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

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:

Section 1. The penal law is amended by adding three new sections 120.26, 120.27 and 120.28 to read as follows:

S 120.26 ASSAULTING A CHILD IN THE FIRST DEGREE.

A PERSON IS GUILTY OF ASSAULTING A CHILD IN THE FIRST DEGREE WHEN, HE OR SHE BEING EIGHTEEN YEARS OLD OR OLDER AND WITH INTENT TO CAUSE SERIOUS PHYSICAL INJURY TO A PERSON LESS THAN ELEVEN YEARS OLD, CAUSES SUCH INJURY TO SUCH PERSON.

ASSAULTING A CHILD IN THE FIRST DEGREE IS A CLASS B FELONY.

S 120.27 ASSAULTING A CHILD IN THE SECOND DEGREE.

A PERSON IS GUILTY OF ASSAULTING A CHILD IN THE SECOND DEGREE WHEN:

1. BEING EIGHTEEN YEARS OLD OR OLDER AND WITH THE INTENT TO CAUSE PHYSICAL INJURY TO A PERSON LESS THAN ELEVEN YEARS OLD, HE OR SHE RECKLESSLY CAUSES SERIOUS PHYSICAL INJURY TO SUCH PERSON; OR

2. BEING EIGHTEEN YEARS OLD OR OLDER AND WITH INTENT TO CAUSE PHYSICAL INJURY TO A PERSON LESS THAN SEVEN YEARS OLD, HE OR SHE CAUSES SUCH INJURY TO SUCH PERSON.

ASSAULTING A CHILD IN THE SECOND DEGREE IS A CLASS C FELONY.

S 120.28 AGGRAVATED ASSAULT ON A CHILD.

A PERSON IS GUILTY OF AGGRAVATED ASSAULT ON A CHILD WHEN HE OR SHE 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.

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

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

S 2. Paragraphs (a) and (b) of subdivision 1 of section 70.02 of the penal law, paragraph (a) as amended by chapter 320 of the laws of 2006 and paragraph (b) as amended by chapter 405 of the laws of 2010, are amended to read as follows:

(a) Class B violent felony offenses: an attempt to commit the class A-I felonies of murder in the second degree as defined in section 125.25, kidnapping in the first degree as defined in section 135.25, and arson in the first degree as defined in section 150.20; manslaughter in the first degree as defined in section 125.20, aggravated manslaughter in the first degree as defined in section 125.22, rape in the first degree as defined in section 130.35, criminal sexual act in the first degree as defined in section 130.50, aggravated sexual abuse in the first degree as defined in section 130.70, course of sexual conduct against a child in the first degree as defined in section 130.75; assault in the first degree as defined in section 120.10, kidnapping in the second degree as defined in section 135.20, burglary in the first degree as defined in section 140.30, arson in the second degree as defined in section 150.15, robbery in the first degree as defined in section 160.15, incest in the first degree as defined in section 255.27, criminal possession of a weapon in the first degree as defined in section 265.04, criminal use of a firearm in the first degree as defined in section 265.09, criminal sale of a firearm in the first degree as defined in section 265.13, aggravated assault upon a police officer or a peace officer as defined in section 120.11, gang assault in the first degree as defined in section 120.07, ASSAULTING A CHILD IN THE FIRST DEGREE AS DEFINED IN SECTION 120.26, intimidating a victim or witness in the first degree as defined in section 215.17, hindering prosecution of terrorism in the first degree as defined in section 490.35, criminal possession of a chemical weapon or biological weapon in the second degree as defined in section 490.40, and criminal use of a chemical weapon or biological weapon in the third degree as defined in section 490.47.

(b) Class C violent felony offenses: an attempt to commit any of the class B felonies set forth in paragraph (a) of this subdivision; aggravated criminally negligent homicide as defined in section 125.11, aggravated manslaughter in the second degree as defined in section 125.21, aggravated sexual abuse in the second degree as defined in section 130.67, assault on a peace officer, police officer, fireman or emergency medical services professional as defined in section 120.08, gang assault in the second degree as defined in section 120.06, ASSAULTING A CHILD IN THE SECOND DEGREE AS DEFINED IN SECTION 120.27, strangulation in the first degree as defined in section 121.13, burglary in the second degree as defined in section 140.25, robbery in the second degree as defined in section 160.10, criminal possession of a weapon in the second degree as defined in section 265.03, criminal use of a firearm in the second degree as defined in section 265.08, criminal sale of a firearm in the second degree as defined in section 265.12, criminal sale of a firearm with the aid of a minor as defined in section 265.14, soliciting or providing support for an act of terrorism in the first degree as defined in section 490.15, hindering prosecution of terrorism in the second degree as defined in section 490.30, and criminal possession of a chemical weapon or biological weapon in the third degree as defined in section 490.37.

S 3. Subdivisions 8 and 9 of section 120.05 of the penal law are REPEALED.

S 4. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.