



State of Wisconsin  
2017 - 2018 LEGISLATURE

LRBs0164/1  
CMH:klm

**ASSEMBLY SUBSTITUTE AMENDMENT 1,  
TO ASSEMBLY BILL 355**

October 27, 2017 – Offered by Representative HORLACHER.

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

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

Under current law, any person who is responsible for a child's welfare who, through his or her action 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 substitute amendment, any person who is responsible for a child's welfare who negligently fails to provide the child with necessary care, food, clothing, medical care, or shelter; education; or the protection from exposure to the distribution or manufacture of controlled substances is guilty of the crime of neglect. Under the substitute amendment, the penalties for the crime vary from a Class D felony to a Class A misdemeanor depending on the consequences or risks of the crime and on the duration of the neglect.

The substitute amendment also creates a crime of chronic or repeated acts of neglect of the same child. A person is guilty of committing chronic or repeated acts of neglect either if the person commits the crime of neglect and the person has a prior conviction of neglect against the same child or if a jury agrees that the person committed at least three acts of neglect against the same child, but does not agree on which acts constitute the three acts. The penalties for chronic or repeated acts

of neglect vary from a Class B felony to a Class H felony, depending on the consequences or risks of the crime.

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***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) or (5) (a) 1., 2., 3., or 4., 948.05,  
5           948.051, 948.055, 948.06, 948.07, 948.08, 948.085, 948.11 (2) (a) or (am), 948.12,  
6           948.13, 948.21 ~~(1)~~ (2), 948.215, 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) or (5)  
10          (a) 4., 948.05, 948.051, 948.055, 948.06, 948.07, 948.08, 948.085, 948.11 (2) (a) or  
11          (am), 948.12, 948.13, 948.21 ~~(1)~~ (2), 948.215, 948.30, or 948.53 or a violation of the  
12          law of any other state or United States jurisdiction that would be a violation of s.  
13          948.02 (2), 948.03 (2) (b) or (c) or (5) (a) 4., 948.05, 948.051, 948.055, 948.06, 948.07,  
14          948.08, 948.085, 948.11 (2) (a) or (am), 948.12, 948.13, 948.21 ~~(1)~~ (2), 948.30, or 948.53  
15          if committed in this 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,  
20          943.04, 943.10, 943.30, 943.31, 943.32, 944.32, 944.34, 946.10, 948.02 (1) or (2),  
21          948.025, 948.03 (2), (3), or (5) (a) 1., 2., 3., or 4., 948.04, 948.05, 948.051, 948.055,

1 948.06, 948.07, 948.075, 948.08, 948.085, 948.11 (2) (a) or (am), 948.12, 948.13,  
2 948.21 (1) (2), 948.215, or 948.30 or of a substantially similar federal law or law of  
3 another state.

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

5 939.25 (3) This section does not apply to s. 948.21.

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

7 **948.21 Neglecting a child. (1) DEFINITIONS.** In this section:

8 (a) “Child sex offense” means an offense under s. 948.02, 948.025, 948.05,  
9 948.051, 948.055, 948.06, 948.07, 948.08, 948.10, 948.11, or 948.12.

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

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

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

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

23 (a) Necessary care.

24 (b) Necessary food.

25 (c) Necessary clothing.

1 (d) Necessary medical care.

2 (e) Necessary shelter.

3 (f) Education in compliance with s. 118.15.

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

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

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

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

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

11 2. The child becomes a victim of a child sex offense as a consequence.

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

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

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

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

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

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

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

1           **948.215 Chronic neglect; repeated acts of neglect. (1)** Whoever violates  
2 s. 948.21 (2) is guilty of chronic neglect and may be penalized as provided in sub. (2)  
3 if one of the following applies:

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

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

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

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

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

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

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

14 (a), as a consequence.

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

16 (1) (b), as a consequence.

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

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

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

