

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

5890--C

2011-2012 Regular Sessions

I N A S S E M B L Y

March 2, 2011

Introduced by M. of A. CUSICK, O'DONNELL -- read once and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Codes in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Codes in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the penal law, in relation to establishing domestic abuse offenses; to amend the criminal procedure law, in relation to providing for a special information in the indictment of certain felony domestic abuse offenses and procedures for determining whether domestic abuse misdemeanors are crimes of domestic violence for purposes of federal law; and to amend the criminal procedure law and the family court act, in relation to including domestic abuse in the first and second degrees as family offenses

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

1 Section 1. The penal law is amended by adding three new sections
2 120.75, 120.80 and 120.85 to read as follows:
3 S 120.75 DEFINITIONS; DOMESTIC ABUSE.
4 FOR THE PURPOSES OF SECTIONS 120.80 AND 120.85 OF THIS ARTICLE:
5 1. "DOMESTIC PARTNER" SHALL MEAN A PERSON WHO IS LIVING OR HAS LIVED
6 TOGETHER WITH ANOTHER PERSON FOR AN EXTENDED DURATION IN AN INTIMATE
7 RELATIONSHIP MARKED BY SEXUAL, PHYSICAL OR FINANCIAL INTERDEPENDENCE.
8 2. "FELLOW PARENT OF A CHILD IN COMMON" SHALL MEAN A PERSON WHO HAS A
9 CHILD IN COMMON WITH ANOTHER PERSON REGARDLESS OF WHETHER SUCH PERSONS
10 WERE MARRIED OR HAVE LIVED TOGETHER.

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

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1 3. "FORMER SPOUSE" SHALL MEAN A PERSON FORMERLY MARRIED TO ANOTHER
2 PERSON REGARDLESS OF WHETHER SUCH PERSONS STILL RESIDE IN THE SAME
3 HOUSEHOLD.

4 4. "SPOUSE" SHALL MEAN A PERSON LEGALLY MARRIED TO ANOTHER PERSON.

5 S 120.80 DOMESTIC ABUSE IN THE SECOND DEGREE.

6 A PERSON IS GUILTY OF DOMESTIC ABUSE IN THE SECOND DEGREE WHEN, WITH
7 INTENT TO HARASS, ANNOY OR ALARM HIS OR HER SPOUSE, FORMER SPOUSE,
8 FELLOW PARENT OF A CHILD IN COMMON OR DOMESTIC PARTNER, HE OR SHE CAUSES
9 PHYSICAL INJURY TO SUCH SPOUSE, FORMER SPOUSE, FELLOW PARENT OF A CHILD
10 IN COMMON OR DOMESTIC PARTNER.

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

12 S 120.85 DOMESTIC ABUSE IN THE FIRST DEGREE.

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

14 1. WITH INTENT TO CAUSE PHYSICAL INJURY TO HIS OR HER SPOUSE, FORMER
15 SPOUSE, FELLOW PARENT OF A CHILD IN COMMON OR DOMESTIC PARTNER, HE OR
16 SHE CAUSES SUCH INJURY TO SUCH SPOUSE, FORMER SPOUSE, FELLOW PARENT OF A
17 CHILD IN COMMON OR DOMESTIC PARTNER, OR TO A THIRD PERSON; OR

18 2. HE OR SHE RECKLESSLY CAUSES PHYSICAL INJURY TO HIS OR HER SPOUSE,
19 FORMER SPOUSE, FELLOW PARENT OF A CHILD IN COMMON OR DOMESTIC PARTNER;
20 OR

21 3. WITH CRIMINAL NEGLIGENCE, HE OR SHE CAUSES PHYSICAL INJURY TO HIS
22 OR HER SPOUSE, FORMER SPOUSE, FELLOW PARENT OF A CHILD IN COMMON OR
23 DOMESTIC PARTNER BY MEANS OF A DEADLY WEAPON OR DANGEROUS INSTRUMENT; OR

24 4. HE OR SHE COMMITS A CRIME AGAINST HIS OR HER SPOUSE, FORMER SPOUSE,
25 FELLOW PARENT OF A CHILD IN COMMON OR DOMESTIC PARTNER, AND HE OR SHE
26 HAS PREVIOUSLY BEEN CONVICTED OF A CRIME AGAINST HIS OR HER SPOUSE,
27 FORMER SPOUSE, FELLOW PARENT OF A CHILD IN COMMON OR DOMESTIC PARTNER
28 WITHIN THE PRECEDING FIVE YEARS. THE PERSON AGAINST WHOM A CRIME HAS
29 BEEN COMMITTED FOR PURPOSES OF CULPABILITY UNDER THIS SUBDIVISION MAY BE
30 A DIFFERENT PERSON THAN WHOM THE PREDICATE CRIME WAS COMMITTED AGAINST
31 DURING THE PRECEDING FIVE YEARS. FOR PURPOSES OF THIS SUBDIVISION, ANY
32 PERIOD OF TIME DURING WHICH THE DEFENDANT WAS INCARCERATED FOR ANY
33 REASON BETWEEN THE COMMISSION OF ANY PREVIOUS CRIMES AND THE COMMISSION
34 OF THE CRIME IN VIOLATION OF THIS SUBDIVISION SHALL BE EXCLUDED AND SUCH
35 FIVE YEAR PERIOD SHALL BE EXTENDED BY THE PERIOD OR PERIOD OF TIME
36 DURING WHICH THE DEFENDANT WAS INCARCERATED.

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

38 S 2. The criminal procedure law is amended by adding a new section
39 200.63 to read as follows:

40 S 200.63 INDICTMENT; SPECIAL INFORMATION FOR DOMESTIC ABUSE OFFENDER.

41 1. WHENEVER A PERSON IS CHARGED WITH THE COMMISSION OR ATTEMPTED
42 COMMISSION OF DOMESTIC ABUSE IN THE FIRST DEGREE AS DEFINED IN SUBDIVI-
43 SION FOUR OF SECTION 120.85 OF THE PENAL LAW, AN INDICTMENT OR INFORMA-
44 TION FOR SUCH OFFENSE SHALL BE ACCOMPANIED BY A SPECIAL INFORMATION,
45 FILED BY THE DISTRICT ATTORNEY WITH THE COURT, ALLEGING THAT THE DEFEND-
46 ANT WAS PREVIOUSLY CONVICTED OF A CRIME, THAT AT THE TIME OF THE PREVI-
47 OUS CRIME OR AT AN EARLIER TIME THE DEFENDANT WAS THE SPOUSE, FORMER
48 SPOUSE, FELLOW PARENT OF A CHILD IN COMMON OR DOMESTIC PARTNER, AS
49 DEFINED IN SECTION 120.75 OF THE PENAL LAW OF THE VICTIM OF SUCH CRIME,
50 AND THAT SUCH PREVIOUS CONVICTION TOOK PLACE WITHIN THE TIME PERIOD
51 SPECIFIED IN SUBDIVISION FOUR OF SECTION 120.85 OF THE PENAL LAW.
52 EXCEPT AS PROVIDED IN THIS SECTION, THE PEOPLE MAY NOT REFER TO SUCH
53 SPECIAL INFORMATION DURING TRIAL NOR ADDUCE ANY EVIDENCE CONCERNING THE
54 ALLEGATIONS THEREIN.

55 2. AT ANY TIME BEFORE THE CLOSE OF THE PEOPLE'S CASE, THE COURT, IN
56 THE ABSENCE OF THE JURY, MUST ARRAIGN THE DEFENDANT UPON SUCH INFORMA-

1 TION AND ADVISE HIM OR HER THAT HE OR SHE MAY ADMIT EACH SUCH ALLEGA-
2 TION, DENY ANY SUCH ALLEGATION OR REMAIN MUTE WITH RESPECT TO ANY SUCH
3 ALLEGATION. DEPENDING UPON THE DEFENDANT'S RESPONSE, THE TRIAL OF THE
4 INDICTMENT OR INFORMATION MUST THEN PROCEED AS FOLLOWS:

5 (A) (I) IF THE PREVIOUS CONVICTION IS OF DOMESTIC ABUSE IN THE SECOND
6 DEGREE AS DEFINED BY SECTION 120.80 OF THE PENAL LAW, AND THE DEFENDANT
7 ADMITS THE PREVIOUS CONVICTION OR THAT IT TOOK PLACE WITHIN THE TIME
8 PERIOD SPECIFIED IN SUBDIVISION FOUR OF SECTION 120.85 OF THE PENAL LAW,
9 THE ADMITTED ALLEGATION OR ALLEGATIONS SHALL BE DEEMED ESTABLISHED FOR
10 ALL SUBSEQUENT PURPOSES, INCLUDING SENTENCING PURSUANT TO SECTION 70.00
11 OF THE PENAL LAW. THE COURT MUST SUBMIT THE CASE TO THE JURY AS IF THE
12 ADMITTED ALLEGATION OR ALLEGATIONS WERE NOT ELEMENTS OF THE OFFENSE. THE
13 COURT MAY NOT SUBMIT TO THE JURY ANY LESSER INCLUDED OFFENSE WHICH IS
14 DISTINGUISHED FROM THE OFFENSE CHARGED SOLELY BY THE FACT THAT THE
15 PREVIOUS CONVICTION IS NOT AN ELEMENT THEREOF.

