



NEWS FROM THE LAW COMMISSION

13 September 2003

STRICT EMBARGO

EMBARGOED UNTIL 0001HRS TUESDAY 16 SEPTEMBER 2003

Criminal responsibility for non-accidental child deaths or serious injuries

**“Achieving justice requires changes in the law”
says the Law Commission**

Today the Law Commission has published a report¹ containing recommendations for changes in the law governing criminal responsibility for the non-accidental death or serious injury of children.

The report includes a draft Bill.

Some shocking statistics

In the 3 years to 31 December 2000

- ◆ No fewer than 3 children under the age of 10 years were killed or suffered serious injury each week.
Approximately one-half were under 6 months old – and 83% were under 2 years old.
- ◆ 61% of investigations which reached a conclusion resulted in no prosecution for any offence following a decision either by the police or the Crown Prosecution Service.
- ◆ Of those cases which resulted in a conviction, only a small proportion were for murder, manslaughter or wounding/causing grievous bodily harm.

¹ Children: Their Non-Accidental Death or Serious Injury (Criminal Trials) – (2003) Law Com No 282, HC 1054, available from TSO (£13.25) and also on the Law Commission's website at <http://www.lawcom.gov.uk>.

THE LAW COMMISSION MAKES THE FOLLOWING RECOMMENDATIONS:

(1) Evidence and Procedure

- (i) That the recommendations should apply in cases where a child under the age of 16 years has suffered non-accidental death or serious injury, which must have been caused by at least one of a defined group of individuals. At least one of this group must have had responsibility for the child's care at the time, or during the period within which, the offence was committed.
- (ii) That those who had responsibility for the child at the relevant time should be under a **statutory responsibility** to assist the police and the court by providing as much information as they can, regarding the circumstances in which the offence was committed and by whom.
- (iii) That where, at the conclusion of the prosecution case, the court is satisfied beyond reasonable doubt that
 - (a) a child has suffered non-accidental death or serious injury; and
 - (b) the defendants form the whole of (or are within) a defined group of individuals one or other or all of whom must be guilty of causing the death or serious injury; and
 - (c) at least one defendant had responsibility for the welfare of the child during the time within which the death or serious injury occurred;

the decision whether the judge should withdraw the case from the jury must be postponed until the close of the defence case.

- (iv) That in such a case:
 - (1) if a defendant who is subject to the **statutory responsibility** does not give evidence, the jury should, in determining the guilt of that defendant, be permitted to draw such inferences from the failure as appear proper, taking into account any explanation for the failure; but
 - (2) the judge must withdraw the case from the jury if, having regard to all the evidence and any inference that the jury may properly draw from the defendant's failure to give evidence, no reasonable jury properly directed could convict the accused of the offence charged or an alternative offence.

[More]

(2) Substantive Law

- (i) That there be an aggravated form of the existing offence of child cruelty under section 1 of the Children and Young Persons Act 1933 where the offence results in or contributes significantly to the child's death. In these circumstances the offence would carry a maximum sentence of 14 years imprisonment as opposed to its current maximum of 10 years.
- (ii) That there be a new offence under which a person aged at least 16 years who has responsibility for and is connected with a child:
 - (1) is aware or ought to be aware that there is a real risk that an offence involving harm might be committed against the child;
 - (2) fails to take such steps as it would be reasonable to expect him or her to take to prevent the commission of the offence; and
 - (3) the offence is committed in circumstances of the kind that he or she anticipated or ought to have anticipated.

We are of the view that the maximum sentence for this offence should be no higher than 7 years imprisonment.

- ♦ **Judge Alan Wilkie QC, Commissioner, said today on behalf of the Law Commission:**

"The problem of how fairly and accurately to establish guilt for these most serious and distressing of crimes is pressing and difficult. We believe that the recommendations we are making will greatly assist the Courts to achieve justice in these cases."

NOTES FOR EDITORS

Further information about the Law Commission, and all recent Law Commission publications, can be viewed on the web site at <http://www.lawcom.gov.uk>.



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