



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

RESEARCH APPENDIX - **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Transfer Requested: 02/17/2005 (Per: MGD)



☞ The 2003 drafting file for LRB 03-2977

has been transferred to the drafting file for

2005 LRB 05-2181

☞ This cover sheet, the final request sheet, and the final version of the 2003 draft were copied on yellow paper, and returned to the original 2003 drafting file.

☞ The attached 2003 draft was incorporated into the new 2005 draft listed above. For research purposes, this cover sheet and the complete drafting file were transferred, as a separate appendix, to the 2005 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

2003 DRAFTING REQUEST

Bill

Received: **07/14/2003**

Received By: **mdsida**

Wanted: **As time permits**

Identical to LRB:

For: **Annette Polly Williams (608) 266-0960**

By/Representing: **Wanda**

This file may be shown to any legislator: **NO**

Drafter: **mdsida**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - law enforcement
Criminal Law - procedure**

Extra Copies: **rlr**

Submit via email: **YES**

Requester's email: **Rep.WilliamsA@legis.state.wi.us**

Carbon copy (CC:) to: **pedro.colon@legis.state.wi.us
wanda.anthony@legis.state.wi.us
mthomsen@cannon-dunphy.com**

Pre Topic:

No specific pre topic given

Topic:

Investigating deaths caused by law enforcement officers

Instructions:

Same as 1999 AB-302

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mdsida 07/28/2003	csicilia 08/19/2003					S&L
/P1	mdsida 01/22/2004	csicilia 01/23/2004	pgreensl 08/20/2003		lemery 08/20/2003		S&L

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P2			rschluet 01/23/2004	_____	sbasford 01/23/2004		S&L
/1	mdsida 02/19/2004	csicilia 02/24/2004	rschluet 02/24/2004	_____	lnorthro 02/24/2004		S&L
/2	mdsida 03/04/2004	csicilia 03/11/2004	pgreensl 03/11/2004	_____	lnorthro 03/11/2004	mbarman 03/12/2004	

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1/2 yrs 3/11/04 3 11/18/03

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1999 ASSEMBLY BILL 302

P.W.F.

inserts

April 22, 1999 - Introduced by Representative WILLIAMS. Referred to Committee on Urban and Local Affairs.

start comp ✓
SA comm ✓
SA 01 ✓
SA 99 ✓
New CR's ✓
T-r eds ✓

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particularly those involving

1 AN ACT to renumber 979.04 (2); to amend 758.19 (5) (a) 5., 978.045 (1g), 978.045
 2 (1r) (intro.), 979.04 (1), 979.05 (1), 979.05 (2), 979.05 (6), 979.06 (1), 979.06 (2),
 3 979.07 (1) (a), 979.09 and 979.10 (2); and to create 978.045 (1r) (i), 979.04 (1m),
 4 979.04 (2) (b), 979.05 (1m) and 979.05 (1r) of the statutes; relating to: inquests
 5 into deaths caused by law enforcement officers.

Analysis by the Legislative Reference Bureau

This bill ~~makes~~ changes in the ordering and conducting of inquests into deaths caused by law enforcement officers. Current law governing inquests and the changes made by this bill are as follows:

Current law

Current law provides for inquests into the cause of death of a person if there is reason to believe from the circumstances surrounding the death that a homicide may have been committed or that the death may have been due to suicide or unexplained or suspicious circumstances. A district attorney may order an inquest if he or she has been given notice of the death of a person under any of these circumstances. The district attorney is not required to order an inquest, but uses his or her discretion in deciding whether to do so. In addition, a coroner or medical examiner who knows of the death of a person under any of these circumstances may request the district attorney to order an inquest. If the district attorney refuses to order the inquest, the coroner or medical examiner may petition the circuit court to order an inquest, and

are ordered and conducted

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circuit

the court may order an inquest if it finds that the district attorney has abused his or her discretion in not ordering an inquest.

An inquest is held before a jury of six persons unless the district attorney, coroner or medical examiner requests that the inquest be conducted before the court without a jury. The judge or court commissioner conducting the inquest may order that proceedings be secret if the district attorney so requests or concurs. The district attorney appears for the state and presents all evidence which may be relevant or material to the inquiry of the inquest. However, the court may appoint a special prosecutor under certain circumstances, such as when the district attorney has a conflict of interest or when the district attorney is physically unable to attend to his or her duties and there are no other prosecutors employed by the state who can assist in handling the district attorney's duties.

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At the request of the coroner or medical examiner, the court may subpoena witnesses to appear at the inquest. The court must issue subpoenas for witnesses requested by the district attorney. In addition, the court and the district attorney may subpoena expert witnesses, including physicians, surgeons, and pathologists, for the purposes of examining the body, performing scientific and medical tests connected with the examination and testifying as to the results of the examination and tests. Any witness examined at an inquest may have an attorney present during the examination of that witness, but the attorney may not examine or cross-examine his or her client, cross-examine or call other witnesses, or argue before the court holding the inquest. If a person refuses to testify or provide evidence before an inquest on the ground that the testimony or evidence may tend to incriminate him or her, the court may, at the request of the district attorney, compel the person to testify or produce evidence. A person who testifies or produces evidence in obedience to the court's order is not subject to any forfeiture or penalty for or on account of testifying or producing evidence, except for perjury or false swearing committed when testifying.

