



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-2766/PT

RLR:bjk:pg

Lstays

In 10/17/07
wanted soon

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

2007 Bill

SAV
X-ref ✓

Inserts ← out of order

RMNR
D-W

Regen Cat ←

1 AN ACT *to repeal* 979.01 (2), 979.01 (3), 979.01 (3m), 979.03 and 979.10 (3) and
 2 (4); *to renumber* 979.10 (1) (c); *to renumber and amend* 979.01 (4), 979.02,
 3 979.09 and 979.10 (1) (a) 1., 2. and 3.; *to amend* 979.01 (title), 979.01 (1) (intro.),
 4 979.01 (1) (a), 979.01 (1) (d), 979.01 (1) (e), 979.01 (1) (g), 979.01 (1) (i), 979.01
 5 (1m), 979.01 (1r), 979.015, 979.02 (title), 979.025 (title), 979.025 (1), 979.025
 6 (2), 979.025 (3), 979.04, 979.05 (2), (3), (4), (5) and (6), 979.06 (1), (2) and (4),
 7 979.07 (1) (a), 979.08 (1), 979.08 (5), 979.08 (6), 979.08 (7), 979.10 (1) (a) (intro.),
 8 979.10 (1) (b), 979.10 (2), 979.11 and 979.22; *to repeal and recreate* 979.01 (1)
 9 (b), 979.01 (1) (c), 979.01 (1) (f), 979.01 (1) (h), 979.01 (1g) and 979.09 (title); and
 10 *to create* 51.30 (4) (b) 28., 157.113 (title), 979.001, 979.01 (1) (j) to (q), 979.01
 11 (1i), 979.01 (1k), 979.01 (1p), 979.017, 979.02 (2) to (8), 979.027, 979.032,
 12 979.034, 979.036, 979.038, 979.09 (1), 979.09 (3), 979.09 (4), 979.10 (1) (a) 1m.

1 and 2m., 979.10 (1) (d), 979.10 (5) and 979.10 (6) of the statutes; **relating to:**
2 investigations of deaths and duties of coroners and medical examiners.

INS RC

INS ANALYSIS

Analysis by the Legislative Reference Bureau

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

INS 2-3e3
from LRB-1963

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

INS 2-3B

SECTION 1. 51.30 (4) (b) 28. of the statutes is created to read:

51.30 (4) (b) 28. To a medical examiner, assistant medical examiner, coroner, or assistant coroner upon an oral or written request from that person, if the treatment records are relevant to completion of a medical certification under s. 69.18 (2) or to an investigation of the cause or manner of the patient's death under s. 979.01 or 979.10. A custodian of treatment records may initiate contact with a coroner or medical examiner to inform him or her of treatment records of a deceased patient that may be relevant to the completion of a medical certification or the investigation of a death. The recipient of any information under this subdivision shall keep the information confidential except as necessary to comply with s. 69.18, 979.01, or 979.10.

INS 2-3A

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

INS 2-13B
from LRB-1963

157.113 (title) **Permission required to deposit cremated remains in cemetery.**

INS 2-13C

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

INS 2-16A

979.001 **Definitions.** In this chapter:

INS 2-16B
from LRB-1963

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

INS 2-16C

20

- 1 (a) The deceased's spouse.
- 2 (b) An adult son or daughter of the deceased.
- 3 (c) A parent of the deceased.
- 4 (d) An adult brother or sister of the deceased.

JNS 3-4 →

****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?

*

5 (2) "Event" includes a sudden unexplained collapse.

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

7 (a) A midwife licensed under subch. XII of ch 440.

*

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

8 (b) A nurse licensed under ch. 441.

9 (c) A chiropractor licensed under ch. 446.

10 (d) A dentist licensed under ch. 447.

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

13 (f) A physical therapist licensed under subch. III of ch. 448.

14 (g) A podiatrist licensed under subch. IV of ch. 448.

15 (h) A dietitian certified under subch. V of ch. 448.

16 (i) An athletic trainer licensed under subch. VI of ch. 448.

17 (j) An occupational therapist or occupational therapy assistant licensed under
18 subch. VII of ch. 448.

19 (k) An optometrist licensed under ch. 449.

20 (L) A pharmacist licensed under ch. 450.

21 (m) An acupuncturist certified under ch. 451.

22 (n) A psychologist licensed under ch. 455.

1 (o) A social worker, marriage and family therapist, or professional counselor
2 certified or licensed under ch. 457.

3 (p) A speech-language pathologist or audiologist licensed under subch. II of ch.
4 459 or a speech and language pathologist licensed by the department of public
5 instruction.

6 (q) A massage therapist or bodyworker certified under ch. 460.

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

8 (5) "Therapeutic misadventure" means an unintended medical error made by
9 a health care provider or an unexpected mechanical failure of a medical device
10 during the treatment of a patient that causes serious harm to the patient.

11 "Therapeutic misadventure" includes but is not limited to unintentional
12 administration of a wrong medication or a wrong dosage of medication, unexpected
13 mechanical failure of a device including a ventilator or cardiac implant, avoidable
14 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.

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

16 **979.01 (title) Reporting deaths required; penalty; taking specimens by**
17 **notification of coroner or medical examiner; jurisdiction for investigating**
18 **deaths.**

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

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

* ****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 want to define "correctional facility"?

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

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

14 ✓ 979.01 (1) (a) ~~All deaths in which there are~~ The death involves unexplained,
 15 unusual, or suspicious circumstances.

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

17 ✓ 979.01 (1) (b) The death is a suspected homicide, including a death resulting
 18 from an act of bioterrorism. *was defined in s. 166.02(1r)*

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

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

20 ✓ 979.01 (1) (c) The death is a suspected suicide.

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

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

4 SECTION ~~10~~[✓]. 979.01 (1) (e) of the statutes is amended to read:

5 979.01 (1) (e) ~~All deaths due to~~ Injury or poisoning may be a contributing cause
6 of the death, whether homicidal, suicidal or accidental or not the injury or poisoning
7 is the primary cause of death and regardless of the interval between the injury or
8 poisoning and the death.

9 SECTION ~~11~~[✓]. 979.01 (1) (f) of the statutes is repealed and recreated to read:

10 979.01 (1) (f) The death occurs while the individual is in the actual or
11 constructive custody of a law enforcement officer, during active pursuit of the
12 individual by a law enforcement officer, or otherwise involves a law enforcement
13 officer.

14 SECTION ~~12~~[✓]. 979.01 (1) (g) of the statutes is amended to read:

15 979.01 (1) (g) ~~When there was no~~ The individual was not under the care of a
16 physician, or accredited practitioner of a bona fide religious denomination relying
17 upon prayer or spiritual means for healing in attendance within 30 days preceding
18 for the illness or condition that caused the death.

19 SECTION ~~13~~[✓]. 979.01 (1) (h) of the statutes is repealed and recreated to read:

20 979.01 (1) (h) The death occurs while the individual is confined in a federal
21 prison in this state, a state prison, county jail or house of correction, a juvenile
22 correctional facility, as defined in s. 938.02 (10p), or a juvenile detention facility, as
23 defined in s. 938.02 (10r), or is otherwise incarcerated in the custody of the
24 department of corrections or of a county sheriff.

25 SECTION ~~14~~[✓]. 979.01 (1) (i) of the statutes is amended to read:

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

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

9 979.01 (1) (j) The death occurs while the individual is detained or committed
 10 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
 pretrial competency examination or after being committed as incompetent to stand trial?

11 (k) The death occurs in the emergency room of a health care facility, in an
 12 outpatient area of a health care facility, or within 24 hours of the individual's
 13 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?

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

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

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

20 (n) The death is associated with an epidemic or pandemic, with the spread of
 21 a dangerous communicable disease, as defined by the department of health and

INS
7-13

1 family services, or with a disease-causing agent that may pose a threat to public
2 health.

* (handwritten mark)

****NOTE: 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," "pandemic," or "disease-causing agent"?

3 (o)

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

4

* (handwritten mark)

****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"?

5 (p)

The individual's remains are discovered outside a cemetery or documented burial plot.

6

* (handwritten mark)

****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.

7 (q)

If a coroner or medical examiner publishes a written death reporting protocol, the protocol requires reporting of the death.

8

JNS 8-8 (handwritten note)

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

9

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

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

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

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

16

17

1 immediately notify the coroner or medical examiner in the county in which the crime,
2 injury, or other event is believed to have occurred.

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

4 979.01 (1k) (a) Except as provided in par. (b), if a death must be reported under
5 sub. (1), the coroner or medical examiner in the county in which the crime, injury, or
6 other event that caused the death occurred shall investigate the cause and manner
7 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?

8 (b) If there is reason to believe that a death that must be reported under sub.
9 (1) was caused by a crime, injury, or other event that occurred outside this state, or
10 if after reasonable efforts it cannot be determined where the crime, injury, or other
11 event that caused the death occurred, the coroner or medical examiner in the county
12 in which death is pronounced shall investigate the cause and manner of death.

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

14 979.01 (1m) The coroner or medical examiner receiving notification under sub.
15 (1) or (1g) who has jurisdiction to investigate a death under this section shall
16 immediately, within a reasonable time after receiving notice of the death, notify the
17 district attorney for his or her county or the attorney general of the death.

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

19 979.01 (1p) A coroner or medical examiner who receives notice of a death under
20 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?

for his or her designee

next of kin

(a) Except as provided in par. (b)

INS
9-17

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

2 979.01 (1r) If the coroner or medical examiner is notified of a death under sub.
3 (1) or (1g) and determines that his or her notification of the death was not required
4 under sub. (1) or (1g), the discovery of human remains under this section and
5 determines that the remains have no forensic significance, he or she shall notify the
6 director of the historical society under s. 157.70 (3).

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

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

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

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

12 979.105 **Authorization to embalm.** No person may embalm or perform an
13 autopsy on or dispose of the body of any person who has died under any of the
14 circumstances listed in this section unless the person obtains the individual whose
15 death must be reported under s. 979.01 (1) without the written authorization of the
16 coroner of the county in which the injury or cause of death occurred. Such
17 authorization shall be issued by the or medical examiner who has jurisdiction to
18 investigate the death under s. 979.01. An authorization to embalm shall include
19 information necessary to identify the deceased, the date and place of death, the name
20 of the funeral director or person acting in the place of the funeral director, and shall
21 specify that the coroner or medical examiner does not provide authorization to
22 override the wishes of the next of kin of the deceased. If possible, the coroner or a
23 deputy medical examiner shall issue an authorization to embalm under this
24 subsection within 12 hours after notification of the reportable being notified of the
25 death, or as soon thereafter as possible in the event of unexplained, unusual or

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for historical society designee

with respect to disposition of the body

strike

after being notified of the death

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suspicious circumstances. If the coroner or medical examiner cannot issue an authorization to perform an autopsy within 12 hours after being notified of a death, the coroner or medical examiner shall indicate the reason for the delay on the authorization to embalm.

