

2013 DRAFTING REQUEST

Bill

Received: **8/26/2013** Received By: **chanaman**
Wanted: **As time permits** Same as LRB: **-3642**
For: **Jennifer Shilling (608) 266-5490** By/Representing: **Tony Palese**
May Contact: Drafter: **chanaman**
Subject: **Criminal Law - crimes agnst kids** Addl. Drafters:
Criminal Law - procedure Extra Copies:
Criminal Law - sentencing

Submit via email: **YES**
Requester's email: **Sen.Shilling@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:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	chanaman 8/27/2013	scalvin 9/9/2013	phenry 9/9/2013	_____			
/P1				_____	lparisi 9/9/2013		State S&L Crime
/1	chanaman 11/14/2013	scalvin 11/14/2013	rschluet 11/14/2013	_____	sbasford 11/14/2013	lparisi 12/4/2013	State S&L

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Required
Crime

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→ A+
Intro.

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09/05/2013

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FE Sent For:

<END>

Hanaman, Cathlene

From: Palese, Tony
Sent: Thursday, August 22, 2013 10:57 AM
To: Hanaman, Cathlene
Subject: Sen. Shilling bill draft - child neglect

Hi Cathlene,

A few of our local constituents from a group called the Drug Endangered Children's Coalition are working on some legislation regarding cases of child neglect. We're hoping that you might be able to help us start a P-Draft of this legislation to help address some issues they've identified with children's safety.

They've sent me some draft language as a start. I've included this document as well as a news story as some background.

Feel free to call or email me if you have any questions.

Thanks,

- Tony

Tony Palese
Legislative Aide
Office of Sen. Jennifer Shilling

State Capitol, Room 20 South
PO Box 7882, Madison, WI 53707
(608) 266-5490 office
(800) 385-3385 toll-free



LaCrosseTribune.com

Special team responds to needs of children when drug busts target parents

JULY 28, 2013 12:00 AM • BY ANNE JUNGEN | AJUNGEN@LACROSSETRIBUNE.COM

Heavily armed police found a drug den after knocking down the mobile home's door last summer in south La Crosse.

They discovered cocaine. They found marijuana. They found prescription and Ecstasy pills in a dwelling littered with filth, food and bugs.

They also found children.

There were four of them, all younger than 12. They slept in one room while their drug dealing father drove an expensive sports utility vehicle.

On that July morning, they were all in the living room when officers burst into their home. Police swept them from the squalor to minimize the trauma of the raid.

Social workers were waiting outside to help the children temporarily orphaned because their parents chose to push drugs.

They are the youngest victims of a widespread epidemic. They are the children of drug dealers and users.

And there are hundreds of them.

"This is just La Crosse County," social worker Erin Malak said.

Malak heads a local coalition that's saving these children by saving their parents. The goal is to keep the family together by eradicating the drug environment where kids are spending their childhood.

The group started in 2006 as a proactive measure to protect kids living near methamphetamine labs during the drug's outbreak. But the labs never came. Instead, Malak said, the coalition dealt mostly with parents using marijuana.

Today, they're seeing a growing number of children exposed to heroin and other lethal narcotics as parents caught in the area's growing drug plague use and deal in the home.

The statistics are terrifying: Cases have more than doubled in the past two years.

"We have a significant problem in this community," Malak said.

'The kids are suffering'

The National Alliance for Drug Endangered Children started in the 1990s when a fire in a California mobile home meth lab killed three children.

The Wisconsin Department of Justice started the program in 2004. Today, there are 29 chapters statewide and 15 in development, including in Monroe and Trempealeau counties, said Cindy Giese, a special agent who coordinates the statewide program.

Police, prosecutors, social workers, pediatricians and other stakeholders assemble into teams that intervene when children are suffering physical or psychological harm or neglect by parents who are using, making and dealing drugs.

The 17-member La Crosse County Drug Endangered Children Coalition handled 133 cases in 2012, an alarming 55 percent increase from 2011 and a 138 percent jump from 2010, Malak said. DEC cases, which make up 57 percent of social worker's ongoing cases, show no signs of slowing this year.

