

**2015 DRAFTING REQUEST**

**Bill**

Received: **3/9/2015** Received By: **chanaman**  
For: **Robert Cowles (608) 266-0484** Same as LRB: **-3480**  
May Contact: By/Representing: **Mike Queensland**  
Subject: **Criminal Law - crimes agnst kids** Drafter: **chanaman**  
**Criminal Law - procedure** Addl. Drafters:  
**Criminal Law - sentencing** Extra Copies:

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

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Neglect of a child

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**Instructions:**

See attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	chanaman 3/9/2015	csicilia 3/11/2015	_____			
/1	chanaman 4/21/2015	csicilia 4/22/2015	_____	sbasford 3/11/2015		State S&L
/2	chanaman 4/29/2015	csicilia 4/30/2015	_____	mbarman 4/22/2015		State S&L
/3	chanaman	kfollett	_____	srose		State

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	5/12/2015	5/12/2015	_____	4/30/2015		S&L
/4	chanaman 5/18/2015	csicilia 5/19/2015	_____ _____	srose 5/12/2015		State S&L
/5	chanaman 9/4/2015	knochall 9/4/2015	_____ _____	lparisi 5/19/2015		State S&L
/6			_____ _____	lparisi 9/4/2015	sbasford 10/12/2015	State S&L

FE Sent For:

*at  
intro*

<END>



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRBs0332/1  
CMH:sac&cjs:rs

WED 3/11

9  
-1942/1

SENATE SUBSTITUTE AMENDMENT 2,  
TO SENATE BILL 471

P.W.F.

CA13 ✓  
SA 15 ✓  
Stat comp ✓

February 24, 2014 - Offered by Senator SHILLING.

Gov Car

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.

IND A

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

4 SECTION 1. 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), 948.30,  
9 or 948.53.

10 SECTION 2. 50.065 (1) (e) 2. of the statutes is amended to read:  
11 50.065 (1) (e) 2. For the purposes of an entity that serves persons under the age  
12 of 18, "serious crime" includes a violation of s. 948.02 (2), 948.03 (2) (b) or (c), 948.05,

✓

✓

1 948.051, 948.055, 948.06, 948.07, 948.08, 948.085, 948.11 (2) (a) or (am), 948.12,  
2 948.13, 948.21 (1) (2), 948.30, or 948.53 or a violation of the law of any other state or  
3 United States jurisdiction that would be a violation of s. 948.02 (2), 948.03 (2) (b) or  
4 (c), 948.05, 948.051, 948.055, 948.06, 948.07, 948.08, 948.085, 948.11 (2) (a) or (am),  
5 948.12, 948.13, 948.21 (1) (2), 948.30, or 948.53 if committed in this state.

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

7 103.34 (1) (b) 2. A violation of s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.07,  
8 940.08, 940.09, 940.10, 940.19 (2), (4), (5), or (6), 940.21, 940.225 (1), (2), or (3),  
9 940.23, 940.235, 940.24, 940.25, 940.30, 940.302, 940.305, 940.31, 943.02, 943.03,  
10 943.04, 943.10, 943.30, 943.31, 943.32, 944.32, ~~944.33 (2)~~, 944.34, 946.10, 948.02 (1)  
11 or (2), 948.025, 948.03 (2) or (3), 948.04, 948.05, 948.051, 948.055, 948.06, 948.07,  
12 948.075, 948.08, 948.085, 948.11 (2) (a) or (am), 948.12, 948.13, 948.21 (1) (2), or  
13 948.30 or of a substantially similar federal law or law of another state.

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

15 **948.21 Neglecting a child.** (1) DEFINITIONS. In this section:

16 (a) "Child sex offense" means an offense under s. 948.02, 948.025, 948.05,  
17 948.051, 948.055, 948.06, 948.07, 948.10, 948.11, or 948.12.

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

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

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

24 (c) "Necessary care" means the care that is critical to a child's physical or  
25 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:





State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-2995/1  
CMH:sac:rs

## 2013 SENATE BILL 471

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.

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.

↑ shelter and supervision

### *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

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**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.

end  
INSA

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

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.

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),



## Hanaman, Cathlene

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**From:** Mugnaini, Jason  
**Sent:** Monday, April 20, 2015 12:51 PM  
**To:** Queensland, Michael; Hanaman, Cathlene  
**Subject:** FW: Neglect Bill  
**Attachments:** 15-1942\_1.pdf; Neglect2015draftJJK (2).docx

Mike and Cathlene,

Here are some changes to the Neglect bill.  
Creating 939.25 (1)(a) and repeated acts of neglect  
(Word Doc & highlighted)  
I'd like to add these and make a /2 for LRB 1942  
(Also attached)

Please let me know if you have any questions.

Thanks,  
Jason Mugnaini  
Office of Sen. Cowles

**939.25 Criminal negligence. (1)** In this section, "criminal negligence" means ordinary negligence to a high degree, consisting of conduct that the actor should realize creates a substantial and unreasonable risk of death or great bodily harm to another, except that for purposes of ss. 940.08 (2), 940.10 (2) and 940.24 (2), "criminal negligence" means ordinary negligence to a high degree, consisting of conduct that the actor should realize creates a substantial and unreasonable risk of death or great bodily harm to an unborn child, to the woman who is pregnant with that unborn child or to another.

939.25(1)(a) is created to read:

(1)(a) In a prosecution under section 948.21 "criminal negligence" means ordinary negligence to a high degree, consisting of conduct that the actor should realize creates a substantial and unreasonable risk that a child could become neglected as set forth in section 948.21 (1) (a) – (d).

(2) If criminal negligence is an element of a crime in chs. 939 to 951 or s. 346.62, the negligence is indicated by the term "negligent" or "negligently".

**948.21 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, 948.08, 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. "Necessary care" includes 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. The protection from the exposure to the distribution, manufacture, or use of controlled substances, as defined in s. 961.01 (4).

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

**(2) NEGLECT.** Any person who is responsible for a child's welfare who negligently fails to provide the child with necessary care, or negligently 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 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 the child suffers emotional damage as a consequence.
- (e) A Class H felony if the child suffers bodily harm as a consequence.
- (g) A Class A misdemeanor.

**(3) REBUTTABLE PRESUMPTION.** A rebuttable presumption that a course of conduct creates an unreasonable and substantial risk of the harm described under sub. (.....), 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.

**(4) REPEATED ACTS OF NEGLECT OF SAME CHILD**

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

- 1. A Class B felony if death is a consequence.
- 3. A Class D felony if any of the following apply:
  - (a) The child suffers great bodily harm is a consequence.
  - (b) The child becomes the victim of a child sex offense as a consequence.
- 4. A Class E felony if emotional harm is a consequence;
- 5. A Class F felony if bodily harm is a consequence;
- 6. A Class H felony if there are three or more violations of 948.21(2)(g).

(b) If an action under par. (4)(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 of sub. (2) occurred to the same child within the specified period but need not agree on which acts constitute the requisite number or which acts resulted in the 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).



State of Wisconsin  
2015 - 2016 LEGISLATURE

LRB-1942/1  
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2015 BILL

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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 criminal 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, medical and dental care, shelter, and supervision; the opportunity for education; or the protection from exposure to the distribution, manufacture, or use of 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.

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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:*

**BILL**

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), 948.30,  
6           or 948.53.

or (4)



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), 948.30, or 948.53 or a violation of the law of any other state or  
12          United States jurisdiction that would be a violation of s. 948.02 (2), 948.03 (2) (b) or  
13          (c), 948.05, 948.051, 948.055, 948.06, 948.07, 948.08, 948.085, 948.11 (2) (a) or (am),  
14          948.12, 948.13, 948.21 (1) (2), 948.30, or 948.53 if committed in this state.

or (4)

or (4)



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

16          103.34 (1) (b) 2. A violation of s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.07,  
17          940.08, 940.09, 940.10, 940.19 (2), (4), (5), or (6), 940.21, 940.225 (1), (2), or (3),  
18          940.23, 940.235, 940.24, 940.25, 940.30, 940.302, 940.305, 940.31, 943.02, 943.03,  
19          943.04, 943.10, 943.30, 943.31, 943.32, 944.32, 944.34, 946.10, 948.02 (1) or (2),  
20          948.025, 948.03 (2) or (3), 948.04, 948.05, 948.051, 948.055, 948.06, 948.07, 948.075,  
21          948.08, 948.085, 948.11 (2) (a) or (am), 948.12, 948.13, 948.21 (1) (2), or 948.30 or of  
22          a substantially similar federal law or law of another state.

or (4)



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2-23  
24

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

24          **948.21 Neglecting a child. (1) DEFINITIONS.** In this section:

**BILL**

1 (a) “Child sex offense” means an offense under s. 948.02, 948.025, 948.05,  
2 948.051, 948.055, 948.06, 948.07, 948.10, 948.11, or 948.12.

