

State of Wisconsin



2017 Assembly Bill 355

Date of enactment: **April 16, 2018**
Date of publication*: **April 17, 2018**

2017 WISCONSIN ACT 283

AN ACT *to amend* 48.685 (1) (c) 2., 50.065 (1) (e) 2. and 103.34 (1) (b) 2.; *to repeal and recreate* 948.21; and *to create* 939.25 (3) and 948.215 of the statutes; **relating to:** neglect of a child and providing criminal penalties.

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

SECTION 1. 48.685 (1) (c) 2. of the statutes, as affected by [2017 Wisconsin Act 128](#), is amended to read:

48.685 (1) (c) 2. A violation of s. 940.01, 940.02, 940.03, 940.05, 940.12, 940.19 (2), (4), (5) or (6), 940.22 (2) or (3), 940.225 (1), (2) or (3), 940.285 (2), 940.29, 940.295, 942.09 (2), 948.02 (1) or (2), 948.025, 948.03 (2) or (5) (a) 1., 2., 3., or 4., 948.05, 948.051, 948.055, 948.06, 948.07, 948.08, 948.081, 948.085, 948.11 (2) (a) or (am), 948.12, 948.13, 948.21 ~~(1) (2)~~, 948.215, 948.30, or 948.53.

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

50.065 (1) (e) 2. For the purposes of an entity that serves persons under the age of 18, "serious crime" includes a violation of s. 948.02 (2), 948.03 (2) (b) or (c) or (5) (a) 4., 948.05, 948.051, 948.055, 948.06, 948.07, 948.08, 948.085, 948.11 (2) (a) or (am), 948.12, 948.13, 948.21 ~~(1) (2)~~, 948.215, 948.30, or 948.53 or a violation of the law of any other state or United States jurisdiction that would be a violation of s. 948.02 (2), 948.03 (2) (b) or (c) or (5) (a) 4., 948.05, 948.051, 948.055, 948.06, 948.07, 948.08, 948.085, 948.11 (2) (a) or (am), 948.12, 948.13, 948.21 ~~(1) (2)~~, 948.215, 948.30, or 948.53 if committed in this state.

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

103.34 (1) (b) 2. A violation of s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.07, 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, 944.34, 946.10, 948.02 (1) or (2), 948.025, 948.03 (2), (3), or (5) (a) 1., 2., 3., or 4., 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)~~, 948.215, or 948.30 or of a substantially similar federal law or law of another state.

SECTION 4. 939.25 (3) of the statutes is created to read:

939.25 (3) This section does not apply to s. 948.21.

SECTION 5. 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, 948.08, 948.10, 948.11, or 948.12.

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

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

(c) “Necessary care” means care that is vital to the needs of a child’s physical, emotional, or mental health based on all of the facts and circumstances bearing on the child’s need for care, including the child’s age; the child’s physical, mental, or emotional condition; and any special needs of the child.

(d) “Negligently” means acting, or failing to act, in such a way that a reasonable person would know or should know seriously endangers the physical, mental, or emotional health of a child.

(2) **NEGLECT.** Any person who is responsible for a child’s welfare who, through his or her action or failure to take action, for reasons other than poverty, negligently fails to provide any of the following, so as to seriously endanger the physical, mental, or emotional health of the child, is guilty of neglect and may be penalized as provided in sub. (3):

- (a) Necessary care.
- (b) Necessary food.
- (c) Necessary clothing.
- (d) Necessary medical care.
- (e) Necessary shelter.
- (f) Education in compliance with s. 118.15.

(g) The protection from exposure to the distribution or manufacture of controlled substances, as defined in s. 961.01 (4), or controlled substance analogs, as defined in s. 961.01 (4m), or to drug abuse, as defined in s. 46.973 (1) (b).

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

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

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

- 1. The child suffers great bodily harm as a consequence.
- 2. The child becomes a victim of a child sex offense as a consequence.

(c) A Class G felony if the child suffers emotional damage as a consequence.

(d) A Class H felony if the child suffers bodily harm as a consequence.

(e) A Class I felony if the natural and probable consequences of the violation would be a harm under par. (a), (b), (c), or (d) although the harm did not actually occur if one of the following applies:

- 1. The child had not attained the age of 6 years when the violation was committed.

2. The child has a physical, cognitive, or developmental disability that was known or should have been known by the actor.

(f) A Class A misdemeanor if the natural and probable consequences of the violation would be a harm under par. (a), (b), (c), or (d) although the harm did not actually occur.

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

948.215 Chronic neglect; repeated acts of neglect.

(1) Whoever violates s. 948.21 (2) is guilty of chronic neglect and may be penalized as provided in sub. (2) if one of the following applies:

(a) The person commits 3 or more violations under s. 948.21 (2) within a specified period of time involving the same child.

(b) The person has at least one previous conviction for a violation of s. 948.21 (2) involving the same child as the current violation.

(2) A person who is guilty of chronic neglect under sub. (1) is guilty of the following:

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

(b) A Class D felony if any of the following applies:

- 1. The child suffers great bodily harm as a consequence.

- 2. The child becomes a victim of a child sex offense, as defined in s. 948.21 (1) (a), as a consequence.

(c) A Class E felony if the child suffers emotional damage, as defined in s. 948.21 (1) (b), as a consequence.

(d) A Class F felony if the child suffers bodily harm as a consequence.

(e) A Class H felony if the natural and probable consequences of the violation would be a harm under par. (a), (b), (c), or (d) although the harm did not actually occur.

(3) If an action under sub. (1) (a) is tried to a jury, in order to find the defendant guilty the members of the jury must unanimously agree that at least 3 violations of s. 948.21 (2) involving the same child occurred within the specified period but need not agree on which acts constitute the requisite number or which acts resulted in any requisite consequence.

(4) The state may not charge a person in the same action with a violation under sub. (1) (a) and a violation involving the same child under s. 948.21 (2), unless the violation of s. 948.21 (2) occurred outside of the period applicable under sub. (1) (a).