

## 1999 ASSEMBLY BILL 302

April 22, 1999 – Introduced by Representative WILLIAMS. Referred to Committee on Urban and Local Affairs.

1     **AN ACT** *to renumber* 979.04 (2); *to amend* 758.19 (5) (a) 5., 978.045 (1g), 978.045  
2           (1r) (intro.), 979.04 (1), 979.05 (1), 979.05 (2), 979.05 (6), 979.06 (1), 979.06 (2),  
3           979.07 (1) (a), 979.09 and 979.10 (2); and *to create* 978.045 (1r) (i), 979.04 (1m),  
4           979.04 (2) (b), 979.05 (1m) and 979.05 (1r) of the statutes; **relating to:** inquests  
5           into deaths caused by law enforcement officers.

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### ***Analysis by the Legislative Reference Bureau***

This bill makes changes in the ordering and conducting of inquests into deaths caused by law enforcement officers. Current law governing inquests and the changes made by this bill are as follows:

#### ***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. The district attorney is not required to order an inquest, 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 the circuit court to order an inquest, and

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the court may order an inquest if it finds that the district attorney has abused his or her discretion in not ordering an inquest.

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 court commissioner conducting the inquest may order that proceedings be secret if the district attorney so requests or concurs. 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 of the coroner or medical examiner, the court may subpoena witnesses to appear at the inquest. The court must issue subpoenas for witnesses requested by the district attorney. 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, cross-examine or call 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 obedience to the court's order is not subject to any forfeiture or penalty for or on account of 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, including the law regarding any criminal offense if a reasonable jury might find probable cause to believe the offense had been committed. 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 and, if so, the specific crimes committed and the name of the person or persons, if known, having 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 current law governing inquests in cases where a person has died as the result of an act of a law enforcement officer. Specifically, the bill eliminates the district attorney's discretion to call an inquest in cases where a person has died as the result of an act of a law enforcement officer and instead requires a district attorney to order an inquest whenever the district attorney has notice of the death of a person and there is any evidence that the person's death was caused by an act of a law enforcement officer.

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The bill also provides that 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 persons. In addition, the bill prohibits an inquest into a death caused by an act of a law enforcement officer from being conducted in secret.

In addition, while the district attorney is generally required to represent the state at an inquest into a death caused by an act of a law enforcement officer, the bill allows a court to appoint a special prosecutor if the court determines that, for any reason, the district attorney cannot, or it appears he or she cannot, discharge his or her responsibility to present all relevant evidence or act in an impartial manner in conducting the inquest. The bill also allows certain relatives of the person who died to be represented at the inquest by an attorney. An attorney representing a relative may request the court to subpoena witnesses, including expert witnesses, and upon the attorney's request the court must subpoena the witnesses. The attorney may also examine or cross-examine any witness at the inquest, argue before the court and ask the court to appoint a special prosecutor.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

- 1           **SECTION 1.** 758.19 (5) (a) 5. of the statutes is amended to read:
- 2           758.19 (5) (a) 5. Fees for witnesses or expert witnesses subpoenaed by the court
- 3           at the request of the district attorney, coroner or medical examiner or an attorney for
- 4           a relative of the decedent under s. 979.06 (1) and (2).
- 5           **SECTION 2.** 978.045 (1g) of the statutes is amended to read:
- 6           978.045 (1g) A court on its own motion or on a motion under s. 979.05 (1m) (c)
- 7           may appoint a special prosecutor under sub. (1r) or a district attorney may request
- 8           a court to appoint a special prosecutor under that subsection. Before a court appoints
- 9           a special prosecutor on its own motion, on a motion under s. 979.05 (1m) (c) or at the
- 10          request of a district attorney for an appointment that exceeds 6 hours per case, the
- 11          court or district attorney shall request assistance from a district attorney, deputy
- 12          district attorney or assistant district attorney from other prosecutorial units or an
- 13          assistant attorney general. A district attorney requesting the appointment of a

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1 special prosecutor, or a court if the court is appointing a special prosecutor on its own  
2 motion or on a motion under s. 979.05 (1m) (c), shall notify the department of  
3 administration, on a form provided by that department, of the district attorney's or  
4 the court's inability to obtain assistance from another prosecutorial unit or from an  
5 assistant attorney general.

