

2019 DRAFTING REQUEST**Bill**For: **Legislative Fiscal Bureau**Drafter: **mjohns**By: **Charlie**Secondary Drafters: **swalkenh**Date: **4/6/2020**

May Contact:

Same as LRB:

Submit via email: **YES**
 Requester's email: **Charlie.morgan@legis.wisconsin.gov**
 Carbon copy (CC) to: **jon.dyck@legis.wisconsin.gov**
Alexandra.bentzen@legis.wisconsin.gov
Melinda.Johns@legis.wisconsin.gov
sarah.walkenhorstbarber@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Human remains during COVID19

Instructions:

- State law requires that every deceased inmate is autopsied. During the pandemic, it would be helpful to offer an external exam as an option for coroners/MEs if the prisoner died of COVID.
- Remove the requirement for mandatory viewing of a body by a coroner/ME prior to cremation if the physician has signed the death certificate and listed COVID as the cause of death (this should only be during the pandemic, perhaps list an end date on this)
- Require the issuance of a cremation permit within 48 hours following the death if the death certificate has been signed by a dr and listed COVID as the underlying cause of death (again, only during pandemic, perhaps list an end date)
- Require electronic signature on death certificates from drs during the statewide emergency with all death certificates to be signed within 48 hours after the death if the underlying cause of death is due to COVID.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	swalkenh 4/6/2020	anienaja 4/6/2020			
/P1	anienaja 4/6/2020		anienaja 4/6/2020	m/batman 4/6/2020	
/P2	mjohns 4/11/2020	swinder 4/10/2020	wjackson 4/10/2020		
/P3	mjohns 4/11/2020	swinder 4/11/2020	wjackson 4/11/2020		
/P4	mjohns 4/11/2020	aernstr 4/11/2020	wjackson 4/11/2020		

FE Sent For:

<END>



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT relating to:** autopsies and cremation of bodies of persons who died of
2 COVID-19.

Analysis by the Legislative Reference Bureau
CORRECTIONAL SYSTEM

Death of an Inmate

Under current law, if an individual dies while he or she is in the legal custody of the Department of Corrections and confined to a correctional facility located in this state, an autopsy on the deceased individual must be performed by the coroner or medical examiner of the county where the death occurred. Under this bill, for the duration of the public health emergency relating to COVID-19, the autopsy may be performed by any coroner or medical examiner in this state.

HEALTH AND HUMAN SERVICES

Cremation permits and electronic signature of death certificates

Under current law, a coroner or medical examiner must view the corpse of a deceased person before issuing a cremation permit, and the corpse may not be cremated within 48 hours after the death unless the death was caused by a contagious or infectious disease. Under this bill, for the duration of the public health emergency relating to COVID-19, including any extensions, if a physician has signed the death certificate of a deceased person and listed COVID-19 as the cause of death, a coroner or medical examiner may issue a cremation permit without viewing the corpse of a deceased person and a coroner or medical examiner must issue the permit within 48 hours after the time of death. The bill also requires that

if the underlying cause of a death is determined to be COVID-19, the person required to sign the death certificate shall provide an electronic signature on the death certificate within 48 hours after the death occurs.

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

1 **SECTION 1. Nonstatutory provisions.**

2 (1) AUTOPSIES AND CREMATION OF BODIES OF PERSONS WHO DIED OF COVID-19.

3 (a) *Definition.* In this subsection, "COVID-19" means an infection caused by
4 the SARS-CoV-2 coronavirus.

5 (b) *Viewing of a corpse to be cremated following death from COVID-19.*

6 Notwithstanding s. 979.10 (1) (b), for the duration of the public health emergency
7 declared on March 12, 2020, by executive order 72, including any extensions, if a
8 physician has signed the death certificate of a deceased person and listed COVID-19
9 as the underlying cause of death, a coroner or medical examiner may issue a
10 cremation permit to cremate the corpse of that deceased person without viewing the
11 corpse.

12 (c) *Time for cremation of a person who has died of COVID-19.* Notwithstanding
13 s. 979.10 (1) (a) (intro.), for the duration of the public health emergency declared on
14 March 12, 2020, by executive order 72, including any extensions, if a physician has
15 signed the death certificate of a deceased person and listed COVID-19 as the
16 underlying cause of death, a coroner or medical examiner shall issue, within 48 hours
17 after the time of death, a cremation permit for the cremation of a corpse of a deceased
18 person.

19 (d) *Autopsy of an inmate who has died of COVID-19.* Notwithstanding s.
20 979.025, for the duration of the public health emergency declared on March 12, 2020,

1 by executive order 72, including any extensions, if an individual dies of COVID-19
2 while he or she is in the legal custody of the department of corrections and confined
3 to a correctional facility located in this state, an autopsy on the deceased individual
4 may be performed by any coroner or medical examiner in this state.

5 (e) *Requiring electronic signature on death certificates with 48 hours if death*
6 *is caused by COVID-19.* Notwithstanding s. 69.18 or any other requirements to the
7 contrary, during the public health emergency declared on March 12, 2020, by
8 executive order 72, including any extensions, if the underlying cause of a death is
9 determined to be COVID-19, the person required to sign the death certificate shall
10 provide an electronic signature on the death certificate within 48 hours after the
11 death occurs.

12

(END)



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-6125/P2
SWB&MLJ:amn&skw

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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if the underlying cause of a death is determined to be COVID-19, the person required to sign the death certificate shall provide an electronic signature on the death certificate within 48 hours after the death occurs.

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9 COVID-19 as the underlying cause of death, a coroner or medical examiner shall
10 issue a cremation permit to cremate the corpse of that deceased person without
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4 coroner or medical examiner in this state.

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(END)



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-6125/P3
SWB&MLJ:amn&skw

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CORRECTIONAL SYSTEM

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Under current law, if an individual dies while he or she is in the legal custody of the Department of Corrections and confined to a correctional facility located in this state, an autopsy on the deceased individual must be performed by the coroner or medical examiner of the county where the death occurred. Under this bill, for the duration of the public health emergency relating to COVID-19, if the cause of death is COVID-19, the autopsy may be performed by any coroner or medical examiner in this state.

HEALTH AND HUMAN SERVICES

Cremation permits and electronic signature of death certificates

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issue the permit within 48 hours after the time of death. The bill also requires that if the underlying cause of a death is determined to be COVID-19, the person required to sign the death certificate shall provide an electronic signature on the death certificate within 48 hours after the death occurs.

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20 979.025, for the duration of the public health emergency declared on March 12, 2020,

1 by executive order 72, if an individual dies while he or she is in the legal custody of
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3 state, and COVID-19 is the underlying cause of death, an autopsy on the deceased
4 individual may be performed by any coroner or medical examiner in this state.

5 (e) *Requiring electronic signature on death certificates with 48 hours if death*
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10 on the death certificate within 48 hours after the death occurs.

11 (END)

Barman, Mike

From: Ottman, Tad
Sent: Saturday, April 11, 2020 1:28 PM
To: Johns, Melinda
Cc: Morgan, Charlie; Walkenhorst Barber, Sarah; Bentzen, Alexandra; Hanaman, Cathlene
Subject: RE: LRB 6089

Correct. It was intended to be just an exam of the outside of the body if Covid is the cause of death.

From: Johns, Melinda <Melinda.Johns@legis.wisconsin.gov>
Sent: Saturday, April 11, 2020 1:21 PM
To: Ottman, Tad <Tad.Ottman@legis.wisconsin.gov>
Cc: Morgan, Charlie <Charlie.Morgan@legis.wisconsin.gov>; Walkenhorst Barber, Sarah <Sarah.WalkenhorstBarber@legis.wisconsin.gov>; Bentzen, Alexandra <Alexandra.Bentzen@legis.wisconsin.gov>; Hanaman, Cathlene <Cathlene.Hanaman@legis.wisconsin.gov>
Subject: RE: LRB 6089

Hi Tad,

I was just talking with Alex about the prison inmate autopsies. I think we had a miscommunication about what was meant by "external exam." Under current law, an autopsy must be performed by the coroner or ME in the county which the death occurred. That's the provision of law that the draft notwithstanding – i.e., allowing an exam from "external exam" - one outside the county.

Do you mean that, rather than performing a full autopsy of the deceased, you want the coroner or ME to be allowed to just examine the outside of the body of the deceased inmate?

Please clarify so I can fix the draft accordingly.

Thanks,

Melinda

Melinda L. Johns
Legislative Attorney
Wisconsin Legislative Reference Bureau
P.O. Box 2037
Madison, WI 53701-2037
(608) 504-5855

From: Bentzen, Alexandra <Alexandra.Bentzen@legis.wisconsin.gov>
Sent: Saturday, April 11, 2020 12:52 PM
To: Johns, Melinda <Melinda.Johns@legis.wisconsin.gov>
Cc: Morgan, Charlie <Charlie.Morgan@legis.wisconsin.gov>; Walkenhorst Barber, Sarah <Sarah.WalkenhorstBarber@legis.wisconsin.gov>
Subject: FW: LRB 6089

Hi Melinda,

This should probably have gone to you as well.

Thanks!

Alex

From: Bentzen, Alexandra
Sent: Saturday, April 11, 2020 12:37 PM
To: Walkenhorst Barber, Sarah <Sarah.WalkenhorstBarber@legis.wisconsin.gov>
Cc: Morgan, Charlie <Charlie.Morgan@legis.wisconsin.gov>
Subject: FW: LRB 6089

Hi Sarah,

LRB draft 6125/P3 as it pertains to processing of DOC inmates does not seem to reflect the Legislature's intent. Will you update the draft to remove the current provision and replace it with one allowing an external exam for coroners and MEs instead of what they are currently required to complete for inmates, for the duration of the current public health emergency.

Thanks!

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Alex - Does the revised draft reflect the intent (see highlighted text on dead bodies draft).

Charles Morgan, Program Supervisor
Wisconsin Legislative Fiscal Bureau
1 East Main Street, Suite 301
Madison, WI 53703

Telephone: (608) 266-3847
FAX: (608) 267-6873
Email: Charlie.Morgan@legis.wisconsin.gov

From: Lang, Bob <Bob.Lang@legis.wisconsin.gov>
Sent: Saturday, April 11, 2020 9:19 AM
To: Horton, Ryan <Ryan.Horton@legis.wisconsin.gov>; Runde, Al <Al.Runde@legis.wisconsin.gov>; Bauer Jr., Jere <Jere.BauerJr@legis.wisconsin.gov>; Hannah, Becky <Becky.Hannah@legis.wisconsin.gov>; Dyck, Jon <Jon.Dyck@legis.wisconsin.gov>; Lang, Bob <Bob.Lang@legis.wisconsin.gov>; Barton, Elizabeth <Elizabeth.Barton@legis.wisconsin.gov>; Loppnow, Dave <Dave.Loppnow@legis.wisconsin.gov>; Lor, Mai <Mai.Lor@legis.wisconsin.gov>; Morgan, Charlie <Charlie.Morgan@legis.wisconsin.gov>; Ferguson, Paul <Paul.Ferguson@legis.wisconsin.gov>; Janke, Rachel <Rachel.Janke@legis.wisconsin.gov>; Moran, Sean <Sean.Moran@legis.wisconsin.gov>
Subject: FW: LRB 6089

From: Ottman, Tad <Tad.Ottman@legis.wisconsin.gov>
Sent: Friday, April 10, 2020 10:25 PM
To: Smith, Heather <Heather.Smith@legis.wisconsin.gov>; Lang, Bob <Bob.Lang@legis.wisconsin.gov>;
Champagne, Rick <Rick.Champagne@legis.wisconsin.gov>
Cc: Morgan, Charlie <Charlie.Morgan@legis.wisconsin.gov>
Subject: LRB 6089

I'm copying Heather on this to see if she concurs and I think she has some additional suggestions/questions.

A couple of things that appear not to be quite what I thought they were supposed to be.

1. For prisoner autopsies, I thought what we were looking for was language along the lines of:
During the pandemic, it would be helpful to offer an external exam as an option for coroners/MEs if the prisoner died of COVID.

The language in the draft is:

Notwithstanding s.

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I'm not sure where this language came from.

2. JFC transfer from sum-sufficient appropriations:

My reading of the language is that this new provision would apply under any public health emergency. I think we wanted it to apply only to the current public health emergency, and 90 days after.

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Attachments: Guidance for INMATE deaths.docx

The attached document describes it in a little more detail. I've highlighted the relevant part from the document below.

- a. If COVID-19 status is positive, the examination may be limited as per office policy for COVID-19 cases, and can include limited examination such as external examination, review of medical records, and/or radiographs when available.

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<Elizabeth.Barton@legis.wisconsin.gov>; Loppnow, Dave <Dave.Loppnow@legis.wisconsin.gov>; Lor, Mai <Mai.Lor@legis.wisconsin.gov>; Morgan, Charlie <Charlie.Morgan@legis.wisconsin.gov>; Ferguson, Paul <Paul.Ferguson@legis.wisconsin.gov>; Janke, Rachel <Rachel.Janke@legis.wisconsin.gov>; Moran, Sean <Sean.Moran@legis.wisconsin.gov>

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Guidance regarding mandated autopsies for prisoners in state funded institutions:

Sources:

National Association of Medical Examiner Position Paper: Recommendations for the Definition, Investigation, Postmortem Examination, and Reporting of Deaths in Custody

Collection and Submission of Postmortem Specimens from Deceased Persons with Known or Suspected COVID-19 <https://www.cdc.gov/coronavirus/2019-ncov/hcp/guidance-postmortem-specimens.html>

NAME COVID-19 release <https://www.thename.org/assets/docs/COVID-19%20PRESS%20RELEASE.pdf>

In keeping with the direction outlined in the National Association of Medical Examiners Position Paper regarding in custody deaths, the following guidelines are provided for the autopsy of inmates of state run institutions in WI for cases in which COVID-19 is known or suspected. Although current OSHA recommendations suggest COVID-19 cases not be autopsies, the interest of the state in certain cases- particularly those which are not due to natural disease, may sometimes supersede these directives. Each Coroner/Medical Examiner Office has unique resources and protocols for the investigation of inmate deaths and performance of inmate autopsies, and these established relationships and protocols should continue to be the foundation of practice in all in-custody deaths. The following guidelines are intended to provide direction on the examination and investigation of in custody deaths to maintain a the highest possible standard of investigation of inmate deaths while addressing the limited resources and safety of C/ME and their staff and partners during the COVID-19 pandemic.

Non-natural inmate deaths, or suspected non-natural inmate deaths, should continue to be investigated and examined through current C/ME office policies. However, as the course of investigation and necessary Personal Protective Equipment may vary in COVID-19 positive or suspected cases, the following guidelines are provided:

- a. If COVID-19 status of the inmate is unknown, it is appropriate to perform a postmortem nasopharyngeal swab for COVID-19 testing as per DHS guidelines, hold the body until results return, and proceed with examination as per office policy
- b. If COVID-19 status of the inmate is pending testing already underway, it is appropriate to hold the body until results return, and proceed as per office policy for such cases
- c. If COVID-19 status is positive, the examination may be limited as per office policy for COVID-19 cases, and can include limited examination such as external examination, review of medical records, and/or radiographs when available.

In the case of a natural death of an inmate of a state run institution, irrespective of whether the death occurs in the institution infirmary or an outside care facility, the following guidelines are recommended:

- a. If the COVID-19 status of the inmate is unknown, and death due to the COVID-19 virus is suspected to be causal or contributory, or the decedent exhibited symptoms consistent with infection, it is appropriate to perform a postmortem nasopharyngeal swab for COVID-19 testing as per DHS guidelines, and proceed to review medical records and/or examination as per office policy for COVID-19 cases; examination may be delayed or deferred as per office policy until results return

- b. If COVID-19 status of the inmate is pending testing already underway, it is appropriate to proceed with review medical records and/or examination as per office policy for COVID-19 cases; examination may be delayed or deferred as per office policy until results return
- c. If COVID-19 status is positive, and contributory to the cause of death, review medical records and/or examination as per office policy for COVID-19 cases; examination may be delayed or deferred as per office policy until results return

Deaths in which the decedent was COVID-19 positive AND actively suffering from symptoms characteristic of COVID-19 infection (shortness of breath), should be classified as due to COVID-19 infection. In these cases, known contributory causes that may have predisposed the individual to death from the disease or actively contributed (heart disease, diabetes mellitus, immunocompromised state, etc.) should be listed in Part II of the death certificate as contributory.

Deaths in which the decedent was COVID-19 positive, but not suffering from symptoms characteristic of COVID-19 infection, should be classified as due to the underlying cause of death, such as cancer, stroke, or embolism in natural deaths, or drug intoxication or other injury in non-natural deaths.

It is expected that these guidelines will meet the statutory burden of C/ME examination and investigation of in custody death, and relieve the burdens and safety concerns associated with COVID-19 positive in-custody deaths. Each C/ME office is encouraged to develop examination practices in accordance with their safety guidelines and available resourced to best achieve these goals.

Sources:

National Association of Medical Examiner Position Paper: Recommendations for the Definition, Investigation, Postmortem Examination, and Reporting of Deaths in Custody

Collection and Submission of Postmortem Specimens from Deceased Persons with Known or Suspected COVID-19 <https://www.cdc.gov/coronavirus/2019-ncov/hcp/guidance-postmortem-specimens.html>

NAME COVID-19 release <https://www.thename.org/assets/docs/COVID-19%20PRESS%20RELEASE.pdf>

Although recent literature suggest the virus may live longer than initially believed, this does not preclude autopsy of such infectious cases with similar profiles such as hepatitis or HIV. Coroners, medical examiners, forensic pathologists and funeral directors routinely handle bodies with known infections with equal or higher risk than COVID-19. In addition, the transmission of droplets after death is known to be limited. The CDC has provided guidelines for the performance of autopsies in these cases, and outlined appropriate PPE to maintain the safety of autopsy personnel, funeral directors, or any other individual in contact with COVID-19 positive human remains.



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-6125/P4
SWB&MLJ:amn/skw/ahe

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT relating to:** autopsies and cremation of bodies of persons who died of
2 COVID-19.

Analysis by the Legislative Reference Bureau
CORRECTIONAL SYSTEM

Death of an Inmate

Under current law, if an individual dies while he or she is in the legal custody of the Department of Corrections and confined to a correctional facility located in this state, an autopsy on the deceased individual must be performed. Under this bill, for the duration of the public health emergency relating to COVID-19, if an individual who has been diagnosed with COVID-19 dies, the coroner or medical examiner may perform limited examination of the deceased individual instead of a full autopsy, which may include an external examination of the body of the deceased individual, a review of the deceased individual's medical records, or a review of the deceased individual's radiographs.

HEALTH AND HUMAN SERVICES

Cremation permits and electronic signature of death certificates

Under current law, a coroner or medical examiner must view the corpse of a deceased person before issuing a cremation permit, and the corpse may not be cremated within 48 hours after the death unless the death was caused by a contagious or infectious disease. Under this bill, for the duration of the public health emergency relating to COVID-19, if a physician, coroner, or medical examiner has signed the death certificate of a deceased person and listed COVID-19 as the cause

of death, a coroner or medical examiner must issue a cremation permit without viewing the corpse of a deceased person and a coroner or medical examiner must issue the permit within 48 hours after the time of death. The bill also requires that if the underlying cause of a death is determined to be COVID-19, the person required to sign the death certificate shall provide an electronic signature on the death certificate within 48 hours after the death occurs.

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

1 **SECTION 1. Nonstatutory provisions.**

2 (1) AUTOPSIES AND CREMATION OF BODIES OF PERSONS WHO DIED OF COVID-19.

3 (a) *Definition.* In this subsection, "COVID-19" means an infection caused by
4 the SARS-CoV-2 coronavirus.

5 (b) *Viewing of a corpse to be cremated following death from COVID-19.*

6 Notwithstanding s. 979.10 (1) (b), for the duration of the public health emergency
7 declared on March 12, 2020, by executive order 72, if any physician, coroner, or
8 medical examiner has signed the death certificate of a deceased person and listed
9 COVID-19 as the underlying cause of death, a coroner or medical examiner shall
10 issue a cremation permit to cremate the corpse of that deceased person without
11 viewing the corpse.

12 (c) *Time for cremation of a person who has died of COVID-19.* Notwithstanding
13 s. 979.10 (1) (a) (intro.), for the duration of the public health emergency declared on
14 March 12, 2020, by executive order 72, if a physician, coroner, or medical examiner
15 has signed the death certificate of a deceased person and listed COVID-19 as the
16 underlying cause of death, a coroner or medical examiner shall issue, within 48 hours
17 after the time of death, a cremation permit for the cremation of a corpse of a deceased
18 person.

1 (d) *Examination of the body of an inmate who has died of COVID-19.*
2 Notwithstanding s. 979.025, for the duration of the public health emergency declared
3 on March 12, 2020, by executive order 72, if an individual who has been diagnosed
4 with COVID-19 dies while he or she is in the legal custody of the department of
5 corrections and confined to a correctional facility located in this state, the coroner or
6 medical examiner may perform a limited examination of the deceased individual
7 instead of a full autopsy, which may include an external examination of the body of
8 the deceased individual, a review of the deceased individual's medical records, or a
9 review of the deceased individual's radiographs.

10 (e) *Requiring electronic signature on death certificates with 48 hours if death*
11 *is caused by COVID-19.* Notwithstanding s. 69.18 or any other requirements to the
12 contrary, during the public health emergency declared on March 12, 2020, by
13 executive order 72, if the underlying cause of a death is determined to be COVID-19,
14 the person required to sign the death certificate shall provide an electronic signature
15 on the death certificate within 48 hours after the death occurs.

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(END)