

State of Delaware Child Protection Accountability Commission Legislative Committee

FRIDAY, JUNE 8, 2018

MINUTES

In Attendance:

Tania Culley, Esq. (Chair)
Addie Asay, Esq.
Ellie Torres, Esq.
James Kriner, Esq.
Abigail Layton, Esq.

Maureen Monagle
Kathryn Lunger, Esq. (by phone)
Randy Williams
Janice Mink
Meredith Seitz
Steve Yeatman

I. WELCOME AND INTRODUCTIONS

Tania Culley, Chair, welcomed everyone and attendees introduced themselves. Ms. Culley indicated this meeting was being held at the request of CPAC so that this Committee could review and understand the bills, and make a recommendation to CPAC.

II. REVIEW/DISCUSSION OF SB209 AND SB210

The Committee first acknowledged that both bills have been pulled from being worked this legislative session. The Committee agreed that CPAC should begin to formulate a plan so that its concerns can be addressed before January.

The Committee began by reviewing the changes to prosecution of child physical abuse cases.

Definitions of physical injury and serious physical injury. Under SB209, the adult definition was utilized (11 Del. C. 222) instead of the child definition (11 Del. C. 1100). The words substantial and prolonged would apply to child crime victims. The child specific definitions were established in 2012 with passage of the child abuse crimes legislation found in 11 Del. C. 1100 *et seq.*

Definition of abuse. Under SB209, the definition refers to 10 Del. C. 901 instead of the child crimes definition in 11 Del. C. 1100. In so doing, a person must have “care, custody and control” for the child abuse enhancement under assault.

Murder by abuse or neglect. Under SB209, this child crime has been eliminated. Unless the crime was intentional or knowing (which most child murders are not), prosecution would now occur under Manslaughter (reckless) or Criminal Negligent Homicide (criminal negligence). The minimum mandatories for these crimes have also been eliminated. Under Murder by abuse or neglect first there is a minimum mandatory of 15 years – manslaughter is 2 years. Under Murder by abuse or neglect second there is a minimum mandatory of 10 years – criminal negligent homicide has no minimum mandatory. It is also not clear on the face of a DELJIS report if the victim as a child.

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Endangering the welfare of a child. Under SB209, this child crime has been eliminated. The new crime is Reckless Endangerment. While it still may be possible to prosecute a caregiver for endangering the child of physical injury, albeit more difficult (i.e. the definition of physical injury is the adult definition), the prosecution for prosecuting for conduct that is injurious to the mental welfare is not available. Additionally, DUI/ passenger, child witnesses to crimes and children in drug homes would not be prosecuted.

Parental discipline. Under SB209, the limitations on parental discipline have been removed allowing a parent to commit significant abuse/assault (biting, throwing, choking, punching) so long as it “safeguards or promotes the welfare” of the child.

Child Abuse 1st, 2nd and 3rd. These crimes have been eliminated. Under SB209, these crimes would either be assaults or reckless injuring depending on the *mens rea*. It will no longer be clear on a DELJIS report whether the victim was a child. The sentencing guidelines are more lenient as well. By way of example, Child Abuse 1st with a reckless *mens rea* would be Reckless Injuring with no minimum mandatory.

The Committee agreed to cover the changes to child sexual abuse at a later time, but general input indicated significant changes in this area as well. DOJ will assist the Committee at its next meeting. Both within the physical child abuse and sexual child abuse, the age of a child was reduced to less than 14 years of age in many places (or used as the age for sentence enhancement). The Committee was concerned about this change.

The Committee then briefly discussed initial thoughts on the potential impact SB209 and SB210 would have on the civil child welfare system if the bills remained as is. Definitions of abuse, dependency and neglect need to be reviewed and streamlined with new criminal code if practical. Financial means test in neglect and care, custody and control in abuse need to be considered. Change in definition of parental discipline may impact calls to the DFS Hotline, revision of the structured decision making tools, revision of the new DSCYF database - FOCUS, and retraining of what constitutes child abuse and neglect. Application of Chapter 7A in presumptions against parents for sex crimes, deaths and near deaths, and domestic violence would need to be reviewed. The termination of parental rights statute would need revisions. Chapter 9 of Title 16 would have significant edits. Criminal contempt of a PFA and the person prohibited statutes would need to be reviewed. Mandatory reporter training for the educators, physicians and medical professionals would all need to be revised. The child welfare system professionals, including judicial employees making safety assessments in emergency custody and guardianship petitions, would all need training on analysis of DELJIS reports to assess guardian/parent fitness, safety on home visits, risk to children, etc. The Committee agreed to continue to think about the civil impacts and add to this list.

The Committee agreed to gather more information as to what next steps are for input and revisions to the child crime sections of SB209. The Committee will then meet again on July 30th to formulate a recommendation to CPAC on concrete steps to be taken.

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III. NEXT MEETING DATE – JULY 30, 2018 - 10 – NOON, NCCCH, 12TH FLOOR, WILMINGTON.

IV. PUBLIC COMMENT AND ADJOURNMENT

There was no public comment. The meeting was adjourned at 11:50 am.