

STATE OF NEW YORK

9538

IN ASSEMBLY

January 19, 2018

Introduced by M. of A. ZEBROWSKI, FAHY, D'URSO, LUPARDO, GALEF, OTIS, THIELE, SIMOTAS, JAFFEE, PALUMBO, RA, GIGLIO -- Multi-Sponsored by -- M. of A. CROUCH -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, the criminal procedure law and the family court act, in relation to the crime of coercion in the second and third degree

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

1 Section 1. Section 135.60 of the penal law, as amended by chapter 426
2 of the laws of 2008, is amended to read as follows:

3 § 135.60 Coercion in the [~~second~~] third degree.

4 A person is guilty of coercion in the [~~second~~] third degree when he or
5 she compels or induces a person to engage in conduct which the latter
6 has a legal right to abstain from engaging in, or to abstain from engag-
7 ing in conduct in which he or she has a legal right to engage, or
8 compels or induces a person to join a group, organization or criminal
9 enterprise which such latter person has a right to abstain from joining,
10 by means of instilling in him or her a fear that, if the demand is not
11 complied with, the actor or another will:

12 1. Cause physical injury to a person; or

13 2. Cause damage to property; or

14 3. Engage in other conduct constituting a crime; or

15 4. Accuse some person of a crime or cause criminal charges to be
16 instituted against him or her; or

17 5. Expose a secret or publicize an asserted fact, whether true or
18 false, tending to subject some person to hatred, contempt or ridicule;
19 or

20 6. Cause a strike, boycott or other collective labor group action
21 injurious to some person's business; except that such a threat shall not
22 be deemed coercive when the act or omission compelled is for the benefit
23 of the group in whose interest the actor purports to act; or

24 7. Testify or provide information or withhold testimony or information
25 with respect to another's legal claim or defense; or

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

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8. Use or abuse his or her position as a public servant by performing some act within or related to his or her official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or

9. Perform any other act which would not in itself materially benefit the actor but which is calculated to harm another person materially with respect to his or her health, safety, business, calling, career, financial condition, reputation or personal relationships.

Coercion in the ~~second~~ third degree is a class A misdemeanor.

§ 2. The penal law is amended by adding a new section 135.61 to read as follows:

§ 135.61 Coercion in the second degree.

A person is guilty of coercion in the second degree when he or she commits the crime of coercion in the third degree as defined in section 135.60 of this article and thereby compels or induces a person to engage in sexual intercourse, oral sexual conduct or anal sexual conduct as such terms are defined in section 130 of the penal law.

Coercion in the second degree is a class E felony.

§ 3. Section 135.65 of the penal law, as amended by chapter 426 of the laws of 2008, is amended to read as follows:

§ 135.65 Coercion in the first degree.

A person is guilty of coercion in the first degree when he or she commits the crime of coercion in the ~~second~~ third degree, and when:

1. He or she commits such crime by instilling in the victim a fear that he or she will cause physical injury to a person or cause damage to property; or

2. He or she thereby compels or induces the victim to:

(a) Commit or attempt to commit a felony; or

(b) Cause or attempt to cause physical injury to a person; or

(c) Violate his or her duty as a public servant.

Coercion in the first degree is a class D felony.

§ 4. The opening paragraph of subdivision 1 of section 530.11 of the criminal procedure law, as amended by chapter 526 of the laws of 2013, 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, 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, an attempted assault, identity theft in the first degree, identity theft in the second degree, identity theft in the third degree, grand larceny in the fourth degree, grand larceny in the third degree ~~[or]~~, coercion in the second degree or coercion in the third degree as set forth in subdivisions one, two and three of section 135.60 of the penal law 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

1 complainant's election to proceed in family court, the criminal court
2 shall not be divested of jurisdiction to hear a family offense proceeding
3 pursuant to this section. For purposes of this section, "disorderly
4 conduct" includes disorderly conduct not in a public place. For purposes
5 of this section, "members of the same family or household" with respect
6 to a proceeding in the criminal courts shall mean the following:

7 § 5. The opening paragraph of subdivision 1 of section 812 of the
8 family court act, as amended by chapter 526 of the laws of 2013, is
9 amended to read as follows:

10 The family court and the criminal courts shall have concurrent juris-
11 diction over any proceeding concerning acts which would constitute
12 disorderly conduct, harassment in the first degree, harassment in the
13 second degree, aggravated harassment in the second degree, sexual
14 misconduct, forcible touching, sexual abuse in the third degree, sexual
15 abuse in the second degree as set forth in subdivision one of section
16 130.60 of the penal law, stalking in the first degree, stalking in the
17 second degree, stalking in the third degree, stalking in the fourth
18 degree, criminal mischief, menacing in the second degree, menacing in
19 the third degree, reckless endangerment, criminal obstruction of breath-
20 ing or blood circulation, strangulation in the second degree, strangu-
21 lation in the first degree, assault in the second degree, assault in the
22 third degree, an attempted assault, identity theft in the first degree,
23 identity theft in the second degree, identity theft in the third degree,
24 grand larceny in the fourth degree, grand larceny in the third degree
25 ~~[or]~~, coercion in the second degree or coercion in the third degree as
26 set forth in subdivisions one, two and three of section 135.60 of the
27 penal law between spouses or former spouses, or between parent and child
28 or between members of the same family or household except that if the
29 respondent would not be criminally responsible by reason of age pursuant
30 to section 30.00 of the penal law, then the family court shall have
31 exclusive jurisdiction over such proceeding. Notwithstanding a
32 complainant's election to proceed in family court, the criminal court
33 shall not be divested of jurisdiction to hear a family offense proceed-
34 ing pursuant to this section. In any proceeding pursuant to this arti-
35 cle, a court shall not deny an order of protection, or dismiss a peti-
36 tion, solely on the basis that the acts or events alleged are not
37 relatively contemporaneous with the date of the petition, the conclusion
38 of the fact-finding or the conclusion of the dispositional hearing. For
39 purposes of this article, "disorderly conduct" includes disorderly
40 conduct not in a public place. For purposes of this article, "members of
41 the same family or household" shall mean the following:

42 § 6. Paragraph (a) of subdivision 1 of section 821 of the family court
43 act, as amended by chapter 526 of the laws of 2013, is amended to read
44 as follows:

45 (a) An allegation that the respondent assaulted or attempted to
46 assault his or her spouse, or former spouse, parent, child or other
47 member of the same family or household or engaged in disorderly conduct,
48 harassment, sexual misconduct, forcible touching, sexual abuse in the
49 third degree, sexual abuse in the second degree as set forth in subdivi-
50 sion one of section 130.60 of the penal law, stalking, criminal
51 mischief, menacing, reckless endangerment, criminal obstruction of
52 breathing or blood circulation, strangulation, identity theft in the
53 first degree, identity theft in the second degree, identity theft in the
54 third degree, grand larceny in the fourth degree, grand larceny in the
55 third degree ~~[or]~~, coercion in the second degree or coercion in the

1 third degree as set forth in subdivisions one, two and three of section
2 135.60 of the penal law, toward any such person;

3 § 7. Paragraph c of subdivision 5 of section 120.40 of the penal law,
4 as added by chapter 635 of the laws of 1999, is amended to read as
5 follows:

6 c. assault in the third degree, as defined in section 120.00; menacing
7 in the first degree, as defined in section 120.13; menacing in the
8 second degree, as defined in section 120.14; coercion in the first
9 degree, as defined in section 135.65; coercion in the second degree, as
10 defined in section 135.61; coercion in the third degree, as defined in
11 section 135.60; aggravated harassment in the second degree, as defined
12 in section 240.30; harassment in the first degree, as defined in section
13 240.25; menacing in the third degree, as defined in section 120.15;
14 criminal mischief in the third degree, as defined in section 145.05;
15 criminal mischief in the second degree, as defined in section 145.10,
16 criminal mischief in the first degree, as defined in section 145.12;
17 criminal tampering in the first degree, as defined in section 145.20;
18 arson in the fourth degree, as defined in section 150.05; arson in the
19 third degree, as defined in section 150.10; criminal contempt in the
20 first degree, as defined in section 215.51; endangering the welfare of a
21 child, as defined in section 260.10; or

22 § 8. Subdivision 2 of section 240.75 of the penal law, as added by
23 section 2 of part D of chapter 491 of the laws of 2012, is amended to
24 read as follows:

25 2. A "specified offense" is an offense defined in section 120.00
26 (assault in the third degree); section 120.05 (assault in the second
27 degree); section 120.10 (assault in the first degree); section 120.13
28 (menacing in the first degree); section 120.14 (menacing in the second
29 degree); section 120.15 (menacing in the third degree); section 120.20
30 (reckless endangerment in the second degree); section 120.25 (reckless
31 endangerment in the first degree); section 120.45 (stalking in the
32 fourth degree); section 120.50 (stalking in the third degree); section
33 120.55 (stalking in the second degree); section 120.60 (stalking in the
34 first degree); section 121.11 (criminal obstruction of breathing or
35 blood circulation); section 121.12 (strangulation in the second degree);
36 section 121.13 (strangulation in the first degree); subdivision one of
37 section 125.15 (manslaughter in the second degree); subdivision one, two
38 or four of section 125.20 (manslaughter in the first degree); section
39 125.25 (murder in the second degree); section 130.20 (sexual miscon-
40 duct); section 130.30 (rape in the second degree); section 130.35 (rape
41 in the first degree); section 130.40 (criminal sexual act in the third
42 degree); section 130.45 (criminal sexual act in the second degree);
43 section 130.50 (criminal sexual act in the first degree); section 130.52
44 (forcible touching); section 130.53 (persistent sexual abuse); section
45 130.55 (sexual abuse in the third degree); section 130.60 (sexual abuse
46 in the second degree); section 130.65 (sexual abuse in the first
47 degree); section 130.66 (aggravated sexual abuse in the third degree);
48 section 130.67 (aggravated sexual abuse in the second degree); section
49 130.70 (aggravated sexual abuse in the first degree); section 130.91
50 (sexually motivated felony); section 130.95 (predatory sexual assault);
51 section 130.96 (predatory sexual assault against a child); section
52 135.05 (unlawful imprisonment in the second degree); section 135.10
53 (unlawful imprisonment in the first degree); section 135.60 (coercion in
54 the ~~second~~ third degree); section 135.61 (coercion in the second
55 degree); section 135.65 (coercion in the first degree); section 140.20
56 (burglary in the third degree); section 140.25 (burglary in the second

