



## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

**2015 Senate Bill 324**

**Senate Amendment 1**

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### CURRENT LAW

Under current law, a person who is responsible for a child's welfare, is guilty of the crime of child neglect if he or she, through his or her actions or failure to take action, intentionally contributes to the neglect of the child. Also under current law, a person responsible for a 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.

A person who commits neglect of a child is guilty of a Class A misdemeanor if the neglect did not result in bodily harm, substantial bodily harm, or death to the child. If the neglect resulted in bodily harm, substantial bodily harm, or death, the person is guilty of a Class H felony, a Class F felony, or a Class D felony, respectively.

### 2015 SENATE BILL 324

Senate Bill 324 makes a number of changes to the crime of criminal neglect of a child. First, the bill eliminates the mental element of intent from the crime of child neglect. Instead, the bill provides that a 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 negligently contributes to the failure commits child neglect. The bill defines necessary care as "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." It further defines necessary care to include the following:

- Appropriate food;
- Appropriate clothing;

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

The bill defines “contributes to the failure” as “including contributing to the failure to provide a child with necessary care even if the child does not actually suffer from neglect if the natural and probable consequences of the act or failure would be that the child suffers from neglect.”

The bill also modifies the definition of criminal negligence. Under current law, criminal negligence is generally defined as ordinary negligence to a high degree consisting of conduct that the actor should realize creates a substantial and unreasonable risk of death or bodily harm to another. The bill specifies that for the purposes of the crime of child neglect, criminal negligence means negligence to a high degree, consisting of conduct that the actor should realize creates a substantial and unreasonable risk that he or she will fail to provide a child for whose welfare he or she is responsible necessary care or that he or she will contribute to the neglect of a child for whose welfare he or she is responsible.

As under current law, under the bill a person who commits neglect that results in bodily harm, substantial bodily harm, or death, is guilty of a Class H felony, a Class F felony, or a Class D felony, respectively. The bill expands upon this penalty structure as follows:

- A person who commits neglect and knows or should know that his or her action creates an unreasonable and substantial risk of bodily harm, substantial bodily harm, or death, is guilty of a Class I felony, a Class G felony, or a Class E felony, respectively.
- A person who commits neglect is guilty of a Class G felony if the child becomes a victim of a child sex offense as a consequence.
- A person who commits neglect is guilty of a Class F felony if the person knows or should know that his or her action creates an unreasonable and substantial risk that the child could become a victim of a child sex offense.
- A person’s neglectful conduct is presumed to have created an unreasonable and substantial risk of one of the types of harm described above if either: (a) the neglected child is either under the age of six; or (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. This presumption may be rebutted by the defendant.

- A person who commits neglect is guilty of a Class H felony if the child suffers emotional damage as a consequence.
- Finally, a person who commits neglect is guilty of a Class A misdemeanor if the neglect did not result in any of the harms described above and if the person neither knew nor should have known his or her conduct created an unreasonable and substantial risk of one of these harms.

### **SENATE AMENDMENT 1**

Senate Amendment 1 makes the following changes to Senate Bill 324:

- The amendment removes the modifications the bill made to the definition of criminal negligence and instead specifies that the definition of criminal negligence does not apply to the crime of child neglect.
- The amendment removes the definition of “contributes to the failure” from the bill.
- The amendment changes all of the references to “appropriate,” within the definition of “necessary care,” to “adequate.”
- The bill changes the criteria for a disability triggering the rebuttable presumption that neglectful conduct created an unreasonable and substantial risk of harm to “a physical cognitive, or developmental disability that is actually known or should have been known by the actor.”
- The amendment also changes the description of the crime of neglect to the following:

Any person who is responsible for a child’s welfare who, for reasons other than poverty, through action or failure to take action, 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 act or failure would be that the child suffers from neglect.

### **BILL HISTORY**

Senate Amendment 1 to Senate Bill 324 was offered by Senator Cowles on October 27, 2015. On October 29, 2015, the Senate Committee on Judiciary and Public Safety voted to recommend adoption of Senate Amendment 1 on a vote of Ayes, 4; Noes, 1. On the same day, the committee voted to recommend passage of Senate Bill 324, as amended, on a vote of Ayes, 3; Noes, 2.

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