

RESOLUTION OF THE  
NAVAJO NATION COUNCIL

23rd NAVAJO NATION COUNCIL -- Fourth Year, 2018

AN ACT

RELATING TO LAW AND ORDER, NAABIK'ÍYÁTI' AND THE NAVAJO NATION COUNCIL; AMENDING 2 N.N.C. § 1352 AND 17 N.N.C §§ 1851 THROUGH 1856; AMENDING CORONER PROVISIONS AND ESTABLISHING A DEPARTMENT OF MEDICAL EXAMINERS WITHIN THE DIVISION OF PUBLIC SAFETY; AUTHORIZING THE LAW AND ORDER COMMITTEE TO APPROVE A PLAN OF OPERATION FOR THE DEPARTMENT OF MEDICAL EXAMINERS

BE IT ENACTED:

**SECTION ONE. AUTHORITIES**

- A. The Law and Order Committee is a standing committee of the Navajo Nation Council. 2 N.N.C. § 600 (A). The committee, among other duties and responsibilities, oversees the Navajo Nation Division of Public Safety and programs within the division. 2 N.N.C. §§ 600(C)(5) and 601(C)(1). The committee pursuant to 2 N.N.C. § 601(B)(4) is authorized to approve and amend plans of operation for programs over which it exercises oversight authority.
- B. Pursuant to 2 N.N.C. §164(A)(9), "A proposed resolution that requires final action by the Navajo Nation Council [must] be assigned to standing committee(s) having authority over the subject matter at issue and the Naabik'íyáti' Committee."
- C. The Navajo Nation Council, pursuant to 2 N.N.C. §102(A), is the "governing body of the Navajo Nation ...." A primary role of Navajo Nation Council delegates is policy-making, a role which includes approval of enabling legislation.

**SECTION TWO. FINDINGS**

- A. Pursuant to 17 N.N.C. §1851, "[t]he President of the Navajo Nation is authorized to appoint at least one coroner within each police district, and to hold office at the President's pleasure. Coroners shall be paid at a rate established by the Navajo Nation Council and may be reimbursed for actual and necessary expenses, upon presenting proper vouchers to the Controller of the Navajo Nation." 17 N.N.C. § 1851, *Appointment of coroners; compensation.*

- B. By a 2004 Executive Order, Joe Shirley, Jr., then President of the Navajo Nation, appointed the Navajo Department of Criminal Investigation Captains (Criminal Investigator Supervisors) as Coroners; and Criminal Investigation Lieutenants (Senior Criminal Investigators) and Criminal Investigation Sergeants (Criminal Investigators) as Deputy Coroners of each of the several Police Districts on the Navajo Nation.
- C. The Navajo Department of Criminal Investigations is a program within the Division of Public Safety, and is contracted through the BIA P.L. 93-638 to conduct investigations of major crimes such as, but not limited to, homicides, rapes, and serious assaults.
- D. Regarding determinations on causes of death, the policy of the BIA is that "under no circumstances will a BIA Special Agent or Police Officer make a ruling regarding the cause of death." BIA Death Investigation Policy # DIV-CR-02-2005 (issued 2005). This policy applies to all law enforcement officers performing the same duties and responsibilities as BIA Special Agents or Police Officers under the Navajo Nation's P.L. 93-638 contract.
- E. The Navajo Department of Criminal Investigation is currently experiencing a strain to perform coroner duties and to also conduct major crime investigations, especially under the current manpower shortage.
- F. Death investigation is a health-related field that should be managed by personnel specifically trained in Medicolegal Death Investigation.
- G. The creation of the Navajo Department of Medical Examiners supports self-reliance, self-determination, job creation, and ensures that Navajo interests, beliefs, and traditions will be protected.

**SECTION THREE. AMENDING ENABLING LEGISLATION FOR DIVISION OF PUBLIC SAFETY**

The Navajo Nation hereby amends the enabling legislation for the Navajo Nation Division of Public Safety, 2 N.N.C. § 1352 et seq., as follows:

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**TITLE 2. NAVAJO NATION GOVERNMENT**  
**Chapter 5. Executive Branch**  
**Subchapter 15. Division of Public Safety**

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**§ 1352. Purpose and objectives**

