



2015 ASSEMBLY BILL 428

October 21, 2015 - Introduced by Representatives HEATON, BERCEAU, BILLINGS, EDMING, HORLACHER, JACQUE, JOHNSON, KLEEFISCH, KNODL, KULP, MACCO, MURPHY, MURSAU, MURTHA, NERISON, NOVAK, A. OTT, PETRYK, ROHRKASTE, SARGENT, SINICKI, SPIROS, STEFFEN, SUBECK, TITTL, TRANEL and VANDERMEER, cosponsored by Senators COWLES, CARPENTER, DARLING, HANSEN, LASEE, LASSA, OLSEN and SHILLING. Referred to Committee on Criminal Justice and Public Safety.

1 **AN ACT** *to amend* 48.355 (2d) (b) 3., 48.415 (9m) (b) 2. a., 48.417 (1) (d), 48.685
2 (1) (c) 2., 50.065 (1) (e) 1., 50.065 (1) (e) 2., 103.34 (1) (b) 2., 165.84 (7) (ab) 1.,
3 165.84 (7) (ab) 2., 302.11 (1g) (a) 2., 938.355 (2d) (b) 3., 939.62 (2m) (a) 2m. b.,
4 939.632 (1) (e) 1., 939.635, 939.74 (2) (c), 939.74 (2) (cm), 973.0135 (1) (b) 2.,
5 973.015 (1m) (a) 3. a. and 973.017 (6) (b); and **to create** 343.12 (7) (c) 14m. and
6 948.03 (5) of the statutes; **relating to:** repeated acts of physical abuse of the
7 same child and providing a criminal penalty.

Analysis by the Legislative Reference Bureau

This bill creates the crime of engaging in repeated acts of physical abuse of the same child. Under this bill, to convict an individual of the crime, a jury must unanimously agree that at least three violations of physical abuse of the same child occurred within a specified period but need not agree on which acts constitute the three violations. The penalty for the crime varies from a Class E felony to a Class A felony, depending on the harm to the child. This bill also adds references to the created crime to statutes that reference the crime of physical abuse of a child.

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

ASSEMBLY BILL 428**SECTION 1**

1 **SECTION 1.** 48.355 (2d) (b) 3. of the statutes is amended to read:

2 48.355 **(2d)** (b) 3. That the parent has committed a violation of s. 940.19 (3),
3 1999 stats., a violation of s. 940.19 (2), (4), or (5), 940.225 (1) or (2), 948.02 (1) or (2),
4 948.025, 948.03 (2) (a) ~~or~~, (3) (a), or (5) (a) 1., 2., or 3., or 948.085 or a violation of the
5 law of any other state or federal law, if that violation would be a violation of s. 940.19
6 (2), (4), or (5), 940.225 (1) or (2), 948.02 (1) or (2), 948.025, 948.03 (2) (a) ~~or~~, (3) (a),
7 or (5) (a) 1., 2., or 3., or 948.085 if committed in this state, as evidenced by a final
8 judgment of conviction, and that the violation resulted in great bodily harm, as
9 defined in s. 939.22 (14), or in substantial bodily harm, as defined in s. 939.22 (38),
10 to the child or another child of the parent.

11 **SECTION 2.** 48.415 (9m) (b) 2. a. of the statutes is amended to read:

12 48.415 **(9m)** (b) 2. a. The commission of a violation of s. 940.19 (3), 1999 stats.,
13 a violation of s. 940.19 (2), (4) or (5), 940.225 (1) or (2), 948.02 (1) or (2), 948.025,
14 948.03 (2) (a) ~~or~~, (3) (a), or (5) (a) 1., 2., or 3., 948.05, 948.051, 948.06, or 948.08, or
15 a violation of s. 940.302 (2) if s. 940.302 (2) (a) 1. b. applies.

16 **SECTION 3.** 48.417 (1) (d) of the statutes is amended to read:

17 48.417 **(1)** (d) A court of competent jurisdiction has found that the parent has
18 committed a violation of s. 940.19 (3), 1999 stats., a violation of s. 940.19 (2), (4), or
19 (5), 940.225 (1) or (2), 948.02 (1) or (2), 948.025, 948.03 (2) (a) ~~or~~, (3) (a), or (5) (a) 1.,
20 2., or 3., 948.051, or 948.085, a violation of s. 940.302 (2) if s. 940.302 (2) (a) 1. b.
21 applies, or a violation of the law of any other state or federal law, if that violation
22 would be a violation listed under this paragraph if committed in this state, and that
23 the violation resulted in great bodily harm, as defined in s. 939.22 (14), or in
24 substantial bodily harm, as defined in s. 939.22 (38), to the child or another child of
25 the parent. If the circumstances specified in this paragraph apply, the petition shall

ASSEMBLY BILL 428

1 be filed or joined in within 60 days after the date on which the court assigned to
2 exercise jurisdiction under this chapter determines, based on a finding that a
3 circumstance specified in this paragraph applies, that reasonable efforts to make it
4 possible for the child to return safely to his or her home are not required.

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

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

11 **SECTION 5.** 50.065 (1) (e) 1. of the statutes is amended to read:

12 50.065 (1) (e) 1. "Serious crime" means a violation of s. 940.19 (3), 1999 stats.,
13 a violation of s. 940.01, 940.02, 940.03, 940.05, 940.12, 940.19 (2), (4), (5) or (6), 940.22
14 (2) or (3), 940.225 (1), (2) or (3), 940.285 (2), 940.29, 940.295, 948.02 (1), 948.025 or
15 948.03 (2) (a) or (5) (a) 1., 2., or 3., or a violation of the law of any other state or United
16 States jurisdiction that would be a violation of s. 940.19 (3), 1999 stats., or a violation
17 of s. 940.01, 940.02, 940.03, 940.05, 940.12, 940.19 (2), (4), (5) or (6), 940.22 (2) or (3),
18 940.225 (1), (2) or (3), 940.285 (2), 940.29, 940.295, 948.02 (1), 948.025 or 948.03 (2)
19 (a) or (5) (a) 1., 2., or 3. if committed in this state.

20 **SECTION 6.** 50.065 (1) (e) 2. of the statutes is amended to read:

21 50.065 (1) (e) 2. For the purposes of an entity that serves persons under the age
22 of 18, "serious crime" includes a violation of s. 948.02 (2), 948.03 (2) (b) or (c) or (5)
23 (a) 4., 948.05, 948.051, 948.055, 948.06, 948.07, 948.08, 948.085, 948.11 (2) (a) or
24 (am), 948.12, 948.13, 948.21 (1), 948.30, or 948.53 or a violation of the law of any other
25 state or United States jurisdiction that would be a violation of s. 948.02 (2), 948.03

ASSEMBLY BILL 428**SECTION 6**

1 (2) (b) or (c) or (5) (a) 4., 948.05, 948.051, 948.055, 948.06, 948.07, 948.08, 948.085,
2 948.11 (2) (a) or (am), 948.12, 948.13, 948.21 (1), 948.30, or 948.53 if committed in this
3 state.

4 **SECTION 7.** 103.34 (1) (b) 2. of the statutes is amended to read:

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

12 **SECTION 8.** 165.84 (7) (ab) 1. of the statutes, as affected by 2013 Wisconsin Act
13 214, is amended to read:

14 165.84 (7) (ab) 1. A felony violation of s. 940.01, 940.05, 940.21, 940.225 (1), (2),
15 or (3), 940.235, 940.30, 940.302 (2), 940.305, 940.31, 940.32 (2), (2e), or (2m), 940.43,
16 940.45, 941.20, 941.21, 941.327, 943.02, 943.06, 943.10, 943.23 (1g) or (2), 943.32,
17 948.02 (1) or (2), 948.025, 948.03 (2) (a) or (c) or (5) (a) 1., 2., 3., or 4., 948.05, 948.051,
18 948.055, 948.07, 948.08, 948.085, 948.095, or 948.30 (2).

19 **SECTION 9.** 165.84 (7) (ab) 2. of the statutes, as affected by 2013 Wisconsin Act
20 214, is amended to read:

21 165.84 (7) (ab) 2. A felony violation of s. 940.02, 940.03, 940.06, 940.07, 940.08,
22 940.09 (1c), 940.10, 940.19 (2), (4), (5), or (6), 940.195 (2), (4), (5), or (6), 940.20,
23 940.201 (2), 940.203 (2), 940.205 (2), 940.207 (2), 940.208, 940.23, 941.30, or 948.03
24 (3) or (5) (a) 4.

