



## WISCONSIN LEGISLATIVE COUNCIL

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### Special Committee Staff Brief 04-8

# POWERS AND DUTIES OF CORONERS AND MEDICAL EXAMINERS



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***STAFF BRIEF 04-8***

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***POWERS AND DUTIES OF CORONERS AND MEDICAL EXAMINERS***

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***INTRODUCTION***

The Special Committee on the Powers and Duties of Coroners and Medical Examiners is directed by the Joint Legislative Council to review current laws and practices on the roles of coroners and medical examiners in the reporting and investigation of deaths to determine if those laws should be revised for enhanced organization and clarity and to achieve greater efficiency, uniformity, and quality in the reporting and investigation of deaths. The committee is directed to develop and recommend legislation relating to these issues as it finds appropriate.

This Staff Brief provides a general overview of the constitutional and statutory provisions relating to the powers and duties of coroners and medical examiners.

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## **PART I**

### **BACKGROUND: CONSTITUTIONAL PROVISIONS; KEY COURT CASE**

#### **CONSTITUTIONAL PROVISIONS**

The elected office of coroner is a constitutional office under Article VI, Section 4, of the Wisconsin Constitution (entitled, “*County officers; election, terms, removal; vacancies*”). With reference to the elected office of coroner (partisan election in the November general election) and the appointed office of medical examiner, section 4 provides as follows (titles are added for clarity):

- (1) (a) **[Elected Office; Term].** Except as provided in pars. (b) and (c) and sub. (2), **coroners**, registers of deeds, district attorneys, and all other elected county officers, except judicial officers, sheriffs, and chief executive officers, **shall be chosen by the electors of the respective counties once in every 2 years.**
- (b) **[Four-Year Terms if Ratification of Constitutional Amendment].** Beginning with the first general election at which the governor is elected which occurs after the ratification of this paragraph, sheriffs shall be chosen by the electors of the respective counties, or by the electors of all of the respective counties comprising each combination of counties combined by the legislature for that purpose, for the term of 4 years and **coroners in counties in which there is a coroner shall be chosen by the electors of the respective counties, or by the electors of all of the respective counties comprising each combination of counties combined by the legislature for that purpose, for the term of 4 years.**
- (2) **[Coroner Abolished in Large Counties; Option of Coroner or Medical Examiner in Other Counties].** The offices of coroner and surveyor in counties having a population of 500,000 or more are abolished. Counties not having a population of 500,000 shall have the option of retaining the elective office of coroner or instituting a medical examiner system. Two or more counties may institute a joint medical examiner system.
- (4) **[Removal from Office].** The **governor may remove any elected county officer mentioned in this section** except a county clerk, treasurer, or surveyor, giving to the officer a copy of the charges and an opportunity of being heard.
- (5) **[Filling Vacancy by Appointment].** All vacancies in the offices of coroner, register of deeds or district attorney shall be filled by appointment. The person appointed to fill a vacancy shall hold office only for the unexpired portion of the term to which appointed and until a successor shall be elected and qualified.

The following **Opinions of the Attorney General** (OAG) are pertinent to these constitutional provisions relating to coroners and medical examiners:

1. In **61 OAG 355 (1961)**, the Attorney General opined that implementation legislation was necessary before counties under 500,000 in population could abolish the office of coroner.
2. In **63 OAG 361 (1963)**, the Attorney General opined that a county board in a county under 500,000 could abolish the elective office of coroner and implement a medical examiner system to be effective at the end of incumbent coroner's term.

**WISCONSIN SUPREME COURT DECISION ON AUTHORITY TO AFFECT DUTIES AND RESPONSIBILITIES OF CONSTITUTIONAL OFFICE OF CORONER: SCHULTZ V. MILWAUKEE COUNTY**

**General Holding**

It appears that the key Wisconsin Supreme Court case relating to defining, limiting, or expanding the powers and authority of the constitutional office of coroner is *Schultz v. Milwaukee County*, 245 Wis. 111, 13 N.W.2d 580 (Wis. 1944). In that case, the issue was centered on the enactment of Ch. 247, Laws of 1943, which took from the constitutional office of coroner ***all its duties with the exception of*** serving papers upon the sheriff; and when there was no sheriff or under-sheriff in any county to exercise the powers and duties of sheriff. These duties were transferred, in Milwaukee County, to the statutorily created office of medical examiner. The argument was that: (1) this removed from the office of coroner those duties that were most distinctive and characteristic of that office; and (2) that this was beyond the authority of the Legislature since the office of coroner is a constitutional office. The Supreme Court overturned the judgment of the lower court invalidating the new law and declared the new law valid, holding that:

1. Under Wisconsin law, "the holding of inquests was not such a distinctive and characteristic feature of the office of coroner at the time of the adoption of the constitution as to deprive the legislature of power to create another office and impose the duty to hold inquests upon it." (p. 121.) The Court traced the statutes relating to inquests from the 1839 territorial statutes to the date of the case, noting that: (a) at the first legislative session under the new state constitution, justices of the peace were given exclusive authority to hold inquests; (b) it was not until 1883 that coroners were also authorized to hold inquests; (c) it "was not until 1909 that exclusive jurisdiction was conferred upon [the coroner] and then only in counties having a population of [150,000] or more." The Court added that it "appears from the early history of the office that duties of the coroner were frequently changed, and that holding inquests was in the beginning a mere incident to wider and more important powers."

2. "If it was within the power of the legislature to transfer the duty of holding inquests at all, it was clearly within the power of the legislature to transfer it to such officer as it might have designated." (p. 122) Thus, even though justices of the peace had the inquest authority for many years and were constitutional and elective officers, that was not controlling on the issue of to whom the duty to hold inquests could be transferred to.

