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Memorandum

ADMIN. CONF. 11/30
AGENDA ITEM 1(c)
Alaska Court System

TO:

Coroner's Committee
(See Distribution)

DATE : September 28, 1981

FROM:

Susan Miller
Magistrate System Coordinator

SUBJECT: Coroner's Inquest
Statutes

Enclosed are the amendments to the Coroner's Inquest Statutes which we discussed at our last meeting. Included with the statutes are some comments I drafted to explain the purpose of each of the proposed amendments. Please examine both the amendments and the explanations of the amendments and let me know if you agree with them. If you can think of additional reasons for the amendments or if you would like to change some of my explanations, please let me know.

In preparing this draft, I made two additional changes in the statutes after our discussion. In AS 12.65.030, I rearranged the wording of the proposed new sentence to try to make it a little clearer. In AS 12.65.090, I decided to completely replace the section instead of just revising the last phrase as we discussed. After rereading this section, I decided there were just too many problems with leaving the phrase "charges a pers. with the commission of the crime" in the law. It seemed inconsistent to tell the magistrates in the Coroner's Handbook that the inquest is not a criminal proceeding (which I believe is true) and at the same time have a statute which implies that the inquest jury can "charge" a person with a crime. Please let me know whether or not you agree with my proposed change in this statute.

The amendments to the statutes are typed in legislative style. Language to be added is underlined, and language being deleted is capitalized and enclosed in brackets.

SM:jm
Enclosures

Susan

Distribution:

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cc: Arthur H. Snowden, II
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9/28/81

CORONER'S INQUEST STATUTES
REASONS FOR REVISIONS

One of the main reasons for several of the proposed revisions to these statutes is to clarify the authority of the coroner/public administrators. The position of coroner/public administrator was created in 1970, but the inquest statutes were not amended to include any reference to the new office. See AS 22.15.310. 1/

1/ AS 22.15.310. APPOINTMENT. When authorized by the supreme court, the presiding judge in each judicial district shall appoint a person to act as public administrator of the estates of deceased persons and as coroner. (S1 ch 216 SLA 1970; am S1 ch 55 SLA 1975)

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CORONER'S INQUEST STATUTES

AS 12.65.020. DUTIES. When a person dies unattended by a physician, or when no physician is prepared to execute the certificate of death prescribed by the Vital Statistics Act, the district judge, [OR] magistrate or coroner assigned to serve the place where the death occurs may, by written order, direct a medical examiner to view the remains of the deceased person and to perform the post mortem examination, including an autopsy, as is [, IN THE OPINION OF THE MEDICAL EXAMINER,] necessary to make a proper determination of the cause of death and to execute the prescribed death certificate. Upon the completion of the examination, the examiner shall, without delay, submit a report of his findings and conclusions to the district judge, [OR] magistrate or coroner. The judge, [OR] magistrate or coroner shall order an inquest under this chapter if the findings and conclusions of the medical examiner, together with other information available to the judge, [OR] magistrate or coroner, warrant the inquest. Otherwise he shall enter an order dispensing with the inquest and shall record the certificate of death as prescribed by law.

REASONS FOR REVISIONS

The words "or coroner" should be added to this section because coroners as well as district judges and magistrates can order post mortem examinations, autopsies and inquests. The reason for deleting the phrase "in the opinion of the medical examiner" is to allow the coroner to order a full autopsy in cases where the medical examiner may not think one is necessary.

9/28/81

CORONER'S INQUEST STATUTES

AS 12.65.030. DISTRICT JUDGE AND MAGISTRATE AS CORONER. District judges and magistrates shall serve as ex officio coroners and shall perform the duties and exercise the authority of that office. In this chapter the term "coroner" includes district judges, magistrates, and the coroner/public administrators appointed under AS 22.15.310.

REASONS FOR REVISIONS

The purpose of adding the proposed new sentence to this section is to allow the use of the word "coroner" in subsequent sections instead of the phrase "district judge, magistrate or coroner."

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CORONER'S INQUEST STATUTES

AS 12.65.040. INQUIRY INTO CAUSE OF DEATH. The coroner may [SHALL], when he is informed that a person has been killed by another or has suddenly died under such circumstances as to afford a reasonable ground to suspect that his death has been occasioned by criminal means or he has committed suicide, inquire by the intervention of a jury into the cause and manner of the death, and perform the other duties incidental thereto in the manner prescribed by law. The coroner shall go to the place where the dead person is, or, in the alternative, arrange for a peace officer to do so and report his findings to the coroner, on the basis of which the coroner may proceed with an inquest if an inquest is warranted.

REASONS FOR REVISIONS

The purpose of replacing the word "shall" with the word "may" in this section is to make inquests optional in homicide and suicide cases at the discretion of the coroner. The present statute appears to make it mandatory that an inquest be held in every case where the coroner "is informed that a person has been killed by another or has suddenly died under such circumstances as to afford a reasonable ground to suspect that his death has been occasioned by criminal means or he has committed suicide." Although the present statute appears to make inquests mandatory in these circumstances, many courts are not holding inquests in every one of these cases because in some cases the inquest would allegedly interfere with or be an unnecessary duplication of the work of the grand jury. Also, some coroners and judges believe that there are some suicide cases in which no inquest is necessary.

