



## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

**2017 Assembly Bill 355**

**Assembly Substitute  
Amendment 1**

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### **BACKGROUND**

Under current law, a person who is responsible for a child's welfare is guilty of the crime of neglect of a child 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.

The penalty for committing the crime of neglect of a child is 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 penalty is 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 neglect of a child 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 physical health of the child." This definition is reflected in the jury instructions for the crime of neglect of a child. These instructions explain: "A child is neglected when the person responsible for the child's welfare fails for reasons other than poverty to provide necessary care, food, clothing, medical or dental care, or shelter so as to seriously endanger the physical health of the child."

## **2017 ASSEMBLY BILL 355**

### **Elements of the Crime of Neglect of a Child**

#### **The Bill**

2017 Assembly Bill 355 (hereinafter, "the bill") provides that a 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 of a child. "Negligently," for these purposes, is defined as "acting, or failing to act, in such a way that a reasonable person would know or should know seriously endangers the physical, mental, or emotional health of a child."

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:

- Adequate food;
- Adequate clothing;
- Adequate medical care;
- The opportunity for education;
- Adequate shelter;
- Adequate supervision; and
- Protection from exposure to the distribution, manufacture, or use of controlled substances.

#### **Assembly Substitute Amendment 1**

Assembly Substitute Amendment 1 (hereinafter, "the substitute amendment") to Assembly Bill 355 provides that any person who is responsible for a child's welfare who, through his or her action or failure to take action, for reasons other than poverty, negligently fails to provide any of the following, so as to seriously endanger the physical, mental, or emotional health of the child is guilty of neglect:

- Necessary care.
- Necessary food.
- Necessary clothing.
- Necessary medical care.
- Necessary shelter.

- Education in compliance with the compulsory school attendance requirements.
- The protection from exposure to the distribution or manufacture of controlled substances or controlled substance analogs, or to drug abuse.<sup>1</sup>

The substitute amendment defines “negligently” in the same manner as the bill defines the term.

The substitute amendment defines “necessary care” as “care that is vital to the needs of a child’s physical, emotional, or mental health based on all of the facts and circumstances bearing on the child’s needs for care, including the child’s age; the child’s physical, mental, or emotional condition; and any special needs of the child.” This definition is similar to the explanation of what “necessary care” means in the jury instructions that apply to a child in need of protection or services (CHIPS) proceedings based on parental neglect.<sup>2</sup>

### **Penalties for Committing Criminal Neglect of a Child**

#### **The Bill**

Under the bill, the penalties for committing neglect of a child are as follows:

- A Class A misdemeanor if the commission creates an unreasonable and substantial risk of bodily harm.
- A Class H felony, a Class F felony, or a Class D felony, if the commission results in bodily harm, substantial bodily harm, or death, respectively.
- A Class F felony if a person who commits neglect and knows or should know that his or her action creates an unreasonable and substantial risk of substantial bodily harm.
- A Class F felony if the child becomes a victim of a child sex offense as a consequence.
- A Class I 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 Class G felony if the child suffers emotional damage as a consequence.

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<sup>1</sup> The substitute amendment uses the definition of “drug abuse” in s. 46.973 (1) (b), Stats., which means “the use of a drug in such a manner as to endanger the public health, safety or welfare.”

<sup>2</sup> “Necessary care” is explained in the jury instructions for CHIPS petitions based on parental neglect as “care which is vital to the needs and the physical health of the child. Parents have the right and duty to protect, train, and discipline their children and supervise their activities. In determining what constitutes necessary care, you may consider all of the facts and circumstances bearing on the child’s need for care, including his or her age, physical condition, and special needs.” [WI-JI Children 250.]

For the purposes of the penalties that apply when a person's conduct creates an unreasonable and substantial risk of a specified harm, the bill creates a rebuttable presumption that an action creates an unreasonable and substantial risk of the harm described if either: (1) the child is under the age of six when the action was committed; or (2) the child has a physical, cognitive, or developmental disability that was known or should have been known by the actor.

### **The Substitute Amendment**

The penalties for committing neglect of a child that results in the child suffering death, great bodily harm, emotional damage, bodily harm or becoming the victim of a child sex offense, under the substitute amendment, are the same as under the bill. Under the substitute amendment, a person is guilty of a Class I felony if the natural and probable consequences of the neglect violation would be one of these harms although the harm did not actually occur if either:

- The child has not attained the age of six years when the violation was committed; or
- The child has a physical, cognitive, or developmental disability that was known or should have been known by the actor.

Also under the substitute amendment, a person who commits criminal neglect of a child is guilty of a Class A misdemeanor if the natural and probable consequence of the violation would be one of the harms described above although the harm did not actually occur.

### **Chronic Neglect and Repeated Acts of Neglect**

#### **The Bill**

The bill creates enhanced penalties for repeated acts of neglect of the same child. The bill provides that a person who commits three or more violations of criminal neglect of a child within a specified time period involving the same child is subject to penalties ranging from a Class H felony, if the child suffers no harm from the acts of neglect, to a Class B felony if the child suffers death as a consequence.

The bill provides that if an action for repeated acts of criminal neglect of the same child is tried to a jury, the jury must unanimously agree that at least three violations involving the same child occurred within the specified period, but need not agree on which acts constitute the requisite number or which acts resulted in any requisite consequence to find the defendant guilty. The bill provides that a person may not be charged with both criminal neglect of a child and repeated acts of neglecting a child unless the charge for the former did not occur during the specified period of time that applies to the repeated acts.

#### **The Substitute Amendment**

As under the bill, the substitute amendment provides that a person is subject to enhanced penalties if he or she commits three or more violations of the prohibition against criminal neglect of a child within a specified period involving the same child. In addition, the substitute

amendment provides that these enhanced penalties also apply to any person who commits criminal neglect of a child if the person was previously convicted of criminal neglect of a child involving the same child as the current violation.

### **BILL HISTORY**

The substitute amendment was introduced by Representative Horlacher on October 27, 2017. On November 7, 2017, the Assembly Committee on Criminal Justice and Public Safety voted to recommend adoption of the substitute amendment by a vote of Ayes, 7; Noes, 4; and Absent 1, and voted to recommend passage of the bill, as amended, by a vote of Ayes, 7; Noes, 4; and Absent, 1.

MS:jal