S T A T E  O F  N E W  Y O R K

6862

2009-2010 Regular Sessions

I N  A S S E M B L Y

March 13, 2009

Introduced by M. of A. SCOZZAFAVA, McDONOUGH, KOLB, SPANO, TOWNSEND, GIGLIO -- Multi-Sponsored by -- M. of A. ALFANO, BACALLES, BALL, BARCLAY, BARRA, BOYLE, BURLING, BUTLER, CALHOUN, CONTE, CROUCH, DUPREY, ERRIGO, FINCH, FITZPATRICK, HAWLEY, P. LOPEZ, McKEVITT, MILLER, MOLINARO, OAKS, O'MARA, QUINN, RABBITT, RAIA, REILICH, SAYWARD, TEDISCO, THIELE, WALKER -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law and the family court act, in relation to jurisdiction in family offense proceedings; and to amend the penal law, in relation to creating the crime of domestic assault

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision 1 of section 530.11 of the criminal procedure law, as amended by chapter 326 of the laws of 2008, is amended to read as follows:

1. Jurisdiction. 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, 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, 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 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. For purposes of this

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

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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:

(a) persons related by consanguinity or affinity;

(b) persons legally married to one another;

(c) persons formerly married to one another regardless of whether they still reside in the same household;

(d) persons who have a child in common, regardless of whether such persons have been married or have lived together at any time; [and]

(e) persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time. Factors the court may consider in determining whether a relationship is an "intimate relationship" include but are not limited to: the nature or type of relationship, regardless of whether the relationship is sexual in nature; the frequency of interaction between the persons; and the duration of the relationship. Neither a casual acquaintance nor ordinary fraternization between two individuals in business or social contexts shall be deemed to constitute an "intimate relationship"; AND

(F) PERSONS RESIDING TOGETHER CONTINUALLY OR AT REGULAR INTERVALS, CURRENTLY OR IN THE PAST.

S 2. Subdivision 1 of section 812 of the family court act, as amended by chapter 326 of the laws of 2008, is amended to read as follows:

1. Jurisdiction. 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, 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, 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 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. 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:

(a) persons related by consanguinity or affinity;

(b) persons legally married to one another;

(c) persons formerly married to one another regardless of whether they still reside in the same household;

(d) persons who have a child in common regardless of whether such persons have been married or have lived together at any time; [and]

(e) persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time. Factors the court may consider in determining whether a relationship is an "intimate relationship" include but are not limited to: the nature or type of relationship, regardless of whether the relationship is sexual in nature; the frequency of interaction between the persons; and the duration of the relation-

ship. Neither a casual acquaintance nor ordinary fraternization between two individuals in business or social contexts shall be deemed to constitute an "intimate relationship"; AND

(F) PERSONS RESIDING TOGETHER CONTINUALLY OR AT REGULAR INTERVALS, CURRENTLY OR IN THE PAST.

S 3. The penal law is amended by adding three new sections 120.26, 120.27 and 120.28 to read as follows:

S 120.26 DOMESTIC ASSAULT IN THE SECOND DEGREE.

A PERSON IS GUILTY OF DOMESTIC ASSAULT IN THE SECOND DEGREE WHEN, WITH INTENT TO CAUSE PHYSICAL INJURY TO ANOTHER PERSON WHO IS A MEMBER OF THE SAME FAMILY OR HOUSEHOLD AS SUCH PERSON, HE OR SHE CAUSES TO SUCH OTHER PERSON OR TO A THIRD PERSON, PHYSICAL PAIN AND (1) A VISIBLE OR PALPABLE MARK, OR (2) A LACERATION.

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

S 120.27 DOMESTIC ASSAULT IN THE FIRST DEGREE.

