S T A T E O F N E W Y O R K

732

2011-2012 Regular Sessions

I N S E N A T E

(PREFILED)

January 5, 2011

Introduced by Sen. ROBACH -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the executive law, the family court act and the criminal procedure law, in relation to pre-dispositional and pre-sentence investigations in family offense cases

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision 4 of section 221-a of the executive law, as amended by section 7 of part D of chapter 56 of the laws of 2008, is amended to read as follows:

4. Courts and law enforcement officials, including probation officers, shall have the ability to disclose and share information with respect to such orders and warrants consistent with the purposes of this section, subject to applicable provisions of the family court act, domestic relations law and criminal procedure law concerning the confidentiality, sealing and expungement of records. DESIGNATED REPRESENTATIVES OF A LOCAL PROBATION SERVICE SHALL HAVE ACCESS TO INFORMATION IN THE STATEWIDE REGISTRY OF ORDERS OF PROTECTION AND WARRANTS NECESSARY IN ORDER TO RESPOND TO A JUDICIAL REQUEST FOR INFORMATION PURSUANT TO SUBDIVISION SIX OF SECTION EIGHT HUNDRED TWENTY-ONE-A OF THE FAMILY COURT ACT, SUBDIVISION SIX-A OF SECTION 530.12 OF THE CRIMINAL PROCEDURE LAW OR, INSOFAR AS THEY INVOLVE VICTIMS OF DOMESTIC VIOLENCE AS DEFINED BY SECTION FOUR HUNDRED FIFTY-NINE-A OF THE SOCIAL SERVICES LAW, SECTION 530.13 OF THE CRIMINAL PROCEDURE LAW, OR TO PREPARE AN INVESTIGATION AND REPORT IN PROCEEDINGS CONDUCTED PURSUANT TO SECTIONS 351.1, SIX HUNDRED FORTY-TWO, SIX HUNDRED FIFTY-SIX, SIX HUNDRED SIXTY-TWO, SEVEN HUNDRED FIFTY, EIGHT HUNDRED THIRTY-FIVE AND SUBDIVISION (B) OF SECTION ONE THOUSAND FORTY-SEVEN OF THE FAMILY COURT ACT OR ARTICLE THREE HUNDRED NINETY OF THE CRIMINAL PROCEDURE LAW.

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

LBD01933-01-1

S 2. The section heading and subdivision (a) of section 835 of the family court act, as amended by chapter 529 of the laws of 1963, are amended to read as follows:

Sequence of hearings; PROBATION INVESTIGATIONS AND REPORTS.

(a) Upon completion of the fact-finding hearing, the dispositional hearing may commence immediately after the required findings are made. IN AID OF ITS DISPOSITION, THE COURT MAY ADJOURN THE PROCEEDING FOR AN INVESTIGATION AND REPORT BY A LOCAL PROBATION SERVICE. FOR THE PURPOSES OF THIS ARTICLE, THE PROBATION INVESTIGATION AND REPORT MAY INCLUDE, BUT IS NOT LIMITED TO: THE PRESENCE OR ABSENCE OF AGGRAVATING FACTORS AS DEFINED IN PARAGRAPH (VII) OF SUBDIVISION (A) OF SECTION EIGHT HUNDRED TWENTY-SEVEN OF THIS ARTICLE, THE EXTENT OF INJURIES OR OUT-OF-POCKET LOSSES TO THE VICTIM WHICH MAY FORM THE BASIS FOR AN ORDER OF RESTITUTION PURSUANT TO SUBDIVISION (E) OF SECTION EIGHT HUNDRED FORTY-ONE OF THIS ARTICLE, THE HISTORY OF THE RESPONDENT WITH RESPECT TO FAMILY OFFENSES AND ORDERS OF PROTECTION IN THIS OR OTHER COURTS, WHETHER THE RESPONDENT IS IN POSSESSION OF ANY FIREARMS AND, IF SO, WHETHER THE RESPONDENT IS LICENSED OR OTHERWISE AUTHORIZED TO BE IN POSSESSION OF SUCH FIREARMS.

S 3. Subdivision 3 of section 390.20 of the criminal procedure law is amended to read as follows:

3. Permissible in any case. For purposes of sentence, ISSUANCE OF AN ORDER OF PROTECTION PURSUANT TO SUBDIVISION FIVE OF SECTION 530.12 OF THIS CHAPTER OR, INSOFAR AS THEY INVOLVE VICTIMS OF DOMESTIC VIOLENCE AS DEFINED BY SECTION FOUR HUNDRED FIFTY-NINE-A OF THE SOCIAL SERVICES LAW, SECTION 530.13 OF THIS CHAPTER, the court may, in its discretion, order a pre-sentence investigation and report in any case, irrespective of whether such investigation and report is required by subdivision one or two OF THIS SECTION.

S 4. Subdivision 4 of section 390.30 of the criminal procedure law, as amended by chapter 618 of the laws of 1992, the opening paragraph as amended by section 50 of part A of chapter 56 of the laws of 2010, is amended to read as follows:

4. Abbreviated investigation and short form report. In lieu of the procedure set forth in subdivisions one, two and three of this section, where the conviction is of a misdemeanor OR FAMILY OFFENSE, AS DEFINED IN SUBDIVISION ONE OF SECTION 530.11 OF THIS CHAPTER, OTHER THAN A FELONY, the scope of the pre-sentence investigation may be abbreviated and a short form report may be made. The use of abbreviated investigations and short form reports, the matters to be covered therein and the form of the reports shall be in accordance with the general rules regulating methods and procedures in the administration of probation as adopted from time to time by the commissioner of the division of criminal justice services pursuant to the provisions of article twelve of the executive law. No such rule, however, shall be construed so as to relieve the agency conducting the investigation of the duty of investigating and reporting upon:

(a) the extent of the injury or economic loss and the actual out-of-pocket loss to the victim including the amount of restitution and reparation sought by the victim, after the victim has been informed of the right to seek restitution and reparation, or

(b) IN A CASE INVOLVING A FAMILY OFFENSE, AS DEFINED IN SUBDIVISION ONE OF SECTION 530.11 OF THIS CHAPTER, THE DEFENDANT'S HISTORY OF FAMILY OFFENSES AND ORDERS OF PROTECTION, INCLUDING VIOLATIONS, IN PROCEEDINGS OR ACTIONS IN THIS OR OTHER COURTS, THE EXTENT OF INJURIES OR THREATS OF INJURY TO THE COMPLAINANT OR MEMBERS OF COMPLAINANT'S FAMILY OR HOUSE-

HOLD, THE USE OR THREATENED USE OF DANGEROUS INSTRUMENTS AGAINST THE COMPLAINANT OR MEMBERS OF COMPLAINANT'S FAMILY OR HOUSEHOLD, WHETHER THE DEFENDANT IS IN POSSESSION OF ANY FIREARMS AND, IF SO, WHETHER DEFENDANT IS LICENSED OR OTHERWISE AUTHORIZED TO BE IN POSSESSION OF SUCH FIREARMS, THE EXTENT TO WHICH THE DEFENDANT POSES AN IMMEDIATE AND ONGOING DANGER TO THE COMPLAINANT OR MEMBERS OF THE COMPLAINANT'S FAMILY OR HOUSEHOLD AND ANY OTHER INFORMATION RELEVANT TO THE ISSUE OF WHETHER AN ORDER OF PROTECTION, IN ADDITION TO ANY OTHER DISPOSITION, SHOULD BE ISSUED IN ACCORDANCE WITH SUBDIVISION FIVE OF SECTION 530.12 OF THIS CHAPTER, OR

(C) any matter relevant to the question of sentence OR ISSUANCE OF AN ORDER OF PROTECTION that the court directs to be included in particular cases.

S 5. This act shall take effect on the ninetieth day after it shall have become a law.