

STATE OF NEW YORK

5890

2021-2022 Regular Sessions

IN ASSEMBLY

March 1, 2021

Introduced by M. of A. HAWLEY, McDONOUGH, J. M. GIGLIO, PALMESANO, MORI-
NELLO, DeSTEFANO, ASHBY, SALKA -- Multi-Sponsored by -- M. of A.
BARCLAY, THIELE -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to establishing the crimes of
assaulting a child in the first and second degree and the crime of
aggravated assault on a child; and to repeal subdivisions 8 and 9 of
section 120.05 of such law relating to assault in the second degree

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

Section 1. The penal law is amended by adding three new sections
120.26, 120.27 and 120.28 to read as follows:

§ 120.26 Assaulting a child in the first degree.

A person is guilty of assaulting a child in the first degree when, he
or she being eighteen years old or older and with intent to cause seri-
ous physical injury to a person less than eleven years old, causes such
injury to such person.

Assaulting a child in the first degree is a class B felony.

§ 120.27 Assaulting a child in the second degree.

A person is guilty of assaulting a child in the second degree when:

1. Being eighteen years old or older and with the intent to cause
physical injury to a person less than eleven years old, he or she reck-
lessly causes serious physical injury to such person; or

2. Being eighteen years old or older and with intent to cause physical
injury to a person less than seven years old, he or she causes such
injury to such person.

Assaulting a child in the second degree is a class C felony.

§ 120.28 Aggravated assault on a child.

A person is guilty of aggravated assault on a child when he or she
commits the offense of assaulting a child in the first degree or
assaulting a child in the second degree and has previously been
convicted of either such offense within the preceding five years.

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

LBD02053-01-1

1 Aggravated assault on a child is a class A-II felony.

2 § 2. Paragraphs (a) and (b) of subdivision 1 of section 70.02 of the
3 penal law, paragraph (a) as amended by chapter 189 of the laws of 2018
4 and paragraph (b) as amended by chapter 94 of the laws of 2020, are
5 amended to read as follows:

6 (a) Class B violent felony offenses: an attempt to commit the class
7 A-I felonies of murder in the second degree as defined in section
8 125.25, kidnapping in the first degree as defined in section 135.25, and
9 arson in the first degree as defined in section 150.20; manslaughter in
10 the first degree as defined in section 125.20, aggravated manslaughter
11 in the first degree as defined in section 125.22, rape in the first
12 degree as defined in section 130.35, criminal sexual act in the first
13 degree as defined in section 130.50, aggravated sexual abuse in the
14 first degree as defined in section 130.70, course of sexual conduct
15 against a child in the first degree as defined in section 130.75;
16 assault in the first degree as defined in section 120.10, kidnapping in
17 the second degree as defined in section 135.20, burglary in the first
18 degree as defined in section 140.30, arson in the second degree as
19 defined in section 150.15, robbery in the first degree as defined in
20 section 160.15, sex trafficking as defined in paragraphs (a) and (b) of
21 subdivision five of section 230.34, sex trafficking of a child as
22 defined in section 230.34-a, incest in the first degree as defined in
23 section 255.27, criminal possession of a weapon in the first degree as
24 defined in section 265.04, criminal use of a firearm in the first degree
25 as defined in section 265.09, criminal sale of a firearm in the first
26 degree as defined in section 265.13, aggravated assault upon a police
27 officer or a peace officer as defined in section 120.11, gang assault in
28 the first degree as defined in section 120.07, assaulting a child in the
29 first degree as defined in section 120.26, intimidating a victim or
30 witness in the first degree as defined in section 215.17, hindering
31 prosecution of terrorism in the first degree as defined in section
32 490.35, criminal possession of a chemical weapon or biological weapon in
33 the second degree as defined in section 490.40, and criminal use of a
34 chemical weapon or biological weapon in the third degree as defined in
35 section 490.47.

36 (b) Class C violent felony offenses: an attempt to commit any of the
37 class B felonies set forth in paragraph (a) of this subdivision; aggra-
38 vated criminally negligent homicide as defined in section 125.11, aggra-
39 vated manslaughter in the second degree as defined in section 125.21,
40 aggravated sexual abuse in the second degree as defined in section
41 130.67, assault on a peace officer, police officer, firefighter or emer-
42 gency medical services professional as defined in section 120.08,
43 assault on a judge as defined in section 120.09, gang assault in the
44 second degree as defined in section 120.06, assaulting a child in the
45 second degree as defined in section 120.27, strangulation in the first
46 degree as defined in section 121.13, aggravated strangulation as defined
47 in section 121.13-a, burglary in the second degree as defined in section
48 140.25, robbery in the second degree as defined in section 160.10, crim-
49 inal possession of a weapon in the second degree as defined in section
50 265.03, criminal use of a firearm in the second degree as defined in
51 section 265.08, criminal sale of a firearm in the second degree as
52 defined in section 265.12, criminal sale of a firearm with the aid of a
53 minor as defined in section 265.14, aggravated criminal possession of a
54 weapon as defined in section 265.19, soliciting or providing support for
55 an act of terrorism in the first degree as defined in section 490.15,
56 hindering prosecution of terrorism in the second degree as defined in

1 section 490.30, and criminal possession of a chemical weapon or biolog-
2 ical weapon in the third degree as defined in section 490.37.

3 § 3. Subdivisions 8 and 9 of section 120.05 of the penal law are
4 REPEALED.

5 § 4. This act shall take effect on the first of November next succeed-
6 ing the date on which it shall have become a law.