

2745--A

2015-2016 Regular Sessions

I N A S S E M B L Y

January 20, 2015

Introduced by M. of A. TITONE, ORTIZ, MILLER, CORWIN, FINCH -- Multi-Sponsored by -- M. of A. ARROYO, BARCLAY, CERETTO, GIGLIO, HOOPER -- read once and referred to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

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1 such child; (b) with the intent that the child be safe from physical
2 injury and cared for in an appropriate manner; (c) the child is left
3 with an appropriate person, or in a suitable location and the person who
4 leaves the child promptly notifies an appropriate person of the child's
5 location; and (d) the child is not more than thirty days old.

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

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

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

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

12 A PERSON IS GUILTY OF ENDANGERING THE WELFARE OF A CHILD IN THE FIRST
13 DEGREE WHEN:

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

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

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

20 (B) THE CHILD SUFFERED PHYSICAL INJURY; OR

21 (C) HE OR SHE HAS PREVIOUSLY BEEN CONVICTED OF ANY OF THE FOLLOWING
22 OFFENSES: ENDANGERING THE WELFARE OF A CHILD IN THE SECOND DEGREE AS

23 DEFINED IN SECTION 260.10; ENDANGERING THE WELFARE OF A CHILD IN THE

24 FIRST DEGREE AS DEFINED IN THIS SECTION; ABANDONMENT OF A CHILD AS

25 DEFINED IN SECTION 260.00; ASSAULT IN THE SECOND DEGREE AS DEFINED IN

26 SUBDIVISION EIGHT OR NINE OF SECTION 120.05; AGGRAVATED ASSAULT UPON A

27 PERSON LESS THAN ELEVEN YEARS OLD AS DEFINED IN SECTION 120.12;

28 MANSLAUGHTER IN THE FIRST DEGREE AS DEFINED IN SUBDIVISION FOUR OF

29 SECTION 125.20; MURDER IN THE SECOND DEGREE AS DEFINED IN SUBDIVISION

30 FOUR OF SECTION 125.25; RAPE IN THE THIRD DEGREE AS DEFINED IN SUBDIVI-

31 SION TWO OF SECTION 130.25; RAPE IN THE SECOND DEGREE AS DEFINED IN

32 SECTION 130.30; RAPE IN THE FIRST DEGREE AS DEFINED IN SUBDIVISION THREE

33 OF SECTION 130.35; CRIMINAL SEXUAL ACT IN THE THIRD DEGREE AS DEFINED IN

34 SUBDIVISION TWO OF SECTION 130.40; CRIMINAL SEXUAL ACT IN THE SECOND

35 DEGREE AS DEFINED IN SECTION 130.45; CRIMINAL SEXUAL ACT IN THE FIRST

36 DEGREE AS DEFINED IN SUBDIVISION THREE OF SECTION 130.50; SEXUAL ABUSE

37 IN THE SECOND DEGREE AS DEFINED IN SUBDIVISION TWO OF SECTION 130.60;

38 SEXUAL ABUSE IN THE FIRST DEGREE AS DEFINED IN SUBDIVISION THREE OF

39 SECTION 130.65; AGGRAVATED SEXUAL ABUSE IN THE THIRD DEGREE AS DEFINED

40 IN PARAGRAPH (C) OF SUBDIVISION ONE OF SECTION 130.66; AGGRAVATED SEXUAL

41 ABUSE IN THE SECOND DEGREE AS DEFINED IN PARAGRAPH (C) OF SUBDIVISION

42 ONE OF SECTION 130.67; AGGRAVATED SEXUAL ABUSE IN THE FIRST DEGREE AS

43 DEFINED IN PARAGRAPH (C) OF SUBDIVISION ONE OF SECTION 130.70; COURSE OF

44 SEXUAL CONDUCT AGAINST A CHILD IN THE FIRST DEGREE AS DEFINED IN SECTION

45 130.75; COURSE OF SEXUAL CONDUCT AGAINST A CHILD IN THE SECOND DEGREE AS

46 DEFINED IN SECTION 130.80; DISSEMINATING INDECENT MATERIAL TO MINORS IN

47 THE SECOND DEGREE AS DEFINED IN SECTION 235.21; DISSEMINATING INDECENT

48 MATERIAL TO MINORS IN THE FIRST DEGREE AS DEFINED IN SECTION 235.22; USE

49 OF A CHILD IN A SEXUAL PERFORMANCE AS DEFINED IN SECTION 263.05; PROMOT-

50 ING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD AS DEFINED IN SECTION

51 263.10; POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD AS DEFINED

52 IN SECTION 263.11; PROMOTING A SEXUAL PERFORMANCE BY A CHILD AS DEFINED

53 IN SECTION 263.15; POSSESSING A SEXUAL PERFORMANCE BY A CHILD AS DEFINED

54 IN SECTION 263.16; OR A SIMILAR OFFENSE AGAINST A CHILD IN ANY OTHER

55 JURISDICTION.

1 ENDANGERING THE WELFARE OF A CHILD IN THE FIRST DEGREE IS A CLASS D
2 FELONY.

3 S 4. Paragraph (c) of subdivision 1 of section 70.02 of the penal law,
4 as amended by chapter 368 of the laws of 2015, is amended to read as
5 follows:

6 (c) Class D violent felony offenses: an attempt to commit any of the
7 class C felonies set forth in paragraph (b); reckless assault of a child
8 as defined in section 120.02, assault in the second degree as defined in
9 section 120.05, menacing a police officer or peace officer as defined in
10 section 120.18, stalking in the first degree, as defined in subdivision
11 one of section 120.60, strangulation in the second degree as defined in
12 section 121.12, rape in the second degree as defined in section 130.30,
13 criminal sexual act in the second degree as defined in section 130.45,
14 sexual abuse in the first degree as defined in section 130.65, course of
15 sexual conduct against a child in the second degree as defined in
16 section 130.80, aggravated sexual abuse in the third degree as defined
17 in section 130.66, facilitating a sex offense with a controlled
18 substance as defined in section 130.90, labor trafficking as defined in
19 paragraphs (a) and (b) of subdivision three of section 135.35, ENDANGER-
20 ING THE WELFARE OF A CHILD IN THE FIRST DEGREE AS DEFINED IN SECTION
21 260.11, criminal possession of a weapon in the third degree as defined
22 in subdivision five, six, seven, eight, nine or ten of section 265.02,
23 criminal sale of a firearm in the third degree as defined in section
24 265.11, intimidating a victim or witness in the second degree as defined
25 in section 215.16, soliciting or providing support for an act of terror-
26 ism in the second degree as defined in section 490.10, and making a
27 terroristic threat as defined in section 490.20, falsely reporting an
28 incident in the first degree as defined in section 240.60, placing a
29 false bomb or hazardous substance in the first degree as defined in
30 section 240.62, placing a false bomb or hazardous substance in a sports
31 stadium or arena, mass transportation facility or enclosed shopping mall
32 as defined in section 240.63, and aggravated unpermitted use of indoor
33 pyrotechnics in the first degree as defined in section 405.18.

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

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

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

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

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

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

1 ment for illness; and (c) treated or caused such ill child to be treated
2 in accordance with such tenets.
3 S 7. This act shall take effect on the first of November next succeed-
4 ing the date on which it shall have become a law.