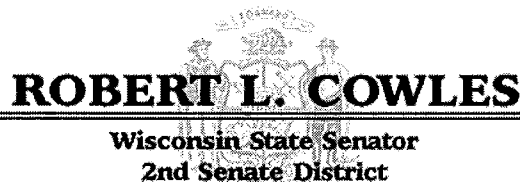


**STANDING COMMITTEES:**

Natural Resources & Energy, Chair  
Transportation & Veterans Affairs



**JOINT COMMITTEES**

Audit Committee, Co-Chair  
Information Policy and Technology

**Senate Bill 280- Neglect of a Child Testimony**

August 23, 2017

Senator Rob Cowles

Over the past few years, a host of advocacy groups, Attorney General Brad Schimel, Representative Horlacher and I have collaborated to address challenges relating to the maltreatment of children. I am very pleased today for the opportunity to have Senate Bill 280 heard on the outcome of years of work to address the issue of child neglect in Wisconsin.

I'll begin today with some concerning statistics from the 2015 Department of Children and Families Child Abuse and Neglect Report.<sup>1</sup> Child neglect is unquestionably the most reported form of child maltreatment, constituting over 60% of all substantiated maltreatment cases (Figures 1 and 2).<sup>2</sup> Over the last three years of available data, the total number of allegations of neglect and the substantiated number of neglect allegations have increased (Figure 3).<sup>3</sup> In 2015, 3,282 cases of child neglect were substantiated.<sup>4</sup> Over the last ten years in Wisconsin, 214 children died as a result of maltreatment (Figure 4).<sup>5</sup> In 2015 alone, two children from counties I represent died as a result of neglect. This is unacceptable.

Countless studies have consistently concluded that children exposed to neglect are at an increased risk for future emotional or behavioral problems. Neglect is unmistakably linked to an increased risk of alcoholism, drug abuse, high-risk sexual behaviors, eating disorders, obesity, depression, suicide, and other chronic diseases. However, despite the great harm that may result from neglect, current law is insufficient to adequately deal with the complex circumstances surrounding child neglect (Figure 5).<sup>6</sup>

Senate Bill 280 reforms Wisconsin's neglect statutes to add substance and clarity for law enforcement, prosecutors, social workers, community leaders, and caretakers. Under current law, prosecutors are required to prove that there was intent to neglect a child. It is inherently contradictory to be able to prove intent in the act of neglect. This legislation appropriately changes the standard to 'negligently failing to act.' The intent of this legislation is not to catch more people or create more criminals, but instead it's focused on being able to effectively protect children from the maltreaters that are impacting their wellbeing and development.

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<sup>1</sup> Wisconsin Department of Children and Families, comp. "2015 Wisconsin Child Abuse and Neglect Report." December 2016. <https://dcf.wisconsin.gov/files/cwportal/reports/pdf/can.pdf>.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> Wis. Stat. §948.21.

Senate Bill 280 also creates the crime of repeated acts of neglect of the same child. This component of the legislation is modeled after repeated acts of sexual assault of the same child.<sup>7</sup> This gives prosecutors a new tool to identify situations in which a very young or non-verbal child has been neglected, but are unable to identify dates and specific instances. Additionally, the current felony schedule has proved to be inflexible and excludes too many instances that constitute neglect in our communities. As a result, long-term and repeated acts of neglect are not being adequately charged as a course of conduct, leaving child victims in negligent situations. It is important to note that this bill does not overrule or minimize the ability of Child Protective Services to intervene and improve the situation before felony neglect charges would even be considered.

Furthermore, this legislation's most significant provision addresses a substantial gap in our laws to address the rapidly growing problem of drug endangered children. These are children who are regularly exposed to the distribution, manufacture or use of controlled substances by their caretakers. Wisconsin has recently seen a steep increase in child endangerment cases that were flagged for drugs, which now constitutes nearly 1 in 5 cases.<sup>8</sup> Senate Bill 280 adds language that exposing children to drug abuse, sales, and manufacturing is child neglect.

There are too many stories to tell about drug endangered children, but one in particular has stuck in my mind. James Vessell Jr. was a two-year-old boy from Milwaukee, and is 1 of 7 children under the age of five that have died of a drug overdose in the past two years in Milwaukee County.<sup>9</sup> Two-year old James suffered a fatal overdose in January of 2016 after eating oxycodone pills he found. James was the subject in an open child neglect complaint which was filed three months prior to his death. There were also 24 calls to child protective services regarding James and his siblings. This circumstance was completely preventable. It's my hope that James's story may serve as a catalyst to prevent other children from being subjected to drug-filled environments.

It's so important to ensure that victims of child neglect may receive protection and justice in Wisconsin. By creating Senate Bill 280, Attorney General Schimel, Representative Horlacher and I are striving to give kids a safer childhood by deterring these dangerous acts of neglect in our communities. It is my hope that this bill will begin to add stability in our justice system for those too young to protect themselves.

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<sup>7</sup> Wis. Stat. §948.025.

