

593--A

2011-2012 Regular Sessions

I N S E N A T E

(PREFILED)

January 5, 2011

Introduced by Sens. FUSCHILLO, DeFRANCISCO, HANNON, LARKIN, MAZIARZ, RANZENHOFER -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the penal law and the executive law, in relation to endangering the welfare of a child

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 260.10 of the penal law, as amended by chapter 447
2 of the laws of 2010, is amended to read as follows:
3 S 260.10 Endangering the welfare of a child IN THE SECOND DEGREE.
4 A person is guilty of endangering the welfare of a child IN THE SECOND
5 DEGREE when:
6 1. He or she knowingly acts in a manner likely to be injurious to the
7 physical, mental or moral welfare of a child less than seventeen years
8 old or directs or authorizes such child to engage in an occupation
9 involving a substantial risk of danger to his or her life or health; or
10 2. Being a parent, guardian or other person legally charged with the
11 care or custody of a child less than eighteen years old, he or she fails
12 or refuses to exercise reasonable diligence in the control of such child
13 to prevent him or her from becoming an "abused child," a "neglected
14 child," a "juvenile delinquent" or a "person in need of supervision," as
15 those terms are defined in articles ten, three and seven of the family
16 court act.
17 3. A person is not guilty of the provisions of this section when he or
18 she engages in the conduct described in subdivision one of section
19 260.00 of this article: (a) with the intent to wholly abandon the child
20 by relinquishing responsibility for and right to the care and custody of
21 such child; (b) with the intent that the child be safe from physical

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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injury and cared for in an appropriate manner; (c) the child is left with an appropriate person, or in a suitable location and the person who leaves the child promptly notifies an appropriate person of the child's location; and (d) the child is not more than thirty days old.

Endangering the welfare of a child IN THE SECOND DEGREE is a class A misdemeanor.

S 2. Section 260.11 of the penal law, as amended by chapter 89 of the laws of 1984, is renumbered section 260.12 and amended to read as follows:

S 260.12 Endangering the welfare of a child; corroboration.

A person shall not be convicted of endangering the welfare of a child IN THE FIRST OR SECOND DEGREE, or of an attempt to commit the same, upon the testimony of a victim who is incapable of consent because of mental defect or mental incapacity as to conduct that constitutes an offense or an attempt to commit an offense referred to in section 130.16, without additional evidence sufficient pursuant to section 130.16 to sustain a conviction of an offense referred to in section 130.16, or of an attempt to commit the same.

S 3. The penal law is amended by adding a new section 260.11 to read as follows:

S 260.11 ENDANGERING THE WELFARE OF A CHILD IN THE FIRST DEGREE.

A PERSON IS GUILTY OF ENDANGERING THE WELFARE OF A CHILD IN THE FIRST DEGREE WHEN, HAVING BEEN PREVIOUSLY CONVICTED OF A VIOLATION OF THIS SECTION OR OF SECTION 260.10 OF THIS ARTICLE, HE OR SHE COMMITS THE CRIME OF ENDANGERING THE WELFARE OF A CHILD IN THE SECOND DEGREE.

ENDANGERING THE WELFARE OF A CHILD IN THE FIRST DEGREE IS A CLASS E FELONY.

S 4. Section 260.15 of the penal law, as amended by chapter 447 of the laws of 2010, is amended to read as follows:

S 260.15 Endangering the welfare of a child; defense.

In any prosecution for endangering the welfare of a child, pursuant to section 260.10 OR 260.11 of this article, based upon an alleged failure or refusal to provide proper medical care or treatment to an ill child, it is an affirmative defense that the defendant (a) is a parent, guardian or other person legally charged with the care or custody of such child; and (b) is a member or adherent of an organized church or religious group the tenets of which prescribe prayer as the principal treatment for illness; and (c) treated or caused such ill child to be treated in accordance with such tenets.

S 5. Subdivision 7 of section 995 of the executive law, as amended by chapter 2 of the laws of 2006, paragraph (a) as separately amended by chapter 320 of the laws of 2006, paragraph (f) as amended by chapter 405 of the laws of 2010, is amended to read as follows:

7. "Designated offender" means a person convicted of and sentenced for any one or more of the following provisions of the penal law (a) sections 120.05, 120.10, and 120.11, relating to assault; sections 125.15 through 125.27 relating to homicide; sections 130.25, 130.30, 130.35, 130.40, 130.45, 130.50, 130.65, 130.67 and 130.70, relating to sex offenses; sections 205.10, 205.15, 205.17 and 205.19, relating to escape and other offenses, where the offender has been convicted within the previous five years of one of the other felonies specified in this subdivision; or sections 255.25, 255.26 and 255.27, relating to incest, a violent felony offense as defined in subdivision one of section 70.02 of the penal law, attempted murder in the first degree, as defined in section 110.00 and section 125.27 of the penal law, kidnapping in the first degree, as defined in section 135.25 of the penal law, arson in

