

5148

2009-2010 Regular Sessions

I N A S S E M B L Y

February 10, 2009

Introduced by M. of A. TITONE, TOBACCO -- Multi-Sponsored by -- M. of A.
HYER-SPENCER -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to the crime of endangering
the welfare of a child and to create a new crime of endangering the
welfare of a child in the first degree

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, subdivision 1 as amended
2 by chapter 476 of the laws of 1990 and subdivision 2 as amended by chap-
3 ter 920 of the laws of 1982, is amended to read as follows:
4 S 260.10 Endangering the welfare of a child IN THE SECOND DEGREE.
5 A person is guilty of endangering the welfare of a child IN THE SECOND
6 DEGREE when:
7 1. He knowingly acts in a manner likely to be injurious to the phys-
8 ical, mental or moral welfare of a child less than seventeen years old
9 or directs or authorizes such child to engage in an occupation involving
10 a substantial risk of danger to his life or health; or
11 2. Being a parent, guardian or other person legally charged with the
12 care or custody of a child less than eighteen years old, he fails or
13 refuses to exercise reasonable diligence in the control of such child to
14 prevent him from becoming an "abused child," a "neglected child," a
15 "juvenile delinquent" or a "person in need of supervision," as those
16 terms are defined in articles ten, three and seven of the family court
17 act.
18 Endangering the welfare of a child IN THE SECOND DEGREE is a class A
19 misdemeanor.
20 S 2. Section 260.11 of the penal law is renumbered section 260.12.
21 S 3. The penal law is amended by adding a new section 260.11 to read
22 as follows:
23 S 260.11 ENDANGERING THE WELFARE OF A CHILD IN THE FIRST DEGREE.

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

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1 A PERSON IS GUILTY OF ENDANGERING THE WELFARE OF A CHILD IN THE FIRST
2 DEGREE WHEN:

3 1. HE KNOWINGLY ACTS IN A MANNER WHICH CREATES A RISK OF EITHER SERI-
4 OUS PHYSICAL INJURY OR PROLONGED IMPAIRMENT OF THE MENTAL OR EMOTIONAL
5 CONDITION OF A CHILD LESS THAN SEVENTEEN YEARS OLD; OR

6 2. HE COMMITS THE CRIME OF ENDANGERING THE WELFARE OF A CHILD IN THE
7 SECOND DEGREE AND WHEN:

8 (A) THE CHILD IS LESS THAN ELEVEN YEARS OLD; OR

9 (B) THE CHILD SUFFERED PHYSICAL INJURY; OR

10 (C) HE HAS PREVIOUSLY BEEN CONVICTED OF ANY OF THE FOLLOWING CRIMES:
11 ENDANGERING THE WELFARE OF A CHILD IN THE SECOND DEGREE AS DEFINED IN
12 SECTION 260.10; ENDANGERING THE WELFARE OF A CHILD IN THE FIRST DEGREE
13 AS DEFINED IN THIS SECTION; ABANDONMENT OF A CHILD AS DEFINED IN SECTION
14 260.00; ASSAULT IN THE SECOND DEGREE AS DEFINED IN SUBDIVISION EIGHT OR
15 NINE OF SECTION 120.05; AGGRAVATED ASSAULT UPON A PERSON LESS THAN ELEV-
16 EN YEARS OLD AS DEFINED IN SECTION 120.12; MANSLAUGHTER IN THE FIRST
17 DEGREE AS DEFINED IN SUBDIVISION FOUR OF SECTION 125.20; MURDER IN THE
18 SECOND DEGREE AS DEFINED IN SUBDIVISION FOUR OF SECTION 125.25; RAPE IN
19 THE THIRD DEGREE AS DEFINED IN SUBDIVISION TWO OF SECTION 130.25; RAPE
20 IN THE SECOND DEGREE AS DEFINED IN SECTION 130.30; RAPE IN THE FIRST
21 DEGREE AS DEFINED IN SUBDIVISION THREE OF SECTION 130.35; CRIMINAL SEXU-
22 AL ACT IN THE THIRD DEGREE AS DEFINED IN SUBDIVISION TWO OF SECTION
23 130.40; CRIMINAL SEXUAL ACT IN THE SECOND DEGREE AS DEFINED IN SECTION
24 130.45; CRIMINAL SEXUAL ACT IN THE FIRST DEGREE AS DEFINED IN SUBDIVI-
25 SION THREE OF SECTION 130.50; SEXUAL ABUSE IN THE SECOND DEGREE AS
26 DEFINED IN SUBDIVISION TWO OF SECTION 130.60; SEXUAL ABUSE IN THE FIRST
27 DEGREE AS DEFINED IN SUBDIVISION THREE OF SECTION 130.65; AGGRAVATED
28 SEXUAL ABUSE IN THE THIRD DEGREE AS DEFINED IN PARAGRAPH (C) OF SUBDIVI-
29 SION ONE OF SECTION 130.66; AGGRAVATED SEXUAL ABUSE IN THE SECOND DEGREE
30 AS DEFINED IN PARAGRAPH (C) OF SUBDIVISION ONE OF SECTION 130.67; AGGRA-
31 VATED SEXUAL ABUSE IN THE FIRST DEGREE AS DEFINED IN PARAGRAPH (C) OF
32 SUBDIVISION ONE OF SECTION 130.70; COURSE OF SEXUAL CONDUCT AGAINST A
33 CHILD IN THE FIRST DEGREE AS DEFINED IN SECTION 130.75; COURSE OF SEXUAL
34 CONDUCT AGAINST A CHILD IN THE SECOND DEGREE AS DEFINED IN SECTION
35 130.80; DISSEMINATING INDECENT MATERIAL TO MINORS IN THE SECOND DEGREE
36 AS DEFINED IN SECTION 235.21; DISSEMINATING INDECENT MATERIAL TO MINORS
37 IN THE FIRST DEGREE AS DEFINED IN SECTION 235.22; USE OF A CHILD IN A
38 SEXUAL PERFORMANCE AS DEFINED IN SECTION 263.05; PROMOTING AN OBSCENE
39 SEXUAL PERFORMANCE BY A CHILD AS DEFINED IN SECTION 263.10; POSSESSING
40 AN OBSCENE SEXUAL PERFORMANCE BY A CHILD AS DEFINED IN SECTION 263.11;
41 PROMOTING A SEXUAL PERFORMANCE BY A CHILD AS DEFINED IN SECTION 263.15;
42 POSSESSING A SEXUAL PERFORMANCE BY A CHILD AS DEFINED IN SECTION 263.16;
43 OR A SIMILAR OFFENSE AGAINST A CHILD IN ANY OTHER JURISDICTION.

