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2009-2010 Regular Sessions

I N S E N A T E

(PREFILED)

January 7, 2009

Introduced by Sen. ADAMS -- 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 defining offenses against
the family

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

1 Section 1. The penal law is amended by adding a new article 121 to
2 read as follows:

3 ARTICLE 121
4 FAMILY OFFENSES

5 SECTION 121.00 DEFINITIONS.

6 121.05 DOMESTIC VIOLENCE.

7 121.10 AGGRAVATED DOMESTIC VIOLENCE.

8 121.15 EXTREME DOMESTIC VIOLENCE.

9 121.20 DEFENSE.

10 S 121.00 DEFINITIONS.

11 FOR THE PURPOSES OF THIS ARTICLE THE FOLLOWING TERMS SHALL HAVE THE
12 FOLLOWING MEANINGS:

13 1. "FAMILY MEMBER" MEANS ANY PERSON RELATED BY BLOOD OR MARRIAGE, AS A
14 SPOUSE, OR AS AN ANCESTOR OR DESCENDANT; OR ANY PERSONS HAVING CHILDREN
15 IN COMMON; OR ANY PERSONS HAVING SHARED THE SAME DOMICILE FOR A PERIOD
16 OF SIX MONTHS OR MORE.

17 2. "ACT OF VIOLENCE" MEANS ANY ASSAULTIVE BEHAVIOR, WHETHER BY OPEN
18 HAND, FIST, FOOT, TEETH, OR ANY OTHER BODY PART, OR BY ANY INSTRUMENT OR
19 INSTRUMENTALITY, WHICH CAUSES PHYSICAL INJURY TO ANOTHER FAMILY MEMBER.

20 3. "INJURY" MEANS ANY OF THE FOLLOWING: BLACK AND BLUE MARKS; WELT
21 MARKS; A BLACK EYE; SUBSTANTIAL SORENESS; A BITE MARK; A CONCUSSION;
22 SUTURES; BURNS; OR ANY OTHER MEDICALLY DISTINGUISHABLE BRUISES, CONTU-
23 SIONS, ABRASIONS OR LACERATIONS, OR ANY "PHYSICAL INJURY" AS THAT TERM
24 HAS BEEN DEFINED BY ARTICLE ONE HUNDRED TWENTY OF THIS TITLE.

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

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1 S 121.05 DOMESTIC VIOLENCE.

2 A PERSON IS GUILTY OF DOMESTIC VIOLENCE WHEN BEING A FAMILY MEMBER
3 WITH INTENT TO CAUSE INJURY TO ANOTHER FAMILY MEMBER, HE OR SHE COMMITS
4 AN ACT OF VIOLENCE AGAINST ANY FAMILY MEMBER.

5 DOMESTIC VIOLENCE IS A CLASS A MISDEMEANOR.

6 S 121.10 AGGRAVATED DOMESTIC VIOLENCE.

7 A PERSON IS GUILTY OF AGGRAVATED DOMESTIC VIOLENCE WHEN HE OR SHE
8 COMMITS AN ACT OF DOMESTIC VIOLENCE AND WHEN:

9 1. HE OR SHE HAS PREVIOUSLY BEEN CONVICTED OF AN ACT OF DOMESTIC
10 VIOLENCE, OR AN ATTEMPT TO COMMIT SAME; OR

11 2. HE OR SHE HAS PREVIOUSLY BEEN CONVICTED OF ASSAULT, UNDER ARTICLE
12 ONE HUNDRED TWENTY OF THIS TITLE, OR AN ATTEMPT TO COMMIT SAME, AND THE
13 VICTIM IN SAID PRIOR CONVICTION WAS A FAMILY MEMBER; OR

14 3. HE OR SHE HAS PREVIOUSLY COMMITTED ANOTHER ACT OF DOMESTIC VIOLENCE
15 WITHIN THE PAST SIX MONTHS AGAINST ANY FAMILY MEMBER, AND AS TO SAID
16 PRIOR CONDUCT NO PROSECUTION HAS PREVIOUSLY BEEN INSTITUTED, OR PROSE-
17 CUTION HAS BEEN WITHDRAWN, DISMISSED OR ADJOURNED IN CONTEMPLATION OF
18 DISMISSAL BEFORE AN ADJUDICATION ON THE MERITS, PROVIDING HOWEVER, THAT
19 SAID PRIOR CONDUCT MUST BE ALLEGED WITHIN THE ACCUSATORY INSTRUMENT
20 HEREIN WITH THE SAME SPECIFICITY AS IS REQUIRED FOR THE CONDUCT PRESENT-
21 LY AT ISSUE; OR

