

HO-CHUNK NATION CODE (HCC)

TITLE 9 – CRIMINAL CODE

SECTION 979 – INVESTIGATION OF DEATHS

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TABLE OF CONTENTS

979.01 Reporting deaths required; penalty; taking specimens by coroner or medical examiner. 1
979.012 Reporting deaths of public health concerní í í í í í í í í í í í í í í í í .. 3
979.015 Subpoena for documentsí .. 3
979.02 Autopsiesí ... 3
979.03 Autopsy for sudden infant death syndromeí .. 3
979.04 Inquests: when calledí 4
979.05 Inquests: procedureí ... 4
979.06 Inquests: witnessesí 5
979.07 Incriminating testimony compelled; immunityí .. 6
979.08 Inquests: instructions, burden of proof and verdictí í í í í í í í í í í í í í í í .. 6
979.09 Burial of bodyí ... 7
979.10 Cremationí ..í 7
979.11 Compensation of officersí .. 8
979.22 Autopsies and toxicological services by medical examinersí í í í í í í í í í í í 8

979.01 Reporting deaths required; penalty; taking specimens by coroner or medical examiner.

(1) 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, shall 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 Wisconsin Statute s. 69.18 (2) (b) or (c) within 6 days after the pronouncement of death or sooner under circumstances which the coroner or medical examiner determines to be an emergency.

(1g) A sheriff or police chief shall, immediately upon notification under sub. (1) or s. 948.23 (1) (b) of a death, notify the coroner or the medical examiner, and the coroner or medical examiner of the county where death took place, if the crime, injury, or event occurred in another county, shall immediately report the death to the coroner or medical examiner of that county.

(1m) The the police chief who provided notification under sub. (1) or (1g) shall immediately notify the prosecutor.

(1r) If the coroner or medical examiner is notified of a death under sub. (1) or (1g) and determines that his or her notification of the death was not required under sub. (1) or (1g), he or she shall notify the tribal historic preservation officer.

(2) Unless s. 948.23 (1) (b) applies, any person who violates this section shall be fined not more than \$1,000 or imprisoned not more than 90 days.

(3) In all cases of death reportable under sub. (1) or s. 948.23 (1) (b) where an autopsy is not performed, the coroner or medical examiner may take for analysis any and all specimens, body fluids and any other material which will assist him or her in determining the cause of death. The specimens, body fluids and other material taken under this subsection shall not be admissible in evidence in any civil action against the deceased or the deceased's estate, as the result of any act of the deceased.

(3m) In all cases of death reportable under sub. (1) or s. 948.23 (1) (b) where an autopsy is not performed, the coroner or medical examiner shall 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 this subsection shall not be admissible in evidence in any civil action against the deceased or his or her estate, as the result of any act of the deceased.

(4) No person may embalm or perform an autopsy on the body of any person who has died under any of the circumstances listed in this section or on the body of any person whose death has been reported under s. 948.23 (1) (b) unless the person obtains the written authorization of the coroner of the county in which the injury or cause of death occurred. Such authorization shall be issued by the coroner or a police chief within 12 hours after notification of the reportable death, or as soon thereafter as possible in the event of unexplained, unusual or suspicious circumstances.

979.012 Reporting deaths of public health concern.

(1) 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 Wisconsin Statute s. 323.02 (16) (a) or if the coroner or medical examiner knows or suspects that the person had a communicable disease that, under rules promulgated by the department of health services, must be reported to a local health officer or to the state epidemiologist, the coroner or medical examiner shall report the illness, health condition, or communicable disease to the department of health services and to the local health department, in whose jurisdiction the coroner or medical examiner is located in writing or by electronic transmission within 24 hours of learning of the deceased's illness, health condition, or communicable disease.

(2) In a report under sub. (1), the coroner or medical examiner shall include all of the following information if such information is available:

(a) The illness, health condition, or communicable disease 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, health condition, or communicable disease 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.

979.015 Subpoena for documents. Upon the request of the coroner, medical examiner or prosecutor, a court shall 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. The documents shall be returnable to the officer named in the subpoena.

979.02 Autopsies. The coroner, medical examiner or tribal prosecutor 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 notwithstanding the fact that no such inquest is ordered or conducted. The autopsy shall be conducted by a licensed physician who has specialized training in pathology. The district attorney may move the circuit court for the county in which the body is buried for an order disinterring the body for purposes of autopsy. The order shall be granted by the circuit court upon a reasonable showing that any of the criteria specified in s. 979.04 exists. This section does not prevent additional autopsies or examinations of the body if there are unanswered pathological questions concerning the death and the causes of death.

