

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

7178

2013-2014 Regular Sessions

I N A S S E M B L Y

May 6, 2013

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

AN ACT to amend the penal law, in relation to enhancing punishment for crimes involving domestic violence; and to amend the criminal procedure law, in relation to the consideration of certain factors when determining the issuance of an order of recognizance or bail

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

1 Section 1. Subdivision 5 of section 240.30 of the penal law, as
2 amended by chapter 510 of the laws of 2008 and as renumbered by section
3 4 of part D of chapter 491 of the laws of 2012, is amended to read as
4 follows:
5 5. Commits the crime of harassment in the first degree OR SECOND
6 DEGREE and has previously been convicted of the crime of harassment in
7 the first degree OR SECOND DEGREE as defined by section 240.25 OR 240.26
8 of this article within the preceding ten years.
9 S 2. The section heading, opening paragraph and closing paragraph of
10 section 240.31 of the penal law, as amended by chapter 49 of the laws of
11 2006, are amended to read as follows:
12 [Aggravated] BIAS RELATED AGGRAVATED harassment [in the first degree].
13 A person is guilty of BIAS RELATED aggravated harassment [in the first
14 degree] when with intent to harass, annoy, threaten or alarm another
15 person, because of a belief or perception regarding such person's race,
16 color, national origin, ancestry, gender, religion, religious practice,
17 age, disability or sexual orientation, regardless of whether the belief
18 or perception is correct, he or she:
19 [Aggravated] BIAS RELATED AGGRAVATED harassment [in the first degree]
20 is a class E felony.
21 S 3. The penal law is amended by adding a new section 240.29 to read
22 as follows:
23 S 240.29 AGGRAVATED HARASSMENT IN THE FIRST DEGREE.

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

LBD09634-01-3

1 A PERSON IS GUILTY OF A AGGRAVATED HARASSMENT IN THE FIRST DEGREE WHEN
2 WITH INTENT TO HARASS, ANNOY, THREATEN, OR ALARM ANOTHER PERSON, HE OR
3 SHE COMMITS THE CRIME OF AGGRAVATED HARASSMENT IN THE SECOND DEGREE IN
4 THE MANNER PROSCRIBED BY THE PROVISIONS OF SUBDIVISION ONE, TWO OR FIVE
5 OF SECTION 240.30 OF THIS ARTICLE AND HAS PREVIOUSLY BEEN CONVICTED OF
6 THE CRIME OF AGGRAVATED HARASSMENT IN THE SECOND DEGREE FOR THE COMMIS-
7 SION OF CONDUCT PROSCRIBED BY THE PROVISIONS OF SUBDIVISION ONE, TWO OR
8 FIVE OF SECTION 240.30 OF THIS ARTICLE WITHIN THE PRECEDING TEN YEARS
9 AND SUCH PERSON IS A MEMBER OF THE SAME FAMILY OR HOUSEHOLD AS THE
10 PERSON UPON WHOM THE PRESENT OFFENSE IS COMMITTED. FOR THE PURPOSES OF
11 THIS SUBDIVISION "MEMBERS OF THE SAME FAMILY OR HOUSEHOLD" SHALL HAVE
12 THE SAME MEANING AS IS DEFINED IN SECTION 530.11 OF THE CRIMINAL PROCE-
13 DURE LAW.

