

6357

I N   S E N A T E

February 1, 2012

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Introduced by Sen. KENNEDY -- 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 the crime of domestic abuse; and to amend the criminal procedure law, in relation to a judicial diversion program for domestic abuse defendants

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     120.80, 120.83 and 120.85 to read as follows:  
3     S 120.80 DOMESTIC ABUSE IN THE THIRD DEGREE.  
4     A PERSON IS GUILTY OF DOMESTIC ABUSE IN THE THIRD DEGREE WHEN, WITH  
5     INTENT TO HARASS, ANNOY, OR ALARM HIS OR HER SPOUSE, FORMER SPOUSE,  
6     FELLOW PARENT OF A CHILD IN COMMON, OR DOMESTIC PARTNER, HE OR SHE  
7     STRIKES, SHOVES, KICKS, OR OTHERWISE SUBJECTS SUCH PERSON TO PHYSICAL  
8     CONTACT OR ATTEMPTS OR THREATENS TO DO THE SAME.  
9     FOR PURPOSES OF THIS SECTION, "SPOUSE" SHALL MEAN PERSONS LEGALLY  
10    MARRIED TO ONE ANOTHER, "FORMER SPOUSE" SHALL MEAN PERSONS FORMERLY  
11    MARRIED TO ONE ANOTHER REGARDLESS OF WHETHER THEY STILL RESIDE IN THE  
12    SAME HOUSEHOLD, "FELLOW PARENT OF A CHILD IN COMMON" SHALL MEAN PERSONS  
13    WHO HAVE A CHILD IN COMMON REGARDLESS OF WHETHER SUCH PERSONS HAVE BEEN  
14    MARRIED OR HAVE LIVED TOGETHER, AND "DOMESTIC PARTNER" SHALL MEAN  
15    PERSONS WHO ARE LIVING OR HAVE LIVED TOGETHER FOR AN EXTENDED DURATION  
16    IN AN INTIMATE RELATIONSHIP MARKED BY SEXUAL, PHYSICAL, OR FINANCIAL  
17    INTERDEPENDENCE.  
18    DOMESTIC ABUSE IN THE THIRD DEGREE IS A CLASS B MISDEMEANOR.  
19    S 120.83 DOMESTIC ABUSE IN THE SECOND DEGREE.  
20    A PERSON IS GUILTY OF DOMESTIC ABUSE IN THE SECOND DEGREE WHEN WITH  
21    INTENT TO HARASS, ANNOY, OR ALARM HIS OR HER SPOUSE, FORMER SPOUSE,  
22    FELLOW PARENT OF A CHILD IN COMMON, OR DOMESTIC PARTNER, AS DEFINED IN  
23    SECTION 120.80 OF THIS ARTICLE, HE OR SHE CAUSES SUCH PERSON PHYSICAL  
24    INJURY.  
25    DOMESTIC ABUSE IN THE SECOND DEGREE IS A CLASS A MISDEMEANOR.  
26    S 120.85 DOMESTIC ABUSE IN THE FIRST DEGREE.  
27    A PERSON IS GUILTY OF DOMESTIC ABUSE IN THE FIRST DEGREE WHEN:

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

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1 1. (A) WITH INTENT TO CAUSE PHYSICAL INJURY TO HIS OR HER SPOUSE,  
2 FORMER SPOUSE, FELLOW PARENT OF A CHILD IN COMMON, OR DOMESTIC PARTNER,  
3 AS DEFINED IN SECTION 120.80 OF THIS ARTICLE, HE OR SHE CAUSES SUCH  
4 INJURY TO SUCH PERSON OR TO A THIRD PERSON; OR

5 (B) HE OR SHE RECKLESSLY CAUSES PHYSICAL INJURY TO HIS OR HER SPOUSE,  
6 FORMER SPOUSE, FELLOW PARENT OF A CHILD IN COMMON, OR DOMESTIC PARTNER,  
7 AS DEFINED IN SECTION 120.80 OF THIS ARTICLE; OR

8 (C) WITH CRIMINAL NEGLIGENCE, HE OR SHE CAUSES PHYSICAL INJURY TO HIS  
9 OR HER SPOUSE, FORMER SPOUSE, FELLOW PARENT OF A CHILD IN COMMON, OR  
10 DOMESTIC PARTNER, AS DEFINED IN SECTION 120.80 OF THIS ARTICLE, BY MEANS  
11 OF A DEADLY WEAPON OR A DANGEROUS INSTRUMENT; OR

12 2. HE OR SHE COMMITS THE CRIME OF DOMESTIC ABUSE IN THE SECOND DEGREE  
13 AND HAS PREVIOUSLY BEEN CONVICTED OF THE CRIME OF DOMESTIC ABUSE IN ANY  
14 DEGREE AS DEFINED IN THIS ARTICLE WITHIN THE PRECEDING FIVE YEARS.

