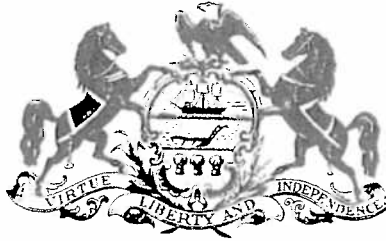


BERNARD T. O'NEILL, MEMBER
29TH LEGISLATIVE DISTRICT
B-8 MAIN CAPITOL
PO BOX 202029
HARRISBURG, PA 17120-2029
(717) 705-7170
E-mail: boneill@pahousegop.com
Website: www.reponeill.com

SUITE 105
755 YORK ROAD
WARMINSTER, PA 18974
(215) 441-2624

PO BOX 1290
BUCKINGHAM, PA 18912
(215) 794-1055



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MEMORANDUM

To: All House Members
From: Representative Bernie O'Neill *BT*
Date: January 11, 2011
Subject: Drug Delivery Resulting in Death – former HB 2469

In the near future, I am planning to introduce legislation which will amend Section 2506 of the Crimes Code (Title 18) relating to drug delivery resulting in death. Currently, Section 2506 provides that a person, who administers, dispenses, gives, prescribes, sells or distributes any controlled substance or counterfeit controlled substance to another person and the person dies as a result of using the substance, commits murder of the third degree.

In 2005, the Pennsylvania Supreme Court in *Commonwealth v. Ludwig*, 874 A.2d 623 (Pa. 2005), upheld the constitutionality of Section 2506. However, in interpreting the intent of the General Assembly, the Court made it extremely difficult to prosecute individuals under this statute. The Court held that a defendant must have acted with "malice" in order to be convicted of the offense. The mental state of malice is significantly more than mere carelessness or neglect or the disregard of a chance or possibility of death. I was recently contacted by the Pennsylvania District Attorney's Association seeking an amendment to Section 2506 which would change the applicable mens rea as well as the sentencing requirements.

My legislation will amend this section to require the prosecution to prove that the defendant acted intentionally. Additionally, my legislation alters the sentencing requirements by eliminating the five year mandatory minimum and instead providing that a person convicted under this statute is guilty of a first degree felony punishable by a term of imprisonment fixed by the court at not more than 40 years. While the defendant will no longer subject to a mandatory minimum sentence, the defendant will be subject to a potential sentence which is significantly greater than a standard punishment associated with a first degree felony crime.

If you would like to co-sponsor this legislation, please contact Connie McClure in my Harrisburg office at 705-7170 or by e-mailing cmcclure@pahousegop.com.

Thank you for your consideration of this legislation.