

1999 DRAFTING REQUEST

**Bill**

Received: **01/05/1999**

Received By: **olsenje**

Wanted: **As time permits**

Identical to LRB:

For: **Gregg Underheim (608) 266-2254**

By/Representing: **Himself**

This file may be shown to any legislator: NO

Drafter: **olsenje**

May Contact:

Alt. Drafters:

Subject: **Criminal Law - crimes agnst kids**

Extra Copies:

**Pre Topic:**

No specific pre topic given

**Topic:**

Interference with custody of a child

**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>Resuired</u>
/P1	olsenje 02/12/1999	j geller 02/14/1999	jfrantze 02/15/1999	_____	lrb-docadmin 02/15/1999		
/1	olsenje 04/28/1999	jgeller 04/29/1999	mclark 05/04/1999	_____	lrb-docadmin 05/04/1999	lrb-docadminlocal 09/15/1999	
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/2			jfrantze 10/11/1999	_____	lrb-docadmin 10/11/1999	lrb_docadminLocal 10/11/1999	

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FE Sent For:

*1/2 10/11 jg* *10/11* *J/me*  
 <END>

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/P1	olsenje 02/12/99	j geller 02/14/99	jfrantze 02/15/99	_____	lrb-docadmin 02/15/99		
/1	olsenje 04/28/99	j geller 04/29/99	mclark 05/4/99	_____	lrb-docadmin 05/4/99		Local

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<END>

*Jacket  
for  
Assembly  
Sent to Underheim  
P. Frantze*

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By/Representing: Himself

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Drafter: olsenje

May Contact:

Alt. Drafters:

Subject: Criminal Law - crimes agnst kids

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FE Sent For:

1 4/29 jg MRC 4-30

<END>

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May Contact:

Alt. Drafters:

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Extra Copies:

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1/?	olsenje	1/1 2/14 jlg	2/15	2/15			

FE Sent For:

<END>

1599

Underheim by himself

Physical custody agreement  
948.31(1)(b) — ottrs!  
Change 12 hours to 3

More to follow



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-1599/P1

JEO: A:...

D. Nole

JLg

PRELIMINARY **DRAFT - NOT READY FOR** INTRODUCTION

gen cat

the ✓

1

**AN ACT . . . . relating to:** interference with custody of a child.

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

Current law prohibits a person from interfering with the custody of a child. A person can violate this prohibition in various ways, such as by causing a child to leave his or her parents or legal custodian or by taking a child away from his or her legal custodian.

In addition, a person violates the prohibition against interfering with custody by withholding a child for more than 12 hours from his or her parents or from a single parent with legal custody without consent of the parents or the single parent with legal custody. In addition, a person violates the prohibition by withholding a child from his or her legal custodian for more than 12 hours beyond a court-approved period of physical placement or visitation, if the person withholds the child without the custodian's consent and with the intent to deprive the custodian of his or her custody rights. This bill provides that a person violates the prohibition against interfering with the custody of a child if he or she withholds the child from his or her parents or from a single parent with legal custody for more than three hours or if he or she withholds a child from his or her legal custodian for more than three hours beyond a court-approved period of physical placement or visitation.

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

**SECTION 1.** 948.31 (1) <sup>Y</sup>(b) of the statutes is amended to read:

1           **948.31 (1)** (b) Except as provided under chs. 48 and 938, whoever intentionally  
2 causes a child to leave, takes a child away or withholds a child for more than ~~12~~ 3<sup>✓</sup>  
3 hours beyond the court-approved period of physical placement or visitation period  
4 from a legal custodian with intent to deprive the custodian of his or her custody rights  
5 without the consent of the custodian is guilty of a Class C felony. This paragraph is  
6 not applicable if the court has entered an order authorizing the person to so take or  
7 withhold the child. The fact that joint legal custody has been awarded to both  
8 parents by a court does not preclude a court from finding that one parent has  
9 committed a violation of this paragraph.

10 History: 1987 a. 332; 1989 a. 31, 56, 107; 1993 a. 302; 1995 a. 27 ss. ~~7237, 9126~~ (19); 1995 a. 77; 1997 a. 290.

**SECTION 2.** 948.31 (2) of the statutes is amended to read:

11           **948.31 (2)** Whoever causes a child to leave, takes a child away or withholds a  
12 child for more than ~~12~~ 3<sup>✓</sup> hours from the child's parents or, in the case of a nonmarital  
13 child whose parents do not subsequently intermarry under s. 767.60, from the child's  
14 mother or, if he has been granted legal custody, the child's father, without the consent  
15 of the parents, the mother or the father with legal custody, is guilty of a Class E  
16 felony. This subsection is not applicable if legal custody has been granted by court  
17 order to the person taking or withholding the child.

18 History: 1987 a. 332; 1989 a. 31, 56, 107; 1993 a. 302; 1995 a. 27 ss. ~~7237, 9126~~ (19); 1995 a. 77; 1997 a. 290.

**SECTION 3.** 948.31 (3) (c) of the statutes is amended to read:

19           **948.31 (3)** (c) After issuance of a temporary or final order specifying joint legal  
20 custody rights and periods of physical placement, takes a child from or causes a child  
21 to leave the other parent in violation of the order or withholds a child for more than  
22 ~~12~~ & hours beyond the court-approved period of physical placement or visitation  
23 period.

24 History: 1987 a. 332; 1989 a. 31, 56, 107; 1993 a. 302; 1995 a. 27 ss. ~~7237, 9126~~ (19); 1995 a. 77; 1997 a. 290

**SECTION 4. Initial applicability.**



1 (1) This act first applies to offenses committed on the effective date of this  
2 subsection. ✓

3 (END)

D-note  
↓

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1599/P1dn

JEO: A:...



Representative Underheim:

This is a preliminary draft for your review. When you requested this draft, you mentioned that you were considering other changes to s. 948.31, stats., and that you would send further instructions concerning those changes. I haven't received any additional instructions, so I thought I'd send you a preliminary draft with the change to the 12-hour period so that you have the chance to review that change. When you know what other amendments, if any, you would like to make to s. 948.31, stats., please let me know and I will redraft this proposal to incorporate them.

Note that this draft changes all of the 12-hour time periods under s. 948.31, stats., to 3 hours. Is that your intent?

Please let me know if you have any questions.

**Jefren E. Olsen**  
Legislative Attorney  
Phone: (608) 266-8906  
E-mail: Jefren.Olsen@legis.state.wi.us

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1599/P1dn  
JEO:jlj:jf

February 15, 1999

Representative Underheim:

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Jefren E. Olsen  
Legislative Attorney  
Phone: (608) 266-8906  
E-mail: [Jefren.Olsen@legis.state.wi.us](mailto:Jefren.Olsen@legis.state.wi.us)



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(608) 266-2254

**District:**

1652 Beech St.  
Oshkosh, WI 54901  
(414) 233-1082

**Legislative Hotline (toll-free): 1 (800) 362-9472**



3/20/99

**GREGG UNDERHEIM**

State Representative • 54th Assembly District

*Jeffrey -*

The attached is provided for your information.

Please let me know if I can be of further assistance.

*Here's the info I forgot to send you RE: LRB 1599/P  
Oops! Sorry about that.*

♻️ Printed on recycled paper

*Seadly*

TO Greg Underheim

Thank  
D.D. Himmler

September 23, 1998

Dear State Senator Carol **Roessler**,

**Attached** please **find** a copy of my proposed ideas for changes in State Statute 948.3 1 relating to interference with child custody by a parent or others.

It is my contention that the statute **as** it is written does not enable our law enforcement officials the ability to act in the "best interest" of the very children the statute was designed to protect. With some modifications, however, I believe this can be an **effective** way for children of divorce to be taken out of the firing **lines** of ugly custody battles and **be** given the **stability** of the situation that is crucial to their **fulfilling** their potential as adults.

Respectfully,

*D. D. Himmler*

Donald D. **Himmler**

Mike & Hunt suggested I send  
The Sign.

12 Pages

## WISCONSIN STATE SENATE

**Carol Roessler**  
STATE SENATOR

September 1, 1998

Donald ~~Himm~~ler  
219 Guenther Street  
Oshkosh, WI 54901

Dear Donald,

Thank you for contacting me with your concerns regarding persons violating their visitation rights and the effect this has on the children. It is an unfortunate situation when conflict arises in custody cases which results in legal action.

Individuals who resist the court's custody order are in contempt of court. There are various remedial and punitive sanctions in place as repercussions to this action. I have enclosed a list of the sanctions as well as an overview of Wisconsin Statute 948.31, which states that an individual who withholds their children for more than 12 hours beyond a visitation period from a legal custodian, is guilty of a Class E felony (a fine not more than \$10,000 or a maximum of two years in prison, or both.). Thus, it is recognized by the state that court orders are being broken in these cases.

You had suggested imposing a general, immediate fine on those individuals who refuse to return their children to the legal custodian. One problem with this is that all court orders regarding custody are not the same, Authority investigation of some sort would still need to be done to confirm that the court order was indeed violated. This differs from your analogy of an individual caught for speeding in a 30 mph zone because the terms are the same for everyone. Anyone driving in that area must drive 30 mph or suffer the consequence of a ticket, Custody orders are not so cut and dry. Violators incur consequences, though documentation needs to be evident to determine the violation.

Thank you ~~again~~ for sharing your views with me on this issue. I will keep your views in mind during the ~~next~~ legislative session.

Sincerely,  
*Carol*

CAROL ROESSLER

18<sup>th</sup> District

State Senator

CR/gr/himmler.ltr.

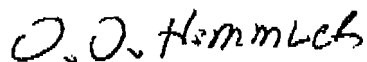


Dear State Senator Carol **Roessler**;

Attached please **find** a copy of my proposed ideas for changes in State Statute 948.31 **relating to interference with child** custody by a parent or others.

It is my contention that the statute **as** it is written does not **enable** our law enforcement officials the ability to act **in** the “best interest” of the very children the statute was designed to protect. With some modifications, however, I believe this can be an effective way **for** children of divorce to be taken **out** of the **firing** lines of ugly custody battles **and** be given the stability of the situation **that** is crucial to their **fulfilling** their potential as adults.

**Respectfully,**



Donald **D. Himmler**

## CHAPTER 947

## CRIMES AGAINST PUBLIC PEACE, ORDER AND OTHER INTERESTS

947.01 Disorderly conduct.  
 947.012 Unlawful use of telephone.  
 947.013 Harassment.  
 947.015 Bomb scares.

947.02 Vagrancy.  
 947.04 Drinking in common carriers.  
 947.06 Unlawful assemblies and their suppression.

**947.01 Disorderly conduct.** Whoever, in a public or private place, engages in violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct under circumstances in which the conduct tends to cause or provoke a disturbance is guilty of a Class B misdemeanor.

**History:** 1977 c. 173; 1979 c. 131.

Defendant was properly convicted of disorderly conduct where he appeared on a stage wearing a minimum of clothing, intending to and succeeding in causing a loud reaction in the audience. *State v. Maker*, 48 W (2d) 612, 180 NW (2d) 707.

An attorney may be convicted under this section for refusing to leave a ward in a mental hospital until he had seen a client after having made statements in the presence of patients which caused some to become agitated. *State v. Elson*, 60 W (2d) 54, 208 NW (2d) 363.

It is not disorderly conduct for 4 people to enter an office with other members of the public for the purpose of protesting the draft and to refuse to leave on orders of the police, when their conduct is not otherwise disturbing. *State v. Werstein*, 60 W (2d) 668, 211 NW (2d) 437.

See note to 939.47, citing *State v. Olsen*, 99 W (2d) 573, 299 NW (2d) 632 (Cl. App. 1980).

See note to Art. I, sec. 1, citing *Pederson v. Breier*, 327 F Supp. 1382

**947.012 Unlawful use of telephone.** (1) Whoever does any of the following is guilty of a Class B misdemeanor:

(a) With intent to frighten, intimidate, threaten, abuse or harass, makes a telephone call and threatens to inflict injury or physical harm to any person or the property of any person.

(b) With intent to frighten, intimidate, threaten or abuse, telephones another and uses any obscene, lewd or profane language or suggests any lewd or lascivious act.

(c) Makes a telephone call, whether or not conversation ensues, without disclosing his or her identity and with intent to abuse or threaten any person at the called number.

(2) Whoever does any of the following is subject to a Class B forfeiture:

(a) With intent to harass or offend, telephones another and uses any obscene, lewd or profane language or suggests any lewd or lascivious act.

(b) Makes or causes the telephone of another repeatedly to ring, with intent to harass any person at the called number.

(c) Makes repeated telephone calls, whether or not conversation ensues, with intent solely to harass any person at the called number.

(d) Makes a telephone call, whether or not conversation ensues, without disclosing his or her identity and with intent to harass any person at the called number.

(e) Knowingly permits any telephone under his or her control to be used for any purpose prohibited by this section

**History:** 1979 c. 131; 1991 a 39.

**947.013 Harassment.** (1) In this section:

(a) "Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose.

(b) "Credible threat" means a threat made with the intent and apparent ability to carry out the threat.

(c) "Personally identifiable information" has the meaning given in s. 19.62 (5).

(d) "Record" has the meaning given in s. 19.32 (2).

(1) Whoever, with intent to harass or intimidate another person, does any of the following is subject to a Class B forfeiture:

(a) Strikes, shoves, kicks or otherwise subjects the person to physical contact or attempts or threatens to do the same.

(b) Engages in a course of conduct or repeatedly commits acts which harass or intimidate the person and which serve no legitimate purpose.

(1r) Whoever violates sub. (1m) under all of the following circumstances is guilty of a Class A misdemeanor:

(a) The act is accompanied by a credible threat that places the victim in reasonable fear of death or great bodily harm.

(b) The act occurs while the actor is subject to an order or injunction under s. 813.12, 813.122 or 813.125 that prohibits or limits his or her contact with the victim.

(1t) Whoever violates sub. (1r) is guilty of a Class E felony if the person has a prior conviction under this subsection or sub. (1 r), (1 v) or (1 x) or s. 940.32 (2), (2m), (3) or (3m) involving the same victim and the present violation occurs within 7 years of the prior conviction.

(1v) Whoever violates sub. (1r) is guilty of a Class D felony if he or she intentionally gains access to a record in electronic format that contains personally identifiable information regarding the victim in order to facilitate the violation under sub. (1r).

(1x) Whoever violates sub. (1r) under all of the following circumstances is guilty of a Class D felony:

(a) The person has a prior conviction under sub. (1r), (1t) or (1v) or this subsection or s. 940.32 (2), (2m), (3) or (3m).

(b) The person intentionally gains access to a record in order to facilitate the current violation under sub. (1r).

(2) This section does not prohibit any person from participating in lawful disputes under s. 103.53.

**History:** 1983 a. 336; 1991 a 194; 1993 il. 4%

This section isn't safety statute and doesn't grant private right of action for its violation. In re Estate of Drab, 143 W (2d) 568, 422 NW (2d) 144 (Cl. App. 1988).

**947.015 Bomb scares.** Whoever intentionally conveys or causes to be conveyed any threat or false information, knowing such to be false, concerning an attempt or alleged attempt being made or to be made to destroy any property by the means of explosives is guilty of a Class E felony,

**History:** 1977 c. 173.

This section is not an included crime in 941.30. *State v. Van Ark*, 62 W (2d) 155, 215 NW (2d) 41.

**947.02 Vagrancy.** Any of the following are vagrants and are guilty of a Class C misdemeanor:

(1) A person, with the physical ability to work, who is without lawful means of support and does not seek employment; or

(3) A prostitute who loiters on the streets or in a place where intoxicating liquors are sold, or a person who, in public, solicits another to commit a crime against sexual morality; or

(4) A person known to be a professional gambler or known as a frequenter of gambling places or who derives part of his or her support from begging or, as a fortune teller or similar impostor.