16 (II) IF THE DEFENDANT DENIES THE PREVIOUS CONVICTION OR REMAINS MUTE
17 WITH RESPECT TO IT, THE PEOPLE MAY PROVE THAT ELEMENT OF THE OFFENSE
18 BEFORE THE JURY AS A PART OF THEIR CASE.

19 (III) IF THE DEFENDANT DENIES THAT THE PREVIOUS CONVICTION TOOK PLACE
20 WITHIN THE TIME PERIOD SPECIFIED IN SUBDIVISION FOUR OF SECTION 120.85
21 OF THE PENAL LAW, OR REMAINS MUTE WITH RESPECT TO THAT MATTER, THE
22 PEOPLE MAY PROVE, BEYOND A REASONABLE DOUBT, BEFORE THE JURY AS PART OF
23 THEIR CASE, THAT THE PREVIOUS CONVICTION TOOK PLACE WITHIN THE TIME
24 PERIOD SPECIFIED.

25 (B) (I) IF THE PREVIOUS CONVICTION IS FOR A CRIME OTHER THAN DOMESTIC
26 ABUSE IN THE SECOND DEGREE AS DEFINED BY SECTION 120.80 OF THE PENAL
27 LAW, AND THE DEFENDANT ADMITS THE PREVIOUS CONVICTION, THAT IT TOOK
28 PLACE WITHIN THE TIME PERIOD SPECIFIED IN SUBDIVISION FOUR OF SECTION
29 120.85 OF THE PENAL LAW, OR THAT THE DEFENDANT WAS THE SPOUSE, FORMER
30 SPOUSE, FELLOW PARENT OF A CHILD IN COMMON OR DOMESTIC PARTNER AS
31 DEFINED IN SECTION 120.75 OF THE PENAL LAW OF THE VICTIM OF SUCH CRIME,
32 THE ADMITTED ALLEGATION OR ALLEGATIONS SHALL BE DEEMED ESTABLISHED FOR
33 ALL SUBSEQUENT PURPOSES, INCLUDING SENTENCING PURSUANT TO SECTION 70.00
34 OF THE PENAL LAW. THE COURT MUST SUBMIT THE CASE TO THE JURY AS IF THE
35 ADMITTED ALLEGATION OR ALLEGATIONS WERE NOT ELEMENTS OF THE OFFENSE. THE
36 COURT MAY NOT SUBMIT TO THE JURY ANY LESSER INCLUDED OFFENSE WHICH IS
37 DISTINGUISHED FROM THE OFFENSE CHARGED SOLELY BY THE FACT THAT THE
38 PREVIOUS CONVICTION IS NOT AN ELEMENT THEREOF.

39 (II) IF THE DEFENDANT DENIES THE PREVIOUS CONVICTION OR REMAINS MUTE
40 WITH RESECT TO IT, THE PEOPLE MAY PROVE THAT ELEMENT OF THE OFFENSE
41 BEFORE THE JURY AS A PART OF THEIR CASE.

42 (III) IF THE DEFENDANT DENIES THAT THE PREVIOUS CONVICTION TOOK PLACE
43 WITHIN THE TIME PERIOD SPECIFIED IN SUBDIVISION FOUR OF SECTION 120.85
44 OF THE PENAL LAW, OR REMAINS MUTE WITH RESECT TO THAT MATTER, THE PEOPLE
45 MAY PROVE, BEYOND A REASONABLE DOUBT, BEFORE THE JURY AS PART OF THEIR
46 CASE, THAT THE PREVIOUS CONVICTION TOOK PLACE WITHIN THE TIME PERIOD
47 SPECIFIED.

48 (IV) IF THE DEFENDANT DENIES THAT THE DEFENDANT WAS THE SPOUSE, FORMER
49 SPOUSE, FELLOW PARENT OF A CHILD IN COMMON OR DOMESTIC PARTNER AS
50 DEFINED IN SECTION 120.75 OF THE PENAL LAW OF THE VICTIM OF SUCH PREVI-
51 OUS CRIME, OR REMAINS MUTE WITH RESPECT TO THAT MATTER, THE PEOPLE MAY
52 PROVE THAT ELEMENT OF THE OFFENSE BEFORE THE JURY AS A PART OF THEIR
53 CASE.

