

STATE OF NEW YORK

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2021-2022 Regular Sessions

IN ASSEMBLY

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Introduced by M. of A. BARCLAY, MORINELLO, B. MILLER, SMITH, MIKULIN, NORRIS, WALCZYK, GALLAHAN, SALKA, DeSTEFANO, J. M. GIGLIO -- Multi-Sponsored by -- M. of A. BROWN, LEMONDES, MANKTELOW -- 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:

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.

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 is renumbered section 260.12.

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

6 § 260.11 Endangering the welfare of a child in the first degree.

7 A person is guilty of endangering the welfare of a child in the first
8 degree when:

9 1. He or she knowingly acts in a manner which creates a foreseeable
10 risk of either serious physical injury or protracted harm to the mental
11 or emotional welfare of a child less than seventeen years old; or

12 2. He or she commits the crime of endangering the welfare of a child
13 in the second degree and has previously been convicted of endangering
14 the welfare of a child in the second degree as defined in section 260.10
15 of this article or endangering the welfare of a child in the first
16 degree as defined in this section.

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

19 § 4. Section 260.12 of the penal law, as amended by chapter 89 of the
20 laws of 1984 and as renumbered by section two of this act, is amended to
21 read as follows:

22 § 260.12 Endangering the welfare of a child; corroboration.

23 A person shall not be convicted of endangering the welfare of a child
24 as defined in sections 260.10 or 260.11 of this article, or of an
25 attempt to commit the same, upon the testimony of a victim who is inca-
26 pable of consent because of mental defect or mental incapacity as to
27 conduct that constitutes an offense or an attempt to commit an offense
28 referred to in section 130.16 of this chapter, without additional
29 evidence sufficient pursuant to section 130.16 of this chapter to
30 sustain a conviction of an offense referred to in section 130.16 of this
31 chapter, or of an attempt to commit the same.

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

34 § 260.15 Endangering the welfare of a child; defense.

35 In any prosecution for endangering the welfare of a child, pursuant to
36 section 260.10 or 260.11 of this article, based upon an alleged failure
37 or refusal to provide proper medical care or treatment to an ill child,
38 it is an affirmative defense that the defendant (a) is a parent, guardi-
39 an or other person legally charged with the care or custody of such
40 child; and (b) is a member or adherent of an organized church or reli-
41 gious group the tenets of which prescribe prayer as the principal treat-
42 ment for illness; and (c) treated or caused such ill child to be treated
43 in accordance with such tenets.

44 § 6. Paragraph (a) of subdivision 2 of section 30.10 of the criminal
45 procedure law, as amended by chapter 315 of the laws of 2019, is amended
46 to read as follows:

47 (a) A prosecution for a class A felony, or rape in the first degree as
48 defined in section 130.35 of the penal law, or a crime defined or
49 formerly defined in section 130.50 of the penal law, or aggravated sexu-
50 al abuse in the first degree as defined in section 130.70 of the penal
51 law, or course of sexual conduct against a child in the first degree as
52 defined in section 130.75 of the penal law, or incest in the first
53 degree as defined in section 255.27 of the penal law, or predatory sexu-
54 al assault as defined in section 130.95 of the penal law or predatory
55 sexual assault against a child as defined in section 130.96 of the penal
56 law may be commenced at any time;

§ 7. Section 213-c of the civil practice law and rules, as amended by chapter 315 of the laws of 2019, is amended to read as follows:

§ 213-c. Action by victim of conduct constituting certain sexual offenses. Notwithstanding any other limitation set forth in this article, except as provided in subdivision (b) of section two hundred eight of this article, all civil claims or causes of action brought by any person for physical, psychological or other injury or condition suffered by such person as a result of conduct which would constitute rape in the first degree as defined in section 130.35 of the penal law, or rape in the second degree as defined in subdivision two of section 130.30 of the penal law, or rape in the third degree as defined in subdivision one or three of section 130.25 of the penal law, or criminal sexual act in the first degree as defined in section 130.50 of the penal law, or criminal sexual act in the second degree as defined in subdivision two of section 130.45 of the penal law, or criminal sexual act in the third degree as defined in subdivision one or three of section 130.40 of the penal law, or incest in the first degree as defined in section 255.27 of the penal law, or incest in the second degree as defined in section 255.26 of the penal law (where the crime committed is rape in the second degree as defined in subdivision two of section 130.30 of the penal law or criminal sexual act in the second degree as defined in subdivision two of section 130.45), or aggravated sexual abuse in the first degree as defined in section 130.70 of the penal law, or course of sexual conduct against a child in the first degree as defined in section 130.75 of the penal law, or predatory sexual assault as defined in section 130.95 of the penal law or predatory sexual assault against a child as defined in section 130.96 of the penal law may be brought against any party whose intentional or negligent acts or omissions are alleged to have resulted in the commission of the said conduct, within twenty years. Nothing in this section shall be construed to require that a criminal charge be brought or a criminal conviction be obtained as a condition of bringing a civil cause of action or receiving a civil judgment pursuant to this section or be construed to require that any of the rules governing a criminal proceeding be applicable to any such civil action.

§ 8. Paragraph (b) of subdivision 8 of section 215 of the civil practice law and rules, as added by chapter 3 of the laws of 2006, is amended to read as follows:

(b) Whenever it is shown that a criminal action against the same defendant has been commenced with respect to the event or occurrence from which a claim governed by this section arises, and such criminal action is for rape in the first degree as defined in section 130.35 of the penal law, or criminal sexual act in the first degree as defined in section 130.50 of the penal law, or aggravated sexual abuse in the first degree as defined in section 130.70 of the penal law, or course of sexual conduct against a child in the first degree as defined in section 130.75 of the penal law, or predatory sexual assault as defined in section 130.95 of the penal law, or predatory sexual assault against a child as defined in section 130.96 of the penal law the plaintiff shall have at least five years from the termination of the criminal action as defined in section 1.20 of the criminal procedure law in which to commence the civil action, notwithstanding that the time in which to commence such action has already expired or has less than a year remaining.

§ 9. Paragraph (f) of subdivision 3 of section 30.10 of the criminal procedure law, as amended by chapter 11 of the laws of 2019, is amended to read as follows:

(f) For purposes of a prosecution involving a sexual offense as defined in article one hundred thirty of the penal law, other than a sexual offense delineated in paragraph (a) of subdivision two of this section, committed against a child less than eighteen years of age, incest in the first, second or third degree as defined in sections 255.27, 255.26 and 255.25 of the penal law committed against a child less than eighteen years of age, or use of a child in a sexual performance as defined in section 263.05 of the penal law, ~~[the period of limitation shall not begin to run until the child has reached the age of twenty-three or the offense is reported to a law enforcement agency or statewide central register of child abuse and maltreatment, whichever occurs earlier]~~ may be commenced at any time.

§ 10. Subdivision 4 of section 130.65 of the penal law, as amended by chapter 26 of the laws of 2011, is amended to read as follows:

4. When the other person is less than thirteen years old and the actor is ~~[twenty-one]~~ eighteen years old or older.

§ 11. Paragraph (c) of subdivision 1 of section 130.66 of the penal law, as amended by chapter 485 of the laws of 2009, is amended and a new paragraph (d) is added to read as follows:

(c) When the other person is less than eleven years old~~[-]; or~~

(d) When the other person is less than thirteen years old and the actor is eighteen years old or older.

§ 12. Paragraph (c) of subdivision 1 of section 130.67 of the penal law, as added by chapter 450 of the laws of 1988, is amended and a new paragraph (d) is added to read as follows:

(c) When the other person is less than eleven years old~~[-]; or~~

(d) When the other person is less than thirteen years old and the actor is eighteen years old or older.

§ 13. Paragraph (c) of subdivision 1 of section 130.70 of the penal law, as amended by chapter 450 of the laws of 1988, is amended and a new paragraph (d) is added to read as follows:

(c) When the other person is less than eleven years old~~[-]; or~~

(d) When the other person is less than thirteen years old and the actor is eighteen years old or older.

