

7111

I N S E N A T E

March 12, 2010

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

AN ACT to amend the penal law, the criminal procedure law, the domestic relations law, the executive law, the family court act, and the social services law, in relation to throttling and strangulation

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

1 Section 1. Paragraph (b) of subdivision 1 of section 70.02 of the
2 penal law, as separately amended by chapters 764 and 765 of the laws of
3 2005, is amended to read as follows:
4 (b) Class C violent felony offenses: an attempt to commit any of the
5 class B felonies set forth in paragraph (a); aggravated criminally
6 negligent homicide as defined in section 125.11, aggravated manslaughter
7 in the second degree as defined in section 125.21, aggravated sexual
8 abuse in the second degree as defined in section 130.67, assault on a
9 peace officer, police officer, fireman or emergency medical services
10 professional as defined in section 120.08, gang assault in the second
11 degree as defined in section 120.06, STRANGULATION AS DEFINED IN SECTION
12 120.72, burglary in the second degree as defined in section 140.25,
13 robbery in the second degree as defined in section 160.10, criminal
14 possession of a weapon in the second degree as defined in section
15 265.03, criminal use of a firearm in the second degree as defined in
16 section 265.08, criminal sale of a firearm in the second degree as
17 defined in section 265.12, criminal sale of a firearm with the aid of a
18 minor as defined in section 265.14, soliciting or providing support for
19 an act of terrorism in the first degree as defined in section 490.15,
20 hindering prosecution of terrorism in the second degree as defined in
21 section 490.30, and criminal possession of a chemical weapon or biolog-
22 ical weapon in the third degree as defined in section 490.37.
23 S 2. Subdivision 5 of section 120.05 of the penal law, as amended by
24 chapter 134 of the laws of 1975, is amended to read as follows:
25 5. For a purpose other than lawful medical or therapeutic treatment,
26 he intentionally causes stupor, unconsciousness or other physical
27 impairment or injury to another person [by administering to him], with-

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

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1 out his consent, BY (A) ADMINISTERING TO HIM a drug, substance or prepa-
2 ration capable of producing the same; OR (B) APPLYING PRESSURE ON THE
3 THROAT OR NECK OR BLOCKING THE NOSE OR MOUTH OF SUCH PERSON; or

4 S 3. The penal law is amended by adding a new section 120.71 to read
5 as follows:

6 S 120.71 THROTTLING.

7 A PERSON IS GUILTY OF THROTTLING WHEN, WITH INTENT TO IMPEDE THE
8 NORMAL BREATHING OR CIRCULATION OF THE BLOOD OF ANOTHER PERSON, HE OR
9 SHE:

10 A. APPLIES PRESSURE ON THE THROAT OR NECK OF SUCH PERSON; OR

11 B. BLOCKS THE NOSE OR MOUTH OF SUCH PERSON.

12 THROTTLING IS A CLASS A MISDEMEANOR.

13 S 4. The penal law is amended by adding a new section 120.72 to read
14 as follows:

15 S 120.72 STRANGULATION.

16 A PERSON IS GUILTY OF STRANGULATION WHEN HE OR SHE COMMITS THE CRIME
17 OF THROTTLING, AS DEFINED IN SECTION 120.71 OF THIS ARTICLE OR ASSAULT
18 IN THE SECOND DEGREE, AS DEFINED IN PARAGRAPH (B) OF SUBDIVISION FIVE OF
19 SECTION 120.05 OF THIS ARTICLE, AND CAUSES PHYSICAL INJURY TO SUCH OTHER
20 PERSON.

21 STRANGULATION IS A CLASS C FELONY.

22 S 5. The penal law is amended by adding a new section 120.73 to read
23 as follows:

24 S 120.73 MEDICAL OR DENTAL PURPOSE.

25 FOR PURPOSES OF SECTIONS 120.71 AND 120.72 OF THIS ARTICLE, IT SHALL
26 BE AN AFFIRMATIVE DEFENSE THAT THE DEFENDANT PERFORMED SUCH CONDUCT FOR
27 A VALID MEDICAL OR DENTAL PURPOSE.