<sup>8</sup> Stephenson, Crocker, and Ashley Luthern. "In Harm's Way: Children are drug epidemic's innocent victims." Milwaukee Journal Sentinel, May 11, 2017. Accessed August 21, 2017. <http://www.jsonline.com/story/news/local/wisconsin/2017/05/11/harms-way-children-drug-epidemics-innocent-victims/100889436/>.

<sup>9</sup> Ibid.

# Senate Bill 280 Testimony-Supporting Appendix

August 23, 2017

Figure 1

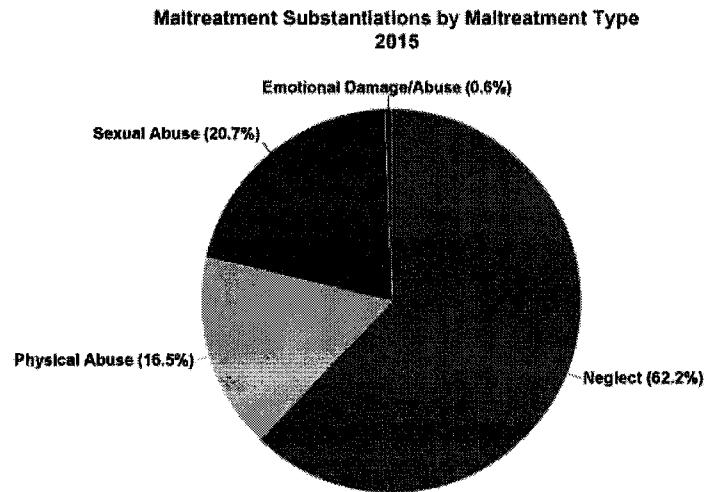
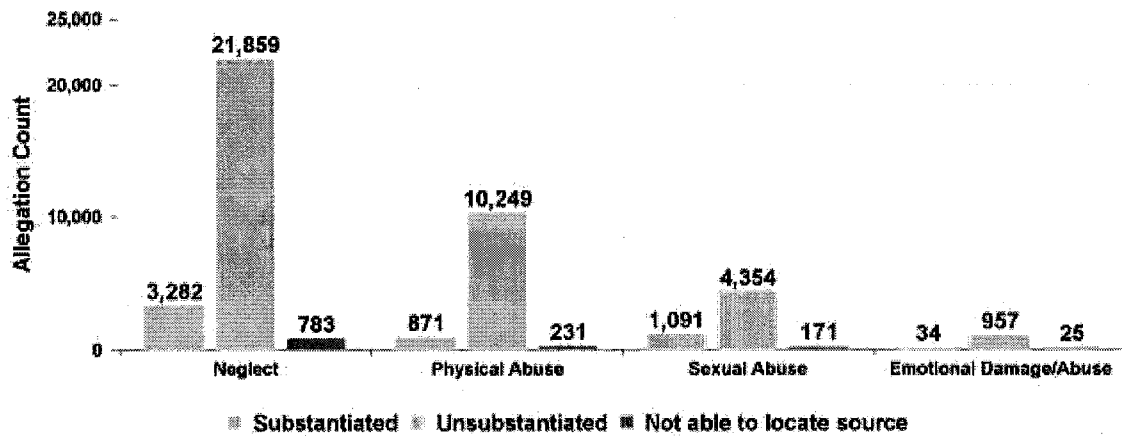


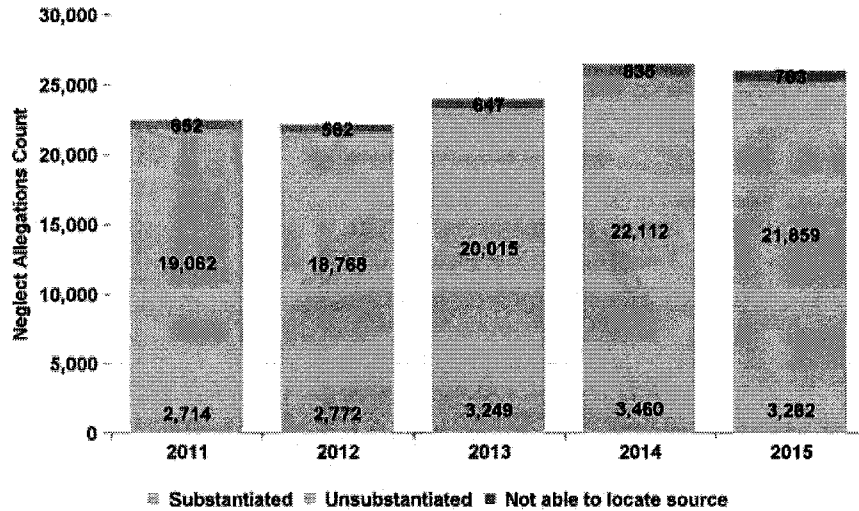
Figure 2

Count of Maltreatment Allegations by Maltreatment Findings, and by Maltreatment Type  
2015



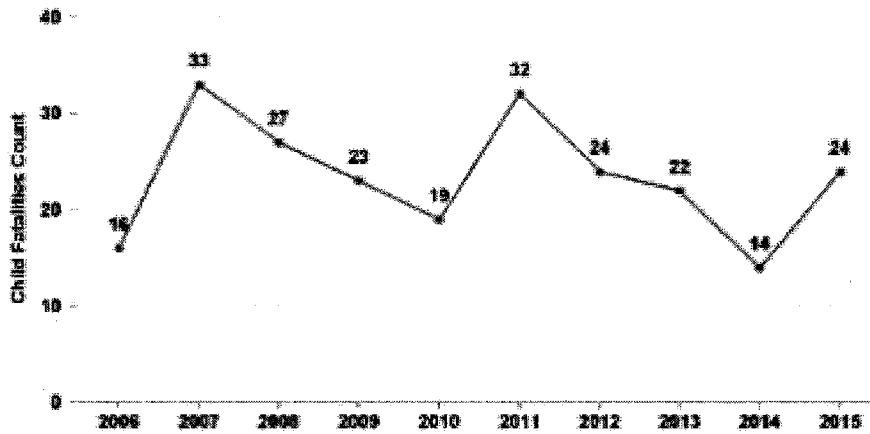
**Figure 3**

Neglect Allegation Findings \*  
2011-2015



**Figure 4**

Count of Child Fatalities Substantiated as Maltreatment \*  
2006-2015



\* Please note that as compared to the 2014 Child Abuse and Neglect Report, the child fatality figure in 2014 increased by one child due to late reporting of the fatality to the county agency.

Figure 5

**948.21 Neglecting a child. (1)** 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 one of the following:

- (a) A Class A misdemeanor.
- (b) A Class H felony if bodily harm is a consequence.
- (c) A Class F felony if great bodily harm is a consequence.
- (d) A Class D felony if death is a consequence.

**(2)** Under sub. (1), a person responsible for the child's welfare contributes to the neglect of the child although the child does not actually become neglected if the natural and probable consequences of the person's actions or failure to take action would be to cause the child to become neglected.



**STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE**

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**PREPARED TESTIMONY OF ATTORNEY GENERAL BRAD D. SCHIMEL**

Support for Senate Bill 280  
Senate Committee on Judiciary and Public Safety  
Wednesday, August 23, 2017

Thank you, Chairman Wanggard and members of the Senate Committee on Judiciary and Public Safety, for allowing me the opportunity to testify in support of Senate Bill 280. This legislation aims to clarify our child neglect statutes, as well as provide for a stricter enforcement of penalties.

I would like to thank Senator Cowles and Representative Horlacher for their continued efforts in providing protection from, and remedies for, the appalling crimes of child neglect throughout our state. Their input and enthusiasm for this legislation, which provides prosecutors the tools to more effectively fight child neglect, demonstrates their commitment to improve the lives of children in their districts and across the state.

The State of Wisconsin prides itself on its commitment to providing a healthy and nurturing environment for our children. Yet even with this commitment, we have seen too many instances of child neglect. Child neglect is more prevalent than child sexual abuse, physical abuse, and emotional abuse combined.

Of the 24 children that died from maltreatment in Wisconsin in 2015, 9 of them were victims of neglect.

The numbers are only outdone by the astonishing abuse stories of neglect that have occurred recently.

- In 2013, a man was convicted of child neglect after he refused to feed his 15 year old daughter, who weighed just 68 pounds when she was taken into protective custody. This abuse began when she was just ten years old, and for the majority of the next five years, she was locked in a basement and forced to eat her own feces and drink her own urine. Her step-mother was also charged with child abuse, and her step-brother was charged with sexual abuse.

- In 2015, Patrick and Alycin Keller, parents of an autistic child, were charged with child neglect after locking her in a basement every day when not attending school. The 13 year old girl was forced to live in a space that had no lavatory, or basin for running water or showering. The parents forced her to wear a "onesie" with only a zipper on the back, and often they forced her into a makeshift cage. The child's school reported as many as seven times that she showed up to school with dried stool in her hair and in clothes covered in feces. .
- We are all too familiar with the case in Ohio where two parents had overdosed in a car with their 4 year old son in the car. It happens here, too. Time and time again I prosecuted parents who left their children, often toddlers and infants, unsupervised and uncared for while they left to get drugs or put themselves in a stupefied state as a result of their drug use.

Sadly, these are not isolated incidents of child abuse. Child neglect too often leads to child death. Even if it does not lead to death, these neglected children are left to cope with severe emotional, physical, and mental harm. Often the harm done to these children and their families is irreparable and continues from generation to generation.

I served as an assistant DA and DA for over 25 years, and the largest part of my career involved prosecution of sensitive crimes, most of which involved abuse and neglect of children. Time and time again, when I prosecuted an offender for abusing or neglecting a child, that offender had his or her own history of traumatic experiences as a child. When left unchecked, the cycle of maltreatment is generational.

Any child social services professional will tell you that children who suffer maltreatment are much more likely to go on to be in trouble in delinquency court or adult criminal court, to self-medicate emotional trauma with drug and alcohol abuse and to have an unbalanced sense of what normal family life is, which they will then pass on to the next generation.

