



OFFICE OF THE DISTRICT ATTORNEY
Milwaukee County

JOHN T. CHISHOLM • District Attorney

Chief Deputy Kent L. Lovern, Deputies James J. Martin, Patrick J. Kenney, Lovell Johnson, Jr., Jeffrey J. Altenburg

January 29, 2014

Senator Leah Vukmir, Chairperson,
 Senate Committee on Health and Human Services

Re: Senate Bill 471

Dear Senator Vukmir:

We write to express qualified support for SB 471 which was written to promote the safety and well being of children in our State. However, we have some concerns about the bill as drafted. The legislation should expand the definition of "necessary care." Additionally, language including references to control substances is well intended but adds an element of proof which will make the prosecution of serious offenses more difficult.

The definition of "necessary care" under proposed section 948.21(1)(c) is very limited. It should also include appropriate shelter and appropriate supervision. For example, consider the caretaker who leaves an infant in a car or home alone for hours but is not intoxicated or otherwise under the influence. We recently had a case in Milwaukee County where a mother left very small children home alone while she went to work. She made a conscious decision to leave her children unattended and locked in a bedroom. Although she was not intoxicated or under the influence, she was appropriately charged and convicted when her home caught fire and the children died.

Additionally, the statute fails to address the "dirty house" neglect cases because the definition of "necessary care" does not include "appropriate shelter." According to well recognized research, a dirty house environment often has the most long term impact on children because it is evidence of long-term and pervasive failure to provide appropriate care.

The bill's definition of "necessary care" includes care that is "vital." The dictionary definition of "vital" reads "necessary to the continuation of life; life sustaining;". The inclusion of the term "vital" in the definition is concerning because it increases the burden on the State to prove the neglect was life threatening which we presume is not a goal of this legislation.

We're also concerned about the reduction of child neglect resulting in bodily harm from a Class H felony to a Class I felony in the new legislation. We have often prosecuted cases in which we are unable to prove abuse but can prove a knowing failure to seek medical care post abuse that results in prolonged pain (bodily harm) constituting child neglect. The current law allows aggressive prosecutions of individuals who conceal abuse. The proposed reduction in penalty would deter our ability to handle these matters effectively. Again, we are certain that this is not the purpose of the legislation.

Gale G. Shelton
 Gary D. Mahkorn
 David Robles
 Cynthia G. Brown
 Norman A. Gahn
 Steven H. Glamm
 Mark S. Williams
 John M. Stolber
 Thomas L. Potter
 David Feiss
 Rayann Chandler Szychlinski
 Carole Manchester
 Warren D. Zier
 Timothy J. Cotter
 Steven V. Licata
 Brad Vorpahl
 Paul Tiffin
 Miriam S. Falk
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 Sara Beth Lewis
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 Amanda Kirklewski
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 Karl P. Hayes
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 Catelin A. Ringersma
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 Jay R. Pucek
 Danielle E. Chojnacki
 Kalvon Yazdani
 Kristian K. Lindo
 Benjamin T. Lindsay
 Nicholas S. Cerwin
 Michael Schindhelm

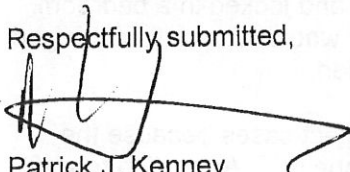
We are also concerned about the introduction of the delineation of "substantial bodily harm" into Chapter 948 offenses. The definition of "substantial bodily harm" under Section 939.22(38) includes "any fracture", "a burn" and "loss of consciousness." All of these examples of injuries are often much more serious in child abuse cases because of the vulnerability of a young child and the child's brain development. For example, in many of our fracture cases we charge the injury as "great bodily harm" and argue that the injury falls under the "other serious injury" portion of the definition. While at first glance it may seem that this statute provides more options, we believe that it confuses terms and may impact our ability to issue serious charges on severe injuries to children.

The suggested modifications to the bill are attached. These modification were the results of meetings and a conference call with several experienced prosecutors including Dane County Deputy District Attorney Tom Fallon, and Assistant District Attorney Matt Torbenson. Tom is a nationally recognized expert in the prosecution of child abuse. Matt is the Team Captain of our Child Protection and Advocacy Unit (CPAU). Matt has developed investigation protocols for law enforcement and CPAU handles 100's of child abuse and neglect cases per year, including homicides. I hope you will consider these changes to SB 471.

I am a member of the Executive Board and Legislative Committee of the Wisconsin District Attorney Association (WDAA). If these modifications are made, I am confident they will support this important bill.