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

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

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

9 (c) “Necessary care” means the care that is critical to a child’s physical or  
10 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 1. Appropriate food.
- 14 2. Appropriate clothing.
- 15 3. Appropriate medical care.
- 16 4. Appropriate dental care.
- 17 5. The opportunity for education.
- 18 6. Appropriate shelter.
- 19 7. Appropriate supervision.
- 20 8. The protection from the exposure to the distribution, manufacture, or use of  
21 controlled substances, as defined in s. 961.01 (4).

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

**BILL****SECTION 4**

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

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

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

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

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

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

10          (d) A Class G 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 great 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 that the child could become a  
15 victim of a child sex offense.

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

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

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

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

21          (f) A Class I felony if the person engages in a course of conduct that the person  
22 knows or should know creates an unreasonable and substantial risk of bodily harm  
23 to the child.

24          (g) A Class A misdemeanor.

**BILL**

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

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

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

10 →

(END)

INS 5-10



**2015-2016 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1942/2ins  
CMH:.....

1           Insert A

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 Class B felony to a Class H felony, depending on the consequence of the repeated acts of neglect.

2

3           Insert 2-23

4           **SECTION 1.** 939.25 (1) of the statutes is amended to read:

5           939.25 (1) In this section, "criminal negligence" means ordinary negligence to  
6           a high degree, consisting of conduct that the actor should realize creates a  
7           substantial and unreasonable risk of death or great bodily harm to another, except  
8           that, for purposes of ss. 940.08 (2), 940.10 (2), and 940.24 (2), "criminal negligence"  
9           means ordinary negligence to a high degree, consisting of conduct that the actor  
10          should realize creates a substantial and unreasonable risk of death or great bodily  
11          harm to an unborn child, to the woman who is pregnant with that unborn child, or  
12          to another and, for purposes of s. 948.21 (2), "criminal negligence" means ordinary  
13          negligence to a high degree, consisting of conduct that the actor should realize  
14          creates a substantial and unreasonable risk that he or she will fail to provide a child  
15          for whom<sup>+ whose welfare</sup> he or she is responsible necessary care or that he or she will contribute to  
16          the neglect of a child for whom<sup>whose welfare</sup> he or she is responsible.

17          History: 1987 a. 399; 1989 a. 56 s. 259; 1997 a. 180, 295.

18

          Insert 5-10

1           (4) REPEATED ACTS OF NEGLECT OF SAME CHILD. (a) Any person who commits 3 or  
2 more violations under sub. (2) within a specified period of time involving the same  
3 child is guilty of the following:

- 4           1. A Class B felony if the child suffers death as a consequence.
- 5           2. A Class D felony if any of the following applies:
  - 6           a. The child suffers great bodily harm as a consequence.
  - 7           b. The child becomes the victim of a child sex offense as a consequence.
- 8           3. A Class E felony if the child suffers emotional damage as a consequence.
- 9           4. A Class F felony if the child suffers bodily harm as a consequence.
- 10          5. A Class H felony.

11           (b) If an action under par. (a) is tried to a jury, in order to find the defendant  
12 guilty the members of the jury must unanimously agree that at least 3 violations of  
13 sub. (2) <sup>involving the same child</sup> occurred ~~to the same child~~ within the specified period but need not agree on  
14 which acts constitute the requisite number or which acts resulted in any requisite  
15 consequence.

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

## Hanaman, Cathlene

---

**From:** Mugnaini, Jason  
**Sent:** Wednesday, April 29, 2015 1:29 PM  
**To:** Hanaman, Cathlene  
**Subject:** RE: Neglect Reform 1942

I guess I didn't catch that it was just criminal negligence at first glance

That's fine

---

**From:** Hanaman, Cathlene  
**Sent:** Wednesday, April 29, 2015 1:26 PM  
**To:** Mugnaini, Jason  
**Subject:** RE: Neglect Reform 1942

I think the only change is to take out the treatment of 939.25. I will do only that unless you tell me I'm mistaken.