The words "and manner" are being added to "cause of the death" in line six of this section to make it clear that the inquest jury should make a finding as to the manner of death as well as to the cause of death. "Cause of death" is normally defined as "the injury or disease or combination of the two which brought about the death." "Manner of death" is normally defined as "the fashion in which the cause of death arose." The five possible manners of death are: natural causes, accident, suicide, homicide and undetermined. A determination of the manner of death is required for the death certificate.

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CORONER'S INQUEST STATUTES

AS 12.65.050. SUMMONING JURORS FOR INQUEST. If an inquest is warranted, the coroner shall immediately summon six persons qualified by law to serve as jurors to appear before him at a specified place to inquire into the cause and manner of the death.

REASONS FOR REVISIONS

The words "and manner" are being added to this section for the reasons explained on the preceding page.

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CORONER'S INQUEST STATUTES

AS 12.65.060. OATH OF INQUEST JURORS. When six jurors attend, they shall be sworn by the coroner to inquire who the person was and when, where, and by what means he came to his death, and to inquire into the circumstances attending his death, and to give a true verdict according to the evidence [OFFERED THEM OR ARISING FROM THE INSPECTION OF THE BODY].

REASONS FOR REVISIONS

The phrase "offered them or arising from the inspection of the body" at the end of this section is being deleted because inquest jurors do not inspect the body of the deceased.

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CORONER'S INQUEST STATUTES

AS 12.65.070. SUBPOENA AND EXAMINATION OF WITNESSES. The coroner [DISTRICT JUDGE OR MAGISTRATE] may subpoena and examine as witnesses persons who, in his opinion, have knowledge of the material facts relating to the death[, AND ALSO AN APPOINTED MEDICAL EXAMINER WHEN AVAILABLE, OR OTHERWISE A PHYSICIAN, WHO SHALL EXAMINE THE BODY AND GIVE PROFESSIONAL OPINION AS TO THE CAUSE OF THE DEATH. THE TESTIMONY SHALL BE REDUCED TO WRITING].

REASONS FOR REVISIONS

It is proposed that the word "coroner" replace the words "district judge or magistrate" so that the coroner/public administrators as well as the district judges and magistrates will have the authority to issue subpoenas compelling the attendance of witnesses at inquests. It is proposed that the last half of the first sentence of the section be deleted because it is unnecessary. The physician who performs the autopsy is a person having "knowledge of the material facts" as described in the first part of the sentence. The physician would always be called as a witness at the inquest if the physician is available to attend the inquest.

The last sentence in the section should be deleted because courts do not reduce testimony to writing since the entire hearing is tape recorded.

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CORONER'S INQUEST STATUTES

AS 12.65.080. VERDICT OF INQUEST JURY. After hearing the testimony, the jury or two-thirds of their number shall give its written verdict, signed by them and setting forth

(1) the name of the deceased [PERSON KILLED] and when, where, and by what means he came to his death; and

(2) if he was killed or his death was occasioned by the act of another by criminal means, who is guilty.

REASONS FOR REVISIONS

1. IT THIS A CONSTRUCTION
OF A WORD SUICIDE TO DETERMINE
IF PROBABLY CAUSE

It is proposed that the word "deceased" replace the words "person killed" in subparagraph (1) because the inquest jury may find that the deceased was not killed but rather died by accident, natural causes, or in an undetermined manner.

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CORONER'S INQUEST STATUTES

AS 12.65.090. NOTIFICATION OF DISTRICT ATTORNEY. The coroner shall send a copy of the verdict to the district attorney. [WARRANT FOR ARREST OF PERSON CAUSING DEATH. IF THE JURY FINDS THAT A CRIME WAS COMMITTED IN THE KILLING, AND ALSO CHARGES A PERSON WITH THE COMMISSION OF THE CRIME, THE CORONER, AS A DISTRICT JUDGE OR MAGISTRATE, SHALL IMMEDIATELY ISSUE A WARRANT FOR THE ARREST OF THAT PERSON.]

REASONS FOR REVISIONS

It is proposed that the present section 090 be deleted and be replaced with a section requiring the coroner to notify the district attorney's office of the jury's verdict. The present section is misleading to the extent that it implies that the inquest jury may charge a person with the commission of a crime. In practice, the inquest jury does not really (and should not) have this power. The power to charge people with murder should be reserved to the grand jury. The purpose of the inquest is merely to investigate and advise, not to charge or prosecute. It serves no purpose for the coroner to issue an arrest warrant based on the verdict of an inquest jury if the district attorney does not believe he has adequate evidence to file charges or take the case to the grand jury. 2/

2/ For cases discussing the investigatory, noncriminal nature of inquests, see *People v. Coker*, 104 Cal. App. 2d 224, 231 P.2d 81 (1951); *State v. Caruthers*, 519 P.2d 44 (Arizona 1974); *Kennedy v. Justice of the District Court of Dukes County*, 252 N.E. 2d 201 (Massachusetts 1969).