14 AGGRAVATED HARASSMENT IN THE FIRST DEGREE IS A CLASS E FELONY.

15 S 4. Section 120.05 of the penal law is amended by adding a new subdi-
16 vision 13 to read as follows:

17 13. SUCH PERSON COMMITS THE CRIME OF ASSAULT IN THE THIRD DEGREE AS
18 DEFINED IN SECTION 120.00 AGAINST ANOTHER PERSON AND SUCH PERSON HAS
19 BEEN PREVIOUSLY CONVICTED OF ANY OFFENSE DEFINED BY ANY OF THE FOLLOWING
20 PROVISIONS OF THIS CHAPTER: SECTION 120.00 (ASSAULT IN THE THIRD
21 DEGREE); SECTION 120.05 (ASSAULT IN THE SECOND DEGREE); SECTION 120.10
22 (ASSAULT IN THE FIRST DEGREE); SECTION 120.12 (AGGRAVATED ASSAULT UPON A
23 PERSON LESS THAN ELEVEN YEARS OLD); SECTION 120.13 (MENACING IN THE
24 FIRST DEGREE); SECTION 120.14 (MENACING IN THE SECOND DEGREE); SECTION
25 120.15 (MENACING IN THE THIRD DEGREE); SECTION 120.20 (RECKLESS ENDAN-
26 GERMENT IN THE SECOND DEGREE); SECTION 120.25 (RECKLESS ENDANGERMENT IN
27 THE FIRST DEGREE); SECTION 121.12 (STRANGULATION IN THE SECOND DEGREE);
28 SECTION 121.13 (STRANGULATION IN THE FIRST DEGREE); SUBDIVISION ONE OF
29 SECTION 125.15 (MANSLAUGHTER IN THE SECOND DEGREE); SUBDIVISION ONE, TWO
30 OR FOUR OF SECTION 125.20 (MANSLAUGHTER IN THE FIRST DEGREE); SECTION
31 125.25 (MURDER IN THE SECOND DEGREE); SECTION 120.45 (STALKING IN THE
32 FOURTH DEGREE); SECTION 120.50 (STALKING IN THE THIRD DEGREE); SECTION
33 120.55 (STALKING IN THE SECOND DEGREE); SECTION 120.60 (STALKING IN THE
34 FIRST DEGREE); SUBDIVISION ONE OF SECTION 130.35 (RAPE IN THE FIRST
35 DEGREE); SUBDIVISION ONE OF SECTION 130.50 (CRIMINAL SEXUAL ACT IN THE
36 FIRST DEGREE); SUBDIVISION ONE OF SECTION 130.65 (SEXUAL ABUSE IN THE
37 FIRST DEGREE); PARAGRAPH (A) OF SUBDIVISION ONE OF SECTION 130.67
38 (AGGRAVATED SEXUAL ABUSE IN THE SECOND DEGREE); PARAGRAPH (A) OF SUBDI-
39 VISION ONE OF SECTION 130.70 (AGGRAVATED SEXUAL ABUSE IN THE FIRST
40 DEGREE); SECTION 135.05 (UNLAWFUL IMPRISONMENT IN THE SECOND DEGREE);
41 SECTION 135.10 (UNLAWFUL IMPRISONMENT IN THE FIRST DEGREE); SECTION
42 135.20 (KIDNAPPING IN THE SECOND DEGREE); SECTION 135.25 (KIDNAPPING IN
43 THE FIRST DEGREE); SECTION 135.60 (COERCION IN THE SECOND DEGREE);
44 SECTION 135.65 (COERCION IN THE FIRST DEGREE); SECTION 140.10 (CRIMINAL
45 TRESPASS IN THE THIRD DEGREE); SECTION 140.15 (CRIMINAL TRESPASS IN THE
46 SECOND DEGREE); SECTION 140.17 (CRIMINAL TRESPASS IN THE FIRST DEGREE);
47 SECTION 140.20 (BURGLARY IN THE THIRD DEGREE); SECTION 140.25 (BURGLARY
48 IN THE SECOND DEGREE); SECTION 140.30 (BURGLARY IN THE FIRST DEGREE);
49 SECTION 145.00 (CRIMINAL MISCHIEF IN THE FOURTH DEGREE); SECTION 145.05
50 (CRIMINAL MISCHIEF IN THE THIRD DEGREE); SECTION 145.10 (CRIMINAL
51 MISCHIEF IN THE SECOND DEGREE); SECTION 145.12 (CRIMINAL MISCHIEF IN THE
52 FIRST DEGREE); SECTION 150.05 (ARSON IN THE FOURTH DEGREE); SECTION
53 150.10 (ARSON IN THE THIRD DEGREE); SECTION 150.15 (ARSON IN THE SECOND
54 DEGREE); SECTION 150.20 (ARSON IN THE FIRST DEGREE); SECTION 155.25
55 (PETIT LARCENY); SECTION 155.30 (GRAND LARCENY IN THE FOURTH DEGREE);
56 SECTION 155.35 (GRAND LARCENY IN THE THIRD DEGREE); SECTION 155.40

