

Clermont County Prosecuting Attorney

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Dear Mr. Chairperson and Members of the Committee:

My Name is David Gast. I am Chief Municipal Assistant Prosecuting Attorney for Clermont County, Ohio. I want to thank you all for the opportunity to address this Committee regarding Ohio's Keg Law. Specifically, I want to discuss what I believe we should change regarding the culpable mental state required to hold parents and guardians accountable for permitting violations of Ohio's Keg Law.

Ohio's Keg Law is codified in R.C. 4301.69. The relevant portion of that statute is R.C. 4301.69(F), which states:

“No parent, spouse who is not an underage person, or legal guardian of a minor shall **knowingly** permit the minor to violate this section or section 4301.63, 4301.633, or 4301.634 of the Revised Code.”

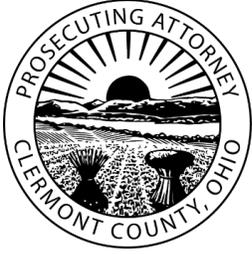
Emphasis added. “Knowingly” is defined under R.C. 2901.22(B):

R.C. 2901.22(B): A person acts **knowingly**, regardless of purpose, when the person is aware that the person's conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when the person is aware that such circumstances probably exist. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person **subjectively believes** that there is a high probability of its existence and fails to make inquiry or acts with a conscious purpose to avoid learning the fact.

Emphasis added. “Knowingly” requires the State to prove beyond a reasonable doubt that the Defendant has subjective knowledge of the facts and circumstances which would create a high probability that something is likely to occur. Subjective knowledge means that the State must prove that the Defendant believed that he or she was permitting a minor to violate Ohio's Keg Law. Proving subjective belief can be difficult where parents turn a blind eye to the actions of minors they are responsible for or fail to act with due care and responsibility. Given that this law is designed to prohibit minors from engaging in particularly harmful activity and to limit the means by which they may gain access to alcohol, this committee should support a change in the mental state required from “knowingly” to “recklessly.”

R.C. 2901.22(C) states:

A person acts **recklessly** when, with heedless indifference to the consequences, the person disregards a substantial and unjustifiable risk that the person's conduct is likely to cause a certain result or is likely to be of a certain nature. A person is reckless with respect to circumstances when, with heedless indifference to the consequences, the



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person disregards a substantial and unjustifiable risk that such circumstances are likely to exist.

Emphasis added. The key difference in this definition is that the State would not have to prove the subjective knowledge of the Defendant. Instead, the State would be able to focus on the objective circumstances, which created the present dangerous condition that allows minors to violate the Keg Law. The State wants to be able to prosecute conduct that amounts to “heedless indifference.” This subtle change would not subject parents who are negligent to prosecution; an important distinction.

Furthermore, a reckless standard of care is not novel to Ohio law when it comes to parents and guardians’ responsibilities with children. Ohio’s Child Endangering statute criminalizes reckless conduct that creates a substantial risk to the health and safety of a child. R.C. 2919.22(A). Changing the standard from knowingly to recklessly would not bring confusion or a greater burden to parents and guardians. Rather, it would bring harmony to the legislative code regarding what types of conduct the State of Ohio deems criminal.