The *Schultz* case was summarized in a footnote to the 1980 Wisconsin Supreme Court decision in *Scarpaci v. Milwaukee County* (96 Wis. 2d 663, 292 N.W.2d 816), as follows:

In the *Schultz* case, this court held that the jurisdiction of the coroner to hold inquests is not, under the law of this state, one of the distinctive and characteristic



duties attached to the office and that therefore the legislature could regulate the coroner's conducting of inquests and transfer the duties to another officer (namely the Milwaukee County medical examiner). Although autopsies are not mentioned in the opinion, inquests and autopsies are interrelated and the opinion can be read to include autopsies. The import of the *Schultz* case is that the office of the coroner and medical examiner do not have inherent powers over inquests and autopsies; the powers are derived from statute. The court in *Schultz* traced the statutes relating to inquests from the 1839 territorial statutes to the date of the case. Each statute limited inquests to particular circumstances, e.g., where it is supposed that death was caused by violence, or death was caused by violence or casualty, or that murder or manslaughter was committed. Section 979.121, Stats., empowering coroners to conduct autopsies, was enacted in 1945. Ch. 198, Laws of 1945.

### **Distinguishing the Constitutional Offices of Coroner and Sheriff on This Issue**

In its decision, the court, after noting that the Wisconsin Constitution provides for the offices of coroner and sheriff in the same section, pointed out, and distinguished, comparable attempted legislation relating to sheriffs:

It is to be noted that the constitution provides for the office of coroner and sheriff in the same section. The legislature of 1870 sought by the enactment of ch. 332, P. & L. Laws, to take away from the sheriff the custody and care of prisoners confined in the county jail of Milwaukee county and transfer it to the inspector of the house of correction of the county of Milwaukee. The sheriff refused to make the transfer and the inspector sought a writ of mandamus from this court to compel the sheriff to comply with the statute. The matter was heard and the writ was denied. The court said:

“The office of sheriff, in a certain sense, is a constitutional office; that is, the constitution provides that sheriffs shall be chosen by the electors of the respective counties, once in every two years and as often as vacancies shall happen. Sec. 4, art. 6. Now, it is quite true that the constitution nowhere defines what powers, rights and duties shall attach or belong to the office of sheriff. But there can be no doubt that the framers of the constitution had reference to the office with those generally recognized legal duties and functions belonging to it in this country, and in the territory, when the constitution was adopted. Among those duties, one of the most characteristic and well acknowledged was the custody of the common jail and of the prisoners therein. This is apparent from the statutes and authorities cited by the counsel for the respondent. And it seems to us unreasonable to hold, under a constitution which carefully provides for the election of sheriffs, fixes the term of the office, etc., that the legislature may detach from the office its duties and functions, and transfer those duties to another officer.” *State ex rel. Kennedy v. Brunst*, 26 Wis. 2d 412, 414 (1870).

Counsel for the defendants urges that [*Brunst*] should be overruled, (1) because if the theory of that case is literally followed, it would mean not only that sheriffs, registers of deeds, district attorneys, and all other county officers which would

include the treasurer, clerk of circuit court, surveyor, and county clerk would have all of the powers and prerogatives of the corresponding office at common law without any right or authority on the part of the legislature to restrict them. Counsel overlooked *State ex rel. Williams v. Samuelson* (1907), 131 Wis. 499, 507, 111 N.W. 712 in which case it was held that the term “all other county officers” incorporated into sec. 4 of art. VI of the constitution by amendment in 1882, means the heads of the several major divisions of county government existing at that time, and the section as amended does not take away the legislative power mentioned in sec. 9 of art. XIII [of the constitution] to create other county offices with other duties and to provide for the manner of filling such offices and the terms thereof....

We find no ground upon which we would be justified in overruling [*Brunst*]. It is in accord with the great weight of authority in this country.

Thus, although the office of coroner and the office of sheriff are both constitutional offices, the office of sheriff had substantially more “generally recognized legal duties and functions” at the time the constitution was adopted. The *Schultz* court, citing the *Brunst* case, indicates that changes in the powers and duties of the office of sheriff would, because of these recognized duties and functions, involve much greater scrutiny than changes in the powers and duties of the office of coroner (which, as explained above, were not well-defined at the time the constitution was adopted, were very limited in nature, and, in the years subsequent to the adoption, were changed without constitutional amendment).

## **PART II**

### **GENERAL PROVISIONS RELATING TO ELECTIONS, RESIGNATIONS, VACANCIES, AND REMOVALS FROM OFFICE OF CORONERS AND MEDICAL EXAMINERS**

This Part of the Staff Brief discusses general provisions, statutory and otherwise, relating to elections, resignations, vacancies, and removals from office, as related to the office of coroner and the appointed position of medical examiner.

1. **Coroner's Election.** The office of coroner is a partisan elected office, with the election held during the fall general election. Medical examiner is an appointed position (by the county board).

2. **Resignation; To Whom Made.** A resignation by a coroner must be made to the sheriff, who must immediately transmit a notice of the resignation to the Governor. [s. 17. 01 (7), Stats.]

3. **Vacancy.** The causes resulting in a vacancy in a public office are set forth in ss. 17.03 to 17.05, Stats. A vacancy in the elective county office of coroner must be filled ***by the Governor for the residue of the expired term.***

4. **Removal.** A coroner may be removed from office ***by the Governor, for cause.*** [s. 17.09 (5), Stats.] Under s. 17.10 (2), Stats., county officers appointed by the county board (as is the case with medical examiners) may be removed ***by the county board for cause.*** All such removals may be made by an affirmative vote of 2/3rds of the supervisors entitled to seats on the county board. The procedures and related provisions for removals (applicable to both coroners and medical examiners) are set forth in s. 17.16, Stats.



### **PART III**

#### **CHAPTER 59, STATS., PROVISIONS RELATING TO CORONERS AND MEDICAL EXAMINERS**

Part III of this Staff Brief describes the provisions in ch. 59, Stats. (counties), relating to coroners and medical examiners.

##### **CORONER, MEDICAL EXAMINER REQUIREMENTS AND DUTIES [S. 59.34 (1), STATS.]**

Section 59.34, Stats., sets forth the following requirements and duties relating to coroners and medical examiners:

1. **Inquests.** The coroner is required to participate in inquest proceedings when required by law. However, in any county with a population of 500,000 or more and all counties that have instituted the medical examiner system this duty and the powers incident to this duty must be vested exclusively in the office of the medical examiner.
2. **Medical Examiner Appointment.** Except under s. 59.38 (5), Stats. (discussed below), the county board must appoint the medical examiner.
3. **Full-Time or Part-Time; Compensation.** The office of coroner or medical examiner may be occupied on a full-time or part-time basis and the officeholder must be paid compensation as the county board, by ordinance, provides.
4. **When Coroner Duties Performed by Clerk.** The duties performed by the county coroner and not vested in the medical examiner must be performed by the county clerk.
5. **Appointment of Assistants--Medical Examiner.** The medical examiner may appoint such assistants as the county board authorizes.
6. **Medical Examiner to Testify.** Whenever requested by the court or district attorney, the medical examiner is required to:
  - a. Testify to facts and conclusions disclosed by autopsies performed by him or her, at his or her direction or in his or her presence.
  - b. Make physical examinations and tests incident to any matter of a criminal nature up for consideration before either the court or district attorney upon request.
  - c. Testify as an expert for either the court or the state in all matters where the examinations or tests have been made.
  - d. Perform any other duties of a pathological or medicolegal nature as may be required.

7. **Coroner: Exercise Powers of Sheriff Where No Sheriff or Undersheriff.** When there is no sheriff or undersheriff in any county organized for judicial purposes, exercise all the powers and duties of sheriff of that county until a sheriff is elected or appointed and qualified.

8. **Coroner: Keeper of Jail if Sheriff is in Jail.** The coroner is required, if the sheriff, for any cause, is committed to the jail of that county, to be the keeper of the jail during the time that the sheriff remains a prisoner in the jail.

9. **Coroner: Serve and Execute Process.** The coroner is required to serve and execute process (e.g., a court summons) of every kind and perform all other duties of the sheriff: (a) when the sheriff is a party to the action; and (b) whenever the clerk of the circuit court addresses the original or other process in any action to the coroner as provided in s. 59.40 (2) (o), Stats. The coroner is required to execute the process in the same manner as the sheriff might do in other cases; exercise the same powers and proceed in the same manner as prescribed for sheriffs in the performance of similar duties. The provision specifies that in all cases the coroner and the coroner's sureties must be liable in the same manner and to the same extent on the coroner's official bonds as sheriffs and their sureties are liable in similar cases.

10. **Act as Coroner in Nearby County.** The coroner is required to act as coroner in a nearby county when requested to do so, as described below.

**Note:** With reference to the provisions in s. 59.34 (1), Stats., the following opinions of the Attorney General should be noted:

1. In 63 OAG 361, the Attorney General opined that a county board in a county under 500,000 can abolish the elective office of coroner and implement a medical examiner system to be effective at the end of the incumbent coroner's term.

2. In 69 OAG 44, the Attorney General opined that a medical examiner should be a qualified expert in pathology.

#### **COMPATIBILITY WITH OTHER OFFICES [S. 59.34 (2), STATS.]: CURRENT LAW AND CURRENT LEGISLATION**

##### **Current Law**

1. Notwithstanding s. 979.04 (3), Stats., and except as provided in item 2., below, any person holding the office of ***coroner or medical examiner*** may also serve as a volunteer emergency medical technician, first responder, or volunteer fire fighter.

2. No person serving as a ***coroner*** who also serves as a volunteer emergency medical technician, volunteer first responder, or a volunteer fire fighter ***may participate as a coroner*** in any case in which he or she may be required to participate as a volunteer emergency medical technician, volunteer first responder, or a volunteer fire fighter. If an apparent or actual conflict of interest arises between the person's duties as coroner and as volunteer emergency medical technician, volunteer first responder, or volunteer fire fighter, the ***deputy coroner*** must act as coroner in the case in which the conflict exists. ***If there is no deputy coroner***, the coroner must request that the coroner, medical examiner, deputy coroner, or a medical examiner's assistant in a nearby county act as coroner in the case in which the conflict exists. Any fees owed to or

expenses incurred by the acting coroner from the nearby county must be paid by the county that requested the acting coroner's services.

3. If a person serving as coroner is required to exercise the powers and duties of sheriff, as described above, the deputy coroner must act as coroner or, if there is no deputy coroner, the coroner must request, under the procedures in item 2., above, that another person act as coroner until the coroner is no longer exercising the powers and duties of sheriff.

**Note:** In 75 OAG 28, the Attorney General opined that appointment of a law enforcement officer as an assistant medical examiner creates an impermissible conflict between the offices.

**Current Legislation: 2005 Assembly Bill 201, Relating to the Compatibility of the Offices of Coroner or Medical Examiner, and Certain Emergency Services Positions**

2005 Assembly Bill 201 relates to the compatibility of the offices of coroner or medical examiner, and certain emergency services positions. The bill, as amended by Assembly Amendment 1, was recommended by the Assembly Committee on Urban and Local Affairs, for passage by a vote of Ayes, 8; Noes, 0. The bill is currently in the Assembly Rules Committee awaiting scheduling for floor action. ***The bill:***

- Allows coroners, deputy coroners, medical examiners, and assistant medical examiners to also serve as paid, not just volunteer, emergency medical technicians (EMTs), first responders, or fire fighters.
- Extends the current prohibition on participation by a coroner in any case in which the coroner may be required to participate as an EMT, first responder, or fire fighter to also apply to medical examiners.
- Allows, where a conflict exists, a coroner, deputy coroner, medical examiner, or medical examiner assistant from "another" county, not only a "nearby" county, to act.

***Assembly Amendment 1 to the bill*** extends the prohibition on participating in the same case as a coroner or medical examiner and as an EMT, first responder, or fire fighter to also apply to deputy coroners and assistant medical examiners.

**DEPUTY CORONER [S. 59.35, STATS.]**

1. **Appointment.** Section 59.35 (1), Stats., was amended by 2005 Wisconsin Act 39. Under ***prior law***, a coroner, within 10 days after taking office, was permitted to appoint up to six deputy coroners who had to be county residents.

