

# STATE OF NEW YORK

5887

2021-2022 Regular Sessions

## IN SENATE

March 22, 2021

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 chapter 109 of the laws of 2019, is amended to  
4 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, unlawful dissemination or publication of  
8 an intimate image, harassment in the first degree, harassment in the  
9 second degree, aggravated harassment in the second degree, sexual  
10 misconduct, forcible touching, sexual abuse in the third degree, sexual  
11 abuse in the second degree as set forth in subdivision one of section  
12 130.60 of the penal law, stalking in the first degree, stalking in the  
13 second degree, stalking in the third degree, stalking in the fourth  
14 degree, criminal mischief, menacing in the second degree, menacing in  
15 the third degree, reckless endangerment, strangulation in the first  
16 degree, strangulation in the second degree, criminal obstruction of  
17 breathing or blood circulation, assault in the second degree, assault in  
18 the third degree, an attempted assault, identity theft in the first  
19 degree, identity theft in the second degree, identity theft in the third  
20 degree, grand larceny in the fourth degree, grand larceny in the third  
21 degree, coercion in the second degree or coercion in the third degree as  
22 set forth in subdivisions one, two and three of section 135.60 of the  
23 penal law, rape in the third degree as set forth in section 130.25 of  
24 the penal law, rape in the second degree as set forth in section 130.30

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

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

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

30 § 2. Subdivision 1 of section 812 of the family court act, as amended  
31 by chapter 326 of the laws of 2008, and the opening paragraph as amended  
32 by chapter 109 of the laws of 2019, is amended to 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, unlawful dissemination or publication of  
36 an intimate image, harassment in the first degree, harassment in the  
37 second degree, aggravated harassment in the second degree, sexual  
38 misconduct, forcible touching, sexual abuse in the third degree, sexual  
39 abuse in the second degree as set forth in subdivision one of section  
40 130.60 of the penal law, stalking in the first degree, stalking in the  
41 second degree, stalking in the third degree, stalking in the fourth  
42 degree, criminal mischief, menacing in the second degree, menacing in  
43 the third degree, reckless endangerment, criminal obstruction of breath-  
44 ing or blood circulation, strangulation in the second degree, strangula-  
45 tion in the first degree, assault in the second degree, assault in the  
46 third degree, an attempted assault, identity theft in the first degree,  
47 identity theft in the second degree, identity theft in the third degree,  
48 grand larceny in the fourth degree, grand larceny in the third degree,  
49 coercion in the second degree or coercion in the third degree as set  
50 forth in subdivisions one, two and three of section 135.60 of the penal  
51 law, rape in the third degree as set forth in section 130.25 of the  
52 penal law, rape in the second degree as set forth in section 130.30 of  
53 the penal law, rape in the first degree as set forth in section 130.35  
54 of the penal law between spouses or former spouses, or between parent  
55 and child or between members of the same family or household except that  
56 if the respondent would not be criminally responsible by reason of age

1 pursuant to section 30.00 of the penal law, then the family court shall  
2 have exclusive jurisdiction over such proceeding. Notwithstanding a  
3 complainant's election to proceed in family court, the criminal court  
4 shall not be divested of jurisdiction to hear a family offense proceed-  
5 ing pursuant to this section. In any proceeding pursuant to this arti-  
6 cle, a court shall not deny an order of protection, or dismiss a peti-  
7 tion, solely on the basis that the acts or events alleged are not  
8 relatively contemporaneous with the date of the petition, the conclusion  
9 of the fact-finding or the conclusion of the dispositional hearing. For  
10 purposes of this article, "disorderly conduct" includes disorderly  
11 conduct not in a public place. For purposes of this article, "members of  
12 the same family or household" shall 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 § 3. Subdivision 2 of section 240.75 of the penal law, as amended by  
30 section 8 of part NN of chapter 55 of the laws of 2018, is amended to  
31 read as follows:

32 2. A "specified offense" is an offense defined in section 120.00  
33 (assault in the third degree); section 120.05 (assault in the second  
34 degree); section 120.10 (assault in the first degree); section 120.13  
35 (menacing in the first degree); section 120.14 (menacing in the second  
36 degree); section 120.15 (menacing in the third degree); section 120.20  
37 (reckless endangerment in the second degree); section 120.25 (reckless  
38 endangerment in the first degree); section 120.45 (stalking in the  
39 fourth degree); section 120.50 (stalking in the third degree); section  
40 120.55 (stalking in the second degree); section 120.60 (stalking in the  
41 first degree); section 121.11 (criminal obstruction of breathing or  
42 blood circulation); section 121.12 (strangulation in the second degree);  
43 section 121.13 (strangulation in the first degree); subdivision one of  
44 section 125.15 (manslaughter in the second degree); subdivision one, two  
45 or four of section 125.20 (manslaughter in the first degree); section  
46 125.25 (murder in the second degree); section 130.20 (sexual miscon-  
47 duct); section 130.25 (rape in the third degree); section 130.30 (rape  
48 in the second degree); section 130.35 (rape in the first degree);  
49 section 130.40 (criminal sexual act in the third degree); section 130.45  
50 (criminal sexual act in the second degree); section 130.50 (criminal  
51 sexual act in the first degree); section 130.52 (forcible touching);  
52 section 130.53 (persistent sexual abuse); section 130.55 (sexual abuse  
53 in the third degree); section 130.60 (sexual abuse in the second  
54 degree); section 130.65 (sexual abuse in the first degree); section  
55 130.66 (aggravated sexual abuse in the third degree); section 130.67  
56 (aggravated sexual abuse in the second degree); section 130.70 (aggra-

1 vated sexual abuse in the first degree); section 130.91 (sexually moti-  
2 vated felony); section 130.95 (predatory sexual assault); section 130.96  
3 (predatory sexual assault against a child); section 135.05 (unlawful  
4 imprisonment in the second degree); section 135.10 (unlawful imprison-  
5 ment in the first degree); section 135.60 (coercion in the third  
6 degree); section 135.61 (coercion in the second degree); section 135.65  
7 (coercion in the first degree); section 140.20 (burglary in the third  
8 degree); section 140.25 (burglary in the second degree); section 140.30  
9 (burglary in the first degree); section 145.00 (criminal mischief in the  
10 fourth degree); section 145.05 (criminal mischief in the third degree);  
11 section 145.10 (criminal mischief in the second degree); section 145.12  
12 (criminal mischief in the first degree); section 145.14 (criminal  
13 tampering in the third degree); section 215.50 (criminal contempt in the  
14 second degree); section 215.51 (criminal contempt in the first degree);  
15 section 215.52 (aggravated criminal contempt); section 240.25 (harass-  
16 ment in the first degree); subdivision one, two or four of section  
17 240.30 (aggravated harassment in the second degree); aggravated family  
18 offense as defined in this section or any attempt or conspiracy to  
19 commit any of the foregoing offenses where the defendant and the person  
20 against whom the offense was committed were members of the same family  
21 or household as defined in subdivision one of section 530.11 of the  
22 criminal procedure law.

23 § 4. This act shall take effect immediately.