---

**From:** Mugnaini, Jason  
**Sent:** Wednesday, April 29, 2015 1:14 PM  
**To:** Hanaman, Cathlene; Queensland, Michael  
**Subject:** Neglect Reform 1942

Hi again,

Looks like we may need a /p3

Speaking with Mike Austin from DOJ it looks like the course of conduct language should be taken out as the bill will focus on repeated acts.

Attached are the recommended changes from DOJ to eliminate the course of conduct language.

Note: Course of conduct is maintained in the reputable presumption section

<< File: Neglect2015draftJJK (3).docx >>

Please let me know if there are any questions

**Jason Mugnaini**  
**Office of State Senator Robert Cowles**  
**608-266-0484**  
**Toll-Free: 800-334-1465**  
**State Capitol**  
**PO Box 7882**  
**Madison, WI 53707**



State of Wisconsin  
2015 - 2016 LEGISLATURE

LRB-1942/2  
CMH:cjs:cs

2015 BILL

*Thus please*

*stays*

*SAV*

*new*

1 AN ACT *to amend* 48.685 (1) (c) 2., 50.065 (1) (e) 2., 103.34 (1) (b) 2. and 939.25  
2 (1); and *to repeal and recreate* 948.21 of the statutes; **relating to:** neglect of  
3 a child and providing criminal 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, medical and dental care, shelter, and supervision; the opportunity for education; or the protection from exposure to the distribution, manufacture, or use of 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 Class B felony to a Class H felony, depending on the consequence of the repeated acts of neglect.

**BILL**

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:*

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 (4),  
6 948.30, or 948.53.

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 (4), 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 (4), 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),  
19 940.23, 940.235, 940.24, 940.25, 940.30, 940.302, 940.305, 940.31, 943.02, 943.03,  
20 943.04, 943.10, 943.30, 943.31, 943.32, 944.32, 944.34, 946.10, 948.02 (1) or (2),  
21 948.025, 948.03 (2) or (3), 948.04, 948.05, 948.051, 948.055, 948.06, 948.07, 948.075,

**BILL**

1 948.08, 948.085, 948.11 (2) (a) or (am), 948.12, 948.13, 948.21 (1) (2) or (4), or 948.30  
2 or of a substantially similar federal law or law of another state.

3 **SECTION 4.** 939.25 (1) of the statutes is amended to read:

4 939.25 (1) In this section, “criminal negligence” means ordinary negligence to  
5 a high degree, consisting of conduct that the actor should realize creates a  
6 substantial and unreasonable risk of death or great bodily harm to another, except  
7 that, for purposes of ss. 940.08 (2), 940.10 (2), and 940.24 (2), “criminal negligence”  
8 means ordinary negligence to a high degree, consisting of conduct that the actor  
9 should realize creates a substantial and unreasonable risk of death or great bodily  
10 harm to an unborn child, to the woman who is pregnant with that unborn child, or  
11 to another and, for purposes of s. 948.21 (2), “criminal negligence” means ordinary  
12 negligence to a high degree, consisting of conduct that the actor should realize  
13 creates a substantial and unreasonable risk that he or she will fail to provide a child  
14 for whose welfare he or she is responsible necessary care or that he or she will  
15 contribute to the neglect of a child for whose welfare he or she is responsible.

16 **SECTION 5.** 948.21 of the statutes is repealed and recreated to read:

17 **948.21 Neglecting a child. (1) DEFINITIONS.** In this section:

18 (a) “Child sex offense” means an offense under s. 948.02, 948.025, 948.05,  
19 948.051, 948.055, 948.06, 948.07, 948.10, 948.11, or 948.12.

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

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

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

**BILL**

1 (c) "Necessary care" means the care that is critical to a child's physical or  
2 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 1. Appropriate food.
- 6 2. Appropriate clothing.
- 7 3. Appropriate medical care.
- 8 4. Appropriate dental care.
- 9 5. The opportunity for education.
- 10 6. Appropriate shelter.
- 11 7. Appropriate supervision.
- 12 8. The protection from the exposure to the distribution, manufacture, or use of  
13 controlled substances, as defined in s. 961.01 (4).

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

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

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

**BILL**

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 3. The child suffers emotional damage as a consequence.

