

340--A

2013-2014 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2013

Introduced by Sen. DeFRANCISCO -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the penal law and the social services law, in relation to mandatory orders of protection for personal information pertaining to victims; and to amend the civil practice law and rules and the criminal procedure law, in relation to service of a subpoena by a pro se litigant

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

1 Section 1. The penal law is amended by adding a new section 60.38 to
2 read as follows:
3 S 60.38 MANDATORY ORDER OF PROTECTION FOR PERSONAL INFORMATION PERTAIN-
4 ING TO VICTIMS.
5 1. WHENEVER PROCEEDINGS IN AN ADMINISTRATIVE TRIBUNAL OR A COURT OF
6 THIS STATE RESULT IN A CONVICTION FOR A CRIME:
7 (A) ENTAILING PHYSICAL INJURY; OR
8 (B) INVOLVING AN OFFENSE DESCRIBED IN ARTICLE ONE HUNDRED THIRTY OF
9 THIS CHAPTER,
10 THERE SHALL BE ISSUED AT SENTENCING A MANDATORY PROTECTIVE ORDER PROHIB-
11 ITING THE CONVICTED PERSON FROM OBTAINING ANY NON-PUBLIC RECORDS
12 CONTAINING PERSONAL INFORMATION REGARDING THE VICTIM AGAINST WHOM THE
13 CRIME WAS COMMITTED, INCLUDING, BUT NOT LIMITED TO MEDICAL, EDUCATIONAL,
14 EMPLOYMENT AND FINANCIAL INFORMATION AND INFORMATION PERTAINING TO THE
15 VICTIM'S LOCATION. THIS ORDER SHALL BE A PERMANENT ORDER WHICH SHALL NOT
16 EXPIRE, PROVIDED THAT IF THE CONVICTION IS REVERSED ON APPEAL, OR
17 VACATED PURSUANT TO ARTICLE FOUR HUNDRED FORTY OF THE CRIMINAL PROCEDURE
18 LAW, THE ORDER MAY BE CONCOMITANTLY MODIFIED OR VACATED BY THE COURT.

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

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1 2. THE PROVISIONS OF THIS SECTION SHALL APPLY TO SENTENCES IMPOSED
2 UPON A YOUTHFUL OFFENDER FINDING.

3 3. THE PROVISIONS OF THIS SECTION SHALL APPLY TO ALL CONVICTIONS AS
4 DESCRIBED IN SUBDIVISION ONE OF THIS SECTION, REGARDLESS OF WHETHER THE
5 SENTENCE WAS ONE INVOLVING IMPRISONMENT, PROBATION AND/OR A SUSPENDED
6 SENTENCE.

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

10 (d) Notwithstanding any other provision of law to the contrary, the
11 office of children and family services, upon receipt of a criminal
12 history record from the division of criminal justice services, may
13 request, and is entitled to receive, information pertaining to any
14 offense contained in such criminal history record from any state or
15 local law enforcement agency or court for the purposes of determining
16 whether any ground relating to such criminal conviction or pending crim-
17 inal charge exists for denying an application; PROVIDED THAT NOTHING IN
18 THIS SECTION SHALL BE CONSTRUED TO ALLOW A PERSON TO ACCESS RECORDS OF
19 HIS OR HER VICTIM IN VIOLATION OF A PROTECTIVE ORDER ISSUED PURSUANT TO
20 SECTION 60.38 OF THE PENAL LAW.

21 S 3. Subdivision 5 of section 390-b of the social services law, as
22 added by chapter 416 of the laws of 2000, is amended to read as follows:

23 5. Notwithstanding any other provision of law to the contrary, the
24 office of children and family services, upon receipt of a criminal
25 history record from the division of criminal justice services, may
26 request, and is entitled to receive, information pertaining to any crime
27 contained in such criminal history record from any state or local law
28 enforcement agency, district attorney, parole officer, probation officer
29 or court for the purposes of determining whether any ground relating to
30 such criminal conviction or pending criminal charge exists for denying a
31 license, registration, application or employment; PROVIDED THAT NOTHING
32 IN THIS SECTION SHALL BE CONSTRUED TO ALLOW A PERSON TO ACCESS RECORDS
33 OF HIS OR HER VICTIM IN VIOLATION OF A PROTECTIVE ORDER ISSUED PURSUANT
34 TO SECTION 60.38 OF THE PENAL LAW.

35 S 4. The civil practice law and rules is amended by adding a new
36 section 2303-b to read as follows:

37 S 2303-B. SERVICE OF A SUBPOENA BY A PRO SE LITIGANT. A PRO SE LITI-
38 GANT MAY SERVE A SUBPOENA IN PERSON ONLY IF THE SUBPOENA IS A JUDICIAL
39 SUBPOENA THAT EXPLICITLY PERMITS SUCH SERVICE.

40 S 5. Section 610.40 of the criminal procedure law is amended to read
41 as follows:

42 S 610.40 Securing attendance of witnesses by subpoena; how and by whom
43 subpoena may be served.

44 A subpoena may be served by any person more than eighteen years old.
45 A SUBPOENA SERVED ON BEHALF OF A DEFENDANT IN A CRIMINAL PROCEEDING
46 SHALL BE SERVED BY AN AGENT OF THE DEFENDANT AND NOT BY THE DEFENDANT IN
47 PERSON EXCEPT AS PROVIDED IN SECTION TWENTY-THREE HUNDRED THREE-B OF THE
48 CIVIL PRACTICE LAW AND RULES. Service must be made in the manner
49 provided by the civil practice law and rules for the service of subpoe-
50 nas in civil cases.

51 S 6. This act shall take effect on the ninetieth day after it shall
52 have become a law.