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2011-2012 Regular Sessions

I N S E N A T E

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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

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 ASSEM-
BLY, 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
22 injury and cared for in an appropriate manner; (c) the child is left
23 with an appropriate person, or in a suitable location and the person who

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

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1 leaves the child promptly notifies an appropriate person of the child's
2 location; and (d) the child is not more than thirty days old.

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

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

8 S 260.12 Endangering the welfare of a child; corroboration.

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

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

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

20 A PERSON IS GUILTY OF ENDANGERING THE WELFARE OF A CHILD IN THE FIRST
21 DEGREE WHEN:

22 1. HE OR SHE KNOWINGLY ACTS IN A MANNER LIKELY TO BE INJURIOUS TO A
23 CHILD LESS THAN SEVENTEEN YEARS OLD OR DIRECTS OR AUTHORIZES SUCH CHILD
24 TO ENGAGE IN AN OCCUPATION INVOLVING A SUBSTANTIAL RISK OF DANGER TO HIS
25 OR HER LIFE OR HEALTH AND AS A RESULT SUCH CHILD SUSTAINS SERIOUS PHYS-
26 ICAL INJURY; OR

27 2. HE OR SHE HAS BEEN PREVIOUSLY CONVICTED OF A VIOLATION OF THIS
28 SECTION OR OF SECTION 260.10 OF THIS ARTICLE AND COMMITS THE CRIME OF
29 ENDANGERING THE WELFARE OF A CHILD IN THE SECOND DEGREE.

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

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

34 S 260.15 Endangering the welfare of a child; defense.

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

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

48 7. "Designated offender" means a person convicted of and sentenced for
49 any one or more of the following provisions of the penal law (a)
50 sections 120.05, 120.10, and 120.11, relating to assault; sections
51 125.15 through 125.27 relating to homicide; sections 130.25, 130.30,
52 130.35, 130.40, 130.45, 130.50, 130.65, 130.67 and 130.70, relating to
53 sex offenses; sections 205.10, 205.15, 205.17 and 205.19, relating to
54 escape and other offenses, where the offender has been convicted within
55 the previous five years of one of the other felonies specified in this
56 subdivision; or sections 255.25, 255.26 and 255.27, relating to incest,

1 a violent felony offense as defined in subdivision one of section 70.02
2 of the penal law, attempted murder in the first degree, as defined in
3 section 110.00 and section 125.27 of the penal law, kidnapping in the
4 first degree, as defined in section 135.25 of the penal law, arson in
5 the first degree, as defined in section 150.20 of the penal law,
6 burglary in the third degree, as defined in section 140.20 of the penal
7 law, attempted burglary in the third degree, as defined in section
8 110.00 and section 140.20 of the penal law, a felony defined in article
9 four hundred ninety of the penal law relating to terrorism or any
10 attempt to commit an offense defined in such article relating to terror-
11 ism which is a felony; or (b) criminal possession of a controlled
12 substance in the first degree, as defined in section 220.21 of the penal
13 law; criminal possession of a controlled substance in the second degree,
14 as defined in section 220.18 of the penal law; criminal sale of a
15 controlled substance, as defined in article [220] TWO HUNDRED TWENTY of
16 the penal law; or grand larceny in the fourth degree, as defined in
17 subdivision five of section 155.30 of the penal law; or (c) any misde-
18 meanor or felony defined as a sex offense or sexually violent offense
19 pursuant to paragraph (a), (b) or (c) of subdivision two or paragraph
20 (a) of subdivision three of section one hundred sixty-eight-a of the
21 correction law; or (d) any of the following felonies, or an attempt
22 thereof where such attempt is a felony offense:

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

1 the penal law; patronizing a prostitute in the second degree, as defined
2 in section 230.05 of the penal law; patronizing a prostitute in the
3 first degree, as defined in section 230.06 of the penal law; promoting
4 prostitution in the second degree, as defined in section 230.30 of the
5 penal law; promoting prostitution in the first degree, as defined in
6 section 230.32 of the penal law; compelling prostitution, as defined in
7 section 230.33 of the penal law; disseminating indecent materials to
8 minors in the second degree, as defined in section 235.21 of the penal
9 law; disseminating indecent materials to minors in the first degree, as
10 defined in section 235.22 of the penal law; riot in the first degree, as
11 defined in section 240.06 of the penal law; criminal anarchy, as defined
12 in section 240.15 of the penal law; aggravated harassment of an employee
13 by an inmate, as defined in section 240.32 of the penal law; unlawful
14 surveillance in the second degree, as defined in section 250.45 of the
15 penal law; unlawful surveillance in the first degree, as defined in
16 section 250.50 of the penal law; endangering the welfare of a vulnerable
17 elderly person, OR AN INCOMPETENT OR PHYSICALLY DISABLED PERSON in the
18 second degree, as defined in section 260.32 of the penal law; endanger-
19 ing the welfare of a vulnerable elderly person, OR AN INCOMPETENT OR
20 PHYSICALLY DISABLED PERSON in the first degree, as defined in section
21 260.34 of the penal law; use of a child in a sexual performance, as
22 defined in section 263.05 of the penal law; promoting an obscene sexual
23 performance by a child, as defined in section 263.10 of the penal law;
24 possessing an obscene sexual performance by a child, as defined in
25 section 263.11 of the penal law; promoting a sexual performance by a
26 child, as defined in section 263.15 of the penal law; possessing a sexu-
27 al performance by a child, as defined in section 263.16 of the penal
28 law; criminal possession of a weapon in the third degree, as defined in
29 section 265.02 of the penal law; criminal sale of a firearm in the third
30 degree, as defined in section 265.11 of the penal law; criminal sale of
31 a firearm to a minor, as defined in section 265.16 of the penal law;
32 unlawful wearing of a body vest, as defined in section 270.20 of the
33 penal law; hate crimes as defined in section 485.05 of the penal law;
34 and crime of terrorism, as defined in section 490.25 of the penal law;
35 or (e) a felony defined in the penal law or an attempt thereof where
36 such attempt is a felony; or (f) any of the following misdemeanors:
37 assault in the third degree as defined in section 120.00 of the penal
38 law; attempted aggravated assault upon a person less than eleven years
39 old, as defined in section 110.00 and section 120.12 of the penal law;
40 attempted menacing in the first degree, as defined in section 110.00 and
41 section 120.13 of the penal law; menacing in the second degree as
42 defined in section 120.14 of the penal law; menacing in the third degree
43 as defined in section 120.15 of the penal law; reckless endangerment in
44 the second degree as defined in section 120.20 of the penal law; stalk-
45 ing in the fourth degree as defined in section 120.45 of the penal law;
46 stalking in the third degree as defined in section 120.50 of the penal
47 law; attempted stalking in the second degree, as defined in section
48 110.00 and section 120.55 of the penal law; criminal obstruction of
49 breathing or blood circulation as defined in section 121.11 of the penal
50 law; forcible touching as defined in section 130.52 of the penal law
51 regardless of the age of the victim; sexual abuse in the third degree as
52 defined in section 130.55 of the penal law regardless of the age of the
53 victim; unlawful imprisonment in the second degree as defined in section
54 135.05 of the penal law regardless of the age of the victim; attempted
55 unlawful imprisonment in the first degree, as defined in section 110.00
56 and section 135.10 of the penal law regardless of the age of the victim;

1 criminal trespass in the second degree as defined in section 140.15 of
2 the penal law; possession of burglar's tools as defined in section
3 140.35 of the penal law; petit larceny as defined in section 155.25 of
4 the penal law; endangering the welfare of a child IN THE SECOND DEGREE
5 as defined in section 260.10 of the penal law; ENDANGERING THE WELFARE
6 OF A CHILD IN THE FIRST DEGREE AS DEFINED IN SECTION 260.11 OF THE PENAL
7 LAW; endangering the welfare of an incompetent or physically disabled
8 person as defined in section 260.25 of the penal law.

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

12 c. assault in the third degree, as defined in section 120.00; menacing
13 in the first degree, as defined in section 120.13; menacing in the
14 second degree, as defined in section 120.14; coercion in the first
15 degree, as defined in section 135.65; coercion in the second degree, as
16 defined in section 135.60; aggravated harassment in the second degree,
17 as defined in section 240.30; harassment in the first degree, as defined
18 in section 240.25; menacing in the third degree, as defined in section
19 120.15; criminal mischief in the third degree, as defined in section
20 145.05; criminal mischief in the second degree, as defined in section
21 145.10, criminal mischief in the first degree, as defined in section
22 145.12; criminal tampering in the first degree, as defined in section
23 145.20; arson in the fourth degree, as defined in section 150.05; arson
24 in the third degree, as defined in section 150.10; criminal contempt in
25 the first degree, as defined in section 215.51; endangering the welfare
26 of a child IN THE SECOND DEGREE, as defined in section 260.10; ENDANGER-
27 ING THE WELFARE OF A CHILD IN THE FIRST DEGREE, AS DEFINED IN SECTION
28 260.11; or

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