

CHAPTER 979

INVESTIGATION OF DEATHS

979.01	Reporting deaths required; penalty; taking specimens by coroner or medical examiner.	979.07	Incriminating testimony compelled; immunity
979.015	Subpoena for documents	979.08	Inquests: instructions, burden of proof and verdict
979.02	Autopsies.	979.09	Burial of body
979.03	Autopsy for sudden infant death syndrome	979.10	Cremation.
979.04	Inquests: when called	979.11	Compensation of officers.
979.05	Inquests: procedure	979.12	Fees for morgue services.
979.06	Inquests: witnesses	979.22	Autopsies and toxicological services by medical examiners.

979.01 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.
- (i) When a physician cannot be obtained within 24 hours of death.

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

(2) Any person who violates this section shall be fined not more than \$1,000 or imprisoned not more than 90 days.

(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; 1983 a 279 ss 8, 22

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

979.015 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.

History: 1983 a. 279

979.02 Autopsies. The coroner, medical examiner or district attorney may order the conducting of an autopsy upon the body of a dead person any place within the state in cases where an inquest might be had as provided in s. 979.04 notwithstanding the fact that no such inquest is ordered or 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.

History: 1983 a. 279 s. 12.

979.03 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; 1983 a. 279 s. 13.

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.

979.04 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.]

NOTE: Bracketed words deleted by AA 8 to 83 AB 664.

(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.

History: 1983 a. 279.

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.

ate. 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.

History: 1983 a 279

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.

History: 1983 a 279

INVESTIGATION OF DEATHS 979.10

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.

History: 1983 a 279.

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.

History: 1983 a 279.

979.09 Burial of body. 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 shall certify to all the charges incurred in taking any inquest by him or her and to the expenses of burial or cremation of the dead body. The charges and expenses shall be audited by the county board of the proper county and paid out of the county treasury.

History: 1983 a 279 s. 14.

979.10 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. If the death occurred within the state, the body may only be received or cremated by a person, firm, copartnership or corporation authorized by the department to cremate the bodies of the dead. The body may not be cremated until 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 the person died. If the person died outside the state, the body may not be

cremated until the coroner or medical examiner of the county where the body is to be cremated 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 is necessary. The heirs or next of kin shall agree with the funeral director as to the final disposition of the cremated remains before the burial permit is issued. The method of disposition shall be noted on the death certificate and no change in the disposition of such remains may be permitted. The disposition shall be consummated within 60 days from the time of 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) If the body is to be cremated, 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 conducting of an autopsy, if in his or her or the district attorney's opinion it is necessary to determine the cause and manner of death. 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 \$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 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 certificate specified in sub. (1) shall be fined not more than \$10,000 or imprisoned not more than 9 months or both.

History: 1971 c. 164 s. 86; 1973 c. 272; 1979 c. 177; 1983 a. 146; 1983 a. 279 s. 20.

979.11 Compensation of officers. The sole compensation of the coroner and deputy coroners for 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 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 under s. 59.15 which shall be in lieu of all fees, per diem and compensation for services rendered.

History: 1975 c. 294; 1977 c. 187 s. 135; 1977 c. 449 s. 497; 1983 a. 279 s. 15.

979.12 Fees for morgue services. A county board may establish a fee for the retention of a body at the morgue after the first day, not to exceed an amount reasonably related to the actual and necessary cost of retaining the body. This charge shall not apply to indigents.

History: 1983 a. 146; 1983 a. 279 s. 23.

979.22 Autopsies and toxicological services by medical examiners. A medical examiner may perform autopsies and toxicological services not required under this chapter and may charge a fee established by the county board for such autopsies and services. The fee may not exceed an amount reasonably related to the actual and necessary cost of providing the service.

History: 1983 a. 146.