner has previously designated a cause of death and filed reports, he can also reopen the investigation if the original conclusion is not correct or is in doubt.

OAG (1979 Op.Atty.Gen. No. 79-27.) In every "coroner's case," the coroner must notify a police agency to assist him in his investigation before disturbing the death scene. Before the dead body is moved or the death scene is disturbed, the coroner must cause photographs to be taken of the body or scene unless the position or location of the dead body interferes unduly with activities carried on in the immediate area. In that case, the coroner or a police officer may order the body to be moved before the photographs are taken, providing it is not moved from the immediate area and providing it can be moved without altering or destroying the evidence.

It is a Class A misdemeanor, pursuant to § 35-44-3-4(b), for any person to alter, damage or remove any record, document, or thing with intent to prevent it from being produced or used as evidence in any official proceeding or investigation.

State v. Williams, 367 N.E.2d 1120 (Ind.1977) A decedent was found dead in an automobile. There was no apparent attempt to brake prior to the accident, and the body was intact and not bloody despite the impact with a bridge. The circumstances of death were sufficient to conclude that the decedent died while in apparent good health, and thus the coroner was required to assume jurisdiction to investigate.

Thompson v. State, 386 N.E.2d 682 (1979) If the physician who conducted the autopsy and wrote the report is unavailable at trial (for example, because of his death) the report may be used by another expert in formulating his opinion as to the cause of death.

Grooms v. State, 379 N.E.2d 458, certiorari denied 99 S.Ct. 1053, 439 U.S. 1131, 59 L.Ed.2d 93, denial of post-conviction relief affirmed 595 N.E.2d 260 (1978) Even though gruesome, autopsy photographs that illustrate the physician witness' testimony and tend to prove cause of death (by showing the path of bullets passing through the decedent's neck) are admissible.

[See also, Section 104.5, Failure to Notify Coroner of Suspicious Death, which provides criminal penalties.]
[See also, Section 102.4, Coroner's Investigative Jurisdiction, for a note on bodies arriving in Indiana from other states.]

Note: It is suggested that the coroner enter into a memorandum of understanding with each hospital, nursing home or other health care facility, and ambulance service in the county to establish standard reporting and investigation procedures for deaths.

Section 104.4

Immunity from Liability for Autopsy

Persons who order or perform autopsies in good faith are immune from liability.

IC 36-2-14-13. A person who in good faith orders or performs a medical examination or autopsy under statutory authority is immune from civil liability for damages for ordering or performing the examination or autopsy.

State v. Williams, 367 N.E.2d 1120 (1977) The pathologist performing an autopsy for the coroner is required only to perform the autopsy and is not liable for failure to investigate other physical evidence involved in the case.

Lee v. Weston, 402 N.E.2d 23(Ind.App.1980) Coroner is immune from a charge of "bad faith" in ordering an autopsy for a decedent who was 18 years old who was found dead in a friend's apartment and who was surrounded by and covered in his own vomit.

[See also, Section 103.3, Coroner's Records, for a definition of the word "autopsy" and a caution about the lack of clear Indiana law on the topic.]

Section 104.5

Failure to Notify Coroner of Suspicious Death

- Failing to report discovery of a dead body where death is from violence or under suspicious circumstances is an infraction.

- Moving a body from a death scene where death is from violence or under suspicious circumstances is a felony.

IC 36-2-14-17. (a) A person who knowingly or intentionally fails to immediately notify the coroner or a law enforcement agency of the discovery of the body of a person who has died:

- (1) from violence; or
- (2) in an apparently suspicious, unusual, or unnatural manner;
commits a Class B infraction.

(b) A person who, without the permission of the coroner or a law enforcement officer, knowingly or intentionally moves or transports from the scene of death the body of a person who has died:

- (1) from violence; or
- (2) in an apparently suspicious, unusual, or unnatural manner;
commits a Class D felony.

Carrigg v. State, 696 N.E.2d 392 (Ind. App. 1998). Compliance with the statutes requiring that coroner be notified of every death not caused by natural causes and that coroner conduct investigation into cause of death is not element of reckless homicide.

Section 105

Coroner's Inquest

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Note: Although the archaic word “inquest” is generally used to describe the coroner’s formal procedure for inquiry into the cause and manner of death, the procedure is actually governed as a part of the coroner’s general duties for the investigation of death. Such an investigation might or might not be conducted by using the formal proceedings of the coroner’s inquest. If the coroner decides to use the “inquest” procedure (which is actually somewhat rare in Indiana), the following statutes provide specific guidance.

Caution: It is recommended that the coroner cooperate closely with the prosecuting attorney in the event of a formal inquest because it is unlikely that any criminal prosecution will result from a coroner’s determination of probable cause to believe that a criminal homicide has been committed unless the prosecuting attorney also agrees with this finding.