1 the first degree, as defined in section 150.20 of the penal law,
2 burglary in the third degree, as defined in section 140.20 of the penal
3 law, attempted burglary in the third degree, as defined in section
4 110.00 and section 140.20 of the penal law, a felony defined in article
5 four hundred ninety of the penal law relating to terrorism or any
6 attempt to commit an offense defined in such article relating to terror-
7 ism which is a felony; or (b) criminal possession of a controlled
8 substance in the first degree, as defined in section 220.21 of the penal
9 law; criminal possession of a controlled substance in the second degree,
10 as defined in section 220.18 of the penal law; criminal sale of a
11 controlled substance, as defined in article [220] TWO HUNDRED TWENTY of
12 the penal law; or grand larceny in the fourth degree, as defined in
13 subdivision five of section 155.30 of the penal law; or (c) any misde-
14 meanor or felony defined as a sex offense or sexually violent offense
15 pursuant to paragraph (a), (b) or (c) of subdivision two or paragraph
16 (a) of subdivision three of section one hundred sixty-eight-a of the
17 correction law; or (d) any of the following felonies, or an attempt
18 thereof where such attempt is a felony offense:

19 aggravated assault upon a person less than eleven years old, as
20 defined in section 120.12 of the penal law; menacing in the first
21 degree, as defined in section 120.13 of the penal law; reckless endan-
22 germent in the first degree, as defined in section 120.25 of the penal
23 law; stalking in the second degree, as defined in section 120.55 of the
24 penal law; criminally negligent homicide, as defined in section 125.10
25 of the penal law; vehicular manslaughter in the second degree, as
26 defined in section 125.12 of the penal law; vehicular manslaughter in
27 the first degree, as defined in section 125.13 of the penal law;
28 persistent sexual abuse, as defined in section 130.53 of the penal law;
29 aggravated sexual abuse in the fourth degree, as defined in section
30 130.65-a of the penal law; female genital mutilation, as defined in
31 section 130.85 of the penal law; facilitating a sex offense with a
32 controlled substance, as defined in section 130.90 of the penal law;
33 unlawful imprisonment in the first degree, as defined in section 135.10
34 of the penal law; custodial interference in the first degree, as defined
35 in section 135.50 of the penal law; criminal trespass in the first
36 degree, as defined in section 140.17 of the penal law; criminal tamper-
37 ing in the first degree, as defined in section 145.20 of the penal law;
38 tampering with a consumer product in the first degree, as defined in
39 section 145.45 of the penal law; robbery in the third degree as defined
40 in section 160.05 of the penal law; identity theft in the second degree,
41 as defined in section 190.79 of the penal law; identity theft in the
42 first degree, as defined in section 190.80 of the penal law; promoting
43 prison contraband in the first degree, as defined in section 205.25 of
44 the penal law; tampering with a witness in the third degree, as defined
45 in section 215.11 of the penal law; tampering with a witness in the
46 second degree, as defined in section 215.12 of the penal law; tampering
47 with a witness in the first degree, as defined in section 215.13 of the
48 penal law; criminal contempt in the first degree, as defined in subdivi-
49 sions (b), (c) and (d) of section 215.51 of the penal law; aggravated
50 criminal contempt, as defined in section 215.52 of the penal law; bail
51 jumping in the second degree, as defined in section 215.56 of the penal
52 law; bail jumping in the first degree, as defined in section 215.57 of
53 the penal law; patronizing a prostitute in the second degree, as defined
54 in section 230.05 of the penal law; patronizing a prostitute in the
55 first degree, as defined in section 230.06 of the penal law; promoting
56 prostitution in the second degree, as defined in section 230.30 of the