***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.

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

979.015 Subpoena for documents. 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 necessary for the determination of a decedent's relevant to determining the cause or manner of a decedent's death. The documents may include the decedent's patient health care records and, as defined in s. 146.81 (4) and described in s. 146.50 (12), treatment records, as defined in ss. s. 51.30 and 146.81 (4) (1) (b), or documents that are not covered under s. 51.30 (4) (b) 28., 146.50 (12), or 146.82 (2) (a) 18. The documents shall be returnable to the officer named in the subpoena.

strike period

***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.

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

2 979.017 Custody of and authorization to move a body. (1) The coroner
3 or medical examiner who has jurisdiction to investigate a death under s. 979.01 has
4 legal custody of the decedent's body until he or she releases the body for disposition.
5 Temporary transfer of a decedent's body for the purpose of removing a body part that
6 is the subject of an anatomical gift under s. 157.06 does not constitute release of legal
7 custody of the body.

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28

8 (2) No person may remove the body of an individual whose death must be
9 reported under s. 979.01 (1) from the scene of death without oral or written
10 authorization from the coroner or medical examiner to whom the death was first
11 reported under s. 979.01, except if removal of the body is necessary to perform search
12 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?

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

14 979.02 (title) Autopsies and other diagnostic procedures.

15 SECTION 29. 979.02 of the statutes is renumbered 979.02 (1) and amended to
16 read:

17 979.02 (1) The coroner, or medical examiner ~~or district attorney~~ who has
18 jurisdiction to investigate a death under s. 979.01 may order the ~~conducting of that~~
19 an autopsy upon or other appropriate diagnostic procedure be performed on the body
20 of a dead person ~~any place within the state in cases where an inquest might be had~~
21 ~~as provided in s. 979.04 notwithstanding the fact that no such inquest is ordered or~~

for his or her designee

1 conducted. The autopsy shall be conducted by a licensed physician who has
2 specialized training in pathology. The district attorney may move the circuit court
3 for the county in which the body is buried for an order disinterring the body for
4 purposes of autopsy. The order shall be granted by the circuit court upon a
5 reasonable showing that any of the criteria specified in s. 979.04 exists. This section
6 does not prevent additional autopsies or examinations of the body if there are
7 unanswered pathological questions concerning the death and the causes of death the

8 deceased *material from p. 14, lines 15-19* (7)

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

10 979.02 (2) The coroner or medical examiner who has jurisdiction to investigate
11 a death under s. 979.01 shall order that an autopsy and any other appropriate
12 diagnostic procedure be performed on the body of the deceased if the death occurred
13 under any of the following circumstances:

- 14 (a) The death likely resulted from a criminal act, unless the district attorney
15 or attorney general waives the requirement for an autopsy.
- 16 (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).

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

19 (3) An autopsy ordered under this section may be performed only by a licensed
20 physician who has undergone specialized training in pathology, and an autopsy
21 ordered under sub. (2) may be performed only by a pathologist who has
22 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?

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

INS 14-4
4 (5) If the coroner or medical examiner who has jurisdiction to investigate a
5 death under s. 979.01 does not order that an autopsy or other diagnostic procedure
6 be performed on the body of the deceased and the district attorney who has
7 jurisdiction under s. 979.01 or the attorney general determines that an autopsy or
8 other specified diagnostic procedure is necessary to establish evidence for an inquest
9 or for a potential criminal case, the district attorney or attorney general may direct
10 the coroner or medical examiner to order that an autopsy or other appropriate
11 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.

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

* ****NOTE: Should the material in this subsection be combined 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."

to move to p. 13 line 8 (underscored)

Bold
(6) Except if ordered under sub. (5)

1 (7) No person may perform an autopsy on the body of an individual whose death
2 must be reported under s. 979.01 (1) without the written authorization of the coroner
3 or medical examiner who has jurisdiction to investigate the death under s. 979.01.

4 The autopsy authorization shall be on a form prescribed by the coroner or medical
5 examiner. In cases in which the coroner or medical examiner issues an authorization
6 to perform an autopsy, the coroner or medical examiner shall, if possible, issue the
7 authorization within 12 hours after being notified of the death, or as soon as possible
8 thereafter. If the coroner or medical examiner cannot issue an authorization to
9 perform an autopsy within 12 hours after being notified of a death, the coroner or
10 medical examiner shall indicate the reason for the delay on the autopsy
11 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?

Bold
12 (7) (8) If the coroner or medical examiner *who has* jurisdiction to investigate a death
13 under s. 979.01 determines that an autopsy or analysis of specimens, bodily fluids,
14 or other bodily materials is not required for an investigation of a death that must be
15 reported under s. 979.01 (1), the coroner or medical examiner shall, upon the request
16 of the deceased's representative, inform the deceased's representative of his or her
17 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?

18 SECTION ~~31~~ 979.025 (title) of the statutes is amended to read:
19 **979.025 (title) Autopsy Investigation of death of a correctional inmate.**
20 SECTION ~~32~~ 979.025 (1) of the statutes is amended to read:

INS 16-1 →

1 979.025 (1) INMATE CONFINED TO AN INSTITUTION IN THIS STATE. If an individual
 2 dies while he or she is in the legal custody of the department and confined to a
 3 correctional facility located in this state, the coroner or medical examiner of the
 4 county where the death occurred shall perform an autopsy on the deceased
 5 individual. If the a coroner or medical examiner, who performs the orders under s.
 6 979.02 (2) (b) that an autopsy be performed on the body of an individual who died
 7 while in the legal custody of the department and confined to a correctional facility
 8 in this state, determines that the individual's death may have been the result of any
 9 of the situations that would permit the district attorney to order an inquest under
 10 s. 979.04 (1), the coroner or medical examiner shall follow the procedures under s.
 11 979.04 (2).

*
 ****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).

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

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

1 medical examiner shall forward the results of the autopsy or other diagnostic
2 procedure to the appropriate authority in the other state.

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

4 979.025 (3) COSTS OF AN AUTOPSY AND DIAGNOSTIC PROCEDURE. The costs of an
5 autopsy or other diagnostic procedure performed under sub. (1) ~~or~~ (2) or performed
6 on an inmate confined in a correctional facility in this state under s. 979.02 (2) (b)
7 shall be paid by the department.

8 SECTION ~~35~~. 979.027 of the statutes is created to read:

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

Upon receipt of the order the coroner or medical examiner shall issue a permit for disinterment and reinterment within 5. 69. 18/19 18/19 18/19

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

*

19 SECTION ~~36~~. 979.03 of the statutes is repealed.

20 SECTION ~~37~~. 979.032 of the statutes is created to read:

21 **979.032 Coroner or medical examiner investigation records.** (1) The
22 coroner or medical examiner shall create and maintain a record for each
23 investigation conducted under s. 979.01 that includes all of the following:

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

2 (b) A coroner or medical examiner case number.

3 (c) A case activity log.

4 (d) An investigation report containing any personal information regarding the
5 deceased that is relevant to determining the cause and manner of death, the medical
6 history of the deceased, information relevant to the circumstances of the death, death
7 scene observations, findings regarding the body of the deceased that are relevant to
8 determining the cause of death, notation of evidence recovered, including any visual
9 documentation, a list of other persons or agencies involved in the investigation, and
10 a list of persons interviewed by the coroner or medical examiner regarding the case.

11 (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?

12 (f) Documentation of the chain of custody of all evidence and property obtained
13 by the coroner or medical examiner, including an inventory sheet, described under
14 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.

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

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

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

21 **979.034 Confidentiality of coroner or medical examiner investigation**
22 **records and information.** (1) The coroner or medical examiner shall keep
23 confidential all records obtained under s. 51.30 (4) (b) 28. or 146.82 (2) (a) 18., all

1 confidential documents obtained by subpoena under s. 979.015, and any information
2 contained in such records or documents, except that the coroner or medical examiner
3 may divulge such information as necessary to complete a medical certification under
4 s. 69.18 (2).

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

13 (3) If a law enforcement agency, or a district attorney investigating a death, or
14 the attorney general, requests that the coroner or medical examiner keep
15 investigation records under s. 979.032 and information related to an investigation
16 confidential, the coroner or medical examiner shall keep such records and
17 information confidential for as long as the law enforcement agency, district attorney,
18 or attorney general requests.

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

20 **979.036 Handling of personal property of deceased.** (1) Each coroner or
21 medical examiner shall keep an inventory of any money or other property that the
22 coroner or medical examiner takes from a death scene or from a deceased person and
23 does not immediately provide to a law enforcement agency as evidence. The coroner
24 or medical examiner shall release any such property, other than prescription
25 medication, that belonged to the deceased to the deceased's representative unless the

1 property is needed as evidence or unless a court has issued an order to hold the
2 property for payment of fees associated with the disposal of the body.

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

6 If the coroner or medical examiner does not provide the prescription medications to
7 a law enforcement agency as evidence, the coroner or medical examiner shall destroy
8 them in accordance with applicable county evidence retention policies and
9 appropriate standards for disposal of medications, except that the coroner or medical
10 examiner shall donate those prescription medications that satisfy the standards
11 under s. 255.056 (3) to the drug repository program under s. 255.056. The coroner
12 or medical examiner shall indicate on the inventory sheet the disposition of the
13 prescription medications.

* ****NOTE: This subsection combines provisions from the "coroner or medical
examiner investigation records" and "handling of personal property of the deceased"
sections of the proposed draft.

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

15 **979.038 Grief counselling referral for certain child deaths.** If a coroner
16 or medical examiner is notified of the death of a child under 2 years of age and there
17 is no indication that the child's death was caused by a criminal act, the coroner or
18 medical examiner shall notify a grief counselor, who receives public funding to
19 provide grief counselling for child deaths, of the death and shall inform the child's
20 parent that grief counselling is available. If a coroner or medical examiner is notified
21 of the death of a child under 2 years of age and suspects that the death may have the
22 been the result of a criminal act, the coroner or medical examiner may not notify a
23 grief counselor of the child's death or refer the child's parents for grief counselling

or to another drug repository program
Similar

1 unless the law enforcement agency and district attorney or attorney general
2 investigating the death consent to the notification and referral.

