

## CHAPTER 979

## INQUESTS OF THE DEAD

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**979.01 Inquests.** Whenever the district attorney has notice of the death of any person and from the circumstances surrounding the same there is any reason to believe that murder, manslaughter, homicide resulting from negligent control of vicious animal, homicide by reckless conduct, homicide by negligent use of vehicle or firearm, or homicide by intoxicated user of vehicle or firearm may have been committed, or that death may have been due to self-murder or unexplained or suspicious circumstances, and the venue of such offense is in his county, excepting in cases where a criminal warrant has been issued, he shall forthwith order and require the coroner or deputy coroner to make an inquest as to how the person came to his death. In any inquest ordered by the district attorney he shall appear in the inquest representing the state in presenting the evidence. For the purpose of taking the inquest, deputy coroners may perform all the duties and exercise all the jurisdiction and powers conferred upon coroners by this chapter and shall be entitled to the same fees as the coroner for the performance of like duties. Nothing herein contained shall be construed as preventing such coroner from holding an inquest under the circumstances hereinabove specified without being first notified by the district attorney to hold such inquest. Such inquest may be held in any county, if within this state, in which there would be venue for the trial of the offense.

See note to 979.15, citing *Mohrhusen v. McCann*, 62 W (2d) 509, 215 NW (2d) 560.

Coroner must make subjective determination that circumstances required by this section exist before ordering autopsy. Family's right to bury family member discussed. *Scarpaci v. Milwaukee County*, 96 W (2d) 663, 292 NW (2d) 816 (1980).

Open meeting law does not apply to a coroner's inquest. 67 Atty. Gen. 250.

**979.02 Jury to be called, when.** Any coroner or deputy coroner who holds an inquest may dispense with the summoning of a coroner's jury and personally conduct the inquest and render a verdict therein the same as a coroner's jury would do; or the coroner or deputy coroner shall issue a precept to the sheriff or any constable forthwith to summon a jury of 6 residents of the county to appear at the time and place specified in the precept, which precept shall be in substance as follows:

THE STATE OF WISCONSIN, To the sheriff or any constable of the county of .....

You are hereby required immediately to summon 6 good and lawful residents of the county of ....., to appear forthwith before me at ....., in the town of ....., to inquire how and by what means the person known as .... died.

Given under my hand this ..... day ....., 19..

....., Coroner.

History: 1975 c. 94.

**979.03 Officers' return.** Every officer to whom such precept is directed and delivered shall forthwith execute the same and make return of the precept, with his proceedings thereon, to the person who issued it.

**979.04 His neglect; nonappearance of juror.** If any officer shall refuse or neglect to execute such precept or to return the same as aforesaid he shall forfeit and pay the sum of \$5, and every person summoned as a juror as aforesaid, who shall fail to appear without having a reasonable excuse, shall forfeit and pay a sum not exceeding \$5.

**979.05 Other jurors; oath.** If 6 jurors shall not appear at the time and place appointed the coroner may require the officer to summon such

number of jurors as shall make up the number 6, and when the requisite number so summoned shall appear the coroner shall administer to them an oath or affirmation in substance as follows: You do solemnly swear that you will diligently inquire in 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; that you will return a true inquest thereon according to your knowledge and such evidence as shall be laid before you.

**History:** 1975 c. 41 s. 51; 1975 c. 199

**979.06 Witnesses; physician's fees.** The coroner may issue subpoenas for witnesses, returnable forthwith or at such time and place as he shall therein direct and the attendance of the persons so served with such subpoenas may be compelled in the manner provided in s. 885.12; and it shall be lawful for the coroner taking such inquest, in all such cases, to require by subpoena the attendance of one or more expert witnesses, competent physicians or surgeons for the purpose of making an examination of the body and of testifying as to the result of the same. Such expert witnesses, physicians and surgeons so subpoenaed shall receive fees as expert witnesses the reasonable amount of which shall be determined by the district attorney and the coroner but shall not be less than \$5 for each examination.

**979.065 Counsel.** Any witness examined at an inquest may have counsel present at the examination but such counsel shall not be allowed to examine his client, cross-examine other witnesses or argue before the person holding the inquest.

**979.07 Witness' oath.** An oath or affirmation to the following effect shall be administered to each witness by the coroner: You do solemnly swear that the evidence you shall give to this inquest concerning the death of the person known as ..... shall be the truth, the whole truth, and nothing but the truth.

**979.08 Evidence to be written; stenographer.** In all cases the testimony of all witnesses examined before the inquest shall be reduced to writing by the coroner, or some other person by his direction, and subscribed by the witnesses. Any officer authorized to take inquests may employ a stenographer to take and transcribe the testimony of all witnesses examined at any inquest held by him. Such stenographer shall receive reimbursement at a reasonable rate per folio for all the testimony taken and transcribed by him, plus additional reasonable reimbursement per folio for each copy thereof, all in

accordance with customary charges in the area; his account therefor, after being audited by the proper county board, shall be paid by the county treasurer.

