

# 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:

1 Section 1. Paragraph (c) of subdivision 1 of section 35.07 of the arts  
2 and cultural affairs law is REPEALED.  
3 § 2. Paragraph c of subdivision 5 of section 120.40 of the penal law,  
4 as added by chapter 635 of the laws of 1999, is amended to read as  
5 follows:  
6 c. assault in the third degree, as defined in section 120.00; menacing  
7 in the first degree, as defined in section 120.13; menacing in the  
8 second degree, as defined in section 120.14; coercion in the first  
9 degree, as defined in section 135.65; coercion in the second degree, as  
10 defined in section 135.60; aggravated harassment in the second degree,  
11 as defined in section 240.30; harassment in the first degree, as defined  
12 in section 240.25; menacing in the third degree, as defined in section  
13 120.15; criminal mischief in the third degree, as defined in section  
14 145.05; criminal mischief in the second degree, as defined in section  
15 145.10, criminal mischief in the first degree, as defined in section  
16 145.12; criminal tampering in the first degree, as defined in section  
17 145.20; arson in the fourth degree, as defined in section 150.05; arson  
18 in the third degree, as defined in section 150.10; criminal contempt in  
19 the first degree, as defined in section 215.51; endangering the welfare  
20 of a child in the second degree, as defined in section 260.10; endanger-  
21 ing the welfare of a child in the first degree, as defined in section  
22 260.10-a; or

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

LBD04841-02-7

1 § 3. Section 260.10 of the penal law, as amended by chapter 447 of the  
2 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[+]; or

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

25 4. A person is not guilty of the provisions of this section when he or  
26 she engages in the conduct described in subdivision one of section  
27 260.00 of this article: (a) with the intent to wholly abandon the child  
28 by relinquishing responsibility for and right to the care and custody of  
29 such child; (b) with the intent that the child be safe from physical  
30 injury and cared for in an appropriate manner; (c) the child is left  
31 with an appropriate person, or in a suitable location and the person who  
32 leaves the child promptly notifies an appropriate person of the child's  
33 location; and (d) the child is not more than thirty days old.

34 Endangering the welfare of a child in the second degree is a class A  
35 misdemeanor.

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

38 § 260.10-a Endangering the welfare of a child in the first degree.

39 A person is guilty of endangering the welfare of a child in the first  
40 degree when he or she commits the crime of endangering the welfare of a  
41 child in the second degree as defined in section 260.10 of this article,  
42 and:

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

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

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

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

52 § 260.11 Endangering the welfare of a child; corroboration.

53 A person shall not be convicted of endangering the welfare of a child  
54 in the second degree or endangering the welfare of a child in the first  
55 degree, or of an attempt to commit the same, upon the testimony of a  
56 victim who is incapable of consent because of mental defect or mental

1 incapacity as to conduct that constitutes an offense or an attempt to  
2 commit an offense referred to in section 130.16, without additional  
3 evidence sufficient pursuant to section 130.16 to sustain a conviction  
4 of an offense referred to in section 130.16, or of an attempt to commit  
5 the same.

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

8 § 260.15 Endangering the welfare of a child; defense.

9 In any prosecution for endangering the welfare of a child in the  
10 second degree, pursuant to section 260.10 of this article, or endanger-  
11 ing the welfare of a child in the first degree, pursuant to section  
12 260.10-a of this article, based upon an alleged failure or refusal to  
13 provide proper medical care or treatment to an ill child, it is an  
14 affirmative defense that the defendant (a) is a parent, guardian or  
15 other person legally charged with the care or custody of such child; and  
16 (b) is a member or adherent of an organized church or religious group  
17 the tenets of which prescribe prayer as the principal treatment for  
18 illness; and (c) treated or caused such ill child to be treated in  
19 accordance with such tenets.

20 § 7. Paragraph (c) of subdivision 4 of section 509-cc of the vehicle  
21 and traffic law, as amended by chapter 368 of the laws of 2015, is  
22 amended to read as follows:

23 (c) The offenses referred to in subparagraph (i) of paragraph (b) of  
24 subdivision one and subparagraph (i) of paragraph (c) of subdivision two  
25 of this section that result in disqualification for a period of five  
26 years shall include a conviction under sections 100.10, 105.13, 115.05,  
27 120.03, 120.04, 120.04-a, 120.05, 120.10, 120.25, 121.12, 121.13,  
28 125.40, 125.45, 130.20, 130.25, 130.52, 130.55, 135.10, 135.55, 140.17,  
29 140.25, 140.30, 145.12, 150.10, 150.15, 160.05, 160.10, 220.06, 220.09,  
30 220.16, 220.31, 220.34, 220.60, 220.65, 221.30, 221.50, 221.55, 230.00,  
31 230.05, 230.06, 230.11, 230.12, 230.13, 230.19, 230.20, 235.05, 235.06,  
32 235.07, 235.21, 240.06, 245.00, 260.10, 260.10-a, subdivision two of  
33 section 260.20 and sections 260.25, 265.02, 265.03, 265.08, 265.09,  
34 265.10, 265.12, 265.35 of the penal law or an attempt to commit any of  
35 the aforesaid offenses under section 110.00 of the penal law, or any  
36 similar offenses committed under a former section of the penal law, or  
37 any offenses committed under a former section of the penal law which  
38 would constitute violations of the aforesaid sections of the penal law,  
39 or any offenses committed outside this state which would constitute  
40 violations of the aforesaid sections of the penal law.

41 § 8. This act shall take effect immediately.