

2013 DRAFTING REQUEST

Senate Substitute Amendment (SSA-SB471)

Received: 2/20/2014 Received By: chanaman
Wanted: As time permits Same as LRB: s0333
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 Extra Copies:
Criminal Law - sentencing

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

Pre Topic:

No specific pre topic given

Topic:

Neglect of a child; degrees and chronic neglect -- change penalties; engross amendment. Remove ch.

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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FE Sent For:

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Instructions:

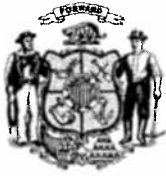
See attached

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State of Wisconsin
2013 - 2014 LEGISLATURE



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CMH:400A.sac:jm

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SENATE SUBSTITUTE AMENDMENT **1**,
TO SENATE BILL 471

Now please

Bill
ST

February 11, 2014 - Offered by Senator SHILLING.

negate 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.

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

1 48.02 (12d) “Necessary care” means the care that is critical to a child’s physical
2 or emotional health, safety, welfare, or development, based on all of the facts and
3 circumstances, such as the child’s age, physical or emotional condition, and any
4 special needs of the child. “Necessary care” includes any of the following:

5 (a) Appropriate food.

6 (b) Appropriate clothing.

7 (c) Appropriate medical care.

8 (d) Appropriate dental care.

9 (e) The opportunity for education.

10 (f) Appropriate shelter.

11 (g) Appropriate supervision.

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

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

15 48.02 (12g) “Neglect” means failure, refusal, or inability on the part of a
16 caregiver, for reasons other than poverty, to provide necessary care, ~~food, clothing,~~
17 ~~medical or dental care or shelter~~ as provided under sub. (12d) (a) to (g), or the failure,
18 refusal, or inability on the part of a caregiver to provide necessary care as provided
19 in sub. (12d) (h), so as to seriously endanger the physical or emotional health of the
20 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;

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

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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), 948.30,
11 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), 948.30, or 948.53 or a violation of the law of any other state or
24 United States jurisdiction that would be a violation of s. 948.02 (2), 948.03 (2) (b) or

1 (c), 948.05, 948.051, 948.055, 948.06, 948.07, 948.08, 948.085, 948.11 (2) (a) or (am),
2 948.12, 948.13, 948.21 (1) (2), 948.30, or 948.53 if committed in this 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
10 948.30 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 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.

