

# STATE OF NEW YORK

4686--A

Cal. No. 1471

2023-2024 Regular Sessions

## IN SENATE

February 13, 2023

Introduced by Sen. PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged and said bill committed to the Committee on Rules -- ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

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. Domestic violence is a pattern of coercive behavior and tactics  
6 used by someone against their intimate partner in an attempt to gain or  
7 maintain power and control and types of abuse can include physical,  
8 sexual, emotional, psychological, technological and economic abuse or  
9 threats of actions.
- 10 2. On average, one in three women and one in four men in the United  
11 States experience rape, physical violence, or stalking by an intimate  
12 partner in their lifetime.
- 13 3. Between six percent and fourteen percent of male offenders of  
14 domestic violence and between 23 percent and 37 percent of female offen-  
15 ders of domestic violence report they had been physically or sexually  
16 abused before the age of 18.
- 17 4. When domestic violence occurs in New York state, the time victims  
18 have to report the incident to law enforcement to initiate criminal  
19 proceedings varies depending on the type of crime committed.

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

LBD01990-02-4

1 5. Research demonstrates that survivors of domestic violence who were  
2 hesitant to call law enforcement frequently cite fear of reprisal,  
3 eviction, arrest, embarrassment, immigration status and fear of losing  
4 custody of their children as reasons for their hesitation.

5 6. Due to systemic racism, which affects social structures, laws and  
6 policies, Black men and Black women experience domestic violence at  
7 higher rates than other communities. Due to distrust in government agen-  
8 cies or law enforcement due to years of discrimination and abuse, Black  
9 victims experiencing domestic violence are less likely to call law  
10 enforcement due to fears of their partner being brutalized or killed by  
11 the police. On average, Black men are 2.5 times more likely to be killed  
12 by police than white men, and Black women are 1.4 times more likely to  
13 be killed by police than white women.

14 7. Black women who report crime to law enforcement are more likely to  
15 be criminalized, prosecuted and incarcerated while trying to navigate  
16 and survive the conditions of violence in their lives. Compared to other  
17 groups, Black women are 80% more likely to be convicted of killing their  
18 abusive partner when defending themselves from abuse.

19 8. Law enforcement officers often have initial contact with victims of  
20 domestic violence and such response should be viewed as a serious call  
21 for service and an opportunity to provide life-saving engagement with  
22 victims and connection to community-based supportive services.

23 9. It is the intent of the legislature to allow for victims of domes-  
24 tic violence to seek justice by extending the statute of limitations for  
25 reporting family offenses to law enforcement.

26 10. It is the intent of the legislature to ensure law enforcement  
27 personnel receive comprehensive survivor-centered, trauma-informed  
28 training that is culturally sensitive and appropriate for diverse commu-  
29 nities.

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

32 (i) A prosecution of a felony family offense defined in subdivision  
33 one of section 530.11 of this chapter with a period of limitation of  
34 less than ten years may be commenced within ten years of the commission  
35 thereof. A prosecution of a misdemeanor family offense defined in subdi-  
36 vision one of section 530.11 of this chapter with a period of limitation  
37 of less than five years may be commenced within five years of the  
38 commission thereof.

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

41 § 214-b. Family offense intervention. The superintendent shall, for  
42 all members of the state police including new and veteran officers,  
43 develop, maintain and disseminate, in consultation with the state office  
44 for the prevention of domestic violence and the New York state coalition  
45 against domestic violence, written policies and procedures consistent  
46 with article eight of the family court act and applicable provisions of  
47 the criminal procedure and domestic relations laws, regarding the inves-  
48 tigation of and intervention in incidents of family offenses. The writ-  
49 ten policies and procedures shall include a brief current and historical  
50 context on communities of color impacted by incarceration and violence,  
51 enforcement of criminal laws in family offense situations, availability  
52 of civil remedies and community resources, and protection of the victim.

