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2013-2014 Regular Sessions

I N   S E N A T E

(PREFILED)

January 9, 2013

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

AN ACT to amend the criminal procedure law, the family court act, the  
civil practice law and rules, the penal law and the social services  
law, in relation to restricting the ability of perpetrators of violent  
crimes to access personal records of their victims; and to amend the  
civil practice law and rules, in relation to service of a subpoena by  
a pro se litigant

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

1     Section 1. Section 240.50 of the criminal procedure law is amended by  
2     adding a new subdivision 5 to read as follows:  
3     5. NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE, IN THE CASE OF  
4     A CRIMINAL ACTION INVOLVING A FELONY AS DEFINED IN SECTION 10.00 OF THE  
5     PENAL LAW:  
6     (A) ENTAILING SERIOUS PHYSICAL INJURY AS DEFINED IN SECTION 10.00 OF  
7     THE PENAL LAW; OR  
8     (B) INVOLVING AN OFFENSE DESCRIBED IN ARTICLE ONE HUNDRED THIRTY OF  
9     THE PENAL LAW,  
10    DISCOVERY OF MATERIAL CONTAINING PERSONAL INFORMATION REGARDING THE  
11    VICTIM AGAINST WHOM THE FELONY WAS ALLEGEDLY COMMITTED IS ALLOWED,  
12    INCLUDING, BUT NOT LIMITED TO DISCOVERY OF MEDICAL, EDUCATIONAL, EMPLOY-  
13    MENT AND FINANCIAL INFORMATION AND NON-PUBLIC INFORMATION PERTAINING TO  
14    THE VICTIM'S LOCATION, SHALL BE ALLOWED ONLY PURSUANT TO A SUBPOENA  
15    ISSUED BY THE COURT IN WHICH THE ACTION IS PENDING, AND A PROTECTIVE  
16    ORDER DIRECTING THAT ANY SUCH MATERIAL SHALL BE USED FOR THE EXCLUSIVE  
17    PURPOSE OF PREPARING FOR THE DEFENSE OR PROSECUTION OF THE CRIMINAL  
18    ACTION. ALL SUCH SUBPOENAS SERVED ON BEHALF OF THE DEFENSE SHALL BE  
19    SERVED BY THE DEFENDANT'S AGENT.

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

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1 S 2. Section 331.5 of the family court act is amended by adding a new  
2 subdivision 5 to read as follows:

3 5. NOTWITHSTANDING ANY OTHER PROVISION OF THIS ACT, IN THE CASE OF AN  
4 ACTION INVOLVING A FELONY AS DEFINED IN SECTION 10.00 OF THE PENAL LAW:

5 (A) ENTAILING SERIOUS PHYSICAL INJURY AS DEFINED IN SECTION 10.00 OF  
6 THE PENAL LAW; OR

7 (B) INVOLVING AN OFFENSE DESCRIBED IN ARTICLE ONE HUNDRED THIRTY OF  
8 THE PENAL LAW,

9 DISCOVERY OF MATERIAL CONTAINING PERSONAL INFORMATION REGARDING THE  
10 VICTIM AGAINST WHOM THE FELONY WAS ALLEGEDLY COMMITTED IS ALLOWED,  
11 INCLUDING, BUT NOT LIMITED TO DISCOVERY OF MEDICAL, EDUCATIONAL, EMPLOY-  
12 MENT AND FINANCIAL INFORMATION AND NON-PUBLIC INFORMATION PERTAINING TO  
13 THE VICTIM'S LOCATION, SHALL BE ALLOWED ONLY PURSUANT TO A SUBPOENA  
14 ISSUED BY THE COURT IN WHICH THE ACTION IS PENDING, AND A PROTECTIVE  
15 ORDER DIRECTING THAT ANY SUCH MATERIAL SHALL BE USED FOR THE EXCLUSIVE  
16 PURPOSE OF PREPARING FOR THE DEFENSE OR PRESENTMENT OF THE ACTION. ALL  
17 SUCH SUBPOENAS SERVED ON BEHALF OF THE PERSON ACCUSED OF COMMITTING THE  
18 FELONY SHALL BE SERVED BY SUCH PERSON'S AGENT.

