

## 2013 DRAFTING REQUEST

### Senate Substitute Amendment (SSA-SB471)

Received: 1/31/2014 Received By: chanaman  
Wanted: As time permits Same as LRB:  
For: Jennifer Shilling (608) 266-5490 By/Representing: Tony Palese  
May Contact: Drafter: chanaman  
Subject: Criminal Law - crimes agnst kids Addl. Drafters:  
Criminal Law - procedure  
Criminal Law - sentencing Extra Copies:

Submit via email: YES  
Requester's email: Sen.Shilling@legis.wisconsin.gov  
Carbon copy (CC) to:

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#### Pre Topic:

No specific pre topic given

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#### Topic:

Neglect of a child; degrees and chronic neglect -- change penalties; engross amendment; add chapter 48

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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 2/1/2014	scalvin 2/3/2014		_____			
/P1	chanaman 2/4/2014	scalvin 2/5/2014	jfrantze 2/3/2014	_____	mbarman 2/3/2014		
/P2	chanaman 2/5/2014	scalvin 2/5/2014	rschluet 2/5/2014	_____	srose 2/5/2014		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P3	chanaman 2/6/2014	scalvin 2/6/2014	jfrantze 2/5/2014	_____	mbarman 2/5/2014		
/P4	chanaman 2/6/2014		jfrantze 2/6/2014	_____	sbasford 2/6/2014		
/1		scalvin 2/6/2014	jmurphy 2/6/2014	_____	sbasford 2/6/2014	sbasford 2/6/2014	

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/P4			jfrantze 2/6/2014	_____	sbasford 2/6/2014		
FE Sent For:		<i>/1 sac 02/06/2014</i>	<i>/1 sac 02/06/2014</i>	<i>jm 2/6</i>			

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1P3 sac  
02/05/2014

1P3 sac  
02/05/2014

*JM* 2/5  
*Jo*

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/P1			jfrantze 2/3/2014	_____	mbarman 2/3/2014		
FE Sent For:		1 p2 sac 02/05/2014	1 p2 sac 02/05/2014				

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**Criminal Law - sentencing**

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/?	chanaman	/p1 sac 02/03/2014	/p1 sac 02/03/2014	<i>JM</i> <i>Jb</i>	2/3		

FE Sent For:

<END>

SECTION 4. 948.21 of the statutes is repealed and recreated to read:

**7948.21 Neglecting a child. (1) DEFINITIONS.** In this section:

(a) "Child sex offense" means an offense under s. 948.02, 948.025, 948.05, 948.051, 948.055, 948.06, 948.07, 948.10, 948.11, or 948.12.

(am) "Contributes to the neglect" includes the act of contributing to neglect even if the child does not actually suffer from neglect if the natural and probable consequences of the act or failure to act would be that the child suffers from neglect.

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

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

"Necessary care"

includes, but is not limited to, any of the following:

1. Appropriate food.
2. Appropriate clothing.
3. Appropriate medical care.
4. Appropriate dental care.
5. The opportunity for education.
6. Appropriate shelter.
7. Appropriate supervision.

8. ~~6-~~The protection from the exposure to the distribution, manufacture, or use of controlled substances, as defined in s. 961.01 (4).

(d) "Neglect" means ~~any of the following~~ ~~:-t~~

- ~~1. To fail, for reasons other than poverty, to provide a child necessary care.~~
- ~~2. To fail to provide a child with appropriate supervision due to the sustained consumption of alcohol or controlled substances, as defined in s. 961.01 (4).~~

~~(2) NEGLECT.~~ Any person who is responsible for a child's welfare who neglects, or contributes to the neglect of, the child for whom he or she is responsible is guilty of the following:

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

(b) A Class E felony if the person engages in ~~a course of~~ conduct that the person knows or should know creates an unreasonable and substantial risk of death.

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

1. ~~As a consequence,~~ The child suffers great bodily harm as a consequence.

2. The child becomes a victim of a child sex offense ~~as a consequence,~~ ~~or suffers emotional damage.~~

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

1. The child suffers emotional damage as a consequence.

2. The person engages in ~~a course of~~ conduct that the person knows or should know creates an unreasonable and substantial risk of great bodily harm to the child.

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3. The person engages in a course of conduct that the person knows or should know creates an unreasonable and substantial risk that the child could become a victim of a child sex offense.

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4. The person engages in a course of conduct that the person knows or should know creates an unreasonable and substantial risk of emotional damage to the child.

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

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1. The child suffers bodily harm as a consequence.
2. The person engages in conduct that the person knows or should know creates an unreasonable and substantial risk of emotional damage to the child.

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

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1. The child suffers substantial bodily harm as a consequence.
2. The person engages in a course of conduct that the person knows or should know creates an unreasonable and substantial risk of substantial bodily harm to the child.

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(f) A Class I felony if the any of the following applies:

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1. The child suffers bodily harm as a consequence.
2. The person engages in a course of conduct that the person knows or should know creates an unreasonable and substantial risk of bodily harm to the child.

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(g) A Class A misdemeanor.

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(2m) REBUTTABLE PRESUMPTION. A rebuttable presumption of a course of conduct creating an unreasonable and substantial risk of the harm described under sub. (2) (b), (de) 12., 23., or 34., or (fd) 12., or

(e) 2., whichever is applicable, exists/arises under any of the following circumstances:

(a) The child had not attained the age of 6 years at the start of the conduct or course of conduct.

