

# Sydney Parents Avoid Prison for Child Neglect

By Sonia Hickey and Ugur Nedim

A Sydney couple who inadequately nourished their baby for the first 19 months of her life have avoided prison time, despite the girl facing life-long health issues as a result.

The parents were charged with [failing to provide the necessities of life](#) last year, after their daughter had a seizure and was admitted to Sydney Children's Hospital.

The couple, who cannot be named for legal reasons, [pleaded guilty to the charge](#).

## **Failing to provide the necessities of life**

Failing to provide the necessities of life is an offence under [section 44 of the Crimes Act 1900](#) (NSW) which carries a maximum penalty of 5 years in prison.

To establish the offence, the prosecution must prove beyond reasonable doubt that:

1. The defendant was under a legal duty to provide another with the 'necessities of life'
2. He or she intentionally or recklessly failed to provide the person with those necessities,
3. The failure caused serious injury to, or created the likelihood of serious injury to, or endangered the life of, the person to a legal duty was owed, and
4. The defendant did not have a 'reasonable excuse' for the conduct.

Necessities of life include sufficient nutrition, shelter, and required medical care.

## **Failure of parent to care for child**

A similar offence titled [failure of parent to care for child](#) is contained [in section 43A of the Crimes Act](#), which prescribes a maximum penalty of 5 years in prison where the prosecution is able to prove that:

1. The defendant had parental responsibility for a child
2. He or she intentionally or recklessly failed to provide the child with the necessities of life, and
3. He or she did not have a 'reasonable excuse' for the conduct.

A 'child' is defined as a person under the age of 16 for the purposes of the section.

A person cannot be charged with an offence under both section 44 and 43A for the same act or omission.

Defences to the either offence include [duress](#) and [necessity](#).

## **Sentencing hearing**

During the sentencing proceedings in [Downing Centre District Court](#), Judge Sarah Hugget remarked:

"It is the responsibility of every parent to ensure the diet they choose to provide to their children ... is one that is balanced and contains sufficient essential nutrients for optimal growth. This child was severely malnourished, underweight and undersized, and delayed as far as age-appropriate milestones were concerned."

She sentenced each parent to an 18 month [intensive correction order](#).

The court heard that for the first 19 months of her life, the child was fed a conservative vegan diet, which ultimately consisted of oats with olive oil, rice milk, vegetables, rice, potatoes and tofu, and her snacks consisted of a mouthful of

fruit or two sultanas.

Hospital tests revealed the baby had multiple severe nutritional deficiencies and Osteopenia, or thin bones. Medical staff testified that her bones had not developed since birth.

Through a victim impact statement, the child's foster carer, who met the toddler when she was just 19 months old, said was shocked to see how far behind her growth milestones she had fallen. In her statement, she said the girl looked like a three-month-old baby, weighing only 4.89 kilograms and had no teeth.

While the carer said the girl became more interactive with play and cuddles, her height and weight remained disproportionate, and she is traumatised by routine medical procedures such as blood tests, which she must now undergo regularly to ensure that her health is monitored carefully.

In an investigation into the girl's medical history, doctors found an absence of immunisations, no follow-up check-ups after she was born and no birth certificate or Medicare number.

Health experts also testified that the mother was suffering depression since the baby was born, and while the judge accepted this may suggest that she had diminished culpability, she was critical of the child's father who, she said, [could have taken the child to a doctor much sooner](#), and should have realised that the baby was not developing at the same rate as other babies the same age.

The toddler's two older brothers, aged six and four, are also in government care and were also on vegan diets. The three have since been united and are in the care of a relative. Both parents have supervised access to the children.