Section 105.1

Coroner's Examination of Witnesses

- Coroners may examine persons under oath and may issue subpoenas.
- Physicians who attend an investigation and conduct a post mortem examination are entitled to payment.

IC 36-2-14-7. (a) At an investigation under this chapter, the coroner shall examine persons wanting to testify and may examine persons he has summoned by his subpoena. Witnesses shall answer under oath all questions concerning the death under investigation.

(b) If a physician is required to attend an investigation and make a post mortem examination, the coroner shall certify this service to the county executive, which shall order payment for the physician from the county treasury.

OAG (1979 Op.Atty.Gen. No. 79-27) Coroners can subpoena witnesses and require them to produce papers and documents relevant to the investigation.

Section 105.2

Coroner's Witness Fees

Coroner’s witnesses are entitled to the same fees as circuit court witnesses.

IC 36-2-14-8. A witness testifying before a county coroner is entitled to the same fees as a witness testifying in the circuit court for the county.

Section 105.3

Coroner's Inquest Testimony to Be in Writing

- Witness statements must be reduced to writing and signed.
- Coroner may require posting of recognizance to bind a witness to give evidence in a related trial, and may jail a witness who refuses to give the recognizance.

IC 36-2-14-9. The testimony of each witness at a coroner's investigation shall be reduced to writing and signed by him. The coroner shall, by recognizance in a reasonable sum, bind any witness whose testimony relates to the trial of a person concerned in the death to give evidence in court and shall send the written evidence and recognizance of the witness to the court. The coroner shall commit to the county jail a witness who refuses to enter into the recognizance required by this section.

Section 105.4 Coroner's Verdict and Report

The coroner must prepare a verdict and written report for public inspection.

IC 36-2-14-10. After viewing the body, hearing the evidence, and making all necessary inquiries, the coroner shall draw up and sign his verdict on the death under consideration. The coroner shall also make a written report giving an accurate description of the deceased person, his name if it can be determined, and the amount of money and other property found with the body. The verdict and the written report are subject to inspection and copying under IC 5-14-3-3.

OAG (1987 Op.Atty.Gen. No. 10) Even after a grand jury has met and failed to indict, a coroner may conduct an inquest if he has filed a certificate of death designated "deferred pending further action." A coroner may also reopen his investigation if he has already designated a cause of death and filed his report, but feels his original report is not correct or is in doubt.

Section 105.5 Coroner's Arrest Warrant

A coroner may issue an arrest warrant after a finding of probable cause to believe that the person to be arrested has feloniously caused a death.

IC 36-2-14-12. The coroner, after conducting an investigation of the death of a person by felony, may issue a warrant commanding a law enforcement officer to arrest and take before a court the person whom the coroner charges with the felony. The court shall proceed with the case as if the person had been arrested on a complaint made before it.

Caution: Although this statute does authorize the coroner to issue an arrest warrant, it is not recommended that the coroner do so. The statute seems to be a remnant of older law which the General Assembly has never repealed. The more reasonable method for the coroner to follow is to cooperate with the prosecuting attorney and present the results of the coroner's investigation to that office to permit presentation of the case to the grand jury or to permit the prosecuting attorney to file proper charges and obtain any arrest warrant from the court.

Section 105.6 Uniform Determination of Death Act

Death may be declared either because of irreversible cessation of circulatory and respiratory function or

because of brain death.

IC 1-1-4-3. (a) Only an individual who has sustained either:

(1) Irreversible cessation of circulatory and respiratory functions; or

(2) Irreversible cessation of all functions of the entire brain, including the brain stem;

is dead. A determination of death must be made in accordance with accepted medical standards.

(b) This section shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this section among states enacting it.

(c) This section may be cited as the Uniform Determination of Death Act.

Section 106

Special Problems

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Section 106.1

Unusual Expenses of Autopsy and Burial

§ 106.1.1

State Inmate Autopsy

State institutions must pay the county for the cost of autopsies performed on deceased inmates (*e.g.*, prisoners, mental patients).

IC 4-24-4-1. In the event an autopsy shall be performed on any deceased inmate of any of the several public institutions of the state of Indiana, the cost thereof shall be paid by such state institution from its appropriate funds, to the county in which such institution is located.

§ 106.1.2

Funeral Expenses for Indigents

Unless the death is a “coroner’s case” the township trustee must pay for the burial of the decedent.

IC12-20-16-12. (a) This section does not apply if the county coroner assumes jurisdiction of an unclaimed body under IC 36-2-14-16.

(b) If: (1) an individual dies in a township without leaving:

- (A) money;
- (B) real or personal property;
- (C) other assets that may be liquidated; or
- (D) other means necessary to defray funeral expenses; and

(2) the individual is not a resident of another township in Indiana;

the township trustee, as administrator of poor relief, shall provide a person to superintend and authorize either the funeral and burial or cremation of the deceased individual. If the township trustee determines that the deceased individual is a resident of another township in Indiana, the township trustee shall notify the trustee of that township, who shall then provide a person to superintend and authorize either the funeral and burial or cremation of the deceased individual.

