

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46

A resolution by Supervisors Lipscomb, Sr., Moore Omokunde, West, Dimitrijevic, Cullen, Sartori, Staskunas, Sebring, and Mayo, Sr., establishing a policy to conduct external investigations of deaths that occur under certain circumstances at the Milwaukee County House of Correction and the Milwaukee County Jail, by recommending adoption of the following:

**AN AMENDED RESOLUTION**

WHEREAS, Section 175.47 of the Wisconsin State Statutes (State Statutes) outlines a procedure for the review of deaths involving law enforcement officers but not jail officers; and

WHEREAS, the Milwaukee County Jail (Jail) and House of Correction (HOC) are staffed by correctional officers who are defined as "jail officers" and not "law enforcement officers," therefore the State Statute does not apply to them; and

WHEREAS, though Jail and HOC staff are not governed by Section 175.47 of the State Statutes, neither are prohibited from following it as a best practice; and

WHEREAS, the HOC already informally models the State external investigation statute in these matters; and

WHEREAS, four deaths have occurred in the Jail this year in the months of April, July, August, and October; and

WHEREAS, the enactment of Section 175.47 of the State Statutes, is the result of 2013 Wisconsin Act 348, which establishes an external investigative procedure whenever an off-or-on duty officer is involved in a custodial death; and

WHEREAS, Section 175.47 of the State Statutes requires that all law enforcement agencies have a written policy on investigations of officer-involved deaths; and

WHEREAS, the policy requires that an investigation be conducted by at least two investigators, with one in the role of lead investigator, with neither investigator being employed by the agency that employs the involved officer; and

WHEREAS, such a policy may allow for an internal investigation, on the condition that it does not interfere with the external investigation; and

WHEREAS, such an external investigation must occur in an expeditious manner, culminating with a report to the District Attorney of the county in which the officer-involved death occurred; and

47 WHEREAS, if the District Attorney determines there is no basis for prosecution,  
48 the investigators shall release the report, redacting any privileged information under the  
49 public record law in Section 19.35(1)(a) of the State Statutes; and  
50

51 WHEREAS, pursuant to Section 895.46 of the State Statutes, Milwaukee County  
52 (the County) is liable for any judgments entered against public officials or government  
53 employees for acts committed within the scope of employment; and  
54

55 WHEREAS, pursuant to Section 59.52(12) of the State Statutes, the Milwaukee  
56 County Board of Supervisors (County Board) is ultimately responsible for examining and  
57 settling claims, demands, or causes of action against the County; and  
58

59 WHEREAS, the County Board is therefore obligated as a policy matter to follow  
60 best practices countywide, so as to limit liabilities; and  
61

62 WHEREAS, the County Board requires as a policy matter, and to formalize  
63 current procedures that the HOC follow the statutory protocol for investigating deaths  
64 that occur within that facility whenever deaths therein involve inmate-on-inmate  
65 assaults, staff use-of-force or unexplained or suspicious circumstances; and  
66

67 WHEREAS, the Milwaukee County Sheriff (Sheriff) is a constitutional and  
68 statutory officer with distinct duties regarding Jail operations and taking charge of  
69 prisoners; and  
70

71 WHEREAS, the County Board recommends that the Sheriff follow the statutory  
72 procedure for investigating deaths that occur within the Jail, given the four deaths that  
73 have occurred in the Jail over a six-month period between April and October 2016; and  
74

75 WHEREAS, the Committee on Judiciary, Safety, and General Services, at its  
76 special meeting of December 15, 2016, recommended adoption of this amended  
77 resolution (vote 4-1); now, therefore,  
78

79 BE IT RESOLVED, it is the broad policy of Milwaukee County that the House of  
80 Correction (HOC) and the Office of the Sheriff (Sheriff) follow the statutory procedure  
81 outlined in Section 175.47 of the Wisconsin State Statutes (State Statutes) for external  
82 investigations of deaths at the HOC and the Milwaukee County Jail whenever deaths  
83 therein involve inmate-on-inmate assaults, staff use-of-force, or unexplained or  
84 suspicious circumstances; and  
85

86 BE IT FURTHER RESOLVED, the Office of Corporation Counsel shall provide an  
87 informational report on implementation of this policy on a countywide basis, inclusive of  
88 all County facilities, and relative to County law enforcement community interactions by  
89 the January 2017 cycle; and

90 BE IT FURTHER RESOLVED, the HOC and the Sheriff, pursuant to Section  
91 59.794(3)(b) of the State Statutes, provide an informational report on the  
92 implementation of this policy to the Milwaukee County Board of Supervisors in the  
93 January 2017 committee cycle.

94

95

96

ars

97

12/15/16

98

S:\Committees\2016\Dec\JSGS Special Meeting 121516\Resolutions\16-743 Establishing external investigative protocol.docx

## MILWAUKEE COUNTY FISCAL NOTE FORM

**DATE:** December 6, 2016

Original Fiscal Note

Substitute Fiscal Note

**SUBJECT:** A resolution establishing a policy for external investigations of deaths that occur under certain circumstances at the Milwaukee County House of Correction and the Milwaukee County Jail.

**FISCAL EFFECT:**

- |  |  |
|--|--|
| <input checked="" type="checkbox"/> No Direct County Fiscal Impact<br><input checked="" type="checkbox"/> Existing Staff Time Required<br><input type="checkbox"/> Increase Operating Expenditures<br>(If checked, check one of two boxes below)<br><input type="checkbox"/> Absorbed Within Agency's Budget<br><input type="checkbox"/> Not Absorbed Within Agency's Budget<br><input type="checkbox"/> Decrease Operating Expenditures<br><input type="checkbox"/> Increase Operating Revenues<br><input type="checkbox"/> Decrease Operating Revenues | <input type="checkbox"/> Increase Capital Expenditures<br><input type="checkbox"/> Decrease Capital Expenditures<br><input type="checkbox"/> Increase Capital Revenues<br><input type="checkbox"/> Decrease Capital Revenues<br><input type="checkbox"/> Use of contingent funds |
|--|--|

*Indicate below the dollar change from budget for any submission that is projected to result in increased/decreased expenditures or revenues in the current year.*

	Expenditure or Revenue Category	Current Year	Subsequent Year
<b>Operating Budget</b>	Expenditure	\$0	\$0
	Revenue	\$0	\$0
	Net Cost	\$0	\$0
<b>Capital Improvement Budget</b>	Expenditure	\$0	\$0
	Revenue	\$0	\$0
	Net Cost	\$0	\$0

DESCRIPTION OF FISCAL EFFECT

In the space below, you must provide the following information. Attach additional pages if necessary.

- A. Briefly describe the nature of the action that is being requested or proposed, and the new or changed conditions that would occur if the request or proposal were adopted.
  - B. State the direct costs, savings or anticipated revenues associated with the requested or proposed action in the current budget year and how those were calculated. <sup>1</sup> If annualized or subsequent year fiscal impacts are substantially different from current year impacts, then those shall be stated as well. In addition, cite any one-time costs associated with the action, the source of any new or additional revenues (e.g. State, Federal, user fee or private donation), the use of contingent funds, and/or the use of budgeted appropriations due to surpluses or change in purpose required to fund the requested action.
  - C. Discuss the budgetary impacts associated with the proposed action in the current year. A statement that sufficient funds are budgeted should be justified with information regarding the amount of budgeted appropriations in the relevant account and whether that amount is sufficient to offset the cost of the requested action. If relevant, discussion of budgetary impacts in subsequent years also shall be discussed. Subsequent year fiscal impacts shall be noted for the entire period in which the requested or proposed action would be implemented when it is reasonable to do so (i.e. a five-year lease agreement shall specify the costs/savings for each of the five years in question). Otherwise, impacts associated with the existing and subsequent budget years should be cited.
  - D. Describe any assumptions or interpretations that were utilized to provide the information on this form.
- 
- A. This resolution, if adopted, establishes a policy for external investigations of deaths that occur at the Milwaukee County House of Correction (HOC) and the Milwaukee County Jail (Jail). The resolution directs the HOC and Jail to follow the statutory procedure outlined in Wis. Stat. § 175.47 for external investigations of deaths at its facility whenever deaths therein involve inmate-on-inmate assaults, staff use-of-force or unexplained or suspicious circumstances.
  - B. No direct costs are associated with adoption of this resolution, but existing staff time may be utilized to implement the policy and provide a report to the County Board. Typically law enforcement agencies utilize a mutual assistance method for external investigations, i.e., an outside law enforcement agency would conduct the investigation at no cost to the county with the expectation that the county would return the assistance.
  - C. No budgetary impact is expected in this year or future years if external investigations continue to be conducted through the mutual assistance method.
  - D. It is assumed that if an external investigation is necessary, the HOC and Office of the Sheriff will be able to utilize a mutual assistance method to conduct the investigation resulting in no cost to the county.

Department/Prepared By Erica Hayden, Research & Policy Analyst, Office of the Comptroller

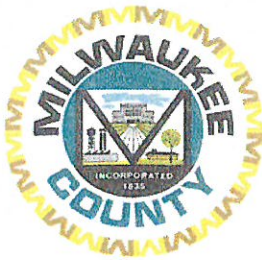
Authorized Signature *Erica Hayden*

Did DAS-Fiscal Staff Review?  Yes  No

Did CBDP Review?<sup>2</sup>  Yes  No  Not Required

<sup>1</sup> If it is assumed that there is no fiscal impact associated with the requested action, then an explanatory statement that justifies that conclusion shall be provided. If precise impacts cannot be calculated, then an estimate or range should be provided.

<sup>2</sup> Community Business Development Partners' review is required on all professional service and public work construction contracts.



## OFFICE OF CORPORATION COUNSEL

---

COLLEEN FOLEY  
Interim Corporation Counsel

PAUL D. KUGLITSCH  
Deputy Corporation Counsel

TIMOTHY R. KARASKIEWICZ  
MOLLY J. ZILLIG  
ALAN M. POLAN  
JENNIFER K. RHODES  
DEWEY B. MARTIN  
JAMES M. CARROLL  
KATHRYN M. WEST  
JULIE P. WILSON  
CHRISTINE L. HANSEN  
CARRIE THEIS  
Assistant Corporation Counsel

Date: December 1, 2016

To: Chairman Theodore Lipscomb, Sr.

Cc: Kelly Bablitch, Chief of Staff

From: Interim Corporation Counsel Colleen Foley

Re: Investigations of Jail/House of Correction Deaths

**Question:** Does the Milwaukee County Board of Supervisors have authority to request external investigations of deaths at the Milwaukee County Jail or House of Correction?

**Answer:** State statute dictates procedure regarding deaths involving a law enforcement officer, but not a jail officer. State law also sets forth a notification procedure for the reporting of deaths in jails or houses of correction. The Board lacks authority to require external investigations of deaths in the jail by the sheriff but could do so as a policy matter for the House of Correction.

**Analysis - State Process for Deaths Involving Law Enforcement Officers:** 2013 Wisconsin Act 348 resulted in the enactment of Wis. Stat. § 175.47. The law establishes an investigative procedure whenever an on-or-off duty officer is involved in a custodial death. Wis. Stat. § 175.47(1)(c).

The law defines “law enforcement officers” as “any person employed by the state or any political subdivision of the state, for the purpose of detecting and preventing crime and enforcing laws or ordinances and who is authorized to make arrests for violations of the laws or ordinances that the person is employed to enforce.” Wis. Stat. § 165.85(2)(c). The jail and House of Correction on the other hand, are staffed by correctional officers who are defined as “jail officers”<sup>1</sup> not “law enforcement officers”. Jail officers cannot make arrests. Wis. Stat. § 175.47 therefore does not apply to jail or House of Correction staff.

Jails and houses of correction are governed by Department of Correction (DOC) Administrative Rule 350. The chapter’s stated purpose is to “establish minimum standards for the design, construction, and operation of jails and houses of correction.” Specifically, that chapter requires that the sheriff notify the DOC’s regional detention facilities specialist within 48 hours after an inmate’s death. *See* DOC 350.10(3)a)(1). Wis. Stat. § 302.38 establishes procedures for care of inmates generally, from medical care to emergency services for crisis intervention to protocols if an inmate refuses appropriate care or treatment.

---

<sup>1</sup> “‘Jail officer’ means any person employed by any political subdivision of the state for the purpose of supervising, controlling or maintaining a jail or the persons confined in a jail. ‘Jail officer’ includes officers regardless of whether they have been sworn regarding their duties or whether they serve on a full-time basis.” Wis. Stat. 165.85(2)(bn).



Though the jail and House of Correction staff are not covered by the external investigation statute, neither are prohibited from using it as a model. Under that statute, each law enforcement agency<sup>2</sup> must have a written policy on investigations of officer-involved deaths. Wis. Stat. § 175.47(2). The policy shall require that an investigation be conducted by at least two investigators, one of whom must be the lead investigator, and neither of whom are employed by the agency that employs the involved officer. Wis. Stat. § 175.47(3)(a). The policy may allow for an internal investigation, so long as it does not interfere with the external investigation. Wis. Stat. § 175.47(4).

The external investigation must occur in an expeditious manner culminating with a report to the district attorney's (DA's) office for the county in which the death occurred. Wis. Stat. § 175.47(5)(a). If the DA determines there is no basis for prosecution, the investigators shall release the report, redacting any privileged information under Wis. Stat. § 19.35(1)(a). Wis. Stat. § 175.47(5)(b).<sup>3</sup> The DA may also call for an inquest where a death involves unexplained or suspicious circumstances. Wis. Stat. § 979.04(1).

**Analysis – Sheriff's Duties:** The Wisconsin Constitution establishes the office of sheriff . . . [but] does not delineate the powers, rights, and duties of the office of sheriff." *Kocken v. Wisconsin Council 40, AFSCME, AFL-CIO*, 2007 WI 72, ¶¶31-33, 301 Wis. 2d 266, 732 N.W.2d 828. Case law has narrowed a sheriff's constitutional powers from the common law nature of the office to only "those immemorial principal and important duties that characterized and distinguished the office." *State ex rel. Milwaukee Cnty. V. Buech*, 171 Wis. 474, 482, 177 N.W.781 (1920).

The sheriff's constitutionally protected duties include the operation of the jail, attendance on the courts, maintaining law, and preserving the peace. *Kocken* at ¶¶52-57. See also *State ex rel. Kennedy v. Brunst*, 26 Wis. 412 (1870) regarding the sheriff's duty to take charge of the jail and the prisoners therein. By statute, the sheriff's duties include taking charge and custody of the jail and the persons in the jail, keeping a true and exact register of all prisoners, attending on the courts, and serving or executing all processes, writs, precepts and orders. Wis. Stat. § 59.27.

In dismissing the sheriff's recent lawsuit against the county for an alleged arbitrary and unreasonable 2015 budget preventing him from hiring and appointing deputies, the Wisconsin

---

<sup>2</sup> "'Law enforcement agency' means a governmental unit of one or more persons employed full time by the state or its political subdivision for the purpose of preventing and detecting crime and enforcing state laws or local ordinances, employees of which unit are authorized to make arrests for crimes while acting within the scope of their authority." Wis. Stat. § 165.83(1)(b).

<sup>3</sup> Family members of the decedent of an officer-involved death must also be informed of: 1) the process by which to file a complaint charging a person with a crime, if permitted by a judge; 2) the process by which he may file a complaint under the John Doe investigation proceedings, and 3) the process for an inquest under Wis. Stat. Chapter 979<sup>3</sup>. Wis. Stat. § 950.04(1v)(do).

Court of Appeals held that such acts are not constitutionally or statutorily protected powers of the sheriff and that the budget was not arbitrary or unreasonable. *Milwaukee County Deputy Sheriff's Assoc. v. Clarke*, 2016 WI App. 56, 370 Wis.2d 644, 883 N.W.2d 154. The sheriff's power may still be regulated if it is a "nondistinctive, mundane and commonplace[.], internal management and administrative [duty] of a sheriff. *Id.* at ¶9 citing *Kocken* at ¶40. Such mundane duties have included hiring and firing of personnel to provide food to inmates. *Id.* Staffing an x-ray and metal detector security screen station is another example. *Washington County v. Washington County Deputy Sheriff's Assoc.*, 2009 WI App. 116, 320 Wis. 2d 570, 772 N.W.12d 697.

Nonetheless, as stated in *Andreski v. Industrial Comm'n*, 261 Wis. 234, 240 (1952):

Within the field of his responsibility for the maintenance of law and order the sheriff today retains his ancient character and is accountable only to the sovereign, the voters of this county, though he may be removed by the governor for cause. No other county official supervises his work or can require a report or an accounting from him concerning his performance of his duty. He chooses his own ways and means of performing it.

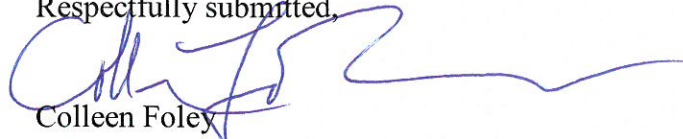
The Board's primary role with the sheriff is to set reasonable budgetary constraints for that office. But it is the sheriff who determines how his traditional duties and functions are performed. That would include the manner of conducting an investigation of a death within the jail he operates.

In contrast, the House of Correction is operated by an appointed Superintendent who is neither a constitutional officer nor a law enforcement officer. The Board could as a policy matter require external investigations of HOC deaths by a law enforcement agency per the state statute. Triggering events could include, for example, inmate-on-inmate assault, staff use-of-force or whenever a death involves unexplained or suspicious circumstances. Indeed, that is already how the House of Correction handles such matters.

**Conclusion:** The state has established a procedure for investigations of deaths by "law enforcement" officers whereas the jail and House of Correction are staffed by correctional/jail officers. The statutes establish a procedure for notification of deaths in jails or houses of correction, but are silent as to how those investigations occur. Unlike the Superintendent, the sheriff has distinct statutory and constitutional duties regarding the jail's operation and is largely immune from legislative control excepting reasonable budget constraints. The Board may certainly recommend that the sheriff follow the state process for external investigations of deaths. But it cannot compel it. It could as a policy matter require that the House of Correction follow the state statute for external investigations of certain deaths at its facility.



Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Colleen Foley', with a long horizontal flourish extending to the right.

Colleen Foley  
Interim Corporation Counsel