

A 11076 DenDekker Same as [S 7832](#) ADDABBO
Penal Law

TITLE....Establishes the offense of aggravated endangering
the welfare of a child
05/13/10 referred to codes

S7832 ADDABBO Same as [A 11076](#) DenDekker
NOT ON FILE

TITLE....Establishes the offense of aggravated
endangering the welfare of a child
05/14/10 REFERRED TO CODES

DENDEKKER

Add S260.12, Pen L

Establishes the offense of aggravated endangering the welfare of a child, a class E felony.

CRIMINAL SANCTION IMPACT.

11076

IN ASSEMBLY

May 13, 2010

Introduced by M. of A. DenDEKKER -- read once and referred to the
Committee on Codes

AN ACT to amend the penal law, in relation to establishing the offense
of aggravated endangering the welfare of a child

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

- 1 Section 1. The penal law is amended by adding a new section 260.12 to
2 read as follows:
3 **§ 260.12 Aggravated endangering the welfare of a child.**
4 **A person is guilty of aggravated endangering the welfare of a child**
5 **when he or she is a parent, guardian or other person legally charged**
6 **with the care of a child less than eighteen years of age who knowingly**
7 **acts in a manner likely to be injurious to the physical, mental or moral**
8 **welfare of such child and:**
9 **1. such person has previously been convicted of any offense set forth**
10 **in this chapter in which the victim was a child less than eighteen years**
11 **old; or**
12 **2. the conduct of such person includes acts that cause the child**
13 **extreme pain or which are carried out in an especially vicious or sadis-**
14 **tic manner.**
15 **Aggravated endangering the welfare of a child is a class E felony.**
16 § 2. This act shall take effect on the first of November next succeed-
17 ing the date on which it shall have become a law.

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

LBD17160-01-0

**NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(f)**

BILL NUMBER: A11076

SPONSOR: DenDekker

TITLE OF BILL: An act to amend the penal law, in relation to establishing the offense of aggravated endangering the welfare of a child

PURPOSE: To adequately address the offense of endangering the welfare of a child and further protect innocent child victims.

SUMMARY OF PROVISIONS: A new section, 260.12, is amended in to the Penal Law. EXISTING LAW: Please see "justification" section for further information.

JUSTIFICATION: The following is transcribed from the New York State Law Enforcement Council 2010 Legislative Priorities handbook:

"Under current statutes, to prosecute child abuse as a felony, prosecutors must prove the intentional infliction of serious physical injury or prove the use of a dangerous weapon. In most cases of child abuse, particularly in the earlier stages of abuse, the actions either do not result in a telltale physical injury or it is difficult to prove that the act was undertaken intentionally, rather than recklessly. In many of these cases, children may be put in danger through abandonment or neglect or subjected to other physical or emotional cruelties that do not fall under the Penal Law definition of serious physical injury (currently defined as "physical injury which creates a substantial risk of death, or which causes death or serious and protected disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ" within Article 10.10 of the Penal Law). Hands, fists, and feet do not qualify as "weapons" so abuse inflicted by hitting, kicking or punching frequently falls through the gap in the law.

Prosecutors are left with two options: a 'B' felony, a high-level felony punishable by a minimum of five years in prison, or an 'A' misdemeanor, a low-level charge which can garner no jail time." law.

The proposed "Aggravated Endangering the Welfare of a Child, a class 'E' felony, would penalize a person in a position of trust who knowingly acts in a way likely to be injurious to the child's physical, mental, or emotional welfare. The charge requires one of two aggravating factors be present: the offender has previously been convicted of a crime in which the victim was a minor, or the conduct includes acts that cause the child extreme pain or which are carried out in an especially vicious or sadistic manner.

Among other states, Florida, California, Delaware, Texas, Georgia, and Iowa have recognized that a misdemeanor penalty is inadequate in these situations. The children of New York State deserve no less protection.

The proposed felony endangering statute would apply to a person charged with any duty or responsibility for the health, education, welfare, supervision, or care of the child. This requirement recognizes the increased danger and isolation faced by a child when his or her abuser is an adult to whom the child would otherwise turn for help. Persons in a position of trust should be the first people to recognize that a child is being endangered, but when they are the abuser, the child must hope that outsiders will intervene.

The current Endangering the Welfare of a Child misdemeanor penalizes parents and guardians who fail to take actions to prevent their children from abuse, neglect or delinquency, but it provides no enhanced penalty for parents and guardians who take active roles in abusing their children. When children are abused by those who are responsible for their care, the psychological and emotional toll is great."

LEGISLATIVE HISTORY: New bill.

FISCAL IMPLICATIONS: None.

EFFECTIVE DATE: This act shall take effect on the first of November next succeeding the date on which it shall have become a law.
