



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2017 Wisconsin Act 283
[2017 Assembly Bill 355]

Criminally Neglecting a Child

BACKGROUND

Under prior law, a person who was responsible for a child's welfare was guilty of the crime of neglecting a child if he or she, through his or her actions or failure to take action, intentionally contributed to the neglect of the child. Prior law also provided that a person was guilty of this crime if the person was responsible for the child's welfare and contributed to the neglect of the child, although the child did not actually become neglected, because the natural and probable consequences of the person's actions or failure to take action would have been to cause the child to become neglected.

The penalty, under prior law, for committing the crime of neglecting a child, was a Class A misdemeanor¹ if the neglect did not result in bodily harm, substantial bodily harm, or death to the child. However, if the neglect resulted in bodily harm, substantial bodily harm, or death, the penalty was a Class H felony², a Class F felony³, or a Class D felony⁴, 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 the "failure, refusal or inability on the part of a caregiver, for reasons other than poverty, to provide necessary care,

¹ A Class A misdemeanor is punishable by a fine of up to \$10,000, imprisonment up to nine months, or both. [s. 939.51 (3) (a), Stats.]

² A Class H felony is punishable by a fine of up to \$10,000, imprisonment up to six years, or both. [s. 939.50 (3) (h), Stats.]

³ A Class F felony is punishable by a fine of up to \$25,000, imprisonment up to 12 years and six months, or both. [s. 939.50 (3) (f), Stats.]

⁴ A Class D felony is punishable by a fine of up to \$100,000, imprisonment up to 25 years, or both. [s. 939.50 (3) (d), Stats.]

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.wisconsin.gov>.

food, clothing, medical or dental care, or shelter so as to seriously endanger the physical health of the child.” [s. 48.02 (12g), Stats.] This definition was reflected in the criminal jury instructions for the crime of neglect of a child. These instructions explained: “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.” [WIS JI-Criminal 2150, p. 2 (5/2009).]

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Elements of the Crime of Neglecting a Child

2017 Wisconsin Act 283 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.⁵

The term “negligently” is defined by the Act to mean “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 term “necessary care” is defined by the Act to mean “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.⁶

⁵ The Act 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.”

⁶ “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,

Penalties for Committing the Crime of Neglecting a Child

Under the Act, the penalties for committing the crime of neglecting a child are as follows:

- A Class D felony if the child suffers death as a consequence.
- A Class F felony if any of the following applies: (1) the child suffers great bodily harm as a consequence; or (2) the child becomes a victim of a child sex offense as a consequence.
- A Class G felony⁷ if the child suffers emotional damage as a consequence. Under the Act, “emotional damage” means “harm to a child’s psychological or intellectual functioning. “Emotional damage” shall be evidenced by one or more of the following characteristics exhibited to a severe degree: anxiety; depression; withdrawal; outward aggressive behavior; or a substantial and observable change in behavior, emotional response or cognition that is not within the normal range for the child’s age and stage of development.”
- A Class H felony if the child suffers bodily harm as a consequence.
- A Class I felony⁸ if the natural and probable consequences of the violation would be a harm listed above, although the harm did not actually occur, if one of the following applies: (1) the child had not attained the age of six years when the violation was committed; or (2) the child has a physical, cognitive, or developmental disability that was known or should have been known by the actor.
- A Class A misdemeanor if the natural and probable consequences of the violation would be a harm listed above, although the harm did not actually occur.

Chronic Neglect and Repeated Acts of Neglect

The Act creates enhanced penalties for repeated acts of neglect of the same child. The Act 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, or has at least one previous conviction for the crime of neglecting a child involving the same child as the current violation, is subject to the following penalties:

- A Class B felony⁹ if the child suffers death as a consequence.

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.]

⁷ A Class G felony is punishable by a fine of up to \$25,000, imprisonment up to 10 years, or both. [s. 939.50 (3) (g), Stats.]

⁸ A Class I felony is punishable by a fine of up to \$10,000, imprisonment up to three years and six months, or both. [s. 939.50 (3) (i), Stats.]

⁹ A Class B felony is punishable by imprisonment up to 60 years. [s. 939.50 (3) (b), Stats.]

- A Class D felony if any of the following applies: (1) the child suffers great bodily harm as a consequence; or (2) the child becomes a victim of a child sex offense as a consequence.
- A Class E felony¹⁰ if the child suffers emotional damage as a consequence.
- A Class F felony if the child suffers bodily harm as a consequence.
- A Class H felony if the natural and probable consequences of the violation would be a harm listed above, although the harm did not actually occur.

The Act 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 Act also 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.

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¹⁰ A Class E felony is punishable by a fine not to exceed \$50,000, imprisonment up to 15 years, or both. [s. 939.50 (3) (e), Stats.]