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I N S E N A T E

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Introduced by Sens. FUSCHILLO, ALESI, DeFRANCISCO, C. JOHNSON, O. JOHNSON, LARKIN, MAZIARZ, ONORATO, PADAVAN, VOLKER -- 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 ASSEMBLY, 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, subdivision 2 as amended by chapter
3 920 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 OR SHE knowingly acts in a manner likely to be injurious to the
8 physical, mental or moral welfare of a child less than seventeen years
9 old or directs or authorizes such child to engage in an occupation
10 involving 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 OR SHE fails
13 or refuses to exercise reasonable diligence in the control of such child
14 to 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, as amended by chapter 89 of the
21 laws of 1984, is renumbered section 260.12 and amended to read as
22 follows:
23 S 260.12 Endangering the welfare of a child; corroboration.
24 A person shall not be convicted of endangering the welfare of a child
25 IN THE FIRST OR SECOND DEGREE, or of an attempt to commit the same, upon
26 the testimony of a victim who is incapable of consent because of mental

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

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defect or mental incapacity as to conduct that constitutes an offense or an attempt to commit an offense referred to in section 130.16, without additional evidence sufficient pursuant to section 130.16 to sustain a conviction of an offense referred to in section 130.16, or of an attempt to commit the same.

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

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

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

1. HE OR SHE KNOWINGLY ACTS IN A MANNER LIKELY TO BE INJURIOUS TO A CHILD LESS THAN SEVENTEEN YEARS 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 AND AS A RESULT SUCH CHILD SUSTAINS SERIOUS PHYSICAL INJURY; OR

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

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

S 4. 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 OR 260.11:

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) is a parent, guardian or other person legally charged with the care or custody of such child; and (b) 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) 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 5. Subdivision 7 of section 995 of the executive law, as amended by chapter 2 of the laws of 2006, paragraph (a) as separately amended by chapter 320 of the laws of 2006, is amended to read as follows:

7. "Designated offender" means a person convicted of and sentenced for any one or more of the following provisions of the penal law (a) sections 120.05, 120.10, and 120.11, relating to assault; sections 125.15 through 125.27 relating to homicide; sections 130.25, 130.30, 130.35, 130.40, 130.45, 130.50, 130.65, 130.67 and 130.70, relating to sex offenses; sections 205.10, 205.15, 205.17 and 205.19, relating to escape and other offenses, where the offender has been convicted within the previous five years of one of the other felonies specified in this subdivision; or sections 255.25, 255.26 and 255.27, relating to incest, a violent felony offense as defined in subdivision one of section 70.02 of the penal law, attempted murder in the first degree, as defined in section 110.00 and section 125.27 of the penal law, kidnapping in the first degree, as defined in section 135.25 of the penal law, arson in the first degree, as defined in section 150.20 of the penal law, burglary in the third degree, as defined in section 140.20 of the penal

1 law, attempted burglary in the third degree, as defined in section
2 110.00 and section 140.20 of the penal law, a felony defined in article
3 four hundred ninety of the penal law relating to terrorism or any
4 attempt to commit an offense defined in such article relating to terror-
5 ism which is a felony; or (b) criminal possession of a controlled
6 substance in the first degree, as defined in section 220.21 of the penal
7 law; criminal possession of a controlled substance in the second degree,
8 as defined in section 220.18 of the penal law; criminal sale of a
9 controlled substance, as defined in article 220 of the penal law; or
10 grand larceny in the fourth degree, as defined in subdivision five of
11 section 155.30 of the penal law; or (c) any misdemeanor or felony
12 defined as a sex offense or sexually violent offense pursuant to para-
13 graph (a), (b) or (c) of subdivision two or paragraph (a) of subdivision
14 three of section one hundred sixty-eight-a of the correction law; or (d)
15 any of the following felonies, or an attempt thereof where such attempt
16 is a felony offense:

17 aggravated assault upon a person less than eleven years old, as
18 defined in section 120.12 of the penal law; menacing in the first
19 degree, as defined in section 120.13 of the penal law; reckless endan-
20 germent in the first degree, as defined in section 120.25 of the penal
21 law; stalking in the second degree, as defined in section 120.55 of the
22 penal law; criminally negligent homicide, as defined in section 125.10
23 of the penal law; vehicular manslaughter in the second degree, as
24 defined in section 125.12 of the penal law; vehicular manslaughter in
25 the first degree, as defined in section 125.13 of the penal law;
26 persistent sexual abuse, as defined in section 130.53 of the penal law;
27 aggravated sexual abuse in the fourth degree, as defined in section
28 130.65-a of the penal law; female genital mutilation, as defined in
29 section 130.85 of the penal law; facilitating a sex offense with a
30 controlled substance, as defined in section 130.90 of the penal law;
31 unlawful imprisonment in the first degree, as defined in section 135.10
32 of the penal law; custodial interference in the first degree, as defined
33 in section 135.50 of the penal law; criminal trespass in the first
34 degree, as defined in section 140.17 of the penal law; criminal tamper-
35 ing in the first degree, as defined in section 145.20 of the penal law;
36 tampering with a consumer product in the first degree, as defined in
37 section 145.45 of the penal law; robbery in the third degree as defined
38 in section 160.05 of the penal law; identity theft in the second degree,
39 as defined in section 190.79 of the penal law; identity theft in the
40 first degree, as defined in section 190.80 of the penal law; promoting
41 prison contraband in the first degree, as defined in section 205.25 of
42 the penal law; tampering with a witness in the third degree, as defined
43 in section 215.11 of the penal law; tampering with a witness in the
44 second degree, as defined in section 215.12 of the penal law; tampering
45 with a witness in the first degree, as defined in section 215.13 of the
46 penal law; criminal contempt in the first degree, as defined in subdivi-
47 sions (b), (c) and (d) of section 215.51 of the penal law; aggravated
48 criminal contempt, as defined in section 215.52 of the penal law; bail
49 jumping in the second degree, as defined in section 215.56 of the penal
50 law; bail jumping in the first degree, as defined in section 215.57 of
51 the penal law; patronizing a prostitute in the second degree, as defined
52 in section 230.05 of the penal law; patronizing a prostitute in the
53 first degree, as defined in section 230.06 of the penal law; promoting
54 prostitution in the second degree, as defined in section 230.30 of the
55 penal law; promoting prostitution in the first degree, as defined in
56 section 230.32 of the penal law; compelling prostitution, as defined in