***Act 39*** permits a coroner to appoint the number of deputy coroners the coroner considers appropriate. The Act does not require that the deputy coroners be residents of the county. However, the Act does require a coroner to appoint a chief deputy coroner who must be a resident of the county. The Act took effect on September 1, 2005. Note that the Act expressly authorizes a coroner currently holding office to appoint as many other deputy coroners as the coroner considers proper; however, no such appointment may be made on or after the first

Monday in January following the first general election that is held after the Act's effective date. Otherwise, the act first applies to a coroner who takes office on or after the effective date of the act.

**Note:** In 74 OAG 198, the Attorney General opined that a coroner can legally appoint a deputy after the time specified in s. 59.35 (1), Stats.

2. **Vacancies.** The coroner may fill vacancies in the office of any deputy coroner appointees, and may appoint a person to take the place of any deputy who becomes incapable of executing the duties of the office. A person appointed deputy coroner for a regular term or to fill a vacancy or otherwise holds office "during the pleasure of the coroner."

3. **In Writing and Recorded.** Every appointment of a deputy coroner and every revocation of an appointment must be in writing and filed and recorded in the office of the clerk of the circuit court.

4. **If Vacancy in Office of Coroner.** In case of a vacancy in the office of coroner, the chief deputy coroner "shall in all things and with like liabilities and penalties" execute the duties of the coroner's office until the vacancy is filled as provided by law.

5. **Coroner Responsible for Default or Misconduct of Deputy Coroner.** The coroner is responsible for every default or misconduct in office of a deputy coroner during the coroner's term of office, "and after the coroner's death, resignation, or removal from office, as well as before." An action for any default or misconduct under this provision may be prosecuted against the coroner and the sureties on the coroner's official bond or against the coroner's personal representative.

6. **Bond May Be Required.** The coroner may require a deputy coroner, before entering upon the duties of the office, to execute and deliver to the coroner a bond in such sum and with such sureties as the coroner may require, "conditioned for the faithful performance of the deputy's official duties." Every default or misconduct of the deputy coroner for which the coroner is liable is a breach of the bond.

7. **Where Medical Examiner Appointed.** Whenever a medical examiner has been appointed by counties, as described above (s. 59.34 (1) (a), Stats.), this section on deputy coroners does not apply in these counties, and the coroner of such counties is not responsible for any default or misconduct in office of the medical examiner.

8. **No Conflict of Interest.** A person holding office of deputy coroner may also serve as a volunteer emergency medical technician, a volunteer first responder, a volunteer fire fighter, or a chief, deputy chief, or assistant chief of a fire department. With reference to this provision, note the provisions of 2005 Assembly Bill 201, discussed in the analysis of s. 59.34 (2), above.

#### **CORONER: FEES [S. 59.36, STATS.]**

The county board is required to set the fees for all services rendered by the coroner. The fees may not exceed an amount that is reasonably related to the actual and necessary cost of providing the service.



### **SERVICE WHEN NO CORONER [S. 59.37, STATS.]**

Whenever there is a *vacancy* in the office of coroner, or when the coroner is *absent* from the county, sick or *unable to perform* the duties of that office, or the coroner for any reason, except the nonpayment of legal fees, refuses to serve and execute legal process against the sheriff in any action commenced in any court of record within the county for which the coroner was or should have been elected:

1. Any circuit judge or circuit court commissioner of the county may, on proof of the vacancy, sickness, absence or refusal to serve and execute this process, by an order to be endorsed on the process and “addressed to him or her,” *empower any citizen of the county in which such process is to be served and executed* to serve and execute the process.

2. The order under item 1., above, is sufficient authority to the person named in the order to serve and execute the process with the same powers, liabilities, and fees as the coroner.

### **MEDICAL EXAMINER AND ASSISTANTS [S. 59.38, STATS.]**

#### **1. Salaries; Fees; Report**

- a. The medical examiner and medical examiner’s assistants authorized by the board must be *paid semi-monthly* out of the county treasury of the proper county, for the performance of all their official duties and in lieu of all other compensation, *salaries to be fixed by the board*.
- b. The medical examiner and medical examiner’s assistants are required to collect for all services performed, except in cases where the county is solely liable, “all fees that coroners are by law entitled to receive.”
- c. The medical examiner and medical examiner’s assistants must keep accurate books of account in which must be entered “from day to day” the items of services rendered, the titles of the proceedings in which and the names of the persons for whom rendered, and the fees charged and received.
- d. At the end of every three months, the medical examiner and medical examiner’s assistants must render to the board and to the treasurer an accurate report or statement, verified by his or her oath, of all fees and income collected by them or for them during the three months; and at the same time they must pay to the treasurer all fees and incomes collected by them, or which they were entitled by law to charge or receive, not paid to the treasurer. The medical examiner or a medical examiner’s assistant must act as coroner in a nearby county when requested to do so under s. 59.34 (2) (b), Stats.

#### **2. Office and Records**

The county board is required to provide, for the use of the medical examiner, suitable offices at the county seat. The medical examiner is required to keep in his or her office proper books containing records of all inquests held by the medical examiner, setting forth the time and

place of holding the inquests and the names of the jurors serving on the inquests, together with a brief statement of the inquest proceedings.

### **3. Medical Examiner's Bond**

Before entering upon the duties of office, the medical examiner of the county is required to deliver to the clerk a bond, subscribed by two or more sufficient sureties, in "such penal sum" as the board determines, conditioned for the faithful performance of all official duties as set forth in chs. 59 and 979, Stats. The bond must indicate that the medical examiner will faithfully account for and pay to the treasurer of the county all moneys that may come to him or her belonging to the county, and which, by virtue of chs. 59 and 979, the medical examiner is required to account for and pay.

### **4. Special Counties: Deputies and Assistants; Powers**

The medical examiner and his or her assistants must be compensated for the performance of all their official duties by salaries fixed by the board under item 1., above.

### **5. Medical Examiner; Appointment in Populous Counties; Dismissal**

- a. In a county with a population of 500,000 or more (Milwaukee County), the county executive must appoint the medical examiner in the unclassified service, subject to confirmation by a majority of the board.
- b. The medical examiner may be dismissed at any time by the county executive with the concurrence of a majority of the members-elect of the board, or by a majority of the members-elect of the board with the concurrence of the county executive. If the county executive vetoes an action by the board to dismiss the medical examiner, the board may override the veto by a 2/3rds vote of the members-elect of the board.

### **6. Coroner or Medical Examiner as Funeral Director; Limitation**

No coroner, deputy coroner, medical examiner, or assistant medical examiner who is a licensed funeral director, an owner or operator of a funeral establishment as defined in s. 445.01, or an employee of a funeral establishment, and no funeral establishment with which such a coroner, deputy coroner, medical examiner, or assistant medical examiner is associated, is permitted to perform any of the services of a funeral director upon the body of any person whose death is required by law to be investigated by such coroner, his or her deputy, medical examiner or assistant medical examiner. Any person who violates this prohibition is subject to a fine of not more than \$50.

## **PART IV**

### **CHAPTER 979, STATS.: INVESTIGATION OF DEATHS**

#### **REPORTING DEATHS REQUIRED; PENALTY; TAKING SPECIMENS BY CORONER OR MEDICAL EXAMINER [S. 979.01, STATS.]**

1. **Deaths Required To Be Reported.** All physicians, authorities of hospitals, sanatoriums, public and private institutions, convalescent homes, authorities of any institution of a like nature, and other persons having knowledge of the death of any person *who has died under any of the following circumstances*, must immediately report the death to the sheriff, police chief, *or medical examiner or coroner* of the county where the death took place:

- a. All deaths in which there are unexplained, unusual or suspicious circumstances.
- b. All homicides.
- c. All suicides.
- d. All deaths following an abortion.
- e. All deaths due to poisoning, whether homicidal, suicidal, or accidental.
- f. All deaths following accidents, whether the injury is or is not the primary cause of death.
- g. When there was no physician, or accredited practitioner of a bona fide religious denomination relying upon prayer or spiritual means for healing in attendance within 30 days preceding death.
- h. When a physician refuses to sign the death certificate.
- i. When, after reasonable efforts, a physician cannot be obtained to sign the medical certification as required under s. 69.18 (2) (b) or (c), Stats., within six days after the pronouncement of death or sooner under circumstances which the coroner or medical examiner determines to be an emergency.

2. **Notice to Coroner or Medical Examiner.** A sheriff or police chief must, immediately upon notification of a death under item 1., above: (a) notify the coroner or the medical examiner; and (b) notify the coroner or medical examiner of the county where death took place, if the crime, injury, or event occurred in another county.

3. **Notice to District Attorney.** The *coroner or medical examiner* receiving notification under item 1. or 2., above, must immediately notify the district attorney.

4. **When Notice to Historical Society Required.** If the *coroner or medical examiner* is notified of a death under item 1. or 2. and determines that his or her notification of the death was

not required under item 1. or 2., he or she must notify the director of the Historical Society under s. 157.70 (3), Stats.

5. **Penalty for Violating s. 979.01, Stats.** Any person who violates s. 979.01, Stats., is subject to a fine of not more than \$1,000 or imprisonment not more than 90 days.

6. **When Autopsy Not Performed; Specimens.** In all cases of death reportable under item 1., above, where an autopsy is not performed:

- a. The ***coroner or medical examiner may*** take for analysis any and all specimens, body fluids and any other material that will assist him or her in determining the cause of death.
- b. The ***coroner or medical examiner must*** take for analysis any and all specimens, body fluids and any other material that will assist him or her in determining the cause of death if requested to do so by a spouse, parent, child or sibling of the deceased person and not objected to by any of those family members.

The specimens, body fluids and other material taken under either of these provisions are not admissible in evidence in any civil action against the deceased or his or her estate, as the result of any act of the deceased.

7. **No Embalming or Autopsy; When.** No person may embalm or perform an autopsy on the body of any person who has died under any of the circumstances listed in s. 979.01, Stats., ***unless*** the person obtains the ***written authorization of the coroner of the county in which the injury or cause of death occurred.*** The authorization must be issued by the coroner or a deputy within 12 hours after notification of the reportable death, or as soon thereafter as possible in the event of “unexplained, unusual or suspicious circumstances.”

#### **REPORTING DEATHS OF PUBLIC HEALTH CONCERN [S. 979.012, STATS.]**

1. **Where Certain Illnesses or Health Conditions.** If a ***coroner or medical examiner*** is aware of the death of a person who, at the time of his or her death, had an illness or a health condition that satisfies s. 166.02 (7) (a), Stats., the coroner or medical examiner must report the illness or health condition to: (a) the Department of Health and Family Services (DHFS); and (b) the local health department, as defined in s. 250.01 (4), Stats., in whose jurisdiction the ***coroner or medical examiner*** is located. The report must be in writing or by electronic transmission and be made ***within 24 hours*** of learning of the deceased’s illness or health condition. In the report, the ***coroner or medical examiner*** must include all of the following information if such information is available:

- a. The illness or health condition of the deceased.
- b. The name, date of birth, gender, race, occupation, and home and work addresses of the deceased.
- c. The name and address of the coroner or medical examiner.

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

#### **SUBPOENA FOR DOCUMENTS [S. 979.015, STATS.]**

Upon the request of the **coroner, medical examiner, or district attorney**, a court must issue a subpoena requiring the production of documents necessary for the determination of a decedent's cause of death. The documents may include the decedent's patient health care records and treatment records, as defined in ss. 51.30 and 146.81 (4), Stats. The documents must be returnable to the officer named in the subpoena.

#### **AUTOPSIES; DISINTERING THE BODY [S. 979.02, STATS.]**

The **coroner, medical examiner, or district attorney** may order the conducting of an autopsy upon the body of a dead person any place within the state in cases where an inquest might be had as provided in s. 979.04, Stats., notwithstanding the fact that no such inquest is ordered or conducted. The autopsy must 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 disintering the body for purposes of autopsy. The order must be granted by the circuit court upon a reasonable showing that any of the criteria specified in s. 979.04, Stats., exists.

