

**To:** New Jersey Law Revision Commission  
**From:** Samuel M. Silver, Deputy Director  
**Re:** Definition of “Harm” in the Child Endangerment Statute (N.J.S. 2C:24-4(a))  
**Date:** June 08, 2020

## MEMORANDUM

### Executive Summary

Staff sought Commission authorization of a project to define the term “harm” as set forth in subsection (a)(2) of New Jersey’s Child Endangerment statute<sup>1</sup> and discussed by the New Jersey Supreme Court in *State v. Fuqua*.<sup>2</sup> The *Fuqua* Court considered whether the State must prove that a child suffered “actual harm” in order to convict a defendant under New Jersey’s child endangerment statute, N.J.S. 2C:24-4(a)(2).<sup>3</sup>

As written, N.J.S. 2C:24-4(a)(2) provides that, “[a]ny person who has a legal duty to care for a child [...] who **causes the child harm** that would make the child an abused or neglected child [...] is guilty of a crime of the second degree.”<sup>4</sup> In a split decision, the *Fuqua* Court determined that a child’s exposure to an “imminent danger and a substantial risk of harm” is sufficient to convict a defendant of second-degree child endangerment and the range of behavior contemplated by each.<sup>5</sup>

The Commission authorized Staff to engage in additional research to determine whether other jurisdictions have codified the term “substantial risk of harm.”<sup>6</sup>

### Background

As part of a narcotics investigation by the Middlesex County Prosecutor’s Office, officers surveilled a local motel where defendants Tyrell Johnson and Danyell Fuqua were residing.<sup>7</sup> The State obtained a search warrant and officers subsequently searched the suspects’ room.<sup>8</sup> After gaining entry to the motel room, officers found the suspects, six children, and an assortment of illegal and easily accessible drugs including: marijuana and pills on the kitchen table; a lockbox with a key still inserted containing 653 packets of heroin and 1 large bag of cocaine; and, a black

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<sup>1</sup> Memorandum from Joseph Pistrutto, former Legislative Fellow to the NJLRC, on the ‘Definition of Harm in the Child Endangerment Statute (N.J.S. 2C:24-4(a))’ to the New Jersey Law Revision Commission 1 (Mar. 11, 2019) (on file with the Commission). See NEW JERSEY LAW REVISION COMMISSION (2019) ‘Child Endangerment’. *Minutes of NJLRC meeting 21 Mar. 2019*, Newark, New Jersey.

<sup>2</sup> *State v. Fuqua*, 234 N.J. 583 (2018).

<sup>3</sup> *Id.* at 587.

<sup>4</sup> Emphasis added.

<sup>5</sup> *Id.* at 595.

<sup>6</sup> NEW JERSEY LAW REV. COMM’N (2019) ‘Child Endangerment’. *Minutes of NJLRC meeting 21 Mar. 2019*, Newark, N.J.

<sup>7</sup> *State v. Fuqua*, 234 N.J. 583, 587 (2018).

<sup>8</sup> *Id.*

plastic bag containing 201 packets of heroin and 14 bags of cocaine next to the children’s toys.<sup>9</sup> In addition, on a nearby windowsill, officers found “a digital scale covered in white cocaine residue...”<sup>10</sup> Finally, the officers found nearly \$4,000 in cash and 5 cellphones.<sup>11</sup>

Johnson later pled guilty to drug distribution and was convicted by a jury of endangering the welfare of children pursuant to N.J.S. 2C:24-4(a).<sup>12</sup> His motion for a judgment of acquittal was denied by the trial court, which found that the State did not have to prove actual harm to children to convict under the statute.<sup>13</sup> The trial court determined that the State was only required to prove that the defendant subjected children to a risk of harm in order to secure a conviction.<sup>14</sup>

The Appellate Division affirmed the denial of the motion, finding that, under N.J.S. 2C:24-4(a), the phrase “causes harm” refers to actions resulting in actual harm as well as those which unreasonably subject children to a substantial risk of harm.<sup>15</sup> Turning to Johnson’s case, the Court held that the children faced a substantial risk of harm given that they were in a small motel room and exposed to a large quantities of drugs easily within their reach.<sup>16</sup>