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

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

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 (f) A Class I felony if the person engages in a course of conduct that the person  
13 knows or should know creates an unreasonable and substantial risk of bodily harm  
14 to the child.

15 (g) A Class A misdemeanor.

16 **(3) REBUTTABLE PRESUMPTION.** A rebuttable presumption that a course of  
17 conduct creates an unreasonable and substantial risk of the harm described under  
18 sub. (2) (b), (d) 1. or 2., (e) 2., or (f), 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.



**BILL**

1           (4) REPEATED ACTS OF NEGLECT OF SAME CHILD. (a) Any person who commits 3  
2 or more violations under sub. (2) within a specified period of time involving the same  
3 child is guilty of the following:

- 4           1. A Class B felony if the child suffers death as a consequence.  
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7           b. The child becomes the victim of a child sex offense as a consequence.  
8           3. A Class E felony if the child suffers emotional damage as a consequence.  
9           4. A Class F felony if the child suffers bodily harm as a consequence.  
10          5. A Class H felony.

11          (b) If an action under par. (a) is tried to a jury, in order to find the defendant  
12 guilty the members of the jury must unanimously agree that at least 3 violations of  
13 sub. (2) involving the same child occurred within the specified period but need not  
14 agree on which acts constitute the requisite number or which acts resulted in any  
15 requisite consequence.

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

19                           (END)



State of Wisconsin  
2015 - 2016 LEGISLATURE

LRB-1942/3  
CMH:cjs:cs

*Two or  
Wed please*

**2015 BILL**

*refer act*

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 criminal penalties.

---

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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, medical and dental care, shelter, and supervision; the opportunity for education; or the protection from exposure to the distribution, manufacture, or use of 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.

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**BILL**

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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 (4),  
6           948.30, or 948.53.

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 (4), 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 (4), 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),  
19          940.23, 940.235, 940.24, 940.25, 940.30, 940.302, 940.305, 940.31, 943.02, 943.03,  
20          943.04, 943.10, 943.30, 943.31, 943.32, 944.32, 944.34, 946.10, 948.02 (1) or (2),  
21          948.025, 948.03 (2) or (3), 948.04, 948.05, 948.051, 948.055, 948.06, 948.07, 948.075,

**BILL**

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2 or of a substantially similar federal law or law of another state.

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

4 **948.21 Neglecting a child. (1) DEFINITIONS.** In this section:

5 (a) “Child sex offense” means an offense under s. 948.02, 948.025, 948.05,  
6 948.051, 948.055, 948.06, 948.07, 948.10, 948.11, or 948.12.

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11 actions or inactions over a period of time, however short.

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

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

- 17 1. Appropriate food.
- 18 2. Appropriate clothing.
- 19 3. Appropriate medical care.
- 20 4. Appropriate dental care.
- 21 5. The opportunity for education.
- 22 6. Appropriate shelter.
- 23 7. Appropriate supervision.
- 24 8. The protection from the exposure to the distribution, manufacture, or use of  
25 controlled substances, as defined in s. 961.01 (4).

**BILL**

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

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

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

7 (b) A Class E felony if the person engages in a course of conduct that the person  
8 knows or should know <sup>that his or her action</sup> creates an unreasonable and substantial risk of death.

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

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

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

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

13 1. The person engages in a course of conduct that the person knows or should  
14 know <sup>that his or her action</sup> 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 <sup>that his or her action</sup> creates an unreasonable and substantial risk that the child could become a  
17 victim of a child sex offense.

18 3. The child suffers emotional damage as a consequence.

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

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

21 2. The person engages in a course of conduct that the person knows or should  
22 know <sup>that his or her action</sup> creates an unreasonable and substantial risk of emotional damage to the child.

23 (f) A Class I felony if the person engages in a course of conduct that the person  
24 knows or should know <sup>that his or her action</sup> creates an unreasonable and substantial risk of bodily harm  
25 to the child.

**BILL**

1 (g) A Class A misdemeanor.