22 4. HE OR SHE ACCOMPANIES SAID ACT WITH A THREAT OR THREATS TO THE LIFE
23 OF ANY FAMILY MEMBER; OR

24 5. HE OR SHE USES OR THREATENS THE USE OF A DANGEROUS INSTRUMENT; OR

25 6. AT THE TIME OF SAID CONDUCT AN ORDER OF PROTECTION HAS BEEN ISSUED
26 CONSTRAINING THE CONDUCT OF SAID PERSON; OR

27 7. AT TWO TIMES OTHER THAN THE ACT OF DOMESTIC VIOLENCE, HE OR SHE
28 THREATENS THE LIFE OR SAFETY OF ANY FAMILY MEMBER OVER THE PHONE OR BY
29 ANY AGENT OR INSTRUMENTALITY.

30 AGGRAVATED DOMESTIC VIOLENCE IS A CLASS E FELONY.

31 S 121.15 EXTREME DOMESTIC VIOLENCE.

32 A PERSON IS GUILTY OF EXTREME DOMESTIC VIOLENCE WHEN:

33 1. WITH INTENT TO CAUSE INJURY TO ANY FAMILY MEMBER, OR IN RECKLESS
34 DISREGARD OF THE LIKELIHOOD OF CAUSING SUCH INJURY, HE OR SHE COMMITS AN
35 ACT OR ACTS WHICH RESULT IN SECOND OR THIRD DEGREE BURNS TO ANY FAMILY
36 MEMBER; OR

37 2. HE OR SHE COMMITS AN ACT OF DOMESTIC VIOLENCE, HAVING TWICE WITHIN
38 THE THREE YEARS IMMEDIATELY PRIOR TO SAID ACT BEEN CONVICTED OF ANY
39 COMBINATION OF DOMESTIC VIOLENCE AND/OR ASSAULT CHARGES, OR AN ATTEMPT
40 TO COMMIT SAME AGAINST ANY FAMILY MEMBER OR MEMBERS; OR

41 3. HE OR SHE COMMITS AN ACT OF DOMESTIC VIOLENCE HAVING THREE TIMES
42 WITHIN A YEAR IMMEDIATELY PRIOR TO SAID ACT COMMITTED OTHER ACTS OF
43 DOMESTIC VIOLENCE AGAINST ANY FAMILY MEMBER OR MEMBERS, AND AS TO SAID
44 PRIOR CONDUCT, NO PROSECUTION HAS PREVIOUSLY BEEN INSTITUTED OR PROSE-
45 CUTION HAS BEEN WITHDRAWN, DISMISSED OR ADJOURNED IN CONTEMPLATION OF
46 DISMISSAL BEFORE AN ADJUDICATION ON THE MERITS, PROVIDING HOWEVER, THAT
47 SAID PRIOR CONDUCT MUST BE ALLEGED WITHIN THE ACCUSATORY INSTRUMENT
48 HEREIN WITH THE SAME SPECIFICITY AS IS REQUIRED FOR THE CONDUCT PRESENT-
49 LY AT ISSUE; OR

50 4. HE OR SHE RESTRAINS AS THAT TERM IS DEFINED BY ARTICLE ONE HUNDRED
51 THIRTY-FIVE OF THIS TITLE A FAMILY MEMBER FOR A PERIOD OF MORE THAN TWO
52 HOURS, DURING THE COURSE OF WHICH HE OR SHE:

53 (A) COMMITS AN ACT OF DOMESTIC VIOLENCE; OR

54 (B) THREATENS THE LIFE OF ANY PERSON; OR

55 (C) ENDANGERS THE LIFE OF A CHILD; OR

56 (D) DISPLAYS OR THREATENS THE USE OF A DANGEROUS INSTRUMENT; OR

1 (E) COMMITS THE CRIME OF COERCION AS THAT TERM IS DEFINED BY ARTICLE
2 ONE HUNDRED THIRTY-FIVE OF THIS TITLE; OR
3 5. HE OR SHE COMMITS AN ACT OF AGGRAVATED DOMESTIC VIOLENCE AND THE
4 VICTIM IS LESS THAN TEN YEARS OLD.
5 EXTREME DOMESTIC VIOLENCE IS A CLASS C FELONY.
6 S 121.20 DEFENSE.
7 IT IS AN AFFIRMATIVE DEFENSE UNDER THIS ARTICLE THAT ANY CONDUCT
8 AGAINST A CHILD BY AN ADULT FAMILY MEMBER WAS JUSTIFIED PURSUANT TO THE
9 PROVISIONS OF SUBDIVISION ONE OF SECTION 35.10 OF THIS CHAPTER.
10 S 2. This act shall take effect on the first of November next succeed-
11 ing the date on which it shall have become a law.