The New Jersey Supreme Court granted certification.<sup>17</sup>

### Analysis

The issue before the New Jersey Supreme Court was whether actual harm to a child is required to convict under N.J.S. 2C:24-4(a).<sup>18</sup> The Court noted that “... the incorporation by reference of N.J.S.[ ] 9:6-8.21 in N.J.S. [ ] 2C:24-4(a)(2), does not require that any act or omission of the parent result in specific harm to the child.”<sup>19</sup> In addition, the Court opined that “[t]he focus is on the conduct of the parent which exposes the child to a ‘substantial risk’ of death or physical harm”.<sup>20</sup> In light of this express incorporation, the Court interpreted the statute to include actual harm and conduct that creates a substantial risk of harm.<sup>21</sup>

In addition to the plain language of the statute, the Court noted that state appellate courts over the last three decades have “unanimously held that the State is not required to prove actual harm to a child to convict under N.J.S.A. 2C:24-2(a)(2).”<sup>22</sup> Rather, they have consistently held that a “substantial risk of harm is sufficient to sustain a conviction.”<sup>23</sup> If the Legislature wanted

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 588.

<sup>11</sup> *Id.* at 588-89.

<sup>12</sup> *Id.* at 588.

<sup>13</sup> *Fuqua*, 234 N.J. at 588.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *State v. Fuqua*, 230 N.J. 560 (2017).

<sup>18</sup> *Fuqua*, 234 N.J. 583, 587 (2018).

<sup>19</sup> *Id.* at 594.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 593.

<sup>23</sup> *Id.*

to require proof of actual harm, it could have amended the statute.<sup>24</sup> Given that the Legislature had not taken any action to address this specific portion of the statute despite amending it on three separate occasions since 1992, the Court presumed legislative acquiescence to the judiciary's interpretation.<sup>25</sup>

The New Jersey Supreme Court affirmed the Appellate Court's conclusion that N.J.S. 2C:24-2(a)(2) punishes conduct exposing children to a substantial risk of harm and upheld defendant's conviction.<sup>26</sup> Three justices joined the majority opinion.<sup>27</sup>

### **Dissenting Opinions**

Justice Albin's dissent, joined by Justice LaVecchia, said that the Court's decision ran contrary to the endangering statute's text and legislative history, failed to apply the doctrine of lenity, and "erased all distinctions" between civil and criminal statutes.<sup>28</sup>

Justice Albin noted the majority's definition of harm disregarded its "customary, well-understood, and common-sense definition"<sup>29</sup> and suggested that "[t]here [was] a difference between a child who is permitted to run through traffic (substantial risk of harm) and a child who is struck while doing so (harm)."<sup>30</sup>

The legislative history indicates that the Criminal Law Revision Commission reluctantly endorsed a 1971 draft version of the statute which did not include a harm requirement.<sup>31</sup> The Legislature ultimately embraced a "narrower" version of the statute, and enacted N.J.S. 2C:24-4 in 1979.<sup>32</sup>

Justice Albin also suggested that the majority violated the doctrine of lenity.<sup>33</sup> Given that this statute is subject to two reasonable interpretations, he said that statutory ambiguities should have been resolved in favor of the defendant, not the State.<sup>34</sup> Finally, Justice Albin discussed the apparent criminalization of the civil abuse and neglect statute by Title 2C,<sup>35</sup> suggesting that a parent or guardian who commits civil abuse and neglect would also be guilty of second-degree child endangerment.<sup>36</sup> Since second-degree child endangerment carries with it maximum of ten years in prison, he expressed skepticism that the Legislature intended such an "absurd result."<sup>37</sup>

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<sup>24</sup> *Fuqua*, 234 N.J. at 594.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 595.

<sup>27</sup> *Id.* at 598.

<sup>28</sup> *Id.* at 599, 604.

<sup>29</sup> *Id.* at 601.

<sup>30</sup> *Fuqua*, 234 N.J. at 601.

<sup>31</sup> *Id.* at 602.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 604.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 605.

<sup>36</sup> *Fuqua*, 234 N.J. at 605.