The health and well-being of our children should be of the outmost importance to our state and the communities in which we live. If we allow abuse and neglect of our most vulnerable citizens to occur, we not only condemn them to a future of distress; we condemn our own future as well.

Current law is inadequate to insure meaningful prosecution of these most neglectful caregivers. It only provides enhanced, felonious penalties if there is actual bodily harm, but does not address the various other types of harm that occur as a

result of child neglect. This new law provides several benefits to insure caregiver accountability.

- Changes the state of mind requirement (scienter) from intending to neglect care for one's child to one of "negligently acting or failing to act" in providing care such that a reasonable person would know or should know endangers the physical or emotional health of the child. It is an oxymoron to require a prosecutor to prove that a person intentionally committed a crime of neglect, and because the law sets a confusing standard, jurors are sometimes left confused.
- The current law is limited to protecting against physical harm; but as you just heard this new law protects against emotional harm as well. SB 280 expands the necessary care provisions of the current criminal law to protect against negligent supervision that leads to physical and or emotional harm including sexual assault and human trafficking.
- SB 280 enumerates a non-exclusive list of some of the specific forms of neglect that would be prohibited. This list is there to more closely link the neglect provisions in the Children's Code in Chapter 48 with the neglect provisions in Chapter 948. The list in SB 280 virtually identically mirrors the child protection provisions in Chapter 48.
  - The one significant exception relates to the opportunity for participation in required education. This is a recognition that caregivers who engage in child neglect will often keep their children out of school, because teachers and other school staff are often the first place where the system identifies the symptoms of neglect. We want to make it clear that a person responsible for the welfare of a child cannot avoid detection for their maltreatment of a child by keeping them out of school.
  - I want to highlight one particular provision that is very important.
    - SB 280's enumerated list of things that constitute "Necessary Care" includes protection from the manufacture, use or distribution of controlled substances.
    - The drug epidemic in our state and nation is the largest public safety and public health crisis I have seen in over a quarter century in law enforcement. All too often, innocent children fall victim to the consequences of drug abuse by their caregivers. We have seen many, many



cases in which children have become endangered, physically harmed, and even have died from coming in contact with dangerous controlled substances abused by their caregivers or the paraphernalia from that abuse.

- The vast majority of counties and tribes in Wisconsin now have active Drug Endangered Child Programs. These multidisciplinary teams work together to prevent risks to children from drug trafficking and abusing environments, and to restore children to safe environments when they have been exposed to use of dangerous controlled substances. Wisconsin can now seek to protect children that may be in danger of neglect or abuse due to the use, distribution, or manufacturing of controlled substances.
- SB 280 also specifically recognizes that preschool aged children are most at risk, and provides extra protection for our most vulnerable children who are 5 years of age and younger.
- Finally, this bill creates additional protections for children who suffer Repeated Acts of Neglect that result in Physical or Emotional Harm.
  - From my perspective as a prosecutor, this is the most important provision in the bill, because it eases the burden on the child in an investigation and prosecution.
  - In many child maltreatment cases, the child themselves will provide us with much of the information we need to prosecute, and will be a critical witness if a trial occurs. When the maltreatment is ongoing or repetitive, as it often is, it is often very difficult to child victims to put specific time frames on acts of maltreatment.
  - For as long as I can recall, Wisconsin law has provided that repeated acts of sexual abuse of a child be charged as a single, continuing offense. Just last session, Wisconsin expanded this important tool to include cases involving physical abuse of a child. We need to close this gap for child neglect cases, as well. SB 280 does that.

This proposed legislation would allow prosecutors to rigorously prosecute crimes of severe neglect and allows for softer punishments on less severe neglect. An increase in the flexibility and severity of punishment will help curb the number of children neglected or abused in the future as well as provide justice for victims.

SB 280 would make it clear that it is a felony if the neglect if the child becomes a victim a child sex offense, which would help protect those children who become at risk of sexual assault or human trafficking.

Our children do not have the voice to speak for themselves. We have a duty to provide a nurturing community that allows for development and growth. Through this legislation, we have an opportunity to dramatically increase the number of children that we can protect.

Thank you for the opportunity to testify in support of Senate Bill 280.



# CODY HORLACHER

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August 23<sup>rd</sup>, 2017

Chairman Wanggaard and Judiciary and Public Safety Committee Members,

Thank you for holding a Public Hearing on SB 280 related to neglect of a child and providing criminal penalties.

It has been my honor to work with Senator Cowles as well as our partners at DOJ, DCF, and various other stakeholders who have an interest in helping keep Wisconsin kids safe.

This bill not only addresses issues of what constitutes neglect but it also provides prosecutors more clarity as it relates to the various criminal charges related to neglect. Importantly this bill also creates the crime of repeated acts of neglect of the same child. Tragically we have seen cases where the same child has been repeatedly neglected and this law will help to protect those children from future neglect.

