STATE OF NEW YORK

2650

2017-2018 Regular Sessions

IN SENATE

January 17, 2017

Introduced by Sen. KLEIN -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law and the vehicle and traffic law, in relation to endangering the welfare of a child; and to repeal paragraph (c) of subdivision 1 of section 35.07 of the arts and cultural affairs law relating to unlawful exhibitions

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Paragraph (c) of subdivision 1 of section 35.07 of the arts and cultural affairs law is REPEALED.

§ 2. Paragraph c of subdivision 5 of section 120.40 of the penal law, as added by chapter 635 of the laws of 1999, is amended to read as follows:

c. assault in the third degree, as defined in section 120.00; menacing in the first degree, as defined in section 120.13; menacing in the second degree, as defined in section 120.14; coercion in the first degree, as defined in section 135.65; coercion in the second degree, as defined in section 135.60; aggravated harassment in the second degree, as defined in section 240.30; harassment in the first degree, as defined in section 240.25; menacing in the third degree, as defined in section 120.15; criminal mischief in the third degree, as defined in section 145.05; criminal mischief in the second degree, as defined in section 145.10, criminal mischief in the first degree, as defined in section 145.12; criminal tampering in the first degree, as defined in section 145.20; arson in the fourth degree, as defined in section 150.05; arson in the third degree, as defined in section 150.10; criminal contempt in the first degree, as defined in section 215.51; 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 section 260.10-a;** or

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

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§ 3. 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[~~.~~]**; or**

3. **He or she employs, uses or exhibits a child less than sixteen years old, or being the parent, guardian, employer or other person legally charged with the care or custody of such a child, he or she consents to allowing or refuses to restrain, such child from engaging in begging, or receiving or soliciting alms in any manner or under any pretense, or in any mendicant occupation, or in gathering or picking rags, or collecting cigar stumps, or collecting bones or other refuse from markets or streets, or peddling.**

4. 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.

§ 4. The penal law is amended by adding a new section 260.10-a to read as follows:

§ 260.10-a 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 he or she commits the crime of endangering the welfare of a child in the second degree as defined in section 260.10 of this article, and:

1. Has been convicted of such offense or a violation of this section within the previous five years; or

2. Knowingly solicits, requests, commands, importunes or attempts to cause another person to engage in endangering the welfare of a child in the second degree.

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

§ 5. Section 260.11 of the penal law, as amended by chapter 89 of the laws of 1984, is amended to read as follows:

§ 260.11 Endangering the welfare of a child; corroboration.

A person shall not be convicted of endangering the welfare of a child **in the second degree or endangering the welfare of a child in the first degree**, 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 **in the second degree**, pursuant to section 260.10 of this article, **or endangering the welfare of a child in the first degree, pursuant to section 260.10-a 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. Paragraph (c) of subdivision 4 of section 509-cc of the vehicle and traffic law, as amended by chapter 368 of the laws of 2015, is amended to read as follows:

(c) The offenses referred to in subparagraph (i) of paragraph (b) of subdivision one and subparagraph (i) of paragraph (c) of subdivision two of this section that result in disqualification for a period of five years shall include a conviction under sections 100.10, 105.13, 115.05, 120.03, 120.04, 120.04-a, 120.05, 120.10, 120.25, 121.12, 121.13, 125.40, 125.45, 130.20, 130.25, 130.52, 130.55, 135.10, 135.55, 140.17, 140.25, 140.30, 145.12, 150.10, 150.15, 160.05, 160.10, 220.06, 220.09, 220.16, 220.31, 220.34, 220.60, 220.65, 221.30, 221.50, 221.55, 230.00, 230.05, 230.06, 230.11, 230.12, 230.13, 230.19, 230.20, 235.05, 235.06, 235.07, 235.21, 240.06, 245.00, 260.10, **260.10-a,** subdivision two of section 260.20 and sections 260.25, 265.02, 265.03, 265.08, 265.09, 265.10, 265.12, 265.35 of the penal law or an attempt to commit any of the aforesaid offenses under section 110.00 of the penal law, or any similar offenses committed under a former section of the penal law, or any offenses committed under a former section of the penal law which would constitute violations of the aforesaid sections of the penal law, or any offenses committed outside this state which would constitute violations of the aforesaid sections of the penal law.

§ 8. This act shall take effect immediately.