"This is a real problem in La Crosse. Don't think it's a big city problem," said Gundersen Lutheran pediatrician Ann Budzak. "The kids are suffering."

They're at risk for inhaling toxic chemicals or ingesting drugs. They can access needles, lighters and guns. There's an increased chance of abuse and dealing exposes children to other users.

"The sad thing is when you hear a child doing a drug transaction," Giese said.

Some have watched their parents use drugs, taking in the dangerous fumes alongside their caregivers, La Crosse police Sgt. Dan Kloss said. Others have gone to school and told their friends their parents sleep all night after smoking.

"They don't get something to eat at night," Kloss said.

The houses are littered with hazards associated with use — from narcotics to needles — and other dangers from poor parenting. Kloss has heard of cases where dealers are hiding narcotics in teddy bears and toys.

"It's sad when you see a preteen because it's already been cemented in their head that this is the normal way of living," he said.

Budzak estimates she sees about 25 percent of children involved in DEC cases. Most are neglected and are withdrawn, vigilant or aggressive, she said.

"When parents are using, they're essentially not present," she said. "When they're high, they can't be parenting."

Breaking the cycle

The DEC team's ultimate goal is to protect these children by getting parents the help they desperately need. They don't want to punish the parents for an addiction; they want to break the cycle to protect children.

"It's not about taking kids out of the home, it's about reunifying the family in a stronger format," Giese said.

Each case is unique and multi-faceted. It starts with a referral, most often from relatives or police about to search the home.

Malak can't discuss specific cases because of juvenile confidentiality but victims range from newborns to teenagers.

In cases where children aren't removed, social workers are connecting parents with treatment, drug testing and other services while continuing random stops at the home.

Counseling and medical attention is available for their children, Malak said.

Cases are reevaluated weekly or monthly.

"We try to keep kids in the home if we can," she said. "Removal is traumatic, even more than the environment they're in."

Court intervention is needed to remove children in homes where they're unsafe.

In most cases, attorneys representing the county, parents and children gather with social workers to develop a plan to remedy the situation. Parents have to comply with court ordered conditions, from drug testing to psychological evaluations and parenting classes, La Crosse County Deputy Corporation Counsel Megan DeVore said.

Gradually, children staying with relatives or in foster care can see their parents again during supervised and unsupervised visits. With sobriety, they can return home.

"Reunification is always the goal," Malak said. "Kids are best with the parents if they're safe."

DeVore estimates half of the about 100 cases she files each year stem from a parent with a drug addiction. The threat of losing their children is a wake up call for most, she said.

Still, some parents voluntarily give up their rights, DeVore said. The county must consider filing a petition to terminate the rights if a child is living outside the home for 15 months.

Children now are encouraged to attend court hearings so judges can interact with them.

"It makes a difference to make a connection with that child," DeVore said. "Our judges are very invested in these cases."

Changing the law

It's illegal in 33 states including Minnesota to expose children to drug activity, according to the Child Welfare Information Gateway. Wisconsin isn't among them.

"Our laws do not do a good job of protecting children in drug endangered environments," Budzak said. "We are working to change that. We need to be able to protect kids."

La Crosse County's DEC team want lawmakers to make it a felony to use, distribute or manufacture drugs around kids.

Members met with area legislators earlier this year, when they showed a video of a caregiver ignoring a child after using drugs.

"It was very disturbing and sobering," said State Rep. Jennifer Shilling. "This is not a partisan issue. This is about child safety."

The local group also is pushing for a change to an existing law that allows social workers to intervene before a child is showing signs of neglect and exposure.

"Right now we can't access kids until there's a high risk," Malak said. "Our group has struggled in providing safety to children because of some of the statutory limitations."

Social workers are working to draft legislation before gathering statewide support, Malak said. Shilling said it's possible to introduce it as early as fall.

