



2007 ASSEMBLY BILL 139

March 5, 2007 - Introduced by Representatives WASSERMAN, BENEDICT, BERCEAU, CULLEN, FIELDS, GRIGSBY, PARISI, POCAN, POPE-ROBERTS, SHERMAN, TURNER and A. WILLIAMS, cosponsored by Senators COGGS, DARLING, ERPENBACH, LASSA and LEHMAN. Referred to Committee on Corrections and Courts.

1 **AN ACT to renumber and amend** 979.04 (2); **to amend** 20.916 (9) (f) 1., 979.025
2 (1), 979.04 (1), 979.08 (7), 979.09, 979.10 (1) (a) 2. and 979.10 (2); and **to create**
3 15.07 (1) (b) 24., 15.07 (3) (bm) 7., 15.145 (5), 51.30 (4) (b) 23g., 51.30 (4) (b) 23r.,
4 146.82 (2) (a) 22., 146.82 (2) (a) 23., 979.028 and 979.04 (2) (b) of the statutes;
5 **relating to:** review of deaths at correctional institutions.

Analysis by the Legislative Reference Bureau

Under current law, if a person dies while confined in a correctional facility, the coroner or medical examiner for the county where the death occurred must conduct an autopsy. In addition, the person in charge of the facility is required to notify the appropriate relative of the inmate of the death. The Department of Corrections (DOC) must also provide the relative with written notification that DOC, upon request, will provide the relative with a copy of the autopsy report or any other report or information regarding the inmate's death.

Separately, current law establishes procedures for inquests, which apply to inmates and noninmates alike. Under current law, if the district attorney has notice that the death of a person may have been the result of a homicide or suicide or may have occurred under unexplained or suspicious circumstances, the district attorney may order an inquest to determine the cause of the person's death. If a coroner or medical examiner has similar knowledge about a person's death, the coroner or medical examiner is required to notify the district attorney of the circumstances surrounding the death and may request that the district attorney order an inquest.

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The district attorney may order an inquest based on that information and may request that the coroner or medical examiner conduct a preliminary examination and report back to the district attorney. If the district attorney does not order an inquest, the coroner or medical examiner may petition the circuit court to order an inquest.

This bill expands the scope of the provision requiring autopsies for persons who die while confined in a state correctional facility so that it applies to a person in DOC's custody who dies while temporarily confined in, and under a DOC contract with, a county jail or house of correction. In addition, the bill requires the coroner or medical examiner to notify the attorney general (as well as the district attorney) when such a person or a person confined in a state correctional institution dies if the death is one that would permit the district attorney to order an inquest. Moreover, the bill gives the attorney general the same powers as the district attorney to order and conduct an inquest when notified of that death.

The bill also creates an Inmate and Resident Mortality Board, which is composed of 12 members and attached to DOC. Under the bill, if a person in DOC custody dies while in an in-state or out-of-state correctional institution, a county jail, or a house of correction, the board must review the circumstances of the person's death. Within three business days after the person's death, DOC must send a written notice to each member of the board of the death and provide them with a summary of information regarding the death, including the date, time, and place of the death. Upon request, DOC must also provide a board member with the records that are in the custody of DOC (including medical and mental health records) regarding the person who died and with any information obtained as the result of DOC's internal review of the death.

In addition, DOC is required to provide any assistance the Inmate and Resident Mortality Board needs to review the circumstances of the death. Beyond reviewing information from DOC, the board may also review any medical and mental health records of the inmate or resident in the custody of a medical or mental health treatment provider; with the approval of the district attorney or attorney general, medical and mental health records in the custody of a law enforcement agency; information obtained by the coroner or medical examiner regarding the death; and information collected as a result of the autopsy.

The bill requires the board to issue a report regarding its review of an inmate's death within 30 days after the meeting at which the board completes its review and to submit that report to a relative of the deceased person, to members of the appropriate standing committees of the senate and assembly, to the secretary of DOC, and to the district attorney or attorney general, if appropriate. The bill also requires the board to submit to DOC any recommendations that it has regarding medical and other prison procedures, and rules to implement them, based on the board's review of the death. If the board determines during its review of a person's death that a medical provider failed to provide appropriate, proper, and necessary medical care, the board is required under the bill to prepare and forward a complaint to the appropriate credentialing board.

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Meetings of the Inmate and Resident Mortality Board are not subject to the Open Meetings Law. Records prepared by the board are not subject to the Open Records Law.

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.** 15.07 (1) (b) 24. of the statutes is created to read:

2 15.07 (1) (b) 24. The members of the inmate and resident mortality board
3 appointed under s. 15.145 (5).

4 **SECTION 2.** 15.07 (3) (bm) 7. of the statutes is created to read:

5 15.07 (3) (bm) 7. The inmate and resident mortality board shall meet on the
6 call of the chairperson or a majority of the board's members.

7 **SECTION 3.** 15.145 (5) of the statutes is created to read:

8 15.145 (5) INMATE AND RESIDENT MORTALITY BOARD. There is created in the
9 department of corrections an inmate and resident mortality board consisting of 12
10 members appointed for 4-year terms. Eight of the members shall be appointed by
11 the governor and shall include 2 physicians from the University of Wisconsin School
12 of Medicine and Public Health, 2 physicians from the Medical College of Wisconsin,
13 one physician from a health care provider other than the University of Wisconsin
14 School of Medicine and Public Health or the Medical College of Wisconsin, one
15 registered nurse employed by a private health maintenance organization, one
16 registered nurse employed by a private hospital, and one member who does not
17 represent any of the foregoing entities and who is not employed by a state agency.
18 The other 4 members of the board shall be appointed by the secretary of corrections
19 and shall be a warden of a state correctional facility, a manager of a unit within a

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1 state correctional facility that provides the health services to inmates, a health care
2 provider who is employed by the department of corrections, and a correctional officer
3 who shall be from a list provided to the secretary by the labor organization recognized
4 or certified to represent the employees in the collective bargaining unit that
5 represents correctional officers. At least one member of the board shall be a
6 physician who is a pathologist with subspecialty training in forensic pathology and
7 who is certified by the American Board of Pathology.

8 **SECTION 4.** 20.916 (9) (f) 1. of the statutes is amended to read:

9 20.916 (9) (f) 1. Scheduled air travel. Reimbursement for air travel shall be
10 limited to the lowest appropriate airfare, as determined by the director of the office
11 of state employment relations. An employee may be reimbursed for air travel at a
12 rate other than the lowest appropriate airfare only if the employee submits a written
13 explanation of the reasonableness of the expense. Members of the inmate and
14 resident mortality board may not receive reimbursement for air travel.

15 **SECTION 5.** 51.30 (4) (b) 23g. of the statutes is created to read:

16 51.30 (4) (b) 23g. To the inmate and resident mortality board to enable it to
17 review the death of an inmate or resident under s. 978.028.

18 **SECTION 6.** 51.30 (4) (b) 23r. of the statutes is created to read:

19 51.30 (4) (b) 23r. By the inmate and resident mortality board under s. 979.028
20 (4), (5), or (6).

21 **SECTION 7.** 146.82 (2) (a) 22. of the statutes is created to read:

22 146.82 (2) (a) 22. To the inmate and resident mortality board to enable it to
23 review the death of an inmate or resident under s. 979.028.

24 **SECTION 8.** 146.82 (2) (a) 23. of the statutes is created to read:

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1 146.82 (2) (a) 23. By the inmate and resident mortality board under s. 979.028
2 (4), (5), or (6). The board is not required to receive a request in order to release patient
3 health care records under this subdivision.

4 **SECTION 9.** 979.025 (1) of the statutes is amended to read:

5 979.025 (1) INMATE OR RESIDENT CONFINED TO AN INSTITUTION IN THIS STATE. If an
6 individual ~~dies while he or she is~~ in the legal custody of the department and dies
7 while confined to a state correctional facility located in this state institution, as
8 defined in s. 301.01 (4), but excluding any institution that meets the criteria under
9 s. 302.01 solely because of its status under s. 301.046 or 301.048 (4) (b), or while
10 confined to a county jail or house of correction pursuant to a contract under s. 302.27,
11 the coroner or medical examiner of the county where the death occurred shall
12 perform an autopsy on the deceased individual. If the coroner or medical examiner
13 who performs the autopsy determines that the individual's death may have been the
14 result of any of the situations that would permit the district attorney to order an
15 inquest under s. 979.04 (1), the coroner or medical examiner shall follow the
16 procedures under s. 979.04 (2).

17 **SECTION 10.** 979.028 of the statutes is created to read:

18 **979.028 Review of an inmate's or resident's death.** (1) In this section:

19 (a) "Patient health care records" has the meaning given in s. 146.81 (4).

20 (b) "Treatment records" has the meaning given in s. 51.30 (1) (b).

21 (2) The inmate and resident mortality board shall review the circumstances of
22 the death of every individual who is subject to an autopsy under s. 979.025. A
23 member of the board shall disqualify himself or herself from any discussion
24 regarding a specific death if he or she determines that he or she cannot act in an
25 impartial manner regarding that death.

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1 **(3)** (a) Within 3 business days, as defined in s. 421.301 (6), after the death of
2 a person whose death requires the performance of an autopsy under s. 979.025, the
3 secretary of corrections or the secretary's designee shall send a written notice to
4 every member of the inmate and resident mortality board of the death. The written
5 notification shall include a summary of information related to the person's death,
6 including the date, time, and place of the death. At the request of any board member,
7 the department shall provide the member with the records that are in the custody
8 of the department regarding the person who died, including patient health care and
9 treatment records, and any information obtained as a result of any departmental
10 internal review of the death. The department shall cooperate with the board and
11 provide any assistance the board requests to review the circumstances of the death
12 of the inmate or resident.

13 (b) 1. If the board, while performing its duties, requests patient health care or
14 treatment records that are in the custody of a health care provider, as defined in s.
15 146.81 (1), the department of health and family services, a county department under
16 s. 51.42 or 51.437 or its staff, or a treatment facility, as defined in s. 51.01 (19), the
17 records shall be provided to the board for its review.

18 2. If the board, while performing its duties, requests patient health care or
19 treatment records that are in the custody of a law enforcement agency, the agency
20 shall provide the records to the board for its review, but only with the approval of the
21 district attorney or attorney general.

22 3. Upon request by the board, a coroner or medical examiner shall provide the
23 board any information that it has obtained regarding the death of the inmate or
24 resident. The board may also review any information collected through any of the
25 following:

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- 1 a. An autopsy performed under s. 979.025.
- 2 b. An inquest ordered under s. 979.04 if the inquest is not secret under s. 979.05
- 3 (6).
- 4 c. A secret inquest if a judge or circuit court commissioner has authorized the
- 5 board to inspect the record of the inquest under s. 979.08 (7).
- 6 **(4)** (a) Except as provided in sub. (5), within 30 days after the meeting during
- 7 which the board completes its review of an inmate's or resident's death, the inmate
- 8 and resident mortality board shall prepare a summary report of the board's review
- 9 of the inmate's or resident's death and submit that summary report to all of the
- 10 following:
- 11 1. The appropriate relative of the deceased.
- 12 2. The secretary of corrections.
- 13 3. If appropriate, the attorney general or district attorney.
- 14 4. Notwithstanding s. 13.172 (3), the chairperson and the ranking minority
- 15 member of the appropriate standing committee of the assembly and senate.
- 16 (b) The board may include patient health care or treatment records in a report
- 17 prepared under par. (a), but only to the minimum extent necessary to summarize its
- 18 conclusions regarding the inmate's or resident's death.
- 19 **(5)** If there is a criminal investigation of an inmate's or resident's death, the
- 20 board may not issue a final report under sub. (4) regarding the board's review of the
- 21 inmate's or resident's death until after that criminal investigation is completed. Any
- 22 report issued before completion of the criminal investigation is preliminary and is
- 23 subject to modification based on information received as a result of the criminal
- 24 investigation.