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

(3) REPEATED ACTS OF NEGLECT OF THE SAME CHILD. (a) Any person who is responsible for a child's welfare who commits 3 or more violations under 948.21 within a specified period of time involving the same child is guilty of the following, at least 3 times in a specified period, neglects, or contributes to the neglect of, that child is responsible is guilty of the following:

1. A Class ~~BC~~ felony if death is a consequence of one or more of the acts or failures to act.

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2. A Class ~~DD~~ felony if the person engages in conduct that the person knows or should know creates an unreasonable and substantial risk of death is a probable consequence.

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3. A Class ~~EE~~ felony if the child suffers great bodily harm as a consequence of one or more of the acts or failures to act or a probable consequence.

4. A Class FF felony if any of the following applies:

(a) The child suffers emotional damage as a consequence of one or more of the acts or failures to act or a probable consequence.

~~5. A Class G felony if substantial bodily harm is a consequence or a probable consequence.~~

(b) The person engages in conduct that the person knows or should know creates an unreasonable and substantial risk of great bodily harm to the child.

56. A Class GH felony if any of the following applies:

(a) The child suffers bodily harm as a consequence of one or more of the acts or failures to act or a probable consequence.

(b) The person engages in conduct that person knows or should know creates an unreasonable and substantial risk of emotional damage to the child.

(a) \_\_\_\_\_

(b) If an action under par. (a) is tried to a jury, in order to find the defendant guilty, the members of the jury must unanimously agree that at least 3 violations occurred to the same child within the specified period but need not agree on which instances of neglect acts constitute the requisite number or which instances of neglect acts resulted in the requisite harm or risk of harm ~~death or harm~~.

(c) The State may not charge in the same action a person with a violation of this subsection and with a violation involving the same child under sub. (2), unless the violation of sub. (2) occurred outside of the period applicable under par. (a).

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**(2) NEGLECT.** Any person who is responsible for a child's welfare who neglects, or contributes to the neglect of, the child for whom he or she is responsible is guilty of the following:

- (a) A Class D felony if the child suffers death as a consequence.
- (b) A Class E felony if the person engages in conduct that the person knows or should know creates an unreasonable and substantial risk of death.
- (c) A Class F felony if any of the following applies:
  - 1. The child suffers great bodily harm as a consequence.
  - 2. The child becomes a victim of a child sex offense as a consequence.
- (d) A Class G felony if any of the following applies:
  - 1. The person engages in conduct that the person knows or should know creates an unreasonable and substantial risk of great bodily harm to the child.
  - 2. The person engages in conduct that the person knows or should know creates an unreasonable and substantial risk that the child could become a victim of a child sex offense.
- (e) A Class H felony if any of the following applies:
  - 1. The child suffers bodily harm as a consequence.
  - 2. The child suffers emotional damage as a consequence.
- (f) A Class I felony if any of the following applies:
  - 1. The person engages in conduct that the person knows or should know creates an unreasonable and substantial risk of bodily harm to the child.
  - 2. The person engages in conduct that the person knows or should know creates an unreasonable and substantial risk of emotional damage to the child.
- (g) A Class A misdemeanor.

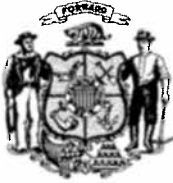
**(2m) REBUTTABLE PRESUMPTION.** A rebuttable presumption of a course of conduct creating an unreasonable and substantial risk of the harm described under sub. (2) (b), (d) 1., 2., or 3., or (f) 1., whichever is applicable, exists under any of the following circumstances:

- (a) The child had not attained the age of 6 years at the start of the conduct or course of conduct.
- (b) The child has a physical, cognitive, or developmental disability that is discernible by an ordinary person viewing the child or that is actually known by the actor.

**(3) REPEATED NEGLECT OF THE SAME CHILD.** (a) Any person who is responsible for a child's welfare who commits 3 or more violations under 948.21 within a specified period of time involving the same child is guilty of the following:

- 1. A Class C felony if death is a consequence of one or more of the acts or failures to act.
- 2. A Class D felony if the person engages in conduct that the person knows or should know creates an unreasonable and substantial risk of death.
- 3. A Class E felony if any of the following applies:
  - (a) The child suffers great bodily harm as a consequence of one or more of the acts or failures to act.
  - (b) The child becomes a victim of a child sex offense as a consequence of one or more of the acts or failures to act.
- 4. A Class F felony if any of the following applies:

- (a) The person engages in conduct that the person knows or should know creates an unreasonable and substantial risk of great bodily harm to the child.
  - (b) The person engages in conduct that the person knows or should know creates an unreasonable and substantial risk that the child could become a victim of a child sex offense.
5. A Class G felony if any of the following applies:
- (a) The child suffers bodily harm as a consequence of one or more of the acts or failures to act.
  - (b) The child suffers emotional damage as a consequence of one or more of the acts or failures to act.
6. A Class H felony if any of the following applies:
- (a) The person engages in conduct that the person knows or should know creates an unreasonable and substantial risk of bodily harm to the child.
  - (b) The person engages in conduct that the person knows or should know creates an unreasonable and substantial risk of emotional damage to the child.
7. A Class I felony.
- (b) If an action under par. (a) is tried to a jury, in order to find the defendant guilty the members of the jury must unanimously agree that at least 3 violations occurred to the same child within the specified period but need not agree on which instances of neglect constitute the requisite number or which acts resulted in the requisite harm or risk of harm.
  - (c) The state may not charge in the same action a person with a violation of this subsection and with a violation involving the same child under sub. (2), unless the violation of sub. (2) occurred outside of the period applicable under par. (a).



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LRB-299571

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Sub.