Additionally, SB 280 is just one piece of the larger effort to combat the scourge of drug abuse in our communities. We need to be vigilant in our pursuit of those who do harm to children by engaging in drug related criminal activities in the presence of children. Too often we see cases where children have been harmed during drug production and distribution situations. This cannot stand in Wisconsin.

While I understand that this issue requires a multi-faceted approach, I believe that this bill will provide another layer of support to the efforts currently underway to address child neglect in our state.

I have seen first-hand the horrors of child abuse and neglect, during my time at the district attorney's office, and I know that my colleagues here in the state legislature are committed to working together to address this issue.

I have been able to work with folks across my district who are working every day on the front lines to combat these issues in their communities. It is vital that we protect some of our most vulnerable Wisconsinites, children.

I appreciate your consideration of this bill and I would be happy to answer any questions you may have.



DATE: August 23, 2017

TO: Senate Committee on Judiciary and Public Safety

FROM: Wisconsin Child Abuse and Neglect Prevention Board

RE: SB 280

Thank you for the opportunity to testify on SB 280. The Wisconsin Child Abuse and Neglect Prevention Board (Prevention Board) opposes this bill as it is unclear how it will prevent child neglect from occurring and because of lack of clarity regarding potential unintended consequences.

The Prevention Board was created by the Legislature in 1983. One of its statutory duties is to advise the Governor, the Legislature, and state agencies on issues related to child abuse and neglect. Board members represent offices of the Governor, Attorney General, State Superintendent of Public Instruction; Secretaries from the Department of Children and Families, Department of Health Services, Department of Corrections; two state senators and two state assembly representatives appointed by the majority and minority leaders; and ten public members appointed by the Governor.

The mission of the Prevention Board is to mobilize research and practices to prevent child abuse and neglect in Wisconsin. The Prevention Board's position is that the best way to keep children safe and prevent neglect is to take an approach that focuses on building family strengths, providing supports when families struggle, and giving them the tools that promote family and child well-being.

The Prevention Board grounds all its work in the Protective Factors Framework, an evidence-informed, strengths-based approach to child maltreatment prevention and family well-being developed by the Center for the Study of Social Policy. When families have Protective Factors, it increases the probability of positive, healthy outcomes, even in the face of adversity.

The five Protective Factors are:

- Social and emotional competence of children
- Knowledge of parenting and child development
- Social connections
- Parental resilience
- Concrete supports in times of need

As drafted, SB 280 does not align with what we know from research about Protective Factors to strengthen families or prevent child neglect from occurring in the first place, and it is not clear what the bill is trying to achieve. Child neglect is a complex issue and there is limited research on its causes. However, research has identified several risk factors that contribute to child neglect, such as household income level or socio-economic status, parental depression, and parental substance abuse.

Broadening the current criminal neglect statute is unlikely mitigate these risk factors. In fact, the legislation may exacerbate them. Research has shown that involvement in the criminal justice system



can adversely impact a person's ability to find employment, obtain housing, and receive financial aid, all of which contribute to poverty and low parental income, both risk factors for child neglect. It can also adversely affect a parent's mental health and potentially lead to social isolation and stress—which are also risk factors for child neglect.

The Prevention Board is unaware of any research showing that the criminalization of child neglect is a deterrent. A punitive approach is also inconsistent with the trauma-informed care philosophy being implemented throughout Wisconsin and the recent opioid legislation that approaches drug use as a public health issue by focusing on treatment instead of punishment. Broadening the criminal law also has the potential to have a disparate impact on low-income families and families of color.

Child neglect is already a criminal offense. Most of cases of child neglect are not egregious. They are the result of stressed and struggling caregivers, many of whom are responsive when they receive support and access to resources. For those cases that do require the intervention of the criminal justice system, the current law is being used. Based on data from CCAP, prosecutors used the current law to obtain over 300 convictions for child neglect in each year from 2011 through 2016, and in 2015 there were almost 450 convictions.

One specific concern related to proposed language is that the definition of “necessary care” in SB 280 is different from, and more expansive than, the definition in the Children's Code that defines neglect as “failure, refusal or inability on the part of a caregiver, for reasons other than poverty, to provide necessary care, food, clothing, medical or dental care or shelter to seriously endanger the physical health of the child.” SB 280 creates a lower threshold for criminal prosecution than it does for county child protective services to be able to provide families the help they need to keep their children safe. It may be that the expansion of the definition of necessary care more appropriately belongs in the Children's Code because, unlike the criminal code, it is structured to allow for treatment and service needs to strengthen and support families.

There are several initiatives currently underway that could inform public policy decisions around child neglect. The Prevention Board has convened a Child Neglect Workgroup to develop a common understanding of what we know from current research, data, and practice about child neglect in Wisconsin; identify potential directions for future research and programmatic interventions; and identify strategies for educational outreach on neglect policy and legislation. The workgroup is comprised of experts in a variety of child and family-serving fields, including law enforcement officers, social workers, healthcare professionals, behavioral health experts, judicial officials, a prosecutor, a defense attorney, and a professor specializing in child neglect research.