(c) The necessary and reasonable expenses of the funeral and burial or cremation, including a burial plot, shall be paid in the same manner as other claims for poor relief. A trustee shall determine the cost for the items and services required by law for the funeral and burial of an individual, including a burial plot, and for the cremation of an individual, and include in the township's poor relief standards the maximum funeral and burial or cremation amount to be paid from poor relief funds. The trustee may deduct from the maximum amount the following:

- (1) Any monetary benefits that the deceased individual is entitled to receive from a state or federal program.
- (2) Any money that another person provides on behalf of the deceased individual.

(d) If an individual described in subsection (b) is a resident of a state institution at the time of the individual's death, the division that has administrative control of the state institution shall reimburse the township trustee for the necessary and reasonable expenses of the funeral and burial or cremation of the deceased individual. The township trustee shall submit to the division that has administrative control of the state institution an itemized claim for reimbursement of the necessary and reasonable funeral and burial or cremation expenses incurred by the township trustee.

(e) If an individual described in subsection (b) is a resident of a special institution governed by IC

16-33 at the time of the individual's death, the state department of health shall reimburse the township trustee for the necessary and reasonable expenses of the funeral and burial or cremation of the deceased individual. The township trustee shall submit to the state department of health an itemized claim for reimbursement of the necessary and reasonable funeral and burial or cremation expenses incurred by the township trustee.

(f) A township trustee who provides funeral and burial or cremation benefits to a deceased individual is entitled to a first priority claim, to the extent of the cost of the funeral and burial or cremation benefits paid by the township trustee, against any money or other personal property held by the coroner under IC 36-2-14-11.

(g) The township trustee may not cremate a deceased individual if:

(1) the deceased individual; or

(2) a surviving family member of the deceased individual; has objected in writing to cremation.

(h) If a township trustee provides a funeral under this section, the cost of the funeral may not be more than the cost of the least expensive funeral, including any necessary merchandise and embalming, available from the funeral director under the funeral director's price list disclosed to the Federal Trade Commission.

Section 106.2

Cooperation with Bureau of Motor Vehicles Programs

§ 106.2.1

Victim Impact Program

Victim impact programs for motor vehicle violators may include court-ordered visits to a "coroner facility."

IC 9-30-14-3. To qualify as a victim impact program under section 2 of this chapter, a program must do the following:

(1) Provide an opportunity to participate in a victim impact program in the county in which the court is located.

(2) Present each victim impact program described in subdivision (1) with at least one (1) speaker who is one (1) of the following:

(A) A person who was injured as a result of the operation of a vehicle by another person who operated the vehicle under the influence of alcohol or a controlled substance listed in schedule I or II under IC 35-48-2.

(B) A family member or a friend of a person who was injured or died as a result of the operation of a vehicle by another person who operated the vehicle under the influence of alcohol or a controlled substance listed in schedule I or II under IC 35-48-2.

(C) A person who was convicted in Indiana of a covered offense or in another state of an offense that is substantially similar to a covered offense.

(D) A person who has been or is involved in a program designed to control the use or otherwise rehabilitate a person who is an alcohol abuser (as defined in IC 12-7-2-11), a drug abuser (as defined in IC 12-7-2-73), or both.

(3) Require a person to visit a specified emergency medical care facility, a coroner facility, or a chronic

alcoholism treatment center under supervision, as specified by the court.

§ 106.2.2

Victim Impact Visit to Coroner

Coroners are immune from liability for other than willful or grossly negligent injuries to persons visiting their facilities under a court-ordered victim impact program.

IC 9-30-14-4. Neither a facility described in section 3(3) of this chapter nor an employee of the facility is liable for:

- (1) civil damages from injury to a person required to visit the facility under this chapter; or
- (2) damages caused to a person during the visitation described in subdivision (1) by another person required to visit the facility under this chapter;

except for willful or grossly negligent acts intended to, or reasonably likely to, result in the injury or damage.

Section 106.3

Cooperation with Indiana Department of Toxicology

§ 106.3.1

Department of Toxicology Analyses

Indiana Department of Toxicology will conduct analyses for poisons, drugs, and alcohol in human tissues and fluids and will provide expert testimony in coroner's cases.

IC 20-12-34-2. The department of toxicology shall conduct analyses for poisons, drugs and alcohols upon human tissues and fluids submitted by Indiana coroners, prosecutors, prosecuting attorneys, sheriffs, duly authorized officials of the Indiana state police and Indiana city police departments, and by officials of the Indiana University Medical Center hospitals in cases of suspected poisoning or intoxication of human beings, and to report these analytical findings to the official requesting such analyses; and to consult with Indiana coroners and coroner's physicians regarding the interpretation of the above analytical findings. The personnel of the department shall furnish expert testimony regarding the analytical findings in all hearings required by law including criminal prosecutions growing out of such findings.