<sup>37</sup> *Id.*

Writing separately in dissent, Chief Justice Rabner was unpersuaded that the legislative history cited by the majority and Justice Albin resolved the issue before the Court.<sup>38</sup> He did, however, agree with Justice Albin's view that the Court was faced with two reasonable interpretations of a criminal statute which required the Court to apply the rule of lenity.<sup>39</sup> In his view, it was unclear "whether the Legislature intended a narrow definition of actual harm or a broader meaning that includes substantial risk of harm."<sup>40</sup> Given this ambiguity, the Chief Justice suggested defendant's conviction could not stand.<sup>41</sup>

## 50 State Survey

### • *Preliminary Statement*

In New Jersey, the courts are "...adjured to follow an analytical approach by which the level of clarity required of the language of the enactment depends on the nature of the activity that is sought to be regulated."<sup>42</sup> The likelihood, as well as the consequences, of any misunderstanding dictate that enactments with criminal penalties must be drafted with greater precision than their civil counterparts.<sup>43</sup> When examining a criminal statute, the New Jersey Supreme Court has made it clear that, "[t]he test is whether the statute gives a person of ordinary intelligence fair notice that his conduct is forbidden and punishable by certain penalties.<sup>44</sup> With these constitutional precepts in mind, the Commission requested that Staff undertake an examination whether and how the other 49 states, and the District of Columbia, utilize the term "substantial risk of harm" and the range of behavior contemplated by use of this term.<sup>45</sup>

### • *Statutory Titles*

All fifty states, and the District of Columbia, have enacted statutes to punish those who either injure, or expose a child to the risk of injury.<sup>46</sup> As a preliminary matter, Staff noted that

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<sup>38</sup> *Id.* at 606.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Binkowski v. State*, 322 N.J. Super. 359 (App. Div. 1999).

<sup>43</sup> *Id.* (Observing that "[G]reater imprecision can be tolerated in enactments with civil rather than criminal penalties because of differences in the likelihood, as well as in the consequences, of any misunderstanding." [internal citations omitted] (citing *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 298-99 (1982)).

<sup>44</sup> *In re DeMarco*, 83, N.J. 25, 37 (1980).

<sup>45</sup> NEW JERSEY LAW REV. COMM'N (2019) 'Child Endangerment'. *Minutes of NJLRC meeting 21 Mar. 2019*, Newark, N.J.

<sup>46</sup> For purposes of this Memorandum, the statutes that follow will be collectively be referred to as "the endangerment statutes." Where a distinction is necessary, the appropriate statutory distinction will be made. ALA. CODE §13A-13-6 (2020); ALASKA STAT. ANN. §11.51.100 (West 2020); ARIZ. REV. STAT. ANN. §13-3623 (2020); ARK. CODE ANN. §5-27-205 (West 2020); CAL. PENAL CODE §273a (West 2020); COLO. REV. STAT. ANN. §18-6-401 (West 2020); CONN. GEN. STAT. §53-21 (West 2020); DEL. CODE ANN. tit. 11 §1102 (West 2020); D.C. CODE §22-1101 (2020); FLA. STAT. ANN. §827.03 (West 2020); GA. CODE ANN. §16-5-70 (West 2020); HAW. REV. STAT. §709-903.5 (West 2020); IDAHO CODE ANN. §18-1501 (West 2020); 720 ILL. COMP. STAT. 5 / 12C-5 (West 2020); IND. CODE ANN. §35-46-1-4 (West 2020); IOWA CODE ANN. §726.3 (West 2020); KAN. STAT. ANN. §21-5601 (West 2020); KY. REV. STAT. ANN. §530.060 (West 2020); LA. REV. STAT. ANN. §93 (2020); ME. REV. STAT. ANN. tit. 17-A §554 (2020); MD. CODE ANN., CRIM. LAW §3-601 (2020); MASS. GEN. LAWS ANN. ch. 265 §13L (West 2020); MICH. COMP. LAWS ANN. §136b (West 2020); MINN. STAT. ANN. §609.378 (West 2020); MISS. CODE ANN. §97.5-

the statutory titles for this offense are not uniform. In addition, there is no universally accepted “child endangerment” statute. Thus, the examination of this topic involved a review of state statutes that involve child endangerment, abuse, neglect, cruelty, and the mistreatment of children.

Of the fifty-one statutes examined, 25 utilize a form of the word “endanger” in the statutory title.<sup>47</sup> In addition, there are 16 statutes that refer to the harm of a child as either abuse, neglect or both.<sup>48</sup> The statutory titles of 4 states, and the District of Columbia, recognize acts of “cruelty” committed against a child.<sup>49</sup> Regardless of the differences in title, these statutes shared the common goal of protecting a vulnerable segment of society – children.