1 (GRAND LARCENY IN THE SECOND DEGREE); SECTION 155.42 (GRAND LARCENY IN
2 THE FIRST DEGREE); SECTION 160.05 (ROBBERY IN THE THIRD DEGREE); SECTION
3 160.10 (ROBBERY IN THE SECOND DEGREE); SECTION 160.15 (ROBBERY IN THE
4 FIRST DEGREE); SECTION 240.25 (HARASSMENT IN THE FIRST DEGREE); SUBDIVI-
5 SION ONE, TWO OR FIVE OF SECTION 240.30 (AGGRAVATED HARASSMENT IN THE
6 SECOND DEGREE); OR ANY ATTEMPT OR CONSPIRACY TO COMMIT ANY OF THE FORE-
7 GOING OFFENSES, WITHIN THE PRECEDING TEN YEARS AND SUCH PERSON IS A
8 MEMBER OF THE SAME FAMILY OR HOUSEHOLD AS THE PERSON UPON WHOM THE PRES-
9 ENT OFFENSE IS COMMITTED. FOR THE PURPOSES OF THIS SUBDIVISION "MEMBERS
10 OF THE SAME FAMILY OR HOUSEHOLD" SHALL HAVE THE SAME MEANING AS IS
11 DEFINED IN SECTION 530.11 OF THE CRIMINAL PROCEDURE LAW.

12 S 5. Section 121.12 of the penal law, as added by chapter 405 of the
13 laws of 2010, is amended to read as follows:

14 S 121.12 Strangulation in the second degree.

15 A person is guilty of strangulation in the second degree when he or
16 she: (1) commits the crime of criminal obstruction of breathing or blood
17 circulation, as defined in section 121.11 of this article, and thereby
18 causes stupor, loss of consciousness for any period of time, or any
19 other physical injury or impairment[.]; OR

20 (2) COMMITS THE CRIME OF CRIMINAL OBSTRUCTION OF BREATHING OR BLOOD
21 CIRCULATION AS DEFINED IN SECTION 121.11 OF THIS ARTICLE AND SUCH PERSON
22 HAS PREVIOUSLY BEEN CONVICTED WITHIN THE PRECEDING TEN YEARS OF CRIMINAL
23 OBSTRUCTION OF BREATHING OR BLOOD CIRCULATION; AND SUCH PERSON IS A
24 MEMBER OF THE SAME FAMILY OR HOUSEHOLD AS THE PERSON UPON WHOM THE PRES-
25 ENT CRIME OF CRIMINAL OBSTRUCTION OF BREATHING OR BLOOD CIRCULATION IS
26 COMMITTED. FOR THE PURPOSES OF THIS SUBDIVISION "MEMBERS OF THE SAME
27 FAMILY OR HOUSEHOLD" SHALL HAVE THE SAME MEANING AS IS DEFINED IN
28 SECTION 530.11 OF THE CRIMINAL PROCEDURE LAW.

29 Strangulation in the second degree is a class D felony.

30 S 6. Section 120.13 of the penal law, as amended by chapter 765 of the
31 laws of 2005, is amended to read as follows:

32 S 120.13 Menacing in the first degree.

33 A person is guilty of menacing in the first degree when he or she
34 commits the crime of menacing in the second degree and has been previ-
35 ously convicted of the crime of menacing in the second degree or the
36 crime of menacing a police officer or peace officer within the preceding
37 ten years.

38 Menacing in the first degree is a class [E] D felony.

39 S 7. Subdivision (c) of section 215.51 of the penal law, as amended by
40 chapter 349 of the laws of 2006, is amended to read as follows:

41 (c) he or she commits the crime of criminal contempt in the second
42 degree as defined in subdivision three of section 215.50 of this article
43 by violating [that part of] a duly served order of protection, or such
44 order of which the defendant has actual knowledge because he or she was
45 present in court when such order was issued, under sections two hundred
46 forty and two hundred fifty-two of the domestic relations law, articles
47 four, five, six and eight of the family court act and section 530.12 of
48 the criminal procedure law, or an order of protection issued by a court
49 of competent jurisdiction in another state, territorial or tribal juris-
50 diction, [which requires the respondent or defendant to stay away from
51 the person or persons on whose behalf the order was issued,] and where
52 the defendant has been previously convicted of the crime of aggravated
53 criminal contempt or criminal contempt in the first or second degree for
54 violating an order of protection [as described herein] within the
55 preceding [five] TEN years; or