Section 106.4

Workmen's Compensation Cases

§ 106.4.1

Workmen's Compensation – Autopsy

Employers and the worker's compensation board may require an autopsy in the case of claims for compensation resulting from death in the workplace.

IC 22-3-3-6. [Sections (a) through (g) are omitted]

* * * * *

(h) The employer upon proper application, or the worker's compensation board, shall have the right in any case of death to require an autopsy at the expense of the party requesting the same. If, after a hearing, the worker's compensation board orders an autopsy and such autopsy is refused by the surviving spouse or next of kin, then any claim for compensation on account of such death shall be suspended and abated during such refusal. The surviving spouse or dependent must be served with a notice setting forth the consequences of the refusal under this subsection. The notice must be in a form prescribed by the worker's compensation board. No autopsy,

except one performed by or on the authority or order of the coroner in the discharge of the coroner's duties, shall be held in any case by any person, without notice first being given to the surviving spouse or next of kin, if they reside in Indiana or their whereabouts can reasonably be ascertained, of the time and place thereof, and reasonable time and opportunity given such surviving spouse or next of kin to have a representative or representatives present to witness same. However, if such notice is not given, all evidence obtained by such autopsy shall be suppressed on motion duly made to the worker's compensation board.

§ 106.4.2

Workmen's Compensation – Autopsy Costs and Admissibility

Autopsies ordered by the coroner are exempted from the rules of notice in workmen's compensation claims.

IC 22-3-7-20. [Sections (a) through (h) are omitted]

* * * * *

(i) The employer upon proper application, or the worker's compensation board, shall have the right in any case of death to require an autopsy at the expense of the party requesting the same. If, after a hearing, the board orders an autopsy and the autopsy is refused by the surviving spouse or next of kin, in this event any claim for compensation on account of the death shall be suspended and abated during the refusal. The surviving spouse or dependent must be served with a notice setting forth the consequences of the refusal under this subsection.

The notice must be in a form prescribed by the worker's compensation board. No autopsy, except one performed by or on the authority or order of the coroner in discharge of the coroner's duties, shall be held in any case by any person without notice first being given to the surviving spouse or next of kin, if they reside in Indiana or their whereabouts can reasonably be ascertained, of the time and place thereof, and reasonable time and opportunity shall be given such surviving spouse or next of kin to have a representative or representatives present to witness same. However, if such notice is not given, all evidence obtained by the autopsy shall be suspended on motion duly made to the board.

Section 106.5 Deaths in Mines

§ 106.5.1

Mine Inspectors and Deaths in Mines

Mine inspector inquiries into deaths in underground mines are to paid by the county on the same basis as coroner's inquests.

IC 22-10-3-6. [Sections (a) through (i) are omitted]

* * * * *

(j) Mine inspectors shall report immediately upon being informed of a mine fire, mine explosion, or any accident resulting in loss of life or serious injury, to the director, to the nearest office of the United States Bureau of Mines, and to the district office of the mine workers' organization having jurisdiction at the mine.

(k) The mine inspector shall proceed immediately to the scene of any mine accident in his assigned territory that results in loss of life or serious personal injury, and to the scene of any mine fire or explosion regardless of whether there is loss of life or personal injury, shall make such investigation and recommendations and render such assistance necessary for the safety of the employees, and shall make a complete report thereof and give such report to the same distribution as a regular mine inspection report. The district president of the mine workers' organization having jurisdiction at the mine, or some person delegated by him, the mine safety committee at the mine involved, and federal coal mine inspectors shall be permitted to actively and fully participate in the investigation of any such accident and any hearings held in connection therewith, including the right to call, examine, and cross-examine witnesses. At all hearings held in connection with accidents that result in loss of life, the director and mine inspectors are empowered to compel the attendance of witnesses and administer oaths or affirmation to them, and the costs of such investigations shall be paid by the county

in which the accident occurs, as costs of coroner's inquests are now paid.

[Sections (l) through (m) are omitted]

OAG (1925-26 Op.Atty.Gen. p. 610) The only guidance as to procedure is a 70 year old Opinion of the Attorney General which reported that the mine inspector should go with the county coroner to the mine where any death occurs, and that the chief mine inspector was required to be with the coroner for the inquest, but that the coroner did not have to go into the mine if the cause of death could be ascertained otherwise.

Section 106.6 Exhumation and Removal of Bodies

§ 106.6.1

Exhumation

Remains can be exhumed for autopsy (or removal and reinterment) only with the consent of the owner of the cemetery and surviving spouse or other surviving relatives; or by court order. This section does not apply to the disinterment of remains upon the written order of the coroner of the county wherein such cemetery is situated.