53 Such policies and procedures shall make provision for education and  
54 training in the interpretation and enforcement of New York's family  
55 offense laws, including but not limited to:

1 (a) techniques for handling incidents of family offenses that minimize  
2 the likelihood of injury and promote the safety of all individuals at  
3 the scene, including officers. These techniques shall include, but are  
4 not limited to, the following:

5 (i) methods for ensuring victim interviews occur in a trauma-informed  
6 manner and are conducted beyond the presence of other involved parties  
7 and with appropriate sound barriers to prevent the conversation from  
8 being overheard;

9 (ii) intake and recording of victim statements, and the prompt trans-  
10 lation of such statements if made in a language other than English, in  
11 accordance with [~~subdivision (e)~~] paragraph (iv) of this [~~section~~]  
12 subdivision, on a standardized "domestic violence incident report form"  
13 promulgated by the state division of criminal justice services in  
14 consultation with the superintendent and with the state office for the  
15 prevention of domestic violence, and the investigation thereof so as to  
16 ascertain whether a crime has been committed against the victim by a  
17 member of the victim's family or household as such terms are defined in  
18 section eight hundred twelve of the family court act and section 530.11  
19 of the criminal procedure law;

20 [~~(b)~~] (iii) the need [for immediate intervention in family offenses]  
21 to respond to every domestic incident as a serious call for service and  
22 to immediately intervene, as appropriate including the arrest and  
23 detention of alleged offenders, pursuant to subdivision four of section  
24 140.10 of the criminal procedure law, and notifying victims of their  
25 criminal and civil rights, in their native language, if identified as  
26 other than English, in accordance with [~~subdivision (e)~~] paragraph (iv)  
27 of this [~~section~~] subdivision, including but not limited to immediately  
28 providing the victim with the written notice provided in subdivision six  
29 of section 530.11 of the criminal procedure law and subdivision five of  
30 section eight hundred twelve of the family court act[~~-~~]; and

31 [~~(e) The~~] (iv) the superintendent, in consultation with the division  
32 of criminal justice services and the office for the prevention of domes-  
33 tic violence shall determine the languages in which such translation  
34 required by [~~subdivision (a)~~] paragraph (ii) of this [~~section~~] subdivi-  
35 sion, and the notification required pursuant to [~~subdivision (b)~~] para-  
36 graph (iii) of this [~~section~~] subdivision, shall be provided. Such  
37 determination shall be based on the size of the New York state popu-  
38 lation that speaks each language and any other relevant factor. Such  
39 written notice required pursuant to [~~subdivision (b)~~] paragraph (iii) of  
40 this [~~section~~] subdivision shall be made available to all state police  
41 officers in the state[~~-~~];

42 (b) case law and definitions of domestic violence and the tactics  
43 commonly used by one party to induce fear in another party, including  
44 verbal, emotional, psychological, economic, physical, technological,  
45 coercive and sexual abuse, and monitoring of a partner's location and  
46 activities;

47 (c) relevant statutes and case law involving law enforcement's inves-  
48 tigation and intervention of cases involving family offenses and court-  
49 issued orders of protection, including assessing the immediate safety  
50 and welfare of all occupants at the location, including children; iden-  
51 tifying the presence of any firearms in the household; and laws and  
52 protocols pertaining to the search and seizure of firearms in plain  
53 sight or discovered pursuant to a consensual or lawful search;

54 (d) the increased risk posed to victims and children after police  
55 intervention;

1 (e) the legal rights of, and remedies available to, victims of family  
2 offenses, including the right to seek justice in either a civil or crim-  
3 inal court or in both;

4 (f) the process for documenting the complete history of the parties'  
5 abusive tactics and coercive control behaviors, collection of evidence  
6 and documentation of the investigation, including requests by victims to  
7 not be recorded on body cameras;

8 (g) the disproportionate levels of violence experienced by communities  
9 of color, particularly women, and data regarding rates of physical  
10 violence, psychological abuse, sexual violence and homicide experienced  
11 by such communities in comparison to other communities;

12 (h) the disproportionate involvement of communities of color with the  
13 criminal justice system and racial profiling, and trends in rates of  
14 incarceration for such communities;

15 (i) the culturally specific ways domestic violence can be perpetrated  
16 and the need for law enforcement to consider the cultural background and  
17 unique issues facing parties when investigating and responding to inci-  
18 dents involving family offenses; and

19 (j) community-based resources and services available to parties  
20 involved in family offense situations.

