

STATE OF NEW YORK

4838

2017-2018 Regular Sessions

IN SENATE

March 2, 2017

Introduced by Sen. 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 endangering the welfare of a child in the first and second degrees

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
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.

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

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1 Endangering the welfare of a child in the second degree is a class A
2 misdemeanor.

3 § 2. Section 260.11 of the penal law, as amended by chapter 89 of the
4 laws of 1984, is renumbered section 260.12 and amended to read as
5 follows:

6 § 260.12 Endangering the welfare of a child; corroboration.

7 A person shall not be convicted of endangering the welfare of a child
8 as defined in section 260.09 or 260.10 of this article, or of an attempt
9 to commit the same, upon the testimony of a victim who is incapable of
10 consent because of mental defect or mental incapacity as to conduct that
11 constitutes an offense or an attempt to commit an offense referred to in
12 section 130.16, without additional evidence sufficient pursuant to
13 section 130.16 to sustain a conviction of an offense referred to in
14 section 130.16, or of an attempt to commit the same.

15 § 3. The penal law is amended by adding a new section 260.09 to read
16 as follows:

17 § 260.09 Endangering the welfare of a child in the first degree.

18 A person is guilty of endangering the welfare of a child in the first
19 degree when:

20 1. He or she knowingly acts in a manner which creates a risk of either
21 serious physical injury or prolonged impairment of the physical, mental
22 or moral welfare condition of a child less than seventeen years old; or

23 2. He or she recklessly acts in a manner which creates a risk of
24 either serious physical injury or prolonged impairment of the physical,
25 mental or moral welfare condition of a child less than seventeen years
26 old; or

27 3. He or she commits the crime of endangering the welfare of a child
28 in the second degree when:

29 (a) the child suffered physical injury; or

30 (b) he or she has previously been convicted of endangering the welfare
31 of a child in the second degree as defined in section 260.10 of this
32 article or endangering the welfare of a child in the first degree as
33 defined in this section.

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

36 § 4. Paragraph (c) of subdivision 1 of section 70.02 of the penal law,
37 as amended by chapter 368 of the laws of 2015, is amended to read as
38 follows:

39 (c) Class D violent felony offenses: an attempt to commit any of the
40 class C felonies set forth in paragraph (b); reckless assault of a child
41 as defined in section 120.02, assault in the second degree as defined in
42 section 120.05, menacing a police officer or peace officer as defined in
43 section 120.18, stalking in the first degree, as defined in subdivision
44 one of section 120.60, strangulation in the second degree as defined in
45 section 121.12, rape in the second degree as defined in section 130.30,
46 criminal sexual act in the second degree as defined in section 130.45,
47 sexual abuse in the first degree as defined in section 130.65, course of
48 sexual conduct against a child in the second degree as defined in
49 section 130.80, aggravated sexual abuse in the third degree as defined
50 in section 130.66, facilitating a sex offense with a controlled
51 substance as defined in section 130.90, endangering the welfare of a
52 child in the first degree as defined in section 260.09, labor traffick-
53 ing as defined in paragraphs (a) and (b) of subdivision three of section
54 135.35, criminal possession of a weapon in the third degree as defined
55 in subdivision five, six, seven, eight, nine or ten of section 265.02,
56 criminal sale of a firearm in the third degree as defined in section

1 265.11, intimidating a victim or witness in the second degree as defined
2 in section 215.16, soliciting or providing support for an act of terror-
3 ism in the second degree as defined in section 490.10, and making a
4 terroristic threat as defined in section 490.20, falsely reporting an
5 incident in the first degree as defined in section 240.60, placing a
6 false bomb or hazardous substance in the first degree as defined in
7 section 240.62, placing a false bomb or hazardous substance in a sports
8 stadium or arena, mass transportation facility or enclosed shopping mall
9 as defined in section 240.63, and aggravated unpermitted use of indoor
10 pyrotechnics in the first degree as defined in section 405.18.

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

13 § 260.15 Endangering the welfare of a child; defense.

14 In any prosecution for endangering the welfare of a child, pursuant to
15 section 260.09 or 260.10 of this article, based upon an alleged failure
16 or refusal to provide proper medical care or treatment to an ill child,
17 it is an affirmative defense that the defendant (a) is a parent, guardi-
18 an or other person legally charged with the care or custody of such
19 child; and (b) is a member or adherent of an organized church or reli-
20 gious group the tenets of which prescribe prayer as the principal treat-
21 ment for illness; and (c) treated or caused such ill child to be treated
22 in accordance with such tenets.

23 § 6. This act shall take effect on the first of January next succeed-
24 ing the date on which it shall have become a law.