"Our goal is to add another deterrent to adults who are choosing to use and deal with children in the home," Budzak said. "We want to be able to do more to hopefully stop this activity."

948.21 Neglecting a child as it currently reads

948.21 Neglecting a child.

(1) 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 one of the following:

- (a) A Class A misdemeanor.
- (b) A Class H felony if bodily harm is a consequence.
- (c) A Class F felony if great bodily harm is a consequence.
- (d) A Class D felony if death is a consequence.

(2) Under sub. (1), a person responsible for the child's welfare contributes to the neglect of the child although the child does not actually become neglected if the natural and probable consequences of the person's actions or failure to take action would be to cause the child to become neglected.

History: 1987 a. 332; 2001 a. 109; 2007 a. 80.

948.21 Neglecting a child as amended would read:

(1.) Any person responsible for the child's welfare who negligently contributes to the neglect of the child although the child does not actually become neglected if the natural and probable consequences of the person's actions or failure to take action would be to cause the child to become neglected.

(2.) "Neglect" means failure, refusal or inability on the part of a caregiver, for reasons other than poverty, to provide necessary care, food, clothing, medical or dental care or shelter or supervision so as to seriously endanger the physical or emotional health of the child. A child is neglected when the person responsible for the child's welfare fails to provide supervision, as a result of the sustained consumption of alcohol or other intoxicants.

(3) "Necessary care" means that care which is vital to the needs and the physical or emotional health or both of the child. "Necessary care" for a particular child will depend upon all of the facts and circumstances bearing on the child's need for care, including his or her age, physical condition, and special needs. The failure to provide "necessary care" that seriously endangers a child's health and safety includes but is not limited to:

- (a.) the failure to provide appropriate food; or

- (b.) the failure to provide appropriate clothing; or
- (c.) the failure to provide appropriate medical care; or
- (d.) the failure to provide appropriate dental care; or
- (e.) depriving a child of the opportunity for education; or
- (f.) exposing a child to the distribution, manufacture or continued use of controlled substances or maintaining a house for the distribution; manufacture or use of controlled substances; [The parent's/caregiver's failure to protect the child from the exposure to the use, distribution or manufacture of cocaine, methamphetamine, heroin, prescription medication, or any other controlled substances that pose a substantial threat to the child.] or
- (g.) isolating a child from the everyday social interactions necessary for the child's emotional and developmental growth.

(3.) A person charged under sub. (1) is guilty of:

- (a.) Class D felony if death is a consequence.
- (b.) Class E felony if the defendant engages in a course of conduct that the defendant should realize creates an unreasonable and substantial risk of death.
- (c.) Class F felony if great bodily harm is a consequence, or if the defendant engages in a course of conduct that the defendant should realize creates an unreasonable and substantial risk of great bodily harm. A rebuttable presumption of conduct creating a substantial risk of great bodily harm arises:
 - i. if the child is 5 years of age or younger; or
 - ii. if the child has a physical, cognitive or developmental disability, whether congenital or acquired by accident, injury or disease that is discernible by an ordinary person viewing the physically disabled person, or that is actually known by the defendant.
- (d.) Class F felony if the child experiences any violation of §§ 948.02, 948.025, 948.05, 948.051, 948.055, 948.06, 948.07, 948.10, 948.11 or 948.12 as a consequence, or if the defendant engages in a course of conduct that the defendant should realize creates an unreasonable and substantial risk the child could experience such a consequence.

- (e.) Class F felony if emotional damage, as defined in § 48.02 (5j) is a consequence, or if the defendant engages in a course of conduct that the defendant should realize creates an unreasonable and substantial risk that the child suffers from emotional damage, as defined in sec. 48.02(5j), Stats.
- (f.) Class G felony if substantial bodily harm is a consequence, or if the defendant engages in a course of conduct that the defendant should realize creates an unreasonable and substantial risk of substantial bodily harm.
- (g.) Class I felony if the child suffers bodily harm, or the defendant engages in a course of conduct that the defendant should realize creates an unreasonable and substantial risk of bodily harm.
- (h.) Class A misdemeanor if the child suffers no physical harm or emotional damage.

948.211 Chronic or Repeated of Acts of Neglect of the Same Child

(1.) Whoever commits three (3) or more violations under s. 948.21 (1) and (3) within a specified period of time involving the same child is guilty of the crimes described in subsection (2).

- (a.) Class C felony if death is a consequence.
- (b.) Class D felony if death is a probable consequence.
- (c.) Class E felony if ~~great~~ bodily harm is an actual or probable consequence.
- (d.) Class F felony if a child suffers emotional harm as defined in §48.02 (5j)
- (e.) Class G felony if a child suffers actual or probable substantial bodily harm
- (f.) Class H felony if a child suffers actual bodily harm; or if the defendant engages in a course of conduct that the defendant should realize creates an unreasonable and substantial risk of bodily harm to a child.

(3.) If an action under this statute is tried to a jury, in order to find a defendant guilty the jury must unanimously agree that at least three (3) violations occurred within the specified period of time for a single child but need not agree on which acts. The state may not charge in the same action a defendant with a violation of this section and 948.21, unless the other violation occurred outside of the time period applicable under sub.(2).

Drafting Notes for Legislative Council and or Reference Bureau:

This statute changes the law relating to neglect in substantial ways.

The current statute prohibits 4 degrees of neglectful behavior ranging from a Class D felony for a death to a Class A misdemeanor if there is no physical injury or emotional damage occurs. This statutory revision makes several changes acknowledging that neglect is multifaceted. **First**, it recognizes that neglect has serious, long-term consequences for children. This statute maintains the Class D felony for neglect resulting in death. However, the statute creates a graduated level of penalties for neglect that results in varying types and severity of harm. Principally, it includes additional harms experienced by children in “neglectful” situations. It recognizes that sexual assaults and emotional damage are often experienced by neglected children.

Second, the new statute eliminates the *mens rea* of criminal intent. Proving that a defendant intentionally caused neglect (WI Crim JI 2150) has been difficult if not impossible at times, because *neglectful behavior*, by its nature, is not *intentional behavior*.

Third, new statute is created to address chronic acts of neglect. This statute is based on the **Engaging in repeated acts of sexual assault of the same child** found in § 948.025, Stats. The new statute criminalizes *chronic* neglect that occurs over a long period of time, where no single act or omission may constitute neglect, but the totality of the acts and/or omissions may constitute neglect. Chronic, long-term neglect has serious physical and or emotional harm for children that may be more damaging to the children than a single act of physical abuse. Examples of chronic, long term neglect might include, but are not limited to: Environmental neglect, such as keeping a dwelling in such filthy or unsafe conditions that living in the dwelling causes a risk to the child; exposure to hazardous environment including accessible drugs, drug distribution and toxic chemicals or materials that lead to other hazardous conditions; medical neglect, such as failure to procure or follow appropriate medical treatment for a child; failing to feed a child such that the child becomes malnourished or starved; failure to protect a child: such as failure to protect a child from physical or sexual abuse; exposing a child to chronic drug use in the home, the manufacture of methamphetamines in an area where the child can be expected to be present, exposing a child to extreme domestic violence which may result in the child being hurt; supervisory neglect, such as failure to supervise a child properly such that the child is injured or sexually assaulted or has a risk of injury; physical neglect such as failure to ensure a child’s adequate hygiene, inadequate or inappropriate clothing, inadequate diet and/or inadequate formula (the child may not be malnourished, but is chronically hungry or chronically has no access to food); chronic sleep deprivation; educational neglect, such as failure to ensure school attendance, failure to attend to a child’s special educational needs; emotional neglect, such as inadequate affection and nurturance, inadequate stimulation and/or interaction for development, exposure to chronic domestic violence, exposure to pornography and/or sexual activity

The definitions for the terms used in this draft statute are found in Chapter 939 of the current criminal statutes. The term "bodily harm" has the meaning in sec. 939.22(4), Stats. The term "substantial bodily harm" has the meaning in sec. 939.22(38), Stats. Criminal negligence is defined in §939.25 and in WI JI Criminal 925. It is modified here to account for the varying degrees of harm a child may experience as there will not always be an "unreasonable and substantial risk of death or great bodily harm." The term "great bodily harm" has the meaning in sec. 939.22(14), Stats. Examples of "great bodily harm" include permanent loss of brain function or decrease in brain size, or causation of any level of mental retardation, which are unfortunate outcomes of child neglect. The term "emotional damage" is not defined in Chapter 939. However, that term is defined in Chapter 48. The definition in § 48.02(5j), Stats. is used in this statute.



State of Wisconsin
2011 - 2012 LEGISLATURE



-2005/P1

LRB-2618/P5

CMH:med/rs
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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

LPS: Delete any hidden notes.

repeal act

1 AN ACT *to amend* 48.685 (1) (c) 2., 50.065 (1) (e) 2. and 103.34 (1) (b) 2.; and *to*
2 *repeal and recreate* 948.21 of the statutes; **relating to:** neglect of a child and
3 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 negligently neglects or contributes to the neglect of the child is guilty of the crime of neglect. This bill defines neglect as the failure, 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; or the protection from exposure to the distribution, manufacture, or use of 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 I felony depending on the consequence or likely consequence of death, injury, or becoming a victim of a crime. Under the bill, if a person who is responsible for a child's welfare engages in a course of conduct that the person knows creates an unreasonable and substantial risk of harm to the child is guilty of a criminal offense. The classification of the offense varies from a Class F felony to a Class A misdemeanor, depending on the consequence for which the child is put at risk. 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. Finally, under the bill, a person who fails to exercise reasonable supervision of a child on three or more separate occasions is guilty of a Class I felony if the child is at risk of death, bodily harm, or emotional damage due to the failure. As in the crime of repeated acts of neglect of the same child, the jury does not have to agree on which acts constitute the three acts for a conviction to occur.~~

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.

IND
H

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), (2r), or
6 (3), 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), (2r), or (3), 948.30, or 948.53 or a violation of the law of any
12 other state or United States jurisdiction that would be a violation of s. 948.02 (2),
13 948.03 (2) (b) or (c), 948.05, 948.051, 948.055, 948.06, 948.07, 948.08, 948.085, 948.11

① (2) (a) or (am), 948.12, 948.13, 948.21 ~~(1) (2), (2r), or (3)~~, 948.30, or 948.53 if committed
2 in this state.

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

4 103.34 (1) (b) 2. A violation of s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.07,
5 940.08, 940.09, 940.10, 940.19 (2), (4), (5), or (6), 940.21, 940.225 (1), (2), or (3),
6 940.23, 940.235, 940.24, 940.25, 940.30, 940.302, 940.305, 940.31, 943.02, 943.03,
7 943.04, 943.10, 943.30, 943.31, 943.32, 944.32, 944.33 (2), 944.34, 946.10, 948.02 (1)
8 or (2), 948.025, 948.03 (2) or (3), 948.04, 948.05, 948.051, 948.055, 948.06, 948.07,
9 948.075, 948.08, 948.085, 948.11 (2) (a) or (am), 948.12, 948.13, 948.21 ~~(1) (2), (2r),~~
10 or (3), or 948.30 or of a substantially similar federal law or law of another state.

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

12 **948.21 Neglecting a child. (1) DEFINITIONS.** In this section:

13 (a) "Child sex offense" means an offense under s. 948.02, 948.025, 948.05,
14 948.051, 948.055, 948.06, 948.07, 948.10, 948.11, or 948.12.

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

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

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

- 23 1. Appropriate food.
- 24 2. Appropriate clothing.
- 25 3. Appropriate medical care.

- 1 4. Appropriate dental care.
- 2 5. The opportunity for education.
- 3 6. The protection from the exposure to the distribution, manufacture, or use of
- 4 controlled substances, as defined in s. 961.01 (4).

5 (d) "Neglect" means ^{any of the following: 9 1. To} fail ~~to~~ for reasons other than poverty, to provide a
6 child necessary care.

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

- 10 1. If the child suffers death as a consequence, a Class D felony.
- 11 2. If the child suffers great bodily harm as a consequence, becomes a victim of
- 12 a child sex offense as a consequence, or suffers emotional damage as a consequence,
- 13 a Class F felony.
- 14 3. If the child suffers substantial bodily harm as a consequence, a Class G
- 15 felony.
- 16 4. If the child suffers bodily harm as a consequence, a Class I felony.

17 (b) Any person who is responsible for a child's welfare who engages in a course
18 of conduct that the person knows or should know creates an unreasonable and
19 substantial risk of great bodily harm to the child is guilty of a Class F felony.

20 (c) Any person who is responsible for a child's welfare who engages in a course
21 of conduct that the person knows or should know creates an unreasonable and
22 substantial risk that the child could become a victim of a child sex offense is guilty
23 of a Class F felony.

~~IN~~
4-23

91

1 (d) Any person who is responsible for a child's welfare who engages in a course
2 of conduct that the person knows or should know creates an unreasonable and
3 substantial risk of emotional damage to the child is guilty of a Class F felony.

4 (e) Any person who is responsible for a child's welfare who engages in a course
5 of conduct that the person knows or should know creates an unreasonable and
6 substantial risk of substantial bodily harm to the child is guilty of a Class G felony.

7 (f) Any person who is responsible for a child's welfare who engages in a course
8 of conduct that the person knows or should know creates an unreasonable and
9 substantial risk of bodily harm to the child is guilty of a Class A misdemeanor.

felony

10/11/12

INJ 5-10

10 (2m) REBUTTABLE PRESUMPTION. For purposes of sub. (2), a rebuttable
11 presumption of conduct creating a substantial risk of the harm described under sub.

12 (2) (a) 1., 2., 3., or 4., (b), (c), (d), (e), or (f), whichever is applicable, arises under any
13 of the following circumstances:

2, 3, or 4.

14 (a) The child had not attained the age of 5 years at the start of the conduct or
15 course of conduct.

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

19 (2r) FAILURE TO PROVIDE REASONABLE SUPERVISION. (a) Any person who is
20 responsible for a child's welfare who fails to exercise reasonable supervision of that
21 child on 3 or more separate occasions within a specified period of time is guilty of a
22 Class I felony if that failure puts the child at risk of experiencing a harm described
23 under sub. (2) (a) 1., 2., 3., or 4., (b), (c), (d), (e), or (f).

INJ 5-23

24 (b) If an action under par. (a) is tried to a jury, in order to find the defendant
25 guilty the members of the jury must unanimously agree that at least 3 acts occurred

1 on 3 separate occasions to the same child within the specified period but need not
 2 agree on which acts constitute the requisite number or on the level of risk the child
 3 was put in with each act.

4 **(3) REPEATED ACTS OF NEGLECT OF SAME CHILD.** (a) Whoever commits 3 or more
 5 violations under sub. (2) within a specified period of time involving the same child
 6 is guilty of:

- 7 1. A Class C felony if death is a consequence.
- 8 2. A Class D felony if death is a probable consequence.
- 9 3. A Class E felony if great bodily harm is a consequence or a probable
 10 consequence.
- 11 4. A Class F felony if emotional damage is a consequence or a probable
 12 consequence.
- 13 5. A Class G felony if the substantial bodily harm is a consequence or a probable
 14 consequence.
- 15 6. A Class H felony if bodily harm is a consequence or a probable consequence.

16 (b) If an action under par. (a) is tried to a jury, in order to find the defendant
 17 guilty the members of the jury must unanimously agree that at least 3 violations of
 18 sub. (2) occurred to the same child within the specified period but need not agree on
 19 which acts constitute the requisite number or which acts resulted in the death or
 20 harm.

