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

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:

Section 1. Paragraph (b) of subdivision 1 of section 70.02 of the penal law, as separately amended by chapters 764 and 765 of the laws of 2005, is amended to read as follows:

(b) Class C violent felony offenses: an attempt to commit any of the class B felonies set forth in paragraph (a); aggravated criminally negligent homicide as defined in section 125.11, aggravated manslaughter in the second degree as defined in section 125.21, aggravated sexual abuse in the second degree as defined in section 130.67, assault on a peace officer, police officer, fireman or emergency medical services professional as defined in section 120.08, gang assault in the second degree as defined in section 120.06, STRANGULATION AS DEFINED IN SECTION 120.72, burglary in the second degree as defined in section 140.25, robbery in the second degree as defined in section 160.10, criminal possession of a weapon in the second degree as defined in section 265.03, criminal use of a firearm in the second degree as defined in section 265.08, criminal sale of a firearm in the second degree as defined in section 265.12, criminal sale of a firearm with the aid of a minor as defined in section 265.14, soliciting or providing support for an act of terrorism in the first degree as defined in section 490.15, hindering prosecution of terrorism in the second degree as defined in section 490.30, and criminal possession of a chemical weapon or biological weapon in the third degree as defined in section 490.37.

S 2. Subdivision 5 of section 120.05 of the penal law, as amended by chapter 134 of the laws of 1975, is amended to read as follows:

5. For a purpose other than lawful medical or therapeutic treatment, he intentionally causes stupor, unconsciousness or other physical 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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out his consent, BY (A) ADMINISTERING TO HIM a drug, substance or preparation capable of producing the same; OR (B) APPLYING PRESSURE ON THE THROAT OR NECK OR BLOCKING THE NOSE OR MOUTH OF SUCH PERSON; or

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

S 120.71 THROTTLING.

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

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

B. BLOCKS THE NOSE OR MOUTH OF SUCH PERSON.

THROTTLING IS A CLASS A MISDEMEANOR.

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

S 120.72 STRANGULATION.

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

STRANGULATION IS A CLASS C FELONY.

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

S 120.73 MEDICAL OR DENTAL PURPOSE.

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

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

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

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

(b) Any of the following felonies: assault in the second degree as defined in section 120.05 of the penal law, assault in the first degree as defined in section 120.10 of the penal law, reckless endangerment in the first degree as defined in section 120.25 of the penal law, promoting a suicide attempt as defined in section 120.30 of the penal law, STRANGULATION AS DEFINED IN SECTION 120.72 OF THE PENAL LAW, criminally negligent homicide as defined in section 125.10 of the penal law, manslaughter in the second degree as defined in section 125.15 of the penal law, manslaughter in the first degree as defined in section 125.20 of the penal law, murder in the second degree as defined in section 125.25 of the penal law, murder in the first degree as defined in section 125.27 of the penal law, abortion in the second degree as

defined in section 125.40 of the penal law, abortion in the first degree as defined in section 125.45 of the penal law, rape in the third degree as defined in section 130.25 of the penal law, rape in the second degree as defined in section 130.30 of the penal law, rape in the first degree as defined in section 130.35 of the penal law, criminal sexual act in the third degree as defined in section 130.40 of the penal law, criminal sexual act in the second degree as defined in section 130.45 of the penal law, criminal sexual act in the first degree as defined in section 130.50 of the penal law, sexual abuse in the first degree as defined in section 130.65 of the penal law, unlawful imprisonment in the first degree as defined in section 135.10 of the penal law, kidnapping in the second degree as defined in section 135.20 of the penal law, kidnapping in the first degree as defined in section 135.25 of the penal law, labor trafficking as defined in section 135.35 of the penal law, custodial interference in the first degree as defined in section 135.50 of the penal law, coercion in the first degree as defined in section 135.65 of the penal law, criminal trespass in the first degree as defined in section 140.17 of the penal law, burglary in the third degree as defined in section 140.20 of the penal law, burglary in the second degree as defined in section 140.25 of the penal law, burglary in the first degree as defined in section 140.30 of the penal law, criminal mischief in the third degree as defined in section 145.05 of the penal law, criminal mischief in the second degree as defined in section 145.10 of the penal law, criminal mischief in the first degree as defined in section 145.12 of the penal law, criminal tampering in the first degree as defined in section 145.20 of the penal law, arson in the fourth degree as defined in section 150.05 of the penal law, arson in the third degree as defined in section 150.10 of the penal law, arson in the second degree as defined in section 150.15 of the penal law, arson in the first degree as defined in section 150.20 of the penal law, grand larceny in the fourth degree as defined in section 155.30 of the penal law, grand larceny in the third degree as defined in section 155.35 of the penal law, grand larceny in the second degree as defined in section 155.40 of the penal law, grand larceny in the first degree as defined in section 155.42 of the penal law, health care fraud in the fourth degree as defined in section 177.10 of the penal law, health care fraud in the third degree as defined in section 177.15 of the penal law, health care fraud in the second degree as defined in section 177.20 of the penal law, health care fraud in the first degree as defined in section 177.25 of the penal law, robbery in the third degree as defined in section 160.05 of the penal law, robbery in the second degree as defined in section 160.10 of the penal law, robbery in the first degree as defined in section 160.15 of the penal law, unlawful use of secret scientific material as defined in section 165.07 of the penal law, criminal possession of stolen property in the fourth degree as defined in section 165.45 of the penal law, criminal possession of stolen property in the third degree as defined in section 165.50 of the penal law, criminal possession of stolen property in the second degree as defined by section 165.52 of the penal law, criminal possession of stolen property in the first degree as defined by section 165.54 of the penal law, trademark counterfeiting in the second degree as defined in section 165.72 of the penal law, trademark counterfeiting in the first degree as defined in section 165.73 of the penal law, forgery in the second degree as defined in section 170.10 of the penal law, forgery in the first degree as defined in section 170.15 of the penal law, criminal possession of a forged instrument in the second degree as defined in section 170.25 of the penal law, criminal

