

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:

1 Section 1. Subdivision 4 of section 221-a of the executive law, as
2 amended by section 7 of part D of chapter 56 of the laws of 2008, is
3 amended to read as follows:
4 4. Courts and law enforcement officials, including probation officers,
5 shall have the ability to disclose and share information with respect to
6 such orders and warrants consistent with the purposes of this section,
7 subject to applicable provisions of the family court act, domestic
8 relations law and criminal procedure law concerning the confidentiality,
9 sealing and expungement of records. DESIGNATED REPRESENTATIVES OF A
10 LOCAL PROBATION SERVICE SHALL HAVE ACCESS TO INFORMATION IN THE STATE-
11 WIDE REGISTRY OF ORDERS OF PROTECTION AND WARRANTS NECESSARY IN ORDER TO
12 RESPOND TO A JUDICIAL REQUEST FOR INFORMATION PURSUANT TO SUBDIVISION
13 SIX OF SECTION EIGHT HUNDRED TWENTY-ONE-A OF THE FAMILY COURT ACT,
14 SUBDIVISION SIX-A OF SECTION 530.12 OF THE CRIMINAL PROCEDURE LAW OR,
15 INsofar AS THEY INVOLVE VICTIMS OF DOMESTIC VIOLENCE AS DEFINED BY
16 SECTION FOUR HUNDRED FIFTY-NINE-A OF THE SOCIAL SERVICES LAW, SECTION
17 530.13 OF THE CRIMINAL PROCEDURE LAW, OR TO PREPARE AN INVESTIGATION AND
18 REPORT IN PROCEEDINGS CONDUCTED PURSUANT TO SECTIONS 351.1, SIX HUNDRED
19 FORTY-TWO, SIX HUNDRED FIFTY-SIX, SIX HUNDRED SIXTY-TWO, SEVEN HUNDRED
20 FIFTY, EIGHT HUNDRED THIRTY-FIVE AND SUBDIVISION (B) OF SECTION ONE
21 THOUSAND FORTY-SEVEN OF THE FAMILY COURT ACT OR ARTICLE THREE HUNDRED
22 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

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

4 Sequence of hearings; PROBATION INVESTIGATIONS AND REPORTS.

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

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

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

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

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

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

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

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

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

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