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

16 S 2. The criminal procedure law is amended by adding a new article 217  
17 to read as follows:

18 ARTICLE 217

19 JUDICIAL DIVERSION PROGRAM FOR DOMESTIC ABUSE DEFENDANTS  
20 SECTION 217.00 DEFINITIONS.

21 217.05 JUDICIAL DIVERSION PROGRAM; COURT PROCEDURES.  
22 S 217.00 DEFINITIONS.

23 THE FOLLOWING DEFINITIONS ARE APPLICABLE TO THIS ARTICLE:

24 1. "ELIGIBLE DEFENDANT" SHALL MEAN ANY PERSON WHO STANDS CHARGED WITH  
25 DOMESTIC ABUSE AS DEFINED IN SECTIONS 120.80, 120.83 AND 120.85 OF THE  
26 PENAL LAW, PROVIDED, HOWEVER, A DEFENDANT IS NOT AN "ELIGIBLE DEFENDANT"  
27 IF HE OR SHE:

28 (A) WITHIN THE PRECEDING TEN YEARS, EXCLUDING ANY TIME DURING WHICH  
29 THE OFFENDER WAS INCARCERATED FOR ANY REASON BETWEEN THE TIME OF COMMIS-  
30 SION OF THE PREVIOUS OFFENSE AND THE TIME OF COMMISSION OF THE PRESENT  
31 OFFENSE, HAS PREVIOUSLY BEEN CONVICTED OF: (I) A VIOLENT FELONY OFFENSE  
32 AS DEFINED IN SECTION 70.02 OF THE PENAL LAW OR (II) ANY OTHER OFFENSE  
33 FOR WHICH A MERIT TIME ALLOWANCE IS NOT AVAILABLE PURSUANT TO SUBPARA-  
34 GRAPH (II) OF PARAGRAPH (D) OF SUBDIVISION ONE OF SECTION EIGHT HUNDRED  
35 THREE OF THE CORRECTION LAW; OR

36 (B) HAS PREVIOUSLY BEEN ADJUDICATED A SECOND VIOLENT FELONY OFFENDER  
37 PURSUANT TO SECTION 70.04 OF THE PENAL LAW OR A PERSISTENT VIOLENT FELO-  
38 NY OFFENDER PURSUANT TO SECTION 70.08 OF THE PENAL LAW.

39 2. "DOMESTIC VIOLENCE PROGRAM" SHALL MEAN A PROGRAM WHICH IS OPERATED  
40 BY A PUBLIC OR NOT-FOR-PROFIT ORGANIZATION FOR THE PURPOSE OF PROVIDING  
41 DOMESTIC VIOLENCE PREVENTION WHOSE GOAL IS TO HELP ELIGIBLE DEFENDANTS  
42 END ABUSIVE BEHAVIOR.

43 S 217.05 JUDICIAL DIVERSION PROGRAM; COURT PROCEDURES.

44 1. AT ANY TIME AFTER THE ARRAIGNMENT OF AN ELIGIBLE DEFENDANT, BUT  
45 PRIOR TO THE ENTRY OF A PLEA OF GUILTY OR THE COMMENCEMENT OF TRIAL, THE  
46 COURT MAY DETERMINE THAT AN ELIGIBLE DEFENDANT SHOULD BE OFFERED JUDI-  
47 CIAL DIVERSION IN A DOMESTIC VIOLENCE PROGRAM. AN ELIGIBLE DEFENDANT MAY  
48 DECLINE TO PARTICIPATE IN SUCH A PROGRAM AT ANY TIME. PRIOR TO THE  
49 COURT'S ISSUING AN ORDER GRANTING JUDICIAL DIVERSION, THE ELIGIBLE  
50 DEFENDANT SHALL BE REQUIRED TO ENTER A PLEA OF GUILTY TO THE CHARGE OR  
51 CHARGES; PROVIDED, HOWEVER, THAT NO GUILTY PLEA SHALL BE REQUIRED WHEN:

52 (A) THE PEOPLE AND THE COURT CONSENT TO THE ENTRY OF SUCH AN ORDER  
53 WITHOUT A PLEA OF GUILTY; OR

54 (B) BASED ON A FINDING OF EXCEPTIONAL CIRCUMSTANCES, THE COURT DETER-  
55 MINES THAT A PLEA OF GUILTY SHALL NOT BE REQUIRED. FOR PURPOSES OF THIS  
56 SUBDIVISION, EXCEPTIONAL CIRCUMSTANCES EXIST WHEN, REGARDLESS OF THE

1 ULTIMATE DISPOSITION OF THE CASE, THE ENTRY OF A PLEA OF GUILTY IS LIKE-  
2 LY TO RESULT IN SEVERE COLLATERAL CONSEQUENCES.

3 2. THE ELIGIBLE DEFENDANT SHALL AGREE ON THE RECORD OR IN WRITING TO  
4 ABIDE BY THE RELEASE CONDITIONS SET BY THE COURT, WHICH, SHALL INCLUDE:  
5 PARTICIPATION IN A SPECIFIED DOMESTIC VIOLENCE PROGRAM; PERIODIC COURT  
6 APPEARANCES; AND A REQUIREMENT THAT THE DEFENDANT REFRAIN FROM ENGAGING  
7 IN CRIMINAL BEHAVIORS.

8 3. UPON AN ELIGIBLE DEFENDANT'S AGREEMENT TO ABIDE BY THE CONDITIONS  
9 SET BY THE COURT, THE COURT SHALL ISSUE A SECURING ORDER PROVIDING FOR  
10 BAIL OR RELEASE ON THE DEFENDANT'S OWN RECOGNIZANCE AND CONDITIONING ANY  
11 RELEASE UPON THE AGREED UPON CONDITIONS. THE DOMESTIC VIOLENCE PROGRAM  
12 SHALL BEGIN AS SPECIFIED BY THE COURT AND AS SOON AS PRACTICABLE AFTER  
13 THE DEFENDANT'S RELEASE. IN THE EVENT THAT A DOMESTIC VIOLENCE PROGRAM  
14 IS NOT IMMEDIATELY AVAILABLE OR BECOMES UNAVAILABLE DURING THE COURSE OF  
15 THE DEFENDANT'S PARTICIPATION IN THE JUDICIAL DIVERSION PROGRAM, THE  
16 COURT MAY RELEASE THE DEFENDANT PURSUANT TO THE SECURING ORDER.

17 4. DURING THE PERIOD OF A DEFENDANT'S PARTICIPATION IN THE JUDICIAL  
18 DIVERSION PROGRAM, THE COURT SHALL RETAIN JURISDICTION OF THE DEFENDANT.  
19 THE COURT MAY REQUIRE THE DEFENDANT TO APPEAR IN COURT AT ANY TIME TO  
20 ENABLE THE COURT TO MONITOR THE DEFENDANT'S PROGRESS IN THE PROGRAM. THE  
21 COURT SHALL PROVIDE NOTICE, REASONABLE UNDER THE CIRCUMSTANCES, TO THE  
22 PEOPLE, THE DOMESTIC VIOLENCE PROGRAM PROVIDER, THE DEFENDANT AND THE  
23 DEFENDANT'S COUNSEL WHENEVER IT ORDERS OR OTHERWISE REQUIRES THE APPEAR-  
24 ANCE OF THE DEFENDANT IN COURT. FAILURE TO APPEAR AS REQUIRED WITHOUT  
25 REASONABLE CAUSE THEREFOR SHALL CONSTITUTE A VIOLATION OF THE CONDITIONS  
26 OF THE COURT'S AGREEMENT WITH THE DEFENDANT.

27 5. UPON THE COURT'S DETERMINATION THAT THE DEFENDANT HAS SUCCESSFULLY  
28 COMPLETED THE DOMESTIC VIOLENCE PROGRAM AND HAS OTHERWISE SATISFIED THE  
29 CONDITIONS REQUIRED FOR SUCCESSFUL COMPLETION OF THE JUDICIAL DIVERSION  
30 PROGRAM, THE COURT SHALL COMPLY WITH THE TERMS AND CONDITIONS IT SET FOR  
31 FINAL DISPOSITION WHEN IT ACCEPTED THE DEFENDANT'S AGREEMENT TO PARTIC-  
32 IPATE IN THE JUDICIAL DIVERSION PROGRAM. SUCH DISPOSITION MAY INCLUDE,  
33 BUT IS NOT LIMITED TO:

34 (A) REQUIRING THE DEFENDANT TO UNDERGO A PERIOD OF INTERIM PROBATION  
35 SUPERVISION AND, UPON THE DEFENDANT'S SUCCESSFUL COMPLETION OF THE  
36 INTERIM PROBATION SUPERVISION TERM, NOTWITHSTANDING THE PROVISION OF ANY  
37 OTHER LAW, PERMITTING THE DEFENDANT TO WITHDRAW HIS OR HER GUILTY PLEA  
38 AND DISMISSING THE INDICTMENT; OR

39 (B) REQUIRING THE DEFENDANT TO UNDERGO A PERIOD OF INTERIM PROBATION  
40 SUPERVISION AND, UPON SUCCESSFUL COMPLETION OF THE INTERIM PROBATION  
41 SUPERVISION TERM, NOTWITHSTANDING THE PROVISION OF ANY OTHER LAW,  
42 PERMITTING THE DEFENDANT TO WITHDRAW HIS OR HER GUILTY PLEA, ENTER A  
43 GUILTY PLEA TO A MISDEMEANOR OFFENSE AND SENTENCING THE DEFENDANT AS  
44 PROMISED IN THE PLEA AGREEMENT, WHICH MAY INCLUDE A PERIOD OF PROBATION  
45 SUPERVISION PURSUANT TO SECTION 65.00 OF THE PENAL LAW; OR

46 (C) ALLOWING THE DEFENDANT TO WITHDRAW HIS OR HER GUILTY PLEA AND  
47 DISMISSING THE INDICTMENT.

48 S 3. This act shall take effect on the ninetieth day after it shall  
49 have become a law.