

4155--A

2013-2014 Regular Sessions

I N S E N A T E

March 12, 2013

Introduced by Sen. LANZA -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the penal law, in relation to establishing domestic abuse offenses; to amend the criminal procedure law, in relation to providing for a special information in the indictment of certain felony domestic abuse offenses and procedures for determining whether domestic abuse misdemeanors are crimes of domestic violence for purposes of federal law; and to amend the criminal procedure law and the family court act, in relation to including domestic abuse in the first and second degrees as family offenses

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 three new sections
2 120.75, 120.80 and 120.85 to read as follows:
3 S 120.75 DEFINITIONS; DOMESTIC ABUSE.
4 FOR THE PURPOSES OF SECTIONS 120.80 AND 120.85 OF THIS ARTICLE:
5 1. "DOMESTIC PARTNER" SHALL MEAN A PERSON WHO IS LIVING OR HAS LIVED
6 TOGETHER WITH ANOTHER PERSON FOR AN EXTENDED DURATION IN AN INTIMATE
7 RELATIONSHIP MARKED BY SEXUAL, PHYSICAL OR FINANCIAL INTERDEPENDENCE.
8 2. "FELLOW PARENT OF A CHILD IN COMMON" SHALL MEAN A PERSON WHO HAS A
9 CHILD IN COMMON WITH ANOTHER PERSON REGARDLESS OF WHETHER SUCH PERSONS
10 WERE MARRIED OR HAVE LIVED TOGETHER.
11 3. "FORMER SPOUSE" SHALL MEAN A PERSON FORMERLY MARRIED TO ANOTHER
12 PERSON REGARDLESS OF WHETHER SUCH PERSONS STILL RESIDE IN THE SAME
13 HOUSEHOLD.
14 4. "SPOUSE" SHALL MEAN A PERSON LEGALLY MARRIED TO ANOTHER PERSON.
15 S 120.80 DOMESTIC ABUSE IN THE SECOND DEGREE.

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

LBD00816-02-4

1 A PERSON IS GUILTY OF DOMESTIC ABUSE IN THE SECOND DEGREE WHEN, WITH
2 INTENT TO HARASS, ANNOY OR ALARM HIS OR HER SPOUSE, FORMER SPOUSE,
3 FELLOW PARENT OF A CHILD IN COMMON OR DOMESTIC PARTNER, HE OR SHE CAUSES
4 PHYSICAL INJURY TO SUCH SPOUSE, FORMER SPOUSE, FELLOW PARENT OF A CHILD
5 IN COMMON OR DOMESTIC PARTNER.

6 DOMESTIC ABUSE IN THE SECOND DEGREE IS A CLASS A MISDEMEANOR.

7 S 120.85 DOMESTIC ABUSE IN THE FIRST DEGREE.

8 A PERSON IS GUILTY OF DOMESTIC ABUSE IN THE FIRST DEGREE WHEN:

9 1. WITH INTENT TO CAUSE PHYSICAL INJURY TO HIS OR HER SPOUSE, FORMER
10 SPOUSE, FELLOW PARENT OF A CHILD IN COMMON OR DOMESTIC PARTNER, HE OR
11 SHE CAUSES SUCH INJURY TO SUCH SPOUSE, FORMER SPOUSE, FELLOW PARENT OF A
12 CHILD IN COMMON OR DOMESTIC PARTNER, OR TO A THIRD PERSON; OR

13 2. HE OR SHE RECKLESSLY CAUSES PHYSICAL INJURY TO HIS OR HER SPOUSE,
14 FORMER SPOUSE, FELLOW PARENT OF A CHILD IN COMMON OR DOMESTIC PARTNER;
15 OR

16 3. WITH CRIMINAL NEGLIGENCE, HE OR SHE CAUSES PHYSICAL INJURY TO HIS
17 OR HER SPOUSE, FORMER SPOUSE, FELLOW PARENT OF A CHILD IN COMMON OR
18 DOMESTIC PARTNER BY MEANS OF A DEADLY WEAPON OR DANGEROUS INSTRUMENT; OR

