

1983 Assembly Bill 664

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1983 Wisconsin Act 279

AN ACT to repeal 59.35 (4), 979.01, 979.02 and 979.03, 979.09 to 979.12, 979.15 and 979.19 (5); to renumber 59.35 (1), 979.125, 979.16, 979.17 and 979.21; to renumber and amend 979.121, 979.13, 979.14, 979.18, 979.19 (title) and (1) to (4) and 979.20; to amend chapter 979 (title), 59.34 (1) and 102.13 (5); to repeal and recreate 979.04 to 979.08; and to create 757.69 (1) (i), 979.01 (1m) and 979.015 of the statutes, relating to inquests, investigations of deaths, autopsies, cremations and providing penalties.

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

SECTION 1. 59.34 (1) of the statutes is amended to read:

59.34 (1) ~~Take inquest of the dead~~ Participate in inquest proceedings when required by law, except that in counties having a population of 500,000 or more and all counties which have instituted the medical examiner system ~~such that~~ duty and the powers incident thereto shall be vested exclusively in the office of the medical examiner. Appointment to ~~such the~~ office in counties having a population of 500,000 or more shall be made by the county board of supervisors under ss. 63.01 to 63.17. In all other counties, appointment shall be made by the county board. ~~Such The~~ office may be occupied on a full or part-time basis and shall be paid such compensation as the county board of supervisors by ordinance provides. The medical examiner may appoint such assistants as the county board authorizes. Whenever requested by the court or district attorney, the medical examiner shall testify to facts and conclusions disclosed by autopsies performed by him or her, at his or her direction; or in his or her presence; shall make physical examinations and tests incident to any matter of a criminal nature up for consideration before either court or district attorney when requested so to do; shall testify as an expert for either ~~such the~~ court or the state in all matters where ~~such the~~ examinations or tests have been made, and perform such other duties of a pathological or medicolegal nature as may be required; and without fees or compensation other than the salary provided.

SECTION 2. 59.35 (1) of the statutes is renumbered 59.35.

SECTION 3. 59.35 (4) of the statutes is repealed.

SECTION 4. 102.13 (5) of the statutes is amended to read:

102.13 (5) The department may refuse to receive testimony as to conditions determined from an autopsy if it appears ~~a)~~ that the party offering the testimony had procured the autopsy and had failed to make reasonable effort to notify at least one party in

adverse interest or the department at least 12 hours before ~~said~~ the autopsy of the time and place it would be performed, or ~~b)~~ that the autopsy was performed by or at the direction of the coroner or medical examiner or at the direction of the district attorney for purposes not authorized by ch. 979. The department may withhold findings until an autopsy is held in accordance with its directions.

SECTION 5. 757.69 (1) (i) of the statutes is created to read:

757.69 (1) (i) Conduct inquests under ch. 979.

SECTION 6. Chapter 979 (title) of the statutes is amended to read:

CHAPTER 979
INQUESTS INVESTIGATION OF
THE DEAD DEATHS

SECTION 7. 979.01 of the statutes is repealed.

SECTION 8. 979.01 (1m) of the statutes is created to read:

979.01 (1m) The coroner or medical examiner receiving notification under sub. (1) shall immediately notify the district attorney.

SECTION 8m. 979.015 of the statutes is created to read:

979.015 Subpoena for documents. Upon the request of the coroner, medical examiner or district attorney, a court shall issue a subpoena requiring the production of documents necessary for the determination of a decedent's cause of death. The documents may include the decedent's patient health care records and treatment records, as defined in ss. 51.30 and 146.81 (4). The documents shall be returnable to the officer named in the subpoena.

SECTION 9. 979.02 and 979.03 of the statutes are repealed.

SECTION 10. 979.04 to 979.08 of the statutes are repealed and recreated to read:

979.04 Inquests: when called. (1) 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 murder, manslaughter, homicide resulting from negligent control of a vicious animal, homicide by reckless conduct, homicide by negligent use of a vehicle or firearm or homicide by intoxicated user 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. An inquest may only be ordered by the district attorney under this subsection or by the circuit judge under sub. (2). An inquest may only be ordered by the district attorney. No inquest may be conducted unless this subsection is complied with.