IC 23-14-57-3. (a) This chapter does not prohibit:

- (1) the removal of human remains by a cemetery owner from a plot, building, or structure for which the purchase price is past due and unpaid; and
- (2) the reinterment, reentombment, or reinurnment of the remains in some other suitable plot in the cemetery.

(b) For a removal and reinterment, reentombment, or reinurnment (at the discretion of the cemetery owner) referred to in subsection (a), the cemetery owner is not liable in any action unless the owner fails to exercise reasonable care in the removal or reinterment, reentombment, or reinurnment. There is a rebuttable presumption that the owner exercised reasonable care in the removal or reinterment, reentombment, or reinurnment.

IC 23-14-57-4. This chapter does not apply to the disinterment, disentombment, or disurnment of remains upon the written order of the coroner of the county in which the cemetery is situated.

IC 23-14-57-5. (a) The remains of a deceased human interred, entombed, or inurned in a plot in a cemetery may be removed from the plot for the purpose of autopsy or reinterment, reentombment, or reinurnment in another cemetery with:

- (1) the consent of the owner of the cemetery; and
- (2) the written consent of:
 - (A) the surviving spouse in the case of a deceased married person; or
 - (B) the surviving parents in the case of a deceased minor child.

(b) If the consent of:

- (1) the owner of the cemetery; or
- (2) a person from whom consent is required under subsection (a)(2);

cannot be obtained, the remains of a deceased human can be removed for the purpose of autopsy or reinterment, reentombment, or reinurnment in another cemetery only under a judgment of the circuit or superior court with jurisdiction in the county in which the cemetery is located.

Note: Occasionally, remains will be discovered which are of archeological significance. Human remains which predate January 1, 1940 ultimately fall under the jurisdiction of the State Archeologist. Contact the

Indiana Department of Natural Resources for assistance with the investigation and processing of human remains which are of archeological significance (e.g., Native American burial sites, remains in cemeteries from Indiana frontier days).

Section 106.7

Cremation

§ 106.7.1

Authorizing Agents – Cremation

Under some circumstances, the coroner may be the authorizing agent for a cremation.

IC 23-14-31-26. (a) The following persons, in the priority listed, have the right to serve as an authorizing agent:

- (1) The individual who was the spouse of the decedent at the time of the decedent's death.
- (2) The decedent's surviving adult children. If more than one (1) adult child is surviving, any adult child who confirms in writing that the other adult children have been notified, unless the crematory authority receives a written objection to the cremation from another adult child.
- (3) The decedent's surviving parent. If the decedent is survived by both parents, either parent may serve as the authorizing agent unless the crematory authority receives a written objection to the cremation from the other parent.
- (4) The individual in the next degree of kinship under IC 29-1-2-1 to inherit the estate of the decedent. If more than one (1) individual of the same degree is surviving, any person of that degree may serve as the authorizing agent unless the crematory authority receives a written objection to the cremation from one (1) or more persons of the same degree.
- (5) In the case of an indigent or other individual whose final disposition is the responsibility of the state or township, the following may serve as the authorizing agent:
 - (A) If none of the persons identified in subdivisions (1) through (4) of this section are available:
 - (i) a public administrator, including a responsible township trustee or the trustee's designee; or
 - (ii) the coroner.
 - (B) A state appointed guardian.

However, an indigent decedent may not be cremated if a surviving family member objects to the cremation or if cremation would be contrary to the religious practices of the deceased individual as expressed by the individual or the individual's family.

(6) In the absence of any person under subdivisions (1) through (5), any person willing to assume the responsibility as the authorizing agent, as specified in this article.

(b) When a body part of a nondeceased individual is to be cremated, a representative of the institution that has arranged with the crematory authority to cremate the body part may serve as the authorizing agent.

§ 106.7.2

Cremation Procedure

If a death is a "coroner's case," the coroner must issue a release of the body before cremation.

IC 23-14-31-27. (a) Except as provided in subsection (c), a crematory authority shall not cremate human remains until the authority has received the following:

- (1) A cremation authorization form provided by the crematory authority, signed by an authorizing agent, containing the following information:
 - (A) The identity of the human remains and the time and date of death.
 - (B) The name of the funeral director who obtained the cremation authorization.
 - (C) The name of the authorizing agent and the relationship between the authorizing agent and the

decedent.

(D) A statement by the authorizing agent that the authorizing agent:

- (i) has the right to authorize the cremation of the decedent;
- (ii) is not aware of any person who has a superior priority right to that of the authorizing agent; or
- (iii) if the authorizing agent is aware that there is another person who has a superior priority right to that of the authorizing agent, a statement that the authorizing agent has made all reasonable efforts to contact the person, has been unable to contact the person, and has no reason to believe that the person would object to the cremation of the decedent.

(E) Authorization for the crematory authority to cremate the human remains.