19 4. HE OR SHE COMMITS A CRIME AGAINST HIS OR HER SPOUSE, FORMER SPOUSE,
20 FELLOW PARENT OF A CHILD IN COMMON OR DOMESTIC PARTNER, AND HE OR SHE
21 HAS PREVIOUSLY BEEN CONVICTED OF A CRIME AGAINST HIS OR HER SPOUSE,
22 FORMER SPOUSE, FELLOW PARENT OF A CHILD IN COMMON OR DOMESTIC PARTNER
23 WITHIN THE PRECEDING FIVE YEARS. THE PERSON AGAINST WHOM A CRIME HAS
24 BEEN COMMITTED FOR PURPOSES OF CULPABILITY UNDER THIS SUBDIVISION MAY BE
25 A DIFFERENT PERSON THAN WHOM THE PREDICATE CRIME WAS COMMITTED AGAINST
26 DURING THE PRECEDING FIVE YEARS. FOR PURPOSES OF THIS SUBDIVISION, ANY
27 PERIOD OF TIME DURING WHICH THE DEFENDANT WAS INCARCERATED FOR ANY
28 REASON BETWEEN THE COMMISSION OF ANY PREVIOUS CRIMES AND THE COMMISSION
29 OF THE CRIME IN VIOLATION OF THIS SUBDIVISION SHALL BE EXCLUDED AND SUCH
30 FIVE YEAR PERIOD SHALL BE EXTENDED BY THE PERIOD OR PERIOD OF TIME
31 DURING WHICH THE DEFENDANT WAS INCARCERATED.

32 DOMESTIC ABUSE IN THE FIRST DEGREE IS A CLASS E FELONY.

33 S 2. The criminal procedure law is amended by adding a new section
34 200.64 to read as follows:

35 S 200.64 INDICTMENT; SPECIAL INFORMATION FOR DOMESTIC ABUSE OFFENDER.

36 1. WHENEVER A PERSON IS CHARGED WITH THE COMMISSION OR ATTEMPTED
37 COMMISSION OF DOMESTIC ABUSE IN THE FIRST DEGREE AS DEFINED IN SUBDIVI-
38 SION FOUR OF SECTION 120.85 OF THE PENAL LAW, AN INDICTMENT OR INFORMA-
39 TION FOR SUCH OFFENSE SHALL BE ACCOMPANIED BY A SPECIAL INFORMATION,
40 FILED BY THE DISTRICT ATTORNEY WITH THE COURT, ALLEGING THAT THE DEFEND-
41 ANT WAS PREVIOUSLY CONVICTED OF A CRIME, THAT AT THE TIME OF THE PREVI-
42 OUS CRIME OR AT AN EARLIER TIME THE DEFENDANT WAS THE SPOUSE, FORMER
43 SPOUSE, FELLOW PARENT OF A CHILD IN COMMON OR DOMESTIC PARTNER, AS
44 DEFINED IN SECTION 120.75 OF THE PENAL LAW OF THE VICTIM OF SUCH CRIME,
45 AND THAT SUCH PREVIOUS CONVICTION TOOK PLACE WITHIN THE TIME PERIOD
46 SPECIFIED IN SUBDIVISION FOUR OF SECTION 120.85 OF THE PENAL LAW.
47 EXCEPT AS PROVIDED IN THIS SECTION, THE PEOPLE MAY NOT REFER TO SUCH
48 SPECIAL INFORMATION DURING TRIAL NOR ADDUCE ANY EVIDENCE CONCERNING THE
49 ALLEGATIONS THEREIN.

50 2. AT ANY TIME BEFORE THE CLOSE OF THE PEOPLE'S CASE, THE COURT, IN
51 THE ABSENCE OF THE JURY, MUST ARRAIGN THE DEFENDANT UPON SUCH INFORMA-
52 TION AND ADVISE HIM OR HER THAT HE OR SHE MAY ADMIT EACH SUCH ALLEGA-
53 TION, DENY ANY SUCH ALLEGATION OR REMAIN MUTE WITH RESPECT TO ANY SUCH
54 ALLEGATION. DEPENDING UPON THE DEFENDANT'S RESPONSE, THE TRIAL OF THE
55 INDICTMENT OR INFORMATION MUST THEN PROCEED AS FOLLOWS:

1 (A) (I) IF THE PREVIOUS CONVICTION IS OF DOMESTIC ABUSE IN THE SECOND
2 DEGREE AS DEFINED BY SECTION 120.80 OF THE PENAL LAW, AND THE DEFENDANT
3 ADMITS THE PREVIOUS CONVICTION OR THAT IT TOOK PLACE WITHIN THE TIME
4 PERIOD SPECIFIED IN SUBDIVISION FOUR OF SECTION 120.85 OF THE PENAL LAW,
5 THE ADMITTED ALLEGATION OR ALLEGATIONS SHALL BE DEEMED ESTABLISHED FOR
6 ALL SUBSEQUENT PURPOSES, INCLUDING SENTENCING PURSUANT TO SECTION 70.00
7 OF THE PENAL LAW. THE COURT MUST SUBMIT THE CASE TO THE JURY AS IF THE
8 ADMITTED ALLEGATION OR ALLEGATIONS WERE NOT ELEMENTS OF THE OFFENSE. THE
9 COURT MAY NOT SUBMIT TO THE JURY ANY LESSER INCLUDED OFFENSE WHICH IS
10 DISTINGUISHED FROM THE OFFENSE CHARGED SOLELY BY THE FACT THAT THE
11 PREVIOUS CONVICTION IS NOT AN ELEMENT THEREOF.

