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

6993

2011-2012 Regular Sessions

I N A S S E M B L Y

April 7, 2011

Introduced by M. of A. J. MILLER -- read once and referred to the Committee on Codes

AN ACT to amend the penal law and the criminal procedure law, in relation to enacting the domestic violence prevention act

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

Section 1. The title heading of title Y of the penal law, as added by chapter 107 of the laws of 2000, is amended to read as follows:

[HATE CRIMES ACT OF 2000]

OFFENSES SUBJECT TO ENHANCED PENALTIES

S 2. The article heading of article 485 of the penal law, as added by chapter 107 of the laws of 2000, is amended to read as follows:

HATE CRIMES ACT OF 2000

S 3. The penal law is amended by adding a new article 487 to read as follows:

ARTICLE 487

DOMESTIC VIOLENCE PREVENTION ACT

SECTION 487.00 DOMESTIC VIOLENCE OFFENSE.
487.05 SENTENCING.

S 487.00 DOMESTIC VIOLENCE OFFENSE.

1. A PERSON IS GUILTY OF A DOMESTIC VIOLENCE OFFENSE WHEN SUCH PERSON COMMITS A SPECIFIED OFFENSE AS DEFINED IN SUBDIVISION TWO OF THIS SECTION AND THE VICTIM IS A MEMBER OF THE SAME FAMILY OR HOUSEHOLD. FOR PURPOSES OF THIS ARTICLE, A MEMBER OF THE SAME FAMILY OR HOUSEHOLD SHALL MEAN THE FOLLOWING INDIVIDUALS:

(A) PERSONS RELATED BY CONSANGUINITY OR AFFINITY;

(B) PERSONS LEGALLY MARRIED TO ONE ANOTHER;

(C) PERSONS FORMERLY MARRIED TO ONE ANOTHER REGARDLESS OF WHETHER THEY STILL RESIDE IN THE SAME HOUSEHOLD;

(D) PERSONS WHO HAVE A CHILD IN COMMON REGARDLESS OF WHETHER SUCH PERSONS ARE MARRIED OR HAVE LIVED TOGETHER AT ANY TIME; OR

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

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(E) UNRELATED PERSONS WHO ARE CONTINUALLY OR AT REGULAR INTERVALS LIVING IN THE SAME HOUSEHOLD OR WHO HAVE IN THE PAST CONTINUALLY OR AT REGULAR INTERVALS LIVED IN THE SAME HOUSEHOLD.

2. A "SPECIFIED OFFENSE" IS AN OFFENSE DEFINED BY ANY OF THE FOLLOWING PROVISIONS OF THIS CHAPTER: SUBDIVISION ONE, TWO, FOUR, EIGHT, NINE OR TWELVE OF SECTION 120.05 (ASSAULT IN THE SECOND DEGREE); SUBDIVISION ONE, TWO OR THREE OF SECTION 120.10 (ASSAULT IN THE FIRST DEGREE); SECTION 120.12 (AGGRAVATED ASSAULT UPON A PERSON LESS THAN ELEVEN YEARS OLD); SECTION 120.25 (RECKLESS ENDANGERMENT IN THE FIRST DEGREE); 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); SECTION 125.20 (MANSLAUGHTER IN THE FIRST DEGREE); SUBDIVISION ONE, TWO, FOUR OR FIVE OF SECTION 125.25 (MURDER IN THE SECOND DEGREE); SUBDIVISION ONE OF SECTION 130.35 (RAPE IN THE FIRST DEGREE); SUBDIVISION ONE OF SECTION 130.50 (CRIMINAL SEXUAL ACT IN THE FIRST DEGREE); SUBDIVISION ONE OF SECTION 130.65 (SEXUAL ABUSE IN THE FIRST DEGREE); PARAGRAPH (A) OF SUBDIVISION ONE OF SECTION 130.67 (AGGRAVATED SEXUAL ABUSE IN THE SECOND DEGREE); PARAGRAPH (A) OF SUBDIVISION ONE OF SECTION 130.70 (AGGRAVATED SEXUAL ABUSE IN THE FIRST DEGREE); SECTION 135.10 (UNLAWFUL IMPRISONMENT IN THE FIRST DEGREE); SECTION 135.20 (KIDNAPPING IN THE SECOND DEGREE); PARAGRAPH A, B OR C OF SUBDIVISION TWO OF SECTION 135.25 (KIDNAPPING IN THE FIRST DEGREE); OR ANY ATTEMPT OR CONSPIRACY TO COMMIT ANY OF THE FOREGOING OFFENSES.

