



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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MEMORANDUM

DATE: March 28, 2014

TO: Members of the Delaware Senate
and House of Representatives

FROM: Ms. Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

RE: S.B. 163 [Endangering Welfare of Child]

The State Council for Persons with Disabilities (SCPD) has reviewed S.B. 163 which is intended to "allow prosecution for endangering the welfare of a child if the person had reason to know that the child was witnessing the crime(s)." The proposed statutory amendment is as follows:

(a) A person is guilty of endangering the welfare of a child when:

...(4) The person commits any violent felony, or reckless endangering second degree, assault third degree, terroristic threatening, or unlawful imprisonment second degree against a victim, knowing or having reason to know that such felony or misdemeanor was witnessed, either by sight or sound, by a child less than 18 years of age who is a member of the person's family or the victim's family.

SCPD is not taking a formal position on the proposed legislation but believes there are two considerations which may provide reason to reflect on the merits of the bill.

First, consistent with the attached Title 11 Del.C. §231, there are standard definitions of the required state of mind which apply to criminal offenses. There is no definition of "reason to know" and the term is not common in the criminal law. This may result in a lack of uniform interpretation of the term.

Second, consistent with both §231(c) and the attached Title 11 Del.C. §255, there is already a "reason to know" component to determination of whether a perpetrator acts knowingly. If a perpetrator is aware of a high probability that a child may be witnessing the violent crime, the "knowing" standard is ostensibly met.

Thank you for your consideration and please contact SCPD if you have any questions regarding our observations on the proposed legislation.

cc: Mr. Brian Hartman, Esq.
Brendan O'Neill, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

sb 163 endangering welfare of child 3-28-14

§ 231 Definitions relating to state of mind.

(a) "*Criminal negligence*". — A person acts with criminal negligence with respect to an element of an offense when the person fails to perceive a risk that the element exists or will result from the conduct. The risk must be of such a nature and degree that failure to perceive it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation.

(b) "*Intentionally*". — A person acts intentionally with respect to an element of an offense when:

- (1) If the element involves the nature of the person's conduct or a result thereof, it is the person's conscious object to engage in conduct of that nature or to cause that result; and
- (2) If the element involves the attendant circumstances, the person is aware of the existence of such circumstances or believes or hopes that they exist.

(c) "*Knowingly*". — A person acts knowingly with respect to an element of an offense when:

- (1) If the element involves the nature of the person's conduct or the attendant circumstances, the person is aware that the conduct is of that nature or that such circumstances exist; and
- (2) If the element involves a result of the person's conduct, the person is aware that it is practically certain that the conduct will cause that result.

(d) "*Negligence*". — A person acts with negligence with respect to an element of an offense when the person fails to exercise the standard of care which a reasonable person would observe in the situation.

(e) "*Recklessly*". — A person acts recklessly with respect to an element of an offense when the person is aware of and consciously disregards a substantial and unjustifiable risk that the element exists or will result from the conduct. The risk must be of such a nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. A person who creates such a risk but is unaware thereof solely by reason of voluntary intoxication also acts recklessly with respect thereto.

11 Del. C. 1953, § 231; 58 Del. Laws, c. 497, § 1; 63 Del. Laws, c. 88, § 6; 70 Del. Laws, c. 186, § 1;

§ 255 Knowledge of high probability.

When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is aware of a high probability of its existence, unless the person actually believes that it does not exist.

11 Del. C. 1953, § 255; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1.;