1 section 230.33 of the penal law; disseminating indecent materials to
2 minors in the second degree, as defined in section 235.21 of the penal
3 law; disseminating indecent materials to minors in the first degree, as
4 defined in section 235.22 of the penal law; riot in the first degree, as
5 defined in section 240.06 of the penal law; criminal anarchy, as defined
6 in section 240.15 of the penal law; aggravated harassment of an employee
7 by an inmate, as defined in section 240.32 of the penal law; unlawful
8 surveillance in the second degree, as defined in section 250.45 of the
9 penal law; unlawful surveillance in the first degree, as defined in
10 section 250.50 of the penal law; endangering the welfare of a vulnerable
11 elderly person in the second degree, as defined in section 260.32 of the
12 penal law; endangering the welfare of a vulnerable elderly person in the
13 first degree, as defined in section 260.34 of the penal law; use of a
14 child in a sexual performance, as defined in section 263.05 of the penal
15 law; promoting an obscene sexual performance by a child, as defined in
16 section 263.10 of the penal law; possessing an obscene sexual perform-
17 ance by a child, as defined in section 263.11 of the penal law; promot-
18 ing a sexual performance by a child, as defined in section 263.15 of the
19 penal law; possessing a sexual performance by a child, as defined in
20 section 263.16 of the penal law; criminal possession of a weapon in the
21 third degree, as defined in section 265.02 of the penal law; criminal
22 sale of a firearm in the third degree, as defined in section 265.11 of
23 the penal law; criminal sale of a firearm to a minor, as defined in
24 section 265.16 of the penal law; unlawful wearing of a body vest, as
25 defined in section 270.20 of the penal law; hate crimes as defined in
26 section 485.05 of the penal law; and crime of terrorism, as defined in
27 section 490.25 of the penal law; or (e) a felony defined in the penal
28 law or an attempt thereof where such attempt is a felony; or (f) any of
29 the following misdemeanors: assault in the third degree as defined in
30 section 120.00 of the penal law; attempted aggravated assault upon a
31 person less than eleven years old, as defined in section 110.00 and
32 section 120.12 of the penal law; attempted menacing in the first degree,
33 as defined in section 110.00 and section 120.13 of the penal law; menac-
34 ing in the second degree as defined in section 120.14 of the penal law;
35 menacing in the third degree as defined in section 120.15 of the penal
36 law; reckless endangerment in the second degree as defined in section
37 120.20 of the penal law; stalking in the fourth degree as defined in
38 section 120.45 of the penal law; stalking in the third degree as defined
39 in section 120.50 of the penal law; attempted stalking in the second
40 degree, as defined in section 110.00 and section 120.55 of the penal
41 law; forcible touching as defined in section 130.52 of the penal law
42 regardless of the age of the victim; sexual abuse in the third degree as
43 defined in section 130.55 of the penal law regardless of the age of the
44 victim; unlawful imprisonment in the second degree as defined in section
45 135.05 of the penal law regardless of the age of the victim; attempted
46 unlawful imprisonment in the first degree, as defined in section 110.00
47 and section 135.10 of the penal law regardless of the age of the victim;
48 criminal trespass in the second degree as defined in section 140.15 of
49 the penal law; possession of burglar's tools as defined in section
50 140.35 of the penal law; petit larceny as defined in section 155.25 of
51 the penal law; endangering the welfare of a child IN THE SECOND DEGREE
52 as defined in section 260.10 of the penal law; ENDANGERING THE WELFARE
53 OF A CHILD IN THE FIRST DEGREE AS DEFINED IN SECTION 260.11 OF THE PENAL
54 LAW; endangering the welfare of an incompetent or physically disabled
55 person as defined in section 260.25 OF THE PENAL LAW.

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

4 c. assault in the third degree, as defined in section 120.00; menacing
5 in the first degree, as defined in section 120.13; menacing in the
6 second degree, as defined in section 120.14; coercion in the first
7 degree, as defined in section 135.65; coercion in the second degree, as
8 defined in section 135.60; aggravated harassment in the second degree,
9 as defined in section 240.30; harassment in the first degree, as defined
10 in section 240.25; menacing in the third degree, as defined in section
11 120.15; criminal mischief in the third degree, as defined in section
12 145.05; criminal mischief in the second degree, as defined in section
13 145.10, criminal mischief in the first degree, as defined in section
14 145.12; criminal tampering in the first degree, as defined in section
15 145.20; arson in the fourth degree, as defined in section 150.05; arson
16 in the third degree, as defined in section 150.10; criminal contempt in
17 the first degree, as defined in section 215.51; endangering the welfare
18 of a child IN THE SECOND DEGREE, as defined in section 260.10; ENDANGER-
19 ING THE WELFARE OF A CHILD IN THE FIRST DEGREE, AS DEFINED IN SECTION
20 260.11; or

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