



# State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

## Appendix A ... segment II

### LRB BILL HISTORY RESEARCH APPENDIX

The drafting file for

2011 LRB-2457 (For: Rep. Kerkman)

has been transferred to the drafting file for

**2013 LRB-2250** (For: Rep. Kerkman)



**RESEARCH APPENDIX -  
PLEASE KEEP WITH THE DRAFTING FILE**

Date Transfer Requested: 05/06/2013 (Per: TJD)

The attached draft was incorporated into the new draft listed above. For research purposes the attached materials were added, as a appendix, to the new drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.



State of Wisconsin  
2011 - 2012 LEGISLATURE



LRB-2457/P1

PJH...

7/11 (cmh)

[Handwritten signature]

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

8-1-11  
d-note

Gen

AN ACT ...; relating to: causing harm to a child by cosleeping while intoxicated  
and creating a penalty.

***Analysis by the Legislative Reference Bureau***

Under this bill, no person may injure or kill a child under the age of three by cosleeping, while the person is intoxicated, with the child. Under the bill, if the child suffers bodily harm as a consequence, the person is guilty of a Class H felony, if the child suffers great bodily harm as a consequence, the person is guilty of a Class F felony, and if the child dies as a consequence, 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.

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:***

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

**948.215 Intoxicated cosleeping.** (1) DEFINITIONS. In this section:

(a) "Cosleep" means to be asleep or unconscious while being on the same bed or on another sleeping surface with an infant.

(b) "Infant" means a child from birth until 36 months of age.

X (c) "Intoxicated" means having an alcohol concentration of 0.08 or more or having substantially impaired physical or mental functioning as a result of the use of alcohol, a controlled substance, or <sup>a</sup> controlled substance analog or other drug, or any combination thereof.

(2) PROHIBITION. No person may cause harm to an infant by cosleeping, while he or she is intoxicated, with the infant.

(3) PENALTIES. A person who violates sub. (2) is guilty of one of the following:

(a) A Class H felony if bodily harm to the infant is a consequence.

(b) A Class F felony if great bodily harm to the infant is a consequence.

(c) A Class D felony if death to the infant is a consequence.

(END)

O-Note

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-2457/P1dn

PJH: *[Signature]*

*Date*

Tami,

Please review this draft to ensure that it is consistent with your intent. Please note that the draft defines an "infant" as any child up to the age of 3; let me know if you would like a different definition. If the other definitions do not reflect your intent, please let me know. I am not entirely sure if the definition of "cosleeping" would include, say, semi-sitting on a sofa or recliner with a child in your arms or on your lap. If you can think of a definition that reflects your intent more precisely, please let me know.

The draft does not prohibit cosleeping while intoxicated *per se*. Rather, the draft prohibits causing harm by cosleeping while intoxicated; the graduated penalty scheme reflects the level of harm caused, with the highest penalty reserved for someone who causes the death of an infant.

Please note that one of the elements for this crime is that the injury or death was a consequence of the act of cosleeping while intoxicated. This is again reflective of the fact that the draft does not criminalize cosleeping while intoxicated *per se*. If this does not reflect your intent, please let me know.

Under current law, committing an act of child neglect can have consequences beyond criminal liability for the act. The other consequences range from the involuntary termination of parental rights to another child (see s. 48.415 (9m) (b) 3.) to denial of a license to operate a school bus (see s. 343.12 (7) (c) 25.) or be a licensed child care provider (see s. 48.685 (1) (c) 2.). This draft does not extend those types of consequences to the act harming a child by cosleeping while intoxicated; please let me know if you want me to do so.

When the draft meets your approval, I can have it put into introducible form. In the meantime, please let me know if you have any questions or would like to discuss this draft further.

Peggy Hurley  
Legislative Attorney  
Phone: (608) 266-8906  
E-mail: [peggy.hurley@legis.wisconsin.gov](mailto:peggy.hurley@legis.wisconsin.gov)

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-2457/P1dn  
PJH:kjf:rs

August 16, 2011

Tami,

Please review this draft to ensure that it is consistent with your intent. Please note that the draft defines an "infant" as any child up to the age of 3; let me know if you would like a different definition. If the other definitions do not reflect your intent, please let me know. I am not entirely sure if the definition of "cosleeping" would include, say, semi-sitting on a sofa or recliner with a child in your arms or on your lap. If you can think of a definition that reflects your intent more precisely, please let me know.

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**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-2457/P1dn

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The draft does not prohibit cosleeping while intoxicated *per se*. Rather, the draft prohibits causing harm by cosleeping while intoxicated; the graduated penalty scheme reflects the level of harm caused, with the highest penalty reserved for someone who causes the death of an infant.

Please note that one of the elements for this crime is that the injury or death was a consequence of the act of cosleeping while intoxicated. This is again reflective of the fact that the draft does not criminalize cosleeping while intoxicated *per se*. If this does not reflect your intent, please let me know.

Under current law, committing an act of child neglect can have consequences beyond criminal liability for the act. The other consequences range from the involuntary termination of parental rights to another child (see s. 48.415 (9m) (b) 3.) to denial of a license to operate a school bus (see s. 343.12 (7) (c) 25.) or be a licensed child care provider (see s. 48.685 (1) (c) 2.). This draft does not extend those types of consequences to the act harming a child by cosleeping while intoxicated; please let me know if you want me to do so.

When the draft meets your approval, I can have it put into introducible form. In the meantime, please let me know if you have any questions or would like to discuss this draft further.

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Phone: (608) 266-8906  
E-mail: [peggy.hurley@legis.wisconsin.gov](mailto:peggy.hurley@legis.wisconsin.gov)



**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

1     **AN ACT** *to create* 948.215 of the statutes; **relating to:** causing harm to a child  
2             by cosleeping while intoxicated and creating a penalty.

---

***Analysis by the Legislative Reference Bureau***

Under this bill, no person may injure or kill a child under the age of three by cosleeping, while the person is intoxicated, with the child. Under the bill, if the child suffers bodily harm as a consequence, the person is guilty of a Class H felony, if the child suffers great bodily harm as a consequence, the person is guilty of a Class F felony, and if the child dies as a consequence, 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.

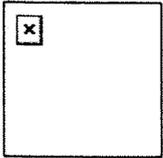
For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

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

3             **SECTION 1.** 948.215 of the statutes is created to read:

4             **948.215 Intoxicated cosleeping.** (1) **DEFINITIONS.** In this section:



# COUNTY OF KENOSHA DISTRICT ATTORNEY

**Robert D. Zapf**  
District Attorney

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Erica M. Reinke  
Tricia J. Riley  
Emily K. Trigg

**Sandra J. Bertelle**  
Victim Witness Coordinator

**Kathy L. Kemen**  
Office Manager

August 25, 2011

Honorable Samantha Kerkman  
Attn: Tami Rongstad

VIA Email: [Tami.Rongstad@legis.wi.gov](mailto:Tami.Rongstad@legis.wi.gov)

RE: Draft of LRB 11-2457/P1 – Co-sleeping with Child While Intoxicated “Joey’s Law”

Dear Representative Kerkman:

I have reviewed the draft of “Joey’s Law” and the letter forwarded to me by Legislative Attorney Peggy Hurley dated August 16, 2011 commenting on the proposal and make the following comments.

1. Regarding the definition of “infant” as any child under the age of 3, it was my intent to cap the age of the child to include the most vulnerable, dependent and helpless of children. I have no objection to expanding the definition to include older children but believe that by capping the age of the child at 3, the legislation would have a better chance of getting support and passing.
2. Regarding the definition of “co-sleeping,” I do recommend that the definition be given the broadest interpretation possible and include any and all areas, including but not limited to those already defined as well as sofas, recliners, mattresses, front or backseats of a vehicle or any other surfaces etc.
3. Please know that it was not my intent to make mere co-sleeping while intoxicated a crime because given the current public debate in the marketplace on the benefits versus the risks of co-sleeping; such legislation would probably not pass. As an aside, it would be almost impossible to detect, enforce and successfully prosecute. I have found no experts that recommend that a parent, guardian or caregiver sleep with a

child while intoxicated. On the other hand, it was my belief that co-sleeping while intoxicated where harm results would attract greater support and have a greater likelihood of passing.

Finally, regarding the impact or other consequences for violating Joey's Law, I see no reason why a law of co-sleeping while intoxicated resulting in harm to a child should be treated any differently than the consequences attaching to neglect violations. In that regard, I recommend that such consequences be considered and cross-referenced in the legislation.

I trust the foregoing addresses the concerns previously expressed. Again, thank you for permitting me the opportunity to share my thoughts with you and thank you for considering to sponsor "Joey's Law."

If you have any further questions regarding this matter, please feel free to contact the undersigned at your convenience.

Sincerely,

Robert D. Zapf  
District Attorney  
State Bar No. 1014578

RDZ:tab

1 (a) "Cosleep" means to be asleep or unconscious while being on the same bed  
2 or on another sleeping surface with an infant.

3 (b) "Infant" means a child from birth until 36 months of age.

4 (c) "Intoxicated" means having an alcohol concentration of 0.08 or more or  
5 having substantially impaired physical or mental functioning as a result of the use  
6 of alcohol, a controlled substance, or a controlled substance analog or other drug, or  
7 any combination thereof.

8 (2) PROHIBITION. No person may cause harm to an infant by cosleeping, while  
9 he or she is intoxicated, with the infant.

10 (3) PENALTIES. A person who violates sub. (2) is guilty of one of the following:

11 (a) A Class H felony if bodily harm to the infant is a consequence.

12 (b) A Class F felony if great bodily harm to the infant is a consequence.

13 (c) A Class D felony if death to the infant is a consequence.

14 (END)

*add in X-refs that  
apply to other  
acts of child  
neglect (ex: 48.415  
(9m)(b)3,  
48.685(1)(c)2  
etc.)*

## Dodge, Tamara

---

**From:** Hurley, Peggy  
**Sent:** Wednesday, July 25, 2012 2:42 PM  
**To:** Dodge, Tamara; Knepp, Fern  
**Subject:** FW: Co-sleeping bill draft

Tami and Fern,

Please take a look at this request. I can make the easy change to my portion; the "education component" portion is brand new to this request. Would one of you like to take a crack at it

Peggy

---

**From:** Morrell, Alison  
**Sent:** Wednesday, July 25, 2012 2:34 PM  
**To:** Hurley, Peggy  
**Subject:** Co-sleeping bill draft

Peggy,

Rep. Kerkman has a few updates to her bill draft on intoxicated co-sleeping. It is LRB 2457.

Firstly, several weeks ago we discussed changing the definition of "infant" to a child up to age 12 months. Please make that change in the bill text.

Secondly, Rep. Kerkman would like the bill to include an education component similar to that in statutes under shaken baby syndrome (Wis Stats 253.15). She'd like the educational requirements to be the same, but without the requirement for students in grades 5-8.

If you could prepare a new draft of the bill for us with these changes, that would be wonderful. Thank you in advance!

***Alison Morrell***

Office of State Representative Samantha Kerkman  
66th Assembly District of Wisconsin  
608-266-2530

2011-2012 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-2457/P2insTD  
TJD:.....

LPS -  
please  
spellcheck

1 INSERT TJD 1

The bill requires the Child Abuse and Neglect Prevention Board (board) to purchase, prepare, or arrange with a nonprofit organization to prepare printed and audiovisual materials relating to cosleeping while intoxicated. The materials must include information regarding the risks of cosleeping while intoxicated and a discussion of ways to reduce the risks of cosleeping while intoxicated. The board must make the materials available to certain entities and may satisfy that requirement by making the materials available, at no charge, on its Internet site. Under the bill, the board or nonprofit organization is immune from any damages resulting from any good faith act or omission in preparing or distributing the materials.

\* Before an infant who is born in or on route to a hospital or a maternity home is discharged, the bill requires an attending physician, attending nurse-midwife, or other trained, designated staff member must provide to the parents of the infant the board's printed materials and inform the parents about and make available to the parents to view the board's audiovisual materials. For an infant born elsewhere, the attending physician, attending nurse-midwife, or other trained, designated staff member of a hospital or maternity home, must provide to the parents the board's printed materials and inform the parents of the availability of the board's audiovisual materials within seven days of the infant's birth. Regardless where the infant was born, at the same time the materials are provided to the parents the person who provided the materials must provide the parent with a form, prepared by the board, that includes a statement that the parent has been advised of the risks of cosleeping with an infant while that parent is intoxicated and a statement that the parent will share that information with all persons who provide care for the infant. Under the bill, a hospital, maternity home, physician, nurse-midwife, other staff member of the hospital or maternity home, or birth attendant is immune from liability for any damages resulting from any good faith act or omission in providing the board's materials and form.

(department) The bill also requires certain individuals and entities to provide the board's materials to specified individuals. Before an obtaining a license to operate a child care center for the care and supervision of children under 5 years of age or entering into a contract to provide a child care program for children under 5 years of age, the bill requires the individual seeking the license to obtain training, which is provided or approved by the Department of Health Services, relating to cosleeping while intoxicated. Similarly, before an individual may be certified as a child care provider of children under 5 years of age and before an employee or volunteer of a licensed child care center, a certified child care provider, or a child care program, that individual must receive training relating to cosleeping while intoxicated that is approved or provided by the department or certifying county department or agency. The bill requires that each school board shall provide or arrange with a nonprofit organization or health care provider to provide age-appropriate instruction relating to cosleeping while intoxicated for pupils on one of grades ten to 12. A county

may provide care and supervision for children under five years of age

five

five

department

in 10

department or Indian<sup>✓</sup> tribe that provides home visitation services and providers of prenatal, postpartum, and young child care coordination services must provide to recipients of those services a copy of the board's printed materials and and give an oral explanation of those materials. Under the bill, a department, a county department, a nonprofit organization, any other person that provides training to a potential child care provider, a school board, a health care provider, an<sup>✓</sup> Indian tribe, or a provider of prenatal, postpartum, and young child care coordination is immune from liability for any damages resulting from any good faith act or omission in connection with providing training on cosleeping while intoxicated or providing materials relating to cosleeping while intoxicated. \*

(END INSERT TJD 1)

1 INSERT TJD 2

2 SECTION 1. 253.155 of the statutes is created to read:

3 **253.155 Intoxicated cosleeping.** (1) DEFINITIONS. <sup>✓</sup>In this section:

4 (a) "Board" means the child abuse and neglect prevention board.

\*\*\*\*NOTE: Do you think this is the appropriate entity to create informational materials on cosleeping while intoxicated? Should DHS do it instead?

5 (b) "Controlled substance" has the meaning given in s. 961.01 (4) <sup>✓</sup>⊙

6 (c) "Controlled substance analog" has the meaning given in s. <sup>✓</sup>961.01 (4m).

7 (d) "Cosleeping" means being asleep or unconscious while being on the same  
8 bed or on another sleeping <sup>surface</sup> surface with an infant.

9 (e) "County department" means a county department of human services or  
10 social services under s. <sup>✓</sup>46.215, <sup>✓</sup>46.22, or <sup>✓</sup>46.23.

11 (f) "Health care provider" <sup>✓</sup>means any person who is licensed, registered,  
12 permitted, or certified by the department of health services or the department of  
13 safety and professional services <sup>✓</sup>to provide health care services in this state.

14 (g) "Infant" means a child from birth until 12 months of age. <sup>✓</sup>

15 (h) "Intoxicated" means having an alcohol concentration of 0.08 <sup>✓</sup>or more or  
16 having substantially impaired physical or mental functioning as a result of the use



1 of alcohol, a controlled substance, or a controlled substance analog or other drug, or  
2 any combination of those substances. ✓

3 (i) "Nonprofit organization" means an organization described in section 501 (c)  
4 (3) of the Internal Revenue Code that is dedicated to the prevention of injury to or  
5 death of infants and the support of families affected by injury to or death of an infant.

6 (2) INFORMATIONAL MATERIALS. The board shall purchase or prepare or arrange  
7 with a nonprofit organization to prepare printed and audiovisual materials relating  
8 to ✓cosleeping while intoxicated. The materials shall include information regarding  
9 the risks of cosleeping ~~with~~ <sup>e While</sup> intoxicated and a discussion of ways to reduce the risks  
10 of cosleeping while intoxicated. The materials shall be prepared in ✓English, Spanish,  
11 and other languages spoken by a significant number of state residents, as  
12 determined by the board. ✓ The board shall make those printed and audiovisual  
13 materials available to all hospitals, maternity homes, and ✓nurse-midwives licensed  
14 under s. 441.15 ✓ that are required to provide or make available materials to parents  
15 under sub. (3) (a) 1., ✓ to the department ✓ and to all county departments and nonprofit  
16 organizations that are required to provide the materials to child care providers under  
17 sub. (4) (d), ✓ and to all school boards and nonprofit organizations that are permitted  
18 to provide the materials to pupils in one of grades ✓10 to 12 under sub. (5). ✓ The board  
19 shall also make those printed materials available to all county departments and  
20 Indian tribes that are providing home visitation services under s. 48.983 (4) (b) 1. and  
21 to all providers of prenatal, postpartum, and young child care coordination services  
22 under s. 49.45 (44). ✓ The board may satisfy the requirement under this subsection by ✓  
23 making the materials available at no charge on the board's Internet site. ✓

24 (3) INFORMATION TO PARENTS. (a) 1. Before an infant who is born at or on route  
25 to a hospital or maternity home is discharged from the ✓hospital or maternity home,



1 the attending physician, the attending nurse-midwife, or another trained,  
2 designated staff member of the hospital or maternity home shall provide to the  
3 parents of the infant, without cost to those parents, a copy of the printed materials  
4 purchased or prepared under sub. (2), shall inform those parents of the availability  
5 of the audiovisual materials purchased or prepared under sub. (2), and shall make  
6 those audiovisual materials available for those parents to view.

7 2. Within 7 days after the birth of an infant who is born elsewhere than at or  
8 on route to a hospital or maternity home, the attending physician, the attending  
9 nurse-midwife, or a trained, designated birth attendant who attended the birth of  
10 the child shall provide to the parents of the infant, without cost to those parents, a  
11 copy of the printed materials purchased or prepared under sub. (2) and shall inform  
12 those parents of the availability of the audiovisual materials purchased or prepared  
13 under sub. (2).

14 (b) At the same time that the printed materials and explanation are provided  
15 under par. (a) 1. or 2., the person who provides the printed materials and explanation  
16 shall also provide the parent with a form prepared by the board in English, Spanish,  
17 and other languages spoken by a significant number of state residents, as  
18 determined by the board, that includes all of the following:

19 1. A statement that the parent has been advised as to the risks of cosleeping  
20 with an infant while that parent is intoxicated.

21 2. A statement that the parent will share the information specified in subd. 1.  
22 with all persons who provide care for the infant.

23 (c) In preparing the form under par. (b), the board may not include in the form  
24 a signature line for the parent to sign or require that the parent sign the form.



1 (d) The person who provides the printed materials and explanation under par.  
2 (a) 1. or 2. and the form under par. (b) shall include in the records of the hospital,  
3 maternity home, or nurse-midwife relating to the infant a statement that the  
4 printed materials, explanation, and form have been provided as required under pars.  
5 (a) 1. or 2. and (b) and that the audiovisual materials have been made available as  
6 required under par. (a) 1. or that the parents have been informed of their availability  
7 as required under par. (a) 2., whichever is applicable.

8 (4) TRAINING FOR CHILD CARE PROVIDERS: (a) Before an individual may obtain  
9 a license to operate a child care center under s. 48.65 for the care and supervision of  
10 children under 5 years of age or enter into a contract to provide a child care program  
11 under s. 120.13 (14) for the care and supervision of children under 5 years of age, the  
12 individual shall receive training relating to cosleeping while intoxicated that is  
13 approved or provided by the department or that is provided by a nonprofit  
14 organization arranged by the department to provide that training.

15 (b) Before an individual may be certified under s. 48.651 as a child care provider  
16 of children under 5 years of age, the individual shall receive training relating to  
17 cosleeping while intoxicated that is approved or provided by the certifying  
18 department in a county having a population of 500,000 or more, county department,  
19 or agency contracted with under s. 48.651 (2) or that is provided by a nonprofit  
20 organization arranged by that department, county department, or contracted agency  
21 to provide that training.

22 (c) Before an employee or volunteer of a child care center licensed under s.  
23 48.65, a child care provider certified under s. 48.651, or a child care program  
24 established under s. 120.13 (14) may provide care and supervision for children under  
25 5 years of age, the employee or volunteer shall receive training relating to cosleeping



1 while intoxicated<sup>✓</sup> that is approved or provided by the department or the certifying  
2 county department or agency contracted with under s. 48.651 (2)<sup>✓</sup> or that is provided  
3 by a nonprofit organization arranged by the department or that county department  
4 or contracted agency to provide that training.<sup>✓</sup>

5 (d) The person conducting the training shall provide to the individual receiving  
6 the training, without cost to the individual, a copy of the printed materials purchased  
7 or prepared under sub. (2)<sup>✓</sup>, a presentation of the audiovisual materials purchased or  
8 prepared under sub. (2)<sup>✓</sup>, and an oral explanation of those printed and audiovisual  
9 materials.

10 (e) Any training relating to cosleeping<sup>✓</sup> while intoxicated that an individual  
11 obtains in connection with military service, as defined in s. 111.32 (12g)<sup>✓</sup>, counts  
12 toward satisfying the training requirements under par. (a)<sup>✓</sup>, (b)<sup>✓</sup>, or (c)<sup>✓</sup>, if the  
13 individual demonstrates to the satisfaction of the department that the training  
14 obtained in that connection is substantially equivalent to the training required  
15 under par. (a)<sup>✓</sup>, (b)<sup>✓</sup>, or (c)<sup>✓</sup>.

16 (5) INSTRUCTION FOR PUPILS.<sup>✓</sup> Each school board shall provide or arrange with  
17 a nonprofit organization or health care provider to provide age-appropriate  
18 instruction relating to cosleeping while intoxicated for pupils<sup>✓</sup> in one of grades 10 to  
19 12.<sup>✓</sup> The person providing the instruction may provide to each pupil receiving the  
20 instruction a copy of the printed materials purchased or prepared under sub. (2)<sup>✓</sup>, a  
21 presentation of the audiovisual materials purchased or prepared under sub. (2)<sup>✓</sup>, and  
22 an oral explanation of those printed and audiovisual materials.

23 (6)<sup>✓</sup> INFORMATION TO HOME VISITATION OR CARE COORDINATION SERVICES RECIPIENTS.  
24 A county department or Indian tribe that is providing home visitation services under  
25 s. 48.983 (4) (b) 1.<sup>✓</sup> and a provider of prenatal, postpartum, and young child care



1 coordination services under s. 49.45 (44) shall provide to a recipient of those services,  
2 without cost, a copy of the printed materials purchased or prepared under sub. (2)  
3 and an oral explanation of those materials.

4 (7) IMMUNITY FROM LIABILITY. (a) The board, a nonprofit organization specified  
5 under sub. (2), or a person from whom the board purchases the materials specified  
6 in sub. (2) is immune from liability for any damages resulting from any good faith  
7 act or omission in preparing and distributing, or in failing to prepare and distribute,  
8 the materials specified in sub. (2).

9 (b) A hospital, maternity home, physician, nurse-midwife, other staff member  
10 of a hospital or maternity home, or other birth attendant attending the birth of an  
11 infant is immune from liability for any damages resulting from any good faith act or  
12 omission in providing or failing to provide the printed and audiovisual materials  
13 specified in sub. (3) (a) or the form specified in sub. (3) (b).

14 (c) The department, a county department, a nonprofit organization specified  
15 under sub. (4) (a), (b), or (c), or any other person that provides the training under sub.  
16 (4) (a), (b), or (c) and the printed and audiovisual materials and oral explanation  
17 specified in sub. (4) (d) is immune from liability for any damages resulting from any  
18 good faith act or omission in approving, providing, or failing to approve or provide  
19 that training, those materials, and that explanation. A school board is immune from  
20 liability for any damages resulting from any good faith act or omission in connection  
21 with the provision of, or the failure to provide, the training under sub. (4) (a) or (c)  
22 and the printed and audiovisual materials and oral explanation specified in sub. (4)  
23 (d).

24 (d) A school board, nonprofit organization, or health care provider specified  
25 under sub. (5) is immune from liability for any damages resulting from any good faith



1 act or omission in providing or failing to provide the instruction and the printed and  
2 audiovisual materials and oral explanation specified in sub. (5).

3 (e) A county department or Indian tribe that is providing home visitation  
4 services under s. 48.983 (4) (b) 1. and a provider of prenatal, postpartum, and young  
5 child care coordination services under s. 49.45 (44) is immune from liability for any  
6 damages resulting from any good faith act or omission in providing or failing to  
7 provide the printed materials and oral explanation specified in sub. (6).

(END INSERT TJD 2)



State of Wisconsin  
2011 - 2012 LEGISLATURE

In: 8(3)12

due  
FRI



LRB-2457/P1

PJH:kjfrs

P2  
JLD  
TJD

Due 8/10/12  
if possible

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

providing  
information about cosleeping while intoxicated

X

Gen

1

AN ACT to create 948.215 of the statutes; relating to: causing harm to a child

2

by cosleeping while intoxicated and creating a penalty 12 months of age

providing

Analysis by the Legislative Reference Bureau

Under this bill, no person may injure or kill a child under ~~the age of three~~ by cosleeping, while the person is intoxicated, with the child. Under the bill, if the child suffers bodily harm as a consequence, the person is guilty of a Class H felony, if the child suffers great bodily harm as a consequence, the person is guilty of a Class F felony, and if the child dies as a consequence, 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.

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:

3

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

4

948.215 Intoxicated cosleeping. (1) DEFINITIONS. In this section:

Insert TJD1

Insert TJD2

1 (a) "Cosleep" means to be asleep or unconscious while being on the same bed  
2 or on another sleeping surface with an infant.

3 (b) "Infant" means a child from birth until 36 months of age.

4 (c) "Intoxicated" means having an alcohol concentration of 0.08 or more or  
5 having substantially impaired physical or mental functioning as a result of the use  
6 of alcohol, a controlled substance, or a controlled substance analog or other drug, or  
7 any combination thereof.

8 (2) PROHIBITION. No person may cause harm to an infant by cosleeping, while  
9 he or she is intoxicated, with the infant.

10 (3) PENALTIES. A person who violates sub. (2) is guilty of one of the following:

11 (a) A Class H felony if bodily harm to the infant is a consequence.

12 (b) A Class F felony if great bodily harm to the infant is a consequence.

13 (c) A Class D felony if death to the infant is a consequence.

14 (END)



State of Wisconsin  
2011 - 2012 LEGISLATURE



LRB-2457/P2  
PJH&TJD:kjf&jld:jf

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

1 **AN ACT to create** 253.155 and 948.215 of the statutes; **relating to:** causing harm  
2 to a child by cosleeping while intoxicated, providing information about  
3 cosleeping while intoxicated, and providing a penalty.

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***Analysis by the Legislative Reference Bureau***

Under this bill, no person may injure or kill a child under 12 months of age by cosleeping, while the person is intoxicated, with the child. Under the bill, if the child suffers bodily harm as a consequence, the person is guilty of a Class H felony, if the child suffers great bodily harm as a consequence, the person is guilty of a Class F felony, and if the child dies as a consequence, the person is guilty of a Class D felony.

The bill requires the Child Abuse and Neglect Prevention Board (board) to purchase, prepare, or arrange with a nonprofit organization to prepare printed and audiovisual materials relating to cosleeping while intoxicated. The materials must include information regarding the risks of cosleeping while intoxicated and a discussion of ways to reduce the risks of cosleeping while intoxicated. The board must make the materials available to certain entities and may satisfy that requirement by making the materials available, at no charge, on its Internet site. Under the bill, the board or nonprofit organization is immune from any damages resulting from any good faith act or omission in preparing or distributing the materials.

Before an infant who is born in or on route to a hospital or a maternity home is discharged, the bill requires an attending physician, attending nurse-midwife, or other trained, designated staff member must provide to the parents of the infant the board's printed materials and inform the parents about and make available to the

parents to view the board's audiovisual materials. For an infant born elsewhere, the attending physician, attending nurse-midwife, or other trained, designated staff member of a hospital or maternity home, must provide to the parents the board's printed materials and inform the parents of the availability of the board's audiovisual materials within seven days of the infant's birth. Regardless where the infant was born, at the same time the materials are provided to the parents the person who provided the materials must provide the parent with a form, prepared by the board, that includes a statement that the parent has been advised of the risks of cosleeping with an infant while that parent is intoxicated and a statement that the parent will share that information with all persons who provide care for the infant. Under the bill, a hospital, maternity home, physician, nurse-midwife, other staff member of the hospital or maternity home, or birth attendant is immune from liability for any damages resulting from any good faith act or omission in providing the board's materials and form.

The bill also requires certain individuals and entities to provide the board's materials to specified individuals. Before an obtaining a license to operate a child care center for the care and supervision of children under five years of age or entering into a contract to provide a child care program for children under five years of age, the bill requires the individual seeking the license to obtain training, which is provided or approved by the Department of Health Services (department), relating to cosleeping while intoxicated. Similarly, before an individual may be certified as a child care provider of children under five years of age and before an employee or volunteer of a licensed child care center, a certified child care provider, or a child care program may provide care and supervision for children under five years of age, that individual must receive training relating to cosleeping while intoxicated that is approved or provided by the department or certifying county department or agency. The bill requires that each school board shall provide or arrange with a nonprofit organization or health care provider to provide age-appropriate instruction relating to cosleeping while intoxicated for pupils in one of grades 10 to 12. A county department or Indian tribe that provides home visitation services and providers of prenatal, postpartum, and young child care coordination services must provide to recipients of those services a copy of the board's printed materials and give an oral explanation of those materials. Under the bill, a department, a county department, a nonprofit organization, any other person that provides training to a potential child care provider, a school board, a health care provider, an Indian tribe, or a provider of prenatal, postpartum, and young child care coordination is immune from liability for any damages resulting from any good faith act or omission in connection with providing training on cosleeping while intoxicated or providing materials relating to cosleeping while intoxicated.

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.

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

1           **SECTION 1.** 253.155 of the statutes is created to read:

2           **253.155 Intoxicated cosleeping.** (1) DEFINITIONS. In this section:

3           (a) "Board" means the child abuse and neglect prevention board.

          \*\*\*NOTE: Do you think this is the appropriate entity to create informational materials on cosleeping while intoxicated? Should DHS do it instead?

4           (b) "Controlled substance" has the meaning given in s. 961.01 (4).

5           (c) "Controlled substance analog" has the meaning given in s. 961.01 (4m).

6           (d) "Cosleeping" means being asleep or unconscious while being on the same  
7 bed or on another sleeping surface with an infant.

8           (e) "County department" means a county department of human services or  
9 social services under s. 46.215, 46.22, or 46.23.

10          (f) "Health care provider" means any person who is licensed, registered,  
11 permitted, or certified by the department of health services or the department of  
12 safety and professional services to provide health care services in this state.

13          (g) "Infant" means a child from birth until 12 months of age.

14          (h) "Intoxicated" means having an alcohol concentration of 0.08 or more or  
15 having substantially impaired physical or mental functioning as a result of the use  
16 of alcohol, a controlled substance, or a controlled substance analog or other drug, or  
17 any combination of those substances.

18          (i) "Nonprofit organization" means an organization described in section 501 (c)  
19 (3) of the Internal Revenue Code that is dedicated to the prevention of injury to or  
20 death of infants and the support of families affected by injury to or death of an infant.

**SECTION 1**

1           **(2) INFORMATIONAL MATERIALS.** The board shall purchase or prepare or arrange  
2 with a nonprofit organization to prepare printed and audiovisual materials relating  
3 to cosleeping while intoxicated. The materials shall include information regarding  
4 the risks of cosleeping while intoxicated and a discussion of ways to reduce the risks  
5 of cosleeping while intoxicated. The materials shall be prepared in English, Spanish,  
6 and other languages spoken by a significant number of state residents, as  
7 determined by the board. The board shall make those printed and audiovisual  
8 materials available to all hospitals, maternity homes, and nurse-midwives licensed  
9 under s. 441.15 that are required to provide or make available materials to parents  
10 under sub. (3) (a) 1., to the department and to all county departments and nonprofit  
11 organizations that are required to provide the materials to child care providers under  
12 sub. (4) (d), and to all school boards and nonprofit organizations that are permitted  
13 to provide the materials to pupils in one of grades 10 to 12 under sub. (5). The board  
14 shall also make those printed materials available to all county departments and  
15 Indian tribes that are providing home visitation services under s. 48.983 (4) (b) 1. and  
16 to all providers of prenatal, postpartum, and young child care coordination services  
17 under s. 49.45 (44). The board may satisfy the requirement under this subsection by  
18 making the materials available at no charge on the board's Internet site.

19           **(3) INFORMATION TO PARENTS.** (a) 1. Before an infant who is born at or on route  
20 to a hospital or maternity home is discharged from the hospital or maternity home,  
21 the attending physician, the attending nurse-midwife, or another trained,  
22 designated staff member of the hospital or maternity home shall provide to the  
23 parents of the infant, without cost to those parents, a copy of the printed materials  
24 purchased or prepared under sub. (2), shall inform those parents of the availability

1 of the audiovisual materials purchased or prepared under sub. (2), and shall make  
2 those audiovisual materials available for those parents to view.

3 2. Within 7 days after the birth of an infant who is born elsewhere than at or  
4 on route to a hospital or maternity home, the attending physician, the attending  
5 nurse-midwife, or a trained, designated birth attendant who attended the birth of  
6 the child shall provide to the parents of the infant, without cost to those parents, a  
7 copy of the printed materials purchased or prepared under sub. (2) and shall inform  
8 those parents of the availability of the audiovisual materials purchased or prepared  
9 under sub. (2).

10 (b) At the same time that the printed materials and explanation are provided  
11 under par. (a) 1. or 2., the person who provides the printed materials and explanation  
12 shall also provide the parent with a form prepared by the board in English, Spanish,  
13 and other languages spoken by a significant number of state residents, as  
14 determined by the board, that includes all of the following:

15 1. A statement that the parent has been advised as to the risks of cosleeping  
16 while that parent is intoxicated.

17 2. A statement that the parent will share the information specified in subd. 1.  
18 with all persons who provide care for the infant.

19 (c) In preparing the form under par. (b), the board may not include in the form  
20 a signature line for the parent to sign or require that the parent sign the form.

21 (d) The person who provides the printed materials and explanation under par.  
22 (a) 1. or 2. and the form under par. (b) shall include in the records of the hospital,  
23 maternity home, or nurse-midwife relating to the infant a statement that the  
24 printed materials, explanation, and form have been provided as required under pars.  
25 (a) 1. or 2. and (b) and that the audiovisual materials have been made available as

## SECTION 1

1 required under par. (a) 1. or that the parents have been informed of their availability  
2 as required under par. (a) 2., whichever is applicable.

3 (4) TRAINING FOR CHILD CARE PROVIDERS. (a) Before an individual may obtain  
4 a license to operate a child care center under s. 48.65 for the care and supervision of  
5 children under 5 years of age or enter into a contract to provide a child care program  
6 under s. 120.13 (14) for the care and supervision of children under 5 years of age, the  
7 individual shall receive training relating to cosleeping while intoxicated that is  
8 approved or provided by the department or that is provided by a nonprofit  
9 organization arranged by the department to provide that training.

10 (b) Before an individual may be certified under s. 48.651 as a child care provider  
11 of children under 5 years of age, the individual shall receive training relating to  
12 cosleeping while intoxicated that is approved or provided by the certifying  
13 department in a county having a population of 500,000 or more, county department,  
14 or agency contracted with under s. 48.651 (2) or that is provided by a nonprofit  
15 organization arranged by that department, county department, or contracted agency  
16 to provide that training.