When all of the evidence has been received, the court instructs the jury on its duties and on the law regarding the issues in the inquest, including the law regarding any criminal offense if a reasonable jury might find probable cause to believe the offense had been committed. The jury then reaches a verdict on whether the deceased died by natural causes, accident, suicide, or an act privileged by law or whether the deceased died as the result of the commission of a crime and, if so, the specific crimes committed and the name of the person or persons, if known, having committed the crimes. The verdict delivered by an inquest jury is advisory and does not preclude or require the issuance of any criminal charges by the district attorney.

Changes made by this bill

This bill changes current law governing inquests in cases where a person has died as the result of an act of a law enforcement officer. Specifically, the bill eliminates the district attorney's discretion to call an inquest in cases where a person has died as the result of an act of a law enforcement officer and instead requires a district attorney to order an inquest whenever the district attorney has notice of the death of a person and there is any evidence that the person's death was caused by an act of a law enforcement officer.

If the jury determines that the death was the result of a crime, the verdict must also indicate

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The bill also provides that an inquest into a death caused by a law enforcement officer may not be held before the court alone but must be held before a jury of six persons. In addition, the bill prohibits an inquest into a death caused by an act of a law enforcement officer from being conducted in secret.

In addition, while the district attorney is generally required to represent the state at an inquest into a death caused by an act of a law enforcement officer, the bill allows a court to appoint a special prosecutor if the court determines that, for any reason, the district attorney cannot, or it appears he or she cannot, discharge his or her responsibility to present all relevant evidence or act in an impartial manner in conducting the inquest. The bill also allows certain relatives of the person who died to be represented at the inquest by an attorney. An attorney representing a relative may request the court to subpoena witnesses, including expert witnesses, and upon the attorney's request the court must subpoena the witnesses. The attorney may also examine or cross-examine any witness at the inquest, argue before the court and ask the court to appoint a special prosecutor.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 758.19 (5) (a) 5. of the statutes is amended to read:

2 758.19 (5) (a) 5. Fees for witnesses or expert witnesses subpoenaed by the court
3 at the request of the district attorney, coroner or medical examiner or an attorney for
4 a relative of the decedent under s. 979.06 (1) and (2).

5 **SECTION 2.** 978.045 (1g) of the statutes is amended to read:

6 978.045 (1g) A court on its own motion or on a motion under s. 979.05 (1m) (c)
7 may appoint a special prosecutor under sub. (1r) or a district attorney may request
8 a court to appoint a special prosecutor under that subsection. Before a court appoints
9 a special prosecutor on its own motion, on a motion under s. 979.05 (1m) (c) or at the
10 request of a district attorney for an appointment that exceeds 6 hours per case, the
11 court or district attorney shall request assistance from a district attorney, deputy
12 district attorney or assistant district attorney from other prosecutorial units or an
13 assistant attorney general. A district attorney requesting the appointment of a

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ASSEMBLY BILL 302

1 special prosecutor, or a court if the court is appointing a special prosecutor on its own
2 motion or on a motion under s. 979.05 (1m) (c), shall notify the department of
3 administration, on a form provided by that department, of the district attorney's or
4 the court's inability to obtain assistance from another prosecutorial unit or from an
5 assistant attorney general.

6 **SECTION 3.** 978.045 (1r) (intro.) of the statutes is amended to read:

7 978.045 (1r) (intro.) Any judge of a court of record, by an order entered in the
8 record stating the cause therefor, may appoint an attorney as a special prosecutor to
9 perform, for the time being, for an inquest under s. 979.04 (1m) or for the trial of the
10 accused person, the duties of the district attorney. An attorney appointed under this
11 subsection shall have all of the powers of the district attorney. The judge may appoint
12 an attorney as a special prosecutor at the request of a district attorney to assist the
13 district attorney in the prosecution of persons charged with a crime, in grand jury
14 or John Doe proceedings or in investigations. The judge may appoint an attorney as
15 a special prosecutor if any of the following conditions exists:

16 **SECTION 4.** 978.045 (1r) (i) of the statutes is created to read:

17 978.045 (1r) (i) The district attorney cannot, or it appears that he or she cannot,
18 discharge his or her responsibilities relating to an inquest required under s. 979.04
19 (1m) or act in an impartial manner in conducting an inquest required under s. 979.04
20 (1m).

21 **SECTION 5.** 979.04 (1) of the statutes is amended to read:

22 979.04 (1) If Except as provided in sub. (1m), if the district attorney has notice
23 of the death of any person and there is reason to believe from the circumstances
24 surrounding the death that felony murder, first-degree or 2nd-degree intentional
25 homicide, first-degree or 2nd-degree reckless homicide, homicide by negligent

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1 handling of dangerous weapon, explosives or fire, homicide by negligent operation
2 of vehicle, homicide resulting from negligent control of a vicious animal or homicide
3 by intoxicated ~~user~~ use of a vehicle or firearm may have been committed, or that
4 death may have been due to suicide or unexplained or suspicious circumstances, the
5 district attorney may order that an inquest be conducted for the purpose of inquiring
6 how the person died. ~~The district attorney shall appear in any such inquest~~
7 ~~representing the state in presenting all evidence which may be relevant or material~~
8 ~~to the inquiry of the inquest. The inquest may be held in any county in this state in~~
9 ~~which venue would lie for the trial of any offense charged as the result of or involving~~
10 ~~the death.~~

11 [^]
12 (4) An inquest may only be ordered by the district attorney under ~~this~~
13 ~~subsection~~ sub. (1) or (1m) or by the circuit judge under sub. (2) (a).

14 [^]
15 **SECTION 6.** 979.04 (1m) of the statutes is created to read:

16 979.04 (1m) If the district attorney has notice of the death of any person and
17 there is any evidence that the person's death was caused by an act of a law
18 enforcement officer, the district attorney shall order that an inquest be conducted for
19 the purpose of inquiring how the person died. *INS 5/17*

20 [^]
21 **SECTION 7.** 979.04 (2) of the statutes is renumbered 979.04 (2) (a).

22 **SECTION 8.** 979.04 (2) (b) of the statutes is created to read:

23 979.04 (2) (b) If the coroner or medical examiner has knowledge of the death
24 of any person under the circumstances described under sub. (1m), he or she shall
25 immediately notify the district attorney. The notification shall include information
concerning the circumstances surrounding the death. Upon receiving notification
from a coroner or medical examiner under this paragraph, the district attorney shall
order an inquest under sub. (1m).

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SECTION 9

1 SECTION 9. 979.05 (1) of the statutes is amended to read:

2 979.05 (1) An inquest shall be conducted by a circuit judge or a court
3 commissioner. The inquest may be held in any county in this state in which venue
4 would lie for the trial of any offense charged as the result of or involving the death.

5 SECTION 10. 979.05 (1m) of the statutes is created to read:

6 979.05 (1m) (a) Except as provided in par. (b), the district attorney shall appear
7 in an inquest under s. 979.04 (1) or (1m) and shall represent the state in presenting
8 all evidence which may be relevant or material to the inquiry of the inquest.

9 (b) A circuit court may appoint a special prosecutor under s. 978.045 to order
10 or appear and represent the state in an inquest required under s. 979.04 (1m) if the
11 court determines that, for any reason, the district attorney cannot, or it appears he
12 or she cannot, discharge his or her responsibilities under par. (a) or act in an
13 impartial manner in conducting the inquest.

14 (c) An attorney for a relative of a decedent who is authorized to appear under
15 sub. (1r) may make a motion in the circuit court for appointment of a special
16 prosecutor under par. (b).

17 SECTION 11. 979.05 (1r) of the statutes is created to read:

18 979.05 (1r) (a) In this subsection, "relative" means a spouse, child, stepchild,
19 parent, grandparent, stepparent, brother, stepbrother, sister or stepsister.

20 (b) A relative of a decedent whose death is being investigated at an inquest
21 under s. 979.04 (1m) may be represented by an attorney of his or her own choosing
22 at the inquest proceedings. The relative's attorney may request the court to
23 subpoena witnesses under s. 979.06 (1) and (2), examine and cross-examine any
24 witness presenting evidence at the inquest and argue before the judge or court
25 commissioner holding the inquest.

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ASSEMBLY BILL 302

1 **SECTION 12.** 979.05 (2) of the statutes is amended to read:

2 979.05 (2) The An inquest under s. 979.04 (1) shall be conducted before a jury
3 unless the district attorney, coroner or medical examiner requests that the inquest
4 be conducted before the judge or court commissioner only. An inquest under s. 979.04
5 (1m) shall be conducted before a jury.

6 **(2m)** If the inquest is to be conducted before a jury, a sufficient number of
7 names of prospective jurors shall be selected from the prospective juror list for the
8 county in which the inquest is to be held by the clerk of circuit court in the manner
9 provided in s. 756.06. The judge or court commissioner conducting the inquest shall
10 summon the prospective jurors to appear before the judge or court commissioner at
11 the time fixed in the summons. The summons may be served by mail, or by personal
12 service if the judge, court commissioner or district attorney determines personal
13 service to be appropriate. The summons shall be in the form used to summon petit
14 jurors in the circuit courts of the county. Any person who fails to appear when
15 summoned as an inquest juror is subject to a forfeiture of not more than \$40. The
16 inquest jury shall consist of 6 jurors. If 6 jurors do not remain from the number
17 originally summoned after establishment of qualifications, the judge or court
18 commissioner conducting the inquest may require the clerk of the circuit court to
19 select sufficient additional jurors' names. Those persons shall be summoned
20 forthwith by the sheriff of the county.

21 **SECTION 13.** 979.05 (6) of the statutes is amended to read:

22 979.05 (6) The judge or court commissioner conducting the an inquest under
23 s. 979.04 (1) may order that proceedings be secret if the district attorney so requests
24 or concurs. Proceedings of an inquest under s. 979.04 (1m) may not be conducted in
25 secret.

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SECTION 14

Circuit PLAIN

1 SECTION 14. 979.06 (1) of the statutes is amended to read:

2 979.06 (1) The judge or court commissioner may issue subpoenas for witnesses
3 at the request of the coroner or medical examiner and shall issue subpoenas for
4 witnesses requested by the district attorney or an attorney representing a relative
5 of the decedent under s. 979.05 (1r). Subpoenas are returnable at the time and place
6 stated therein. Persons who are served with a subpoena may be compelled to attend
7 proceedings in the manner provided in s. 885.12.

PLAIN
Circuit

8 SECTION 15. 979.06 (2) of the statutes is amended to read:

9 979.06 (2) The judge or court commissioner conducting the inquest, an attorney
10 representing a relative of the decedent under s. 979.05 (1r) and the district attorney
11 may require by subpoena the attendance of one or more expert witnesses, including
12 physicians, surgeons and pathologists, for the purposes of conducting an
13 examination of the body and all relevant and material scientific and medical tests
14 connected with the examination and testifying as to the results of the examination
15 and tests. The expert witnesses so subpoenaed shall receive reasonable fees
16 determined by the district attorney or attorney representing a relative, whichever
17 is applicable, and the judge or court commissioner conducting the inquest.