Section 979.02, Stats., does not prevent additional autopsies or examinations of the body if there are unanswered pathological questions concerning the death and the causes of death.

#### **AUTOPSY OF CORRECTIONAL INMATE [S. 979.025, STATS.]**

1. **Inmate Confined to an Institution in this State.** If an individual dies while he or she is in the legal custody of the Department of Corrections (DOC) and confined to a correctional facility located in this state, the **coroner or medical examiner** of the county where the death occurred must perform an autopsy on the deceased individual. If the **coroner or medical examiner** who performs the autopsy determines that the individual's death may have been the result of any of the situations that would permit the district attorney to order an inquest under s. 979.04 (1), Stats., the **coroner or medical examiner** must follow the procedures under s. 979.04 (2), Stats.

2. **Inmate Confined in an Institution in Another State.** If an individual dies while he or she is in the legal custody of DOC and confined to a correctional facility in another state under a contract under s. 301.07, 301.21, or 302.25, Stats., the DOC must have an autopsy performed by an appropriate authority in the other state **or by the coroner or medical examiner of the county in which the circuit court is located that sentenced the individual to the custody of DOC.**

If the **coroner or medical examiner** who performs the autopsy in this state determines that the individual's death may have been the result of any of the situations that would permit the district attorney to order an inquest under s. 979.04 (1), the **coroner or medical examiner** must forward the results of the autopsy to the appropriate authority in the other state.

3. **Costs of an Autopsy.** The costs of an autopsy performed under item 1. or 2., above, must be paid by DOC.

**AUTOPSY FOR SUDDEN INFANT DEATH SYNDROME (SIDS) [S. 979.03, STATS.]**

If a child *under the age of two years* dies suddenly and unexpectedly under circumstances indicating that the death may have been caused by SIDS, the ***coroner or medical examiner*** must notify the child's parents or guardian that an autopsy will be performed, at no cost to the parents or guardian, unless the parents or guardian object to the autopsy. The ***coroner or medical examiner*** must conduct or must order the conducting of an autopsy at county expense, unless parent or guardian requests in writing that an autopsy not be performed. If the autopsy reveals that SIDS is the cause of death, that fact must be stated in the autopsy report. The parents or guardian of the child must be promptly notified of the cause of death and of the availability of counseling services.

**INQUESTS: WHEN CALLED; WHERE HELD [S. 979. 04, STATS.]**

1. **When District Attorney May Order Inquest.** If the district attorney has notice of the death of any person and there is reason to believe from the circumstances surrounding the death that ***felony murder, first-degree or second-degree intentional homicide, first-degree or second-degree reckless homicide, homicide by negligent handling of a dangerous weapon, explosives or fire, homicide by negligent operation of vehicle, homicide resulting from negligent control of a vicious animal or homicide by intoxicated user of a vehicle or firearm may have been committed, or that death may have been due to suicide or unexplained or suspicious circumstances,*** the district attorney *may* order that an inquest be conducted for the purpose of inquiring how the person died.

The district attorney must appear in any such inquest representing the state in presenting all evidence that may be relevant or material to the inquiry of the inquest.

The inquest may be held in any county in this state in which venue would lie for the trial of any offense charged as the result of or involving the death. An inquest may only be ordered by the district attorney under this provision or by the circuit judge under item 2., below.

2. **Request or Petition for Inquest.** If the ***coroner or medical examiner*** has knowledge of the death of any person in the manner described under item 1., above, he or she must immediately notify the district attorney. The notification must include information concerning the circumstances surrounding the death. The ***coroner or medical examiner*** may request the district attorney to order an inquest under item 1. If the district attorney refuses to order the inquest, a ***coroner or medical examiner*** may petition the circuit court to order an inquest. The court may issue the order if it finds that the district attorney has abused his or her discretion in not ordering an inquest.

3. **Preliminary Investigation by Coroner or Medical Examiner.** Subsequent to receipt of notice of the death, the district attorney may request the ***coroner or medical examiner*** to conduct a preliminary investigation and report back to the district attorney. The district attorney may determine the scope of the preliminary investigation. This provision does not limit or

prevent any other investigation into the death by any law enforcement agency with jurisdiction over the investigation.

**INQUESTS: PROCEDURE [S. 979.05, STATS.]**

1. **Who Conducts Inquest.** An inquest must be conducted by a circuit judge or a circuit court commissioner.

2. **Before a Jury; Exception; Jury Summons; Number of Jurors; Jury Process.** The inquest must be conducted before a jury *unless the district attorney, coroner, or medical examiner* requests that the inquest be conducted before the judge or circuit court commissioner only. The inquest jury must consist of six jurors.

3. **Instructions to Jury; Statements by District Attorney.** Prior to the submission of evidence to the jury, the judge or circuit court commissioner may instruct the jury on its duties and on the substantive law regarding the issues which may be inquired into before the jury. The district attorney may, at any time during the course of the inquest, make statements to the jury relating to procedural or evidentiary matters he or she and the judge or circuit court commissioner deem appropriate. Section 972.12, Stats., applies to the conduct of the inquest jury.

4. **Proceedings May Be In Secret.** The judge or circuit court commissioner conducting the inquest may order that proceedings be secret if the district attorney so requests or concurs.

**INQUESTS: WITNESSES [S. 979.06, STATS.]**

1. **Subpoenas in General.** The judge or circuit court commissioner *may* issue subpoenas for witnesses at the request of the *coroner or medical examiner* and *must* issue subpoenas for witnesses requested by the district attorney.

2. **Expert Witnesses.** The judge or circuit court commissioner conducting the inquest and the district attorney may require by subpoena the attendance of one or more expert witnesses, including physicians, surgeons and pathologists, for the purposes of: (a) conducting an examination of the body and all relevant and material scientific and medical tests connected with the examination; and (b) testifying as to the results of the examination and tests.

