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

6357

I N S E N A T E

February 1, 2012

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

AN ACT to amend the penal law, in relation to the crime of domestic abuse; and to amend the criminal procedure law, in relation to a judicial diversion program for domestic abuse defendants

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 three new sections 120.80, 120.83 and 120.85 to read as follows:

S 120.80 DOMESTIC ABUSE IN THE THIRD DEGREE.

A PERSON IS GUILTY OF DOMESTIC ABUSE IN THE THIRD DEGREE WHEN, WITH INTENT TO HARASS, ANNOY, OR ALARM HIS OR HER SPOUSE, FORMER SPOUSE, FELLOW PARENT OF A CHILD IN COMMON, OR DOMESTIC PARTNER, HE OR SHE STRIKES, SHOVES, KICKS, OR OTHERWISE SUBJECTS SUCH PERSON TO PHYSICAL CONTACT OR ATTEMPTS OR THREATENS TO DO THE SAME.

FOR PURPOSES OF THIS SECTION, "SPOUSE" SHALL MEAN PERSONS LEGALLY MARRIED TO ONE ANOTHER, "FORMER SPOUSE" SHALL MEAN PERSONS FORMERLY MARRIED TO ONE ANOTHER REGARDLESS OF WHETHER THEY STILL RESIDE IN THE SAME HOUSEHOLD, "FELLOW PARENT OF A CHILD IN COMMON" SHALL MEAN PERSONS WHO HAVE A CHILD IN COMMON REGARDLESS OF WHETHER SUCH PERSONS HAVE BEEN MARRIED OR HAVE LIVED TOGETHER, AND "DOMESTIC PARTNER" SHALL MEAN PERSONS WHO ARE LIVING OR HAVE LIVED TOGETHER FOR AN EXTENDED DURATION IN AN INTIMATE RELATIONSHIP MARKED BY SEXUAL, PHYSICAL, OR FINANCIAL INTERDEPENDENCE.

DOMESTIC ABUSE IN THE THIRD DEGREE IS A CLASS B MISDEMEANOR.

S 120.83 DOMESTIC ABUSE IN THE SECOND DEGREE.

A PERSON IS GUILTY OF DOMESTIC ABUSE IN THE SECOND DEGREE WHEN WITH INTENT TO HARASS, ANNOY, OR ALARM HIS OR HER SPOUSE, FORMER SPOUSE, FELLOW PARENT OF A CHILD IN COMMON, OR DOMESTIC PARTNER, AS DEFINED IN SECTION 120.80 OF THIS ARTICLE, HE OR SHE CAUSES SUCH PERSON PHYSICAL INJURY.

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

S 120.85 DOMESTIC ABUSE IN THE FIRST DEGREE.

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

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

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1. (A) WITH INTENT TO CAUSE PHYSICAL INJURY TO HIS OR HER SPOUSE, FORMER SPOUSE, FELLOW PARENT OF A CHILD IN COMMON, OR DOMESTIC PARTNER, AS DEFINED IN SECTION 120.80 OF THIS ARTICLE, HE OR SHE CAUSES SUCH INJURY TO SUCH PERSON OR TO A THIRD PERSON; OR

(B) HE OR SHE RECKLESSLY CAUSES PHYSICAL INJURY TO HIS OR HER SPOUSE, FORMER SPOUSE, FELLOW PARENT OF A CHILD IN COMMON, OR DOMESTIC PARTNER, AS DEFINED IN SECTION 120.80 OF THIS ARTICLE; OR

(C) WITH CRIMINAL NEGLIGENCE, HE OR SHE CAUSES PHYSICAL INJURY TO HIS OR HER SPOUSE, FORMER SPOUSE, FELLOW PARENT OF A CHILD IN COMMON, OR DOMESTIC PARTNER, AS DEFINED IN SECTION 120.80 OF THIS ARTICLE, BY MEANS OF A DEADLY WEAPON OR A DANGEROUS INSTRUMENT; OR

2. HE OR SHE COMMITS THE CRIME OF DOMESTIC ABUSE IN THE SECOND DEGREE AND HAS PREVIOUSLY BEEN CONVICTED OF THE CRIME OF DOMESTIC ABUSE IN ANY DEGREE AS DEFINED IN THIS ARTICLE WITHIN THE PRECEDING FIVE YEARS.

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

S 2. The criminal procedure law is amended by adding a new article 217 to read as follows:

ARTICLE 217

JUDICIAL DIVERSION PROGRAM FOR DOMESTIC ABUSE DEFENDANTS

SECTION 217.00 DEFINITIONS.

