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:

Section 1. This act shall be known and may be cited as the "New York State Phoenix Act".

§ 2. Legislative findings. The legislature finds and declares all of the following:

1. Domestic violence is a pattern of coercive behavior and tactics used by someone against their intimate partner in an attempt to gain or maintain power and control and types of abuse can include physical, sexual, emotional, psychological, technological and economic abuse or threats of actions.

2. On average, one in three women and one in four men in the United States experience rape, physical violence, or stalking by an intimate partner in their lifetime.

3. Between six percent and fourteen percent of male offenders of domestic violence and between 23 percent and 37 percent of female offenders of domestic violence report they had been physically or sexually abused before the age of 18.

4. When domestic violence occurs in New York state, the time victims have to report the incident to law enforcement to initiate criminal 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.

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

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

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

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

9. It is the intent of the legislature to allow for victims of domestic violence to seek justice by extending the statute of limitations for reporting family offenses to law enforcement.

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

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

(i) A prosecution of a felony family offense defined in subdivision one of section 530.11 of this chapter with a period of limitation of less than ten years may be commenced within ten years of the commission thereof. A prosecution of a misdemeanor family offense defined in subdivision one of section 530.11 of this chapter with a period of limitation of less than five years may be commenced within five years of the commission thereof.

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

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

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

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

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

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

[~~(c) The~~] (iv) the superintendent, in consultation with the division of criminal justice services and the office for the prevention of domestic violence shall determine the languages in which such translation required by [~~subdivision (a)~~] paragraph (ii) of this [~~section~~] subdivision, and the notification required pursuant to [~~subdivision (b)~~] paragraph (iii) of this [~~section~~] subdivision, shall be provided. Such determination shall be based on the size of the New York state population that speaks each language and any other relevant factor. Such written notice required pursuant to [~~subdivision (b)~~] paragraph (iii) of this [~~section~~] subdivision shall be made available to all state police officers in the state[~~.~~];

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

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

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

(e) the legal rights of, and remedies available to, victims of family offenses, including the right to seek justice in either a civil or criminal court or in both;

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

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

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

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

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

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

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

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

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

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

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

detention of alleged offenders, pursuant to subdivision four of section 140.10 of the criminal procedure law, and notifying victims of their criminal and civil rights, in their native language, if identified as other than English, in accordance with [~~subparagraph three~~] clause (iv) of this [~~paragraph~~] subparagraph, including but not limited to immediately providing the victim with the written notice required in subdivision six of section 530.11 of the criminal procedure law and subdivision five of section eight hundred twelve of the family court act; and

[~~(3)~~] (iv) determine, in consultation with the superintendent of state police and the office for the prevention of domestic violence, the languages in which such translation required by [~~subparagraph one~~] clause (ii) of this [~~paragraph~~] subparagraph, and the notification required by [~~subparagraph two~~] clause (iii) of this [~~paragraph~~] subparagraph, shall be provided. Such determination shall be based on the size of the New York state population that speaks each language and any other relevant factor. Such written notice required pursuant to [~~subparagraph two~~] clause (iii) of this [~~paragraph~~] subparagraph shall be made available to all local law enforcement agencies throughout the state. Nothing in this [~~paragraph~~] subparagraph shall prevent the council from using the determinations made by the superintendent of state police pursuant to paragraph (iv) of subdivision [~~(c)~~] (a) of section two hundred fourteen-b of this chapter;

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

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

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

(5) the legal rights of, and remedies available to, victims of family offenses, including the right to seek justice in either a civil or criminal court or in both;

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

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

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

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

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

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