degree); section 140.30 (burglary in the first degree); section 145.00 (criminal mischief in the fourth degree); section 145.05 (criminal mischief in the third degree); section 145.10 (criminal mischief in the second degree); section 145.12 (criminal mischief in the first degree); section 145.14 (criminal tampering in the third degree); section 215.50 (criminal contempt in the second degree); section 215.51 (criminal contempt in the first degree); section 215.52 (aggravated criminal contempt); section 240.25 (harassment in the first degree); subdivision one, two or four of section 240.30 (aggravated harassment in the second degree); aggravated family offense as defined in this section or any attempt or conspiracy to commit any of the foregoing offenses where the defendant and the person against whom the offense was committed were members of the same family or household as defined in subdivision one of section 530.11 of the criminal procedure law.

§ 9. Subdivision 3 of section 485.05 of the penal law, as amended by chapter 405 of the laws of 2010, is amended to read as follows:

3. A "specified offense" is an offense defined by any of the following provisions of this chapter: section 120.00 (assault in the third degree); section 120.05 (assault in the second degree); section 120.10 (assault in the first degree); section 120.12 (aggravated assault upon a person less than eleven years old); section 120.13 (menacing in the first degree); section 120.14 (menacing in the second degree); section 120.15 (menacing in the third degree); section 120.20 (reckless endangerment in the second degree); section 120.25 (reckless endangerment in the first degree); section 121.12 (strangulation in the second degree); section 121.13 (strangulation in the first degree); subdivision one of section 125.15 (manslaughter in the second degree); subdivision one, two or four of section 125.20 (manslaughter in the first degree); section 125.25 (murder in the second degree); section 120.45 (stalking in the fourth degree); section 120.50 (stalking in the third degree); section 120.55 (stalking in the second degree); section 120.60 (stalking in the first degree); subdivision one of section 130.35 (rape in the first degree); subdivision one of section 130.50 (criminal sexual act in the first degree); subdivision one of section 130.65 (sexual abuse in the first degree); paragraph (a) of subdivision one of section 130.67 (aggravated sexual abuse in the second degree); paragraph (a) of subdivision one of section 130.70 (aggravated sexual abuse in the first degree); section 135.05 (unlawful imprisonment in the second degree); section 135.10 (unlawful imprisonment in the first degree); section 135.20 (kidnapping in the second degree); section 135.25 (kidnapping in the first degree); section 135.60 (coercion in the ~~second~~ third degree); section 135.61 (coercion in the second degree); section 135.65 (coercion in the first degree); section 140.10 (criminal trespass in the third degree); section 140.15 (criminal trespass in the second degree); section 140.17 (criminal trespass in the first degree); section 140.20 (burglary in the third degree); section 140.25 (burglary in the second degree); section 140.30 (burglary in the first degree); section 145.00 (criminal mischief in the fourth degree); section 145.05 (criminal mischief in the third degree); section 145.10 (criminal mischief in the second degree); section 145.12 (criminal mischief in the first degree); section 150.05 (arson in the fourth degree); section 150.10 (arson in the third degree); section 150.15 (arson in the second degree); section 150.20 (arson in the first degree); section 155.25 (petit larceny); section 155.30 (grand larceny in the fourth degree); section 155.35 (grand larceny in the third degree); section 155.40 (grand larceny in the second degree); section 155.42 (grand larceny in the first degree);

1 section 160.05 (robbery in the third degree); section 160.10 (robbery in
2 the second degree); section 160.15 (robbery in the first degree);
3 section 240.25 (harassment in the first degree); subdivision one, two or
4 four of section 240.30 (aggravated harassment in the second degree); or
5 any attempt or conspiracy to commit any of the foregoing offenses.
6 § 10. This act shall take effect on the first of November next
7 succeeding the date on which it shall have become a law.