

State of Wisconsin



2011 Assembly Bill 397

Date of enactment:
Date of publication*:

2011 WISCONSIN ACT

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

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.

SECTION 4. 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 pre-

vent a determination of whether it was born dead or alive ~~is guilty of a Class I felony.~~

SECTION 5. 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 6. 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 immediate reporting is impossible, if the actor is the parent, stepparent, guardian, or legal custodian of the child and if any of the following applies:

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

* Section 991.11, WISCONSIN STATUTES 2009-10: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

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

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

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

948.23 (3) (ag) In this subsection, “missing” means absent without a reasonable explanation if the absence would raise concern in a reasonable person for the child’s well-being.

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

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

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

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

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

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

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

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

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

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

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

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

979.01 (1g) A sheriff or police chief shall, immediately upon notification of a death under sub. (1) or s. 948.23 (1) (b) of a death, notify the coroner or the medical examiner, and the coroner or medical examiner of the county where death took place, if the crime, injury, or

event occurred in another county, shall immediately report the death to the coroner or medical examiner of that county.

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

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

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

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

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

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

SECTION 14. 979.01 (4) of the statutes is amended to read:

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

SECTION 15. Initial applicability.

(1) The treatment of section 948.23 (1) (intro.) and (b) and (3) of the statutes first applies to discoveries made on the effective date of this subsection.