S T A T E O F N E W Y O R K

3778

2009-2010 Regular Sessions

I N A S S E M B L Y

January 28, 2009

Introduced by M. of A. LENTOL -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to providing that certain conduct shall not constitute abandonment of a child or endangering the welfare of a child; and to repeal section 260.03 of such law relating thereto

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

Section 1. Section 260.00 of the penal law is amended to read as follows:

S 260.00 Abandonment of a child.

1. A person is guilty of abandonment of a child when, being a parent, guardian or other person legally charged with the care or custody of a child less than fourteen years old, he OR SHE deserts such child in any place with intent to wholly abandon it.

2. PROVIDED HOWEVER, THAT A PERSON IS NOT GUILTY OF ABANDONMENT OF A CHILD WHEN HE OR SHE ENGAGES IN THE CONDUCT DESCRIBED IN SUBDIVISION ONE OF THIS SECTION: (A) WITH THE INTENT THAT THE CHILD BE SAFE FROM PHYSICAL INJURY AND CARED FOR IN AN APPROPRIATE MANNER; (B) 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 (C) THE CHILD IS NOT MORE THAN THIRTY DAYS OLD.

Abandonment of a child is a class E felony.

S 2. Section 260.10 of the penal law, subdivision 1 as amended by chapter 476 of the laws of 1990 and subdivision 2 as amended by chapter 920 of the laws of 1982, is amended to read as follows:

S 260.10 Endangering the welfare of a child.

A person is guilty of endangering the welfare of a child when:

1. He OR SHE knowingly acts in a manner likely to be injurious to the physical, mental or moral welfare of a child less than seventeen years

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

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old or directs or authorizes such child to engage in an occupation involving a substantial risk of danger to his OR HER life or health; or

2. Being a parent, guardian or other person legally charged with the care or custody of a child less than eighteen years old, he OR SHE fails or refuses to exercise reasonable diligence in the control of such child to prevent him from becoming an "abused child," a "neglected child," a "juvenile delinquent" or a "person in need of supervision," as those terms are defined in articles ten, three and seven of the family court act.

3. PROVIDED HOWEVER, THAT A PERSON IS NOT GUILTY OF ENDANGERING THE WELFARE OF A CHILD WHEN HE OR SHE ENGAGES IN THE CONDUCT DESCRIBED IN SUBDIVISION ONE OF SECTION 260.00 OF THIS ARTICLE: (A) WITH THE INTENT THAT THE CHILD BE SAFE FROM PHYSICAL INJURY AND CARED FOR IN AN APPROPRIATE MANNER; (B) 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 (C) THE CHILD IS NOT MORE THAN THIRTY DAYS OLD.

Endangering the welfare of a child is a class A misdemeanor.

S 3. Section 260.15 of the penal law, as amended by chapter 156 of the laws of 2000, 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[:

1.], 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)] 1. is a parent, guardian or other person legally charged with the care or custody of such child; and [(b)] 2. 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)] 3. treated or caused such ill child to be treated in accordance with such tenets[; or

2. based upon an alleged desertion of a child not more than five days old, it is an affirmative defense that, with the intent that the child be safe from physical injury and cared for in an appropriate manner, the defendant left the child with an appropriate person or in a suitable location and promptly notified an appropriate person of the child's location].

S 4. Section 260.03 of the penal law is REPEALED.

S 5. This act shall take effect immediately.