(F) A statement that the human remains do not contain a pacemaker or any other material or implant or radiation producing device that may be potentially hazardous or cause damage to the cremation chamber or the individual performing the cremation. The authorization form may state that the funeral director is not liable for damages caused by a pacemaker or other implanted device that was not disclosed to the funeral director or of which the funeral director could not reasonably be aware.

(G) The name of the funeral director authorized to receive the cremated remains from the crematory authority or, if the crematory is on cemetery property, the cemetery authorized to receive cremated remains.

(H) The manner in which final disposition of the cremated remains is to take place, if known. If the cremation authorization form does not specify final disposition in a grave, niche, or scattering area, the form may indicate that the cremated remains will be held by the crematory authority for not longer than thirty (30) days from the date of cremation before the remains are released. The form may indicate that the crematory authority shall return cremated remains that have not been disposed of within thirty (30) days to the funeral director or funeral home of record who shall hold them for not longer than sixty (60) days from the date of cremation before disposing of the cremated remains either as previously authorized or, if there is no authorization, in any legal manner.

(I) A statement confirming the identity of the valuables belonging to the decedent previously taken and being held by the funeral director or the funeral home.

(J) A statement prohibiting the crematory from selling nonorganic material recovered from the human remains.

(K) A statement that the authorizing agent has made specific arrangements for any viewing of the decedent before cremation, or for a service with the decedent present before cremation. If a viewing or service is planned, the date and time of the viewing or service and whether the crematory authority is authorized to proceed with the cremation upon receipt of the human remains.

(L) The signature of the authorizing agent, attesting to the accuracy of all representations contained on the cremation authorization form.

(2) A completed and executed burial transit permit provided by the local health officer to the funeral director indicating that the human remains are to be cremated.

(3) A copy of:

(A) the completed and executed certificate of death; or

(B) a release for cremation by the coroner if an investigation of the circumstances of the deceased person's death came under the authority of the **coroner**, but the release does not constitute an authorization as required by this chapter.

(b) The cremation authorization form required under subsection (a)(1) must be signed by the funeral director who obtained the cremation authorization. The funeral director shall execute the cremation authorization form as a witness and is not responsible for the representations made by the authorizing agent unless the funeral director has actual knowledge of a false or inaccurate representation. The funeral director shall certify to the crematory that the human remains delivered to the crematory authority are the human remains identified by the authorizing agent on the cremation authorization form.

(c) Notwithstanding subsection (a)(3)(A), a death certificate is not required for the cremation of the remains of a person:

- (1) who died in another state; and
- (2) whose remains are transported to Indiana by:
 - (A) a licensed funeral director; or
 - (B) the agent of a licensed funeral director;

for the purpose of cremation at an Indiana crematory;

if the funeral director or funeral director's agent obtains the documents required for cremation by the state in which the death occurred. However, if final disposition of the human remains is to occur in Indiana, the provisions of subsection (a)(3)(A) shall apply.

§ 106.7.3

Cremation Time Limit; Hazardous Materials in Remains

Except when waived in writing by the city or county health officer where the death occurred, human remains shall not be cremated less than forty-eight (48) hours after the time of death, and pacemakers and any other material or implant which might be hazardous must be removed.

IC 23-14-31-36. (a) Except:

- (1) when waived in writing by the city or county health officer where the death occurred; or
- (2) as provided in subsection (d);

human remains shall not be cremated less than forty-eight (48) hours after the time of death as indicated on the medical certificate of death or the coroner's certificate.

(b) Except as provided in subsection (a), unless the crematory authority has received specific instructions to the contrary on the cremation authorization form, a crematory authority may schedule the actual cremation to be performed at the authority's convenience at any time after the human remains have been delivered to the crematory authority.

(c) A crematory authority shall not cremate human remains when the authority has actual knowledge that the human remains contain a pacemaker or other material or implant that may be potentially hazardous to the individual performing the cremation.

(d) The mandatory delay of forty-eight (48) hours imposed by subsection (a) does not apply to the cremation of the remains of a person:

- (1) who died in another state; and
- (2) whose remains are transported to Indiana by:
 - (A) a licensed funeral director; or
 - (B) the agent of a licensed funeral director;

for the purpose of cremation at an Indiana crematory;

if the funeral director or funeral director's agent obtains the documents required for cremation by the state in which the death occurred.

Section 106.8

Anatomical Gifts and Organ Removal

§ 106.8.1

Anatomical Gifts

Indiana has adopted the Uniform Anatomical Gifts Act, and the harvesting and release of organs is governed by that act.

IC 29-2-16-4. (a) A gift of all or part of the body under section 2(a) [IC 29-2-16-2(a)] of this chapter may be made by will. The gift becomes effective upon the death of the testator without waiting for probate. If the will is not probated, or if it is declared invalid for testamentary purposes, the gift, to the extent that it has been acted upon in good faith, is nevertheless valid and effective.