(2) If the coroner or medical examiner has knowledge of the death of any person in the manner described under sub. (1), he or she shall immediately notify the district attorney. The notification shall include information concerning the circumstances surrounding the death. The coroner or medical examiner may request the district attorney to order an inquest under sub. (1). If the district attorney refuses to order the inquest, a coroner or medical examiner may petition the circuit court to order an inquest. The court may issue the order if it finds that the district attorney has abused his or her discretion in not ordering an inquest.

(3) Subsequent to receipt of notice of the death, the district attorney may request the coroner or medical examiner to conduct a preliminary investigation and report back to the district attorney. The district attorney 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.

979.05 Inquests: procedure. (1) An inquest shall be conducted by a circuit judge or a court commissioner.

(2) The inquest shall be conducted before a jury unless the district attorney, coroner or medical examiner requests that the inquest be conducted before the judge or court commissioner only. If the inquest is to be conducted before a jury, a sufficient number of potential jurors shall be drawn from the master tumbler containing the names of jurors who will be drawn for petit juries in the circuit courts of the county in which the inquest is to be held by the clerk of circuit court in the manner provided in s. 756.04 (3), except that the reserve panel and time requirements do not apply. The judge or court commissioner conducting the inquest shall summon the persons drawn as jurors to appear before the judge or court commissioner at the time fixed in the summons. The summons may be served by mail, or by personal service if the judge, court commissioner or district attorney 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. The inquest jury shall consist of 6 jurors. If 6 jurors do not remain from the number originally summoned after establishment of qualifications, the judge or court commissioner conducting the inquest may require the clerk of the circuit court to draw sufficient additional jurors' names. Those persons shall be summoned forthwith by the sheriff of the county.

(3) The judge or court commissioner shall examine on oath each person who is called as a juror to discover whether the juror is related by blood or marriage to the decedent, any member of the decedent's family, the district attorney, any other attorney appearing in the case, any members of the office of the district attorney or any other attorney appearing in the case or has expressed or formed any opinion regarding the matters being inquired into or is aware of or has any bias or prejudice concerning the matters being inquired into in the inquest. If any potential 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 court commissioner may impanel one or more alternate jurors if the inquest is likely to be protracted. This subsection does not limit the right of the district attorney to supplement the judge's or court commissioner's examination of any potential jurors as to qualifications.

(4) When 6 jurors have been selected, the judge or court commissioner shall administer to them an oath or affirmation which shall be substantially in the following form:

You do solemnly swear (affirm) that you will diligently inquire and determine on behalf of this state when, and in what manner and by what means, the person known as who is now dead came to his or her death and that you will return a true verdict thereon according to your knowledge, according to the evidence presented and according to the instructions given to you by the (judge) (court commissioner).

(5) Prior to the submission of evidence to the jury, the judge or 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 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 court commissioner deem appropriate. Section 972.12 applies to the conduct of the inquest jury.

(6) The judge or court commissioner conducting the inquest may order that proceedings be secret if the district attorney so requests or concurs.

(7) Inquest jurors shall receive the same compensation as jurors under s. 756.25.

979.06 Inquests: witnesses. (1) The judge or court commissioner may issue subpoenas for witnesses at the request of the coroner or medical examiner and shall issue subpoenas for witnesses requested by the district attorney. 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.

(2) The judge or court commissioner conducting the inquest and the district attorney 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 and the judge or court commissioner conducting the inquest.

(3) Any witness examined at an inquest may have counsel present during the examination of that witness. The counsel may not examine or cross-examine his or her client, cross-examine or call other witnesses or argue before the judge or court commissioner holding the inquest.

(4) The judge or court commissioner shall administer an oath or affirmation to each witness which shall be substantially in the following form:

You do solemnly swear (affirm) that the evidence and testimony you give to this inquest concerning the death of the person known as shall be the truth, the whole truth and nothing but the truth.

(5) The judge or court commissioner conducting the inquest shall cause the testimony given by all witnesses to be reduced to writing or recorded and may employ stenographers to take and transcribe all of the testimony. The stenographer shall receive reimbursement at a reasonable rate for each appearance and transcription at rates in accordance with the customary charges in the area for similar services.

(6) Inquest witnesses shall receive the same compensation as witnesses in circuit court under s. 814.67.

979.07 Incriminating testimony compelled; immunity. (1) 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. 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 any transaction, matter or thing concerning which he or she so testifies or produces evidence, except the person is subject to prosecution and punishment for perjury or false swearing committed in so testifying.