44 ENDANGERING THE WELFARE OF A CHILD IN THE FIRST DEGREE IS A CLASS D
45 FELONY.

46 S 4. Paragraph (c) of subdivision 1 of section 70.02 of the penal law,
47 as amended by chapter 7 of the laws of 2007, is amended to read as
48 follows:

49 (c) Class D violent felony offenses: an attempt to commit any of the
50 class C felonies set forth in paragraph (b); reckless assault of a child
51 as defined in section 120.02, assault in the second degree as defined in
52 section 120.05, menacing a police officer or peace officer as defined in
53 section 120.18, stalking in the first degree, as defined in subdivision
54 one of section 120.60, rape in the second degree as defined in section
55 130.30, criminal sexual act in the second degree as defined in section
56 130.45, sexual abuse in the first degree as defined in section 130.65,

1 course of sexual conduct against a child in the second degree as defined
2 in section 130.80, aggravated sexual abuse in the third degree as
3 defined in section 130.66, ENDANGERING THE WELFARE OF A CHILD IN THE
4 FIRST DEGREE AS DEFINED IN SECTION 260.11, facilitating a sex offense
5 with a controlled substance as defined in section 130.90, criminal
6 possession of a weapon in the third degree as defined in subdivision
7 five, six, seven or eight of section 265.02, criminal sale of a firearm
8 in the third degree as defined in section 265.11, intimidating a victim
9 or witness in the second degree as defined in section 215.16, soliciting
10 or providing support for an act of terrorism in the second degree as
11 defined in section 490.10, and making a terroristic threat as defined in
12 section 490.20, falsely reporting an incident in the first degree as
13 defined in section 240.60, placing a false bomb or hazardous substance
14 in the first degree as defined in section 240.62, placing a false bomb
15 or hazardous substance in a sports stadium or arena, mass transportation
16 facility or enclosed shopping mall as defined in section 240.63, and
17 aggravated unpermitted use of indoor pyrotechnics in the first degree as
18 defined in section 405.18.

19 S 5. Section 260.12 of the penal law, as amended by chapter 89 of the
20 laws of 1984 and as renumbered by section two of this act, is amended to
21 read as follows:

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

23 A person shall not be convicted of endangering the welfare of a child
24 AS DEFINED IN SECTION 260.10 OR 260.11 OF THIS ARTICLE, or of an attempt
25 to commit the same, upon the testimony of a victim who is incapable of
26 consent because of mental defect or mental incapacity as to conduct that
27 constitutes an offense or an attempt to commit an offense referred to in
28 section 130.16, without additional evidence sufficient pursuant to
29 section 130.16 to sustain a conviction of an offense referred to in
30 section 130.16, or of an attempt to commit the same.

31 S 6. The opening paragraph of section 260.15 of the penal law, as
32 amended by chapter 156 of the laws of 2000, is amended to read as
33 follows:

34 In any prosecution for endangering the welfare of a child, pursuant to
35 section 260.10 OR 260.11 OF THIS ARTICLE:

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