- *Causes Harm*

The plain language of the statutes of two states, New Jersey and Washington, requires that the defendant’s conduct cause the child harm in order for the State to secure a conviction.<sup>50</sup> As written, it is unclear whether actual harm must be the outcome of the defendant’s behavior. Neither statute specifies whether physical or emotional harm are required in order to obtain a conviction. Both of these statutes are unclear about whether placing a child “in a situation in which harm *could* result” is a criminal act.

Despite the plain language of each statute requiring harm for conviction, the courts in both New Jersey and Washington State have determined that the exposure of a child to a substantial risk of harm was sufficient to secure a conviction under the endangerment statute.<sup>51</sup> It

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39 (West 2020); MO. REV. STAT. §568.060 (West 2020); MONT. CODE ANN. §45-5-622,628 (2020); NEB. REV. STAT. §28-707 (2020); NEV. REV. STAT. ANN. §200.508 (West 2020); N.H. REV. STAT. ANN. §639:3 (2020); N.J. STAT. §2C:24-4 (2020); N.M. STAT. ANN. §30-6-1 (2020); N.Y. PENAL LAW §260.10 (2020); N.C. GEN. STAT. ANN. §14-318.4 (West 2020); N.D. CENT. CODE §19-03.1-22.2 (West 2020); OHIO REV. CODE ANN. §2919.22 (West 2020); OKLA. STAT. tit. 21 §852.1 (West 2020); OR. REV. STAT. ANN. §163.575 (West 2020); PA. CONS. STAT. §4304 (West 2020); R.I. GEN. LAWS §11-9-5 (West 2020); S.C. CODE ANN. §63-5-70 (2020); S.D. CODIFIED LAWS §26-8A-2 (2020); TENN. CODE ANN. §39-15-401 (West 2020); TEX. PENAL CODE ANN. §22.041 (West 2020); UTAH CODE ANN. §76-5-112.5 (2020); VT. STAT. ANN. tit. 13 §1304 (West 2020); VA. CODE ANN. §18.2-371.1 (West 2020); WASH. REV. CODE ANN. §9A.42.020 (West 2020); W. VA. CODE ANN. §61-8D-3 (West 2020); WIS. STAT. ANN. §948.21 (West 2020); WYO. STAT ANN. §6-4-403 (West 2020). See Fig. 1 which sets forth each state in alphabetical order along with the corresponding endangerment statute.

<sup>47</sup> See Fig. 2. There are three statutory references that utilize terms from two categories. See MINN. STAT. ANN. §609.378 (West 2020) (Neglect or endangerment of a child); NEV. REV. STAT. ANN. §200.508 (West 2020) (Abuse, neglect or endangerment of child); and, R.I. GEN. LAWS §11-9-5 (West 2020) (Cruelty to or neglect of child). The statutes with the word endanger in them have been placed in the endangerment category because it is the focus of this Memorandum. The remaining dual reference has been placed in the category in which the first common term appears.

<sup>48</sup> See Fig. 2.

<sup>49</sup> *Id.*

<sup>50</sup> See N.J. STAT. §2C:24-4 (2020) (providing that any person who “causes the child harm” is guilty of child endangerment in the second degree); and, see WASH. REV. CODE ANN. §9A.42.020 (West 2020) (providing that a person who “causes great bodily harm to a child [...] by withholding any of the basic necessities of life [...]” is guilty of criminal mistreatment in the first degree).

<sup>51</sup> See discussion of *State v. Fuqua*, 234 N.J. 583 (2018) *supra*; and see *State v. Perez*, 137 Wash. App. 97 (2007) (evidence that defendant fired BB gun at target held by four-year-old child was sufficient to support conviction for reckless endangerment, even though child was wearing safety goggles and his injuries were slight).

is noted that the State of Washington has enacted a statute that provides that, “[a] person is guilty of the crime of endangerment with a controlled substance if the person knowingly or intentionally permits a [...] child to be exposed to...” any of the drugs enumerated in the statute.<sup>52</sup> This statute appears to address the factual situation that faced the *Fuqua* Court.<sup>53</sup>

