

2011 DRAFTING REQUEST

Bill

Received: 07/13/2011

Received By: **chanaman**

Wanted: **As time permits**

Companion to LRB: **-3457**

For: **Samantha Kerkman (608) 266-2530**

By/Representing: **Tami**

May Contact:

Drafter: **chanaman**

Subject: **Criminal Law - crimes agnst kids**
Criminal Law - sentencing

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Kerkman@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Failing to report death or disappearance of a child; penalties vary depending on harm

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	chanaman 07/13/2011	kfollett 07/13/2011		_____			Crime
/P1	chanaman 07/15/2011	kfollett 07/15/2011	rschluet 07/13/2011	_____	sbasford 07/13/2011		Crime
/P2	chanaman 07/22/2011	kfollett 07/25/2011	jfrantze 07/15/2011	_____	sbasford 07/15/2011		Crime
/P3	chanaman 09/28/2011	kfollett 09/28/2011	phenry 07/25/2011	_____	mbarman 07/25/2011		Crime

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11/18*

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1?	chanaman	1P/1GF 2/13	 2/13/11				

FE Sent For:

<END>

Hanaman, Cathlene

From: Malaise, Gordon
Sent: Tuesday, July 12, 2011 1:16 PM
To: Hanaman, Cathlene; Hurley, Peggy
Cc: Rongstad, Tami
Subject: FW: Drafting Request - Requirement to report missing child

Cathlene and Peggy:

The following is a criminal law drafting request that is wanted by the end of this week.

In response to the Casey Anthony acquittal, there is a national movement outlined in the constituent letter at the bottom of this thread to make it a crime for a person who is responsible for a child's welfare to fail to report the death or disappearance of the child to the proper authorities. I had a good conversation with Tami from Rep. Kerkman's office yesterday in which she indicated that they would like to go with: 1) reporting within 24 hours of the disappearance; and 2) applying the s. 948.21 penalty structure, so I suppose the draft would read something as follows:

Section 1. 948.215 of the statutes is created to read:

948.215 Reporting disappearance of child. Any person who is responsible for a child's welfare who fails to report the disappearance of the child to a law enforcement officer within 24 hours after the person knows or should know of the child's disappearance is guilty of one of the following:

- (1) A Class A misdemeanor.
- (2) A Class H felony if bodily harm is a consequence.
- (3) A class F felony if great bodily harm is a consequence.
- (4) A Class D felony if death is a consequence.

As for failure to report a child's death, there are several approaches that could be taken, which I will leave to your discretion as the Criminal Law drafters. Those approaches include: 1) create a new provision in ch. 948, perhaps s. 948.215 (2); amend s. 979.01 (1) (intro.) to insert "and a person who is responsible for a child's welfare, as defined in s. 948.01 (3), shall immediately report the death of the child to the sheriff . . ."; or create that duty in s. 979.01 (1d) and conform the cross references to sub. (1) in s. 979.01 to include references to sub. (1d).

If questions arise, Tami is a good resource.

Gordon

From: Rongstad, Tami
Sent: Friday, July 08, 2011 5:26 PM
To: Malaise, Gordon
Cc: Kerkman, Samantha
Subject: Drafting Request - Requirement to report missing child

Gordon,

In response to constituent contacts calling for "Caylee's Law", Rep. Kerkman would like a bill drafted that would require a person responsible for a child's welfare to notify law enforcement of that child's disappearance.

One option would be to make it a felony to not notify law enforcement.

Another option would be to follow the penalties for neglecting a child in s. 948.21.

Would the law need to specify a particular timeframe for the notification?

Is there anything about the Amber Alert system that should be taken into consideration or that would suggest

a timeframe?

I did check with Katie Bender-Olson at Leg Council about current law related to the constituents' requests for a Caylee's Law, her answer is included below.

Thank you,

Tami Rongstad
Office of Rep. Samantha Kerkman
608-266-2531 / 888-534-0066

From: Bender-Olson, Katherine
Sent: Thursday, July 07, 2011 11:40 AM
To: Rongstad, Tami
Subject: RE: Create Caylee's Law, Not Reporting Child's Death Should be a Felony

Tami,

I am providing the following information in response to an inquiry about current Wisconsin law requiring notification of law enforcement about the death or disappearance of a child within a particular timeframe. The most relevant Wisconsin statute is one that penalizes the failure to report a death.

Section 979.01 requires physicians, authorities of hospitals and similar institutions, and "other persons" who know about certain deaths to immediately report those deaths to the sheriff, police chief, or medical examiner or coroner. A person is required to report, among others, any death that occurs following an accident and any death in which there are unexplained, unusual or suspicious circumstances. [s. 979.01 (1), Stats.]

A person who violates the statute by failing to report such a death is subject to a fine of not more than \$1,000 or imprisonment of not more than 90 days. [s. 979.01 (2), Stats.] The crime constitutes a misdemeanor because it is punishable by less than one year of imprisonment. [ss. 939.60, 973.02, Stats.]

Wisconsin law does not currently penalize the failure to report a disappearance within a particular timeframe. The statutes do penalize the kidnapping, taking away, or withholding of a child, but not the failure to notify law enforcement of a disappearance.

Your inquiry about current law regarding failure to notify about a death or disappearance arose in the context of the recent murder trial of Casey Anthony and the circumstances and jury verdict in that case. The constituent contact you received referenced potential charges in the Anthony case related to Casey Anthony's failure to report the disappearance or death of her daughter. Therefore, I am including other Wisconsin laws that may be relevant if a similar situation were to occur in Wisconsin.

The following statutes may be applicable, depending upon the particular facts of the case:

- s. 940.11 (2) - Hiding a Corpse. The statute criminalizes hiding or burying a corpse with intent to conceal a crime or avoid apprehension, prosecution or conviction for a crime. A violation of the statute is a Class G felony and may result in a fine not to exceed \$25,000, imprisonment not to exceed 10 years, or both.
- s. 940.34 (2) (a) - Duty to Aid a Victim or Report a Crime. The statute requires any person who knows that a crime is being committed and that a victim is exposed to bodily harm to summon law enforcement

officers or other assistance or provide assistance to the victim. A violation of the statute is a Class C misdemeanor carrying penalties of a fine not to exceed \$1,000, imprisonment not to exceed 30 days, or both.

- s. 946.41 (1) – Resisting or Obstructing an Officer. The statute penalizes a person who knowingly resists or obstructs an officer while the officer is doing any act in an official capacity and with lawful authority. A violation is a class A misdemeanor carrying penalties of a fine not to exceed \$10,000, imprisonment not to exceed 9 months, or both.
- s. 948.20 - Abandonment of a Child. The statute penalizes a person who abandons or leaves a child in a place where the child may suffer because of neglect. A violation is a Class G felony carrying penalties of a fine not to exceed \$25,000, imprisonment not to exceed 10 years, or both.
- s. 948.21 – Neglecting a Child. The statute penalizes a person responsible for a child's welfare who intentionally contributes to the neglect of a child. A violation of the statute is a Class A misdemeanor. However, a violation is a Class H felony if bodily harm results from the neglect, a Class F felony if great bodily harm results, or a Class D felony if death results. A Class H felony carries penalties of a fine not to exceed \$10,000, imprisonment not to exceed 6 years, or both. A class F felony carries penalties of a fine not to exceed \$25,000, imprisonment not to exceed 12 years and 6 months, or both. A Class D felony carries penalties of a fine not to exceed \$100,000, imprisonment not to exceed 25 years, or both.

As a final note, Wisconsin law does include a felony for concealing the death of a child. However, the statute would not apply in a case such as that of Casey and Caylee Anthony because it relates to concealing a fetus or newborn. Section 948.23 penalizes a person who conceals the corpse of "any issue of a woman's body" with intent to prevent a determination of whether it was born dead or alive. A violation of the statute is a Class I felony carrying a penalty of a fine not to exceed \$10,000, imprisonment not to exceed 3 years and 6 months, or both.

I hope this information is helpful. Please do not hesitate to contact me if you have additional questions.

Have a good day,
Katie

Katie Bender-Olson
Wisconsin Legislative Council
(608) 266-2988
katie.bender-olson@legis.wisconsin.gov

Katie -

Can you let us know what current law is related to the request below?

Thank you,

Tami Rongstad
Office of Rep. Samantha Kerkman
608-266-2531 / 888-534-0066

-----Original Message-----

From: Evy Davis [<mailto:storm33y@hotmail.com>]
Sent: Wednesday, July 06, 2011 12:48 AM
To: Rep.Kerkman

Subject: Create Caylee's Law, Not Reporting Child's Death Should Be a Felony

Rep. Samantha Kerkman
State Capitol, Room 315 North
2 East Main Street
Madison WI 53702

Greetings,

On July 5, 2011, at 1:15 pm CST, Casey Anthony was found not guilty of first degree murder in the death of her daughter Caylee Anthony. The only charges she now faces are four counts of falsifying police reports, each of which only carries a 1 year prison term. Since she has been in jail since August 2008, she will be out of jail ENTIRELY too soon.

I'm writing to propose that a new law be put into effect making it a felony for a parent, legal guardian, or caretaker to not notify law enforcement of the death of their child, accidental or otherwise, within 1 hour of said death being discovered. This way there will be no more cases like Casey Anthony's in the courts, and no more innocent children will have to go without justice.

Also, make it a felony for a parent, legal guardian, or caretaker to not notify law enforcement of the disappearance of a child within 24 hours, so proper steps can be taken to find that child before it's too late.

The case of Caylee Anthony was tragic, and there is no reason for another case like this one to hit the courts. Let's do what is necessary to prevent another case like this from happening.

Note: this email was sent as part of a petition started on Change.org, viewable at www.change.org/petitions/create-caylees-law.

To respond, email responses@change.org and include a link to this petition.

Evy Davis
4303 75th st
Kenosha, WI 53142



State of Wisconsin
2011 - 2012 LEGISLATURE



2372/P1

LRB-2362/P1
CMH:kjf:md

TODAY please

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 AN ACT *to renumber and amend* 948.23; *to amend* 973.015 (1) (c) 2., 979.01
 2 (1g), 979.01 (2), 979.01 (3), 979.01 (3m) and 979.01 (4); and *to create* 948.23
 3 (intro.) and 948.23 (2) and (3) of the statutes; **relating to:** failing to report the
 4 death of a child or ^{to report} a missing child and providing ^{penalties} a penalty

new cat

CLASS I

Analysis by the Legislative Reference Bureau

Under current law, a person having knowledge of a death must report the death to law enforcement or a coroner if certain circumstances apply, including: 1) a death in which there are unexplained, unusual, or suspicious circumstances; 2) a homicide; 3) a suicide; 4) a death due to poisoning; and 5) a death following an accident, whether the injury is or is not the primary cause of death. A person who fails to report such a death may be fined up to \$1,000 or imprisoned for up to 90 days. Under this bill, if a child under 18 years of age dies, the parent, stepparent, guardian, or legal custodian of the child must report the death to law enforcement within one hour of discovering the death unless another person is required to report the death. This bill also requires that, if a child goes missing, the parent, stepparent, guardian, or legal custodian of the child must report the missing child to a law enforcement officer within 24 hours of discovering that the child is missing. A person who violates ~~either~~ requirement is guilty of a felony and may be subject to a fine of up to \$10,000 and imprisonment of up to three years and six months.

this

INS A

more

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a

report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 948.23 (intro.) of the statutes is created to read:

2 **948.23** **Concealing or not reporting death of a child; not reporting**
3 **disappearance of a child.** (intro.) Whoever does any of the following is guilty of
4 a Class I felony: (1) ← B

5 SECTION 2. 948.23 of the statutes is renumbered 948.23 (1) and amended to
6 read: (a)

7 948.23 (1) **CONCEALING DEATH OF CHILD.** Any person who conceals Conceals the
8 corpse of any issue of a woman's body with intent to prevent a determination of
9 whether it was born dead or alive is guilty of a Class I felony.

10 SECTION 3. 948.23 (2) and (3) of the statutes are created to read: (1) (b) is

11 948.23 (2) Unless a physician or an authority of a hospital, sanatorium, public
12 or private institution, convalescent home, or any institution of a like nature is
13 required to report the death under s. 979.01 (1), fails to report to law enforcement the
14 death of a child within one hour of discovering the death if the actor is the parent,
15 stepparent, guardian, or legal custodian of the child.

16 (3) Fails to report to law enforcement a child as missing within 24 hours after
17 the child is discovered to be missing if the actor is the parent, stepparent, guardian,
18 or legal custodian of the child.

19 SECTION 4. 973.015 (1) (c) 2. of the statutes is amended to read:

INS
2-1

INS
2-19

1 973.015 (1) (c) 2. A Class I felony, if the person has, in his or her lifetime, been
2 convicted of a prior felony offense, or if the felony is a violent offense, as defined in
3 s. 301.048 (2) (bm), or is a violation of s. 948.23 (1) ^(a) ✓

4 **SECTION 5.** 979.01 (1g) of the statutes is amended to read:

5 979.01 (1g) A sheriff or police chief shall, immediately upon notification of a
6 ~~death~~ under sub. (1) or s. 948.23 (1)(b) of a death, notify the coroner or the medical
7 examiner, and the coroner or medical examiner of the county where death took place,
8 if the crime, injury, or event occurred in another county, shall immediately report the
9 death to the coroner or medical examiner of that county.

10 **SECTION 6.** 979.01 (2) of the statutes is amended to read:

11 979.01 (2) ~~Any~~ Unless s. 948.23 (1)(b) applies, any person who violates this section
12 shall be fined not more than \$1,000 or imprisoned not more than 90 days. ✓

13 **SECTION 7.** 979.01 (3) of the statutes is amended to read: ^{(1)(b)}

14 979.01 (3) In all cases of death reportable under sub. (1) or s. 948.23 (2) where
15 an autopsy is not performed, the coroner or medical examiner may take for analysis
16 any and all specimens, body fluids and any other material which will assist him or
17 her in determining the cause of death. The specimens, body fluids and other material
18 taken under this subsection shall not be admissible in evidence in any civil action
19 against the deceased or the deceased's estate, as the result of any act of the deceased.

20 **SECTION 8.** 979.01 (3m) of the statutes is amended to read: ^{(1)(b)}

21 979.01 (3m) In all cases of death reportable under sub. (1) or s. 948.23 (2) where
22 an autopsy is not performed, the coroner or medical examiner shall take for analysis
23 any and all specimens, body fluids and any other material that will assist him or her
24 in determining the cause of death if requested to do so by a spouse, parent, child or
25 sibling of the deceased person and not objected to by any of those family members.

1 The specimens, body fluids and other material taken under this subsection shall not
2 be admissible in evidence in any civil action against the deceased or his or her estate,
3 as the result of any act of the deceased.

4 **SECTION 9.** 979.01 (4) of the statutes is amended to read:

5 979.01 (4) No person may embalm or perform an autopsy on the body of any
6 person who has died under any of the circumstances listed in this section or on the
7 body of any person whose death has been reported under s. 948.23 ^{(1)(b)} ~~(2)~~ unless the
8 person obtains the written authorization of the coroner of the county in which the
9 injury or cause of death occurred. Such authorization shall be issued by the coroner
10 or a deputy within 12 hours after notification of the reportable death, or as soon
11 thereafter as possible in the event of unexplained, unusual or suspicious
12 circumstances.

13 **SECTION 10. Initial applicability.**

14 (1) This act first applies to deaths that are discovered, and to children who are
15 discovered to be missing, on the effective date of this subsection.

16 (END)

1 Insert A (no paragraph)

not A person who violates this requirement is guilty of a Class A misdemeanor unless the child suffers bodily harm or death while missing. If the child suffers pain or an injury such as a broken bone or one that requires stitches, the person is guilty of a Class H felony. If the child suffers an injury that causes a permanent disfigurement or results in a permanent or protracted loss or impairment of a bodily function, the person is guilty of a Class F felony. If the child dies, the person is guilty of a Class D felony.

2

3 Insert 2-1

4 SECTION 1. 948.23 (title) of the statutes is amended to read:

5 **948.23 (title) Concealing or not reporting death of a child; not reporting**
6 **disappearance of a child.**

7 History: 1977 c. 173; 1987 a. 332 s. 47; Stats. 1987 s. 948.23; 2001 a. 109.

8 Insert 2-19

9 SECTION 2. 948.23 (2) of the statutes is created to read:

10 948.23 (2) Whoever fails to report to law enforcement a child as missing within
11 24 hours ^{after} the child is discovered to be missing if the actor is the parent,
12 stepparent, guardian, or legal custodian of the child is guilty of the following:

13 (a) Except as provided in pars. (b) to (d), a Class A misdemeanor.

14 (b) If the child suffers bodily harm or substantial bodily harm while he or she
15 is missing, a Class H felony.

16 (c) If the child suffers great bodily harm while he or she is missing, a Class F
17 felony.

18 (d) If the child dies while he or she is missing, a Class D felony.

or as a result of an
injury he or she suffered
while missing

Hanaman, Cathlene

From: Rongstad, Tami
Sent: Friday, July 15, 2011 8:37 AM
To: Hanaman, Cathlene
Cc: Kerkman, Samantha; Bender-Olson, Katherine
Subject: RE: Drafting Revision Request LRB 2372/P1 - Caylee's Law
Cathlene –

Thank you very much. The working group is still discussing the timeframe for reporting a death; I needed the clarification. And thanks to Katie as well!

Tami Rongstad
Office of Rep. Samantha Kerkman
608-266-2531 / 888-534-0066

From: Hanaman, Cathlene
Sent: Friday, July 15, 2011 8:16 AM
To: Rep.Kerkman; Rongstad, Tami; Bender-Olson, Katherine
Subject: RE: Drafting Revision Request LRB 2372/P1 - Caylee's Law

Tami:

1. Thanks.
2. We could put "reasonable" amount of time instead of an exact time. Since there is a criminal penalty involved, you want some sort of timeframe so that it would be clear when failing to do something becomes a crime. Otherwise, you fail to do it as soon as the death is discovered and, simultaneously, you haven't clearly failed to do it weeks later because you still could report the death.

I cc'ed Katie, who was involved early on, for your second part of this question. She probably has access to this information more quickly than I do.

I will get you another version by this afternoon-- please let me know if you want to change the timeframe if you want that change in the next version.

From: Rep.Kerkman
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To: Hanaman, Cathlene
Subject: Drafting Revision Request LRB 2372/P1 - Caylee's Law

Good Afternoon, Cathlene –

1. Revision Request:
 - ✓ Thank you to please prepare a revision that changes the timeframe for reporting a missing child from 24 hours to 24 hours for children 11 and under and to 48 hours for children 12 and older (or children 12-17).
2. Inquires:
 - ✓ Regarding the reporting of the death of a child within one hour of discovering the

7/15/2011

death: is it necessary to have a specific timeframe in the statute? I believe Gordon Malaise mentioned it was, but my understanding of why/the difficulties presented without a specific timeframe is incomplete. Can you explain?

- ✓ Due to the revision request with different timeframe requirements based on the age of the child, would you be able to provide examples of other areas in statute that include age-based consideration? (Ex: babysit at age X, driver's license at age 16, can seek emancipation at age X, testify in court, have a say in divorce/custody situations, sexual consent, marriage, etc. – any examples the working group may wish to consider.) Please let me know if this is a question more appropriate for Leg. Council.

This is an urgent request; we would like to be able to circulate a draft for co-sponsorship early next week.

Thank you,

Tami Rongstad
Office of Rep. Samantha Kerkman
608-266-2531 / 888-534-0066



TODAY

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

repeal

1 **AN ACT** *to renumber and amend* 948.23; *to amend* 948.23 (title), 973.015 (1)
 2 (c) 2., 979.01 (1g), 979.01 (2), 979.01 (3), 979.01 (3m) and 979.01 (4); and *to*
 3 **create** 948.23 (1) (intro.), 948.23 (1) (b) and 948.23 (2) of the statutes; **relating**
 4 **to:** failing to report the death of a child or to report a missing child and providing
 5 penalties.

Analysis by the Legislative Reference Bureau

Under current law, a person having knowledge of a death must report the death to law enforcement or a coroner if certain circumstances apply, including: 1) a death in which there are unexplained, unusual, or suspicious circumstances; 2) a homicide; 3) a suicide; 4) a death due to poisoning; and 5) a death following an accident, whether the injury is or is not the primary cause of death. A person who fails to report such a death may be fined up to \$1,000 or imprisoned for up to 90 days. Under this bill, if a child under 18 years of age dies, the parent, stepparent, guardian, or legal custodian of the child must report the death to law enforcement within one hour of discovering the death unless another person is required to report the death. A person who violates this requirement is guilty of a Class I felony and may be subject to a fine of up to \$10,000 and imprisonment of up to three years and six months. This bill also requires that, if a child goes missing, the parent, stepparent, guardian, or legal custodian of the child must report the missing child to a law enforcement officer within 24 hours of discovering that the child is missing. A person who violates this requirement is guilty of a Class A misdemeanor unless the child suffers bodily harm

if the child is under 12 and within 48 hours if the child is over 12

or death while missing. If the child suffers pain or an injury such as a broken bone or one that requires stitches, the person is guilty of a Class H felony. If the child suffers an injury that causes a permanent disfigurement or results in a permanent or protracted loss or impairment of a bodily function, the person is guilty of a Class F felony. If the child dies, the person is guilty of a Class D felony.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 948.23 (title) of the statutes is amended to read:

2 **948.23 (title) Concealing or not reporting death of a child; not**
3 **reporting disappearance of a child.**

4 SECTION 2. 948.23 of the statutes is renumbered 948.23 (1) (a) and amended
5 to read:

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7 woman's body with intent to prevent a determination of whether it was born dead or
8 alive is guilty of a Class I felony.

9 SECTION 3. 948.23 (1) (intro.) of the statutes is created to read:

10 948.23 (1) (intro.) Whoever does any of the following is guilty of a Class I felony:

11 SECTION 4. 948.23 (1) (b) of the statutes is created to read:

12 948.23 (1) (b) Unless a physician or an authority of a hospital, sanatorium,
13 public or private institution, convalescent home, or any institution of a like nature
14 is required to report the death under s. 979.01 (1), fails to report to law enforcement
15 the death of a child within one hour of discovering the death if the actor is the parent,
16 stepparent, guardian, or legal custodian of the child.

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(a)
as provided in par. (b)

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 2 24 hours after the child is discovered to be missing if the actor is the parent,
 3 stepparent, guardian, or legal custodian of the child is guilty of the following:
 4 1. *Subds. 2. to 4.* (a) Except as provided in *par. (b) to (d)*, a Class A misdemeanor.
 5 2. (b) If the child suffers bodily harm or substantial bodily harm while he or she
 6 is missing, a Class H felony.
 7 3. (c) If the child suffers great bodily harm while he or she is missing, a Class F
 8 felony.
 9 4. (d) If the child dies while he or she is missing or as a result on an injury he or
 10 she suffered while missing, a Class D felony.

*INS
3-11*

11 SECTION 6. 973.015 (1) (c) 2. of the statutes is amended to read:
 12 973.015 (1) (c) 2. A Class I felony, if the person has, in his or her lifetime, been
 13 convicted of a prior felony offense, or if the felony is a violent offense, as defined in
 14 s. 301.048 (2) (bm), or is a violation of s. 948.23 (1) (a).

15 SECTION 7. 979.01 (1g) of the statutes is amended to read:
 16 979.01 (1g) A sheriff or police chief shall, immediately upon notification of a
 17 death under sub. (1) or s. 948.23 (1) (b) of a death, notify the coroner or the medical
 18 examiner, and the coroner or medical examiner of the county where death took place,
 19 if the crime, injury, or event occurred in another county, shall immediately report the
 20 death to the coroner or medical examiner of that county.

21 SECTION 8. 979.01 (2) of the statutes is amended to read:
 22 979.01 (2) Any Unless s. 948.23 (1) (b) applies, any person who violates this
 23 section shall be fined not more than \$1,000 or imprisoned not more than 90 days.

24 SECTION 9. 979.01 (3) of the statutes is amended to read:

1 979.01 (3) In all cases of death reportable under sub. (1) or s. 948.23 (1) (b)
2 where an autopsy is not performed, the coroner or medical examiner may take for
3 analysis any and all specimens, body fluids and any other material which will assist
4 him or her in determining the cause of death. The specimens, body fluids and other
5 material taken under this subsection shall not be admissible in evidence in any civil
6 action against the deceased or the deceased's estate, as the result of any act of the
7 deceased.

8 **SECTION 10.** 979.01 (3m) of the statutes is amended to read:

9 979.01 (3m) In all cases of death reportable under sub. (1) or s. 948.23 (1) (b)
10 where an autopsy is not performed, the coroner or medical examiner shall take for
11 analysis any and all specimens, body fluids and any other material that will assist
12 him or her in determining the cause of death if requested to do so by a spouse, parent,
13 child or sibling of the deceased person and not objected to by any of those family
14 members. The specimens, body fluids and other material taken under this
15 subsection shall not be admissible in evidence in any civil action against the deceased
16 or his or her estate, as the result of any act of the deceased.

17 **SECTION 11.** 979.01 (4) of the statutes is amended to read:

18 979.01 (4) No person may embalm or perform an autopsy on the body of any
19 person who has died under any of the circumstances listed in this section or on the
20 body of any person whose death has been reported under s. 948.23 (1) (b) unless the
21 person obtains the written authorization of the coroner of the county in which the
22 injury or cause of death occurred. Such authorization shall be issued by the coroner
23 or a deputy within 12 hours after notification of the reportable death, or as soon
24 thereafter as possible in the event of unexplained, unusual or suspicious
25 circumstances.

2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2372/p2ins
CMH:.....

1 Insert 3-11

under par. (a)

2 (b) If the child is under 12 years of age the report must be made within 24 hours
3 after the child is discovered to be missing. If the child is at least 12 years of age, the
4 report must be made within 48 hours after the child is discovered to be missing.

under par. (a)

Hanaman, Cathlene

From: Rongstad, Tami
Sent: Wednesday, July 20, 2011 3:13 PM
To: Hanaman, Cathlene
Cc: Rep.Kerkman
Subject: Drafting Revision Request LRB 2372/P2 - Caylee's Law

Hello, Cathlene –

I have another revision request for you for the Caylee's Law draft.
Under the reporting the death section, please change:

1. timeframe from one hour to immediately
2. not all deaths would need to be reported (wouldn't have to report natural causes) – would have to report suspicious deaths, accidental deaths, etc.
3. an exemption to the requirement for religious beliefs

Thank you,

Tami Rongstad
Office of Rep. Samantha Kerkman
608-266-2531 / 888-534-0066

From: Rongstad, Tami
Sent: Friday, July 15, 2011 8:37 AM
To: Hanaman, Cathlene
Cc: Kerkman, Samantha; Bender-Olson, Katherine
Subject: RE: Drafting Revision Request LRB 2372/P1 - Caylee's Law

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608-266-2531 / 888-534-0066

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Subject: RE: Drafting Revision Request LRB 2372/P1 - Caylee's Law

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1. Thanks.
2. We could put "reasonable" amount of time instead of an exact time. Since there is a criminal penalty involved, you want some sort of timeframe so that it would be clear when failing to do something becomes a crime. Otherwise, you fail to do it as soon as the death is discovered and, simultaneously, you haven't clearly failed to do it weeks later because you still could report the death.

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Office of Rep. Samantha Kerkman
608-266-2531 / 888-534-0066



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-2372/P2
CMH:kjf:jf

p3

MON or Tues if possible

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Reger

1 AN ACT to renumber and amend 948.23; to amend 948.23 (title), 973.015 (1)
2 (c) 2., 979.01 (1g), 979.01 (2), 979.01 (3), 979.01 (3m) and 979.01 (4); and to
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4 to: failing to report the death of a child or to report a missing child and providing
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under certain circumstances

immediately after

Analysis by the Legislative Reference Bureau

Under current law, a person having knowledge of a death must report the death to law enforcement or a coroner if certain circumstances apply, including: 1) a death in which there are unexplained, unusual, or suspicious circumstances; 2) a homicide; 3) a suicide; 4) a death due to poisoning; and 5) a death following an accident, whether the injury is or is not the primary cause of death. A person who fails to report such a death may be fined up to \$1,000 or imprisoned for up to 90 days. Under this bill, if a child under 18 years of age dies, the parent, stepparent, guardian, or legal custodian of the child must report the death to law enforcement within one hour of discovering the death unless another person is required to report the death. A person who violates this requirement is guilty of a Class I felony and may be subject to a fine of up to \$10,000 and imprisonment of up to three years and six months. This bill also requires that, if a child goes missing, the parent, stepparent, guardian, or legal custodian of the child must report the missing child to a law enforcement officer within 24 hours if the child is under 12 and within 48 hours if the child is over 12 of discovering that the child is missing. A person who violates this requirement is

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15 the death of a child within one hour of discovering the death if the actor is the parent,
16 stepparent, guardian, or legal custodian of the child,

17 SECTION 5. 948.23 (2) of the statutes is created to read:

WS
2-17

and if any of the following applies:

or as soon as practically possible if immediately reporting is impossible

or unless a report conflicts with religious tenets or practices

immediately after

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- 4 1. Except as provided in subds. 2. to 4., a Class A misdemeanor.
5 2. If the child suffers bodily harm or substantial bodily harm while he or she
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7 3. If the child suffers great bodily harm while he or she is missing, a Class F
8 felony.
9 4. If the child dies while he or she is missing or as a result on an injury he or
10 she suffered while missing, a Class D felony.

11 (b) If the child is under 12 years of age ^a the report ^{to law enforcement} under par. (a) must be made
12 within 24 hours after the child is discovered to be missing. If the child is at least 12
13 years of age, the report under par. (a) must be made within 48 hours after the child
14 is discovered to be missing.

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17 convicted of a prior felony offense, or if the felony is a violent offense, as defined in
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7 him or her in determining the cause of death. The specimens, body fluids and other
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9 action against the deceased or the deceased's estate, as the result of any act of the
10 deceased.

11 **SECTION 10.** 979.01 (3m) of the statutes is amended to read:

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13 where an autopsy is not performed, the coroner or medical examiner shall take for
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15 him or her in determining the cause of death if requested to do so by a spouse, parent,
16 child or sibling of the deceased person and not objected to by any of those family
17 members. The specimens, body fluids and other material taken under this
18 subsection shall not be admissible in evidence in any civil action against the deceased
19 or his or her estate, as the result of any act of the deceased.

20 **SECTION 11.** 979.01 (4) of the statutes is amended to read:

21 979.01 (4) No person may embalm or perform an autopsy on the body of any
22 person who has died under any of the circumstances listed in this section or on the
23 body of any person whose death has been reported under s. 948.23 (1) (b) unless the
24 person obtains the written authorization of the coroner of the county in which the
25 injury or cause of death occurred. Such authorization shall be issued by the coroner

1 or a deputy within 12 hours after notification of the reportable death, or as soon
2 thereafter as possible in the event of unexplained, unusual or suspicious
3 circumstances.

*discoveries
discoveries made*

4 **SECTION 12. Initial applicability.**

5 (1) This act first applies to deaths that are discovered, and to children who are
6 discovered to be missing, on the effective date of this subsection.

7 (END)

**2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2372/p3ins
CMH:.....

1 Insert 2-17

- 2 1. The death involves unexplained, unusual, or suspicious circumstances.
3 2. The death is or appears to be a homicide or a suicide.
4 3. The death is due to poisoning.
5 4. The death follows an accident, whether the injury is or is not the primary
6 cause of the death.

7

8 Insert 3-4

9 948.23 (2) (a) Within the period under par. (b), an individual must report to law
10 enforcement a child as missing if the individual is the parent, stepparent, guardian,
11 or legal custodian of the child.

12 (b) 1. The report under par. (a) must be made within 24 hours after the child
13 is discovered to be missing if the child is under 12 years of age when the discovery
14 is made.

15 2. The report under par. (a) must be made within 48 hours after the child is
16 discovered to be missing if the child is at least 12 years of age when the discovery is
17 made.

18 (c) Whoever violates par. (a) is guilty of the following:

Hanaman, Cathlene

From: Rongstad, Tami
Sent: Monday, September 26, 2011 3:59 PM
To: Hanaman, Cathlene
Subject: Caylee's Law: Drafting Request Changes
Attachments: Comparison - to CMH.doc

Hi, Cathlene –

Rep. Kerkman has some requested changes to LRB 2372/P3.

She and Senator Lassa are working together to introduce identical bills and have compared drafts and made some decisions but would also like your input on the penalties area.

I have attached a comparison of the two drafts with notes for the changes.

Thank you,

Tami Rongstad
Office of Rep. Samantha Kerkman
608-266-2531 / 888-534-0066

From: Hanaman, Cathlene
Sent: Monday, September 26, 2011 3:19 PM
To: Rongstad, Tami
Subject:

Tami:

Here is my email address. You mentioned you wanted to send some instructions my way.

-Cathlene

Comparative Summary of Caylee's Law Proposed Legislation

Reporting Death of a Child	
LRB 2372/3 (Rep. Kerkman)	LRB 2371/1 (Sen. Lassa)
REPORTS	parent, stepparent, guardian, legal custodian
AGE	under 18 years of age
DEATH	any
TIMEFRAME	within 24 hours of discovering the death
PENALTY	Class I felony (fine not to exceed \$10,000 or imprisonment not to exceed 3 years and 6 months or both)
STATS	added to 948.23 (concealing the death of child)
Corpse of a Child	
LRB 2372/3 (Rep. Kerkman)	LRB 2371/1 (Sen. Lassa)
See comment	anyone without authority to move a corpse
	hides or buries a corpse of a child
	Class F felony (fine not to exceed \$25,000 or imprisonment not to exceed 12 years and 6 months or both)
Intent to Collect Benefits	
LRB 2372/3 (Rep. Kerkman)	LRB 2371/1 (Sen. Lassa)
See comment	anyone
	hides, or buries a corpse with intent to collect Medical Assistance, benefits or services under Wisconsin Works or food stamps
	Class G felony (fine not to exceed \$25,000 or imprisonment not to exceed 10 years or both)

948.23

Comment [13]: Please add Lassa draft language to Kerkman bill.
Who has authority to move a corpse? in Stats?

Comment [14]: Please add Lassa draft language to Kerkman bill.

Comparative Summary of Caylee's Law Proposed Legislation

Reporting Disappearance of a Child	
LRB 2372/3 (Rep. Kerkman)	LRB 2371/1 (Sen. Lassa)
REPORTS	parent, stepparent, guardian, legal custodian
AGE / TIMEFRAME	parent, stepparent, guardian, legal custodian under 13 years of age within 24 hours after the child is discovered to be missing
AGE / TIMEFRAME	13 years of age or older, but under 16 years of age within 48 hours after the child is discovered to be missing
	at least 16 years of age within 72 hours after the child is discovered to be missing
	<i>accelerated by level of harm suffered by the child (follows the penalties currently in place for neglecting a child in 948.21)</i>
	Class A misdemeanor (fine not to exceed \$10,000 or imprisonment not to exceed 9 months or both)
	Class H felony if bodily harm results (fine not to exceed \$10,000 or imprisonment not to exceed 6 years or both)
PENALTIES	Class H felony if child is at least 16 years of age (fine not to exceed \$10,000 or imprisonment not to exceed 6 years or both) Class G felony if child is 13 to 15 years of age (fine not to exceed \$25,000 or imprisonment not to exceed 10 years or both) Class F felony if child is <13 years of age (fine not to exceed \$25,000 or imprisonment not to exceed 12 years and 6 months or both)
STATS	added to 948.23 (concealing the death of child)

2/18/23

Comment [1]: We would like to use the Lassa draft for ages/timeframes for reporting the disappearance of a child.

Comment [2]: As you know, the Kerkman draft follows the penalties currently in place for neglect. I believe the Lassa draft utilizes DA input; does it follow a structure currently in place elsewhere?
From a drafting standpoint, which approach is more appropriate?
Do you happen to know how much leeway prosecutors have?



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-2372/P8
CMH:kjf:ph

PM

TODAY please

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Reger

INJ REL.

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2 (c) 2., 979.01 (1g), 979.01 (2), 979.01 (3), 979.01 (3m) and 979.01 (4); and *to*
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5 penalties.

Analysis by the Legislative Reference Bureau

Under current law, a person having knowledge of a death must report the death to law enforcement or a coroner if certain circumstances apply, including: 1) a death in which there are unexplained, unusual, or suspicious circumstances; 2) a homicide; 3) a suicide; 4) a death due to poisoning; and 5) a death following an accident, whether the injury is or is not the primary cause of death. A person who fails to report such a death may be fined up to \$1,000 or imprisoned for up to 90 days. Under this bill, if a child under 18 years of age dies under certain circumstances, the parent, stepparent, guardian, or legal custodian of the child must report the death to law enforcement immediately after discovering the death unless another person is required to report the death. A person who violates this requirement is guilty of a Class I felony and may be subject to a fine of up to \$10,000 and imprisonment of up to three years and six months. This bill also requires that, if a child goes missing, the parent, stepparent, guardian, or legal custodian of the child must report the missing child to a law enforcement officer within 24 hours if the child is under 12 and within 48 hours if the child is over 12 of discovering that the child is missing. A

is discovered to be missing

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at least 13 but under 16, or within 72 hours if the child is at least 16

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person who violates this requirement is guilty of a Class A misdemeanor unless the child suffers bodily harm or death while missing. If the child suffers pain or an injury such as a broken bone or one that requires stitches, the person is guilty of a Class H felony. If the child suffers an injury that causes a permanent disfigurement or results in a permanent or protracted loss or impairment of a bodily function, the person is guilty of a Class F felony. If the child dies, the person is guilty of a Class D felony.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 948.23 (title) of the statutes is amended to read:

948.23 (title) Concealing or not reporting death of a child; not reporting disappearance of a child.

SECTION 2. 948.23 of the statutes is renumbered 948.23 (1) (a) and amended to read:

948.23 (1) (a) ~~Any person who conceals~~ Conceals the corpse of any issue of a woman's body with intent to prevent a determination of whether it was born dead or alive is guilty of a Class I felony.

SECTION 3. 948.23 (1) (intro.) of the statutes is created to read:

948.23 (1) (intro.) Whoever does any of the following is guilty of a Class I felony:

SECTION 4. 948.23 (1) (b) of the statutes is created to read:

948.23 (1) (b) Unless a physician or an authority of a hospital, sanatorium, public or private institution, convalescent home, or any institution of a like nature is required to report the death under s. 979.01 (1) or unless a report conflicts with religious tenets or practices, fails to report to law enforcement the death of a child immediately after discovering the death, or as soon as practically possible if

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1 immediately reporting is impossible, if the actor is the parent, stepparent, guardian,
2 or legal custodian of the child and if any of the following applies:

- 3 1. The death involves unexplained, unusual, or suspicious circumstances.
- 4 2. The death is or appears to be a homicide or a suicide.
- 5 3. The death is due to poisoning.
- 6 4. The death follows an accident, whether the injury is or is not the primary
- 7 cause of the death.

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→

8 SECTION 5. 948.23 (2) of the statutes is created to read:

9 948.23 (2) (a) Within the period under par. (b), an individual must report to law
10 enforcement a child as missing if the individual is the parent, stepparent, guardian,
11 or legal custodian of the child.

12 (b) 1. The report under par. (a) must be made within 24 hours after the child
13 is discovered to be missing if the child is under 12 years of age when the discovery
14 is made. 13

but under 16 years of age

15 2. The report under par. (a) must be made within 48 hours after the child is
16 discovered to be missing if the child is at least 12 years of age when the discovery is
17 made. 13

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18 (c) Whoever violates par. (a) is guilty of the following:

- 19 1. Except as provided in subds. 2. to 4., a Class A misdemeanor.
- 20 2. If the child suffers bodily harm or substantial bodily harm while he or she
- 21 is missing, a Class H felony.
- 22 3. If the child suffers great bodily harm while he or she is missing, a Class F
- 23 felony.
- 24 4. If the child dies while he or she is missing or as a result on an injury he or
- 25 she suffered while missing, a Class D felony.

1 **SECTION 6.** 973.015 (1) (c) 2. of the statutes is amended to read:

2 973.015 (1) (c) 2. A Class I felony, if the person has, in his or her lifetime, been
3 convicted of a prior felony offense, or if the felony is a violent offense, as defined in
4 s. 301.048 (2) (bm), or is a violation of s. 948.23 (1) (a).

5 **SECTION 7.** 979.01 (1g) of the statutes is amended to read:

6 979.01 (1g) A sheriff or police chief shall, immediately upon notification of a
7 ~~death~~ under sub. (1) or s. 948.23 (1) (b) of a death, notify the coroner or the medical
8 examiner, and the coroner or medical examiner of the county where death took place,
9 if the crime, injury, or event occurred in another county, shall immediately report the
10 death to the coroner or medical examiner of that county.

11 **SECTION 8.** 979.01 (2) of the statutes is amended to read:

12 979.01 (2) ~~Any~~ Unless s. 948.23 (1) (b) applies, any person who violates this
13 section shall be fined not more than \$1,000 or imprisoned not more than 90 days.

14 **SECTION 9.** 979.01 (3) of the statutes is amended to read:

15 979.01 (3) In all cases of death reportable under sub. (1) or s. 948.23 (1) (b)
16 where an autopsy is not performed, the coroner or medical examiner may take for
17 analysis any and all specimens, body fluids and any other material which will assist
18 him or her in determining the cause of death. The specimens, body fluids and other
19 material taken under this subsection shall not be admissible in evidence in any civil
20 action against the deceased or the deceased's estate, as the result of any act of the
21 deceased.

22 **SECTION 10.** 979.01 (3m) of the statutes is amended to read:

23 979.01 (3m) In all cases of death reportable under sub. (1) or s. 948.23 (1) (b)
24 where an autopsy is not performed, the coroner or medical examiner shall take for
25 analysis any and all specimens, body fluids and any other material that will assist

1 him or her in determining the cause of death if requested to do so by a spouse, parent,
2 child or sibling of the deceased person and not objected to by any of those family
3 members. The specimens, body fluids and other material taken under this
4 subsection shall not be admissible in evidence in any civil action against the deceased
5 or his or her estate, as the result of any act of the deceased.

6 **SECTION 11.** 979.01 (4) of the statutes is amended to read:

7 979.01 (4) No person may embalm or perform an autopsy on the body of any
8 person who has died under any of the circumstances listed in this section or on the
9 body of any person whose death has been reported under s. 948.23 (1) (b) unless the
10 person obtains the written authorization of the coroner of the county in which the
11 injury or cause of death occurred. Such authorization shall be issued by the coroner
12 or a deputy within 12 hours after notification of the reportable death, or as soon
13 thereafter as possible in the event of unexplained, unusual or suspicious
14 circumstances.

15 **SECTION 12. Initial applicability.**

16 (1) This act first applies to discoveries made on the effective date of this
17 subsection.

18 (END)

*The treatment of section 948.23 (1) (intro.)
and (b) and (3) of the statutes*



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-2371/1
CMH:kjf:jf

2011 BILL

1 AN ACT *to renumber and amend* 948.23; *to amend* 940.11 (2), 940.11 (3),
2 948.23 (title), 973.015 (1) (c) 2., 979.01 (1g), 979.01 (2), 979.01 (3), 979.01 (3m)
3 and 979.01 (4); and *to create* 948.23 (1) (intro.), 948.23 (1) (b), 948.23 (2) and
4 948.23 (3) of the statutes; **relating to: failing to report the death of a child or**
5 **to report a missing child, moving the corpse of a child, and hiding a corpse to**
6 **collect public benefits, and providing penalties.**

Analysis by the Legislative Reference Bureau

Under current law, a person having knowledge of a death must report the death to law enforcement or a coroner if certain circumstances apply, including: 1) a death in which there are unexplained, unusual, or suspicious circumstances; 2) a homicide; 3) a suicide; 4) a death due to poisoning; and 5) a death following an accident, whether the injury is or is not the primary cause of death. A person who fails to report such a death may be fined up to \$1,000 or imprisoned for up to 90 days. Under this bill, if a child under 18 years of age dies, the parent, stepparent, guardian, or legal custodian of the child must report the death to law enforcement within 24 hours of discovering the death unless another person is required to report the death. A person who violates this requirement is guilty of a Class I felony and may be subject to a fine of up to \$10,000 and imprisonment of up to three years and six months. This bill also requires that, if a child goes missing, the parent, stepparent, guardian, or legal custodian of the child must report the missing child to a law enforcement officer. The

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time limit for reporting and the penalty for failing to report vary by the age of the child. If the child is under 13 and the person fails to report him or her missing within 24 hours of discovering that he or she is missing, the person is guilty of a Class F felony. If the child is between 13 and 16 and the person fails to report him or her missing within 48 hours of discovering that he or she is missing, the person is guilty of a Class G felony. If the child is at least 16 years of age and the person fails to report him or her missing within 72 hours of discovering that he or she is missing, the person is guilty of a Class H felony. This bill also prohibits a person who is not authorized under law from moving the corpse of a child. A person who violates this prohibition is guilty of a Class F felony. This bill also specifies that it is a felony to hide or bury a corpse with the intent to collect Medical Assistance, benefits or services under Wisconsin Works, or food stamps.

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Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 940.11 (2) of the statutes is amended to read:

940.11 (2) Whoever hides or buries a corpse, with intent to conceal a crime or avoid apprehension, prosecution or conviction for a crime or notwithstanding s. 49.141 (7), 49.49 (1), or 49.795 with intent to collect benefits under one of those sections, is guilty of a Class G felony.

SECTION 2. 940.11 (3) of the statutes is amended to read:

940.11 (3) A person may not be subject to prosecution under both this section and s. 946.47 or under both this section and s. 948.23 (2) for his or her acts regarding the same corpse.

SECTION 3. 948.23 (title) of the statutes is amended to read:

948.23 (title) Concealing or not reporting death of a child; not reporting disappearance of a child.

INS
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BILL

1 **SECTION 4.** 948.23 of the statutes is renumbered 948.23 (1) (a) and amended
2 to read:

3 948.23 (1) (a) ~~Any person who conceals~~ Conceals the corpse of any issue of a
4 woman's body with intent to prevent a determination of whether it was born dead or
5 alive ~~is guilty of a Class I felony.~~

6 **SECTION 5.** 948.23 (1) (intro.) of the statutes is created to read:

7 948.23 (1) (intro.) Whoever does any of the following is guilty of a Class I felony:

8 **SECTION 6.** 948.23 (1) (b) of the statutes is created to read:

9 948.23 (1) (b) Unless a physician or an authority of a hospital, sanatorium,
10 public or private institution, convalescent home, or any institution of a like nature
11 is required to report the death under s. 979.01 (1), fails to report to law enforcement
12 the death of a child within 24 hours of discovering the death if the actor is the parent,
13 stepparent, guardian, or legal custodian of the child.

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14 **SECTION 7.** 948.23 (2) of the statutes is created to read:

15 948.23 (2) Whoever, without authorization under s. 69.18 or other legal
16 authority to move a corpse, hides or buries the corpse of a child is guilty of a Class
17 F felony.

18 **SECTION 8.** 948.23 (3) of the statutes is created to read:

19 948.23 (3) (a) Whoever fails to report to law enforcement a child as missing
20 within 24 hours after the child is discovered to be missing if the child is under 13
21 years of age when the discovery is made and if the actor is the parent, stepparent,
22 guardian, or legal custodian of the child is guilty of a Class F felony.

23 (b) Whoever fails to report to law enforcement a child as missing within 48
24 hours after the child is discovered to be missing if the child is at least 13 years of age

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3. The

under par. (a) must be made

1 but under 16 years of age when the discovery is made and if the actor is the parent,
2 stepparent, guardian, or legal custodian of the child is guilty of a Class G felony.

3 ~~(4) Whoever fails to report to law enforcement a child as missing~~ within 72
4 hours after the child is discovered to be missing if the child is at least 16 years of age
5 when the discovery is made and if the actor is the parent, stepparent, guardian, or
6 legal custodian of the child is guilty of a Class H felony.

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7 **SECTION 9.** 973.015 (1) (c) 2. of the statutes is amended to read:

8 973.015 (1) (c) 2. A Class I felony, if the person has, in his or her lifetime, been
9 convicted of a prior felony offense, or if the felony is a violent offense, as defined in
10 s. 301.048 (2) (bm), or is a violation of s. 948.23 (1) (a).

11 **SECTION 10.** 979.01 (1g) of the statutes is amended to read:

12 979.01 (1g) A sheriff or police chief shall, immediately upon notification of a
13 death under sub. (1) or s. 948.23 (1) (b) of a death, notify the coroner or the medical
14 examiner, and the coroner or medical examiner of the county where death took place,
15 if the crime, injury, or event occurred in another county, shall immediately report the
16 death to the coroner or medical examiner of that county.

17 **SECTION 11.** 979.01 (2) of the statutes is amended to read:

18 979.01 (2) ~~Any~~ Unless s. 948.23 (1) (b) applies, any person who violates this
19 section shall be fined not more than \$1,000 or imprisoned not more than 90 days.

20 **SECTION 12.** 979.01 (3) of the statutes is amended to read:

21 979.01 (3) In all cases of death reportable under sub. (1) or s. 948.23 (1) (b)
22 where an autopsy is not performed, the coroner or medical examiner may take for
23 analysis any and all specimens, body fluids and any other material which will assist
24 him or her in determining the cause of death. The specimens, body fluids and other
25 material taken under this subsection shall not be admissible in evidence in any civil



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-2372/PA
CMH:kjf:rs

~~PRELIMINARY DRAFT NOT READY FOR INTRODUCTION~~

Tom

Neyer

1 AN ACT *to renumber and amend* 948.23; *to amend* 940.11 (2), 940.11 (3),
2 948.23 (title), 973.015 (1) (c) 2., 979.01 (1g), 979.01 (2), 979.01 (3), 979.01 (3m)
3 and 979.01 (4); and *to create* 948.23 (1) (intro.), 948.23 (1) (b), 948.23 (2) and
4 948.23 (3) of the statutes; **relating to:** failing to report the death of a child or
5 to report a missing child, moving the corpse of a child, hiding a corpse to collect
6 public benefits, and providing penalties.

Analysis by the Legislative Reference Bureau

Under current law, a person having knowledge of a death must report the death to law enforcement or a coroner if certain circumstances apply, including: 1) a death in which there are unexplained, unusual, or suspicious circumstances; 2) a homicide; 3) a suicide; 4) a death due to poisoning; and 5) a death following an accident, whether the injury is or is not the primary cause of death. A person who fails to report such a death may be fined up to \$1,000 or imprisoned for up to 90 days. Under this bill, if a child under 18 years of age dies under certain circumstances, the parent, stepparent, guardian, or legal custodian of the child must report the death to law enforcement immediately after discovering the death unless another person is required to report the death. A person who violates this requirement is guilty of a Class I felony and may be subject to a fine of up to \$10,000 and imprisonment of up to three years and six months.

This bill also requires that, if a child is discovered to be missing, the parent, stepparent, guardian, or legal custodian of the child must report the missing child

to a law enforcement officer within 24 hours if the child is under 13, within 48 hours if the child is at least 13 but under 16, or within 72 hours if the child is at least 16. A person who violates this requirement is guilty of a Class A misdemeanor unless the child suffers bodily harm or death while missing. If the child suffers pain or an injury such as a broken bone or one that requires stitches, the person is guilty of a Class H felony. If the child suffers an injury that causes a permanent disfigurement or results in a permanent or protracted loss or impairment of a bodily function, the person is guilty of a Class F felony. If the child dies, the person is guilty of a Class D felony.

This bill also prohibits an unauthorized person from moving the corpse of a child. A person who violates this prohibition is guilty of a Class F felony. This bill also specifies that it is a felony to hide or bury a corpse with the intent to collect Medical Assistance, benefits or services under Wisconsin Works, or food stamps.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 940.11 (2) of the statutes is amended to read:

2 940.11 (2) Whoever hides or buries a corpse, with intent to conceal a crime or
3 avoid apprehension, prosecution or conviction for a crime or notwithstanding s.
4 49.141 (7), 49.49 (1), or 49.795 with intent to collect benefits under one of those
5 sections, is guilty of a Class G felony.

6 SECTION 2. 940.11 (3) of the statutes is amended to read:

7 940.11 (3) A person may not be subject to prosecution under both this section
8 and s. 946.47 or under both this section and s. 948.23 (2) for his or her acts regarding
9 the same corpse.

10 SECTION 3. 948.23 (title) of the statutes is amended to read:

11 **948.23 (title) Concealing or not reporting death of a child; not**
12 **reporting disappearance of a child.**

1 **SECTION 4.** 948.23 of the statutes is renumbered 948.23 (1) (a) and amended
2 to read:

3 948.23 (1) (a) ~~Any person who conceals~~ Conceals the corpse of any issue of a
4 woman's body with intent to prevent a determination of whether it was born dead or
5 alive ~~is guilty of a Class I felony.~~

6 **SECTION 5.** 948.23 (1) (intro.) of the statutes is created to read:

7 948.23 (1) (intro.) Whoever does any of the following is guilty of a Class I felony:

8 **SECTION 6.** 948.23 (1) (b) of the statutes is created to read:

9 948.23 (1) (b) Unless a physician or an authority of a hospital, sanatorium,
10 public or private institution, convalescent home, or any institution of a like nature
11 is required to report the death under s. 979.01 (1) or unless a report conflicts with
12 religious tenets or practices, fails to report to law enforcement the death of a child
13 immediately after discovering the death, or as soon as practically possible if
14 immediate reporting is impossible, if the actor is the parent, stepparent, guardian,
15 or legal custodian of the child and if any of the following applies:

- 16 1. The death involves unexplained, unusual, or suspicious circumstances.
- 17 2. The death is or appears to be a homicide or a suicide.
- 18 3. The death is due to poisoning.
- 19 4. The death follows an accident, whether the injury is or is not the primary
20 cause of the death.

21 **SECTION 7.** 948.23 (2) of the statutes is created to read:

22 948.23 (2) Whoever, without authorization under s. 69.18 or other legal
23 authority to move a corpse, hides or buries the corpse of a child is guilty of a Class
24 F felony.

25 **SECTION 8.** 948.23 (3) of the statutes is created to read:

1 948.23 (3) (a) Within the period under par. (b), an individual must report to law
2 enforcement a child as missing if the individual is the parent, stepparent, guardian,
3 or legal custodian of the child.

4 (b) 1. The report under par. (a) must be made within 24 hours after the child
5 is discovered to be missing if the child is under 13 years of age when the discovery
6 is made.

7 2. The report under par. (a) must be made within 48 hours after the child is
8 discovered to be missing if the child is at least 13 years of age but under 16 years of
9 age when the discovery is made.

10 3. The report under par. (a) must be made within 72 hours after the child is
11 discovered to be missing if the child is at least 16 years of age when the discovery is
12 made.

13 (c) Whoever violates par. (a) is guilty of the following:

14 1. Except as provided in subds. 2. to 4., a Class A misdemeanor.

15 2. If the child suffers bodily harm or substantial bodily harm while he or she
16 is missing, a Class H felony.

17 3. If the child suffers great bodily harm while he or she is missing, a Class F
18 felony.

19 4. If the child dies while he or she is missing or as a result on an injury he or
20 she suffered while missing, a Class D felony.

21 SECTION 9. 973.015 (1) (c) 2. of the statutes is amended to read:

22 973.015 (1) (c) 2. A Class I felony, if the person has, in his or her lifetime, been
23 convicted of a prior felony offense, or if the felony is a violent offense, as defined in
24 s. 301.048 (2) (bm), or is a violation of s. 948.23 (1) (a).

25 SECTION 10. 979.01 (1g) of the statutes is amended to read:

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3 examiner, and the coroner or medical examiner of the county where death took place,
4 if the crime, injury, or event occurred in another county, shall immediately report the
5 death to the coroner or medical examiner of that county.

6 **SECTION 11.** 979.01 (2) of the statutes is amended to read:

7 979.01 (2) Any Unless s. 948.23 (1) (b) applies, any person who violates this
8 section shall be fined not more than \$1,000 or imprisoned not more than 90 days.

9 **SECTION 12.** 979.01 (3) of the statutes is amended to read:

10 979.01 (3) In all cases of death reportable under sub. (1) or s. 948.23 (1) (b)
11 where an autopsy is not performed, the coroner or medical examiner may take for
12 analysis any and all specimens, body fluids and any other material which will assist
13 him or her in determining the cause of death. The specimens, body fluids and other
14 material taken under this subsection shall not be admissible in evidence in any civil
15 action against the deceased or the deceased's estate, as the result of any act of the
16 deceased.

17 **SECTION 13.** 979.01 (3m) of the statutes is amended to read:

18 979.01 (3m) In all cases of death reportable under sub. (1) or s. 948.23 (1) (b)
19 where an autopsy is not performed, the coroner or medical examiner shall take for
20 analysis any and all specimens, body fluids and any other material that will assist
21 him or her in determining the cause of death if requested to do so by a spouse, parent,
22 child or sibling of the deceased person and not objected to by any of those family
23 members. The specimens, body fluids and other material taken under this
24 subsection shall not be admissible in evidence in any civil action against the deceased
25 or his or her estate, as the result of any act of the deceased.

2011 DRAFTING REQUEST

Bill

Received: **07/13/2011**

Received By: **chanaman**

Wanted: **As time permits**

Companion to LRB:

For: **Samantha Kerkman (608) 266-2530**

By/Representing: **Tami**

May Contact:

Drafter: **chanaman**

Subject: **Criminal Law - crimes agnst kids**
Criminal Law - sentencing

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Kerkman@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Failing to report death or disappearance of a child; penalties vary depending on harm

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	chanaman 07/13/2011	kfollett 07/13/2011		_____			Crime
/P1	chanaman 07/15/2011	kfollett 07/15/2011	rschluet 07/13/2011	_____	sbasford 07/13/2011		Crime
/P2	chanaman 07/22/2011	kfollett 07/25/2011	jfrantze 07/15/2011	_____	sbasford 07/15/2011		Crime
/P3	chanaman 09/28/2011	kfollett 09/28/2011	phenry 07/25/2011	_____	mbarman 07/25/2011		Crime

JACKET FOR ARS

11/5/11
11/9/11

11/5/11
11/7/11

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

/P4

rschluet _____
09/28/2011 _____

lparisi
09/28/2011

FE Sent For:

<END>

2011 DRAFTING REQUEST

Bill

Received: 07/13/2011

Received By: chanaman

Wanted: As time permits

Companion to LRB:

For: Samantha Kerkman (608) 266-2530

By/Representing: Tami

May Contact:

Drafter: chanaman

Subject: Criminal Law - crimes agnst kids
Criminal Law - sentencing

Addl. Drafters:

Extra Copies:

Submit via email: YES

Requester's email: Rep.Kerkman@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

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See attached

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/?	chanaman 07/13/2011	kfollett 07/13/2011		_____			Crime
/P1	chanaman 07/15/2011	kfollett 07/15/2011	rschluet 07/13/2011	_____	sbasford 07/13/2011		Crime
/P2	chanaman 07/22/2011	kfollett 07/25/2011	jfrantze 07/15/2011	_____	sbasford 07/15/2011		Crime
/P3		1/1/15f 9/28	pchenry 07/25/2011	_____	mbarman 07/25/2011		

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

FE Sent For:

<END>

Godwin, Gigi

From: Rongstad, Tami

Sent: Monday, November 07, 2011 3:48 PM

To: LRB.Legal

Subject: Draft Review: LRB 11-2372/1 Topic: Failing to report death or disappearance of a child; penalties vary depending on harm

Please Jacket LRB 11-2372/1 for the ASSEMBLY.

11/7/2011



Today if possible



2011 BILL

Regen, or as soon as practically possible if immediate reporting is impossible

1 AN ACT ~~to renumber and amend~~ 948.23; ~~to amend~~ 940.11 (2), 940.11 (3),
 2 948.23 (title), 973.015 (1)(c) 2., 979.01 (1g), 979.01 (2), 979.01 (3), 979.01 (3m)
 3 and 979.01 (4); and ~~to create~~ 948.23 (1) (intro.), 948.23 (1) (b), 948.23 (2) and
 4 948.23 (3) of the statutes; **relating to:** failing to report the death of a child or
 5 to report a missing child, moving the corpse of a child, hiding a corpse to collect
 6 public benefits, and providing penalties.

Analysis by the Legislative Reference Bureau

Under current law, a person having knowledge of a death must report the death to law enforcement or a coroner if certain circumstances apply, including: 1) a death in which there are unexplained, unusual, or suspicious circumstances; 2) a homicide; 3) a suicide; 4) a death due to poisoning; and 5) a death following an accident, whether the injury is or is not the primary cause of death. A person who fails to report such a death may be fined up to \$1,000 or imprisoned for up to 90 days. Under this bill, if a child under 18 years of age dies under certain circumstances, the parent, stepparent, guardian, or legal custodian of the child must report the death to law enforcement immediately after discovering the death unless another person is required to report the death. A person who violates this requirement is guilty of a Class I felony and may be subject to a fine of up to \$10,000 and imprisonment of up to three years and six months.

This bill also requires that, if a child is discovered to be missing, the parent, stepparent, guardian, or legal custodian of the child must report the missing child

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to a law enforcement officer within 24 hours if the child is under 13, within 48 hours if the child is at least 13 but under 16, or within 72 hours if the child is at least 16. A person who violates this requirement is guilty of a Class A misdemeanor unless the child suffers bodily harm or death while missing. If the child suffers pain or an injury such as a broken bone or one that requires stitches, the person is guilty of a Class H felony. If the child suffers an injury that causes a permanent disfigurement or results in a permanent or protracted loss or impairment of a bodily function, the person is guilty of a Class F felony. If the child dies, the person is guilty of a Class D felony.

This bill also prohibits an unauthorized person from moving the corpse of a child. A person who violates this prohibition is guilty of a Class F felony. This bill also specifies that it is a felony to hide or bury a corpse with the intent to collect Medical Assistance, benefits or services under Wisconsin Works, or food stamps.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 940.11 (2) of the statutes is amended to read:

2 940.11 (2) Whoever hides or buries a corpse, with intent to conceal a crime or
3 avoid apprehension, prosecution or conviction for a crime or notwithstanding s.
4 49.141 (7), 49.49 (1), or 49.795 with intent to collect benefits under one of those
5 sections, is guilty of a Class G felony.

6 SECTION 2. 940.11 (3) of the statutes is amended to read:

7 940.11 (3) A person may not be subject to prosecution under both this section
8 and s. 946.47 or under both this section and s. 948.23 (2) for his or her acts regarding
9 the same corpse.

10 SECTION 3. 948.23 (title) of the statutes is amended to read:

11 **948.23 (title) Concealing or not reporting death of a child; not**
12 **reporting disappearance of a child.**

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1 **SECTION 4.** 948.23 of the statutes is renumbered 948.23 (1) (a) and amended
2 to read:

3 948.23 (1) (a) ~~Any person who conceals~~ Conceals the corpse of any issue of a
4 woman's body with intent to prevent a determination of whether it was born dead or
5 alive is guilty of a Class I felony.

6 **SECTION 5.** 948.23 (1) (intro.) of the statutes is created to read:

7 948.23 (1) (intro.) Whoever does any of the following is guilty of a Class I felony:

8 **SECTION 6.** 948.23 (1) (b) of the statutes is created to read:

9 948.23 (1) (b) Unless a physician or an authority of a hospital, sanatorium,
10 public or private institution, convalescent home, or any institution of a like nature
11 is required to report the death under s. 979.01 (1) or unless a report conflicts with
12 religious tenets or practices, fails to report to law enforcement the death of a child
13 immediately after discovering the death, or as soon as practically possible if
14 immediate reporting is impossible, if the actor is the parent, stepparent, guardian,
15 or legal custodian of the child and if any of the following applies:

- 16 1. The death involves unexplained, unusual, or suspicious circumstances.
- 17 2. The death is or appears to be a homicide or a suicide.
- 18 3. The death is due to poisoning.
- 19 4. The death follows an accident, whether the injury is or is not the primary
20 cause of the death.

21 **SECTION 7.** 948.23 (2) of the statutes is created to read:

22 948.23 (2) Whoever, without authorization under s. 69.18 or other legal
23 authority to move a corpse, hides or buries the corpse of a child is guilty of a Class
24 F felony.

25 **SECTION 8.** 948.23 (3) of the statutes is created to read:

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1 948.23 (3) (a) Within the period under par. (b), an individual must report to law
2 enforcement a child as missing if the individual is the parent, stepparent, guardian,
3 or legal custodian of the child.

4 (b) 1. The report under par. (a) must be made within 24 hours after the child
5 is discovered to be missing if the child is under 13 years of age when the discovery
6 is made.

7 2. The report under par. (a) must be made within 48 hours after the child is
8 discovered to be missing if the child is at least 13 years of age but under 16 years of
9 age when the discovery is made.

10 3. The report under par. (a) must be made within 72 hours after the child is
11 discovered to be missing if the child is at least 16 years of age when the discovery is
12 made.

13 (c) Whoever violates par. (a) is guilty of the following:

14 1. Except as provided in subds. 2. to 4., a Class A misdemeanor.

15 2. If the child suffers bodily harm or substantial bodily harm while he or she
16 is missing, a Class H felony.

17 3. If the child suffers great bodily harm while he or she is missing, a Class F
18 felony.

19 4. If the child dies while he or she is missing or as a result on an injury he or
20 she suffered while missing, a Class D felony.

21 SECTION 9. 973.015 (1) (c) 2. of the statutes is amended to read:

22 973.015 (1) (c) 2. A Class I felony, if the person has, in his or her lifetime, been
23 convicted of a prior felony offense, or if the felony is a violent offense, as defined in
24 s. 301.048 (2) (bm), or is a violation of s. 948.23 (1) (a).

25 SECTION 10. 979.01 (1g) of the statutes is amended to read:

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1 979.01 (1g) A sheriff or police chief shall, immediately upon notification of a
2 ~~death~~ under sub. (1) or s. 948.23 (1) (b) of a death, notify the coroner or the medical
3 examiner, and the coroner or medical examiner of the county where death took place,
4 if the crime, injury, or event occurred in another county, shall immediately report the
5 death to the coroner or medical examiner of that county.

6 **SECTION 11.** 979.01 (2) of the statutes[✓] is amended to read:

7 979.01 (2) ~~Any~~ Unless s. 948.23 (1) (b) applies, any person who violates this
8 section shall be fined not more than \$1,000 or imprisoned not more than 90 days.

9 **SECTION 12.** 979.01 (3) of the statutes is amended to read:

10 979.01 (3) In all cases of death reportable under sub. (1) or s. 948.23 (1) (b)
11 where an autopsy is not performed, the coroner or medical examiner may take for
12 analysis any and all specimens, body fluids and any other material which will assist
13 him or her in determining the cause of death. The specimens, body fluids and other
14 material taken under this subsection shall not be admissible in evidence in any civil
15 action against the deceased or the deceased's estate, as the result of any act of the
16 deceased.

17 **SECTION 13.** 979.01 (3m) of the statutes[✓] is amended to read:

18 979.01 (3m) In all cases of death reportable under sub. (1) or s. 948.23 (1) (b)
19 where an autopsy is not performed, the coroner or medical examiner shall take for
20 analysis any and all specimens, body fluids and any other material that will assist
21 him or her in determining the cause of death if requested to do so by a spouse, parent,
22 child or sibling of the deceased person and not objected to by any of those family
23 members. The specimens, body fluids and other material taken under this
24 subsection shall not be admissible in evidence in any civil action against the deceased
25 or his or her estate, as the result of any act of the deceased.

