

1133

2011-2012 Regular Sessions

I N   A S S E M B L Y

(PREFILED)

January 5, 2011

---

Introduced by M. of A. HAWLEY, KOLB, GIGLIO, BURLING, McDONOUGH, TOBACCO, FINCH -- Multi-Sponsored by -- M. of A. BARCLAY, CROUCH, DUPREY, McKEVITT, J. 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 ASSEMBLY, 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  
16    INJURY 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.

LBD03343-01-1

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 amended by chapter 405 of the laws of 2010, are  
7 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) of this subdivision; aggra-  
38 vated criminally negligent homicide as defined in section 125.11, aggra-  
39 vated manslaughter in the second degree as defined in section 125.21,  
40 aggravated sexual abuse in the second degree as defined in section  
41 130.67, assault on a peace officer, police officer, fireman or emergency  
42 medical services professional as defined in section 120.08, gang assault  
43 in the second degree as defined in section 120.06, ASSAULTING A CHILD IN  
44 THE SECOND DEGREE AS DEFINED IN SECTION 120.27, strangulation in the  
45 first degree as defined in section 121.13, burglary in the second degree  
46 as defined in section 140.25, robbery in the second degree as defined in  
47 section 160.10, criminal possession of a weapon in the second degree as  
48 defined in section 265.03, criminal use of a firearm in the second  
49 degree as defined in section 265.08, criminal sale of a firearm in the  
50 second degree as defined in section 265.12, criminal sale of a firearm  
51 with the aid of a minor as defined in section 265.14, soliciting or  
52 providing support for an act of terrorism in the first degree as defined  
53 in section 490.15, hindering prosecution of terrorism in the second  
54 degree as defined in section 490.30, and criminal possession of a chemi-  
55 cal weapon or biological weapon in the third degree as defined in  
56 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.