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Res. No. 629

Resolution calling upon the New York State Legislature to increase the punishment for endangering the welfare of a child by designating this crime as a felony.

By Council Members Vallone Jr., Arroyo, Cabrera, Ferreras, Fidler, Gennaro, Gentile, Palma and Koo

Whereas, A central tenet of a just society is the care and protection of those who are least able to take care of themselves; and

Whereas, In keeping with this principle, there are numerous state laws protecting children and the elderly; and

Whereas, The punishments given for abusing these vulnerable populations vary greatly; and

Whereas, Pursuant to Penal Law §§ 260.32 and 260.34, a caregiver who injures a vulnerable elderly person may be charged with a felony and punished by up to seven years of imprisonment; and

Whereas, In contrast, pursuant to Penal Law § 260.10, a person found guilty of endangering the welfare of a child may be charged with just a Class A misdemeanor, which carries a penalty of up to one year of

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imprisonment and a fine; and

Whereas, A person is guilty of endangering a child if he or she "acts in a manner that is likely to be injurious to the physical, mental, or moral welfare of a child less than seventeen years old or directs or authorizes such child to engage in an occupation involving a substantial risk of danger to his life or health," or, if one is a parent, guardian or custodian of a minor, if "he or she fails or refuses to exercise some reasonable diligence in the control of such child to prevent him from becoming an 'abused child,' a 'neglected child,' a 'juvenile delinquent' or 'a person in need of supervision;'" and

Whereas, As the horrific case of Nixzmary Brown made clear, the law must allow law enforcement to take action to protect children who are being harmed before they suffer serious injury or death; and

Whereas, Currently, prosecutors and police often see cases in which minor injuries are inflicted upon a child, sometimes over and over again for months or years, and yet they are unable to bring felony charges unless they can prove the deliberate infliction of "serious physical injury" or the use of a dangerous weapon; and

Whereas, As stated by Queens Distict Attorney Richard Brown in the aftermath of the Nixmary Brown tragedy, "New York needs to do more to provide these children with the chance to grow into adulthood-and not become grim statistics…[prosecutors] need felony sanctions for such patterns of abuse and cruel maltreatment to punish and deter such conduct"; and

Whereas, Several bills are pending in the New York State Legislature that would address this issue, including A.4534 (Mayersohn), which would redesignate the current crime of endangering the welfare of a child as endangering the welfare of a child in the second degree, a misdemeanor penalty, and create the new crime of endangering the welfare of a child in the first degree, which would be categorized as a class D violent felony with a punishment of up to seven years in prison; and

Whereas, Under A.4534, a person is guilty of endangering the welfare of a child in the first degree if he "commits the crime of endangering the welfare of a child in the second degree upon a child less than 11 or

which results in physical injury to a child less than 17," or if he has either been previously found guilty of endangering the welfare of a child in either the first or second degree or acts "in a manner that creates a risk of serious physical injury or prolonged impairment of the mental or emotional condition of a child less than seventeen years old;" and

Whereas, Abusing a child is a horrible crime that should be treated as a felony with the potential for more than one year of imprisonment; now, therefore, be it

Resolved, That the Council of the City of New York calls upon the New York State Legislature to increase the punishment for endangering the welfare of a child by designating this crime as a felony.

DMB
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