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

1510

2011-2012 Regular Sessions

I N S E N A T E

January 10, 2011

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 OFFENSES 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 OR WERE AT A PREVIOUS TIME 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 THIS CHAPTER: 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

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

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IN THE THIRD DEGREE); SECTION 120.55 (STALKING IN THE SECOND DEGREE); SECTION 120.60 (STALKING IN THE FIRST DEGREE); SECTION 121.11 (CRIMINAL OBSTRUCTION OF BREATHING OR BLOOD CIRCULATION); SECTION 121.12 (STRANGULATION IN THE SECOND DEGREE); SECTION 121.13 (STRANGULATION IN THE FIRST DEGREE); SUBDIVISION ONE OF SECTION 125.15 (MANSLAUGHTER IN THE SECOND DEGREE); SUBDIVISION ONE, TWO OR FOUR OF SECTION 125.20 (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 135.60 (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 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); OR ANY ATTEMPT OR CONSPIRACY TO COMMIT ANY OF THE FOREGOING OFFENSES.

3. THE PERSON AGAINST WHOM THE SPECIFIED DOMESTIC VIOLENCE OFFENSE IS COMMITTED MAY BE DIFFERENT FROM THE PERSON AGAINST WHOM THE PREVIOUSLY COMMITTED SPECIFIED DOMESTIC VIOLENCE OFFENSE WAS COMMITTED AND, DOES NOT NEED TO BE A MEMBER OF THE SAME FAMILY OR HOUSEHOLD.

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 AGGRAVATED DOMESTIC VIOLENCE AS DEFINED IN SECTION 240.75 OF THE PENAL LAW, AN INDICTMENT OR INFORMATION FOR SUCH OFFENSE SHALL BE ACCOMPANIED BY A SPECIAL INFORMATION, FILED BY THE DISTRICT ATTORNEY WITH THE COURT, ALLEGING THAT THE DEFENDANT WAS PREVIOUSLY CONVICTED OF AGGRAVATED DOMESTIC VIOLENCE AS DEFINED IN SECTION 240.75 OF THE PENAL LAW, OR OF A SPECIFIED DOMESTIC VIOLENCE OFFENSE AS DEFINED IN SUBDIVISION TWO OF SECTION 240.75 OF THE PENAL LAW, THAT AT THE TIME OF THE PREVIOUS OFFENSE OR AT AN EARLIER TIME THE DEFENDANT AND THE PERSON AGAINST WHOM THE OFFENSE WAS COMMITTED WERE MEMBERS OF THE SAME FAMILY

OR HOUSEHOLD AS DEFINED IN SUBDIVISION ONE OF SECTION 530.11 OF THIS CHAPTER, AND THAT SUCH PREVIOUS CONVICTION TOOK PLACE WITHIN THE TIME PERIOD SPECIFIED IN SUBDIVISION ONE OF SECTION 240.75 OF THE PENAL LAW. EXCEPT AS PROVIDED HEREIN, THE PEOPLE MAY NOT REFER TO SUCH SPECIAL INFORMATION DURING TRIAL NOR ADDUCE ANY EVIDENCE CONCERNING THE ALLEGATIONS THEREIN.

2. AT ANY TIME 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 EACH SUCH ALLEGATION, DENY ANY SUCH ALLEGATION OR REMAIN MUTE WITH RESPECT TO ANY SUCH ALLEGATION. DEPENDING UPON THE DEFENDANT'S RESPONSE, THE TRIAL OF THE INDICTMENT OR INFORMATION MUST THEN PROCEED AS FOLLOWS:

(A)(I) IF THE PREVIOUS CONVICTION IS FOR AGGRAVATED DOMESTIC VIOLENCE AS DEFINED IN SECTION 240.75 OF THE PENAL LAW, AND THE DEFENDANT ADMITS THE PREVIOUS CONVICTION OR THAT IT TOOK PLACE WITHIN THE TIME PERIOD SPECIFIED IN SUBDIVISION ONE OF SECTION 240.75 OF THE PENAL LAW, THE ADMITTED ALLEGATION OR ALLEGATIONS SHALL BE DEEMED ESTABLISHED FOR ALL SUBSEQUENT PURPOSES, INCLUDING SENTENCING PURSUANT TO SECTION 70.00 OF THE PENAL LAW. THE COURT MUST SUBMIT THE CASE TO THE JURY AS IF THE ADMITTED ALLEGATION OR ALLEGATIONS WERE NOT ELEMENTS OF THE OFFENSE. THE COURT MAY NOT SUBMIT TO THE JURY ANY LESSER INCLUDED OFFENSE WHICH IS DISTINGUISHED FROM THE OFFENSE CHARGED SOLELY BY THE FACT THAT THE PREVIOUS CONVICTION IS NOT AN ELEMENT THEREOF.