28 S 6. Paragraph (h) of subdivision 3 of section 190.25 of the criminal
29 procedure law, as separately amended by chapters 93 and 320 of the laws
30 of 2006, is amended to read as follows:

31 (h) A social worker, rape crisis counselor, psychologist or other
32 professional providing emotional support to a child witness twelve years
33 old or younger who is called to give evidence in a grand jury proceeding
34 concerning a crime defined in article one hundred thirty, article two
35 hundred sixty, section 120.10, 120.72, 125.10, 125.15, 125.20, 125.25,
36 125.26, 125.27, 255.25, 255.26 or 255.27 of the penal law provided that
37 the district attorney consents. Such support person shall not provide
38 the witness with an answer to any question or otherwise participate in
39 such proceeding and shall first take an oath before the grand jury that
40 he or she will keep secret all matters before such grand jury within his
41 or her knowledge.

42 S 7. Paragraph (b) of subdivision 8 of section 700.05 of the criminal
43 procedure law, as amended by chapter 472 of the laws of 2008, is amended
44 to read as follows:

45 (b) Any of the following felonies: assault in the second degree as
46 defined in section 120.05 of the penal law, assault in the first degree
47 as defined in section 120.10 of the penal law, reckless endangerment in
48 the first degree as defined in section 120.25 of the penal law, promot-
49 ing a suicide attempt as defined in section 120.30 of the penal law,
50 STRANGULATION AS DEFINED IN SECTION 120.72 OF THE PENAL LAW, criminally
51 negligent homicide as defined in section 125.10 of the penal law,
52 manslaughter in the second degree as defined in section 125.15 of the
53 penal law, manslaughter in the first degree as defined in section 125.20
54 of the penal law, murder in the second degree as defined in section
55 125.25 of the penal law, murder in the first degree as defined in
56 section 125.27 of the penal law, abortion in the second degree as

1 defined in section 125.40 of the penal law, abortion in the first degree
2 as defined in section 125.45 of the penal law, rape in the third degree
3 as defined in section 130.25 of the penal law, rape in the second degree
4 as defined in section 130.30 of the penal law, rape in the first degree
5 as defined in section 130.35 of the penal law, criminal sexual act in
6 the third degree as defined in section 130.40 of the penal law, criminal
7 sexual act in the second degree as defined in section 130.45 of the
8 penal law, criminal sexual act in the first degree as defined in section
9 130.50 of the penal law, sexual abuse in the first degree as defined in
10 section 130.65 of the penal law, unlawful imprisonment in the first
11 degree as defined in section 135.10 of the penal law, kidnapping in the
12 second degree as defined in section 135.20 of the penal law, kidnapping
13 in the first degree as defined in section 135.25 of the penal law, labor
14 trafficking as defined in section 135.35 of the penal law, custodial
15 interference in the first degree as defined in section 135.50 of the
16 penal law, coercion in the first degree as defined in section 135.65 of
17 the penal law, criminal trespass in the first degree as defined in
18 section 140.17 of the penal law, burglary in the third degree as defined
19 in section 140.20 of the penal law, burglary in the second degree as
20 defined in section 140.25 of the penal law, burglary in the first degree
21 as defined in section 140.30 of the penal law, criminal mischief in the
22 third degree as defined in section 145.05 of the penal law, criminal
23 mischief in the second degree as defined in section 145.10 of the penal
24 law, criminal mischief in the first degree as defined in section 145.12
25 of the penal law, criminal tampering in the first degree as defined in
26 section 145.20 of the penal law, arson in the fourth degree as defined
27 in section 150.05 of the penal law, arson in the third degree as defined
28 in section 150.10 of the penal law, arson in the second degree as
29 defined in section 150.15 of the penal law, arson in the first degree as
30 defined in section 150.20 of the penal law, grand larceny in the fourth
31 degree as defined in section 155.30 of the penal law, grand larceny in
32 the third degree as defined in section 155.35 of the penal law, grand
33 larceny in the second degree as defined in section 155.40 of the penal
34 law, grand larceny in the first degree as defined in section 155.42 of
35 the penal law, health care fraud in the fourth degree as defined in
36 section 177.10 of the penal law, health care fraud in the third degree
37 as defined in section 177.15 of the penal law, health care fraud in the
38 second degree as defined in section 177.20 of the penal law, health care
39 fraud in the first degree as defined in section 177.25 of the penal law,
40 robbery in the third degree as defined in section 160.05 of the penal
41 law, robbery in the second degree as defined in section 160.10 of the
42 penal law, robbery in the first degree as defined in section 160.15 of
43 the penal law, unlawful use of secret scientific material as defined in
44 section 165.07 of the penal law, criminal possession of stolen property
45 in the fourth degree as defined in section 165.45 of the penal law,
46 criminal possession of stolen property in the third degree as defined in
47 section 165.50 of the penal law, criminal possession of stolen property
48 in the second degree as defined by section 165.52 of the penal law,
49 criminal possession of stolen property in the first degree as defined by
50 section 165.54 of the penal law, trademark counterfeiting in the second
51 degree as defined in section 165.72 of the penal law, trademark counter-
52 feiting in the first degree as defined in section 165.73 of the penal
53 law, forgery in the second degree as defined in section 170.10 of the
54 penal law, forgery in the first degree as defined in section 170.15 of
55 the penal law, criminal possession of a forged instrument in the second
56 degree as defined in section 170.25 of the penal law, criminal

