



2017 ASSEMBLY BILL 355

May 31, 2017 - Introduced by Representatives HORLACHER, R. BROOKS, DOYLE, EDMING, HUTTON, JACQUE, KITCHENS, KLEEFISCH, KRUG, KULP, MACCO, MURPHY, NOVAK, PETRYK, RIPP, SKOWRONSKI, TUSLER and VRUWINK, cosponsored by Senators COWLES, DARLING, KAPENGA, OLSEN, PETROWSKI, STROEBEL and VINEHOUT. Referred to Committee on Criminal Justice and Public Safety.

1 **AN ACT to amend** 48.685 (1) (c) 2., 50.065 (1) (e) 2. and 103.34 (1) (b) 2.; **to repeal**
2 **and recreate** 948.21; and **to create** 939.25 (3) of the statutes; **relating to:**
3 neglect of 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 negligently fails, for reasons other than poverty, to provide the child with necessary care or contributes to the failure is guilty of the crime of neglect. Under the bill, necessary care includes adequate food, clothing, medical 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.

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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:

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) or (5) (a) 1., 2., 3., or 4., 948.05,
5 948.051, 948.055, 948.06, 948.07, 948.08, 948.085, 948.11 (2) (a) or (am), 948.12,
6 948.13, 948.21 ~~(1)~~ (2) or (4), 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) or (5)
10 (a) 4., 948.05, 948.051, 948.055, 948.06, 948.07, 948.08, 948.085, 948.11 (2) (a) or
11 (am), 948.12, 948.13, 948.21 ~~(1)~~ (2) or (4), 948.30, or 948.53 or a violation of the law
12 of any other state or United States jurisdiction that would be a violation of s. 948.02
13 (2), 948.03 (2) (b) or (c) or (5) (a) 4., 948.05, 948.051, 948.055, 948.06, 948.07, 948.08,
14 948.085, 948.11 (2) (a) or (am), 948.12, 948.13, 948.21 ~~(1)~~ (2) or (4), 948.30, or 948.53
15 if committed in this 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), (3), or (5) (a) 1., 2., 3., or 4., 948.04, 948.05, 948.051, 948.055,

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1 948.06, 948.07, 948.075, 948.08, 948.085, 948.11 (2) (a) or (am), 948.12, 948.13,
2 948.21 ~~(1) (2) or (4)~~, or 948.30 or of a substantially similar federal law or law of
3 another state.

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

5 939.25 (3) This section does not apply to s. 948.21.

6 **SECTION 5.** 948.21 of the statutes is repealed and recreated to read:

7 **948.21 Neglecting a child. (1) DEFINITIONS.** In this section:

8 (a) “Child sex offense” means an offense under s. 948.02, 948.025, 948.05,
9 948.051, 948.055, 948.06, 948.07, 948.08, 948.10, 948.11, or 948.12.

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. Adequate food.

16 2. Adequate clothing.

17 3. Adequate medical care.

18 4. The opportunity for education.

19 5. Adequate shelter.

20 6. Adequate supervision.

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

23 (d) “Negligently” means acting, or failing to act, in such a way that a reasonable
24 person would know or should know seriously endangers the physical, mental, or
25 emotional health of a child.

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1 **(2) NEGLECT.** Any person who is responsible for a child's welfare who, for
2 reasons other than poverty, negligently fails, or contributes to the failure, to provide
3 the child with necessary care commits neglect, even if the child does not actually
4 suffer from neglect if the natural and probable consequences of the failure would be
5 that the child suffers from neglect. A person who commits neglect is guilty of the
6 following:

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

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

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

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

11 (c) A Class G felony if the child suffers emotional damage as a consequence.

12 (d) A Class H felony if the child suffers bodily harm as a consequence.

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

14 1. The commission creates an unreasonable and substantial risk of great bodily
15 harm to the child.

16 2. The commission creates an unreasonable and substantial risk that the child
17 could become a victim of a child sex offense.

18 (f) A Class A misdemeanor if the commission creates an unreasonable and
19 substantial risk of bodily harm to the child.

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

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

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1 (b) The child has a physical, cognitive, or developmental disability that was
2 known or should have been known by the actor.

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

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

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

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

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

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

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

12 5. A Class H felony.

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

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

21 **(END)**