

LEGISLATIVE PRIORITIES

New York State Law Enforcement Council

2007



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*New York State Sheriffs'
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*Citizens Crime Commission
of New York City*



PREFACE

The New York State Law Enforcement Council was formed in 1982 as a legislative advocate for New York's law enforcement community. The Council's members represent the leading law enforcement professionals throughout the State, including the Attorney General of the State of New York, the New York State District Attorneys Association, the New York State Association of Chiefs of Police, the New York State Sheriffs' Association, the New York City Criminal Justice Coordinator, and the Citizens Crime Commission of New York City. Since its inception, the Council has been an active voice and participant in improving the quality of justice and in the continuing effort to provide for a safer New York.

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STRENGTHEN CHILD ABUSE LAW

CREATE A NEW FELONY OFFENSE OF ENDANGERING THE WELFARE OF A CHILD

For many years, the Law Enforcement Council has supported the creation of a new felony to penalize the most serious cases of Endangering the Welfare of a Child. Recent high-profile child deaths have brought the issue of child abuse to the public's attention once again. In New York City, child abuse complaints jumped 30.5% in 2006.¹ This change represents an increasing awareness among the public of the dangers to children of parental abuse.

In recently enacted laws, the Legislature has recognized the need for earlier identification of child abuse, for coordination between law enforcement and child services agencies, and for ensuring that case workers have access to potentially abused children. These new laws recognize the need for aggressive intervention in cases of child abuse to prevent escalation of abuse causing serious injury or death to the child. In some cases, such an intervention may involve pursuing criminal charges against an abusive parent.

When arrests do occur, the most common charge for child abusers is the misdemeanor of Endangering the Welfare of a Child. This is because most cases of child abuse, particularly in the earlier stages of abuse, do not involve intentional infliction of physical injury by the abuser. Instead, children may be put in danger through abandonment or neglect or subjected to other physical or emotional cruelties that do not fall under

¹ Andy Geller, 'Abuse' Deaths Soar Despite ACS Reform, N.Y. POST, Jan. 8, 2007, at 2.

the Penal Law definition of “physical injury.” Although a misdemeanor charge is appropriate for less serious cases, certain extremes of the behaviors described above may cause significant suffering or danger to the child without rising to the level of felony assault. In any event, where abuse is escalating, it is not in the child’s interest to wait until the abuser has intentionally caused the child physical injury to intervene with felony-level charges.

The felony proposed by the Law Enforcement Council would cover cases that involve behavior that is too harmful to the child to be treated as a misdemeanor, but which do not rise to the level of second-degree assault. Aggravated Endangering the Welfare of a Child, a class E felony, would penalize a person legally responsible for the child who knowingly acts in a way likely to be injurious to the physical, mental, or emotional welfare of a child less than fourteen years where 1) the offender has previously been convicted of a crime in which the victim was a minor; 2) the conduct includes acts that cause the child extreme pain or which are carried out in an especially vicious or sadistic manner; or 3) the conduct creates a grave risk of serious physical injury or death.

The proposed felony applies only to a person legally responsible for the care of the child, in recognition of the increased danger and isolation faced by a child when his or her abuser is the adult to whom the child would otherwise turn for help. Caretakers should be the first people to recognize that a child is being endangered, but when the caretaker is the abuser, the child must rely on outsiders to recognize the need for intervention.

The current Endangering misdemeanor penalizes parents and guardians who fail to take actions to prevent their children from abuse, neglect or delinquency, but provides no enhanced penalty for parents and guardians who take active roles in abusing their children. When children are abused by those who are legally responsible for their care, the psychological and emotional toll is great.

ENHANCE PENALTIES FOR CARETAKERS WITH PRIOR CHILD ABUSE CONVICTIONS

Caretakers with prior convictions for crimes against children—such as Endangering the Welfare of a Child, assault, rape and sexual abuse—should not be entitled to misdemeanor treatment for a subsequent Endangering conviction. Rather, persons in positions of trust who commit Endangering, and have been previously convicted of one or more crimes against a child, should be guilty of a felony.

ENHANCE PENALTIES FOR CARETAKERS WHO ENGAGE REPEATEDLY IN ACTS OF CRUELTY

Abusive acts can cause extreme physical pain or be carried out in an especially vicious or sadistic manner against children without causing the kind of serious physical injury required for felony-level assault. Forcing a child to kneel on rice or pencils, disciplining a child by making him or her stand outside in freezing weather without a coat, or hanging a child by the wrists in a darkened closet are all real-life examples of cruelty to children that cause extreme pain without necessarily resulting in serious physical injury.

