

1999 DRAFTING REQUEST**Bill**Received: **03/10/99**Received By: **olsenje**Wanted: **As time permits**

Identical to LRB:

For: **Annette Polly Williams (608) 266-0960**By/Representing: **Larry**This file may be shown to any legislator: **NO**Drafter: **olsenje**

May Contact:

Alt. Drafters:

Subject: **Criminal Law - law enforcement**

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Investigation of deaths caused by law enforcement officer

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	olsenje 04/1/99	ygeller 04/2/99	jfrantze 04/6/99	_____	lrb_docadmin 04/6/99		S&L
/1	olsenje 04/13/99	ygeller 04/14/99	martykr 04/14/99	_____	lrb_docadmin 04/14/99	lrb_docadminS&L 04/14/99	

FE Sent For:

4/22/99

<END>

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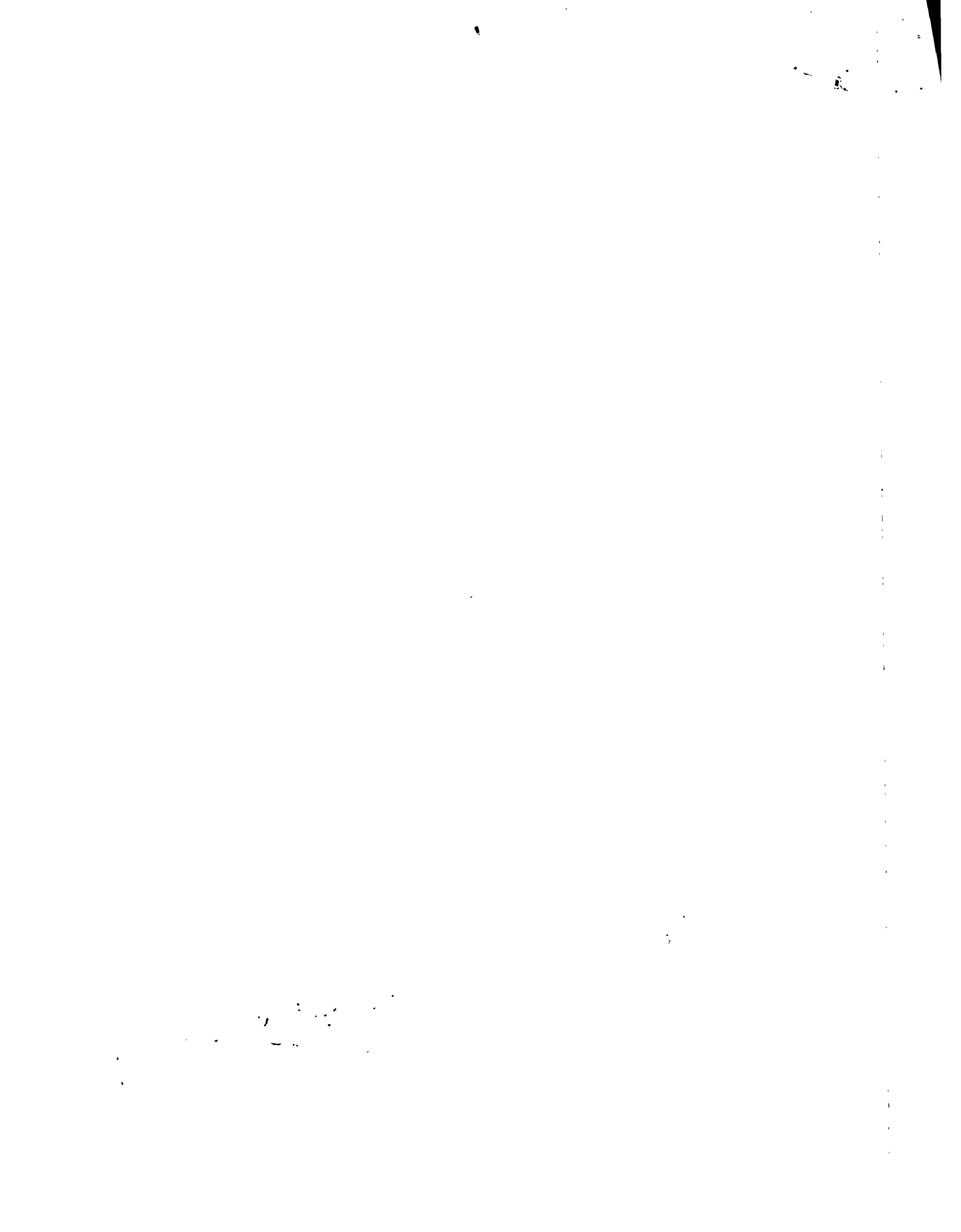
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/P1	olsenje 04/1/99	ygeller 04/2/99	jfrantze 04/6/99	_____	lrb_docadmin 04/6/99		S&L

