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

9188

I N A S S E M B L Y

February 2, 2012

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

AN ACT to amend the penal law and the vehicle and traffic law, in relation to reckless assault of a child by a parent, guardian or other person legally charged with the child's care and endangering the welfare of a child

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

Section 1. Section 120.01 of the penal law, as added by chapter 600 of the laws of 1998, is amended to read as follows:

S 120.01 Reckless assault of a child by a child day care provider, PARENT, GUARDIAN OR OTHER PERSON LEGALLY CHARGED WITH THE CHILD'S CARE.

A person is guilty of reckless assault of a child BY A CHILD DAY CARE PROVIDER, PARENT, GUARDIAN OR OTHER PERSON LEGALLY CHARGED WITH THE CHILD'S CARE when[,]:

1. being a child day care provider or an employee thereof, he or she recklessly causes serious physical injury to a child under the care of such provider or employee who is less than eleven years of age[.]; OR

2. BEING A PARENT, GUARDIAN OR OTHER PERSON LEGALLY CHARGED WITH THE CARE OF A CHILD LESS THAN ELEVEN YEARS OF AGE, HE OR SHE RECKLESSLY CAUSES SERIOUS PHYSICAL INJURY TO SUCH CHILD.

Reckless assault of a child by a child day care provider, PARENT, GUARDIAN OR OTHER PERSON LEGALLY CHARGED WITH THE CHILD'S CARE is a class E felony.

S 2. 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

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

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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 SECOND DEGREE, as defined in section 260.10; ENDANGERING THE WELFARE OF A CHILD IN THE FIRST DEGREE, AS DEFINED IN SECTION 260.09; or

S 3. 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, BEING EIGHTEEN YEARS OF AGE OR OLDER, HE OR SHE KNOWINGLY ACTS IN A MANNER LIKELY TO BE INJURIOUS TO THE PHYSICAL, MENTAL OR MORAL WELFARE OF A CHILD LESS THAN THIRTEEN YEARS OLD, AND HE OR SHE, WITHIN THE PREVIOUS FIVE YEARS, HAS BEEN CONVICTED OF ENDANGERING THE WELFARE OF A CHILD IN THE SECOND DEGREE, IN VIOLATION OF SECTION 260.10 OF THIS ARTICLE OR THIS SECTION.

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

S 4. 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 5. 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[, pursuant to section 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 6. Paragraph (c) of subdivision 4 of section 509-cc of the vehicle and traffic law, as amended by chapter 400 of the laws of 2011, is amended to read as follows:

(c) The offenses referred to in subparagraph (i) of paragraph (b) of subdivision one and subparagraph (i) of paragraph (c) of subdivision two of this section that result in disqualification for a period of five years shall include a conviction under sections 100.10, 105.13, 115.05, 120.03, 120.04, 120.04-a, 120.05, 120.10, 120.25, 121.12, 121.13, 125.40, 125.45, 130.20, 130.25, 130.52, 130.55, 135.10, 135.55, 140.17, 140.25, 140.30, 145.12, 150.10, 150.15, 160.05, 160.10, 220.06, 220.09, 220.16, 220.31, 220.34, 220.60, 220.65, 221.30, 221.50, 221.55, 230.00, 230.05, 230.06, 230.20, 235.05, 235.06, 235.07, 235.21, 240.06, 245.00, 260.09, 260.10, subdivision two of section 260.20 and sections 260.25,

265.02, 265.03, 265.08, 265.09, 265.10, 265.12, 265.35 of the penal law or an attempt to commit any of the aforesaid offenses under section 110.00 of the penal law, or any similar offenses committed under a former section of the penal law, or any offenses committed under a former section of the penal law which would constitute violations of the aforesaid sections of the penal law, or any offenses committed outside this state which would constitute violations of the aforesaid sections of the penal law.

S 7. This act shall take effect on the ninetieth day after it shall have become a law; provided, however, that if section 1 of chapter 400 of the laws of 2011 shall not have taken effect on or before such date then section six of this act shall take effect on the same date and in the same manner as such chapter takes effect.