

Hanaman, Cathlene

From: Palese, Tony
Sent: Wednesday, February 05, 2014 3:14 PM
To: Hanaman, Cathlene
Cc: Whitmore, Lori
Subject: RE: Draft review: LRB s0261/P2 Topic: Neglect of a child; degrees and chronic neglect -- change penalties; engross amendment; add chapter 48
Attachments: 13s0261_P2.pdf

Hi Cathlene,

I've got another list of changes to the sub for SB 471, but I think this should be all for now (knock on wood)...

1. Delete the "Repeated Neglect of Same Child" section – I think this part still needs some work, so I think we're going to try and deal with it separately.
2. Clarify drug use – It was pointed out to use that some controlled substances such as codeine and oxycodone can be legally prescribed. As such, we'd like to clarify 48.02(12d)(f) and 948.21(c) to read: "...protection from exposure to illegal or unlawful distribution, manufacture, or use of controlled substances."
3. Emotional health – There are two sections that we'd like to add emotional health so that the definition includes both "physical and emotional health." I believe the two areas are 48.02(12g) (page 2 line 20 of the sub) and 48.13(10m) (page 3 line 9 of the sub).

I hope that's it. With these changes, we should be all set with this amendment. If we could get a final version jacketed for introduction, I'd appreciate it.

Thanks!

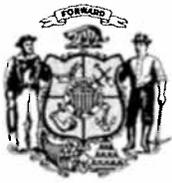
- Tony

Tony Palese
Legislative Aide
Office of Sen. Jennifer Shilling

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(800) 385-3385 toll-free

From: LRB.Legal
Sent: Wednesday, February 05, 2014 12:35 PM
To: Sen.Shilling
Subject: Draft review: LRB s0261/P2 Topic: Neglect of a child; degrees and chronic neglect -- change penalties; engross amendment; add chapter 48

Following is the PDF version of draft LRB s0261/P2.



p3

today
if possible
in 11:00 a.m.

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

repeal

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) Appropriate shelter.
- 12 (g) Appropriate supervision.

illegal

13 (h) Protection from exposure to the illegal distribution, manufacture, or use of
14 controlled substances.

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

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

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

or emotional

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 48.685 (1) (c) 2. A violation of s. 940.01, 940.02, 940.03, 940.05, 940.12, 940.19
8 (2), (4), (5) or (6), 940.22 (2) or (3), 940.225 (1), (2) or (3), 940.285 (2), 940.29, 940.295,
9 942.09 (2), 948.02 (1) or (2), 948.025, 948.03 (2), 948.05, 948.051, 948.055, 948.06,
10 948.07, 948.08, 948.085, 948.11 (2) (a) or (am), 948.12, 948.13, 948.21 (1) (2) or (3),
11 948.30, or 948.53.

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

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

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

21 48.977 (4) (b) 3. The date on which the child was adjudged in need of protection
22 or services under s. 48.13 (1), (2), (3), (3m), (4), (4m), (5), (8), (9), (10), (10m), (10r),
23 (11), or (11m) or 938.13 (4) and the dates on which the child has been placed, or
24 continued in a placement, outside of his or her home pursuant to one or more court
25 orders under s. 48.345, 48.357, 48.363, 48.365, 938.345, 938.357, 938.363, or 938.365

1 or, if the child has been so adjudged, but not so placed, the date of the report under
2 s. 48.33 (1) or 938.33 (1) in which placement of the child in the home of the person
3 is recommended.

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

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

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

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

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

20 50.065 (1) (e) 2. For the purposes of an entity that serves persons under the age
21 of 18, "serious crime" includes a violation of s. 948.02 (2), 948.03 (2) (b) or (c), 948.05,
22 948.051, 948.055, 948.06, 948.07, 948.08, 948.085, 948.11 (2) (a) or (am), 948.12,
23 948.13, 948.21 (1) (2) or (3), 948.30, or 948.53 or a violation of the law of any other
24 state or United States jurisdiction that would be a violation of s. 948.02 (2), 948.03
25 (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) 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 exposure to the *illegal* distribution, manufacture, or use of
- 8 controlled substances, as defined in s. 961.01 (4).

9 (d) "Neglect" means to fail, for reasons other than poverty, to provide a child
 10 necessary care, as provided in par. (c) 1. to 7., or to fail to provide a child necessary
 11 care, as provided in par. (c) 8.

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

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

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

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

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

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

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

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

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

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

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

12 (g) A Class A misdemeanor.

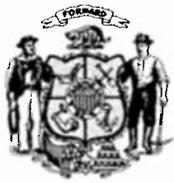
13 **(2m) REBUTTABLE PRESUMPTION.** A rebuttable presumption of a course of
14 conduct creating an unreasonable and substantial risk of the harm described under
15 sub. (2) (b), (d) 1. or 2., or (f) 1. or 2., whichever is applicable, exists under any of the
16 following circumstances:

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

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

22 **(3) REPEATED NEGLECT OF SAME CHILD.** ~~(a) Whoever commits 3 or more violations~~
23 ~~under sub. (2) within a specified period of time involving the same child is guilty of~~
24 ~~the following:~~

25 1. A Class D felony if death is a consequence.



today please

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

refer 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) Appropriate shelter.
- 12 (g) Appropriate supervision.
- 13 (h) Protection from exposure to the illegal distribution, manufacture, or use of
14 controlled substances.

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~~ as provided under sub. (12d) (a) to (g), or the failure,
19 refusal, or inability on the part of a caregiver to provide necessary care as provided
20 in sub. (12d) (h), so as to seriously endanger the physical or emotional health of the
21 child.

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

23 48.13 (10) Whose parent, guardian, or legal custodian neglects, refuses, or is
24 unable for reasons other than poverty to provide necessary care, ~~food, clothing,~~

1 ~~medical or dental care or shelter~~ so as to seriously endanger the physical or emotional
2 health of the child;

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

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

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

13 48.13 **(10r)** Whose parent, guardian, or legal custodian contributes to the
14 neglect of the child so as to endanger seriously the physical or emotional health of
15 the child.

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

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

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

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

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

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

1 transferring custody from the parent, the judge shall consider transferring custody
2 to a relative whenever possible.

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

4 48.415 (2) (am) 1. That on 3 or more occasions the child has been adjudicated
5 to be in need of protection or services under s. 48.13 (3), (3m), (10) ~~or~~, (10m), or (10r)
6 and, in connection with each of those adjudications, has been placed outside his or
7 her home pursuant to a court order under s. 48.345 containing the notice required
8 by s. 48.356 (2).

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

10 48.685 (1) (c) 2. A violation of s. 940.01, 940.02, 940.03, 940.05, 940.12, 940.19
11 (2), (4), (5) or (6), 940.22 (2) or (3), 940.225 (1), (2) or (3), 940.285 (2), 940.29, 940.295,
12 942.09 (2), 948.02 (1) or (2), 948.025, 948.03 (2), 948.05, 948.051, 948.055, 948.06,
13 948.07, 948.08, 948.085, 948.11 (2) (a) or (am), 948.12, 948.13, 948.21 ~~(1)~~ (2), 948.30,
14 or 948.53.

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

16 48.977 (2) (a) That the child has been adjudged to be in need of protection or
17 services under s. 48.13 (1), (2), (3), (3m), (4), (4m), (5), (8), (9), (10), (10m), (10r), (11),
18 or (11m) or 938.13 (4) and been placed, or continued in a placement, outside of his or
19 her home pursuant to one or more court orders under s. 48.345, 48.357, 48.363,
20 48.365, 938.345, 938.357, 938.363, or 938.365 or that the child has been so adjudged
21 and placement of the child in the home of a guardian under this section has been
22 recommended under s. 48.33 (1) or 938.33 (1).

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

24 48.977 (4) (b) 3. The date on which the child was adjudged in need of protection
25 or services under s. 48.13 (1), (2), (3), (3m), (4), (4m), (5), (8), (9), (10), (10m), (10r),

1 (11), or (11m) or 938.13 (4) and the dates on which the child has been placed, or
2 continued in a placement, outside of his or her home pursuant to one or more court
3 orders under s. 48.345, 48.357, 48.363, 48.365, 938.345, 938.357, 938.363, or 938.365
4 or, if the child has been so adjudged, but not so placed, the date of the report under
5 s. 48.33 (1) or 938.33 (1) in which placement of the child in the home of the person
6 is recommended.