Circuit PLAIN

18 SECTION 16. 979.07 (1) (a) of the statutes is amended to read:

19 979.07 (1) (a) If a person refuses to testify or to produce books, papers or
20 documents when required to do so before an inquest for the reason that the testimony
21 or evidence required of the person may tend to incriminate him or her or subject him
22 or her to a forfeiture or penalty, the person may be compelled to testify or produce the
23 evidence by order of the circuit court of the county in which the inquest is convened
24 on motion of the district attorney or an attorney representing a relative of the
25 decedent under s. 979.05 (1r). A person who testifies or produces evidence in

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1 obedience to the command of the court in that case is not subject to any forfeiture or
2 penalty for or on account of testifying or producing evidence, except the person is
3 subject to prosecution and punishment for perjury or false swearing committed in so
4 testifying.

5 **SECTION 17.** 979.09 of the statutes is amended to read: Circuit PLAIN

6 **979.09 Burial of body.** If any judge or court commissioner conducts an
7 inquest as to the death of a stranger or of a person whose identity is unknown or
8 whose body is unclaimed or if the district attorney determines that no inquest into
9 the death of such a person is necessary and the circuit judge has not ordered an
10 inquest under s. 979.04 (2) (a), the coroner or medical examiner shall cause the body
11 to be decently buried or cremated and shall certify to all the charges incurred in
12 taking any inquest by him or her and to the expenses of burial or cremation of the
13 dead body. The charges and expenses shall be audited by the county board of the
14 proper county and paid out of the county treasury.

15 **SECTION 18.** 979.10 (2) of the statutes is amended to read:

16 **979.10 (2)** If a corpse is to be cremated, the coroner or medical examiner shall
17 make a careful personal inquiry into the cause and manner of death, and conduct an
18 autopsy or order the conducting of an autopsy, if in his or her or the district attorney's
19 opinion it is necessary to determine the cause and manner of death. If the coroner
20 or medical examiner determines that no further examination or judicial inquiry is
21 necessary he or she shall certify that fact. Upon written request by the district
22 attorney the coroner or medical examiner shall obtain the concurrence of the district
23 attorney before issuing the certification. If the coroner or medical examiner
24 determines that further examination or judicial inquiry is necessary, he or she shall
25 notify the district attorney under s. 979.04 (2) (a) or (b), whichever is applicable.

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

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1 analysis INSERT A

2 Finally, the bill specifies that any inquest, including one relating to a death not
3 caused by a law enforcement officer, may be held in any county in which criminal
4 charges relating to the death may properly be filed. ✓

5 INSERT 4/20 ✓

6 **SECTION 1.** 979.025 (1) of the statutes is amended to read:

7 979.025 (1) INMATE CONFINED TO AN INSTITUTION IN THIS STATE. If an individual
8 dies while he or she is in the legal custody of the department and confined to a
9 correctional facility located in this state, the coroner or medical examiner of the
10 county where the death occurred shall perform an autopsy on the deceased
11 individual. If the coroner or medical examiner who performs the autopsy determines
12 that the individual's death may have been the result of any of the situations that
13 would permit or require the district attorney to order an inquest under s. 979.04 (1)
14 or (1m), the coroner or medical examiner shall follow the procedures under s. 979.04
15 (2).

16 History: 2001 a. 16.

16 INSERT5/17

17 *no 9* A circuit court may appoint a special prosecutor under s. 978.045 to order an
18 inquest required under this paragraph if the court determines that, for any reason,
19 the district attorney is or appears unable to discharge his or her duty to order the
20 inquest. ✓

subsection

21
22
23

INSERT 10/1

1
2 (1) The treatment of section 979.04 (1) and (1m), the renumbering of section
3 979.04 (2), and the creation of section 979.04 (2) (b) of the statutes first applies to
4 deaths occurring on the effective date of this subsection.

*Not stat
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apply

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

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cjs

Wanda:

1. Does the bill apply to deaths caused by federal law enforcement officers?
2. Should the bill state that it does not apply to a death occurring outside of Wisconsin (for example, in the case of a prisoner confined in another state)?
3. I moved the part of s. 979.05 (1m) (b) that related to a special prosecutor ordering an inquest to s. 979.04 (1m). It seemed to fit better there. But should a relative of the deceased person have the right to file a motion asking for the appointment of a special prosecutor if an inquest has not even been ordered? Although it is somewhat unclear, under 1999 Assembly Bill 302, the relative probably could file the motion only if the district attorney had already ordered an inquest.

✓

Michael Dsida
Legislative Attorney
Phone: (608) 266-9867

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2977/P1dn
MGD:cjs:pg

August 20, 2003

Wanda:

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Michael Dsida
Legislative Attorney
Phone: (608) 266-9867

Pub. Entity 6-9-70

-2977

P/c from Rep. Williams

Give DOJ ~~with~~ discretion to appt
spcl prosecutor

11/11

P/c to Wanda —

Shd ct still have authority to appt?

12/29 - P/c to Rep. Williams

Give ~~base~~ both ct & DOJ ~~to~~ authority to appt

1/16 P/c to Wanda

Shd it be D'Asst. A.G. or AG appty someone outside
of DOJ?