3 SECTION ~~41~~ 979.04 of the statutes is amended to read:

4 **979.04 Inquests: when called.** (1) If the district attorney or attorney general
5 has notice of the death of any person and there is reason to believe from the
6 circumstances surrounding the death that felony murder, first-degree or
7 2nd-degree intentional homicide, first-degree or 2nd-degree reckless homicide,
8 homicide by negligent handling of dangerous weapon, explosives or fire, homicide by
9 negligent operation of vehicle, homicide resulting from negligent control of a vicious
10 animal, or homicide by intoxicated user of a vehicle or firearm may have been
11 committed, or that death may have been due to suicide or unexplained or suspicious
12 circumstances, the district attorney or attorney general may order that an inquest
13 be conducted for the purpose of inquiring how the person died. The district attorney
14 or attorney general shall appear in any such inquest representing the state in
15 presenting all evidence which may be relevant or material to the inquiry of the
16 inquest. The inquest may be held in any county in this state in which venue would
17 lie for the trial of any offense charged as the result of or involving the death. An
18 inquest may only be ordered by the district attorney or attorney general under this
19 subsection or by the circuit judge under sub. (2).

20 (2) If the coroner or medical examiner has knowledge of the death of any person
21 in the manner described under sub. (1), he or she shall immediately notify the district
22 attorney or attorney general. The notification shall include information concerning
23 the circumstances surrounding the death. The coroner or medical examiner may
24 request the district attorney or attorney general to order an inquest under sub. (1).
25 If the district attorney refuses and attorney general refuse to order the inquest, a

1 coroner or medical examiner may petition the circuit court to order an inquest. The
2 court may issue the order if it finds that the district attorney ~~has~~ and attorney
3 general have abused ~~his or her~~ their discretion in not ordering an inquest.

4 (3) Subsequent to receipt of notice of the death, the district attorney or attorney
5 general may request the coroner or medical examiner to conduct a preliminary
6 investigation and report back to the district attorney or attorney general. The
7 district attorney or attorney general may determine the scope of the preliminary
8 investigation. This subsection does not limit or prevent any other investigation into
9 the death by any law enforcement agency with jurisdiction over the investigation.

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

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

1 circuit court commissioner conducting the inquest may require the clerk of the circuit
2 court to select sufficient additional jurors' names. Those persons shall be summoned
3 forthwith by the sheriff of the county.

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

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

21 You do solemnly swear (affirm) that you will diligently inquire and determine
22 on behalf of this state when, and in what manner and by what means, the person
23 known as who is now dead came to his or her death and that you will return
24 a true verdict thereon according to your knowledge, according to the evidence

1 presented and according to the instructions given to you by the (judge) (circuit
2 court commissioner).

3 (5) Prior to the submission of evidence to the jury, the judge or circuit court
4 commissioner may instruct the jury on its duties and on the substantive law
5 regarding the issues which may be inquired into before the jury. The district attorney
6 or attorney general may, at any time during the course of the inquest, make
7 statements to the jury relating to procedural or evidentiary matters he or she and
8 the judge or circuit court commissioner deem appropriate. Section 972.12 applies to
9 the conduct of the inquest jury.

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

13 SECTION ~~43~~[✓] 979.06 (1), (2) and (4) of the statutes are amended to read:

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

20 (2) The judge or circuit court commissioner conducting the inquest and the
21 district attorney or attorney general may require by subpoena the attendance of one
22 or more expert witnesses, including physicians, surgeons, and pathologists, for the
23 purposes of conducting an examination of the body and all relevant and material
24 scientific and medical tests connected with the examination and testifying as to the
25 results of the examination and tests. The expert witnesses so subpoenaed shall

1 receive reasonable fees determined by the district attorney or attorney general and
2 the judge or circuit court commissioner conducting the inquest.

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

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

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

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

19 SECTION ~~45~~. 979.08 (1) of the statutes is amended to read:

20 979.08 (1) When the evidence is concluded and the testimony closed, the judge
21 or circuit court commissioner shall instruct the jury on its duties and on the
22 substantive law regarding the issues inquired into before the jury. The district
23 attorney or attorney general shall prepare a written set of appropriate requested
24 instructions and shall submit them to the judge or circuit court commissioner who,
25 together with the district attorney or attorney general, shall compile the final set of

1 instructions which shall be given. The instructions shall include those criminal
2 offenses for which the judge or circuit court commissioner believes a reasonable jury
3 might return a verdict based upon a finding of probable cause.

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

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

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

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

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

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

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

20 **979.09 (title) Disposition of an unidentified or unclaimed body.**

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

23 979.09 (2) If any judge or circuit court commissioner conducts an inquest as to
24 the death of a stranger or of a person whose identity is unknown or whose body is
25 unclaimed or if the district attorney determines that no inquest into the death of such

Bold ← Barriat Disposition of an unidentified or unclaimed body ⊙

1 a person is necessary and the circuit judge has not ordered an inquest under s. 979.04
 2 (2), a coroner or medical examiner takes custody of a body under sub. (1) or has
 3 custody of an unidentified or unclaimed body of an individual whose death was
 4 investigated under s. 979.01, and the coroner or medical examiner has made
 5 reasonable efforts to identify the body or locate the deceased's representative, the
 6 coroner or medical examiner shall cause the body to be decently buried or cremated
 7 and shall certify to all the charges incurred in taking any inquest by him or her and
 8 to the expenses of burial or cremation of the dead body. The charges and expenses
 9 shall be audited by the county board of the proper county and paid out of the county
 10 treasury.

INS
27-10 ✓

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

12 979.09 (1) If a health care facility has the body of a deceased individual and
 13 cannot by exercise of reasonable effort locate the deceased's representative or the
 14 deceased's representative refuses to claim the body for disposition, the facility shall
 15 notify the coroner or medical examiner in the county in which the facility is located,
 16 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 chapter 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?

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

18 979.09 (3) A coroner or medical examiner is immune from civil liability for his
 19 or her choice of method for disposing of an unidentified body under this section if the
 20 coroner or medical examiner made reasonable efforts to identify the body. A coroner
 21 or medical examiner is immune from civil liability for his or her choice of method for
 22 disposing of an unclaimed body under this section if the coroner or medical examiner

1 made reasonable efforts to notify the deceased's representative of the disposal of the
2 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.

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

4 979.09 (4) If the identity of a deceased is known and the deceased's
5 representative cannot be located or refuses to claim the deceased's body for
6 disposition and the decedent has property or an estate, the county treasurer may
7 place a lien on the property or the estate to reimburse the county for the costs of
8 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 (ag) No person may cremate a ~~corpse~~ unless the person has received a
15 cremation permit release from one of the following:

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

18 979.10 (1) (ag) 1. The coroner or medical examiner in the county where the
19 death ~~occurred~~ was pronounced if the death ~~occurred~~ was pronounced in this state;
20 and the death was not subject to an investigation under s. 979.01.

Part 2

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

body

4 3. The coroner or medical examiner of the county where the ~~corpse~~ is to be
5 cremated if the death ~~occurred~~ was pronounced outside this state. ~~no #~~

strike

6 ~~(ar) A cremation permit release issued under this subdivision par. (ag) may not~~
7 ~~be used in any county except the county in which the cremation permit release is~~
8 ~~issued.~~

Not

****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"?

9 SECTION 56. 979.10 (1) (a) 1m. and 2m. of the statutes are created to read:

10 979.10 (1) (a) 1m. The corpse must be cremated immediately to effectively
11 contain the disease.

body
+2

12 2m. A public health authority orders sooner disposal of the corpse under s.
13 157.055 (2) (c) during a state of emergency related to public health.

14 SECTION 57. 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.

body

21 SECTION 58. 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 (1) (\$200 forfeiture) to a violation.

22 SECTION 59. 979.10 (1) (d) of the statutes is created to read:

review

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

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

10 SECTION 60. 979.10 (2) of the statutes is amended to read:

11 979.10 (2) If a ^{body} ~~corpse~~ is to be cremated, the coroner or medical examiner shall
 12 view the ~~corpse~~ ^{strike} 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

body
x2

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?

SECTION 61. 979.10 (3) and (4) of the statutes are repealed.

SECTION 62. 979.10 (5) of the statutes is created to read:

979.10 (5) If a coroner or medical examiner issues a release to embalm authorizing the burial or entombment of a corpse but refuses under sub. (2) to issue a cremation release for the corpse, the coroner or medical examiner and county are 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?

SECTION 63. 979.10 (6) of the statutes is created to read:

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

SECTION 64. 979.11 of the statutes is amended to read:

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

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body

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 SECTION ~~65~~[✓]. 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.

(END) ✓

15

INS 32-14
 from LRB-1962

INS 32-14B

D-note

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2007 - 2008 LEGISLATURE

LRB-1962/2
RLR:kf:rs

2007 BILL

Inserts

1 AN ACT *to create* 15.255 (3), 59.34 (1) (cm), 59.35 (3m), 59.38 (3m) and 165.65
 2 of the statutes; **relating to:** training and testing requirements for coroners,
 3 deputy coroners, medical examiners, and medical examiners' assistants and
 4 requiring the exercise of rule-making authority.

Analysis by the Legislative Reference Bureau

Under current law, coroners or medical examiners are required to investigate certain deaths. In a county with a population of 500,000 or more and in any county that has instituted a medical examiner system, a medical examiner appointed by the county board is responsible for death investigations. In all other counties, the coroner, who is an elected constitutional officer, is responsible for death investigations.

This bill creates a Board on Medicolegal Investigations and requires the board to establish training and testing requirements for coroners, deputy coroners, medical examiners, and medical examiner assistants.

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

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

SECTION 1. 15.255 (3) of the statutes is created to read:

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SECTION 1

1 ✓ 15.255 (3) BOARD ON MEDICOLEGAL INVESTIGATIONS. There is created a board on
 2 medicolegal investigations that is attached to the department of justice under s.
 3 15.03 and that shall consist of the following members appointed for staggered 6-year
 4 terms:

5 (a) A coroner, a medical examiner, and a forensic pathologist, who are members
 6 of the Wisconsin Coroners and Medical Examiners Association.

7 (b) A member of the Wisconsin Funeral Directors Association.

8 (c) A member of the Wisconsin District Attorney's Association.

9 (d) A member of the Wisconsin Sheriffs and Deputy Sheriffs Association.

10 (e) A member of the Wisconsin Chiefs of Police Association, Inc.

11 (f) A member of the Wisconsin Counties Association.

12 (g) The attorney general or his or her designee.

13 (h) The state public defender or his or her designee.

14 **SECTION 2.** 59.34 (1) (cm) of the statutes is created to read:

15 ✓ 59.34 (1) (cm) Complete training and testing required by the board of
 16 medicolegal investigations under s. 165.65.

17 **SECTION 3.** 59.35 (3m) of the statutes is created to read:

18 ✓ 59.35 (3m) A deputy coroner shall complete training and testing required by
 19 the board of medicolegal investigations under s. 165.65.

20 **SECTION 4.** 59.38 (3m) of the statutes is created to read:

21 ✓ 59.38 (3m) TRAINING AND TESTING. The medical examiner and his or her
 22 assistants shall complete training and testing required by the board of medicolegal
 23 investigations under s. 165.65.

