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

8038

I N S E N A T E

June 2, 2010

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

AN ACT to amend the penal law and the criminal procedure law, in relation to the creation of the crime of aggravated domestic violence

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 a new section 240.75 to read as follows:

S 240.75 AGGRAVATED DOMESTIC VIOLENCE.

1. A PERSON IS GUILTY OF AGGRAVATED DOMESTIC VIOLENCE WHEN HE OR SHE COMMITS A SPECIFIED DOMESTIC VIOLENCE OFFENSE AND HE OR SHE HAS BEEN CONVICTED OF ONE OR MORE SPECIFIED DOMESTIC VIOLENCE OFFENSES WITHIN THE IMMEDIATELY PRECEDING FIVE YEARS. FOR THE PURPOSES OF THIS SECTION, IN CALCULATING THE FIVE YEAR PERIOD, ANY PERIOD OF TIME DURING WHICH THE DEFENDANT WAS INCARCERATED FOR ANY REASON BETWEEN THE TIME OF THE COMMISSION OF ANY OF THE PREVIOUS CONVICTIONS AND THE TIME OF COMMISSION OF THE PRESENT CRIME SHALL BE EXCLUDED AND SUCH FIVE YEAR PERIOD SHALL BE EXTENDED BY A PERIOD OR PERIODS EQUAL TO THE TIME SERVED UNDER SUCH INCARCERATION.

2. A "SPECIFIED DOMESTIC VIOLENCE OFFENSE" IS AN OFFENSE WHERE THE DEFENDANT AND THE PERSON AGAINST WHOM THE OFFENSE IS COMMITTED ARE MEMBERS OF THE SAME FAMILY OR HOUSEHOLD AS DEFINED IN SUBDIVISION ONE OF SECTION 530.11 OF THE CRIMINAL PROCEDURE LAW AND WHERE THAT OFFENSE INCLUDES ANY OF THE FOLLOWING PROVISIONS OF THE PENAL LAW: SECTION 120.00 (ASSAULT IN THE THIRD DEGREE); SECTION 120.05 (ASSAULT IN THE SECOND DEGREE); SECTION 120.10 (ASSAULT IN THE FIRST DEGREE); SECTION 120.13 (MENACING IN THE FIRST DEGREE); SECTION 120.14 (MENACING IN THE SECOND DEGREE); SECTION 120.15 (MENACING IN THE THIRD DEGREE); SECTION 120.20 (RECKLESS ENDANGERMENT IN THE SECOND DEGREE); SECTION 120.25 (RECKLESS ENDANGERMENT IN THE FIRST DEGREE); SECTION 120.45 (STALKING IN THE FOURTH DEGREE); SECTION 120.50 (STALKING IN THE THIRD DEGREE); SECTION 120.55 (STALKING IN THE SECOND DEGREE); SECTION 120.60 (STALKING IN THE FIRST DEGREE); SUBDIVISION ONE OF SECTION 125.15 (MANSLAUGHTER IN THE SECOND DEGREE); SUBDIVISION ONE, TWO OR FOUR OF SECTION 125.20

