

# STATE OF NEW YORK

6170

2017-2018 Regular Sessions

## IN ASSEMBLY

February 27, 2017

Introduced by M. of A. CUSICK, O'DONNELL -- read once and referred to the Committee on Codes

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 § 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 § 120.80 Domestic abuse in the second degree.

16 A person is guilty of domestic abuse in the second degree when, with  
17 intent to harass, annoy or alarm his or her spouse, former spouse,  
18 fellow parent of a child in common or domestic partner, he or she causes

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

LBD02244-01-7

1 physical injury to such spouse, former spouse, fellow parent of a child  
2 in common or domestic partner.

3 Domestic abuse in the second degree is a class A misdemeanor.

4 § 120.85 Domestic abuse in the first degree.

5 A person is guilty of domestic abuse in the first degree when:

6 1. With intent to cause physical injury to his or her spouse, former  
7 spouse, fellow parent of a child in common or domestic partner, he or  
8 she causes such injury to such spouse, former spouse, fellow parent of a  
9 child in common or domestic partner, or to a third person; or

10 2. He or she recklessly causes physical injury to his or her spouse,  
11 former spouse, fellow parent of a child in common or domestic partner;  
12 or

13 3. With criminal negligence, he or she causes physical injury to his  
14 or her spouse, former spouse, fellow parent of a child in common or  
15 domestic partner by means of a deadly weapon or dangerous instrument; or

16 4. He or she commits a crime against his or her spouse, former spouse,  
17 fellow parent of a child in common or domestic partner, and he or she  
18 has previously been convicted of a crime against his or her spouse,  
19 former spouse, fellow parent of a child in common or domestic partner  
20 within the preceding five years. The person against whom a crime has  
21 been committed for purposes of culpability under this subdivision may be  
22 a different person than whom the predicate crime was committed against  
23 during the preceding five years. For purposes of this subdivision, any  
24 period of time during which the defendant was incarcerated for any  
25 reason between the commission of any previous crimes and the commission  
26 of the crime in violation of this subdivision shall be excluded and such  
27 five year period shall be extended by the period or period of time  
28 during which the defendant was incarcerated.

29 Domestic abuse in the first degree is a class E felony.

30 § 2. The criminal procedure law is amended by adding a new section  
31 200.64 to read as follows:

32 § 200.64 Indictment; special information for domestic abuse offender.

33 1. Whenever a person is charged with the commission or attempted  
34 commission of domestic abuse in the first degree as defined in subdivi-  
35 sion four of section 120.85 of the penal law, an indictment or informa-  
36 tion for such offense shall be accompanied by a special information,  
37 filed by the district attorney with the court, alleging that the defend-  
38 ant was previously convicted of a crime, that at the time of the previ-  
39 ous crime or at an earlier time the defendant was the spouse, former  
40 spouse, fellow parent of a child in common or domestic partner, as  
41 defined in section 120.75 of the penal law of the victim of such crime,  
42 and that such previous conviction took place within the time period  
43 specified in subdivision four of section 120.85 of the penal law.  
44 Except as provided in this section, the people may not refer to such  
45 special information during trial nor adduce any evidence concerning the  
46 allegations therein.

47 2. At any time before the close of the people's case, the court, in  
48 the absence of the jury, must arraign the defendant upon such informa-  
49 tion and advise him or her that he or she may admit each such allega-  
50 tion, deny any such allegation or remain mute with respect to any such  
51 allegation. Depending upon the defendant's response, the trial of the  
52 indictment or information must then proceed as follows:

53 (a) (i) If the previous conviction is of domestic abuse in the second  
54 degree as defined by section 120.80 of the penal law, and the defendant  
55 admits the previous conviction or that it took place within the time  
56 period specified in subdivision four of section 120.85 of the penal law,

1 the admitted allegation or allegations shall be deemed established for  
2 all subsequent purposes, including sentencing pursuant to section 70.00  
3 of the penal law. The court must submit the case to the jury as if the  
4 admitted allegation or allegations were not elements of the offense. The  
5 court may not submit to the jury any lesser included offense which is  
6 distinguished from the offense charged solely by the fact that the  
7 previous conviction is not an element thereof.

8 (ii) If the defendant denies the previous conviction or remains mute  
9 with respect to it, the people may prove that element of the offense  
10 before the jury as a part of their case.

11 (iii) If the defendant denies that the previous conviction took place  
12 within the time period specified in subdivision four of section 120.85  
13 of the penal law, or remains mute with respect to that matter, the  
14 people may prove, beyond a reasonable doubt, before the jury as part of  
15 their case, that the previous conviction took place within the time  
16 period specified.

17 (b) (i) If the previous conviction is for a crime other than domestic  
18 abuse in the second degree as defined by section 120.80 of the penal  
19 law, and the defendant admits the previous conviction, that it took  
20 place within the time period specified in subdivision four of section  
21 120.85 of the penal law, or that the defendant was the spouse, former  
22 spouse, fellow parent of a child in common or domestic partner as  
23 defined in section 120.75 of the penal law of the victim of such crime,  
24 the admitted allegation or allegations shall be deemed established for  
25 all subsequent purposes, including sentencing pursuant to section 70.00  
26 of the penal law. The court must submit the case to the jury as if the  
27 admitted allegation or allegations were not elements of the offense. The  
28 court may not submit to the jury any lesser included offense which is  
29 distinguished from the offense charged solely by the fact that the  
30 previous conviction is not an element thereof.

31 (ii) If the defendant denies the previous conviction or remains mute  
32 with respect to it, the people may prove that element of the offense  
33 before the jury as a part of their case.

34 (iii) If the defendant denies that the previous conviction took place  
35 within the time period specified in subdivision four of section 120.85  
36 of the penal law, or remains mute with respect to that matter, the  
37 people may prove, beyond a reasonable doubt, before the jury as part of  
38 their case, that the previous conviction took place within the time  
39 period specified.

