

**2009 DRAFTING REQUEST**

**Bill**

Received: **01/14/2010**

Received By: **chanaman**

Wanted: **As time permits**

Identical to LRB:

For: **David Hansen (608) 266-5670**

By/Representing: **John Wagnitz**

This file may be shown to any legislator: **NO**

Drafter: **chanaman**

May Contact:

Addl. Drafters:

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

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Hansen@legis.wisconsin.gov**

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Penalties for drug use in presence of children

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**Instructions:**

See attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	chanaman 01/15/2010	bkraft 01/22/2010		_____			S&L Crime
/1			rschluet 01/25/2010	_____	sbasford 01/25/2010	sbasford 01/25/2010	

FE Sent For:

*at  
intro*

<END>

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/?	chanaman	1/bjk'122	WJ				
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1/22  
JW  
<END>

FE Sent For:

**Lundquist, Jessica**

**From:** Dave Graf [DaveGraf@ci.green-bay.wi.us]  
**Sent:** Tuesday, December 08, 2009 6:53 PM  
**To:** Sen.Hansen  
**Subject:** New Legislation request

Dear Senator Hansen,

I am a 16 year veteran of law enforcement and I am currently a Detective with the Green Bay Police Department assigned to the Brown County Drug Task force. I am writing to you at my own discretion both for professional and personal reasons. I ask that you and your fellow legislators look into the possibility of adding new legislation or enhancing current legislation in response to the presence of young children during illegal narcotic transactions.

I have researched current legislation and I am aware of the laws regarding minors and illegal narcotics as well as the child neglect laws. However I believe that they fail to specifically address the issue of the presence of minors during illegal drug sales.

I have personally participated in executing search warrants and arresting suspects in vehicles, in residences and on foot. Several times during my agencies narcotic investigations I see that young children are present during a drug deal or are present in the residence where a search warrant is executed. When I mention young children I am referring to children age 10 or under. Illegal narcotics are of course dangerous and the distribution of illegal narcotics causes dangerous situations that young children are being exposed to. Children age 10 and under cannot be responsible for their welfare and it is up to their parents and guardians. However, when a parent or guardian is selling illegal narcotics the child is being exposed to the illegal drugs, the suspects who purchase the drugs and the dangerous situation of the drug deal itself.

It is my purpose of the email is to inform you that the State of Wisconsin needs to make it clear to suspects who do deal drugs that if they choose to involve their young children that there will be greater penalties to pay. I ask that you look into either new legislation or adding an enhancer penalty of current legislation that would make it illegal for an individual to sell illegal narcotics in the presence of a child 10 or younger. There is current legislation that covers the use of minors for the distribution of illegal narcotics and child neglect which would more difficult to address for a single drug transactions. An example of a situation I am referring to is that after my department conducted a controlled drug transaction with a suspect who sold illegal narcotics to a confidential informant the suspect vehicle was stopped and occupied by the suspect and two small children in child restraints. The suspect was arrested and then my agency was left with finding a safe place for the children or calling Human Services. All of that of course could be avoided if the suspect choose to not have their children present when they sold illegal drugs.

Once again I ask you to look at present legislation and the possibility of introducing new legislation concerning the mere presence of a young child during a drug deal. I would compare the legislation to be in accordance with OWI laws that enhance penalties for individuals who drive while under the influence with young children present. Please feel free to contact me if you have any questions, concerns or if I can assist you in any way.

Sincerely,

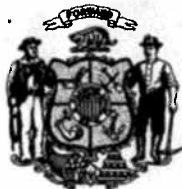
Narcotics Investigator David Graf  
 Brown County Drug Task Force  
 Green Bay Police Department  
 307 S. Adams St  
 Green Bay, WI 54301  
 Desk (920) 448-7651  
 Cell (920) 360-3542  
[davegraf@ci.green-bay.wi.us](mailto:davegraf@ci.green-bay.wi.us)

948.015 (8)

941.573 (3) (b) 2

possession of  
 drug  
 paraph

12/10/2009



①  
Lbjk

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

SA  
X-ref

7/29/09 cut

1 AN ACT ...; relating to: distribution or delivery of a controlled substance or  
2 controlled substance analog in the presence of a child and providing a penalty.

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

Under current law, a person who distributes or delivers a controlled substance or controlled substance analog is guilty of a felony, the penalties for which vary depending on the controlled substance or controlled substance analog. Under this bill, the maximum term of imprisonment for distributing or delivering a controlled substance or controlled substance analog is increased by five years if the offense is done in the presence of a child who is under the age of ten years old. *no more than*

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

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

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

3 SECTION 1. 939.30 (1) of the statutes is amended to read:  
4 939.30 (1) Except as provided in sub. (2) and s. 961.455 (1m), whoever, with  
5 intent that a felony be committed, advises another to commit that crime under

1 circumstances that indicate unequivocally that he or she has the intent is guilty of  
2 a Class H felony.

3 History: 1977 c. 173; 1989 a. 121; 1991 a. 153; 1995 a. 448; 2001 a. 109.

3 SECTION 2. 948.015 (7r) of the statutes is created to read:

4 948.015 (7r) Section 961.455 (2m) relating to the distribution or delivery of  
5 controlled substance or controlled substance analog in the presence of a child who  
6 has not attained the age of 10 years.

7 SECTION 3. 961.455 (title) of the statutes is amended to read:

8 961.455 (title) ~~Using a child for~~ **Children and illegal drug distribution,**  
9 **delivery, or manufacturing purposes.**

10 History: 1989 a. 121; 1991 a. 153; 1995 a. 27; 1995 a. 448 ss. 273 to 275; Stats. 1995 s. 961.455; 1997 a. 283; 2001 a. 109.

10 SECTION 4. 961.455 (1) of the statutes is renumbered 961.455 (1m) (a).

11 SECTION 5. 961.455 (2) of the statutes is renumbered 961.455 (1m) (b) and  
12 amended to read:

13 961.455 (1m) (b) The knowledge requirement under ~~sub. (1) par. (a)~~ does not  
14 require proof of knowledge of the age of the child. It is not a defense to a prosecution  
15 under this section that the actor mistakenly believed that the person solicited, hired,  
16 directed, employed, or used under ~~sub. (1) par. (a)~~ had attained the age of 18 years,  
17 even if the mistaken belief was reasonable.

18 History: 1989 a. 121; 1991 a. 153; 1995 a. 27; 1995 a. 448 ss. 273 to 275; Stats. 1995 s. 961.455; 1997 a. 283; 2001 a. 109.

18 SECTION 6. 961.455 (2m) of the statutes is created to read:

19 961.455 (2m) If a person who is 18 years of age or older violates s. 961.41 (1)  
20 by delivering or distributing while in the presence of a child who is 10 years of age  
21 or younger the maximum term of imprisonment for that crime is increased by 5  
22 years.

23 SECTION 7. 961.455 (3) of the statutes is renumbered 961.455 (1m) (c) and  
24 amended to read:

1           961.455 (1m) (c) Solicitation under ~~sub. (1) par. (a)~~ occurs in the manner  
2           described under s. 939.30, but the penalties under ~~sub. (1) par. (a)~~ apply instead of  
3           the penalties under s. 939.30.

4           History: 1989 a. 121; 1991 a. 153; 1995 a. 27; 1995 a. 448 ss. 273 to 275; Stats. 1995 s. 961.455; 1997 a. 283; 2001 a. 109.

4           **SECTION 8.** 961.455 (4) of the statutes is renumbered 961.455 (1m) (d) and  
5           amended to read:

6           961.455 (1m) (d) If the conduct described under ~~sub. (1) par. (a)~~ results in a  
7           violation under s. 961.41 (1), the actor is subject to prosecution and conviction under  
8           s. 961.41 (1) or this section or both.

9           History: 1989 a. 121; 1991 a. 153; 1995 a. 27; 1995 a. 448 ss. 273 to 275; Stats. 1995 s. 961.455; 1997 a. 283; 2001 a. 109.

9           **SECTION 9.** 973.01 (2) (c) 2. a. of the statutes is amended to read:

10           973.01 (2) (c) 2. a. Sections 939.621, 939.632, 939.645, 946.42 (4), 961.455 (2m),  
11           961.46, and 961.49.

12           History: 1997 a. 283; 2001 a. 109; 2003 a. 33; 2005 a. 277; 2007 a. 116, 226; 2009 a. 28.

(END)

**Barman, Mike**

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**From:** Wagnitz, John  
**Sent:** Monday, January 25, 2010 1:51 PM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB 09-4126/1 Topic: Penalties for drug use in presence of children

Please Jacket LRB 09-4126/1 for the SENATE.