**History:** 1973 c. 276.

**979.09 Verdict.** The jury, after hearing the testimony of the witnesses and making all needful inquiries, shall draw up and deliver to the coroner their inquisition under their hands, in which they shall find and certify when, and in what manner and by what means the deceased came to his death, and his name, if known; and if it shall appear that he came to his death by unlawful means the jurors shall further state who was guilty, either as principal or accessory or were in any manner the cause of his death, if known.

**979.10 Form of.** Such inquisition may be in substance in the following form:

An inquisition taken at ....., in the county of ....., on the .... day of ....., 19.., before ....., the coroner of said county, as to the cause of the death of the person known as ..... (or a person unknown), there dead, by the jurors whose names are hereunto subscribed, who being duly sworn to inquire on behalf of this state, when, in what manner and by what means the said ..... (or person unknown) came to his death, upon their oaths do say (here insert when, in what manner and by what means, persons, weapons or instruments he was killed or came to his death).

In testimony whereof, the said coroner and the jurors of this inquest have hereunto set their hands the day and year aforesaid.

**979.11 Witnesses to be bound.** If the coroner finds that any murder, manslaughter, homicide by reckless conduct or battery has been committed upon the deceased, the coroner shall bind over, by recognizance, such witnesses as he thinks necessary to appear and testify at the next court to be held in the same county at which an indictment for such offense may be found or an information filed; and he shall also return to the same court the inquisition, written evidence and all recognizances and examinations by him taken, and may commit to the jail of the county any witness who refuses to recognize in such manner as he directs.

**History:** 1973 c. 243.

**979.12 Warrant for person charged.** If any person charged by the inquest with having committed any such offense shall not be in custody the coroner shall issue a warrant for his apprehension, and such warrant shall be made returnable before any other magistrate or court having cognizance of the case, who shall proceed

thereon in the manner that is required of magistrates in like cases.

**979.121 Autopsies.** The coroner may conduct an autopsy or 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 inquest might be had as provided in s. 979.01 notwithstanding that no such inquest is ordered or had.

**979.125 Autopsy for sudden infant death syndrome.** If a child under the age of 2 years dies suddenly and unexpectedly under circumstances indicating that the death may have been caused by sudden infant death syndrome, the coroner or medical examiner shall notify the child's parents or guardian that an autopsy will be performed, at no cost to the parents or guardian, unless the parents or guardian object to the autopsy. The coroner or medical examiner shall conduct or shall order the conducting of an autopsy at county expense, unless parent or guardian requests in writing that an autopsy not be performed. If the autopsy reveals that sudden infant death syndrome is the cause of death, that fact shall be so stated in the autopsy report. The parents or guardian of the child shall be promptly notified of the cause of death and of the availability of counseling services.

**History:** 1977 c. 246.

Only where coroner has no reason to believe death was caused by circumstances under 979.01 other than sudden infant death syndrome does written objection under 979.125 bar autopsy under 979.121. 68 Atty. Gen. 55.

**979.13 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 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 and to the expenses of burial or cremation of such dead body; and the same shall be audited by the county board of the proper county and paid out of the county treasury.

**979.14 Compensation of officers; witness fees.** 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 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 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 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.

**History:** 1975 c. 294; 1977 c. 187 s. 135; 1977 c. 449 s. 497.

**979.15 Inquests.** In each county whose inhabitants exceed in number 500,000 and all counties instituting a medical examiner system all the duties mentioned in ss. 979.01 to 979.14 shall be performed by the medical examiner appointed pursuant to s. 59.34 (1), who is hereby invested with the exclusive jurisdiction and power to take inquests therein, and in case of the inability of the medical examiner to attend to such duties the medical examiner may deputize one of his assistants to conduct the inquest.

**History:** 1973 c. 272; 1981 c. 390.

The medical examiner's duty to take inquests when required by law includes duty to take them when ordered by the district attorney under 979.01. *Mohrhusen v. McCann*, 62 W (2d) 509, 215 NW (2d) 560.

**979.16 Medical examiner, assistants; salaries; fees; report.** Such medical examiner and medical examiner's assistants authorized by the county board shall be paid semimonthly out of the county treasury of the proper county, for the performance of all their official duties and in lieu of all other compensation, salaries to be fixed by the county board. Such medical examiner, and medical examiner's assistants, shall collect for all services which he or they perform (except in cases where such county is solely liable therefor) all such fees as coroners are by law entitled to receive, and shall keep accurate books of account in which shall be entered from day to day, the items of services rendered, the titles of the proceedings in which and the names of the persons for whom rendered, and the fees charged and received, and shall, at the end of every 3 months, render to the county board of such county and to the county treasurer an accurate report or statement verified by his oath, of all fees and income collected by them or for them during such 3 months; and at the same time they shall pay to the treasurer of such county all such fees and incomes of every kind, collected by them, or which they were entitled by law to charge or receive, not theretofore paid to the treasurer.

