2005 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB359)

Received: **01/20/2006**

Received By: **mdsida**

Wanted: **As time permits**

Identical to LRB:

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

By/Representing:

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

Drafter: **mdsida**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - procedure**

Extra Copies:

Submit via email: **YES**

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

Carbon copy (CC:) to: **robin.ryan@legis.state.wi.us**
cathlene.hanaman@legis.state.wi.us

Pre Topic:

No specific pre topic given

Topic:

Limit to Milwaukee County

Instructions:

See Attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
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FE Sent For:

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/?	mdsida	lcjs 2/3 06	236				

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Notes

P/c to Madu re covg

Cover deaths caused by MKE LEO, regardless of where the deaths occur

s0504/1

2005 – 2006 LEGISLATURE

LRB-2181/1
MGD:cjs:rs

stays

2005 ASSEMBLY BILL 359

FRIDAY
SA 1

April 22, 2005 – Introduced by Representatives A. WILLIAMS, COLON, YOUNG, FIELDS, GRIGSBY, TURNER, SCHNEIDER, TRAVIS and TOLES, cosponsored by Senator TAYLOR. Referred to Committee on Corrections and the Courts.

Reg cont

in certain counties

AN ACT ***to renumber*** 979.04 (2); ***to amend*** 20.455 (1) (a), 758.19 (5) (a) 5., 979.01 (1m), 979.025 (1), 979.04 (1), 979.04 (3), 979.05 (1), 979.05 (2), 979.05 (3), 979.05 (5), 979.05 (6), 979.06 (1), 979.06 (2), 979.07 (1) (a), 979.08 (1), 979.08 (5), 979.08 (6), 979.09, 979.10 (2) and 979.11; and ***to create*** 979.04 (1m), 979.04 (2) (b), 979.05 (1m) and 979.05 (1r) of the statutes; **relating to:** inquests into deaths caused by law enforcement officers and making an appropriation.

Analysis by the Legislative Reference Bureau

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

INS A

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, 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

in counties having a population of 500,000 or more (currently only Milwaukee County)

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 upon the request or with the approval of the district attorney. 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 the district attorney, the court must issue subpoenas for witnesses to appear at the inquest. The court may also subpoena witnesses at the request of the coroner or medical examiner. 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, call or cross–examine 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 response to the court's order is not subject to any forfeiture or penalty for 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. If a reasonable jury might find probable cause to believe that a crime was committed, the court must instruct the jury regarding the elements of that crime. 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, who 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 how inquests are ordered and conducted in cases in which a person has died as the result of an act of a law enforcement officer. First, the bill eliminates the district attorney's authority to call an inquest in such cases. Instead, the bill requires the attorney general to call an inquest and to appear, or to appoint a special prosecutor to appear, at an inquest in cases of that type. If the attorney

that occurs in a county with a population of 500,000 or more

in a county with a population of 500,000 or more

general appears at an inquest or appoints a special prosecutor to appear at an inquest 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. Second, under the bill, 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 or 12 persons. Third, the bill prohibits an inquest into a death caused by a law enforcement officer from being conducted in secret. Fourth, the bill allows certain relatives of a person whose death was caused by a law enforcement officer to be represented by an attorney at an inquest into the person's death. An attorney representing a relative may ask the court to subpoena witnesses, including expert witnesses, and upon the attorney's request the court must do so. The attorney may also examine or cross–examine any witness at the inquest and argue before the court.

also specify a new [illegible] of [illegible] under [illegible]

This bill affects where inquests may be held. Under the bill, 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.

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

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

2 20.455 **(1)** (a) *General program operations.* The amounts in the schedule for
3 general program operations, including s. 165.065, and for special prosecutors
4 appointed under s. 979.05 (1m).

5 **SECTION 2.** 758.19 (5) (a) 5. of the statutes is amended to read:

6 758.19 **(5)** (a) 5. Fees for witnesses or expert witnesses subpoenaed by the court
7 under s. 979.06 (1) and (2) at the request of the district attorney, attorney general
8 coroner, or medical examiner ~~under s. 979.06 (1) and (2)~~, a special prosecutor
9 appointed under s. 978.045, or an attorney for a relative of the decedent.

10 **SECTION 3.** 979.01 (1m) of the statutes is amended to read:

11 979.01 **(1m)** The coroner or medical examiner receiving notification under sub.
12 (1) or (1g) shall immediately notify the district attorney and, if there is any evidence

INS 4/1

that the person's death was caused by an act of a law enforcement officer, the attorney general.

