

2001 ASSEMBLY BILL 170

March 6, 2001 – Introduced by Representatives WALKER, WASSERMAN, COGGS, ALBERS, BALOW, BOCK, CARPENTER, COLON, CULLEN, GUNDERSON, KAUFERT, KESTELL, LADWIG, LA FAVE, F. LASEE, J. LEHMAN, M. LEHMAN, MCCORMICK, MILLER, MUSSER, PETTIS, PLALE, POCAN, POWERS, SHERMAN, STONE, TURNER, URBAN and WADE, cosponsored by Senators BURKE, BAUMGART, DARLING, ERPENBACH, GEORGE, ROESSLER, ROSENZWEIG and SCHULTZ. Referred to Committee on Corrections and the Courts.

1 **AN ACT to amend** 758.19 (5) (a) 5., 979.015, 979.02, 979.04 (2), 979.06 (1) and
 2 979.10 (1) (a) 2.; and **to create** 15.07 (1) (b) 23., 15.07 (2) (m), 15.07 (3) (bm) 4.,
 3 15.145 (3), 146.82 (2) (a) 22. and 979.15 of the statutes; **relating to:** creating
 4 a board to investigate and make recommendations regarding inmate deaths.

Analysis by the Legislative Reference Bureau

Under current law, upon the death of an inmate of a state correctional institution, the person in charge of the institution is required to notify the inmate's relative of the death. Currently, the department of corrections (DOC) is also required to provide the relative with written notification that DOC, upon request, will provide the relative with a copy of any autopsy performed on the inmate or a copy of any other report or information regarding the inmate's death.

Under current law, if the district attorney has notice that the death of a person may be the result of homicide (including homicide by negligent handling of a dangerous weapon or resulting from intoxicated use of a motor vehicle) or suicide, or may have occurred under unexplained or suspicious circumstances, the district attorney may order an inquest to determine the cause of the person's death. If a coroner or medical examiner has similar knowledge about a person's death, the coroner or medical examiner is required to notify the district attorney of the circumstances surrounding the death and may request that the district attorney order an inquest. The district attorney may order an inquest based on that information or may request that the coroner or medical examiner conduct a preliminary examination and report back to the district attorney. If the district

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attorney does not order an inquest, under current law the coroner or medical examiner may petition the circuit court to order an inquest.

This bill creates a prison mortality and morbidity board composed of 11 members appointed by the governor and attached to DOC. The prison mortality and morbidity board will have the authority to investigate the death of an inmate in a state correctional institution. Under the bill, within 72 hours after the death of an inmate, DOC must notify the speaker of the assembly, the president of the senate, and each member of the prison mortality and morbidity board of the death, and provide them with all of the information available to DOC regarding the death.

Under the bill, DOC is required to provide any assistance the prison mortality and morbidity board needs to investigate the death, including providing the board with the inmate's prison records, information obtained as the result of any internal investigation of the death, and any medical records of the inmate in DOC's custody. The bill allows the board to review any medical records of the inmate; information related to the death in the custody of a law enforcement agency, district attorney, or attorney general; and information regarding the death obtained by the coroner or medical examiner. The bill allows the board to ask a court to subpoena documents related to the death, to order an autopsy, and to request the district attorney or court to order an inquest into the inmate's death.

The bill requires the prison mortality and morbidity board to issue a report of the board's investigation and submit that report to the district attorney, if appropriate, to a relative of the deceased inmate, to the speaker of the assembly and president of the senate, or their designees, and to the secretary of DOC. The bill authorizes the board to make recommendations to DOC regarding medical and other prison procedures, and to make recommendations regarding possible disciplinary action against DOC staff. If the board determines during its investigation of an inmate's death that a medical provider failed to provide proper and necessary medical care, the board is required under the bill to prepare and forward a complaint to the appropriate credentialing board.

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

1 **SECTION 1.** 15.07 (1) (b) 23. of the statutes is created to read:

2 15.07 **(1)** (b) 23. Members of the prison mortality and morbidity board shall be
3 appointed as provided in s. 15.145 (3).

4 **SECTION 2.** 15.07 (2) (m) of the statutes is created to read:

5 15.07 **(2)** (m) One cochairperson of the prison mortality and morbidity board
6 shall be a member appointed under s. 15.145 (3) from the list submitted by the

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1 Medical College of Wisconsin, and the other cochairperson shall be a member
2 appointed under s. 15.145 (3) from the list submitted by the University of
3 Wisconsin–Madison Medical School.

4 **SECTION 3.** 15.07 (3) (bm) 4. of the statutes is created to read:

5 15.07 (3) (bm) 4. The prison mortality and morbidity board shall meet at least
6 4 times each year and may meet at other times on the call of either cochairperson or
7 a majority of the board's members.

8 **SECTION 4.** 15.145 (3) of the statutes is created to read:

9 15.145 (3) PRISON MORTALITY AND MORBIDITY BOARD. There is created in the
10 department of corrections a prison mortality and morbidity board consisting of 11
11 members appointed for 2–year terms. Four of the members shall be appointed by the
12 governor from a list of candidates submitted by the Medical College of Wisconsin.
13 Four of the members shall be appointed by the governor from a list of candidates
14 submitted by the University of Wisconsin–Madison Medical School. Three of the
15 members, one of whom shall be a nurse employed by the department of corrections,
16 shall be appointed by the governor from a list of candidates submitted by the
17 secretary of the department of corrections. At least one member of the board must
18 be a physician who is certified and licensed as a forensics pathologist by the
19 American Board of Pathology.

