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

3977

2011-2012 Regular Sessions

I N S E N A T E

March 11, 2011

Introduced by Sen. ADAMS -- 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 defining offenses against the family

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 article 122 to read as follows:

ARTICLE 122
FAMILY OFFENSES

SECTION 122.00 DEFINITIONS.
122.05 DOMESTIC VIOLENCE.
122.10 AGGRAVATED DOMESTIC VIOLENCE.
122.15 EXTREME DOMESTIC VIOLENCE.
122.20 DEFENSE.

S 122.00 DEFINITIONS.

FOR THE PURPOSES OF THIS ARTICLE THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

1. "FAMILY MEMBER" MEANS ANY PERSON RELATED BY BLOOD OR MARRIAGE, AS A SPOUSE, OR AS AN ANCESTOR OR DESCENDANT; OR ANY PERSONS HAVING CHILDREN IN COMMON; OR ANY PERSONS HAVING SHARED THE SAME DOMICILE FOR A PERIOD OF SIX MONTHS OR MORE.

2. "ACT OF VIOLENCE" MEANS ANY ASSAULTIVE BEHAVIOR, WHETHER BY OPEN HAND, FIST, FOOT, TEETH, OR ANY OTHER BODY PART, OR BY ANY INSTRUMENT OR INSTRUMENTALITY, WHICH CAUSES PHYSICAL INJURY TO ANOTHER FAMILY MEMBER.

3. "INJURY" MEANS ANY OF THE FOLLOWING: BLACK AND BLUE MARKS; WELT MARKS; A BLACK EYE; SUBSTANTIAL SORENESS; A BITE MARK; A CONCUSSION; SUTURES; BURNS; OR ANY OTHER MEDICALLY DISTINGUISHABLE BRUISES, CONTUSIONS, ABRASIONS OR LACERATIONS, OR ANY "PHYSICAL INJURY" AS THAT TERM HAS BEEN DEFINED BY ARTICLE ONE HUNDRED TWENTY OF THIS TITLE.

S 122.05 DOMESTIC VIOLENCE.

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

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A PERSON IS GUILTY OF DOMESTIC VIOLENCE WHEN BEING A FAMILY MEMBER WITH INTENT TO CAUSE INJURY TO ANOTHER FAMILY MEMBER, HE OR SHE COMMITS AN ACT OF VIOLENCE AGAINST ANY FAMILY MEMBER.

DOMESTIC VIOLENCE IS A CLASS A MISDEMEANOR.

S 122.10 AGGRAVATED DOMESTIC VIOLENCE.

A PERSON IS GUILTY OF AGGRAVATED DOMESTIC VIOLENCE WHEN HE OR SHE COMMITS AN ACT OF DOMESTIC VIOLENCE AND WHEN:

1. HE OR SHE HAS PREVIOUSLY BEEN CONVICTED OF AN ACT OF DOMESTIC VIOLENCE, OR AN ATTEMPT TO COMMIT SAME; OR

2. HE OR SHE HAS PREVIOUSLY BEEN CONVICTED OF ASSAULT, UNDER ARTICLE ONE HUNDRED TWENTY OF THIS TITLE, OR AN ATTEMPT TO COMMIT SAME, AND THE VICTIM IN SAID PRIOR CONVICTION WAS A FAMILY MEMBER; OR

3. HE OR SHE HAS PREVIOUSLY COMMITTED ANOTHER ACT OF DOMESTIC VIOLENCE WITHIN THE PAST SIX MONTHS AGAINST ANY FAMILY MEMBER, AND AS TO SAID PRIOR CONDUCT NO PROSECUTION HAS PREVIOUSLY BEEN INSTITUTED, OR PROSECUTION HAS BEEN WITHDRAWN, DISMISSED OR ADJOURNED IN CONTEMPLATION OF DISMISSAL BEFORE AN ADJUDICATION ON THE MERITS, PROVIDING HOWEVER, THAT SAID PRIOR CONDUCT MUST BE ALLEGED WITHIN THE ACCUSATORY INSTRUMENT HEREIN WITH THE SAME SPECIFICITY AS IS REQUIRED FOR THE CONDUCT PRESENTLY AT ISSUE; OR

