



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

Memo No. 1

TO: MEMBERS OF THE SPECIAL COMMITTEE ON THE POWERS AND DUTIES OF
CORONERS AND MEDICAL EXAMINERS

FROM: Dan Schmidt, Senior Analyst, and Don Salm, Senior Staff Attorney

RE: Suggestions Made at, and in Response to, the September 14, 2005 Meeting of the Special
Committee on the Powers and Duties of Coroners and Medical Examiners

DATE: October 6, 2005

This Memo, prepared at the request of the Special Committee on the Powers and Duties of Coroners and Medical Examiners at its September 14, 2005 meeting, sets forth suggestions for changes in the current law relating to the role and authority of coroners and medical examiners. These changes were suggested at that meeting or in response to that meeting.

The suggested changes are divided into the general categories of: (1) modifications to the office of coroner; and (2) other related modifications.

MODIFICATIONS TO THE OFFICE OF THE CORONER

Members of the committee have suggested a number of modifications to the current office of the coroner. These modifications may be generally categorized as modifications that: (1) eliminate the current office of the coroner; (2) maintain the current office of the coroner and modify the powers or duties of the office; and (3) establish a coroner/medical examiners training board.

1. Elimination of the Office of the Coroner

This option would eliminate the office of the coroner from county government through a constitutional amendment. A constitutional amendment requires adoption by two successive legislatures, and ratification by the people of Wisconsin, before it can become effective. Upon elimination of the office of the coroner, an entity must remain responsible for death investigations in counties where no medical examiner exists. Two general options have been suggested: (1) requiring all counties to convert to the current medical examiner system; or (2) establishing a statewide examiner

system as a division of a current state agency or as its own agency. The new system could be operated as is the current medical examiner system with, it has been suggested, additional state agency oversight; or the current medical examiner system could be eliminated in favor of regional state medical examiner offices.

2. Modifications That Maintain the Current Office of the Coroner and Revise Current Powers and Duties of the Office

As with the “elimination of the office of coroner” option, a number of the modifications listed below would require a constitutional amendment before legislation could be enacted. Modifications that require constitutional amendments and those that do not are noted separately below.

a. Modifications Where Constitutional Amendment is Required

- Require county board oversight of the office of the coroner. An essential part of this oversight option is the authority to remove a coroner from office. Under the Wisconsin Constitution (art. VI, s. 5) and the statutes (s. 17.09 (5), Stats.), a coroner may be removed from office **by the Governor, for cause**. In contrast, medical examiners (as well as other county officers appointed by the county board) may be removed **by the county board, for cause**.
- Establish technical qualifications or certifications for individuals seeking election to the office of the coroner.
- Permit regionalization of the coroner’s office or permit county sharing of a single coroner similar to the current medical examiner system (the Wisconsin Constitution, in art. VI, s. 4, permits two or more counties to institute a joint medical examiner system).
- Convert the office of the coroner to a nonpartisan office. This would require a constitutional amendment because, by switching the election from the fall general election to the Spring Election (at which nonpartisan officers are elected), the term of office of the coroners would be changed. That term of office is currently set forth in the Constitution (two years).
- Extend the coroner’s term of office from the current two-year term to a four-year term.
- Eliminate the statutory requirements that the coroner fulfill the duties of the sheriff in the absence of the sheriff when the sheriff is party to an action.

b. Modifications Where a Constitutional Amendment is Generally Not Required

- Require cooperation and collaboration between coroners or medical examiners representing different counties within the state under s. 59.28, Stats.
- Establish specific statutory requirements for cooperation between the office of the coroner or medical examiner and hospice care professionals.

- Establish a statutory problem resolution system for issues which arise between coroners and medical examiners and law enforcement officers, medical personnel, hospice care individuals, the general public, or other coroners or medical examiners.
- Increase state funding for coroner or medical examiner facilities and equipment, particularly in less populous counties.
- Prohibit coroners or medical examiners from requiring hospice registration lists of terminal patients prior to their death.
- Require the Department of Health and Family Services (DHFS) to promulgate rules regarding death investigation procedures, recordkeeping, and general guidelines for training for coroners and medical examiners.
- Establish training and certification for coroners and medical examiners in death investigation procedures, recordkeeping, legal testimony, and other areas where training may be beneficial (see training board information below for further discussion).

3. Establish Coroner and Medical Examiner Training Board

If a coroner and medical examiner training board is established, the board would have the authority to set a training curriculum for coroners and medical examiners who are recently elected and continuing legal education for senior coroners and medical examiners. A statutory requirement that all new coroners and medical examiners must complete the training prior to completion of their first year in office may promote uniformity in policy and procedure. Members of the board (other than legislators) would be appointed by the Governor. Potential members of the training board could include:

- Coroners and medical examiners (e.g., persons recommended by the Wisconsin Coroners and Medical Examiners Association).
- Hospice care personnel.
- Funeral directors.
- Medical personnel with transplant expertise.
- District attorneys.
- Law enforcement personnel.
- Legislators from committees in the Legislature that deal most directly with coroner and medical examiner issues.

