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

2393

2011-2012 Regular Sessions

I N A S S E M B L Y

January 18, 2011

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

AN ACT to amend the criminal procedure law, the penal law, the social services law, and the civil practice law and rules, in relation to enacting the Child Sexual Abuse Reform Act; providing for the elimination and extending of certain statutes of limitations related to sexual offenses against children, the expansion of reporting requirements in cases of such offenses, and the expansion of the central child abuse and maltreatment register; and providing for the repeal of certain provisions upon expiration thereof

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

Section 1. This act shall be known and may be cited as the "Child Sexual Abuse Reform Act".

S 2. Subdivision 3 of section 30.10 of the criminal procedure law is amended by adding a new paragraph (h) to read as follows:

(H) A PROSECUTION FOR THE OFFENSE OF HINDERING PROSECUTION IN THE THIRD DEGREE AS DEFINED IN SECTION 205.55 OF THE PENAL LAW, HINDERING PROSECUTION IN THE SECOND DEGREE AS DEFINED IN SECTION 205.60 OF THE PENAL LAW, AND HINDERING PROSECUTION IN THE FIRST DEGREE AS DEFINED IN SECTION 205.65 OF THE PENAL LAW, WHERE SUCH OFFENSE INVOLVES A SEXUAL OFFENSE AS DEFINED IN ARTICLE ONE HUNDRED THIRTY OF THE PENAL LAW WHICH IS COMMITTED AGAINST A CHILD LESS THAN EIGHTEEN YEARS OF AGE, INCEST AS DEFINED IN ARTICLE TWO HUNDRED FIFTY-FIVE OF THE PENAL LAW WHICH IS COMMITTED AGAINST A CHILD LESS THAN EIGHTEEN YEARS OF AGE, OR USE OF A CHILD IN A SEXUAL PERFORMANCE AS DEFINED IN SECTION 263.05 OF THE PENAL LAW, MAY BE COMMENCED AT ANY TIME.

S 3. Subdivision 7 of section 10.00 of the penal law, as amended by chapter 791 of the laws of 1967, is amended to read as follows:

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

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7. "Person" means a human being, and where appropriate, a public or private corporation, an unincorporated association, a partnership, A NONPROFIT CORPORATION, a government or a governmental instrumentality.

S 4. Section 20.00 of the penal law is amended to read as follows:

S 20.00 Criminal liability for conduct of another.

When one person engages in conduct which constitutes an offense, another person is criminally liable for such conduct when, acting with the mental culpability required for the commission thereof, he OR SHE solicits, requests, commands, importunes, or intentionally aids such person to engage in such conduct OR, FOR AN OFFENSE LISTED IN ARTICLE ONE HUNDRED THIRTY OF THIS CHAPTER WHICH IS COMMITTED AGAINST A CHILD LESS THAN EIGHTEEN YEARS OF AGE, AFTER THE COMMISSION OF THE OFFENSE HE OR SHE CONCEALS OR HINDERS THE DISCOVERY OF THE OFFENSE OR EVIDENCE OF THE OFFENSE.

S 5. Paragraph (h) of subdivision 3 of section 130.05 of the penal law, as amended by chapter 264 of the laws of 2003, is amended to read as follows:

(h) a client or patient and the actor is a health care provider [or], mental health care provider OR ANYONE REPRESENTING HIMSELF OR HERSELF AS A MEMBER OF THE CLERGY WHO PROVIDES HEALTH CARE OR MENTAL HEALTH CARE SERVICES charged with rape in the third degree as defined in section 130.25, criminal sexual act in the third degree as defined in section 130.40, aggravated sexual abuse in the fourth degree as defined in section 130.65-a, or sexual abuse in the third degree as defined in section 130.55, and the act of sexual conduct occurs during a treatment session, consultation, interview, or examination.

