

2007 DRAFTING REQUEST

Bill

Received: 05/21/2007

Received By: rryan

Wanted: As time permits

Identical to LRB:

For: Amy Sue Vruwink (608) 266-8366

By/Representing: George Gillis

This file may be shown to any legislator: NO

Drafter: rryan

May Contact:

Addl. Drafters:

Subject: Criminal Law - miscellaneous

Extra Copies:

Submit via email: YES

Requester's email: Rep.Vruwink@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Investigation of deaths

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>
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/P1	rryan 08/01/2007	bkraft 08/27/2007	pgreensl 08/27/2007	_____	lparisi 08/27/2007		S&L
	rryan 10/18/2007	bkraft 10/23/2007		_____			
	rryan 10/23/2007			_____			
/1	rryan 11/27/2007	bkraft 10/29/2007	pgreensl 10/30/2007	_____	sbasford 10/30/2007		S&L

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FE Sent For: 12/06/2007, 12/06/2007, 12/06/2007, 12/06/2007, 12/06/2007.

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→ 12-06-2007
("12")

requested
by George Gillis

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	rryan 10/23/2007			_____			
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/?	rryan	1/PI bjk 8/21					

Handwritten notes and signatures: 8/21, 8/21, 8/21, MN

FE Sent For:

<END>

Ryan, Robin

From: Gillis, George
Sent: Monday, May 21, 2007 9:51 AM
To: Ryan, Robin
Subject: Drafting Request

Attachments: Cornor and Medical Examiner Legislation.pdf

Robin,

Since you drafted the previous coroner legislation, Rep. Vruwink would like to draft some changes to Statutes 979- Which is in relation to Investigation of Deaths.

Attached is a bill that was drafted last session that I'd like to model this version off of.

However, I do not know how to handle 979.26 and 979.27. So perhaps leave them off of this first P Draft.



Cornor and Medical
Examiner Le...

← *not a leg. council bill*

Thank you very much for your help.

George J. Gillis Jr.
Office of Representative Amy Sue Vruwink
State Capitol
Room 112 North
608-266-8366
Toll Free 888 534 0070

CHAPTER 979

INVESTIGATION OF DEATHS

979.001 Definitions

979.01 Reporting deaths required; notification of coroner or medical examiner; jurisdiction for investigating deaths

~~Reporting deaths required; penalty; taking specimens by coroner or medical examiner.~~

979.012 Reporting deaths of public health concern.

979.015 Access to patient records; Subpoena for documents.

979.02 Authorization for removing a body from a death scene; obtaining specimens and other evidence from the body; authorization to perform an autopsy; authorization to embalm a body. Autopsies.

979.025 Autopsy of correctional inmate.

979.03 Grief counseling referral for certain child deaths Autopsy for sudden infant death syndrome.

979.04 Inquests: when called.

979.05 Inquests: procedure.

979.06 Inquests: witnesses.

979.07 Incriminating testimony compelled; immunity.

979.08 Inquests: instructions, burden of proof and verdict.

979.09 ~~Burial~~ Disposition of an unidentified or unclaimed body of body.

979.10 Cremation.

979.11 Compensation of officers.

979.12 Fees for morgue services.

979.20 Coroner or medical examiner investigation records

979.21 Confidentiality of coroner or medical examiner investigation records and information

979.22 Autopsies and toxicological services by coroner or medical examiners.

979.23 Handling of Personal Property

979.24 Disinterment Permits

979.25 Penalties

979.001 Definitions. In this chapter:

- (1) "Deceased's representative" or "representative of a deceased" means the deceased's next of kin or other authorized person in priority class order as listed in s. 69.18 (4) 1-6.
 - (2) "Event" includes a sudden, unexplained collapse.
 - (3) "Health care provider" means any of the following:
 - (a) A nurse licensed under ch. 441.
 - (b) a chiropractor licensed under ch. 446.
 - (c) A dentist licensed under ch. 447.
 - (d) A physician, physician assistant, or respiratory care practitioner licensed or certified under subch. II of ch. 448.
 - (e) A physical therapist licensed under subch. III of ch. 448.
 - (f) A podiatrist licensed under subch. IV of ch. 448.
 - (g) A dietician certified under subch. V of ch. 448.
 - (h) An athletic trainer licensed under subch. VI of ch. 448.
 - (i) An occupational therapist or occupational therapy assistant licensed under subch. VII of ch. 448.
 - (j) An optometrist licensed under ch. 449.
 - (k) A pharmacist licensed under ch. 450.
 - (L) an acupuncturist certified under ch 451.
 - (m) A psychologist licensed under ch. 455.
 - (n) A social worker, marriage and family therapist, or professional counselor certified under ch. 457.
 - (o) A speech-language pathologist or audiologist licensed under subch. II of ch. 459 or a speech and language pathologist licensed by the department of public instruction.
 - (p) A massage therapist or bodyworker issued a license of registration under subch. XI of ch. 440.
- NOTE: Some of these categories may be lumped together.
- (4) "Hospice agency" has the meaning given in s. 50.90.
 - (5) "Inpatient health care facility" has the meaning given in s. 50.135 (1).
 - (6) "Law enforcement agency" has the meaning given in s. 165.83 (10 (b)).

(7) "Long-term care facility" has the meaning given in s. 16.009 (1) (em).

(8) Therapeutic misadventure" means an unintended medical error made by a health care provider or an unexpected mechanical failure of a medical device during the treatment of a patient that causes serious harm to that patient. It includes but is not limited to unintentional administration of wrong medication or wrong dosage of medication, unexpected mechanical failure of devices such as ventilators and cardiac implants, avoidable surgical errors, and incorrect placement of medical devices.

979.01 Reporting deaths required; ~~notification of ; penalty; taking specimens by coroner or medical examiner; jurisdiction~~ for investigating deaths. (1) ~~All physicians, authorities of hospitals, sanatoriums, public and private institutions, convalescent homes, authorities of any institution of a like nature, and other persons having~~ Any health care provider, health care worker, director of an inpatient health care facility, a director of along-term care facility, director of a hospice, director of emergency medical services, director of a correctional facility, or any other person who has knowledge of the death of any person who has died under any of the following circumstances listed in 3 (a) – (q), shall immediately report the death to the sheriff, police chief a law enforcement officer, or the medical examiner or coroner coroner or medical examiner of in the county where the death took place person was pronounced dead or where the person's body was found or located: If a law enforcement officer is notified of a death under this section, the law enforcement officer shall immediately notify the coroner or medical examiner in the county in which the body was found or located.

(2) If there is reason to believe that the crime, injury, or other event that caused the person's death occurred in a Wisconsin county in the state other than the county in which the body was found or located, the coroner or medical examiner in the county in which the body was found or located shall immediately notify the coroner or medical examiner in the county in which the crime, injury, or other event is believed to have taken place. The coroner or medical examiner in the Wisconsin county in which the crime, injury, or other event occurred shall investigate the cause and manner of death. If the crime, injury or other event that caused the person's death is believed to have occurred outside the state or, if after reasonable efforts, the place where the crime, injury or other event that caused the person's death cannot be

Who must report to whom

Law enforcement to coroner

Coroner's duty to investigate

determined, the coroner or medical examiner in the county where death was pronounced shall investigate the cause and manner of death.

Deaths that must be reported

(3) The following types of deaths are reportable to the coroner or medical examiner:

(a) All deaths ~~Any death~~ in which there are unexplained, unusual or suspicious circumstances.

(b) Any ~~All~~ suspected homicides, including a death resulting from an act of bioterrorism.

(c) Any ~~All~~ suspected suicides.

(d) Any ~~All~~ deaths of a woman that is associated with ~~following~~ an abortion as defined in s. 253.10 (2) (a).

(e) All deaths due to poisoning, whether homicidal, suicidal or accidental.

(f) Any ~~All~~ deaths in which an injury or poisoning may have contributed to the cause of death, whether or not the injury or poisoning is the primary cause of death and regardless of the interval between the injury or poisoning and the date of death.

(g) following accidents, whether the injury is or is not the primary cause of death, any death of a person in the actual constructive custody of a law enforcement officer, while being actively pursued by a law enforcement officer, or any other death in which a law enforcement officer is involved.

(h) Any death of a person who was not under the care of a physician for the illness or condition that caused the death ~~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.~~

938.02 (15p)

(i) Any death of a person confined in a federal prison located in the state, a state prison, a county jail or house of correction, a secured correctional facility as defined in s. 938.02 (15m), or a secure detention facility as defined in s. 938.02 (16), or otherwise incarcerated while in the custody of the department of corrections or a county sheriff

(j) Any death of a person detained or committed and institutionalized under s. 51.20, s. 971.17 or ch 980. ~~When a physician refuses to sign the death certificate.~~

(k) When, after reasonable efforts, a physician cannot be obtained to sign the medical certification as required under s. 69.18 (2) (b) or (c) within 6 days after the pronouncement of death or death, or sooner under circumstances which the coroner or medical examiner determines to be an emergency, or if all potential physician certifiers listed under s. 69.18 (2) (b) or (c) refuse to sign the death certificate.

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(k) Any death occurring in the emergency room of a health care facility, in an out-patient area of a health care facility, or occurring within 24 hours of admittance to a health care facility.

(L) Any death suspected to be associated with a therapeutic misadventure that occurred during a diagnostic, anesthetic, or therapeutic procedure or administration of drugs.

(m) Any death suspected to be associated with the abuse of a chemical substance that may be legally used, or with the use of a controlled substance as defined in s. 961.01 (4).

(n) Any death associated with an epidemic or pandemic or with the spread of a dangerous communicable disease as defined by the department of health and family services or associated with a disease-causing agent that may pose a threat to public health.

(o) Any suspected fetal homicide as defined under ss. 940.01 (1) (b), 940.02 (1m), or 940.05 (2g).

(p) All cases in which human remains are discovered outside of a cemetery or documented burial plot. If the remains are determined to have no current forensic significance, the coroner or medical examiner shall immediately notify the director of the director of the historical society under s. 157.70 (3). } more

(q) Any other death that is reportable to the coroner or medical examiner as defined in the county coroner or medical examiner written death reporting protocol.

(4)(4m) The coroner or medical examiner investigating the death receiving notification under sub. (1) or (1g) shall immediately notify the district attorney shall, within a reasonable time after receiving such notification, notify the district attorney in his or her county or the attorney general of the death.

(5) A coroner or medical examiner who is notified of a death under sub. (1) shall notify the deceased's representative of the death.

-History: 1973 c. 272; 1975 c. 294, 421; 1979 c. 221; 1983 a. 279 ss. 8, 22; Stats. 1983 s. 979.01; 1985 a. 315, 316; 1989 a. 121; 1993 a. 486; 1999 a. 85; 2001 a. 38.

Cross Reference: See also s. HFS 135.09, Wis. adm. code. Admission of a blood sample is not barred by sub. (3) when the action is brought by the deceased's estate. Luedtke v. Shedivy, 51 Wis. 2d 110, 186 N.W.2d 220 (1971).

If an accident occurs in one county and the victim is transported to another county, and death occurs there, the coroner where the death occurs has a duty to immediately report the death to the coroner of county where the crime, injury, or event occurred, and the coroner of the latter county has authority to investigate and a duty to hold an inquest if he or she considers it necessary or if directed by the district attorney of his or her county. 62 Atty. Gen. 127.

979.012 Reporting deaths of public health concern. (1) If a coroner or medical examiner is aware of the death of a person who, at the time of his or her death, had an illness or a health condition that satisfies s. 166.02 (7) (a), the coroner

or medical examiner shall report the illness or health condition to the department of health and family services and to the local health department, as defined in s. 250.01 (4), in whose jurisdiction the coroner or medical examiner is located in writing or by electronic transmission within 24 hours of learning of the deceased's illness or health condition.

(2) In a report under sub. (1), the coroner or medical examiner shall include all of the following information if such information is available:

_____ (a) The illness or health condition of the deceased.

_____ (b) The name, date of birth, gender, race, occupation, and home and work addresses of the deceased.

_____ (c) The name and address of the coroner or medical examiner.

_____ (d) If the illness or health condition was related to an animal or insect bite, the suspected location where the bite occurred and the name and address of the owner of the animal or insect, if an owner is identified.

History: 2001 a. 109.

s. 146.50 (12) (a) provides that emergency treatment & transport records are substant h. care records for purposes of 146.82

979.015 Access to patient records; subpoena for documents (1) Under ss. 146.82 (2) ^(a) 18, 51.30 (4) (b) 27, upon a written or verbal request from a coroner or medical examiner or a deputy coroner or deputy or assistant medical examiner, a health care provider must provide copies of health care records for a decedent if the records are relevant to the determination of cause and manner of death under s. 979.01. The documents may include, but are not limited to, the decedent's patient health care records and treatment records, as defined in ss. 51.30 and 146.81 (4), emergency medical treatment and transport records, and prescription records.

~~(2) Subpoena for documents.~~ If a health care provider refuses to provide medical records under s. 979.015 (1) or if the coroner or medical examiner has knowledge of the existence of other documents or evidence necessary to determine cause and manner of death, in the custody of a firm or agency or an individual not covered under s. 146.82 (2) 18 or 51.30 (4) (b) 27, the coroner or medical examiner may petition a court to issue a subpoena to the appropriate party, requiring the production of the documents in question. Upon the request of the coroner, medical examiner, or district attorney, or attorney general, a court shall issue a subpoena requiring the production of documents relevant to necessary for the determination of a decedent's cause and manner of death. The documents may include, but are not limited to, the decedent's patient health care records and treatment records, as defined in ss. 51.30 and 146.81 (4).

emergency medical treatment and transport records, and prescription records. The documents shall be returnable to the officer named in the subpoena.

History: 1983 a. 279.