(b) A gift of all or part of the body under section 2(a) of this chapter may also be made by document other than

a will. The gift becomes effective upon the death of the donor. The document, which may be a card designed to be carried on the person, must be signed by the donor. If the donor cannot sign, the document may be signed by another for the donor:

- (1) at the donor's direction and in the donor's presence; and
- (2) in the presence of two (2) witnesses who must sign the document in the donor's presence and each other's presence.

The document must state that it has been signed in accordance with this subsection. Delivery of the document of gift during the donor's lifetime is not necessary to make the gift valid.

(c) The gift may be made to a specified donee or without specifying a donee. If the latter, the gift may be accepted by the attending physician as donee upon or following death. If the gift is made to a specified donee who is not available at the time and place of death, the attending physician upon or following death, in the absence of any expressed indication that the donor desired otherwise, may accept the gift as donee. The gift of an eye or part of an eye made without specifying a donee, or made to a donee who is not available at the time and place of death and without an expression of a contrary desire, may be accepted by the attending physician as donee on behalf of an eye bank in Indiana. The physician who becomes a donee under this subsection shall not participate in the procedures for removing or transplanting a part.

(d) Notwithstanding section 7(b) [IC 29-2-16-7(b)] of this chapter, the donor may designate in his will, card, or other document of gift the surgeon or physician to carry out the appropriate procedures. In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the gift may employ or authorize any surgeon or physician for the purpose.

(e) After proper certification of death by a physician and compliance with the intent of the gift as determined by reference to this chapter:

- (1) with respect to a gift of an eye or part of an eye, including the cornea or corneal tissue, the eye or part of the eye may be removed for the gift by:

- (A) a physician licensed under IC 25-22.5; or
 - (B) an individual who is registered with the medical licensing board as a corneal excision technician;
- or

- (2) with respect to a gift of a whole eye, the eye may be removed for the gift by:

- (A) a physician licensed under IC 25-22.5;
- (B) an individual who is registered with the medical licensing board as a corneal excision technician;
- (C) an embalmer or a funeral director who, before September 1, 1983, completed a course in eye enucleation and was certified as competent to enucleate eyes by an accredited school of medicine; or
- (D) an individual who is registered with the medical licensing board as an eye enucleator.

(f) A person who, in good faith reliance upon a will, card, or other document of gift, and without actual notice of the amend, revocation, or invalidity of the will, card, or document:

- (1) takes possession of a decedent's body or performs or causes to be performed surgical operations upon a decedent's body; or
 - (2) removes or causes to be removed organs, tissues, or other parts from a decedent's body;
- is not liable in damages in any civil action brought against the donor for that act.

(g) Any gift by a person designated in section 2(b) [IC 29-2-16-2(b)] of this chapter shall be made by a document signed by the donor or made by the donor's telegraphic, recorded telephonic, or other recorded message.

(h) An individual may refuse to make a gift under this chapter or IC 9-24-17 of all or part of the individual's body by any of the following methods:

- (1) A writing signed in the same manner as a document under subsection (b).
- (2) A written statement attached to or imprinted on a person's anatomical gift card received from the bureau of motor vehicles under IC 9-24-17 and signed in the same manner as a gift under IC 9-24-17-8.
- (3) Any writing used to identify the individual as refusing to make an anatomical gift under this chapter.

During a terminal illness or injury, the refusal may be an oral statement or other form of communication.

(i) In the absence of a contrary indication by an individual, a gift under this chapter of a part of the individual's body is neither a refusal to give other parts of the body nor a limitation to give only part of the body under this

chapter or IC 9-24-17.

(j) In the absence of a contrary indication by an individual, a revocation or an amendment under section 6 [IC 29-2-16-6] of this chapter is not a refusal to make another gift under this chapter. If an individual intends a revocation to be a refusal to make a gift under this chapter, the individual must make the refusal in accordance with subsection (h).

(k) A gift under this chapter or IC 9-24-17 that is not revoked before the donor dies is irrevocable.

(l) If a document of gift is attached to or imprinted on a donor's motor vehicle driver's license or identification card issued under IC 9-24-16, the document of gift must comply with this section. Revocation, suspension, or cancellation of the license or expiration of the license or identification card does not invalidate the anatomical gift.

OAG (1976 sOp.Atty.Gen. 19) In an Opinion of the Attorney General, that office reports that under the Uniform Anatomical Gift Act, an embalmer may remove eyes subject to the special certification issued by an accredited school of medicine inside or outside Indiana.

§ 106.8.2

Removal and Release of Body Part

- A coroner must meet the following 7 conditions to release a body part for transplantation.
- The person releasing the body part must make a permanent record of the release.

IC 29-2-16-4.5. (a) A coroner may release and permit the removal of a part from a body within the coroner's custody, for transplantation or therapy only, if all of the following occur:

- (1) The coroner receives a request for a part from a hospital, physician, surgeon, or procurement organization.
- (2) The coroner makes a reasonable effort, taking into account the useful life of a part, to locate and examine the decedent's medical records and inform individuals listed in section 2(b) of this chapter of their option to make or object to making a gift under this chapter.
- (3) The coroner does not know of a refusal or contrary indication by the decedent or an objection by an individual having priority to act as listed in section 2(b) of this chapter.
- (4) The removal will be by:
 - (A) a physician licensed under IC 25-22.5; or
 - (B) in the case of removal of an eye or part of an eye, by an individual described in section 4(e) of this chapter and under IC 36-2-14-19.
- (5) The removal will not interfere with any autopsy or investigation.
- (6) The removal will be in accordance with accepted medical standards.
- (7) Cosmetic restoration will be done, if appropriate.

(b) If the body is not within the custody of the coroner, the medical examiner may release and permit the removal of any part from a body in the medical examiner's custody for transplantation or therapy if the requirements of subsection (a) are met.

(c) A person under this section who releases or permits the removal of a part shall maintain a permanent record of the name of the decedent, the individual making the request, the date and purpose of the request, the body part requested, and the person to whom it was released.

§ 106.8.3

Documenting Anatomical Gifts

If an organ donation is made to a specific recipient, the document or a copy making the gift should be delivered to the recipient immediately after death, but delivery is not required for the donation to be valid.

IC 29-2-16-5. If the gift is made by the donor to a specified donee, the will, card or other document, or an executed copy thereof, may be delivered to the donee to expedite the appropriate procedures immediately after death. Delivery is not necessary to the validity of the gift. The will, card or other document, or an executed

copy thereof, may be deposited in any hospital, bank or storage facility or registry office that accepts it for safekeeping or for facilitation of procedures after death. On request of any interested party upon or after the donor's death, the person in possession shall produce the document for examination.

OAG (1989 Op.Atty.Gen. No. 89-23) In order to avoid liability for damages in a civil action, the coroner must be sure the driver's license of the deceased has a completed organ gift form, signed by the donor and two witnesses. If the driver's license endorsement is not complete, then the coroner must obtain proper permission from relatives before any organ release.

§ 106.8.4

Cornea Donations

Coroners may authorize removal of corneas for transplant under certain conditions.

IC 36-2-14-19. (a) As used in this section, "cornea" includes corneal tissue.

(b) As used in this section, "decedent" means a person described in section 6(a)(1) through 6(a)(5) of this chapter.

(c) As used in this section, "eye bank" means a nonprofit corporation:

- (1) organized under Indiana law;
- (2) exempt from federal income taxation under Section 501 of the Internal Revenue Code; and
- (3) whose purposes include obtaining, storing, and distributing corneas that are to be used for corneal transplants or for other medical or medical research purposes.

(d) If under section 6(d) of this chapter the coroner requires an autopsy to be performed upon a decedent, the coroner may authorize the removal of one (1) or both of the decedent's corneas for donation to an eye bank for transplantation, if the following conditions exist:

- (1) The decedent's corneas are not necessary for successful completion of the autopsy.
- (2) The decedent's corneas are not necessary for use as evidence.
- (3) Removal of the decedent's corneas will not alter the postmortem facial appearance of the decedent.
- (4) A representative of the eye bank, authorized by the trustees of the eye bank to make requests for corneas, has done the following:
 - (A) Within six (6) hours after the time of death, made a reasonable attempt to:
 - (i) contact any of the persons listed in the order of priority specified in IC 29-2-16-2(b); and
 - (ii) inform the person of the effect of the removal of the decedent's corneas on the physical appearance of the decedent.
 - (B) Submitted to the coroner:
 - (i) a written request for the donation by the coroner of corneas of the decedent subject to autopsy under section 6(d) of this chapter; and
 - (ii) a written certification that corneas donated under this section are intended to be used only for cornea transplant.
- (5) The removal of the corneas and their donation to the eye bank will not alter a gift made by:
 - (A) the decedent when alive; or
 - (B) any of the persons listed in the order of priority specified in IC 29-2-16-2(b); to an agency or organization other than the eye bank making the request for the donation.
- (6) The coroner, at the time the removal and donation of a decedent's corneas is authorized, does not know of any objection to the removal and donation of the decedent's corneas made by:
 - (A) the decedent, as evidenced in a written document executed by the decedent when alive; or
 - (B) any of the persons listed in the order of priority specified in IC 29-2-16-2(b).

(e) A person, including a coroner and an eye bank and the eye bank's representatives, who exercises reasonable care in complying with subsection (d)(6) is immune from civil liability arising from cornea removal and donation allowed under this section.

(f) A person who authorizes the donation of a decedent's corneas may not be charged for the costs related to the donation. The recipient of the donation is responsible for the costs related to the donation.