State of Wisconsin
2003 - 2004 LEGISLATURE

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Sperry

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*and making
an
appropriation*

1 **AN ACT to renumber** 979.04 (2); **to amend** 758.19 (5) (a) 5., 978.045 (1g), 978.045
2 (1r) (intro.), 979.025 (1), 979.04 (1), 979.05 (1), 979.05 (2), 979.05 (6), 979.06 (1),
3 979.06 (2), 979.07 (1) (a), 979.09 and 979.10 (2); and **to create** 978.045 (1r) (i),
4 979.04 (1m), 979.04 (2) (b), 979.05 (1m) and 979.05 (1r) of the statutes; **relating**
5 **to:** inquests into deaths caused by law enforcement officers.

Analysis by the Legislative Reference Bureau

This bill changes how inquests, particularly those involving deaths caused by law enforcement officers, are ordered and conducted.

Current law

Current law provides for inquests into the cause of death of a person if there is reason to believe from the circumstances surrounding the death that a homicide may have been committed or that the death may have been due to suicide or unexplained or suspicious circumstances. A district attorney may order an inquest if he or she has been given notice of the death of a person under any of these circumstances. The district attorney is not required to order an inquest, but uses his or her discretion in deciding whether to do so. In addition, a coroner or medical examiner who knows of the death of a person under any of these circumstances may request the district attorney to order an inquest. If the district attorney refuses to order the inquest, the coroner or medical examiner may petition the circuit court to order an inquest, and the court may order an inquest if it finds that the district attorney has abused his or her discretion in not ordering one.

An inquest is held before a jury of six persons unless the district attorney, coroner, or medical examiner requests that the inquest be conducted before the court without a jury. The judge or circuit court commissioner conducting the inquest may order that proceedings be secret if the district attorney so requests or concurs. The district attorney appears for the state and presents all evidence which may be relevant or material to the inquiry of the inquest. However, the court may appoint a special prosecutor under certain circumstances, such as when the district attorney has a conflict of interest or when the district attorney is physically unable to attend to his or her duties and there are no other prosecutors employed by the state who can assist in handling the district attorney's duties.

At the request of the coroner or medical examiner, the court may subpoena witnesses to appear at the inquest. The court must issue subpoenas for witnesses requested by the district attorney. In addition, the court and the district attorney may subpoena expert witnesses, including physicians, surgeons, and pathologists, for the purposes of examining the body, performing scientific and medical tests connected with the examination, and testifying as to the results of the examination and tests. Any witness examined at an inquest may have an attorney present during the examination of that witness, but the attorney may not examine or cross-examine his or her client, cross-examine or call other witnesses, or argue before the court holding the inquest. If a person refuses to testify or provide evidence before an inquest on the ground that the testimony or evidence may tend to incriminate him or her, the court may, at the request of the district attorney, compel the person to testify or produce evidence. A person who testifies or produces evidence in obedience to the court's order is not subject to any forfeiture or penalty for or on account of testifying or producing evidence, except for perjury or false swearing committed when testifying.

When all of the evidence has been received, the court instructs the jury on its duties and on the law regarding the issues in the inquest, including the law regarding any criminal offense if a reasonable jury might find probable cause to believe the offense had been committed. The jury then reaches a verdict on whether the deceased died by natural causes, accident, suicide, or an act privileged by law or whether the deceased died as the result of the commission of a crime. If the jury determines that the death was the result of a crime, the verdict must also indicate the specific crimes committed and the name of the person or persons, if known, having committed the crimes. The verdict delivered by an inquest jury is advisory and does not preclude or require the issuance of any criminal charges by the district attorney.

Changes made by this bill

This bill changes current law governing inquests in cases ~~where~~^{First, in which} a person has died as the result of an act of a law enforcement officer. ~~Specifically, the bill eliminates the district attorney's discretion to call an inquest in cases where a person has died as the result of an act of a law enforcement officer and instead requires a district attorney to order an inquest whenever the district attorney has notice of the death of a person and there is any evidence that the person's death was caused by an act of a law enforcement officer.~~^{INS A1}

or appear at

INS A2

INS B

whose death was caused by a law enforcement officer

Third, under (9) The bill also provides that an inquest into a death caused by a law enforcement officer may not be held before the court alone but must be held before a jury of six persons. In addition, the bill prohibits an inquest into a death caused by an act of a law enforcement officer from being conducted in secret. Fifthly

Fourthly

In addition, while the district attorney is generally required to represent the state at an inquest into a death caused by an act of a law enforcement officer, the bill also allows a court to appoint a special prosecutor if the court determines that, for any reason, the district attorney is or appears unable to discharge his or her responsibilities in calling or conducting the inquest. The bill also allows certain relatives of the person who died to be represented at the inquest by an attorney. An attorney representing a relative may request the court to subpoena witnesses, including expert witnesses, and upon the attorney's request the court must subpoena the witnesses. The attorney may also examine or cross-examine any witness at the inquest, argue before the court, and ask the court to appoint a special prosecutor.

at any inquest into the person's death

appearing at

a

do so

Finally, the bill specifies that any inquest, including one relating to a death not caused by a law enforcement officer, may be held in any county in which criminal charges relating to the death may properly be filed.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

INS 3/0

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 758.19 (5) (a) 5. of the statutes is amended to read:
2 758.19 (5) (a) 5. Fees for witnesses or expert witnesses subpoenaed by the court
3 at the request of the district attorney, coroner, or medical examiner or an attorney
4 for a relative of the decedent under s. 979.06 (1) and (2).