979.02 Custody of the decedent's body; authorization for removing a body from a death scene; obtaining specimens and other evidence from the body; authorization to perform an autopsy; authorization to embalm a body.

See to make custody

(1) The coroner or medical examiner investigating a death under s. 979.01 has legal custody of the body until and unless he or she releases the body for disposition. In the case of a death being investigated under s. 979.01 involving an anatomical gift under chap. 157, temporary transfer of the body for donation purposes does not constitute release of legal custody of the body.

(2) No person may remove a body from the scene of death that was reportable under s. 979.01 without the verbal or written authorization of the coroner or medical examiner who was first notified of the death under s. 979.01 except as required in the performance of search and rescue operations for living persons.

(3) The coroner or medical examiner investigating a death under s.979.01 may order any appropriate diagnostic procedures to be conducted and may order an autopsy to be conducted upon the body of the deceased. A licensed physician who has specialized training in pathology shall conduct the autopsy.

fit here?

(4) The coroner or medical examiner shall order an autopsy to be conducted by a pathologist with advanced forensic training and order any other appropriate diagnostic procedures for deaths occurring under the following circumstances

(a) any death that likely resulted from a criminal act unless the district attorney or attorney general waives the requirement.

home cont law ent corrections committed in inst fetal homicides

(b) any death reportable under s. 979.01 (3) (b), (f), (h), (i) or (o).

Note: these cases are suspected homicides, suspected fetal homicides, deaths in corrections, mental institutions or involving law enforcement

(c) any death of a child under 18 years of age that is unexplained or unusual.

(4a) Requirements for autopsy specified in section (4) do not preclude the ability of the coroner or medical examiner to allow anatomical gifts under chap. 157.

(5) If the coroner or medical examiner does not order an autopsy but the district attorney with jurisdiction under s. 979.01 or the attorney general determines that an autopsy is necessary to establish evidence for an inquest or for a

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potential criminal case, the district attorney or the attorney general may direct the coroner or medical examiner to order an autopsy and/or other appropriate diagnostic procedures.

(6) In any case of a death that must be reported under s. 979.01, for which an autopsy is not performed, the coroner or medical examiner may extract for analysis any specimens, body fluids, other bodily material and any other material which will assist him or her in conducting the death investigation. If the specimens and fluids are no longer of use in the investigation, the coroner or medical examiner will dispose of the material according to standard biological material disposal practices and county evidence retention rules. When deemed beneficial for the advancement of medical knowledge and progress, such materials may be retained and released to a scientific institution upon consent of the decedent's representative.

(7) No person may perform an autopsy on a body of a person whose death was reportable under s. 979.01 without the written authorization of the coroner or medical examiner with jurisdiction to investigate the death under s. 979.01. The autopsy authorization shall be on a form prescribed by the coroner or medical examiner investigating the death under s. 979.01. If possible, the coroner or medical examiner shall issue the authorization for autopsy within 12 hours after being notified of the death or as soon after as possible. If the coroner or medical examiner cannot issue the authorization for autopsy within 12 hours of being notified of the death, the coroner or medical examiner shall indicate the reason for the delay on the autopsy authorization form.

(8) In the case of a death that was reportable under s. 979.01, if the coroner or medical examiner determines that the death investigation does not require the performance of an autopsy and/or the analysis of specimens, the coroner or medical examiner shall, upon the request of the decedent's representative, inform that person of his or her right to privately contract for pathology-related services at his or her own expense.

(9) No person may embalm or dispose of a body of a person whose death was reportable under s. 979.01 without the written consent of the coroner or medical examiner investigating the death under s. 979.01. The format of the release to embalm shall meet the minimum standards specified in administrative rule HFS 135. . . If possible, the coroner or medical examiner shall issue the release to embalm within 12 hours after being notified of the death or as soon after as possible. If the coroner or medical examiner cannot issue the release to embalm within 12 hours of being notified of the death, the coroner or medical examiner shall indicate the reason for the delay on the release to embalm form.

DRAFT 1/8/06

~~(10) 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 or attorney general may move the circuit court for the county in which the body is buried for an order disinterring the body for purposes of autopsy or other appropriate diagnostic procedures. The order shall be granted by the circuit court upon a reasonable showing that any of the criteria specified in s. 979.04 exists. A copy of the order shall be sent to the county coroner or medical examiner in the county in which the body is buried. 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; Stats. 1983 s. 979.02.

*redundant to
979.02 (4)(b)
this draft in*

979.025 Autopsy of correctional inmate. (1) INMATE CONFINED TO AN INSTITUTION IN THIS STATE. If an individual dies while he or she is in the legal custody of the department of corrections and confined to a correctional facility located in this state, the coroner or medical examiner investigating the death under s. 979.01 shall order of the county where the death occurred shall perform an autopsy and any other appropriate diagnostic procedure on the deceased individual. If the coroner or medical examiner who ~~performs~~ orders the autopsy determines that the individual's death may have been the result of any of the situations that would permit the district attorney or attorney general to order an inquest under s. 979.04 (1), the coroner or medical examiner shall follow the procedures under s. 979.04 (2).

keep where?

(2) INMATE CONFINED IN AN INSTITUTION IN ANOTHER STATE. If an individual dies while he or she is in the legal custody of the department of corrections and confined to a correctional facility in another state under a contract under s. 301.07, 301.21, or 302.25, the department of corrections shall have an autopsy performed by an appropriate authority in the other state or, if the body is returned to the state, by order of the coroner or medical examiner of the county in which the circuit court is located that sentenced the individual to the custody of the department. If the coroner or medical examiner who ~~performs~~ orders the autopsy in this state determines that the individual's death may have been the

result of any of the situations that would permit the district attorney to order an inquest under s. 979.04 (1), the coroner or medical examiner shall forward the results of the autopsy to the appropriate authority in the other state.

(3) COSTS OF AN AUTOPSY AND DIAGNOSTIC PROCEDURES. The costs of an autopsy and diagnostic procedures performed under sub. (1) or (2) shall be paid by the department.

History: 2001 a. 16.

979.03 Autopsy for sudden infant death syndrome Grief counseling referral for certain child deaths. (1) if a coroner or medical examiner is notified of the death of a child under 2 years of age and there is no indication that the child's death was caused by a criminal act, the coroner or medical examiner shall notify a grief counselor who receives public funding to provide grief counseling for child deaths, and shall notify the child's parent(s) that grief counseling is available.

(2) If the coroner or medical examiner suspects that the death of a child under 2 years of age may have been the result of a criminal act, the coroner or medical examiner may not notify a grief counselor of the child's death or refer the child's parent for grief counseling unless the law enforcement agency and the district attorney or attorney general investigating the case consent to the notification and referral. 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; Stats. 1983 s. 979.03.

979.04 Inquests: when called. (1) If the district attorney or attorney general has notice of the death of any person and there is reason to believe from the circumstances surrounding the death that felony murder, first-degree or 2nd-degree intentional homicide, first-degree or 2nd-degree reckless homicide, homicide by negligent handling of dangerous weapon, explosives or fire, homicide by negligent operation of vehicle, homicide resulting from negligent control of a vicious animal 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 or attorney general may order that an inquest be conducted for the purpose of inquiring how the person died. The district attorney or attorney general who ordered the inquest 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 or attorney general under this subsection or by the circuit judge under sub. (2).

(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 or attorney general. The notification shall include information concerning the circumstances surrounding the death. The coroner or medical examiner may request the district attorney or attorney general to order an inquest under sub. (1). If the district attorney refuses and the attorney general 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 and the attorney general have abused their his or her discretion in not ordering an inquest.

(3) Subsequent to receipt of notice of the death, the district attorney or attorney general may request the coroner or medical examiner to conduct a preliminary investigation and report back to the district attorney or attorney general. The district attorney or attorney general 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; 1985 a. 135; 1987 a. 399.

979.05 Inquests: procedure. (1) An inquest shall be conducted by a circuit judge or a circuit court commissioner.

__ (2) The inquest shall be conducted before a jury unless the district attorney, attorney general, coroner, or medical examiner requests that the inquest be conducted before the judge or circuit court commissioner only. If the inquest is to be conducted before a jury, a sufficient number of names of prospective jurors shall be selected from the prospective juror list for the county in which the inquest is to be held by the clerk of circuit court in the manner provided in s. 756.06. The judge or circuit court commissioner conducting the inquest shall summon the prospective jurors to appear before the judge or circuit court commissioner at the time fixed in the summons. The summons may be served by mail, or by personal service if the judge, circuit court commissioner, ~~or~~ district attorney, or attorney general determines personal service to be appropriate. 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 circuit court commissioner conducting the inquest may require the clerk of the circuit court to select sufficient additional jurors' names. Those persons shall be summoned forthwith by the sheriff of the county.

__ (3) The judge or circuit court commissioner shall examine on oath or affirmation each person who is called as a juror to discover whether the juror is related by blood, marriage or adoption to the decedent, any member of the decedent's family, the district attorney, any other attorney appearing in the case or any members of the office of the district attorney, of the office of the attorney general, or of the office of any other attorney appearing in the case, has expressed or formed any opinion regarding the matters being inquired into in the inquest or is aware of or has any bias or prejudice concerning the matters being inquired into in the inquest. If any prospective juror is found to be not indifferent or is found to have formed an opinion ~~which that~~ cannot be laid aside, that juror shall be excused. The judge or circuit commissioner may select one or more alternate jurors if the inquest is likely to be protracted. This subsection does not limit the right of the district attorney or attorney general to supplement the judge's or circuit commissioner's examination of any prospective jurors as to qualifications.

__ (4) When 6 jurors have been selected, the judge or circuit court commissioner shall administer to them an oath or affirmation ~~which that~~ 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) (circuit court commissioner).

__ (5) Prior to the submission of evidence to the jury, the judge or circuit 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 or attorney general 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 circuit court commissioner deem appropriate. Section 972.12 applies to the conduct of the inquest jury.

__ (6) The judge or circuit court commissioner conducting the inquest may order that proceedings be secret if the district attorney or attorney general so requests or concurs.

__ (7) Inquest jurors shall receive the same compensation as jurors under s. 756.25.

History: 1983 a. 279; Sup. Ct. Order No. 96-08, 207 Wis. 2d xv (1997); 1999 a. 162; 2001 a. 61.

979.06 Inquests: witnesses. (1) The judge or circuit 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 or attorney general. 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 circuit court commissioner conducting the inquest and the district attorney or attorney general 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 or attorney general and the judge or circuit 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 circuit court commissioner holding the inquest.

__ (4) The judge or circuit 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 circuit 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; 2001 a. 61.

979.07 Incriminating testimony compelled; immunity. (1) (a) 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 or attorney general. 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 testifying or producing evidence, except the person is subject to prosecution and punishment for perjury or false swearing committed in so testifying. (b) The immunity provided under par. (a) is subject to the restrictions under s. 972.085.

__ (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; 1989 a. 122.

979.08 Inquests: instructions, burden of proof and verdict. (1) When the evidence is concluded and the testimony closed, the judge or circuit 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 or attorney general shall prepare a written set of appropriate requested instructions and shall submit them to the judge or circuit court commissioner who, together with the district attorney or attorney general, shall compile the final set of instructions which shall be given. The instructions shall include those criminal offenses for which the judge or circuit 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 circuit 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 or attorney general.

__ (6) Any verdict so rendered, after being validated and signed by the judge or circuit court commissioner, together with the record of the inquest, shall be delivered to the district attorney or attorney general for consideration. After considering the verdict and record, the district attorney or attorney general 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 circuit court commissioner conducting the inquest upon petition by the district attorney or attorney general.

History: 1983 a. 279; 2001 a. 61.

979.09 ~~Burial of body~~Disposition of an unidentified or unclaimed body. (1) If a health care facility has made reasonable effort to locate the representative of a decedent at their facility or if a representative of a decedent refuses to claim a body for disposition, the facility shall notify the coroner or medical examiner in the county in which the health care facility is located and that coroner or medical examiner will take custody of the body.

(2) If a coroner or medical examiner has custody of an unidentified or unclaimed body of an individual whose death was investigated under s. 979.01 or was referred to the coroner or medical examiner under s. 979.09 (1), and the coroner or medical examiner has made reasonable efforts to identify the body and/or locate the deceased's representative any judge or circuit court commissioner conducts an inquest as to the death of a stranger or of a person whose identity is unknown or

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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.

(3) A coroner or medical examiner may not be held liable for civil damages for choosing a particular method of disposition under this section for an unidentified or unclaimed body, if the coroner or medical examiner made reasonable efforts to identify and/or notify the deceased's representative.

(4) If the identity of the deceased is known but the decedent's representative cannot be located or refuses to claim the body for disposition purposes and the decedent has property or an estate, the county treasurer may place a lien on the property or the estate to reimburse the county for the costs of the disposition.

History: 1983 a. 279 s. 14; Stats. 1983 s. 979.09; 2001 a. 61.

979.10 Cremation. (1) (a) No person may cremate the corpse of a deceased person within 48 hours after the date and time pronounced dead death, or the discovery of the death, of the deceased person unless the deceased's death was caused by a contagious or infectious disease and the corpse must be cremated immediately in order to effectively contain the disease or the coroner or medical examiner has been ordered to waive the 48-hour waiting period by the department of health and family services during a declared public health emergency as defined under s. 166.02 (7). No person may cremate a corpse unless the person has received a cremation ~~permit from~~ release from one of the following:

_____ 1. The coroner or medical examiner in the county where the death was pronounced~~occurred~~ if the death was pronounced ~~occurred~~ in this state and if the death was not subject to investigation under s. 979.01.