possession of a forged instrument in the first degree as defined in section 170.30 of the penal law, criminal possession of forgery devices as defined in section 170.40 of the penal law, falsifying business records in the first degree as defined in section 175.10 of the penal law, tampering with public records in the first degree as defined in section 175.25 of the penal law, offering a false instrument for filing in the first degree as defined in section 175.35 of the penal law, issuing a false certificate as defined in section 175.40 of the penal law, criminal diversion of prescription medications and prescriptions in the second degree as defined in section 178.20 of the penal law, criminal diversion of prescription medications and prescriptions in the first degree as defined in section 178.25 of the penal law, residential mortgage fraud in the fourth degree as defined in section 187.10 of the penal law, residential mortgage fraud in the third degree as defined in section 187.15 of the penal law, residential mortgage fraud in the second degree as defined in section 187.20 of the penal law, residential mortgage fraud in the first degree as defined in section 187.25 of the penal law, escape in the second degree as defined in section 205.10 of the penal law, escape in the first degree as defined in section 205.15 of the penal law, absconding from temporary release in the first degree as defined in section 205.17 of the penal law, promoting prison contraband in the first degree as defined in section 205.25 of the penal law, hindering prosecution in the second degree as defined in section 205.60 of the penal law, hindering prosecution in the first degree as defined in section 205.65 of the penal law, sex trafficking as defined in section 230.34 of the penal law, criminal possession of a weapon in the third degree as defined in subdivisions two, three and five of section 265.02 of the penal law, criminal possession of a weapon in the second degree as defined in section 265.03 of the penal law, criminal possession of a weapon in the first degree as defined in section 265.04 of the penal law, manufacture, transport, disposition and defacement of weapons and dangerous instruments and appliances defined as felonies in subdivisions one, two, and three of section 265.10 of the penal law, sections 265.11, 265.12 and 265.13 of the penal law, or prohibited use of weapons as defined in subdivision two of section 265.35 of the penal law, relating to firearms and other dangerous weapons, or failure to disclose the origin of a recording in the first degree as defined in section 275.40 of the penal law;

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

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

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

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

degree, as defined in section 110.00 and section 120.13 of the penal law; menacing in the second degree as defined in section 120.14 of the penal law; menacing in the third degree as defined in section 120.15 of the penal law; reckless endangerment in the second degree as defined in section 120.20 of the penal law; stalking in the fourth degree as defined in section 120.45 of the penal law; stalking in the third degree as defined in section 120.50 of the penal law; attempted stalking in the second degree, as defined in section 110.00 and section 120.55 of the penal law; THROTTLING AS DEFINED IN SECTION 120.71 OF THE PENAL LAW; forcible touching as defined in section 130.52 of the penal law regardless of the age of the victim; sexual abuse in the third degree as defined in section 130.55 of the penal law regardless of the age of the victim; unlawful imprisonment in the second degree as defined in section 135.05 of the penal law regardless of the age of the victim; attempted unlawful imprisonment in the first degree, as defined in section 110.00 and section 135.10 of the penal law regardless of the age of the victim; criminal trespass in the second degree as defined in section 140.15 of the penal law; possession of burglar's tools as defined in section 140.35 of the penal law; petit larceny as defined in section 155.25 of the penal law; endangering the welfare of a child as defined in section 260.10 of the penal law; endangering the welfare of an incompetent or physically disabled person as defined in section 260.25.

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

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

235.22 relating to obscenity; sections 263.10 and 263.15 relating to promoting a sexual performance by a child; sections 265.02, 265.03, 265.04, 265.11, 265.12, 265.13 and the provisions of section 265.10 which constitute a felony relating to firearms and other dangerous weapons; and sections 265.14 and 265.16 relating to criminal sale of a firearm; and section 275.10, 275.20, 275.30, or 275.40 relating to unauthorized recordings; and sections 470.05, 470.10, 470.15 and 470.20 relating to money laundering; or

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

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

S 12. The opening paragraph of subdivision 1 of section 812 of the family court act, as amended by chapter 476 of the laws of 2009, 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, THROTTLING, STRANGULATION, assault in the second degree, assault in the third degree or an attempted assault, THROTTLING OR STRANGULATION 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:

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