2 (3) REBUTTABLE PRESUMPTION. A rebuttable presumption that a course of  
3 ~~conduct~~ <sup>an action</sup> creates an unreasonable and substantial risk of the harm described under  
4 sub. (2) (b), (d) 1. or 2., (e) 2., or (f), whichever is applicable, exists under any of the  
5 following circumstances:

6 (a) The child had not attained the age of 6 years at the start of the conduct or  
7 ~~course of conduct~~ <sup>when the action was committed</sup>

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

11 (4) REPEATED ACTS OF NEGLECT OF SAME CHILD. (a) Any person who commits 3  
12 or more violations under sub. (2) within a specified period of time involving the same  
13 child is guilty of the following:

14 1. A Class B felony if the child suffers death as a consequence.

15 2. A Class D felony if any of the following applies:

16 a. The child suffers great bodily harm as a consequence.

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18 3. A Class E felony if the child suffers emotional damage as a consequence.

19 4. A Class F felony if the child suffers bodily harm as a consequence.

20 5. A Class H felony.

21 (b) If an action under par. (a) is tried to a jury, in order to find the defendant  
22 guilty the members of the jury must unanimously agree that at least 3 violations of  
23 sub. (2) involving the same child occurred within the specified period but need not  
24 agree on which acts constitute the requisite number or which acts resulted in any  
25 requisite consequence.





State of Wisconsin  
2015 - 2016 LEGISLATURE

LRB-1942/4  
CMH:cjs&kjf:kt

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2  
cs

2015 BILL

Tues  
5/19

80

Coon Cat

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  
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**BILL**

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

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

1           **SECTION 1.** 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 (4),  
6 948.30, or 948.53.

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 (4), 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 (4), 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),  
19 940.23, 940.235, 940.24, 940.25, 940.30, 940.302, 940.305, 940.31, 943.02, 943.03,  
20 943.04, 943.10, 943.30, 943.31, 943.32, 944.32, 944.34, 946.10, 948.02 (1) or (2),  
21 948.025, 948.03 (2) or (3), 948.04, 948.05, 948.051, 948.055, 948.06, 948.07, 948.075,

**BILL**

1 948.08, 948.085, 948.11 (2) (a) or (am), 948.12, 948.13, 948.21 ~~(1) (2) or (4)~~, or 948.30  
2 or of a substantially similar federal law or law of another state.

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

4 **948.21 Neglecting a child. (1) DEFINITIONS.** In this section:

5 (a) "Child sex offense" means ~~an offense~~ under s. 948.02, 948.025, 948.05,  
6 948.051, 948.055, 948.06, 948.07, <sup>948.08,</sup> 948.10, 948.11, or 948.12.

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

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

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

15 1. Appropriate food.

16 2. Appropriate clothing.

17 3. Appropriate medical care.

18 4. Appropriate dental care.

19 5. The opportunity for education.

20 6. Appropriate shelter.

21 7. Appropriate supervision.

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

**BILL****SECTION 4**

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

4 (2) **NEGLECT.** Any person who is responsible for a child's welfare who <sup>negligently</sup> neglects,  
5 or <sup>negligently</sup> contributes to the neglect of, the child is guilty of the following:

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

7 (b) A Class E felony if the person knows or should know that his or her action  
8 creates an unreasonable and substantial risk of death.

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

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

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

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

13 1. The person knows or should know that his or her action creates an  
14 unreasonable and substantial risk of great bodily harm to the child.

15 2. The person knows or should know that his or her action creates an  
16 unreasonable and substantial risk that the child could become a victim of a child sex  
17 offense.

18 3. The child suffers emotional damage as a consequence.

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

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

21 2. The person knows or should know that his or her action creates an  
22 unreasonable and substantial risk of emotional damage to the child.

23 (f) A Class I felony if the person knows or should know that his or her action  
24 creates an unreasonable and substantial risk of bodily harm to the child.

25 (g) A Class A misdemeanor.

**BILL**

1           (3) **REBUTTABLE PRESUMPTION.** A rebuttable presumption that an action creates  
2 an unreasonable and substantial risk of the harm described under sub. (2) (b), (d) 1.  
3 or 2., (e) 2., or (f), whichever is applicable, exists under any of the following  
4 circumstances:

5           (a) The child had not attained the age of 6 years when the action was  
6 committed.

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

10           (4) **REPEATED ACTS OF NEGLECT OF SAME CHILD.** (a) Any person who commits 3  
11 or more violations under sub. (2) within a specified period of time involving the same  
12 child is guilty of the following:

13           1. A Class B felony if the child suffers death as a consequence.