Finally, I would like to thank Anthony Palese of Senator Jennifer Schilling's office for participating in our discussion and facilitating communication during this process.

Respectfully submitted,



Patrick J. Kenney
Deputy District Attorney

cc: Senator Terry Moulton (Vice Chair)
Senator Mary Lazich
Senator Jon Erpenbach
Senator Tim Carpenter
Senator Jennifer Schilling

PJK:mw

SECTION 4. 948.21 of the statutes is repealed and recreated to read:

948.21 Neglecting a child. (1) DEFINITIONS. In this section:

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(a) "Child sex offense" means an offense under s. 948.02, 948.025, 948.05, 948.051, 948.055, 948.06, 948.07, 948.10, 948.11, or 948.12.

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(am) "Contributes to the neglect" includes the act of contributing to neglect even if the child does not actually suffer from neglect if the natural and probable consequences of the act or failure to act would be that the child suffers from neglect.

(b) "Emotional damage" has the meaning given in s. 48.02 (5j).

(c) "Necessary care" means the 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. "Necessary care" includes, but is not limited to, any of the following:

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1. Appropriate food.
2. Appropriate clothing.
3. Appropriate medical care.
4. Appropriate dental care.
5. The opportunity for education.
6. Appropriate shelter.
7. Appropriate supervision.

8. The protection from the exposure to the distribution, manufacture, or use of controlled substances, as defined in s. 961.01 (4).

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(d) "Neglect" means to fail, for reasons other than poverty, to provide a child necessary care.

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(e) A "course of conduct" includes any action or inaction on the part of a person who is responsible for a child's welfare.

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(2) NEGLECT. Any person who is responsible for a child's welfare who neglects, or contributes to the neglect of, the child for whom he or she is responsible is guilty of the following:

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(a) A Class D felony if the child suffers death as a consequence.
(b) A Class E felony if the person engages in a course of conduct that the person knows or should know creates an unreasonable and substantial risk of death.

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(c) A Class F felony if any of the following applies:
1. As a consequence, the child suffers great bodily harm, becomes a victim of a child sex offense, or suffers emotional damage.

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2. The person engages in a course of conduct that the person knows or should know creates an unreasonable and substantial risk of great bodily harm to the child.

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3. The person engages in a course of conduct that the person knows or should know creates an unreasonable and substantial risk that the child could become a victim of a child sex offense.

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4. The person engages in a course of conduct that the person knows or should know creates an unreasonable and substantial risk of emotional damage to the child.

(d) A Class G felony if any of the following applies:

1. The child suffers substantial bodily harm as a consequence.

2. The person engages in a course of conduct that the person knows or should know creates an unreasonable and substantial risk of substantial bodily harm to the child.

(e) A Class I felony if any of the following applies:

1. The child suffers bodily harm as a consequence.

2. The person engages in a course of conduct that the person knows or should know creates an unreasonable and substantial risk of bodily harm to the child.

(f) A Class A misdemeanor.

(2m) REBUTTABLE PRESUMPTION. A rebuttable presumption of a course of conduct creating an unreasonable and substantial risk of the harm described under sub. (2) (b), (c) 2., 3., or 4., (d) 2., or (e) 2., whichever is applicable, exists under any of the following circumstances:

(a) The child had not attained the age of 6 years at the start of the conduct or course of conduct.

(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.

(3) REPEATED ACTS OF NEGLECT OF SAME CHILD. (a) Any person who is responsible for a child's welfare who, at least 3 times in a specified period, neglects, or contributes to the neglect of, that child is responsible is guilty of the following:

1. A Class C felony if death is a consequence.

2. A Class D felony if death is a probable consequence.

3. A Class E felony if great bodily harm is a consequence or a probable consequence.

4. A Class F felony if emotional damage is a consequence or a probable consequence.

5. A Class G felony if substantial bodily harm is a consequence or a probable consequence.

6. A Class H felony if bodily harm is a consequence or a probable consequence.

(b) If an action under par. (a) is tried to a jury, in order to find the defendant guilty, the members of the jury must unanimously agree that at least 3 violations occurred to the same child within the specified period but need not agree on which acts constitute the requisite number or which acts resulted in the death or harm.

(c) The State may not charge in the same action a person with a violation of this subsection and with a violation involving the same child under sub. (2), unless the violation of sub. (2) occurred outside of the period applicable under par. (a).