Sen SUB A +

## 2013 SENATE BILL 471

MONDAY PLEASE

January 6, 2014 - Introduced by Senators SHILLING, HARRIS and SCHULTZ, cosponsored by Representatives DOYLE, BILLINGS, DANOU, BERCEAU, HULSEY, JORGENSEN, KAHL, SINICKI, STROEBEL, WACHS and WRIGHT. Referred to Committee on Health and Human Services.

neglect

1 **AN ACT to amend** 48.685 (1) (c) 2., 50.065 (1) (e) 2. and 103.34 (1) (b) 2.; and **to**  
2 **repeal and recreate** 948.21 of the statutes; **relating to:** neglect of a child and  
3 providing 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 neglects or contributes to the neglect of the child is guilty of the crime of neglect. This bill defines neglect as failing, for reasons other than poverty, to provide the child necessary care, such as appropriate food, clothing, and medical and dental care; the opportunity for education; supervision; or the protection from exposure to the distribution, manufacture, or use of controlled substances; or as failing to provide the child with appropriate supervision due to the sustained consumption of alcohol or 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



**SENATE BILL 471**

Class C felony to a Class H felony, depending on the actual or likely consequence of death, injury, or becoming the victim of a crime.

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:***

INS  
2-1

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 (3),  
6           948.30, or 948.53.

INS  
2-6

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 (3), 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 (3), 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),

SENATE BILL 471

1 940.23, 940.235, 940.24, 940.25, 940.30, 940.302, 940.305, 940.31, 943.02, 943.03,  
2 943.04, 943.10, 943.30, 943.31, 943.32, 944.32, 944.33 (2), 944.34, 946.10, 948.02 (1)  
3 or (2), 948.025, 948.03 (2) or (3), 948.04, 948.05, 948.051, 948.055, 948.06, 948.07,  
4 948.075, 948.08, 948.085, 948.11 (2) (a) or (am), 948.12, 948.13, 948.21 (1) (2) or (3),  
5 or 948.30 or of a substantially similar federal law or law of another state.

6 SECTION 4. 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, 948.10, 948.11, or 948.12.

10 (am) "Contributes to the neglect" includes the act of contributing to neglect  
11 even if the child does not actually suffer from neglect if the natural and probable  
12 consequences of the act or failure to act would be that the child suffers from neglect.

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

14 (c) "Necessary care" means the care that is <sup>IND 3-14</sup> vital based on all of the facts and  
15 circumstances, such as the child's age, physical or emotional condition, and any  
16 special needs, for the physical or emotional health of the child. "Necessary care"  
17 includes any of the following:

18 1. Appropriate food.

19 2. Appropriate clothing.

20 3. Appropriate medical care.

21 4. Appropriate dental care.

22 5. The opportunity for education.

23 6. The protection from the <sup>indirect</sup> exposure to the distribution, manufacture, or use of  
24 controlled substances, as defined in s. 961.01 (4).

25 (d) "Neglect" means any of the following:

IND 3-13

IND 3-23A

IND 3-25A

IND 3-25B

SENATE BILL 471

SECTION 4

- 1 1. To fail, for reasons other than poverty, to provide a child necessary care.
- 2 2. To fail to provide a child with appropriate supervision due to the sustained
- 3 consumption of alcohol or controlled substances, as defined in s. 961.01 (4).

4 (2) NEGLECT. Any person who is responsible for a child's welfare who neglects,  
 5 or contributes to the neglect of, the child for whom he or she is responsible is guilty  
 6 of the following:

- 7 (a) A Class D felony if the child suffers death as a consequence.
- 8 (b) A Class E felony if the person engages in a course of conduct that the person
- 9 knows or should know creates an unreasonable and substantial risk of death.
- 10 (c) A Class F felony if any of the following applies:

11 1. As a consequence, the child suffers great bodily harm, becomes a victim of  
 12 a child sex offense, or suffers emotional damage.

INS  
4-13

- 13 1. The person engages in a course of conduct that the person knows or should
- 14 know creates an unreasonable and substantial risk of great bodily harm to the child.
- 15 2. The person engages in a course of conduct that the person knows or should
- 16 know creates an unreasonable and substantial risk that the child could become a
- 17 victim of a child sex offense.

18 4. The person engages in a course of conduct that the person knows or should  
 19 know creates an unreasonable and substantial risk of emotional damage to the child.

I

- 20 (d) A Class G felony if any of the following applies:
- 21 1. The child suffers substantial bodily harm as a consequence. - H
- 22 2. The person engages in a course of conduct that the person knows or should
- 23 know creates an unreasonable and substantial risk of substantial bodily harm to the
- 24 child.

NOT  
There

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

H

SENATE BILL 471

INS 5-2

INS 5-4

(f) 1. or

16

INS 5-24

1 1. The child suffers bodily harm as a consequence.  
 2 2. The person engages in a course of conduct that the person knows or should  
 3 know creates an unreasonable and substantial risk of bodily harm to the child.

4 (f) A Class A misdemeanor.  
 5 (2m) REBUTTABLE PRESUMPTION. A rebuttable presumption of conduct creating  
 6 a substantial risk of the harm described under sub. (2) (b), ~~(c) 2. or (d) 2.~~, or  
 7 ~~(c) 2.~~, whichever is applicable, <sup>exists</sup> arises under any of the following circumstances.

8 (a) The child had not attained the age of 6 years at the start of the conduct or  
 9 course of conduct.

