STATE OF NEW YORK

8901

IN ASSEMBLY

January 26, 2024

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

AN ACT to amend the penal law and the criminal procedure law, in relation to establishing domestic violence crimes

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

Section 1. Title O of the penal law is amended by adding a new article 256 to read as follows:

ARTICLE 256
DOMESTIC VIOLENCE CRIMES

Section 256.00 Domestic violence crimes.

§ 256.00 Domestic violence crimes.

1. A person commits a domestic violence crime when he or she intentionally commits or intends to commit a specified offense against a member of the same family or household.

2. A "specified offense" is an offense defined by any of the following provisions of this chapter: section 120.00 (assault in the third degree); section 120.02 (reckless assault of a child); 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 120.30 (promoting a suicide attempt); 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); section 125.10 (criminally negligent homicide); section 125.15 (manslaughter in the second degree); section 125.20 (manslaughter in the first degree); section 125.25 (murder in the second degree); section 130.20 (sexual

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

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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 130.65-a (aggravated sexual abuse in the fourth 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 130.75 (course of sexual conduct against a child in the first degree); section 130.80 (course of sexual conduct against a child in the second degree); section 130.85 (female genital mutilation); section 130.90 (facilitating a sex offense with a controlled substance); section 130.91 (sexually motivated felony); section 130.95 (predatory sexual assault); section 130.96 (predatory sexual assault against a child); section 135.05 (unlawful imprisonment in the second degree); section 135.10 (unlawful imprisonment in the first degree); section 135.20 (kidnapping in the second degree); section 135.25 (kidnapping in the first degree); section 135.60 (coercion in the third degree); section 135.61 (coercion in the second degree); section 135.65 (coercion in the first degree); section 140.05 (trespass); section 140.15 (criminal trespass in the second degree); section 140.17 (criminal trespass in the first degree); section 140.20 (burglary in the third degree); section 140.25 (burglary in the second degree); section 140.30 (burglary in the first degree); section 145.00 (criminal mischief in the fourth degree); section 145.05 (criminal mischief in the third degree); section 145.10 (criminal mischief in the second degree); section 145.12 (criminal mischief in the first degree); section 145.14 (criminal tampering in the third degree); section 215.50 (criminal contempt in the second degree); section 215.51 (criminal contempt in the first degree); section 215.52 (aggravated criminal contempt); section 240.20 (disorderly conduct); section 240.25 (harassment in the first degree); section 240.26 (harassment in the second degree); subdivision one, two or four of section 240.30 (aggravated harassment in the second degree); section 240.70 (criminal interference with health care services or religious worship in the second degree); section 240.72 (aggravated interference with health care services in the second degree); section 240.73 (aggravated interference with health care services in the first degree); section 240.75 (aggravated family offense); or any attempt or conspiracy to commit any of the foregoing offenses where the defendant and the person against whom the offense was committed were members of the same family or household as defined in subdivision three of this section. A "specified offense" shall also be an offense defined by any of the following provisions of this chapter: section 242.05 (interference, harassment or intimidation of a service animal) and section 242.10 (harming a service animal in the second degree) when such service animal is owned by members of the same family or household as defined in subdivision three of this section.

3. For purposes of this section, a member of the same family or household shall mean the following individuals:

(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 are married or have lived together at any time; or

(e) unrelated persons who are continually or at regular intervals living in the same household or who have in the past continually or at regular intervals lived in the same household.

§ 2. The penal law is amended by adding a new section 60.38 to read as follows:

§ 60.38 Authorized disposition; domestic violence crimes.

1. When a person is convicted of a domestic violence crime pursuant to section 256.00 of this chapter, and the specified offense is a violent felony offense, as defined in section 70.02 of this title, the domestic violence crime may be deemed a violent felony offense.

2. When a person is convicted of a domestic violence crime pursuant to section 256.00 of this chapter and the specified offense is a misdemeanor or a class C, D or E felony, the domestic violence crime may be deemed to be one category higher than the specified offense the defendant committed, or one category higher than the offense level applicable to the defendant's conviction for an attempt or conspiracy to commit a specified offense, whichever is applicable.

3. When a person is convicted of a domestic violence crime pursuant to section 256.00 of this chapter and the specified offense is a violation, the domestic violence crime may be deemed an unclassified misdemeanor.

4. In addition to any of the dispositions authorized by this chapter, the court may require as part of the sentence imposed upon a person convicted of a domestic violence crime pursuant to this article, that the defendant complete a program, training session or counseling session directed at domestic violence crime prevention and education, where the court determines such program, training session or counseling session is appropriate, available and was developed or authorized by the court or local agencies in cooperation with organizations serving the affected community.

§ 3. Paragraphs (t) and (u) of subdivision 4 of section 510.10 of the criminal procedure law, paragraph (t) as amended and paragraph (u) as added by section 2 of subpart B of part UU of chapter 56 of the laws of 2022, are amended and a new paragraph (v) is added to read as follows:

(t) any felony or class A misdemeanor involving harm to an identifiable person or property, or any charge of criminal possession of a firearm as defined in section 265.01-b of the penal law, where such charge arose from conduct occurring while the defendant was released on his or her own recognizance, released under conditions, or had yet to be arraigned after the issuance of a desk appearance ticket for a separate felony or class A misdemeanor involving harm to an identifiable person or property, or any charge of criminal possession of a firearm as defined in section 265.01-b of the penal law, provided, however, that the prosecutor must show reasonable cause to believe that the defendant committed the instant crime and any underlying crime. For the purposes of this subparagraph, any of the underlying crimes need not be a qualifying offense as defined in this subdivision. For the purposes of this paragraph, "harm to an identifiable person or property" shall include but not be limited to theft of or damage to property. However, based upon a review of the facts alleged in the accusatory instrument, if the court determines that such theft is negligible and does not appear to be in furtherance of other criminal activity, the principal shall be released on his or her own recognizance or under appropriate non-monetary conditions; [~~or~~]

(u) criminal possession of a weapon in the third degree as defined in subdivision three of section 265.02 of the penal law or criminal sale of a firearm to a minor as defined in section 265.16 of the penal law[~~.~~]; **or**

(v) a domestic violence crime as defined in section 256.00 of the penal law.

§ 4. This act shall take effect on the ninetieth day after it shall have become a law.