1 possession of a forged instrument in the first degree as defined in
2 section 170.30 of the penal law, criminal possession of forgery devices
3 as defined in section 170.40 of the penal law, falsifying business
4 records in the first degree as defined in section 175.10 of the penal
5 law, tampering with public records in the first degree as defined in
6 section 175.25 of the penal law, offering a false instrument for filing
7 in the first degree as defined in section 175.35 of the penal law, issu-
8 ing a false certificate as defined in section 175.40 of the penal law,
9 criminal diversion of prescription medications and prescriptions in the
10 second degree as defined in section 178.20 of the penal law, criminal
11 diversion of prescription medications and prescriptions in the first
12 degree as defined in section 178.25 of the penal law, residential mort-
13 gage fraud in the fourth degree as defined in section 187.10 of the
14 penal law, residential mortgage fraud in the third degree as defined in
15 section 187.15 of the penal law, residential mortgage fraud in the
16 second degree as defined in section 187.20 of the penal law, residential
17 mortgage fraud in the first degree as defined in section 187.25 of the
18 penal law, escape in the second degree as defined in section 205.10 of
19 the penal law, escape in the first degree as defined in section 205.15
20 of the penal law, absconding from temporary release in the first degree
21 as defined in section 205.17 of the penal law, promoting prison contra-
22 band in the first degree as defined in section 205.25 of the penal law,
23 hindering prosecution in the second degree as defined in section 205.60
24 of the penal law, hindering prosecution in the first degree as defined
25 in section 205.65 of the penal law, sex trafficking as defined in
26 section 230.34 of the penal law, criminal possession of a weapon in the
27 third degree as defined in subdivisions two, three and five of section
28 265.02 of the penal law, criminal possession of a weapon in the second
29 degree as defined in section 265.03 of the penal law, criminal
30 possession of a weapon in the first degree as defined in section 265.04
31 of the penal law, manufacture, transport, disposition and defacement of
32 weapons and dangerous instruments and appliances defined as felonies in
33 subdivisions one, two, and three of section 265.10 of the penal law,
34 sections 265.11, 265.12 and 265.13 of the penal law, or prohibited use
35 of weapons as defined in subdivision two of section 265.35 of the penal
36 law, relating to firearms and other dangerous weapons, or failure to
37 disclose the origin of a recording in the first degree as defined in
38 section 275.40 of the penal law;

39 S 8. Paragraph (c) of subdivision 3-a of section 115-d of the domestic
40 relations law, as added by chapter 7 of the laws of 1999, is amended to
41 read as follows:

42 (c) For the purposes of this subdivision, "spousal abuse" is an
43 offense defined in section 120.05 [or], 120.10 OR 120.72 of the penal
44 law where the victim of such offense was the defendant's spouse;
45 provided, however, spousal abuse shall not include a crime in which the
46 applicant was the defendant, and the court finds in accordance with this
47 subdivision that he or she was the victim of physical, sexual or psycho-
48 logical abuse by the victim of such offense and such abuse was a factor
49 in causing the applicant to commit such offense.