- A. The purposes of the Navajo Division of Public Safety shall be:
1. To plan, organize and administer all aspects of the Navajo Division of Public Safety programs so as to provide multi-public safety services that meet the needs of tribal members of the Navajo Nation, as well as other individuals and entities within the territorial jurisdiction of the Navajo Nation as defined in 7 N.N.C. § 254 and 18 U.S.C. § 1151.
  2. To exercise control and authority over all law enforcement and public safety activities within the Navajo Nation and adjoining Indian Country as designated under Navajo, federal and other applicable laws where the Navajo Nation exercises jurisdiction.
- B. The objectives of the Navajo Division of Public Safety include, but are not limited to the following:
1. To maintain law and order by the enforcement of applicable criminal laws and the safeguarding of the lives and properties of the persons on the Navajo Nation by deterring criminal activities and violations of tribal, state and federal laws, through effective investigation, and to provide assistance in prosecutions and appropriate court actions, in cooperation with the Navajo Nation Office of the Prosecutor and other criminal justice entities which possess jurisdiction; to negotiate and enter into appropriate agreements with other governmental jurisdictions to carry out the responsibilities herein, in compliance with applicable Navajo Nation laws, rules and regulations.
  2. To plan for, respond to, and aid in the recovery from natural and manmade disasters on the Navajo Nation and to coordinate with and train tribal and affiliated non-tribal entities in the development of a comprehensive emergency management plan.
  3. To provide fire and rescue services and to develop community volunteer fire services to effectively and efficiently respond to fire and rescue operations; to provide training facilities and instructors for local

fire departments; to enforce fire and building codes and other applicable codes related to fire safety.

4. To respond to medical emergencies by rendering emergency care, and to transport the sick or injured to a clinic or hospital when appropriate.
5. To establish, operate and provide support services for victims of serious and violent crimes.
6. To provide and coordinate support services to ensure the availability of counseling for Division employees.
7. To coordinate and disseminate information on safety programs and to facilitate funding mechanism for its component departments with non-tribal entities.
8. To plan for, establish, provide and operate appropriate correctional facilities and appropriate correctional services.
9. To provide competent medicolegal death investigations.

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**SECTION FOUR. AMENDING TITLE 17 BY DELETING CORONER PROVISIONS;  
CREATING A DEPARTMENT OF MEDICAL EXAMINERS**

The Navajo Nation hereby amends Title 17 by deleting coroner provisions at sections 1851 through 1854 and creating a Department of Medical Examiners as follows:

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**TITLE 17. LAW AND ORDER**

**Chapter 5. Procedures**

**Subchapter 3. Coroners Medical Examiners; Investigation of Deaths**

**~~§ 1851. Appointment of coroners; compensation~~**

~~The President of the Navajo Nation is authorized to appoint at least one coroner within each police district, and to hold office at the President's pleasure. Coroners shall be paid at a rate established by the Navajo Nation Council and may be reimbursed for actual and necessary expenses, upon presenting proper vouchers to the Controller of the Navajo Nation.~~

**§ 1851. Establishment of the Navajo Department of Medical Examiners**

There is established within the Navajo Nation Division of Public Safety in the Executive branch of the government of the Navajo Nation, the Navajo Department of Medical Examiners.

**§ 1852. Investigation of deaths - Generally**

~~Whenever a coroner is informed that a person on Navajo Nation land has been killed, or has suddenly died under such circumstances as afford reasonable ground to suspect that the death was occasioned by the criminal act or gross negligence of another, the coroner shall go to the place where the body is located and inquire into the cause of death. Unless the coroner is a physician, he or she shall endeavor to have a physician accompany him or her to the place where the body is located.~~

- A. The Navajo Nation Department of Medical Examiners shall, within the Navajo Nation, investigate all deaths occurring under suspicious circumstances, including violent and unexplained deaths. The Chief Medical Examiner, other medical examiners, and medicolegal investigators within the Navajo Nation Department of Medical Examiners are authorized to make determinations and issue certificates of death, among other duties and responsibilities within its Plan of Operation.
- B. The Navajo Nation Department of Medical Examiners is authorized to respond to the scene of the death and shall prescribe procedures for taking possession of a dead body following a death subject to investigation under this Section and for obtaining all medicolegal facts relevant to the medical cause of death. The dead body shall not be disturbed unless the Chief Medical Examiner or his/her designee grants permission to do so.
- C. All medicolegal investigations must be conducted in a manner that respects the culture, tradition, and beliefs of the Navajo Nation.
- D. As needed, the Navajo Nation Department of Medical Examiners may engage medical examiners or offices of medical examination on a short term basis to respond to unexpected surges in the need for medicolegal investigations.