54 3. NOTWITHSTANDING SUBDIVISION ONE, AND SUBPARAGRAPH (I) OF PARAGRAPH
55 (A) AND SUBPARAGRAPH (I) OF PARAGRAPH (B) OF SUBDIVISION TWO OF THIS
56 SECTION, IF EVIDENCE REGARDING THE PRIOR CONVICTION, OR THAT THE DEFEND-

1 ANT WAS THE SPOUSE, FORMER SPOUSE, FELLOW PARENT OF A CHILD IN COMMON OR
2 DOMESTIC PARTNER AS DEFINED IN SECTION 120.75 OF THE PENAL LAW OF THE
3 VICTIM OF SUCH PREVIOUS CRIME, IS RELEVANT TO HELP PROVE THE CRIME OR
4 CRIMES CHARGED IN THE INDICTMENT OR INFORMATION, SUCH EVIDENCE SHALL BE
5 ADMISSIBLE.

6 4. A DETERMINATION PURSUANT TO THIS SECTION THAT THE DEFENDANT HAS A
7 PREVIOUS CONVICTION, THAT AT THE TIME OF THE PRIOR OFFENSE THE DEFENDANT
8 WAS THE SPOUSE, FORMER SPOUSE, FELLOW PARENT OF A CHILD IN COMMON OR
9 DOMESTIC PARTNER AS DEFINED IN SECTION 120.75 OF THE PENAL LAW OF THE
10 VICTIM OF SUCH PREVIOUS CRIME, OR THAT THE PREVIOUS CONVICTION TOOK
11 PLACE WITHIN THE TIME PERIOD SPECIFIED IN SUBDIVISION FOUR OF SECTION
12 120.85 OF THE PENAL LAW, SHALL BE BINDING IN ANY FUTURE PROCEEDING IN
13 WHICH THE ISSUE MAY ARISE UNLESS THE CONVICTION FOR THE DOMESTIC ABUSE
14 OFFENSE CHARGED IN THE INDICTMENT OR INFORMATION IS VACATED OR REVERSED.

15 S 3. Subdivision 1 of section 370.15 of the criminal procedure law, as
16 added by chapter 258 of the laws of 2011, is amended to read as follows:

17 1. When a defendant has been charged with assault or attempted assault
18 in the third degree as defined in sections 120.00 and 110.00 of the
19 penal law, menacing or attempted menacing in the second degree as
20 defined in sections 120.14 and 110.00 of the penal law, DOMESTIC ABUSE
21 OR ATTEMPTED DOMESTIC ABUSE IN THE SECOND DEGREE AS DEFINED IN SECTIONS
22 120.80 AND 110.00 OF THE PENAL LAW, criminal obstruction of breathing or
23 blood circulation or attempted criminal obstruction of breathing or
24 blood circulation as defined in sections 121.11 and 110.00 of the penal
25 law, or forcible touching or attempted forcible touching as defined in
26 sections 130.52 and 110.00 of the penal law, the people may, at arraign-
27 ment or no later than forty-five days after arraignment, for the purpose
28 of notification to the division of criminal justice services pursuant to
29 section 380.97 of this part, serve on the defendant and file with the
30 court a notice alleging that the defendant is related or situated to the
31 victim of the crime in the manner specified in 18 U.S.C.
32 921(a)(33)(A)(ii).

33 S 4. Section 380.97 of the criminal procedure law, as added by chapter
34 258 of the laws of 2011, is amended to read as follows:

35 S 380.97 Notification to division of criminal justice services of deter-
36 minations in certain misdemeanor cases.

37 Upon judgment of conviction of assault or attempted assault in the
38 third degree, as defined in sections 120.00 and 110.00 of the penal law,
39 menacing or attempted menacing in the second degree, as defined in
40 section 120.14 and 110.00 of the penal law, DOMESTIC ABUSE OR ATTEMPTED
41 DOMESTIC ABUSE IN THE SECOND DEGREE AS DEFINED IN SECTIONS 120.80 AND
42 110.00 OF THE PENAL LAW, criminal obstruction of breathing or blood
43 circulation or attempted criminal obstruction of breathing or blood
44 circulation, as defined in sections 121.11 and 110.00 of the penal law,
45 forcible touching or attempted forcible touching, as defined in sections
46 130.52 and 110.00 of the penal law, when the defendant has been deter-
47 mined, pursuant to section 370.15 of this part, to be related or situ-
48 ated to the victim of the offense in the manner specified in 18 U.S.C.
49 921(a)(33)(A)(ii), the clerk of the court shall include notification and
50 a copy of the written determination in a report of such conviction to
51 the division of criminal justice services to enable the division to
52 report such determination to the federal bureau of investigation and
53 assist the bureau in identifying persons prohibited from purchasing and
54 possessing a firearm pursuant to the provisions of 18 U.S.C. 922.