4. HE OR SHE ACCOMPANIES SAID ACT WITH A THREAT OR THREATS TO THE LIFE OF ANY FAMILY MEMBER; OR

5. HE OR SHE USES OR THREATENS THE USE OF A DANGEROUS INSTRUMENT; OR

6. AT THE TIME OF SAID CONDUCT AN ORDER OF PROTECTION HAS BEEN ISSUED CONSTRAINING THE CONDUCT OF SAID PERSON; OR

7. AT TWO TIMES OTHER THAN THE ACT OF DOMESTIC VIOLENCE, HE OR SHE THREATENS THE LIFE OR SAFETY OF ANY FAMILY MEMBER OVER THE PHONE OR BY ANY AGENT OR INSTRUMENTALITY.

AGGRAVATED DOMESTIC VIOLENCE IS A CLASS E FELONY.

S 122.15 EXTREME DOMESTIC VIOLENCE.

A PERSON IS GUILTY OF EXTREME DOMESTIC VIOLENCE WHEN:

1. WITH INTENT TO CAUSE INJURY TO ANY FAMILY MEMBER, OR IN RECKLESS DISREGARD OF THE LIKELIHOOD OF CAUSING SUCH INJURY, HE OR SHE COMMITS AN ACT OR ACTS WHICH RESULT IN SECOND OR THIRD DEGREE BURNS TO ANY FAMILY MEMBER; OR

2. HE OR SHE COMMITS AN ACT OF DOMESTIC VIOLENCE, HAVING TWICE WITHIN THE THREE YEARS IMMEDIATELY PRIOR TO SAID ACT BEEN CONVICTED OF ANY COMBINATION OF DOMESTIC VIOLENCE AND/OR ASSAULT CHARGES, OR AN ATTEMPT TO COMMIT SAME AGAINST ANY FAMILY MEMBER OR MEMBERS; OR

3. HE OR SHE COMMITS AN ACT OF DOMESTIC VIOLENCE HAVING THREE TIMES WITHIN A YEAR IMMEDIATELY PRIOR TO SAID ACT COMMITTED OTHER ACTS OF DOMESTIC VIOLENCE AGAINST ANY FAMILY MEMBER OR MEMBERS, AND AS TO SAID PRIOR CONDUCT, NO PROSECUTION HAS PREVIOUSLY BEEN INSTITUTED OR PROSECUTION HAS BEEN WITHDRAWN, DISMISSED OR ADJOURNED IN CONTEMPLATION OF DISMISSAL BEFORE AN ADJUDICATION ON THE MERITS, PROVIDING HOWEVER, THAT SAID PRIOR CONDUCT MUST BE ALLEGED WITHIN THE ACCUSATORY INSTRUMENT HEREIN WITH THE SAME SPECIFICITY AS IS REQUIRED FOR THE CONDUCT PRESENTLY AT ISSUE; OR

4. HE OR SHE RESTRAINS AS THAT TERM IS DEFINED BY ARTICLE ONE HUNDRED THIRTY-FIVE OF THIS TITLE A FAMILY MEMBER FOR A PERIOD OF MORE THAN TWO HOURS, DURING THE COURSE OF WHICH HE OR SHE:

(A) COMMITS AN ACT OF DOMESTIC VIOLENCE; OR

(B) THREATENS THE LIFE OF ANY PERSON; OR

(C) ENDANGERS THE LIFE OF A CHILD; OR

(D) DISPLAYS OR THREATENS THE USE OF A DANGEROUS INSTRUMENT; OR

(E) COMMITS THE CRIME OF COERCION AS THAT TERM IS DEFINED BY ARTICLE ONE HUNDRED THIRTY-FIVE OF THIS TITLE; OR

5. HE OR SHE COMMITS AN ACT OF AGGRAVATED DOMESTIC VIOLENCE AND THE VICTIM IS LESS THAN TEN YEARS OLD.

EXTREME DOMESTIC VIOLENCE IS A CLASS C FELONY.

S 122.20 DEFENSE.

IT IS AN AFFIRMATIVE DEFENSE UNDER THIS ARTICLE THAT ANY CONDUCT AGAINST A CHILD BY AN ADULT FAMILY MEMBER WAS JUSTIFIED PURSUANT TO THE PROVISIONS OF SUBDIVISION ONE OF SECTION 35.10 OF THIS CHAPTER.

S 2. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.