20 **SECTION 5.** 146.82 (2) (a) 22. of the statutes is created to read:

21 146.82 (2) (a) 22. To the prison mortality and morbidity board to enable that
22 board to investigate the death of an inmate under s. 979.15.

23 **SECTION 6.** 758.19 (5) (a) 5. of the statutes is amended to read:

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1 758.19 (5) (a) 5. Fees for witnesses or expert witnesses subpoenaed by the court
2 at the request of the district attorney, coroner, prison mortality and morbidity board,
3 or medical examiner under s. 979.06 (1) and (2).

4 **SECTION 7.** 979.015 of the statutes is amended to read:

5 **979.015 Subpoena for documents.** Upon the request of the coroner, medical
6 examiner, prison mortality and morbidity board, or district attorney, a court shall
7 issue a subpoena requiring the production of documents necessary for the
8 determination of a decedent's cause of death. The documents may include the
9 decedent's patient health care records and treatment records, as defined in ss. 51.30
10 and 146.81 (4). The documents shall be returnable to the officer named in the
11 subpoena.

12 **SECTION 8.** 979.02 of the statutes is amended to read:

13 **979.02 Autopsies.** The coroner, medical examiner, prison mortality and
14 morbidity board, or district attorney may order the conducting of an autopsy upon
15 the body of a dead person any place within the state in cases where an inquest might
16 be had as provided in s. 979.04 notwithstanding the fact that no such inquest is
17 ordered or conducted. The autopsy shall be conducted by a licensed physician who
18 has specialized training in pathology. The district attorney may move the circuit
19 court for the county in which the body is buried for an order disinterring the body for
20 purposes of autopsy. The order shall be granted by the circuit court upon a
21 reasonable showing that any of the criteria specified in s. 979.04 exists. This section
22 does not prevent additional autopsies or examinations of the body if there are
23 unanswered pathological questions concerning the death and the causes of death.

24 **SECTION 9.** 979.04 (2) of the statutes is amended to read:

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1 979.04 (2) If the coroner or medical examiner has knowledge of the death of any
2 person in the manner described under sub. (1), he or she shall immediately notify the
3 district attorney. If the prison mortality and morbidity board has knowledge of the
4 death of any person in the manner described under sub. (1), the board shall
5 immediately notify the district attorney. The notification shall include information
6 concerning the circumstances surrounding the death. The coroner, prison mortality
7 and morbidity board, or medical examiner may request the district attorney to order
8 an inquest under sub. (1). If the district attorney refuses to order the inquest, a
9 coroner, the prison mortality and morbidity board, or a medical examiner may
10 petition the circuit court to order an inquest. The court may issue the order if it finds
11 that the district attorney has abused his or her discretion in not ordering an inquest.

12 **SECTION 10.** 979.06 (1) of the statutes is amended to read:

13 979.06 (1) The judge or court commissioner may issue subpoenas for witnesses
14 at the request of the coroner, prison mortality and morbidity board, or medical
15 examiner and shall issue subpoenas for witnesses requested by the district attorney.
16 Subpoenas are returnable at the time and place stated therein. Persons who are
17 served with a subpoena may be compelled to attend proceedings in the manner
18 provided in s. 885.12.

19 **SECTION 11.** 979.10 (1) (a) 2. of the statutes is amended to read:

20 979.10 (1) (a) 2. The coroner or medical examiner in the county where the event
21 which caused the death occurred if the death occurred in this state and if the death
22 is the subject of an investigation under s. 979.01 or 979.15; or

23 **SECTION 12.** 979.15 of the statutes is created to read:

24 **979.15 Investigation of a prison inmate's death. (1)** The prison mortality
25 and morbidity board shall investigate the death of every individual who dies while

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1 he or she is an inmate in a state correctional institution, as defined in s. 301.01 (4).
2 To facilitate the investigation, the board shall have access to all medical and prison
3 records related to the deceased inmate.

4 (2) Within 72 hours after the death of an inmate in a state correctional
5 institution, the secretary of the department of corrections shall notify the speaker of
6 the assembly and the president of the senate, or their designees, and every member
7 of the prison mortality and morbidity board, of the death. The secretary shall provide
8 the speaker and president, or their designees, and the board members with all of the
9 information available to the department regarding the inmate's death, including the
10 date, time, location, and cause of death. The secretary shall provide the board with
11 the inmate's prison records, information obtained as the result of any internal
12 investigation of the death, and any medical records of the inmate that are in the
13 custody of the department. The department shall cooperate with the board and
14 provide any assistance the board requests while investigating the death of the
15 inmate. The board, while performing its duties, may review medical records of the
16 inmate in the custody of any medical provider; information related to the death in
17 the custody of a law enforcement agency, district attorney, or the attorney general;
18 information regarding the death of the inmate obtained by the coroner or medical
19 examiner; and any information collected as the result of an autopsy ordered under
20 s. 979.02 or an inquest ordered under s. 979.04. The board may interview
21 department and law enforcement staff and subpoena witnesses and documents as
22 part of its investigation.

23 (3) The prison mortality and morbidity board shall prepare a report of the
24 board's investigation of an inmate's death and submit that report to all of the
25 following:

