



**ASSEMBLY SUBSTITUTE AMENDMENT 1,  
TO 2003 ASSEMBLY BILL 152**

August 12, 2003 – Offered by Representative WASSERMAN.

1     **AN ACT** *to amend* 979.025 (1), 979.05 (2), 979.05 (3), 979.05 (5), 979.05 (6), 979.06  
2           (1), 979.06 (2), 979.08 (1), 979.08 (5), 979.08 (6) and 979.08 (7); and **to create**  
3           15.07 (1) (b) 23., 15.07 (3) (bm) 5., 15.145 (4), 146.82 (2) (a) 22., 979.028, 979.04  
4           (2m) and 979.10 (1) (a) 1m. of the statutes; **relating to:** creating a board to  
5           review and make recommendations regarding deaths at correctional  
6           institutions.

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***Analysis by the Legislative Reference Bureau***

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

Under current law, if the district attorney has notice that the death of a person may be the result of homicide (including homicide by negligent handling of a dangerous weapon or resulting from intoxicated use of a motor vehicle) or suicide, or may have occurred under unexplained or suspicious circumstances, the district

attorney may order an inquest to determine the cause of the person's death. If a coroner or medical examiner has similar knowledge about a person's death, the coroner or medical examiner is required to notify the district attorney of the circumstances surrounding the death and may request that the district attorney order an inquest. The district attorney may order an inquest based on that information or may request that the coroner or medical examiner conduct a preliminary examination and report back to the district attorney. If the district attorney does not order an inquest, under current law the coroner or medical examiner may petition the circuit court to order an inquest.

This substitute amendment requires the coroner or medical examiner to also notify the attorney general of the death of a person in the custody of DOC who is in an institution if the death is one that would permit the district attorney to order an inquest. The bill gives the attorney general the same powers as the district attorney to order and conduct an inquest when notified of that death.

The substitute amendment creates an Inmate and Resident Mortality Board composed of 12 members and attached to DOC. The board is given authority to review circumstances of the death of a person who is in the custody of DOC and who is an inmate in an in-state or out-of-state correctional institution, a county jail, or a house of corrections, or who is a resident of a secured correctional facility. Under the substitute amendment, within three days after the death of an inmate or resident, DOC must send a written notice to each member of the board of the death, and provide them with a summary of information regarding the death, including the date, time, and place of the death. DOC is also required to provide the board, at its next scheduled meeting, with the records that are in the custody of DOC regarding the person who died and with any information obtained as the result of DOC's internal review of the death.

Under the substitute amendment, DOC is required to provide any assistance the Inmate and Resident Mortality Board needs to review the circumstances of the death. The substitute amendment allows the board to review any medical records of the inmate or resident in the custody of a medical provider; with the approval of the district attorney or attorney general, medical records in the custody of a law enforcement agency; information obtained by the coroner or medical examiner regarding the death; and information collected as a result of the autopsy.

The substitute amendment requires the board to issue a report of the board's review within 30 days after the meeting at which the board completes its review of the death and to submit that report to a relative of the deceased person, to members of the appropriate standing committees of the senate and assembly, to the secretary of DOC, and to the district attorney or attorney general, if appropriate. The substitute amendment authorizes the board to make recommendations to DOC regarding medical and other prison procedures, including rules, based on the board's review of the death. If the board determines during its review of a person's death that a medical provider failed to provide appropriate, proper, and necessary medical care,

the board is required under the substitute amendment to prepare and forward a complaint to the appropriate credentialing board.

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

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

15.07 (1) (b) 23. The members of the inmate and resident mortality board appointed under s. 15.145 (4).

**SECTION 2.** 15.07 (3) (bm) 5. of the statutes is created to read:

15.07 (3) (bm) 5. The inmate and resident mortality board shall meet at least 4 times each year and may meet at other times on the call of the chairperson or a majority of the board's members.

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

15.145 (4) INMATE AND RESIDENT MORTALITY BOARD. There is created in the department of corrections an inmate and resident mortality board consisting of 12 members appointed for 4-year terms. Eight of the members shall be appointed by the governor and shall include 2 physicians from the University of Wisconsin Hospitals and Clinics Authority, 2 physicians from the Medical College of Wisconsin, one physician from a health care provider other than the University of Wisconsin Hospitals and Clinics Authority or the Medical College of Wisconsin, one registered nurse employed by a private health maintenance organization, one registered nurse employed by a private hospital, and one member who does not represent any of the foregoing entities and who is not employed by a state agency. The other 4 members of the board shall be appointed by the secretary of corrections and shall be a warden of a state correctional facility, a manager of a unit within a state correctional facility that provides the health services to inmates, a health care provider who is employed

1 by the department of corrections, and an employee of the department of corrections  
2 who works in a correctional facility. At least one member of the board shall be a  
3 physician who is a pathologist with subspecialty training in forensic pathology and  
4 who is certified by the American Board of Pathology.

5 **SECTION 4.** 146.82 (2) (a) 22. of the statutes is created to read:

6 146.82 (2) (a) 22. To the inmate and resident mortality board to enable that  
7 board to review the death of an inmate or resident under s. 979.028.

8 **SECTION 5.** 979.025 (1) of the statutes is amended to read:

9 979.025 (1) INMATE OR RESIDENT CONFINED TO AN INSTITUTION IN THIS STATE. If an  
10 individual dies while he or she is in the legal custody of the department and confined  
11 to a state correctional facility located in this state institution, as defined s. 301.01 (4),  
12 but excluding any institution that meets the criteria under s. 302.01 solely because  
13 of its status under s. 301.046 or 301.048 (4) (b) or is confined to a county jail or house  
14 of correction pursuant to a contract under s. 302.27, the coroner or medical examiner  
15 of the county where the death occurred shall perform an autopsy on the deceased  
16 individual. If the coroner or medical examiner who performs the autopsy determines  
17 that the individual's death may have been the result of any of the situations that  
18 would permit the district attorney to order an inquest under s. 979.04 (1) the coroner  
19 or medical examiner shall follow the procedures under s. 979.04 (2) or (2m).

20 **SECTION 6.** 979.028 of the statutes is created to read:

21 **979.028 Review of an inmate's or resident's death.** (1) The inmate and  
22 resident mortality board shall review the circumstances of the death of every  
23 individual who is subject to an autopsy under s. 979.025. To facilitate the review, the  
24 board shall have access to all medical and prison records related to the deceased  
25 inmate. A member of the board shall disqualify himself or herself from any

1 discussion regarding a specific death if he or she determines that he or she cannot  
2 act in an impartial manner regarding that death.

3 (2) (a) Within 3 business days, as defined in s. 421.301 (6), after the death of  
4 a person whose death requires the performance of an autopsy under s. 979.025, the  
5 secretary of corrections or the secretary's designee shall send a written notice to  
6 every member of the inmate and resident mortality board of the death. The written  
7 notification shall include a summary of information related to the person's death,  
8 including the date, time, and place of the death. At the next scheduled meeting of  
9 the board, the department shall provide the board with the records that are in the  
10 custody of the department regarding the person who died, including medical records,  
11 and any information obtained as a result of any departmental internal review of the  
12 death. At the request of any board member, the department shall provide the  
13 member with the records and information obtained as a result of any internal review  
14 before the next scheduled meeting of the board.

15 (b) The department shall cooperate with the board and provide any assistance  
16 the board requests to review the circumstances of the death of the inmate or resident.  
17 The board, while performing its duties, may review medical records of the inmate or  
18 resident in the custody of any medical provider; with the approval of the district  
19 attorney or attorney general, medical records in the custody of a law enforcement  
20 agency; information obtained by the coroner or medical examiner regarding the  
21 death of the inmate or resident; and any information collected as the result of an  
22 autopsy performed under s. 979.025 or an inquest ordered under s. 979.04.

23 (3) Within 30 days after the meeting during which the board completes its  
24 review of an inmate's or resident's death, the inmate and resident mortality board

1 shall prepare a summary report of the board's review of an inmate's or resident's  
2 death and submit that summary report to all of the following:

3 (a) The appropriate relative of the deceased.

4 (b) The secretary of corrections.

5 (c) If appropriate, the attorney general or district attorney.

6 (d) Notwithstanding s. 13.172 (3), the chairperson and the ranking minority  
7 member of the appropriate standing committee of the assembly and senate.

8 (4) The inmate and resident mortality board may make recommendations to  
9 the department regarding medical and other prison procedures, based on the board's  
10 review of an inmate's or resident's death. The board may also refer concerns or  
11 recommendations to the department related to the performance or work rule  
12 violations regarding staff who did not follow departmental policies or procedures  
13 related to the circumstances surrounding the death. The inmate and resident  
14 mortality board shall prepare and forward a complaint to the appropriate  
15 credentialing board, as defined in s. 440.01 (2) (bm), if, during the board's review of  
16 an inmate's or resident's death, the board determines that a medical provider failed  
17 to provide the appropriate, proper, and necessary medical care.

18 **SECTION 7.** 979.04 (2m) of the statutes is created to read:

19 979.04 (2m) If the coroner or medical examiner has knowledge of the death of  
20 any inmate or resident under s. 979.025 (1) that would permit the district attorney  
21 to order an inquest under s. 979.04 (1), he or she shall notify the attorney general in  
22 addition to the notification to the district attorney. The notification shall include  
23 information concerning the circumstances surrounding the death. The attorney  
24 general shall have the same powers and authority to order an inquest when notified  
25 of a death under this subsection as has the district attorney under sub. (1).

1 Subsequent to receipt of notice of the death, the attorney general may request the  
2 coroner or medical examiner to conduct a preliminary investigation and report back  
3 to the attorney general. The attorney general may determine the scope of the  
4 preliminary investigation. This subsection does not limit or prevent any other  
5 investigation into the death by any law enforcement agency with jurisdiction over  
6 the investigation. The coroner or medical examiner may request the attorney  
7 general to order an inquest. If the attorney general refuses to order the inquest, and  
8 the district attorney has refused to order an inquest under sub. (1), the coroner or  
9 medical examiner may petition the circuit court to order an inquest. The court may  
10 issue the order if it finds that the attorney general has abused his or her discretion  
11 in not ordering an inquest.

12 **SECTION 8.** 979.05 (2) of the statutes is amended to read:

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

1     \$40. The inquest jury shall consist of 6 jurors. If 6 jurors do not remain from the  
2     number originally summoned after establishment of qualifications, the judge or  
3     circuit court commissioner conducting the inquest may require the clerk of the circuit  
4     court to select sufficient additional jurors' names. Those persons shall be summoned  
5     forthwith by the sheriff of the county.

6           **SECTION 9.** 979.05 (3) of the statutes is amended to read:

7           979.05 (3) The judge or circuit court commissioner shall examine on oath or  
8     affirmation each person who is called as a juror to discover whether the juror is  
9     related by blood, marriage, or adoption to the decedent, any member of the decedent's  
10    family, the attorney general, district attorney, any other attorney appearing in the  
11    case, or any members of the office of the attorney general, district attorney, or of the  
12    office of any other attorney appearing in the case, has expressed or formed any  
13    opinion regarding the matters being inquired into in the inquest or is aware of or has  
14    any bias or prejudice concerning the matters being inquired into in the inquest. If  
15    any prospective juror is found to be not indifferent or is found to have formed an  
16    opinion which cannot be laid aside, that juror shall be excused. The judge or circuit  
17    commissioner may select one or more alternate jurors if the inquest is likely to be  
18    protracted. This subsection does not limit the right of the attorney general or district  
19    attorney to supplement the judge's or circuit commissioner's examination of any  
20    prospective jurors as to qualifications.

21           **SECTION 10.** 979.05 (5) of the statutes is amended to read:

22           979.05 (5) Prior to the submission of evidence to the jury, the judge or circuit  
23    court commissioner may instruct the jury on its duties and on the substantive law  
24    regarding the issues which may be inquired into before the jury. The attorney  
25    general or district attorney may, at any time during the course of the inquest, make



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

4 **SECTION 11.** 979.05 (6) of the statutes is amended to read:

5 979.05 (6) The judge or circuit court commissioner conducting the inquest may  
6 order that proceedings be secret if the attorney general or district attorney so  
7 requests or concurs.

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

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

15 **SECTION 13.** 979.06 (2) of the statutes is amended to read:

16 979.06 (2) The judge or circuit court commissioner conducting the inquest and  
17 the attorney general or district attorney may require by subpoena the attendance of  
18 one or more expert witnesses, including physicians, surgeons and pathologists, for  
19 the purposes of conducting an examination of the body and all relevant and material  
20 scientific and medical tests connected with the examination and testifying as to the  
21 results of the examination and tests. The expert witnesses so subpoenaed shall  
22 receive reasonable fees determined by the attorney general or district attorney and  
23 the judge or circuit court commissioner conducting the inquest.

24 **SECTION 14.** 979.08 (1) of the statutes is amended to read:

1           979.08 (1) When the evidence is concluded and the testimony closed, the judge  
2 or circuit court commissioner shall instruct the jury on its duties and on the  
3 substantive law regarding the issues inquired into before the jury. The attorney  
4 general or district attorney shall prepare a written set of appropriate requested  
5 instructions and shall submit them to the judge or circuit court commissioner who,  
6 together with the attorney general or district attorney, shall compile the final set of  
7 instructions which shall be given. The instructions shall include those criminal  
8 offenses for which the judge or circuit court commissioner believes a reasonable jury  
9 might return a verdict based upon a finding of probable cause.

10           **SECTION 15.** 979.08 (5) of the statutes is amended to read:

11           979.08 (5) The verdict delivered by the inquest jury is advisory and does not  
12 preclude or require the issuance of any criminal charges by the attorney general or  
13 district attorney.

14           **SECTION 16.** 979.08 (6) of the statutes is amended to read:

15           979.08 (6) Any verdict so rendered, after being validated and signed by the  
16 judge or circuit court commissioner, together with the record of the inquest, shall be  
17 delivered to the district attorney for consideration. After considering the verdict and  
18 record, the attorney general or district attorney may deliver the entire inquest record  
19 or any part thereof to the coroner or medical examiner for safekeeping.

20           **SECTION 17.** 979.08 (7) of the statutes is amended to read:

21           979.08 (7) The record of a secret inquest proceeding shall not be open for  
22 inspection unless so ordered by the judge or circuit court commissioner conducting  
23 the inquest upon petition by the attorney general or district attorney.

24           **SECTION 18.** 979.10 (1) (a) 1m. of the statutes is created to read:

979.10 (1) (a) 1m. If an autopsy is performed under s. 979.025 (1), the coroner or medical examiner who performed the autopsy; or

## SECTION 19. Nonstatutory provisions.

(1) Notwithstanding the length of terms for the members of the inmate and resident mortality board specified in section 15.145 (4) of the statutes, as created by this act, 3 initial members of the board appointed by the governor and 2 initial members appointed by the secretary of corrections shall be for a term of 4 years; 3 initial members of the board appointed by the governor and one initial member appointed by the secretary of corrections shall be for a term of 3 years; and 2 initial members of the board appointed by the governor and one initial member appointed by the secretary of corrections shall be for a term of 2 years.

**(END)**