§ 14. Paragraph (a) of subdivision 1 of section 70.02 of the penal law, as amended by chapter 189 of the laws of 2018, is amended to read as follows:

(a) Class B violent felony offenses: an attempt to commit the class A-I felonies of murder in the second degree as defined in section 125.25, kidnapping in the first degree as defined in section 135.25, and arson in the first degree as defined in section 150.20; manslaughter in the first degree as defined in section 125.20, aggravated manslaughter in the first degree as defined in section 125.22, rape in the first degree as defined in section 130.35, criminal sexual act in the first degree as defined in section 130.50, aggravated sexual abuse in the first degree as defined in section 130.70, ~~[course of sexual conduct against a child in the first degree as defined in section 130.75;]~~ assault in the first degree as defined in section 120.10, kidnapping in the second degree as defined in section 135.20, burglary in the first degree as defined in section 140.30, arson in the second degree as defined in section 150.15, robbery in the first degree as defined in section 160.15, sex trafficking as defined in paragraphs (a) and (b) of subdivision five of section 230.34, sex trafficking of a child as defined in section 230.34-a, incest in the first degree as defined in section 255.27, criminal possession of a weapon in the first degree as defined in section 265.04, criminal use of a firearm in the first degree

1 as defined in section 265.09, criminal sale of a firearm in the first
2 degree as defined in section 265.13, aggravated assault upon a police
3 officer or a peace officer as defined in section 120.11, gang assault in
4 the first degree as defined in section 120.07, intimidating a victim or
5 witness in the first degree as defined in section 215.17, hindering
6 prosecution of terrorism in the first degree as defined in section
7 490.35, criminal possession of a chemical weapon or biological weapon in
8 the second degree as defined in section 490.40, and criminal use of a
9 chemical weapon or biological weapon in the third degree as defined in
10 section 490.47.

11 § 15. Subdivision 3 of section 70.80 of the penal law, as added by
12 chapter 7 of the laws of 2007, is amended to read as follows:

13 3. Except as provided by subdivision four, five, six, seven or eight
14 of this section, or when a defendant is being sentenced for a conviction
15 of the class A-II felonies of predatory sexual assault ~~[and]~~, predatory
16 sexual assault against a child, or course of sexual conduct against a
17 child in the first degree as defined in sections 130.95 ~~[and]~~, 130.96
18 and 130.75 of this chapter, or for any class A-I sexually motivated
19 felony for which a life sentence or a life without parole sentence must
20 be imposed, a sentence imposed upon a defendant convicted of a felony
21 sex offense shall be a determinate sentence. The determinate sentence
22 shall be imposed by the court in whole or half years, and shall include
23 as a part thereof a period of post-release supervision in accordance
24 with subdivision two-a of section 70.45 of this article. Persons eligi-
25 ble for sentencing under section 70.07 of this article governing second
26 child sexual assault felonies shall be sentenced under such section and
27 paragraph (j) of subdivision two-a of section 70.45 of this article.

28 § 16. Paragraphs (b) and (c) of subdivision 1 of section 70.02 of the
29 penal law, paragraph (b) as amended by chapter 94 of the laws of 2020
30 and paragraph (c) as amended by chapter 134 of the laws of 2019, are
31 amended to read as follows:

32 (b) Class C violent felony offenses: an attempt to commit any of the
33 class B felonies set forth in paragraph (a) of this subdivision; aggra-
34 vated criminally negligent homicide as defined in section 125.11, aggra-
35 vated manslaughter in the second degree as defined in section 125.21,
36 aggravated sexual abuse in the second degree as defined in section
37 130.67, assault on a peace officer, police officer, firefighter or emer-
38 gency medical services professional as defined in section 120.08,
39 assault on a judge as defined in section 120.09, gang assault in the
40 second degree as defined in section 120.06, strangulation in the first
41 degree as defined in section 121.13, aggravated strangulation as defined
42 in section 121.13-a, course of sexual conduct against a child in the
43 second degree as defined in section 130.80, burglary in the second
44 degree as defined in section 140.25, robbery in the second degree as
45 defined in section 160.10, criminal possession of a weapon in the second
46 degree as defined in section 265.03, criminal use of a firearm in the
47 second degree as defined in section 265.08, criminal sale of a firearm
48 in the second degree as defined in section 265.12, criminal sale of a
49 firearm with the aid of a minor as defined in section 265.14, aggravated
50 criminal possession of a weapon as defined in section 265.19, soliciting
51 or providing support for an act of terrorism in the first degree as
52 defined in section 490.15, hindering prosecution of terrorism in the
53 second degree as defined in section 490.30, and criminal possession of a
54 chemical weapon or biological weapon in the third degree as defined in
55 section 490.37.