1 S 8. The closing paragraph of section 215.51 of the penal law, as
2 amended by chapter 222 of the laws of 1994, is amended to read as
3 follows:

4 Criminal contempt in the first degree is a class [E] D felony.

5 S 9. Subdivisions 1, 2 and 3 of section 60.35 of the penal law, as
6 amended by section 1 of part E of chapter 56 of the laws of 2004,
7 subparagraphs (i), (ii) and (iii) of paragraph (a) of subdivision 1 as
8 amended by section 1 of part DD of chapter 56 of the laws of 2008 and
9 paragraph (b) of subdivision 1 as amended by chapter 320 of the laws of
10 2006, are amended to read as follows:

11 1. (a) Except as provided in section eighteen hundred nine of the
12 vehicle and traffic law and section 27.12 of the parks, recreation and
13 historic preservation law, whenever proceedings in an administrative
14 tribunal or a court of this state result in a conviction for a felony, a
15 misdemeanor, or a violation, as these terms are defined in section 10.00
16 of this chapter, there shall be levied at sentencing a mandatory
17 surcharge, sex offender registration fee, DNA databank fee [and], a
18 crime victim assistance fee AND A DOMESTIC VIOLENCE VICTIM ASSISTANCE
19 FEE in addition to any sentence required or permitted by law, in accord-
20 ance with the following schedule:

21 (i) a person convicted of a felony shall pay a mandatory surcharge of
22 three hundred dollars and a crime victim assistance fee of twenty-five
23 dollars;

24 (ii) a person convicted of a misdemeanor shall pay a mandatory
25 surcharge of one hundred seventy-five dollars and a crime victim assist-
26 ance fee of twenty-five dollars;

27 (iii) a person convicted of a violation shall pay a mandatory
28 surcharge of ninety-five dollars and a crime victim assistance fee of
29 twenty-five dollars;

30 (iv) a person convicted of a sex offense as defined by subdivision two
31 of section one hundred sixty-eight-a of the correction law or a sexually
32 violent offense as defined by subdivision three of section one hundred
33 sixty-eight-a of the correction law shall, in addition to a mandatory
34 surcharge and crime victim assistance fee, pay a sex offender registra-
35 tion fee of fifty dollars[.];

36 (v) a person convicted of a designated offense as defined by subdivi-
37 sion seven of section nine hundred ninety-five of the executive law
38 shall, in addition to a mandatory surcharge and crime victim assistance
39 fee, pay a DNA databank fee of fifty dollars[.];

40 (VI) A PERSON CONVICTED OF ANY OFFENSE WHERE THE COMPLAINANT OF SUCH
41 OFFENSE IS A MEMBER OF THE SAME FAMILY OR HOUSEHOLD AS THE CONVICTED
42 PERSON SHALL, IN ADDITION TO A MANDATORY SURCHARGE AND CRIME VICTIM
43 ASSISTANCE FEE, PAY ANY OTHER FEE REQUIRED BY THIS ARTICLE, AND PAY A
44 DOMESTIC VIOLENCE VICTIM ASSISTANCE FEE IN THE AMOUNT OF TWO HUNDRED
45 FIFTY DOLLARS. FOR THE PURPOSES OF THIS SUBDIVISION, "MEMBER OF THE SAME
46 FAMILY OR HOUSEHOLD" SHALL HAVE THE SAME MEANING AS DEFINED IN SECTION
47 530.11 OF THE CRIMINAL PROCEDURE LAW.

48 (b) When the felony or misdemeanor conviction in subparagraphs (i),
49 (ii) or (iv) of paragraph (a) of this subdivision results from an
50 offense contained in article one hundred thirty of this chapter, incest
51 in the third, second or first degree as defined in sections 255.25,
52 255.26 and 255.27 of this chapter or an offense contained in article two
53 hundred sixty-three of this chapter, the person convicted shall pay a
54 supplemental sex offender victim fee of one thousand dollars in addition
55 to the mandatory surcharge and any other fee.