12 (II) IF THE DEFENDANT DENIES THE PREVIOUS CONVICTION OR REMAINS MUTE
13 WITH RESPECT TO IT, THE PEOPLE MAY PROVE THAT ELEMENT OF THE OFFENSE
14 BEFORE THE JURY AS A PART OF THEIR CASE.

15 (III) IF THE DEFENDANT DENIES THAT THE PREVIOUS CONVICTION TOOK PLACE
16 WITHIN THE TIME PERIOD SPECIFIED IN SUBDIVISION FOUR OF SECTION 120.85
17 OF THE PENAL LAW, OR REMAINS MUTE WITH RESPECT TO THAT MATTER, THE
18 PEOPLE MAY PROVE, BEYOND A REASONABLE DOUBT, BEFORE THE JURY AS PART OF
19 THEIR CASE, THAT THE PREVIOUS CONVICTION TOOK PLACE WITHIN THE TIME
20 PERIOD SPECIFIED.

21 (B) (I) IF THE PREVIOUS CONVICTION IS FOR A CRIME OTHER THAN DOMESTIC
22 ABUSE IN THE SECOND DEGREE AS DEFINED BY SECTION 120.80 OF THE PENAL
23 LAW, AND THE DEFENDANT ADMITS THE PREVIOUS CONVICTION, THAT IT TOOK
24 PLACE WITHIN THE TIME PERIOD SPECIFIED IN SUBDIVISION FOUR OF SECTION
25 120.85 OF THE PENAL LAW, OR THAT THE DEFENDANT WAS THE SPOUSE, FORMER
26 SPOUSE, FELLOW PARENT OF A CHILD IN COMMON OR DOMESTIC PARTNER AS
27 DEFINED IN SECTION 120.75 OF THE PENAL LAW OF THE VICTIM OF SUCH CRIME,
28 THE ADMITTED ALLEGATION OR ALLEGATIONS SHALL BE DEEMED ESTABLISHED FOR
29 ALL SUBSEQUENT PURPOSES, INCLUDING SENTENCING PURSUANT TO SECTION 70.00
30 OF THE PENAL LAW. THE COURT MUST SUBMIT THE CASE TO THE JURY AS IF THE
31 ADMITTED ALLEGATION OR ALLEGATIONS WERE NOT ELEMENTS OF THE OFFENSE. THE
32 COURT MAY NOT SUBMIT TO THE JURY ANY LESSER INCLUDED OFFENSE WHICH IS
33 DISTINGUISHED FROM THE OFFENSE CHARGED SOLELY BY THE FACT THAT THE
34 PREVIOUS CONVICTION IS NOT AN ELEMENT THEREOF.

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

38 (III) IF THE DEFENDANT DENIES THAT THE PREVIOUS CONVICTION TOOK PLACE
39 WITHIN THE TIME PERIOD SPECIFIED IN SUBDIVISION FOUR OF SECTION 120.85
40 OF THE PENAL LAW, OR REMAINS MUTE WITH RESPECT TO THAT MATTER, THE
41 PEOPLE MAY PROVE, BEYOND A REASONABLE DOUBT, BEFORE THE JURY AS PART OF
42 THEIR CASE, THAT THE PREVIOUS CONVICTION TOOK PLACE WITHIN THE TIME
43 PERIOD SPECIFIED.

44 (IV) IF THE DEFENDANT DENIES THAT THE DEFENDANT WAS THE SPOUSE, FORMER
45 SPOUSE, FELLOW PARENT OF A CHILD IN COMMON OR DOMESTIC PARTNER AS
46 DEFINED IN SECTION 120.75 OF THE PENAL LAW OF THE VICTIM OF SUCH PREVI-
47 OUS CRIME, OR REMAINS MUTE WITH RESPECT TO THAT MATTER, THE PEOPLE MAY
48 PROVE THAT ELEMENT OF THE OFFENSE BEFORE THE JURY AS A PART OF THEIR
49 CASE.

