SPONSOR: Sen. Blevins & Rep. Walker ; Sens. Bunting Connor Hall-Long Henry Marshall Sokola Sorenson ; Reps. Heffernan Jaques Q. Johnson Kowalko Lavelle B. Short M. Smith Willis Sen. Cloutier

DELAWARE STATE SENATE

146th GENERAL ASSEMBLY

SENATE BILL NO. 234
AS AMENDED BY
SENATE AMENDMENT NO. 2

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO OFFENSES AGAINST CHILDREN.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 5, Title 11 of the Delaware Code by redesignating Section 1100 of Chapter 5, Title 11 as Section 1100A of Chapter 5, Title 11 and further by redesignating current Section 1103 of Chapter 5, Title 11 as Section 1100, of Chapter 5, Title 11, and by further amending the current language of that section by making insertions as shown by underlining and deletions as shown by strike through as follows:

§~~1103.~~ 1100. Definitions relating to children.

When used in this subchapter:

(a) "Abuse" means causing any physical injury to a child through unjustified force as defined in §468(1)(c) of this title, torture, negligent treatment, sexual abuse, exploitation, maltreatment, mistreatment or any means other than accident.

"(b) "Child" shall mean any individual ~~18 years of age or less~~ less than 18 years of age. For the purposes of §1108, §1109, §1110, §1111 and 1112A of this Title, "child" shall also mean any individual who is intended by the defendant to appear to be 14 years of age or less.

(c) "Delinquent child" means a child who commits an act which if committed by an adult would constitute a crime.

(d) "Neglect" or "neglected child" is as defined in §901 of Title 10.

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(e) "Prohibited sexual act" shall include:

(1) Sexual intercourse;

(2) Anal intercourse;

(3) Masturbation;

(4) Bestiality;

(5) Sadism;

(6) Masochism;

(7) Fellatio;

(8) Cunnilingus;

(9) Nudity, if such nudity is to be depicted for the purpose of the sexual stimulation or the sexual gratification of any individual who may view such depiction;

(10) Sexual contact;

(11) Lascivious exhibition of the genitals or pubic area of any child;

(12) Any other act which is intended to be a depiction or simulation of any act described in this subsection.

(f) "Truancy" or "truant" shall refer to a pupil enrolled in grades kindergarten through 12 of a public school who has been absent from school for more than 3 school days during a school year without a valid excuse as defined in regulations of the district board of education of the school district in which the pupil is or should be enrolled pursuant to the provisions of Title 14, or where a student is enrolled in a charter school, by the board of directors of the charter school.

(g) "Visual depiction" includes, but is not limited to:

(1) Any image which is recorded, stored or contained on or by developed or undeveloped photographic film, motion picture film or videotape; or

(2) Data which is stored or transmitted on or by any computer, or on or by any digital storage medium or by any other electronic means which is capable of conversion into a visual image; or

(3) Any picture, or computer-generated image or picture, or any other image whether made, stored or produced by electronic, digital, mechanical or other means.

(h) "Previous pattern" of abuse and/or neglect shall mean 2 or more incidents of conduct:

(1) That constitute an act of abuse and/or neglect; and

(2) Are not so closely related to each other or connected in point of time and place that they constitute a single event.

A conviction is not required for an act of abuse or neglect to be used in prosecution of a matter under this subchapter, including an act used as proof of a previous pattern as defined in this subsection. A conviction for any act of abuse or neglect, including one which may be relied upon to establish a previous pattern of abuse and/or neglect, does not preclude prosecution under this subchapter.

(i) "Significant intellectual or developmental disabilities" means impairment in the intellectual or physical capacity of a child as evidenced by a discernible inability to function within the normal range of performance and behavior with regard to age, development, and environment.

(j) "Physical injury" to a child shall mean any impairment of physical condition or pain.

(k) "Serious physical injury" shall mean physical injury which creates a risk of death, or which causes disfigurement, impairment of health or loss or impairment of the function of any bodily organ or limb, or which causes the unlawful termination of a pregnancy without the consent of the pregnant female.

Section 2. Amend Chapter 5, Title 11, Section 1102 of the Delaware Code by making insertions as shown by underling and deleting as shown by strike through as follows:

§ 1102. Endangering the welfare of a child; class E or G felony.

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

(1) Being a parent, guardian or any other person who has assumed responsibility for the care or supervision of a child ~~less than 18 years old~~ the person:

a. ~~Knowingly~~ Intentionally, knowingly, or recklessly acts in a manner likely to be injurious to the physical, mental or moral welfare of the child; or

b. Intentionally, knowingly or recklessly does or fails to do any act, including failing to report a missing child, with the result that the child becomes a neglected or abused child.

(2) The person knowingly contributes to the delinquency of any child less than 18 years old by doing or failing to do any act with the result, alone or in conjunction with other acts or circumstances, that the child becomes a delinquent child; or

(3) The person knowingly encourages, aids, abets or conspires with the child to run away from the home of the child's parents, guardian or custodian; or the person knowingly and illegally harbors a child who has run away from home; or

(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 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.

(5) The person commits the offense of Driving Under the Influence as set forth in §4177 of Title 21, or the offense of Operating a Vessel or Boat Under the Influence as set forth in §2302 of Title 23, and during the commission of the offense knowingly permits a child less than 18 years of age to be a passenger in or on such vehicle, vessel or boat.

(6) The person commits any offense set forth in Chapter 47 of Title 16 in any dwelling, knowing that any child less than 18 years of age is present in the dwelling at the time.

(7) The person provides or permits a child to consume or inhale any substance not prescribed to the child by a physician, as defined in §§4714, 4716, 4718, 4720, and 4722 of Title 16.

(b) Endangering the welfare of a child shall be punished as follows:

(1) When the death of a child occurs while the child's welfare was endangered as defined in subsection (a) of this section, endangering the welfare of a child is a class E felony;

(2) When serious physical injury to a child occurs while the child's welfare was endangered as defined in subsection (a) of this section, endangering the welfare of a child is a class G felony;

(3) When a child becomes the victim of a sexual offense as defined in § 761(g) of this title while the child's welfare was endangered as defined in subsection (a) of this section, endangering the welfare of a child is a class G felony;

(4) In all other cases, endangering the welfare of a child is a class A misdemeanor.

(c) For the purpose of imposing the penalties prescribed in subdivision (b)(1), (b)(2) or (b)(3) of this section, it is not necessary to prove the person's state of mind or liability for causation with regard to the resulting death of or physical injury to the child or sexual offense against the child, notwithstanding the provisions of § 251, § 252, § 261, § 262, § 263 or § 264 of this title, or any other statutes to the contrary.

Section 3. Amend Chapter 5, Title 11 of the Delaware Code by redesignating §615 at §1103B, and further by making insertions as shown by underlining and deletions as shown by strike through as follows:

§1103. Child Abuse in the third degree; class A misdemeanor.

(a) A person is guilty of child abuse in the third degree when:

(1) The person recklessly or intentionally causes physical injury to a child through an act of abuse and/or neglect of such child; or

(2) The person recklessly or intentionally causes physical injury to a child when the person has engaged in a previous pattern of abuse and/or neglect of such child.

(b) This offense shall be a Class A misdemeanor.

§ 1103A. Child Abuse in the second degree; class G felony.

(a) A person is guilty of child abuse in the second degree when:

(1) The person intentionally or recklessly causes physical injury to a child who is 3 years of age or younger; or

(2) The person intentionally or recklessly causes physical injury to a child who has significant intellectual or developmental disabilities

(b) This offense shall be a Class G Felony.

(3) The person intentionally or recklessly causes physical injury to a child by means of a deadly weapon or dangerous instrument.

~~§615~~§ 1103B. Child Abuse in the First degree ~~Assault by abuse or neglect~~; class B felony.

(a) A person is guilty of ~~assault by abuse or neglect~~ child abuse in the first degree when the person recklessly or intentionally causes serious physical injury to a child:

(1) Through an act of abuse and/or neglect of such child; or

(2) When the person has engaged in a previous pattern of abuse and/or neglect of such child.

"~~(b) For the purposes of this section:~~

~~(1) "Child" shall refer to any person who has not yet reached that person's 14/ft/fh birthday.~~

~~(2) "Abuse" and "neglect" shall have the same meaning as set forth in § 1103 of this title.~~

~~(3) "Previous pattern" of abuse and/or neglect shall mean 2 or more incidents of conduct:~~

~~a. That constitute an act of abuse and/or neglect; and~~

~~b. Are not so closely related to each other or connected in point of time and place that they constitute a single event.~~

~~(c) A conviction is not required for an act of abuse or neglect to be used in prosecution of a matter under this section, including an act used as proof of a previous pattern as defined in this paragraph. A conviction for any act of abuse or neglect, including one which may be relied upon to establish a previous pattern of abuse and/or neglect, does not preclude prosecution under this section. Prosecution under this section does not preclude prosecution under any other section of the Code.~~

~~(d) Assault by abuse or neglect~~ Child Abuse in the First Degree is a class B felony.

Section 4. Amend §2702(b), Title 11, of the Delaware Code by adding the following paragraph in numerical order and by redesignating the remaining paragraphs accordingly: "(36) Section 1103 of this Title (child abuse in the third degree);

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