50 S 9. Paragraph (f) of subdivision 7 of section 995 of the executive
51 law, as amended by chapter 2 of the laws of 2006, is amended to read as
52 follows:

53 (f) any of the following misdemeanors: assault in the third degree as
54 defined in section 120.00 of the penal law; attempted aggravated assault
55 upon a person less than eleven years old, as defined in section 110.00
56 and section 120.12 of the penal law; attempted menacing in the first

1 degree, as defined in section 110.00 and section 120.13 of the penal
2 law; menacing in the second degree as defined in section 120.14 of the
3 penal law; menacing in the third degree as defined in section 120.15 of
4 the penal law; reckless endangerment in the second degree as defined in
5 section 120.20 of the penal law; stalking in the fourth degree as
6 defined in section 120.45 of the penal law; stalking in the third degree
7 as defined in section 120.50 of the penal law; attempted stalking in the
8 second degree, as defined in section 110.00 and section 120.55 of the
9 penal law; THROTTLING AS DEFINED IN SECTION 120.71 OF THE PENAL LAW;
10 forcible touching as defined in section 130.52 of the penal law regard-
11 less of the age of the victim; sexual abuse in the third degree as
12 defined in section 130.55 of the penal law regardless of the age of the
13 victim; unlawful imprisonment in the second degree as defined in section
14 135.05 of the penal law regardless of the age of the victim; attempted
15 unlawful imprisonment in the first degree, as defined in section 110.00
16 and section 135.10 of the penal law regardless of the age of the victim;
17 criminal trespass in the second degree as defined in section 140.15 of
18 the penal law; possession of burglar's tools as defined in section
19 140.35 of the penal law; petit larceny as defined in section 155.25 of
20 the penal law; endangering the welfare of a child as defined in section
21 260.10 of the penal law; endangering the welfare of an incompetent or
22 physically disabled person as defined in section 260.25.

23 S 10. Paragraph (a) of subdivision 1 of section 460.10 of the penal
24 law, as amended by section 30 of part AAA of chapter 56 of the laws of
25 2009, is amended to read as follows:

26 (a) Any of the felonies set forth in this chapter: sections 120.05,
27 120.10 and 120.11 relating to assault; SECTION 120.72 RELATING TO STRAN-
28 GULATION; sections 125.10 to 125.27 relating to homicide; sections
29 130.25, 130.30 and 130.35 relating to rape; sections 135.20 and 135.25
30 relating to kidnapping; section 135.35 relating to labor trafficking;
31 section 135.65 relating to coercion; sections 140.20, 140.25 and 140.30
32 relating to burglary; sections 145.05, 145.10 and 145.12 relating to
33 criminal mischief; article one hundred fifty relating to arson; sections
34 155.30, 155.35, 155.40 and 155.42 relating to grand larceny; sections
35 177.10, 177.15, 177.20 and 177.25 relating to health care fraud; article
36 one hundred sixty relating to robbery; sections 165.45, 165.50, 165.52
37 and 165.54 relating to criminal possession of stolen property; sections
38 165.72 and 165.73 relating to trademark counterfeiting; sections 170.10,
39 170.15, 170.25, 170.30, 170.40, 170.65 and 170.70 relating to forgery;
40 sections 175.10, 175.25, 175.35, 175.40 and 210.40 relating to false
41 statements; sections 176.15, 176.20, 176.25 and 176.30 relating to
42 insurance fraud; sections 178.20 and 178.25 relating to criminal diver-
43 sion of prescription medications and prescriptions; sections 180.03,
44 180.08, 180.15, 180.25, 180.40, 180.45, 200.00, 200.03, 200.04, 200.10,
45 200.11, 200.12, 200.20, 200.22, 200.25, 200.27, 215.00, 215.05 and
46 215.19 relating to bribery; sections 187.10, 187.15, 187.20 and 187.25
47 relating to residential mortgage fraud, sections 190.40 and 190.42
48 relating to criminal usury; section 190.65 relating to schemes to
49 defraud; sections 205.60 and 205.65 relating to hindering prosecution;
50 sections 210.10, 210.15, and 215.51 relating to perjury and contempt;
51 section 215.40 relating to tampering with physical evidence; sections
52 220.06, 220.09, 220.16, 220.18, 220.21, 220.31, 220.34, 220.39, 220.41,
53 220.43, 220.46, 220.55, 220.60 and 220.77 relating to controlled
54 substances; sections 225.10 and 225.20 relating to gambling; sections
55 230.25, 230.30, and 230.32 relating to promoting prostitution; section
56 230.34 relating to sex trafficking; sections 235.06, 235.07, 235.21 and