50 3. NOTWITHSTANDING SUBDIVISION ONE, AND SUBPARAGRAPH (I) OF PARAGRAPH
51 (A) AND SUBPARAGRAPH (I) OF PARAGRAPH (B) OF SUBDIVISION TWO OF THIS
52 SECTION, IF EVIDENCE REGARDING THE PRIOR CONVICTION, OR THAT THE DEFEND-
53 ANT WAS THE SPOUSE, FORMER SPOUSE, FELLOW PARENT OF A CHILD IN COMMON OR
54 DOMESTIC PARTNER AS DEFINED IN SECTION 120.75 OF THE PENAL LAW OF THE
55 VICTIM OF SUCH PREVIOUS CRIME, IS RELEVANT TO HELP PROVE THE CRIME OR

1 CRIMES CHARGED IN THE INDICTMENT OR INFORMATION, SUCH EVIDENCE SHALL BE
2 ADMISSIBLE.

3 4. A DETERMINATION PURSUANT TO THIS SECTION THAT THE DEFENDANT HAS A
4 PREVIOUS CONVICTION, THAT AT THE TIME OF THE PRIOR OFFENSE THE DEFENDANT
5 WAS THE SPOUSE, FORMER SPOUSE, FELLOW PARENT OF A CHILD IN COMMON OR
6 DOMESTIC PARTNER AS DEFINED IN SECTION 120.75 OF THE PENAL LAW OF THE
7 VICTIM OF SUCH PREVIOUS CRIME, OR THAT THE PREVIOUS CONVICTION TOOK
8 PLACE WITHIN THE TIME PERIOD SPECIFIED IN SUBDIVISION FOUR OF SECTION
9 120.85 OF THE PENAL LAW, SHALL BE BINDING IN ANY FUTURE PROCEEDING IN
10 WHICH THE ISSUE MAY ARISE UNLESS THE CONVICTION FOR THE DOMESTIC ABUSE
11 OFFENSE CHARGED IN THE INDICTMENT OR INFORMATION IS VACATED OR REVERSED.

12 S 3. Subdivision 1 of section 370.15 of the criminal procedure law, as
13 added by chapter 258 of the laws of 2011, is amended to read as follows:

14 1. When a defendant has been charged with assault or attempted assault
15 in the third degree as defined in sections 120.00 and 110.00 of the
16 penal law, menacing or attempted menacing in the second degree as
17 defined in sections 120.14 and 110.00 of the penal law, DOMESTIC ABUSE
18 OR ATTEMPTED DOMESTIC ABUSE IN THE SECOND DEGREE AS DEFINED IN SECTIONS
19 120.80 AND 110.00 OF THE PENAL LAW, criminal obstruction of breathing or
20 blood circulation or attempted criminal obstruction of breathing or
21 blood circulation as defined in sections 121.11 and 110.00 of the penal
22 law, or forcible touching or attempted forcible touching as defined in
23 sections 130.52 and 110.00 of the penal law, the people may, at arraign-
24 ment or no later than forty-five days after arraignment, for the purpose
25 of notification to the division of criminal justice services pursuant to
26 section 380.97 of this part, serve on the defendant and file with the
27 court a notice alleging that the defendant is related or situated to the
28 victim of the crime in the manner specified in 18 U.S.C.
29 921(a)(33)(A)(ii).

30 S 4. Section 380.97 of the criminal procedure law, as added by chapter
31 258 of the laws of 2011, is amended to read as follows:

32 S 380.97 Notification to division of criminal justice services of deter-
33 minations in certain misdemeanor cases.

34 Upon judgment of conviction of assault or attempted assault in the
35 third degree, as defined in sections 120.00 and 110.00 of the penal law,
36 menacing or attempted menacing in the second degree, as defined in
37 section 120.14 and 110.00 of the penal law, DOMESTIC ABUSE OR ATTEMPTED
38 DOMESTIC ABUSE IN THE SECOND DEGREE AS DEFINED IN SECTIONS 120.80 AND
39 110.00 OF THE PENAL LAW, criminal obstruction of breathing or blood
40 circulation or attempted criminal obstruction of breathing or blood
41 circulation, as defined in sections 121.11 and 110.00 of the penal law,
42 forcible touching or attempted forcible touching, as defined in sections
43 130.52 and 110.00 of the penal law, when the defendant has been deter-
44 mined, pursuant to section 370.15 of this part, to be related or situ-
45 ated to the victim of the offense in the manner specified in 18 U.S.C.
46 921(a)(33)(A)(ii), the clerk of the court shall include notification and
47 a copy of the written determination in a report of such conviction to
48 the division of criminal justice services to enable the division to
49 report such determination to the federal bureau of investigation and
50 assist the bureau in identifying persons prohibited from purchasing and
51 possessing a firearm pursuant to the provisions of 18 U.S.C. 922.