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

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(MANSLAUGHTER IN THE FIRST DEGREE); SECTION 125.25 (MURDER IN THE SECOND DEGREE); SECTION 130.20 (SEXUAL MISCONDUCT); SECTION 130.30 (RAPE IN THE SECOND DEGREE); SECTION 130.35 (RAPE IN THE FIRST DEGREE); SECTION 130.40 (CRIMINAL SEXUAL ACT IN THE THIRD DEGREE); SECTION 130.45 (CRIMINAL SEXUAL ACT IN THE SECOND DEGREE); SECTION 130.50 (CRIMINAL SEXUAL ACT IN THE FIRST DEGREE); SECTION 130.52 (FORCIBLE TOUCHING); SECTION 130.53 (PERSISTENT SEXUAL ABUSE); SECTION 130.55 (SEXUAL ABUSE IN THE THIRD DEGREE); SECTION 130.60 (SEXUAL ABUSE IN THE SECOND DEGREE); SECTION 130.65 (SEXUAL ABUSE IN THE FIRST DEGREE); SECTION 130.66 (AGGRAVATED SEXUAL ABUSE IN THE THIRD DEGREE); SECTION 130.67 (AGGRAVATED SEXUAL ABUSE IN THE SECOND DEGREE); SECTION 130.70 (AGGRAVATED SEXUAL ABUSE IN THE FIRST DEGREE); SECTION 130.91 (SEXUALLY MOTIVATED FELONY); SECTION 130.95 (PREDATORY SEXUAL ASSAULT); SECTION 130.96 (PREDATORY SEXUAL ASSAULT AGAINST A CHILD); SECTION 135.05 (UNLAWFUL IMPRISONMENT IN THE SECOND DEGREE); SECTION 135.10 (UNLAWFUL IMPRISONMENT IN THE FIRST DEGREE); SECTION 135.20 (KIDNAPPING IN THE SECOND DEGREE); SECTION 135.25 (KIDNAPPING IN THE FIRST DEGREE); SECTION 135.60 (COERCION IN THE SECOND DEGREE); SECTION 135.65 (COERCION IN THE FIRST DEGREE); SECTION 140.10 (CRIMINAL TRESPASS IN THE THIRD DEGREE); SECTION 140.15 (CRIMINAL TRESPASS IN THE SECOND DEGREE); SECTION 140.17 (CRIMINAL TRESPASS IN THE FIRST DEGREE); SECTION 140.20 (BURGLARY IN THE THIRD DEGREE); SECTION 140.25 (BURGLARY IN THE SECOND DEGREE); SECTION 140.30 (BURGLARY IN THE FIRST DEGREE); SECTION 145.00 (CRIMINAL MISCHIEF IN THE FOURTH DEGREE); SECTION 145.05 (CRIMINAL MISCHIEF IN THE THIRD DEGREE); SECTION 145.10 (CRIMINAL MISCHIEF IN THE SECOND DEGREE); SECTION 145.12 (CRIMINAL MISCHIEF IN THE FIRST DEGREE); SECTION 145.14 (CRIMINAL TAMPERING IN THE THIRD DEGREE); SECTION 145.25 (RECKLESS ENDANGERMENT OF PROPERTY); SECTION 145.60 (MAKING GRAFFITI); SECTION 150.01 (ARSON IN THE FIFTH DEGREE); SECTION 150.05 (ARSON IN THE FOURTH DEGREE); SECTION 150.10 (ARSON IN THE THIRD DEGREE); SECTION 150.15 (ARSON IN THE SECOND DEGREE); SECTION 150.20 (ARSON IN THE FIRST DEGREE); SECTION 215.50 (CRIMINAL CONTEMPT IN THE SECOND DEGREE); SECTION 215.51 (CRIMINAL CONTEMPT IN THE FIRST DEGREE); SECTION 215.52 (AGGRAVATED CRIMINAL CONTEMPT); SECTION 240.25 (HARASSMENT IN THE FIRST DEGREE); SUBDIVISION ONE, TWO OR FOUR OF SECTION 240.30 (AGGRAVATED HARASSMENT IN THE SECOND DEGREE); SECTION 240.48 (DISSEMINATING A FALSE REGISTERED SEX OFFENDER NOTICE); SECTION 240.50 (FALSELY REPORTING AN INCIDENT IN THE THIRD DEGREE); SECTION 240.55 (FALSELY REPORTING AN INCIDENT IN THE SECOND DEGREE); SECTION 240.60 (FALSELY REPORTING AN INCIDENT IN THE FIRST DEGREE); OR ANY ATTEMPT OR CONSPIRACY TO COMMIT ANY OF THE FOREGOING OFFENSES.

AGGRAVATED DOMESTIC VIOLENCE IS A CLASS E FELONY.