40 (iv) If the defendant denies that the defendant was the spouse, former  
41 spouse, fellow parent of a child in common or domestic partner as  
42 defined in section 120.75 of the penal law of the victim of such previ-  
43 ous crime, or remains mute with respect to that matter, the people may  
44 prove that element of the offense before the jury as a part of their  
45 case.

46 3. Notwithstanding subdivision one, and subparagraph (i) of paragraph  
47 (a) and subparagraph (i) of paragraph (b) of subdivision two of this  
48 section, if evidence regarding the prior conviction, or that the defend-  
49 ant was the spouse, former spouse, fellow parent of a child in common or  
50 domestic partner as defined in section 120.75 of the penal law of the  
51 victim of such previous crime, is relevant to help prove the crime or  
52 crimes charged in the indictment or information, such evidence shall be  
53 admissible.

54 4. A determination pursuant to this section that the defendant has a  
55 previous conviction, that at the time of the prior offense the defendant  
56 was the spouse, former spouse, fellow parent of a child in common or

1 domestic partner as defined in section 120.75 of the penal law of the  
2 victim of such previous crime, or that the previous conviction took  
3 place within the time period specified in subdivision four of section  
4 120.85 of the penal law, shall be binding in any future proceeding in  
5 which the issue may arise unless the conviction for the domestic abuse  
6 offense charged in the indictment or information is vacated or reversed.

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

9 1. When a defendant has been charged with assault or attempted assault  
10 in the third degree as defined in sections 120.00 and 110.00 of the  
11 penal law, menacing or attempted menacing in the second degree as  
12 defined in sections 120.14 and 110.00 of the penal law, domestic abuse  
13 or attempted domestic abuse in the second degree as defined in sections  
14 120.80 and 110.00 of the penal law, criminal obstruction of breathing or  
15 blood circulation or attempted criminal obstruction of breathing or  
16 blood circulation as defined in sections 121.11 and 110.00 of the penal  
17 law, or forcible touching or attempted forcible touching as defined in  
18 sections 130.52 and 110.00 of the penal law, the people may, at arraign-  
19 ment or no later than forty-five days after arraignment, for the purpose  
20 of notification to the division of criminal justice services pursuant to  
21 section 380.97 of this part, serve on the defendant and file with the  
22 court a notice alleging that the defendant is related or situated to the  
23 victim of the crime in the manner specified in 18 U.S.C.  
24 921(a)(33)(A)(ii).

25 § 4. Section 380.97 of the criminal procedure law, as added by chapter  
26 258 of the laws of 2011, is amended to read as follows:

27 § 380.97 Notification to division of criminal justice services of deter-  
28 minations in certain misdemeanor cases.

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

47 § 5. The opening paragraph of subdivision 1 of section 530.11 of the  
48 criminal procedure law, as amended by chapter 526 of the laws of 2013,  
49 is amended to read as follows:

50 The family court and the criminal courts shall have concurrent juris-  
51 diction over any proceeding concerning acts which would constitute  
52 disorderly conduct, harassment in the first degree, harassment in the  
53 second degree, aggravated harassment in the second degree, domestic  
54 abuse in the first degree, domestic abuse in the second degree, sexual  
55 misconduct, forcible touching, sexual abuse in the third degree, sexual  
56 abuse in the second degree as set forth in subdivision one of section

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

23 § 6. The opening paragraph of subdivision 1 of section 812 of the  
24 family court act, as amended by chapter 526 of the laws of 2013, is  
25 amended to read as follows:

26 The family court and the criminal courts shall have concurrent juris-  
27 diction over any proceeding concerning acts which would constitute  
28 disorderly conduct, harassment in the first degree, harassment in the  
29 second degree, aggravated harassment in the second degree, domestic  
30 abuse in the first degree, domestic abuse in the second degree, sexual  
31 misconduct, forcible touching, sexual abuse in the third degree, sexual  
32 abuse in the second degree as set forth in subdivision one of section  
33 130.60 of the penal law, stalking in the first degree, stalking in the  
34 second degree, stalking in the third degree, stalking in the fourth  
35 degree, criminal mischief, menacing in the second degree, menacing in  
36 the third degree, reckless endangerment, criminal obstruction of breath-  
37 ing or blood circulation, strangulation in the second degree, strangula-  
38 tion in the first degree, assault in the second degree, assault in the  
39 third degree, an attempted assault, identity theft in the first degree,  
40 identity theft in the second degree, identity theft in the third degree,  
41 grand larceny in the fourth degree, grand larceny in the third degree or  
42 coercion in the second degree as set forth in subdivisions one, two and  
43 three of section 135.60 of the penal law between spouses or former  
44 spouses, or between parent and child or between members of the same  
45 family or household except that if the respondent would not be criminal-  
46 ly responsible by reason of age pursuant to section 30.00 of the penal  
47 law, then the family court shall have exclusive jurisdiction over such  
48 proceeding. Notwithstanding a complainant's election to proceed in fami-  
49 ly court, the criminal court shall not be divested of jurisdiction to  
50 hear a family offense proceeding pursuant to this section. In any  
51 proceeding pursuant to this article, a court shall not deny an order of  
52 protection, or dismiss a petition, solely on the basis that the acts or  
53 events alleged are not relatively contemporaneous with the date of the  
54 petition, the conclusion of the fact-finding or the conclusion of the  
55 dispositional hearing. For purposes of this article, "disorderly  
56 conduct" includes disorderly conduct not in a public place. For purposes

1 of this article, "members of the same family or household" shall mean  
2 the following:  
3 § 7. This act shall take effect on the first of November next succeed-  
4 ing the date on which it shall have become a law.