1 S 5. The opening paragraph of subdivision 1 of section 530.11 of the
2 criminal procedure law, as amended by chapter 405 of the laws of 2010,
3 is amended to read as follows:

4 The family court and the criminal courts shall have concurrent juris-
5 diction over any proceeding concerning acts which would constitute
6 disorderly conduct, harassment in the first degree, harassment in the
7 second degree, aggravated harassment in the second degree, DOMESTIC
8 ABUSE IN THE FIRST DEGREE, DOMESTIC ABUSE IN THE SECOND DEGREE, sexual
9 misconduct, forcible touching, sexual abuse in the third degree, sexual
10 abuse in the second degree as set forth in subdivision one of section
11 130.60 of the penal law, stalking in the first degree, stalking in the
12 second degree, stalking in the third degree, stalking in the fourth
13 degree, criminal mischief, menacing in the second degree, menacing in
14 the third degree, reckless endangerment, strangulation in the first
15 degree, strangulation in the second degree, criminal obstruction of
16 breathing or blood circulation, assault in the second degree, assault in
17 the third degree or an attempted assault between spouses or former
18 spouses, or between parent and child or between members of the same
19 family or household except that if the respondent would not be criminal-
20 ly responsible by reason of age pursuant to section 30.00 of the penal
21 law, then the family court shall have exclusive jurisdiction over such
22 proceeding. Notwithstanding a complainant's election to proceed in fami-
23 ly court, the criminal court shall not be divested of jurisdiction to
24 hear a family offense proceeding pursuant to this section. For purposes
25 of this section, "disorderly conduct" includes disorderly conduct not in
26 a public place. For purposes of this section, "members of the same fami-
27 ly or household" with respect to a proceeding in the criminal courts
28 shall mean the following:

29 S 6. The opening paragraph of subdivision 1 of section 812 of the
30 family court act, as separately amended by chapters 341 and 405 of the
31 laws of 2010, is amended to read as follows:

32 The family court and the criminal courts shall have concurrent juris-
33 diction over any proceeding concerning acts which would constitute
34 disorderly conduct, harassment in the first degree, harassment in the
35 second degree, aggravated harassment in the second degree, DOMESTIC
36 ABUSE IN THE FIRST DEGREE, DOMESTIC ABUSE IN THE SECOND DEGREE, sexual
37 misconduct, forcible touching, sexual abuse in the third degree, sexual
38 abuse in the second degree as set forth in subdivision one of section
39 130.60 of the penal law, stalking in the first degree, stalking in the
40 second degree, stalking in the third degree, stalking in the fourth
41 degree, criminal mischief, menacing in the second degree, menacing in
42 the third degree, reckless endangerment, criminal obstruction of breath-
43 ing or blood circulation, strangulation in the second degree, strangula-
44 tion in the first degree, assault in the second degree, assault in the
45 third degree or an attempted assault, criminal obstruction of breathing
46 or blood circulation or strangulation between spouses or former spouses,
47 or between parent and child or between members of the same family or
48 household except that if the respondent would not be criminally respon-
49 sible by reason of age pursuant to section 30.00 of the penal law, then
50 the family court shall have exclusive jurisdiction over such proceeding.
51 Notwithstanding a complainant's election to proceed in family court, the
52 criminal court shall not be divested of jurisdiction to hear a family
53 offense proceeding pursuant to this section. In any proceeding pursuant
54 to this article, a court shall not deny an order of protection, or
55 dismiss a petition, solely on the basis that the acts or events alleged
56 are not relatively contemporaneous with the date of the petition, the

1 conclusion of the fact-finding or the conclusion of the dispositional
2 hearing. For purposes of this article, "disorderly conduct" includes
3 disorderly conduct not in a public place. For purposes of this article,
4 "members of the same family or household" shall mean the following:
5 S 7. This act shall take effect on the first of November next succeed-
6 ing the date on which it shall have become a law.