S T A T E O F N E W Y O R K

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:

Section 1. Section 260.10 of the penal law, as amended by chapter 447 of the laws of 2010, is amended to read as follows:

S 260.10 Endangering the welfare of a child IN THE SECOND DEGREE.

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

1. He or she knowingly acts in a manner likely to be injurious to the physical, mental or moral welfare of a child less than seventeen years old or directs or authorizes such child to engage in an occupation involving a substantial risk of danger to his or her life or health; or

2. Being a parent, guardian or other person legally charged with the care or custody of a child less than eighteen years old, he or she fails or refuses to exercise reasonable diligence in the control of such child to prevent him or her from becoming an "abused child," a "neglected child," a "juvenile delinquent" or a "person in need of supervision," as those terms are defined in articles ten, three and seven of the family court act.

3. A person is not guilty of the provisions of this section when he or she engages in the conduct described in subdivision one of section 260.00 of this article: (a) with the intent to wholly abandon the child by relinquishing responsibility for and right to the care and custody of such child; (b) with the intent that the child be safe from physical injury and cared for in an appropriate manner; (c) the child is left with an appropriate person, or in a suitable location and the person who leaves the child promptly notifies an appropriate person of the child's location; and (d) the child is not more than thirty days old.

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

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

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

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

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

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

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

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

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

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

S 260.12 Endangering the welfare of a child; corroboration.

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

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

S 260.15 Endangering the welfare of a child; defense.

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

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

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

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

S 213-c. Action by victim of conduct constituting certain sexual offenses. Notwithstanding any other limitation set forth in this article, a civil claim or cause of action to recover from a defendant as hereinafter defined, for physical, psychological or other injury or condition suffered by a person as a result of acts by such defendant of rape in the first degree as defined in section 130.35 of the penal law, or criminal sexual act in the first degree as defined in section 130.50 of the penal law, or aggravated sexual abuse in the first degree as defined in section 130.70 of the penal law, or course of sexual conduct against a child in the first degree as defined in section 130.75 of the penal law, OR PREDATORY SEXUAL ASSAULT AS DEFINED IN SECTION 130.95 OF THE PENAL LAW, OR PREDATORY SEXUAL ASSAULT AGAINST A CHILD AS DEFINED IN SECTION 130.96 OF THE PENAL LAW may be brought within five years. As used in this section, the term "defendant" shall mean only a person who commits the acts described in this section or who, in a criminal proceeding, could be charged with criminal liability for the commission of such acts pursuant to section 20.00 of the penal law and shall not apply to any related civil claim or cause of action arising from such acts. Nothing in this section shall be construed to require that a criminal charge be brought or a criminal conviction be obtained as a condition of bringing a civil cause of action or receiving a civil judgment pursuant to this section or be construed to require that any of the rules governing a criminal proceeding be applicable to any such civil action.

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

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

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

(f) For purposes of a prosecution involving a sexual offense as defined in article one hundred thirty of the penal law, other than a sexual offense delineated in paragraph (a) of subdivision two of this section, committed against a child less than eighteen years of age, incest in the first, second or third degree as defined in sections 255.27, 255.26 and 255.25 of the penal law committed against a child less than eighteen years of age, or use of a child in a sexual performance as defined in section 263.05 of the penal law,[the period of limitation shall not begin to run until the child has reached the age of eighteen or the offense is reported to a law enforcement agency or

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Class B violent felony offenses: an attempt to commit the class A-I felonies of murder in the second degree as defined in section 125.25, kidnapping in the first degree as defined in section 135.25, and arson in the first degree as defined in section 150.20; manslaughter in the first degree as defined in section 125.20, aggravated manslaughter in the first degree as defined in section 125.22, rape in the first degree as defined in section 130.35, criminal sexual act in the first degree as defined in section 130.50, aggravated sexual abuse in the first degree as defined in section 130.70, [course of sexual conduct against a child in the first degree as defined in section 130.75;] assault in the first degree as defined in section 120.10, kidnapping in the second degree as defined in section 135.20, burglary in the first degree as defined in section 140.30, arson in the second degree as defined in section 150.15, robbery in the first degree as defined in section 160.15, sex trafficking as defined in paragraphs (a) and (b) of subdivision five of section 230.34, incest in the first degree as defined in section 255.27, criminal possession of a weapon in the first degree as defined in section 265.04, criminal use of a firearm in the first degree as defined in section 265.09, criminal sale of a firearm in the first degree as defined in section 265.13, aggravated assault upon a police officer or a peace officer as defined in section 120.11, gang assault in the first degree as defined in section 120.07, intimidating a victim or witness in the first degree as defined in section 215.17, hindering prosecution of terrorism in the first degree as defined in section 490.35, criminal possession of a chemical weapon or biological weapon in the second degree as defined in section 490.40, and criminal use of a chemical weapon or biological weapon in the third degree as defined in section 490.47.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

S 130.53 Persistent sexual abuse.

A person is guilty of persistent sexual abuse when he or she commits the crime of forcible touching, as defined in section 130.52 of this article, sexual abuse in the third degree, as defined in section 130.55 of this article, or sexual abuse in the second degree, as defined in section 130.60 of this article, OR SEXUAL MISCONDUCT, AS DEFINED IN SECTION 130.20 OF THIS ARTICLE, and, within the previous ten year period, excluding any time during which such person was incarcerated for any reason, has been convicted two or more times, in separate criminal transactions for which sentence was imposed on separate occasions, of forcible touching, as defined in section 130.52 of this article, sexual abuse in the third degree as defined in section 130.55 of this article, sexual abuse in the second degree, as defined in section 130.60 of this article, or any offense defined in this article, of which the commission or attempted commission thereof is a felony.

Persistent sexual abuse is a class E felony.

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

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

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

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

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