

3362--A

2015-2016 Regular Sessions

I N S E N A T E

February 5, 2015

Introduced by Sens. LANZA, GALLIVAN -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Senate Rule 6, sec. 8 -- 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
21 such child; (b) with the intent that the child be safe from physical

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

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

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

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

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

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

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

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

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

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

19 (B) THE CHILD SUFFERED PHYSICAL INJURY; OR

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

55 ENDANGERING THE WELFARE OF A CHILD IN THE FIRST DEGREE IS A CLASS D
56 FELONY.

1 S 4. Paragraph (c) of subdivision 1 of section 70.02 of the penal law,
2 as amended by chapter 368 of the laws of 2015, 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, labor trafficking as defined in
17 paragraphs (a) and (b) of subdivision three of section 135.35, ENDANGER-
18 ING THE WELFARE OF A CHILD IN THE FIRST DEGREE AS DEFINED IN SECTION
19 260.11, criminal possession of a weapon in the third degree as defined
20 in subdivision five, six, seven, eight, nine or ten of section 265.02,
21 criminal sale of a firearm in the third degree as defined in section
22 265.11, intimidating a victim or witness in the second degree as defined
23 in section 215.16, soliciting or providing support for an act of terror-
24 ism in the second degree as defined in section 490.10, and making a
25 terroristic threat as defined in section 490.20, falsely reporting an
26 incident in the first degree as defined in section 240.60, placing a
27 false bomb or hazardous substance in the first degree as defined in
28 section 240.62, placing a false bomb or hazardous substance in a sports
29 stadium or arena, mass transportation facility or enclosed shopping mall
30 as defined in section 240.63, and aggravated unpermitted use of indoor
31 pyrotechnics in the first degree as defined in section 405.18.

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

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

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

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

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

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

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