STATE OF NEW YORK

10852--A

IN ASSEMBLY

July 24, 2020

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Cruz, Jaffee) -- read once and referred to the Committee on Codes -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the criminal procedure law, the executive law and the penal law, in relation to enacting the "New York State Phoenix Act"

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. This act shall be known and may be cited as the "New York State Phoenix Act".

§ 2. Legislative findings. The legislature finds and declares all of the following:

1. More than one in three women and one in four men in the United States have experienced rape, physical violence, or stalking by an intimate partner in their lifetime.

2. One in five female high school students report being physically or sexually assaulted by a dating partner.

3. Many perpetrators of domestic violence were themselves abused.

4. Better education and resources can help prevent domestic violence from occurring.

5. When domestic violence occurs, the statute of limitations varies depending on the crime committed.

6. Victims may not report a crime for myriad reasons, including their age at the time of abuse, ongoing trauma, threats from the perpetrator, or lack of evidence.

7. Without resources or any intervention, many perpetrators of domestic violence will abuse multiple partners.

8. It is the intent of the legislature to allow for victims of domestic violence to come forward by extending the statute of limitations in order to ensure those victims see justice.

9. It is the intent of the legislature to increase training for law enforcement to ensure victims are protected and to prevent future domestic violence from occurring.

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

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§ 3. Subdivision 3 of section 30.10 of the criminal procedure law is amended by adding a new paragraph (h) to read as follows:

(h) A prosecution of any family offense defined in subdivision one of section 530.11 of this chapter with a period of limitation of less than ten years may be commenced within ten years of the commission thereof.

§ 4. Section 214-b of the executive law, as amended by chapter 432 of the laws of 2015, is amended to read as follows:

§ 214-b. Family offense intervention. The superintendent shall, for all members of the state police including new and veteran officers, develop, maintain and disseminate, in consultation with the state office for the prevention of domestic violence, written policies and procedures consistent with article eight of the family court act and applicable provisions of the criminal procedure and domestic relations laws, regarding the investigation of and intervention in incidents of family offenses. **The written policies and procedures shall include a brief current and historical context on communities of color impacted by incarceration and violence, enforcement of criminal laws in family offense situations, availability of civil remedies and community resources, and protection of the victim.** Such policies and procedures shall make provision for education and training in the interpretation and enforcement of New York's family offense laws, including but not limited to:

(a) **techniques for handling incidents of family offenses that minimize the likelihood of injury to the officer and that promote the safety of the victim. These techniques shall include, but are not limited to, the following:**

(i) methods for ensuring victim interviews occur in a venue separate from the alleged perpetrator and with appropriate sound barriers to prevent the conversation from being overheard;

(ii) intake and recording of victim statements, and the prompt translation of such statements if made in a language other than English, in accordance with [~~subdivision (c)~~] **paragraph (iv)** of this [~~section~~] **subdivision**, on a standardized "domestic violence incident report form" promulgated by the state division of criminal justice services in consultation with the superintendent and with the state office for the prevention of domestic violence, and the investigation thereof so as to ascertain whether a crime has been committed against the victim by a member of the victim's family or household as such terms are defined in section eight hundred twelve of the family court act and section 530.11 of the criminal procedure law; **and**

[~~(b)~~] **(iii)** the need for immediate intervention in family offenses including the arrest and detention of alleged offenders, pursuant to subdivision four of section 140.10 of the criminal procedure law, and notifying victims of their rights, in their native language, if identified as other than English, in accordance with [~~subdivision (c)~~] **paragraph (iv)** of this [~~section~~] **subdivision**, including but not limited to immediately providing the victim with the written notice provided in subdivision six of section 530.11 of the criminal procedure law and subdivision five of section eight hundred twelve of the family court act.

[~~(c)~~] **(iv)** The superintendent, in consultation with the division of criminal justice services and the office for the prevention of domestic violence shall determine the languages in which such translation required by [~~subdivision (a)~~] **paragraph (ii)** of this [~~section~~] **subdivision**, and the notification required pursuant to [~~subdivision (b)~~] **paragraph (iii)** of this [~~section~~] **subdivision**, shall be provided. Such

determination shall be based on the size of the New York state population that speaks each language and any other relevant factor. Such written notice required pursuant to [~~subdivision (b)~~] paragraph (iii) of this [~~section~~] subdivision shall be made available to all state police officers in the state[~~.~~];

(b) the nature and extent of family offenses;

(c) the signs of family offenses;

(d) criminal conduct that may be related to family offenses, including, but not limited to, any of the following:

(i) coercion for purposes of committing or impeding the investigation or prosecution of family offenses;

(ii) unlawful imprisonment, as defined in article one hundred thirty-five of the penal law;

(iii) extortion and the use of fear;

(iv) crimes of fraud as defined in article one hundred ninety of the penal law; and

(v) unlawful dissemination or publication of an intimate image;

(e) the assessment of lethality or signs of lethal violence in family offense situations;

(f) the legal rights of, and remedies available to, victims of family offenses;

(g) documentation, report writing, and evidence collection;

(h) family offense diversion;

(i) tenancy issues and family offenses;

(j) the impact on children of law enforcement intervention in family offenses;

(k) the services and facilities available to victims and offenders;

(l) the use and applications of the penal law in family offense situations;

(m) verification and enforcement of orders of protection when

(i) the suspect is present and (ii) the suspect has fled;

(n) cite and release policies; and

(o) emergency assistance to victims and how to assist victims in pursuing criminal justice options.