52 S 5. The opening paragraph of subdivision 1 of section 530.11 of the
53 criminal procedure law, as amended by chapter 526 of the laws of 2013,
54 is amended to read as follows:

55 The family court and the criminal courts shall have concurrent juris-
56 diction over any proceeding concerning acts which would constitute

1 disorderly conduct, harassment in the first degree, harassment in the
2 second degree, aggravated harassment in the second degree, DOMESTIC
3 ABUSE IN THE FIRST DEGREE, DOMESTIC ABUSE IN THE SECOND DEGREE, sexual
4 misconduct, forcible touching, sexual abuse in the third degree, sexual
5 abuse in the second degree as set forth in subdivision one of section
6 130.60 of the penal law, stalking in the first degree, stalking in the
7 second degree, stalking in the third degree, stalking in the fourth
8 degree, criminal mischief, menacing in the second degree, menacing in
9 the third degree, reckless endangerment, strangulation in the first
10 degree, strangulation in the second degree, criminal obstruction of
11 breathing or blood circulation, assault in the second degree, assault in
12 the third degree, an attempted assault, identity theft in the first
13 degree, identity theft in the second degree, identity theft in the third
14 degree, grand larceny in the fourth degree, grand larceny in the third
15 degree or coercion in the second degree as set forth in subdivisions
16 one, two and three of section 135.60 of the penal law between spouses or
17 former spouses, or between parent and child or between members of the
18 same family or household except that if the respondent would not be
19 criminally responsible by reason of age pursuant to section 30.00 of the
20 penal law, then the family court shall have exclusive jurisdiction over
21 such proceeding. Notwithstanding a complainant's election to proceed in
22 family court, the criminal court shall not be divested of jurisdiction
23 to hear a family offense proceeding pursuant to this section. For
24 purposes of this section, "disorderly conduct" includes disorderly
25 conduct not in a public place. For purposes of this section, "members of
26 the same family or household" with respect to a proceeding in the criminal
27 courts shall mean the following:

28 S 6. The opening paragraph of subdivision 1 of section 812 of the
29 family court act, as amended by chapter 526 of the laws of 2013, is
30 amended to read as follows:

31 The family court and the criminal courts shall have concurrent juris-
32 diction over any proceeding concerning acts which would constitute
33 disorderly conduct, harassment in the first degree, harassment in the
34 second degree, aggravated harassment in the second degree, DOMESTIC
35 ABUSE IN THE FIRST DEGREE, DOMESTIC ABUSE IN THE SECOND DEGREE, sexual
36 misconduct, forcible touching, sexual abuse in the third degree, sexual
37 abuse in the second degree as set forth in subdivision one of section
38 130.60 of the penal law, stalking in the first degree, stalking in the
39 second degree, stalking in the third degree, stalking in the fourth
40 degree, criminal mischief, menacing in the second degree, menacing in
41 the third degree, reckless endangerment, criminal obstruction of breath-
42 ing or blood circulation, strangulation in the second degree, strangula-
43 tion in the first degree, assault in the second degree, assault in the
44 third degree, an attempted assault, identity theft in the first degree,
45 identity theft in the second degree, identity theft in the third degree,
46 grand larceny in the fourth degree, grand larceny in the third degree or
47 coercion in the second degree as set forth in subdivisions one, two and
48 three of section 135.60 of the penal law between spouses or former
49 spouses, or between parent and child or between members of the same
50 family or household except that if the respondent would not be criminal-
51 ly responsible by reason of age pursuant to section 30.00 of the penal
52 law, then the family court shall have exclusive jurisdiction over such
53 proceeding. Notwithstanding a complainant's election to proceed in fami-
54 ly court, the criminal court shall not be divested of jurisdiction to
55 hear a family offense proceeding pursuant to this section. In any
56 proceeding pursuant to this article, a court shall not deny an order of

1 protection, or dismiss a petition, solely on the basis that the acts or
2 events alleged are not relatively contemporaneous with the date of the
3 petition, the conclusion of the fact-finding or the conclusion of the
4 dispositional hearing. For purposes of this article, "disorderly
5 conduct" includes disorderly conduct not in a public place. For purposes
6 of this article, "members of the same family or household" shall mean
7 the following:

8 S 7. This act shall take effect on the first of November next succeed-
9 ing the date on which it shall have become a law.