The board could also, with the assistance of the DHFS and other pertinent agencies, establish: (a) accepted guidelines for death investigations; and (b) a process for problem resolution when significant disputes arise relating to the functions and duties of coroners and medical examiners as to other coroners and medical examiners or as to other entities in the death investigation process.

OTHER RELATED MODIFICATIONS

In addition to the general changes to the powers and duties of coroners and medical examiners, a number of other related modifications to the offices of coroner and medical examiner have been proposed by the committee members. These include issues relating to: coroner/medical examiner autopsies and examinations and preservation of tissue or organs for transplantation purposes; (2) tissue banks and how they are selected following a tissue donor's death; and (3) individual modifications to ch. 979, Stats., regulating the investigation of deaths.

1. Preservation of Tissues and Organs for Transplantation Purposes and Tissue Bank Modifications

A preliminary draft (WLC: 0234/2; enclosed with this Memo) has been provided to the Special Committee (by committee member Dr. Anthony D'Alessandro) to resolve certain issues relating to coroners, hospitals, tissue banks, and the donation of organs and tissues.

The first part of the draft provides that a decedent who is either a donor or an individual for whom a document of gift has been executed under s. 157.06 (3), Stats., and is within the custody of a coroner or medical examiner, the coroner or medical examiner (or the designee of the coroner or medical examiner) may perform an examination, autopsy, or analysis of the tissues or organs **only in a manner and within a time period compatible with their preservation for the purposes of transplantation.**

If the examination, autopsy, or analysis **has not been undertaken in the manner and within the time provided above**, an individual who removes a part that is an anatomical gift from a decedent whose death is under investigation by a coroner or medical examiner may remove the part **after giving notice** to the coroner or medical examiner (or a designee of the coroner or medical examiner). In that case, the coroner or medical examiner (or a designee of the coroner or medical examiner):

- (a) **Must be present during removal of the part** if, in his or her judgment, the part may be involved in the cause of death, and may request a biopsy of the part or deny removal; and
- (b) **Must explain in writing** any reasons for determining that the part may be involved in the cause of death.

A physician performing a transplant of a part from a decedent whose death is under investigation by a coroner or medical examiner must file with the coroner or medical examiner a report detailing the condition of the part and its relationship to the cause of death. The report may include a biopsy or medically approved sample from the part.

The second part of the draft provides that if a decedent is within the custody of a coroner or medical examiner, **and the death occurred in a hospital**, any donation of tissues must be to the tissue bank with which the hospital has an agreement under 42 CFR 482.45 (a) (2) ("CFR" is the acronym for "Code of Federal Regulations").

If a decedent is within the custody of a coroner or medical examiner, **and the death occurred outside a hospital**, and if the coroner or medical examiner is releasing a tissue to a tissue bank, the release must be made as follows:

(a) **Agreement.** If the county board has entered into an agreement with one or more tissue banks following a **request-for-proposals process** that considers a tissue bank's history, services and tissue distribution record, the coroner or medical examiner must release tissues in accordance with the agreement. Tissue banks under this provision must be accredited by the American Association of Tissue Banks and registered with the federal Food and Drug Administration.

(b) **No Agreement.** If the county board has not entered into an agreement under item (a), above, the coroner or medical examiner must release tissues **on an equal rotating basis** to any tissue bank that is accredited by the American Association of Tissue Banks and registered with the federal Food and Drug Administration and that proposes to provide removal services in the county, **subject to approval by the county board.**

2. Chapter 979 Modifications

A subcommittee of the Wisconsin Coroners and Medical Examiners Association is currently reviewing ch. 979, Stats., for sufficiency and to verify that the chapter's provisions match current practices. The approximate date of completion of this review is unknown.

Specific Special Committee member suggestions for modification to ch. 979 include:

- Clarifying the timing of law enforcement notice under ch. 979.01 (1g), Stats.
- Eliminating the family permission to take specimens under s. 979.01 (3m), Stats.
- Requiring public health officials to alert coroners and medical examiners of public health concerns under s. 979.012, Stats.
- Permitting an out-of-state autopsy to occur for municipalities located near Wisconsin borders under s. 979.02, Stats.
- Permitting counties to determine fees for cremation certification under s. 979.10 (3), Stats. Current law requires the coroner to receive a fee of \$25 from the county for each corpse viewed or inquiry made unless an annual salary for the coroner has been established by the county board.

DWS:DLS:wu:jal
Enclosure