3. **Counsel for Witnesses.** Any witness examined at an inquest may have counsel present during the examination of that witness. The counsel may not examine or cross-examine his or her client, cross-examine, or call other witnesses or argue before the judge or circuit court commissioner holding the inquest.

4. **Record.** The judge or circuit court commissioner conducting the inquest must cause the testimony given by all witnesses to be reduced to writing or recorded.

**INQUESTS: INCRIMINATING TESTIMONY COMPELLED; IMMUNITY [S. 979.07 (1), STATS.]**

1. **Compelled Testimony; Immunity.** If a person refuses to testify or to produce required documents before an inquest for the reason that the testimony or evidence required of the person may tend to incriminate him or her or subject him or her to a forfeiture or penalty, the person

may be compelled to testify or produce the evidence by order of the circuit court of the county in which the inquest is convened on motion of the district attorney.

2. **Contempt for Failure or Refusal to Comply.** If a witness appearing before an inquest fails or refuses without just cause to comply with an order of the court under this provision to give testimony, the court may punish the witness for contempt under ch. 785, Stats.

**INQUESTS: INSTRUCTIONS, BURDEN OF PROOF AND VERDICT [S. 979.08, STATS.]**

1. **Instructions to Jury.** When the evidence is concluded and the testimony closed, the judge or circuit court commissioner must instruct the jury on its duties and on the substantive law regarding the issues inquired into before the jury.

2. **Finding of Probable Cause; Unanimous Verdict; Form of Verdict.** The jury's verdict must be based upon a finding of probable cause and must be unanimous.

The verdict must be in a form that permits the following findings:

a. Whether the deceased came to his or her death by criminal means and, if so, the specific crimes committed and the name of the person or persons, if known, having committed the crimes.

b. Whether the deceased came to his or her death by natural causes, accident, suicide, or an act privileged by law.

The jury must render its verdict in writing, signed by all of its members. The verdict must set forth its findings from the evidence produced according to the instructions.

3. **Verdict Advisory Only; Delivered to District Attorney.** The verdict delivered by the inquest jury is advisory and does not preclude or require the issuance of any criminal charges by the district attorney. The verdict, after being validated and signed by the judge or circuit court commissioner, together with the record of the inquest, must be delivered to the district attorney for consideration. After considering the verdict and record, the district attorney may deliver the entire inquest record or any part of that record to the *coroner or medical examiner* for safekeeping.

4. **Record of Secret Inquest.** The record of a secret inquest proceeding may not be open for inspection *unless* so ordered by the judge or circuit court commissioner conducting the inquest upon petition by the district attorney.

**BURIAL OF BODY [S. 979.09, STATS.]**

If a judge or circuit court commissioner conducts an inquest as to the death of a stranger or of a person whose identity is unknown or whose body is unclaimed or if the district attorney determines that no inquest into the death of such a person is necessary and the circuit judge has not ordered an inquest under s. 979.04 (2), the *coroner or medical examiner* must: (1) cause the body to be “decently” buried or cremated; and (2) must certify to all the charges incurred in taking any inquest by him or her and to the expenses of burial or cremation of the dead body.



The charges and expenses must be audited by the county board and paid out of the county treasury.

**CREMATION [S. 979.10, STATS.]**

1. **No Cremation Within 48 Hours; Cremation Permit Form.** No person may cremate the corpse of a deceased person within 48 hours after the death, or the discovery of the death, of the deceased person *unless* the death was caused by a contagious or infectious disease. In addition, no person may cremate a corpse unless the person has received a *cremation permit from*:

a. *The coroner or medical examiner in the county where the death occurred if the death occurred in this state;*

b. *The coroner or medical examiner in the county where the event which caused the death occurred if the death occurred in this state and if the death is the subject of an investigation under s. 979.01; or*

c. *The coroner or medical examiner of the county where the corpse is to be cremated if the death occurred outside this state.*

A cremation permit issued under this provision may not be used in any county except the county in which the cremation permit is issued.

2. **Statement in Cremation Permit.** A *coroner or medical examiner* must include in any cremation permit issued under item 1., above, a statement that he or she has viewed the corpse which is the subject of the permit and made personal inquiry into the cause and manner of death under item 4., below, and is of the opinion that no further examination or judicial inquiry is necessary.

3. **Permission of Cemetery Owner.** No person may deposit any cremated remains of a corpse in any cemetery without the permission of the person who owns or is in charge of the cemetery.

4. **Inquiry Into Cause and Manner of Death.** If a corpse is to be cremated, the *coroner or medical examiner* must: (a) make “a careful personal inquiry” into the cause and manner of death; and (b) conduct an autopsy or order the conducting of an autopsy, if in his or her or the district attorney’s opinion it is necessary to determine the cause and manner of death. If the *coroner or medical examiner* determines that no further examination or judicial inquiry is necessary, he or she must certify that fact. Upon written request by the district attorney, the *coroner or medical examiner* must obtain the concurrence of the district attorney before issuing the certification. If the *coroner or medical examiner* determines that further examination or judicial inquiry is necessary, he or she must notify the district attorney under s. 979.04 (2), Stats.

5. **Coroner’s Fee.** The *coroner* must receive a fee of \$25, to be paid out of the county treasury, for each corpse viewed or inquiry made under item 4., above, *unless* an annual salary has been established by the county board under s. 979.11, Stats.

6. **Unlawful Cremation; Penalty.** Whoever accepts, receives, or takes any corpse of a deceased person with intent to destroy the corpse by means of cremation, or who cremates or aids and assists in the cremation of any corpse of a deceased person without having presented the necessary cremation permit must be fined not more than \$10,000 or imprisoned not more than nine months, or both.

**Note:** With reference to s. 979.10, Stats., the Attorney General has opined that: (1) chs. 69 and 157, Stats., are not alternatives to the requirement in this section that anyone cremating a corpse first obtain a cremation permit from the coroner; (2) university medical schools or anyone else qualified to receive a corpse can receive a corpse for research without first obtaining a permit; and (3) this section only requires that a permit be obtained before cremation. [77 OAG 218.]