1 235.22 relating to obscenity; sections 263.10 and 263.15 relating to
2 promoting a sexual performance by a child; sections 265.02, 265.03,
3 265.04, 265.11, 265.12, 265.13 and the provisions of section 265.10
4 which constitute a felony relating to firearms and other dangerous weap-
5 ons; and sections 265.14 and 265.16 relating to criminal sale of a
6 firearm; and section 275.10, 275.20, 275.30, or 275.40 relating to unau-
7 thorized recordings; and sections 470.05, 470.10, 470.15 and 470.20
8 relating to money laundering; or

9 S 11. Paragraph (j) of subdivision 2 of section 378-a of the social
10 services law, as added by chapter 7 of the laws of 1999, is amended to
11 read as follows:

12 (j) For the purposes of this subdivision "spousal abuse" is an offense
13 defined in section 120.05 [or], 120.10 OR 120.72 of the penal law where
14 the victim of such offense was the defendant's spouse; provided, howev-
15 er, spousal abuse shall not include a crime in which the prospective
16 foster parent or prospective adoptive parent, who was the defendant, has
17 received notice pursuant to paragraph (g) of this subdivision and the
18 office of children and family services finds after a fair hearing held
19 pursuant to section twenty-two of this chapter, that he or she was the
20 victim of physical, sexual or psychological abuse by the victim of such
21 offense and such abuse was a factor in causing the prospective foster
22 parent or prospective adoptive parent to commit such offense.

23 S 12. The opening paragraph of subdivision 1 of section 812 of the
24 family court act, as amended by chapter 476 of the laws of 2009, is
25 amended to read as follows:

26 The family court and the criminal courts shall have concurrent juris-
27 diction over any proceeding concerning acts which would constitute
28 disorderly conduct, harassment in the first degree, harassment in the
29 second degree, aggravated harassment in the second degree, sexual
30 misconduct, forcible touching, sexual abuse in the third degree, sexual
31 abuse in the second degree as set forth in subdivision one of section
32 130.60 of the penal law, stalking in the first degree, stalking in the
33 second degree, stalking in the third degree, stalking in the fourth
34 degree, criminal mischief, menacing in the second degree, menacing in
35 the third degree, reckless endangerment, THROTTLING, STRANGULATION,
36 assault in the second degree, assault in the third degree or an
37 attempted assault, THROTTLING OR STRANGULATION between spouses or former
38 spouses, or between parent and child or between members of the same
39 family or household except that if the respondent would not be criminal-
40 ly responsible by reason of age pursuant to section 30.00 of the penal
41 law, then the family court shall have exclusive jurisdiction over such
42 proceeding. Notwithstanding a complainant's election to proceed in fami-
43 ly court, the criminal court shall not be divested of jurisdiction to
44 hear a family offense proceeding pursuant to this section. For purposes
45 of this article, "disorderly conduct" includes disorderly conduct not in
46 a public place. For purposes of this article, "members of the same fami-
47 ly or household" shall mean the following:

48 S 13. This act shall take effect on the ninetieth day after it shall
49 have become a law.