19 S 3. Section 3103 of the civil practice law and rules is amended by  
20 adding a new subdivision (d) to read as follows:

21 (D) NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE, IN THE CASE  
22 OF ANY ACTION INVOLVING A PERSON WHO IS CONVICTED IN A CRIMINAL COURT OF  
23 A FELONY AS DEFINED IN SECTION 10.00 OF THE PENAL LAW:

24 (I) ENTAILING SERIOUS PHYSICAL INJURY AS DEFINED IN SECTION 10.00 OF  
25 THE PENAL LAW; OR

26 (II) INVOLVING AN OFFENSE DESCRIBED IN ARTICLE ONE HUNDRED THIRTY OF  
27 THE PENAL LAW,

28 DISCOVERY OF MATERIAL CONTAINING PERSONAL INFORMATION REGARDING THE  
29 VICTIM AGAINST WHOM THE FELONY WAS COMMITTED IS ALLOWED, INCLUDING, BUT  
30 NOT LIMITED TO DISCOVERY OF MEDICAL, EDUCATIONAL, EMPLOYMENT AND FINAN-  
31 CIAL INFORMATION AND NON-PUBLIC INFORMATION PERTAINING TO THE VICTIM'S  
32 LOCATION, SHALL BE ALLOWED ONLY PURSUANT TO A SUBPOENA ISSUED BY THE  
33 COURT IN WHICH THE ACTION IS PENDING, AND A PROTECTIVE ORDER DIRECTING  
34 THAT ANY SUCH MATERIAL SHALL BE USED FOR THE EXCLUSIVE PURPOSE OF  
35 PREPARING FOR THE DEFENSE OR PROSECUTION OF THE ACTION. ALL SUCH SUBPOE-  
36 NAS SERVED ON BEHALF OF THE PERSON ACCUSED OF COMMITTING THE FELONY  
37 SHALL BE SERVED BY SUCH PERSON'S AGENT.

38 S 4. The penal law is amended by adding a new section 60.38 to read as  
39 follows:

40 S 60.38 MANDATORY ORDER OF PROTECTION FOR PERSONAL INFORMATION PERTAIN-  
41 ING TO VICTIMS OF VIOLENT CRIMES.

42 1. WHENEVER PROCEEDINGS IN AN ADMINISTRATIVE TRIBUNAL OR A COURT OF  
43 THIS STATE RESULT IN A CONVICTION FOR A FELONY:

44 (A) ENTAILING SERIOUS PHYSICAL INJURY; OR

45 (B) INVOLVING AN OFFENSE DESCRIBED IN ARTICLE ONE HUNDRED THIRTY OF  
46 THIS CHAPTER,

47 THERE SHALL BE ISSUED AT SENTENCING A MANDATORY PROTECTIVE ORDER PROHIB-  
48 ITING THE CONVICTED PERSON FROM OBTAINING ANY NON-PUBLIC RECORDS  
49 CONTAINING PERSONAL INFORMATION REGARDING THE VICTIM AGAINST WHOM THE  
50 FELONY WAS COMMITTED, INCLUDING, BUT NOT LIMITED TO MEDICAL, EDUCA-  
51 TIONAL, EMPLOYMENT AND FINANCIAL INFORMATION AND INFORMATION PERTAINING  
52 TO THE VICTIM'S LOCATION. THIS ORDER SHALL BE A PERMANENT ORDER WHICH  
53 SHALL NOT EXPIRE, AND THE VICTIM SHALL NOT BE REQUIRED TO PERIODICALLY  
54 RENEW OR REAPPLY FOR THE ORDER. SUBJECT TO THE PROVISIONS OF SUBDIVISION  
55 TWO OF THIS SECTION, THE ORDER SHALL NOT BE SUBJECT TO VITIATION OR  
56 MODIFICATION UPON APPLICATION BY THE CONVICTED PERSON, PROVIDED THAT IF

1 THE CONVICTION IS REVERSED ON APPEAL, THE ORDER MAY BE MODIFIED OR VITI-  
2 ATED BY THE SUPERIOR COURT UPON APPLICATION BY THE DEFENDANT AND AFTER  
3 APPROPRIATE NOTICE TO AN OPPORTUNITY TO BE HEARD BY THE VICTIM AND THE  
4 PROSECUTOR IN THE CASE. THE PROTECTIVE ORDER ISSUED PURSUANT TO THIS  
5 SECTION SHALL REPLACE ANY PROTECTIVE ORDER ISSUED DURING THE COURSE OF  
6 THE ACTION RESULTING IN THE CONVICTION.