979.03 Autopsy for sudden infant death syndrome. If a child under the age of 2 years dies suddenly and unexpectedly under circumstances indicating that the death may have been caused by sudden infant death syndrome, the coroner or medical examiner shall 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 shall conduct or shall order the conducting of an autopsy at Nation's expense, unless parent or guardian requests in writing that an autopsy not be performed. If the autopsy reveals that sudden infant death syndrome is the cause of death, that fact shall be so stated in the autopsy report. The parents or

guardian of the child shall be promptly notified of the cause of death and of the availability of counseling services.

979.04 Inquests: when called.

(1) If the tribal prosecutor 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 2nd-degree intentional homicide, first-degree or 2nd-degree reckless homicide, homicide by negligent handling of 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 tribal prosecutor may order that an inquest be conducted for the purpose of inquiring how the person died. The tribal prosecutor shall appear in any such inquest representing the Nation in presenting all evidence which may be relevant or material to the inquiry of the inquest. An inquest may only be ordered by the tribal prosecutor under this subsection or by the trial court judge under sub. (2).

(2) If the coroner or medical examiner has knowledge of the death of any person in the manner described under sub. (1), he or she shall immediately notify the prosecutor. The notification shall include information concerning the circumstances surrounding the death. The coroner or medical examiner may request the tribal prosecutor to order an inquest under sub. (1). If the tribal prosecutor refuses to order the inquest, a coroner or medical examiner may petition the trial court to order an inquest. The court may issue the order if it finds that the tribal prosecutor has abused his or her discretion in not ordering an inquest.

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

979.05 Inquests: procedure.

(1) An inquest shall be conducted by a trial judge.

(2) The inquest shall be conducted before a jury unless the tribal prosecutor, coroner, or medical examiner requests that the inquest be conducted before the judge only. If the inquest is to be conducted before a jury, a sufficient number of names of prospective jurors shall be selected from the prospective juror list by the clerk of court in the manner provided by the court. The judge conducting the inquest shall summon the prospective jurors to appear before the judge at the time fixed in the summons. The summons may be served by mail, or by personal service if the judge or prosecutor determines personal service to be appropriate. The summons shall be in the form used to summon petit jurors in the trial courts. Any person who fails to appear when summoned as an inquest juror is subject to a forfeiture of not more than \$40. The inquest jury shall consist of 6 jurors. If 6 jurors do not remain from the number originally summoned after establishment of qualifications, the judge conducting the inquest may require the clerk of the court to select sufficient additional jurors' names. Those persons shall be summoned forthwith by tribal law enforcement.

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

(4) When 6 jurors have been selected, the judge shall administer to them an oath or affirmation which shall be substantially in the following form:

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

(5) Prior to the submission of evidence to the jury, the judge may instruct the jury on its duties and on the substantive law regarding the issues which may be inquired into before the jury. The tribal prosecutor 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 deem appropriate. Section 972.12 applies to the conduct of the inquest jury.

(6) The judge conducting the inquest may order that proceedings be secret if the tribal prosecutor so requests or concurs.

(7) Inquest jurors shall receive the same compensation as jurors.

979.06 Inquests: witnesses.

(1) The judge may issue subpoenas for witnesses at the request of the coroner or medical examiner and shall issue subpoenas for witnesses requested by the tribal prosecutor. Subpoenas are returnable at the time and place stated therein. Persons who are served with a subpoena may be compelled to attend proceedings in the manner provided in *HCN R. Civ. Pro.*, Rule 44.

(2) The judge conducting the inquest and the tribal prosecutor may require by subpoena the attendance of one or more expert witnesses, including physicians, surgeons and pathologists, for the purposes of conducting an examination of the body and all relevant and material scientific and medical tests connected with the examination and testifying as to the results of the examination and tests. The expert witnesses so subpoenaed shall receive reasonable fees determined by the tribal prosecutor and the judge conducting the inquest.

(3) 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 holding the inquest.

(4) The judge shall administer an oath or affirmation to each witness which shall be substantially in the following form:

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

(5) The judge conducting the inquest shall cause the testimony given by all witnesses to be reduced to writing or recorded and may employ stenographers to take and transcribe all of the testimony. The stenographer shall receive reimbursement at a reasonable rate for each appearance and transcription at rates in accordance with the customary charges in the area for similar services.

(6) Inquest witnesses shall receive the same compensation as witnesses in court.