_____ 2. The coroner or medical examiner in the county where the crime, injury or other reportable event which caused the death occurred if the death occurred in this state and if the death is the subject of an investigation under s.979.01; or

_____ 3. The coroner or medical examiner of the county where the corpse is to be cremated if the death was pronounced~~occurred~~ outside this state. A cremation ~~permit~~ release issued under this subdivision may not be used in any county except the county in which the cremation ~~permit~~ release is issued.

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(b) A coroner or medical examiner shall include in any cremation permit release issued under par. (a) a statement that he or she has viewed the corpse which that is the subject of the permit release and made personal inquiry into the cause and manner of death under sub. (2) and is of the opinion that no further examination or judicial inquiry is necessary. The release shall also specify the earliest date and time the cremation can occur.

(c) Before issuing a cremation release, the coroner or medical examiner shall view the cause and manner of death certification by the medical certifier of the deceased's death certificate. For purposes of complying with this subsection, the copying of an un-filed death certificate and receipt of a copy of an un-filed death certificate does not constitute a violation of s. 69.24. The copy may not be released to any other person and cannot be used for any other purpose. No person may deposit any cremated remains of a corpse in any cemetery without the permission of the person who owns or is in charge of the cemetery.

(2) If a corpse is to be cremated, the coroner or medical examiner shall view the body of the decedent, 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 the coroner or medical examiner, his or her or the district attorney's or the attorney general determines opinion that 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 and issue the cremation release. Upon written request by the district attorney or attorney general the coroner or medical examiner shall obtain the concurrence of the district attorney or the attorney general 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 or the attorney general under s. 979.04 (2) and the coroner or medical examiner shall refuse to issue the cremation release until such time as the examination or the judicial inquiry is concluded.

(2a) If a coroner or medical examiner issues a release to embalm which would allow the corpse to be buried or entombed, but refuses to issue a cremation release due to a determination made under s. 979.10 (2), neither the coroner or medical examiner nor the county he or she represents are not liable for the cost of storing the corpse for the family.

(3) Since bodies donated to medical research under s. 157.02 or 157.06 are eventually cremated, the person receiving the body under s. 157.02 (3) or 157.06 must request a cremation release from the coroner or medical examiner with jurisdiction to issue a cremation release under s. 979.10 (1), before moving the body out of that county.

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~~(3) The coroner shall receive a fee of \$25, to be paid out of the county treasury, for each corpse viewed or inquiry made under sub. (2), unless an annual salary has been established by the county board under s. 979.11.~~

~~(4) Whoever accepts, receives, or takes any corpse of a deceased person with intent to destroy the corpse by means of cremation, or who cremates or aids and assists in the cremation of any corpse of a deceased person without having presented the permit 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; Stats. 1983 s. 979.10; 1985 a. 315; 2001 a. 104.~~

~~Cross Reference: See also s. HES 135.06, Wis. adm. code. Chapters 69 and 157 are not alternatives to the requirement in this section that anyone cremating a corpse first obtain a cremation permit from the coroner. University medical schools or anyone else qualified to receive a corpse can receive a corpse for research without first obtaining a permit. This section only requires that a permit be obtained before cremation. 77 Atty. Gen. 248.~~

(4) No person may deposit any cremated remains of a corpse in any cemetery without the permission of the person who owns or is in charge of the cemetery.

Note: the first sentence of (4) is existing law but has been moved. It should probably be moved to chapter 69 or to the burial chapter unless you add coroner/me involvement in the solution to the problem, so that part has been added to make it relevant (see the new disinterment section).

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 or attorney general 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. 59.22 ~~which that~~ 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; Stats. 1983 s. 979.11; 1995 a. 201.~~

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; Stats. 1983 s. 979.12.~~

979.20 Coroner or medical examiner investigation records. (1) The coroner or medical examiner shall create and maintain a record for each investigation conducted under s. 979.01. Each investigation record shall include all of the following:

- (a) the full name of the deceased and any alias names, if known.
- (b) a coroner or medical examiner case number.
- (c) a case activity log
- (d) an investigation report containing any personal information regarding the deceased that is relevant to determining the cause and manner of death, the medical history of the deceased, information relevant to the circumstances of the death, death scene observations, findings regarding the deceased's body that are relevant to determining the cause and manner of death, notation of evidence recovered, including any visual documentation, and a list of other persons or agencies involved in the investigation or interviewed by the coroner or medical examiner concerning the case.
- (e) a written or electronic narrative autopsy report and/or results of any other diagnostic testing for any autopsy or diagnostic procedure completed on the case.
- (f) documentation of the chain of custody for all evidence and property obtained by the coroner or medical examiner, including an inventory sheet for prescription medications as specified in (g).
- (g) a signed inventory sheet listing prescription medications taken from the scene by the coroner or medical examiner. The signature of the coroner or medical examiner shall be witnessed by another individual. The inventory sheet shall indicate the date and method of disposal of the prescription medications and shall contain the signatures of the person disposing of the medications and the signature of at least one witness to the disposal. The disposal of the medications shall be conducted according to appropriate standards for disposal of specific medications and in compliance with county policies on evidence retention schedules.

(2) The coroner or medical examiner shall maintain investigation records created under sub (1) in a county-owned or leased and county maintained office that is designated as the county coroner or medical examiner office.

(3) The coroner or medical examiner shall maintain written policies regarding access to investigation records created or maintained under this section.

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979.21 Confidentiality of coroner or medical examiner investigation records and information. (1) The coroner or medical examiner shall keep confidential all records obtained under s. 51.30 (4) (b) 27 or 146.82 (2) (a) 18., all confidential documents obtained by subpoena under s. 979.015 (2), and any information contained in such records or documents, except that the coroner or medical examiner may divulge such information as necessary to complete a medical certification under s. 69.18 (2).

(2) The coroner or medical examiner shall keep records of autopsies, including any photographs or other pictorial images of the deceased made in connection with an autopsy, and information learned from an autopsy or other diagnostic testing confidential. The coroner or medical examiner may not release such records or information except to persons listed under s. 146.82 (2) who may access treatment records without a patient's informed consent, the deceased's representative or his or her designee, or for educational purposes.

(3) If a law enforcement agency, a district attorney investigating the death, or the attorney general, requests that the coroner or medical examiner keep investigation records under s. 979.20 and information related to an investigation confidential, the coroner or medical examiner shall keep such records and information confidential for as long as the law enforcement agency, district attorney, or attorney general requests.

979.22 Autopsies and toxicological services by coroner or medical examiners. A coroner or 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.

979.23 Handling of Personal Property. (1) Each coroner or medical examiner shall keep an inventory of any money or other property that the coroner or medical examiner takes from a death scene or from the deceased person and which is not immediately provided to a law enforcement agency as evidence. The coroner or medical examiner shall release any property except prescription medications that belonged to the deceased to the deceased's representative unless the property is need for evidence or unless a probate court has issued an order to hold the property for payment of fees associated with the disposal of the body.

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Prescription medications shall not be returned to the deceased's representative. The medications shall be inventoried and destroyed according to the method prescribed in s. 979.20 (1) (g), except that any medications that are eligible to be legally transferred to a drug repository center under s. 255.055, shall be transferred to such a repository.

Redundant to 69.18(4)

69.18(4)

979.24 Disinterment Permits (1) Upon receipt of a disinterment court order from a court of competent jurisdiction, or upon receipt of a request to disinter a human corpse for reasonable cause under the requirements in s. 69.18 (4)1-6, a coroner or medical examiner shall issue a disinterment permit. For a disinterment permit requested under s. 69.18 (4) 1-6, the permit shall be issued if the requestor provides proof of intent to cremate the corpse or to reinter or entomb the corpse in a specified legal burial place or above ground vault.

permit under 69.18 is for disinterment and reinterment

(2) If the disinterred corpse will be cremated, a cremation release is required from the coroner or medical examiner of jurisdiction under s. 979.10.

Just cremation?

(3) Cremation is final disposition and a disinterment permit is not required for disinterment of cremated remains, including cremated remains that were illegally interred in a cemetery under s. 979.10 (4).

(4) Removal of a human corpse from an above ground burial vault requires a disinterment permit. Opening of an above ground burial vault without removal of the body, does not require a disinterment permit unless the vault is opened under court order as specified in s. 69.18 (4).

- but 157.111 applies

(5) No one shall disinter cremated remains from a cemetery without the permission of the person who owns or is in charge of the cemetery and permission from the next of kin in priority order as listed in s. 69.18 (4).

covered under 157.111

(6) No one shall open an above ground burial vault without the permission of the person who owns or is in charge of the cemetery or mausoleum and permission from the next of kin in priority order as listed in s. 69.19 (4).

This one is not complete: you need to think about what activities should be penalized and what the appropriate penalty should be. I just gave a few examples.

979.25 Penalties (1) Any person who does any of the following is guilty of a class ???? felony

(a) willfully accepts, receives, or takes any corpse of a deceased person with intent to destroy the corpse by means of cremation, or who cremates or aids and assists in the cremation of any corpse of a deceased person without having

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presented the signed cremation release specified in s. 979.10 for any purpose of obstructing the investigation of a death under s. 979.01 or 979.10.

(b) Willfully fails to make proper notification of the death of an individual who died under circumstances listed in s. 979.01 with the purpose of concealing a death or obstructing the investigation of the cause and manner of death under s. 979.01.

(2) Any person who does any of the following shall be fined not more than \$? or imprisoned not more than ? or both:

(a) accepts, receives, or takes any corpse of a deceased person with intent to destroy the corpse by means of cremation, or who cremates or aids and assists in the cremation of any corpse of a deceased person without having presented the signed cremation release specified in s. 979.10

(3) Any person who does any of the following shall be fined not more than \$? or imprisoned not more than ? days or both:

(a) Willfully and knowingly neglects or violates or refuses to perform any requirement under this subchapter.

979.26 Coroner and medical examiner training and standards board. (1) A Wisconsin Coroner and Medical Examiner Training and Standards Board shall be created and located within the Wisconsin department of justice law enforcement division.

(2) The board shall be responsible for developing and implementing rules related to the credentialing, training, and conduct of coroners and medical examiners performing death investigations under chap. 979, in Wisconsin.

(3) The membership, duties, and authority of the Wisconsin Coroner and Medical Examiner Training and Standards Board shall be defined under rules promulgated by the department of justice.

979.27 Death investigation advancement fund (1) A fund shall be created under this section and administered by the Wisconsin Coroner and Medical Examiner Training and Standards Board for the purpose of supporting performance standards established in s. 979.26 (2).

(2) The death investigation advancement fund shall be derived from independent of county or state general revenue.



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-27660

RLR:.....

bjk

In 8/10/07

RMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SA ✓
X-ref - not
done as per RLR

LPS - Please check spacing.

→ D-N

gen. cont.

1 AN ACT ...; relating to: investigations of deaths and duties of coroners and
2 medical examiners.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

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

3 SECTION 1. 51.30 (4) (b) 28. of the statutes is created to read:
4 51.30 (4) (b) 28. To a medical examiner, assistant medical examiner, coroner,
5 or assistant coroner upon an oral or written request from that person, if the
6 treatment records are relevant to completion of a medical certification under s. 69.18
7 (2) or to an investigation of the cause or manner of the patient's death under s. 979.01
8 or 979.10. A custodian of treatment records may initiate contact with a coroner or
9 medical examiner to inform him or her of treatment records of a deceased patient
10 that may be relevant to the completion of a medical certification or the investigation

SECTION 1

1 of a death. The recipient of any information under this subdivision shall keep the
2 information confidential except as necessary to comply with s. 69.18, 979.01 or
3 979.10.

4 SECTION 2. 157.113 (title) of the statutes is created to read:

5 **157.113**(title) **Permission required to deposit cremation remains in**
6 **cemetery.**

7 SECTION 3. 979.001 of the statutes is created to read:

8 **979.001 Definitions.** In this chapter:

9 (1) "Deceased's representative" means any member of the following classes of
10 individuals, in the order of priority listed:

- 11 (a) The deceased's spouse. ✓
- 12 (b) An adult son or daughter of the deceased. ✓
- 13 (c) A parent of the deceased. ✓
- 14 (d) An adult brother or sister of the decedent. ✓

****NOTE: Is the definition of deceased's representative expansive enough? If a
deceased does not have a surviving spouse, child, parent, or sibling, who may receive the
deceased's personal property, make decisions about disposition of the body, and view
autopsy records? ✓

15 (2) "Event" includes a sudden unexplained collapse. ✓

16 (3) "Health care provider" means all of the following:

17 (a) A massage therapist or bodyworker issued a license of registration under
18 subch. XI of ch. 440. certified under ch. 440

19 (b) A midwife licensed under subch. XII of ch 440. ✓

*
****NOTE: I added midwives, a newly regulated profession, starting in May of 2007.

20 (c) A nurse licensed under ch. 441. ✓

21 (d) A chiropractor licensed under ch. 446. ✓

22 (e) A dentist licensed under ch. 447. ✓

*move to
p. 3, after line 17*

(g)

cremated

deceased

certified under ch. 440

*copy
copy
copy*

1 (e) (f) A physician, physician assistant, or respiratory care practitioner licensed
2 or certified under subch. II of ch. 448.

3 (g) A physical therapist licensed under subch. III of ch. 448.

4 (h) A podiatrist licensed under subch. IV of ch. 448.

5 (i) A dietitian certified under subch. V of ch. 448.

6 (j) An athletic trainer licensed under subch. VI of ch. 448.

7 (k) An occupational therapist or occupational therapy assistant licensed under
8 subch. VII of ch. 448.

9 (l) An optometrist licensed under ch. 449.

10 (m) A pharmacist licensed under ch. 450.

11 (n) An acupuncturist certified under ch. 451.

12 (o) A psychologist licensed under ch. 455.