7 2. THE PROVISIONS OF SUBDIVISION ONE OF THIS SECTION SHALL APPLY IN  
8 ALL CASES IN WHICH THE VICTIM IS AN ADULT AND IN ALL CASES IN WHICH THE  
9 VICTIM IS A MINOR AND THE CONVICTED PERSON IS NOT AN IMMEDIATE FAMILY  
10 MEMBER OF THE VICTIM. IN CASES IN WHICH THE VICTIM IS A MINOR AND THE  
11 CONVICTED PERSON IS AN IMMEDIATE FAMILY MEMBER OF THE VICTIM, THE  
12 PROVISIONS OF SUBDIVISION ONE OF THIS SECTION SHALL APPLY, PROVIDED THAT  
13 THE CONVICTED PERSON MAY APPLY TO FAMILY COURT FOR RELIEF FROM THE  
14 PROTECTIVE ORDER. THE FAMILY COURT MAY GRANT OR DENY SUCH APPLICATION  
15 AND/OR MAY ISSUE AN ORDER OF PROTECTION AS DESCRIBED IN SECTION ONE  
16 THOUSAND FIFTY-SIX OF THE FAMILY COURT ACT.

17 3. THE PERSON CONVICTED OF THE FELONY SHALL PAY ALL COSTS INCURRED IN  
18 CONNECTION WITH THE ISSUANCE AND ENFORCEMENT OF THE PROTECTIVE ORDER. IN  
19 THE EVENT THAT SUCH PERSON UNSUCCESSFULLY CHALLENGES THE VALIDITY OF THE  
20 PROTECTIVE ORDER OR UNSUCCESSFULLY SEEKS TO HAVE IT VITIATED OR MODI-  
21 FIED, HE OR SHE SHALL BE LIABLE FOR ALL COSTS INCURRED DURING THE COURSE  
22 OF SUCH CHALLENGE, INCLUDING COSTS INCURRED BY THE VICTIM IN OPPOSING  
23 THE CHALLENGE.

24 4. THE COSTS PROVIDED FOR IN SUBDIVISION THREE OF THIS SECTION SHALL  
25 BE PAID TO THE CLERK OF THE COURT OR ADMINISTRATIVE TRIBUNAL THAT  
26 RENDERED THE CONVICTION. WITHIN THE FIRST TEN DAYS OF THE MONTH FOLLOW-  
27 ING COLLECTION OF THE COSTS, THE COLLECTING AUTHORITY SHALL DETERMINE  
28 THE AMOUNT OF THE MONEY COLLECTED AND, IF IT IS AN ADMINISTRATIVE TRIBU-  
29 NAL, OR A TOWN OR VILLAGE JUSTICE COURT, IT SHALL THEN PAY SUCH MONEY TO  
30 THE STATE COMPTROLLER WHO SHALL DEPOSIT SUCH MONEY IN THE STATE TREASURY  
31 PURSUANT TO SECTION ONE HUNDRED TWENTY-ONE OF THE STATE FINANCE LAW TO  
32 THE CREDIT OF THE CRIMINAL JUSTICE IMPROVEMENT ACCOUNT ESTABLISHED BY  
33 SECTION NINETY-SEVEN-BB OF THE STATE FINANCE LAW. IF SUCH COLLECTING  
34 AUTHORITY IS ANY OTHER COURT OF THE UNIFIED COURT SYSTEM, IT SHALL,  
35 WITHIN SUCH PERIOD, PAY SUCH MONEY TO THE STATE COMMISSIONER OF TAXATION  
36 AND FINANCE TO THE CREDIT OF THE CRIMINAL JUSTICE IMPROVEMENT ACCOUNT  
37 ESTABLISHED BY SECTION NINETY-SEVEN-BB OF THE STATE FINANCE LAW.

38 5. ANY PERSON WHO HAS PAID A PROTECTIVE ORDER FEE UNDER THE AUTHORITY  
39 OF THIS SECTION BASED UPON A CONVICTION THAT IS SUBSEQUENTLY REVERSED  
40 SHALL BE ENTITLED TO A REFUND OF FEE UPON APPLICATION TO THE STATE COMP-  
41 TROLLER. THE STATE COMPTROLLER SHALL REQUIRE SUCH PROOF AS IS NECESSARY  
42 IN ORDER TO DETERMINE WHETHER A REFUND IS REQUIRED BY LAW.

