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

8665

2011-2012 Regular Sessions

I N A S S E M B L Y

October 14, 2011

Introduced by M. of A. STEVENSON -- Multi-Sponsored by -- M. of A. ARROYO, CRESPO, McDONOUGH, P. RIVERA -- 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 DeAnna Bazemore act

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

Section 1. This act shall be known and may be cited as the "DeAnna Bazemore act."

S 2. The penal law is amended by adding a new title Y-2 to read as follows:

TITLE Y-2
DOMESTIC VIOLENCE OFFENSE
ARTICLE 495
DOMESTIC VIOLENCE OFFENSE

SECTION 495.00 DOMESTIC VIOLENCE OFFENSE.
495.05 SENTENCING.

S 495.00 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.

LBD13438-02-1

(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 495.05 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, WHO HAS BEEN PREVIOUSLY CONVICTED OF A DOMESTIC VIOLENCE OFFENSE PURSUANT TO THIS ARTICLE AND THE SPECIFIED OFFENSE WAS A MISDEMEANOR, IS CONVICTED OF ANOTHER DOMESTIC VIOLENCE OFFENSE PURSUANT TO THIS ARTICLE AND THE SPECIFIED OFFENSE IS A MISDEMEANOR, THE COURT SHALL IMPOSE A SENTENCE OF IMPRISONMENT FOR A PERIOD OF NO LESS THAN SIX MONTHS.

3. WHEN A PERSON, WHO HAS BEEN PREVIOUSLY CONVICTED OF TWO DOMESTIC VIOLENCE OFFENSES PURSUANT TO THIS ARTICLE AND THE SPECIFIED OFFENSES WERE MISDEMEANORS, IS CONVICTED OF ANOTHER DOMESTIC VIOLENCE OFFENSE PURSUANT TO THIS ARTICLE AND THE SPECIFIED OFFENSE IS A MISDEMEANOR, THE COURT SHALL IMPOSE A SENTENCE OF IMPRISONMENT FOR A PERIOD OF NO LESS THAN ONE YEAR.

4. WHEN A PERSON, WHO HAS BEEN PREVIOUSLY CONVICTED OF THREE OR MORE DOMESTIC VIOLENCE OFFENSES PURSUANT TO THIS ARTICLE AND THE SPECIFIED OFFENSES WERE MISDEMEANORS, IS CONVICTED OF ANOTHER DOMESTIC VIOLENCE OFFENSE PURSUANT TO THIS ARTICLE AND THE SPECIFIED OFFENSE IS A MISDEMEANOR, THE DOMESTIC VIOLENCE OFFENSE SHALL BE DEEMED TO BE A CLASS D FELONY, AND THE PERSON SHALL BE SENTENCED IN ACCORDANCE WITH THE PROVISIONS OF SECTION 70.00 OF THIS CHAPTER OR SECTION 70.06, WHICHEVER IS APPLICABLE.

5. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, WHEN A PERSON IS CONVICTED OF A DOMESTIC VIOLENCE OFFENSE PURSUANT TO THIS ARTICLE AND THE SPECIFIED OFFENSE IS A FELONY, THE COURT SHALL IMPOSE AN ADDITIONAL CONSECUTIVE SENTENCE OF FIVE TO TEN YEARS TO THE MINIMUM TERM OF AN INDETERMINATE SENTENCE IMPOSED ON THE UNDERLYING FELONY OFFENSE, PROVIDED, HOWEVER, THAT SUCH ADDITIONAL SENTENCE SHALL NOT BE IMPOSED IF THE COURT, HAVING REGARD TO THE NATURE AND CIRCUMSTANCES OF THE CRIME

AND TO THE HISTORY AND CHARACTER OF THE DEFENDANT, FINDS ON THE RECORD THAT SUCH ADDITIONAL CONSECUTIVE SENTENCE WOULD BE UNDULY HARSH AND THAT NOT IMPOSING SUCH SENTENCE WOULD BE CONSISTENT WITH THE PUBLIC SAFETY AND WOULD NOT DEPRECATE THE SERIOUSNESS OF THE CRIME.

S 3. 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 NINETY-FIVE OF THE PENAL LAW, THE DESIGNATED OFFENSE SHALL BE THE SPECIFIED OFFENSE, AS DEFINED IN SUBDIVISION TWO OF SECTION 495.00 OF THE PENAL LAW, FOLLOWED BY THE PHRASE "AS A DOMESTIC VIOLENCE OFFENSE"; AND

S 4. 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 495.00 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 495.00 OF THE PENAL LAW; AND

S 5. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.