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I N S E N A T E

April 16, 2014

Introduced by Sen. NOZZOLIO -- (at request of the Office for Prevention of Domestic Violence) -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the executive law, the social services law and the criminal procedure law, in relation to the New York state domestic violence fatality review team access to sealed records

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

1 Section 1. Paragraph (h) of subdivision 10 of section 575 of the execu-
2 tive law, as added by section 3 of part A of chapter 491 of the laws of
3 2012, is amended to read as follows:
4 (h) To the extent consistent with federal law, upon request the team
5 shall be provided client-identifiable information and records necessary
6 for the investigation of a domestic violence-related death or near death
7 incident, including, but not limited to:
8 (i) records maintained by a local social services district, INCLUDING
9 BUT NOT LIMITED TO, RECORDS WHICH ARE AUTHORIZED TO BE DISCLOSED PURSU-
10 ANT TO SUBPARAGRAPH (BB) OF PARAGRAPH (A) OF SUBDIVISION FOUR OF SECTION
11 FOUR HUNDRED TWENTY-TWO, SUBPARAGRAPH (VI) OF PARAGRAPH (A) OF SUBDIVI-
12 SION FIVE OF SECTION FOUR HUNDRED TWENTY-TWO AND SUBPARAGRAPH (VIII) OF
13 PARAGRAPH (D) OF SUBDIVISION FIVE OF SECTION FOUR HUNDRED TWENTY-SEVEN-A
14 OF THE SOCIAL SERVICES LAW;
15 (ii) law enforcement records, INCLUDING RECORDS SEALED PURSUANT TO
16 SECTIONS 160.50, 160.55 AND 160.58 OF THE CRIMINAL PROCEDURE LAW, except
17 where the provision of [such] LAW ENFORCEMENT records would interfere
18 with an ongoing law enforcement investigation or identify a confidential
19 source or endanger the safety or welfare of an individual;
20 (iii) court records;
21 (iv) probation and parole records;
22 (v) records from domestic violence residential or non-residential
23 programs;
24 (vi) records from any relevant service provider, program or organiza-
25 tion; and

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

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(vii) all other relevant records in the possession of state and local officials or agencies provided, however, no official or agency shall be required to provide information or records concerning a person charged, investigated or convicted in such death or near death in violation of such person's attorney-client privilege.

S 2. Paragraph (i) of subdivision 10 of section 575 of the executive law, as added by section 3 of part A of chapter 491 of the laws of 2012, is amended to read as follows:

(i) Any information or records otherwise confidential [and], privileged AND SEALED in accordance with state law which are provided to the team shall remain confidential, PRIVILEGED AND SEALED as otherwise provided by law. All records received, meetings conducted, reports and records made and maintained and all books and papers obtained by the team shall be confidential and shall not be open or made available, except by court order or as set forth in paragraphs (k) and (l) of this subdivision.

S 3. Subparagraphs (z) and (aa) of paragraph (A) of subdivision 4 of section 422 of the social services law, subparagraph (z) as amended and subparagraph (aa) as added by chapter 440 of the laws of 2011, are amended and a new subparagraph (bb) is added to read as follows:

(z) an entity with appropriate legal authority in another state to license, certify or otherwise approve prospective foster and adoptive parents where disclosure of information regarding the prospective foster or adoptive parents and other persons over the age of eighteen residing in the home of such prospective parents is required by paragraph twenty of subdivision (a) of section six hundred seventy-one of title forty-two of the United States code; [and]

(aa) a social services official who is investigating whether an adult is in need of protective services in accordance with the provisions of section four hundred seventy-three of this chapter, when such official has reasonable cause to believe such adult may be in need of protective services due to the conduct of an individual or individuals who had access to such adult when such adult was a child and that such reports and information are needed to further the present investigation[.]; AND

(BB) THE FATALITY REVIEW TEAM OF THE NEW YORK STATE OFFICE FOR THE PREVENTION OF DOMESTIC VIOLENCE RELATING TO THOSE RECORDS SUCH TEAM IS AUTHORIZED TO UTILIZE PURSUANT TO SUBPARAGRAPH (I) OF PARAGRAPH (H) OF SUBDIVISION TEN OF SECTION FIVE HUNDRED SEVENTY-FIVE OF THE EXECUTIVE LAW, SUBJECT TO THE CONFIDENTIALITY PROVISIONS OF PARAGRAPHS (I) AND (J) OF SUCH SUBDIVISION.