**COMPENSATION OF OFFICERS [S. 979.11, STATS.]**

The sole compensation of the *coroner and deputy coroners* for attendance at an inquest and for any preliminary investigation under ch. 979, Stats., at the direction of the district attorney must be “a reasonable sum set by the county board for each day actually and necessarily required for the purpose, and a sum set by the county board for each mile actually and necessarily traveled in performing the duty.” Any *coroner or deputy coroner* may be paid an annual salary and allowance for traveling expenses to be established by the county board under s. 59.22, Stats., that must be in lieu of all fees, per diem, and compensation for services rendered.

**FEES FOR MORGUE SERVICES [S. 979.12, STATS.]**

A county board may establish a fee for the retention of a body at the morgue after the first day, not to exceed an amount reasonably related to the actual and necessary cost of retaining the body. This charge must not apply to indigents.

**AUTOPSIES AND TOXICOLOGICAL SERVICES BY MEDICAL EXAMINERS [S. 979.22, STATS.]**

A *medical examiner* may perform autopsies and toxicological services not required under this chapter and may charge a fee established by the county board for such autopsies and services. The fee may not exceed an amount reasonably related to the actual and necessary cost of providing the service.

## **PART V**

### **REGISTRATION AND PRONOUNCEMENT OF DEATHS [S. 69.18 (1), STATS.]**

Under current law, a hospital, nursing home, or hospice that is the place of death of an individual may prepare a death certificate for the individual and give it to the funeral director or other person who is authorized to move the corpse for final disposition. The death certificate must include the date of death, which under current law is the date that a person is pronounced dead by a physician, ***coroner, deputy coroner, medical examiner, or deputy medical examiner***. The physician of the deceased individual or, in certain circumstances, the ***coroner or medical examiner***, must, within five days after the pronouncement of death, present the death certificate to the funeral director or other person authorized to move the corpse, who must file the death certificate with the local registrar.

With reference to pronouncement of death by a “hospice nurse” (defined, for purposes of ch. 69, as a registered nurse, as defined in s. 146.40 (1) (f), Stats., who is ***employed by and under contract to*** a hospice), current law contains special provisions, created in 2003 Wisconsin Act 273. Current law specifies that, for purposes of preparation of the certificate of death and in accordance with accepted medical standards, a hospice nurse in a hospice that is ***directly involved with the care of a hospice patient*** who dies may pronounce the date, time, and place of the patient’s death ***if all of the following apply***:

1. The patient was generally under the care of a physician at the time of death.
2. The death was anticipated.

Current law specifies that this new provision may not be construed to authorize a hospice nurse to certify (under s. 69.18 (2) (b), Stats.) the cause of the patient’s death.

There is a recent DHFS publication related to the new law, “Pronouncement of Death Regulations Update Due to 2003 Wisconsin Act 273: Hospice Nurse Pronouncement of Death” ([http://dhfs.wisconsin.gov/rl\\_DSL/Publications/04-019.htm](http://dhfs.wisconsin.gov/rl_DSL/Publications/04-019.htm)). Note, the following comments found under the following headings in that publication:

- **“Who May Now Pronounce Death Under the New Law,” “Important Restrictions and Considerations,” and “Reporting Deaths to Coroners and Medical Examiners.”**

“Technically, a hospice may now initiate the death certificate (see the last paragraph under Important Restrictions and Considerations). However, this authority is rarely used by any of the institutions that have had rights to do so. Since a majority of funeral homes initiate the death certificate using a computer software program, it is impractical for institutions, including hospice, to begin the death certificate. Therefore, the Vital Records Section will not issue blank death certificates to hospices.”
- **“Important Restrictions and Considerations”**

**“For pronouncement of death:**

1. **An R.N. who is not employed by a Wisconsin-licensed hospice program cannot pronounce death.** This situation is still covered under the original pronouncement of death instructions. The R.N. calls a physician for pronouncement of death.
2. **A hospice R.N. cannot pronounce death for a patient who is not under hospice care** at the time of death. Again, a physician (or coroner/medical examiner) must be called for pronouncement of death.
3. **Other non-physician health care professionals** (e.g., a physician assistant, LPN or paramedic) **cannot pronounce death.**
4. As is true for all other authorized parties who perform legal pronouncements of death, **the hospice R.N. pronouncing death cannot be an immediate relative of the decedent.**

**A hospice R.N. cannot sign the medical certification of the death certificate and cannot sign as the person acting as a funeral director.”**

- **“Reporting Deaths to Coroners and Medical Examiners:”**

1. **Section HFS 135.08, Wis. Admin. Code,** directs a county Coroner or Medical Examiner to establish procedures for the pronouncement of death outside of a hospital or nursing home in that county. Those procedures must not conflict with the law that now permits a hospice R.N. to pronounce death under certain conditions. However, the procedures may direct the pronouncer to notify the Coroner or Medical Examiner of non-hospital, non-nursing home deaths and may specify circumstances under which the Coroner or Medical Examiner will respond to the death scene.
2. Each hospice worker must know the rules for reporting home deaths in the counties served, as well as the statutory requirements for reporting deaths that are listed in Wis. Stat. § 979.01.

- **“Notes on Reporting Deaths to Coroners and Medical Examiners and Health Insurance Portability and Accountability (HIPAA) Requirements:”**

1. **A Coroner or Medical Examiner does not need consent for release of medical information pursuant to a death notification or investigation under HFS 135.08, or under Wis. Stats. §§ 979.01 or 979.10** (investigation and body examination required for cremation permit). HIPAA exempts these activities from consent requirements.
2. Some counties have **Coroner/Medical Examiner “hospice advance notification registries.”** In those counties, the Coroner/Medical Examiner maintains a pre-death notification for residential hospice deaths. Participation in that registry allows the Coroner/Medical Examiner to treat the death as an anticipated death that results in a reduced death-scene response by that office. In those cases, the practice **may continue with the written consent of the patient.** The Bureau of Health Information and Policy will supply a model consent form to each Coroner/Medical Examiner.