§ 5. Paragraph (f) of subdivision 3 of section 840 of the executive law, as amended by chapter 432 of the laws of 2015, is amended to read as follows:

(f) Develop, maintain and disseminate, in consultation with the state office for the prevention of domestic violence, written policies and procedures and a course or courses of instruction consistent with article eight of the family court act and applicable provisions of the criminal procedure and domestic relations laws, regarding the investigation of and intervention by new and veteran police officers in incidents of family offenses. The course or courses of instruction and the written polices and procedures shall include a brief current and historical context on communities of color impacted by incarceration and violence, enforcement of criminal laws in family offense situations, availability of civil remedies and community resources, and protection of the victim. If appropriate, the training presenters shall include family offense experts, who may include victims and people who have committed family offenses and have been or are in the process of being rehabilitated, with expertise in the delivery of direct services to victims and people who have committed family offenses, including, but not limited to, utilizing the staff of shelters for victims. Such courses of instruction and policies and procedures shall make provisions for education and

training in the interpretation and enforcement of New York's family offense laws, including but not limited to:

(1) techniques for handling incidents of family offenses that minimize the likelihood of injury to the officer and that promote the safety of the victim. These techniques shall include, but are not limited to, the following:

(i) methods for ensuring victim interviews occur in a venue separate from the alleged perpetrator and with appropriate sound barriers to prevent the conversation from being overheard;

(ii) intake and recording of victim statements, and the prompt translation of such statements if made in a language other than English, in accordance with [~~subparagraph three~~] clause (iv) of this [~~paragraph~~] subparagraph, on a standardized "domestic violence incident report form" promulgated by the division of criminal justice services in consultation with the superintendent of state police, representatives of local police forces and the state office for the prevention of domestic violence, and the investigation thereof so as to ascertain whether a crime has been committed against the victim by a member of the victim's family or household as such terms are defined in section eight hundred twelve of the family court act and section 530.11 of the criminal procedure law; and

[~~(2)~~] (iii) the need for immediate intervention in family offenses including the arrest and detention of alleged offenders, pursuant to subdivision four of section 140.10 of the criminal procedure law, and notifying victims of their rights, in their native language, if identified as other than English, in accordance with [~~subparagraph three~~] clause (iv) of this [~~paragraph~~] subparagraph, including but not limited to immediately providing the victim with the written notice required in subdivision six of section 530.11 of the criminal procedure law and subdivision five of section eight hundred twelve of the family court act;

[~~(3)~~] (iv) determine, in consultation with the superintendent of state police and the office for the prevention of domestic violence, the languages in which such translation required by [~~subparagraph one~~] clause (ii) of this [~~paragraph~~] subparagraph, and the notification required by [~~subparagraph two~~] clause (iii) of this [~~paragraph~~] subparagraph, shall be provided. Such determination shall be based on the size of the New York state population that speaks each language and any other relevant factor. Such written notice required pursuant to [~~subparagraph two~~] clause (iii) of this [~~paragraph~~] subparagraph shall be made available to all local law enforcement agencies throughout the state. Nothing in this [~~paragraph~~] subparagraph shall prevent the council from using the determinations made by the superintendent of state police pursuant to paragraph (iv) of subdivision [~~(c)~~] (a) of section two hundred fourteen-b of this chapter;

(2) the nature and extent of family offenses;

(3) the signs of family offenses;

(4) criminal conduct that may be related to family offenses, including, but not limited to, any of the following:

(i) coercion for purposes of committing or impeding the investigation or prosecution of family offenses;

(ii) unlawful imprisonment, as defined in article one hundred thirty-five of the penal law;

(iii) extortion and the use of fear;

(iv) crimes of fraud as defined in article one hundred ninety of the penal law; and

(v) unlawful dissemination or publication of an intimate image;
(5) the assessment of lethality or signs of lethal violence in family offense situations;
(6) the legal rights of, and remedies available to, victims of family offenses;
(7) documentation, report writing, and evidence collection;
(8) family offense diversion;
(9) tenancy issues and family offenses;
(10) the impact on children of law enforcement intervention in family offenses;
(11) the services and facilities available to victims and offenders;
(12) the use and applications of the penal law in family offense situations;
(13) verification and enforcement of orders of protection when
(i) the suspect is present and (ii) the suspect has fled;
(14) cite and release policies; and
(15) emergency assistance to victims and how to assist victims in pursuing criminal justice options;

§ 6. The penal law is amended by adding a new section 135.80 to read as follows:

§ 135.80 Coercive control.

A person is guilty of coercive control when one engages in a pattern of acts against a spouse or former spouse, between a parent and child or between members of one's same family or household, as defined in section 530.11 of the criminal procedure law, without the victim's consent, which results in limiting or restricting, in full or in part, the victim's behavior, movement, associations or access to or use of his or her own finances or financial information. For the purposes of this section, lack of consent results from forcible compulsion, as defined in subdivision eight of section 130.00 of this title, or from fear that refusal to consent will result in further actions limiting or restricting the victim's behavior, movement, associations or access to or use of his or her own finances or financial information. This section shall not apply to actions taken pursuant to a legal arrangement granting one person power or authority over another person, including, but not limited to, power of attorney arrangements as defined in paragraph (j) of subdivision two of section 5-1501 of the general obligations law, guardians of the property or person as defined in subdivisions (c) and (d) of section 83.03 of the mental hygiene law, or parental control of a minor child.

Coercive control is a class E felony.

§ 7. This act shall take effect on the first of January next succeeding the date upon which it shall have become a law; provided that section three of this act shall apply to crimes committed on or after such date and to crimes for which the statute of limitations that was in effect prior to such date has not elapsed as of such date.