STATE OF NEW YORK

5751

2019-2020 Regular Sessions

IN ASSEMBLY

February 14, 2019

Introduced by M. of A. GIGLIO, BARCLAY, BRABENEC, CROUCH, DeSTEFANO, FINCH, GOODELL, HAWLEY, KOLB, LAWRENCE, McDONOUGH, MIKULIN, B. MILLER, MORINELLO, NORRIS, PALMESANO, REILLY, SMITH, TAGUE, WALSH -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to acts of domestic violence committed in the presence of children

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 a new article 261 to read as follows:

ARTICLE 261

OFFENSES RELATING TO A MEMBER OF THE SAME FAMILY OR HOUSEHOLD

Section 261.00 Specified offenses against a member of the same family or household.

261.05 Sentencing.

§ 261.00 Specified offenses against a member of the same family or household.

1. A person commits a domestic violence crime when he or she intentionally commits or intends to commit a specified offense against a member of the same family or household.

2. A "specified offense" is an offense defined by any of the following provisions of this chapter: section 120.00 (assault in the third degree); section 120.05 (assault in the second degree); section 120.10 (assault in the first degree); section 120.13 (menacing in the first degree); section 120.14 (menacing in the second degree); section 120.15 (menacing in the third degree); section 120.20 (reckless endangerment in the second degree); section 120.25 (reckless endangerment in the first degree); section 120.45 (stalking in the fourth degree); section 120.50 (stalking in the third degree); section 120.55 (stalking in the second degree); section 120.60 (stalking in the first degree); section 121.11 (criminal obstruction of breathing or blood circulation); section 121.12

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

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(strangulation in the second degree); section 121.13 (strangulation in the first degree); subdivision one of section 125.15 (manslaughter in the second degree); subdivision one, two or four of section 125.20 (manslaughter in the first degree); section 125.25 (murder in the second degree); section 130.20 (sexual misconduct); section 130.30 (rape in the second degree); section 130.35 (rape in the first degree); section 130.40 (criminal sexual act in the third degree); section 130.45 (criminal sexual act in the second degree); section 130.50 (criminal sexual act in the first degree); section 130.52 (forcible touching); section 130.53 (persistent sexual abuse); section 130.55 (sexual abuse in the third degree); section 130.60 (sexual abuse in the second degree); section 130.65 (sexual abuse in the first degree); section 130.66 (aggravated sexual abuse in the third degree); section 130.67 (aggravated sexual abuse in the second degree); section 130.70 (aggravated sexual abuse in the first degree); section 130.91 (sexually motivated felony); section 130.95 (predatory sexual assault); section 130.96 (predatory sexual assault against a child); section 135.05 (unlawful imprisonment in the second degree); section 135.10 (unlawful imprisonment in the first degree); section 135.60 (coercion in the second degree); section 135.65 (coercion in the first degree); section 140.20 (burglary in the third degree); section 140.25 (burglary in the second degree); section 140.30 (burglary in the first degree); section 145.00 (criminal mischief in the fourth degree); section 145.05 (criminal mischief in the third degree); section 145.10 (criminal mischief in the second degree); section 145.12 (criminal mischief in the first degree); section 145.14 (criminal tampering in the third degree); section 215.50 (criminal contempt in the second degree); section 215.51 (criminal contempt in the first degree); section 215.52 (aggravated criminal contempt); section 240.20 (disorderly conduct); section 240.25 (harassment in the first degree); section 240.26 (harassment in the second degree); subdivision one, two or four of section 240.30 (aggravated harassment in the second degree); aggravated family offense as defined in this section or any attempt or conspiracy to commit any of the foregoing offenses where the defendant and the person against whom the offense was committed were members of the same family or household as defined in subdivision one of section 530.11 of the criminal procedure law.

3. For purposes of this section, a member of the same family or household shall mean the following individuals:

(a) persons related by consanguinity or affinity;

(b) persons legally married to one another;

(c) persons formerly married to one another regardless of whether they still reside in the same household;

(d) persons who have a child in common regardless of whether such persons are married or have lived together at any time; or

(e) unrelated persons who are continually or at regular intervals living in the same household or who have in the past continually or at regular intervals lived in the same household.

§ 261.05 Sentencing.

A person who is found guilty of a domestic violence offense pursuant to this article, and the specified offense occurs in the presence of a child aged fifteen years or less, shall be guilty of a class E felony. Any sentence imposed pursuant to a conviction under this section is to be served consecutive to any sentence imposed for the underlying offense.

§ 2. Subdivision 2 of section 70.25 of the penal law, as amended by chapter 56 of the laws of 1984, is amended to read as follows:

2. When more than one sentence of imprisonment is imposed on a person for two or more offenses committed through a single act or omission, or through an act or omission which in itself constituted one of the offenses and also was a material element of the other, the sentences, except if one or more of such sentences is for a violation of section 270.20 of this chapter, must run concurrently. **Provided, however, that if one or more of such sentences is for a conviction under article two hundred sixty-one of this chapter, the sentence may run consecutively.**

§ 3. This act shall take effect on the thirtieth day after it shall have become a law.