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

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

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

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

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

23 50.065 (1) (e) 2. For the purposes of an entity that serves persons under the age
24 of 18, "serious crime" includes a violation of s. 948.02 (2), 948.03 (2) (b) or (c), 948.05,
25 948.051, 948.055, 948.06, 948.07, 948.08, 948.085, 948.11 (2) (a) or (am), 948.12,

1 948.13, 948.21 ~~(1)~~ (2), 948.30, or 948.53 or a violation of the law of any other state or
2 United States jurisdiction that would be a violation of s. 948.02 (2), 948.03 (2) (b) or
3 (c), 948.05, 948.051, 948.055, 948.06, 948.07, 948.08, 948.085, 948.11 (2) (a) or (am),
4 948.12, 948.13, 948.21 ~~(1)~~ (2), 948.30, or 948.53 if committed in this state.

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

6 103.34 (1) (b) 2. A violation of s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.07,
7 940.08, 940.09, 940.10, 940.19 (2), (4), (5), or (6), 940.21, 940.225 (1), (2), or (3),
8 940.23, 940.235, 940.24, 940.25, 940.30, 940.302, 940.305, 940.31, 943.02, 943.03,
9 943.04, 943.10, 943.30, 943.31, 943.32, 944.32, 944.33 (2), 944.34, 946.10, 948.02 (1)
10 or (2), 948.025, 948.03 (2) or (3), 948.04, 948.05, 948.051, 948.055, 948.06, 948.07,
11 948.075, 948.08, 948.085, 948.11 (2) (a) or (am), 948.12, 948.13, 948.21 ~~(1)~~ (2), or
12 948.30 or of a substantially similar federal law or law of another state.

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

14 **948.21 Neglecting a child. (1) DEFINITIONS.** In this section:

15 (a) “Child sex offense” means an offense under s. 948.02, 948.025, 948.05,
16 948.051, 948.055, 948.06, 948.07, 948.10, 948.11, or 948.12.

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

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

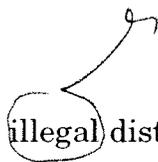
22 (b) “Emotional damage” has the meaning given in s. 48.02 (5j).

23 (c) “Necessary care” means the care that is critical to a child’s physical or
24 emotional health, safety, welfare, or development, based on all of the facts and

1 circumstances, such as the child’s age, physical or emotional condition, and any
2 special needs of the child. “Necessary care” includes any of the following:

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

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



12 (d) “Neglect” means to fail, for reasons other than poverty, to provide a child
13 necessary care as provided in par. (c) 1. to 7., or to fail to provide a child necessary
14 care as provided in par. (c) 8.

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

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



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

Today
no changes

Myer act

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) Appropriate shelter.

12 (g) Appropriate supervision.

13 (h) Protection from exposure to the distribution, manufacture, or use of
14 controlled substances.

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~~ as provided under sub. (12d) (a) to (g), or the failure,
19 refusal, or inability on the part of a caregiver to provide necessary care as provided
20 in sub. (12d) (h), so as to seriously endanger the physical or emotional health of the
21 child.

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

23 48.13 **(10)** Whose parent, guardian, or legal custodian neglects, refuses, or is
24 unable for reasons other than poverty to provide necessary care, ~~food, clothing,~~

1 ~~medical or dental care or shelter~~ so as to seriously endanger the physical or emotional
2 health of the child;

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

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

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

13 48.13 (10r) Whose parent, guardian, or legal custodian contributes to the
14 neglect of the child so as to endanger seriously the physical or emotional health of
15 the child.

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

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

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

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

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

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

1 transferring custody from the parent, the judge shall consider transferring custody
2 to a relative whenever possible.

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

4 48.415 (2) (am) 1. That on 3 or more occasions the child has been adjudicated
5 to be in need of protection or services under s. 48.13 (3), (3m), (10) ~~or~~, (10m), or (10r)
6 and, in connection with each of those adjudications, has been placed outside his or
7 her home pursuant to a court order under s. 48.345 containing the notice required
8 by s. 48.356 (2).

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

10 48.685 (1) (c) 2. A violation of s. 940.01, 940.02, 940.03, 940.05, 940.12, 940.19
11 (2), (4), (5) or (6), 940.22 (2) or (3), 940.225 (1), (2) or (3), 940.285 (2), 940.29, 940.295,
12 942.09 (2), 948.02 (1) or (2), 948.025, 948.03 (2), 948.05, 948.051, 948.055, 948.06,
13 948.07, 948.08, 948.085, 948.11 (2) (a) or (am), 948.12, 948.13, 948.21 ~~(1)~~ (2), 948.30,
14 or 948.53.

