



2015 SENATE BILL 28

February 11, 2015 - Introduced by Senators RISSER, CARPENTER, BEWLEY, ERPENBACH and MILLER, cosponsored by Representatives POPE, HESSELBEIN, BERCEAU, OHNSTAD, SARGENT, BILLINGS, HINTZ, C. TAYLOR, SUBECK, ZAMARRIPA, SINICKI, JOHNSON, KAHL and BOWEN. Referred to Committee on Health and Human Services.

1 **AN ACT** *to repeal* 979.01 (1r); *to amend* 979.01 (1) (intro.) and 979.01 (1g); and
2 *to create* 16.009 (2) (q), 146.82 (2) (a) 8m., chapter 156 and 979.01 (1j) of the
3 statutes; **relating to:** permitting certain individuals to make requests for
4 medication for the purpose of ending their lives and providing penalties.

Analysis by the Legislative Reference Bureau

This bill permits an individual who is of sound mind, is not incapacitated, is at least 18 years of age, is a resident of Wisconsin, and has a terminal disease to request voluntarily medication from his or her attending physician for the purpose of ending the individual's life in a humane and dignified manner. The bill authorizes the individual's attending physician to issue a prescription for the medication if specified requirements are met. Further, the bill creates a statutory request for medication authorization form and requires that the Department of Health Services (DHS) prepare and provide copies of the form for distribution to certain facilities, associations, and persons.

The bill establishes the following requirements that must be met before an individual's attending physician may issue a prescription in response to the individual's request for medication:

1. First, the requester must orally ask his or her attending physician for the medication. Then, not fewer than 15 days later, the requester must again request the medication, using a valid request form that is substantially in the form specified in the bill, is in writing, is signed in the presence of three qualified witnesses and dated by the requester, is made voluntarily, and is filed in the requester's patient

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health care record. After the written request is filed, the requester must orally ask his or her attending physician a second time for the medication. The attending physician may not prescribe a medication to fulfill a request for medication until at least 48 hours after the second oral request.

2. The requester's attending physician must determine that the requester meets the requirements for making the request; must inform the requester of his or her diagnosis and prognosis, the probable results of taking the prescribed medication, and the alternatives to doing so; must refer the requester to a consulting physician for review; must, if the requester may be suffering from a psychiatric or psychological disorder, refer the requester to a psychiatrist or psychologist for review; must, in the requester's patient health care record, document certain information and certify that requirements have been met regarding the request; must ask the requester to inform his or her next of kin about the request; must inform the requester that the request is revocable and offer him or her the opportunity to revoke it; and must report information about the request to DHS on a form prescribed by DHS.

3. A consulting physician to whom the requester is referred must medically confirm the attending physician's diagnosis and determination that the requester meets the requirements for making the request. Any psychologist or psychiatrist to whom the requester is referred by the attending or consulting physician must determine and certify in writing that the requester is not suffering from a psychiatric or psychological disorder, including depression, that causes impaired judgment.

The bill specifies that, if the requester is a resident of a nursing home or community-based residential facility, at least one of the witnesses to the written request for medication must be a residents' advocate designated by the Board on Aging and Long-Term Care. The bill also specifies procedures by which a requester may revoke a request for medication and provides that making a request for medication does not revoke or otherwise modify a declaration to physicians or health care power of attorney that a requester may have. The bill provides that making a request for medication does not constitute attempted suicide and that taking medication under a fulfilled request does not constitute suicide. The bill establishes penalties for certain actions with regard to the request for medication, but prohibits a health care facility or health care provider from being charged with a crime, being held civilly liable, or being charged with unprofessional conduct for failing to fulfill a request (except that an attending physician who refuses to fulfill a valid request and fails to make a good faith attempt to transfer the requester to another physician who will fulfill the request may be charged with unprofessional conduct), for fulfilling a valid request, or for acting contrary to or failing to act on a revocation of a request unless the health care facility or health care provider has actual knowledge of the revocation.

This bill also provides that, when a patient dies as a result of a request for medication under the bill, a physician or other person having knowledge of the death need not report the death to the sheriff, medical examiner, or coroner of the county or the police chief of the community where the death took place, as is required for certain deaths, including suicides, under current law.

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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.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 16.009 (2) (q) of the statutes is created to read:

2 16.009 (2) (q) Designate residents’ advocates under s. 156.19.

3 **SECTION 2.** 146.82 (2) (a) 8m. of the statutes is created to read:

4 146.82 (2) (a) 8m. To the department under s. 156.09 (8) (g).

5 **SECTION 3.** Chapter 156 of the statutes is created to read:

6

CHAPTER 156

7

COMPASSIONATE CHOICES

8 **156.01 Definitions.** In this chapter:

9 (1) “Attending physician” means a physician who has primary responsibility
10 for the care of the requester and treatment of the requester’s terminal disease.

11 (2) “Comfort care” means palliative care, as defined in s. 50.90 (3), or supportive
12 care, as defined in s. 50.90 (4).

13 (3) “Consulting physician” means a physician who is qualified by specialty or
14 experience to make a professional diagnosis and prognosis with respect to the
15 requester’s disease.

16 (4) “Department” means the department of health services.

17 (5) “Health care facility” has the meaning given in s. 155.01 (6).

18 (6) “Health care provider” has the meaning given in s. 155.01 (7).

19 (7) “Incapacity” has the meaning given in s. 155.01 (8).

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1 (8) “Multipurpose senior center” has the meaning given in s. 155.01 (9).

2 (9) “Patient health care records” has the meaning given in s. 146.81 (4).

3 (10) “Request for medication” means a request for medication under the
4 requirements of this chapter for the purpose of ending the requester’s life in a
5 humane and dignified manner.

6 (11) “Requester” means an individual who makes a request for medication.

7 (12) “Residence” has the meaning given in s. 46.27 (1) (d).

8 (13) “Responsible person” means the attending physician, a health care
9 provider serving the requester, an inpatient health care facility in which the
10 requester is located, or the requester’s spouse, child, parent, brother, sister,
11 grandparent, or grandchild.

12 (14) “Social worker” means a person certified under s. 457.08 as a social worker,
13 advanced practice social worker, independent social worker, or clinical social worker.

14 (15) “Terminal disease” means an incurable and irreversible disease that has
15 been diagnosed by an individual’s attending physician and medically confirmed and
16 that will, within reasonable medical judgment, cause death within 6 months.

17 **156.03 Authorization to make request.** An individual who is of sound mind,
18 has attained age 18, has residence in this state, does not have incapacity, and has a
19 terminal disease may voluntarily make a request for medication for the purpose of
20 ending his or her life in a humane and dignified manner. An individual for whom an
21 adjudication of incompetence and appointment of a guardian of the person is in effect
22 under ch. 54 is presumed not to be of sound mind for purposes of this section.

23 **156.05 Requester rights, responsibilities, and limitations.** (1) No
24 requester may receive a prescription that fulfills a request for medication unless he
25 or she has made an informed decision. An informed decision under this chapter

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1 means a decision by an individual to request and obtain a prescription for medication
2 so as to end his or her life in a humane and dignified manner that is based on an
3 appreciation of the relevant facts and is made after having been fully informed by
4 the attending physician of all of the following:

5 (a) The individual's medical diagnosis.

6 (b) The individual's prognosis.

7 (c) The potential risks associated with taking the medication to be prescribed
8 under this chapter.

9 (d) The probable result of taking the medication to be prescribed under this
10 chapter.

11 (e) The feasible alternatives, including comfort care, hospice care, and pain
12 control.

13 **(2)** In order to receive a prescription for medication to end his or her life, a
14 requester shall do all of the following:

15 (a) Make an oral request for medication for the purpose of ending his or her life
16 to his or her attending physician.

17 (b) No fewer than 15 days after making the oral request for medication under
18 par. (a), complete a valid written request for medication under s. 156.07. The written
19 request under this paragraph may not be completed until a consulting physician
20 completes the examination and report required under s. 156.11.

21 (c) After completing a written request for medication under par. (b), make a 2nd
22 oral request for medication for the purpose of ending his or her life to his or her
23 attending physician.

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1 **(3)** No requester may be required to notify his or her next of kin regarding his
2 or her request for medication, and no request for medication may be denied because
3 the requester has failed to notify his or her next of kin.

4 **156.07 Valid written request for medication; requirements. (1)** A
5 written request for medication under s. 156.05 (2) (b) is valid only if it is all of the
6 following:

7 (a) In writing.

8 (b) Dated and signed by the requester or, at the express direction and in the
9 presence of the requester, by an individual who has attained age 18.

10 (c) Signed in the presence of 3 witnesses who meet the requirements of sub. (2).

11 (d) Made voluntarily.

12 (e) Substantially in the form specified in s. 156.15.

13 (f) Filed in the requester's patient health care record in the custody of the
14 requester's attending physician and, if the requester is an inpatient of a health care
15 facility, in the requester's patient health care record in the custody of the health care
16 facility.

17 **(2)** (a) A witness to the making of a valid written request for medication under
18 this section shall be an individual who has attained age 18. No witness to the making
19 of a valid written request for medication may, at the time of the witnessing, be any
20 of the following:

21 1. Related to the requester by blood, marriage, or adoption.

22 2. An individual who has knowledge that he or she is entitled to or has a claim
23 on any portion of the requester's estate.

24 3. Directly financially responsible for the requester's health care.

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1 4. An individual who is a health care provider who is serving the requester at
2 the time of the witnessing; an employee, other than a chaplain or a social worker, of
3 the health care provider; or an employee, other than a chaplain or a social worker,
4 of a health care facility in which the requester is a patient.

5 (b) If a requester is a resident of a nursing home or community-based
6 residential facility, at least one of the witnesses to the request shall be a residents'
7 advocate designated under s. 156.19.

8 **156.09 Attending physician; responsibilities, and limitations.** The
9 attending physician shall do all of the following:

10 (1) Determine whether the requester has a terminal disease, does not have
11 incapacity, and is making a request under this chapter voluntarily.

12 (2) Inform the requester of all of the following:

13 (a) The requester's medical diagnosis.

14 (b) The requester's prognosis.

15 (c) The potential risks associated with taking the medication to be prescribed
16 under this chapter.

17 (d) The probable result of taking the medication to be prescribed under this
18 chapter.

19 (e) The feasible alternatives to taking the medication to be prescribed under
20 this chapter, including comfort care, hospice care, and pain control.

21 (3) Refer the requester to a consulting physician under the requirements of s.
22 156.11.

23 (4) Refer the requester for review and counseling if the referral is determined
24 to be appropriate under s. 156.13.

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1 **(5)** Ask the requester to notify his or her next of kin with respect to the request
2 for medication.

3 **(6)** Inform the requester that he or she may revoke the request for medication
4 at any time; explain the methods of revocation that are specified under s. 156.17 (1);
5 and offer the requester an opportunity to revoke the request at the time, if any, that
6 the requester orally asks for medication under s. 156.05 (2) (c).

7 **(7)** Before writing a prescription that fulfills a request for medication, verify
8 that all of the following have occurred:

9 (a) The requester has fulfilled the requirements of s. 156.05 (2).

10 (b) No fewer than 48 hours have elapsed since the requester made a 2nd oral
11 request for medication under s. 156.05 (2) (c).

12 (c) The requester has made an informed decision under s. 156.05.

13 **(8)** Document or file all of the following in the requester's patient health care
14 record:

15 (a) All occasions that the requester orally asks for medication under s. 156.05
16 (2) (a) or (c) as well as all written requests for medication under s. 156.05 (2) (b) that
17 are made by the requester.

18 (b) The attending physician's diagnosis of and prognosis for the requester and
19 determination as to whether the requester is incapacitated, is acting voluntarily, and
20 has made an informed decision under s. 156.05 (1).

21 (c) The consulting physician's diagnosis of and prognosis for the requester and
22 determination as to whether the requester is incapacitated, is acting voluntarily, and
23 has made an informed decision under s. 156.05 (1).

24 (d) A certification of the outcome and determinations made during any review
25 and counseling for which the requester was referred under s. 156.13.

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1 (e) A certification as to whether the attending physician offered the requester
2 an opportunity to revoke the request for medication, as required under sub. (6).

3 (f) Evidence of a revocation, if made, as specified in s. 156.17 (2).

4 (g) A certification as to whether the requirements of this chapter are met and
5 indicating the steps taken to fulfill the request for medication, including a notation
6 of any medication that is prescribed. The attending physician shall report the
7 information under this paragraph to the department on a form prescribed by the
8 department. Information reported to the department under this paragraph that
9 could identify the requester, the attending physician, the consulting physician, or the
10 psychiatrist or psychologist to whom referral was made under s. 156.13, if any, is
11 confidential and may not be disclosed by the department except under an
12 investigation of an alleged violation of this chapter. The report of information under
13 this paragraph is not a violation of any person's responsibility for maintaining the
14 confidentiality of patient health care records under s. 146.82.

15 (9) If the attending physician refuses to fulfill the requester's request for
16 medication that meets the requirements of this chapter, the attending physician
17 shall make a good faith attempt to transfer the requester's care and treatment to
18 another physician who will act as the attending physician under this chapter and will
19 fulfill the requester's request for medication. If a transfer is made, the attending
20 physician to whom the requester's care and treatment is transferred shall comply
21 with the requirements of this section.

22 **156.11 Consulting physician confirmation.** (1) Before an attending
23 physician may fulfill a request for medication under this chapter, a consulting
24 physician shall examine the requester and his or her relevant patient health care
25 records and shall medically confirm the attending physician's determinations that

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1 the requester suffers from a terminal disease, does not have incapacity, is making a
2 request for medication voluntarily, and has made an informed decision. The
3 consulting physician shall complete a written report regarding his or her findings
4 and provide it to the attending physician for filing in the requester's patient health
5 care record in compliance with the certification requirement of 156.09 (8) (g).

6 **156.13 Referral for review and counseling.** If in the opinion of the
7 attending physician or the consulting physician a requester may be suffering from
8 a psychiatric or psychological disorder, including depression, that causes impaired
9 judgment, the attending physician or consulting physician shall refer the requester
10 for review and counseling to a physician specializing in psychiatry or a licensed
11 psychologist, as defined in s. 455.01 (4). If a referral is made by the attending or
12 consulting physician, no request for medication may be fulfilled under this chapter
13 unless the physician specializing in psychiatry, or the psychologist, to whom referral
14 was made, determines and certifies in writing that the requester is not suffering from
15 a psychiatric or psychological disorder, including depression, that causes impaired
16 judgment. The attending physician shall file the certification in the requester's
17 patient health care record under s. 156.09 (8) (d).

18 **156.15 Written request for medication; form.** The department shall
19 prepare and provide copies of a request for medication authorization form and
20 accompanying information for distribution in quantities to health care providers,
21 hospitals, nursing homes, multipurpose senior centers, county clerks, and local bar
22 associations and individually to private persons. The department shall include, in
23 information accompanying the copy of the request for medication authorization
24 form, at least the statutory definitions of terms used in the request for medication
25 authorization form, statutory restrictions on who may be witnesses to a valid request

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1 for medication under s. 156.07, and a statement explaining that valid witnesses
2 acting in good faith are statutorily immune from civil or criminal liability. The
3 request for medication authorization form distributed by the department shall be in
4 the following form:

REQUEST FOR MEDICATION**AUTHORIZATION TO END MY LIFE IN A****HUMANE AND DIGNIFIED MANNER**

5
6
7
8 I, (insert name), am an adult of sound mind, do not have incapacity, and am
9 a resident of Wisconsin.

10 I am suffering from (insert description of terminal disease), which my
11 attending physician has determined is a terminal disease and which has been
12 medically confirmed by a consulting physician.

13 I have been fully informed of my diagnosis, prognosis, the nature of medication
14 to be prescribed and potential associated risks, the expected result, and the feasible
15 alternatives, including comfort care, hospice care, and pain control.

16 I request that my attending physician prescribe medication that will end my life
17 in a humane and dignified manner.

18 INITIAL ONE OF THE FOLLOWING 3 STATEMENTS:

19 I have informed my family members of my decision and taken their opinions
20 into consideration.

21 I have decided not to inform my family of my decision.

22 I have no family to inform of my decision.

23 I understand that I have the right to revoke this request at any time.

24 I understand the full import of this request and I expect to die when I take the
25 medication to be prescribed.

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1 I make this request voluntarily and without reservation, and I accept full moral
2 responsibility for my actions.

3 Signed:

4 Dated:

STATEMENT AND SIGNATURES**OF WITNESSES**

7 I know the requester personally or I have received proof of his or her identity
8 and I believe him or her to be of sound mind and at least 18 years of age. I believe
9 that the requester makes this request voluntarily. I am at least 18 years of age, am
10 not related to the requester by blood, marriage, or adoption, and am not directly
11 financially responsible for the requester's health care. I am not a health care
12 provider who is serving the requester at this time; an employee of the health care
13 provider, other than a chaplain or a social worker; or an employee, other than a
14 chaplain or a social worker, of a health care facility in which the requester is a
15 patient. To the best of my knowledge, I am not entitled to and do not have a claim
16 on the requester's estate.

17 Witness No. 1:

18 (print) Name:

19 Address:

20 Signature:

21 Witness No. 2:

22 (print) Name:

23 Address:

24 Signature:

25 Witness No. 3:

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1 (print) Name:

2 Address:

3 Signature:

4 If the requester is a resident of a nursing home or community-based residential
5 facility, at least one of the above witnesses must be a residents' advocate designated
6 by the board on aging and long-term care. A residents' advocate who is a witness
7 should print "residents' advocate" after the printing of his or her name above.

8 **156.17 Revocation of request for medication.** (1) A requester may revoke
9 his or her request for medication at any time by doing any of the following:

10 (a) Canceling, defacing, obliterating, burning, tearing, or otherwise destroying
11 the written request for medication or directing another in the presence of the
12 requester to destroy, in the same manner, the request for medication.

13 (b) Executing a statement, in writing, that is signed and dated by the requester,
14 expressing the requester's intent to revoke the request for medication.

15 (c) Orally expressing the requester's intent to revoke the request for
16 medication, in the presence of 2 witnesses or the attending physician.

17 (2) A health care provider shall, upon notification of revocation of the
18 requester's request for medication, record in the requester's medical record the time,
19 date, and place of the revocation and the time, date, and place, if different, of the
20 notification to the health care provider of the revocation.

21 **156.19 Designation of residents' advocates.** The board on aging and
22 long-term care shall designate staff of the long-term care ombudsman program as
23 residents' advocates. A person so designated shall serve as a witness to a request for
24 medication of a requester who is a resident of a nursing home or community-based
25 residential facility, as required under s. 156.07 (2) (b), and shall speak on behalf of

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1 the requester to ensure that his or her needs or wants are communicated to and
2 addressed by his or her attending physician.

3 **156.21 Duties and immunities. (1)** No health care facility or health care
4 provider may be charged with a crime, held civilly liable, or charged with
5 unprofessional conduct for any of the following:

6 (a) Failing to fulfill a request for medication, except that failure of an attending
7 physician to fulfill a request for medication constitutes unprofessional conduct if the
8 attending physician refuses or fails to make a good faith attempt to transfer the
9 requester's care and treatment to another physician who will act as attending
10 physician under this chapter and fulfill the request for medication.

11 (b) In the absence of actual knowledge of a revocation, fulfilling a request for
12 medication that is in compliance with this chapter.

