

STATE OF NEW YORK

9715

IN ASSEMBLY

February 6, 2020

Introduced by M. of A. PAULIN -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to procedures for determining whether certain misdemeanor crimes are serious offenses under the penal law and the defendant and alleged victim are members of the same family or household

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

Section 1. Subdivisions 1 and 3 of section 370.15 of the criminal procedure law, as added by chapter 60 of the laws of 2018, are amended to read as follows:

1. When a defendant has been charged with assault in the third degree, menacing in the third degree, menacing in the second degree, criminal obstruction of breathing or blood circulation, unlawful imprisonment in the second degree, coercion in the third degree, criminal tampering in the third degree, criminal contempt in the second degree, harassment in the first degree, aggravated harassment in the second degree, criminal trespass in the third degree, criminal trespass in the second degree, arson in the fifth degree, or attempt to commit any of the above-listed offenses, the people ~~[may]~~ shall, at arraignment or no later than forty-five days after arraignment, serve on the defendant and file with the court a notice alleging that the defendant and the person alleged to be the victim of such crime were members of the same family or household as defined in subdivision one of section 530.11 of this chapter.

3. After having been advised by the court as provided in subdivision two of this section, the defendant may stipulate or admit, orally on the record or in writing, that he or she is related or situated to the victim of such crime in the manner described in subdivision one of this section. In such case, such relationship shall be deemed established. If the defendant denies that he or she is related or situated to the victim of the crime as alleged in the notice served by the people, or stands mute with respect to such allegation, then the people shall bear the burden to prove ~~[beyond a reasonable doubt]~~ by a preponderance of the evidence that the defendant is related or situated to the victim in the

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

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1 manner alleged in the notice. The court may consider reliable hearsay
2 evidence submitted by either party provided that it is relevant to the
3 determination of the allegation. Facts previously proven at trial or
4 elicited at the time of entry of a plea of guilty shall be deemed estab-
5 lished beyond a reasonable doubt and shall not be relitigated. At the
6 conclusion of the hearing, or upon such a stipulation or admission, as
7 applicable, the court shall make a specific written determination with
8 respect to such allegation.
9 § 2. This act shall take effect immediately.