SECTION 4. 979.025 (1) of the statutes is amended to read:

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

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

979.04 **(1)** ~~If~~ Except as provided in sub. (1m), if the district attorney has notice of the death of any person and there is reason to believe from the circumstances surrounding the death that felony murder, first–degree or 2nd–degree intentional homicide, first–degree or 2nd–degree reckless homicide, homicide by negligent handling of dangerous weapon, explosives or fire, homicide by negligent operation of vehicle, homicide resulting from negligent control of a vicious animal or homicide by intoxicated ~~user~~ use of a vehicle or firearm may have been committed, or that death may have been due to suicide or unexplained or suspicious circumstances, the district attorney may order that an inquest be conducted for the purpose of inquiring how the person died. ~~The district attorney shall appear in any such inquest representing the state in presenting all evidence which may be relevant or material to the inquiry of the inquest. The inquest may be held in any county in this state in~~

~~which venue would lie for the trial of any offense charged as the result of or involving the death.~~

(4) An inquest may only be ordered by the district attorney under ~~this subsection~~ sub. (1), by the attorney general under sub. (1m), or by the circuit judge under sub. (2) (a).

SECTION 6. 979.04 (1m) of the statutes is created to read:

979.04 **(1m)** The attorney general shall order that an inquest be conducted for the purpose of inquiring how a person died if there is any evidence that the person's death was caused by an act of a law enforcement officer. INS 5/9

SECTION 7. 979.04 (2) of the statutes is renumbered 979.04 (2) (a).

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

979.04 **(2)** (b) If the coroner or medical examiner has knowledge of the death of any person under the circumstances described under sub. (1m), he or she shall immediately notify the district attorney and the attorney general. The notification shall include information concerning the circumstances surrounding the death.

SECTION 9. 979.04 (3) of the statutes is amended to read:

979.04 **(3)** ~~Subsequent to receipt of~~ After receiving notice of the death, the district attorney or, in a case in which the attorney general believes that sub. (1m) applies, the attorney general may request the coroner or medical examiner to conduct a preliminary investigation and report back to the ~~district attorney~~ requester. The district attorney or the attorney general may determine the scope of the preliminary investigation. This subsection does not limit or prevent any other investigation into the death by any law enforcement agency with jurisdiction over the investigation.

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

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

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

979.05 **(1m)** The district attorney shall appear in an inquest under s. 979.04 (1) and shall represent the state in presenting all evidence which may be relevant or material to the inquiry of the inquest. The attorney general, or a special prosecutor appointed by the attorney general, shall appear in an inquest required under s. 979.04 (1m) and shall represent the state in presenting all evidence which may be relevant or material to the inquiry of the inquest.

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

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

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

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

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

(2m) (a) If the inquest is to be conducted before a jury, a sufficient number of names of prospective jurors shall be selected from the prospective juror list for the county in which the inquest is to be held by the clerk of circuit court in the manner provided in s. 756.06. The judge or circuit court commissioner conducting the inquest shall summon the prospective jurors to appear before the judge or circuit court commissioner at the time fixed in the summons. The summons may be served by mail, or by personal service if the judge~~,~~ or circuit court commissioner~~,~~ or ~~district~~ the attorney representing the state at the inquest determines personal service to be appropriate. The summons shall be in the form used to summon petit jurors in the circuit courts of the county. Any person who fails to appear when summoned as an inquest juror is subject to a forfeiture of not more than $40.

(b) The inquest jury shall consist of 6 jurors except for an inquest under s. 979.04 (1m), in which case the inquest jury shall consist of either 6 or 12 jurors, with the number specified by the attorney general when the inquest is called. If ~~6~~ the requisite number of jurors ~~do~~ does not remain from the number originally summoned after establishment of qualifications, the judge or circuit court commissioner conducting the inquest may require the clerk of the circuit court to select sufficient additional jurors' names. Those persons shall be summoned forthwith by the sheriff of the county.

SECTION 14. 979.05 (3) of the statutes is amended to read:

979.05 **(3)** The judge or circuit court commissioner shall examine on oath or affirmation each person who is called as a juror to discover whether the juror is related by blood, marriage, or adoption to the decedent, any member of the decedent's family, ~~the district attorney,~~ any other attorney appearing in the case, or any members of ~~the office of the district attorney or of~~ the office of any ~~other~~ attorney

appearing in the case, has expressed or formed any opinion regarding the matters being inquired into in the inquest, or is aware of or has any bias or prejudice concerning the matters being inquired into in the inquest. If any prospective juror is found to be not indifferent or is found to have formed an opinion which cannot be laid aside, that juror shall be excused. The judge or circuit commissioner may select one or more alternate jurors if the inquest is likely to be protracted. This subsection does not limit the right of the ~~district~~ attorney representing the state at the inquest to supplement the judge's or circuit commissioner's examination of any prospective jurors as to qualifications.

SECTION 15. 979.05 (5) of the statutes is amended to read:

979.05 **(5)** Prior to the submission of evidence to the jury, the judge or circuit court commissioner may instruct the jury on its duties and on the substantive law regarding the issues which may be inquired into before the jury. The ~~district~~ attorney representing the state at the inquest may, at any time during the course of the inquest, make statements to the jury relating to procedural or evidentiary matters he or she and the judge or circuit court commissioner deem appropriate. Section 972.12 applies to the conduct of the inquest jury.

