



2015 ASSEMBLY BILL 431

October 21, 2015 – Introduced by Representatives TRANEL, DOYLE, A. OTT, BERCEAU, EDMING, HEATON, HORLACHER, JACQUE, KLEEFISCH, KNODL, KULP, T. LARSON, MACCO, MURPHY, MURTHA, NERISON, NOVAK, PETRYK, ROHRKASTE, SINICKI, SPIROS, TITTL, VANDERMEER and STEFFEN, cosponsored by Senators COWLES, DARLING, LASEE, LASSA, OLSEN, PETROWSKI and SHILLING. Referred to Committee on Criminal Justice and Public Safety.

1 **AN ACT** *to amend* 48.685 (1) (c) 2., 50.065 (1) (e) 2., 103.34 (1) (b) 2. and 939.25
2 (1); and *to repeal and recreate* 948.21 of the statutes; **relating to:** neglect of
3 a child and providing criminal 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 fails, for reasons other than poverty, to provide the child with necessary care or contributes to the failure is guilty of the crime of neglect. Under the bill, necessary care includes appropriate food, clothing, medical and dental care, shelter, and supervision; 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 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 B felony to a Class H felony, depending on the consequence of the repeated acts of neglect.

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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 (4),
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 (4), 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 (4), 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,
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) or (3), 948.04, 948.05, 948.051, 948.055, 948.06, 948.07, 948.075,

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1 948.08, 948.085, 948.11 (2) (a) or (am), 948.12, 948.13, 948.21 ~~(1) (2) or (4)~~, or 948.30
2 or of a substantially similar federal law or law of another state.

3 **SECTION 4.** 939.25 (1) of the statutes is amended to read:

4 939.25 (1) In this section, “criminal negligence” means ordinary negligence to
5 a high degree, consisting of conduct that the actor should realize creates a
6 substantial and unreasonable risk of death or great bodily harm to another, except
7 that, for purposes of ss. 940.08 (2), 940.10 (2), and 940.24 (2), “criminal negligence”
8 means ordinary negligence to a high degree, consisting of conduct that the actor
9 should realize creates a substantial and unreasonable risk of death or great bodily
10 harm to an unborn child, to the woman who is pregnant with that unborn child, or
11 to another and, for purposes of s. 948.21 (2), “criminal negligence” means ordinary
12 negligence to a high degree, consisting of conduct that the actor should realize
13 creates a substantial and unreasonable risk that he or she will fail to provide a child
14 for whose welfare he or she is responsible necessary care or that he or she will
15 contribute to the neglect of a child for whose welfare he or she is responsible.

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

17 **948.21 Neglecting a child. (1) DEFINITIONS.** In this section:

18 (a) “Child sex offense” means an offense under s. 948.02, 948.025, 948.05,
19 948.051, 948.055, 948.06, 948.07, 948.08, 948.10, 948.11, or 948.12.

20 (am) “Contributes to the failure” includes the act of contributing to the failure
21 to provide a child with necessary care even if the child does not actually suffer from
22 neglect if the natural and probable consequences of the act or failure to act would be
23 that the child suffers from neglect.

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

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1 (c) "Necessary care" means the care that is critical to a child's physical or
2 emotional health, safety, welfare, or development, based on all of the facts and
3 circumstances, such as the child's age, physical or emotional condition, and any
4 special needs of the child. "Necessary care" includes any of the following:

5 1. Appropriate food.

6 2. Appropriate clothing.

7 3. Appropriate medical care.

8 4. Appropriate dental care.

9 5. The opportunity for education.

10 6. Appropriate shelter.

11 7. Appropriate supervision.

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

14 **(2) NEGLECT.** Any person who is responsible for a child's welfare who
15 negligently fails, for reasons other than poverty, to provide the child with necessary
16 care, or negligently contributes to the failure, commits neglect and is guilty of the
17 following:

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

19 (b) A Class E felony if the person knows or should know that his or her action
20 creates an unreasonable and substantial risk of death.

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

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

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

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

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1 1. The person knows or should know that his or her action creates an
2 unreasonable and substantial risk of great bodily harm to the child.

3 2. The person knows or should know that his or her action creates an
4 unreasonable and substantial risk that the child could become a victim of a child sex
5 offense.

6 3. The child suffers emotional damage as a consequence.

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

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

9 2. The person knows or should know that his or her action creates an
10 unreasonable and substantial risk of emotional damage to the child.

11 (f) A Class I felony if the person knows or should know that his or her action
12 creates an unreasonable and substantial risk of bodily harm to the child.

13 (g) A Class A misdemeanor.

14 **(3) REBUTTABLE PRESUMPTION.** A rebuttable presumption that an action creates
15 an unreasonable and substantial risk of the harm described under sub. (2) (b), (d) 1.
16 or 2., (e) 2., or (f), whichever is applicable, exists under any of the following
17 circumstances:

18 (a) The child had not attained the age of 6 years when the action was
19 committed.

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

23 **(4) REPEATED ACTS OF NEGLECT OF SAME CHILD.** (a) Any person who commits 3
24 or more violations under sub. (2) within a specified period of time involving the same
25 child is guilty of the following:

