

9109

I N A S S E M B L Y

January 28, 2016

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

AN ACT to amend the penal law, the criminal procedure law and the civil practice law and rules, in relation to crimes committed against a child

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
24 leaves the child promptly notifies an appropriate person of the child's
25 location; and (d) the child is not more than thirty days old.
26 Endangering the welfare of a child IN THE SECOND DEGREE is a class A
27 misdemeanor.

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

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

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

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

5 A PERSON IS GUILTY OF ENDANGERING THE WELFARE OF A CHILD IN THE FIRST
6 DEGREE WHEN:

7 1. HE OR SHE KNOWINGLY ACTS IN A MANNER WHICH CREATES A FORESEEABLE
8 RISK OF EITHER SERIOUS PHYSICAL INJURY OR PROTRACTED HARM TO THE MENTAL
9 OR EMOTIONAL WELFARE OF A CHILD LESS THAN SEVENTEEN YEARS OLD; OR

10 2. HE OR SHE COMMITS THE CRIME OF ENDANGERING THE WELFARE OF A CHILD
11 IN THE SECOND DEGREE AND HAS PREVIOUSLY BEEN CONVICTED OF ENDANGERING
12 THE WELFARE OF A CHILD IN THE SECOND DEGREE AS DEFINED IN SECTION 260.10
13 OF THIS ARTICLE OR ENDANGERING THE WELFARE OF A CHILD IN THE FIRST
14 DEGREE AS DEFINED IN THIS SECTION.

15 ENDANGERING THE WELFARE OF A CHILD IN THE FIRST DEGREE IS A CLASS D
16 FELONY.

17 S 4. Section 260.12 of the penal law, as amended by chapter 89 of the
18 laws of 1984 and as renumbered by section two of this act, is amended to
19 read as follows:

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

21 A person shall not be convicted of endangering the welfare of a child
22 AS DEFINED IN SECTIONS 260.10 OR 260.11 OF THIS ARTICLE, or of an
23 attempt to commit the same, upon the testimony of a victim who is inca-
24 pable of consent because of mental defect or mental incapacity as to
25 conduct that constitutes an offense or an attempt to commit an offense
26 referred to in section 130.16 OF THIS CHAPTER, without additional
27 evidence sufficient pursuant to section 130.16 OF THIS CHAPTER to
28 sustain a conviction of an offense referred to in section 130.16 OF THIS
29 CHAPTER, or of an attempt to commit the same.

30 S 5. Section 260.15 of the penal law, as amended by chapter 447 of the
31 laws of 2010, is amended to read as follows:

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

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

42 S 6. Paragraph (a) of subdivision 2 of section 30.10 of the criminal
43 procedure law, as amended by chapter 467 of the laws of 2008, is amended
44 to read as follows:

45 (a) A prosecution for a class A felony, or rape in the first degree as
46 defined in section 130.35 of the penal law, or a crime defined or
47 formerly defined in section 130.50 of the penal law, or aggravated sexu-
48 al abuse in the first degree as defined in section 130.70 of the penal
49 law, or course of sexual conduct against a child in the first degree as
50 defined in section 130.75 of the penal law, OR PREDATORY SEXUAL ASSAULT
51 AS DEFINED IN SECTION 130.95 OF THE PENAL LAW, OR PREDATORY SEXUAL
52 ASSAULT AGAINST A CHILD AS DEFINED IN SECTION 130.96 OF THE PENAL LAW,
53 may be commenced at any time;

54 S 7. Section 213-c of the civil practice law and rules, as added by
55 chapter 3 of the laws of 2006, is amended to read as follows:

1 S 213-c. Action by victim of conduct constituting certain sexual
2 offenses. Notwithstanding any other limitation set forth in this arti-
3 cle, a civil claim or cause of action to recover from a defendant as
4 hereinafter defined, for physical, psychological or other injury or
5 condition suffered by a person as a result of acts by such defendant of
6 rape in the first degree as defined in section 130.35 of the penal law,
7 or criminal sexual act in the first degree as defined in section 130.50
8 of the penal law, or aggravated sexual abuse in the first degree as
9 defined in section 130.70 of the penal law, or course of sexual conduct
10 against a child in the first degree as defined in section 130.75 of the
11 penal law, OR PREDATORY SEXUAL ASSAULT AS DEFINED IN SECTION 130.95 OF
12 THE PENAL LAW, OR PREDATORY SEXUAL ASSAULT AGAINST A CHILD AS DEFINED IN
13 SECTION 130.96 OF THE PENAL LAW may be brought within five years. As
14 used in this section, the term "defendant" shall mean only a person who
15 commits the acts described in this section or who, in a criminal
16 proceeding, could be charged with criminal liability for the commission
17 of such acts pursuant to section 20.00 of the penal law and shall not
18 apply to any related civil claim or cause of action arising from such
19 acts. Nothing in this section shall be construed to require that a crim-
20 inal charge be brought or a criminal conviction be obtained as a condi-
21 tion of bringing a civil cause of action or receiving a civil judgment
22 pursuant to this section or be construed to require that any of the
23 rules governing a criminal proceeding be applicable to any such civil
24 action.

25 S 8. Paragraph (b) of subdivision 8 of section 215 of the civil prac-
26 tice law and rules, as added by chapter 3 of the laws of 2006, is
27 amended to read as follows:

28 (b) Whenever it is shown that a criminal action against the same
29 defendant has been commenced with respect to the event or occurrence
30 from which a claim governed by this section arises, and such criminal
31 action is for rape in the first degree as defined in section 130.35 of
32 the penal law, or criminal sexual act in the first degree as defined in
33 section 130.50 of the penal law, or aggravated sexual abuse in the first
34 degree as defined in section 130.70 of the penal law, or course of sexu-
35 al conduct against a child in the first degree as defined in section
36 130.75 of the penal law, OR PREDATORY SEXUAL ASSAULT AS DEFINED IN
37 SECTION 130.95 OF THE PENAL LAW, OR PREDATORY SEXUAL ASSAULT AGAINST A
38 CHILD AS DEFINED IN SECTION 130.96 OF THE PENAL LAW the plaintiff shall
39 have at least five years from the termination of the criminal action as
40 defined in section 1.20 of the criminal procedure law in which to
41 commence the civil action, notwithstanding that the time in which to
42 commence such action has already expired or has less than a year remain-
43 ing.

44 S 9. Paragraph (f) of subdivision 3 of section 30.10 of the criminal
45 procedure law, as separately amended by chapters 3 and 320 of the laws
46 of 2006, is amended to read as follows:

47 (f) For purposes of a prosecution involving a sexual offense as
48 defined in article one hundred thirty of the penal law, other than a
49 sexual offense delineated in paragraph (a) of subdivision two of this
50 section, committed against a child less than eighteen years of age,
51 incest in the first, second or third degree as defined in sections
52 255.27, 255.26 and 255.25 of the penal law committed against a child
53 less than eighteen years of age, or use of a child in a sexual perform-
54 ance as defined in section 263.05 of the penal law, [the period of limi-
55 tation shall not begin to run until the child has reached the age of
56 eighteen or the offense is reported to a law enforcement agency or

1 statewide central register of child abuse and maltreatment, whichever
2 occurs earlier.] MAY BE COMMENCED AT ANY TIME.

3 S 10. Subdivision 4 of section 130.65 of the penal law, as amended by
4 chapter 26 of the laws of 2011, is amended to read as follows:

5 4. When the other person is less than thirteen years old and the actor
6 is [twenty-one] EIGHTEEN years old or older.

7 S 11. Paragraph (c) of subdivision 1 of section 130.66 of the penal
8 law, as amended by chapter 485 of the laws of 2009, is amended and a new
9 paragraph (d) is added to read as follows:

10 (c) When the other person is less than eleven years old[.]; OR

11 (D) WHEN THE OTHER PERSON IS LESS THAN THIRTEEN YEARS OLD AND THE
12 ACTOR IS EIGHTEEN YEARS OLD OR OLDER.

13 S 12. Paragraph (c) of subdivision 1 of section 130.67 of the penal
14 law, as added by chapter 450 of the laws of 1988, is amended and a new
15 paragraph (d) is added to read as follows:

16 (c) When the other person is less than eleven years old[.]; OR

17 (D) WHEN THE OTHER PERSON IS LESS THAN THIRTEEN YEARS OLD AND THE
18 ACTOR IS EIGHTEEN YEARS OLD OR OLDER.

19 S 13. Paragraph (c) of subdivision 1 of section 130.70 of the penal
20 law, as amended by chapter 450 of the laws of 1988, is amended and a new
21 paragraph (d) is added to read as follows:

22 (c) When the other person is less than eleven years old[.]; OR

23 (D) WHEN THE OTHER PERSON IS LESS THAN THIRTEEN YEARS OLD AND THE
24 ACTOR IS EIGHTEEN YEARS OLD OR OLDER.

25 S 14. Paragraph (a) of subdivision 1 of section 70.02 of the penal
26 law, as amended by chapter 368 of the laws of 2015, is amended to read
27 as follows:

28 (a) Class B violent felony offenses: an attempt to commit the class
29 A-I felonies of murder in the second degree as defined in section
30 125.25, kidnapping in the first degree as defined in section 135.25, and
31 arson in the first degree as defined in section 150.20; manslaughter in
32 the first degree as defined in section 125.20, aggravated manslaughter
33 in the first degree as defined in section 125.22, rape in the first
34 degree as defined in section 130.35, criminal sexual act in the first
35 degree as defined in section 130.50, aggravated sexual abuse in the
36 first degree as defined in section 130.70, [course of sexual conduct
37 against a child in the first degree as defined in section 130.75;]
38 assault in the first degree as defined in section 120.10, kidnapping in
39 the second degree as defined in section 135.20, burglary in the first
40 degree as defined in section 140.30, arson in the second degree as
41 defined in section 150.15, robbery in the first degree as defined in
42 section 160.15, sex trafficking as defined in paragraphs (a) and (b) of
43 subdivision five of section 230.34, incest in the first degree as
44 defined in section 255.27, criminal possession of a weapon in the first
45 degree as defined in section 265.04, criminal use of a firearm in the
46 first degree as defined in section 265.09, criminal sale of a firearm in
47 the first degree as defined in section 265.13, aggravated assault upon a
48 police officer or a peace officer as defined in section 120.11, gang
49 assault in the first degree as defined in section 120.07, intimidating a
50 victim or witness in the first degree as defined in section 215.17,
51 hindering prosecution of terrorism in the first degree as defined in
52 section 490.35, criminal possession of a chemical weapon or biological
53 weapon in the second degree as defined in section 490.40, and criminal
54 use of a chemical weapon or biological weapon in the third degree as
55 defined in section 490.47.

1 S 15. Subdivision 3 of section 70.80 of the penal law, as added by
2 chapter 7 of the laws of 2007, is amended to read as follows:

3 3. Except as provided by subdivision four, five, six, seven or eight
4 of this section, or when a defendant is being sentenced for a conviction
5 of the class A-II felonies of predatory sexual assault [and], predatory
6 sexual assault against a child, OR COURSE OF SEXUAL CONDUCT AGAINST A
7 CHILD IN THE FIRST DEGREE as defined in sections 130.95 [and], 130.96
8 AND 130.75 of this chapter, or for any class A-I sexually motivated
9 felony for which a life sentence or a life without parole sentence must
10 be imposed, a sentence imposed upon a defendant convicted of a felony
11 sex offense shall be a determinate sentence. The determinate sentence
12 shall be imposed by the court in whole or half years, and shall include
13 as a part thereof a period of post-release supervision in accordance
14 with subdivision two-a of section 70.45 of this article. Persons eligi-
15 ble for sentencing under section 70.07 of this article governing second
16 child sexual assault felonies shall be sentenced under such section and
17 paragraph (j) of subdivision two-a of section 70.45 of this article.

18 S 16. Paragraphs (b) and (c) of subdivision 1 of section 70.02 of the
19 penal law, paragraph (b) as amended by chapter 1 of the laws of 2013 and
20 paragraph (c) as amended by chapter 368 of the laws of 2015, are amended
21 to read as follows:

22 (b) Class C violent felony offenses: an attempt to commit any of the
23 class B felonies set forth in paragraph (a) of this subdivision; aggra-
24 vated criminally negligent homicide as defined in section 125.11, aggra-
25 vated manslaughter in the second degree as defined in section 125.21,
26 aggravated sexual abuse in the second degree as defined in section
27 130.67, assault on a peace officer, police officer, fireman or emergency
28 medical services professional as defined in section 120.08, assault on a
29 judge as defined in section 120.09, gang assault in the second degree as
30 defined in section 120.06, strangulation in the first degree as defined
31 in section 121.13, COURSE OF SEXUAL CONDUCT AGAINST A CHILD IN THE
32 SECOND DEGREE AS DEFINED IN SECTION 130.80, burglary in the second
33 degree as defined in section 140.25, robbery in the second degree as
34 defined in section 160.10, criminal possession of a weapon in the second
35 degree as defined in section 265.03, criminal use of a firearm in the
36 second degree as defined in section 265.08, criminal sale of a firearm
37 in the second degree as defined in section 265.12, criminal sale of a
38 firearm with the aid of a minor as defined in section 265.14, aggravated
39 criminal possession of a weapon as defined in section 265.19, soliciting
40 or providing support for an act of terrorism in the first degree as
41 defined in section 490.15, hindering prosecution of terrorism in the
42 second degree as defined in section 490.30, and criminal possession of a
43 chemical weapon or biological weapon in the third degree as defined in
44 section 490.37.

45 (c) Class D violent felony offenses: an attempt to commit any of the
46 class C felonies set forth in paragraph (b); reckless assault of a child
47 as defined in section 120.02, assault in the second degree as defined in
48 section 120.05, menacing a police officer or peace officer as defined in
49 section 120.18, stalking in the first degree, as defined in subdivision
50 one of section 120.60, strangulation in the second degree as defined in
51 section 121.12, rape in the second degree as defined in section 130.30,
52 criminal sexual act in the second degree as defined in section 130.45,
53 sexual abuse in the first degree as defined in section 130.65, [course
54 of sexual conduct against a child in the second degree as defined in
55 section 130.80,] aggravated sexual abuse in the third degree as defined
56 in section 130.66, facilitating a sex offense with a controlled

1 substance as defined in section 130.90, labor trafficking as defined in
2 paragraphs (a) and (b) of subdivision three of section 135.35, criminal
3 possession of a weapon in the third degree as defined in subdivision
4 five, six, seven, eight, nine or ten of section 265.02, criminal sale of
5 a firearm in the third degree as defined in section 265.11, intimidating
6 a victim or witness in the second degree as defined in section 215.16,
7 soliciting or providing support for an act of terrorism in the second
8 degree as defined in section 490.10, and making a terroristic threat as
9 defined in section 490.20, falsely reporting an incident in the first
10 degree as defined in section 240.60, placing a false bomb or hazardous
11 substance in the first degree as defined in section 240.62, placing a
12 false bomb or hazardous substance in a sports stadium or arena, mass
13 transportation facility or enclosed shopping mall as defined in section
14 240.63, and aggravated unpermitted use of indoor pyrotechnics in the
15 first degree as defined in section 405.18.

16 S 17. Section 130.75 of the penal law, as amended by chapter 1 of the
17 laws of 2000, paragraphs (a) and (b) of subdivision 1 as amended by
18 chapter 264 of the laws of 2003, is amended to read as follows:

19 S 130.75 Course of sexual conduct against a child OR CHILDREN in the
20 first degree.

21 1. A person is guilty of course of sexual conduct against a child OR
22 CHILDREN in the first degree when[, over a period of time not less than
23 three months in duration]:

24 (a) he or she engages in two or more acts of sexual conduct, which
25 includes at least one act of sexual intercourse, oral sexual conduct,
26 anal sexual conduct or aggravated sexual contact, with a child less than
27 eleven years old; or

28 (b) he or she, being eighteen years old or more, engages in two or
29 more acts of sexual conduct, which include at least one act of sexual
30 intercourse, oral sexual conduct, anal sexual conduct or aggravated
31 sexual contact, with a child less than thirteen years old[.]; OR

32 (C) HE OR SHE ENGAGES IN THE ACTS DEFINED IN SUBDIVISION (A) OR (B) OF
33 THIS SECTION WITH TWO OR MORE CHILDREN.

34 2. A person may not be subsequently prosecuted for any other sexual
35 offense involving the same victim unless the other charged offense
36 occurred outside the time period charged under this section.

37 Course of sexual conduct against a child OR CHILDREN in the first
38 degree is a class [B] A-II felony.

39 S 18. Section 130.80 of the penal law, as amended by chapter 1 of the
40 laws of 2000, is amended to read as follows:

41 S 130.80 Course of sexual conduct against a child OR CHILDREN in the
42 second degree.

43 1. A person is guilty of course of sexual conduct against a child OR
44 CHILDREN in the second degree when[, over a period of time not less than
45 three months in duration]:

46 (a) he or she engages in two or more acts of sexual conduct with a
47 child less than eleven years old; or

48 (b) he or she, being eighteen years old or more, engages in two or
49 more acts of sexual conduct with a child less than thirteen years old;
50 OR

51 (C) HE OR SHE ENGAGES IN THE ACTS DEFINED IN SUBDIVISION (A) OR (B) OF
52 THIS SECTION WITH TWO OR MORE CHILDREN.

53 2. A person may not be subsequently prosecuted for any other sexual
54 offense involving the same victim unless the other charged offense
55 occurred outside the time period charged under this section.

1 Course of sexual conduct against a child OR CHILDREN in the second
2 degree is a class [D] C felony.

3 S 19. Section 130.53 of the penal law, as amended by chapter 192 of
4 the laws of 2014, is amended to read as follows:

5 S 130.53 Persistent sexual abuse.

6 A person is guilty of persistent sexual abuse when he or she commits
7 the crime of forcible touching, as defined in section 130.52 of this
8 article, sexual abuse in the third degree, as defined in section 130.55
9 of this article, or sexual abuse in the second degree, as defined in
10 section 130.60 of this article, OR SEXUAL MISCONDUCT, AS DEFINED IN
11 SECTION 130.20 OF THIS ARTICLE, and, within the previous ten year peri-
12 od, excluding any time during which such person was incarcerated for any
13 reason, has been convicted two or more times, in separate criminal tran-
14 sactions for which sentence was imposed on separate occasions, of forcible
15 touching, as defined in section 130.52 of this article, sexual abuse
16 in the third degree as defined in section 130.55 of this article, sexual
17 abuse in the second degree, as defined in section 130.60 of this arti-
18 cle, or any offense defined in this article, of which the commission or
19 attempted commission thereof is a felony.

20 Persistent sexual abuse is a class E felony.

21 S 20. Section 10.00 of the penal law is amended by adding a new subdi-
22 vision 22 to read as follows:

23 22. FOR THE PURPOSES OF SECTION 125.25 OF THIS CHAPTER, THE TERM
24 "DEPRAVED INDIFFERENCE TO HUMAN LIFE" MEANS WHERE THE DEFENDANT,
25 ALTHOUGH NOT INTENDING TO CAUSE DEATH, RECKLESSLY ENGAGES IN A COURSE OF
26 FATAL CONDUCT WHICH CREATES A GRAVE RISK OF DEATH TO ANOTHER PERSON AND
27 INDICATES INDIFFERENCE FOR THE VALUE OF HUMAN LIFE. RECKLESSNESS SHALL
28 BE ASSESSED OBJECTIVELY BY THE CIRCUMSTANCES OR FACTUAL SETTING IN WHICH
29 THE CRIME OCCURRED.

30 S 21. This act shall take effect on the first of November next
31 succeeding the date on which it shall have become a law, provided that:

32 1. section six of this act shall apply to offenses committed on and
33 after such date as well as to offenses committed prior thereto, provided
34 that such section six of this act shall not apply to offenses committed
35 prior to such date on which the prosecution thereof was barred under the
36 provisions of section 30.10 of the criminal procedure law in effect
37 immediately prior to such date; and

38 2. sections seven and eight of this act shall apply to acts committed
39 on and after such date as well as to acts committed prior thereto,
40 provided that such section seven of this act shall not apply to acts
41 committed prior to such date where the commencement of an action thereon
42 was barred under the provisions of article 2 of the civil practice law
43 and rules in effect immediately prior to such date.