

Comment Report

HSB 29

A bill for an act relating to the crime of disorderly conduct and making penalties applicable.(See HF 232.)

Subcommittee Members: Klein-CH, Kaufmann, Wessel-Kroeschell

Date: 01/19/2021

Time: 12:00 PM

Location: House Lounge

Name: Marty Ryan

Comment: Document attached.

I have “opposed” House Study Bill 29 based solely upon the poor grammatical structure of the sentence. I am willing to help fix it.

May we try this language:

“2. Intentionally or recklessly makes ~~Makes~~ loud and raucous noise in the vicinity of any residence or public building and while doing so ~~which~~ causes unreasonable distress to the occupants thereof.”

The language in the bill, as well as the current law, is grammatically incorrect in that the object of the “unreasonable distress” is the “residence or public building”. Incorporating the intent language after the residence or public building means that the residence or public building “intentionally or recklessly” caused the subsequent action. There is no way around trying to say that this measure, as written, means that “the person” is intentionally or recklessly causing unreasonable distress to the occupants thereof.

The language in the bill is possibly considered “void for vagueness”.

“[T]he void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.” *Kolender v. Lawson*, 461 U.S. 352, 357, 103 S.Ct. 1855, 1858, 75 L.Ed.2d 903, 909 (1983); accord *State v. Watkins*, 659 N.W.2d 526, 535 (Iowa 2003). *State v. Millsap*, 704 N.W.2d 426, 436 (Iowa 2005).

Yes, the current statute lacks a criminal intent [*mens rea*]. However, slapping intent language within the sentence without regard to the syntax is just putting language into the Code for no specific purpose.

In *Kolender v. Lawson*, 461 U.S. 352 (1983)(Holding that the statute as it has been construed is unconstitutionally vague within the meaning of the Due Process Clause of the Fourteenth Amendment by failing to clarify what is contemplated by the requirement that a suspect provide a “credible and reliable” identification.), Justice O’Connor wrote that police “stress the need for strengthened law enforcement tools to combat the epidemic of crime that plagues our Nation. The concern of our citizens with curbing criminal activity is certainly a matter requiring the attention of all branches of government. As weighty as this concern is, however, **it cannot justify legislation that would otherwise fail to meet constitutional standards for definiteness and clarity.** See *Lanzetta v. New Jersey*, 306 U. S. 451 (1939).” *Kolender* at 361 (Emphasis mine).

I have notified the three subcommittee members of the Iowa Senate Judiciary Committee, and Kelly Meyers with the Iowa County Attorneys Ass’n. I will change my declaration from “oppose” to “undecided” when the language is changed to reflect my concerns.

Thank you.

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