

STATE OF NEW YORK

8642

IN SENATE

June 26, 2020

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

AN ACT to amend the criminal procedure law, the executive law and the penal law, in relation to enacting the "phoenix act"

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

- 1 Section 1. This act shall be known and may be cited as the "phoenix
- 2 act".
- 3 § 2. Legislative findings. The legislature finds and declares all of
- 4 the following:
- 5 1. More than one in three women and one in four men in the United
- 6 States have experienced rape, physical violence, or stalking by an inti-
- 7 mate partner in their lifetime.
- 8 2. One in five female high school students report being physically or
- 9 sexually assaulted by a dating partner.
- 10 3. Many perpetrators of domestic violence were themselves abused.
- 11 4. Better education and resources can help prevent domestic violence
- 12 from occurring.
- 13 5. When domestic violence occurs, the statute of limitations varies
- 14 depending on the crime committed.
- 15 6. Victims may not report a crime for myriad reasons, including their
- 16 age at the time of abuse, ongoing trauma, threats from the perpetrator,
- 17 or lack of evidence.
- 18 7. Without resources or any intervention, many perpetrators of domes-
- 19 tic violence will abuse multiple partners.
- 20 8. It is the intent of the legislature to allow for victims of domes-
- 21 tic violence to come forward by extending the statute of limitations in
- 22 order to ensure those victims see justice.
- 23 9. It is the intent of the legislature to increase training for law
- 24 enforcement to ensure victims are protected and to prevent future domes-
- 25 tic violence from occurring.
- 26 § 3. Subdivision 3 of section 30.10 of the criminal procedure law is
- 27 amended by adding a new paragraph (h) to read as follows:

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

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

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

6 § 214-b. Family offense intervention. The superintendent shall, for
7 all members of the state police including new and veteran officers,
8 develop, maintain and disseminate, in consultation with the state office
9 for the prevention of domestic violence, written policies and procedures
10 and a course or courses of instruction consistent with article eight of
11 the family court act and applicable provisions of the criminal procedure
12 and domestic relations laws, regarding the investigation of and inter-
13 vention in incidents of family offenses. The course or courses of
14 instruction and the written policies and procedures shall include a
15 brief current and historical context on communities of color impacted by
16 incarceration and violence, enforcement of criminal laws in family
17 offense situations, availability of civil remedies and community
18 resources, and protection of the victim. If appropriate, the training
19 presenters shall include family offense experts, who may include victims
20 and people who have committed family offenses and have been or are in
21 the process of being rehabilitated, with expertise in the delivery of
22 direct services to victims and people who have committed family
23 offenses, including, but not limited to, utilizing the staff of shelters
24 for victims. Such courses of instruction and policies and procedures
25 shall make provision for education and training in the interpretation
26 and enforcement of New York's family offense laws, including but not
27 limited to:

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

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

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

46 [~~(b)~~] (iii) the need for immediate intervention in family offenses
47 including the arrest and detention of alleged offenders, pursuant to
48 subdivision four of section 140.10 of the criminal procedure law, and
49 notifying victims of their rights, in their native language, if identi-
50 fied as other than English, in accordance with [subdivision (e)] para-
51 graph (iv) of this [section] subdivision, including but not limited to
52 immediately providing the victim with the written notice provided in
53 subdivision six of section 530.11 of the criminal procedure law and
54 subdivision five of section eight hundred twelve of the family court
55 act.

1 ~~[(e)]~~ (iv) The superintendent, in consultation with the division of
2 criminal justice services and the office for the prevention of domestic
3 violence shall determine the languages in which such translation
4 required by ~~[subdivision (a)]~~ paragraph (ii) of this ~~[section]~~ subdivi-
5 sion, and the notification required pursuant to ~~[subdivision (b)]~~ para-
6 graph (iii) of this ~~[section]~~ subdivision, shall be provided. Such
7 determination shall be based on the size of the New York state popu-
8 lation that speaks each language and any other relevant factor. Such
9 written notice required pursuant to ~~[subdivision (b)]~~ paragraph (iii) of
10 this ~~[section]~~ subdivision shall be made available to all state police
11 officers in the state~~[-]~~;

12 (b) the nature and extent of family offenses;

13 (c) the signs of family offenses;

14 (d) criminal conduct that may be related to family offenses, includ-
15 ing, but not limited to, any of the following:

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

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

20 (iii) extortion and the use of fear;

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

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

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

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

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

29 (h) family offense diversion;

30 (i) tenancy issues and family offenses;

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

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

34 (l) the use and applications of the penal law in family offense situ-
35 ations;

36 (m) verification and enforcement of orders of protection when

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

38 (n) cite and release policies; and

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

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

44 (f) Develop, maintain and disseminate, in consultation with the state
45 office for the prevention of domestic violence, written policies and
46 procedures and a course or courses of instruction consistent with arti-
47 cle eight of the family court act and applicable provisions of the crim-
48 inal procedure and domestic relations laws, regarding the investigation
49 of and intervention by new and veteran police officers in incidents of
50 family offenses. The course or courses of instruction and the written
51 policies and procedures shall include a brief current and historical
52 context on communities of color impacted by incarceration and violence,
53 enforcement of criminal laws in family offense situations, availability
54 of civil remedies and community resources, and protection of the victim.
55 If appropriate, the training presenters shall include family offense
56 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 ~~[(a)]~~ (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 he or she engages in a course of conduct against a member of his or her 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.