



Legislation Text

File #: Res 0868-2011, **Version:** *

Preconsidered Res. No. 868

Resolution in support of S.3666/A.5890, which would amend the penal and criminal procedure law, as well as the family court act, by: (i) creating the crimes of domestic abuse in the first and second degrees; (ii) providing for deferral of sentencing in felony domestic abuse offenses pending court ordered treatment; and (iii) granting criminal courts and family courts concurrent jurisdiction over domestic abuse offenses.

By Council Members Vallone, Fidler, Gentile, Mendez and Weprin

Whereas, Domestic violence can manifest itself in a number of ways and can have lasting and detrimental physical and emotional effects on victims and their families; and

Whereas, Often, domestic violence batterers abuse their victims on a regular basis; and

Whereas, The penal laws of many states, but not New York, identify certain crimes as domestic violence crimes; and

Whereas, Although many crimes in New York are used to arrest and charge domestic violence batterers, the state currently has no penal law specifically designed to be used only for domestic violence offenses; and

Whereas, There are federal laws prohibiting the sale of firearms to individuals who are convicted of a misdemeanor crime of domestic violence; and

Whereas, Because New York does not have a penal law section specifically identified as a domestic violence crime, it is possible that certain cases which might otherwise be reported to the Federal Bureau of Investigation for the purpose of excluding the convicted offenders from purchasing a firearm are not being so reported; and

Whereas, Furthermore, under current New York law, it is possible for batterers to only be charged with a misdemeanor offense despite having committed multiple acts of domestic violence; and

Whereas, It is important for New York State to equip law enforcement with the tools necessary to

protect domestic violence victims and arrest and prosecute those batterers who inflict harm, especially those who are repeat offenders; and

Whereas, In order to bring greater protection to those who are victims of domestic violence, Senator Andrew Lanza and Assemblymember Michael Cusick introduced S.3666/A.5890; and

Whereas, S.3666/A.5890 would amend the penal law to add definitions for the following terms: domestic partner, fellow parent of a child in common, former spouse, and spouse; and

Whereas, S.3666/A.5890 would create, for the first time in New York, crimes identified as domestic violence crimes; and

Whereas, One of these crimes would be domestic abuse in the second degree, a class A misdemeanor, defined as when an individual, with the intent to harass, annoy, or alarm another person who is his or her spouse, former spouse, fellow parent of a child in common or domestic partner, causes physical injury to such other person; and

Whereas, The other crime would be domestic abuse in the first degree, an E felony, which could be charged following one of these four circumstances: (1) when, with intent to cause physical injury to another person who is his or her spouse, former spouse, fellow parent of a child in common or domestic partner, an individual causes such injury to such other person or to a third person; or (2) when an individual recklessly causes serious physical injury to his or her spouse, former spouse, fellow parent of a child in a common or domestic partner; or (3) when, with criminal negligence, an individual causes physical injury to his or her spouse, former spouse, fellow parent of a child in common or domestic partner by means of a deadly weapon or dangerous instrument; or (4) when an individual commits the crime of domestic abuse in the second degree, and he or she has previously been convicted of a violation of such or of the crime of domestic abuse in the first degree within the preceding five years; and

Whereas, S.3666/A.5890 would also allow a judge to order, under certain circumstances, deferred sentencing for those defendants who enter a guilty plea to the offense of domestic abuse in the first degree in

order to permit the defendant to participate in a court approved domestic violence and anger management program, or treatment for substance and/or alcohol abuse and dependence and any related mental disease or disorder; and

Whereas, If such a defendant successfully completes the program, subject to certain conditions, the court may authorize the defendant to withdraw his/her plea of guilty to domestic abuse in the first degree; and

Whereas, S.3666/A.5890 would also amend the criminal procedure law and family court act in order to grant family courts and criminal courts concurrent jurisdiction over the crimes of domestic abuse in the first and second degrees; and

Whereas, The passage of S.3666/A.5890 would establish specific domestic violence offenses and could, in certain cases, increase the punishment for those domestic violence abusers who commit serious acts of domestic abuse or who are repeat offenders; now, therefore, be it

Resolved, That the Council of the City of New York supports S.3666/A.5890, which would amend the penal and criminal procedure law, as well as the family court act, by: (i) creating the crimes of domestic abuse in the first and second degrees; (ii) providing for deferral of sentencing in felony domestic abuse offenses pending court ordered treatment; and (iii) granting criminal courts and family courts concurrent jurisdiction over domestic abuse offenses.

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