(2) If a witness appearing before an inquest fails or refuses without just cause to comply with an order of the court under this section to give testimony in response to a question or with respect to any matter, the court, upon the failure or refusal or when the failure or refusal is duly brought to its attention, may punish the witness for contempt under ch. 785.

979.08 Inquests: instructions, burden of proof and verdict. (1) When the evidence is concluded and the testimony closed, the judge or 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 shall prepare a written set of appropriate requested instructions and shall submit them to the judge or court commissioner who, together with the district attorney, shall compile the final set of instructions which shall be given. The instructions shall include those criminal offenses for which the judge or court commissioner believes a reasonable jury might return a verdict based upon a finding of probable cause.

(2) The jury's verdict shall be based upon a finding of probable cause and shall be unanimous.

(3) The jury shall retire to consider its verdict after hearing all of the testimony and evidence, making all necessary inquiries and having been instructed in the law. The judge or court commissioner shall provide the jury with one complete set of written instructions providing the substantive law to be applied to the issues to be decided. The verdict shall be in a form which permits the following findings:

(a) Whether the deceased came to his or her death by criminal means and, if so, the specific crimes committed and the name of the person or persons, if known, having committed the crimes.

(b) Whether the deceased came to his or her death by natural causes, accident, suicide or an act privileged by law.

(4) The jury shall render its verdict in writing, signed by all of its members. The verdict shall set forth its findings from the evidence produced according to the instructions.

(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.

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

(7) The record of a secret inquest proceeding shall not be open for inspection unless so ordered by the judge or court commissioner conducting the inquest upon petition by the district attorney.

SECTION 11. 979.09 to 979.12 of the statutes are repealed.

SECTION 12. 979.121 of the statutes is renumbered 979.02 and amended to read:

979.02 Autopsies. ~~The coroner may conduct an autopsy or, medical examiner or district attorney may order the conducting of an autopsy upon the body of a dead person any place within the state and disinter the body if necessary in cases where a coroner's an inquest might be had as provided in s. 979.01 979.04 notwithstanding the fact that no such inquest is ordered or had conducted. The autopsy shall be conducted by a licensed physician who has specialized training in pathology. The district attorney may move the circuit court for the county in which the body is buried for an order disinterring the body for purposes of autopsy. The order shall be granted by the circuit court upon a reasonable showing that any of the criteria specified in s. 979.04 exists. This section does not prevent additional autopsies or examinations of the body if there are unanswered pathological questions concerning the death and the causes of death.~~

SECTION 13. 979.125 of the statutes is renumbered 979.03.

SECTION 14. 979.13 of the statutes is renumbered 979.09 and amended to read:

979.09 Burial of body. ~~When any coroner shall take an inquest as to the cause of death of a stranger or, being called for that purpose, shall not think it necessary that an inquest should be taken, he~~ If any judge or court commissioner conducts an inquest as to the death of a stranger or of a person whose identity is unknown or whose body is unclaimed or if the district attorney determines that no inquest into the death of such a person is necessary and the circuit judge has not ordered an inquest under s. 979.04 (2), the coroner or medical examiner shall cause the body to be decently buried or cremated; and the said coroner shall certify to all the charges incurred in taking any inquest by him or her and to the expenses of burial or cremation of such the dead body; and the same. The

charges and expenses shall be audited by the county board of the proper county and paid out of the county treasury.

SECTION 15. 979.14 of the statutes is renumbered 979.11 and amended to read:

979.11 (title) Compensation of officers. The sole compensation of the coroner and deputy coroners for ~~taking inquest or making an investigation to determine the necessity to take inquest shall be a~~ attendance at an inquest and for any preliminary investigation under this chapter at the direction of the district attorney shall be a reasonable sum set by the county board for each day actually and necessarily required for the purpose, and a sum set by the county board for each mile actually and necessarily traveled in performing such the duty. Any coroner or deputy coroner may be paid an annual salary and allowance for traveling expenses to be established by the county board pursuant to under s. 59.15 which shall be in lieu of all fees, per diem and compensation for services rendered. ~~The compensation of constables and witnesses at such inquest shall be the same as is allowed for like services in circuit court, and the compensation of jurors shall be the same as that for jurors under s. 756.25.~~

SECTION 16. 979.15 of the statutes is repealed.

SECTION 17. 979.16 of the statutes is renumbered 59.351.

SECTION 18. 979.17 of the statutes is renumbered 59.352.

SECTION 19. 979.18 of the statutes is renumbered 59.353 and amended to read:

59.353 Medical examiner's bond. Before entering upon the duties of his office, the medical examiner of ~~such the~~ county shall deliver to the county clerk a bond, subscribed by 2 or more sufficient sureties, in such penal sum as the county board determines, conditioned for the faithful performance of all his official duties as set forth in this chapter and ch. 979 and that he or she will faithfully account for and pay to the treasurer of said the county all moneys which may come to his hands him or her belonging to said the county, and which by virtue of this chapter he and ch. 979 the medical examiner is required to account for and pay as aforesaid.

SECTION 20. 979.19 (title) and (1) to (4) of the statutes are renumbered 979.10 (title) and (1) to (4) and amended to read:

979.10 (title) Cremation. (1) The body of a deceased person shall not be cremated within 48 hours after its decease unless death was caused by a contagious or infectious disease, ~~and, if,~~ If the death occurred within the state, the body shall not may only be received or cremated by any a person, firm, copartnership or corporation not authorized by the department of health and social services to cremate the bodies of the dead. The body may not be cremated until its officers have the crematory has received the certificate of burial permit required by law before burial, and a certificate from the coroner or medical examiner of the county, where said the person died, and if such. If the person died without outside the state, then from the body may not be cremated until the coroner or medical examiner of the county where said the body is to be cremated, that he has viewed the body and made personal inquiry into the cause and manner of death and is of the opinion that no further examination or judicial inquiry concerning the same is necessary. The heirs or next of kin shall agree with the funeral director as to the final disposition of the cremated remains before such the burial permit is issued. The method of such disposition shall be noted on the death certificate and no change in the disposition of such remains shall may be permitted. Such The disposition shall be consummated within 60 days from the time of such the notation on the death certificate. The cremated remains or ashes shall not be deposited in the cemetery without due notification and permission of the cemetery authorities.

(2) ~~It shall be the duty of the respective coroners of this state, in any case where~~ If the body is to be cremated, to the coroner or medical examiner shall make a careful personal inquiry into the cause and manner of death, and conduct an autopsy or order the con-

ducting of an autopsy, if in ~~their~~ his or her or the district attorney's opinion it is necessary to determine the cause and manner of death, ~~and thereupon certify that no further examination or judicial inquiry concerning the same is necessary, if so satisfied, otherwise, or in the event of doubt to proceed as otherwise provided by law.~~ If the coroner or medical examiner determines that no further examination or judicial inquiry is necessary he or she shall certify that fact. Upon written request by the district attorney the coroner or medical examiner shall obtain the concurrence of the district attorney before issuing the certification. If the coroner or medical examiner determines that further examination or judicial inquiry is necessary, he or she shall notify the district attorney under s. 979.04 (2).

(3) The coroner shall receive a fee of ~~\$10~~ \$25, to be paid out of the county treasury, for each body so viewed or inquiry made, unless an annual salary has been established by the county board ~~pursuant to s. 979.14~~ under s. 979.11.

(4) Whoever accepts, receives or takes any body of a deceased person with intent to destroy the body by means of cremation, or who cremates or aids and assists in the cremation of any body of a deceased person without having presented the ~~coroner's~~ certificate specified in sub. (1) shall be fined not ~~less than \$500 nor more than \$1,000, \$10,000~~ or be imprisoned not ~~less than 6 months nor more than one year in the county jail more than 9 months or both.~~

SECTION 21. 979.19 (5) of the statutes is repealed.

SECTION 22. 979.20 of the statutes is renumbered 979.01, and 979.01 (2), as renumbered, is amended to read:

979.01 (2) Any person who ~~shall violate~~ violates this section shall be fined not ~~less than \$5, nor more than \$200, \$1,000~~ or imprisoned not ~~less than 30 days nor more than 3 months~~ 90 days.

SECTION 23. 979.21 of the statutes is renumbered 979.12.

SECTION 24. **Cross-reference changes.** In the sections of the statutes listed in Column A, the cross-references shown in Column B are changed to the cross-references shown in Column C:

A	B	C
Statute Sections	Old Cross-References	New Cross-References
69.38 (2)(a)	979.20	979.01