979.07 Incriminating testimony compelled; immunity.

(1)(a) If a person refuses to testify or to produce books, papers or documents when required to do so 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 court on motion of the tribal prosecutor. A person who testifies or produces evidence in obedience to the command of the court in that case is not subject to any forfeiture or penalty for or on account of testifying or producing evidence, except the person is subject to prosecution and punishment for perjury or false swearing committed in so testifying.

(b) The immunity provided under par. (a) is subject to the restrictions under s. 972.085.

(2) If a witness appearing before an inquest fails or refuses without just cause to comply with an order of the court under this section to give testimony in response to a question or with respect to any matter, the court, upon the failure or refusal or when the failure or refusal is duly brought to its attention, may punish the witness for contempt under 2 HCC § 5.

979.08 Inquests: instructions, burden of proof and verdict.

(1) When the evidence is concluded and the testimony closed, the judge shall instruct the jury on its duties and on the substantive law regarding the issues inquired into before the jury. The tribal prosecutor shall prepare a written set of appropriate requested instructions and shall submit them to the judge who, together with the tribal prosecutor, shall compile the final set of instructions which shall be given. The instructions shall include those criminal offenses for which the judge or believes a reasonable jury might return a verdict based upon a finding of probable cause.

(2) The jury's verdict shall be based upon a finding of probable cause and shall be unanimous.

(3) The jury shall retire to consider its verdict after hearing all of the testimony and evidence, making all necessary inquiries and having been instructed in the law. The judge shall provide the jury with one complete set of written instructions providing the substantive law to be applied to the issues to be decided. The verdict shall be in a form which 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.

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

(5) The verdict delivered by the inquest jury is advisory and does not preclude or require the issuance of any criminal charges by the tribal prosecutor.

(6) Any verdict so rendered, after being validated and signed by the judge, together with the record of the inquest, shall be delivered to the tribal prosecutor for consideration. After considering the verdict and record, the tribal prosecutor may deliver the entire inquest record or any part thereof to the coroner or medical examiner for safekeeping.

(7) The record of a secret inquest proceeding shall not be open for inspection unless so ordered by the judge conducting the inquest upon petition by the tribal prosecutor.

979.09 Burial of body. If any judge 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 tribal prosecutor determines that no inquest into the death of such a person is necessary and the judge has not ordered an inquest under s. 979.04 (2), the coroner or medical examiner shall cause the body to be decently buried or cremated and shall 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 shall be audited and paid by the Nation.

979.10 Cremation.

(1)(a) 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. No person may cremate a corpse unless the person has received a cremation permit from:

1. The coroner or medical examiner in the county where the death occurred if the death occurred in this Nation;

2. The coroner or medical examiner in the county where the event which caused the death occurred if the death occurred in this Nation and if the death is the subject of an investigation under the Nation; or

(b) A coroner or medical examiner shall include in any cremation permit issued under par. (a) 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 sub. (2) and is of the opinion that no further examination or judicial inquiry is necessary.

(c) 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.

(2) If a corpse is to be cremated, the coroner or medical examiner shall make a careful personal inquiry into the cause and manner of death, and conduct an autopsy or order the conducting of an autopsy, if in his or her or the tribal prosecutor'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 shall certify that fact. Upon written request by the tribal prosecutor the coroner or medical examiner shall obtain the concurrence of the tribal prosecutor before issuing the certification. If the coroner or medical examiner determines that further examination or judicial inquiry is necessary, he or she shall notify the tribal prosecutor under s. 979.04 (2).

(4) 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 permit specified in sub. (1) shall be fined not more than \$10,000 or imprisoned not more than 9 months or both.

979.11 Compensation of officers. The sole compensation of the coroner and deputy coroners for attendance at an inquest and for any preliminary investigation under this chapter at the direction of the tribal prosecutor shall be a reasonable sum necessarily required for the purpose, and a sum set for each mile actually and necessarily traveled in performing the duty.

979.22 Autopsies and toxicological services by medical examiners. A medical examiner may perform autopsies and toxicological services not required under this chapter and may charge a fee established for such autopsies and services. The fee may not exceed an amount reasonably related to the actual and necessary cost of providing the service and shall be paid by the Nation upon use of such services.

Legislative History:

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| 05/23/17 | Legislature places the draft Investigation of Deaths Code out for 45 day public comment through Resolution 02-21-17S. |
| 05/23/17 | Legislature enacts the Investigation of Deaths Code through Resolution 05/23/17J. |