SECTION 16. 979.05 (6) of the statutes is amended to read:

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

SECTION 17. 979.06 (1) of the statutes is amended to read:

979.06 **(1)** The judge or circuit court commissioner may issue subpoenas for witnesses at the request of the coroner or medical examiner and shall issue

, at an inquest under s. 979.04(1m),

subpoenas for witnesses requested by the ~~district~~ attorney representing the state at the inquest or an attorney representing a relative of the decedent ~~under s. 979.05 (1r)~~. Subpoenas are returnable at the time and place stated therein. Persons who are served with a subpoena may be compelled to attend proceedings in the manner provided in s. 885.12.

SECTION 18. 979.06 (2) of the statutes is amended to read:

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

SECTION 19. 979.07 (1) (a) of the statutes is amended to read:

979.07 **(1)** (a) If a person refuses to testify or to produce books, papers or documents when required to do so before an inquest for the reason that the testimony or evidence required of the person may tend to incriminate him or her or subject him or her to a forfeiture or penalty, the person may be compelled to testify or produce the evidence by order of the circuit court of the county in which the inquest is convened on motion of the ~~district~~ attorney attempting to obtain the testimony or evidence. A person who testifies or produces evidence in obedience to the command of the court in that case is not subject to any forfeiture or penalty for or on account of testifying

or producing evidence, except the person is subject to prosecution and punishment for perjury or false swearing committed in so testifying.

SECTION 20. 979.08 (1) of the statutes is amended to read:

979.08 **(1)** When the evidence is concluded and the testimony closed, the judge or circuit court commissioner shall instruct the jury on its duties and on the substantive law regarding the issues inquired into before the jury. The ~~district~~ attorney representing the state at the inquest shall prepare a written set of appropriate requested instructions and shall submit them to the judge or circuit court commissioner who, together with ~~the district~~ that attorney, shall compile the final set of instructions which shall be given. The instructions shall include those criminal offenses for which the judge or circuit court commissioner believes a reasonable jury might return a verdict based upon a finding of probable cause.

SECTION 21. 979.08 (5) of the statutes is amended to read:

979.08 **(5)** The verdict delivered by the inquest jury is advisory and does not preclude or require the issuance of any criminal charges by the district attorney or the attorney general.

SECTION 22. 979.08 (6) of the statutes is amended to read:

979.08 **(6)** Any verdict so rendered, after being validated and signed by the judge or circuit court commissioner, together with the record of the inquest, shall be delivered to the ~~district~~ attorney representing the state at the inquest for consideration. After considering the verdict and record, ~~the district attorney~~ he or she may deliver the entire inquest record or any part thereof to the coroner or medical examiner for safekeeping.

SECTION 23. 979.09 of the statutes is amended to read:

1 **979.09 Burial of body.** If any judge or circuit court commissioner conducts
2 an inquest as to the death of a stranger or of a person whose identity is unknown or
3 whose body is unclaimed or if, in a case in which s. 979.04 (1m) does not apply, the
4 district attorney determines that no inquest into the death of such a person is
5 necessary and the circuit judge has not ordered an inquest under s. 979.04 (2) (a), the
6 coroner or medical examiner shall cause the body to be decently buried or cremated
7 and shall certify to all the charges incurred in taking any inquest by him or her and
8 to the expenses of burial or cremation of the dead body. The charges and expenses
9 shall be audited by the county board of the proper county and paid out of the county
10 treasury.

11 **SECTION 24.** 979.10 (2) of the statutes is amended to read:

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

23 **SECTION 25.** 979.11 of the statutes is amended to read:

24 **979.11 Compensation of officers.** The sole compensation of the coroner and
25 deputy coroners for attendance at an inquest and for any preliminary investigation

1 under this chapter at the direction of the ~~district~~ attorney representing the state at
2 the inquest shall be a reasonable sum set by the county board for each day actually
3 and necessarily required for the purpose, and a sum set by the county board for each
4 mile actually and necessarily traveled in performing the duty. Any coroner or deputy
5 coroner may be paid an annual salary and allowance for traveling expenses to be
6 established by the county board under s. 59.22 which shall be in lieu of all fees, per
7 diem and compensation for services rendered.

8 **SECTION 26. Initial applicability.**

9 (1) This act first applies to deaths occurring, and to inquests conducted with
10 respect to deaths occurring, on the effective date of this subsection.

11 **(END)**

INSERT A

no ¶ when a person's death is caused by an act of a law enforcement officer that occurs in a county with a population of 500,000 or more (currently only Milwaukee County)

occurred

INSERT 4/1

Score

no ¶ that occurs in a county with a population of 500,000 or more

INSERT 5/9

that occurs in a county with a population of 500,000 or more

occurred