

STATE OF NEW YORK

7008

IN SENATE

March 14, 2006

Introduced by Sens. SPANO, SALAND, BONACIC, DeFRANCISCO, FARLEY, FUSCHILLO, JOHNSON, LARKIN, LEIBELL, MAZIARZ, MORAHAN, PADAVAN, RATH, TRUNZO, VOLKER, WRIGHT, YOUNG -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law and the public health law, in relation to enacting "Cynthia's law"

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. This act shall be known and may be cited as "Cynthia's
2 law".
3 § 2. Paragraph (c) of subdivision 1 of section 70.02 of the penal law,
4 as separately amended by chapters 764 and 765 of the laws of 2005, is
5 amended to read as follows:
6 (c) Class D violent felony offenses: an attempt to commit any of the
7 class C felonies set forth in paragraph (b); reckless assault of a child
8 as defined in section 120.02, assault in the second degree as defined in
9 section 120.05, menacing a police officer or peace officer as defined in
10 section 120.18, stalking in the first degree, as defined in subdivision
11 one of section 120.60, sexual abuse in the first degree as defined in
12 section 130.65, course of sexual conduct against a child in the second
13 degree as defined in section 130.80, aggravated sexual abuse in the
14 third degree as defined in section 130.66, criminal possession of a
15 weapon in the third degree as defined in subdivision four, five, six,
16 seven or eight of section 265.02, criminal sale of a firearm in the
17 third degree as defined in section 265.11, intimidating a victim or
18 witness in the second degree as defined in section 215.16, soliciting or
19 providing support for an act of terrorism in the second degree as
20 defined in section 490.10, and making a terroristic threat as defined in
21 section 490.20, falsely reporting an incident in the first degree as
22 defined in section 240.60, placing a false bomb or hazardous substance
23 in the first degree as defined in section 240.62, placing a false bomb
24 or hazardous substance in a sports stadium or arena, mass transportation
25 facility or enclosed shopping mall as defined in section 240.63, and

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

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1 aggravated unpermitted use of indoor pyrotechnics in the first degree as
2 defined in section 405.18.

3 § 3. The penal law is amended by adding a new section 120.02 to read
4 as follows:

5 § 120.02 Reckless assault of a child.

6 1. A person is guilty of reckless assault of a child when, being eigh-
7 teen years of age or more, such person recklessly causes serious phys-
8 ical injury to the brain of a child less than five years old by shaking
9 the child, or by slamming or throwing the child so as to impact the
10 child's head on a hard surface or object.

11 2. For purposes of subdivision one of this section, the following
12 shall constitute "serious physical injury":

13 a. "serious physical injury" as defined in subdivision ten of section
14 10.00 of this chapter; or

15 b. extreme rotational cranial acceleration and deceleration and one or
16 more of the following: (i) subdural hemorrhaging; (ii) intracranial
17 hemorrhaging; or (iii) retinal hemorrhaging.

18 Reckless assault of a child is a class D felony.

19 § 4. The public health law is amended by adding a new section 2745 to
20 read as follows:

21 § 2745. Shaken baby syndrome public educational campaign. The depart-
22 ment shall develop and implement an ongoing public information and
23 educational campaign to inform the general public about brain injuries
24 and other harmful effects that may result from shaking infants and chil-
25 dren under five years of age. The program shall include, without limita-
26 tion, the following elements: educational and informational materials in
27 print, audio, video, electronic and other media and public service
28 announcements and advertisements.

29 § 5. This act shall take effect on the first of November next succeed-
30 ing the date on which it shall have become a law.

NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1

BILL NUMBER: S7008

SPONSOR: SPANO

TITLE OF BILL:

An act to amend the penal law and the public health law, in relation to enacting "Cynthia's law"

PURPOSE:

To include within the provisions of the class D felony of assault in the second degree, the reckless causation of serious physical injury to a child under 5 years of age, by a person 18 years of age or older.

SUMMARY OF PROVISIONS:

Section 1 is the bill title, "Cynthia's Law".

Section 2 adds reckless assault of a child as defined in section 120.02

to paragraph (c) of subdivision 1 of section 70.02 of the penal law.

Section 3 of the bill would add a new section 120.02 "reckless assault of a child". Makes reckless assault of a child a Class D felony.

Section 4 creates a Shaken Baby Syndrome (SBS) public educational campaign.