43 6. WHEN A PERSON WHO IS CONVICTED OF A VIOLENT CRIME AND SENTENCED TO  
44 A TERM OF IMPRISONMENT HAS FAILED TO PAY THE PROTECTIVE ORDER COSTS  
45 REQUIRED BY THIS SECTION, THE CLERK OF THE COURT THAT RENDERED THE  
46 CONVICTION SHALL NOTIFY THE SUPERINTENDENT OR THE MUNICIPAL OFFICIAL OF  
47 THE FACILITY WHERE THE PERSON IS CONFINED. THE SUPERINTENDENT OR THE  
48 MUNICIPAL OFFICIAL SHALL CAUSE ANY AMOUNT OWING TO BE COLLECTED FROM  
49 SUCH PERSON DURING HIS OR HER TERM OF IMPRISONMENT FROM MONEYS TO THE  
50 CREDIT OF AN INMATES' FUND OR SUCH MONEYS AS MAY BE EARNED BY A PERSON  
51 IN A WORK RELEASE PROGRAM PURSUANT TO SECTION EIGHT HUNDRED SIXTY OF THE  
52 CORRECTION LAW. SUCH MONEYS SHALL BE PAID OVER TO THE STATE COMPTROLLER  
53 TO THE CREDIT OF THE CRIMINAL JUSTICE IMPROVEMENT ACCOUNT ESTABLISHED BY  
54 SECTION NINETY-SEVEN-BB OF THE STATE FINANCE LAW, EXCEPT THAT ANY SUCH  
55 MONEYS COLLECTED PERTAINING TO COSTS LEVIED IN RELATION TO CONVICTIONS  
56 OBTAINED IN A TOWN OR VILLAGE JUSTICE COURT SHALL BE PAID WITHIN THIRTY

1 DAYS AFTER THE RECEIPT THEREOF BY THE SUPERINTENDENT OR MUNICIPAL OFFI-  
2 CIAL OF THE FACILITY TO THE JUSTICE OF THE COURT IN WHICH THE CONVICTION  
3 WAS OBTAINED. FOR THE PURPOSES OF COLLECTING SUCH FEE, THE STATE SHALL  
4 BE LEGALLY ENTITLED TO THE MONEY TO THE CREDIT OF AN INMATES' FUND OR  
5 MONEY WHICH IS EARNED BY AN INMATE IN A WORK RELEASE PROGRAM. FOR  
6 PURPOSES OF THIS SUBDIVISION, THE TERM "INMATES' FUND" SHALL MEAN MONEYS  
7 IN THE POSSESSION OF AN INMATE AT THE TIME OF HIS OR HER ADMISSION INTO  
8 SUCH FACILITY, FUNDS EARNED BY HIM OR HER AS PROVIDED FOR IN SECTION ONE  
9 HUNDRED EIGHTY-SEVEN OF THE CORRECTION LAW AND ANY OTHER FUNDS RECEIVED  
10 BY HIM OR HER OR ON HIS OR HER BEHALF AND DEPOSITED WITH SUCH SUPER-  
11 INTENDENT OR MUNICIPAL OFFICIAL.

12 7. NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION ONE OF SECTION 60.00  
13 OF THIS ARTICLE, THE PROVISIONS OF SUBDIVISION ONE OF THIS SECTION SHALL  
14 NOT APPLY TO A VIOLATION UNDER ANY LAW OTHER THAN THIS CHAPTER.

15 8. NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION ONE OF SECTION 130.10  
16 OF THE CRIMINAL PROCEDURE LAW, AT THE TIME THAT THE PROTECTION ORDER FEE  
17 IS IMPOSED, A TOWN OR VILLAGE COURT MAY, AND ALL OTHER COURTS SHALL,  
18 ISSUE AND CAUSE TO BE SERVED UPON THE PERSON REQUIRED TO PAY THE PROTEC-  
19 TIVE ORDER FEE, A SUMMONS DIRECTING THAT SUCH PERSON APPEAR BEFORE THE  
20 COURT REGARDING THE PAYMENT OF THE FEE, IF AFTER SIXTY DAYS FROM THE  
21 DATE IT WAS IMPOSED IT REMAINS UNPAID. THE DESIGNATED DATE OF APPEARANCE  
22 ON THE SUMMONS SHALL BE SET FOR THE FIRST DAY COURT IS IN SESSION FALL-  
23 ING AFTER THE SIXTIETH DAY FROM THE IMPOSITION OF THE FEE. THE SUMMONS  
24 SHALL CONTAIN THE INFORMATION REQUIRED BY SUBDIVISION TWO OF SECTION  
25 130.10 OF THE CRIMINAL PROCEDURE LAW EXCEPT THAT IN SUBSTITUTION FOR THE  
26 REQUIREMENT OF PARAGRAPH (C) OF SUCH SUBDIVISION THE SUMMONS SHALL STATE  
27 THAT THE PERSON SERVED MUST APPEAR AT A DATE, TIME AND SPECIFIC LOCATION  
28 SPECIFIED IN THE SUMMONS IF AFTER SIXTY DAYS FROM THE DATE OF ISSUANCE  
29 THE FEE REMAINS UNPAID. THE COURT SHALL NOT ISSUE A SUMMONS UNDER THIS  
30 SUBDIVISION TO A PERSON WHO IS BEING SENTENCED TO A TERM OF CONFINEMENT  
31 IN EXCESS OF SIXTY DAYS IN JAIL OR IN THE DEPARTMENT OF CORRECTIONAL  
32 SERVICES. THE FEES FOR THOSE PERSONS SHALL BE GOVERNED BY THE PROVISIONS  
33 OF SECTION 60.30 OF THIS ARTICLE.

