

5822

2011-2012 Regular Sessions

I N S E N A T E

June 17, 2011

Introduced by Sens. GOLDEN, LANZA, SQUADRON -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the penal law and the criminal procedure law, in relation to the creation of the crime of aggravated family offense

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

1 Section 1. The penal law is amended by adding a new section 240.75 to
2 read as follows:
3 S 240.75 AGGRAVATED FAMILY OFFENSE.
4 1. A PERSON IS GUILTY OF AGGRAVATED FAMILY OFFENSE WHEN HE OR SHE
5 COMMITS A MISDEMEANOR DEFINED IN SUBDIVISION TWO OF THIS SECTION AS A
6 SPECIFIED OFFENSE AND HE OR SHE HAS BEEN CONVICTED OF ONE OR MORE SPECI-
7 FIED OFFENSES WITHIN THE IMMEDIATELY PRECEDING FIVE YEARS. FOR THE
8 PURPOSES OF THIS SUBDIVISION, IN CALCULATING THE FIVE YEAR PERIOD, ANY
9 PERIOD OF TIME DURING WHICH THE DEFENDANT WAS INCARCERATED FOR ANY
10 REASON BETWEEN THE TIME OF THE COMMISSION OF ANY OF SUCH PREVIOUS
11 OFFENSES AND THE TIME OF COMMISSION OF THE PRESENT CRIME SHALL BE
12 EXCLUDED AND SUCH FIVE YEAR PERIOD SHALL BE EXTENDED BY A PERIOD OR
13 PERIODS EQUAL TO THE TIME SERVED UNDER SUCH INCARCERATION.
14 2. A "SPECIFIED OFFENSE" IS AN OFFENSE DEFINED IN SECTION 120.00
15 (ASSAULT IN THE THIRD DEGREE); SECTION 120.05 (ASSAULT IN THE SECOND
16 DEGREE); SECTION 120.10 (ASSAULT IN THE FIRST DEGREE); SECTION 120.13
17 (MENACING IN THE FIRST DEGREE); SECTION 120.14 (MENACING IN THE SECOND
18 DEGREE); SECTION 120.15 (MENACING IN THE THIRD DEGREE); SECTION 120.20
19 (RECKLESS ENDANGERMENT IN THE SECOND DEGREE); SECTION 120.25 (RECKLESS
20 ENDANGERMENT IN THE FIRST DEGREE); SECTION 120.45 (STALKING IN THE
21 FOURTH DEGREE); SECTION 120.50 (STALKING IN THE THIRD DEGREE); SECTION
22 120.55 (STALKING IN THE SECOND DEGREE); SECTION 120.60 (STALKING IN THE
23 FIRST DEGREE); SECTION 121.11 (CRIMINAL OBSTRUCTION OF BREATHING OR
24 BLOOD CIRCULATION); SECTION 121.12 (STRANGULATION IN THE SECOND DEGREE);
25 SECTION 121.13 (STRANGULATION IN THE FIRST DEGREE); SUBDIVISION ONE OF

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

LBD06167-17-1

1 SECTION 125.15 (MANSLAUGHTER IN THE SECOND DEGREE); SUBDIVISION ONE, TWO
2 OR FOUR OF SECTION 125.20 (MANSLAUGHTER IN THE FIRST DEGREE); SECTION
3 125.25 (MURDER IN THE SECOND DEGREE); SECTION 130.20 (SEXUAL MISCON-
4 DUCT); SECTION 130.30 (RAPE IN THE SECOND DEGREE); SECTION 130.35 (RAPE
5 IN THE FIRST DEGREE); SECTION 130.40 (CRIMINAL SEXUAL ACT IN THE THIRD
6 DEGREE); SECTION 130.45 (CRIMINAL SEXUAL ACT IN THE SECOND DEGREE);
7 SECTION 130.50 (CRIMINAL SEXUAL ACT IN THE FIRST DEGREE); SECTION 130.52
8 (FORCIBLE TOUCHING); SECTION 130.53 (PERSISTENT SEXUAL ABUSE); SECTION
9 130.55 (SEXUAL ABUSE IN THE THIRD DEGREE); SECTION 130.60 (SEXUAL ABUSE
10 IN THE SECOND DEGREE); SECTION 130.65 (SEXUAL ABUSE IN THE FIRST
11 DEGREE); SECTION 130.66 (AGGRAVATED SEXUAL ABUSE IN THE THIRD DEGREE);
12 SECTION 130.67 (AGGRAVATED SEXUAL ABUSE IN THE SECOND DEGREE); SECTION
13 130.70 (AGGRAVATED SEXUAL ABUSE IN THE FIRST DEGREE); SECTION 130.91
14 (SEXUALLY MOTIVATED FELONY); SECTION 130.95 (PREDATORY SEXUAL ASSAULT);
15 SECTION 130.96 (PREDATORY SEXUAL ASSAULT AGAINST A CHILD); SECTION
16 135.05 (UNLAWFUL IMPRISONMENT IN THE SECOND DEGREE); SECTION 135.10
17 (UNLAWFUL IMPRISONMENT IN THE FIRST DEGREE); SECTION 135.60 (COERCION IN
18 THE SECOND DEGREE); SECTION 135.65 (COERCION IN THE FIRST DEGREE);
19 SECTION 140.20 (BURGLARY IN THE THIRD DEGREE); SECTION 140.25 (BURGLARY
20 IN THE SECOND DEGREE); SECTION 140.30 (BURGLARY IN THE FIRST DEGREE);
21 SECTION 145.00 (CRIMINAL MISCHIEF IN THE FOURTH DEGREE); SECTION 145.05
22 (CRIMINAL MISCHIEF IN THE THIRD DEGREE); SECTION 145.10 (CRIMINAL
23 MISCHIEF IN THE SECOND DEGREE); SECTION 145.12 (CRIMINAL MISCHIEF IN THE
24 FIRST DEGREE); SECTION 145.14 (CRIMINAL TAMPERING IN THE THIRD DEGREE);
25 SECTION 215.50 (CRIMINAL CONTEMPT IN THE SECOND DEGREE); SECTION 215.51
26 (CRIMINAL CONTEMPT IN THE FIRST DEGREE); SECTION 215.52 (AGGRAVATED
27 CRIMINAL CONTEMPT); SECTION 240.25 (HARASSMENT IN THE FIRST DEGREE);
28 SUBDIVISION ONE, TWO OR FOUR OF SECTION 240.30 (AGGRAVATED HARASSMENT IN
29 THE SECOND DEGREE); AGGRAVATED FAMILY OFFENSE AS DEFINED IN THIS SECTION
30 OR ANY ATTEMPT OR CONSPIRACY TO COMMIT ANY OF THE FOREGOING OFFENSES
31 WHERE THE DEFENDANT AND THE PERSON AGAINST WHOM THE OFFENSE WAS COMMIT-
32 TED WERE MEMBERS OF THE SAME FAMILY OR HOUSEHOLD AS DEFINED IN SUBDIVI-
33 SION ONE OF SECTION 530.11 OF THE CRIMINAL PROCEDURE LAW.