24 **SECTION 5.** 165.65 of the statutes is created to read:

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do all of the following: (1)

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✓ **165.65 Board on medicolegal investigations.** The board on medicolegal investigations shall promulgate rules establishing testing and training requirements for coroners, deputy coroners, medical examiners, and medical examiners' assistants.

SECTION 6. Nonstatutory provisions.

(1) INITIAL TERMS OF BOARD MEMBERS. Notwithstanding the lengths of terms of the members of the board of medicolegal investigations specified in section 15.255 (3) of the statutes, as created by this act, the initial members shall be appointed for the following terms:

INS ✓
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(a) Two members specified under section 15.255 (3) (a) to (f) of the statutes, as created by this act, for a term that expires on May 1, 2009.

(b) Three members specified under section 15.255 (3) (a) to (f) of the statutes, as created by this act, for a term that expires on May 1, 2011.

(c) Three members specified under section 15.255 (3) (a) to (f) of the statutes, as created by this act, for a term that expires on May 1, 2013.

(END)

end of Ins 32-14

institutionalized in connection with a civil commitment, preliminary proceedings for civil commitment, or criminal trial competency proceedings; the death of an individual receiving emergency care at a hospital or other medical facility; a death associated with medical error; a death associated with abuse of a chemical substance that may be legally used or with use of a controlled substance; a death associated with an epidemic, a pandemic, or the spread of a dangerous communicable disease; when human remains are discovered outside a cemetery; and any other death that the coroner or medical examiner in a written policy requires reported. In addition, the bill clarifies that the requirement to report a death associated with an abortion applies to the death of a woman. Also, the bill provides that a death of an individual who was not under the care of a physician for the illness or condition that caused death must be reported regardless of whether the person was attended by a spiritual adviser.

The bill provides that the penalty for failure by a partnership, association, organization, institution, or body politic or corporate to report a death for which reporting is required is a fine of not more than \$10,000, imprisonment for not more than 90 days, or both.

Jurisdiction to investigate death and notifications

The bill assigns jurisdiction to investigate a death to the coroner or medical examiner in the county in which occurred the crime, injury, or other event that caused the death. However, if it cannot be determined where the event that caused the death occurred, or if the death occurred outside the state, the coroner or medical examiner in the county in which death was pronounced has jurisdiction to investigate. The bill provides that the coroner or medical examiner who has jurisdiction to investigate a death has custody of the deceased's body and prohibits any person from moving the body at or from a death scene without authorization from the coroner or medical examiner. The bill requires a coroner or examiner who receives notice of a death to notify the deceased's next of kin. The bill provides that a coroner or medical examiner need not notify the district attorney of certain types of reported deaths if the district attorney has waived notice in writing.

Autopsies and other diagnostic procedures

Currently, a coroner, medical examiner, or district attorney may order an autopsy conducted on a body if there is reason to believe that the death resulted from a homicide or certain other crimes or suicide, or occurred under unexplained or suspicious circumstances. A coroner or medical examiner must order an autopsy on any person who dies while confined in a correctional facility in this state. If a child who is under two years of age dies unexpectedly or under circumstances indicating sudden infant death syndrome, the coroner or medical examiner must order an autopsy unless the parent or guardian in writing requests that an autopsy not be performed. If the autopsy reveals that sudden infant death syndrome is the cause of death, that cause shall be stated in the autopsy report. Autopsies ordered by a coroner, medical examiner, or district attorney must be conducted by a physician who has specialized training in pathology. No person may perform an autopsy on the body of a person whose death must be reported without obtaining written authorization from the coroner or medical examiner.

Under current law, if an autopsy is not performed in connection with a death that must be reported, the coroner or medical examiner may take specimens from the body for analysis to assist in determining the cause of death. The coroner or medical examiner shall take specimens for analysis in such cases if requested to do so by the spouse, parent, child, or sibling, of the deceased.

The bill requires a coroner or medical examiner to order an autopsy for the following deaths: a death that likely resulted from a crime; a death of a person under 18 years of age that is unusual or unexplained; a death of a person who is in the custody of a law enforcement officer or under active pursuit by a law enforcement officer, or that otherwise involves a law enforcement officer; a death of a person who is confined in federal prison, a jail, or otherwise confined by a sheriff; and a death of a person who is detained or institutionalized in connection with a civil commitment, preliminary proceedings for civil commitment, or criminal trial competency proceedings. The bill requires that these mandatory autopsies must be performed by a physician who has specialized training in pathology and advanced forensic training. The bill removes the authority of a district attorney to order an autopsy. Instead, if a coroner or medical examiner does not order an autopsy in the case of a death that must be reported, the district attorney or attorney general may obtain a court order for an autopsy. The bill repeals the requirement that a coroner or medical examiner, in cases where a death must be reported, must take specimens from a deceased's body upon request of the deceased's spouse, parent, child, or sibling. Under the bill, if a coroner or medical examiner does not order an autopsy for a death that must be reported, the bill requires the coroner or medical examiner to inform the deceased's representative that the representative may independently contract for pathology related services. Finally, the bill repeals the requirement that, when applicable, coroners and medical examiners cite sudden infant death syndrome as the cause of death in an autopsy report.

Investigation records and handling of personal property

The bill requires that each coroner or medical examiner keep records of each death investigation and specifies the contents of the records. The bill further requires that the coroner or medical examiner keep death investigation records in an office that is owned or leased by the county and designated as the office of the coroner or medical examiner.

The bill provides that records of autopsies and other diagnostic procedures are confidential. Under the bill, a coroner or medical examiner may release such records only to persons who have authority to access the deceased's health care records without informed consent, to the deceased's representative, or for educational purposes. The bill requires that a coroner or medical examiner keep all confidential records that are gathered for an investigation, such as health care records, confidential. At the request of a law enforcement agency investigating a death, a coroner or medical examiner must keep death investigation records and information related to an investigation confidential during the course of the investigation. The bill also requires that each coroner or medical examiner maintain written policies regarding access to death investigation records.

The bill requires a coroner or medical examiner to maintain an inventory of personal property that the coroner or medical examiner takes from a death scene or from a deceased. The bill specifies that the coroner or medical examiner must destroy or donate to a drug repository program any prescription medications that the coroner or medical collects in an investigation and does not provide to a law enforcement agency.

Disposition of bodies

Under current law, the coroner or medical examiner's authorization is required for various activities related to the disposition of bodies. A coroner's or medical examiner's authorization is required to embalm the body of a person whose death must be reported. A coroner's or medical examiner's authorization is required for cremation of the body of any deceased person. Finally, a coroner or medical examiner must issue authorization to disinter and reinter a body upon an order of the court or at the request of various next of kin of the deceased or another person who has authority to dispose of the body.

Also under current law, if an inmate of state, county, or municipal institution dies, and a relative or friend of the deceased does not claim the body and a medical or mortuary school does not take the body, the superintendent of the institution must bury the body.

The bill clarifies that no person, other than a cemetery, may disinter a body or human remains without authorization from the coroner or medical examiner. The bill adds, as a condition for obtaining a coroner's or medical examiner's authorization for disinterment without a court order, that the person requesting authorization provide proof of intent to cremate or bury the disintered remains. The bill eliminates the requirement that a coroner or medical examiner provide authorization to embalm a body within 12 hours of the request for such authorization or provide a written explanation for the delay.

This bill provides that if a person other than the superintendent of a state, county, or municipal institution has an unidentified or unclaimed body, the person shall notify the coroner or medical examiner, who must bury or cremate the body. The bill further provides that if the coroner or medical examiner makes reasonable efforts to identify a body and notify the deceased's representative of disposal of the body, the coroner or medical examiner is immune from civil liability for his or her choice of method for disposing of the body.

Board on Medicolegal Investigations

This bill creates a Board on Medicolegal Investigations that is attached to the Department of Justice and requires the Board to establish training and testing requirements for coroners, deputy coroners, medical examiners, and medical examiner assistants. The bill requires the Board on Medicolegal Investigations to notify the appropriate county board if a medical examiner does not satisfy the training and testing requirements, and to notify both the governor and the appropriate county board if a coroner does not satisfy the training and testing requirements. The bill provides that failure to satisfy the training or testing requirements constitutes cause for a county board to remove a medical examiner and cause for the governor to remove a coroner.

Inquests

Under current law, if there is reason to believe that a death resulted from criminal activity or occurred under other unexplained or suspicious circumstances, the district attorney in the county in which suspected criminal activity or other event that resulted in death occurred may order that an inquest be conducted. An inquest is a proceeding before a jury or judge at which witnesses may be called. The judge or jury must determine whether there is probable cause to believe that a death occurred as a result of a crime, and, if so, which crimes were committed and who may have committed them.

The bill grants the attorney general the same authority that district attorneys currently have to order, and represent the state in, an inquest, if there is reason to believe that a death resulted from criminal activity or other unexplained or suspicious circumstances.

Other changes

Under current law, a coroner or medical examiner may obtain a decedent's health care records without informed consent for the purpose of conducting a death investigation. This bill provides a coroner or medical examiner access to a decedent's mental health treatment records without informed consent for the purpose of conducting a death investigation.

The bill requires a coroner or medical examiner to notify a grief counsellor of any reported death of a child who is under age two, provided there is no indication that the death was caused by a criminal act, and to notify the child's parents of the availability of grief counselling.

Under current law, a cremation permit for a body of a deceased who died outside the state may be used only in the county in which it is issued. The bill allows such a permit to be used anywhere in the state.

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

and Ins. Analysis

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✓ **Ins 2-3B:**

✓ **SECTION 17.103** of the statutes is created to read:

✓ **17.103 Cause to remove coroner or medical examiner.** Failure of a coroner to satisfy the testing and training requirements for coroners under s. 165.65 (1) constitutes cause for the governor to remove a coroner under s. 17.09 (5). Failure of a medical examiner to satisfy the testing or training requirements for medical

1 examiners under s. 165.65 (1) constitutes cause for a county board to remove a
2 medical examiner under s. 17.10 (2).

end Ins. 2-3B

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4 **✓ Ins 2-13A:**

5 **SECTION 2.** 59.34 (1) (a) of the statutes is amended to read:

6 **✓ 59.34 (1) (a)** Participate in inquest proceedings when required by law, except
7 that in any county with a population of 500,000 or more and all counties which have
8 instituted the medical examiner system this duty and the powers incident thereto
9 shall be vested exclusively in the office of the medical examiner. Except as provided
10 under s. 59.38 (5), the board shall appoint the medical examiner. The office may be
11 occupied on a full-time or part-time basis and the officeholder shall be paid
12 compensation as the board by ordinance provides. The duties performed by the
13 county coroner and not vested in the medical examiner shall be performed by the
14 clerk. The medical examiner may appoint such assistants as the board authorizes.
15 Whenever requested by the court or district attorney, the medical examiner shall
16 testify to facts and conclusions disclosed by autopsies performed by him or her, at his
17 or her direction or in his or her presence; shall make physical examinations and tests
18 incident to any matter of a criminal nature up for consideration before either the
19 court or district attorney or attorney general upon request; shall testify as an expert
20 for either the court or the state in all matters where the examinations or tests have
21 been made; and shall perform such other duties of a pathological or medicolegal
22 nature as may be required.