**§ 1853. Autopsies and exhumations**

- ~~A. When the coroner determines that the cause of death cannot be determined without an autopsy, the coroner or district prosecutor may petition the district court of the Navajo Nation to order an autopsy be held. If such an autopsy shall~~

~~require exhumation of the body, such information shall be included in the petition. Hearings on such petitions shall be held on an expedited schedule upon a showing of exigent circumstances derived from medical necessity or the needs of a criminal investigation.~~

~~B. The immediate family of the decedent shall be served with a copy of the petition and shall be allowed to file objections, if their identity and whereabouts can be ascertained and their participation is consistent with the requirements of medical necessity or the needs of a criminal investigation. The petitioner must show what reasonable, good faith efforts have been made to locate and serve the decedent's immediate family.~~

~~C. The district court may order an autopsy if it finds that:~~

~~1. The cause of death cannot be determined without an autopsy;~~

~~2. Such determination is critical to a criminal investigation or required by medical necessity;~~

~~3. No less invasive means is available for the investigation.~~

~~D. After the district court has ordered an autopsy, the coroner may request the United States Public Health Service perform the autopsy, or may engage a private physician or other licensed health care provider to perform such service.~~

~~E. If the ordered autopsy requires exhumation of a body, the coroner shall cause the body to be exhumed for examination and reburial after autopsy. The coroner may call upon the Navajo police for assistance in exhumation and reburial.~~

### **§ 1853. Notification and Reporting of Deaths**

~~A. Any person subject to the jurisdiction of the Navajo Nation must promptly notify the Navajo Nation Police Department of any death or dead body.~~

~~B. The Navajo Police Department shall promptly notify the Navajo Nation Department of Medical Examiners of any death subject to investigation under this Act.~~

### **§ 1854. Report**

~~A. After inspecting the body and conferring with a physician, if the coroner is not himself or herself a physician, the~~

~~coroner shall make a written report, in quadruplicate, stating the following facts:~~

- ~~1. The name and census number of the dead person.~~
- ~~2. When and where he or she died, and the circumstances of his or her death.~~
- ~~3. What caused the death.~~
- ~~4. Who caused the death, if caused by the act, whether eriminal or not, of another person, or by gross negligence.~~
- ~~5. An inventory of the property other than clothing of ordinary value found on the dead person.~~
- ~~6. If the coroner is not a physician, the name and address the physician he or she consulted.~~

~~B. The coroner shall submit all copies of his or her report to the Police Captain of the Navajo police district in which the death occurred. The Captain shall retain one copy and forward the remaining three copies to the Chief of the Navajo police.~~

#### **§ 1854. Exhumations for Death Investigations**

A. When the Navajo Department of Medical Examiners concludes that the cause of death cannot be determined without an exhumation of the body, the Chief Medical Examiner, other medical examiners, medicolegal investigators, through a Navajo Nation prosecutor or other legal counsel, may petition the district court of the Navajo Nation to order an exhumation. Hearings on such petitions shall be held on an expedited schedule upon showing of exigent circumstances including medical or Public Safety necessity.

B. The immediate family of the decedent shall be served with a copy of the petition and shall be allowed to file objections, if their identity and whereabouts can be ascertained and their participation is consistent with the requirements of medical or Public Safety necessity. The petitioner must show what reasonable, good faith efforts have been made to locate and serve the decedent's immediate family.

C. The district court may order an exhumation if it finds that:

1. The cause of death cannot be determined without an exhumation;
  2. An exhumation is required for Public Safety or Medical Necessities; and
  3. No less invasive means are available to determine cause of death or meet the medical or Public Safety necessity.
- D. The Navajo Department of Medical Examiners shall prescribe means for exhumation that are minimally invasive under the circumstances and carry out the reburial following the autopsy. The Department of Medical Examiners may call upon the Navajo Nation Police for assistance in exhumation and reburial.

**~~§ 1855. Disposition of property found on body~~**

~~It shall be the duty of the coroner to take possession of all property except clothing of ordinary value found on the person of anyone whose death he or she is required to investigate, and to turn property over to the District Police Captain with his or her report containing the inventory thereof. The District Police Captain shall deliver such property to the Court of the Navajo Nation after it has served any purpose it may have as evidence in a criminal prosecution arising out of the death, and the Court shall dispose of the same as part of the estate of the deceased or in such other manner as justice may require.~~

**§ 1855. Records and Reports**

- A. The Chief Medical Examiner shall be responsible for maintaining complete and thorough records and files that are properly indexed and searchable. At a minimum, the record of every deceased person whose death is investigated shall contain:
1. The name, date of birth, and census number of the deceased (if known);
  2. The place where the body was found;
  3. The date, cause and manner of death;
  4. An inventory of the property found on the deceased and the current disposition of that property;
  5. Any and all other relevant information and reports of the Navajo Department of Medical Examiners concerning the death; and