13 (c) Acting contrary to or failing to act on a revocation of a request for medication,
14 unless the health care facility or health care provider has actual knowledge of the
15 revocation.

16 **(2)** In the absence of actual notice to the contrary, a health care facility or a
17 health care provider, other than a physician acting as the requester's attending
18 physician under this chapter, may presume that a requester was authorized to make
19 his or her request for medication under the requirements of this chapter and that the
20 request for medication is valid.

21 **(3)** (a) No person who acts in good faith as a witness to a request for medication
22 under this chapter may be held civilly or criminally liable for a death that results
23 from taking medication under a fulfilled request for medication under this chapter.

24 (b) Paragraph (a) does not apply to a person who acts as a witness in violation
25 of s. 156.07 (2) (a).

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1 **156.23 General provisions.** (1) (a) The making of a request for medication
2 under this chapter does not, for any purpose, constitute attempted suicide. Taking
3 medication under a fulfilled request for medication under this chapter does not, for
4 any purpose, constitute suicide.

5 (b) Paragraph (a) does not prohibit an insurer from making a determination
6 that a requester has attempted suicide or committed suicide if the requester has so
7 acted, apart from a request for medication.

8 (2) The making of a request for medication under this chapter does not revoke
9 or otherwise modify a power of attorney for health care or declaration to physicians
10 that the requester may have executed.

11 (3) No individual may be required to make a request for medication as a
12 condition for receipt of health care or admission to a health care facility. The making
13 of a request for medication is not a bar to the receipt of health care or the admission
14 to a health care facility.

15 (4) A written request for medication that has not been revoked and that is in
16 its original form or is a legible photocopy or electronic facsimile copy is presumed to
17 be valid.

18 (5) Nothing in this chapter may be construed to condone, authorize, approve,
19 or permit any affirmative or deliberate act to end life other than through taking
20 medication that is prescribed under a request for medication as provided in this
21 chapter.

22 **156.25 Record review.** The department shall annually examine a sampling
23 of patient health care records of requesters for whom medication was prescribed in
24 fulfillment of a request for medication and about whom the department has received
25 information under s. 156.09 (8) (g).

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1 **156.27 Penalties. (1)** Any person who willfully conceals, cancels, defaces,
2 obliterates, or damages the request for medication of another without the requester's
3 consent may be fined not more than \$500 or imprisoned for not more than 30 days,
4 or both.

5 **(2)** Any person who, with the intent to cause a requester to take medication that
6 is prescribed under a request for medication contrary to the wishes of the requester,
7 illegally falsifies or forges the request for medication of another or conceals a
8 revocation under s. 156.17 shall be fined not more than \$10,000 or imprisoned for not
9 more than 10 years, or both.

10 **(3)** Any responsible person who, with the intent to cause a requester to take
11 medication that is prescribed under a request for medication contrary to the wishes
12 of the requester, conceals personal knowledge of a revocation under s. 156.17 shall
13 be fined not more than \$10,000 or, except for a health care facility, imprisoned for not
14 more than 10 years, or both.

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

16 979.01 **(1)** (intro.) ~~All~~ Except as provided in sub. (1j), all physicians, authorities
17 of hospitals, sanatoriums, public and private institutions, convalescent homes,
18 authorities of any institution of a like nature, and other persons having knowledge
19 of the death of any person who has died under any of the following circumstances,
20 shall immediately report the death to the sheriff, ~~police chief, or~~ and medical
21 examiner or coroner of the county and to the police chief of any community where the
22 death took place:

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

24 979.01 **(1g)** A sheriff or police chief shall, immediately upon notification under
25 sub. (1) or s. 948.23 (1) (b) of a death, ~~notify the coroner or the medical examiner, and~~

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

4 **SECTION 6.** 979.01 (1j) of the statutes is created to read:

5 979.01 (1j) Subsection (1) does not apply to a death that results from taking
6 medication under a fulfilled request for medication that meets the requirements of
7 ch. 156.

8 **SECTION 7.** 979.01 (1r) of the statutes is repealed.

9 (END)