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

13 (3) REPEATED <sup>01</sup> ACTS OF NEGLECT OF SAME CHILD. (a) Any person who is responsible  
 14 for a child's welfare who, at least 3 times in a specified period, neglects, or contributes  
 15 to the neglect of, that child is responsible <sup>is guilty of the following:</sup>

- 16 1. A Class <sup>D</sup> C felony if death is a consequence.
- 17 2. A Class D felony if death is a probable consequence.
- 18 3. A Class E felony if great bodily harm is a consequence or a probable  
19 consequence.
- 20 4. A Class F felony if emotional damage is a consequence or a probable  
21 consequence.
- 22 5. A Class G felony if substantial bodily harm is a consequence or a probable  
23 consequence.
- 24 6. A Class H felony if bodily harm is a consequence or a probable consequence.

a course of an unreasonable and

~~(c) 2. or (d) 2.~~ 1. or

01

INS 5-15

91

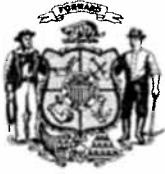
**SENATE BILL 471****SECTION 4**

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

5           (c) The state may not charge in the same action a person with a violation of this  
6 subsection and with a violation involving the same child under sub. (2), unless the  
7 violation of sub. (2) occurred outside of the period applicable under par. (a).

8

(END)



SENATE AMENDMENT,  
TO SENATE BILL 471

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numbers  
use auto numbers*

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 2, line 1: delete that line and substitute:

3 ~~SECTION 4b.~~ 48.02 (2c) of the statutes is created to read:

4 48.02 (2c) "Contributes to the neglect" includes the act of contributing to  
5 neglect even if the child does not actually suffer from neglect if the natural and  
6 probable consequences of the act or failure to act would be that the child suffers from  
7 neglect.

8 ~~SECTION 1c.~~ 48.02 (12d) of the statutes is created to read:

9 48.02 (12d) "Necessary care" means the care that is critical to a child's physical  
10 or emotional health, safety, welfare, or development, based on all of the facts and  
11 circumstances, such as the child's age, physical or emotional condition, and any  
12 special needs of the child. "Necessary care" includes any of the following:

13 (a) Appropriate food.

*INS  
21*

1 (b) Appropriate clothing.

2 (c) Appropriate medical care.

3 (d) Appropriate dental care.

4 (e) The opportunity for education.

5 (f) Protection from exposure to the distribution, manufacture, or use of  
6 controlled substances.

7 (g) Appropriate shelter.

8 (h) Appropriate supervision.

9 **SECTION 1d.** 48.02 (12g) of the statutes is amended to read:

10 48.02 (12g) "Neglect" means failure, refusal, or inability on the part of a  
11 caregiver, for reasons other than poverty, to provide necessary care, ~~food, clothing,~~  
12 ~~medical or dental care or shelter~~ so as to seriously endanger the physical health of  
13 the child.

14 **SECTION 1f.** 48.13 (10) of the statutes is amended to read:

15 48.13 (10) Whose parent, guardian, or legal custodian neglects, refuses, or is  
16 unable for reasons other than poverty to provide necessary care, ~~food, clothing,~~  
17 ~~medical or dental care or shelter~~ so as to seriously endanger the physical or emotional  
18 health of the child;

19 **SECTION 1g.** 48.13 (10m) of the statutes is amended to read:

20 48.13 (10m) Whose parent, guardian, or legal custodian is at substantial risk  
21 of neglecting, refusing, or being unable for reasons other than poverty to provide  
22 necessary care, ~~food, clothing, medical or dental care or shelter~~ so as to endanger  
23 seriously the physical or emotional health of the child, based on reliable and credible  
24 information that the child's parent, guardian, or legal custodian has neglected,  
25 refused, or been unable for reasons other than poverty to provide necessary care;

↑

1 ~~food, clothing, medical or dental care or shelter~~ so as to endanger seriously the  
2 physical health of another child in the home;

3 ~~SECTION 1h.~~ 48.13<sup>✓</sup> (10r) of the statutes is created to read:

4 48.13 (10r) Whose parent, guardian, or legal custodian contributes to the  
5 neglect of the child so as to endanger seriously the physical or emotional health of  
6 the child.

7 ~~SECTION 1j.~~ 48.23<sup>✓</sup> (3m) of the statutes is amended to read:

8 48.23 (3m) GUARDIANS AD LITEM OR COUNSEL FOR ABUSED OR NEGLECTED CHILDREN.  
9 The court shall appoint counsel for any child alleged to be in need of protection or  
10 services under s. 48.13 (3), (3m), (10), (10m) and, (10r), or (11), except that if the child  
11 is less than 12 years of age the court may appoint a guardian ad litem instead of  
12 counsel. The guardian ad litem or counsel for the child may not act as counsel for any  
13 other party or any governmental or social agency involved in the proceeding and may  
14 not act as court-appointed special advocate for the child in the proceeding.

15 ~~SECTION 1L.~~ 48.33<sup>✓</sup> (1) (b) of the statutes is amended to read:

16 48.33 (1) (b) A recommended plan of rehabilitation or treatment and care for  
17 the child or expectant mother which is based on the investigation conducted by the  
18 agency and any report resulting from an examination or assessment under s. 48.295,  
19 which employs the least restrictive means available to accomplish the objectives of  
20 the plan, and, in cases of child abuse or neglect or unborn child abuse, which also  
21 includes an assessment of risks to the physical safety and physical and emotional  
22 health of the child, or to the physical safety and physical health of the unborn child,  
23 and a description of a plan for controlling the risks.

24 ~~SECTION 1n.~~ 48.355<sup>✓</sup> (1) of the statutes is amended to read:



1           48.355 (1) INTENT. In any order under s. 48.345 or 48.347 the judge shall decide  
2 on a placement and treatment finding based on evidence submitted to the judge. The  
3 disposition shall employ those means necessary to maintain and protect the  
4 well-being of the child or unborn child which are the least restrictive of the rights  
5 of the parent and child, of the rights of the parent and child expectant mother or of  
6 the rights of the adult expectant mother, and which assure the care, treatment, or  
7 rehabilitation of the child and the family, of the child expectant mother, the unborn  
8 child, and the family or of the adult expectant mother and the unborn child,  
9 consistent with the protection of the public. When appropriate, and, in cases of child  
10 abuse or neglect or unborn child abuse, when it is consistent with the best interest  
11 of the child in terms of physical safety and physical and emotional health or unborn  
12 child in terms of physical safety and physical health, the family unit shall be  
13 preserved and there shall be a policy of transferring custody of a child from the  
14 parent or of placing an expectant mother outside of her home only when there is no  
15 less drastic alternative. If there is no less drastic alternative for a child than  
16 transferring custody from the parent, the judge shall consider transferring custody  
17 to a relative whenever possible.