1 2. Where a person is convicted of two or more crimes or violations
2 committed through a single act or omission, or through an act or omis-
3 sion which in itself constituted one of the crimes or violations and
4 also was a material element of the other, the court shall impose a
5 mandatory surcharge and a crime victim assistance fee, and where appro-
6 priate a supplemental sex offender victim fee OR DOMESTIC VIOLENCE
7 VICTIM ASSISTANCE FEE, in accordance with the provisions of this section
8 for the crime or violation which carries the highest classification, and
9 no other sentence to pay a mandatory surcharge, crime victim assistance
10 fee [or], supplemental sex offender victim fee OR DOMESTIC VIOLENCE
11 VICTIM ASSISTANCE FEE required by this section shall be imposed. Where a
12 person is convicted of two or more sex offenses or sexually violent
13 offenses, as defined by subdivisions two and three of section one
14 hundred sixty-eight-a of the correction law, committed through a single
15 act or omission, or through an act or omission which in itself consti-
16 tuted one of the offenses and also was a material element of the other,
17 the court shall impose only one sex offender registration fee. Where a
18 person is convicted of two or more designated offenses, as defined by
19 subdivision seven of section nine hundred ninety-five of the executive
20 law, committed through a single act or omission, or through an act or
21 omission which in itself constituted one of the offenses and also was a
22 material element of the other, the court shall impose only one DNA data-
23 bank fee.

24 3. The mandatory surcharge, sex offender registration fee, DNA data-
25 bank fee, crime victim assistance fee, [and] supplemental sex offender
26 victim fee AND DOMESTIC VIOLENCE VICTIM ASSISTANCE FEE provided for in
27 subdivision one of this section shall be paid to the clerk of the court
28 or administrative tribunal that rendered the conviction. Within the
29 first ten days of the month following collection of the mandatory
30 surcharge, crime victim assistance fee, and supplemental sex offender
31 victim fee, the collecting authority shall determine the amount of
32 mandatory surcharge, crime victim assistance fee, [and] supplemental sex
33 offender victim fee AND DOMESTIC VIOLENCE VICTIM ASSISTANCE FEE
34 collected and, if it is an administrative tribunal, or a town or village
35 justice court, it shall then pay such money to the state comptroller who
36 shall deposit such money in the state treasury pursuant to section one
37 hundred twenty-one of the state finance law to the credit of the crimi-
38 nal justice improvement account established by section ninety-seven-bb
39 of the state finance law. Within the first ten days of the month follow-
40 ing collection of the sex offender registration fee and DNA databank
41 fee, the collecting authority shall determine the amount of the sex
42 offender registration fee and DNA databank fee collected and, if it is
43 an administrative tribunal, or a town or village justice court, it shall
44 then pay such money to the state comptroller who shall deposit such
45 money in the state treasury pursuant to section one hundred twenty-one
46 of the state finance law to the credit of the general fund. If such
47 collecting authority is any other court of the unified court system, it
48 shall, within such period, pay such money attributable to the mandatory
49 surcharge or crime victim assistance fee to the state commissioner of
50 taxation and finance to the credit of the criminal justice improvement
51 account established by section ninety-seven-bb of the state finance law.
52 If such collecting authority is any other court of the unified court
53 system, it shall, within such period, pay such money attributable to the
54 sex offender registration fee and the DNA databank fee to the state
55 commissioner of taxation and finance to the credit of the general fund.
56 NOTWITHSTANDING ANY OTHER PROVISION OF THIS SUBDIVISION, ALL MONIES PAID

1 TO THE STATE COMPTROLLER OR TO THE COMMISSIONER OF TAXATION AND FINANCE
2 WHICH ARE ATTRIBUTABLE TO MONIES COLLECTED FOR THE DOMESTIC VIOLENCE
3 VICTIMS ASSISTANCE FEE SHALL BE CREDITED TO THE OFFICE FOR THE
4 PREVENTION OF DOMESTIC VIOLENCE AND SHALL BE USED FOR TRAINING OF LAW
5 ENFORCEMENT PERSONNEL IN ISSUES INVOLVING DOMESTIC VIOLENCE.

