

1042

2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 9, 2013

Introduced by M. of A. PRETLOW -- 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:

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

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

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

16 S 3. Subdivision 7 of section 10.00 of the penal law, as amended by
17 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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1 7. "Person" means a human being, and where appropriate, a public or
2 private corporation, an unincorporated association, a partnership, A
3 NONPROFIT CORPORATION, a government or a governmental instrumentality.

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

5 S 20.00 Criminal liability for conduct of another.

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

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

18 (h) a client or patient and the actor is a health care provider [or],
19 mental health care provider OR ANYONE REPRESENTING HIMSELF OR HERSELF AS
20 A MEMBER OF THE CLERGY WHO PROVIDES HEALTH CARE OR MENTAL HEALTH CARE
21 SERVICES charged with rape in the third degree as defined in section
22 130.25, criminal sexual act in the third degree as defined in section
23 130.40, aggravated sexual abuse in the fourth degree as defined in
24 section 130.65-a, or sexual abuse in the third degree as defined in
25 section 130.55, and the act of sexual conduct occurs during a treatment
26 session, consultation, interview, or examination.

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

29 S 260.09 ENDANGERING THE WELFARE OF A CHILD IN THE FIRST DEGREE.

30 A PERSON IS GUILTY OF ENDANGERING THE WELFARE OF A CHILD IN THE FIRST
31 DEGREE WHEN HE OR SHE COMMITS CONDUCT WHICH IS INJURIOUS TO THE PHYS-
32 ICAL, MENTAL OR MORAL WELFARE OF A CHILD LESS THAN SEVENTEEN YEARS OF
33 AGE AND VIOLATES ANY SECTION OF ARTICLE ONE HUNDRED THIRTY OF THIS CHAP-
34 TER OR SECTION 263.05 OF THIS TITLE.

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

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

40 Endangering the welfare of a child IN THE SECOND DEGREE.

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

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

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

48 c. assault in the third degree, as defined in section 120.00; menacing
49 in the first degree, as defined in section 120.13; menacing in the
50 second degree, as defined in section 120.14; coercion in the first
51 degree, as defined in section 135.65; coercion in the second degree, as
52 defined in section 135.60; aggravated harassment in the second degree,
53 as defined in section 240.30; harassment in the first degree, as defined
54 in section 240.25; menacing in the third degree, as defined in section
55 120.15; criminal mischief in the third degree, as defined in section
56 145.05; criminal mischief in the second degree, as defined in section

1 145.10[,]; criminal mischief in the first degree, as defined in section
2 145.12; criminal tampering in the first degree, as defined in section
3 145.20; arson in the fourth degree, as defined in section 150.05; arson
4 in the third degree, as defined in section 150.10; criminal contempt in
5 the first degree, as defined in section 215.51; ENDANGERING THE WELFARE
6 OF A CHILD IN THE FIRST DEGREE, AS DEFINED IN SECTION 260.09; endanger-
7 ing the welfare of a child IN THE SECOND DEGREE, as defined in section
8 260.10; or

9 S 9. Section 260.15 of the penal law, as amended by chapter 447 of the
10 laws of 2010, is amended to read as follows:

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

12 In any prosecution for endangering the welfare of a child IN THE FIRST
13 OR SECOND DEGREE, pursuant to section 260.09 OR 260.10 of this article,
14 based upon an alleged failure or refusal to provide proper medical care
15 or treatment to an ill child, it is an affirmative defense that the
16 defendant (a) is a parent, guardian or other person legally charged with
17 the care or custody of such child; and (b) is a member or adherent of an
18 organized church or religious group the tenets of which prescribe prayer
19 as the principal treatment for illness; and (c) treated or caused such
20 ill child to be treated in accordance with such tenets.

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

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

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

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

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

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

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

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

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

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