21 (c) The state may not charge in the same action a person with a violation of this
 22 subsection and with a violation involving the same child under sub. (2), unless the
 23 violation of sub. (2) occurred outside of the period applicable under par. (a).

Handwritten marks: a bracket on the left side spanning lines 7-10, and the letters "NS" written vertically next to lines 8-10.

Handwritten circle around the number 13.

Handwritten circle around the number 17.

Handwritten circle around the number 18.

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2995/plins
CMH:.....

1 Insert A

 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 negligently 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.

2

3 Insert 5-10

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (f) A Class A misdemeanor.

20

21 Insert 6-7

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



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-2995/P1
CMH:sac:ph

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~ KMR

*no changes
to lay
phase*

repeal

1 **AN ACT to amend** 48.685 (1) (c) 2., 50.065 (1) (e) 2. and 103.34 (1) (b) 2.; and **to**
2 **repeal and recreate** 948.21 of the statutes; **relating to:** neglect of a child and
3 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),
19 940.23, 940.235, 940.24, 940.25, 940.30, 940.302, 940.305, 940.31, 943.02, 943.03,

1 943.04, 943.10, 943.30, 943.31, 943.32, 944.32, 944.33 (2), 944.34, 946.10, 948.02 (1)
2 or (2), 948.025, 948.03 (2) or (3), 948.04, 948.05, 948.051, 948.055, 948.06, 948.07,
3 948.075, 948.08, 948.085, 948.11 (2) (a) or (am), 948.12, 948.13, 948.21 (1) (2) or (3),
4 or 948.30 or of a substantially similar federal law or law of another state.

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

6 **948.21 Neglecting a child.** (1) DEFINITIONS. In this section:

7 (a) “Child sex offense” means an offense under s. 948.02, 948.025, 948.05,
8 948.051, 948.055, 948.06, 948.07, 948.10, 948.11, or 948.12.

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

12 (b) “Emotional damage” has the meaning given in s. 48.02 (5j).

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

17 1. Appropriate food.

18 2. Appropriate clothing.

19 3. Appropriate medical care.

20 4. Appropriate dental care.

21 5. The opportunity for education.

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

24 (d) “Neglect” means any of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (f) A Class A misdemeanor.

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

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

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

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

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

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

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

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

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

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

24 (b) If an action under par. (a) is tried to a jury, in order to find the defendant
25 guilty the members of the jury must unanimously agree that at least 3 violations

1 occurred to the same child within the specified period but need not agree on which
2 acts constitute the requisite number or which acts resulted in the death or harm.

3 (c) The state may not charge in the same action a person with a violation of this
4 subsection and with a violation involving the same child under sub. (2), unless the
5 violation of sub. (2) occurred outside of the period applicable under par. (a).

6 (END)

Parisi, Lori

From: Hanaman, Cathlene
Sent: Wednesday, December 04, 2013 9:33 AM
To: Parisi, Lori; Barman, Mike; Rose, Stefanie; Basford, Sarah
Subject: FW: LRB 2995

Could we send Tony the jacket?

From: Palese, Tony
Sent: Wednesday, December 04, 2013 9:31 AM
To: Hanaman, Cathlene
Subject: RE: LRB 2995

Yes please!

Thanks,

Tony Palese
Legislative Aide
Office of Sen. Jennifer Shilling

State Capitol, Room 20 South
PO Box 7882, Madison, WI 53707
(608) 266-5490 office
(800) 385-3385 toll-free

From: Hanaman, Cathlene
Sent: Wednesday, December 04, 2013 9:31 AM
To: Palese, Tony
Subject: RE: LRB 2995

It is introducible (/1)--do you want it jacketed?

Thanks,
Cathlene

From: Palese, Tony
Sent: Wednesday, December 04, 2013 9:20 AM
To: Hanaman, Cathlene
Subject: LRB 2995

Hi Cathlene,

Thanks for your help with our Drug Endangered Children's Bill – LRB 2995.