14           2. A Class D felony if any of the following applies:

15           a. The child suffers great bodily harm as a consequence.

16           b. The child becomes the victim of a child sex offense as a consequence.

17           3. A Class E felony if the child suffers emotional damage as a consequence.

18           4. A Class F felony if the child suffers bodily harm as a consequence.

19           5. A Class H felony.

20           (b) If an action under par. (a) is tried to a jury, in order to find the defendant  
21 guilty the members of the jury must unanimously agree that at least 3 violations of  
22 sub. (2) involving the same child occurred within the specified period but need not  
23 agree on which acts constitute the requisite number or which acts resulted in any  
24 requisite consequence.



**BILL**

1 948.08, 948.085, 948.11 (2) (a) or (am), 948.12, 948.13, 948.21 (1) (2) or (4), or 948.30  
2 or of a substantially similar federal law or law of another state.

3 **SECTION 4.** 939.25 (1) of the statutes is amended to read:

4 939.25 (1) In this section, "criminal negligence" means ordinary negligence to  
5 a high degree, consisting of conduct that the actor should realize creates a  
6 substantial and unreasonable risk of death or great bodily harm to another, except  
7 that, for purposes of ss. 940.08 (2), 940.10 (2), and 940.24 (2), "criminal negligence"  
8 means ordinary negligence to a high degree, consisting of conduct that the actor  
9 should realize creates a substantial and unreasonable risk of death or great bodily  
10 harm to an unborn child, to the woman who is pregnant with that unborn child, or  
11 to another and, for purposes of s. 948.21 (2), "criminal negligence" means ordinary  
12 negligence to a high degree, consisting of conduct that the actor should realize  
13 creates a substantial and unreasonable risk that he or she will fail to provide a child  
14 for whose welfare he or she is responsible necessary care or that he or she will  
15 contribute to the neglect of a child for whose welfare he or she is responsible.

16 **SECTION 5.** 948.21 of the statutes is repealed and recreated to read:

17 **948.21 Neglecting a child.** (1) DEFINITIONS. In this section:

18 (a) "Child sex offense" means an offense under s. 948.02, 948.025, 948.05,  
19 948.051, 948.055, 948.06, 948.07, 948.10, 948.11, or 948.12.

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

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

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

MS  
3-3

## **Hanaman, Cathlene**

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**From:** Mugnaini, Jason  
**Sent:** Friday, September 04, 2015 9:22 AM  
**To:** Hanaman, Cathlene  
**Subject:** 1942/5

A change under 948.21(2) from:

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

to:

(2) NEGLECT. Any person who is responsible for a child's welfare who negligently fails to provide the child with necessary care, or negligently contributes to the neglect of the child for whom he or she is responsible, is guilty of the following:

**Jason Mugnaini**  
**Office of State Senator Robert Cowles**  
**608-266-0484**  
**Toll-Free: 800-334-1465**  
**State Capitol**  
**PO Box 7882**  
**Madison, WI 53707**



State of Wisconsin  
2015 - 2016 LEGISLATURE

LRB-1942/3  
CMH:cjs&kjf

le  
/kcm

today  
if  
possible

2015 BILL

refer cut

for reasons  
other than  
poverty

1 AN ACT to amend 48.685 (1) (c) 2., 50.065 (1) (e) 2., 103.34 (1) (b) 2. and 939.25  
2 (1); and to repeal and recreate 948.21 of the statutes; relating to: neglect of  
3 a child and providing criminal penalties.

negligently fails to provide the child with necessary care

**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, medical and dental care, shelter, and supervision; the opportunity for education; or the protection from exposure to the distribution, manufacture, or use of 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.

failure

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 Class B felony to a Class H felony, depending on the consequence of the repeated acts of neglect.

Under the bill,

includes



**BILL**

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

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

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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 (4),  
6           948.30, or 948.53.

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 (4), 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 (4), 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),  
19          940.23, 940.235, 940.24, 940.25, 940.30, 940.302, 940.305, 940.31, 943.02, 943.03,  
20          943.04, 943.10, 943.30, 943.31, 943.32, 944.32, 944.34, 946.10, 948.02 (1) or (2),  
21          948.025, 948.03 (2) or (3), 948.04, 948.05, 948.051, 948.055, 948.06, 948.07, 948.075,

**BILL**

1 948.08, 948.085, 948.11 (2) (a) or (am), 948.12, 948.13, 948.21 (1) (2) or (4), or 948.30  
2 or of a substantially similar federal law or law of another state.

3 **SECTION 4.** 939.25 (1) of the statutes is amended to read:

4 939.25 (1) In this section, “criminal negligence” means ordinary negligence to  
5 a high degree, consisting of conduct that the actor should realize creates a  
6 substantial and unreasonable risk of death or great bodily harm to another, except  
7 that, for purposes of ss. 940.08 (2), 940.10 (2), and 940.24 (2), “criminal negligence”  
8 means ordinary negligence to a high degree, consisting of conduct that the actor  
9 should realize creates a substantial and unreasonable risk of death or great bodily  
10 harm to an unborn child, to the woman who is pregnant with that unborn child, or  
11 to another and, for purposes of s. 948.21 (2), “criminal negligence” means ordinary  
12 negligence to a high degree, consisting of conduct that the actor should realize  
13 creates a substantial and unreasonable risk that he or she will fail to provide a child  
14 for whose welfare he or she is responsible necessary care or that he or she will  
15 contribute to the neglect of a child for whose welfare he or she is responsible.

16 **SECTION 5.** 948.21 of the statutes is repealed and recreated to read:

17 **948.21 Neglecting a child. (1) DEFINITIONS.** In this section:

18 (a) “Child sex offense” means an offense under s. 948.02, 948.025, 948.05,  
19 948.051, 948.055, 948.06, 948.07, 948.08, 948.10, 948.11, or 948.12.

20 (am) “Contributes to the <sup>failure</sup>neglect” includes the act of contributing to/neglect  
21 even if the child does not actually suffer from neglect if the natural and probable  
22 consequences of the act or failure to act would be that the child suffers from neglect.

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

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

*the failure to  
provide a  
child with  
necessary  
care*

**BILL**

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  
16 negligently neglects, or negligently contributes to the neglect of, the child 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 knows or should know that his or her action
- 20 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:

*for reasons other than poverty*

*fails to provide the child with necessary care*

*the failure,*

*commits neglect and*

**BILL**

1           1. The person knows or should know that his or her action creates an  
2 unreasonable and substantial risk of great bodily harm to the child.

3           2. The person knows or should know that his or her action creates an  
4 unreasonable and substantial risk that the child could become a victim of a child sex  
5 offense.

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

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 person knows or should know that his or her action creates an  
10 unreasonable and substantial risk of emotional damage to the child.

11           (f) A Class I felony if the person knows or should know that his or her action  
12 creates an unreasonable and substantial risk of bodily harm to the child.

13           (g) A Class A misdemeanor.

14           **(3) REBUTTABLE PRESUMPTION.** A rebuttable presumption that an action creates  
15 an unreasonable and substantial risk of the harm described under sub. (2) (b), (d) 1.  
16 or 2., (e) 2., or (f), whichever is applicable, exists under any of the following  
17 circumstances:

18           (a) The child had not attained the age of 6 years when the action was  
19 committed.

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

23           **(4) REPEATED ACTS OF NEGLECT OF SAME CHILD.** (a) Any person who commits 3  
24 or more violations under sub. (2) within a specified period of time involving the same  
25 child is guilty of the following:

**BILL**

- 1           1. A Class B felony if the child suffers death as a consequence.
- 2           2. A Class D felony if any of the following applies:
- 3           a. The child suffers great bodily harm as a consequence.
- 4           b. The child becomes the victim of a child sex offense as a consequence.
- 5           3. A Class E felony if the child suffers emotional damage as a consequence.
- 6           4. A Class F felony if the child suffers bodily harm as a consequence.
- 7           5. A Class H felony.

8           (b) If an action under par. (a) is tried to a jury, in order to find the defendant  
9 guilty the members of the jury must unanimously agree that at least 3 violations of  
10 sub. (2) involving the same child occurred within the specified period but need not  
11 agree on which acts constitute the requisite number or which acts resulted in any  
12 requisite consequence.

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

16

(END)

**Basford, Sarah**

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**From:** Mugnaini, Jason  
**Sent:** Monday, October 12, 2015 9:24 AM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB -1942/6

Please Jacket LRB -1942/6 for the SENATE.