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1 **(6)** The inmate and resident mortality board shall make recommendations to
2 the department regarding medical and other prison procedures, based on the board's
3 review of an inmate's or resident's death. The board shall also refer concerns or
4 recommendations to the department related to the performance of staff, including
5 violations by staff of departmental policies, procedures, or work rules related to the
6 circumstances surrounding the death. The inmate and resident mortality board
7 shall prepare and forward a complaint to the appropriate credentialing board, as
8 defined in s. 440.01 (2) (bm), if, during the board's review of an inmate's or resident's
9 death, the board determines that a medical provider failed to provide the
10 appropriate, proper, and necessary medical care.

11 **(7)** Subchapter V of ch. 19 does not apply to meetings of the inmate and resident
12 mortality board. Records prepared under this section are not subject to inspection
13 or copying under s. 19.35 (1).

14 **SECTION 11.** 979.04 (1) of the statutes is amended to read:

15 **979.04 (1)** If the district attorney has notice of the death of any person and there
16 is reason to believe from the circumstances surrounding the death that felony
17 murder, first-degree or 2nd-degree intentional homicide, first-degree or
18 2nd-degree reckless homicide, homicide by negligent handling of dangerous
19 weapon, explosives or fire, homicide by negligent operation of vehicle, homicide
20 resulting from negligent control of a vicious animal or homicide by intoxicated user
21 of a vehicle or firearm may have been committed, or that death may have been due
22 to suicide or unexplained or suspicious circumstances, the district attorney may
23 order that an inquest be conducted for the purpose of inquiring how the person died.
24 The district attorney shall appear in any such inquest representing the state in
25 presenting all evidence which may be relevant or material to the inquiry of the

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1 inquest. The inquest may be held in any county in this state in which venue would
2 lie for the trial of any offense charged as the result of or involving the death. An
3 inquest may only be ordered by the district attorney under this subsection, by the
4 attorney general under sub. (2) (b), or by the circuit judge under sub. (2) (d).

5 **SECTION 12.** 979.04 (2) of the statutes is renumbered 979.04 (2) (a) and
6 amended to read:

7 979.04 (2) (a) If the coroner or medical examiner has knowledge of the death
8 of any that a person has died in the manner described under sub. (1), he or she shall
9 immediately notify the district attorney. The

10 (c) A notification given by a coroner or medical examiner under par. (a) or (b)
11 shall include information concerning the circumstances surrounding the death.

12 (d) The coroner or medical examiner may request the district attorney, if
13 notified under par. (a) or (b), or the attorney general, if notified under par. (b) to order
14 an inquest under sub. (1). If the district attorney refuses and, in cases involving an
15 inmate or resident to whom s. 979.025 (1) applies, the attorney general refuse to
16 order the inquest, a coroner or medical examiner may petition the circuit court to
17 order an inquest. The court may issue the order if it finds that the district attorney
18 has and, in cases involving an inmate or resident to whom s. 979.025 (1) applies, the
19 attorney general, have abused his or her discretion in not ordering an inquest.

20 **SECTION 13.** 979.04 (2) (b) of the statutes is created to read:

21 979.04 (2) (b) If the coroner or medical examiner has knowledge that a person
22 to whom s. 979.025 (1) applies has died in the manner described under sub. (1), the
23 coroner or medical examiner shall immediately notify the district attorney and the
24 attorney general. When notified of a death under this paragraph, the attorney

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1 general shall have the same powers and duties that a district attorney has with
2 respect to an inquest.

3 **SECTION 14.** 979.08 (7) of the statutes is amended to read:

4 979.08 (7) The record of a secret inquest proceeding shall not be open for
5 inspection unless so ordered by the judge or circuit court commissioner conducting
6 the inquest upon petition by the district attorney or, in a case in which the
7 circumstances of a person's death are reviewed under s. 979.028, the inmate and
8 resident mortality board.

9 **SECTION 15.** 979.09 of the statutes is amended to read:

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

19 **SECTION 16.** 979.10 (1) (a) 2. of the statutes is amended to read:

20 979.10 (1) (a) 2. The Unless an autopsy is required under s. 979.025 (1), the
21 coroner or medical examiner in the county where the event which caused the death
22 occurred if the death occurred in this state and if the death is the subject of an
23 investigation under s. 979.01; or

24 **SECTION 17.** 979.10 (2) of the statutes is amended to read:

