



2011 ASSEMBLY BILL 397

November 23, 2011 – Introduced by Representatives KERKMAN, PETRYK, PRIDEMORE, ENDSLEY, KLEEFISCH, SPANBAUER, BERNIER, PETROWSKI, BIES, BROOKS, CLARK, E. COGGS, CRAIG, D. CULLEN, HONADEL, JACQUE, JORGENSEN, KUGLITSCH, LEMAHIEU, MASON, MEYER, MURSAU, NASS, A. OTT, PETERSEN, RIVARD, SINICKI, STEINEKE, STRACHOTA, TRANEL, TURNER, VAN ROY, VOS and VRUWINK, cosponsored by Senators LASSA, CARPENTER, JAUCH, DARLING, HOLPERIN, C. LARSON, OLSEN, SCHULTZ, WANGGAARD and WIRCH. Referred to Committee on Criminal Justice and Corrections.

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

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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.**

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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.

