

# STATE OF NEW YORK

4929

2019-2020 Regular Sessions

## IN ASSEMBLY

February 5, 2019

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.

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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 60 of the laws of 2018, is amended to read as follows:

9 1. When a defendant has been charged with assault in the third degree,  
10 menacing in the third degree, menacing in the second degree, domestic  
11 abuse in the second degree, criminal obstruction of breathing or blood  
12 circulation, unlawful imprisonment in the second degree, coercion in the  
13 third degree, criminal tampering in the third degree, criminal contempt  
14 in the second degree, harassment in the first degree, aggravated harass-  
15 ment in the second degree, criminal trespass in the third degree, crimi-  
16 nal trespass in the second degree, arson in the fifth degree, or attempt  
17 to commit any of the above-listed offenses, the people may, at arraign-  
18 ment or no later than forty-five days after arraignment, serve on the  
19 defendant and file with the court a notice alleging that the defendant  
20 and the person alleged to be the victim of such crime were members of  
21 the same family or household as defined in subdivision one of section  
22 530.11 of this chapter.

23 § 4. Section 380.97 of the criminal procedure law, as added by chapter  
24 60 of the laws of 2018, is amended to read as follows:

25 § 380.97 Notification to division of criminal justice services of  
26 certain misdemeanor convictions.

27 Upon judgment of conviction of assault in the third degree, menacing  
28 in the third degree, menacing in the second degree, domestic abuse in  
29 the second degree, criminal obstruction of breathing or blood circu-  
30 lation, unlawful imprisonment in the second degree, coercion in the  
31 third degree, criminal tampering in the third degree, criminal contempt  
32 in the second degree, harassment in the first degree, or aggravated  
33 harassment in the second degree, criminal trespass in the third degree,  
34 criminal trespass in the second degree, arson in the fifth degree, or  
35 attempt to commit any of the above-listed offenses, when the defendant  
36 and victim have been determined, pursuant to section 370.15 of this  
37 part, to be members of the same family or household as defined in subdi-  
38 vision one of section 530.11 of this chapter, the clerk of the court  
39 shall include notification and a copy of the written determination in a  
40 report of such conviction to the division of criminal justice services  
41 to enable the division to report such determination to the Federal  
42 Bureau of Investigation and assist the bureau in identifying persons  
43 prohibited from purchasing and possessing a firearm or other weapon due  
44 to conviction of an offense specified in paragraph [e] (c) of subdivi-  
45 sion seventeen of section 265.00 of the penal law.

46 § 5. The opening paragraph of subdivision 1 of section 530.11 of the  
47 criminal procedure law, as amended by section 4 of part NN of chapter 55  
48 of the laws of 2018, is amended to read as follows:

49 The family court and the criminal courts shall have concurrent juris-  
50 diction over any proceeding concerning acts which would constitute  
51 disorderly conduct, harassment in the first degree, harassment in the  
52 second degree, aggravated harassment in the second degree, domestic  
53 abuse in the first degree, domestic abuse in the second degree, sexual  
54 misconduct, forcible touching, sexual abuse in the third degree, sexual  
55 abuse in the second degree as set forth in subdivision one of section  
56 130.60 of the penal law, stalking in the first degree, stalking in the

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

22 § 6. The opening paragraph of subdivision 1 of section 812 of the  
23 family court act, as amended by section 5 of part NN of chapter 55 of  
24 the laws of 2018, is amended to read as follows:

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

1 conduct not in a public place. For purposes of this article, "members of  
2 the same family or household" shall mean 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.