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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 -- Multi-Sponsored by -- M. of A. BARRON, CAMARA, GLICK, GOTTFRIED, MAYERSOHN, PHEFFER, TITONE -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to responding to crimes of domestic violence

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

1 Section 1. Subdivision 4 of section 170.10 of the criminal procedure
2 law is amended by adding a new paragraph (f) to read as follows:
3 (F) WHERE AN INFORMATION, A PROSECUTOR'S INFORMATION, A MISDEMEANOR
4 COMPLAINT, A FELONY COMPLAINT OR AN INDICTMENT CHARGES ASSAULT OR
5 ATTEMPTED ASSAULT IN THE THIRD DEGREE, AS DEFINED IN SECTIONS 120.00 AND
6 110.00 OF THE PENAL LAW, MENACING OR ATTEMPTED MENACING IN THE SECOND
7 DEGREE, AS DEFINED IN SECTIONS 120.14 AND 110.00 OF THE PENAL LAW,
8 MENACING IN THE THIRD DEGREE, AS DEFINED IN SECTION 120.15 OF THE PENAL
9 LAW, CRIMINAL OBSTRUCTION OF BREATHING OR BLOOD CIRCULATION OR ATTEMPTED
10 CRIMINAL OBSTRUCTION OF BREATHING OR BLOOD CIRCULATION, AS DEFINED IN
11 SECTIONS 121.11 AND 110.00 OF THE PENAL LAW, FORCIBLE TOUCHING OR
12 ATTEMPTED FORCIBLE TOUCHING, AS DEFINED IN SECTIONS 130.52 AND 110.00 OF
13 THE PENAL LAW, OR AGGRAVATED HARASSMENT IN THE SECOND DEGREE OR
14 ATTEMPTED AGGRAVATED HARASSMENT IN THE SECOND DEGREE, AS DEFINED IN
15 SUBDIVISION THREE OF SECTION 240.30 AND SECTION 110.00 OF THE PENAL LAW,
16 OR IF THERE IS A JUDGMENT OF CONVICTION FOR SUCH OFFENSE, AND THE
17 DEFENDANT IS DETERMINED PURSUANT TO SUBDIVISION EIGHT-B OF THIS SECTION
18 TO BE EITHER A CURRENT OR FORMER SPOUSE, PARENT OR GUARDIAN OF THE
19 PERSON AGAINST WHOM SUCH OFFENSE WAS COMMITTED, OR THE DEFENDANT SHARES
20 A CHILD IN COMMON WITH SUCH PERSON, OR THE DEFENDANT IS OR HAS COHABI-
21 TATED WITH SUCH PERSON AS A SPOUSE, PARENT OR GUARDIAN, OR IS OR WAS

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

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1 SIMILARLY SITUATED TO A SPOUSE, PARENT OR GUARDIAN OF SUCH PERSON, THE
2 CLERK OF THE COURT SHALL INCLUDE NOTIFICATION OF THAT DETERMINATION IN
3 ANY REPORT OF SUCH CONVICTION TO THE DIVISION OF CRIMINAL JUSTICE
4 SERVICES.

5 S 2. Section 170.10 of the criminal procedure law is amended by adding
6 a new subdivision 8-b to read as follows:

7 8-B. (A) WHERE AN INFORMATION, A MISDEMEANOR COMPLAINT, FELONY
8 COMPLAINT OR AN INDICTMENT CHARGES ASSAULT OR ATTEMPTED ASSAULT IN THE
9 THIRD DEGREE, AS DEFINED IN SECTIONS 120.00 AND 110.00 OF THE PENAL LAW,
10 MENACING OR ATTEMPTED MENACING IN THE SECOND DEGREE, AS DEFINED IN
11 SECTIONS 120.14 AND 110.00 OF THE PENAL LAW, MENACING IN THE THIRD
12 DEGREE, AS DEFINED IN SECTION 120.15 OF THE PENAL LAW, CRIMINAL
13 OBSTRUCTION OF BREATHING OR BLOOD CIRCULATION OR ATTEMPTED CRIMINAL
14 OBSTRUCTION OF BREATHING OR BLOOD CIRCULATION, AS DEFINED IN SECTIONS
15 121.11 AND 110.00 OF THE PENAL LAW, FORCIBLE TOUCHING OR ATTEMPTED
16 FORCIBLE TOUCHING, AS DEFINED IN SECTIONS 130.52 AND 110.00 OF THE PENAL
17 LAW, OR AGGRAVATED HARASSMENT IN THE SECOND DEGREE OR ATTEMPTED AGGRA-
18 VATED HARASSMENT IN THE SECOND DEGREE, AS DEFINED IN SUBDIVISION THREE
19 OF SECTION 240.30 AND SECTION 110.00 OF THE PENAL LAW, THE PEOPLE MAY
20 SERVE UPON THE DEFENDANT AND FILE WITH THE COURT A NOTICE ALLEGING THAT
21 THE DEFENDANT: (I) IS A CURRENT OR FORMER SPOUSE, PARENT OR GUARDIAN OF
22 THE VICTIM, OR (II) SHARES A CHILD IN COMMON WITH THE VICTIM, OR (III)
23 IS COHABITATING OR HAS COHABITATED WITH THE VICTIM AS A SPOUSE, PARENT
24 OR GUARDIAN, OR (IV) IS OR WAS SIMILARLY SITUATED TO A SPOUSE, PARENT OR
25 GUARDIAN OF THE VICTIM. SUCH NOTICE MUST BE SERVED WITHIN FIFTEEN DAYS
26 AFTER ARRAIGNMENT FOR SUCH CHARGE AND BEFORE TRIAL, AND MUST INCLUDE THE
27 NAME OF THE PERSON ALLEGED TO BE THE VICTIM OF THE OFFENSE.

28 (B) A DEFENDANT MAY STIPULATE OR ADMIT IN THE COURSE OF A PLEA DISPO-
29 SITION THAT HE OR SHE IS RELATED OR SITUATED TO THE VICTIM OF THE
30 OFFENSE DESCRIBED IN PARAGRAPH (F) OF SUBDIVISION FOUR OF THIS SECTION.
31 IN SUCH CASE, THE RELATIONSHIP SHALL BE DEEMED ESTABLISHED. IF THE
32 DEFENDANT DENIES SUCH RELATIONSHIP TO THE VICTIM AS ALLEGED IN THE
33 NOTICE SERVED BY THE PEOPLE, THE PEOPLE SHALL BEAR THE BURDEN OF PROVING
34 THAT THE DEFENDANT IS RELATED OR SITUATED TO THE VICTIM OF THE OFFENSE
35 AS ALLEGED IN THE NOTICE BY PROOF BEYOND A REASONABLE DOUBT DURING THE
36 TRIAL. IN SUCH CIRCUMSTANCES, THE TRIER OF FACT SHALL MAKE A DETERMI-
37 NATION WITH RESPECT TO SUCH ALLEGATION ORALLY ON THE RECORD OR IN WRIT-
38 ING.

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