

# STATE OF NEW YORK

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4011

2017-2018 Regular Sessions

## IN ASSEMBLY

January 30, 2017

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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 § 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

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

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1 leaves the child promptly notifies an appropriate person of the child's  
2 location; and (d) the child is not more than thirty days old.

3 Endangering the welfare of a child in the second degree is a class A  
4 misdemeanor.

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

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

8 § 260.11 Endangering the welfare of a child in the first degree.

9 A person is guilty of endangering the welfare of a child in the first  
10 degree when:

11 1. He or she knowingly acts in a manner which creates a foreseeable  
12 risk of either serious physical injury or protracted harm to the mental  
13 or emotional welfare of a child less than seventeen years old; or

14 2. He or she commits the crime of endangering the welfare of a child  
15 in the second degree and has previously been convicted of endangering  
16 the welfare of a child in the second degree as defined in section 260.10  
17 of this article or endangering the welfare of a child in the first  
18 degree as defined in this section.

19 Endangering the welfare of a child in the first degree is a class D  
20 felony.

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

24 § 260.12 Endangering the welfare of a child; corroboration.

25 A person shall not be convicted of endangering the welfare of a child  
26 as defined in sections 260.10 or 260.11 of this article, or of an  
27 attempt to commit the same, upon the testimony of a victim who is inca-  
28 pable of consent because of mental defect or mental incapacity as to  
29 conduct that constitutes an offense or an attempt to commit an offense  
30 referred to in section 130.16 of this chapter, without additional  
31 evidence sufficient pursuant to section 130.16 of this chapter to  
32 sustain a conviction of an offense referred to in section 130.16 of this  
33 chapter, or of an attempt to commit the same.

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

36 § 260.15 Endangering the welfare of a child; defense.

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

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

49 (a) A prosecution for a class A felony, or rape in the first degree as  
50 defined in section 130.35 of the penal law, or a crime defined or  
51 formerly defined in section 130.50 of the penal law, or aggravated sexu-  
52 al abuse in the first degree as defined in section 130.70 of the penal  
53 law, or course of sexual conduct against a child in the first degree as  
54 defined in section 130.75 of the penal law, or predatory sexual assault  
55 as defined in section 130.95 of the penal law, or predatory sexual

1 assault against a child as defined in section 130.96 of the penal law,  
2 may be commenced at any time;

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

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

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

32 (b) Whenever it is shown that a criminal action against the same  
33 defendant has been commenced with respect to the event or occurrence  
34 from which a claim governed by this section arises, and such criminal  
35 action is for rape in the first degree as defined in section 130.35 of  
36 the penal law, or criminal sexual act in the first degree as defined in  
37 section 130.50 of the penal law, or aggravated sexual abuse in the first  
38 degree as defined in section 130.70 of the penal law, or course of sexu-  
39 al conduct against a child in the first degree as defined in section  
40 130.75 of the penal law, or predatory sexual assault as defined in  
41 section 130.95 of the penal law, or predatory sexual assault against a  
42 child as defined in section 130.96 of the penal law the plaintiff shall  
43 have at least five years from the termination of the criminal action as  
44 defined in section 1.20 of the criminal procedure law in which to  
45 commence the civil action, notwithstanding that the time in which to  
46 commence such action has already expired or has less than a year remain-  
47 ing.

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

51 (f) For purposes of a prosecution involving a sexual offense as  
52 defined in article one hundred thirty of the penal law, other than a  
53 sexual offense delineated in paragraph (a) of subdivision two of this  
54 section, committed against a child less than eighteen years of age,  
55 incest in the first, second or third degree as defined in sections  
56 255.27, 255.26 and 255.25 of the penal law committed against a child

1 less than eighteen years of age, or use of a child in a sexual perform-  
2 ance as defined in section 263.05 of the penal law, [~~the period of limi-~~  
3 ~~tation shall not begin to run until the child has reached the age of~~  
4 ~~eighteen or the offense is reported to a law enforcement agency or~~  
5 ~~statewide central register of child abuse and maltreatment, whichever~~  
6 ~~occurs earlier.~~] may be commenced at any time.

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

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

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

14 (c) When the other person is less than eleven years old[~~+~~]; or  
15 (d) When the other person is less than thirteen years old and the  
16 actor is eighteen years old or older.

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

20 (c) When the other person is less than eleven years old[~~+~~]; or  
21 (d) When the other person is less than thirteen years old and the  
22 actor is eighteen years old or older.

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

26 (c) When the other person is less than eleven years old[~~+~~]; or  
27 (d) When the other person is less than thirteen years old and the  
28 actor is eighteen years old or older.

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

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

1 weapon in the second degree as defined in section 490.40, and criminal  
2 use of a chemical weapon or biological weapon in the third degree as  
3 defined in section 490.47.

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

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

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

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

48 (c) Class D violent felony offenses: an attempt to commit any of the  
49 class C felonies set forth in paragraph (b); reckless assault of a child  
50 as defined in section 120.02, assault in the second degree as defined in  
51 section 120.05, menacing a police officer or peace officer as defined in  
52 section 120.18, stalking in the first degree, as defined in subdivision  
53 one of section 120.60, strangulation in the second degree as defined in  
54 section 121.12, rape in the second degree as defined in section 130.30,  
55 criminal sexual act in the second degree as defined in section 130.45,  
56 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.

§ 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:

§ 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.

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

§ 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.

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

§ 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.

§ 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.

§ 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.