JUSTIFICATION:

On November 17, 2000, 8 month old Cynthia Gibbs died from a depressed skull fracture and bleeding on both sides of her brain, at the hands of her State certified baby sitter. Often in New York State children are murdered and the indictment of murder is never sought, manslaughter is. Shaken Baby/Shaken Impact Syndrome is a form of child abuse. It results from violently shaking a baby, with or without injury to the head. However, because intent to kill must be clear; the defendant is prosecuted for manslaughter. Under current law, there are protections for children from intentional assault contained in the crimes of Assault in the first degree ("B" felony), Assault in the second degree ("D" felony) and Assault in the Third Degree ("A" misdemeanor). Yet for victims of reckless assault, protections are only contained in crimes of Assault in the First Degree ("B" felony) and Assault in the third degree ("A" misdemeanor). There is no intermediate level of assault. Thus, if a defendant commits a reckless assault on a child that causes serious physical injury, if the People cannot establish depraved indifference, the defendant can only be convicted of a misdemeanor. This can create grave injustices in cases like shaken baby syndrome and serious beating cases where children suffer grievous injury, but the intent to injure cannot be demonstrated.

The proposed statute will remedy the problem of proving intent to injure by a caregiver. However, this is not the only serious barrier to successful prosecutions for cases involving infants and very young children. Equally important, especially in the shaken baby cases, is our ability to prove serious physical injury at the time of the injury and thus at the time the perpetrator is charged with a crime. In cases where the baby survives, despite bleeding on the brain and the presence of retinal hemorrhage at the time that the injuries are inflicted, the long term effects do not necessarily manifest themselves for years; that is, the effects are not seen until the baby fails to reach age-appropriate developmental milestones. Thus, at the time of the injury, even with excellent medical intervention, the baby may look good, appear normal

but have many intellectual, motor, or visual deficits down the road which are impossible to predict.

At least two states have recognized the need for legislation to clarify what is required to prove serious physical injury in shaken baby cases. For example, the Rhode Island child abuse assault statutes define "serious bodily injury" as "evidences of subdural hematoma, intra-cranial hemorrhage, and/or retinal hemorrhages" as signs of "Shaken baby syndrome and/or abusive head trauma". Similarly, the decade-old Utah child abuse statute defines "serious physical injury" as "intra-cranial bleeding, swelling or contusion of the brain; whether caused by blows, shaking, or causing the child's head to impact with an object or surface."

A statutory definition of serious physical injury that includes the hallmark signs of shaken baby syndrome is critical because, unlike most other injuries; the injury caused by shaken baby syndrome cannot be detected by looking at the baby. In addition, infants and small children cannot testify about substantial pain and suffering, or about prolonged impairment of their health like older children and adult crime victims. When adults sustain a head injury; the impairment is evident: speech is impaired, movement is limited, they can tell you that their head hurts. Infants, on the other hand; cannot testify to these impairments. Moreover, the medical profession has difficulty testifying to these impairments. Moreover, the medical profession has difficulty testifying to a reasonable degree of certainty that a shaken baby will not see, talk, think or walk normally months or years down the road as the child develops.

Finally, by adding to the definition of "serious physical injury" for child abuse cases as the legislatures did in Utah and Rhode Island, we would recognize the problem of prosecuting shaken baby cases in situations where the child substantially recovers or prognosis is uncertain. In these cases, the recovery is the result of extraordinary medical procedures and lifesaving measures that in the short term inflict enormous pain and suffering on the child. Brain surgery and procedures, induced comas, insertion of shunts, and powerful medications may minimize long term effects of the shaking, but the injuries that necessitate these procedures should be covered by the definition of serious physical injury. In sum, adding the hallmark signs of Shaken Baby Syndrome to the definition of serious physical injury will allow for more effective prosecutions for what the American Academy of Pediatrics recognizes as "a clearly definable medical condition" and "a serious form of child maltreatment," which too often causes permanent disability or death.

LEGISLATIVE HISTORY:

Similar to:

- 2002: S.6105B - Passed Senate/A.9850B - Referred to Codes
- 2003: S.1936A - Passed Senate/A.1163A - Referred to Codes
- 2004: S.1936B - Passed Senate/ A.1163B - Referred to Codes
- 2005: S.2898 - Passed Senate/A.3096 - Referred to Codes

FISCAL IMPLICATIONS:

None.

EFFECTIVE DATE:

November 1.