- *Substantial Risk of Physical Injury*

In six states and the District of Columbia, actual physical harm need not occur for a defendant to be convicted under the state’s child endangerment statute.<sup>54</sup> A defendant may be convicted if he or she creates a “substantial risk of physical injury” to a child.<sup>55</sup> Creating a risk of “death or serious physical [or bodily] injury” is required for an endangerment condition in Arkansas and West Virginia.<sup>56</sup> The District of Columbia requires the State to prove that an individual has engaged in conduct “which creates a grave risk of bodily injury to a child, and thereby causes bodily injury.”<sup>57</sup> Circumstances involving the risk of “bodily injury” are addressed in the statutes of both Maine<sup>58</sup> and Massachusetts.<sup>59</sup>

- *Circumstantial or Situational Exposure to Harm (Physical or Emotional)*

In *Fuqua*, the Court opined that, “[t]he [statutory] focus is on the conduct of the parent which exposes the child to a ‘substantial risk’ of death or physical harm”.<sup>60</sup>

Criminal endangerment statutes can be drafted to prohibit two types of behavior: (1) deliberate indifference to, acquiescence in, or the creation of situations inimical to the child’s moral or physical welfare, and (2) acts deliberately perpetrated on children and injurious to their moral or physical well-being.<sup>61</sup> The majority of the state statutes relating to child endangerment, 34 in total, have been drafted to effectuate that goal.<sup>62</sup> These statutes criminalize behavior that

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<sup>52</sup> WASH. REV. CODE ANN. §9A.42.100 (West 2020).

<sup>53</sup> See discussion of *State v. Fuqua*, 234 N.J. 583 (2018) *supra*.

<sup>54</sup> See ALASKA STAT. ANN. §11.51.100 (West 2020); ARK. CODE ANN. §5-27-205 (West 2020); D.C. CODE §22-1101 (2020); MASS. GEN. LAWS ANN. ch. 265 §13L (West 2020); ME. REV. STAT. ANN. tit. 17-A §554 (2020); N.C. GEN. STAT. ANN. §14-318.4 (West 2020); AND, W. VA. CODE ANN. §61-8D-3 (West 2020).

<sup>55</sup> See ALASKA STAT. ANN. §11.51.100 (West 2020); N.C. GEN. STAT. ANN. §14-318.4 (West 2020).

<sup>56</sup> See ARK. CODE ANN. §5-27-205 (West 2020); and, W. VA. CODE ANN. §61-8D-3 (West 2020).

<sup>57</sup> D.C. CODE §22-1101 (2020). *But see Lee v. U.S.*, 831 A.2d 378 (2003) (the statute which prohibits cruelty to children requires that an individual create a grave risk of bodily injury, not a risk of grave bodily injury; thus, the correct focus is on the likelihood of injury, rather than the degree of injury sustained).

<sup>58</sup> ME. REV. STAT. ANN. tit. 17-A §554 (2020).

<sup>59</sup> MASS. GEN. LAWS ANN. ch. 265 §13L (West 2020).

<sup>60</sup> *State v. Fuqua*, 234 N.J. 583, 592 (2018).

<sup>61</sup> See *Dubinsky v. Black*, 196 A.3d 870 (Conn. App. 2018).

<sup>62</sup> See ARIZ. REV. STAT. ANN. §13-3623 (2020); CAL. PENAL CODE §273a (West 2020); COLO. REV. STAT. ANN. §18-6-401 (West 2020); CONN. GEN. STAT. §53-21 (West 2020); DEL. CODE ANN. tit. 11 §1102 (West 2020); FLA. STAT. ANN. §827.03 (West 2020); IDAHO CODE ANN. §18-1501 (West 2020); 720 ILL. COMP. STAT. 5 / 12C-5 (West 2020); IND. CODE ANN. §35-46-1-4 (West 2020); IOWA CODE ANN. §726.3 (West 2020); KAN. STAT. ANN. §21-5601 (West 2020); MD. CODE ANN., CRIM. LAW §3-601 (2020); MICH. COMP. LAWS ANN. §136b (West 2020); MINN. STAT. ANN. §609.378 (West 2020); MO. REV. STAT. §568.060 (West 2020); MISS. CODE ANN. §97.5-39 (West 2020); MONT. CODE ANN. §45-5-622,628 (2020); NEB. REV. STAT. §28-707 (2020); NEV. REV. STAT. ANN. §200.508 (West 2020); N.H. REV. STAT. ANN. §639:3 (2020); N.M. STAT. ANN. §30-6-1 (2020); N.Y. PENAL LAW §260.10 (2020); N.D. CENT. CODE §19-03.1-22.2 (West 2020); OHIO REV. CODE ANN. §2919.22 (West 2020); PA.

exposes a child to a “situation” or “circumstances” in which the “person” or “health” of the child is endangered.<sup>63</sup> These statutes cover a wide range of criminal behavior.

• *Range of Criminal Behavior*

Throughout the United States, endangering statutes have been interpreted to cover a wide variety of behavior.<sup>64</sup> The following are examples of prohibited conduct under various child endangering statutes: maintaining a residence with a leaking portable toilet, allowing children to sleep in close proximity to diseased animals and scrap metal auto parts, tin cans while keeping children barefoot in the presence of protruding nails and animal feces<sup>65</sup>; threatening a child with physical harm in order to compel him to urinate in public in a dark area of a vacant building<sup>66</sup>; allowing children to witness, either by sight or sound, the aggravated menacing of another individual<sup>67</sup>; carrying a two-year-old child while conducting multiple drug transactions<sup>68</sup>; attempting to evade the police with as four children rode in the truck cab;<sup>69</sup> setting fire to one’s home and placing an 18-month-old child in the backyard in close proximity to the fire<sup>70</sup>; allowing a child to live in a house where drug paraphernalia and cocaine were found<sup>71</sup>; exposure to a domestic crime – i.e. threatening another with a machete<sup>72</sup>; leaving a child unattended in a car for a prolonged period of time<sup>73</sup>; discharging a firearm in the direction of a child care center at 10 a.m. on a school day<sup>74</sup>; pointing a handgun at a child to her stop crying<sup>75</sup>; and, inaccessibility of a parent or guardian due to intoxication.<sup>76</sup>

• *Actual Physical or Mental Pain*

Two states, Georgia and Louisiana require the victim to suffer actual physical or mental pain.<sup>77</sup> In Georgia, a person is guilty of cruelty to a child if he or she “maliciously causes a child

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CONS. STAT. §4304 (West 2020); R.I. GEN. LAWS §11-9-5 (West 2020); S.C. CODE ANN. §63-5-70 (2020); S.D. CODIFIED LAWS §26-8A-2 (2020); TENN. CODE ANN. §39-15-401 (West 2020); TEX. PENAL CODE ANN. §22.041 (West 2020); UTAH CODE ANN. §76-5-112.5 (2020); VT. STAT. ANN. tit. 13 §1304 (West 2020); VA. CODE ANN. §18.2-371.1 (West 2020); WYO. STAT ANN. §6-4-403 (West 2020).

<sup>63</sup> *Id.*

<sup>64</sup> See Fig. 3.

<sup>65</sup> *State v. Deskins*, 152 Ariz. 209 (App. Div.2 1986).

<sup>66</sup> *State v. Payne*, 669 A.2d 582 (1995), *certif. granted in part* 673 A.2d 112, *aff’d* 695 A.2d 525;

<sup>67</sup> *Bussey v. State*, 159 A.3d 713 (2017), *post-conviction relief denied* 2019 WL 2613109.

<sup>68</sup> *Thompson v. State*, 139 So.3d 377 (2014), *reh’g denied, mandamus dismissed* 151 So.3d 1230, *post-conviction relief denied* 2015 WL 13723887.

<sup>69</sup> *State v. Anspach*, 627 N.W.2d 227 (2001).

<sup>70</sup> *State v. Abdullah*, 348 P.3d 1 (2015), *rehearing denied, certiorari denied* 136 S.Ct. 1161.

<sup>71</sup> *State v. Christian*, 795 N.W.2d 702 (2011).

<sup>72</sup> *State v. Mendez-Osorio*, 900 N.W.2d 776 (2017).

<sup>73</sup> *Hannon v. Commonwealth*, 803 S.E.2d 355 (2017). See *People v. Rudell*, 78 N.E.3d 541 (2017) (conviction for child endangerment where a baby was left unattended in a car for approximately one hour). Compare *State v. Tice*, 686 N.W. 2d 351 (App. 2004) (dismissal of child neglect and endangerment charges in which children were left alone in a locked automobile in a retail parking lot with engine running for 40 minutes finding that the term “likely” in the statute requires proof that the situation is “more likely than not” to cause substantial harm to children).