**History:** 1977 c. 173; 1993a, 486.

New statute to auto  
naturally include 948.31

in all  
circumstances  
physical yo

**B. INTERFERENCE WITH THE CUSTODY OF A CHILD**

Under s. 948.31, Stats., relating to interference with custody by a parent or others, whoever does any of the following is guilty of a Class E felony (a fine not to exceed \$10,000 or imprisonment not to exceed two years, or both):

1. Intentionally causes a **child** to leave, **takes** a child away or **withholds** a child for more than 12 hours beyond a court-approved period of physical placement or visitation period **from a legal custodian, with** intent to deprive the custodian of his or her custody rights without the consent of the custodian. However, if the court has entered an order authorizing the person to take or withhold the child, the penalties would not apply. The fact that joint **legal** custody has been awarded to both parents by a court does not preclude a **court** from finding that one parent **has committed** a violation of this **provision**.

2. Causes a child to leave, takes a child away or **withholds** a **child** for more than 12 hours **from** the child's parents, or the child's mother in the case of a **nonmarital** child where the parents do not subsequently **intermarry**, without the consent of the parents or the mother. This provision does not apply if legal custody has been granted by a court order to the person taking or **withholding** the **child**.

3. Does any of the following:

a. **Intentionally** conceals a **child from** the child's other parent, if done by a parent or a person acting upon directions of a parent.

b. After being served with process and an action **affecting** the family, but prior to the issuance of a temporary or final order determining child custody rights, takes **the** child or causes a child to leave with intent to deprive the other parent of physical custody.

c. **After** issuance of a temporary or final order specifying joint legal custody rights and periods of physical placement, takes a child from or causes a **child to** leave with the other parent **in violation of the order** or **withholds the child** ~~(for more than 12 hours) beyond the court-approved period of physical placement or visitation.~~

- too long

The statute provides **an affirmative** defense to prosecution for **violations** of s. 948.31, Stats., if the action: (1) is taken by a parent or by a person authorized by a **parent** to protect **his** or her child **from imminent** physical **harm** or **sexual assault**; (2) is taken by a parent fleeing **from** imminent physical harm to himself or **herself**; (3) is consented to by the **other** parent or any other person or agency having legal custody of the **child**; or (4) is otherwise authorized by law.

A court is also empowered to order a violator to pay **restitution and to provide** reimbursement for any reasonable expenses incurred by any **person or any governmental entity in locating** and returning the **child**. The restitution or reimbursement is paid by **the** violator to the person or **governmental entity which incurred the expenses.**

1st officers may go in  
\$300,000 2nd offense = jail 1st 7 1/2 months  
automatically fine plus return kids

D. MISTAKE

1117 p. 28

1

**Proposed Amendment to s.948.31, Stats., relating to interference with custody by a parent or others.**

Propose to change **Wisconsin** State Statute **948.31** Section 3 c., with the addition of 3 d. and e as follows:

3 c. After issuance of a temporary or **final** order specifying joint legal custody rights and periods of physical placement, **takes** a child **from** or **causes** a child to leave with the other parent in violation of the order or withholds **the child beyond** the court-approved period of physical placement or visitation

*deleted  
12 hours*

3 d. **After** issuance of a temporary or final order **specifying** joint legal custody rights and periods of physical placement, **takes a child from or causes a child to leave** with the other parent in violation of the order, **the affected parent** may notify the law enforcement agency under whose **jurisdiction** the parent holding the child **falls**. The law enforcement agency, with a copy of the order in **its** possession, shall **assist** the affected parent in **exercising their custodial rights**. The law enforcement agency may then **assess a fine of \$300.00 to \$1,000.00 upon the parent in violation of the custody agreement with second and subsequent offenses punishable by imprisonment in addition to punitive damage.**

*cf.  
645.23 (3)  
D-Note penalties*

3 e. **This statute shall be a mandated inclusion in all** divorce custody agreements,

*New in petition  
of final judgment  
temp order?  
767.23*

NAME ADDRESS PHONE

1. *Shirley J. ...* *Oshkosh WI* 1284 *Kavanaugh* 920 231 1730
2. *Sharon S. Oliver* 5306 *Couderc* *Pickett, WI 54904* 920-589-2794
3. *Jack W. Oliver* 5306 *County Rd N Pickett WI 54904* 920-589-2799
4. *Eleanor B. Gustafski* 3159 *Valley Rd* *54901* 920-231-9126
5. *Shirley M. Radloff* 5066 *Fisk Ave.* *54904* 920-589-6651
6. *Spencer J. ...* 11234 *Spencer St* *Oshkosh* 920-235-5155
7. *Lynn and ...* 11634 *Spencer St* *Oshkosh* 920-235-5155
8. *Joyce G. Braun* 1033 *W. 7th Ave* *Oshkosh* 920-233-7339
9. *Terri Oliver* 5595 *ST RD 44* *OSHKOSH* 920 589-3001
10. *A. ...* 313 *W 14th Ave* *Oshkosh* 920-426-2404
11. *Shaune S. Buege* 313 *W 14th Ave* *Osh* 426-2404

*(Yes)*

Signatures fix petition to change s.948.31, Stats section 3 c., and add 3 d. and e.

12. Kristina R. Anderson- Semb
13. Rebecca J. Woods
14. Mark J. Ulmer 2235 W. HEDWATNA DR. APPLETON WI 54914
15. Rachel Kovach 2225 Terrace View Dr #2C Sheboygan 53081
16. John E Swanson 802 W. 8<sup>th</sup> AVE Oshkosh WI 54901
17. Paul L. Rothering W2649 BARRY CT #6 APPLETON WIS. 54915
18. ~~David C. ...~~ 2160 Wisconsin # Oshkosh, WI 54901
19. Dan Richter 410 W 20<sup>th</sup> Ave Oshkosh WI. 54901
20. Lisa Hotelcord 710 Guenther St. Oshkosh, WI 54901
21. Jimmie Anderson 211 Guenther St. Oshkosh WI 54901
22. Larry H. Anderson 211 Guenther ST. Oshkosh 54901
23. Ronald W. Ziegler 768 S. Commercial, Neenah WI, 54956
24. Chad Breitzke 12510 Pine tree Ln Tolm, WI 54944
25. Michael Miller 5219 White Pine Dr. Casey, WI 54947
26. Joseph H. Howard 1211 S. Lowell St Appleton WI 54911
27. Mary Dusso 1518 S. Kernan Ave Appleton WI 54915
28. Paul Ruzinski W5710 Hwy 71 Appleton, WI 54915
29. Karen Ring 934 W. Appleton WI 54914
30. Susan Huss N2910 Rip Van Winkle Appleton 54915
31. ~~Debbie ...~~ 805 N. ... St Appleton, WI 54910
32. Mary Jo Johnson W6570 Cty Rd S. Shirocon. Wis 54170

	NAME	ADDRESS	PHONE
33.	Jill Hannan	844 Millbrook	Neenah 722-4123
34.	Kyia Aygar	1754 Wendy Way	Neenah 727-0087
35.	Sandra Kasten	N8831 Loop Rd, Menasha	733-7121
36.	Clyde Klotz	1532 E. CRANBERRY DR. APPLETON	734-1550
37.	J. Kelly Damm	N2091 Greenbark Rd Hortonville, WI	54941 779-4162
38.	Sammy J. Anderson	147 8th Street Clintonville, WI	54929 915-823-8836
39.	<del>Jeff</del>	<del>1100 Kingston Dr Menasha, WI</del>	<del>54952</del>
40.	<del>James R. Turpe</del>	<del>1225 Wisconsin Ln Neenah WI</del>	<del>722-1074</del>
41.	Kris Thiel	W16143 Victorian Dr Appleton	54915 733-2338
42.	Dan Lehman	N2577 Comsted Jigston Wd	54486 715-535-2854
43.	Vicky Swenson	Amc ER Appleton WI	54911 733-6256
44.	Pamela W. Christenson	1543 Cranberry Dr. Appleton, WI	54915 730-9707
45.	Don Myer	1545 Whitelaid N. Neenah WI	54958
46.	Karen Volkner	501 Schmidt Ave. Seymour WI	54165 833-6565
47.	Jeff Kaubala	N1443 Kainer Ct Greenfield	54942 757-2932
48.	Sharon	N2329 Maroney Rd Kaukauna Wis	920-766-9291
49.	Ruth A. Wulgast	515 Margaret St Combined Lake WI	54113 920-788-3735
50.	Candice amey	824 S Military Rd, Childs, WI	53014
51.	Lorie Korotke	1316 Eugene St Menasha	54953 727-4766
52.	Nancy Adamaki	N568 Hill Rd. Pulaaki WI	54162 833-9838
53.	Jane Sueders	W2091 School Rd Hortonville, WI	54944 779-0567
54.	Nicholas Miller	815 Bayview Rd, Neenah, WI	54956

	NAME	ADDRESS	PHONE
55.	Robert Smith	1001 N. Clark St.	984-3133
56.	Robert Spick	347 N. Bridge St.	596-3058
57.	Robert Spick	888 E. Stark Road	954-8597
58.	Michael J. Ve RR	1911 E. Fremont St. Appleton	920-993-1463
59.	Alan Bremer	644 Carey Ave., W1cl Rose, WI.	920-622-5400
60.	Kimberly Adams	2111 E. Esther St Appleton WI	920-830-9171
61.	John M. Marshall	404 Pine St Menasha, WI	727-1978
62.	Amy Hall	5480 Michael's Dr. Apt 16 Appleton, WI	54915 735-6166
63.	William Zabol	2905 BN 4th St Appleton, WI	54914 731-5309
64.	Carlene Brown	W2581 Buchanan Rd, Appleton, WI	54915 920-687-0396
65.	Suzanne Tuma	1839 S. Schaefer St Appleton, WI	54915 920-991-9981
66.	Mary Hopfenspeger	824 Apt A Westhaven place	54914 920-738-0479
67.	Susan VanCamp	2940 W. Main Street Appleton - WI	54911
68.	Don Peters	8912 Wylde Oak Dr Oshkosh,	
69.	Paul Mintz	11495 MUNICIPAL DR GREENVILLE WI	54942
70.	Frank Koehler	907 S. CHRISTINE ST Appleton WI	54915
71.	James Polya	1513 S. WILDEN AVE Appleton, WI	54915
72.	Katrina Top	505 Pleasant Ct. Neenah, WI	54956
73.	Paul Top	90 RAIDER Hts, Kiel WI 5302	920-894-3953
74.	Paul Top	307 CLARK ST. BearCreek	1-715-752-4544
75.	Paul Top	601 Honey Bear St Appleton	1-715-256-4110

Proposed Amendment to s.948.3 1, Stats., relating to interference with custody by a parent or others.

Propose to change Wisconsin State Statute 948.31 Section 3 c., with the addition of 3 d. and e as follows:

3 c. After issuance of a temporary or final order specifying joint legal custody rights and periods of physical placement, takes a child **from** or causes a child to leave with the other parent in violation of the order or withholds the **child** beyond the court-approved period of **physical** placement or visitation.

3 d. **After** issuance of a temporary or **final** order **specifying** joint legal custody rights and periods of physical placement, **takes** a child **from** or causes a child to leave with the other parent in violation of the order, the **affected** parent may **notify** the law enforcement agency under whose jurisdiction the parent holding the child falls. The law enforcement agency, with a copy of the order in its Possession, **shall** assist **the affected** parent in exercising their custodial rights. The law **enforcement** agency may then assess a fine of \$300.00 to \$1 ,000.00 upon the parent in violation of the custody agreement with second and subsequent **offenses** punishable by imprisonment in addition to punitive damage.

3 e. This statute **shall** be a mandated inclusion in all divorce custody agreements.

NAME	ADDRESS	PHONE
1. <i>[Signature]</i>	1770 BUEHRING RD	233-4431
2. <i>[Signature]</i>	W802 E. WHUSTARA ST. BERLIN	361-4890
3. <i>[Signature]</i>	1825 ORCHARD LA OSHKOSH, WI	
4. <i>[Signature]</i>	1902 OLIVE OSHKOSH	233-7203
5. <i>[Signature]</i>	46 WELLS DR OSHKOSH	233-5797
6. <i>[Signature]</i>	2540 CLOVER ST. OSHKOSH	231-5310
7. <i>[Signature]</i>	430 BOARD PK NASH	725-4954
8. <i>[Signature]</i>	1599 OAK RIDGE RD NEENAH	-
9. <i>[Signature]</i>	1035 WYLD OAK OSHKOSH	233-5419
10. <i>[Signature]</i>	707 N 9TH ST WINNECONNE WI	582-9939
11. <i>[Signature]</i>	51 OVERLAND OSHKOSH	235-9031



Signatures for petition to change s.948.31, Stats section 3 c., and add 3 d. and e.

12. Trisha Leithen 4066 Westview Ln OSH 426-8410
13. Jeff Welch 2225 Vinland Rd, Oshkosh WI 426-5120
14. Jim [unclear] 1915 MICHIGAN ST, OSHKOSH 233-6419
15. Mary [unclear] 1624 S. MEMORIAL DR APPLETON WI 964-6049
16. Kim M. Prigofski W10581 Cedar Rd Larson WI 836-3286
17. Greg Kuehler 3367 SHEPPARD DR OSHKOSH 426-0782
18. Matthew Kroening 242 W 16TH AV. OSHKOSH WI 54901
19. Garry [unclear] P.O. Box 57 Van Dine WI 54979 689-2238
20. Eric Stenson 2450 HAMILTON ST., OSHKOSH WI. 233-8028
21. Trent Wong PO Box 8011 Oshkosh WI 54903 231-9663
22. Carter [unclear] 4508 Ballhaver Ln, Osh 235-4447
23. Barbara J Ziegler 4512 Cly E Oshkosh WI. 54904 233624
24. Daniel C. [unclear] 1233 Wheatfield Way, Oshkosh, WI 54904 231-6068
25. Joann [unclear] 605 Fox Fire Ln. Oshkosh, WI 54904 426-2717
26. Kimberly S. Daniels 923 Bismarck Ave, Oshkosh WI 54901 426-1690
27. Linda [unclear] 310 Hawk St. Oshkosh, WI 54901 233-0717
28. Glen Willis 1601 Freedom Rd #8, 54140 788-0806
29. Paul Frey 1397 W. 18th Oshkosh WI 54901 232-1348
30. Michael [unclear] 1808 Ohio Ave, Oshkosh, WI 54901 232-0821
31. Yolanda Craft 1181 Liberty Ln. Appleton 54915 734-9070
32. Marge [unclear] 1523 77, [unclear] WI 54914 731-2272

Proposed Amendment to s.948.31, Stats., relating to interference with custody by a parent or others.

Propose to **change** Wisconsin State Statute 948.31 Section 3 c., with the addition of 3 d. and e as follows:

3 c. **After** issuance of a **temporary** or final order specifying joint legal custody rights and periods of physical **placement**, takes a child **from** or causes a child to leave with the other parent in violation of the order or withholds the child beyond **the** court-approved period of physical placement or visitation,

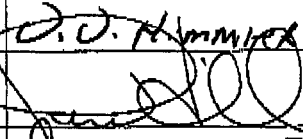
3 d. **After** issuance of a temporary or **final** order specifying joint legal custody rights and periods of physical placement, takes a child **from** or causes a child to leave with the other parent **in** violation of the order, the affected parent may notify the law enforcement agency under whose jurisdiction the parent holding the child falls. The law enforcement **agency**, with a copy of the **order** in its possession, shall assist the **affected** parent in exercising **their** custodial rights. The law enforcement **agency** may then assess a **fine** of \$300.00 to \$1,000.00 upon the parent in violation of the custody agreement with second and subsequent **offenses punishable** by imprisonment in addition to punitive damage,

3 e. **This** statute shall **be** a mandated inclusion in **all** divorce custody agreements.

NAME	ADDRESS	PHONE
1. Bernette Bichler	1312 Eastman St. Oshkosh, WI 54901	232-8145
2. Deborah Kozan	518 Dakota Oshkosh 54901	unpublished
3. Kay Guyard	PO Box 426 Winneconne WI 54986	582-9431
4. Ronnie Baldauf	700 Starboard Ct. W Oshkosh, WI 54901	232-4993
5. Nancy Lalare	1770 Tatt Ave Apt A2 Oshkosh, WI 54901	233-1266
6. Mary Moon	2051 Evans St. Oshkosh, WI 54901	303-0861
7. Nancy Puz	422 W 19th Oshkosh, WI 54901	235-0172
8. Jennifer Smith		232-6609
9. Greta Hartke	1102 S. Sawyer St Oshkosh WI 54901	233-9798
10. Kristin Patten	808 E. Irving Ave. Osh.	303-1624
11. Audrey Kifer	1252 Wheatfield Way	231-7375

Signatures for petition to change s.948.31, Stats section 3 c., and add 3 d. and e.

12. Renee Moran 809 E. 9th St Fld 929-4040
13. Lori Helstrom P.O. Box 41 Redgranite, WI
14. Susan J. Bishop 1909 Emily Anne Dr. Oshkosh 54904  
233-4584
15. Lori S. Potratz 1602 Clay Rd Oshkosh WI 54904  
426-1648
16. Jenny Wayland 219 W 16th St., Oshkosh, WI 54901  
233-4777
17. Carol Lambrecht 906 W. Scott #301 Fld WI 54937  
924-7676
18. Kija Richards 2430 Hamilton St. Oshkosh, WI  
231-3586
19. Lynn Michler 113 W 22nd Ave Oshkosh 233-9716
20. Carol Pensiero 1006 N. Lark St. Oshkosh 231-6765
21. Heather Babe N8591 Townhall Rd Eldorado WI 54932
22. Laurie Freund W3663 Taznette Cir Malone WI 53049
23. Kathryn Clark 377 Sunnysbrook Dr. - WI 54904
24. Kathryn Richardson 47133 Phoenix Dr. Fland du Lac WI 54937
25. Mary Patude 130 S. Westfield Oshkosh, WI 54901
26. Jody Henckel 73 Mayra Jane Dr. Oshkosh WI 54901
27. Bebbie Martin P.O. Box 21 Butte des Morts, WI  
54927
28. Shila Galassi 1686 Grandman Lane Oshkosh WI 54901
29. Linda Cohen 8358 Ann St Larsen WI 54947
30. Deb Wallentin 1515 Rugby St Oshkosh WI 54901
31. Det McNamee 319 Done St Oshkosh WI 54901
32. Eric Each 639 Riverhill Dr. Onro WI 59963

	NAME	ADDRESS
33	Rebecca A Geiwald	2405 Nicole Ct Oshkosh WI 54904
34	Walter Allen	1113 N State St Appleton WI 54911
35	Bob Dultzinski	15 W. South Park Ave Oshkosh WI 54901
36	SANDRA BOE	948 Elmwood Oshkosh, WI 54901
37	Jean Davis	1942 Montana St. Oshkosh, WI 54901
38	Peggy Klevens	225A Guenther St Oshkosh 54901
39	Pauline Klevens	1110A W 4th Street - Oshkosh 54901
40	D. W. Himmick	219 Guenther St Oshkosh WI
41		189 DEJWARDT AVE NEEVAH 54956
42	Sonya Mann	2531 W Waukau Apt 2 Oshkosh
43	Walter Klevens	4543 Sunburst Lane Neenah, WI 54956
44	Minnie Wallace	420 Frances St. Kaukauna 54130
45	Chris Horn	11024 S. Adams St Appleton 54915
46	Tom Hunt	3640 W. SANNYVIEW RD. APPLETON 54914
47	Lolie James	1329 HARRIS ST Appleton 54914
48		
49		
50		
51		
52		
53		
54		

P.O. Box 575.990 S Lake St, Neenah WI 54957-0575  
Phone (920) 727-3020 Fax (920) 727-3033



# Fax

**To:** Greg Underbeum **From:** Don Hummel

**Fax:** 920-233-1082 **Pages:** 73-17

**Phone:** 608-282-3654 **Date:** 9-23-98 1-5-98

**Re:** **CC:**

Urgent  For Review  Please Comment  Please Reply  Please Recycle

~~OK next time~~

Hey,  
 Here is everything, including a  
 response from Carol Roessler and one  
 from you. Our court date is scheduled  
 for March 5 regarding contempt of court  
 which occurred 12-31-98 with girl's father -  
 Don Hummel



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-1599/P1

JEO:jlj:jf

E PJK

redraft  
maker  
run

D-Note

~~PRELIMINARY DRAFT NOT READY FOR INTRODUCTION~~

regenerate

1

AN ACT to amend 948.31 (1) (b), 948.31 (2) and 948.31 (3) (c) of the statutes;

2

relating to: interference with the custody of a child.

**Analysis by the Legislative Reference Bureau**

Current law prohibits a person from interfering with the custody of a child. A person can violate this prohibition in various ways, such as by causing a child to leave his or her parents or legal custodian or by taking a child away from his or her legal custodian.

In addition, a person violates the prohibition against interfering with custody by withholding a child for more than 12 hours from his or her parents or from a single parent with legal custody without consent of the parents or the single parent with legal custody. In addition, a person <sup>(also)</sup> violates the prohibition by withholding a child from his or her legal custodian for more than 12 hours beyond a court-approved period of physical placement or visitation, if the person withholds the child without the custodian's consent and with the intent to deprive the custodian of his or her custody rights. This bill provides that a person violates the prohibition against interfering with the custody of a child if he or she withholds the child from his or her parents or from a single parent with legal custody for more than three hours or if he or she withholds a child from his or her legal custodian for more than three hours beyond a court-approved period of physical placement or visitation.

ANALYSIS  
INSERT

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

INS  
2-1

1 SECTION 1. 948.31 (1) (b) of the statutes is amended to read:

2 948.31 (1) (b) Except as provided under chs. 48 and 938, whoever intentionally  
3 causes a child to leave, takes a child away or withholds a child for more than ~~12~~ 3  
4 hours beyond the court-approved period of physical placement or visitation period  
5 from a legal custodian with intent to deprive the custodian of his or her custody rights  
6 without the consent of the custodian is guilty of a Class C felony. This paragraph is  
7 not applicable if the court has entered an order authorizing the person to so take or  
8 withhold the child. The fact that joint legal custody has been awarded to both  
9 parents by a court does not preclude a court from finding that one parent has  
10 committed a violation of this paragraph.

11 SECTION 2. 948.31 (2) of the statutes is amended to read:

12 948.31 (2) Whoever causes a child to leave, takes a child away or withholds a  
13 child for more than ~~12~~ 3 hours from the child's parents or, in the case of a nonmarital  
14 child whose parents do not subsequently intermarry under s. 767.60, from the child's  
15 mother or, if he has been granted legal custody, the child's father, without the consent  
16 of the parents, the mother or the father with legal custody, is guilty of a Class E  
17 felony. This subsection is not applicable if legal custody has been granted by court  
18 order to the person taking or withholding the child.

19 SECTION 3. 948.31 (3) (c) of the statutes is amended to read:

20 948.31 (3) (c) After issuance of a temporary or final order specifying joint legal  
21 custody rights and periods of physical placement, takes a child from or causes a child  
22 to leave the other parent in violation of the order or withholds a child for more than  
23 ~~12~~ 3 hours beyond the court-approved period of physical placement or visitation  
24 period.

INS  
24  
25

SECTION 4. Initial applicability-.