25 **SECTION 10.** 302.11 (1g) (a) 2. of the statutes is amended to read:

ASSEMBLY BILL 428

1 302.11 **(1g)** (a) 2. Any felony under s. 940.09 (1), 1999 stats., s. 943.23 (1m),
2 1999 stats., s. 948.35 (1) (b) or (c), 1999 stats., or s. 948.36, 1999 stats., or s. 940.02,
3 940.03, 940.05, 940.09 (1c), 940.19 (5), 940.195 (5), 940.21, 940.225 (1) or (2), 940.305
4 (2), 940.31 (1) or (2) (b), 943.02, 943.10 (2), 943.23 (1g), 943.32 (2), 946.43 (1m), 948.02
5 (1) or (2), 948.025, 948.03 (2) (a) or (c) or (5) (a) 1., 2., 3., or 4., 948.05, 948.06, 948.07,
6 948.08, or 948.30 (2).

7 **SECTION 11.** 343.12 (7) (c) 14m. of the statutes is created to read:

8 343.12 **(7)** (c) 14m. Engaging in repeated acts of physical abuse of the same
9 child under s. 948.03 (5).

10 **SECTION 12.** 938.355 (2d) (b) 3. of the statutes is amended to read:

11 938.355 **(2d)** (b) 3. That the parent has committed a violation of s. 940.19 (3),
12 1999 stats., or s. 940.19 (2), (4), or (5), 940.225 (1) or (2), 948.02 (1) or (2), 948.025,
13 948.03 (2) (a) ~~or~~, (3) (a), or (5) (a) 1., 2., or 3., or 948.085 or a violation of the law of
14 any other state or federal law, if that violation would be a violation of s. 940.19 (2),
15 (4), or (5), 940.225 (1) or (2), 948.02 (1) or (2), 948.025, or 948.03 (2) (a) ~~or~~, (3) (a), or
16 (5) (a) 1., 2., or 3. if committed in this state, as evidenced by a final judgment of
17 conviction, and that the violation resulted in great bodily harm, as defined in s.
18 939.22 (14), or in substantial bodily harm, as defined in s. 939.22 (38), to the juvenile
19 or another child of the parent.

20 **SECTION 13.** 939.62 (2m) (a) 2m. b. of the statutes is amended to read:

21 939.62 **(2m)** (a) 2m. b. Any felony under s. 940.09 (1), 1999 stats., s. 943.23 (1m)
22 or (1r), 1999 stats., s. 948.35 (1) (b) or (c), 1999 stats., or s. 948.36, 1999 stats., or s.
23 940.01, 940.02, 940.03, 940.05, 940.09 (1c), 940.16, 940.19 (5), 940.195 (5), 940.21,
24 940.225 (1) or (2), 940.305, 940.31, 941.327 (2) (b) 4., 943.02, 943.10 (2), 943.23 (1g),

ASSEMBLY BILL 428**SECTION 13**

1 943.32 (2), 946.43 (1m), 948.02 (1) or (2), 948.025, 948.03 (2) (a) or (c) or (5) (a) 1., 2.,
2 3., or 4., 948.05, 948.06, 948.07, 948.075, 948.08, 948.085, or 948.30 (2).

3 **SECTION 14.** 939.632 (1) (e) 1. of the statutes is amended to read:

4 939.632 (1) (e) 1. Any felony under s. 940.01, 940.02, 940.03, 940.05, 940.09
5 (1c), 940.19 (2), (4) or (5), 940.21, 940.225 (1), (2) or (3), 940.235, 940.305, 940.31,
6 941.20, 941.21, 943.02, 943.06, 943.10 (2), 943.23 (1g), 943.32 (2), 948.02 (1) or (2),
7 948.025, 948.03 (2) (a) or (c) or (5) (a) 1., 2., 3., or 4., 948.05, 948.051, 948.055, 948.07,
8 948.08, 948.085, or 948.30 (2) or under s. 940.302 (2) if s. 940.302 (2) (a) 1. b. applies.

9 **SECTION 15.** 939.635 of the statutes is amended to read:

10 **939.635 Increased penalty for certain crimes against children**
11 **committed by a child care provider.** If a person commits a violation of s. 948.02,
12 948.025, or 948.03 (2) ~~or~~, (3), or (5) (a) 1., 2., 3., or 4. against a child for whom the
13 person was providing child care for compensation, the maximum term of
14 imprisonment for that crime may be increased by not more than 5 years.