The Prevention Board is also in the process of evaluating the Community Response Program and Project GAIN. These voluntary programs provide supports to families who have been reported to county child protective services for alleged child abuse or neglect, but who are not receiving services because the referral is 1) screened out, or 2) screened in for further assessment, but the case is closed due to a finding that the report could not be substantiated. The evaluation results could be useful in helping design future public policy to effectively address neglect.



Another initiative that could provide valuable information is the Speaker's Task Force on Foster Care. The task force is charged with developing ideas to improve the child welfare system, including how to support at risk families to keep them from entering the system in the first place.

On the national level, the National Alliance of Children's Trust & Prevention Funds has undertaken an initiative to increase knowledge about strategies that help reduce the likelihood that child neglect will occur.

The Prevention Board supports using best practices to prevent child neglect. Those strategies, identified by the Centers for Disease Control and Prevention, are:

- Strengthen economic supports to families
- Change social norms to support parents and positive parenting
- Provide quality care and education early in life
- Enhance parenting skills
- Intervene to lessen harms through enhanced primary care, behavioral parent training programs, and treatment

Concrete examples of initiatives that use these effective strategies include increasing home visiting programs, early childhood education, and parent education; providing mental health services to parents and neglected children; addressing poverty, substance abuse, and family violence; and educating the public and professionals about neglect.

Currently known best practices, such as the ones described, can effectively mitigate the risk factors of child neglect by supporting parents and providing the economic, social, and emotional opportunities that allow families to thrive.

The Prevention Board would welcome the opportunity to work with the bill sponsors, the Speaker's Task Force on Foster Care, and other stakeholders to achieve our common goal to effectively address and prevent child neglect.

Thank you for the opportunity to comment on this legislation.

Child Neglect Legislation Testimony  
Senate Committee on Judiciary and Public Safety  
August 23, 2017

My name is Julie Ahnen. I am the Manager of Child Protective Services for Dane County Human Services, and have served in this role since March of 2010. I've been working as a Social Worker for over 30 years, and have worked for the Dane County Department of Human Services for 22 of those years. I oversee a staff of close to 80 professionals who are devoted to ensuring the safety of the children in Dane County. In 2016, we assessed over 1800 families for abuse and neglect concerns. Nationally, the vast majority of concerns reported to CPS, assessed by CPS, and substantiated by CPS are related to Neglect. Decisions to place children in out of home care are most often related to Neglect.

I'm here to express my opposition to Senate Bill 280, as this issue is at the heart of our work in CPS. My opposition is supported by the leadership within DCDHS, and the Dane County Government.

Before I get into the concerns I have with the language in this bill, I would like to express my concern that the voices of the people who will be most affected by these significant changes to the criminal statutes are not being heard. In Dane County, we learned about this Public Hearing late last Friday and have been scrambling to make sure that our own voices could be heard. The vast majority of families who are referred to CPS for concerns about neglect are low income families of color. Their voices are missing from this discussion.

We can all agree that children deserve every opportunity to reach their full potential. We are also aware of the expanding body of knowledge and research demonstrating that chronic neglect is harmful to child development. At the same time, it is also extremely harmful to children, families and communities when children are removed from their parents, and placed with temporary caregivers. At the State and County levels, our efforts are better spent on developing and passing legislation that strengthens families and communities.

SB 280 contains a provision that parents cannot be charged unless their neglectful actions occur "for reasons other than poverty". This provision is difficult to untangle, even in the child welfare system. The vicious cycle of poverty is tightly intertwined with other issues such as poor housing, unsafe neighborhoods, poor physical and mental health care, poor nutrition, limited transportation, educational deficits, and limited employment opportunities. All of these issues play a significant role in how adults function on a daily basis, and how they parent their children. Maladaptive coping mechanisms such as substance abuse emerge as a way to numb feelings of hopelessness and despair. From the outside looking in, these adults can be labeled as neglectful parents. But, more often than not, people are finding ways to establish the best life

possible for themselves and their children. When my staff are out in the community meeting with people in their homes, they are amazed at how resilient people are in the face of such chronic adversity. On a daily basis we are humbled by the stories of trauma that parents share. We quickly discover that most parents have a deep love for, and understanding of their children, and find creative ways to meet their needs. One of my Social Workers recently told me that the most stressful part of her job is hearing the judgments that others make about the families that she has come to know and respect.

Given what we know about the types of neglect cases that come to the attention of CPS, under this proposed legislation, most families will fall into the lower tier of punishment initially. We also know that many adults struggle to find the motivation to change, and continue to experience parenting challenges. These parents will become repeat offenders. If we end up sending these parents to prison, their children will have to reside with relatives or be placed into foster care for reasons other than child safety.

SB 280 contains terminology that is not well-defined, such as "the opportunity for education", "adequate food, clothing, medical care, shelter, and supervision", "seriously endangering the physical, mental or emotional health of the child", and "unreasonable and substantial risk". Who gets to define when parenting behavior crosses into criminal behavior as outlined in this bill? In our experience, it is often the Patrol Officers or Deputies in the field who have the most discretion in making these decisions.