5 SECTION 2. 978.045 (1g) of the statutes is amended to read:
6 978.045 (1g) A court on its own motion or on a motion under s. 979.05 (1m) (c)
7 may appoint a special prosecutor under sub. (1r) or a district attorney may request
8 a court to appoint a special prosecutor under that subsection. Before a court appoints
9 a special prosecutor on its own motion, on a motion under s. 979.05 (1m) (c), or at the
10 request of a district attorney for an appointment that exceeds 6 hours per case, the
11 court or district attorney shall request assistance from a district attorney, deputy
12 district attorney or assistant district attorney from other prosecutorial units or an

1r

1 assistant attorney general. A district attorney requesting the appointment of a
2 special prosecutor, or a court if the court is appointing a special prosecutor on its own
3 motion or on a motion under s. 979.05 (1m) (c), shall notify the department of ✓
4 administration, on a form provided by that department, of the district attorney's or
5 the court's inability to obtain assistance from another prosecutorial unit or from an
6 assistant attorney general.

7 SECTION 3. 978.045 (1r) (intro.) of the statutes is amended to read:

8 978.045 (1r) (intro.) Any judge of a court of record, by an order entered in the
9 record stating the cause therefor, may appoint an attorney as a special prosecutor to
10 perform, for the time being, for an inquest under s. 979.04 (1m) or for the trial of the
11 accused person, the duties of the district attorney. An attorney appointed under this
12 subsection shall have all of the powers of the district attorney. The judge may appoint
13 an attorney as a special prosecutor at the request of a district attorney to assist the
14 district attorney in the prosecution of persons charged with a crime, in grand jury
15 or John Doe proceedings or in investigations. The judge may appoint an attorney as
16 a special prosecutor if any of the following conditions exists:

17 SECTION 4. 978.045 (1r) (i) of the statutes is created to read:

18 978.045 (1r) (i) ^{judge determines that the} The district attorney cannot, or it appears that he or she cannot,
19 discharge his or her responsibilities relating to an inquest required under s. 979.04
20 (1m) or act in an impartial manner in conducting ^{at} (an inquest required under s. 979.04
21 (1m). appearing

22 ^{INS} 4/21 SECTION 5. 979.025 (1) of the statutes is amended to read:

23 979.025 (1) INMATE CONFINED TO AN INSTITUTION IN THIS STATE. If an individual
24 dies while he or she is in the legal custody of the department and confined to a
25 correctional facility located in this state, the coroner or medical examiner of the

1 county where the death occurred shall perform an autopsy on the deceased
2 individual. If the coroner or medical examiner who performs the autopsy determines
3 that the individual's death may have been the result of any of the situations that
4 would permit or require the district attorney to order an inquest under s. 979.04 (1)
5 or (1m), the coroner or medical examiner shall follow the procedures under s. 979.04
6 (2).

7 **SECTION 6.** 979.04 (1) of the statutes is amended to read:

8 979.04 (1) If Except as provided in sub. (1m), if the district attorney has notice
9 of the death of any person and there is reason to believe from the circumstances
10 surrounding the death that felony murder, first-degree or 2nd-degree intentional
11 homicide, first-degree or 2nd-degree reckless homicide, homicide by negligent
12 handling of dangerous weapon, explosives or fire, homicide by negligent operation
13 of vehicle, homicide resulting from negligent control of a vicious animal or homicide
14 by intoxicated user use of a vehicle or firearm may have been committed, or that
15 death may have been due to suicide or unexplained or suspicious circumstances, the
16 district attorney may order that an inquest be conducted for the purpose of inquiring
17 how the person died. ~~The district attorney shall appear in any such inquest~~
18 ~~representing the state in presenting all evidence which may be relevant or material~~
19 ~~to the inquiry of the inquest. The inquest may be held in any county in this state in~~
20 ~~which venue would lie for the trial of any offense charged as the result of or involving~~
21 ~~the death.~~

22 **(4)** An inquest may only be ordered by the district attorney under this
23 subsection sub. (1) or (1m) ^{INS 5/23} or by the circuit judge under sub. (2) (a).

24 **SECTION 7.** 979.04 (1m) of the statutes is created to read:

1 979.04 (1m) If the district attorney has notice of the death of any person and
 2 there is any evidence that the person's death was caused by an act of a law
 3 enforcement officer, the district attorney shall order that an inquest be conducted for
 4 the purpose of inquiring how the person died. A circuit court may appoint a special
 5 prosecutor under s. 978.045 to order an inquest required under this subsection if the
 6 court determines that, for any reason, the district attorney is or appears unable to
 7 discharge his or her duty to order the inquest.

8 SECTION 8. 979.04 (2) of the statutes is renumbered 979.04 (2) (a).

9 SECTION 9. 979.04 (2) (b) of the statutes is created to read:

10 979.04 (2) (b) If the coroner or medical examiner has knowledge of the death
 11 of any person under the circumstances described under sub. (1m), he or she shall
 12 immediately notify the district attorney. ^{and the attorney general} The notification shall include information
 13 concerning the circumstances surrounding the death. Upon receiving notification
 14 from a coroner or medical examiner under this paragraph, the district attorney shall
 15 order an inquest under sub. (1m).

16 SECTION 10. 979.05 (1) of the statutes is amended to read:

17 979.05 (1) An inquest shall be conducted by a circuit judge or a circuit court
 18 commissioner. The inquest may be held in any county in this state in which venue
 19 would lie for the trial of any offense charged as the result of or involving the death.

20 SECTION 11. 979.05 (1m) of the statutes is created to read:

21 979.05 (1m) (a) Except as provided in par. (b), the district attorney shall appear
 22 in an inquest under s. 979.04 (1) or (1m) and shall represent the state in presenting
 23 all evidence which may be relevant or material to the inquiry of the inquest.