**979.17 Office and records.** The county board of such county shall provide for the use of the medical examiner suitable offices at the county seat of the county, and the medical examiner shall keep in his office proper books containing records of all inquests by him held,

setting forth the time and place of holding such inquests and the names of the jurors serving thereon, together with a brief statement of the proceedings thereof.

**979.18 Medical examiner's bond.** Before entering upon the duties of his office the medical examiner of such 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 that he will faithfully account for and pay to the treasurer of said county all moneys which may come to his hands belonging to said county, and which by virtue of this chapter he is required to account for and pay as aforesaid.

**979.19 Cremation of corpse regulated.**

(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 the death occurred within the state, the body shall not be received or cremated by any person, firm, copartnership or corporation not authorized by the department of health and social services to cremate the bodies of the dead until its officers have received the certificate of burial permit required by law before burial, and a certificate from the coroner of the county, where said person died, and if such person died without the state, then from the coroner of the county where said 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 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 be permitted. Such disposition shall be consummated within 60 days from time of such 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 the body is to be cremated, to make a careful personal inquiry into the cause and manner of death, and conduct an autopsy or order the conducting of an autopsy, if in their 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 neces-

sary, if so satisfied, otherwise, or in the event of doubt to proceed as otherwise provided by law.

(3) The coroner shall receive a fee of \$10, 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.

(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, or be imprisoned not less than 6 months nor more than one year in the county jail.

(5) All the powers and duties granted to or imposed upon the coroner or his deputy in this section are vested in the medical examiner appointed under s. 59.34 (1), except that said medical examiner shall not be entitled to the fees provided by sub. (3).

*History:* 1971 c. 164 s. 86; 1973 c. 272; 1979 c. 177.

**979.20 Reporting deaths required; penalty; taking specimens by coroner or medical examiner.**

(1) All physicians, authorities of hospitals, sanatoriums, institutions (public and private), convalescent homes, authorities of any institution of a like nature, and other persons having knowledge of the death of any person who has died under any of the following circumstances, shall immediately report such death to the sheriff, police chief, medical examiner or coroner of the county wherein such death took place, and the sheriff or police chief shall, immediately upon notification, notify the coroner or the medical examiner and the coroner or medical examiner of the county where death took place, if the crime, injury or event occurred in another county, shall report such death immediately to the coroner or medical examiner of that county:

(a) All deaths in which there are unexplained, unusual or suspicious circumstances.

(b) All homicides.

(c) All suicides.

(d) All deaths following an abortion.

(e) All deaths due to poisoning, whether homicidal, suicidal or accidental.

(f) All deaths following accidents, whether the injury is or is not the primary cause of death.

(g) When there was no physician, or accredited practitioner of a bona fide religious denomination relying upon prayer or spiritual means for healing in attendance within 30 days preceding death.

(h) When a physician refuses to sign the death certificate.

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(i) When a physician cannot be obtained within 24 hours of death.

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

(3) In all cases of death reportable under sub. (1) where an autopsy is not performed, the coroner or medical examiner may take for analysis any and all specimens, body fluids and any other material which will assist him in determining the cause of death. The specimens, body fluids and other material taken under this subsection shall not be admissible in evidence in any civil action against the deceased or his estate, as the result of any act of the deceased.

(4) No person may embalm or perform an autopsy on the body of any person who has died under any of the circumstances listed in this section unless the person obtains the written authorization of the coroner of the county in

which the injury or cause of death occurred. Such authorization shall be issued by the coroner or a deputy within 12 hours after notification of the reportable death, or as soon thereafter as possible in the event of unexplained, unusual or suspicious circumstances.

**History:** 1973 c. 272; 1975 c. 294, 421; 1979 c. 221.

Admission of a blood sample is not barred where the action is brought by the deceased's estate. *Luedtke v. Shedivy*, 51 W (2d) 110, 186 NW (2d) 220.

Where accident occurs in one county and victim is transported to another county, and death occurs there, coroner where death occurs has duty to immediately report death to coroner of county where crime, injury or event occurred, and coroner of latter county has authority to investigate and duty to hold inquest if he deems it necessary or if directed by district attorney of his county. 62 Atty. Gen. 127.

**979.21 Fees for morgue services.** In counties having a population of 500,000 or more, there shall be a \$2 per day fee for the retention of a body at the morgue after the 3rd day, but such charge shall not apply to indigents.