34 3. THE PERSON AGAINST WHOM THE CURRENT SPECIFIED OFFENSE IS COMMITTED
35 MAY BE DIFFERENT FROM THE PERSON AGAINST WHOM THE PREVIOUS SPECIFIED
36 OFFENSE WAS COMMITTED AND SUCH PERSONS DO NOT NEED TO BE MEMBERS OF THE
37 SAME FAMILY OR HOUSEHOLD.

38 AGGRAVATED FAMILY OFFENSE IS A CLASS E FELONY.

39 S 2. The criminal procedure law is amended by adding a new section
40 200.63 to read as follows:

41 S 200.63 INDICTMENT; SPECIAL INFORMATION FOR AGGRAVATED FAMILY OFFENSE.

42 1. WHENEVER A PERSON IS CHARGED WITH THE COMMISSION OR ATTEMPTED
43 COMMISSION OF AN AGGRAVATED FAMILY OFFENSE AS DEFINED IN SECTION 240.75
44 OF THE PENAL LAW, AN INDICTMENT OR INFORMATION FOR SUCH OFFENSE SHALL BE
45 ACCOMPANIED BY A SPECIAL INFORMATION, FILED BY THE DISTRICT ATTORNEY
46 WITH THE COURT, ALLEGING THAT THE DEFENDANT WAS PREVIOUSLY CONVICTED OF
47 A SPECIFIED OFFENSE AS DEFINED IN SUBDIVISION TWO OF SECTION 240.75 OF
48 THE PENAL LAW, THAT AT THE TIME OF THE PREVIOUS OFFENSE THE DEFENDANT
49 AND THE PERSON AGAINST WHOM THE OFFENSE WAS COMMITTED WERE MEMBERS OF
50 THE SAME FAMILY OR HOUSEHOLD AS DEFINED IN SUBDIVISION ONE OF SECTION
51 530.11 OF THIS CHAPTER, AND THAT SUCH PREVIOUS CONVICTION TOOK PLACE
52 WITHIN THE TIME PERIOD SPECIFIED IN SUBDIVISION ONE OF SECTION 240.75 OF
53 THE PENAL LAW. EXCEPT AS PROVIDED HEREIN, THE PEOPLE MAY NOT REFER TO
54 SUCH SPECIAL INFORMATION DURING TRIAL NOR ADDUCE ANY EVIDENCE CONCERNING
55 THE ALLEGATIONS THEREIN.