FE Sent For:

1 4/14 jlg
km 4/14
JA 4/14
 <END>

PA's Jacket "1" for Assm now



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1/?	olsenje	1/1 4/2 jwg	2/4/2	2/6/2 jwg 4/6	<u>7</u>		

FE Sent For:

<END>

Submit "7" draft

JEO

Special procedure for deaths
caused by
l.e. officers.

2467

Require inquest

Require jury

Allow special prosecutor

Check
other
states

∅

Prohibit secrecy

— Amicus (G.A.L. per decedent?
atty/rep of decedent)

Require charging → 979.08 (5)? No; denote

NB: pretrial publicity



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-2467/P1

JEO: A...

By Waas
4/7

D-Note

JLg

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

gen cat

1 AN ACT ...; relating to: inquests into deaths caused by law enforcement officers.

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 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.

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.

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).

History: 1971 c. 254 ss. 1, 2, 4 to 16; Stats. 1971 s. 257.19; 1975 c. 37, 189, 199; 1977 c. 29; 1977 c. 187 ss. 97, 135; 1977 c. 305 s. 64; 1977 c. 449; Stats. 1977 s. 758.19; Sup. Ct. Order, 88 W (2d) xiii (1979); 1981 c. 96; 1983 a. 27; 1985 a. 29, 340; 1989 a. 31; 1991 a. 32, 39; 1993 a. 16, 206, 437, 491; 1995 a. 27, 77, 201, 225, 417; 1997 a. 27, 237.

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
14 special prosecutor, or a court if the court is appointing a special prosecutor on its own
15 motion or on a motion under s. 979.05 (1m) (c), shall notify the department of
16 administration, on a form provided by that department, of the district attorney's or

1 the court's inability to obtain assistance from another prosecutorial unit or from an
2 assistant attorney general.

History: 1989 a. 117; 1991 a. 39, 188; 1993 a. 16; 1995 a. 27; 1997 a. 27.

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

4 978.045 (1r) (intro.) Any judge of a court of record, by an order entered in the
5 record stating the cause therefor, may appoint an attorney as a special prosecutor to
6 perform, for the time being, for an inquest under s. 979.04 (1m) or for the trial of the
7 accused person, the duties of the district attorney. An attorney appointed under this
8 subsection shall have all of the powers of the district attorney. The judge may appoint
9 an attorney as a special prosecutor at the request of a district attorney to assist the
10 district attorney in the prosecution of persons charged with a crime, in grand jury
11 or John Doe proceedings or in investigations. The judge may appoint an attorney as
12 a special prosecutor if any of the following conditions exists:

History: 1989 a. 117; 1991 a. 39, 188; 1993 a. 16; 1995 a. 27; 1997 a. 27.

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

14 978.045 (1r) (i) The district attorney cannot, or it appears that he or she cannot,
15 discharge his or her responsibilities relating to an inquest required under s. 979.04
16 (1m) or act in an impartial manner in conducting an inquest required under s. 979.04
17 (1m).

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

19 979.04 (1) If Except as provided in sub. (1m), if the district attorney has notice
20 of the death of any person and there is reason to believe from the circumstances
21 surrounding the death that felony murder, first-degree or 2nd-degree intentional
22 homicide, first-degree or 2nd-degree reckless homicide, homicide by negligent
23 handling of dangerous weapon, explosives or fire, homicide by negligent operation
24 of vehicle, homicide resulting from negligent control of a vicious animal or homicide

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

9 (4) An inquest may only be ordered by the district attorney under this
10 subsection sub. (1) or (1m) or by the circuit judge under sub. (2)[✓](a).