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The logo for LaCrosseTribune.com features the text "LaCrosseTribune.com" in a bold, sans-serif font. Above the text is a stylized graphic of a bridge or arch, with a thin line curving over the letters "o" and "s" in "Tribune".

Special team responds to needs of children when drug busts target parents

JULY 28, 2013 12:00 AM • BY ANNE JUNGEN | AJUNGEN@LACROSSETRIBUNE.COM

Heavily armed police found a drug den after knocking down the mobile home's door last summer in south La Crosse.

They discovered cocaine. They found marijuana. They found prescription and Ecstasy pills in a dwelling littered with filth, food and bugs.

They also found children.

There were four of them, all younger than 12. They slept in one room while their drug dealing father drove an expensive sports utility vehicle.

On that July morning, they were all in the living room when officers burst into their home. Police swept them from the squalor to minimize the trauma of the raid.

Social workers were waiting outside to help the children temporarily orphaned because their parents chose to push drugs.

They are the youngest victims of a widespread epidemic. They are the children of drug dealers and users.

And there are hundreds of them.

"This is just La Crosse County," social worker Erin Malak said.

Malak heads a local coalition that's saving these children by saving their parents. The goal is to keep the family together by eradicating the drug environment where kids are spending their childhood.

The group started in 2006 as a proactive measure to protect kids living near methamphetamine labs during the drug's outbreak. But the labs never came. Instead, Malak said, the coalition dealt mostly with parents using marijuana.

Today, they're seeing a growing number of children exposed to heroin and other lethal narcotics as parents caught in the area's growing drug plague use and deal in the home.

The statistics are terrifying: Cases have more than doubled in the past two years.

"We have a significant problem in this community," Malak said.

'The kids are suffering'

The National Alliance for Drug Endangered Children started in the 1990s when a fire in a California mobile home meth lab killed three children.

The Wisconsin Department of Justice started the program in 2004. Today, there are 29 chapters statewide and 15 in development, including in Monroe and Trempealeau counties, said Cindy Giese, a special agent who coordinates the statewide program.

Police, prosecutors, social workers, pediatricians and other stakeholders assemble into teams that intervene when children are suffering physical or psychological harm or neglect by parents who are using, making and dealing drugs.

The 17-member La Crosse County Drug Endangered Children Coalition handled 133 cases in 2012, an alarming 55 percent increase from 2011 and a 138 percent jump from 2010, Malak said. DEC cases, which make up 57 percent of social worker's ongoing cases, show no signs of slowing this year.

"This is a real problem in La Crosse. Don't think it's a big city problem," said Gundersen Lutheran pediatrician Ann Budzak. "The kids are suffering."

They're at risk for inhaling toxic chemicals or ingesting drugs. They can access needles, lighters and guns. There's an increased chance of abuse and dealing exposes children to other users.

"The sad thing is when you hear a child doing a drug transaction," Giese said.

Some have watched their parents use drugs, taking in the dangerous fumes alongside their caregivers, La Crosse police Sgt. Dan Kloss said. Others have gone to school and told their friends their parents sleep all night after smoking.

"They don't get something to eat at night," Kloss said.

The houses are littered with hazards associated with use — from narcotics to needles — and other dangers from poor parenting. Kloss has heard of cases where dealers are hiding narcotics in teddy bears and toys.

"It's sad when you see a preteen because it's already been cemented in their head that this is the normal way of living," he said.

Budzak estimates she sees about 25 percent of children involved in DEC cases. Most are neglected and are withdrawn, vigilant or aggressive, she said.

"When parents are using, they're essentially not present," she said. "When they're high, they can't be parenting."

Breaking the cycle

The DEC team's ultimate goal is to protect these children by getting parents the help they desperately need. They don't want to punish the parents for an addiction; they want to break the cycle to protect children.

"It's not about taking kids out of the home, it's about reunifying the family in a stronger format," Giese said.

Each case is unique and multi-faceted. It starts with a referral, most often from relatives or police about to search the home.

Malak can't discuss specific cases because of juvenile confidentiality but victims range from newborns to teenagers.

In cases where children aren't removed, social workers are connecting parents with treatment, drug testing and other services while continuing random stops at the home.

Counseling and medical attention is available for their children, Malak said.

Cases are reevaluated weekly or monthly.

"We try to keep kids in the home if we can," she said. "Removal is traumatic, even more than the environment they're in."

Court intervention is needed to remove children in homes where they're unsafe.