1 penal law; promoting prostitution in the first degree, as defined in
2 section 230.32 of the penal law; compelling prostitution, as defined in
3 section 230.33 of the penal law; disseminating indecent materials to
4 minors in the second degree, as defined in section 235.21 of the penal
5 law; disseminating indecent materials to minors in the first degree, as
6 defined in section 235.22 of the penal law; riot in the first degree, as
7 defined in section 240.06 of the penal law; criminal anarchy, as defined
8 in section 240.15 of the penal law; aggravated harassment of an employee
9 by an inmate, as defined in section 240.32 of the penal law; unlawful
10 surveillance in the second degree, as defined in section 250.45 of the
11 penal law; unlawful surveillance in the first degree, as defined in
12 section 250.50 of the penal law; endangering the welfare of a vulnerable
13 elderly person, OR AN INCOMPETENT OR PHYSICALLY DISABLED PERSON in the
14 second degree, as defined in section 260.32 of the penal law; endanger-
15 ing the welfare of a vulnerable elderly person, OR AN INCOMPETENT OR
16 PHYSICALLY DISABLED PERSON in the first degree, as defined in section
17 260.34 of the penal law; use of a child in a sexual performance, as
18 defined in section 263.05 of the penal law; promoting an obscene sexual
19 performance by a child, as defined in section 263.10 of the penal law;
20 possessing an obscene sexual performance by a child, as defined in
21 section 263.11 of the penal law; promoting a sexual performance by a
22 child, as defined in section 263.15 of the penal law; possessing a sexu-
23 al performance by a child, as defined in section 263.16 of the penal
24 law; criminal possession of a weapon in the third degree, as defined in
25 section 265.02 of the penal law; criminal sale of a firearm in the third
26 degree, as defined in section 265.11 of the penal law; criminal sale of
27 a firearm to a minor, as defined in section 265.16 of the penal law;
28 unlawful wearing of a body vest, as defined in section 270.20 of the
29 penal law; hate crimes as defined in section 485.05 of the penal law;
30 and crime of terrorism, as defined in section 490.25 of the penal law;
31 or (e) a felony defined in the penal law or an attempt thereof where
32 such attempt is a felony; or (f) any of the following misdemeanors:
33 assault in the third degree as defined in section 120.00 of the penal
34 law; attempted aggravated assault upon a person less than eleven years
35 old, as defined in section 110.00 and section 120.12 of the penal law;
36 attempted menacing in the first degree, as defined in section 110.00 and
37 section 120.13 of the penal law; menacing in the second degree as
38 defined in section 120.14 of the penal law; menacing in the third degree
39 as defined in section 120.15 of the penal law; reckless endangerment in
40 the second degree as defined in section 120.20 of the penal law; stalk-
41 ing in the fourth degree as defined in section 120.45 of the penal law;
42 stalking in the third degree as defined in section 120.50 of the penal
43 law; attempted stalking in the second degree, as defined in section
44 110.00 and section 120.55 of the penal law; criminal obstruction of
45 breathing or blood circulation as defined in section 121.11 of the penal
46 law; forcible touching as defined in section 130.52 of the penal law
47 regardless of the age of the victim; sexual abuse in the third degree as
48 defined in section 130.55 of the penal law regardless of the age of the
49 victim; unlawful imprisonment in the second degree as defined in section
50 135.05 of the penal law regardless of the age of the victim; attempted
51 unlawful imprisonment in the first degree, as defined in section 110.00
52 and section 135.10 of the penal law regardless of the age of the victim;
53 criminal trespass in the second degree as defined in section 140.15 of
54 the penal law; possession of burglar's tools as defined in section
55 140.35 of the penal law; petit larceny as defined in section 155.25 of
56 the penal law; endangering the welfare of a child IN THE SECOND DEGREE

1 as defined in section 260.10 of the penal law; ENDANGERING THE WELFARE
2 OF A CHILD IN THE FIRST DEGREE AS DEFINED IN SECTION 260.11 OF THE PENAL
3 LAW; endangering the welfare of an incompetent or physically disabled
4 person as defined in section 260.25 of the penal law.

5 S 6. Paragraph c of subdivision 5 of section 120.40 of the penal law,
6 as added by chapter 635 of the laws of 1999, is amended to read as
7 follows:

8 c. assault in the third degree, as defined in section 120.00; menacing
9 in the first degree, as defined in section 120.13; menacing in the
10 second degree, as defined in section 120.14; coercion in the first
11 degree, as defined in section 135.65; coercion in the second degree, as
12 defined in section 135.60; aggravated harassment in the second degree,
13 as defined in section 240.30; harassment in the first degree, as defined
14 in section 240.25; menacing in the third degree, as defined in section
15 120.15; criminal mischief in the third degree, as defined in section
16 145.05; criminal mischief in the second degree, as defined in section
17 145.10; criminal mischief in the first degree, as defined in section
18 145.12; criminal tampering in the first degree, as defined in section
19 145.20; arson in the fourth degree, as defined in section 150.05; arson
20 in the third degree, as defined in section 150.10; criminal contempt in
21 the first degree, as defined in section 215.51; endangering the welfare
22 of a child IN THE SECOND DEGREE, as defined in section 260.10; ENDANGER-
23 ING THE WELFARE OF A CHILD IN THE FIRST DEGREE, AS DEFINED IN SECTION
24 260.11; or

25 S 7. This act shall take effect on the first of November next succeed-
26 ing the date on which it shall have become a law.