

3666

2011-2012 Regular Sessions

I N S E N A T E

March 1, 2011

Introduced by Sen. LANZA -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, in relation to establishing domestic abuse offenses; to amend the criminal procedure law, in relation to providing for deferral of sentencing felony domestic abuse offenses; and to amend the criminal procedure law and the family court act, in relation to granting family courts and criminal courts concurrent jurisdiction over domestic abuse offenses

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 three new sections
2 120.75, 120.80 and 120.85 to read as follows:
3 S 120.75 DEFINITIONS; DOMESTIC ABUSE.
4 FOR THE PURPOSES OF SECTIONS 120.80 AND 120.85 OF THIS ARTICLE:
5 1. "DOMESTIC PARTNER" SHALL MEAN A PERSON WHO IS LIVING OR HAS LIVED
6 TOGETHER WITH ANOTHER PERSON FOR AN EXTENDED DURATION IN AN INTIMATE
7 RELATIONSHIP MARKED BY SEXUAL, PHYSICAL OR FINANCIAL INTERDEPENDENCE.
8 2. "FELLOW PARENT OF A CHILD IN COMMON" SHALL MEAN A PERSON WHO HAS A
9 CHILD IN COMMON WITH ANOTHER PERSON REGARDLESS OF WHETHER SUCH PERSONS
10 WERE MARRIED OR HAVE LIVED TOGETHER.
11 3. "FORMER SPOUSE" SHALL MEAN A PERSON FORMERLY MARRIED TO ANOTHER
12 PERSON REGARDLESS OF WHETHER SUCH PERSONS STILL RESIDE IN THE SAME
13 HOUSEHOLD.
14 4. "SPOUSE" SHALL MEAN A PERSON LEGALLY MARRIED TO ANOTHER PERSON.
15 S 120.80 DOMESTIC ABUSE IN THE SECOND DEGREE.
16 A PERSON IS GUILTY OF DOMESTIC ABUSE IN THE SECOND DEGREE WHEN, WITH
17 INTENT TO HARASS, ANNOY OR ALARM ANOTHER PERSON WHO IS HIS OR HER
18 SPOUSE, FORMER SPOUSE, FELLOW PARENT OF A CHILD IN COMMON OR DOMESTIC
19 PARTNER, HE OR SHE CAUSES PHYSICAL INJURY TO SUCH OTHER PERSON.
20 DOMESTIC ABUSE IN THE SECOND DEGREE IS A CLASS A MISDEMEANOR.
21 S 120.85 DOMESTIC ABUSE IN THE FIRST DEGREE.

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

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1 A PERSON IS GUILTY OF DOMESTIC ABUSE IN THE FIRST DEGREE WHEN:

2 1. WITH INTENT TO CAUSE PHYSICAL INJURY TO ANOTHER PERSON WHO IS HIS
3 OR HER SPOUSE, FORMER SPOUSE, FELLOW PARENT OF A CHILD IN COMMON OR
4 DOMESTIC PARTNER, HE OR SHE CAUSES SUCH INJURY TO SUCH OTHER PERSON OR
5 TO A THIRD PERSON; OR

6 2. HE OR SHE RECKLESSLY CAUSES SERIOUS PHYSICAL INJURY TO HIS OR HER
7 SPOUSE, FORMER SPOUSE, FELLOW PARENT OF A CHILD IN A COMMON OR DOMESTIC
8 PARTNER; OR

9 3. WITH CRIMINAL NEGLIGENCE, HE OR SHE CAUSES PHYSICAL INJURY TO HIS
10 OR HER SPOUSE, FORMER SPOUSE, FELLOW PARENT OF A CHILD IN COMMON OR
11 DOMESTIC PARTNER BY MEANS OF A DEADLY WEAPON OR DANGEROUS INSTRUMENT; OR

12 4. HE OR SHE COMMITS THE CRIME OF DOMESTIC ABUSE IN THE SECOND DEGREE,
13 AS DEFINED IN SECTION 120.80 OF THIS ARTICLE, AND HE OR SHE HAS PREVI-
14 OUSLY BEEN CONVICTED OF A VIOLATION OF SUCH SECTION OR THIS SECTION
15 WITHIN THE PRECEDING FIVE YEARS.

16 DOMESTIC ABUSE IN THE FIRST DEGREE IS A CLASS E FELONY.

17 S 2. The criminal procedure law is amended by adding a new section
18 216.10 to read as follows:

19 S 216.10 DEFERRAL OF SENTENCING FOR FELONY DOMESTIC ABUSE.

20 1. UPON A PLEA OF GUILTY TO THE OFFENSE OF DOMESTIC ABUSE IN THE FIRST
21 DEGREE, AS DEFINED IN SECTION 120.85 OF THE PENAL LAW, BY A DEFENDANT
22 AND UPON SUCH DEFENDANT'S CONSENT THERETO, THE COURT MAY ORDER THE
23 SENTENCE FOR SUCH OFFENSE BE DEFERRED FOR THE PURPOSE OF THE DEFENDANT'S
24 PARTICIPATION IN A COURT APPROVED DOMESTIC VIOLENCE AND ANGER MANAGEMENT
25 PROGRAM, OR TREATMENT FOR SUBSTANCE AND/OR ALCOHOL ABUSE AND DEPENDENCE
26 AND ANY RELATED MENTAL DISEASE OR DISORDER. UPON SUCCESSFUL COMPLETION
27 OF ANY SUCH COURT ORDERED PROGRAM OR TREATMENT, UPON THE CONSENT OF THE
28 PEOPLE, AND UPON REASONABLE NOTICE TO THE VICTIM AND AN OPPORTUNITY FOR
29 THE VICTIM TO BE HEARD, THE COURT MAY AUTHORIZE THE DEFENDANT TO WITH-
30 DRAW HIS OR HER PLEA OF GUILTY TO DOMESTIC ABUSE IN THE FIRST DEGREE.

31 2. NO PROVISION OF THIS ARTICLE SHALL BE DEEMED TO RESTRICT OR PROHIB-
32 IT ANY COURT FROM ORDERING OR THE PEOPLE FROM RECOMMENDING THE USE OF
33 OTHER LAWFUL PROCEDURES OR MODELS FOR PLACING APPROPRIATE DEFENDANTS
34 INTO ALCOHOL OR SUBSTANCE ABUSE TREATMENT PROGRAMS.

35 S 3. The opening paragraph of subdivision 1 of section 530.11 of the
36 criminal procedure law, as amended by chapter 405 of the laws of 2010,
37 is amended to read as follows:

38 The family court and the criminal courts shall have concurrent juris-
39 diction over any proceeding concerning acts which would constitute
40 disorderly conduct, harassment in the first degree, harassment in the
41 second degree, aggravated harassment in the second degree, DOMESTIC
42 ABUSE IN THE FIRST DEGREE, DOMESTIC ABUSE IN THE SECOND DEGREE, sexual
43 misconduct, forcible touching, sexual abuse in the third degree, sexual
44 abuse in the second degree as set forth in subdivision one of section
45 130.60 of the penal law, stalking in the first degree, stalking in the
46 second degree, stalking in the third degree, stalking in the fourth
47 degree, criminal mischief, menacing in the second degree, menacing in
48 the third degree, reckless endangerment, strangulation in the first
49 degree, strangulation in the second degree, criminal obstruction of
50 breathing or blood circulation, assault in the second degree, assault in
51 the third degree or an attempted assault between spouses or former
52 spouses, or between parent and child or between members of the same
53 family or household except that if the respondent would not be criminal-
54 ly responsible by reason of age pursuant to section 30.00 of the penal
55 law, then the family court shall have exclusive jurisdiction over such
56 proceeding. Notwithstanding a complainant's election to proceed in fami-

ly court, the criminal court shall not be divested of jurisdiction to hear a family offense proceeding pursuant to this section. For purposes of this section, "disorderly conduct" includes disorderly conduct not in a public place. For purposes of this section, "members of the same family or household" with respect to a proceeding in the criminal courts shall mean the following:

S 4. The opening paragraph of subdivision 1 of section 812 of the family court act, as separately amended by chapters 341 and 405 of the laws of 2010, is amended to read as follows:

The family court and the criminal courts shall have concurrent jurisdiction over any proceeding concerning acts which would constitute disorderly conduct, harassment in the first degree, harassment in the second degree, aggravated harassment in the second degree, DOMESTIC ABUSE IN THE FIRST DEGREE, DOMESTIC ABUSE IN THE SECOND DEGREE, sexual misconduct, forcible touching, sexual abuse in the third degree, sexual abuse in the second degree as set forth in subdivision one of section 130.60 of the penal law, stalking in the first degree, stalking in the second degree, stalking in the third degree, stalking in the fourth degree, criminal mischief, menacing in the second degree, menacing in the third degree, reckless endangerment, criminal obstruction of breathing or blood circulation, strangulation in the second degree, strangulation in the first degree, assault in the second degree, assault in the third degree or an attempted assault, criminal obstruction of breathing or blood circulation or strangulation between spouses or former spouses, or between parent and child or between members of the same family or household except that if the respondent would not be criminally responsible by reason of age pursuant to section 30.00 of the penal law, then the family court shall have exclusive jurisdiction over such proceeding. Notwithstanding a complainant's election to proceed in family court, the criminal court shall not be divested of jurisdiction to hear a family offense proceeding pursuant to this section. In any proceeding pursuant to this article, a court shall not deny an order of protection, or dismiss a petition, solely on the basis that the acts or events alleged are not relatively contemporaneous with the date of the petition, the conclusion of the fact-finding or the conclusion of the dispositional hearing. For purposes of this article, "disorderly conduct" includes disorderly conduct not in a public place. For purposes of this article, "members of the same family or household" shall mean the following:

S 5. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.