17 (c) Before an employee or volunteer of a child care center licensed under s.  
18 48.65, a child care provider certified under s. 48.651, or a child care program  
19 established under s. 120.13 (14) may provide care and supervision for children under  
20 5 years of age, the employee or volunteer shall receive training relating to cosleeping  
21 while intoxicated that is approved or provided by the department or the certifying  
22 county department or agency contracted with under s. 48.651 (2) or that is provided  
23 by a nonprofit organization arranged by the department or that county department  
24 or contracted agency to provide that training.

1 (d) The person conducting the training shall provide to the individual receiving  
2 the training, without cost to the individual, a copy of the printed materials purchased  
3 or prepared under sub. (2), a presentation of the audiovisual materials purchased or  
4 prepared under sub. (2), and an oral explanation of those printed and audiovisual  
5 materials.

6 (e) Any training relating to cosleeping while intoxicated that an individual  
7 obtains in connection with military service, as defined in s. 111.32 (12g), counts  
8 toward satisfying the training requirements under par. (a), (b), or (c), if the  
9 individual demonstrates to the satisfaction of the department that the training  
10 obtained in that connection is substantially equivalent to the training required  
11 under par. (a), (b), or (c).

12 **(5) INSTRUCTION FOR PUPILS.** Each school board shall provide or arrange with  
13 a nonprofit organization or health care provider to provide age-appropriate  
14 instruction relating to cosleeping while intoxicated for pupils in one of grades 10 to  
15 12. The person providing the instruction may provide to each pupil receiving the  
16 instruction a copy of the printed materials purchased or prepared under sub. (2), a  
17 presentation of the audiovisual materials purchased or prepared under sub. (2), and  
18 an oral explanation of those printed and audiovisual materials.

19 **(6) INFORMATION TO HOME VISITATION OR CARE COORDINATION SERVICES RECIPIENTS.**  
20 A county department or Indian tribe that is providing home visitation services under  
21 s. 48.983 (4) (b) 1. and a provider of prenatal, postpartum, and young child care  
22 coordination services under s. 49.45 (44) shall provide to a recipient of those services,  
23 without cost, a copy of the printed materials purchased or prepared under sub. (2)  
24 and an oral explanation of those materials.

**SECTION 1**

1           **(7) IMMUNITY FROM LIABILITY.** (a) The board, a nonprofit organization specified  
2 under sub. (2), or a person from whom the board purchases the materials specified  
3 in sub. (2) is immune from liability for any damages resulting from any good faith  
4 act or omission in preparing and distributing, or in failing to prepare and distribute,  
5 the materials specified in sub. (2).

6           (b) A hospital, maternity home, physician, nurse-midwife, other staff member  
7 of a hospital or maternity home, or other birth attendant attending the birth of an  
8 infant is immune from liability for any damages resulting from any good faith act or  
9 omission in providing or failing to provide the printed and audiovisual materials  
10 specified in sub. (3) (a) or the form specified in sub. (3) (b).

11           (c) The department, a county department, a nonprofit organization specified  
12 under sub. (4) (a), (b), or (c), or any other person that provides the training under sub.  
13 (4) (a), (b), or (c) and the printed and audiovisual materials and oral explanation  
14 specified in sub. (4) (d) is immune from liability for any damages resulting from any  
15 good faith act or omission in approving, providing, or failing to approve or provide  
16 that training, those materials, and that explanation. A school board is immune from  
17 liability for any damages resulting from any good faith act or omission in connection  
18 with the provision of, or the failure to provide, the training under sub. (4) (a) or (c)  
19 and the printed and audiovisual materials and oral explanation specified in sub. (4)  
20 (d).

21           (d) A school board, nonprofit organization, or health care provider specified  
22 under sub. (5) is immune from liability for any damages resulting from any good faith  
23 act or omission in providing or failing to provide the instruction and the printed and  
24 audiovisual materials and oral explanation specified in sub. (5).

1 (e) A county department or Indian tribe that is providing home visitation  
2 services under s. 48.983 (4) (b) 1. and a provider of prenatal, postpartum, and young  
3 child care coordination services under s. 49.45 (44) is immune from liability for any  
4 damages resulting from any good faith act or omission in providing or failing to  
5 provide the printed materials and oral explanation specified in sub. (6).

6 **SECTION 2.** 948.215 of the statutes is created to read:

7 **948.215 Intoxicated cosleeping.** (1) DEFINITIONS. In this section:

8 (a) "Cosleep" means to be asleep or unconscious while being on the same bed  
9 or on another sleeping surface with an infant.

10 (b) "Infant" means a child from birth until 12 months of age.

11 (c) "Intoxicated" means having an alcohol concentration of 0.08 or more or  
12 having substantially impaired physical or mental functioning as a result of the use  
13 of alcohol, a controlled substance, or a controlled substance analog or other drug, or  
14 any combination thereof.

15 (2) PROHIBITION. No person may cause harm to an infant by cosleeping, while  
16 he or she is intoxicated, with the infant.

17 (3) PENALTIES. A person who violates sub. (2) is guilty of one of the following:

18 (a) A Class H felony if bodily harm to the infant is a consequence.

19 (b) A Class F felony if great bodily harm to the infant is a consequence.

20 (c) A Class D felony if death to the infant is a consequence.

21 (END)