23 **History:** 1973 c. 272; 1983 a. 146, 279, 538; 1989 a. 31, 268, 359; 1991 a. 316; 1995 a. 201 ss. 296 to 299; 1997 a. 35; 1999 a. 56; 2005 a. 127.

24 *end Ins. 2-13A*

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2 **Ins 2-13C:**

3 **SECTION 3.** 69.18 (2) (d) 1. of the statutes is amended to read:

4 69.18 (2) (d) 1. Except as provided under par. (e), if a death is the subject of a
5 coroner's or medical examiner's determination under s. 979.01 or 979.03, the coroner
6 or medical examiner or a physician supervised by a coroner or medical examiner in
7 the county where the event which caused the death occurred shall complete and sign
8 the medical certification for the death and mail the death certificate within 5 days
9 after the pronouncement of death or present the certificate to the person responsible
10 for filing the death certificate under sub. (1) within 6 days after the pronouncement
11 of death.

History: 1985 a. 315; 1985 a. 332 s. 253; 1989 a. 307; 1993 a. 386; 1995 a. 357; 1997 a. 114; 2001 a. 16; 2003 a. 273; 2005 a. 266.

12 **SECTION 4.** 69.18 (3) (a) of the statutes is amended to read:

13 69.18 (3) (a) Except as provided under par. (c) or (e), the person who has moved
14 a corpse under sub. (1) (a) shall complete a report for final disposition, on a form
15 supplied by the state registrar, and, within 24 hours after being notified of the death,
16 mail or present a copy of the report to the coroner or medical examiner in the county
17 of the place of death and mail or present a copy to the local registrar in the
18 registration district of the place of death. If the cause of death is subject to an
19 investigation under s. 979.01 or 979.03, the report for final disposition shall be
20 submitted to the coroner or medical examiner in the county in which the event which
21 caused the death occurred.

History: 1985 a. 315; 1985 a. 332 s. 253; 1989 a. 307; 1993 a. 386; 1995 a. 357; 1997 a. 114; 2001 a. 16; 2003 a. 273; 2005 a. 266.

22 **SECTION 5.** 69.18 (4) (a) (intro.) of the statutes is renumbered 69.18 (4) (c) and
23 amended to read:

1 ✓ 69.18 (4) (c) Subject to s. 157.111, the coroner or medical examiner of the county
 2 in which a decedent's corpse is interred shall issue ~~an authorization~~ a permit for
 3 disinterment and reinterment upon receipt of an order of a court of competent
 4 jurisdiction ~~or upon receipt of a written application for disinterment and reinterment~~
 5 ~~signed by the person in charge of the disinterment and by any of the following~~
 6 ~~persons, in order of priority stated, when persons in prior classes are not available~~
 7 ~~at the time of application, and in the absence of actual notice of contrary indications~~
 8 ~~by the decedent or actual notice of opposition by a member of the same or a prior~~
 9 ~~class.~~

History: 1985 a. 315; 1985 a. 332 s. 253; 1989 a. 307; 1993 a. 386; 1995 a. 357; 1997 a. 114; 2001 a. 16; 2003 a. 273; 2005 a. 206.

10 ✓ SECTION ~~6~~. 69.18 (4) (a) 1. to 6. of the statutes are renumbered 69.18 (4) (am)

11 1. to 6.

12 ✓ SECTION ~~7~~. 69.18 (4) (am) (intro.) of the statutes is created to read:

13 ✓ 69.18 (4) (am) In this subsection, "decedent's representative" means any
 14 member of the following classes of individuals, in the order of priority listed:

15 ✓ SECTION ~~8~~. 69.18 (4) (b) of the statutes is created to read:

16 ✓ 69.18 (4) (b) Except as provided in s. 157.112 (3), no person may disinter a
 17 human corpse from a grave or tomb without first obtaining a disinterment permit
 18 under par. (c) or (d).

19 ✓ SECTION ~~9~~. 69.18 (4) (bm) of the statutes is repealed.

20 ✓ SECTION ~~10~~. 69.18 (4) (d) of the statutes is created to read:

21 69.18 (4) (d) Subject to s. 157.111, the coroner or medical examiner of the county
 22 in which a decedent's corpse is interred shall issue a disinterment permit upon
 23 receipt of a written application for disinterment that is made and signed by a

1 decedent's representative and signed by the person in charge of disinterment if all
2 of the following apply:

3 1. No decedent's representative who is of a member of prior class under par.
4 (am) is available at the time the application is made.

5 2. The coroner or medical examiner does not have actual notice that the
6 deceased would have opposed the disinterment.

7 3. The coroner or medical examiner does not have actual notice of opposition
8 to disinterment by a decedent's representative who is a member of the same or a prior
9 class under par. (am) as the applicant.

10 4. The applicant provides proof of intent to cremate the decedent's corpse or to
11 lawfully inter the decedent's corpse in a specified burial place.

12 ✓ SECTION ~~11~~^X. 69.18 (4) (e) of the statutes is created to read: ✓

13 ✓ 69.18 (4) (e) No person may cremate a corpse disinterred under this section
14 without obtaining a cremation release under s. 979.10 (1) (ag).

15 ✓ SECTION ~~12~~^X. 69.18 (4) (f) of the statutes is created to read: ✓

16 ✓ 69.18 (4) (f) Except as provided in s. 157.112 (3), no person may disinter a
17 decedent's cremated remains from a cemetery unless all of the following conditions
18 are satisfied:

19 1. The cemetery authority, or its designee, consents to disinterment.

20 2. A decedent's representative consents to disinterment and no other decedent's
21 representative who is a member of the same or a prior class under par. (am) objects

22 to disinterment.

INS 9-22 →

23 ✓ SECTION ~~13~~^X. 157.02 (1), (2), (3), (4) and (5) of the statutes are renumbered ✓

24 157.02 (1m) (a), (b), (c), (d) and (e) and 157.02 (1m) (b) and (e), as renumbered, are
25 amended to read: ✓

1 ✓ (b) *Time allowed relative to act.* If a relative or friend fails to arrange for taking
 2 charge of the corpse within a reasonable time after death, the superintendent or
 3 other officer may proceed as provided in this section subsection, but relatives or
 4 friends may claim the corpse at any time before it has been delivered pursuant to sub-
 5 (~~3~~) par. (c).

History: 1971 c. 211; 1973 c. 90 s. 560 (3); 1985 a. 316 s. 14; Stats. 1985 s. 157.02; 1987 a. 27; 1989 a. 31; 2001 a. 103.

6 ✓ (e) *Other disposition.* If the corpse is not disposed of under subs. (1) to (4) pars.
 7 (a) to (d), the superintendent or public officer shall properly bury it.

History: 1971 c. 211; 1973 c. 90 s. 560 (3); 1985 a. 316 s. 14; Stats. 1985 s. 157.02; 1987 a. 27; 1989 a. 31; 2001 a. 103.

8 ✓ ~~SECTION 14.~~ 157.02 (1m) (title) of the statutes is created to read:

9 157.02 (1m) (title) DISPOSITION OF INMATE'S REMAINS.

10 ✓ ~~SECTION 15.~~ 157.02 (2m) of the statutes is created to read:

11 157.02 (2m) DISPOSITION OF OTHER UNCLAIMED REMAINS. (a) If a person, other

12 than a person who has responsibility to dispose of a corpse under sub. (1m), has the
 13 corpse of a deceased individual and cannot by exercise of reasonable effort locate the
 14 deceased's representative, as defined in s. 979.001 (1), or the deceased's
 15 representative refuses to claim the corpse for disposition, the person shall notify the
 16 coroner or medical examiner in the county in which the corpse is located, and the
 17 coroner or medical examiner shall take custody of the corpse and cause the corpse
 18 to be decently buried or cremated.

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

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1 examiner made reasonable efforts to notify the deceased's representative of the
2 disposal of the corpse.

3 ✓ SECTION ~~16~~. 157.055 (2) (intro.) of the statutes is amended to read:

4 ✓ 157.055 (2) (intro.) Notwithstanding ss. 69.18 (4), 157.113, 445.04 (2), 445.14,
5 979.01 (3), (3m), and (4), 979.02, and 979.025 (2), 979.027, 979.10, and 979.105, and
6 subch. VI of ch. 440, during a period of a state of emergency related to public health
7 declared by the governor under s. 166.03 (1) (b) 1., a public health authority may do
8 all of the following:

9 History: 2001 a. 109; 2005 a. 31.

end Ins. 2-13C

11 ✓ Ins 2-16A:

12 SECTION ~~17~~. 165.50 (4) of the statutes is created to read:

13 ✓ 165.50 (4) The attorney general may order and represent the state in an
14 inquest as provided under s. 979.04 (1) or may order a preliminary investigation into
15 a death as provided under s. 979.04 (3).

end Ins. 2-16A

18 ✓ Ins 2-16C:

19 (2) If a coroner does not satisfy the testing an training requirements for
20 coroners under sub. (1), notify the governor and the appropriate county board.

21 (3) If a medical examiner does not satisfy the training and testing requirement
22 for medical examiners under sub. (1), notify the appropriate county board.

23 SECTION ~~18~~. 346.71 (2) of the statutes is amended to read:

1 ✓ 346.71 (2) In cases of death involving a motor vehicle in which the decedent was
2 the operator of a motor vehicle, a pedestrian 14 years of age or older or a bicycle or
3 electric personal assistive mobility device operator 14 years of age or older and who
4 died within 6 hours of the time of the accident, the coroner or medical examiner of
5 the county where the death occurred shall require that a blood specimen of at least
6 10 cc. be withdrawn from the body of the decedent within 12 hours after his or her
7 death, by the coroner or medical examiner or by a physician so designated by the
8 coroner or medical examiner or by a qualified person at the direction of the physician.
9 All funeral directors shall obtain a release from the coroner or medical examiner of
10 the county where the accident occurred as provided in s. ~~979.01 (4)~~ 979.105 prior to
11 proceeding with embalming any body coming under the scope of this section. The
12 blood so drawn shall be forwarded to a laboratory approved by the department of
13 health and family services for analysis of the alcoholic content of the blood specimen.
14 The coroner or medical examiner causing the blood to be withdrawn shall be notified
15 of the results of each analysis made and shall forward the results of each such
16 analysis to the department of health and family services. If the death involved a
17 motor vehicle, the department shall keep a record of all such examinations to be used
18 for statistical purposes only and the department shall disseminate and make public
19 the cumulative results of the examinations without identifying the individuals
20 involved. If the death involved an all-terrain vehicle, the department of natural
21 resources shall keep a record of all such examinations to be used for statistical
22 purposes only and the department of natural resources shall disseminate and make
23 public the cumulative results of the examinations without identifying the
24 individuals involved.

