

4003

2011-2012 Regular Sessions

I N   S E N A T E

March 11, 2011

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Introduced by Sen. LANZA -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, in relation to the crime of endangering the welfare of a child and to create a new crime of endangering the welfare of a child in the first degree

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, as amended by chapter 447  
2 of the laws of 2010, is amended to read as follows:  
3     S 260.10 Endangering the welfare of a child IN THE SECOND DEGREE.  
4     A person is guilty of endangering the welfare of a child IN THE SECOND  
5 DEGREE when:  
6     1. He or she knowingly acts in a manner likely to be injurious to the  
7 physical, mental or moral welfare of a child less than seventeen years  
8 old or directs or authorizes such child to engage in an occupation  
9 involving a substantial risk of danger to his or her life or health; or  
10    2. Being a parent, guardian or other person legally charged with the  
11 care or custody of a child less than eighteen years old, he or she fails  
12 or refuses to exercise reasonable diligence in the control of such child  
13 to prevent him or her from becoming an "abused child," a "neglected  
14 child," a "juvenile delinquent" or a "person in need of supervision," as  
15 those terms are defined in articles ten, three and seven of the family  
16 court act.  
17    3. A person is not guilty of the provisions of this section when he or  
18 she engages in the conduct described in subdivision one of section  
19 260.00 of this article: (a) with the intent to wholly abandon the child  
20 by relinquishing responsibility for and right to the care and custody of  
21 such child; (b) with the intent that the child be safe from physical  
22 injury and cared for in an appropriate manner; (c) the child is left  
23 with an appropriate person, or in a suitable location and the person who

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

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1 leaves the child promptly notifies an appropriate person of the child's  
2 location; and (d) the child is not more than thirty days old.

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

5 S 2. Section 260.11 of the penal law is renumbered section 260.12.

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

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

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

11 1. HE OR SHE KNOWINGLY ACTS IN A MANNER WHICH CREATES A RISK OF EITHER  
12 SERIOUS PHYSICAL INJURY OR PROLONGED IMPAIRMENT OF THE MENTAL OR  
13 EMOTIONAL CONDITION OF A CHILD LESS THAN SEVENTEEN YEARS OLD; OR

14 2. HE OR SHE COMMITS THE OFFENSE OF ENDANGERING THE WELFARE OF A CHILD  
15 IN THE SECOND DEGREE, WHEN:

16 (A) THE CHILD IS LESS THAN ELEVEN YEARS OLD; OR

17 (B) THE CHILD SUFFERED PHYSICAL INJURY; OR

18 (C) HE OR SHE HAS PREVIOUSLY BEEN CONVICTED OF ANY OF THE FOLLOWING  
19 OFFENSES: ENDANGERING THE WELFARE OF A CHILD IN THE SECOND DEGREE AS  
20 DEFINED IN SECTION 260.10; ENDANGERING THE WELFARE OF A CHILD IN THE  
21 FIRST DEGREE AS DEFINED IN THIS SECTION; ABANDONMENT OF A CHILD AS  
22 DEFINED IN SECTION 260.00; ASSAULT IN THE SECOND DEGREE AS DEFINED IN  
23 SUBDIVISION EIGHT OR NINE OF SECTION 120.05; AGGRAVATED ASSAULT UPON A  
24 PERSON LESS THAN ELEVEN YEARS OLD AS DEFINED IN SECTION 120.12;  
25 MANSLAUGHTER IN THE FIRST DEGREE AS DEFINED IN SUBDIVISION FOUR OF  
26 SECTION 125.20; MURDER IN THE SECOND DEGREE AS DEFINED IN SUBDIVISION  
27 FOUR OF SECTION 125.25; RAPE IN THE THIRD DEGREE AS DEFINED IN SUBDIVI-  
28 SION TWO OF SECTION 130.25; RAPE IN THE SECOND DEGREE AS DEFINED IN  
29 SECTION 130.30; RAPE IN THE FIRST DEGREE AS DEFINED IN SUBDIVISION THREE  
30 OF SECTION 130.35; CRIMINAL SEXUAL ACT IN THE THIRD DEGREE AS DEFINED IN  
31 SUBDIVISION TWO OF SECTION 130.40; CRIMINAL SEXUAL ACT IN THE SECOND  
32 DEGREE AS DEFINED IN SECTION 130.45; CRIMINAL SEXUAL ACT IN THE FIRST  
33 DEGREE AS DEFINED IN SUBDIVISION THREE OF SECTION 130.50; SEXUAL ABUSE  
34 IN THE SECOND DEGREE AS DEFINED IN SUBDIVISION TWO OF SECTION 130.60;  
35 SEXUAL ABUSE IN THE FIRST DEGREE AS DEFINED IN SUBDIVISION THREE OF  
36 SECTION 130.65; AGGRAVATED SEXUAL ABUSE IN THE THIRD DEGREE AS DEFINED  
37 IN PARAGRAPH (C) OF SUBDIVISION ONE OF SECTION 130.66; AGGRAVATED SEXUAL  
38 ABUSE IN THE SECOND DEGREE AS DEFINED IN PARAGRAPH (C) OF SUBDIVISION  
39 ONE OF SECTION 130.67; AGGRAVATED SEXUAL ABUSE IN THE FIRST DEGREE AS  
40 DEFINED IN PARAGRAPH (C) OF SUBDIVISION ONE OF SECTION 130.70; COURSE OF  
41 SEXUAL CONDUCT AGAINST A CHILD IN THE FIRST DEGREE AS DEFINED IN SECTION  
42 130.75; COURSE OF SEXUAL CONDUCT AGAINST A CHILD IN THE SECOND DEGREE AS  
43 DEFINED IN SECTION 130.80; DISSEMINATING INDECENT MATERIAL TO MINORS IN  
44 THE SECOND DEGREE AS DEFINED IN SECTION 235.21; DISSEMINATING INDECENT  
45 MATERIAL TO MINORS IN THE FIRST DEGREE AS DEFINED IN SECTION 235.22; USE  
46 OF A CHILD IN A SEXUAL PERFORMANCE AS DEFINED IN SECTION 263.05; PROMOT-  
47 ING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD AS DEFINED IN SECTION  
48 263.10; POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD AS DEFINED  
49 IN SECTION 263.11; PROMOTING A SEXUAL PERFORMANCE BY A CHILD AS DEFINED  
50 IN SECTION 263.15; POSSESSING A SEXUAL PERFORMANCE BY A CHILD AS DEFINED  
51 IN SECTION 263.16; OR A SIMILAR OFFENSE AGAINST A CHILD IN ANY OTHER  
52 JURISDICTION.