S 6. The penal law is amended by adding a new section 260.09 to read as follows:

S 260.09 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 HE OR SHE COMMITS CONDUCT WHICH IS INJURIOUS TO THE PHYSICAL, MENTAL OR MORAL WELFARE OF A CHILD LESS THAN SEVENTEEN YEARS OF AGE AND VIOLATES ANY SECTION OF ARTICLE ONE HUNDRED THIRTY OF THIS CHAPTER OR SECTION 263.05 OF THIS TITLE.

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

S 7. The section heading, the opening paragraph and the closing paragraph of section 260.10 of the penal law, as amended by chapter 447 of the laws of 2010, are amended to read as follows:

Endangering the welfare of a child IN THE SECOND DEGREE.

A person is guilty of endangering the welfare of a child IN THE SECOND DEGREE when:

Endangering the welfare of a child IN THE SECOND DEGREE is a class A misdemeanor.

S 8. Paragraph c of subdivision 5 of section 120.40 of the penal law, as added by chapter 635 of the laws of 1999, is amended to read as follows:

c. assault in the third degree, as defined in section 120.00; menacing in the first degree, as defined in section 120.13; menacing in the second degree, as defined in section 120.14; coercion in the first degree, as defined in section 135.65; coercion in the second degree, as defined in section 135.60; aggravated harassment in the second degree, as defined in section 240.30; harassment in the first degree, as defined in section 240.25; menacing in the third degree, as defined in section 120.15; criminal mischief in the third degree, as defined in section 145.05; criminal mischief in the second degree, as defined in section

145.10[,]; criminal mischief in the first degree, as defined in section 145.12; criminal tampering in the first degree, as defined in section 145.20; arson in the fourth degree, as defined in section 150.05; arson in the third degree, as defined in section 150.10; criminal contempt in the first degree, as defined in section 215.51; ENDANGERING THE WELFARE OF A CHILD IN THE FIRST DEGREE, AS DEFINED IN SECTION 260.09; endangering the welfare of a child IN THE SECOND DEGREE, as defined in section 260.10; or

S 9. Section 260.15 of the penal law, as amended by chapter 447 of the laws of 2010, 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 IN THE FIRST OR SECOND DEGREE, pursuant to section 260.09 OR 260.10 of this article, 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.

S 10. Paragraph (c) of subdivision 2 of section 422 of the social services law, as added by chapter 717 of the laws of 1986, is amended to read as follows:

(c) Whenever a telephone call to the statewide central register described in this section is received by the [department] OFFICE OF CHILDREN AND FAMILY SERVICES, and [the department] SUCH OFFICE finds that the person allegedly responsible for abuse or maltreatment of a child cannot be a subject of a report as defined in subdivision four of section four hundred twelve of this [chapter] TITLE, but believes that the alleged acts or circumstances against a child described in the telephone call may constitute a crime or an immediate threat to the child's health or safety, [the department] SUCH OFFICE shall: (1) convey by the most expedient means available the information contained in such telephone call to the appropriate law enforcement agency, district attorney or other public official empowered to provide necessary aid or assistance AND, (2) INCLUDE SUCH INDIVIDUALS IN THE STATEWIDE CENTRAL REGISTER IN ACCORDANCE WITH THE REQUIREMENTS OF SUBDIVISION THREE OF THIS SECTION, AND MAKE SUCH INFORMATION ACCESSIBLE PURSUANT TO SECTION FOUR HUNDRED TWENTY-FOUR-A OF THIS TITLE. THE COMMISSIONER OF THE OFFICE OF CHILDREN AND FAMILY SERVICES SHALL PROMULGATE ANY ADDITIONAL RULES AND REGULATIONS HE OR SHE DEEMS NECESSARY IN FURTHERANCE OF THIS PARAGRAPH.