15 **SECTION 16.** 939.74 (2) (c) of the statutes is amended to read:

16 939.74 (2) (c) A prosecution for violation of s. 948.02 (2), 948.025 (1) (e), 948.03
17 (2) (a) or (5) (a) 1., 2., or 3., 948.05, 948.051, 948.06, 948.07 (1), (2), (3), or (4), 948.075,
18 948.08, 948.085, or 948.095 shall be commenced before the victim reaches the age of
19 45 years or be barred, except as provided in sub. (2d).

20 **SECTION 17.** 939.74 (2) (cm) of the statutes is amended to read:

21 939.74 (2) (cm) A prosecution for violation of s. 948.03 (2) (b) or (c), (3) ~~or~~, (4),
22 or (5) (a) 4. or 5., 948.04 or 948.07 (5) or (6) shall be commenced before the victim
23 reaches the age of 26 years or be barred, except as provided in sub. (2d).

24 **SECTION 18.** 948.03 (5) of the statutes is created to read:

ASSEMBLY BILL 428

1 948.03 (5) ENGAGING IN REPEATED ACTS OF PHYSICAL ABUSE OF THE SAME CHILD. (a)
2 Whoever commits 3 or more violations under sub. (2), (3), or (4) within a specified
3 period involving the same child is guilty of the following:

- 4 1. A Class A felony if at least one violation caused the death of the child.
- 5 2. A Class B felony if at least 2 violations were violations of sub. (2) (a).
- 6 3. A Class C felony if at least one violation resulted in great bodily harm to the
7 child.
- 8 4. A Class D felony if at least one violation created a high probability of great
9 bodily harm to the child.
- 10 5. A Class E 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), (3), or (4) occurred within the specified period but need not agree on which
14 acts constitute the requisite number.

15 (c) The state may not charge in the same action a defendant with a violation
16 of this subsection and with a violation involving the same child under sub. (2), (3),
17 or (4), unless the other violation occurred outside of the period applicable under par.
18 (a). This paragraph does not prohibit a conviction for an included crime under s.
19 939.66 when the defendant is charged with a violation of this subsection.

20 **SECTION 19.** 973.0135 (1) (b) 2. of the statutes is amended to read:

21 973.0135 (1) (b) 2. Any felony under s. 940.09 (1), 1999 stats., s. 943.23 (1m)
22 or (1r), 1999 stats., s. 948.35 (1) (b) or (c), 1999 stats., or s. 948.36, 1999 stats., s.
23 940.01, 940.02, 940.03, 940.05, 940.09 (1c), 940.16, 940.19 (5), 940.195 (5), 940.21,
24 940.225 (1) or (2), 940.305, 940.31, 941.327 (2) (b) 4., 943.02, 943.10 (2), 943.23 (1g),

ASSEMBLY BILL 428**SECTION 19**

1 943.32 (2), 946.43 (1m), 948.02 (1) or (2), 948.025, 948.03 (2) (a) or (c) or (5) (a) 1., 2.,
2 3., or 4., 948.05, 948.051, 948.06, 948.07, 948.075, 948.08, or 948.30 (2).

3 **SECTION 20.** 973.015 (1m) (a) 3. a. of the statutes is amended to read:

4 973.015 **(1m)** (a) 3. a. A Class H felony, if the person has, in his or her lifetime,
5 been convicted of a prior felony offense, or if the felony is a violent offense, as defined
6 in s. 301.048 (2) (bm), or is a violation of s. 940.32, 948.03 (2) ~~or~~ (3), or (5) (a) 1., 2.,
7 3., or 4., or 948.095.

8 **SECTION 21.** 973.017 (6) (b) of the statutes is amended to read:

9 973.017 **(6)** (b) When making a sentencing decision concerning a person
10 convicted of a violation of s. 948.02 (1) or (2), 948.025 (1), 948.03 (2) ~~or~~ (3), or (5) (a)
11 1., 2., 3., or 4., or 948.051, the court shall consider as an aggravating factor the fact
12 that the person was a person responsible for the welfare of the child who was the
13 victim of the violation.

14 (END)