6. A death certificate.
- B. The records and reports generated and maintained by the Navajo Department of Medical Examiners shall be:
1. promptly delivered to the appropriate Navajo Nation Law Enforcement Agency upon completion; and
  2. open to the inspection of the Navajo Nation Law Enforcement Agencies, the Navajo Nation Office of the Prosecutor, the Federal Bureau of Investigations, and the United States Attorney's Office, and any other law enforcement agency or official with a legitimate interest.
- C. The records maintained by the Navajo Department of Medical Examiners, or reproductions certified by the Chief Medical Examiners, are admissible as evidence in any Navajo Nation court.
- D. Notwithstanding the Navajo Nation Privacy Act, the following persons and entities shall have conditional access to the records of the Navajo Department of Medical Examiners:
1. All federal, state, and/or tribal law enforcement or prosecutor's office for purposes of criminal prosecution.
  2. The executor or representative of the decedent's estate.
  3. Next of Kin.
  4. Insurance companies handling claims for decedent's family.
  5. Hospitals, health clinics, and/or medical/treatment facilities that provided treatment to deceased for purposes of updating their medical records.
- E. The Navajo Department of Medical Examiners is authorized to access confidential medical records (including, but not limited to, records of substance use and abuse) and any relevant information from physicians, hospitals, nursing homes, residential care facilities, and all other health care providers subject to the jurisdiction of the Navajo Nation. Any violation could result in penalties under 2 N.N.C. §§ 91 and 92.

**~~§ 1856. Duty of person discovering body~~**

~~It shall be the duty of every Navajo police officer upon learning that a person has apparently been killed on Navajo Nation land, or has apparently died on such land because of the criminal act or gross negligence of another, to notify a Navajo coroner of such fact immediately. It shall be the duty of any person other than a police officer making a discovery of a body to notify a Navajo police officer or coroner without delay.~~

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**SECTION FIVE. EFFECTIVE DATE; DIRECTIVE TO APPROVE PLAN OF OPERATION**

- A. This action of the Navajo Nation Council herein shall be effective pursuant to 2 N.N.C. § 221(B).
- B. The Navajo Nation Council hereby directs the Law and Order Committee to approve within 30 days a Plan of Operation for Navajo Nation Department of Medical Examiners within the Division of Public Safety.

**SECTION SIX. CODIFICATION**

The provisions of these amendments of the Navajo Nation Code shall be codified by the Office of Legislative Counsel. The Office of Legislative Counsel shall incorporate such amendments in the next codification of the Navajo Nation Code.

**SECTION SEVEN. SAVINGS CLAUSE**

Should any provision of these amendments be determined invalid by the Navajo Nation Supreme Court, or the District Courts of the Navajo Nation without appeal to the Navajo Nation Supreme Court, those amendments that are not determined invalid shall remain the law of the Nation.

CERTIFICATION

I, hereby, certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 14 in favor and 00 opposed, on this 20th day of December 2018.



LoRenzo C. Bates, Speaker  
23rd Navajo Nation Council

12-20-18

Date

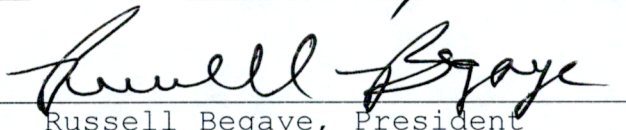
Motion: Honorable Amber Kanazbah Crotty

Second: Honorable Nathaniel Brown

Speaker LoRenzo C. Bates not voting

ACTION BY THE NAVAJO NATION PRESIDENT:

1. I, hereby, sign into law the foregoing legislation, pursuant to 2 N.N.C. §1005 (c)(10), on this 5<sup>th</sup> day of January ~~2018~~.2019



Russell Begaye, President  
Navajo Nation

2. I, hereby, veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (c)(11), on this \_\_\_\_\_ day of \_\_\_\_\_ 2018 for reason(s) expressed in the attached letter to the Speaker

\_\_\_\_\_  
Russell Begaye, President  
Navajo Nation

**NAVAJO NATION**

RCS# 1366

12/20/2018

Special Session

06:08:07 PM

Amd# to Amd#

Legislation 0321-18: Amending

PASSED

MOT Crotty

2 NNC S 1352 and 17 NNC SS 1851

SEC Brown

through 1854; Amending Coroner

**Yea : 14**

**Nay : 0**

**Excused : 0**

**Not Voting : 10**

**Yea : 14**

Begay, K  
BeGaye, N  
Brown  
Chee

Crotty  
Damon  
Daniels  
Jack

Kieyoomia  
Phelps  
Shepherd

Slim  
Smith  
Yellowhair

**Nay : 0**

**Excused : 0**

**Not Voting : 10**

Bates  
Begay, NM  
Bennett

Filfred  
Hale  
Perry

Pete  
Tso

Tsosie  
Yazzie