INTERFERENCE WITH CUSTODY. The  
treatment of section 948.31 (1)(b),  
(2) and (3)(c) of the statutes

SECTION 4

1

(1) This act first applies to offenses committed on the effective date of this subsection.

INS  
3-2

2

3

(END)



ANALYSIS INSERT

The bill also provides that <sup>2</sup>if a court has ordered that both parents have legal custody and periods of physical placement of a child and one parent takes the child from or causes the child to leave the other parent in violation of the order or withholds the child for more than three hours beyond the court-approved period of physical placement or visitation, the other parent may request a law enforcement agency in the jurisdiction in which the first parent is located to assist in locating and returning the child. A law enforcement agency must assist in locating and returning the child of a parent who makes a request for assistance if the parent provides the law enforcement agency with a certified copy of the court order specifying joint legal custody rights and periods of physical placement.

Finally, under current law a summons in an action affecting the family, such as a divorce, in which the parties have a minor child must include notification of the statute that prohibits interference with the custody of a child. Also under current law, a final judgment in an action affecting the family in which custody of, or physical placement with, a minor child was determined must include notification of the statute that prohibits interference with the custody of a child. Under this bill, if a judge or family court commissioner in an action affecting the family grants legal custody of a minor child or periods of physical placement with a minor child temporarily during the pendency of the action, the temporary order must also include notification of the statute that prohibits interference with the custody of a child.

For further information see the *local* fiscal estimate, which will be printed as an appendix to this bill.

(END OF ANALYSIS INSERT)

INSERT 2-1

1           SECTION 1. 767.23 <sup>X</sup>(1n) of the statutes is amended to read:  
2           767.23 (1n) Before making any temporary order under sub. (I), the court or  
3 family court commissioner shall consider those factors which the court is required  
4 by this chapter to consider before entering a final judgment on the same subject  
5 matter. If the court or family court commissioner makes a temporary child support  
6 order that deviates from the amount of support that would be required by using the  
7 percentage standard established by the department under s. 49.22 (9), the court or  
8 family court commissioner shall comply with the requirements of s. 767.25 (1n). A  
9 temporary order under sub. (1) may be based upon the written stipulation of the

1 parties, subject to the approval of the court or the family court commissioner.  
 2 Temporary orders made by the family court commissioner may be reviewed by the  
 3 court as provided in s. 767.13 (6). A temporary order granting legal custody of a  
 4 minor child or periods of physical placement with a minor child shall include  
 5 notification of the contents of s. 948.31.

History: 1971 c. 149; 1971 c. 211 s. 126; 1971 c. 220,307; 1975 c. 283; Sup. Ct. Order, 73 W (2d) xxxi (1976); 1977 c. 105; 1979 c. 32 ss. 50, 92 (4); 1979 c. 111,196; 1979 c. 352 s. 39; Stats. 1979 s. 767.23; 1983 a. 27; 1983 a. 204 s. 22; 1983 a. 447; 1985 a 29 s.3202 (9); 1987 a. 355, 364, 413; 1989 a 212; 1991 a 39; 1993 a. 78, 481, 490; 1995 a. 27 ss. 7100h, 9126 (19); 1995 a. 70,404.

(END OF INSERT 2-1)

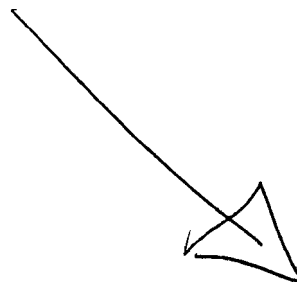
INSERT 2-24

6 SECTION 2. 968.077 of the statutes is created to read:

7 **968.077** <sup>✓</sup> **Interference with child custody or physical placement;**  
 8 **assistance to parent.** If a parent of a child alleges that his or her legal custody or  
 9 period of physical placement of the child is being interfered with by the other **parent**  
 10 of the child in violation of s. <sup>✓</sup>948.31 (3) (c), the parent may request a law enforcement  
 11 agency in the jurisdiction in which the other parent is present to assist in locating  
 12 and returning the child. A law enforcement agency shall assist in locating and  
 13 returning the child of a parent who makes a request under this <sup>✓</sup>section if the parent  
 14 provides the law enforcement agency with a certified copy of the temporary or final  
 15 order specifying joint legal custody rights and periods of physical placement that is  
 16 allegedly being violated by the other parent.

(END OF INSERT 2-24)

INSERT 3-2



1 initial #  
app (1) ORDERS GRANTING LEGAL CUSTODY OR PHYSICAL PLACEMENT. The treatment of  
2 section 767.23 (1n) of the statutes first applies to temporary orders made on the  
3 effective date of this subsection.

(END OF INSERT 3-2)

LRB-1599 11 da  
JEO & PJK :lg:

D-Note

P Please review this dr fully  
to make sure that it does what you want  
it to do. Note that it does not pro-  
vide for the summary assessment of fines  
or imprisonment or "punitive damages"  
by law enforcement agencies because such  
a provision would be unconstitutional.

P Let me know if you have any  
questions or changes.

JEO

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1599/1dn  
JEO&PJK;jlg:mrc

April 30, 1999

Representative Underheim:

Please Review this draft carefully to make sure that it does what you want it to do. Note that it does not provide for the summary assessment of fines or imprisonment or "punitive damages" by law enforcement agencies because such a provision would be unconstitutional.

Let me know if you have any questions or changes.

Jefren E. Olsen  
Legislative Attorney  
Phone: (608) 266-8906  
E-mail: Jefren.Olsen@legis.state.wi.us

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: Pam.Kahler@legis.state.wi.us

**SUBMITTAL  
FORM**

**LEGISLATIVE REFERENCE BUREAU  
Legal Section Telephone: 266-3561  
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

**Date:** 5/4/99

**To:** Representative Underheim

**Relating to LRB drafting number:** LRB- 1599

**Topic**

Interference with custody of a child

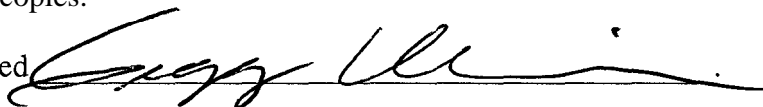
**Subject(s)**

Criminal Law - crimes agnst kids

1. **JACKET** the draft for introduction \_\_\_\_\_

**in the Senate or the Assembly** \_\_\_\_ (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached



A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE** introduction \_\_\_\_\_

If the analysis indicates that the proposal requires a fiscal estimate because the proposal makes an appropriation or increases or decreases the state or general local government fiscal liability or requires a fiscal estimate prior to introduction. If you choose to obtain a fiscal estimate prior to introduction, a fiscal estimate will be requested automatically upon introduction. Requesting the fiscal estimate prior to introduction is optional. If you choose to obtain a fiscal estimate prior to introduction, please call 266-3561. If you have any questions relating to the attached draft, please call me.

*Shanks*  
*Jefren*  
*Kate*

If you have any questions

relating to the attached draft, please call 266-3561. If you have any questions

relating to the attached draft,

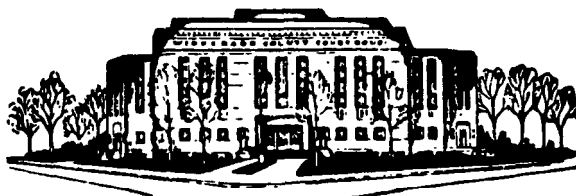
please call me.

Jefren E. Olsen, Legislative Attorney  
Telephone: (608) 26643906

10

11

PHONE: Oshkosh (920) 236-4791  
(920) 2364792  
Neenah (920) 727-2880



**COURTHOUSE**  
415 Jackson Street, Room 220  
P. O. Box 2808  
Oshkosh, Wisconsin 54903-2808

JOSEPH V. YANA  
FAMILY COURT COMMISSIONER  
WINNEBAGO COUNTY, WISCONSIN

PR. O. # 1999

April 7, 1999

State Representative Gregg Underhehn  
P.O. Box 8953  
Madison, WI 537089-8953

Re: Revision of 948.31

Dear Gregg:

I am in receipt of your letter of April 1, 1999 and the enclosed preliminary draft of the proposed amendments to Section 948.31. After our conversation at the Conservation Club Dinner on April 5<sup>th</sup> I have had a chance to think about the proposed legislation a little bit more. I am enclosing a proposed redraft of what you are proposing in terms of amending the **existing** twelve (12) hour time limit on return of children to three (3) hours.

