

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2467/P1dn
JEO:jlg:jf

April 2, 1999

Larry:

Please review this draft carefully to make sure that it does what you want it to do. Note the following when reviewing the draft:

1. The draft allows certain relatives to have an attorney present at the inquest proceedings. As drafted, each listed relative could have his or her own attorney, which could result in quite a few attorneys in some cases. Would you prefer to have the draft provide that there should be one attorney representing all of the relatives? Also, do you want to consider allowing the decedent's estate to be represented by an attorney of its own?

2. Under the draft, an attorney for a relative may call and examine witnesses, argue before the court and ask the court to appoint a special prosecutor under the circumstances specified in proposed s. 979.05 (1m) (b). Is that your intent?

3. The draft requires that an inquest concerning a death caused by a police officer be conducted before a jury and prohibits the inquest from being conducted in secret. Note that in certain cases this may result in pretrial publicity (or other problems) that deprive a suspect of his or her right to a fair trial or other due process. See *State ex rel. Schuler v. Roraff*, 39 Wis. 2d 342 (1968).

4. A finding by an inquest jury that a law enforcement officer caused a person's death is *not* a criminal conviction. Nor does such a finding require the district attorney to charge the law enforcement officer with a crime. See s. 979.08 (5), stats.

Requiring a district attorney to file criminal charges would likely be challenged as a violation of the constitution's separation of powers doctrine. This doctrine does two things: 1) it prohibits one branch of government from exercising the powers granted to another branch; and 2) in cases where branches of government share power, it prohibits one branch from unduly burdening or substantially interfering with another branch's essential role and powers.

The power to bring criminal charges is one resting primarily with the executive branch--that is, the district attorney--though the courts have some power to commence criminal prosecutions as well under ss. 968.02 (3) and 968.26, stats. A legislative directive that a prosecutor bring criminal charges may intrude too much on the district attorney's powers, though the fact that the district attorney must act only after an inquest jury has spoken may make such a directive more constitutionally palatable.

Please let me know if you have any questions or changes.

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