1 ✓ **SECTION 19.** 440.78 (1) (b) of the statutes is amended to read:

2 440.78 (1) (b) A copy of the cremation permit release issued under s. 979.10 (1)

3 (a) (ag).

end Ins. 2-16C

4 History: 2005 a. 31.

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7 ✓ **Ins 3-4:**

8 (e) A person appointed as such by the circuit court.

end Ins. 3-4

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10 ✓ **Ins 7-13:**

11 (k) The death occurs while the individual is receiving emergency care at a
12 hospital, as defined in s. 50.33 (2) (a) and (c), or a physician's office, as defined in s.
13 101.123 (1) (dg).

end of Ins. 7-13

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15 ✓ **Ins 8-8:**

16 (p) The coroner or medical examiner for the county in which the individual was
17 pronounced dead or in which the individual's body or remains were located, in a
18 written and published death reporting protocol, requires that the death be reported.

end of Ins. 8-8

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20 ✓ **Ins 9-17:**

21 (b) Subject to s. 970.04 (2), the coroner or medical examiner is not required to
22 notify the district attorney or attorney general of any deaths for which the district
23 attorney, in writing, waives notice. ✓

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end of Ins. 9-17

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✓ **Ins 10-7:**

~~SECTION 20.~~ 979.01 (2) of the statutes is renumbered 979.01 (2) (a) and amended to read:

979.01 (2) (a) Any person individual who violates ~~this section~~ shall sub. (1) may be fined not more than \$1,000 or imprisoned not more than 90 days or both.

History: 1973 c. 272; 1975 c. 294, 421; 1979 c. 271; 1983 a. 279 ~~vs.~~ 8, 22; Stats. 1983 s. 979.01; 1985 a. 315, 316; 1989 a. 121; 1993 a. 486; 1999 a. 85; 2001 a. 38.

~~SECTION 21.~~ 979.01 (2) (b) of the statutes is created to read:

✓ 979.01 (2) (b) Any partnership, association, organization, institution, or body politic or corporate that violates sub. (1) may be fined not more than \$10,000 or imprisoned not more than 90 days or both. ✓

end of Ins. 10-7

✓ **Ins 12-8:**

✓ (2) If an individual's death must be reported under s. 979.01 (1), no person may move the individual's body at or from the scene of death without authorization from the coroner or medical examiner to whom the death was first reported under s. 979.01, except if it is necessary to move the body to perform search or rescue operations for living individuals.

end of Ins. 12-8

✓ **Ins 14-4:**

(5) If the coroner or medical examiner who has jurisdiction to investigate a death under s. 979.01 does not order that an autopsy or other diagnostic procedure be performed on the body of the deceased, the circuit court shall, upon the request of the district attorney who has jurisdiction to investigate the death under s. 979.04 or the attorney general, order an autopsy or other appropriate diagnostic procedure



1 performed on the body if any of the conditions for ordering an inquest under s. 979.04
2 are satisfied.

end of Ins. 14-4

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5 ✓ **Ins 16-1**

6 ✓ 979.025 (1) INMATE CONFINED TO AN INSTITUTION IN THIS STATE. If a coroner or
7 medical examiner determines that the death of an individual dies, who died while
8 he or she is in the legal custody of the department and confined to a correctional
9 facility located in this state, the coroner or medical examiner of the county where the
10 death occurred shall perform an autopsy on the deceased individual. If the coroner
11 or medical examiner who performs the autopsy determines that the individual's
12 death may have been the result of any of the situations that would permit the district
13 attorney or attorney general to order an inquest under s. 979.04 (1), the coroner or
14 medical examiner shall follow the procedures under s. 979.04 (2).

History: 2001 a. 16.

15 end of Ins. 16-1

16
17 ✓ **Ins 27-10:**

18 No 4 The immunity provision under s. 157.02 (2m) (b) apply to a coroner's or medical
19 examiner's actions under this section.

20 end Ins 27-10

21
22 ✓ **Ins 31-3:**

23 SECTION ~~22~~. 979.10 (4) of the statutes is amended to read:

1 ✓ 979.10 (4) Whoever accepts, receives, or takes any corpse body of a deceased
 2 person with intent to destroy the corpse body by means of cremation, or who cremates
 3 or aids and assists in the cremation of any corpse body of a deceased person
 4 without having presented the permit release specified in sub. (1) shall be fined not
 5 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.

end Ins. 31-3

8 **Ins 32-14B**

9 **SECTION 23. Initial applicability.**

10 **(1) DEATH INVESTIGATIONS; AUTHORIZATION TO EMBALM OR CREMATE; DISPOSITION OF**

11 BODIES. The treatment of sections 59.34 (1) (a), 69.18 (2) (d) 1. and (3) (a), 157.02 (1),
 12 (1m) (title), (2m), (3), and (4), 157.055 (2) (intro.), 165.50 (4), 346.71 (2), 440.78 (1)
 13 (b), 979.001, 979.01 (title), (1) (intro.), (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (L),
 14 (m), (n), (o), and (p), (1g), (1i), (1k), (1m), (1p), (1r), (2) (b), (3), (3m), and (4), 979.017,
 15 979.02 (title), (2), (3), (5), (6), and (7), 979.025, (title), (1), and (2), 979.03, 979.032,
 16 979.034, 979.036, 979.038, 979.04, 979.05 (2) (3), (4), (5), and (6), 979.06 (1), (2), and
 17 (4), 979.07 (1) (a), 979.08 (1), (5), (6), and (7), 979.09, 979.10 (1) (a) (intro.), 1m. and
 18 2m., (ag), (b), (c), and (d), (2), (3), (4), (5), and (6), 979.11, and 979.22 of the statutes,
 19 and the renumbering and amendment of sections 157.02 (2) and (5), 979.01 (2) and
 20 (4), 979.02, and 979.10 (1) (a) 1., 2., and 3. of the statutes first apply to deaths
 21 occurring on the effective date of this subsection.

22 **(2) DISINTERMENT PERMITS.** The treatment of sections 69.18 (4) (a) 1. to 6., (am),
 23 (b), (bm), (d), (e), and (f) of the statutes and the renumbering and amendment of

(157.03 (1) and (2))

69.01 (12)

check spacing

(Intro.)

- 1 section 69.18 (4) (a) (intro.) of the statutes first apply to disinterment permits applied
- 2 for on the effective date of this subsection.

end Ins. 32-14B

2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2766/1Ains
RLR:.....

1 ✓ **Ins 7-2 for 2766/lins:**

2 SECTION ~~1~~. 69.01 (12) of the statutes is amended to read:

3 ✓ 69.01 (12) "Final disposition" means the disposition of a corpse or stillbirth by
4 burial, interment, entombment, cremation, delivery to a university or school under
5 s. 157.02 (3) ~~(1m)~~ (c) or delivery to a medical or dental school anatomy department
6 under s. 157.06. "Final disposition" does not include disposition of the ashes
7 produced by cremation of a corpse or stillbirth.

8 History: 1985 a. 315; 1985 a. 332 s. 253; 1991 a. 39; 1993 a. 27; 1995 a. 27 s. 9126 (19); 2001 a. 16; 2003 a. 273; 2005 a. 69.

9
10 ✓ **Ins 9-22 for 2766/lins:**

11 SECTION ~~2~~. 69.20 (2) (a) 2. of the statutes is amended to read:

12 ✓ 69.20 (2) (a) 2. For a certificate of death, any of the persons specified under s.
13 69.18 (4) ~~(a)~~ (am) 1. to 6. or an individual who is authorized in writing by one of the
14 persons.

15 History: 1985 a. 315; 1993 a. 27; 1995 a. 27 s. 9145 (1); 1997 a. 27, 191; 2001 a. 16.

16
17 ✓ **Ins 11-2 for 2766/lins:**

18 SECTION ~~3~~. 157.03 (1) of the statutes is amended to read:

19 ✓ 157.03 (1) The corpse of a person who died with smallpox, diphtheria, or scarlet
20 fever, or who in his or her last sickness shall request to be buried or cremated, and
21 of a stranger or traveler who suddenly died, shall not be disposed of under s. 157.02

1 ~~(3)~~ [✓](1m) (c), and no person having charge of a corpse authorized to be so disposed of
2 shall sell or deliver it to be used outside the state.

3 History: 1985 a. 316 ss. 14, 25; Stats. 1985 s. 157.03; 1993 a. 482.

3 **SECTION 4.** [✓]157.03 (2) of the statutes is amended to read:

4 [✓]157.03 (2) Upon receipt of the corpse by a university or school pursuant to s.
5 157.02 ~~(3)~~ [✓](1m) (c) it shall be properly embalmed and retained for 3 months before
6 being used or dismembered and shall be delivered to any relative claiming it upon
7 satisfactory proof of relationship.

History: 1985 a. 316 ss. 14, 25; Stats. 1985 s. 157.03; 1993 a. 482.

end of inserts for 2766/1ins.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2766/1dn
RLR:bjk:pg

October 30, 2007

1. I eliminated the requirement under s. 979.01 (1) that people report suspected homicides of unborn children under s. 940.01 (1) (b), 940.02 (1m), or 940.05 (2g) because this requirement is redundant to the requirement under s. 979.01 (1) (b) to report any suspected homicide.
2. As we discussed, I added a provision under s. 979.01 (1m) (b) that allows a district attorney to waive notice of certain deaths. However, under this draft, the district attorney cannot waive notice of deaths for which an inquest may be held.
3. I did not specify that the coroner and medical examiner's authority to extract specimens for analysis under s., 979.02 (2) is "without restrictions" because the draft already states that the coroner or medical examiner may extract "any" bodily material, so adding "without restrictions" with respect to what the coroner or medical examiner may extract is redundant. Furthermore, the draft allows a coroner or medical examiner to extract specimens only for analysis "that will assist him or her in conducting a death investigation." Stating that the coroner or medical examiner may extract specimens "without restrictions" would contradict this purpose limitation. Do you want to do that?
4. Please note that I added an exception to the prohibition in s. 979.02 (6) against conducting an autopsy without authorization from the coroner or medical examiner. I assume that the coroner or medical examiner's authorization should not be required if the court orders the autopsy under s. 979.02 (5).
5. Someone was going to check with the district attorneys or DOJ to find out whether the last clause of s. 979.02 (1) should refer to "applicable evidence retention rules" rather than "county evidence retention rules." Do you have an answer?
6. In the September 27, 2007, meeting we discussed adding a requirement to the section on investigation records (s. 979.032) that would require coroners and medical examiners to keep records in accordance with standards established by the board on Medicolegal Investigations. However, the draft that creates the board, LRB-1962, only requires the board to establish training and testing standards. Do you want to require the board to promulgate rules on standards for investigation records, or are the proposed statutory standards under s. 979.032 sufficient?
7. Section 979.038 requires a coroner or medical examiner to notify the parent of a deceased two-year-old of the availability of publicly funded grief counselling. Do you

want to condition this requirement on the availability of such publicly funded grief counselling in case the funding is not provided statewide or is not available in the future? (I presume that such counselling is currently available.)

8. Given that you do not want a district attorney to be able to order an autopsy, do you want to amend s. 979.10 (2), which provides that a coroner or medical examiner must perform an autopsy on a body that is to be cremated if the district attorney or attorney general determines one is necessary to determine the cause and manner of death?

9. Please review s. 69.18 (2) (d) 1., which refers to deaths that are "the subject of a coroner's or medical examiner's determination under s. 979.01". Since no "determination" is called for under s. 979.01, should s. 69.18 (2) (d) 1. refer to deaths that must be reported under s. 979.01 or to deaths that are the subject to an investigation under s. 979.01? Also, a provision in s. 69.18 (3) (a) is conditioned upon whether the cause of death is "subject to an investigation under s. 979.01." Again, does this reference cover all deaths that must be reported under s. 979.01 or only those that the coroner or medical examiner investigates?

10. As we discussed, I merged the provisions in section 979.24 of the January 8, 2006, draft with current law section 69.18 (4). Please review the treatment of s. 69.18 (4) in this draft. Section 979.24 (6) in the January 8, 2006 draft provides that no person may open a cemetery vault or mausoleum without permission from both the cemetery and the deceased's next of kin. The first part is not necessary, because current law s. 157.111 already provides that only a cemetery may open a vault or mausoleum. Do you want to condition the cemetery's authority to open a vault or mausoleum on obtaining permission from the deceased's next of kin? If so, do you want to make an exception for reburials under s. 157.112 for the purpose of correcting an error?

11. Section 157.70 (3) (a) provides, "Except as provided in s. 979.01," a person shall immediately notify the director of the historical society of any disturbance of a cataloged burial site. I don't see anything in s. 979.01 that creates an exception to the duty under s. 157.70 (3) (a). Do you have any objection to eliminating the except clause in s. 157.70 (3) (a)?

Robin Ryan
Legislative Attorney
Phone: (608) 261-6927
E-mail: robin.ryan@legis.wisconsin.gov

LRB 2 Feb

Ryan, Robin

From: Gillis, George
Sent: Thursday, November 08, 2007 11:44 AM
To: Ryan, Robin
Subject: Coronor Legislation Revisions.
Attachments: Vruwink Mm2.doc

Robin,

Attached is a memo from the Coronor's Organization to awnser you drafting notes.

If you have any questions, please don't hesitate to contact me.

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

Memorandum



To: Rep. Amy Sue Vruwink; Attn: George Gillis

From: Alice O'Connor

Re: Response to Questions for LRB 2766/P1

Date: 7 November 2007

The purpose of this memo is to respond to the questions raised by the drafting attorney in her October 30, 2007 drafting notes related to LRB 2766/1 dn.

- ✓ 1. We agree with her redundancy comment.
- ✓ 2. We believe that a district attorney should be allowed to waive notice of certain deaths because in reality, district attorneys do not want to be notified about every death. It is too cumbersome for them. Keep language that continues to allow a district attorney to waive notice of certain deaths.
- ✓ 3. We agree with the drafter's comments regarding "without restrictions." The most important thing here is the word "any" bodily material.
- ✓ 4. The drafter is correct. The court can supersede a coroner or medical examiner and order an autopsy without authorization from a coroner or medical examiner.
5. We would like the drafter to check with the Department of Justice to confirm whether s. 979.02(1) should refer to "applicable evidence retention rules," rather than county evidence retention rules. The Department of Justice should know the standard for this. I will check with the District Attorneys Association too.
- ✓ 6. The Association desires to establish uniform record keeping standards that would be established by the Board on Medicolegal Investigations. We believe drafter is accurate in suggesting that the Board needs to promulgate rules on uniform standards for investigation records under s. 979.032.
- ✓ 7. Delete all references in the bill regarding a requirement that a coroner or medical examiner has to notify the parent of a deceased two year old about the availability of publicly funded grief counseling. This should not be in the bill draft anywhere and we are not sure where this came from.

✓ 8. We do want a district attorney to be able to order an autopsy as they can now. We are somewhat confused by point number 8 under s. 979.110(2). Under current law, a district attorney, a coroner, medical examiner or circuit court judge can order an autopsy.

9. The word "determination" is somewhat confusing to us. We seek additional clarification on this word. There is always a cause of death, so we aren't exactly sure what this point is or if it will continue to be an issue because of other changes we are recommending in the bill. *It is current law*

✓ 10. We agree with the drafter. Make no changes to current law regarding who is authorized to open a vault or museum.

✓ 11. Please delete this entire section regarding notification to the Historical Society of any disturbance of a catalog burial site. *But it doesn't affect coroner/ME, just affects historical society*

✓ The word "jurisdiction," is a bit confusing too. Law enforcement has jurisdiction of the crime scene, coroners and medical examiners have jurisdiction of the body. Do we need to clarify this?

Other comments:

✓ • Page 4, Second Paragraph – Under the explanation, we wish to delete the requirement for, "and advanced forensic training." There is such a shortage of pathologists alone, that to add an additional stipulation for "advanced forensic training" would put a tremendous burden on the State of Wisconsin.

✓ • We also want to be sure that the bill deletes any references to citing Sudden Infant Death Syndrome as the cause of death in an autopsy report. There are many more current terms being used and a cause of death is always put in an autopsy report. This seems unnecessary. *- yes, done by repealing 979.03*

✓ • Page 4 – Even though coroners and medical examiners currently keep records, there is a wide variety of written policies regarding "access to death investigations." This is another specific area that the new Board needs to promulgate by rule so that there are uniform policies regarding who has access to death investigation records.

need to correct analysis

- Page 5 – Disposition of Bodies – The narrative summary says the bill eliminates the requirement that a coroner or medical examiner provide authorization to embalm a body within 12 hours of the request for such authorization or provide a written explanation for the delay. Under current law, the WCMEA is questioning why this language is there. They don't believe they asked for it and they indicated that under current law if there is any kind of delay, a verbal explanation is sufficient. They are wondering why and where the 12 hours exists in current law.

979.01(4) (though only applies if death must be reported)

- Page 6 – Other Changes – We have already discussed deleting requirements for grief counselors.

- Page 7, Line 24 – Delete the word, “medical certification” and instead change it to completion of a “death certificate.” That is more consistent with Wisconsin law.

should be consistent with 146.82(2)(a)18.

- Page 8, Line 12 – Specify that it is the Clerk, “of Courts.”

- Page 10, Lines 9-17 – Currently, coroners or medical examiners issue a permit for disinternment or reinternment upon receipt of a court order. The WCMEA believes it might be valuable to have a uniform permit that could also be promulgated by rule.

- Page 13, Lines 7-8 – We seek clarification to make sure that someone who must be “decently buried or cremated” is paid out of the County Treasury, not the coroner or medical examiner's office. The WCMEA says even though this is current law, sometimes the county does not like to pay for indigent burial costs out of their operating funds. Instead, they prefer to take it out of a coroner's budget. This should not be the case. Is it redundant with current law to say that it needs to be paid out of the County Treasury? Could it be stated more clearly?

- Page 15, Lines 9-11 – The WCMEA wishes to seek clarification on this section because they indicated funeral directors currently obtain a release from a coroner or medical examiner of the county where an accident occurred prior to embalming any body.

- Page 17, Line 17 – The phrase “jurisdiction for investigating deaths” is confusing, and they believe this phrase should be deleted.

- Page 21, Lines 18-22 – The language has to provide the flexibility that district attorneys want so that they are not notified of every single death. I will be asking Wisconsin District Attorneys Association if they have specific language they would like to suggest if you prefer.

Rep. Amy Sue Vruwink

7 November 2007

Page 4

- ✓ • Page 25, Line 19-21 – On line 19, after “training in pathology,” change the comma to a period and delete the remainder of that sentence which says, “and an autopsy order under sub. 2 may be performed only by a pathologist who has undergone advanced forensic training.”
- Page 29, Lines 12-14 – Is there anything in current law that specifies how long death investigation records need to be maintained? Is this something that should be promulgated by rule? *- not for local gov. records*
- ✓ • Page 31, Lines 11-21 – Delete the entire Section 979.038 on grief counseling referral for certain child deaths.

I believe this summarizes the additional changes we believe are necessary to continue to improve this bill draft. A big thank you to you and the drafting attorney, Robin Ryan, for all your efforts. Please let me know if you have any questions on these comments and if you would like a face-to-face meeting to clarify remaining confusion points. We look forward to hearing from you as soon as possible.

AOC:rsg

070063

Vruwink Mm2

cc: Scott Rifleman

John Stanley

Al Klimek

LRB-2766

Ryan, Robin

From: Ryan, Robin
Sent: Tuesday, November 13, 2007 9:20 AM
To: Gillis, George
Subject: coroner/ME bill

Attachments: follow-up to O'Connor memo Nov 07.doc

Hi George,

I made most of the changes requested in Alice O'Connor's memo from last week. I am attaching some follow-up questions and clarifications. When I get responses I will make the final changes and get you another draft.



follow-up to
O'Connor memo Nov.

Thanks,
Robin

1. Jurisdiction to investigate:

The bill specifies which coroner or medical examiner has authority to investigate a death based on where the death occurred or where the body was found. In the bill, I refer to this power to exercise authority as "jurisdiction". I refer to the coroner or medical examiner "who has jurisdiction..." because I want to be specific with regard to which coroner or medical examiner must perform the duties imposed under the bill, for example ordering autopsies under s. 979.02 (2). If you do not like the term "jurisdiction," I can refer to the coroner or medical examiner who "may investigate under s. 979.01", or who "has authority to investigate under s. 979.01."

2. Section 69.18 (2) (d) 1.

"Determination" is used in current law s. 69.18 (2) (d) 1. Since no "determination" is called for under s. 979.01, lets amend s. 69.18 (2) (d) 1. To do so, I need to know when the coroner or medical examiner signature should be required on the medical certification on the death certificate. Should it be for every death that must be reported to the coroner or medical examiner?

3. Section 157.70 (3) (a)

Do you really want to repeal the requirement that people notify the historical society of disturbances of cataloged burial sites, or just delete the cross-reference in s. 157.70 (3) (a) to s. 979.01, so that the requirement doesn't involve coroners and medical examiners? I imagine that the historical society might object to repealing the requirement.

4. Disposition of bodies

Sorry, in the bill analysis, I incorrectly described current law relating to the time limit for issuing an authorization to embalm. Current law s. 979.01 (4) provides that no person may embalm the body of a person whose death must be reported without obtaining a coroner's authorization to embalm. The subsection further provides that the coroner must provide the authorization within 12 hours after notification of the death, or as soon thereafter as possible in the event of unexplained, unusual or suspicious circumstances. The bill eliminates the reference to 12 hours and says that the coroner shall issue the authorization as soon as possible after being notified of the death. I will correct the bill analysis.

5. Page 7, line 24:

The memo requests that I change "medical certification" to "death certificate" on page 7, line 24 (the creation of s. 51.30 (4) (b) 28.). I prefer not to make the change, because the first sentence of the subdivision refers to a medical certification under s. 69.18 (2), and 69.18 (2) really is about the medical certification on a death certificate. Further, created s. 51.30 (4) (b) 28. is modeled after current law s. 146.82 (2) (a) 18., which refers to a "medical certification". I think that sections 51.30 (4) (b) 28. and 146.82 (2) (a) 18. should use consistent language, so if you change 51.30 (4) (b) 28., I would also want to amend s. 146.82 (2) (a) 18.

Robin Ryan's follow-up questions in response to Alice O'Connor's November 7, 2007 memo

6. Page 8, line 12:

The memo requests that I specify clerk "of court." Under current law, I believe the reference is to the county clerk. So specifying "of court" is a change to current law. Is this intended?

7. Page 13, lines 7 and 8:

I imagine that all county payments are made out of the county treasury. We could specify in statute that the payments be made out of a general account, not the coroner's or medical examiner's account, but this really seems like a local budgeting matter.

8. Page 15, lines 9-11:

The change on line 10 just updates the cross-reference because the bill rennumbers s. 979.01 (4) to be s. 979.105.

9. Page 29, lines 12-14

I do not know of any current law provision that affects retention of local government records in general. (Section 978.07 addresses retention of district attorney records.) I added a provision that requires the Board on Medicolegal Investigations to establish standards for the content and maintenance of coroner and medical examiner death investigation record. The Board could create a retention schedule as part of its duty to address the maintenance of records. Or, if you want, I can explicitly require the Board to develop a retention schedule for death investigation records.

LRB-27466

Ryan, Robin

From: Gillis, George
Sent: Monday, November 26, 2007 9:10 AM
To: Ryan, Robin
Subject: FW: response to follow-up questions from Robin Ryan November 7th memo

Robin,

Here are the responses to the followup questions.

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

From: Alice O'Connor [mailto:AConnor@murphydesmond.com]
Sent: Monday, November 19, 2007 3:08 PM
To: Gillis, George
Cc: Al Klimek; John Stanley; Scott Rifleman
Subject: FW: response to follow-up questions from Robin Ryan November 7th memo

Dear George,

If you can pass back these comments to the LRB, I think we are getting really close to a final bill draft. Comments in bold and italics below are the feedback from the Wisconsin Coroners and Medical Examiners Association. (WCMEA). After Robin reviews these comments let me know if there are any more questions.

✓ 1. Jurisdiction to investigate:

The bill specifies which coroner or medical examiner has authority to investigate a death based on where the death occurred or where the body was found. In the bill, I refer to this power to exercise authority as "jurisdiction". I refer to the coroner or medical examiner "who has jurisdiction..." because I want to be specific with regard to which coroner or medical examiner must perform the duties imposed under the bill, for example ordering autopsies under s. 979.02 (2). If you do not like the term "jurisdiction," I can refer to the coroner or medical examiner who "may investigate under s. 979.01", or who "has authority to investigate under s. 979.01."

"Having Jurisdiction or Holding Jurisdiction" will be fine.

✓ 2. Section 69.18 (2) (d) 1.

"Determination" is used in current law s. 69.18 (2) (d) 1. Since no "determination" is called for under s. 979.01, lets amend s. 69.18 (2) (d) 1. To do so, I need to know when the coroner or medical examiner signature should be required on the medical certification on the death certificate.

11/26/2007

Should it be for every death that must be reported to the coroner or medical examiner?

Under current law a Coroner or Medical Examiner must certify a death certificate on all deaths that are "other than natural" which in essence is "all deaths that are reportable under 979". The inconsistency that C/ME's experience is when a death is reportable under 979, and is investigated and found to be a "natural death." Under those circumstances many C/ME's defer the certification to the personal physician. We seek clarity so that if a C/ME accepts jurisdiction, then that C/ME should follow up by certifying the D/C.

Is there a cleaner way to show consistency?

3. Section 157.70 (3) (a)

Do you really want to repeal the requirement that people notify the historical society of disturbances of cataloged burial sites, or just delete the cross-reference in s. 157.70 (3) (a) to s. 979.01, so that the requirement doesn't involve coroners and medical examiners? I imagine that the historical society might object to repealing the requirement.

Just delete the cross reference

4. Disposition of bodies

Sorry, in the bill analysis, I incorrectly described current law relating to the time limit for issuing an authorization to embalm. Current law s. 979.01 (4) provides that no person may embalm the body of a person whose death must be reported without obtaining a coroner's authorization to embalm. The subsection further provides that the coroner must provide the authorization within 12 hours after notification of the death, or as soon thereafter as possible in the event of unexplained, unusual or suspicious circumstances. The bill eliminates the reference to 12 hours and says that the coroner shall issue the authorization as soon as possible after being notified of the death. I will correct the bill analysis.

Two things.....Good to correct the bill analysis and "Permission to embalm" from C/ME's are only issued with deaths that are reportable to the C/ME. Deaths that are not reportable to C/ME's only require permission from legal next of kin.

5. Page 7, line 24:

The memo requests that I change "medical certification" to "death certificate" on page 7, line 24 (the creation of s. 51.30 (4) (b) 28.). I prefer not to make the change, because the first sentence of the subdivision refers to a medical certification under s. 69.18 (2), and 69.18 (2) really is about the medical certification on a death certificate. Further, created s. 51.30 (4) (b) 28. is modeled after current law s. 146.82 (2) (a) 18., which refers to a "medical certification". I think that sections 51.30 (4) (b) 28. and 146.82 (2) (a) 18. should use consistent language, so if you change 51.30 (4) (b) 28., I would also want to amend s. 146.82 (2) (a) 18.

Agree. Do not make change and maintain consistency.

✓ 6. Page 8, line 12:

The memo requests that I specify clerk "of court." Under current law, I believe the reference is to the county clerk. So specifying "of court" is a change to current law. Is this intended?

As long as statutes are clear as to who we are referring to when the word "clerk" is used, the WCMEA is fine. Is it really redundant to say county clerk? Could it also reference a city clerk? Town clerk? Would this ever be a problem?

s. 59.001(2) defines "clerk" for the chapter

✓ 7. Page 13, lines 7 and 8:

I imagine that all county payments are made out of the county treasury. We could specify in statute that the payments be made out of a general account, not the coroner's or medical examiner's account, but this really seems like a local budgeting matter.

We desire the clarification because even though current language states that the funds will be paid out of the treasury or something similar to that, it should be really clear that this does not mean that the limited budget of C/ME's should have to also cover burials. It is the "County's" responsibility to provide adequate funds to provide for a "reasonable final disposition" so we need to be sure our statutes say that clearly.

✓ 8. Page 15, lines 9-11:

The change on line 10 just updates the cross-reference because the bill renumbers s. 979.01 (4) to be s. 979.105.

OK

✓ 9. Page 29, lines 12-14

I do not know of any current law provision that affects retention of local government records in general. (Section 978.07 addresses retention of district attorney records.) I added a provision that requires the Board on Medicolegal Investigations to establish standards for the content and maintenance of coroner and medical examiner death investigation record. The Board could create a retention schedule as part of its duty to address the maintenance of records. Or, if you want, I can explicitly require the Board to develop a retention schedule for death investigation records.

Either would be fine. There are likely 72 different "records rules" so some consistency would benefit everyone.

This should do it. Let me know if there are any other questions. As always. Thanks to you and Rep. Vruwink for keeping this moving.

Alice O'Connor

Director of Government Relations

Murphy Desmond S.C.

33 East Main Street, Suite 500

P.O. Box 2038

Madison, WI 53701-2038

(608) 268-5579 (Direct)

(608) 257-2508 (Fax)

www.murphydesmond.com

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LRB-27066

Ryan, Robin

From: Rinehart, Mark W. [RinehartMW@DOJ.STATE.WI.US]
Sent: Thursday, November 15, 2007 2:45 PM
To: Ryan, Robin
Subject: RE: question from coroners and medical examiners

Hi Robin,

I want to get back to you with an update. I posed this issue to people in our Legal Services, Law Enforcement Services, and Criminal Investigation Divisions. The response from Law Enforcement Services, the folks that run the crime labs, was, "The crime labs do not retain evidence. The labs test evidence, but once testing is complete, the evidence is returned to the jurisdiction that submitted the evidence."

I have not heard from the two other divisions. It could be that it is difficult for them to respond based upon the short excerpt of the bill that was provided. I will let you know their thoughts as soon as I hear back from them. It may be that we will comment more once we are able to review a full draft of the legislation. Perhaps the author(s) would approve release of the entire draft to us for our review.

From: Ryan, Robin
Sent: Thursday, November 08, 2007 3:08 PM
To: Rinehart, Mark W.
Subject: question from coroners and medical examiners

Hi Mark,

Here is a segment from the bill draft that I called about. The question concerns the last clause of the attached text. I suggested to the coroners and medical examiners that evidence retention rules are not just governed by a county. For example, the statutes contain evidence retention rules applicable to DNA evidence. Therefore I suggested that the bill refer to "applicable evidence retention rules" rather than "county evidence retention rules." The coroners and medical examiners asked that I run this particular item by DOJ. Could you have someone at DOJ give me a response?

<< File: coroner question for DOJ.doc >>

Thanks,

Robin

261-6927

Attachment to 11/08/07
e-mail to DOJ

979.02 (title) Autopsies and other diagnostic procedures.

Section 59. 979.02 of the statutes is renumbered 979.02 (1) and amended to read:

979.02 (1) The coroner, or medical examiner or district attorney who has jurisdiction to investigate a death under s. 979.01 may order the conducting of that an autopsy upon or other appropriate diagnostic procedure be performed on 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 may move the circuit court for the county in which the body is buried for an order disinterring the body for purposes of autopsy. The order shall be granted by the circuit court upon a reasonable showing that any of the criteria specified in s. 979.04 exists. 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 the deceased, or may extract from the body any specimen, bodily fluids, other bodily material, or other material for analysis that will assist him or her in conducting a death investigation. The coroner or medical examiner shall dispose of specimens, fluids, and materials that are no longer of use in the investigation in accordance with standard biological material practices and county evidence retention rules.