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

16 48.977 (2) (a) That the child has been adjudged to be in need of protection or
17 services under s. 48.13 (1), (2), (3), (3m), (4), (4m), (5), (8), (9), (10), (10m), (10r), (11),
18 or (11m) or 938.13 (4) and been placed, or continued in a placement, outside of his or
19 her home pursuant to one or more court orders under s. 48.345, 48.357, 48.363,
20 48.365, 938.345, 938.357, 938.363, or 938.365 or that the child has been so adjudged
21 and placement of the child in the home of a guardian under this section has been
22 recommended under s. 48.33 (1) or 938.33 (1).

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

24 48.977 (4) (b) 3. The date on which the child was adjudged in need of protection
25 or services under s. 48.13 (1), (2), (3), (3m), (4), (4m), (5), (8), (9), (10), (10m), (10r),

1 (11), or (11m) or 938.13 (4) and the dates on which the child has been placed, or
2 continued in a placement, outside of his or her home pursuant to one or more court
3 orders under s. 48.345, 48.357, 48.363, 48.365, 938.345, 938.357, 938.363, or 938.365
4 or, if the child has been so adjudged, but not so placed, the date of the report under
5 s. 48.33 (1) or 938.33 (1) in which placement of the child in the home of the person
6 is recommended.

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

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

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

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

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

23 50.065 (1) (e) 2. For the purposes of an entity that serves persons under the age
24 of 18, "serious crime" includes a violation of s. 948.02 (2), 948.03 (2) (b) or (c), 948.05,
25 948.051, 948.055, 948.06, 948.07, 948.08, 948.085, 948.11 (2) (a) or (am), 948.12,

1 948.13, 948.21 ~~(1)~~ (2), 948.30, or 948.53 or a violation of the law of any other state or
2 United States jurisdiction that would be a violation of s. 948.02 (2), 948.03 (2) (b) or
3 (c), 948.05, 948.051, 948.055, 948.06, 948.07, 948.08, 948.085, 948.11 (2) (a) or (am),
4 948.12, 948.13, 948.21 ~~(1)~~ (2), 948.30, or 948.53 if committed in this state.

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

6 103.34 (1) (b) 2. A violation of s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.07,
7 940.08, 940.09, 940.10, 940.19 (2), (4), (5), or (6), 940.21, 940.225 (1), (2), or (3),
8 940.23, 940.235, 940.24, 940.25, 940.30, 940.302, 940.305, 940.31, 943.02, 943.03,
9 943.04, 943.10, 943.30, 943.31, 943.32, 944.32, 944.33 (2), 944.34, 946.10, 948.02 (1)
10 or (2), 948.025, 948.03 (2) or (3), 948.04, 948.05, 948.051, 948.055, 948.06, 948.07,
11 948.075, 948.08, 948.085, 948.11 (2) (a) or (am), 948.12, 948.13, 948.21 ~~(1)~~ (2), or
12 948.30 or of a substantially similar federal law or law of another state.

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

14 **948.21 Neglecting a child. (1) DEFINITIONS.** In this section:

15 (a) “Child sex offense” means an offense under s. 948.02, 948.025, 948.05,
16 948.051, 948.055, 948.06, 948.07, 948.10, 948.11, or 948.12.

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

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

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

23 (c) “Necessary care” means the care that is critical to a child’s physical or
24 emotional health, safety, welfare, or development, based on all of the facts and

1 circumstances, such as the child’s age, physical or emotional condition, and any
2 special needs of the child. “Necessary care” includes any of the following:

3 1. Appropriate food.

4 2. Appropriate clothing.

5 3. Appropriate medical care.

6 4. Appropriate dental care.

7 5. The opportunity for education.

8 6. Appropriate shelter.

9 7. Appropriate supervision.

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

12 (d) “Neglect” means to fail, for reasons other than poverty, to provide a child
13 necessary care as provided in par. (c) 1. to 7., or to fail to provide a child necessary
14 care as provided in par. (c) 8.

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

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

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

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

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

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

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