History: 1983 a. 279; 1985 a. 135; 1987 a. 399.

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

12 979.04 (1m)[✓] If the district attorney has notice of the death of any person and
13 there is any evidence that the person's death was caused by an act of a law
14 enforcement officer, the district attorney shall order that an inquest be conducted for
15 the purpose of inquiring how the person died.

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

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

18 979.04 (2) (b) If the coroner or medical examiner has knowledge of the death
19 of any person under the circumstances described under sub. (1m)[✓], he or she shall
20 immediately notify the district attorney. The notification shall include information
21 concerning the circumstances surrounding the death. Upon receiving notification
22 from a coroner or medical examiner under this[✓] paragraph, the district attorney shall
23 order an inquest under sub.[✓] (1m).

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

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

4 History: 1983 a. 279; Sup. Ct. Order, No. 96-08, 207 W (2d) xv (1997).

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

5 979.05 (1m) (a) Except as provided in par. (b),[✓] the district attorney shall appear
6 in an inquest under s. 979.04 (1) or (1m)[✓] and shall represent the state in presenting
7 all evidence which may be relevant or material to the inquiry of the inquest.

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

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

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

17 979.05 (1r) (a) In this[✓] subsection, “relative” means a spouse, child, stepchild,
18 parent, grandparent, stepparent, brother, stepbrother, sister or stepsister.

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

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.

History: 1983 a. 279; Sup. Ct. Order, No. 96-08, 207 W (2d) xv (1997).

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

1 or concurs. Proceedings of an inquest under s. 979.04 (1m) may not be conducted in
2 secret.

3 History: 1983 a. 279; Sup. Ct. Order, No. 96-08, 207 W (2d) xv (1997).

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

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

10 History: 1983 a. 279.

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

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

20 History: 1983 a. 279.

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

21 979.07 (1) (a) If a person refuses to testify or to produce books, papers or
22 documents when required to do so before an inquest for the reason that the testimony
23 or evidence required of the person may tend to incriminate him or her or subject him
24 or her to a forfeiture or penalty, the person may be compelled to testify or produce the

1 evidence by order of the circuit court of the county in which the inquest is convened
2 on motion of the district attorney or an attorney representing a relative of the
3 decedent under s. 979.05 (1r).[✓] A person who testifies or produces evidence in
4 obedience to the command of the court in that case is not subject to any forfeiture or
5 penalty for or on account of testifying or producing evidence, except the person is
6 subject to prosecution and punishment for perjury or false swearing committed in so
7 testifying.

8 History: 1983 a. 279; 1989 a. 122.

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

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

18 History: 1983 a. 279 s. 14; Stats. 1983 s. 979.09.

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

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

1 attorney the coroner or medical examiner shall obtain the concurrence of the district
 2 attorney before issuing the certification. If the coroner or medical examiner
 3 determines that further examination or judicial inquiry is necessary, he or she shall
 4 notify the district attorney under s. 979.04 (2) (a) or (b), whichever is applicable.

History: 1971 c. 164 s. 86; 1973 c. 272; 1979 c. 177; 1983 a. 146; 1983 a. 279 s. 20; Stats. 1983 s. 979.10; 1985 a. 315.

5 **SECTION 19. Initial applicability.**

6 (1) The treatment of sections 978.045 (1g) and (1r) (intro.) and (i), 979.05 (1m),
 7 (1r), (2) and (6), 979.06 (1) and (2) and 979.07 (1) (a) of the statutes first applies to
 8 inquests ordered under section 979.04 of the statutes, as affected by this act, on the
 9 effective date of this subsection.

10 (END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2467/P1dn

JEO:.....

JLg

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. Schulter 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. 978.08 (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.

Jefren E. Olsen
Legislative Attorney
Phone: (608) 266-8906
E-mail: Jefren.Olsen@legis.state.wi.us

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:

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

Jefren E. Olsen
Legislative Attorney
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E-mail: Jefren.Olsen@legis.state.wi.us



State of Wisconsin
1999 - 2000 LEGISLATURE

5001

LRB-2467/1

JEO:jlj:jf

redraft
malek run

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

Regen

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.

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

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.

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.

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

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

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).

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.

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.

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

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.

