

To: New Jersey Law Revision Commission
From: Joseph Pistrutto, Legislative Fellow
Re: Definition of “Harm” in the Child Endangerment Statute (N.J.S. 2C:24-4(a))
Date: March 11, 2019

MEMORANDUM

Executive Summary

In *State v. Fuqua*, the New Jersey Supreme Court considered whether actual harm to a child must be shown in order to convict an individual under the child endangerment statute (N.J.S.A. 2C:24-4(a)(2)).¹ The Court held that exposing children to a substantial risk of harm is sufficient for conviction, with the Justices split regarding the definition of “harm”.²

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.³ A search warrant was obtained and officers searched the suspects’ room.⁴ After entering, officers not only found the suspects but six children and an assortment of illegal and easily accessible drugs: 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 plastic bag next to children’s toys with 201 packets of heroin and 14 bags of cocaine inside.⁵ In addition, officers found “a digital scale covered in white cocaine residue on a nearby windowsill.”⁶ Aside from the discovery of illicit drugs, officers also found nearly \$4,000 in cash and 5 cellphones.⁷

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).⁸ 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.⁹ Instead, proving a defendant subjected children to a risk of harm was deemed sufficient to convict.¹⁰ The Appellate Division affirmed 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.¹¹

¹ *State v. Fuqua*, 234 N.J. 583, 587 (2018).

² *Id.* at 595.

³ *Id.* at 587.

⁴ *Id.*

⁵ *State v. Fuqua*, 234 N.J. 583, 587 (2018).

⁶ *Id.* at 588.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *State v. Fuqua*, 234 N.J. 583, 588 (2018).

¹¹ *Id.*

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.¹²

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).¹³ The Court noted that by referencing other provisions defining child abuse and neglect to include a substantial risk of harm, that concept was incorporated into N.J.S. 2C:24-4(a).¹⁴ In light of this express incorporation, the Court interpreted the statute to include actual harm and conduct that creates a substantial risk of harm.¹⁵

Aside from the statute’s plain language, it was also 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).”¹⁶ Rather, they have consistently held that a “substantial risk of harm is sufficient to sustain a conviction.”¹⁷ If the Legislature wanted to require proof of actual harm, it could have amended the statute.¹⁸ 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.¹⁹

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.²⁰

Dissenting Opinions

Only four justices joined the majority opinion.²¹ Justice Albin’s dissent, joined by Justice LaVecchia, argued 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.²² Justice Albin noted the majority’s definition of harm disregarded its

¹² *Id.*

¹³ *Id.* at 587.

¹⁴ *Id.* at 592.

¹⁵ *State v. Fuqua*, 234 N.J. 583, 592 (2018).

¹⁶ *Id.* at 593.

¹⁷ *Id.*

¹⁸ *Id.* at 594.

¹⁹ *Id.*

²⁰ *State v. Fuqua*, 234 N.J. 583, 595 (2018).

²¹ *Id.* at 598

²² *Id.* at 599, 604

“customary, well-understood, and common-sense definition.”²³ The dissent 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).”²⁴

The legislative history shows that the Criminal Law Revision Commission reluctantly endorsed a 1971 draft version of the statute which did not include a harm requirement.²⁵ The Legislature ultimately embraced a “narrower” version of the statute, and enacted N.J.S. 2C:24-4 in 1979.²⁶

Justice Albin also suggested that the majority violated the doctrine of lenity.²⁷ Given that this statute is subject to two reasonable interpretations, he believed that statutory ambiguities should have been resolved in favor of the defendant, not the State.²⁸ In closing, Justice Albin discussed the apparent criminalization of the civil abuse and neglect statute by Title 2C,²⁹ suggesting that a parent or guardian who commits civil abuse and neglect would also be guilty of second-degree child endangerment.³⁰ 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.”³¹

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.³² 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.³³ 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.”³⁴ Given this ambiguity, the Chief Justice suggested defendant’s conviction could not stand.³⁵

Conclusion

Staff seeks authorization to engage in additional research and outreach in this area to determine whether a revision of the statute to clarify the issue of whether the “harm” described in

²³ *Id.* at 601.

²⁴ *Id.*

²⁵ *State v. Fuqua*, 234 N.J. 583, 602 (2018).

²⁶ *Id.*

²⁷ *Id.* at 604.

²⁸ *Id.*

²⁹ *Id.* at 605.

³⁰ *State v. Fuqua*, 234 N.J. 583, 605 (2018).

³¹ *Id.*

³² *Id.* at 606.

³³ *Id.*

³⁴ *State v. Fuqua*, 234 N.J. 583, 606 (2018).

³⁵ *Id.*

N.J.S. 2C:24-4(a)(2) refers to actual harm or includes a substantial likelihood of harm could be of assistance moving forward.