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NEW YORK STATE SHERIFFS' ASSOCIATION  
CITIZENS CRIME COMMISSION OF NEW YORK CITY

NEW YORK STATE LAW ENFORCEMENT COUNCIL

ONE HOGAN PLACE  
NEW YORK, NY 10013  
212.335.8927  
212.335.3808 F

[WWW.NYSLEC.ORG](http://WWW.NYSLEC.ORG)

LEGISLATIVE PRIORITIES

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## 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 District Attorneys Association of the State of New York, 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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*Robert T. Johnson, Bronx County District Attorney*

Coordinator  
*Leroy Frazer, Jr., New York County District Attorney's Office*



#### 4. CREATE A FELONY-LEVEL CHILD ENDANGERMENT CHARGE

##### Create A New Felony Offense Of Endangering The Welfare Of A Child

A Manhattan foster mother routinely locked her three charges, ages four, six, and seven, in a room for substantial periods of time. The woman, who had been collecting more than \$2,000 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.<sup>1</sup>

Unfortunately for children like these, New York's criminal statutes fail to adequately address this type of abuse -- the only charge available to prosecutors is an A misdemeanor, Endangering the Welfare of a Child.<sup>2</sup> An A misdemeanor is punishable by up to one year in jail, but typically results in a much shorter sentence, or even time served or probation. The Penal Law needs to protect innocent child victims; justice is not done when a person in a position of trust beats, tortures, or attempts to drown a child and only receives a misdemeanor penalty.

Under current statutes, to prosecute child abuse as a felony,

prosecutors must prove the intentional infliction of serious physical injury or prove the use of a dangerous weapon. In most cases of child abuse, particularly in the earlier stages of abuse, the actions either don't result in a telltale physical injury or it is difficult to prove that the act was undertaken intentionally, rather than recklessly. In many of these cases, children may be put in danger through abandonment or neglect or subjected to other physical or emotional cruelties that do not fall under the Penal Law definition of “serious physical injury.” Moreover, hands, fists, and feet don't qualify as “weapons” under the Penal Law definitions so the abuse inflicted by hitting, kicking, or punching frequently falls through the gap in the law.

This leaves prosecutors two options: a B felony, a high-level felony punishable by a minimum of five years in prison,<sup>3</sup> or an A misdemeanor, a low-level charge which can garner no jail time. There is no available middle ground.

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 a B-felony assault. Aggravated Endangering the Welfare of a Child, a class E felony, would penalize a person in a position of trust who knowingly acts in a way likely to be injurious to the child's physical, mental, or emotional welfare. The charge requires one of two aggravating factors be present: the offender has previously been convicted of a crime in which the victim was a minor, or the conduct includes acts that cause the child extreme pain or which are carried out in an especially vicious or sadistic manner.

Among other states, Florida, California, Delaware, Texas, Georgia, and Iowa have recognized that a misdemeanor penalty is

inadequate in these situations.<sup>4</sup> The children of New York State deserve no less protection.

The proposed felony endangering statute would apply to a person charged with any duty or responsibility for the health, education, welfare, supervision, or care of the child. This requirement recognizes the increased danger and isolation faced by a child when his or her abuser is an adult to whom the child would otherwise turn for help. Persons in a position of trust should be the first people to recognize that a child is being endangered, but when they are the abuser, the child must hope that outsiders will intervene.

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

### **Enhance Penalties for Persons in a Position of Trust with Prior Child Abuse Convictions**

Persons in a position of trust with prior convictions for crimes against children -- such as endangering, assault, rape and sexual abuse -- should not be entitled to misdemeanor treatment for a subsequent endangering conviction. Rather, caretakers who commit endangering, and have been previously convicted of one or more crimes against a child, should be guilty of a felony.

*In 2008, of the 56,547 reports of child abuse and neglect in New York City, almost 34 percent had at least one prior report.*

Source: New York City Administration for Children's Services, "New York City Child Welfare Indicators Annual Report 2008" (2009), available at [http://www.nyc.gov/html/acs/downloads/pdf/stats\\_annual\\_indicators.pdf](http://www.nyc.gov/html/acs/downloads/pdf/stats_annual_indicators.pdf).

### **Enhance Penalties for Persons in a Position of Trust 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. Duct taping and strapping a special needs child to a seat for an extended period of time, disciplining a child by making her stand outside in freezing weather at night in only underwear and a t-shirt, 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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### ***Special Education Teacher Leaves Own Child at Home Alone Every Day for Two Years***

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, 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*

*Scientists have linked victims of child abuse with cognitive problems such as learning disabilities, poor impulse control, lower academic achievement, depression, and inferior brain development. In addition, victims are more likely than children who were not abused to engage in criminality throughout their lifetime.<sup>5</sup>*

When child abuse leads 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, seven-year-old Nixmary Brown suffered a multitude of abuses before she died at the hands of her mother and stepfather in January 2006, including being tied with bungee cords and duct tape, being forced to eat cat food, urinate in a litter box, 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 distin-

guish them from acts of misdemeanor-level endangering.

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.

## Summary

The Law Enforcement Council recommends adding an Aggravated Endangering the Welfare of a Child statute in order to address circumstances in which a child's welfare is seriously threatened by a person entrusted with that child's care. Current law does not adequately hold parents and other caretakers accountable when they repeatedly abuse their charges or place children in grave danger of permanent injury or death. New York needs enhanced sanctions so that law enforcement can effectively intervene on behalf of our most helpless citizens -- our children -- before they fall victim to more serious crimes.

1. *People v. Tapia, New York County.*
2. The Court of Appeals's interpretation of the depraved indifference standard has made it nearly impossible to charge Reckless Endangerment in the First Degree, a D felony, in these cases.
3. B felonies include Manslaughter in the First Degree, Aggravated Sexual Abuse in the First Degree, and Kidnapping in the Second Degree.
4. Florida Title XLVI, Ch. 827.03; California Penal Code §§ 273a, 273d; Delaware Title 11, Chapter 5 § 1102; Texas Penal Code Title V, Ch. 22 § 22.041; Georgia Code § 16-5-70; Iowa Title XVI, Subtitle 1, § 726.6.
5. Jill Goldman, et al., U.S. Dep't of Health and Human Services, Admin. For Children and Families, Children's Bureau, Office on Child Abuse and Neglect, "A Coordinated Response to Child Abuse and Neglect: The Foundation for Practice" (2003) available at <http://www.childwelfare.gov/pubs/usermanuals/foundation/foundation.cfm>.