STATE OF NEW YORK

5798

2019-2020 Regular Sessions

IN ASSEMBLY

February 19, 2019

Introduced by M. of A. GIGLIO, BARCLAY, HAWLEY, PALMESANO, FINCH, KOLB, GOODELL, MIKULIN -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to domestic violence crimes

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 264 to read as follows:

ARTICLE 264

DOMESTIC VIOLENCE CRIMES

Section 264.00 Domestic violence crimes.

264.05 Sentencing.

§ 264.00 Domestic violence crimes.

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 (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

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

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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 third degree); section 135.61 (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 section 240.75 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 three of this section.

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.

§ 264.05 Sentencing.

1. When a person is convicted of a domestic violence crime pursuant to this article, and the specified offense is a violent felony offense, as defined in section 70.02 of this chapter, the domestic violence crime shall be deemed a violent felony offense.

2. When a person is convicted of a domestic violence crime pursuant to this article and the specified offense is a misdemeanor or a class C, D or E felony, the domestic violence crime shall be deemed to be one category higher than the specified offense the defendant committed, or one category higher than the offense level applicable to the defendant's conviction for an attempt or conspiracy to commit a specified offense, whichever is applicable.

3. When a person is convicted of a domestic violence crime pursuant to this article and the specified offense is a violation, the domestic violence crime shall be deemed an unclassified misdemeanor and the term of the definite sentence shall not exceed sixty days.

4. Notwithstanding any other provision of law, when a person is convicted of a domestic violence crime pursuant to this article and the specified offense is a class B felony:

(a) the maximum term of the indeterminate sentence must be at least six years if the defendant is sentenced pursuant to section 70.00 of this chapter;

(b) the term of the determinate sentence must be at least eight years if the defendant is sentenced pursuant to section 70.02 of this chapter;

(c) the term of the determinate sentence must be at least twelve years if the defendant is sentenced pursuant to section 70.04 of this chapter;

(d) the maximum term of the indeterminate sentence must be at least four years if the defendant is sentenced pursuant to section 70.05 of this chapter; and

(e) the maximum term of the indeterminate sentence or the term of the determinate sentence must be at least ten years if the defendant is sentenced pursuant to section 70.06 of this chapter.

5. Notwithstanding any other provision of law, when a person is convicted of a domestic violence crime pursuant to this article and the specified offense is a class A-1 felony, the minimum period of the indeterminate sentence shall be not less than twenty years.

6. In addition to any of the dispositions authorized by this chapter, the court may require as part of the sentence imposed upon a person convicted of a domestic violence crime pursuant to this article, that the defendant complete a program, training session or counseling session directed at domestic violence crime prevention and education, where the court determines such program, training session or counseling session is appropriate, available and was developed or authorized by the court or local agencies in cooperation with organizations serving the affected community.

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