



**WISCONSIN LEGISLATIVE COUNCIL
AMENDMENT MEMO**

2015 Assembly Bill 431

**Assembly Amendments 1, 2, 3,
and Assembly Amendment 1 to
Assembly Amendment 3**

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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.

“Neglect” is not defined in the Criminal Code, which is where the crime of child neglect is codified. The Children’s Code, however, 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 so as to seriously endanger the health of the child.” [s. 48.02 (12g), Stats.]

2015 ASSEMBLY BILL 431

Assembly Bill 431 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.

ASSEMBLY AMENDMENT 1

Assembly Amendment 1 makes the following changes to Assembly Bill 431:

- 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.

ASSEMBLY AMENDMENT 2

Assembly Amendment 2 eliminates protection from exposure to the use of controlled substances from the definition of "necessary care." (The amendment retains, within this

definition, protection from the exposure to the manufacture or distribution of controlled substances.)

ASSEMBLY AMENDMENT 3

Assembly Amendment 3 changes the penalties for the offense described under the bill in which the actor knows or should know that his or her action creates an unreasonable and substantial risk of a particular harm, but the harm does not occur. Under the amendment, if the actor knows or should know his or her action creates an unreasonable and substantial risk of a particular harm, he or she is guilty of either a Class I felony or a Class A misdemeanor as follows:

- If the person knows or should know that his or her action creates an unreasonable and substantial risk of great bodily harm, emotional damage, or that the child could become a victim of a child sex offense, he or she is guilty of a Class I felony.
- If the person knows or should know that his or her action creates an unreasonable and substantial risk of bodily harm, he or she is guilty of a Class A misdemeanor.

ASSEMBLY AMENDMENT 1 TO ASSEMBLY AMENDMENT 3

Assembly Amendment 1 to Assembly Amendment 3 removes the felony penalty for actions constituting child neglect in which the actor knows or should know that his or her action creates an unreasonable and substantial risk of emotional damage but this harm did not occur.

BILL HISTORY

Representative Tranel offered Assembly Amendment 1 on November 2, 2015. Representative Kessler offered Assembly Amendment 2 on November 4, 2015. Representative Tranel offered Assembly Amendment 3 on December 15, 2015, and Assembly Amendment 1 to Assembly Amendment 3 on January 12, 2016.

On January 28, 2016 the Assembly Committee on Criminal Justice and Public Safety voted to recommend adoption of the amendments as follows:

- Assembly Amendment 1 on a vote of Ayes, 12; Noes, 0;
- Assembly Amendment 2 on a vote of Ayes, 8; Noes, 4;
- Assembly Amendment 1 to Assembly Amendment 3 on a vote of Ayes, 12; Noes, 0; and
- Assembly Amendment 3, as amended, on a vote of Ayes, 12; Noes, 0.

The committee then voted to recommend adoption of Assembly Bill 431, as amended, on a vote of Ayes, 8; Noes, 4.

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