S 487.05 SENTENCING.

1. WHEN A PERSON IS CONVICTED OF A DOMESTIC VIOLENCE OFFENSE PURSUANT TO THIS ARTICLE, AND THE SPECIFIED OFFENSE IS A VIOLENT FELONY OFFENSE, AS DEFINED IN SECTION 70.02 OF THIS CHAPTER, THE DOMESTIC VIOLENCE OFFENSE SHALL BE DEEMED A VIOLENT FELONY OFFENSE.

2. WHEN A PERSON IS CONVICTED OF A DOMESTIC VIOLENCE OFFENSE PURSUANT TO THIS ARTICLE AND THE SPECIFIED OFFENSE IS A MISDEMEANOR OR A CLASS B, C, D OR E FELONY, THE DOMESTIC VIOLENCE OFFENSE SHALL BE DEEMED TO BE ONE CATEGORY HIGHER THAN THE SPECIFIED OFFENSE THE DEFENDANT COMMITTED, OR ONE CATEGORY HIGHER THAN THE OFFENSE LEVEL APPLICABLE TO THE DEFENDANT'S CONVICTION FOR AN ATTEMPT OR CONSPIRACY TO COMMIT A SPECIFIED OFFENSE, WHICHEVER IS APPLICABLE.

S 4. Subdivision 4 of section 200.50 of the criminal procedure law, as amended by chapter 7 of the laws of 2007, is amended to read as follows:

4. A statement in each count that the grand jury, or, where the accusatory instrument is a superior court information, the district attorney, accuses the defendant or defendants of a designated offense, provided that in any prosecution under article four hundred eighty-five of the penal law, the designated offense shall be the specified offense, as defined in subdivision three of section 485.05 of the penal law, followed by the phrase "as a hate crime", and provided further that in any prosecution under section 490.25 of the penal law, the designated offense shall be the specified offense, as defined in subdivision three of section 490.05 of the penal law, followed by the phrase "as a crime of terrorism"; and provided further that in any prosecution under section 130.91 of the penal law, the designated offense shall be the specified offense, as defined in subdivision two of section 130.91 of the penal law, followed by the phrase "as a sexually motivated felony"[; and] PROVIDED FURTHER THAT IN ANY PROSECUTION UNDER ARTICLE FOUR HUNDRED EIGHTY-SEVEN OF THE PENAL LAW, THE DESIGNATED OFFENSE SHALL BE THE SPECIFIED OFFENSE, AS DEFINED IN SUBDIVISION TWO OF SECTION 487.00 OF THE PENAL LAW, FOLLOWED BY THE PHRASE "AS A DOMESTIC VIOLENCE OFFENSE"; AND

S 5. Subdivision 7 of section 200.50 of the criminal procedure law is amended by adding a new paragraph (f) to read as follows:

(F) IN THE CASE OF ANY DOMESTIC VIOLENCE OFFENSE AS DEFINED IN SECTION 487.00 OF THE PENAL LAW, SPECIFIES THAT THE PERSON AGAINST WHOM THE OFFENSE WAS COMMITTED OR INTENDED TO BE COMMITTED WAS A MEMBER OF THE SAME FAMILY OR HOUSEHOLD AS THE DEFENDANT, AS DEFINED IN SUBDIVISION ONE OF SECTION 487.00 OF THE PENAL LAW; AND

S 6. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.