24 (b) ^{if} A circuit court ^{or the attorney general} may appoint a special prosecutor under s. 978.045 to appear
 25 and represent the state in an inquest required under s. 979.04 (1m) if the court

the special prosecutor shall appear in the inquest. INS 6/25

1 determines that, for any reason, the district attorney is or appears unable to
2 discharge his or her responsibilities under par. (a) or act in an impartial manner in
3 conducting the inquest.

4 (c) An attorney for a relative of a decedent who is authorized to appear under
5 ~~sub. (1r)~~ may make a motion in the circuit court for appointment of a special
6 prosecutor under par. (b). s. 978.045 (1r) ✓

7 **SECTION 12.** 979.05 (1r) of the statutes is created to read:

8 979.05 (1r) (a) In this subsection, “relative” means a spouse, child, stepchild,
9 parent, grandparent, stepparent, brother, stepbrother, sister, or stepsister.

10 (b) A relative of a decedent whose death is being investigated at an inquest
11 under s. 979.04 (1m) may be represented by an attorney of his or her own choosing
12 at the inquest proceedings. The relative’s attorney may request the court to
13 subpoena witnesses under s. 979.06 (1) and (2), examine and cross-examine any
14 witness presenting evidence at the inquest, and argue before the judge or court
15 commissioner holding the inquest.

16 **SECTION 13.** 979.05 (2) of the statutes is amended to read:

17 979.05 (2) The An inquest under s. 979.04 (1) shall be conducted before a jury
18 unless the district attorney, coroner, or medical examiner requests that the inquest
19 be conducted before the judge or circuit court commissioner only. An inquest under
20 s. 979.04 (1m) shall be conducted before a jury.

21 **(2m)** If the inquest is to be conducted before a jury, a sufficient number of
22 names of prospective jurors shall be selected from the prospective juror list for the
23 county in which the inquest is to be held by the clerk of circuit court in the manner
24 provided in s. 756.06. The judge or circuit court commissioner conducting the inquest
25 shall summon the prospective jurors to appear before the judge or circuit court

1 commissioner at the time fixed in the summons. The summons may be served by
2 mail, or by personal service if the judge, circuit court commissioner, or district
3 attorney determines personal service to be appropriate. The summons shall be in the
4 form used to summon petit jurors in the circuit courts of the county. Any person who
5 fails to appear when summoned as an inquest juror is subject to a forfeiture of not
6 more than \$40. The inquest jury shall consist of 6 jurors. If 6 jurors do not remain
7 from the number originally summoned after establishment of qualifications, the
8 judge or circuit court commissioner conducting the inquest may require the clerk of
9 the circuit court to select sufficient additional jurors' names. Those persons shall be
10 summoned forthwith by the sheriff of the county.

11 **SECTION 14.** 979.05 (6) of the statutes is amended to read:

12 979.05 (6) The judge or circuit court commissioner conducting the an inquest
13 under s. 979.04 (1) may order that proceedings be secret if the district attorney so
14 requests or concurs. Proceedings of an inquest under s. 979.04 (1m) may not be
15 conducted in secret.

16 **SECTION 15.** 979.06 (1) of the statutes is amended to read:

17 979.06 (1) The judge or circuit court commissioner may issue subpoenas for
18 witnesses at the request of the coroner or medical examiner and shall issue
19 subpoenas for witnesses requested by the district attorney or an attorney
20 representing a relative of the decedent under s. 979.05 (1r). Subpoenas are
21 returnable at the time and place stated therein. Persons who are served with a
22 subpoena may be compelled to attend proceedings in the manner provided in s.
23 885.12.

24 **SECTION 16.** 979.06 (2) of the statutes is amended to read:

1 979.06 (2) The judge or circuit court commissioner conducting the inquest, an
2 attorney representing a relative of the decedent under s. 979.05 (1r), and the district
3 attorney may require by subpoena the attendance of one or more expert witnesses,
4 including physicians, surgeons, and pathologists, for the purposes of conducting an
5 examination of the body and all relevant and material scientific and medical tests
6 connected with the examination and testifying as to the results of the examination
7 and tests. The expert witnesses so subpoenaed shall receive reasonable fees
8 determined by the district attorney or attorney representing a relative, whichever
9 is applicable, and the judge or circuit court commissioner conducting the inquest.

10 **SECTION 17.** 979.07 (1) (a) of the statutes is amended to read:

11 979.07 (1) (a) If a person refuses to testify or to produce books, papers or
12 documents when required to do so before an inquest for the reason that the testimony
13 or evidence required of the person may tend to incriminate him or her or subject him
14 or her to a forfeiture or penalty, the person may be compelled to testify or produce the
15 evidence by order of the circuit court of the county in which the inquest is convened
16 on motion of the district attorney or an attorney representing a relative of the
17 decedent under s. 979.05 (1r). A person who testifies or produces evidence in
18 obedience to the command of the court in that case is not subject to any forfeiture or
19 penalty for or on account of testifying or producing evidence, except the person is
20 subject to prosecution and punishment for perjury or false swearing committed in so
21 testifying.

22 **SECTION 18.** 979.09 of the statutes is amended to read:

23 **979.09 Burial of body.** If any judge or circuit court commissioner conducts
24 an inquest as to the death of a stranger or of a person whose identity is unknown or
25 whose body is unclaimed or if the district attorney determines that no inquest into

1 the death of such a person is necessary and the circuit judge has not ordered an
 2 inquest under s. 979.04 (2) (a), the coroner or medical examiner shall cause the body
 3 to be decently buried or cremated and shall certify to all the charges incurred in
 4 taking any inquest by him or her and to the expenses of burial or cremation of the
 5 dead body. The charges and expenses shall be audited by the county board of the
 6 proper county and paid out of the county treasury.