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

(III) IF THE DEFENDANT DENIES THAT THE PREVIOUS CONVICTION TOOK PLACE WITHIN THE TIME PERIOD SPECIFIED IN SUBDIVISION ONE OF SECTION 240.75 OF THE PENAL LAW, OR REMAINS MUTE WITH RESPECT TO THAT MATTER, THE PEOPLE MAY PROVE, BEYOND A REASONABLE DOUBT, BEFORE THE JURY AS PART OF THEIR CASE, THAT THE PREVIOUS CONVICTION TOOK PLACE WITHIN THE TIME PERIOD SPECIFIED.

(B)(I) IF THE PREVIOUS CONVICTION IS FOR A SPECIFIED DOMESTIC VIOLENCE OFFENSE AS DEFINED IN SUBDIVISION TWO OF SECTION 240.75 OF THE PENAL LAW, AND THE DEFENDANT ADMITS THE PREVIOUS CONVICTION, THAT IT TOOK PLACE WITHIN THE TIME PERIOD SPECIFIED IN SUBDIVISION ONE OF SECTION 240.75 OF THE PENAL LAW, OR THAT THE DEFENDANT AND THE PERSON AGAINST WHOM THE OFFENSE WAS COMMITTED WERE MEMBERS OF THE SAME FAMILY OR HOUSEHOLD AS DEFINED IN SUBDIVISION ONE OF SECTION 530.11 OF THIS CHAPTER, THE ADMITTED ALLEGATION OR ALLEGATIONS SHALL BE DEEMED ESTABLISHED FOR ALL SUBSEQUENT PURPOSES, INCLUDING SENTENCING PURSUANT TO SECTION 70.00 OF THE PENAL LAW. THE COURT MUST SUBMIT THE CASE TO THE JURY AS IF THE ADMITTED ALLEGATION OR ALLEGATIONS WERE NOT ELEMENTS OF THE OFFENSE. THE COURT MAY NOT SUBMIT TO THE JURY ANY LESSER INCLUDED OFFENSE WHICH IS DISTINGUISHED FROM THE OFFENSE CHARGED SOLELY BY THE FACT THAT THE PREVIOUS CONVICTION IS NOT AN ELEMENT THEREOF.

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

(III) IF THE DEFENDANT DENIES THAT THE PREVIOUS CONVICTION TOOK PLACE WITHIN THE TIME PERIOD SPECIFIED IN SUBDIVISION ONE OF SECTION 240.75 OF THE PENAL LAW, OR REMAINS MUTE WITH RESPECT TO THAT MATTER, THE PEOPLE MAY PROVE, BEYOND A REASONABLE DOUBT, BEFORE THE JURY AS PART OF THEIR CASE, THAT THE PREVIOUS CONVICTION TOOK PLACE WITHIN THE TIME PERIOD SPECIFIED.

(IV) IF THE DEFENDANT DENIES THAT THE DEFENDANT AND THE PERSON AGAINST WHOM THE OFFENSE WAS COMMITTED WERE MEMBERS OF THE SAME FAMILY OR HOUSEHOLD AS DEFINED IN SUBDIVISION ONE OF SECTION 530.11 OF THIS CHAPTER, OR REMAINS MUTE WITH RESPECT TO THAT MATTER, THE PEOPLE MAY PROVE THAT ELEMENT OF THE OFFENSE BEFORE THE JURY AS A PART OF THEIR CASE.

3. NOTWITHSTANDING SUBDIVISION ONE AND SUBPARAGRAPH (I) OF PARAGRAPH (A) AND SUBPARAGRAPH (I) OF PARAGRAPH (B) OF SUBDIVISION TWO OF THIS SECTION IF EVIDENCE REGARDING THE PRIOR CONVICTION, OR THAT THE DEFENDANT AND THE PERSON AGAINST WHOM THE OFFENSE WAS COMMITTED WERE MEMBERS OF THE SAME FAMILY OR HOUSEHOLD, AS DEFINED IN SUBDIVISION ONE OF SECTION 530.11 OF THIS CHAPTER, IS RELEVANT TO HELP PROVE THE CRIME OR CRIMES CHARGED IN THE INDICTMENT OR INFORMATION, SUCH EVIDENCE SHALL BE ADMISSIBLE.

4. A DETERMINATION PURSUANT TO THIS SECTION THAT THE DEFENDANT HAS A PREVIOUS CONVICTION, THAT AT THE TIME OF THE PRIOR OFFENSE THE DEFENDANT AND THE PERSON AGAINST WHOM THE OFFENSE WAS COMMITTED WERE MEMBERS OF THE SAME FAMILY OR HOUSEHOLD, AS DEFINED IN SUBDIVISION ONE OF SECTION 530.11 OF THIS CHAPTER, OR THAT THE PREVIOUS CONVICTION TOOK PLACE WITHIN THE TIME PERIOD SPECIFIED IN SUBDIVISION ONE OF SECTION 240.75 OF THE PENAL LAW, SHALL BE BINDING IN ANY FUTURE PROCEEDING IN WHICH THE ISSUE MAY ARISE UNLESS THE CONVICTION FOR THE AGGRAVATED DOMESTIC VIOLENCE OFFENSE CHARGED IN THE INDICTMENT OR INFORMATION IS VACATED OR REVERSED.

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