

STATE OF NEW YORK

145--A

2023-2024 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 4, 2023

Introduced by M. of A. CRUZ, SIMON, BURDICK, GLICK, RAGA, ZACCARO, ZINERMAN, LEVENBERG, SILLITTI -- read once and referred to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Assembly Rule 3, sec. 2 -- 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. 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.
- 20 5. Research demonstrates that survivors of domestic violence who were
21 hesitant to call law enforcement frequently cite fear of reprisal,
22 eviction, arrest, embarrassment, immigration status and fear of losing
23 custody of their children as reasons for their hesitation.

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

LBD01990-03-4

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

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

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

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

22 10. It is the intent of the legislature to ensure law enforcement
23 personnel receive comprehensive survivor-centered, trauma-informed
24 training that is culturally sensitive and appropriate for diverse commu-
25 nities.

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

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

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

37 § 214-b. Family offense intervention. The superintendent shall, for
38 all members of the state police including new and veteran officers,
39 develop, maintain and disseminate, in consultation with the state office
40 for the prevention of domestic violence and the New York state coalition
41 against domestic violence, written policies and procedures consistent
42 with article eight of the family court act and applicable provisions of
43 the criminal procedure and domestic relations laws, regarding the inves-
44 tigation of and intervention in incidents of family offenses. The writ-
45 ten policies and procedures shall include a brief current and historical
46 context on communities of color impacted by incarceration and violence,
47 enforcement of criminal laws in family offense situations, availability
48 of civil remedies and community resources, and protection of the victim.
49 Such policies and procedures shall make provision for education and
50 training in the interpretation and enforcement of New York's family
51 offense laws, including but not limited to:

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

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

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

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

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

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

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

50 (d) the increased risk posed to victims and children after police
51 intervention;

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

55 (f) the process for documenting the complete history of the parties'
56 abusive tactics and coercive control behaviors, collection of evidence

1 and documentation of the investigation, including requests by victims to
2 not be recorded on body cameras;

3 (g) the disproportionate levels of violence experienced by communities
4 of color, particularly women, and data regarding rates of physical
5 violence, psychological abuse, sexual violence and homicide experienced
6 by such communities in comparison to other communities;

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

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

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

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

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

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

33 (i) methods for ensuring victim interviews occur in a trauma-informed
34 manner and are conducted beyond the presence of other involved parties
35 and with appropriate sound barriers to prevent the conversation from
36 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 [~~subparagraph three~~] clause (iv) of this [~~paragraph~~
40 subparagraph, on a standardized "domestic violence incident report form"
41 promulgated by the division of criminal justice services in consultation
42 with the superintendent of state police, representatives of local police
43 forces and the state office for the prevention of domestic violence, and
44 the investigation thereof so as to ascertain whether a crime has been
45 committed against the victim by a member of the victim's family or
46 household as such terms are defined in section eight hundred twelve of
47 the family court act and section 530.11 of the criminal procedure law;
48 [~~and~~

49 ~~(2)]~~ (iii) the need [~~for immediate intervention in family offenses~~] to
50 respond to every domestic incident as a serious call for service and to
51 immediately intervene, as appropriate, including the arrest and
52 detention of alleged offenders, pursuant to subdivision four of section
53 140.10 of the criminal procedure law, and notifying victims of their
54 criminal and civil rights, in their native language, if identified as
55 other than English, in accordance with [~~subparagraph three~~] clause (iv)
56 of this [~~paragraph~~] subparagraph, including but not limited to imme-

1 diately providing the victim with the written notice required in subdivi-
2 sion six of section 530.11 of the criminal procedure law and subdivi-
3 sion five of section eight hundred twelve of the family court act; and
4 ~~[(3)]~~ (iv) determine, in consultation with the superintendent of state
5 police and the office for the prevention of domestic violence, the
6 languages in which such translation required by ~~[subparagraph one]~~
7 clause (ii) of this ~~[paragraph]~~ subparagraph, and the notification
8 required by ~~[subparagraph two]~~ clause (iii) of this ~~[paragraph]~~ subpara-
9 graph, shall be provided. Such determination shall be based on the size
10 of the New York state population that speaks each language and any other
11 relevant factor. Such written notice required pursuant to ~~[subparagraph~~
12 ~~two]~~ clause (iii) of this ~~[paragraph]~~ subparagraph shall be made avail-
13 able to all local law enforcement agencies throughout the state. Nothing
14 in this ~~[paragraph]~~ subparagraph shall prevent the council from using
15 the determinations made by the superintendent of state police pursuant
16 to paragraph (iv) of subdivision ~~[(e)]~~ (a) of section two hundred four-
17 teen-b of this chapter;

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

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

30 (4) the increased risk posed to victims and children after police
31 intervention;

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

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

39 (7) the disproportionate levels of violence experienced by communities
40 of color, particularly women, and data regarding rates of physical
41 violence, psychological abuse, sexual violence and homicide experienced
42 by such communities in comparison to other communities;

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

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

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

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