In most cases, attorneys representing the county, parents and children gather with social workers to develop a plan to remedy the situation. Parents have to comply with court ordered conditions, from drug testing to psychological evaluations and parenting classes, La Crosse County Deputy Corporation Counsel Megan DeVore said.

Gradually, children staying with relatives or in foster care can see their parents again during supervised and unsupervised visits. With sobriety, they can return home.

"Reunification is always the goal," Malak said. "Kids are best with the parents if they're safe."

DeVore estimates half of the about 100 cases she files each year stem from a parent with a drug addiction. The threat of losing their children is a wake up call for most, she said.

Still, some parents voluntarily give up their rights, DeVore said. The county must consider filing a petition to terminate the rights if a child is living outside the home for 15 months.

Children now are encouraged to attend court hearings so judges can interact with them.

"It makes a difference to make a connection with that child," DeVore said. "Our judges are very invested in these cases."

Changing the law

It's illegal in 33 states including Minnesota to expose children to drug activity, according to the Child Welfare Information Gateway. Wisconsin isn't among them.

"Our laws do not do a good job of protecting children in drug endangered environments," Budzak said. "We are working to change that. We need to be able to protect kids."

La Crosse County's DEC team want lawmakers to make it a felony to use, distribute or manufacture drugs around kids.

Members met with area legislators earlier this year, when they showed a video of a caregiver ignoring a child after using drugs.

"It was very disturbing and sobering," said State . Jennifer Shilling. "This is not a partisan issue. This is about child safety."

The local group also is pushing for a change to an existing law that allows social workers to intervene before a child is showing signs of neglect and exposure.

"Right now we can't access kids until there's a high risk," Malak said. "Our group has struggled in providing safety to children because of some of the statutory limitations."

Social workers are working to draft legislation before gathering statewide support, Malak said. Shilling said it's possible to introduce it as early as fall.

"Our goal is to add another deterrent to adults who are choosing to use and deal with children in the home," Budzak said. "We want to be able to do more to hopefully stop this activity."



Jennifer Shilling

WISCONSIN STATE SENATOR
32ND SENATE DISTRICT

Senate Committee on Health and Human Services Public Hearing on Senate Bill 471

January 29, 2014

11:00AM – Room 411 South

Chairwoman Vukmir and committee members, I want to thank you for holding this public hearing on Senate Bill 471.

I am joined today by two of the bill's Assembly authors, Representatives Steve Doyle and Jill Billings. Our delegation introduced this bill after meeting with the local La Crosse Drug Endangered Children coalition and working with various stakeholders across the state.

To give you some background, the Drug Endangered Children program has grown statewide since 2004 and currently has 29 county chapters with another 15 programs being developed. These programs are committed to protecting children who are in danger because their parents or caregivers are using, dealing or manufacturing drugs.

The Drug Endangered Children program and efforts to address child safety have received strong bipartisan support from local community members and have been supported statewide by Attorney General Van Hollen and the Department of Justice.

The La Crosse Drug Endangered Children group was formed by social workers, law enforcement officials, prosecutors and others in 2006 as a proactive effort to protect children exposed to dangerous drug labs and drug trafficking homes.

When we recently met with this group, they shared a case involving a mother who was caught on camera shooting heroin in front of her two year old child. This woman was arrested and charged with drug possession as well as child neglect, but the neglect charges were later dropped by the DA's office due to a lack of clarity in state statutes.

This case is not an isolated incident. Across Wisconsin, incidents involving meth lab chemicals, heroin needles, and drug trafficking have exposed young children to dangerous situations that can lead to serious injuries and long term consequences.

SB 471 seeks to improve our efforts to keep children safe and free from exposure to dangerous environments. This bill would update Wisconsin's child neglect statutes and add "exposure to the distribution, manufacture, or use of controlled substances" to the definition of neglect. SB 471 also creates a crime of "Repeated acts of neglect of same child" to address cases of chronic child neglect.

Thirty-three states including Illinois, Iowa and Minnesota address the issue of exposing children to illegal drug activity in their criminal statutes and this bill would bring Wisconsin into line with these other states.

By updating our neglect statutes to provide more clarity for our law enforcement officials and greater flexibility for child advocates to intervene on behalf of children who are at risk, we can improve living conditions for many Wisconsin children who are currently in danger as a result of their exposure to the use, dealing or manufacturing of illegal narcotics.

Again, I want to thank the committee for holding a public hearing on this bill. I welcome your input and the testimony of others as we seek to address these serious concerns, and I hope that we can continue to have a productive dialogue and bi-partisan support as we work to improve child safety in our state.