6 S 10. Subdivisions 8 and 10 of section 60.35 of the penal law, subdi-
7 vision 8 as amended by section 121 of subpart B of part C of chapter 62
8 of the laws of 2011 and subdivision 10 as amended by section 2 of part Y
9 of chapter 56 of the laws of 2008, are amended to read as follows:

10 8. Subdivision one of section 130.10 of the criminal procedure law
11 notwithstanding, at the time that the mandatory surcharge, sex offender
12 registration fee or DNA databank fee, crime victim assistance fee,
13 DOMESTIC VIOLENCE VICTIM ASSISTANCE FEE or supplemental sex offender
14 victim fee is imposed a town or village court may, and all other courts
15 shall, issue and cause to be served upon the person required to pay the
16 mandatory surcharge, sex offender registration fee or DNA databank fee,
17 crime victim assistance fee, DOMESTIC VIOLENCE VICTIM ASSISTANCE FEE or
18 supplemental sex offender victim fee, a summons directing that such
19 person appear before the court regarding the payment of the mandatory
20 surcharge, sex offender registration fee or DNA databank fee, crime
21 victim assistance fee, DOMESTIC VIOLENCE VICTIM ASSISTANCE FEE or
22 supplemental sex offender victim fee, if after sixty days from the date
23 it was imposed it remains unpaid. The designated date of appearance on
24 the summons shall be set for the first day court is in session falling
25 after the sixtieth day from the imposition of the mandatory surcharge,
26 sex offender registration fee or DNA databank fee, crime victim assist-
27 ance fee, DOMESTIC VIOLENCE VICTIM ASSISTANCE FEE or supplemental sex
28 offender victim fee. The summons shall contain the information required
29 by subdivision two of section 130.10 of the criminal procedure law
30 except that in substitution for the requirement of paragraph (c) of such
31 subdivision the summons shall state that the person served must appear
32 at a date, time and specific location specified in the summons if after
33 sixty days from the date of issuance the mandatory surcharge, sex offen-
34 der registration fee or DNA databank fee, crime victim assistance fee,
35 DOMESTIC VIOLENCE VICTIM ASSISTANCE FEE or supplemental sex offender
36 victim fee remains unpaid. The court shall not issue a summons under
37 this subdivision to a person who is being sentenced to a term of
38 confinement in excess of sixty days in jail or in the department of
39 corrections and community supervision. The mandatory surcharges, sex
40 offender registration fee and DNA databank fees, crime victim assistance
41 fees, DOMESTIC VIOLENCE VICTIM ASSISTANCE FEES and supplemental sex
42 offender victim fees for those persons shall be governed by the
43 provisions of section 60.30 of this article.

44 10. The provisions of this section shall apply to sentences imposed
45 upon a youthful offender finding; provided, however that the court shall
46 not impose the sex offender registration fee, DNA databank fee [or],
47 supplemental sex offender victim fee, OR DOMESTIC VIOLENCE VICTIM
48 ASSISTANCE FEE as defined in subparagraphs (iv) [and], (v) AND (VI) of
49 paragraph (a) and paragraph (b) of subdivision one of this section, for
50 an offense in which the conviction was substituted with a youthful
51 offender finding.

52 S 11. Subdivision 3 and the closing paragraph of section 215.52 of the
53 penal law, subdivision 3 as added and the closing paragraph as amended
54 by chapter 350 of the laws of 2006, are amended to read as follows:

55 3. he or she commits the crime of criminal contempt in the first
56 degree, as defined in paragraph (i), (ii), (iii), (v) or (vi) of subdi-

vision (b) or subdivision (c) of section 215.51 of this article, and has been previously convicted of the crime of criminal contempt in the first degree, as defined in such subdivision (b), (c) or (d) of section 215.51 of this article, within the preceding [five] TEN years.

Aggravated criminal contempt is a class [D] C felony.