13 (p) A social worker, marriage and family therapist, or professional counselor
14 certified under ch. 457. or licensed

15 (q) A speech-language pathologist or audiologist licensed under subch. II of ch.
16 459 or a speech and language pathologist licensed by the department of public
17 instruction.

move here →

18 (4) "Law enforcement agency" has the meaning given in s. 165.83 (1) (b).

19 (5) "Therapeutic misadventure" means an unintended medical error made by
20 a health care provider or an unexpected mechanical failure of a medical device
21 during the treatment of a patient that causes serious harm to the patient.
22 "Therapeutic misadventure" includes but is not limited to unintentional
23 administration of a wrong medication or a wrong dosage of medication, unexpected
24 mechanical failure of a device including a ventilator or cardiac implant, avoidable
25 surgical error, and incorrect placement of a medical device.

***NOTE: It is not necessarily useful to include examples in the definition. When examples are provided, courts sometimes determine that the legislature intended to exclude circumstances that are not specifically included, even when the definition uses the words "includes" and "not limited to."

***NOTE: I reorganized s. 979.01 as follows to flow in a more logical order: who must report; to whom deaths must be reported; which death must be reported; notification of coroners or medical examiners; duty and jurisdiction to investigate; and various other notification requirements.

SECTION 4. 979.01 (title) of the statutes is amended to read:

979.01 (title) Reporting deaths required; penalty; taking specimens by notification of coroner or medical examiner; jurisdiction for investigating deaths.

History: 1973 c. 272; 1975 c. 294, 421; 1979 c. 221; 1983 a. 279 ss. 8, 22; Stats. 1983 s. 979.01; 1985 a. 315, 316; 1989 a. 121; 1993 a. 486; 1999 a. 85; 2001 a. 38.

SECTION 5. 979.01 (1) (intro.) of the statutes is amended to read:

979.01 (1) (intro.) All physicians, authorities of hospitals, sanatoriums, public and private institutions, convalescent homes, authorities of any institution of a like nature, and other persons having Any health care provider, health care worker, director of an inpatient health care facility, as defined in s. 50.135 (1), director of a long-term care facility, as defined in s. 16.009 (1) (3m), director of emergency medical services, director of a correctional facility, or any other person who has knowledge of the death of any person who has died under any of the following circumstances individual, shall, if any of the following applies, immediately report the death to the sheriff, police chief, a law enforcement officer or the medical examiner or coroner of in the county where in which the death took place individual was pronounced dead or in which the individual's body or remains were found or located:

History: 1973 c. 272; 1975 c. 294, 421; 1979 c. 221; 1983 a. 279 ss. 8, 22; Stats. 1983 s. 979.01; 1985 a. 315, 316; 1989 a. 121; 1993 a. 486; 1999 a. 85; 2001 a. 38.

***NOTE: Who qualifies as a "health care worker"? I did not specify hospice, because hospice is included in the definition of "long-term care facility." Who is covered by "director of emergency medical services"? Do you want to define "correctional facility"?

***NOTE: Why reference the county where the body was "found or located"? Isn't either term sufficient?

move outside of quotation marks

*

1 SECTION 6. 979.01 (1) (a) of the statutes is amended to read:

2 ~~979.01 (1) (a) All deaths in which there are~~ The death involves unexplained,
3 unusual, or suspicious circumstances.

4 History: 1973 c. 272; 1975 c. 294, 421; 1979 c. 221; 1983 a. 279 ss. 8, 22; Stats. 1983 s. 979.01; 1985 a. 315, 316; 1989 a. 121; 1993 a. 486; 1999 a. 85; 2001 a. 38.

5 SECTION 7. 979.01 (1) (b) of the statutes is repealed and recreated to read:

6 979.01 (1) (b) The death is a suspected homicide, including a death resulting
from an act of bioterrorism.

****NOTE: Do you want to apply the definition of "bioterrorism" under s. 166.02 (1r)
to this paragraph?

7 SECTION 8. 979.01 (1) (c) of the statutes is repealed and recreated to read:

8 979.01 (1) (c) The death is a suspected suicide.

9 SECTION 9. 979.01 (1) (d) of the statutes is amended to read:

10 979.01 (1) (d) All deaths following The death is of a woman and is associated
11 with an abortion, as defined in s. 253.10 (2) (a).

12 History: 1973 c. 272; 1975 c. 294, 421; 1979 c. 221; 1983 a. 279 ss. 8, 22; Stats. 1983 s. 979.01; 1985 a. 315, 316; 1989 a. 121; 1993 a. 486; 1999 a. 85; 2001 a. 38.

13 SECTION 10. 979.01 (1) (e) of the statutes is amended to read:

14 979.01 (1) (e) All deaths due to Injury or poisoning may be a contributing cause
15 of the death, whether homicidal, suicidal or accidental or not the injury or poisoning
16 is the primary cause of death and regardless of the interval between the injury or
poisoning and the death.

17 History: 1973 c. 272; 1975 c. 294, 421; 1979 c. 221; 1983 a. 279 ss. 8, 22; Stats. 1983 s. 979.01; 1985 a. 315, 316; 1989 a. 121; 1993 a. 486; 1999 a. 85; 2001 a. 38.

18 SECTION 11. 979.01 (1) (f) of the statutes is repealed and recreated to read:

19 979.01 (1) (f) The death occurs while the individual is in the actual or
20 constructive custody of a law enforcement officer, during active pursuit of the
21 individual by a law enforcement officer, or otherwise involves a law enforcement
officer.

22 SECTION 12. 979.01 (1) (g) of the statutes is amended to read:

SECTION 12

1 ✓ 979.01 (1) (g) ~~When there was no~~ The individual was not under the care of a
 2 physician, ~~or accredited practitioner of a bona fide religious denomination relying~~
 3 ~~upon prayer or spiritual means for healing in attendance within 30 days preceding~~
 4 for the illness or condition that caused the death. ✓

5 History: 1973 c. 272; 1975 c. 294, 421; 1979 c. 221; 1983 a. 279 ss. 8, 22; Stats. 1983 s. 979.01; 1985 a. 315, 316; 1989 a. 121; 1993 a. 486; 1999 a. 85; 2001 a. 38.

6 **SECTION 13.** 979.01 (1) (h) of the statutes is repealed and recreated to read:

7 ✓ 979.01 (1) (h) The death occurs while the individual is confined in a federal
 8 prison in this state, a state prison, county jail or house of correction, a juvenile
 9 correctional facility, as defined in s. 938.02 (10p), or a juvenile detention facility, as
 10 defined in s. 938.02 (10r), or is otherwise incarcerated in the custody of the
 11 department of corrections or of a county sheriff. ✓

12 **SECTION 14.** 979.01 (1) (i) of the statutes is amended to read:

13 ✓ 979.01 (1) (i) ~~When, after~~ After reasonable efforts, a physician cannot within
 14 6 days after the pronouncement of death, or sooner under circumstances that the
 15 coroner or medical examiner determines constitute an emergency, be obtained to sign
 16 the medical certification as required under s. 69.18 (2) (b) or (c) ~~within 6 days after~~
 17 ~~the pronouncement of death or sooner under circumstances which the coroner or~~
 18 ~~medical examiner determines to be an emergency, or all persons authorized to certify~~
 19 the cause of death under s. 69.18 (2) (b) or (c) refuse to sign the death certificate. ✓

20 History: 1973 c. 272; 1975 c. 294, 421; 1979 c. 221; 1983 a. 279 ss. 8, 22; Stats. 1983 s. 979.01; 1985 a. 315, 316; 1989 a. 121; 1993 a. 486; 1999 a. 85; 2001 a. 38.

21 **SECTION 15.** 979.01 (1) (j) to (q) of the statutes are created to read:

22 ✓ 979.01 (1) (j) The death occurs while the individual is detained or committed
 23 and institutionalized under s. 51.20, s. 971.17, or ch. 980. ✓

* ****NOTE: Do you want to cover deaths of individuals held under s. 971.14 for a
 24 pre-trial competency examination or after being committed as incompetent to stand
 25 trial? ✓

1 (k) The death occurs in the emergency room of a health care facility, in an
 2 outpatient area of a health care facility, or within 24 hours of the individual's
 3 admittance to a health care facility.

* ****NOTE: It would be helpful to define "health care facility" here because several
 definitions are provided in other chapters of the statutes. What would you like the term
 to cover?

4 (L) The death occurs during a diagnostic, anesthetic, or therapeutic procedure
 5 or during administration of medication and is suspected to be associated with a
 6 therapeutic misadventure.

****NOTE: I substituted "medication" for "drugs" to be consistent with the
 terminology used in the definition of "therapeutic misadventure."

7 (m) The death is suspected to be associated with the abuse of a chemical
 8 substance that may be legally used or with the use of a controlled substances, as
 9 defined in s. 961.01 (4).

10 (n) The death is associated with an epidemic disease, with the spread of a
 11 dangerous communicable disease, as defined by the department of health and family
 12 services, or with a disease-causing agent that may pose a threat to public health.

* ****NOTE: Epidemic includes a pandemic, so I dropped the term pandemic. Should
 this paragraph cover deaths associated with a dangerous communicable disease instead
 of the "spread of" a dangerous communicable disease? Why does the bill require DHFS
 to define "dangerous communicable disease" but not "epidemic disease" or
 "disease-causing agent?"

13 (o) The death is a suspected homicide of an unborn child under s. 940.01 (1) (b),
 14 940.02 (1m) or 940.05 (2g).

****NOTE: This is redundant to paragraph (b) which covers all suspected homicides.
 Do you want to specify in paragraph (b) all suspected homicides "under ch. 940"?

15 (p) The individual's remains are discovered outside a cemetery or documented
 16 burial plot.

****NOTE: I reconfigured this paragraph to fit under the introduction to this
 subsection, which refers to deaths. I included the requirement for a coroner or medical
 examiner to report remains to the historical society under another subsection because the
 requirement is not relevant to which deaths must be reported to law enforcement or the
 coroner or medical examiner.

SECTION 15

1 (q) If a coroner or medical examiner publishes a written death reporting
2 protocol, the protocol requires reporting of the death.

***NOTE: Please review my changes to this paragraph.

3 SECTION 16. 979.01 (1g) of the statutes is repealed and recreated to read:

4 979.01 (1g) If a law enforcement officer is notified of a death under sub. (1), the
5 law enforcement officer shall immediately notify the coroner or medical examiner in
6 the county in which the body or remains were found or located.

7 SECTION 17. 979.01 (1i) of the statutes is created to read:

8 979.01 (1i) If there is reason to believe that a death that must be reported under
9 sub. (1) was caused by a crime, injury, or other event that occurred in a county in this
10 state, other than the county in which the body is found or located, the coroner or
11 medical examiner in the county in which the body is found or located shall
12 immediately notify the coroner or medical examiner in the county in which the crime,
13 injury, or other event is believed to have occurred.

14 SECTION 18. 979.01 (1k) of the statutes is created to read:

15 979.01 (1k)(a) Except as provided in par. (b), if a death must be reported under
16 sub. (1), the coroner or medical examiner in the county in which the crime, injury, or
17 other event that caused the death occurred shall investigate the cause and manner
18 of death.

* ***NOTE: Is "other event" intended to cover all causes of death, other than a crime
or injury? If so, then why not just say that the coroner or medical examiner in the county
in which the event that caused the death occurred ... has jurisdiction. If not, which deaths
under sub. (1) are coroners and medical examiners not required to investigate?

19 (b) If there is reason to believe that a death that must be reported under sub.
20 (1) was caused by a crime, injury, or other event that occurred outside this state, or
21 if after reasonable efforts it cannot be determined where the crime, injury, or other

1 event that caused the death occurred, the coroner or medical examiner in the county
2 in which death is pronounced shall investigate the cause and manner of death.

3 SECTION 19. 979.01 (1m) of the statutes is amended to read:

4 979.01 (1m) The coroner or medical examiner receiving notification under sub-
5 (1) or (1g) who has jurisdiction to investigate a death under this section shall
6 immediately within a reasonable time after receiving notice of the death, notify the
7 district attorney ² ^e ^{for} in his or her county or the attorney general of the death.

History: 1973 c. 272; 1975 c. 294, 421; 1979 c. 221; 1983 a. 279 ss. 8, 22; Stats. 1983 s. 979.01; 1985 a. 315, 316; 1989 a. 121; 1993 a. 486; 1999 a. 85; 2001 a. 38.

8 SECTION 20. 979.01 (1p) of the statutes is created to read:

9 979.01 (1p) A coroner or medical examiner who receives notice of a death under
10 sub. (1) shall notify the deceased's representative of the death.

****NOTE: Subsection (1p) requires a coroner or medical examiner who receives notice of a death to notify the deceased's representative (this could be more than one coroner or medical examiner). Should this subsection assign the coroner or medical examiner who is required to investigate the death to notify the deceased's representative?

11 SECTION 21. 979.01 (1r) of the statutes is amended to read:

12 979.01 (1r) If the coroner or medical examiner is notified of a death under sub-
13 (1) or (1g) and determines that his or her notification of the death was not required
14 under sub. (1) or (1g), the discovery of human remains under this section and
15 determines that the remains have no forensic significance, he or she shall notify the
16 director of the historical society under s. 157.70 (3).

History: 1973 c. 272; 1975 c. 294, 421; 1979 c. 221; 1983 a. 279 ss. 8, 22; Stats. 1983 s. 979.01; 1985 a. 315, 316; 1989 a. 121; 1993 a. 486; 1999 a. 85; 2001 a. 38.

