

STATE OF NEW YORK

1966--A

2021-2022 Regular Sessions

IN ASSEMBLY

January 13, 2021

Introduced by M. of A. CRUZ, SIMON -- read once and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the criminal procedure law and the executive law, in relation to enacting the "New York State 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 "New York
2 State Phoenix 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.

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

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1 9. It is the intent of the legislature to increase training for law
2 enforcement to ensure victims are protected and to prevent future domes-
3 tic violence from occurring.

4 § 3. Subdivision 3 of section 30.10 of the criminal procedure law is
5 amended by adding a new paragraph (h) to read as follows:

6 (h) A prosecution of a felony family offense defined in subdivision
7 one of section 530.11 of this chapter with a period of limitation of
8 less than ten years may be commenced within ten years of the commission
9 thereof. A prosecution of a misdemeanor family offense defined in subdi-
10 vision one of section 530.11 of this chapter with a period of limitation
11 of less than five years may be commenced within five years of the
12 commission thereof.

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

15 § 214-b. Family offense intervention. The superintendent shall, for
16 all members of the state police including new and veteran officers,
17 develop, maintain and disseminate, in consultation with the state office
18 for the prevention of domestic violence, written policies and procedures
19 consistent with article eight of the family court act and applicable
20 provisions of the criminal procedure and domestic relations laws,
21 regarding the investigation of and intervention in incidents of family
22 offenses. The written policies and procedures shall include a brief
23 current and historical context on communities of color impacted by
24 incarceration and violence, enforcement of criminal laws in family
25 offense situations, availability of civil remedies and community
26 resources, and protection of the victim. Such policies and procedures
27 shall make provision for education and training in the interpretation
28 and enforcement of New York's family offense laws, including but not
29 limited to:

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

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

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

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

1 subdivision five of section eight hundred twelve of the family court
2 act.

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

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

15 (c) the signs of family offenses;

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

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

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

22 (iii) extortion and the use of fear;

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

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

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

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

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

31 (h) family offense diversion;

32 (i) tenancy issues and family offenses;

33 (j) the impact on children of law enforcement intervention in family
34 offenses;

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

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

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

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

40 (n) cite and release policies; and

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

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

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

1 If appropriate, the training presenters shall include family offense
2 experts, who may include victims and people who have committed family
3 offenses and have been or are in the process of being rehabilitated,
4 with expertise in the delivery of direct services to victims and people
5 who have committed family offenses, including, but not limited to,
6 utilizing the staff of shelters for victims. Such courses of instruction
7 and policies and procedures shall make provisions for education and
8 training in the interpretation and enforcement of New York's family
9 offense laws, including but not limited to:

10 (1) techniques for handling incidents of family offenses that minimize
11 the likelihood of injury to the officer and that promote the safety of
12 the victim. These techniques shall include, but are not limited to, the
13 following:

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

17 (ii) intake and recording of victim statements, and the prompt trans-
18 lation of such statements if made in a language other than English, in
19 accordance with [~~subparagraph three~~] clause (iv) of this [~~paragraph~~]
20 subparagraph, on a standardized "domestic violence incident report form"
21 promulgated by the division of criminal justice services in consultation
22 with the superintendent of state police, representatives of local police
23 forces and the state office for the prevention of domestic violence, and
24 the investigation thereof so as to ascertain whether a crime has been
25 committed against the victim by a member of the victim's family or
26 household as such terms are defined in section eight hundred twelve of
27 the family court act and section 530.11 of the criminal procedure law;
28 and

29 [~~(2)~~] (iii) the need for immediate intervention in family offenses
30 including the arrest and detention of alleged offenders, pursuant to
31 subdivision four of section 140.10 of the criminal procedure law, and
32 notifying victims of their rights, in their native language, if identi-
33 fied as other than English, in accordance with [~~subparagraph three~~]
34 clause (iv) of this [~~paragraph~~] subparagraph, including but not limited
35 to immediately providing the victim with the written notice required in
36 subdivision six of section 530.11 of the criminal procedure law and
37 subdivision five of section eight hundred twelve of the family court
38 act;

39 [~~(3)~~] (iv) determine, in consultation with the superintendent of state
40 police and the office for the prevention of domestic violence, the
41 languages in which such translation required by [~~subparagraph one~~]
42 clause (ii) of this [~~paragraph~~] subparagraph, and the notification
43 required by [~~subparagraph two~~] clause (iii) of this [~~paragraph~~] subpara-
44 graph, shall be provided. Such determination shall be based on the size
45 of the New York state population that speaks each language and any other
46 relevant factor. Such written notice required pursuant to [~~subparagraph~~]
47 ~~two~~ clause (iii) of this [~~paragraph~~] subparagraph shall be avail-
48 able to all local law enforcement agencies throughout the state. Nothing
49 in this [~~paragraph~~] subparagraph shall prevent the council from using
50 the determinations made by the superintendent of state police pursuant
51 to paragraph (iv) of subdivision [~~(e)~~] (a) of section two hundred four-
52 teen-b of this chapter;

53 (2) the nature and extent of family offenses;

54 (3) the signs of family offenses;

55 (4) criminal conduct that may be related to family offenses, includ-
56 ing, but not limited to, any of the following:

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

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

5 (iii) extortion and the use of fear;

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

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

9 (5) the assessment of lethality or signs of lethal violence in family
10 offense situations;

11 (6) the legal rights of, and remedies available to, victims of family
12 offenses;

13 (7) documentation, report writing, and evidence collection;

14 (8) family offense diversion;

15 (9) tenancy issues and family offenses;

16 (10) the impact on children of law enforcement intervention in family
17 offenses;

18 (11) the services and facilities available to victims and offenders;

19 (12) the use and applications of the penal law in family offense situ-
20 ations;

21 (13) verification and enforcement of orders of protection when

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

23 (14) cite and release policies; and

24 (15) emergency assistance to victims and how to assist victims in
25 pursuing criminal justice options;

26 § 6. This act shall take effect on the first of January next succeed-
27 ing the date upon which it shall have become a law; provided that
28 section three of this act shall apply to crimes committed on or after
29 such date and to crimes for which the statute of limitations that was in
30 effect prior to such date has not elapsed as of such date.