As I stated to you in our conversation, reducing the twelve (12) hour limit to three (3) hours will create some problems primarily in light of the fact that the existing language in the Statutes creates a felony. You will see from what I have drafted that I propose **retaining** the felony status of a violation of a placement order which exceeds twelve (12) hours beyond the placement time and it also creates a misdemeanor category in cases in which the child is withheld from the parent for more than three (3) hours beyond the court ordered period of physical placement. The Class A misdemeanor which I am proposing would carry a **maximum** of nine (9) months in jail, \$10,000.00 **fine**, or both. I am afraid that if we merely reduce the twelve (12) hour **limitation** to three (3) hours that the felony status of the offense could create some problems. Moreover, a felony conviction for violation of a placement order by such a short period of time could be viewed as excessive. However, creating a misdemeanor for withholding a child for three (3) hours or more maintains the criminal sanctions for violation of the Statute without the stigma of a felony conviction. This may make law enforcement of the court order easier and possibly more likely that prosecutors will prosecute the misdemeanor than the felony. Obviously, if there is an excessive withholding of the child for more than twelve (12) hours, the felony status of such offense should be retained and such violations will continue to be prosecuted as felonies.



You will also note that I am proposing creation of Section **948.31(4)(a)(5)** which would create an additional affirmative defense to the misdemeanor violations in cases where the violating parent or person does not comply with the order due to circumstances beyond their control.

Please review what I have proposed and if you have any further questions please feel free to get back with me. If I can be of any further assistance to you in this matter please feel free to contact me.

Sincerely,

Joseph V. Yana  
Family Court Commissioner

JVY/wjb

948.31(1)(c) (created to read) Except as provided under chs. 48 and 938, whoever intentionally causes a child to leave, takes a child away or withholds a child for more than 3 hours beyond the court-approved period of physical placement or visitation period **from** a legal custodian with intent to deprive the custodian of his or her custody rights without the consent of the custodian is guilty of a Class A misdemeanor. This paragraph is not applicable if the court has entered an order authorizing the person to so take or withhold the child. The fact that joint legal custody has been awarded to both parents by a court does not preclude a court from finding that one parent has committed a violation of this paragraph.

948.3 1(2)(a) (created to renumber current 948.3 1(2))

948.3 1(2)(b) (created to read) Whoever causes a child to leave, takes a child away or withholds a child for more than 3 hours from the child's parents or, in the case of a nonmarital child whose parents do not subsequently intermarry under s. 767.60, from the child's mother or, if he has been granted legal custody, the child's father, without the consent of the parents, the mother or father with legal custody, is guilty of a Class A misdemeanor. This subsection is not applicable if legal custody has been granted by court order to the person taking or withholding the child.

948.3 1(3m) (created to read) Any parent, or any person acting pursuant to directions of a parent, who after issuance of a temporary or final order specifying joint legal custody rights and periods of physical placement, takes a child from or causes a child to leave the other parent in violation of the order or withholds a child for more than 3 hours beyond the court-approved period of physical placement or visitation period is guilty of a Class A misdemeanor.

948.3 1(4)(a) It is an affirmative defense to prosecution for violation of this section if the action:

5. (created to read) Is contrary to subs. (1)(c), (2)(b) or (3m) and circumstances beyond the control of the parent or person acting pursuant to directions from the parent make it impossible to return or provide the child to the other parent within 3 hours of the other parent's court approved period of physical placement or visitation period.



Soon

1999 BILL

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**AN ACT** to amend 767.23 (1n), 948.31 (1) (b), 948.31 (2) and 948.31 (3) (c); and

2

to create 968.077 of the statutes; **relating to:** interference with the custody

3

of a child.

and providing a penalty

regenerate

**Analysis by the Legislative Reference Bureau**

Current law prohibits a person from interfering with the custody of a child. A person can violate this prohibition in various ways, such as by causing a child to leave his or her parents or legal custodian or by taking a child away from his or her legal custodian.

In addition, a person violates the prohibition against interfering with custody by withholding a child for more than 12 hours from his or her parents or from a single parent with legal custody without consent of the parents or the single parent with legal custody. A person also violates the prohibition by withholding a child from his or her legal custodian for more than 12 hours beyond a court-approved period of physical placement or visitation, if the person withholds the child without the custodian's consent and with the intent to deprive the custodian of his or her custody rights.

This bill provides that a person violates the prohibition against interfering with the custody of a child if he or she withholds the child from his or her parents or from a single parent with legal custody for more than three hours, or if he or she withholds a child from his or her legal custodian for more than three hours beyond a court-approved period of physical placement or visitation.

The bill also provides that, if a court has ordered that both parents have legal custody and periods of physical placement of a child and one parent takes the child

ANALYSIS INSERT (A)

ANALYSIS INSERT (B)

ANALYSIS INSERT (C)

H

against interfering with custody

**BILL**

from or causes the child to leave the other parent in violation of the order or withholds the child for more than three hours. beyond the court-approved period of physical placement or visitation, the other parent may request a law enforcement agency in the jurisdiction in which the first parent is located to assist in locating and returning the child. A law enforcement agency must assist in locating and returning the child of a parent who makes a request for assistance if the parent provides the law enforcement agency with a certified copy of the court order specifying joint legal custody rights and periods of physical placement.

Finally, under current law a summons in an action affecting the family, such as a divorce, in which the parties have a minor child must include notification of the statute that prohibits interference with the custody of a child. Also under current law, a final judgment in an action affecting the family in which custody of, or physical placement with, a minor child was determined must include notification of the statute that prohibits interference with the custody of a child. Under this bill, if a judge or family court commissioner in an action affecting the family grants legal custody of a minor child or periods of physical placement with a minor child temporarily during the pendency of the action, the temporary order must also include notification of the statute that prohibits interference with the custody of a child.

For further information see the *local* fiscal estimate, which will be printed as an appendix to this bill.

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

1           **SECTION 1.** 767.23 (1n) of the statutes is amended to read:

2           767.23 **(In)** Before making any temporary order under sub. (1), the court or  
3 family court commissioner shall consider those factors which the court is required  
4 by this chapter to consider before entering a final judgment on the same subject  
5 matter. If the court or family court commissioner makes a temporary child support  
6 order that deviates from the amount of support that would be required by using the  
7 percentage standard established by the department under s. 49.22 (9), the court or  
8 family court commissioner shall comply with the requirements of s. 767.25 (In). A  
9 temporary order under sub. (1) may be based upon the written stipulation of the  
10 parties, subject to the approval of the court or the family court commissioner.  
11 Temporary orders made by the family court commissioner may be reviewed by the

**BILL**

1 court as provided in s. 767.13 (6). A temporary order granting legal custody of a  
2 minor child or periods of physical placement with a minor child shall include  
3 notification of the contents of s. 948.31.

INS  
3-4  
④

**SECTION 2.** 948.31 (1) (b) of the statutes is amended to read:

5 948.31 (1) (b) Except as provided under chs. 48 and 938, whoever intentionally  
6 causes a child to leave, takes a child away or withholds a child for more than ~~12~~ 3  
7 hours beyond the court-approved period of physical placement or visitation period  
8 from a legal custodian with intent to deprive the custodian of his or her custody rights  
9 without the consent of the custodian is guilty of a Class C felony. This paragraph is  
10 not applicable if the court has entered an order authorizing the person to so take or  
11 withhold the child. The fact that joint legal custody has been awarded to both  
12 parents by a court does not preclude a court from finding that one parent has  
13 committed a violation of this paragraph.