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

1. WITH INTENT TO CAUSE PHYSICAL INJURY TO ANOTHER PERSON WHO IS A MEMBER OF THE SAME FAMILY OR HOUSEHOLD AS SUCH PERSON, HE OR SHE CAUSES SUCH INJURY TO SUCH OTHER PERSON OR TO A THIRD PERSON; OR

2. HE OR SHE RECKLESSLY CAUSES PHYSICAL INJURY TO ANOTHER PERSON WHO IS A MEMBER OF THE SAME FAMILY OR HOUSEHOLD AS SUCH PERSON; OR

3. WITH CRIMINAL NEGLIGENCE, HE OR SHE CAUSES PHYSICAL INJURY TO ANOTHER PERSON WHO IS A MEMBER OF THE SAME FAMILY OR HOUSEHOLD AS SUCH PERSON BY MEANS OF A DEADLY WEAPON OR A DANGEROUS INSTRUMENT.

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

S 120.28 DOMESTIC ASSAULT; DEFINITION OF TERM.

FOR PURPOSES OF SECTIONS 120.26 AND 120.27 OF THIS ARTICLE, A PERSON IS A "MEMBER OF THE SAME FAMILY OR HOUSEHOLD" AS ANOTHER PERSON ONLY WHEN SUCH PERSONS ARE:

1. RELATED BY CONSANGUINITY OR AFFINITY;

2. LEGALLY MARRIED TO ONE ANOTHER;

3. FORMERLY MARRIED TO ONE ANOTHER;

4. PERSONS WHO HAVE A CHILD IN COMMON, REGARDLESS OF WHETHER SUCH PERSONS HAVE BEEN MARRIED OR HAVE LIVED TOGETHER AT ANY TIME; OR

5. PERSONS RESIDING TOGETHER CONTINUALLY OR AT REGULAR INTERVALS, CURRENTLY OR IN THE PAST.

S 4. Subdivision 2 of section 510.30 of the criminal procedure law, subparagraph (v) of paragraph (a) as amended by chapter 920 of the laws of 1982 and subparagraphs (vi), (vii) and (viii) of paragraph (a) as renumbered by chapter 447 of the laws of 1977, is amended to read as follows:

2. To the extent that the issuance of an order of recognizance or bail and the terms thereof are matters of discretion rather than of law, an application is determined on the basis of the following factors and criteria:

(a) With respect to any principal, the court must consider the kind and degree of control or restriction that is necessary to secure his court attendance when required. In determining that matter, the court must, on the basis of available information, consider and take into account:

(i) The principal's character, reputation, habits and mental condition, INCLUDING ANY HISTORY OF VIOLENT ACTS OR THREATS OF VIOLENT ACTS;

(ii) His OR HER employment and financial resources; and

(iii) His OR HER family ties, INCLUDING ANY HISTORY OF VIOLENT ACTS OR THREATS OF VIOLENT ACTS AGAINST FAMILY OR HOUSEHOLD MEMBERS, and the length of his OR HER residence if any in the community; and

(iv) His OR HER criminal record if any; and
(v) His OR HER record of previous adjudication as a juvenile delinquent, as retained pursuant to section 354.2 of the family court act, or, of pending cases where fingerprints are retained pursuant to section 306.1 of such act, or a youthful offender, if any; and
(vi) His OR HER previous record if any in responding to court appearances when required or with respect to flight to avoid criminal prosecution; and
(vii) A RECORD OF ANY ORDERS OF PROTECTION THAT WERE PREVIOUSLY ISSUED AGAINST THE PRINCIPAL; AND
(VIII) A RECORD OF ANY VIOLATION OF AN ORDER OF PROTECTION OR DISOBEDIENCE OF AN ORDER, MANDATE OR PROCESS OF ANY COURT; AND
(IX) If he OR SHE is a defendant, the weight of the evidence against him OR HER in the pending criminal action and any other factor indicating probability or improbability of conviction; or, in the case of an application for bail or recognizance pending appeal, the merit or lack of merit of the appeal; and
[(viii)] (X) If he OR SHE is a defendant, the sentence which may be or has been imposed upon conviction.
(b) Where the principal is a defendant-appellant in a pending appeal from a judgment of conviction, the court must also consider the likelihood of ultimate reversal of the judgment. A determination that the appeal is palpably without merit alone justifies, but does not require, a denial of the application, regardless of any determination made with respect to the factors specified in paragraph (a) OF THIS SUBDIVISION.
S 5. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.