

FILED FEB 24 '04

SENATE FILE 2166
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 3055)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to child endangerment offenses resulting in the
2 death of a child or minor and providing a penalty.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 2166 JUDICIARY

1 Section 1. Section 726.6, Code 2003, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 3A. A person who commits child
4 endangerment resulting in the death of a child or minor is
5 guilty of a class "B" felony. Notwithstanding section 902.9,
6 subsection 2, a person convicted of a violation of this
7 subsection shall be confined for no more than fifty years.

8 EXPLANATION

9 Under current law in Code section 707.2, a person who kills
10 a child while committing child endangerment under Code section
11 726.6, subsection 1, paragraph "b", or while committing
12 assault under Code section 708.1 upon the child, and the death
13 occurs under circumstances manifesting an extreme indifference
14 to human life, commits murder in the first degree, which is a
15 class "A" felony. Under current law in Code section 726.6A, a
16 person who engages in a course of conduct including three or
17 more acts of child endangerment within a period of 12 months,
18 where one or more of the acts results in serious injury to the
19 child or minor or results in a skeletal injury to a child
20 under four years of age, is guilty of a class "B" felony.
21 Notwithstanding Code section 902.9, subsection 2, which limits
22 the term of confinement for a class "B" felony to 25 years, a
23 person convicted of such a child endangerment offense shall be
24 confined for no more than 50 years.

25 This bill provides that a child endangerment offense
26 resulting in the death of a child or minor, which does not
27 require a showing of extreme indifference to human life, is a
28 class "B" felony. The bill includes the same penalty
29 provision as exists for the current class "B" child
30 endangerment felony offense in that the term of confinement is
31 not more than 50 years rather than 25 years.

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**Fiscal Services Division
Legislative Services Agency
Fiscal Note**

SF 2166 - Child Endangerment (LSB 5205 SV)
Analyst: Beth Lenstra (Phone: (515) 281-6301) (beth.lenstra@legis.state.ia.us)
Fiscal Note Version — New

Description

Senate File 2166 provides a sentencing option for offenders who commit child endangerment resulting in the death of a child or minor. The Bill imposes a Class B felony with confinement of no more than 50 years in the State prison system.

Assumptions

1. Under current law, an offender who kills a child while committing child endangerment or while committing assault upon the child, and the death occurs under circumstances manifesting an extreme indifference to human life, commits murder in the first degree. This is a Class A felony with confinement of life in the State prison system. The average time served prior to death in the State prison system is 16.4 years for offenders sentenced to a life prison term.
2. Under current law, murder in the second degree is a Class B felony with a maximum sentence of 50 years. This is a mandatory minimum term where 70.0% of the sentence (35.0 years) is required to be served in the State prison system. Malice aforethought must be proven in order for this sentence to be imposed.
3. The sentence imposed under SF 2166 is a Class B felony with a maximum sentence of 50 years. However, the sentence is not subject to a mandatory minimum term of confinement. Under this sentencing option, it would not be necessary to prove malice aforethought. The average time served in prison for an offender convicted of a Class B felony crime against a person is 11.25 years.

Correctional Impact

There is no correctional impact over the next five years. An offender sentenced under SF 2166 would serve less time in prison (11.25 years) than someone convicted of murder in the first degree (life in prison) or murder in the second degree (35.0 years).

Fiscal Impact

Senate File 2166 is not expected to have a fiscal impact.

Sources

Department of Human Rights, Criminal and Juvenile Justice Planning Division
Department of Corrections
Office of the State Public Defender
Office of the Attorney General

Dennis C Prouty

March 1, 2004

The fiscal note and correctional impact statement for this bill was prepared pursuant to Joint Rule 17 and pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Fiscal Services Division, Legislative Services Agency to members of the Legislature upon request.

