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

7326

I N S E N A T E

March 30, 2010

Introduced by Sens. PADAVAN, LITTLE, GOLDEN, LEIBELL, LANZA -- 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 establishing domestic abuse offenses; and to amend the criminal procedure law, in relation to authorizing deferral of sentencing upon a plea of guilty of a domestic abuse felony offense

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

Section 1. The penal law is amended by adding three new sections 120.75, 120.80 and 120.85 to read as follows:

S 120.75 DOMESTIC ABUSE IN THE THIRD DEGREE.

A PERSON IS GUILTY OF DOMESTIC ABUSE IN THE THIRD DEGREE WHEN, WITH INTENT TO HARASS, ANNOY OR ALARM A MEMBER OF THE SAME FAMILY OR HOUSEHOLD AS DEFINED BY SUBDIVISION ONE OF SECTION 530.11 OF THE CRIMINAL PROCEDURE LAW, HE OR SHE STRIKES, SHOVES, KICKS OR OTHERWISE SUBJECTS SUCH MEMBER OF THE SAME FAMILY OR HOUSEHOLD TO PHYSICAL CONTACT OR ATTEMPTS OR THREATENS TO DO THE SAME.

DOMESTIC ABUSE IN THE THIRD DEGREE IS A CLASS B MISDEMEANOR.

S 120.80 DOMESTIC ABUSE IN THE SECOND DEGREE.

A PERSON IS GUILTY OF DOMESTIC ABUSE IN THE SECOND DEGREE WHEN, WITH INTENT TO HARASS, ANNOY OR ALARM A MEMBER OF THE SAME FAMILY OR HOUSEHOLD AS DEFINED BY SUBDIVISION ONE OF SECTION 530.11 OF THE CRIMINAL PROCEDURE LAW, HE OR SHE CAUSES PHYSICAL INJURY TO SUCH MEMBER OF THE SAME FAMILY OR HOUSEHOLD.

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

S 120.85 DOMESTIC ABUSE IN THE FIRST DEGREE.

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

1. WITH INTENT TO CAUSE PHYSICAL INJURY TO A MEMBER OF THE SAME FAMILY OR HOUSEHOLD AS DEFINED BY SUBDIVISION ONE OF SECTION 530.11 OF THE CRIMINAL PROCEDURE LAW, HE OR SHE CAUSES SUCH INJURY TO SUCH MEMBER OF THE SAME FAMILY OR HOUSEHOLD OR TO A THIRD PERSON; OR

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

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2. HE OR SHE RECKLESSLY CAUSES PHYSICAL INJURY TO A MEMBER OF THE SAME FAMILY OR HOUSEHOLD AS DEFINED BY SUBDIVISION ONE OF SECTION 530.11 OF THE CRIMINAL PROCEDURE LAW; OR

3. WITH CRIMINAL NEGLIGENCE, HE OR SHE CAUSES PHYSICAL INJURY TO A MEMBER OF THE SAME FAMILY OR HOUSEHOLD AS DEFINED BY SUBDIVISION ONE OF SECTION 530.11 OF THE CRIMINAL PROCEDURE LAW BY MEANS OF A DEADLY WEAPON OR A DANGEROUS INSTRUMENT; OR

4. HE OR SHE RECKLESSLY ENGAGES IN CONDUCT WHICH CREATES A SUBSTANTIAL RISK OF SERIOUS PHYSICAL INJURY TO A MEMBER OF THE SAME FAMILY OR HOUSEHOLD AS DEFINED BY SUBDIVISION ONE OF SECTION 530.11 OF THE CRIMINAL PROCEDURE LAW; OR

5. HE OR SHE COMMITS THE CRIME OF DOMESTIC ABUSE IN THE SECOND DEGREE AND HAS PREVIOUSLY BEEN CONVICTED OF SUCH OFFENSE OR A VIOLATION OF THIS SECTION WITHIN THE PRECEDING FIVE YEARS.

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

S 2. The criminal procedure law is amended by adding a new article 217 to read as follows:

ARTICLE 217
DEFERRAL OF SENTENCING
FOR FELONY DOMESTIC
ABUSE

SECTION 217.00 DEFERRAL OF SENTENCING FOR FELONY DOMESTIC ABUSE.

S 217.00 DEFERRAL OF SENTENCING FOR FELONY DOMESTIC ABUSE.

1. UPON A GUILTY PLEA BY A DEFENDANT TO DOMESTIC ABUSE IN THE FIRST DEGREE AS DEFINED IN SECTION 120.85 OF THE PENAL LAW AND UPON THE DEFENDANT'S CONSENT THERETO, THE COURT MAY ORDER THAT THE SENTENCE FOR SUCH OFFENSE BE DEFERRED FOR THE PURPOSE OF THE DEFENDANT'S PARTICIPATION IN A COURT-APPROVED DOMESTIC VIOLENCE AND ANGER MANAGEMENT PROGRAM, OR FOR TREATMENT FOR SUBSTANCE ABUSE OR DEPENDENCE, ALCOHOL ABUSE OR DEPENDENCE, AND ANY CO-OCCURRING MENTAL DISORDER OR MENTAL ILLNESS. UPON THE SUCCESSFUL COMPLETION OF SUCH PROGRAM OR TREATMENT AND THE CONSENT OF THE PEOPLE, AND WITH REASONABLE NOTICE TO THE VICTIM AND AN OPPORTUNITY FOR THE VICTIM TO BE HEARD, THE COURT MAY PERMIT THE DEFENDANT TO WITHDRAW HIS OR HER PLEA TO DOMESTIC ABUSE IN THE FIRST DEGREE.

2. NOTHING IN THIS ARTICLE SHALL BE CONSTRUED AS RESTRICTING OR PROHIBITING A COURT OR THE PEOPLE FROM USING OTHER LAWFUL PROCEDURES OR MODELS FOR PLACING APPROPRIATE PERSONS INTO ALCOHOL OR SUBSTANCE ABUSE TREATMENT.

S 3. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.