7 **SECTION 19.** 979.10 (2) of the statutes is amended to read:

8 979.10 (2) If a corpse is to be cremated, the coroner or medical examiner shall
 9 make a careful personal inquiry into the cause and manner of death, and conduct an
 10 autopsy or order the conducting of an autopsy, if in his or her or the district attorney's
 11 opinion it is necessary to determine the cause and manner of death. If the coroner
 12 or medical examiner determines that no further examination or judicial inquiry is
 13 necessary he or she shall certify that fact. Upon written request by the district
 14 attorney the coroner or medical examiner shall obtain the concurrence of the district
 15 attorney before issuing the certification. If the coroner or medical examiner
 16 determines that further examination or judicial inquiry is necessary, he or she shall
 17 notify the district attorney under s. 979.04 (2) (a) or (b), whichever is applicable. ✓

18 **SECTION 20. Initial applicability.**

19 (1) The treatment of section 979.04 (1) and (1m), the renumbering of section
 20 979.04 (2), and the creation of section 979.04 (2) (b) of the statutes first apply to
 21 deaths occurring on the effective date of this subsection.

22 (2) The treatment of sections 978.045 (1g) and (1r) (intro.) and (i), 979.05 (1m),
 23 (1r), (2) and (6), 979.06 (1) and (2), and 979.07 (1) (a) of the statutes first applies to

INS 10/17 ✓

165.53,

and (2m)

1 inquests ordered under section 979.04 of the statutes, as affected by this act, on the
2 effective date of this subsection.

3 (END)

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P2 INS

1 **analysis INSERT A1**

no P eliminates the district attorney's discretion to call an inquest in such cases and instead requires a district attorney to order an inquest whenever he or she has notice of the death of a person and there is any evidence that the person's death was caused by an act of a law enforcement officer. Second, the bill gives the attorney general the authority call or appear at an inquest or to appoint a special prosecutor having the power to

2 **analysis INSERT A2**

no P of that type if the attorney general determines that the district attorney general is or appears unable to discharge his or her responsibilities in calling or appearing at the inquest.

3 **analysis INSERT B**

no P If the attorney general calls an inquest or if the attorney general or the court appoints a special prosecutor in such a case, the attorney general or the special prosecutor has the powers and duties that a district attorney ordinarily has at an inquest.

4 **INSERT 3/0**

5 **SECTION 1.** 20.455 (1) (a) of the statutes is amended to read:

6 20.455 (1) (a) *General program operations.* The amounts in the schedule for
7 general program operations, including s. 165.065, and for special prosecutors
8 appointed under s. 978.045 (2m).

History: 1971 c. 125; 1973 c. 90, 336; 1975 c. 39 s. 732 (1); 1975 c. 224; 1977 c. 29, 418; 1979 c. 34 ss. 286m, 290, 523 to 526; 1979 c. 189, 219, 355; 1981 c. 20, 169; 1983 a. 27 ss. 427 to 430, 1800; 1983 a. 199, 523; 1985 a. 29, 120; 1987 a. 27, 326, 399; 1989 a. 31, 122, 336; 1991 a. 11, 39, 269; 1993 a. 16, 98, 193, 460, 496; 1995 a. 27 ss. 1014h to 1029, 9126 (19), 9130 (4); 1995 a. 227; 1997 a. 27, 237; 1999 a. 5, 9, 186; 2001 a. 16, 109; 2003 a. 33.

9 **SECTION 2.** 165.53 of the statutes is created to read:

10 **165.53 Inquests.** If the attorney general determines that the district attorney
11 cannot, or it appears to the attorney general that the district attorney cannot,
12 discharge his or her responsibilities relating to an inquest required under s. 979.04
13 (1m) or act in an impartial manner in appearing at an inquest required under s.
14 979.04 (1m), the attorney general may perform the duties of the district attorney for

1 an inquest required under s. 979.04 (1m). When acting under this section, the
2 attorney general shall have all of the powers of the district attorney. ✓

3 **INSERT 4/21**

4 **SECTION 3.** 978.045 (2m) of the statutes is created to read:

5 978.045 (2m) If the attorney general determines that the district attorney
6 cannot, or it appears to the attorney general that the district attorney cannot,
7 discharge his or her responsibilities relating to an inquest required under s. 979.04
8 (1m) or act in an impartial manner in appearing at an inquest required under s.
9 979.04 (1m), the attorney general may appoint an attorney as a special prosecutor
10 to perform, for an inquest under s. 979.04 (1m), the duties of the district attorney.
11 An attorney appointed under this subsection shall have all of the powers of the
12 district attorney. The ~~district attorney~~ ^{general} shall pay the costs of the special prosecutor
13 from the appropriation under s. 20.455 (1) (a).

14 **INSERT 5/23**

15 no P . by the district attorney ^{general} acting under s. 165.53, by a special prosecutor
16 appointed under s. 978.045 (1r) (i) or (2m),

17 **INSERT 6/25**

18 no P The attorney general, when acting under s. 165.53, shall appear and represent
19 the state in an inquest required under s. 979.04 (1m).

20 **INSERT 10/17**

21 no P the district attorney and the attorney general under s. 979.04 (2) ✓