Child protective services is a highly specialized profession that requires intensive training for workers. The CW system receives significant oversight from the State and Federal Government, as well as oversight from local and national organizations. This intensive training and oversight is in place to ensure consistency in policy, practice, and outcome measures. If this legislation is enacted, how will law enforcement and criminal court decisions be monitored and studied over time to determine if they are effective? What entity will establish best practice standards for LE and the criminal justice system, and expectations for the outcomes of these significantly increased interventions?

The profound and long-lasting impacts on families who experience frequent police contacts and arrests cannot be understated. These contacts show up when landlords, employers, and others conduct background checks. Individual County DA's will have discretion regarding how to handle charges that are referred, but the damage will have been done just by the police knocking on the door and possibly making an arrest, even if those actions do not end up in a conviction.

SB 280 specifically defines necessary care as including the protection from exposure to the distribution, manufacture, or use of controlled substances. Because controlled substances includes a wide range of prescription and non-prescription substances, including the word "use" of these substances casts the net of concern very widely and opens the door for wide local discretion around which groups of substance users are targeted as neglectful parents.



Ultimately, we all want children to be safe and to be thriving. We want to change parental behavior that is not keeping kids safe or meeting their needs. Change through deterrence and punishment is not proving to be effective. We can point to the national discussion going on right now about the failure of the War On Drugs to change behavior. What that War did was to create a system of mass incarceration of people of color. This "tough on crime" legislation has the potential to take us down that path. On the other hand, there is a great deal of research-past and ongoing-supporting social change efforts that utilize supportive and motivational methods to encourage change, as opposed to punitive efforts that rely on punishment as an incentive to change. Extensive research has shown that people engage in change and healing within the context of trusting relationships. That trust is built through addressing barrier needs, often linked to poverty. True diversion involves the investment in strategies that keep families out of the CPS, Juvenile Justice, and criminal justice system all together.

Finally, these bills seem to run counter to messages being communicated to the Child Welfare system by the State Government of WI. As enthusiastic participants in First Lady Walker's Foster Futures Initiative, Dane County applauds the First Lady's efforts to promote and champion Trauma-Informed Practices around the state, and even on a national level. In Dane County, our Adult Criminal Justice system and Juvenile Justice system are effectively moving toward more restorative practices. It does not make sense to me that we would agree to these enhanced criminal penalties for parents struggling with complex issues related to neglect, and at the same time promote our State as one that embraces trauma-informed, and restorative practices.



Date: August 23, 2017

To: Senate Committee on Judiciary and Public Safety

From: Ken Taylor, Executive Director, Kids Forward

(Formerly Wisconsin Council on Children and Families)

**Subj: SB 280**

I respect the intent of the sponsors and co-sponsors of Senate Bill 280, we all want to help keep Wisconsin's children safe. **But I have serious concerns about some aspects of SB 280**, which I believe creates some unintended, negative consequences for children and families.

One of my main concerns about this bill is the lack of clarity about many of the terms in the definition of neglect, which constitutes a significant majority (62%) of all child maltreatment substantiations. For example, it is unclear what the "opportunity for education" means, or who gets to decide whether that has been provided or not. I have similar concerns about what "the protection from exposure to the distribution, manufacture, or use of controlled substances," actually means in practice. Finally, the term "adequate" is used repeatedly and lacks clarity about what that means and who gets to define it.

In addition, it is important to note that nearly 2/3 of children in out-of-home care in Wisconsin are reunified with their parents. I believe that we share the desire that these reunifications are done safely. However, reunification will likely be more difficult if parents have a criminal record due to the changes proposed by SB 280. The criminal record that may result from SB 280 will make these family's lives more tenuous, which will place their children at higher risk for neglect in the future.

I also believe that SB 280 will have disproportionately negative impacts on Wisconsinites who are from communities of color, who are much more likely to be involved with the child welfare system. For example, in Wisconsin, African American children are over five times more likely than White children to be in out-of-home care. It is not a coincidence that African American children are also five times more likely to be poor than White children. While this bill, and child welfare standards, prohibit poverty to be used in the definition of neglect, we know that neglect is often a direct or indirect consequence of poverty. Criminalization of neglect will make things worse for children and families, not better.

I know that the goal of the authors is to improve lives and protect kids. I share that goal. Child welfare systems are very complex and the risk of unintended negative consequences is always present. In summary, I believe that is the case here and that SB 280 does more harm than good.

## MEMORANDUM

**TO:** Honorable Members of the Senate Committee on Judiciary and Public Safety

**FROM:** Sarah Diedrick-Kasdorf, Deputy Director of Government Affairs  
Chuck Price, President, Wisconsin County Human Service Association

**DATE:** August 23, 2017

**SUBJECT:** Senate Bill 280

The Wisconsin Counties Association (WCA) and Wisconsin County Human Service Association (WCHSA) oppose Senate Bill 280, which creates the crime of neglect and provides criminal penalties.

County child welfare agencies from across the state have identified concerns with Senate Bill 280 and how it will impact child welfare practice.