18           **SECTION 1p.** 48.415 (2) (am) 1. of the statutes is amended to read:

19           48.415 (2) (am) 1. That on 3 or more occasions the child has been adjudicated  
20 to be in need of protection or services under s. 48.13 (3), (3m), (10) ~~or~~, (10m), or (10r)  
21 and, in connection with each of those adjudications, has been placed outside his or  
22 her home pursuant to a court order under s. 48.345 containing the notice required  
23 by s. 48.356 (2).

24           **SECTION 1r.** 48.685 (1) (c) 2 of the statutes is amended to read:

END OF  
INS 2-1

1 **2.** Page 2, line 6: after that line insert:

2 ~~SECTION 11.~~ 48.977 (2) (a) of the statutes is amended to read:

3 48.977 (2) (a) That the child has been adjudged to be in need of protection or  
4 services under s. 48.13 (1), (2), (3), (3m), (4), (4m), (5), (8), (9), (10), (10m), (10r), (11),  
5 or (11m) or 938.13 (4) and been placed, or continued in a placement, outside of his or  
6 her home pursuant to one or more court orders under s. 48.345, 48.357, 48.363,  
7 48.365, 938.345, 938.357, 938.363, or 938.365 or that the child has been so adjudged  
8 and placement of the child in the home of a guardian under this section has been  
9 recommended under s. 48.33 (1) or 938.33 (1).

10 ~~SECTION 11.~~ 48.977 (4) (b) 3. of the statutes is amended to read:

11 48.977 (4) (b) 3. The date on which the child was adjudged in need of protection  
12 or services under s. 48.13 (1), (2), (3), (3m), (4), (4m), (5), (8), (9), (10), (10m), (10r),  
13 (11), or (11m) or 938.13 (4) and the dates on which the child has been placed, or  
14 continued in a placement, outside of his or her home pursuant to one or more court  
15 orders under s. 48.345, 48.357, 48.363, 48.365, 938.345, 938.357, 938.363, or 938.365  
16 or, if the child has been so adjudged, but not so placed, the date of the report under  
17 s. 48.33 (1) or 938.33 (1) in which placement of the child in the home of the person  
18 is recommended.

19 ~~SECTION 11.~~ 48.981 (3) (c) 2. a. of the statutes is amended to read:

20 48.981 (3) (c) 2. a. If the person making the investigation is an employee of the  
21 county department or, in a county having a population of 500,000 or more, the  
22 department or a licensed child welfare agency under contract with the department  
23 and he or she determines that it is consistent with the child's best interest in terms  
24 of physical safety and physical and emotional health to remove the child from his or

11/5  
2-6

1 her home for immediate protection, he or she shall take the child into custody under  
2 s. 48.08 (2) or 48.19 (1) (c) and deliver the child to the intake worker under s. 48.20.

3 SECTION ~~1k~~ 48.981 (7) (a) 10. of the statutes is amended to read:

4 48.981 (7) (a) 10. A court conducting proceedings under s. 48.21 or 48.213, a  
5 court conducting proceedings related to a petition under s. 48.13, 48.133 or 48.42 or  
6 a court conducting dispositional proceedings under subch. VI or VIII in which abuse  
7 or neglect, or contribution to the neglect, of the child who is the subject of the report  
8 or record or abuse of the unborn child who is the subject of the report or record is an  
9 issue.

END  
OF  
INS  
3-6

10 **3.** Page 3, line 12: after that line insert:

11 (ar) "Course of conduct" means a pattern of conduct composed of a series of  
12 actions or inactions over a period of time, however short.

INS  
3-13

13 **4.** Page 3, line 14: delete "vital" and substitute "critical to a child's physical or  
14 emotional health, safety, welfare, or development".

15 **5.** Page 3, line 16: delete ", for the physical or emotional health".

INS  
3-14

16 **6.** Page 3, line 24: after that line insert:

17 **7.** Appropriate shelter.

18 **8.** Appropriate supervision.

INS 3-23A

19 **7.** Page 3, line 25: delete the material beginning with that line and ending with  
20 page 4, line 3, and substitute:

21 "(d) "Neglect" means to fail, for reasons other than poverty, to provide a child  
22 necessary care."

23 **8.** Page 5, line 5: before "conduct" insert "course of".

1 **9.** Page 5, line 6: delete “a substantial” and substitute “an unreasonable and  
2 substantial”.

3 **10.** Page 5, line 7: delete “arises” and substitute “exists”.

4 (END)

2013-2014 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRBs0261/plins  
CMH:.....

1 Insert 3-25A

2 9. The protection from the direct exposure to the distribution, manufacture, or  
3 use of controlled substances, as defined in s. 961.01 (4).

4

5 Insert 3-25B

6 to fail, for reasons other than poverty, to provide a child necessary care, as

7 provided in par. (c) 1. to 8, or to fail to provide a child necessary care, as provided in ~~8~~

8 par. (c) 9.