217.05 JUDICIAL DIVERSION PROGRAM; COURT PROCEDURES.

S 217.00 DEFINITIONS.

THE FOLLOWING DEFINITIONS ARE APPLICABLE TO THIS ARTICLE:

1. "ELIGIBLE DEFENDANT" SHALL MEAN ANY PERSON WHO STANDS CHARGED WITH DOMESTIC ABUSE AS DEFINED IN SECTIONS 120.80, 120.83 AND 120.85 OF THE PENAL LAW, PROVIDED, HOWEVER, A DEFENDANT IS NOT AN "ELIGIBLE DEFENDANT" IF HE OR SHE:

(A) WITHIN THE PRECEDING TEN YEARS, EXCLUDING ANY TIME DURING WHICH THE OFFENDER WAS INCARCERATED FOR ANY REASON BETWEEN THE TIME OF COMMISSION OF THE PREVIOUS OFFENSE AND THE TIME OF COMMISSION OF THE PRESENT OFFENSE, HAS PREVIOUSLY BEEN CONVICTED OF: (I) A VIOLENT FELONY OFFENSE AS DEFINED IN SECTION 70.02 OF THE PENAL LAW OR (II) ANY OTHER OFFENSE FOR WHICH A MERIT TIME ALLOWANCE IS NOT AVAILABLE PURSUANT TO SUBPARAGRAPH (II) OF PARAGRAPH (D) OF SUBDIVISION ONE OF SECTION EIGHT HUNDRED THREE OF THE CORRECTION LAW; OR

(B) HAS PREVIOUSLY BEEN ADJUDICATED A SECOND VIOLENT FELONY OFFENDER PURSUANT TO SECTION 70.04 OF THE PENAL LAW OR A PERSISTENT VIOLENT FELONY OFFENDER PURSUANT TO SECTION 70.08 OF THE PENAL LAW.

2. "DOMESTIC VIOLENCE PROGRAM" SHALL MEAN A PROGRAM WHICH IS OPERATED BY A PUBLIC OR NOT-FOR-PROFIT ORGANIZATION FOR THE PURPOSE OF PROVIDING DOMESTIC VIOLENCE PREVENTION WHOSE GOAL IS TO HELP ELIGIBLE DEFENDANTS END ABUSIVE BEHAVIOR.

S 217.05 JUDICIAL DIVERSION PROGRAM; COURT PROCEDURES.

1. AT ANY TIME AFTER THE ARRAIGNMENT OF AN ELIGIBLE DEFENDANT, BUT PRIOR TO THE ENTRY OF A PLEA OF GUILTY OR THE COMMENCEMENT OF TRIAL, THE COURT MAY DETERMINE THAT AN ELIGIBLE DEFENDANT SHOULD BE OFFERED JUDICIAL DIVERSION IN A DOMESTIC VIOLENCE PROGRAM. AN ELIGIBLE DEFENDANT MAY DECLINE TO PARTICIPATE IN SUCH A PROGRAM AT ANY TIME. PRIOR TO THE COURT'S ISSUING AN ORDER GRANTING JUDICIAL DIVERSION, THE ELIGIBLE DEFENDANT SHALL BE REQUIRED TO ENTER A PLEA OF GUILTY TO THE CHARGE OR CHARGES; PROVIDED, HOWEVER, THAT NO GUILTY PLEA SHALL BE REQUIRED WHEN:

(A) THE PEOPLE AND THE COURT CONSENT TO THE ENTRY OF SUCH AN ORDER WITHOUT A PLEA OF GUILTY; OR

(B) BASED ON A FINDING OF EXCEPTIONAL CIRCUMSTANCES, THE COURT DETERMINES THAT A PLEA OF GUILTY SHALL NOT BE REQUIRED. FOR PURPOSES OF THIS SUBDIVISION, EXCEPTIONAL CIRCUMSTANCES EXIST WHEN, REGARDLESS OF THE

ULTIMATE DISPOSITION OF THE CASE, THE ENTRY OF A PLEA OF GUILTY IS LIKELY TO RESULT IN SEVERE COLLATERAL CONSEQUENCES.

2. THE ELIGIBLE DEFENDANT SHALL AGREE ON THE RECORD OR IN WRITING TO ABIDE BY THE RELEASE CONDITIONS SET BY THE COURT, WHICH, SHALL INCLUDE: PARTICIPATION IN A SPECIFIED DOMESTIC VIOLENCE PROGRAM; PERIODIC COURT APPEARANCES; AND A REQUIREMENT THAT THE DEFENDANT REFRAIN FROM ENGAGING IN CRIMINAL BEHAVIORS.