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CORONER'S INQUEST STATUTES

AS 12.65.100. UNCLAIMED BODIES [BURIAL OF BODY]. When a person dies [CORONER HOLDS AN INQUEST UPON A BODY,] and no friend or relative appears to claim the body for burial, and no provision is made for the body under AS 13.50, the coroner shall

(a) notify the Department of Health and Social Services which shall cause the body to be plainly and decently buried or cremated and the remains decently interred, and

(b) take into his possession and inventory any money or other property belonging to the deceased and, within 30 days after the interment, transmit a certified copy of the inventory to the public administrator of his judicial district who shall then proceed under AS 22.15.320.

AND

[AS 12.65.110. PROPERTY ON BODY. IF MONEY OR OTHER PROPERTY IS FOUND ON THE BODY, THE JUDGE OR MAGISTRATE SHALL MAKE AN INVENTORY OF IT FOR HIS RECORDS AND TAKE IT INTO HIS POSSESSION. HE SHALL, WITHIN 30 DAYS AFTER THE INQUEST, TRANSMIT A CERTIFIED COPY OF THE INVENTORY AND THE MONEY OR PROPERTY TO THE CLERK OF THE SUPERIOR COURT. THE CLERK SHALL CAUSE THE PROPERTY TO BE SOLD AS UPON EXECUTION AND SHALL DEDUCT THE EXPENSES OF THE SALE FROM THE PROCEEDS. HE SHALL DEPOSIT THE REMAINDER OF THE PROCEEDS OF THE SALE AND ANY MONEY DELIVERED TO HIM BY THE JUDGE OR MAGISTRATE IN THE SAME MANNER AS MONEY COLLECTED ON JUDGMENTS IN FAVOR OF THE STATE.]

REASONS FOR REVISIONS

Since Section 110 apparently deals only with the bodies described in Section 100 and not with the bodies of all deceased persons, it is proposed that Section 110 be repealed and that its subject matter (the disposition of the deceased's property) be added to Section 100 in a proposed new paragraph (b). The proposed subparagraph (b) makes the disposition of the deceased's property the responsibility of the public administrator rather than the clerk of the superior court. Section 110 was written before the office of public administrator was created. Since this office now exists, it is more appropriate for this responsibility to be assigned to the public administrators rather than to the clerks of court.

The change in the first line of Section 100 (replacing "coroner holds an inquest upon a body" with "person dies") is suggested because inquests are not always required in these cases.

SECTIONAL ANALYSIS CS SB 692(Judiciary)

"An Act relating to the duties of coroners and the coroner's inquest".

Makes amendments to Title 12, Code of Criminal Procedure, Chapter 65, Coroner's Inquest.

Section 1

AS 12.65.020 "Duties"

Coroner is substituted for District judge or magistrate.
Deletes requirement of a medical examiner's opinion
in determining need for an autopsy.

Section 2

AS 12.65.030 "District Judge and magistrate as coroner"

New subsection is added. Public administrators shall
serve as coroners as provided by AS 22.15.310 and AS 22.15.350.

65.310 enables the presiding judge in each judicial
district to appoint a coroner.

15.350 authorizes public administrators to serve as coroners.

Section 3

AS 12.65.040 "Inquiry into cause of death"

Amended.

Authorizes inquiry into manner of death as well as cause.
If the death will be inquired into by the grand jury,
not inquest required.

Section 4

AS 12.65.050 "Summoning jurors for Inquest" Amended.

Inquest in manner of death authorized.

Section 5

AS 12.65.060 "Oath of Inquest Jurors" Amended.

Deletes "offered them or arising from the inspection of the
body"

Section 6

AS 12.65.070 "Subpoena and Examination of Witnesses" Amended.

Coroner shall examine witnesses if necessary. Deletes
requirements of an appointed medical examiner or physician
and written testimony.

Section 7

AS 12.65.080 "Verdict of Inquest Jury"

Grammatical changes

Section 8

AS 12.65.090 Title changed from "Warrant for Arrest of Person
Causing Death" to Notification of Prosecuting Attorney.

If the jury finds death by criminal means, the coroner shall
submit the verdict to the prosecutor (rather than himself
issuing an arrest warrant).

Section 9

AS 12.65.100 Amended. Title changes from "Unclaimed Bodies."

When a person dies and no person appears, DHSS shall decently inter the remains.

Section-10

AS 12.65.110 New Title. Inventory and Disposition for Unclaimed Body.

Sets up procedure for property belonging to decedent to be disposed of.

Section 11

AS 22.15.350 "Other Duties"

Public Administrator shall perform the duties specified in this bill.