53 ENDANGERING THE WELFARE OF A CHILD IN THE FIRST DEGREE IS A CLASS D  
54 FELONY.

1 S 4. Paragraph (c) of subdivision 1 of section 70.02 of the penal law,  
2 as amended by chapter 405 of the laws of 2010, is amended to read as  
3 follows:

4 (c) Class D violent felony offenses: an attempt to commit any of the  
5 class C felonies set forth in paragraph (b); reckless assault of a child  
6 as defined in section 120.02, assault in the second degree as defined in  
7 section 120.05, menacing a police officer or peace officer as defined in  
8 section 120.18, stalking in the first degree, as defined in subdivision  
9 one of section 120.60, strangulation in the second degree as defined in  
10 section 121.12, rape in the second degree as defined in section 130.30,  
11 criminal sexual act in the second degree as defined in section 130.45,  
12 sexual abuse in the first degree as defined in section 130.65, course of  
13 sexual conduct against a child in the second degree as defined in  
14 section 130.80, aggravated sexual abuse in the third degree as defined  
15 in section 130.66, facilitating a sex offense with a controlled  
16 substance as defined in section 130.90, ENDANGERING THE WELFARE OF A  
17 CHILD IN THE FIRST DEGREE AS DEFINED IN SECTION 260.11, criminal  
18 possession of a weapon in the third degree as defined in subdivision  
19 five, six, seven or eight of section 265.02, criminal sale of a firearm  
20 in the third degree as defined in section 265.11, intimidating a victim  
21 or witness in the second degree as defined in section 215.16, soliciting  
22 or providing support for an act of terrorism in the second degree as  
23 defined in section 490.10, and making a terroristic threat as defined in  
24 section 490.20, falsely reporting an incident in the first degree as  
25 defined in section 240.60, placing a false bomb or hazardous substance  
26 in the first degree as defined in section 240.62, placing a false bomb  
27 or hazardous substance in a sports stadium or arena, mass transportation  
28 facility or enclosed shopping mall as defined in section 240.63, and  
29 aggravated unpermitted use of indoor pyrotechnics in the first degree as  
30 defined in section 405.18.

31 S 5. Section 260.12 of the penal law, as amended by chapter 89 of the  
32 laws of 1984 and as renumbered by section two of this act, is amended to  
33 read as follows:

34 S 260.12 Endangering the welfare of a child; corroboration.

35 A person shall not be convicted of endangering the welfare of a child  
36 AS DEFINED IN SECTION 260.10 OR 260.11 OF THIS ARTICLE, or of an attempt  
37 to commit the same, upon the testimony of a victim who is incapable of  
38 consent because of mental defect or mental incapacity as to conduct that  
39 constitutes an offense or an attempt to commit an offense referred to in  
40 section 130.16, without additional evidence sufficient pursuant to  
41 section 130.16 to sustain a conviction of an offense referred to in  
42 section 130.16, or of an attempt to commit the same.

43 S 6. Section 260.15 of the penal law, as amended by chapter 447 of the  
44 laws of 2010, is amended to read as follows:

45 S 260.15 Endangering the welfare of a child; defense.

46 In any prosecution for endangering the welfare of a child, pursuant to  
47 section 260.10 OR 260.11 of this article, based upon an alleged failure  
48 or refusal to provide proper medical care or treatment to an ill child,  
49 it is an affirmative defense that the defendant (a) is a parent, guardi-  
50 an or other person legally charged with the care or custody of such  
51 child; and (b) is a member or adherent of an organized church or reli-  
52 gious group the tenets of which prescribe prayer as the principal treat-  
53 ment for illness; and (c) treated or caused such ill child to be treated  
54 in accordance with such tenets.

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