3. UPON AN ELIGIBLE DEFENDANT'S AGREEMENT TO ABIDE BY THE CONDITIONS SET BY THE COURT, THE COURT SHALL ISSUE A SECURING ORDER PROVIDING FOR BAIL OR RELEASE ON THE DEFENDANT'S OWN RECOGNIZANCE AND CONDITIONING ANY RELEASE UPON THE AGREED UPON CONDITIONS. THE DOMESTIC VIOLENCE PROGRAM SHALL BEGIN AS SPECIFIED BY THE COURT AND AS SOON AS PRACTICABLE AFTER THE DEFENDANT'S RELEASE. IN THE EVENT THAT A DOMESTIC VIOLENCE PROGRAM IS NOT IMMEDIATELY AVAILABLE OR BECOMES UNAVAILABLE DURING THE COURSE OF THE DEFENDANT'S PARTICIPATION IN THE JUDICIAL DIVERSION PROGRAM, THE COURT MAY RELEASE THE DEFENDANT PURSUANT TO THE SECURING ORDER.

4. DURING THE PERIOD OF A DEFENDANT'S PARTICIPATION IN THE JUDICIAL DIVERSION PROGRAM, THE COURT SHALL RETAIN JURISDICTION OF THE DEFENDANT. THE COURT MAY REQUIRE THE DEFENDANT TO APPEAR IN COURT AT ANY TIME TO ENABLE THE COURT TO MONITOR THE DEFENDANT'S PROGRESS IN THE PROGRAM. THE COURT SHALL PROVIDE NOTICE, REASONABLE UNDER THE CIRCUMSTANCES, TO THE PEOPLE, THE DOMESTIC VIOLENCE PROGRAM PROVIDER, THE DEFENDANT AND THE DEFENDANT'S COUNSEL WHENEVER IT ORDERS OR OTHERWISE REQUIRES THE APPEARANCE OF THE DEFENDANT IN COURT. FAILURE TO APPEAR AS REQUIRED WITHOUT REASONABLE CAUSE THEREFOR SHALL CONSTITUTE A VIOLATION OF THE CONDITIONS OF THE COURT'S AGREEMENT WITH THE DEFENDANT.

5. UPON THE COURT'S DETERMINATION THAT THE DEFENDANT HAS SUCCESSFULLY COMPLETED THE DOMESTIC VIOLENCE PROGRAM AND HAS OTHERWISE SATISFIED THE CONDITIONS REQUIRED FOR SUCCESSFUL COMPLETION OF THE JUDICIAL DIVERSION PROGRAM, THE COURT SHALL COMPLY WITH THE TERMS AND CONDITIONS IT SET FOR FINAL DISPOSITION WHEN IT ACCEPTED THE DEFENDANT'S AGREEMENT TO PARTICIPATE IN THE JUDICIAL DIVERSION PROGRAM. SUCH DISPOSITION MAY INCLUDE, BUT IS NOT LIMITED TO:

(A) REQUIRING THE DEFENDANT TO UNDERGO A PERIOD OF INTERIM PROBATION SUPERVISION AND, UPON THE DEFENDANT'S SUCCESSFUL COMPLETION OF THE INTERIM PROBATION SUPERVISION TERM, NOTWITHSTANDING THE PROVISION OF ANY OTHER LAW, PERMITTING THE DEFENDANT TO WITHDRAW HIS OR HER GUILTY PLEA AND DISMISSING THE INDICTMENT; OR

(B) REQUIRING THE DEFENDANT TO UNDERGO A PERIOD OF INTERIM PROBATION SUPERVISION AND, UPON SUCCESSFUL COMPLETION OF THE INTERIM PROBATION SUPERVISION TERM, NOTWITHSTANDING THE PROVISION OF ANY OTHER LAW, PERMITTING THE DEFENDANT TO WITHDRAW HIS OR HER GUILTY PLEA, ENTER A GUILTY PLEA TO A MISDEMEANOR OFFENSE AND SENTENCING THE DEFENDANT AS PROMISED IN THE PLEA AGREEMENT, WHICH MAY INCLUDE A PERIOD OF PROBATION SUPERVISION PURSUANT TO SECTION 65.00 OF THE PENAL LAW; OR

(C) ALLOWING THE DEFENDANT TO WITHDRAW HIS OR HER GUILTY PLEA AND DISMISSING THE INDICTMENT.

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