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Dario Maestripieri et al., *Early Maternal Rejection Affects the Development of Monoaminergic Systems and Adult Abusive Parenting in Rhesus Macaques*, 120 BEHAV. NEUROSCIENCE 1017, 1022-1023 (2006).

Scientists who have studied the effects of maternal rejection and abuse on infant monkeys believe that such early experiences, even when not severe or frequent enough to jeopardize the infant’s life, may result in long-lasting changes in brain chemistry. These changes may affect behavioral development, leading to the perpetuation of abusive behavior once victims of abuse reach adulthood.²

And when child abuse does lead to death or serious injury, investigators often find that these tragic endings were preceded and foreshadowed by a pattern of cruel acts which did not cause lasting injury. For example, news outlets reported that seven-year-old Nixzmary Brown suffered a multitude of abuses before she died in January 2006, including being tied with bungee cords and duct tape, being forced to eat cat food, urinate in a litter box, and sleep standing up, and being doused with cold water. Not one of these acts on its own would have sustained a felony-level charge of assault, but the viciousness and sadism with which they were carried out distinguish them from acts of misdemeanor-level Endangering.

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Young Children Locked in Filthy, Dark Room by Foster Mother: In 1997, police discovered that a Manhattan foster mother had been routinely locking her three charges, ages four, six, and seven, in a room for substantial periods of time. The defendant, who had been collecting more than \$2000 per month for the “care” of these children, also removed the door handle and the room’s only source of light. The room had a container for the children to use as a

toilet and one bare mattress, soiled with human waste. In contrast, the rest of the house, including the rooms of the foster mother’s biological children, was perfectly habitable. On some days, the defendant would only give the children one meal. Despite the inhumane living conditions endured by the foster children, the defendant never spent a day in jail—receiving instead a sentence of three years’ probation. *People v. Tapia, New York County*

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Special Education Teacher Leaves Own Child at Home Alone Every Day for Two Years: On May 1, 1992, an anonymous tip led the police to the home of a special education teacher in Middle Village, Queens. Inside the house, they found piles of garbage and a dead cat on the dining room floor. They also found a two-year-old little boy wearing seven diapers and infested with ticks. The child purred like a cat and did not know how to use his thumbs. It became apparent that the child had not had any interaction with anyone except his mother. Investigators learned that the defendant had given birth to the boy at home and had kept his existence a secret ever since, leaving him alone in the house every day with bottles of milk to drink and multiple diapers wrapped around him. Child development experts who examined the boy said that as a result of his life-long isolation, he had severe developmental delays. Only after months in foster care did the child begin to eat solid foods, speak, and exhibit increased development. The only charge possible upon arrest was Endangering the Welfare of a Child. *People v. Piccininni, Queens County*

A child living in New York should not have to wait for help until he or she suffers permanent injury or death. A felony Endangering statute would provide law enforcement with a valuable tool to protect children at the onset of abuse, rather than at the tragic end.

ENHANCE PENALTIES FOR CARETAKERS WHO PLACE CHILDREN IN SERIOUS DANGER

In the recent past, Reckless Endangerment in the First Degree, a D felony, was used to charge defendants who recklessly created a grave risk of death to another person “under circumstances evincing a depraved indifference to human life.” Recent Court of Appeals decisions on this language have jeopardized prosecutors’ ability to charge this crime.

As a result, prosecutors are left with misdemeanor penalties for parents who dangle a toddler out a fifth-story window by the ankles, or leave dangerous drugs or loaded firearms within reach of young children—all real-life situations encountered by New York State prosecutors.

Dangerous Drugs Left Within Reach of Four-Year-Old Girl:

In March 1994, a father left a Gatorade bottle filled with methadone in his refrigerator and lay stoned in the apartment as his thirsty four-year-old daughter drank the concoction. She died. The defendant pleaded guilty to Manslaughter in the Second Degree. Had the little girl survived ingesting the drink and suffered only simple physical injury, prosecutors would have been left with the misdemeanors of Assault in the Third Degree or

Endangering the Welfare of a Child. *People v. O’Doherty, Queens County*

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The Law Enforcement Council recommends changing the current law in order to address circumstances in which a child’s welfare is very seriously endangered by a person entrusted with that child’s care. Current law does not adequately punish parents and other caretakers who repeatedly abuse their charges or who place them in grave danger of permanent injury or death. New York needs enhanced sanctions so that law enforcement can catch conduct that endangers the welfare of our most helpless citizens—our children—before they fall victim to still more serious crimes. It is time to change the law.