<sup>74</sup> *State v. Herndon*, 379 P.3d 403 (2016).

<sup>75</sup> *Duckworth v. State*, 594 A.2d 109 (1991).

<sup>76</sup> *In re N.K.*, 169 N.H. 546 (2016).

<sup>77</sup> GA. CODE ANN. §16-5-70 (West 2020), LA. REV. STAT. ANN. §93 (2020).

under the age of 18 cruel or excessive physical or mental pain.”<sup>78</sup>

- *Enumerated List*

There are six states that either enumerate or cross-reference other statutes in order to define behavior that constitutes a danger to a child.<sup>79</sup> The failure to exercise reasonable diligence to prevent a child from becoming “dependent”, “delinquent” or “neglected” are omissions that can constitute endangerment.<sup>80</sup>

The remaining 4 states provide a list of prohibited behaviors such as: knowingly permitting the physical or sexual abuse of a child<sup>81</sup>; permitting a child to be present at a location where controlled dangerous substances are being manufactured<sup>82</sup>; permitting a child to be present in a vehicle in which the operator is under the influence of alcohol or another intoxicant<sup>83</sup>, or in violation of the motor vehicle statute<sup>84</sup>; inducing, causing or permitting an unmarried person under 18 years of age to witness an act of sexual conduct<sup>85</sup>; permitting a person under 18 years of age to enter or remain in a place where unlawful activity involving controlled danger substances or cannabis is maintained or conducted<sup>86</sup>; inducing or permitting a child to participate in gambling<sup>87</sup>; selling controlled dangerous substance delivery systems<sup>88</sup>; allowing another person to inflict serious or substantial bodily injury on a minor<sup>89</sup>; causing or permitting a minor to ingest a controlled dangerous substance<sup>90</sup>; and, failure to provide necessities to a minor.<sup>91</sup>

## Conclusion

Staff seeks guidance from the Commission regarding whether to proceed with the drafting of statutory modifications N.J.S. 2C:24-4(a)(2).

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<sup>78</sup> GA. CODE ANN. §16-5-70 (West 2020). *See Banta v. State*, 282 Ga. 392 (2007) (the conscious disregard of a substantial and unjustifiable risk that the defendant’s act or omission will cause the harm at issue or endanger the safety of the other person).

<sup>79</sup> *See* ALA. CODE §13A-13-6 (2020); KY. REV. STAT. ANN. §530.060 (West 2020); OKLA. STAT. tit. 21 §852.1 (West 2020); OR. REV. STAT. ANN. §163.575 (West 2020); HAW. REV. STAT. §709-903.5 (West 2020); WIS. STAT. ANN. §948.21 (West 2020). These statutes do not utilize the term “include”, “includes”, or “including” when setting forth the prohibited behavior. These statutes leave it to the litigants and the courts to determine whether or not a behavior not enumerated constitutes child endangerment.

<sup>80</sup> *See* ALA. CODE §13A-13-6 (2020); KY. REV. STAT. ANN. §530.060 (West 2020).

<sup>81</sup> OKLA. STAT. tit. 21 §852.1(A)(1) (West 2020).

<sup>82</sup> *Id.* at §852.1(A)(2).

<sup>83</sup> *Id.* at §852.1(A)(3).

<sup>84</sup> *Id.* at §852.1(A)(4).

<sup>85</sup> OR. REV. STAT. ANN. §163.575(1)(a) (West 2020).

<sup>86</sup> *Id.* at §163.575(1)(b).

<sup>87</sup> *Id.* at §163.575(1)(c).

<sup>88</sup> *Id.* at §163.575(1)(d)(A) – (G).

<sup>89</sup> HAW. REV. STAT. §709-903.5 (1)(a) (West 2020).

<sup>90</sup> *Id.* at §709-903.5(1)(a).

<sup>91</sup> WIS. STAT. ANN. §948.21 (2)(a)-g) (West 2020) (including necessary care, food, clothing medical care, shelter, education or protection from exposure to the distribution or manufacture of controlled dangerous substances).