According to the bill, "Any person who is responsible for a child's welfare who, for reasons other than poverty, negligently fails, or contributes to the failure, to provide the child with necessary care commits neglect, even if the child does not actually suffer from neglect if the natural and probable consequences of the failure would be that the child suffers from neglect." The bill goes on to discuss the different levels of the crime of "neglect" – from a Class A misdemeanor to a Class D felony. Based on what our counties experience in child welfare practice every day, there are many circumstances that lead to neglect (outside of poverty) that may not be criminal in nature, but would be a chargeable offense under the bill. Examples of this include:

- Parental mental health issues;
- Parental substance abuse issues;
- Parental disability;
- A parent replicating their own upbringing.

In these situations, county caseworkers work hard to engage families in services to ensure children can remain safely in their homes. The risk to children in many of these situations is low to moderate and could be alleviated through supports and/or services. Parents may

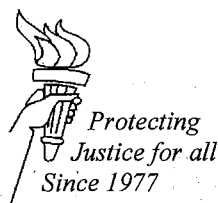
be less likely to engage with social workers if the threat of criminal charges is looming. Additionally, in instances where a child must be removed from the home to ensure safety, reunification is the ultimate goal. Reunification is much more difficult if the parent has a criminal record, or is serving time in jail/prison for the crime of neglect.

Arresting a parent for the crime of neglect - which causes a separation between a parent and child - can cause emotional harm (trauma) to a child as well, which is exactly what this bill is trying to avoid. The unintended consequences of this bill can have a significant negative impact on the same children this bill is trying to protect.

There is a fiscal cost to this legislation as well that is of concern to counties. If parents are criminally charged with neglect causing a child or children to be removed from the home, the out-of-home care cost to counties could be significant. With the opioid/methamphetamine epidemic in a crisis state in Wisconsin, we could see many parents charged with neglect resulting from their substance abuse issues, increasing costs at a rate faster than they are currently increasing. County jails will also see increased costs resulting from pre-trial and post-conviction incarceration.

On a more technical note, counties would like a definition of the word "adequate," as well as assurances that the "use of controlled substances" does not include a parent properly utilizing prescription medication.

Thank you for considering our comments.



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Comments on 2017 Senate Bill 280  
Senate Committee on Judiciary and Public Safety  
Wednesday, August 23, 2017

The State Public Defender's (SPD) office provides representation for individuals accused of crimes that carry the penalty of potential incarceration. The SPD also represents children who are the subjects of Children in Need of Protection and Services (CHIPS) petitions. The SPD has identified potential concerns with Senate Bill (SB) 280 and has had an initial conversation with the author's office.

In 2015, a previous version of this legislation (SB 324) raised several concerns about significantly expanding the concept criminal neglect to the Children's Code in Chapter 48 and the impact that the changes would have in significantly reducing Chapter 48's protection of the best interests of both the child and the family. We worked with both the bill author and Department of Justice on amended language to resolve many of the specific language concerns, although one concern remained at the end of the 2015 session. This language remains in 2017 Senate Bill 280 on page 3, lines 21-22, which defines neglect as "...exposure to the distribution, manufacture, or use of controlled substances, as defined in s. 961.01(4)."

The cross-reference to s. 961.01(4) includes all scheduled narcotics, including schedule 5 drugs such as pseudoephedrine. There are also several scheduled drugs related to the treatment of mental illness. Creating a criminal penalty for neglect when the neglect can be defined as the use of appropriately prescribed or accurately dosed over-the-counter medication creates a scenario in which parents could be charged for trying to appropriately treat mental illness with medication or for treating the common cold. Removing this language from the bill, deleting "use of," or limiting the restriction to only Schedule 1 or 2 narcotics would all be potential alternatives to the current language.

There is one section of language new to the 2017 bill version on page 3, lines 23-25. This language raises two questions. First, the definition of "negligently" includes an action or failure to act that a reasonable person "would know or should know" endangers the health of a child. "Should know" is a highly subjective term that would be difficult to both prove and disprove in court (and in hindsight). A reasonable person standard is usually understood to compare the actions of the accused with what a reasonable person in a similar situation would do. The reasonable standard presumes that there are some people who are held to a higher standard in certain situations. It is an unfair and inaccurate assumption to try to determine what a reasonable person "should know" when there are vast disparities in education and socio-economic status that don't apply equally to what a person should know in every situation as a parent. Changing "would know or should know" to "knows" would mitigate this ambiguity.

Second, this language on page 3, when compared to the language in the first 6 lines on page 4 seems to be inconsistent in usage of whether neglect is an action or a failure to take action. The language could be clarified to avoid misinterpretation if the bill were to become law.

We understand and appreciate the desire to protect children and families. Very often our adult clients exhibit the effects of childhood trauma - which also manifests as today's victim being tomorrow's defendant. Therefore, the focus on trauma-informed care is so critical to the appropriate understanding and treatment of issues that may feed criminogenic behavior.

We are happy to provide any additional information or work with the author to look at alternative language to address these concerns.