S 11. Section 208 of the civil practice law and rules, as amended by chapter 485 of the laws of 1986, is amended to read as follows:

S 208. Infancy, insanity. If a person entitled to commence an action is under a disability because of infancy or insanity at the time the cause of action accrues, and the time otherwise limited for commencing the action is three years or more and expires no later than three years after the disability ceases, or the person under the disability dies, the time within which the action must be commenced shall be extended to three years after the disability ceases or the person under the disability dies, whichever event first occurs UNLESS SUCH ACTION IS FOR SEXUAL ASSAULT UPON A CHILD UNDER ANY SECTION OF ARTICLE ONE HUNDRED THIRTY OF THE PENAL LAW, THEN SUCH ACTION MAY BE COMMENCED UP TO SIX YEARS AFTER THE DISABILITY CEASES OR THE PERSON UNDER THE DISABILITY DIES, WHICHEVER EVENT FIRST OCCURS; if the time otherwise limited is less than three years, the time shall be extended by the period of disability. The time

within which the action must be commenced shall not be extended by this provision beyond ten years after the cause of action accrues, except, in any action other than for medical, dental or podiatric malpractice, where the person was under a disability due to infancy. This section shall not apply to an action to recover a penalty or forfeiture, or against a sheriff or other officer for an escape.

S 12. The civil practice law and rules is amended by adding a new section 213-d to read as follows:

S 213-D. ACTIONS FOR SEXUAL ASSAULT OR ABUSE OF AN INFANT. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, ANY CAUSE OF ACTION OF PHYSICAL OR PSYCHOLOGICAL INJURY SUSTAINED BY A PERSON UNDER EIGHTEEN YEARS OF AGE AS A RESULT OF A SEXUAL ASSAULT OR ABUSE, WHICH IS BARRED BECAUSE THE STATUTE OF LIMITATIONS HAS EXPIRED, IS REVIVED, AND AN ACTION THEREON MAY BE COMMENCED WITHIN THREE YEARS OF THE EFFECTIVE DATE OF THIS SECTION. FOR THE PURPOSES OF THIS SECTION, SEXUAL ASSAULT OR ABUSE SHALL BE A SEX OFFENSE AS DEFINED UNDER ARTICLE ONE HUNDRED THIRTY OF THE PENAL LAW OR A PREDECESSOR STATUTE AT THE TIME OF THE ASSAULT OR ABUSE. ANY SUCH CAUSE OF ACTION PREVIOUSLY DISMISSED BECAUSE OF THE STATUTE OF LIMITATIONS MAY BE BROUGHT UNDER THIS SECTION NOTWITHSTANDING SUCH DISMISSAL. THE PROVISIONS OF THIS SECTION SHALL BE APPLICABLE TO ANY CIVIL ACTION GOVERNED BY THE STATUTE OF LIMITATIONS OF ANOTHER JURISDICTION. ANY CAUSE OF ACTION FOR DAMAGES ARISING UNDER THIS SECTION SHALL NOT INCLUDE, AS PART OF THE RESOLUTION, A CONFIDENTIALITY CLAUSE OR AGREEMENT AS A MATTER OF PUBLIC POLICY.

S 13. Paragraph (a) of subdivision 4 of section 30.10 of the criminal procedure law is amended to read as follows:

(a) Any period following the commission of the offense during which (i) the defendant was continuously outside this state or (ii) the whereabouts of the defendant were continuously unknown and continuously unascertainable by the exercise of reasonable diligence. However, in no event shall the period of limitation be extended by more than five years beyond the period otherwise applicable under subdivision two, EXCEPT THAT AN ACTION FOR AN OFFENSE LISTED IN ARTICLE ONE HUNDRED THIRTY OF THE PENAL LAW WHICH IS COMMITTED AGAINST A CHILD LESS THAN EIGHTEEN YEARS OF AGE MAY BE COMMENCED AT ANY TIME.

S 14. This act shall take effect on the sixtieth day after it shall have become a law; provided, however, that section 213-d of the civil practice law and rules, as added by section twelve of this act, shall expire and be deemed repealed three years after the effective date of this act.