\*\*\*NOTE: This is a first attempt to develop the issue that a person could not use poverty as a reason for distributing, manufacturing, or using a controlled substance. If you would like a parallel provision in ch. 48 or if you would like to continue developing this language, please let me know. Perhaps if we added a definition of "indirect exposure" and "direct exposure" this would be clearer.

9

10 Insert 4-13

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

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

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

14

15 Insert 5-2

16 2. The child suffers emotional damage as a consequence.

17 (f) A Class I felony if any of the following applies:

18

19 Insert 5-4

20 2. The person engages in a course of conduct that the person knows or should

21 know creates an unreasonable and substantial risk of emotional damage to the child.

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Insert 5-15

Whoever commits 3 or more violations under sub. (2) within a specified period of time involving the same child

Insert 5-24

2. A Class E felony if at least 3 of the violations were violations of sub. (2) (b).

3. A Class F felony if at least 3 of the violations were violations of sub. (2) (b) or (c).

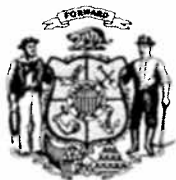
4. A Class G felony if at least 3 of the violations were violations of sub. (2) (b), (c), or (d).

5. A Class H felony if at least 3 of the violations were violations of sub. (2) (b), (c), (d), or (e).

6. A Class I felony if at least 3 of the violations were violations of sub. (2) (b), (c), (d), (e), or (f).

7. A Class A misdemeanor if at least 3 of the violations were violations of sub. (2).

\*\*\*\*NOTE: Per your request, I modelled this provision on s. 948.025.



*Will please*

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION  
SENATE SUBSTITUTE AMENDMENT ,  
TO SENATE BILL 471**

*negn out*

1 **AN ACT to amend** 48.02 (12g), 48.13 (10), 48.13 (10m), 48.23 (3m), 48.33 (1) (b),  
2 48.355 (1), 48.415 (2) (am) 1., 48.685 (1) (c) 2., 48.977 (2) (a), 48.977 (4) (b) 3.,  
3 48.981 (3) (c) 2. a., 48.981 (7) (a) 10., 50.065 (1) (e) 2. and 103.34 (1) (b) 2.; **to**  
4 **repeal and recreate** 948.21; and **to create** 48.02 (2c), 48.02 (12d) and 48.13  
5 (10r) of the statutes; **relating to:** neglect of a child and providing penalties.

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

6 **SECTION 1.** 48.02 (2c) of the statutes is created to read:  
7 48.02 (2c) "Contributes to the neglect" includes the act of contributing to  
8 neglect even if the child does not actually suffer from neglect if the natural and  
9 probable consequences of the act or failure to act would be that the child suffers from  
10 neglect.

1 SECTION 2. 48.02 (12d) of the statutes is created to read:

2 48.02 (12d) "Necessary care" means the care that is critical to a child's physical  
3 or emotional health, safety, welfare, or development, based on all of the facts and  
4 circumstances, such as the child's age, physical or emotional condition, and any  
5 special needs of the child. "Necessary care" includes any of the following:

- 6 (a) Appropriate food.
- 7 (b) Appropriate clothing.
- 8 (c) Appropriate medical care.
- 9 (d) Appropriate dental care.
- 10 (e) The opportunity for education.

11 (f) Protection from exposure to the distribution, manufacture, or use of  
12 controlled substances.

13 (g) Appropriate shelter.

14 (h) Appropriate supervision.

15 SECTION 3. 48.02 (12g) of the statutes is amended to read:

16 48.02 (12g) "Neglect" means failure, refusal, or inability on the part of a  
17 caregiver, for reasons other than poverty, to provide necessary care, food, clothing,  
18 ~~medical or dental care or shelter~~ so as to seriously endanger the physical health of  
19 the child.

*as provided under sub. (12d) or (12g), or the failure refusal, or inability on the part of a caregiver to provide necessary care or shelter so as to seriously endanger the physical health of the child.*

20 SECTION 4. 48.13 (10) of the statutes is amended to read:

21 48.13 (10) Whose parent, guardian, or legal custodian neglects, refuses, or is  
22 unable for reasons other than poverty to provide necessary care, food, clothing,  
23 ~~medical or dental care or shelter~~ so as to seriously endanger the physical or emotional  
24 health of the child;

25 SECTION 5. 48.13 (10m) of the statutes is amended to read:



1           48.13 **(10m)** Whose parent, guardian, or legal custodian is at substantial risk  
2 of neglecting, refusing, or being unable for reasons other than poverty to provide  
3 necessary care, ~~food, clothing, medical or dental care or shelter~~ so as to endanger  
4 seriously the physical or emotional health of the child, based on reliable and credible  
5 information that the child's parent, guardian, or legal custodian has neglected,  
6 refused, or been unable for reasons other than poverty to provide necessary care,  
7 ~~food, clothing, medical or dental care or shelter~~ so as to endanger seriously the  
8 physical health of another child in the home;

9           **SECTION 6.** 48.13 (10r) of the statutes is created to read:

10           48.13 **(10r)** Whose parent, guardian, or legal custodian contributes to the  
11 neglect of the child so as to endanger seriously the physical or emotional health of  
12 the child.

13           **SECTION 7.** 48.23 (3m) of the statutes is amended to read:

14           48.23 **(3m)** GUARDIANS AD LITEM OR COUNSEL FOR ABUSED OR NEGLECTED CHILDREN.  
15 The court shall appoint counsel for any child alleged to be in need of protection or  
16 services under s. 48.13 (3), (3m), (10), (10m) ~~and, (10r), or~~ (11), except that if the child  
17 is less than 12 years of age the court may appoint a guardian ad litem instead of  
18 counsel. The guardian ad litem or counsel for the child may not act as counsel for any  
19 other party or any governmental or social agency involved in the proceeding and may  
20 not act as court-appointed special advocate for the child in the proceeding.