(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, 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, aggravated unpermitted use of indoor pyrotechnics in the first degree as defined in section 405.18, and criminal manufacture, sale, or transport of an undetectable firearm, rifle or shotgun as defined in section 265.50.

§ 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 paragraph (a) or (b) of this subdivision 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 1. A person is guilty of course of sexual conduct against a child or
2 children in the second degree when[~~, over a period of time not less than~~
3 ~~three months in duration~~]:

4 (a) he or she engages in two or more acts of sexual conduct with a
5 child less than eleven years old; or

6 (b) he or she, being eighteen years old or more, engages in two or
7 more acts of sexual conduct with a child less than thirteen years old;

8 or

9 (c) he or she engages in the acts defined in paragraph (a) or (b) of
10 this subdivision with two or more children.

11 2. A person may not be subsequently prosecuted for any other sexual
12 offense involving the same victim unless the other charged offense
13 occurred outside the time period charged under this section.

14 Course of sexual conduct against a child or children in the second
15 degree is a class [D] C felony.

16 § 19. Section 130.53 of the penal law, as amended by chapter 192 of
17 the laws of 2014, is amended to read as follows:

18 § 130.53 Persistent sexual abuse.

19 A person is guilty of persistent sexual abuse when he or she commits
20 the crime of forcible touching, as defined in section 130.52 of this
21 article, sexual abuse in the third degree, as defined in section 130.55
22 of this article, or sexual abuse in the second degree, as defined in
23 section 130.60 of this article, or sexual misconduct, as defined in
24 section 130.20 of this article, and, within the previous ten year peri-
25 od, excluding any time during which such person was incarcerated for any
26 reason, has been convicted two or more times, in separate criminal tran-
27 sactions for which sentence was imposed on separate occasions, of forcible
28 touching, as defined in section 130.52 of this article, sexual abuse
29 in the third degree as defined in section 130.55 of this article, sexual
30 abuse in the second degree, as defined in section 130.60 of this arti-
31 cle, or any offense defined in this article, of which the commission or
32 attempted commission thereof is a felony.

33 Persistent sexual abuse is a class E felony.

34 § 20. Section 10.00 of the penal law is amended by adding a new subdi-
35 vision 22 to read as follows:

36 22. For the purposes of section 125.25 of this chapter, the term
37 "depraved indifference to human life" means where the defendant,
38 although not intending to cause death, recklessly engages in a course of
39 fatal conduct which creates a grave risk of death to another person and
40 indicates indifference for the value of human life. Recklessness shall
41 be assessed objectively by the circumstances or factual setting in which
42 the crime occurred.

43 § 21. This act shall take effect on the first of November next
44 succeeding the date on which it shall have become a law, provided that:

45 1. section six of this act shall apply to offenses committed on and
46 after such date as well as to offenses committed prior thereto, provided
47 that such section six of this act shall not apply to offenses committed
48 prior to such date on which the prosecution thereof was barred under the
49 provisions of section 30.10 of the criminal procedure law in effect
50 immediately prior to such date; and

51 2. sections seven and eight of this act shall apply to acts committed
52 on and after such date as well as to acts committed prior thereto,
53 provided that such section seven of this act shall not apply to acts
54 committed prior to such date where the commencement of an action thereon
55 was barred under the provisions of article 2 of the civil practice law
56 and rules in effect immediately prior to such date.