6 **SECTION 3.** 978.045 (1r) (intro.) of the statutes is amended to read:

7 978.045 (1r) (intro.) Any judge of a court of record, by an order entered in the  
8 record stating the cause therefor, may appoint an attorney as a special prosecutor to  
9 perform, for the time being, for an inquest under s. 979.04 (1m) or for the trial of the  
10 accused person, the duties of the district attorney. An attorney appointed under this  
11 subsection shall have all of the powers of the district attorney. The judge may appoint  
12 an attorney as a special prosecutor at the request of a district attorney to assist the  
13 district attorney in the prosecution of persons charged with a crime, in grand jury  
14 or John Doe proceedings or in investigations. The judge may appoint an attorney as  
15 a special prosecutor if any of the following conditions exists:

16 **SECTION 4.** 978.045 (1r) (i) of the statutes is created to read:

17 978.045 (1r) (i) The district attorney cannot, or it appears that he or she cannot,  
18 discharge his or her responsibilities relating to an inquest required under s. 979.04  
19 (1m) or act in an impartial manner in conducting an inquest required under s. 979.04  
20 (1m).

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

22 979.04 (1) If Except as provided in sub. (1m), if the district attorney has notice  
23 of the death of any person and there is reason to believe from the circumstances  
24 surrounding the death that felony murder, first-degree or 2nd-degree intentional  
25 homicide, first-degree or 2nd-degree reckless homicide, homicide by negligent

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1 handling of dangerous weapon, explosives or fire, homicide by negligent operation  
2 of vehicle, homicide resulting from negligent control of a vicious animal or homicide  
3 by intoxicated user use of a vehicle or firearm may have been committed, or that  
4 death may have been due to suicide or unexplained or suspicious circumstances, the  
5 district attorney may order that an inquest be conducted for the purpose of inquiring  
6 how the person died. ~~The district attorney shall appear in any such inquest~~  
7 ~~representing the state in presenting all evidence which may be relevant or material~~  
8 ~~to the inquiry of the inquest. The inquest may be held in any county in this state in~~  
9 ~~which venue would lie for the trial of any offense charged as the result of or involving~~  
10 ~~the death.~~

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

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

14 979.04 **(1m)** If the district attorney has notice of the death of any person and  
15 there is any evidence that the person's death was caused by an act of a law  
16 enforcement officer, the district attorney shall order that an inquest be conducted for  
17 the purpose of inquiring how the person died.

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

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

20 979.04 **(2)** (b) If the coroner or medical examiner has knowledge of the death  
21 of any person under the circumstances described under sub. (1m), he or she shall  
22 immediately notify the district attorney. The notification shall include information  
23 concerning the circumstances surrounding the death. Upon receiving notification  
24 from a coroner or medical examiner under this paragraph, the district attorney shall  
25 order an inquest under sub. (1m).

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1           **SECTION 9.** 979.05 (1) of the statutes is amended to read:

2           979.05 (1) An inquest shall be conducted by a circuit judge or a court  
3 commissioner. The inquest may be held in any county in this state in which venue  
4 would lie for the trial of any offense charged as the result of or involving the death.

5           **SECTION 10.** 979.05 (1m) of the statutes is created to read:

6           979.05 (1m) (a) Except as provided in par. (b), the district attorney shall appear  
7 in an inquest under s. 979.04 (1) or (1m) and shall represent the state in presenting  
8 all evidence which may be relevant or material to the inquiry of the inquest.

9           (b) A circuit court may appoint a special prosecutor under s. 978.045 to order  
10 or appear and represent the state in an inquest required under s. 979.04 (1m) if the  
11 court determines that, for any reason, the district attorney cannot, or it appears he  
12 or she cannot, discharge his or her responsibilities under par. (a) or act in an  
13 impartial manner in conducting the inquest.

14           (c) An attorney for a relative of a decedent who is authorized to appear under  
15 sub. (1r) may make a motion in the circuit court for appointment of a special  
16 prosecutor under par. (b).

17           **SECTION 11.** 979.05 (1r) of the statutes is created to read:

18           979.05 (1r) (a) In this subsection, “relative” means a spouse, child, stepchild,  
19 parent, grandparent, stepparent, brother, stepbrother, sister or stepsister.

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

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1           **SECTION 12.** 979.05 (2) of the statutes is amended to read:

2           979.05 **(2)** The An inquest under s. 979.04 (1) shall be conducted before a jury  
3 unless the district attorney, coroner or medical examiner requests that the inquest  
4 be conducted before the judge or court commissioner only. An inquest under s. 979.04  
5 (1m) shall be conducted before a jury.

6           **(2m)** If the inquest is to be conducted before a jury, a sufficient number of  
7 names of prospective jurors shall be selected from the prospective juror list for the  
8 county in which the inquest is to be held by the clerk of circuit court in the manner  
9 provided in s. 756.06. The judge or court commissioner conducting the inquest shall  
10 summon the prospective jurors to appear before the judge or court commissioner at  
11 the time fixed in the summons. The summons may be served by mail, or by personal  
12 service if the judge, court commissioner or district attorney determines personal  
13 service to be appropriate. The summons shall be in the form used to summon petit  
14 jurors in the circuit courts of the county. Any person who fails to appear when  
15 summoned as an inquest juror is subject to a forfeiture of not more than \$40. The  
16 inquest jury shall consist of 6 jurors. If 6 jurors do not remain from the number  
17 originally summoned after establishment of qualifications, the judge or court  
18 commissioner conducting the inquest may require the clerk of the circuit court to  
19 select sufficient additional jurors' names. Those persons shall be summoned  
20 forthwith by the sheriff of the county.

21           **SECTION 13.** 979.05 (6) of the statutes is amended to read:

22           979.05 **(6)** The judge or court commissioner conducting ~~the~~ an inquest under  
23 s. 979.04 (1) may order that proceedings be secret if the district attorney so requests  
24 or concurs. Proceedings of an inquest under s. 979.04 (1m) may not be conducted in  
25 secret.

**ASSEMBLY BILL 302****SECTION 14**

1           **SECTION 14.** 979.06 (1) of the statutes is amended to read:

2           979.06 (1) The judge or court commissioner may issue subpoenas for witnesses  
3 at the request of the coroner or medical examiner and shall issue subpoenas for  
4 witnesses requested by the district attorney or an attorney representing a relative  
5 of the decedent under s. 979.05 (1r). Subpoenas are returnable at the time and place  
6 stated therein. Persons who are served with a subpoena may be compelled to attend  
7 proceedings in the manner provided in s. 885.12.

8           **SECTION 15.** 979.06 (2) of the statutes is amended to read:

9           979.06 (2) The judge or court commissioner conducting the inquest, an attorney  
10 representing a relative of the decedent under s. 979.05 (1r) and the district attorney  
11 may require by subpoena the attendance of one or more expert witnesses, including  
12 physicians, surgeons and pathologists, for the purposes of conducting an  
13 examination of the body and all relevant and material scientific and medical tests  
14 connected with the examination and testifying as to the results of the examination  
15 and tests. The expert witnesses so subpoenaed shall receive reasonable fees  
16 determined by the district attorney or attorney representing a relative, whichever  
17 is applicable, and the judge or court commissioner conducting the inquest.

18           **SECTION 16.** 979.07 (1) (a) of the statutes is amended to read:

19           979.07 (1) (a) If a person refuses to testify or to produce books, papers or  
20 documents when required to do so before an inquest for the reason that the testimony  
21 or evidence required of the person may tend to incriminate him or her or subject him  
22 or her to a forfeiture or penalty, the person may be compelled to testify or produce the  
23 evidence by order of the circuit court of the county in which the inquest is convened  
24 on motion of the district attorney or an attorney representing a relative of the  
25 decedent under s. 979.05 (1r). A person who testifies or produces evidence in



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1 obedience to the command of the court in that case is not subject to any forfeiture or  
2 penalty for or on account of testifying or producing evidence, except the person is  
3 subject to prosecution and punishment for perjury or false swearing committed in so  
4 testifying.

5 **SECTION 17.** 979.09 of the statutes is amended to read:

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

15 **SECTION 18.** 979.10 (2) of the statutes is amended to read:

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

