

749

2013-2014 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2013

Introduced by Sens. FUSCHILLO, DeFRANCISCO, LARKIN, LAVALLE, MAZIARZ --
read twice and ordered printed, and when printed to be committed to
the Committee on Codes

AN ACT to amend the penal 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, HAVING BEEN PREVIOUSLY CONVICTED OF A VIOLATION OF THIS
22 SECTION OR OF SECTION 260.10 OF THIS ARTICLE, HE OR SHE COMMITS THE
23 CRIME OF ENDANGERING THE WELFARE OF A CHILD IN THE SECOND DEGREE.

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

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

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

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

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

41 c. assault in the third degree, as defined in section 120.00; menacing
42 in the first degree, as defined in section 120.13; menacing in the
43 second degree, as defined in section 120.14; coercion in the first
44 degree, as defined in section 135.65; coercion in the second degree, as
45 defined in section 135.60; aggravated harassment in the second degree,
46 as defined in section 240.30; harassment in the first degree, as defined
47 in section 240.25; menacing in the third degree, as defined in section
48 120.15; criminal mischief in the third degree, as defined in section
49 145.05; criminal mischief in the second degree, as defined in section
50 145.10; criminal mischief in the first degree, as defined in section
51 145.12; criminal tampering in the first degree, as defined in section
52 145.20; arson in the fourth degree, as defined in section 150.05; arson
53 in the third degree, as defined in section 150.10; criminal contempt in
54 the first degree, as defined in section 215.51; endangering the welfare
55 of a child IN THE SECOND DEGREE, as defined in section 260.10; ENDANGER-

1 ING THE WELFARE OF A CHILD IN THE FIRST DEGREE, AS DEFINED IN SECTION
2 260.11; or
3 S 6. This act shall take effect on the first of November next succeed-
4 ing the date on which it shall have become a law.