

STATE OF NEW YORK

4011

2017-2018 Regular Sessions

IN ASSEMBLY

January 30, 2017

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.

LBD05522-01-7

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.