**SECTION 3.** 948.31 (2) of the statutes is amended to read:

15 948.31 (2) Whoever causes a child to leave, takes a child away or withholds a  
16 child for more than ~~12~~ 3 hours from the child's parents or, in the case of a nonmarital  
17 child whose parents do not subsequently intermarry under s. 767.60, from the child's  
18 mother or, if he has been granted legal custody, the child's father, without the consent  
19 of the parents, the mother or the father with legal custody, is guilty of a Class E  
20 felony. This subsection is not applicable if legal custody has been granted by court  
21 order to the person taking or withholding the child.

**SECTION 4.** 948.31 (3) (c) of the statutes is amended to read:

23 948.31(3) (c) After issuance of a temporary or final order specifying joint legal  
24 custody rights and periods of physical placement, takes a child from or causes a child  
25 to leave the other parent in violation of the order or withholds a child for more than

**BILL**

**SECTION 4**

1 ~~12~~ 3 hours beyond the court-approved period of physical placement or visitation  
2 period.

3 **SECTION 5.** 968.077 of the statutes is created to read:

4 **968.077 Interference with child custody or physical placement;**

5 **assistance to parent.** If a parent of a child alleges that his or her legal custody or

6 period of physical placement of the child is being interfered with by the other parent

7 of the child in violation of s. 948.31 ~~(a)(1)~~ <sup>(3m)</sup> ✓, the parent may request a law enforcement

8 agency in the jurisdiction in which the other parent is present to assist in locating

9 and returning the child. A law enforcement agency shall assist in locating and

10 returning the child of a parent who makes a request under this section if the parent

11 provides the law enforcement agency with a certified copy of the temporary or final

12 order specifying joint legal custody rights and periods of physical placement that is

13 allegedly being violated by the other parent.

14 **SECTION 6. Initial applicability.**

✓ (am),

15 (1) **INTERFERENCE WITH CUSTODY.** The treatment of section 948.31 (1) (b), ~~(2) and~~  
<sup>and (3m) (a)</sup> ✓ <sup>apply</sup>

16 (3) (c) of the statutes first applies to offenses committed on the effective date of this  
17 subsection.

18 (2) **ORDERS GRANTING LEGAL CUSTODY OR PHYSICAL PLACEMENT.** The treatment of

19 section 767.23 (1n) of the statutes first applies to temporary orders made on the

20 effective date of this subsection.

21 **(END)**

the renumbering and amendment  
of section 948.31 (2) ✓ of the  
statutes and the creation of  
section 948.31 (2) (a) ✓ of the  
statutes

1 **ANALYSIS INSERT A.-**

#20 A person who violates the prohibition against interfering with the custody of a child in this manner may be fined not more than \$10,000 or imprisoned for not more than two years or both, if the offense occurs before December 31, 1999, or may be fined not more than \$10,000 or imprisoned for not more than five years or both, if the offense occurs on or after December 31, 1999.

2 **ANALYSIS INSERT B:**

#20 A person who violates the prohibition against interfering with the custody of a child in this manner may be fined not more than \$10,000 or imprisoned for not more than ten years or both, if the offense occurs before December 31, 1999, or may be fined not more than \$10,000 or imprisoned for not more than 15 years or both, if the offense occurs on or after December 31, 1999.

3 **ANALYSIS INSERT C:**

#20 A person who violates the prohibition against interfering with the custody of a child by withholding the child for more than three hours may be fined not more than \$10,000 or imprisoned for not more than nine months or both.

4 **INSERT 3-4:**

5 SECTION 1. 948.31 (1) (am) <sup>x</sup> of the statutes is created to read:

6 948.31 (1) (am) Except as provided under chs. 48 and 938, <sup>✓</sup> whoever  
7 intentionally causes a child to leave, takes a child away or withholds a child for more  
8 than <sup>✓</sup> 3 hours beyond the court-approved period of physical placement or visitation  
9 period from a legal custodian with intent to deprive the custodian of his or her  
10 custody rights without the consent of the custodian is guilty of a <sup>✓</sup> Class A  
11 misdemeanor. This paragraph <sup>✓</sup> is not applicable if the court has entered an order  
12 authorizing the person to so take or withhold the child.

13 SECTION 2. 948.31 (1) (b) <sup>x</sup> of the statutes is amended to read:

14 948.31 (1) (b) Except as provided under chs. 48 and 938, whoever intentionally  
15 causes a child to leave, takes a child away or withholds a child for more than 12 hours  
16 beyond the court-approved period of physical placement or visitation period from a



1 legal custodian with intent to deprive the custodian of his or her custody rights  
2 without the consent of the custodian is guilty of a Class C felony. This paragraph is  
3 not applicable if the court has entered an order authorizing the person to so take or  
4 withhold the child.

5 (c) The fact that joint legal custody has been awarded to both parents by a court  
6 does not preclude a court from finding that one parent has committed a violation of  
7 ~~this paragraph~~ <sup>✓</sup> par. (am) or (b).

8 History: 1987 a. 332; 1989 a. 31, 56, 107; 1993 a. 302; 1995 a. 27 ~~ss.~~ <sup>✓</sup> 7237, 9126 (19); 1995 a. 77; 1997 a. 290.

**SECTION 3. 948.31 (2)** of the statutes is renumbered **948.31 (2) (b)** and amended

9 to read:

10 **948.31 (2) (b)** Whoever causes a child to leave, takes a child away or withholds  
11 a child for more than 12 hours from the child's parents or, in the case of a nonmarital  
12 child whose parents do not subsequently intermarry under s. 767.60, from the child's  
13 mother or, if he has been granted legal custody, the child's father, without the consent  
14 of the parents, the mother or the father with legal custody, is guilty of a Class E  
15 felony. This ~~subsection~~ <sup>✓</sup> paragraph is not applicable if legal custody has been granted  
16 by court order to the person taking or withholding the child.

17 History: 1987 a. 332; 1989 a. 31, 56, 107; 1993 a. 302; 1995 a. 27 ~~ss.~~ <sup>✓</sup> 7237, 9126 (19); 1995 a. 77; 1997 a. 290.

**SECTION 4. 948.31 (2) (a)** of the statutes is created to read:

18 **948.31 (2) (a)** Whoever causes a child to leave, takes a child away or withholds  
19 a child for more than 3 hours from the child's parents or, in the case of a nonmarital  
20 child whose parents do not subsequently intermarry under s.567.60, from the child's  
21 mother or, if he has been granted legal custody, the child's father, without the consent  
22 of the parents, the mother or the father with legal custody, is guilty of a Class A  
23 misdemeanor. This paragraph is not applicable if legal custody has been granted by  
24 court order to the person taking or withholding the child.

1           **SECTION 5.** 948.31 (3) (c) <sup>✓</sup> of the statutes is renumbered 948.31 (3m) (b) and  
2 amended to read:

3           948.31 (3m) (b) ~~After~~ Any parent, or any person acting pursuant to directions  
4 from the parent, who, after issuance of a temporary or final order specifying joint  
5 legal custody rights and periods of physical placement, takes a child from or causes  
6 a child to leave the other parent in violation of the order or withholds a child for more  
7 than 12 hours beyond the court-approved period of physical placement or visitation  
8 period is guilty of a Class C <sup>✓</sup> felony.

**History:** 1987 a. 332; 1989 a. 31, 56, 107; 1993 a. 302; 1995 a. 27 ss. ~~127~~ <sup>✓</sup> 9126 (19); 1995 a 77; 1997 a. 290.

9           **SECTION 6.** 948.31 (3m) (a) <sup>✓</sup> of the statutes is created to read:

10           948.31 (3m) (a) Any parent, or any person acting pursuant to directions from  
11 the parent, who, after issuance of a temporary or final order specifying joint legal  
12 custody rights and periods of physical placement, takes a child from or causes a child  
13 to leave the other parent in violation of the order or withholds a child for more than  
14 <sup>✓</sup> 3 hours beyond the court-approved period of physical placement or visitation period  
15 is guilty of a Class <sup>A</sup> misdemeanor.