

845

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. HAWLEY, WALKER, KOLB, GIGLIO, BURLING, ALFANO,
ERRIGO -- Multi-Sponsored by -- M. of A. BACALLES, BARCLAY, BARRA,
CROUCH, McKEVITT, MILLER, THIELE -- read once and referred to the
Committee on Codes

AN ACT to amend the penal law, in relation to establishing the crimes of
assaulting a child in the first and second degree and the crime of
aggravated assault on a child; and to repeal subdivisions 8 and 9 of
section 120.05 of such law relating to assault in the second degree

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

1 Section 1. The penal law is amended by adding three new sections
2 120.26, 120.27 and 120.28 to read as follows:
3 S 120.26 ASSAULTING A CHILD IN THE FIRST DEGREE.
4 A PERSON IS GUILTY OF ASSAULTING A CHILD IN THE FIRST DEGREE WHEN, HE
5 OR SHE BEING EIGHTEEN YEARS OLD OR OLDER AND WITH INTENT TO CAUSE SERI-
6 OUS PHYSICAL INJURY TO A PERSON LESS THAN ELEVEN YEARS OLD, CAUSES SUCH
7 INJURY TO SUCH PERSON.
8 ASSAULTING A CHILD IN THE FIRST DEGREE IS A CLASS B FELONY.
9 S 120.27 ASSAULTING A CHILD IN THE SECOND DEGREE.
10 A PERSON IS GUILTY OF ASSAULTING A CHILD IN THE SECOND DEGREE WHEN:
11 1. BEING EIGHTEEN YEARS OLD OR OLDER AND WITH THE INTENT TO CAUSE
12 PHYSICAL INJURY TO A PERSON LESS THAN ELEVEN YEARS OLD, HE OR SHE RECK-
13 LESSLY CAUSES SERIOUS PHYSICAL INJURY TO SUCH PERSON; OR
14 2. BEING EIGHTEEN YEARS OLD OR OLDER AND WITH INTENT TO CAUSE PHYSICAL
15 INJURY TO A PERSON LESS THAN SEVEN YEARS OLD HE OR SHE CAUSES SUCH INJU-
16 RY TO SUCH PERSON.
17 ASSAULTING A CHILD IN THE SECOND DEGREE IS A CLASS C FELONY.
18 S 120.28 AGGRAVATED ASSAULT ON A CHILD.
19 A PERSON IS GUILTY OF AGGRAVATED ASSAULT ON A CHILD WHEN HE OR SHE
20 COMMITS THE OFFENSE OF ASSAULTING A CHILD IN THE FIRST DEGREE OR

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

LBD00811-01-9

1 ASSAULTING A CHILD IN THE SECOND DEGREE AND HAS PREVIOUSLY BEEN
2 CONVICTED OF EITHER SUCH OFFENSE WITHIN THE PRECEDING FIVE YEARS.

3 AGGRAVATED ASSAULT ON A CHILD IS A CLASS A-II FELONY.

4 S 2. Paragraphs (a) and (b) of subdivision 1 of section 70.02 of the
5 penal law, paragraph (a) as amended by chapter 320 of the laws of 2006
6 and paragraph (b) as separately amended by chapters 764 and 765 of the
7 laws of 2005, are amended to read as follows:

8 (a) Class B violent felony offenses: an attempt to commit the class
9 A-I felonies of murder in the second degree as defined in section
10 125.25, kidnapping in the first degree as defined in section 135.25, and
11 arson in the first degree as defined in section 150.20; manslaughter in
12 the first degree as defined in section 125.20, aggravated manslaughter
13 in the first degree as defined in section 125.22, rape in the first
14 degree as defined in section 130.35, criminal sexual act in the first
15 degree as defined in section 130.50, aggravated sexual abuse in the
16 first degree as defined in section 130.70, course of sexual conduct
17 against a child in the first degree as defined in section 130.75;
18 assault in the first degree as defined in section 120.10, kidnapping in
19 the second degree as defined in section 135.20, burglary in the first
20 degree as defined in section 140.30, arson in the second degree as
21 defined in section 150.15, robbery in the first degree as defined in
22 section 160.15, incest in the first degree as defined in section 255.27,
23 criminal possession of a weapon in the first degree as defined in
24 section 265.04, criminal use of a firearm in the first degree as defined
25 in section 265.09, criminal sale of a firearm in the first degree as
26 defined in section 265.13, aggravated assault upon a police officer or a
27 peace officer as defined in section 120.11, gang assault in the first
28 degree as defined in section 120.07, ASSAULTING A CHILD IN THE FIRST
29 DEGREE AS DEFINED IN SECTION 120.26, intimidating a victim or witness in
30 the first degree as defined in section 215.17, hindering prosecution of
31 terrorism in the first degree as defined in section 490.35, criminal
32 possession of a chemical weapon or biological weapon in the second
33 degree as defined in section 490.40, and criminal use of a chemical
34 weapon or biological weapon in the third degree as defined in section
35 490.47.

36 (b) Class C violent felony offenses: an attempt to commit any of the
37 class B felonies set forth in paragraph (a); aggravated criminally
38 negligent homicide as defined in section 125.11, aggravated manslaughter
39 in the second degree as defined in section 125.21, aggravated sexual
40 abuse in the second degree as defined in section 130.67, assault on a
41 peace officer, police officer, fireman or emergency medical services
42 professional as defined in section 120.08, gang assault in the second
43 degree as defined in section 120.06, ASSAULTING A CHILD IN THE SECOND
44 DEGREE AS DEFINED IN SECTION 120.27, burglary in the second degree as
45 defined in section 140.25, robbery in the second degree as defined in
46 section 160.10, criminal possession of a weapon in the second degree as
47 defined in section 265.03, criminal use of a firearm in the second
48 degree as defined in section 265.08, criminal sale of a firearm in the
49 second degree as defined in section 265.12, criminal sale of a firearm
50 with the aid of a minor as defined in section 265.14, soliciting or
51 providing support for an act of terrorism in the first degree as defined
52 in section 490.15, hindering prosecution of terrorism in the second
53 degree as defined in section 490.30, and criminal possession of a chemi-
54 cal weapon or biological weapon in the third degree as defined in
55 section 490.37.

1 S 3. Subdivisions 8 and 9 of section 120.05 of the penal law are
2 REPEALED.
3 S 4. This act shall take effect on the first of November next succeed-
4 ing the date on which it shall have become a law.