STATE OF NEW YORK

2619

2017-2018 Regular Sessions

IN SENATE

January 13, 2017

Introduced by Sens. LANZA, GALLIVAN -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

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:

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:

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

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

§ 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 risk of either serious physical injury or prolonged impairment of the mental or emotional condition of a child less than seventeen years old; or

2. He or she commits the offense of endangering the welfare of a child in the second degree, when:

(a) The child is less than eleven years old; or

(b) The child suffered physical injury; or

(c) He or she has previously been convicted of any of the following offenses: endangering the welfare of a child in the second degree as defined in section 260.10; endangering the welfare of a child in the first degree as defined in this section; abandonment of a child as defined in section 260.00; assault in the second degree as defined in subdivision eight or nine of section 120.05; aggravated assault upon a person less than eleven years old as defined in section 120.12; manslaughter in the first degree as defined in subdivision four of section 125.20; murder in the second degree as defined in subdivision four of section 125.25; rape in the third degree as defined in subdivision two of section 130.25; rape in the second degree as defined in section 130.30; rape in the first degree as defined in subdivision three of section 130.35; criminal sexual act in the third degree as defined in subdivision two of section 130.40; criminal sexual act in the second degree as defined in section 130.45; criminal sexual act in the first degree as defined in subdivision three of section 130.50; sexual abuse in the second degree as defined in subdivision two of section 130.60; sexual abuse in the first degree as defined in subdivision three of section 130.65; aggravated sexual abuse in the third degree as defined in paragraph (c) of subdivision one of section 130.66; aggravated sexual abuse in the second degree as defined in paragraph (c) of subdivision one of section 130.67; aggravated sexual abuse in the first degree as defined in paragraph (c) of subdivision one of section 130.70; course of sexual conduct against a child in the first degree as defined in section 130.75; course of sexual conduct against a child in the second degree as defined in section 130.80; disseminating indecent material to minors in the second degree as defined in section 235.21; disseminating indecent material to minors in the first degree as defined in section 235.22; use of a child in a sexual performance as defined in section 263.05; promoting an obscene sexual performance by a child as defined in section 263.10; possessing an obscene sexual performance by a child as defined in section 263.11; promoting a sexual performance by a child as defined in section 263.15; possessing a sexual performance by a child as defined in section 263.16; or a similar offense against a child in any other jurisdiction.

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

§ 4. Paragraph (c) 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:

(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, **endangering the welfare of a child in the first degree as defined in section 260.11,** 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.

§ 5. 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:

§ 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 section 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, without additional evidence sufficient pursuant to section 130.16 to sustain a conviction of an offense referred to in section 130.16, or of an attempt to commit the same.

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

§ 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.

§ 7. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.