2013 DRAFTING REQUEST

Bill

Received:	**11/14/2013**	Received By:	**chanaman**
Wanted:	**As time permits**	Same as LRB:	**-2995**
For:	**Steve Doyle (608) 266-0631**	By/Representing:	**Lori Whitmore**
May Contact:		Drafter:	**chanaman**
Subject:	**Criminal Law - crimes agnst kids** **Criminal Law - procedure** **Criminal Law - sentencing**	Addl. Drafters:	
		Extra Copies:	

Submit via email: **YES**
Requester's email: **Rep.Doyle@legis.wisconsin.gov**
Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Neglect of a child; degrees and chronic neglect

Instructions:

See attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/1	chanaman 11/14/2013	scalvin 11/14/2013	rschluet 11/14/2013	_____ _____	sbasford 11/14/2013	lparisi 11/18/2013	State S&L Crime

FE Sent For:

at intro

<END>

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/1	chanaman	/1 sac 11/14/2013	11/13	_____ _____			State S&L Crime

FE Sent For:

<END>

State of Wisconsin
2013 – 2014 LEGISLATURE

LRB-2995/1
CMH:sac:ph

2013 BILL

AN ACT ***to amend*** 48.685 (1) (c) 2., 50.065 (1) (e) 2. and 103.34 (1) (b) 2.; and ***to repeal and recreate*** 948.21 of the statutes; **relating to:** neglect of a child and providing penalties.

Analysis by the Legislative Reference Bureau

Under current law, any person who is responsible for a child's welfare who, through his or her actions or failure to take action, intentionally contributes to the neglect of the child is guilty of a misdemeanor or, if the child suffers bodily harm or death, the person is guilty of a felony. Under this bill, any person who is responsible for a child's welfare who neglects or contributes to the neglect of the child is guilty of the crime of neglect. This bill defines neglect as failing, for reasons other than poverty, to provide the child necessary care, such as appropriate food, clothing, and medical and dental care; the opportunity for education; supervision; or the protection from exposure to the distribution, manufacture, or use of controlled substances; or as failing to provide the child with appropriate supervision due to the sustained consumption of alcohol or controlled substances. Under the bill, the penalties for the crime of neglect, or for contributing to neglect whether or not actual neglect occurs, vary from a Class D felony to a Class A misdemeanor depending on the consequence or risk of the consequence of death, injury, or becoming a victim of a crime. The bill also creates a crime of repeated acts of neglect of the same child. If a jury agrees that a person committed at least three acts of neglect against the same child, but does not agree on which acts constitute the three acts, the person is convicted of committing this crime. The penalties for repeated acts of neglect of the same child vary from a

Class C felony to a Class H felony, depending on the actual or likely consequence of death, injury, or becoming the victim of a crime.

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.** 48.685 (1) (c) 2. of the statutes is amended to read:

2 48.685 **(1)** (c) 2. A violation of s. 940.01, 940.02, 940.03, 940.05, 940.12, 940.19
3 (2), (4), (5) or (6), 940.22 (2) or (3), 940.225 (1), (2) or (3), 940.285 (2), 940.29, 940.295,
4 942.09 (2), 948.02 (1) or (2), 948.025, 948.03 (2), 948.05, 948.051, 948.055, 948.06,
5 948.07, 948.08, 948.085, 948.11 (2) (a) or (am), 948.12, 948.13, 948.21 ~~(1)~~ (2) or (3),
6 948.30, or 948.53.

7 **SECTION 2.** 50.065 (1) (e) 2. of the statutes is amended to read:

8 50.065 **(1)** (e) 2. For the purposes of an entity that serves persons under the age
9 of 18, "serious crime" includes a violation of s. 948.02 (2), 948.03 (2) (b) or (c), 948.05,
10 948.051, 948.055, 948.06, 948.07, 948.08, 948.085, 948.11 (2) (a) or (am), 948.12,
11 948.13, 948.21 ~~(1)~~ (2) or (3), 948.30, or 948.53 or a violation of the law of any other
12 state or United States jurisdiction that would be a violation of s. 948.02 (2), 948.03
13 (2) (b) or (c), 948.05, 948.051, 948.055, 948.06, 948.07, 948.08, 948.085, 948.11 (2) (a)
14 or (am), 948.12, 948.13, 948.21 ~~(1)~~ (2) or (3), 948.30, or 948.53 if committed in this
15 state.

16 **SECTION 3.** 103.34 (1) (b) 2. of the statutes is amended to read:

17 103.34 **(1)** (b) 2. A violation of s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.07,
18 940.08, 940.09, 940.10, 940.19 (2), (4), (5), or (6), 940.21, 940.225 (1), (2), or (3),

940.23, 940.235, 940.24, 940.25, 940.30, 940.302, 940.305, 940.31, 943.02, 943.03, 943.04, 943.10, 943.30, 943.31, 943.32, 944.32, 944.33 (2), 944.34, 946.10, 948.02 (1) or (2), 948.025, 948.03 (2) or (3), 948.04, 948.05, 948.051, 948.055, 948.06, 948.07, 948.075, 948.08, 948.085, 948.11 (2) (a) or (am), 948.12, 948.13, 948.21 ~~(1)~~ (2) or (3), or 948.30 or of a substantially similar federal law or law of another state.

SECTION 4. 948.21 of the statutes is repealed and recreated to read:

948.21 Neglecting a child. (1) DEFINITIONS. In this section:

(a) "Child sex offense" means an offense under s. 948.02, 948.025, 948.05, 948.051, 948.055, 948.06, 948.07, 948.10, 948.11, or 948.12.

(am) "Contributes to the neglect" includes the act of contributing to neglect even if the child does not actually suffer from neglect if the natural and probable consequences of the act or failure to act would be that the child suffers from neglect.

(b) "Emotional damage" has the meaning given in s. 48.02 (5j).

(c) "Necessary care" means the care that is vital, based on all of the facts and circumstances, such as the child's age, physical or emotional condition, and any special needs, for the physical or emotional health of the child. "Necessary care" includes any of the following:

1. Appropriate food.

2. Appropriate clothing.

3. Appropriate medical care.

4. Appropriate dental care.

5. The opportunity for education.

6. The protection from the exposure to the distribution, manufacture, or use of controlled substances, as defined in s. 961.01 (4).

(d) "Neglect" means any of the following:

1. To fail, for reasons other than poverty, to provide a child necessary care.

2. To fail to provide a child with appropriate supervision due to the sustained consumption of alcohol or controlled substances, as defined in s. 961.01 (4).

(2) NEGLECT. Any person who is responsible for a child's welfare who neglects, or contributes to the neglect of, the child for whom he or she is responsible is guilty of the following:

(a) A Class D felony if the child suffers death as a consequence.

(b) A Class E felony if the person engages in a course of conduct that the person knows or should know creates an unreasonable and substantial risk of death.

(c) A Class F felony if any of the following applies:

1. As a consequence, the child suffers great bodily harm, becomes a victim of a child sex offense, or suffers emotional damage.

2. The person engages in a course of conduct that the person knows or should know creates an unreasonable and substantial risk of great bodily harm to the child.

3. The person engages in a course of conduct that the person knows or should know creates an unreasonable and substantial risk that the child could become a victim of a child sex offense.

4. The person engages in a course of conduct that the person knows or should know creates an unreasonable and substantial risk of emotional damage to the child.

(d) A Class G felony if any of the following applies:

1. The child suffers substantial bodily harm as a consequence.

2. The person engages in a course of conduct that the person knows or should know creates an unreasonable and substantial risk of substantial bodily harm to the child.

(e) A Class I felony if any of the following applies:

1. The child suffers bodily harm as a consequence.

2. The person engages in a course of conduct that the person knows or should know creates an unreasonable and substantial risk of bodily harm to the child.

(f) A Class A misdemeanor.

(2m) REBUTTABLE PRESUMPTION. A rebuttable presumption of conduct creating a substantial risk of the harm described under sub. (2) (b), (c) 2., 3., or 4., (d) 2., or (e) 2., whichever is applicable, arises under any of the following circumstances:

(a) The child had not attained the age of 6 years at the start of the conduct or course of conduct.

(b) The child has a physical, cognitive, or developmental disability that is discernible by an ordinary person viewing the child or that is actually known by the actor.

(3) REPEATED ACTS OF NEGLECT OF SAME CHILD. (a) Any person who is responsible for a child's welfare who, at least 3 times in a specified period, neglects, or contributes to the neglect of, that child is responsible is guilty of the following:

1. A Class C felony if death is a consequence.

2. A Class D felony if death is a probable consequence.

3. A Class E felony if great bodily harm is a consequence or a probable consequence.

4. A Class F felony if emotional damage is a consequence or a probable consequence.

5. A Class G felony if substantial bodily harm is a consequence or a probable consequence.

6. A Class H felony if bodily harm is a consequence or a probable consequence.

1 (b) If an action under par. (a) is tried to a jury, in order to find the defendant
2 guilty the members of the jury must unanimously agree that at least 3 violations
3 occurred to the same child within the specified period but need not agree on which
4 acts constitute the requisite number or which acts resulted in the death or harm.
5 (c) The state may not charge in the same action a person with a violation of this
6 subsection and with a violation involving the same child under sub. (2), unless the
7 violation of sub. (2) occurred outside of the period applicable under par. (a).
8 **(END)**

Parisi, Lori

From: Whitmore, Lori
Sent: Monday, November 18, 2013 11:22 AM
To: LRB.Legal
Subject: Draft Review: LRB -3642/1 Topic: Neglect of a child; degrees and chronic neglect

Please Jacket LRB -3642/1 for the ASSEMBLY.