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

24 (f) Develop, maintain and disseminate, in consultation with the state  
25 office for the prevention of domestic violence and the New York state  
26 coalition against domestic violence, written policies and procedures and  
27 a course or courses of instruction consistent with article eight of the  
28 family court act and applicable provisions of the criminal procedure and  
29 domestic relations laws, regarding the investigation of and intervention  
30 by new and veteran police officers in incidents of family offenses.  
31 Such courses of instruction and policies and procedures shall make  
32 provisions for education and training in the interpretation and enforce-  
33 ment of New York's family offense laws, including but not limited to:

34 (1) techniques for handling incidents of family offenses that minimize  
35 the likelihood of injury and promote the safety of all individuals at  
36 the scene, including officers. These techniques shall include, but are  
37 not limited to, the following:

38 (i) methods for ensuring victim interviews occur in a trauma-informed  
39 manner and are conducted beyond the presence of other involved parties  
40 and with appropriate sound barriers to prevent the conversation from  
41 being overheard;

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

53 [~~and~~  
54 (2)] (iii) the need [~~for immediate intervention in family offenses~~] to  
55 respond to every domestic incident as a serious call for service and to  
56 immediately intervene, as appropriate, including the arrest and

1 detention of alleged offenders, pursuant to subdivision four of section  
2 140.10 of the criminal procedure law, and notifying victims of their  
3 criminal and civil rights, in their native language, if identified as  
4 other than English, in accordance with [~~subparagraph three~~] clause (iv)  
5 of this [~~paragraph~~] subparagraph, including but not limited to imme-  
6 diately providing the victim with the written notice required in subdivi-  
7 sion six of section 530.11 of the criminal procedure law and subdivi-  
8 sion five of section eight hundred twelve of the family court act; and  
9 [~~(3)~~] (iv) determine, in consultation with the superintendent of state  
10 police and the office for the prevention of domestic violence, the  
11 languages in which such translation required by [~~subparagraph one~~]  
12 clause (ii) of this [~~paragraph~~] subparagraph, and the notification  
13 required by [~~subparagraph two~~] clause (iii) of this [~~paragraph~~] subpara-  
14 graph, shall be provided. Such determination shall be based on the size  
15 of the New York state population that speaks each language and any other  
16 relevant factor. Such written notice required pursuant to [~~subparagraph~~  
17 two] clause (iii) of this [~~paragraph~~] subparagraph shall be made avail-  
18 able to all local law enforcement agencies throughout the state. Nothing  
19 in this [~~paragraph~~] subparagraph shall prevent the council from using  
20 the determinations made by the superintendent of state police pursuant  
21 to paragraph (iv) of subdivision [~~(e)~~] (a) of section two hundred four-  
22 teen-b of this chapter;

23 (2) case law and definitions of domestic violence and the tactics  
24 commonly used by one party to induce fear in another party, including  
25 verbal, emotional, psychological, economic, physical, technological,  
26 coercive and sexual abuse, and monitoring of a partner's location and  
27 activities;

28 (3) relevant statutes and case law involving law enforcement's inves-  
29 tigation and intervention of cases involving family offenses and court-  
30 issued orders of protection, including assessing the immediate safety  
31 and welfare of all occupants at the location, including children; iden-  
32 tifying the presence of any firearms in the household; and laws and  
33 protocols pertaining to the search and seizure of firearms in plain  
34 sight or discovered pursuant to a consensual or lawful search;

35 (4) the increased risk posed to victims and children after police  
36 intervention;

37 (5) the legal rights of, and remedies available to, victims of family  
38 offenses, including the right to seek justice in either a civil or crim-  
39 inal court or in both;

40 (6) the process for documenting the complete history of the parties'  
41 abusive tactics and coercive control behaviors, collection of evidence  
42 and documentation of the investigation, including requests by victims to  
43 not be recorded on body cameras;

44 (7) the disproportionate levels of violence experienced by communities  
45 of color, particularly women, and data regarding rates of physical  
46 violence, psychological abuse, sexual violence and homicide experienced  
47 by such communities in comparison to other communities;

48 (8) the disproportionate involvement of communities of color with the  
49 criminal justice system and racial profiling, and trends in rates of  
50 incarceration for such communities;

51 (9) the culturally specific ways domestic violence can be perpetrated  
52 and the need for law enforcement to consider the cultural background and  
53 unique issues facing parties when investigating and responding to inci-  
54 dents involving family offenses; and

55 (10) community-based resources and services available to parties  
56 involved in family offense situations.

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