17 SECTION 22. 979.01 (2) of the statutes is repealed.

18 SECTION 23. 979.01 (3) of the statutes is repealed.

19 SECTION 24. 979.01 (3m) of the statutes is repealed.

20 SECTION 25. 979.01 (4) of the statutes is renumbered 979.105 and amended to
21 read:

1 ✓ 979.105 **Authorization to embalm.** No person may embalm or ~~perform an~~
2 ~~autopsy on or dispose of~~ the body of any person who has died under any of the
3 ~~circumstances listed in this section unless the person obtains the~~ individual whose
4 death must be reported under s. 979.01 (1) without the written authorization of the
5 ~~coroner of the county in which the injury or cause of death occurred.~~ Such
6 ~~authorization shall be issued by the~~ or medical examiner who has jurisdiction to
7 investigate the death under s. 979.01. An authorization to embalm shall include
8 information necessary to identify the deceased, the date and place of death, the name
9 of the funeral director or person acting in the place of the funeral director, and shall
10 specify that the coroner or medical examiner does not provide authorization to
11 override the wishes of the next of kin of the deceased. If possible, the coroner or a
12 deputy ^{medical} examiner shall issue an authorization to embalm under this subsection
13 within 12 hours after notification of the reportable being notified of the death, or as
14 soon thereafter as possible in the event of unexplained, unusual or suspicious
15 circumstances. If the coroner or medical examiner cannot issue an authorization to
16 perform an autopsy within 12 hours after being notified of a death, the coroner or
17 medical examiner shall indicate the reason for the delay on the authorization to
18 embalm.

History: 1973 c. 272; 1975 c. 294, 421; 1979 c. 221; 1983 a. 279 ss. 8, 22; Stats. 1983 s. 979.01; 1985 a. 315, 316; 1989 a. 121; 1993 a. 486; 1999 a. 85; 2001 a. 38.

****NOTE: I created a new section for authorizations to embalm rather than placing this provision with autopsies. This section requires a coroner's or medical examiner's authorization for all forms of disposition of a body and also specifically provides for embalming. A separate section requires authorization for cremation. Since cremation is a form of disposition, should authorization for all forms of disposition be covered under the same section or do you want to limit the scope of this section to embalming?

* ****NOTE: I included the standards for an authorization to embalm from HFS 135.02 (19). Are these the standards you intended? Should the reference to the wishes of the next of kin specify with respect to disposition? Also, should the bill refer to the "deceased's representative" rather than "next of kin"?

***NOTE: An old version of s. 979.012 is shown in the draft provided with the request. I assume that you do not wish to make any changes to current law s. 979.012, as affected by 2005 Act 198.

1 SECTION 26. 979.015 of the statutes is amended to read:

2 **979.015 Subpoena for documents.** Upon the request of the coroner, medical
3 examiner or district attorney, or attorney general, a court shall issue a subpoena
4 requiring the production of documents necessary for the determination of a
5 decedent's relevant to determining the cause or manner of a decedent's death. The
6 documents may include the decedent's patient health care records and, as defined in
7 ss. 146.81 (4) and 146.50 (12), treatment records, as defined in ss. s. 51.30 and 146.81
8 (4) (1) (b), or documents that are not covered under s. 51.30 (4) (b) 28., 146.50 (12),
9 or 146.82 (2) (a) 18. The documents shall be returnable to the officer named in the
10 subpoena.

Described in SA

***NOTE: Coroners and medical examiners already have access to patient health care records under s. 146.82 (2) (a) 18. Prescription records are patient health care records because the definition of "health care provider" under s. 146.81 (1) includes pharmacists. Also, s. 146.50 (12) specifies that emergency treatment and transport records are patient health care records. This bill therefore does not create s. 979.015 (1) as in the draft provided with the request. I assume that you want to create similar access to mental health treatment records, so I created that access under s. 51.30 (4) (b) 28.

***NOTE: This draft treats custody of the body and authority to move a body separately from autopsies.

11 SECTION 27. 979.017 of the statutes is created to read:

12 **979.017 Custody of and authorization to move a body.** (1) The coroner
13 or medical examiner who has jurisdiction to investigate a death under s. 979.01 has
14 legal custody of the decedent's body until he or she releases the body for disposition.
15 Temporary transfer of a decedent's body for the purpose of removing a body part that
16 is the subject of an anatomical gift under s. 157.06 does not constitute release of legal
17 custody of the body.

1 (2) No person may remove the body of an individual whose death must be
2 reported under s. 979.01 (1) from the scene of death without oral or written
3 authorization from the coroner or medical examiner to whom the death was first
4 reported under s. 979.01, except if removal of the body is necessary to perform search
5 or rescue operations for living persons.

 ****NOTE: What if the place that a body is found is not the scene of death? Do you
want to say that no person may move a body from the place it was located when the death
was reported under s. 979.01 without the authorization of the coroner or medical
examiner?

6 **SECTION 28.** 979.02 (title) of the statutes is amended to read:

7 **979.02** (title) **Autopsies and other diagnostic procedures.**

History: 1983 a. 279 s. 12; Stats. 1983 s. 979.02.

8 **SECTION 29.** 979.02 of the statutes is renumbered 979.02 (1) and amended to
9 read:

10 979.02 (1) The coroner, or medical examiner ~~or district attorney who has~~
11 jurisdiction to investigate a death under s. 979.01 may order the conducting of that
12 an autopsy upon or other appropriate diagnostic procedure be performed on the body
13 of a dead person any place within the state in cases where an inquest might be had
14 as provided in s. 979.04 notwithstanding the fact that no such inquest is ordered or
15 conducted. The autopsy shall be conducted by a licensed physician who has
16 specialized training in pathology. The district attorney may move the circuit court
17 for the county in which the body is buried for an order disinterring the body for
18 purposes of autopsy. The order shall be granted by the circuit court upon a
19 reasonable showing that any of the criteria specified in s. 979.04 exists. This section
20 does not prevent additional autopsies or examinations of the body if there are
21 unanswered pathological questions concerning the death and the causes of death the
22 deceased.

History: 1983 a. 279 s. 12; Stats. 1983 s. 979.02.

1 **SECTION 30.** 979.02 (2) to (8) of the statutes are created to read:

2 **(2)** The coroner or medical examiner who has jurisdiction to investigate a death
 3 under s. 979.01 shall order that an autopsy and any other appropriate diagnostic
 4 procedure be performed on the body of the deceased if the death occurred under any
 5 of the following circumstances:

6 (a) The death likely resulted from a criminal act, unless the district attorney
 7 or attorney general waives the requirement for an autopsy.

8 (b) The death must be reported under s. 979.01 (1) (b), (f), (h), (j), or (o).

 ***NOTE: Is par. (a) necessary, given that all the deaths reported because they are
 suspected to involve a crime are covered under par. (b)? If a death is reported because
 homicide is suspected but the district attorney waives the autopsy requirement under
 par. (a), an autopsy would still be required under par. (b).

9 (c) The deceased was under 18 years of age and the death is unexplained or
 10 unusual.

11 **(3)** An autopsy ordered under this section may be performed only by a licensed
 12 physician who has undergone specialized training in pathology, and an autopsy
 13 ordered under sub. (2) may be performed only by a pathologist who has
 14 undergone advanced forensic training.

 ***NOTE: Is the specialized training what all pathologists must have or is it more
 than what a general pathologist must have?

15 **(4)** The requirement to order an autopsy under sub. (2) does not preclude a
 16 coroner or medical examiner from allowing the removal of a body part that is the
 17 subject of an anatomical gift under s. 157.06.

18 **(5)** If the coroner or medical examiner who has jurisdiction to investigate a
 19 death under s. 979.01 does not order that an autopsy or other diagnostic procedure
 20 be performed on the body of the deceased and the district attorney who has
 21 jurisdiction under s. 979.01 or the attorney general determines that an autopsy or

1 other specified diagnostic procedure is necessary to establish evidence for an inquest
2 or for a potential criminal case, the district attorney or attorney general may direct
3 the coroner or medical examiner to order that an autopsy or other appropriate
4 diagnostic procedure be performed on the body of a deceased.

***NOTE: This subsection refers to the district attorney who has jurisdiction under
s. 979.01. Section 979.01 does not cover jurisdiction for district attorneys.

5 (6) If an autopsy is not performed on the body of an individual whose death
6 must be reported under s. 979.01 (1), the coroner or medical examiner who has
7 jurisdiction to investigate the death may extract from the body any specimen, bodily
8 fluids, other bodily material, or other material for analysis that will assist him or her
9 in conducting a death investigation. The coroner or medical examiner shall dispose
10 of specimens, fluids, and materials that are no longer of use in the investigation in
11 accordance with standard biological material practices and county evidence
12 retention rules.

* ***NOTE: Should the material in this subsection be combine with subsection (1)
In other words, shouldn't the coroner or medical examiner be permitted to extract
specimens etc., regardless of whether an autopsy is performed. Are evidence retention
rules county rules or state rules? Perhaps you could refer to "applicable evidence
retention rules."

13 (7) No person may perform an autopsy on the body of an individual whose death
14 must be reported under s. 979.01 (1) without the written authorization of the coroner
15 or medical examiner who has jurisdiction to investigate the death under s. 979.01.
16 The autopsy authorization shall be on a form prescribed by the coroner or medical
17 examiner. In cases in which the coroner or medical examiner issues an authorization
18 to perform an autopsy, the coroner or medical examiner shall, if possible, issue the
19 authorization within 12 hours after being notified of the death, or as soon as possible
20 thereafter. If the coroner or medical examiner cannot issue an authorization to
21 perform an autopsy within 12 hours after being notified of a death, the coroner or

combined

?

?

1 medical examiner shall indicate the reason for the delay on the autopsy
2 authorization form. ✓

****NOTE: What is the intended effect of the second sentence in this subsection? Is it to require coroners and medical examiners to designate and use a particular form for authorizations or is it to say that an authorization is only valid if on such a designated form? ✓

3 (8) If the coroner or medical examiner with jurisdiction to investigate a death
4 under s. 979.01 determines that an autopsy or analysis of specimens, bodily fluids,
5 or other bodily materials is not required for an investigation of a death that must be
6 reported under s. 979.01 (1), the coroner or medical examiner shall, upon the request
7 of the deceased's representative, inform the deceased's representative of his or her
8 right to privately contract for pathology-related services at his or her own expense.

****NOTE: Are "pathology-related services" different from an autopsy or analysis of specimens, bodily fluids, or other bodily materials? ✓

9 SECTION 31. 979.025 (title) of the statutes is amended to read:

10 979.025 (title) ^{plain} **Autopsy Investigation of death of a correctional inmate.**

History: 2001 a. 16.

11 SECTION 32. 979.025 (1) of the statutes is amended to read:

12 ✓ 979.025 (1) INMATE CONFINED TO AN INSTITUTION IN THIS STATE. ~~If an individual~~
13 ~~dies while he or she is in the legal custody of the department and confined to a~~
14 ~~correctional facility located in this state, the coroner or medical examiner of the~~
15 ~~county where the death occurred shall perform an autopsy on the deceased~~
16 ~~individual. If the a coroner or medical examiner, who performs the orders under s.~~
17 ~~979.02 (2) (b) that an autopsy be performed on the body of an individual who died~~
18 ~~while in the legal custody of the department and confined to a correctional facility~~
19 ~~in this state, determines that the individual's death may have been the result of any~~
20 ~~of the situations that would permit the district attorney to order an inquest under~~

1 s. 979.04 (1), the coroner or medical examiner shall follow the procedures under s.
2 979.04 (2).

History: 2001 a. 16.

****NOTE: This bill deletes the first sentence under subsection (1) in the proposed draft provided with the request since it is redundant to s. 979.02 (2) (b).

3 **SECTION 33.** 979.025 (2) of the statutes is amended to read:

4 979.025 (2) INMATE CONFINED IN AN INSTITUTION IN ANOTHER STATE. If an
5 individual dies while he or she is in the legal custody of the department and confined
6 to a correctional facility in another state under a contract under s. 301.07, 301.21,
7 or 302.25, the department shall have an autopsy and any other appropriate
8 diagnostic procedure performed by an appropriate authority in the other state or, if
9 the body is returned to this state, by order of the coroner or medical examiner of the
10 county in which the circuit court is located that sentenced the individual to the
11 custody of the department. If the coroner or medical examiner who performs orders
12 the autopsy or other diagnostic procedure in this state determines that the
13 individual's death may have been the result of any of the situations that would
14 permit the district attorney to order an inquest under s. 979.04 (1), the coroner or
15 medical examiner shall forward the results of the autopsy or other diagnostic
16 procedure to the appropriate authority in the other state.

History: 2001 a. 16.

17 **SECTION 34.** 979.025 (3) of the statutes is amended to read:

18 979.025 (3) COSTS OF AN AUTOPSY AND DIAGNOSTIC PROCEDURE. The costs of an
19 autopsy or other diagnostic procedure performed under sub. ~~(1)~~ or (2) or performed
20 on an inmate confined in a correctional facility in this state under s. 979.02 (2) (b)
21 shall be paid by the department.

History: 2001 a. 16.

22 **SECTION 35.** 979.027 of the statutes is created to read:

1 ✓ **979.027 Disinterment for autopsy or other diagnostic procedure.** ✓ The
2 district attorney or attorney general may move the circuit court for the county in
3 which a body is buried for an order disinterring the body for the purpose of
4 conducting an autopsy or other diagnostic procedures. ✓ The order shall be granted
5 by the circuit court upon a reasonable showing that any of the criteria specified in
6 s. 979.04 exists. ✓ The clerk of the circuit court shall send a copy of the order to the
7 coroner or medical examiner in the county in which the body is buried. ✓ This section
8 does not preclude the performance of additional autopsies or examinations of the
9 body if there are unanswered pathological questions concerning the death and the
10 causes of death. ✓

 ***NOTE: I moved this section to go alongside the material on autopsies and made ✓
the title more specific. OK? ✓

11 ✓ **SECTION 36.** 979.03 of the statutes is repealed. ✓

12 ✓ **SECTION 37.** 979.032 of the statutes is created to read: ✓

13 ✓ **979.032 Coroner or medical examiner investigation records.** (1) The ✓
14 coroner or medical examiner shall create and maintain a record for each
15 investigation conducted under s. 979.01 that includes all of the following: ✓

16 ✓ (a) The full name of the deceased and any known alias used by the deceased. ✓

17 ✓ (b) A coroner or medical examiner case number. ✓

18 ✓ (c) A case activity log. ✓

19 ✓ (d) An investigation report containing any personal information regarding the
20 deceased that is relevant to determining the cause and manner of death, ✓ the medical
21 history of the deceased, ✓ information relevant to the circumstances of the death, ✓ death
22 scene observations, ✓ findings regarding the body of the deceased that are relevant to
23 determining the cause of death, ✓ notation of evidence recovered, ✓ including any visual

and

1 documentation, a list of other persons or agencies involved in the investigation, a list
2 of persons interviewed by the coroner or medical examiner regarding the case.

3 (e) A written or electronic narrative autopsy report, if an autopsy is completed.

****NOTE: By adding electronic, do you intend to cover recordings of oral reports?

4 (f) Documentation of the chain of custody of all evidence and property obtained
5 by the coroner or medical examiner, including an inventory sheet, described under
6 s. 979.036 (2), of prescription medications, if applicable.

* ****NOTE: I moved the requirement regarding handling of prescription medications
to the section on handling property of the deceased.

7 (2) The coroner or medical examiner shall maintain investigation records
8 created under sub. (1) in an office that is owned or leased by the county, maintained
9 by the county, and designated as the office of the county coroner or medical examiner.

10 (3) The coroner or medical examiner shall maintain written policies regarding
11 access to investigation records created or maintained under this section.

12 SECTION 38. 979.034 of the statutes is created to read:

13 **979.034 Confidentiality of coroner or medical examiner investigation**
14 **records and information.** (1) The coroner or medical examiner shall keep
15 confidential all records obtained under s. 51.30 (4) (b) 28. or 146.82 (2) (a) 18., all
16 confidential documents obtained by subpoena under s. 979.015, and any information
17 contained in such records or documents, except that the coroner or medical examiner
18 may divulge such information as necessary to complete a medical certification under
19 s. 69.18 (2).

20 (2) The coroner or medical examiner shall keep records of autopsies and other
21 diagnostic procedures, including any photographs or other pictorial images of the
22 deceased made in connection with an autopsy, and information learned from an
23 autopsy or other diagnostic procedure confidential. The coroner or medical examiner

1 may not release such records or information except to persons listed under s. 146.82
2 (2) who may access patient health care records without the patient's informed
3 consent, to the deceased's representative or his or her designee, or for educational
4 purposes.

5 (3) If a law enforcement agency, or a district attorney investigating a death, or
6 the attorney general, requests that the coroner or medical examiner keep
7 investigation records under s. 979.032 and information related to an investigation
8 confidential, the coroner or medical examiner shall keep such records and
9 information confidential for as long as the law enforcement agency, district attorney,
10 or attorney general requests.

11 SECTION 39. 979.036 of the statutes is created to read:

12 **979.036 Handling of personal property of deceased.** (1) Each coroner or
13 medical examiner shall keep an inventory of any money or other property that the
14 coroner or medical examiner takes from a death scene or from a deceased person and
15 does not immediately provide to a law enforcement agency as evidence. The coroner
16 or medical examiner shall release any such property, other than prescription
17 medication, that belonged to the deceased to the deceased's representative unless the
18 property is needed as evidence or unless a court has issued an order to hold the
19 property for payment of fees associated with the disposal of the body.

20 (2) If the coroner or medical examiner takes prescription medications from a
21 death scene or from the body of a deceased, the coroner or medical examiner shall list
22 them on an inventory sheet and sign the inventory sheet in the presence of witness.

23 If the coroner or medical examiner does not provide the prescription medications to
24 a law enforcement agency as evidence, the coroner or medical examiner shall destroy
25 them in accordance with applicable county evidence retention policies and

coroner or medical examiner

1 appropriate standards for disposal of medications, except that the coroner or medical
2 examiner shall donate those prescription medications that satisfy the standards
3 under s. 255.056 (3) to the drug repository program under s. 255.056. The coroner
4 or medical examiner shall indicate on the inventory sheet the disposition of the
5 prescription medications.

*

****NOTE: This subsection combines provisions from the investigation records and
handling of the deceased's personal property sections of the proposed draft.

of the deceased

6 **SECTION 40.** 979.038 of the statutes is created to read:

7 **979.038 Grief counselling referral for certain child deaths.** If a coroner
8 or medical examiner is notified of the death of a child under 2 years of age and there
9 is no indication that the child's death was caused by a criminal act, the coroner or
10 medical examiner shall notify a grief counselor, who receives public funding to
11 provide grief counselling for child deaths, of the death and shall inform the child's
12 parent that grief counselling is available. If a coroner or medical examiner is notified
13 of the death of a child under 2 years of age and suspects that the death may have the
14 been the result of a criminal act, the coroner or medical examiner may not notify a
15 grief counselor of the child's death or refer the child's parents for grief counselling
16 unless the law enforcement agency and district attorney or attorney general
17 investigating the death consent to the notification and referral.

18 **SECTION 41.** 979.04 of the statutes is amended to read:

19 **979.04 Inquests: when called.** (1) If the district attorney or attorney general
20 has notice of the death of any person and there is reason to believe from the
21 circumstances surrounding the death that felony murder, first-degree or
22 2nd-degree intentional homicide, first-degree or 2nd-degree reckless homicide,
23 homicide by negligent handling of dangerous weapon, explosives or fire, homicide by

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

12 (2) If the coroner or medical examiner has knowledge of the death of any person
13 in the manner described under sub. (1), he or she shall immediately notify the district
14 attorney or attorney general. The notification shall include information concerning
15 the circumstances surrounding the death. The coroner or medical examiner may
16 request the district attorney or attorney general to order an inquest under sub. (1).
17 If the district attorney refuses and attorney general refuse to order the inquest, a
18 coroner or medical examiner may petition the circuit court to order an inquest. The
19 court may issue the order if it finds that the district attorney has and attorney
20 general have abused his or her their discretion in not ordering an inquest.

21 (3) Subsequent to receipt of notice of the death, the district attorney or attorney
22 general may request the coroner or medical examiner to conduct a preliminary
23 investigation and report back to the district attorney or attorney general. The
24 district attorney or attorney general may determine the scope of the preliminary

1 investigation. This subsection does not limit or prevent any other investigation into
2 the death by any law enforcement agency with jurisdiction over the investigation.

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

SECTION 42. 979.05 (2), (3), (4), (5) and (6) of the statutes are amended to read:

4 979.05 (2) The inquest shall be conducted before a jury unless the district
5 attorney, attorney general, coroner, or medical examiner requests that the inquest
6 be conducted before the judge or circuit court commissioner only. If the inquest is to
7 be conducted before a jury, a sufficient number of names of prospective jurors shall
8 be selected from the prospective juror list for the county in which the inquest is to
9 be held by the clerk of circuit court in the manner provided in s. 756.06. The judge
10 or circuit court commissioner conducting the inquest shall summon the prospective
11 jurors to appear before the judge or circuit court commissioner at the time fixed in
12 the summons. The summons may be served by mail, or by personal service if the
13 judge, circuit court commissioner, ~~or~~ district attorney, or attorney general
14 determines personal service to be appropriate. The summons shall be in the form
15 used to summon petit jurors in the circuit courts of the county. Any person who fails
16 to appear when summoned as an inquest juror is subject to a forfeiture of not more
17 than \$40. The inquest jury shall consist of 6 jurors. If 6 jurors do not remain from
18 the number originally summoned after establishment of qualifications, the judge or
19 circuit court commissioner conducting the inquest may require the clerk of the circuit
20 court to select sufficient additional jurors' names. Those persons shall be summoned
21 forthwith by the sheriff of the county.

22 History: 1983 a. 279; Sup. Ct. Order No. 96-08, 207 Wis. 2d xv (1997); 1999 a. 162; 2001 a. 61.

(3) The judge or circuit court commissioner shall examine on oath or
23 affirmation each person who is called as a juror to discover whether the juror is
24 related by blood, marriage or adoption to the decedent, any member of the decedent's

1 family, the district attorney, the attorney general, any other attorney appearing in
2 the case, or any members of the office of the district attorney, the attorney general,
3 or of the office of any other attorney appearing in the case, has expressed or formed
4 any opinion regarding the matters being inquired into in the inquest or is aware of
5 or has any bias or prejudice concerning the matters being inquired into in the
6 inquest. If any prospective juror is found to be not indifferent or is found to have
7 formed an opinion which cannot be laid aside, that juror shall be excused. The judge
8 or circuit commissioner may select one or more alternate jurors if the inquest is likely
9 to be protracted. This subsection does not limit the right of the district attorney or
10 attorney general to supplement the judge's or circuit commissioner's examination of
11 any prospective jurors as to qualifications.

History: 1983 a. 279; Sup. Ct. Order No. 96-08, 207 Wis. 2d xv (1997); 1999 a. 162; 2001 a. 61.

12 (4) When 6 jurors have been selected, the judge or circuit court commissioner
13 shall administer to them an oath or affirmation which that shall be substantially in
14 the following form:

15 You do solemnly swear (affirm) that you will diligently inquire and determine
16 on behalf of this state when, and in what manner and by what means, the person
17 known as who is now dead came to his or her death and that you will return
18 a true verdict thereon according to your knowledge, according to the evidence
19 presented and according to the instructions given to you by the (judge) (circuit
20 court commissioner).

History: 1983 a. 279; Sup. Ct. Order No. 96-08, 207 Wis. 2d xv (1997); 1999 a. 162; 2001 a. 61.

21 (5) Prior to the submission of evidence to the jury, the judge or circuit court
22 commissioner may instruct the jury on its duties and on the substantive law
23 regarding the issues which may be inquired into before the jury. The district attorney
24 or attorney general may, at any time during the course of the inquest, make

1 statements to the jury relating to procedural or evidentiary matters he or she and
2 the judge or circuit court commissioner deem appropriate. Section 972.12 applies to
3 the conduct of the inquest jury.

4 **History:** 1983 a. 279; Sup. Ct. Order No. 96-08, 207 Wis. 2d xv (1997); 1999 a. 162; 2001 a. 61.

4 **(6)** The judge or circuit court commissioner conducting the inquest may order
5 that proceedings be secret if the district attorney or attorney general so requests or
6 concurs.

7 **History:** 1983 a. 279; Sup. Ct. Order No. 96-08, 207 Wis. 2d xv (1997); 1999 a. 162; 2001 a. 61.

7 **SECTION 43.** 979.06 (1), (2) and (4) of the statutes are amended to read:

8 **979.06 (1)** The judge or circuit court commissioner may issue subpoenas for
9 witnesses at the request of the coroner or medical examiner and shall issue
10 subpoenas for witnesses requested by the district attorney or attorney general.
11 Subpoenas are returnable at the time and place stated therein. Persons who are
12 served with a subpoena may be compelled to attend proceedings in the manner
13 provided in s. 885.12.

14 **History:** 1983 a. 279; 2001 a. 61.

14 **(2)** The judge or circuit court commissioner conducting the inquest and the
15 district attorney or attorney general may require by subpoena the attendance of one
16 or more expert witnesses, including physicians, surgeons, and pathologists, for the
17 purposes of conducting an examination of the body and all relevant and material
18 scientific and medical tests connected with the examination and testifying as to the
19 results of the examination and tests. The expert witnesses so subpoenaed shall
20 receive reasonable fees determined by the district attorney or attorney general and
21 the judge or circuit court commissioner conducting the inquest.

22 **History:** 1983 a. 279; 2001 a. 61.

22 **(4)** The judge or circuit court commissioner shall administer an oath or
23 affirmation to each witness which that shall be substantially in the following form:

1 You do solemnly swear (affirm) that the evidence and testimony you give to this
2 inquest concerning the death of the person known as shall be the truth, the
3 whole truth and nothing but the truth.

4 History: 1983 a. 279; 2001 a. 61.

4 **SECTION 44.** 979.07 (1) (a) of the statutes is amended to read:

5 ✓ 979.07 (1) (a) If a person refuses to testify or to produce books, papers or
6 documents when required to do so before an inquest for the reason that the testimony
7 or evidence required of the person may tend to incriminate him or her or subject him
8 or her to a forfeiture or penalty, the person may be compelled to testify or produce the
9 evidence by order of the circuit court of the county in which the inquest is convened
10 on motion of the district attorney or attorney general. A person who testifies or
11 produces evidence in obedience to the command of the court in that case is not subject
12 to any forfeiture or penalty for or on account of testifying or producing evidence,
13 except the person is subject to prosecution and punishment for perjury or false
14 swearing committed in so testifying.

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

15 **SECTION 45.** 979.08 (1) of the statutes is amended to read:

16 ✓ 979.08 (1) When the evidence is concluded and the testimony closed, the judge
17 or circuit court commissioner shall instruct the jury on its duties and on the
18 substantive law regarding the issues inquired into before the jury. The district
19 attorney or attorney general shall prepare a written set of appropriate requested
20 instructions and shall submit them to the judge or circuit court commissioner who,
21 together with the district attorney or attorney general, shall compile the final set of
22 instructions which shall be given. The instructions shall include those criminal

1 offenses for which the judge or circuit court commissioner believes a reasonable jury
2 might return a verdict based upon a finding of probable cause.

3 History: 1983 a. 279; 2001 a. 61.

3 SECTION 46. 979.08 (5) of the statutes is amended to read:

4 979.08 (5) The verdict delivered by the inquest jury is advisory and does not
5 preclude or require the issuance of any criminal charges by the district attorney or
6 attorney general.

7 History: 1983 a. 279; 2001 a. 61.

7 SECTION 47. 979.08 (6) of the statutes is amended to read:

8 979.08 (6) Any verdict so rendered, after being validated and signed by the
9 judge or circuit court commissioner, together with the record of the inquest, shall be
10 delivered to the district attorney or attorney general for consideration. After
11 considering the verdict and record, the district attorney or attorney general may
12 deliver the entire inquest record or any part thereof to the coroner or medical
13 examiner for safekeeping.

14 History: 1983 a. 279; 2001 a. 61.

14 SECTION 48. 979.08 (7) of the statutes is amended to read:

15 979.08 (7) The record of a secret inquest proceeding shall not be open for
16 inspection unless so ordered by the judge or circuit court commissioner conducting
17 the inquest upon petition by the district attorney or attorney general.

18 History: 1983 a. 279; 2001 a. 61.

18 SECTION 49. 979.09 (title) of the statutes is repealed and recreated to read:

19 979.09(title) Disposition of an unidentified or unclaimed body.

20 SECTION 50. 979.09 of the statutes is renumbered 979.09 (2) and amended to
21 read:

22 979.09 (2) If any judge or circuit court commissioner conducts an inquest as to
23 the death of a stranger or of a person whose identity is unknown or whose body is

1 unclaimed or if the district attorney determines that no inquest into the death of such
2 a person is necessary and the circuit judge has not ordered an inquest under s. 979.04
3 (2), a coroner or medical examiner takes custody of a body under sub. (1) or has
4 custody of an unidentified or unclaimed body of an individual whose death was
5 investigated under s. 979.01, and the coroner or medical examiner has made
6 reasonable efforts to identify the body or locate the deceased's representative, the
7 coroner or medical examiner shall cause the body to be decently buried or cremated
8 and shall certify to all the charges incurred in taking any inquest by him or her and
9 to the expenses of burial or cremation of the dead body. The charges and expenses
10 shall be audited by the county board of the proper county and paid out of the county
11 treasury.

12 History: 1983 a. 279 s. 14; Stats. 1983 s. 979.09, 2001 a. 61.

SECTION 51. 979.09 (1) of the statutes is created to read:

13 ✓ 979.09 (1) If a health care facility has the body of a deceased individual and
14 cannot by exercise of reasonable effort locate the deceased's representative or the
15 deceased's representative refuses to claim the body for disposition, the facility shall
16 notify the coroner or medical examiner in the county in which the facility is located,
17 and the coroner or medical examiner shall take custody of the body.

* ****NOTE: Since this subsection deals with disposition of any unclaimed or
unidentified body, not just those that are the subject of a death investigation under s.
979.01, should this provision be in chapters 157? Do you want to define "health care
facility"? If so, I presume the definition should be consistent with other usage of the term
in this chapter?

18 **SECTION 52.** 979.09 (3) of the statutes is created to read:

19 ✓ 979.09 (3) A coroner or medical examiner is immune from civil liability for his
20 or her choice of method for disposing of an unidentified body under this section if the
21 coroner or medical examiner made reasonable efforts to identify the body. A coroner
22 or medical examiner is immune from civil liability for his or her choice of method for

1 disposing of an unclaimed body under this section if the coroner or medical examiner
2 made reasonable efforts to notify the deceased's representative of the disposal of the
3 body.

****NOTE: This draft addresses immunity for unidentified and unclaimed bodies separately so that it does not provide a coroner or medical examiner immunity for disposing of a unclaimed body simply because he or she made efforts to identify the body.

4 SECTION 53. 979.09 (4) of the statutes is created to read:

5 979.09 (4) If the identity of a deceased is known and the deceased's
6 representative cannot be located or refuses to claim the deceased's body for
7 disposition and the decedent has property or an estate, the county treasurer may place
8 a lien on the property or the estate to reimburse the county for the costs of disposition.

* ****NOTE: Generally, one needs a judgment to file a lien. Does it make more sense
* for a county to file a claim against the deceased's estate for the cost of disposition? A county could do this under current law. Are you looking for a provision like the estate recovery provision under the Medical Assistance program (s. 49.682)?

****NOTE: Should this subsection specify not just that the identity of the deceased is known, but that it is known to the coroner or medical examiner?

9 SECTION 54. 979.10 (1) (a) (intro.) of the statutes is amended to read:

10 979.10 (1) (a) (intro.) No person may cremate the corpse of a deceased person
11 within 48 hours after the pronouncement of death, or the discovery of the death, of
12 the deceased person unless the death was caused by a contagious or infectious
13 disease, and one of the following conditions applies:

14 1. The corpse must be cremated immediately to effectively contain the disease.

15 2. A public health authority orders sooner disposal of the corpse under s.

16 157.055 (2) (c) during a state of emergency related to public health.

17 (ag) No person may cremate a corpse unless the person has received a
18 cremation permit release from one of the following:

plain
move
to after
**** Note
after
line 13

1 SECTION 55. 979.10 (1) (a) 1., 2. and 3. of the statutes are renumbered 979.10
2 (1) (ag) 1., 2. and 3. and amended to read:

3 979.10 (1) (ag) 1. The coroner or medical examiner in the county where the
4 death occurred was pronounced if the death occurred was pronounced in this state;
5 and the death was not subject to an investigation under s. 979.01.

6 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; 2001 a. 104.

6 2. The coroner or medical examiner in the county where the crime, injury, or
7 other event which that caused the death occurred if the death occurred in this state
8 and if the death is the subject of an investigation under s. 979.01; ~~or.~~

9 3. The coroner or medical examiner of the county where the corpse is to be
10 cremated if the death occurred was pronounced outside this state.

11 (ar) A cremation permit release issued under this subdivision par. (ag) may not
12 be used in any county except the county in which the cremation permit release is
13 issued.

* → add section
Insert here. → ¶ Section #. 979.10 (1) (a) 1m. and 2m. of the statutes are created to read:
****NOTE: Instead of saying where a release may not be "used", how about saying "A corpse may be cremated only in the county in which the cremation release is issued?"

14 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; 2001 a. 104.

14 SECTION 56. 979.10 (1) (b) of the statutes is amended to read:

15 979.10 (1) (b) A coroner or medical examiner shall include in any cremation
16 permit release issued under par. (a) (ag) a statement that he or she has viewed the
17 corpse which is the subject of the permit release and made personal inquiry into the
18 cause and manner of death under sub. (2) and is of the opinion that no further
19 examination or judicial inquiry is necessary. The release shall also specify the
20 earliest date and time that the cremation may occur.

21 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; 2001 a. 104.

21 SECTION 57. 979.10 (1) (c) of the statutes is renumbered 157.113.

****NOTE: The bill moves s. 979.10 (1) (c) to chapter 157, and applies the general penalty under s. 157.64 (\$200 forfeiture) to a violation.

*
Δ (1)

1 SECTION 58. 979.10 (1) (d) of the statutes is created to read:

2 979.10 (1) (d) If the medical certification of the cause and manner of death of
3 a deceased is completed by a physician under 69.18 (2) (b) or (c), the coroner or
4 medical examiner shall view the medical certification before issuing a cremation
5 release for the deceased. It is not a violation of s. 69.24 for a coroner or medical
6 examiner to make or receive a copy of a death certificate, that has not been filed
7 under 69.18 (1), for purposes of this paragraph. A coroner or medical examiner may
8 not release such a copy of a death certificate to any other person or use the copy for
9 a purpose other than complying with the viewing requirement under this paragraph.

****NOTE: Please review my change. Should the coroner or medical examiner
"review" rather than "view" the medical certification?

10 SECTION 59. 979.10 (2) of the statutes is amended to read:

11 979.10 (2) If a corpse is to be cremated, the coroner or medical examiner shall
12 view the corpse, make a careful personal inquiry into the cause and manner of death,
13 and conduct an autopsy or order the conducting of an autopsy, if in his or her or the
14 coroner or medical examiner or district attorney's opinion attorney or attorney
15 general determines that it is necessary to determine the cause and manner of death,
16 perform or order an autopsy performed on the corpse. If the coroner or medical
17 examiner determines that no further examination or judicial inquiry is necessary he
18 or she shall certify that fact and issue a cremation release. Upon written request by
19 the district attorney or attorney general, the coroner or medical examiner shall
20 obtain the concurrence of the district attorney or attorney general before issuing the
21 certification cremation release. If the coroner or medical examiner determines that
22 further examination or judicial inquiry is necessary, he or she shall notify the district

1 attorney or attorney general under s. 979.04 (2) and refuse to issue a cremation
2 release until the examination or judicial inquiry is concluded.

****NOTE: In the first sentence of this subsection, is the clause regarding
determination by a district or attorney general properly placed?

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; 2001 a. 104.

3 ~~SECTION 60.~~ 979.10 (3) and (4) of the statutes are repealed.

4 ~~SECTION 61.~~ 979.10 (5) of the statutes is created to read:

5 ✓ 979.10 (5) If a coroner or medical examiner issues a release to embalm
6 authorizing the burial or entombment of a corpse but refuses under sub. (2) to issue
7 a cremation release for the corpse, the coroner or medial examiner and county are
8 not liable for the cost of the storing the corpse.

* ****NOTE: I eliminated the phrase "for the family" at the end of this subsection. OK?

9 ~~SECTION 62.~~ 979.10 (6) of the statutes is created to read:

10 ✓ 979.10 (6) A person receiving a body under s. 157.02 (3) or 157.06 shall request
11 a cremation release from the coroner or medical examiner who has jurisdiction to
12 issue a cremation release under 979.10 (1) before moving the body out of the county
13 served by the coroner or medical examiner.

* ****NOTE: Do you want to require that the person receiving the body "obtain" rather
than "request" a release. You could require the following: "If a body must be moved out
of a county to provide the body to a university or school under s. 157.02 (3) or to comply
with an anatomical gift under s. 157.06, the person receiving the body must obtain a
cremation release before moving the body."

****NOTE: Since the cremation provisions are relevant to all deaths, not just those
that must be reported under s. 979.01, do you want to move most of the material under
s. 979.10 to ch. 157?

****NOTE: Why is the authorization for cremation referred to as a "release" but
other authorization in this chapter are referred to as "authorizations"?

* ****NOTE: Section 979.10 is the only section under ch. 979 that uses the term
"corpse" instead of body. Do you want to change "corpse" to "body"?

14 ~~SECTION 63.~~ 979.11 of the statutes is amended to read:

15 ✓ **979.11 Compensation of officers.** The sole compensation of the coroner and
16 deputy coroners for attendance at an inquest and for any preliminary investigation

1 under this chapter at the direction of the district attorney or attorney general shall
 2 be a reasonable sum set by the county board for each day actually and necessarily
 3 required for the purpose, and a sum set by the county board for each mile actually
 4 and necessarily traveled in performing the duty. Any coroner or deputy coroner may
 5 be paid an annual salary and allowance for traveling expenses to be established by
 6 the county board under s. 59.22 which shall be in lieu of all fees, per diem and
 7 compensation for services rendered.

8 History: 1975 c. 294; 1977 c. 187 s. 135; 1977 c. 449 s. 497; 1983 a. 279 s. 15; Stats. 1983 s. 979.M; 1995 a. 201.

8 **SECTION 64.** 979.22 of the statutes is amended to read:

9 **979.22 Autopsies Fees for other autopsy and toxicological services by**
 10 **coroners or medical examiners.** A coroner or medical examiner may perform
 11 autopsies and toxicological services not required under this chapter and may charge
 12 a fee established by the county board for such autopsies and services. The fee may
 13 not exceed an amount reasonably related to the actual and necessary cost of
 14 providing the service.

15 History: 1983 a. 146; 1985 a. 93; 1987 a. 403 s. 256; 1989 a. 298.

(END)

D-N

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2766/P1dn

RLR:.....

l b j k

Date

Representative Vruwink: ✓

I changed the statutory numbering scheme from that in the proposed draft because we do not reuse section numbers in a bill. For example if the bill repeals section 979.02, we do not create a new section 979.02. If you want to change the numbering, you could repeal and recreate all of chapter 979. I also moved a couple of sections so that the general organization of the chapter is as follows: 1) provisions relating to reporting deaths and investigation of deaths by the coroner or medical examiner; 2) provisions relating to inquests; 3) provisions relating to disposition of bodies; 4) and administrative provisions, such as fees. ✓

This draft does not include proposed s. 979.24, regarding disinterment permits, for the following reasons: ✓

1. The first sentence of proposed sub. (1) is redundant to s. 69.18 (4). ✓ (4)
2. The second sentence of proposed sub. (1) adds conditions for issuing a disinterment and reinterment permit under s. 69.18 if the permit is not court ordered. Rather than adding conditions in ch. 979, the bill should amend s. 69.18. Also, 69.18 only covers disinterment and reinterment, not disinterment and cremation. Do you want to expand the scope of a permit under 69.18 (4)? (4)
3. The provisions under proposed subs. (5) and (6) that require permission of a cemetery to disinter human remains that are in a cemetery or to open a vault are redundant to ss. 157.111 and 157.112. Do you want to amend these sections to also require consent of the next of kin? (4)

This draft does not include proposed s. 979.26 or 979.27 because I assume you will want to use the material in LRB-1962 regarding the training and standards board. Do you want to incorporate LRB-1962 into this draft? ✓

What do you want to do with penalties? The proposed draft moves two specific penalty provisions to the end of the chapter and creates a catchall penalty for violating any provision of the chapter, but does not specify the level of the catchall penalty. Do you want a catchall penalty? Under current law, any violation of the statutes for which no penalty is expressed may be penalized as a \$200 forfeiture. If you do not want to include a catchall penalty, I would keep the two specific penalties, as amended in the

proposed draft, with the requirements to which they apply so that they may be easily found. ✓

This draft does not update any cross-references outside chapter 979. ✓

Please review the ****notes in the draft. ✓

Robin Ryan
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**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2766/P1dn
RLR:bjk.pg

August 27, 2007

Representative Vruwink:

I changed the statutory numbering scheme from that in the proposed draft because we do not reuse section numbers in a bill. For example if the bill repeals section 979.02, we do not create a new section 979.02. If you want to change the numbering, you could repeal and recreate all of chapter 979. I also moved a couple of sections so that the general organization of the chapter is as follows: 1) provisions relating to reporting deaths and investigation of deaths by the coroner or medical examiner; 2) provisions relating to inquests; 3) provisions relating to disposition of bodies; 4) and administrative provisions, such as fees.

