

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

698--D

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. PAULIN, GALEF, LANCMAN, PEOPLES-STOKES, BOYLAND, DINOWITZ, GABRYSZAK, HOOPER, HOYT, JAFFEE, KELLNER, MILLMAN, SCHIMEL, McDONOUGH, P. RIVERA, ROSENTHAL, MOLINARO, ENGLEBRIGHT, LAVINE -- Multi-Sponsored by -- M. of A. BARRON, CAMARA, CROUCH, GLICK, GOTTFRIED, MARKEY, TITONE -- read once and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Rules -- Rules Committee discharged, bill amended, ordered reprinted as amended and recommitted to the Committee on Rules

AN ACT to amend the criminal procedure law, in relation to certain domestic violence offenses

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

1 Section 1. The criminal procedure law is amended by adding a new
2 section 370.15 to read as follows:
3 S 370.15 PROCEDURE FOR DETERMINING WHETHER CERTAIN MISDEMEANOR CRIMES
4 ARE CRIMES OF DOMESTIC VIOLENCE FOR PURPOSES OF FEDERAL LAW.
5 1. WHEN A DEFENDANT HAS BEEN CHARGED WITH ASSAULT OR ATTEMPTED ASSAULT
6 IN THE THIRD DEGREE AS DEFINED IN SECTIONS 120.00 AND 110.00 OF THE
7 PENAL LAW, MENACING OR ATTEMPTED MENACING IN THE SECOND DEGREE AS
8 DEFINED IN SECTIONS 120.14 AND 110.00 OF THE PENAL LAW, CRIMINAL
9 OBSTRUCTION OF BREATHING OR BLOOD CIRCULATION OR ATTEMPTED CRIMINAL
10 OBSTRUCTION OF BREATHING OR BLOOD CIRCULATION AS DEFINED IN SECTIONS
11 121.11 AND 110.00 OF THE PENAL LAW, OR FORCIBLE TOUCHING OR ATTEMPTED
12 FORCIBLE TOUCHING AS DEFINED IN SECTIONS 130.52 AND 110.00 OF THE PENAL
13 LAW, THE PEOPLE MAY, AT ARRAIGNMENT OR NO LATER THAN FORTY-FIVE DAYS

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

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1 AFTER ARRAIGNMENT, FOR THE PURPOSE OF NOTIFICATION TO THE DIVISION OF
2 CRIMINAL JUSTICE SERVICES PURSUANT TO SECTION 380.97 OF THIS PART, SERVE
3 ON THE DEFENDANT AND FILE WITH THE COURT A NOTICE ALLEGING THAT THE
4 DEFENDANT IS RELATED OR SITUATED TO THE VICTIM OF THE CRIME IN THE
5 MANNER SPECIFIED IN 18 U.S.C. 921(A)(33)(A)(II).

6 2. SUCH NOTICE SHALL INCLUDE THE NAME OF THE PERSON ALLEGED TO BE THE
7 VICTIM OF SUCH CRIME AND SHALL SPECIFY THE NATURE OF THE ALLEGED
8 RELATIONSHIP AS SET FORTH IN 18 U.S.C. 921(A)(33)(A)(II). UPON
9 CONVICTION OF SUCH OFFENSE, THE COURT SHALL ADVISE THE DEFENDANT THAT HE
10 OR SHE IS ENTITLED TO A HEARING ON THE ALLEGATION CONTAINED IN THE
11 NOTICE AND, IF NECESSARY, AN ADJOURNMENT OF THE SENTENCING PROCEEDING IN
12 ORDER TO PREPARE FOR SUCH HEARING, AND THAT IF SUCH ALLEGATION IS
13 SUSTAINED, THAT DETERMINATION AND CONVICTION WILL BE REPORTED TO THE
14 DIVISION OF CRIMINAL JUSTICE SERVICES.

15 3. AFTER HAVING BEEN ADVISED BY THE COURT AS PROVIDED IN SUBDIVISION
16 TWO OF THIS SECTION, THE DEFENDANT MAY STIPULATE OR ADMIT, ORALLY ON THE
17 RECORD OR IN WRITING, THAT HE OR SHE IS RELATED OR SITUATED TO THE
18 VICTIM OF SUCH CRIME IN THE MANNER DESCRIBED IN SUBDIVISION ONE OF THIS
19 SECTION. IN SUCH CASE, SUCH RELATIONSHIP SHALL BE DEEMED ESTABLISHED FOR
20 PURPOSES OF SECTION 380.97 OF THIS PART. IF THE DEFENDANT DENIES THAT HE
21 OR SHE IS RELATED OR SITUATED TO THE VICTIM OF THE CRIME AS ALLEGED IN
22 THE NOTICE SERVED BY THE PEOPLE, OR STANDS MUTE WITH RESPECT TO SUCH
23 ALLEGATION, THEN THE PEOPLE SHALL BEAR THE BURDEN TO PROVE BEYOND A
24 REASONABLE DOUBT THAT THE DEFENDANT IS RELATED OR SITUATED TO THE VICTIM
25 IN THE MANNER ALLEGED IN THE NOTICE. THE COURT MAY CONSIDER RELIABLE
26 HEARSAY EVIDENCE SUBMITTED BY EITHER PARTY PROVIDED THAT IT IS RELEVANT
27 TO THE DETERMINATION OF THE ALLEGATION. FACTS PREVIOUSLY PROVEN AT TRIAL
28 OR ELICITED AT THE TIME OF ENTRY OF A PLEA OF GUILTY SHALL BE DEEMED
29 ESTABLISHED BEYOND A REASONABLE DOUBT AND SHALL NOT BE RELITIGATED. AT
30 THE CONCLUSION OF THE HEARING, OR UPON SUCH A STIPULATION OR ADMISSION,
31 AS APPLICABLE, THE COURT SHALL MAKE A SPECIFIC WRITTEN DETERMINATION
32 WITH RESPECT TO SUCH ALLEGATION.

33 S 2. The criminal procedure law is amended by adding a new section
34 380.97 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, CRIMINAL OBSTRUCTION OF
41 BREATHING OR BLOOD CIRCULATION OR ATTEMPTED CRIMINAL OBSTRUCTION OF
42 BREATHING OR BLOOD CIRCULATION, AS DEFINED IN SECTIONS 121.11 AND 110.00
43 OF THE PENAL LAW, FORCIBLE TOUCHING OR ATTEMPTED FORCIBLE TOUCHING, AS
44 DEFINED IN SECTIONS 130.52 AND 110.00 OF THE PENAL LAW, WHEN THE DEFEND-
45 ANT HAS BEEN DETERMINED, PURSUANT TO SECTION 370.15 OF THIS PART, TO BE
46 RELATED OR SITUATED TO THE VICTIM OF THE OFFENSE IN THE MANNER SPECIFIED
47 IN 18 U.S.C. 921(A)(33)(A)(II), THE CLERK OF THE COURT SHALL INCLUDE
48 NOTIFICATION AND A COPY OF THE WRITTEN DETERMINATION IN A REPORT OF SUCH
49 CONVICTION TO THE DIVISION OF CRIMINAL JUSTICE SERVICES TO ENABLE THE
50 DIVISION TO REPORT SUCH DETERMINATION TO THE FEDERAL BUREAU OF INVESTI-
51 GATION AND ASSIST THE BUREAU IN IDENTIFYING PERSONS PROHIBITED FROM
52 PURCHASING AND POSSESSING A FIREARM PURSUANT TO THE PROVISIONS OF 18
53 U.S.C. 922.

54 S 3. This act shall take effect on the one hundred twentieth day after
55 it shall have become a law and shall apply to crimes committed on or
56 after such date.