

3666--A

2011-2012 Regular Sessions

I N   S E N A T E

March 1, 2011

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Introduced by Sens. LANZA, SAVINO -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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.

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

LBD09575-02-1

DOMESTIC ABUSE IN THE SECOND DEGREE IS A CLASS A MISDEMEANOR.

S 120.85 DOMESTIC ABUSE IN THE FIRST DEGREE.

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

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

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

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

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

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

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

S 216.10 DEFERRAL OF SENTENCING FOR FELONY DOMESTIC ABUSE.

1. UPON A PLEA OF GUILTY TO THE OFFENSES OF DOMESTIC ABUSE IN THE FIRST DEGREE, AS DEFINED IN SECTION 120.85 OF THE PENAL LAW, AND DOMESTIC ABUSE IN THE SECOND DEGREE, AS DEFINED IN SECTION 120.80 OF SUCH LAW, BY A DEFENDANT AND UPON SUCH DEFENDANT'S CONSENT THERETO, THE COURT MAY ORDER THE SENTENCE FOR SUCH OFFENSE BE DEFERRED FOR THE PURPOSE OF THE DEFENDANT'S PARTICIPATION IN A COURT APPROVED DOMESTIC VIOLENCE AND ANGER MANAGEMENT PROGRAM, OR TREATMENT FOR SUBSTANCE AND/OR ALCOHOL ABUSE AND DEPENDENCE AND ANY RELATED MENTAL DISEASE OR DISORDER. UPON SUCCESSFUL COMPLETION OF ANY SUCH COURT ORDERED PROGRAM OR TREATMENT, UPON THE CONSENT OF THE PEOPLE, AND UPON REASONABLE NOTICE TO THE VICTIM AND AN OPPORTUNITY FOR THE VICTIM TO BE HEARD, THE COURT MAY AUTHORIZE THE DEFENDANT TO WITHDRAW HIS OR HER PLEA OF GUILTY TO DOMESTIC ABUSE IN THE FIRST DEGREE.

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

S 3. The opening paragraph of subdivision 1 of section 530.11 of the criminal procedure law, as amended by chapter 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, strangulation in the first degree, strangulation in the second degree, criminal obstruction of breathing or blood circulation, assault in the second degree, assault in the third degree or an attempted assault between spouses or former spouses, or between parent and child or between members of the same

1 family or household except that if the respondent would not be criminal-  
2 ly responsible by reason of age pursuant to section 30.00 of the penal  
3 law, then the family court shall have exclusive jurisdiction over such  
4 proceeding. Notwithstanding a complainant's election to proceed in fami-  
5 ly court, the criminal court shall not be divested of jurisdiction to  
6 hear a family offense proceeding pursuant to this section. For purposes  
7 of this section, "disorderly conduct" includes disorderly conduct not in  
8 a public place. For purposes of this section, "members of the same fami-  
9 ly or household" with respect to a proceeding in the criminal courts  
10 shall mean the following:

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

14 The family court and the criminal courts shall have concurrent juris-  
15 diction over any proceeding concerning acts which would constitute  
16 disorderly conduct, harassment in the first degree, harassment in the  
17 second degree, aggravated harassment in the second degree, DOMESTIC  
18 ABUSE IN THE FIRST DEGREE, DOMESTIC ABUSE IN THE SECOND DEGREE, sexual  
19 misconduct, forcible touching, sexual abuse in the third degree, sexual  
20 abuse in the second degree as set forth in subdivision one of section  
21 130.60 of the penal law, stalking in the first degree, stalking in the  
22 second degree, stalking in the third degree, stalking in the fourth  
23 degree, criminal mischief, menacing in the second degree, menacing in  
24 the third degree, reckless endangerment, criminal obstruction of breath-  
25 ing or blood circulation, strangulation in the second degree, strangula-  
26 tion in the first degree, assault in the second degree, assault in the  
27 third degree or an attempted assault, criminal obstruction of breathing  
28 or blood circulation or strangulation between spouses or former spouses,  
29 or between parent and child or between members of the same family or  
30 household except that if the respondent would not be criminally respon-  
31 sible by reason of age pursuant to section 30.00 of the penal law, then  
32 the family court shall have exclusive jurisdiction over such proceeding.  
33 Notwithstanding a complainant's election to proceed in family court, the  
34 criminal court shall not be divested of jurisdiction to hear a family  
35 offense proceeding pursuant to this section. In any proceeding pursuant  
36 to this article, a court shall not deny an order of protection, or  
37 dismiss a petition, solely on the basis that the acts or events alleged  
38 are not relatively contemporaneous with the date of the petition, the  
39 conclusion of the fact-finding or the conclusion of the dispositional  
40 hearing. For purposes of this article, "disorderly conduct" includes  
41 disorderly conduct not in a public place. For purposes of this article,  
42 "members of the same family or household" shall mean the following:

43 S 5. This act shall take effect on the first of November next succeed-  
44 ing the date on which it shall have become a law.