This draft does not include proposed s. 979.24, regarding disinterment permits, for the following reasons:

1. The first sentence of proposed sub. (1) is redundant to s. 69.18 (4).
2. The second sentence of proposed sub. (1) adds conditions for issuing a disinterment and reinterment permit under s. 69.18 (4) if the permit is not court ordered. Rather than adding conditions in ch. 979, the bill should amend s. 69.18 (4). Also, 69.18 (4) only covers disinterment and reinterment, not disinterment and cremation. Do you want to expand the scope of a permit under 69.18 (4)?
3. The provisions under proposed subs. (5) and (6) that require permission of a cemetery to disinter human remains that are in a cemetery or to open a vault are redundant to ss. 157.111 and 157.112. Do you want to amend these sections to also require consent of the next of kin?

This draft does not include proposed s. 979.26 or 979.27 because I assume you will want to use the material in LRB-1962 regarding the training and standards board. Do you want to incorporate LRB-1962 into this draft?

What do you want to do with penalties? The proposed draft moves two specific penalty provisions to the end of the chapter and creates a catchall penalty for violating any provision of the chapter, but does not specify the level of the catchall penalty. Do you want a catchall penalty? Under current law, any violation of the statutes for which no penalty is expressed may be penalized as a \$200 forfeiture. If you do not want to include a catchall penalty, I would keep the two specific penalties, as amended in the

proposed draft, with the requirements to which they apply so that they may be easily found.

This draft does not update any cross-references outside chapter 979.

Please review the ****notes in the draft.

Robin Ryan
Legislative Attorney
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Ryan, Robin

From: Gillis, George
Sent: Thursday, September 20, 2007 1:00 PM
To: Ryan, Robin
Subject: LRB 2766/P1 changes

SUMMARY OF DESIRED CHANGES TO LRB 2766/P1 from the Wisconsin Coroners and Medical Examiners Association

- ✓ · Page 3, Line 4 – Add subsection (e) after (d) ; (e) or other person(s) with legal court designation (necessary because of issues with remarriages, probate gets involved; gay partners and next of kin issues etc.
- ✓ · Page 4, Line 14 note. Delete lines 11-14 starting with “therapeutic misadventure” and ending with “medical devise.” on line 14. Redundant from previous language and not necessary.
- Page 4 Note: Line 14 – Agree. Remove lines 11-14
- ✓ · Page 4 Note: Line 14 – Agree with reorganized 979.01
- ? · Page 5, Line 5 – Delete health care, Line 4 worker - *delete or keep?*
- ? · Page 5, Line 10 – Add and/or *to LEO & may want to require rpt. to LEO?*
LEO, coroner or both
- Page 5, Line 3 – Definition of health care worker is usually defined by state licensure, leave as is ?
- ✓ · Page 5 – We agree-- don't need to define hospice, leave as is
- ? · Page 5, Line 6 – Leave as is because defined in 979.01 *which term?*
- ✓ · Page 5, Line 12 – Delete “found or”, O.k. with “located”
- ✓ · Page 5, Lines 17-18 – Refer to death from act of bio-terrorism as defined in s. 166.02 (1r)
- ? · Page 6, Lines 2-3 – 3 or 4 different legal definition, this needs clarification
 - Different definition i.e. is it weeks, how many. Some say 22 weeks, some say if fetus is 350 grams. DOT uses different definition as well.
 - Conception to death – DOT not does not use same definition by MDs or coroners
 - Need to talk to DA's because of possible legal challenges
- ? · Page 7, Line 10 – Agree, yes. ** require institutionalization?*

- ① Page 7, Line 11, Insert "licensed" before health care facility then add a period on Line 12 *mean those under ch. 101*
- ② Page 7, Line 12 – After health care facility period, delete "or within 24 hours of the individual's admittance to a health care facility" *doesn't help. - so just want to cover outpatient & emergency room?*
- ✓ Page 7, Line 16 – O.k.
- ③ Page 8, Line 2 – Irrelevant point *so if die of dangerous communicable disease while quarantined - don't report?*
- Page 8, Lines 3-4 – Check with DA's, too many definitions
- ✓ Page 8, Line 6 – O.k.
- ④ Page 8, Line 8 – 135.08 already dictates a protocol annually for coroners and medical examiners; insert line 8 after "protocol," add "under the provision of 135.08" *#S Code protocol is for pronouncing death outside a hospital or nursing home*
- ⑤ Page 9, Line 6 – After "shall" insert "have jurisdiction to" *pronouncing doesn't necessarily = reporting*
- This answers her note in Line 7 *when should CME have jur. - any death? only if must be reported? - how about just "may"*
- Page 9, Lines 14-15, 16 – Not every death from a hip fracture requires an autopsy so don't mandate *- relates to notif of DA/AG, not to autopsy - ok?*
- ⑥ Page 9, Line 17 – Delete after district attorney, "for his or her county"
- Add "of the county and district attorney protocol and having jurisdiction" *?? what is the DA protocol*
- Then continue "or the attorney general of the death."
- ✓ Page 9, Line 19 – After "medical examiner" insert "or his or her designee"
- ✓ Page 10, Line 22 – Delete "next of kin" and insert "the deceased's representative"
- ✓ Page 10, Line 22 – After "next of kin", insert "with respect to disposition" continues "of the deceased"
- ✓ Page 10, Line 23 – After "medical examiner" add "or their designee" *added on line 18 as well - need??*
- ✓ Page 10, Line 24 – After subsection delete "within 12 hours"
- ✓ Page 11 – Delete lines 1-4 because they are unnecessary
- ✓ Page 11, Line 4 – Note 1 – Separate cremation statutes
- ⑦ Page 11, Line 4 – Note 2 –
- ✓ Page 11, Line 4 – Note 3 – We do not want to be inconsistent with other reporting public health concerns and with 2005 Act 198
- ⑧ Page 11, Line 10, After "may include," insert "but not be limited to" so we can subpoena *already say or does not covered - on line 12 gn. includes & not limited to redundant - by giving specific ex. may limit % type of ex.*

anything that relates to manner of death

- ✓ Page 11, Line 14 – Seek clarification – coroners and medical examiners do want access to mental health records
- ✓ Page 12, Line 8 – Delete “remove,” insert “move”; don’t touch the body period
- ✓ Page 12, Line 9 – After (1), delete “from,” insert “at”; can’t move the body at the scene
- ✓ Page 12, Line 12 – Note – Body is the scene of death
- ✓ Page 13, Line 10 – After “medical examiner,” insert “or their designee”
- ✓ Page 13, Line 16 – Yes, we need both
- ✓ Page 14, 1st Line – Need advanced forensic training
- Page 14, Line 4 – Section 5 is not correct. *from their 979.02(5)* If coroner or medical examiner doesn’t want to do autopsy, the section should follow 979.02 which refers to disinterment as well. Coroners and ME’s could be directed to move to circuit court for the county with the jurisdiction over the body. The DA can’t direct a coroner or medical examiner
- Page 14, Note – Correct. Even if autopsy not performed, coroner and ME most still be allowed to extract specimens *is drawing specimen a subset of diag. process*
- Page 14, Line 12 – Delete Line 12 and Line 13 through 979.01(1), and start with “The coroner.” *merge w/ sub (1)* 979.01(3) & (3m) has to be in Section 6 to give authority to withdraw specimens without restrictions
- Page 14, Line 19 – Note – Yes, coroners and ME’s can extract specimen. Evidence retention rules question for DA and AG. See if they think “applicable evidence retention rules” apply
- ✓ Page 15, Line 8 – After “thereafter,” delete “If the coroner” through Line 11 ending
- Page 15, Line 11 – Intended effect. We don’t want “one form”; county jurisdictions are different *active voice C/ME shall provide (I use) form for — may be on any form sent by coroner? have to be uniform in county?*
- ✓ Page 16, Line 11 – O.k., agree is redundant
- Page 17, Note – “No” in answer to question *— so want it moved back? no or OK?*
- ✓ Page 17, Line 18 – O.k.
- ✓ Page 18, Line 11 – Delete “or electronic narrative”; we need a written report.
- ✓ Page 18, Line 14 – O.k.
- 7. ○ Page 19 references training standards

- ✓ Page 20, Line 5 – Do you really need to have an inventory sheet signed in the presence of a witness? Doesn't always happen. Page 20, Line 5 – Delete "in the presence of a witness."
 - ✓ Page 20, Line 11, after under delete s. 255.056(3) and after 255.056, add language or other bona fide drug repository programs. We don't want to limit because they are many legitimate programs that take drugs like Doctors Without Borders
 - ✓ Page 20, Line 13 Note: OK with other changes above.
 - ✓ Page 26-27 – Aren't (1) and (2) switched and incorrect order? *- bill prints in order of old § when renumber*
 - Page 27, Line 13 – Can resolve question by adding word "licensed" on Page 27, Line 12 after 979.09(1), "If a ...," insert "licensed" *see above - even if licensed - is it a health care facility - hospice? (BRF?)*
 - Page 27, Line 16 – Chapter 157 – Let's discuss; what's your rationale?
 - ✓ Page 28, Line 2 – O.k., but your note is opposite what bill does we like immunity for reasonable effort. Please clarify —
 - Page 28, Line 8 – Note – Duties of County Treasurer not Coroner. Is this County Treasurer authority in statute?
 - ✓ Page 28, Note – Identity of deceased should be known to coroner
 - Page 29, Line 8 – "No"; bodies are cremated in other countries *countries? should just apply (to §) 3.*
 - Page 29, Line 21 – Note – Delete lines 6, 7, 8 *delete a limit to (a) 3.?*
 - ✓ Page 29, Line 21 – O.k. *(See 979.10(1)(a) s. 4 then draft*
 - ✓ Page 30, Line 9 – Note – Yes. Change Line 3, the word "view" to "review"
 - ✓ Page 31, Line 2 – We don't know what you mean by "properly placed"? Please help us understand your question *Oked with George - relates to what clause modifies*
 - ✓ Page 31, Line 13 – Note 1 – We want to leave request
 - ✓ Page 31, Line 13 – Note 2 – No
 - ✓ Page 31, Line 13 – Note 3 – Yes, consistent all
- ✗ Also, can you insert the draft that you had previously prepared into this draft. That would be LRB 1962+

Thank you very much for your time.

George J. Gillis Jr.

Office of Representative Amy Sue Vruwink
State Capitol
Room 112 North
608-266-8366
Toll Free 888 534 0070

LRB-2766/P1

9/27/07

①

meeting w/ Amy Sue Urawink, John Stanby
Al Klimak (by phone)

p. 5, line 4 - delete "health care worker"

p. 5, line 10 - must report to C/ME and
may report to law enforcement

p. 5, line 6 - "correctional facility" - want it
to cover any facility in which person
resides overnight - for ex. halfway house
leave undefined

p. 6, line 23 - will get back to me
if want changes re abortion

p. 7, line 9-10 : how should this be read?
(detained) or (committed & institutionalized)
OR

(detained & institutionalized) or (committed & institutionalized)

delete "committed"

p. 7, lines 11-13 - instead require
reporting of deaths during provision of
emergency care at a medical facility

- don't want all deaths. in ER or within
24 hours of admittance b/c don't
want deaths due to illness/condition

for which person was being treated -

(2)

p. 8 - line 8: HFS 135.08 is protocol for pronouncing death - not reporting wants C/MZ by local rule to be able to require reporting of additional deaths - for ex. if trying to track or study certain causes of death.

p. 9, lines 14-17: some DAs object to receiving reports for all of these deaths. Provide exception so C/MZ needn't notify DA if DA in writing has waived notice requirement

p. 11, delete lines 9-13
DA shouldn't be able to order C/MZ to order an autopsy. DA should seek order from court for an autopsy

p. 14, line 12: yes - can incorporate sub (6) into sub (1), but keep "without restrictions"

'Other appropriate diagnostic procedures' in sub (1) includes more than extraction of specimens, for ex, a dental extraction

p. 15 - can delete sentence on line 4

3

p. 17, line 18 move & OK

p. 19, line 5 - require that keep records
in accordance w/ standards established
by board (LRB-1962)

p. 27, line 11

yes, can move to ch. 157 (code of
unclaimed bodies)
should cover anybody who has a
body, not just health care facilities

p. 29 lines 6-8 par. (a), as under
current law, should only apply to (a) 3.

- delete, don't want restriction at all

Do not move cremation provisions out of ch 979

don't need catch-all penalty

Change penalty for failure to report
under 979.02

Agency (including funeral home)	90 days / \$10,000
Individual	90 days / \$1,000

Keep 979.10 penalty as is

Add LRB-1962

- add that if coroner not certified =
just cause for governor to remove
him or her

- require board to give notice to county if

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

C/MS not certified

4

Disinterment - Amend 69.18(4)