S 12. Paragraphs (b) and (c) of subdivision 1 of section 70.02 of the penal law, paragraph (b) as amended by chapter 148 of the laws of 2011, paragraph (c) as amended by chapter 405 of the laws of 2010, are amended to read as follows:

(b) Class C violent felony offenses: an attempt to commit any of the class B felonies set forth in paragraph (a) of this subdivision; aggravated criminally negligent homicide as defined in section 125.11, aggravated manslaughter in the second degree as defined in section 125.21, aggravated sexual abuse in the second degree as defined in section 130.67, assault on a peace officer, police officer, fireman or emergency medical services professional as defined in section 120.08, assault on a judge as defined in section 120.09, gang assault in the second degree as defined in section 120.06, strangulation in the first degree as defined in section 121.13, burglary in the second degree as defined in section 140.25, robbery in the second degree as defined in section 160.10, AGGRAVATED CRIMINAL CONTEMPT AS DEFINED IN SECTION 215.52, criminal possession of a weapon in the second degree as defined in section 265.03, criminal use of a firearm in the second degree as defined in section 265.08, criminal sale of a firearm in the second degree as defined in section 265.12, criminal sale of a firearm with the aid of a minor as defined in section 265.14, soliciting or providing support for an act of terrorism in the first degree as defined in section 490.15, hindering prosecution of terrorism in the second degree as defined in section 490.30, and criminal possession of a chemical weapon or biological weapon in the third degree as defined in section 490.37.

(c) Class D violent felony offenses: an attempt to commit any of the class C felonies set forth in paragraph (b); reckless assault of a child as defined in section 120.02, assault in the second degree as defined in section 120.05, menacing a police officer or peace officer as defined in section 120.18, stalking in the first degree, as defined in subdivision one of section 120.60, strangulation in the second degree as defined in section 121.12, rape in the second degree as defined in section 130.30, criminal sexual act in the second degree as defined in section 130.45, sexual abuse in the first degree as defined in section 130.65, course of sexual conduct against a child in the second degree as defined in section 130.80, aggravated sexual abuse in the third degree as defined in section 130.66, facilitating a sex offense with a controlled substance as defined in section 130.90, CRIMINAL CONTEMPT IN THE FIRST DEGREE AS DEFINED IN SUBDIVISION (B), (C) OR (D) OF SECTION 215.51, criminal possession of a weapon in the third degree as defined in subdivision five, six, seven or eight of section 265.02, criminal sale of a firearm in the third degree as defined in section 265.11, intimidating a victim or witness in the second degree as defined in section 215.16, soliciting or providing support for an act of terrorism in the second degree as defined in section 490.10, and making a terroristic threat as defined in section 490.20, falsely reporting an incident in the first degree as defined in section 240.60, placing a false bomb or hazardous substance in the first degree as defined in section 240.62, placing a false bomb or hazardous substance in a sports stadium or arena, mass transportation facility or enclosed shopping mall as defined in section

240.63, and aggravated unpermitted use of indoor pyrotechnics in the first degree as defined in section 405.18.

S 13. Paragraphs (b) and (c) of subdivision 1 of section 70.02 of the penal law, as amended by chapter 1 of the laws of 2013, are amended to read as follows:

(b) Class C violent felony offenses: an attempt to commit any of the class B felonies set forth in paragraph (a) of this subdivision; aggravated criminally negligent homicide as defined in section 125.11, aggravated manslaughter in the second degree as defined in section 125.21, aggravated sexual abuse in the second degree as defined in section 130.67, assault on a peace officer, police officer, fireman or emergency medical services professional as defined in section 120.08, assault on a judge as defined in section 120.09, gang assault in the second degree as defined in section 120.06, strangulation in the first degree as defined in section 121.13, burglary in the second degree as defined in section 140.25, robbery in the second degree as defined in section 160.10, AGGRAVATED CRIMINAL CONTEMPT AS DEFINED IN SECTION 215.52, criminal possession of a weapon in the second degree as defined in section 265.03, criminal use of a firearm in the second degree as defined in section 265.08, criminal sale of a firearm in the second degree as defined in section 265.12, criminal sale of a firearm with the aid of a minor as defined in section 265.14, aggravated criminal possession of a weapon as defined in section 265.19, soliciting or providing support for an act of terrorism in the first degree as defined in section 490.15, hindering prosecution of terrorism in the second degree as defined in section 490.30, and criminal possession of a chemical weapon or biological weapon in the third degree as defined in section 490.37.

(c) Class D violent felony offenses: an attempt to commit any of the class C felonies set forth in paragraph (b); reckless assault of a child as defined in section 120.02, assault in the second degree as defined in section 120.05, menacing a police officer or peace officer as defined in section 120.18, stalking in the first degree, as defined in subdivision one of section 120.60, strangulation in the second degree as defined in section 121.12, rape in the second degree as defined in section 130.30, criminal sexual act in the second degree as defined in section 130.45, sexual abuse in the first degree as defined in section 130.65, course of sexual conduct against a child in the second degree as defined in section 130.80, aggravated sexual abuse in the third degree as defined in section 130.66, facilitating a sex offense with a controlled substance as defined in section 130.90, CRIMINAL CONTEMPT IN THE FIRST DEGREE AS DEFINED IN SUBDIVISION (B), (C) OR (D) OF SECTION 215.51, criminal possession of a weapon in the third degree as defined in subdivision five, six, seven, eight, nine or ten of section 265.02, criminal sale of a firearm in the third degree as defined in section 265.11, intimidating a victim or witness in the second degree as defined in section 215.16, soliciting or providing support for an act of terrorism in the second degree as defined in section 490.10, and making a terrorist threat as defined in section 490.20, falsely reporting an incident in the first degree as defined in section 240.60, placing a false bomb or hazardous substance in the first degree as defined in section 240.62, placing a false bomb or hazardous substance in a sports stadium or arena, mass transportation facility or enclosed shopping mall as defined in section 240.63, and aggravated unpermitted use of indoor pyrotechnics in the first degree as defined in section 405.18.

1 S 14. Paragraph (b) of subdivision 2 of section 510.30 of the criminal
2 procedure law is relettered paragraph (c) and a new paragraph (b) is
3 added to read as follows:

4 (B) WHERE THE PRINCIPAL IS CHARGED WITH A CRIME OR CRIMES AGAINST A
5 MEMBER OR MEMBERS OF THE SAME FAMILY OR HOUSEHOLD AS THAT TERM IS
6 DEFINED IN SUBDIVISION ONE OF SECTION 530.11 OF THIS TITLE, THE COURT
7 MUST, ON THE BASIS OF AVAILABLE INFORMATION, CONSIDER AND TAKE INTO
8 ACCOUNT THE DANGER OF INTIMIDATION OR INJURY BY THE PRINCIPAL TO A
9 WITNESS IN THE CASE, INCLUDING THE FOLLOWING FACTORS:

10 (I) ANY HISTORY OF PRIOR ACTS OF VIOLENCE OR THREATS OF VIOLENCE
11 AGAINST A WITNESS IN THE PENDING CRIMINAL ACTION; AND

12 (II) ANY ORDER OF PROTECTION ISSUED BY ANY COURT AGAINST THE PRINCIPAL
13 FOR THE PROTECTION OF A MEMBER OR MEMBERS OF THE SAME FAMILY OR HOUSE-
14 HOLD AS THAT TERM IS DEFINED IN SUBDIVISION ONE OF SECTION 530.11 OF
15 THIS TITLE, WHETHER OR NOT SUCH ORDER IS CURRENTLY IN EFFECT; AND

16 (III) ANY PRIOR ARREST OR CONVICTION FOR A CRIME OR VIOLATION AGAINST
17 A MEMBER OR MEMBERS OF THE SAME FAMILY OR HOUSEHOLD AS THAT TERM IS
18 DEFINED IN SUBDIVISION ONE OF SECTION 530.11 OF THIS TITLE; AND

19 (IV) ANY VIOLATION OF AN ORDER OF PROTECTION ISSUED BY ANY COURT
20 AGAINST THE PRINCIPAL FOR THE PROTECTION OF A MEMBER OR MEMBERS OF THE
21 SAME FAMILY OR HOUSEHOLD AS THAT TERM IS DEFINED IN SUBDIVISION ONE OF
22 SECTION 530.11 OF THIS TITLE; AND

23 (V) THE PRINCIPAL'S HISTORY OF USE OR POSSESSION OF A FIREARM.

24 S 15. This act shall take effect on the first of November next
25 succeeding the date on which it shall have become a law; provided,
26 however, that if section 27 of chapter 1 of the laws of 2013 is not in
27 effect on such date then section twelve of this act is in effect only
28 until section 27 of chapter 1 of the laws of 2013 takes effect when upon
29 such date section thirteen of this act shall take effect.