STATE OF NEW YORK

4810

2017-2018 Regular Sessions

IN SENATE

March 2, 2017

Introduced by Sen. LANZA -- 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 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:

Section 1. The penal law is amended by adding three new sections 120.75, 120.80 and 120.85 to read as follows:

§ 120.75 Definitions; domestic abuse.

For the purposes of sections 120.80 and 120.85 of this article:

1. "Domestic partner" shall mean a person who is living or has lived together with another person for an extended duration in an intimate relationship marked by sexual, physical or financial interdependence.

2. "Fellow parent of a child in common" shall mean a person who has a child in common with another person regardless of whether such persons were married or have lived together.

3. "Former spouse" shall mean a person formerly married to another person regardless of whether such persons still reside in the same household.

4. "Spouse" shall mean a person legally married to another person.

§ 120.80 Domestic abuse in the second degree.

A person is guilty of domestic abuse in the second degree when, with intent to harass, annoy or alarm his or her spouse, former spouse, 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.

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

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

§ 120.85 Domestic abuse in the first degree.

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

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

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

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

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

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

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

§ 200.64 Indictment; special information for domestic abuse offender.

1. Whenever a person is charged with the commission or attempted commission of domestic abuse in the first degree as defined in subdivision four of section 120.85 of the penal law, an indictment or information for such offense shall be accompanied by a special information, filed by the district attorney with the court, alleging that the defendant was previously convicted of a crime, that at the time of the previous crime or at an earlier time the defendant was the spouse, former spouse, fellow parent of a child in common or domestic partner, as defined in section 120.75 of the penal law of the victim of such crime, and that such previous conviction took place within the time period specified in subdivision four of section 120.85 of the penal law. Except as provided in this section, the people may not refer to such special information during trial nor adduce any evidence concerning the allegations therein.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 380.97 Notification to division of criminal justice services of determinations in certain misdemeanor cases.

Upon judgment of conviction of assault or attempted assault in the third degree, as defined in sections 120.00 and 110.00 of the penal law, menacing or attempted menacing in the second degree, as defined in section 120.14 and 110.00 of the penal law, **domestic abuse or attempted domestic abuse in the second degree as defined in sections 120.80 and 110.00 of the penal law,** criminal obstruction of breathing or blood circulation or attempted criminal obstruction of breathing or blood circulation, as defined in sections 121.11 and 110.00 of the penal law, forcible touching or attempted forcible touching, as defined in sections 130.52 and 110.00 of the penal law, when the defendant has been determined, pursuant to section 370.15 of this part, to be related or situated to the victim of the offense in the manner specified in 18 U.S.C. 921(a)(33)(A)(ii), the clerk of the court shall include notification and a copy of the written determination in a report of such conviction to the division of criminal justice services to enable the division to report such determination to the federal bureau of investigation and assist the bureau in identifying persons prohibited from purchasing and possessing a firearm pursuant to the provisions of 18 U.S.C. 922.

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

The family court and the criminal courts shall have concurrent jurisdiction over any proceeding concerning acts which would constitute disorderly conduct, harassment in the first degree, harassment in the second degree, aggravated harassment in the second degree, **domestic abuse in the first degree, domestic abuse in the second degree,** sexual misconduct, forcible touching, sexual abuse in the third degree, sexual abuse in the second degree as set forth in subdivision one of section

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

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

The family court and the criminal courts shall have concurrent jurisdiction over any proceeding concerning acts which would constitute disorderly conduct, harassment in the first degree, harassment in the second degree, aggravated harassment in the second degree, **domestic abuse in the first degree, domestic abuse in the second degree,** sexual misconduct, forcible touching, sexual abuse in the third degree, sexual abuse in the second degree as set forth in subdivision one of section 130.60 of the penal law, stalking in the first degree, stalking in the second degree, stalking in the third degree, stalking in the fourth degree, criminal mischief, menacing in the second degree, menacing in the third degree, reckless endangerment, criminal obstruction of breathing or blood circulation, strangulation in the second degree, strangulation in the first degree, assault in the second degree, assault in the third degree, an attempted assault, identity theft in the first degree, identity theft in the second degree, identity theft in the third degree, grand larceny in the fourth degree, grand larceny in the third degree or coercion in the second degree as set forth in subdivisions one, two and three of section 135.60 of the penal law between spouses or former spouses, or between parent and child or between members of the same family or household except that if the respondent would not be criminally responsible by reason of age pursuant to section 30.00 of the penal law, then the family court shall have exclusive jurisdiction over such proceeding. Notwithstanding a complainant's election to proceed in family court, the criminal court shall not be divested of jurisdiction to hear a family offense proceeding pursuant to this section. In any proceeding pursuant to this article, a court shall not deny an order of protection, or dismiss a petition, solely on the basis that the acts or events alleged are not relatively contemporaneous with the date of the petition, the conclusion of the fact-finding or the conclusion of the dispositional hearing. For purposes of this article, "disorderly conduct" includes disorderly conduct not in a public place. For purposes

of this article, "members of the same family or household" shall mean the following:

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