21           **SECTION 8.** 48.33 (1) (b) of the statutes is amended to read:

22           48.33 **(1)** (b) A recommended plan of rehabilitation or treatment and care for  
23 the child or expectant mother which is based on the investigation conducted by the  
24 agency and any report resulting from an examination or assessment under s. 48.295,  
25 which employs the least restrictive means available to accomplish the objectives of

1 the plan, and, in cases of child abuse or neglect or unborn child abuse, which also  
2 includes an assessment of risks to the physical safety and physical and emotional  
3 health of the child, or to the physical safety and physical health of the unborn child,  
4 and a description of a plan for controlling the risks.

5 **SECTION 9.** 48.355 (1) of the statutes is amended to read:

6 48.355 (1) INTENT. In any order under s. 48.345 or 48.347 the judge shall decide  
7 on a placement and treatment finding based on evidence submitted to the judge. The  
8 disposition shall employ those means necessary to maintain and protect the  
9 well-being of the child or unborn child which are the least restrictive of the rights  
10 of the parent and child, of the rights of the parent and child expectant mother or of  
11 the rights of the adult expectant mother, and which assure the care, treatment, or  
12 rehabilitation of the child and the family, of the child expectant mother, the unborn  
13 child, and the family or of the adult expectant mother and the unborn child,  
14 consistent with the protection of the public. When appropriate, and, in cases of child  
15 abuse or neglect or unborn child abuse, when it is consistent with the best interest  
16 of the child in terms of physical safety and physical and emotional health or unborn  
17 child in terms of physical safety and physical health, the family unit shall be  
18 preserved and there shall be a policy of transferring custody of a child from the  
19 parent or of placing an expectant mother outside of her home only when there is no  
20 less drastic alternative. If there is no less drastic alternative for a child than  
21 transferring custody from the parent, the judge shall consider transferring custody  
22 to a relative whenever possible.

23 **SECTION 10.** 48.415 (2) (am) 1. of the statutes is amended to read:

24 48.415 (2) (am) 1. That on 3 or more occasions the child has been adjudicated  
25 to be in need of protection or services under s. 48.13 (3), (3m), (10) ~~or~~, (10m), or (10r)

1 and, in connection with each of those adjudications, has been placed outside his or  
2 her home pursuant to a court order under s. 48.345 containing the notice required  
3 by s. 48.356 (2).

4 **SECTION 11.** 48.685 (1) (c) 2. of the statutes is amended to read:

5 48.685 (1) (c) 2. A violation of s. 940.01, 940.02, 940.03, 940.05, 940.12, 940.19  
6 (2), (4), (5) or (6), 940.22 (2) or (3), 940.225 (1), (2) or (3), 940.285 (2), 940.29, 940.295,  
7 942.09 (2), 948.02 (1) or (2), 948.025, 948.03 (2), 948.05, 948.051, 948.055, 948.06,  
8 948.07, 948.08, 948.085, 948.11 (2) (a) or (am), 948.12, 948.13, 948.21 (1) (2) or (3),  
9 948.30, or 948.53.

10 **SECTION 12.** 48.977 (2) (a) of the statutes is amended to read:

11 48.977 (2) (a) That the child has been adjudged to be in need of protection or  
12 services under s. 48.13 (1), (2), (3), (3m), (4), (4m), (5), (8), (9), (10), (10m), (10r), (11),  
13 or (11m) or 938.13 (4) and been placed, or continued in a placement, outside of his or  
14 her home pursuant to one or more court orders under s. 48.345, 48.357, 48.363,  
15 48.365, 938.345, 938.357, 938.363, or 938.365 or that the child has been so adjudged  
16 and placement of the child in the home of a guardian under this section has been  
17 recommended under s. 48.33 (1) or 938.33 (1).

18 **SECTION 13.** 48.977 (4) (b) 3. of the statutes is amended to read:

19 48.977 (4) (b) 3. The date on which the child was adjudged in need of protection  
20 or services under s. 48.13 (1), (2), (3), (3m), (4), (4m), (5), (8), (9), (10), (10m), (10r),  
21 (11), or (11m) or 938.13 (4) and the dates on which the child has been placed, or  
22 continued in a placement, outside of his or her home pursuant to one or more court  
23 orders under s. 48.345, 48.357, 48.363, 48.365, 938.345, 938.357, 938.363, or 938.365  
24 or, if the child has been so adjudged, but not so placed, the date of the report under

1 s. 48.33 (1) or 938.33 (1) in which placement of the child in the home of the person  
2 is recommended.

3 **SECTION 14.** 48.981 (3) (c) 2. a. of the statutes is amended to read:

4 48.981 (3) (c) 2. a. If the person making the investigation is an employee of the  
5 county department or, in a county having a population of 500,000 or more, the  
6 department or a licensed child welfare agency under contract with the department  
7 and he or she determines that it is consistent with the child's best interest in terms  
8 of physical safety and physical and emotional health to remove the child from his or  
9 her home for immediate protection, he or she shall take the child into custody under  
10 s. 48.08 (2) or 48.19 (1) (c) and deliver the child to the intake worker under s. 48.20.

11 **SECTION 15.** 48.981 (7) (a) 10. of the statutes is amended to read:

12 48.981 (7) (a) 10. A court conducting proceedings under s. 48.21 or 48.213, a  
13 court conducting proceedings related to a petition under s. 48.13, 48.133 or 48.42 or  
14 a court conducting dispositional proceedings under subch. VI or VIII in which abuse  
15 or neglect, or contribution to the neglect, of the child who is the subject of the report  
16 or record or abuse of the unborn child who is the subject of the report or record is an  
17 issue.