S 2. The criminal procedure law is amended by adding a new section 200.63 to read as follows:

S 200.63 INDICTMENT; SPECIAL INFORMATION FOR AGGRAVATED DOMESTIC VIOLENCE OFFENDER.

1. WHENEVER A PERSON IS CHARGED WITH THE COMMISSION OR ATTEMPTED COMMISSION OF AN AGGRAVATED DOMESTIC VIOLENCE OFFENSE AS DEFINED IN SECTION 240.75 OF THE PENAL LAW WHICH CONSTITUTES A FELONY AND IT APPEARS THAT THE VICTIM OF SUCH OFFENSE WAS A MEMBER OF THE SAME FAMILY OR HOUSEHOLD AS DEFINED IN SUBDIVISION ONE OF SECTION 530.11 OF THIS CHAPTER, AN INDICTMENT FOR SUCH OFFENSE MAY BE ACCOMPANIED BY A SPECIAL INFORMATION, FILED BY THE DISTRICT ATTORNEY WITH THE COURT, ALLEGING THAT THE VICTIM WAS A MEMBER OF THE SAME FAMILY OR HOUSEHOLD AS DEFINED IN SUBDIVISION ONE OF SECTION 530.11 OF THIS CHAPTER AND WAS PREVIOUSLY

CONVICTED OF A SPECIFIED DOMESTIC VIOLENCE OFFENSE AS DEFINED IN SECTION 240.75 OF THE PENAL LAW.

2. PRIOR TO TRIAL, OR AFTER THE COMMENCEMENT OF THE TRIAL BUT BEFORE THE CLOSE OF THE PEOPLE'S CASE, THE COURT, IN THE ABSENCE OF THE JURY, MUST ARRAIGN THE DEFENDANT UPON SUCH INFORMATION AND ADVISE HIM OR HER THAT HE OR SHE MAY ADMIT SUCH ALLEGATION, DENY IT OR REMAIN MUTE. PENDING THE DEFENDANT'S RESPONSE, THE TRIAL OF THE INDICTMENT MUST PROCEED AS FOLLOWS:

(A) IF THE DEFENDANT ADMITS THAT THE ALLEGED VICTIM WAS A MEMBER OF THE SAME FAMILY OR HOUSEHOLD AS DEFINED IN SUBDIVISION ONE OF SECTION 530.11 OF THIS CHAPTER, AT THE TIME OF THE COMMISSION OR ATTEMPTED COMMISSION OF THE OFFENSE, THAT ALLEGATION SHALL BE DEEMED ESTABLISHED FOR ALL SUBSEQUENT PURPOSES, INCLUDING SENTENCING PURSUANT TO SECTION 70.00 OF THE PENAL LAW;

(B) IF THE DEFENDANT ADMITS THAT HE OR SHE WAS CONVICTED OF A SPECIFIED DOMESTIC VIOLENCE OFFENSE AS DEFINED IN SECTION 240.75 OF THE PENAL LAW, THAT ALLEGATION SHALL BE DEEMED ESTABLISHED FOR ALL SUBSEQUENT PURPOSES, INCLUDING SENTENCING PURSUANT TO SECTION 70.00 OF THE PENAL LAW;

(C) IF THE DEFENDANT DENIES EITHER ALLEGATION OR REMAINS MUTE, THE PEOPLE MAY, BY PROOF BEYOND A REASONABLE DOUBT, PROVE BEFORE THE JURY OR, WHERE THE DEFENDANT HAS WAIVED A JURY TRIAL, THE COURT, THAT THE ALLEGED VICTIM WAS A MEMBER OF THE SAME FAMILY OR HOUSEHOLD AS DEFINED IN SUBDIVISION ONE OF SECTION 530.11 OF THIS CHAPTER AT THE TIME OF THE COMMISSION OR ATTEMPTED COMMISSION OF THE OFFENSE.

3. AFTER COMMENCEMENT OF THE TRIAL AND BEFORE THE CLOSE OF THE PEOPLE'S CASE, THE COURT, IN THE ABSENCE OF THE JURY, SHALL ARRAIGN THE DEFENDANT UPON SUCH SPECIAL INFORMATION, AND SHALL ADVISE HIM OR HER THAT HE OR SHE MAY ADMIT THE PREVIOUS CONVICTION ALLEGED, DENY IT OR REMAIN MUTE. DEPENDING UPON THE DEFENDANT'S RESPONSE, THE TRIAL OF THE INDICTMENT SHALL THEN PROCEED AS FOLLOWS:

(A) IF THE DEFENDANT ADMITS THE PREVIOUS CONVICTION, THAT ELEMENT OF THE OFFENSE CHARGED IN THE INDICTMENT IS DEEMED ESTABLISHED, NO EVIDENCE IN SUPPORT THEREOF MAY BE ADDUCED BY THE PEOPLE, AND THE COURT MUST SUBMIT THE CASE TO THE JURY WITHOUT REFERENCE THERETO AND AS IF THE FACT OF SUCH PREVIOUS CONVICTION WERE NOT AN ELEMENT OF THE OFFENSE. THE COURT SHALL NOT SUBMIT TO THE JURY ANY LESSER INCLUDED OFFENSE WHICH IS DISTINGUISHED FROM THE OFFENSE CHARGED SOLELY BY THE FACT THAT A PREVIOUS CONVICTION IS NOT AN ELEMENT THEREOF.

(B) IF THE DEFENDANT DENIES THE PREVIOUS CONVICTION OR REMAINS MUTE, THE PEOPLE MAY PROVE THAT ELEMENT OF THE OFFENSE CHARGED BEFORE THE JURY AS A PART OF THEIR CASE. IN ANY PROSECUTION UNDER SUBPARAGRAPH (IX) OF PARAGRAPH (A) OF SUBDIVISION ONE OF SECTION 125.27 OF THE PENAL LAW, IF THE DEFENDANT DENIES THE PREVIOUS MURDER CONVICTION OR REMAINS MUTE, THE PEOPLE MAY PROVE THAT ELEMENT OF THE OFFENSE ONLY AFTER THE JURY HAS FIRST FOUND THE DEFENDANT GUILTY OF INTENTIONALLY CAUSING THE DEATH OF A PERSON AS CHARGED IN THE INDICTMENT, IN WHICH CASE THE COURT SHALL THEN PERMIT THE PEOPLE AND THE DEFENDANT TO OFFER EVIDENCE AND ARGUMENT CONSISTENT WITH THE RELEVANT PROVISIONS OF SECTION 260.30 OF THIS CHAPTER WITH RESPECT TO THE PREVIOUS MURDER CONVICTION.

4. WHERE A JURY MAKES THE DETERMINATION OF WHETHER THE ALLEGED VICTIM OF THE OFFENSE WAS A MEMBER OF THE SAME FAMILY OR HOUSEHOLD AS DEFINED IN SUBDIVISION ONE OF SECTION 530.11 OF THIS CHAPTER, SUCH JURY SHALL CONSIDER AND RENDER ITS VERDICT ON SUCH ISSUE ONLY AFTER RENDERING ITS VERDICT WITH REGARD TO THE OFFENSE.

5. A DETERMINATION PURSUANT TO THIS SECTION THAT THE VICTIM WAS A MEMBER OF THE SAME FAMILY OR HOUSEHOLD, AS DEFINED IN SUBDIVISION ONE OF SECTION 530.11 OF THIS CHAPTER, AT THE TIME OF THE COMMISSION OF THE OFFENSE SHALL BE BINDING IN ANY FUTURE PROCEEDING IN WHICH THE ISSUE MAY ARISE UNLESS THE UNDERLYING CONVICTION OR DETERMINATION IS VACATED OR REVERSED.

S 3. This act shall take effect on the one hundred eightieth day after it shall have become a law.