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

2685

2011-2012 Regular Sessions

I N A S S E M B L Y

January 20, 2011

Introduced by M. of A. PRETLOW, GALEF, HOOPER, COLTON, COOK, WEINSTEIN -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, the criminal procedure law and the family court act, in relation to criminal mischief in certain cases

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

Section 1. Sections 145.00, 145.05, and 145.10 of the penal law, section 145.00 as amended by chapter 69 of the laws of 2008, section 145.05 as amended by chapter 276 of the laws of 2003 and section 145.10 as amended by chapter 961 of the laws of 1971, are amended to read as follows:

S 145.00 Criminal mischief in the fourth degree.

A person is guilty of criminal mischief in the fourth degree when, having no right to do so nor any reasonable ground to believe that he or she has such right, he or she:

1. Intentionally damages property of another person; or

2. Intentionally participates in the destruction of an abandoned building as defined in section one thousand nine hundred seventy-one-a of the real property actions and proceedings law; or

3. Recklessly damages property of another person in an amount exceeding two hundred fifty dollars; or

4. With intent to prevent a person from communicating a request for emergency assistance, intentionally disables or removes telephonic, TTY or similar communication sending equipment while that person: (a) is attempting to seek or is engaged in the process of seeking emergency assistance from police, law enforcement, fire or emergency medical services personnel; or (b) is attempting to seek or is engaged in the process of seeking emergency assistance from another person or entity in order to protect himself, herself or a third person from imminent physical injury. The fact that the defendant has an ownership interest in

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

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such equipment shall not be a defense to a charge pursuant to this subdivision.

5. HAVING NO RIGHT TO DO SO AND WITH THE INTENT TO HARASS, ANNOY, OR ALARM ANOTHER PERSON, HE OR SHE INTENTIONALLY DAMAGES MARITAL PROPERTY, AS DEFINED IN PARAGRAPH C OF SUBDIVISION ONE OF PART B OF SECTION TWO HUNDRED THIRTY-SIX OF THE DOMESTIC RELATIONS LAW, IN WHICH THAT OTHER PERSON AND THE ACTOR SHARE A POSSESSORY OR PROPRIETARY INTEREST.

Criminal mischief in the fourth degree is a class A misdemeanor.

S 145.05 Criminal mischief in the third degree.

A person is guilty of criminal mischief in the third degree when, with intent to damage property of another person, and having no right to do so nor any reasonable ground to believe that he or she has such right, he or she:

1. damages the motor vehicle of another person, by breaking into such vehicle when it is locked with the intent of stealing property, and within the previous ten year period, has been convicted three or more times, in separate criminal transactions for which sentence was imposed on separate occasions, of criminal mischief in the fourth degree as defined in section 145.00, criminal mischief in the third degree as defined in this section, criminal mischief in the second degree as defined in section 145.10, or criminal mischief in the first degree as defined in section 145.12 of this article; [or]

2. damages property of another person in an amount exceeding two hundred fifty dollars[.]; OR

3. WITH THE INTENT TO HARASS, ANNOY, OR ALARM ANOTHER PERSON, HE INTENTIONALLY DAMAGES MARITAL PROPERTY, AS DEFINED IN PARAGRAPH C OF SUBDIVISION ONE OF PART B OF SECTION TWO HUNDRED THIRTY-SIX OF THE DOMESTIC RELATIONS LAW, IN AN AMOUNT EXCEEDING TWO HUNDRED FIFTY DOLLARS, IN WHICH THAT OTHER PERSON AND THE ACTOR SHARE A POSSESSORY OR PROPRIETARY INTEREST.

Criminal mischief in the third degree is a class E felony.

S 145.10 Criminal mischief in the second degree.

A person is guilty of criminal mischief in the second degree when [with]:

1. WITH intent to damage property of another person, and having no right to do so nor any reasonable ground to believe that he has such right, he damages property of another person in an amount exceeding one thousand five hundred dollars[.]; OR

2. HAVING NO RIGHT TO DO SO AND WITH THE INTENT TO HARASS, ANNOY, OR ALARM ANOTHER PERSON, HE INTENTIONALLY DAMAGES MARITAL PROPERTY, AS DEFINED IN PARAGRAPH C OF SUBDIVISION ONE OF PART B OF SECTION TWO HUNDRED THIRTY-SIX OF THE DOMESTIC RELATIONS LAW, IN AN AMOUNT EXCEEDING ONE THOUSAND FIVE HUNDRED DOLLARS, IN WHICH THAT OTHER PERSON AND THE ACTOR SHARE A POSSESSORY OR PROPRIETARY INTEREST.

Criminal mischief in the second degree is a class D felony.

S 2. The opening paragraph of subdivision 1 of section 530.11 of the criminal procedure law, as amended by chapter 405 of the laws of 2010, 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, CRIMINAL MISCHIEF IN THE SECOND DEGREE, CRIMINAL MISCHIEF IN THE THIRD DEGREE, CRIMINAL MISCHIEF IN THE FOURTH DEGREE, 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, strangulation in the first degree, strangulation in the second degree, criminal obstruction of breathing or blood circulation, assault in the second degree, assault in the third degree or an attempted assault 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 section, "disorderly conduct" includes disorderly conduct not in a public place. For purposes of this section, "members of the same family or household" with respect to a proceeding in the criminal courts shall mean the following:

S 3. The opening paragraph of subdivision 1 of section 812 of the family court act, as separately amended by chapters 341 and 405 of the laws of 2010, 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, CRIMINAL MISCHIEF IN THE SECOND DEGREE, CRIMINAL MISCHIEF IN THE THIRD DEGREE, CRIMINAL MISCHIEF IN THE FOURTH DEGREE, 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, criminal obstruction of breathing or blood circulation, strangulation in the second degree, strangulation in the first degree, assault in the second degree, assault in the third degree or an attempted assault, criminal obstruction of breathing or blood circulation 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. In any proceeding pursuant to this article, a court shall not deny an order of protection, or dismiss a petition, solely on the basis that the acts or events alleged are not relatively contemporaneous with the date of the petition, the conclusion of the fact-finding or the conclusion of the dispositional hearing. 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 4. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.