18 **SECTION 16.** 50.065 (1) (e) 2. of the statutes is amended to read:

19 50.065 (1) (e) 2. For the purposes of an entity that serves persons under the age  
20 of 18, "serious crime" includes a violation of s. 948.02 (2), 948.03 (2) (b) or (c), 948.05,  
21 948.051, 948.055, 948.06, 948.07, 948.08, 948.085, 948.11 (2) (a) or (am), 948.12,  
22 948.13, 948.21 ~~(1)~~ (2) or (3), 948.30, or 948.53 or a violation of the law of any other  
23 state or United States jurisdiction that would be a violation of s. 948.02 (2), 948.03  
24 (2) (b) or (c), 948.05, 948.051, 948.055, 948.06, 948.07, 948.08, 948.085, 948.11 (2) (a)

1 or (am), 948.12, 948.13, 948.21 ~~(1)~~ (2) or (3), 948.30, or 948.53 if committed in this  
2 state.

3 **SECTION 17.** 103.34 (1) (b) 2. of the statutes is amended to read:

4 103.34 (1) (b) 2. A violation of s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.07,  
5 940.08, 940.09, 940.10, 940.19 (2), (4), (5), or (6), 940.21, 940.225 (1), (2), or (3),  
6 940.23, 940.235, 940.24, 940.25, 940.30, 940.302, 940.305, 940.31, 943.02, 943.03,  
7 943.04, 943.10, 943.30, 943.31, 943.32, 944.32, 944.33 (2), 944.34, 946.10, 948.02 (1)  
8 or (2), 948.025, 948.03 (2) or (3), 948.04, 948.05, 948.051, 948.055, 948.06, 948.07,  
9 948.075, 948.08, 948.085, 948.11 (2) (a) or (am), 948.12, 948.13, 948.21 ~~(1)~~ (2) or (3),  
10 or 948.30 or of a substantially similar federal law or law of another state.

11 **SECTION 18.** 948.21 of the statutes is repealed and recreated to read:

12 **948.21 Neglecting a child. (1) DEFINITIONS.** In this section:

13 (a) “Child sex offense” means an offense under s. 948.02, 948.025, 948.05,  
14 948.051, 948.055, 948.06, 948.07, 948.10, 948.11, or 948.12.

15 (am) “Contributes to the neglect” includes the act of contributing to neglect  
16 even if the child does not actually suffer from neglect if the natural and probable  
17 consequences of the act or failure to act would be that the child suffers from neglect.

18 (ar) “Course of conduct” means a pattern of conduct composed of a series of  
19 actions or inactions over a period of time, however short.

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

21 (c) “Necessary care” means the care that is critical to a child’s physical or  
22 emotional health, safety, welfare, or development, based on all of the facts and  
23 circumstances, such as the child’s age, physical or emotional condition, and any  
24 special needs of the child. “Necessary care” includes any of the following:

25 1. Appropriate food.

- 1           2. Appropriate clothing.
- 2           3. Appropriate medical care.
- 3           4. Appropriate dental care.
- 4           5. The opportunity for education.
- 5           6. Appropriate shelter.
- 6           7. Appropriate supervision.
- 7           8. The protection from the indirect exposure to the distribution, manufacture,
- 8           or use of controlled substances, as defined in s. 961.01 (4).

9           9. The protection from the direct exposure to the distribution, manufacture, or  
 10          use of controlled substances, as defined in s. 961.01 (4).

11          (d) "Neglect" means to fail, for reasons other than poverty, to provide a child  
 12          necessary care, as provided in par. (c) 1. to §., or to fail to provide a child necessary  
 13          care, as provided in par. (c) 9.

\*\*\*\*NOTE: This is a first attempt to develop the issue that a person could not use poverty as a reason for distributing, manufacturing, or using a controlled substance. If you would like a parallel provision in ch. 48 or if you would like to continue developing this language, please let me know. Perhaps if we added a definition of "indirect exposure" and "direct exposure" this would be clearer.

14          (2) **NEGLECT.** Any person who is responsible for a child's welfare who neglects,  
 15          or contributes to the neglect of, the child for whom he or she is responsible is guilty  
 16          of the following:

- 17           (a) A Class D felony if the child suffers death as a consequence.
- 18           (b) A Class E felony if the person engages in a course of conduct that the person  
 19           knows or should know creates an unreasonable and substantial risk of death.
- 20           (c) A Class F felony if any of the following applies:
  - 21           1. The child suffers great bodily harm as a consequence.
  - 22           2. The child becomes a victim of a child sex offense as a consequence.

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

2 1. The person engages in a course of conduct that the person knows or should  
3 know creates an unreasonable and substantial risk of great bodily harm to the child.

4 2. The person engages in a course of conduct that the person knows or should  
5 know creates an unreasonable and substantial risk that the child could become a  
6 victim of a child sex offense.

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 child suffers emotional damage as a consequence.

10 (f) A Class I felony if any of the following applies:

11 1. The person engages in a course of conduct that the person knows or should  
12 know creates an unreasonable and substantial risk of bodily harm to the child.

13 2. The person engages in a course of conduct that the person knows or should  
14 know creates an unreasonable and substantial risk of emotional damage to the child.

15 (g) A Class A misdemeanor.

16 **(2m) REBUTTABLE PRESUMPTION.** A rebuttable presumption of a course of  
17 conduct creating an unreasonable and substantial risk of the harm described under  
18 sub. (2) (b), (d) 1. or 2., or (f) 1. or 2., whichever is applicable, exists under any of the  
19 following circumstances:

20 (a) The child had not attained the age of 6 years at the start of the conduct or  
21 course of conduct.

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

