

**2106A LAW NOTE: "PERSON RESPONSIBLE FOR THE CHILD'S WELFARE" — § 948.01(3)****Chapter 948 Offenses**

The term "person responsible for the child's welfare" is currently used in five offense definitions in Chapter 948:

- 948.02(3) Sexual assault of a child; failure to act
- 948.03(4)(a) Physical abuse of a child; failing to act to prevent great bodily harm
- 948.03(4)(b) Physical abuse of a child; failing to act to prevent bodily harm
- 948.21(1) and (2) Neglecting a child
- 948.40(2) Contributing to the delinquency of a child; by a "person responsible . . ."

**Chapter 948 Definition**

Section 948.01(3) defines the term as follows:

"Person responsible for the child's welfare" includes the child's parent; stepparent; guardian; foster parent; an employee of a public or private residential home, institution, or agency; other person legally responsible for the child's welfare in a residential setting; or a person employed by one legally responsible for the child's welfare to exercise temporary control or care for the child.

The Committee concluded that the § 948.01(3) definition applies to all Chapter 948 offenses even though there is a slight difference in the wording of the phrase in § 948.02(3), which refers to "a person responsible for the welfare of a child."

**Compare Privilege of Parental Discipline**

Note that the same phrase – "person responsible for the child's welfare" – is used in defining the class of persons who have the privilege to discipline a child under § 939.45(5). However, that statute provides its own definition, which differs slightly from the Chapter 948 definition. Compare § 939.45(5)(a)3. with § 948.01(3).

**Penalty Enhancers Repealed**

The term was formerly used in penalty enhancers that applied to violations of §§ 948.02, 948.025, and 948.03. Those provisions were repealed by 2001 Wisconsin Act 109 ["TIS II"]; effective date: February 1, 2003.

### Case Law Interpreting the Term

In State v. Sostre, 198 Wis.2d 409, 542 N.W.2d 774 (1996), the Wisconsin Supreme Court held that a live-in boyfriend, who was a volunteer caretaker of a child, was a "person . . . responsible for the welfare of [a] child" under § 948.01(3). The defendant had lived with the mother of the victim for about three years. During this time the defendant did everything the mother did with regard to taking care of the children, including feeding and bathing them. The child considered the defendant his father or stepfather, called him "Poppy," and had a father-son relationship with the defendant. The definition of "person responsible . . ." includes those who are "employed by one legally responsible for the child's welfare to exercise temporary control or care for the child." The court held:

One of the common meanings of the word "employed" is to "engage the service of" or "to make use of." Under these facts, it seems clear that the mother made use of the services of the defendant, or engaged the services of the defendant, in order to take care of her child when it was necessary for her to be away. In other words, the defendant was clearly "employed" by a person "legally responsible" for a child to "care for that child."  
198 Wis.2d 409, 415

The fact that the word "employed" is usually equated with economic payment for services does not require a different result. Nor does the fact that a person in this defendant's position may not qualify as a "person responsible" for purposes of the privilege of parental discipline defined in § 939.45(5). That definition does not include the phrase "employed by one legally responsible . . ." that was at issue in this case. [State v. Dodd, 185 Wis.2d 560, 518 N.W.2d 300 (Ct. App. 1994), held that a live-in boyfriend was not covered by the privilege.] The court concluded the legislature specifically and deliberately defined the same term differently in the two statutes.

A biological father, who has admitted paternity in writing, is a "parent" and thus a "person responsible for the child's welfare" under § 948.21, Neglecting a Child. State v. Evans, 171 Wis.2d 471, 492 N.W.2d 141 (1992). The definition of "person responsible . . ." in § 948.01(3) applies to § 948.21.

In State v. Ward, 228 Wis.2d 301, 596 N.W.2d 301 (Ct. App. 1999), the court held that "person responsible . . ." under § 948.02(3) applied to an unpaid, volunteer babysitter whose husband sexually assaulted children of a neighbor. The evidence was sufficient to show that the defendant was employed by the parent in the sense that she was "used by

the child's legal guardian to act as a caretaker for the child." 228 Wis.2d 301, 307, citing Sostre, cited above.

"A seventeen-year-old employed by a parent to care for the parent's child can be a person responsible for the welfare of the child. . . . [She] became a voluntary caretaker of [the child] and, as such, she was a person responsible for his welfare." State v. Hughes, 2005 WI App 155, 285 Wis.2d 388, 702 N.W.2d 87.

#### COMMENT

Wis JI-Criminal A was originally published in 2009. This revision was approved by the Committee in July 2009.

This Law Note is intended to collect authority relating to the term "person responsible for the welfare of a child" as it is used in Chapter 948 and in § 939.45(5).

The 2010 revision deleted reference to "treatment foster parent," which was removed from the definition in § 948.01(3) by 2009 Wis Act 28 (Section 3352).