1 2. PRIOR TO THE COMMENCEMENT OF THE TRIAL, THE COURT, IN THE ABSENCE
2 OF THE JURY, MUST ARRAIGN THE DEFENDANT UPON SUCH INFORMATION AND ADVISE
3 HIM OR HER THAT HE OR SHE MAY ADMIT EACH SUCH ALLEGATION, DENY ANY SUCH
4 ALLEGATION OR REMAIN MUTE WITH RESPECT TO ANY SUCH ALLEGATION. DEPENDING
5 UPON THE DEFENDANT'S RESPONSE, THE TRIAL OF THE INDICTMENT OR INFORMA-
6 TION MUST THEN PROCEED AS FOLLOWS:

7 (A)(I) IF THE PREVIOUS CONVICTION IS FOR AN AGGRAVATED FAMILY OFFENSE
8 AS DEFINED IN SECTION 240.75 OF THE PENAL LAW, AND THE DEFENDANT ADMITS
9 THE PREVIOUS CONVICTION OR THAT IT TOOK PLACE WITHIN THE TIME PERIOD
10 SPECIFIED IN SUBDIVISION ONE OF SECTION 240.75 OF THE PENAL LAW, SUCH
11 ADMITTED ALLEGATION OR ALLEGATIONS SHALL BE DEEMED ESTABLISHED FOR THE
12 PURPOSES OF THE PRESENT PROSECUTION, INCLUDING SENTENCING PURSUANT TO
13 SECTION 70.00 OF THE PENAL LAW. THE COURT MUST SUBMIT THE CASE TO THE
14 JURY AS IF SUCH ADMITTED ALLEGATION OR ALLEGATIONS WERE NOT ELEMENTS OF
15 THE OFFENSE.

16 (II) IF THE DEFENDANT DENIES THE PREVIOUS CONVICTION OR REMAINS MUTE
17 WITH RESPECT TO IT, THE PEOPLE MAY PROVE, BEYOND A REASONABLE DOUBT,
18 THAT ELEMENT OF THE OFFENSE BEFORE THE JURY AS A PART OF THEIR CASE.

19 (III) IF THE DEFENDANT DENIES THAT THE PREVIOUS CONVICTION TOOK PLACE
20 WITHIN THE TIME PERIOD SPECIFIED IN SUBDIVISION ONE OF SECTION 240.75 OF
21 THE PENAL LAW, OR REMAINS MUTE WITH RESPECT TO THAT MATTER, THE PEOPLE
22 MAY PROVE, BEYOND A REASONABLE DOUBT, BEFORE THE JURY AS PART OF THEIR
23 CASE, THAT THE PREVIOUS CONVICTION TOOK PLACE WITHIN THE TIME PERIOD
24 SPECIFIED.

25 (B)(I) IF THE PREVIOUS CONVICTION IS FOR A SPECIFIED OFFENSE AS
26 DEFINED IN SUBDIVISION TWO OF SECTION 240.75 OF THE PENAL LAW, OTHER
27 THAN AN AGGRAVATED FAMILY OFFENSE, AND THE DEFENDANT ADMITS SUCH PREVI-
28 OUS CONVICTION, THAT IT TOOK PLACE WITHIN THE TIME PERIOD SPECIFIED IN
29 SUBDIVISION ONE OF SECTION 240.75 OF THE PENAL LAW, OR THAT THE DEFEND-
30 ANT AND THE PERSON AGAINST WHOM THE OFFENSE WAS COMMITTED WERE MEMBERS
31 OF THE SAME FAMILY OR HOUSEHOLD AS DEFINED IN SUBDIVISION ONE OF SECTION
32 530.11 OF THIS CHAPTER, SUCH ADMITTED ALLEGATION OR ALLEGATIONS SHALL BE
33 DEEMED ESTABLISHED FOR THE PURPOSES OF THE PRESENT PROSECUTION, INCLUD-
34 ING SENTENCING PURSUANT TO SECTION 70.00 OF THE PENAL LAW. THE COURT
35 MUST SUBMIT THE CASE TO THE JURY AS IF THE ADMITTED ALLEGATION OR ALLE-
36 GATIONS WERE NOT ELEMENTS OF THE OFFENSE.

37 (II) IF THE DEFENDANT DENIES THE PREVIOUS CONVICTION OR REMAINS MUTE
38 WITH RESPECT TO IT, THE PEOPLE MAY PROVE, BEYOND A REASONABLE DOUBT,
39 THAT ELEMENT OF THE OFFENSE BEFORE THE JURY AS A PART OF THEIR CASE.

40 (III) IF THE DEFENDANT DENIES THAT THE PREVIOUS CONVICTION TOOK PLACE
41 WITHIN THE TIME PERIOD SPECIFIED IN SUBDIVISION ONE OF SECTION 240.75 OF
42 THE PENAL LAW, OR REMAINS MUTE WITH RESPECT TO THAT MATTER, THE PEOPLE
43 MAY PROVE, BEYOND A REASONABLE DOUBT, BEFORE THE JURY AS PART OF THEIR
44 CASE, THAT THE PREVIOUS CONVICTION TOOK PLACE WITHIN THE TIME PERIOD
45 SPECIFIED.

46 (IV) IF THE DEFENDANT DENIES THAT THE DEFENDANT AND THE PERSON AGAINST
47 WHOM THE PREVIOUS OFFENSE WAS COMMITTED WERE MEMBERS OF THE SAME FAMILY
48 OR HOUSEHOLD AS DEFINED IN SUBDIVISION ONE OF SECTION 530.11 OF THIS
49 CHAPTER, OR REMAINS MUTE WITH RESPECT TO THAT MATTER, THE PEOPLE MAY
50 PROVE, BEYOND A REASONABLE DOUBT, THAT ELEMENT OF THE OFFENSE BEFORE THE
51 JURY AS A PART OF THEIR CASE.

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