

STATE OF NEW YORK

5307

2019-2020 Regular Sessions

IN SENATE

April 24, 2019

Introduced by Sen. PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families

AN ACT to amend the criminal procedure law, the family court act and the penal law, in relation to including rape in the third degree, rape in the second degree and rape in the first degree as family offenses

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

1 Section 1. Subdivision 1 of section 530.11 of the criminal procedure
2 law, as amended by chapter 326 of the laws of 2008, and the opening
3 paragraph as amended by section 4 of part NN of chapter 55 of the laws
4 of 2018, is amended to read as follows:

5 1. Jurisdiction. The family court and the criminal courts shall have
6 concurrent jurisdiction over any proceeding concerning acts which would
7 constitute disorderly conduct, harassment in the first degree, harass-
8 ment in the second degree, aggravated harassment in the second degree,
9 sexual misconduct, forcible touching, sexual abuse in the third degree,
10 sexual abuse in the second degree as set forth in subdivision one of
11 section 130.60 of the penal law, stalking in the first degree, stalking
12 in the second degree, stalking in the third degree, stalking in the
13 fourth degree, criminal mischief, menacing in the second degree, menac-
14 ing in the third degree, reckless endangerment, strangulation in the
15 first degree, strangulation in the second degree, criminal obstruction
16 of breathing or blood circulation, assault in the second degree, assault
17 in the third degree, an attempted assault, identity theft in the first
18 degree, identity theft in the second degree, identity theft in the third
19 degree, grand larceny in the fourth degree, grand larceny in the third
20 degree, coercion in the second degree or coercion in the third degree as
21 set forth in subdivisions one, two and three of section 135.60 of the
22 penal law, rape in the third degree as set forth in section 130.25 of
23 the penal law, rape in the second degree as set forth in section 130.30
24 of the penal law, rape in the first degree as set forth in section

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

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1 130.35 of the penal law between spouses or former spouses, or between
2 parent and child or between members of the same family or household
3 except that if the respondent would not be criminally responsible by
4 reason of age pursuant to section 30.00 of the penal law, then the fami-
5 ly court shall have exclusive jurisdiction over such proceeding.
6 Notwithstanding a complainant's election to proceed in family court, the
7 criminal court shall not be divested of jurisdiction to hear a family
8 offense proceeding pursuant to this section. For purposes of this
9 section, "disorderly conduct" includes disorderly conduct not in a
10 public place. For purposes of this section, "members of the same family
11 or household" with respect to a proceeding in the criminal courts shall
12 mean the following:

13 (a) persons related by consanguinity or affinity;
14 (b) persons legally married to one another;
15 (c) persons formerly married to one another regardless of whether they
16 still reside in the same household;
17 (d) persons who have a child in common, regardless of whether such
18 persons have been married or have lived together at any time; and
19 (e) persons who are not related by consanguinity or affinity and who
20 are or have been in an intimate relationship regardless of whether such
21 persons have lived together at any time. Factors the court may consider
22 in determining whether a relationship is an "intimate relationship"
23 include but are not limited to: the nature or type of relationship,
24 regardless of whether the relationship is sexual in nature; the frequen-
25 cy of interaction between the persons; and the duration of the relation-
26 ship. Neither a casual acquaintance nor ordinary fraternization between
27 two individuals in business or social contexts shall be deemed to
28 constitute an "intimate relationship".

29 § 2. Subdivision 1 of section 812 of the family court act, as amended
30 by chapter 326 of the laws of 2008, and the opening paragraph as amended
31 by section 5 of part NN of chapter 55 of the laws of 2018, is amended to
32 read as follows:

33 1. Jurisdiction. The family court and the criminal courts shall have
34 concurrent jurisdiction over any proceeding concerning acts which would
35 constitute disorderly conduct, harassment in the first degree, harass-
36 ment in the second degree, aggravated harassment in the second degree,
37 sexual misconduct, forcible touching, sexual abuse in the third degree,
38 sexual abuse in the second degree as set forth in subdivision one of
39 section 130.60 of the penal law, stalking in the first degree, stalking
40 in the second degree, stalking in the third degree, stalking in the
41 fourth degree, criminal mischief, menacing in the second degree, menac-
42 ing in the third degree, reckless endangerment, criminal obstruction of
43 breathing or blood circulation, strangulation in the second degree,
44 strangulation in the first degree, assault in the second degree, assault
45 in the third degree, an attempted assault, identity theft in the first
46 degree, identity theft in the second degree, identity theft in the third
47 degree, grand larceny in the fourth degree, grand larceny in the third
48 degree, coercion in the second degree or coercion in the third degree as
49 set forth in subdivisions one, two and three of section 135.60 of the
50 penal law, rape in the third degree as set forth in section 130.25 of
51 the penal law, rape in the second degree as set forth in section 130.30
52 of the penal law, rape in the first degree as set forth in section
53 130.35 of the penal law between spouses or former spouses, or between
54 parent and child or between members of the same family or household
55 except that if the respondent would not be criminally responsible by
56 reason of age pursuant to section 30.00 of the penal law, then the fami-

ly court shall have exclusive jurisdiction over such proceeding. Notwithstanding a complainant's election to proceed in family court, the criminal court shall not be divested of jurisdiction to hear a family offense proceeding pursuant to this section. In any proceeding pursuant to this article, a court shall not deny an order of protection, or dismiss a petition, solely on the basis that the acts or events alleged are not relatively contemporaneous with the date of the petition, the conclusion of the fact-finding or the conclusion of the dispositional hearing. For purposes of this article, "disorderly conduct" includes disorderly conduct not in a public place. For purposes of this article, "members of the same family or household" shall mean the following:

- (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 have been married or have lived together at any time; and
- (e) persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time. Factors the court may consider in determining whether a relationship is an "intimate relationship" include but are not limited to: the nature or type of relationship, regardless of whether the relationship is sexual in nature; the frequency of interaction between the persons; and the duration of the relationship. Neither a casual acquaintance nor ordinary fraternization between two individuals in business or social contexts shall be deemed to constitute an "intimate relationship".

§ 3. Subdivision 2 of section 240.75 of the penal law, as amended by section 8 of part NN of chapter 55 of the laws of 2018, is amended to read as follows:

2. A "specified offense" is an offense defined in 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 130.25 (rape in the third degree); 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 moti-

1 vated felony); section 130.95 (predatory sexual assault); section 130.96
2 (predatory sexual assault against a child); section 135.05 (unlawful
3 imprisonment in the second degree); section 135.10 (unlawful imprison-
4 ment in the first degree); section 135.60 (coercion in the third
5 degree); section 135.61 (coercion in the second degree); section 135.65
6 (coercion in the first degree); section 140.20 (burglary in the third
7 degree); section 140.25 (burglary in the second degree); section 140.30
8 (burglary in the first degree); section 145.00 (criminal mischief in the
9 fourth degree); section 145.05 (criminal mischief in the third degree);
10 section 145.10 (criminal mischief in the second degree); section 145.12
11 (criminal mischief in the first degree); section 145.14 (criminal
12 tampering in the third degree); section 215.50 (criminal contempt in the
13 second degree); section 215.51 (criminal contempt in the first degree);
14 section 215.52 (aggravated criminal contempt); section 240.25 (harass-
15 ment in the first degree); subdivision one, two or four of section
16 240.30 (aggravated harassment in the second degree); aggravated family
17 offense as defined in this section or any attempt or conspiracy to
18 commit any of the foregoing offenses where the defendant and the person
19 against whom the offense was committed were members of the same family
20 or household as defined in subdivision one of section 530.11 of the
21 criminal procedure law.

22 § 4. This act shall take effect immediately.