34 9. THE PROVISIONS OF THIS SECTION SHALL APPLY TO SENTENCES IMPOSED  
35 UPON A YOUTHFUL OFFENDER FINDING.

36 10. THE PROVISIONS OF THIS SECTION SHALL APPLY TO ALL CONVICTIONS AS  
37 DESCRIBED IN SUBDIVISION ONE OF THIS SECTION, REGARDLESS OF WHETHER THE  
38 SENTENCE WAS ONE INVOLVING IMPRISONMENT, PROBATION AND/OR A SUSPENDED  
39 SENTENCE.

40 S 5. Paragraph (d) of subdivision 2 of section 378-a of the social  
41 services law, as added by chapter 7 of the laws of 1999, is amended to  
42 read as follows:

43 (d) Notwithstanding any other provision of law to the contrary, the  
44 office of children and family services, upon receipt of a criminal  
45 history record from the division of criminal justice services, may  
46 request, and is entitled to receive, information pertaining to any  
47 offense contained in such criminal history record from any state or  
48 local law enforcement agency or court for the purposes of determining  
49 whether any ground relating to such criminal conviction or pending crim-  
50 inal charge exists for denying an application; PROVIDED THAT NOTHING IN  
51 THIS CHAPTER SHALL BE CONSTRUED TO ALLOW A PERSON CONVICTED OF A FELONY  
52 TO ACCESS RECORDS OF HIS OR HER VICTIM IN VIOLATION OF A PROTECTIVE  
53 ORDER ISSUED PURSUANT TO SECTION 60.38 OF THE PENAL LAW.

54 S 6. Subdivision 5 of section 390-b of the social services law, as  
55 added by chapter 416 of the laws of 2000, is amended to read as follows:

1 5. Notwithstanding any other provision of law to the contrary, the  
2 office of children and family services, upon receipt of a criminal  
3 history record from the division of criminal justice services, may  
4 request, and is entitled to receive, information pertaining to any crime  
5 contained in such criminal history record from any state or local law  
6 enforcement agency, district attorney, parole officer, probation officer  
7 or court for the purposes of determining whether any ground relating to  
8 such criminal conviction or pending criminal charge exists for denying a  
9 license, registration, application or employment; PROVIDED THAT NOTHING  
10 IN THIS CHAPTER SHALL BE CONSTRUED TO ALLOW A PERSON CONVICTED OF A  
11 FELONY TO ACCESS RECORDS OF HIS OR HER VICTIM IN VIOLATION OF A PROTEC-  
12 TIVE ORDER ISSUED PURSUANT TO SECTION 60.38 OF THE PENAL LAW.

13 S 7. The civil practice law and rules is amended by adding a new  
14 section 2303-b to read as follows:

15 S 2303-B. SERVICE OF A SUBPOENA BY A PRO SE LITIGANT. A PRO SE LITI-  
16 GANT WHO IS CONVICTED IN A CRIMINAL COURT OF A FELONY, AS DEFINED IN  
17 SECTION 10.00 OF THE PENAL LAW, MAY SERVE A SUBPOENA IN PERSON FOR THE  
18 RECORDS OF THE VICTIM AGAINST WHOM THE PENALTY WAS COMMITTED ONLY AFTER  
19 RECEIVING A COURT ORDER IF SUCH FELONY: ENTAILS SERIOUS PHYSICAL INJURY  
20 AS DEFINED IN SECTION 10.00 OF THE PENAL LAW; OR INVOLVES AN OFFENSE  
21 DESCRIBED IN ARTICLE ONE HUNDRED THIRTY OF THE PENAL LAW.

22 S 8. This act shall take effect on the ninetieth day after it shall  
23 have become a law.