Boettger
Fraise
McKibben

Succeeded By SSB# 3055
⑤/HF 2166

SENATE/HOUSE FILE Judiciary
BY (PROPOSED ATTORNEY
GENERAL BILL)

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Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
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THOMAS J. MILLER
ATTORNEY GENERAL

Department of Justice

ADDRESS REPLY TO
HOOVER BUILDING
DES MOINES, IOWA 50319
TELEPHONE 515/281-5164
FACSIMILE 515/281-4209

MEMORANDUM

TO: Members of the General Assembly
FROM: Brian Meyer, Legislative Liaison
DATE: December 29, 2003
SUBJECT: Child Endangerment Resulting in Death

Overview

This bill gives prosecutors the option of charging a parent, guardian or person having custody or control over a child with a class "B" felony when the death of a child results from an act of child endangerment defined under Iowa Code section 726.6(1). This change continues to be advocated by the Iowa Child Death Review Team.

Current law

Current Iowa law provides that when a child dies under the supervision of a caretaker under circumstances that fit the definition of child endangerment, prosecutors are left with several charging options that generally do not fit the nature of the crime. The options are the following:

1. First Degree Murder. This is a class "A" felony with life imprisonment. If a prosecutor brings this charge, then the prosecutor is required to prove that malice aforethought was present and the death occurred under circumstances manifesting an extreme indifference to human life. This charge is only available in the most extreme cases.
2. Second Degree Murder. This is a class "B" felony with a maximum 50 years in prison and requires a mandatory minimum of 70% of the sentence – 35 years. If a prosecutor brings a murder charge, then the prosecutor is required to prove malice aforethought, which often is not present in these kinds of deaths.
3. Child Endangerment Resulting in Serious Injury. This is a class "C" felony punishable by 10 years in prison. Although this is an option for prosecutors, it may be an inadequate punishment for many of the child death cases.

4. Involuntary manslaughter. This is only a class "D" felony with a maximum of 5 years in prison or an aggravated misdemeanor with up to 2 years in prison. This would be an inadequate punishment in most of these cases.

Note that *voluntary manslaughter*, a class "C" felony punishable by 10 years in prison, is not an option for a prosecutor here. Voluntary manslaughter has a necessary element of "serious provocation" and the Iowa Supreme Court has held that a child cannot create circumstances which amount to serious provocation.

Also note that if the person involved had engaged in a *course of conduct* including three or more acts of child endangerment within a period of 12 months, where one or more of the acts results in a serious injury to a child under four years of age, the prosecutor could charge a special class "B" felony punishable by confinement for no more than 50 years under Iowa Code section 726.6A.

In sum, prosecutors are stuck with a huge disparity in possible charges which makes prosecution and imposition of an appropriate penalty difficult.

Example

A mother leaves her child in the care of a babysitter. The babysitter becomes increasingly frustrated when the child won't stop crying. The babysitter shakes the child, and the child suffers extreme brain injuries and later dies. Although the babysitter harbored no ill will toward the child, the death occurred as a result of an intentional act.

In a case like this, prosecutors could pursue a murder charge but a jury may find that the facts do not support a finding of malice. On the other hand prosecutors could bring a charge of child endangerment resulting in serious injury---- a class "C" felony, which seems inadequate punishment for the death of a child.

Proposed change

Iowa prosecutors need another option in situations that involve the death of a child resulting from child endangerment when murder is not a viable alternative. This bill would make the death of a child resulting from an act of child endangerment a Class "B" felony punishable by up to 50 years in prison. Unlike a second degree murder charge, the Class "B" felony child endangerment would not be a mandatory minimum sentence.

This change would bring the death of a child in line with multiple acts of child endangerment described above.

subsection 2, a person convicted of a violation of this subsection shall be confined for no more than fifty years.

JEFFREY M. LAMBERTI
President of the Senate

CHRISTOPHER C. RANTS
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2166, Eightieth General Assembly.

MICHAEL E. MARSHALL
Secretary of the Senate

Approved _____, 2004

THOMAS J. VILSACK
Governor

SENATE FILE 2166

AN ACT

RELATING TO CHILD ENDANGERMENT OFFENSES RESULTING IN THE DEATH OF A CHILD OR MINOR AND PROVIDING A PENALTY.

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

Section 1. Section 726.6, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 3A. A person who commits child endangerment resulting in the death of a child or minor is guilty of a class "B" felony. Notwithstanding section 902.9,