S 4. Subparagraphs (iv) and (v) of paragraph (a) of subdivision 5 of section 422 of the social services law, as amended by chapter 555 of the laws of 2000, are amended and a new subparagraph (vi) is added to read as follows:

(iv) to the subject of the report; [and]

(v) to a district attorney, an assistant district attorney, an investigator employed in the office of a district attorney, or to a sworn officer of the division of state police, of a city, county, town or village police department or of a county sheriff's office when such official verifies that the report is necessary to conduct an active investigation or prosecution of a violation of subdivision three of section 240.55 of the penal law[.]; AND

(VI) TO THE FATALITY REVIEW TEAM OF THE NEW YORK STATE OFFICE FOR THE PREVENTION OF DOMESTIC VIOLENCE RELATING TO THOSE RECORDS SUCH TEAM IS AUTHORIZED TO UTILIZE PURSUANT TO SUBPARAGRAPH (I) OF PARAGRAPH (H) OF SUBDIVISION TEN OF SECTION FIVE HUNDRED SEVENTY-FIVE OF THE EXECUTIVE

1 LAW, SUBJECT TO THE CONFIDENTIALITY PROVISIONS OF PARAGRAPHS (I) AND (J)
2 OF SUCH SUBDIVISION.

3 S 5. Subparagraphs (vi) and (vii) of paragraph (d) of subdivision 5 of
4 section 427-a of the social services law, as amended by chapter 377 of
5 the laws of 2011, are amended and a new subparagraph (viii) is added to
6 read as follows:

7 (vi) a court, but only while the family is receiving services provided
8 under the family assessment and services track and only pursuant to a
9 court order or judicial subpoena, issued after notice and an opportunity
10 for the subject of the report and all parties to the present proceeding
11 to be heard, based on a judicial finding that such reports, records, and
12 any information concerning such reports and records, are necessary for
13 the determination of an issue before the court. Such reports, records
14 and information to be disclosed pursuant to a judicial subpoena shall be
15 submitted to the court for inspection and for such directions as may be
16 necessary to protect confidentiality, including but not limited to
17 redaction of portions of the reports, records, and information and to
18 determine any further limits on redisclosure in addition to the limita-
19 tions provided for in this title. A court shall not have access to the
20 sealed family assessment and services reports, records, and any informa-
21 tion concerning such reports and records, after the conclusion of
22 services provided under the family assessment and services track; [and]

23 (vii) the subject of the report included in the records of the family
24 assessment and services track[.]; AND

25 (VIII) THE FATALITY REVIEW TEAM OF THE NEW YORK STATE OFFICE FOR THE
26 PREVENTION OF DOMESTIC VIOLENCE RELATING TO THOSE RECORDS SUCH TEAM IS
27 AUTHORIZED TO UTILIZE PURSUANT TO SUBPARAGRAPH (I) OF PARAGRAPH (H) OF
28 SUBDIVISION TEN OF SECTION FIVE HUNDRED SEVENTY-FIVE OF THE EXECUTIVE
29 LAW, SUBJECT TO THE CONFIDENTIALITY PROVISIONS OF PARAGRAPHS (I) AND (J)
30 OF SUCH SUBDIVISION.

31 S 6. Paragraph (d) of subdivision 1 of section 160.50 of the criminal
32 procedure law, as amended by section 73 of subpart B of part C of chap-
33 ter 62 of the laws of 2011, is amended to read as follows:

34 (d) such records shall be made available to the person accused or to
35 such person's designated agent, and shall be made available to (i) a
36 prosecutor in any proceeding in which the accused has moved for an order
37 pursuant to section 170.56 or 210.46 of this chapter, or (ii) a law
38 enforcement agency upon ex parte motion in any superior court, if such
39 agency demonstrates to the satisfaction of the court that justice
40 requires that such records be made available to it, or (iii) any state
41 or local officer or agency with responsibility for the issuance of
42 licenses to possess guns, when the accused has made application for such
43 a license, or (iv) the New York state department of corrections and
44 community supervision when the accused is on parole supervision as a
45 result of conditional release or a parole release granted by the New
46 York state board of parole, and the arrest which is the subject of the
47 inquiry is one which occurred while the accused was under such super-
48 vision or (v) any prospective employer of a police officer or peace
49 officer as those terms are defined in subdivisions thirty-three and
50 thirty-four of section 1.20 of this chapter, in relation to an applica-
51 tion for employment as a police officer or peace officer; provided,
52 however, that every person who is an applicant for the position of
53 police officer or peace officer shall be furnished with a copy of all
54 records obtained under this paragraph and afforded an opportunity to
55 make an explanation thereto, or (vi) the probation department responsi-
56 ble for supervision of the accused when the arrest which is the subject

1 of the inquiry is one which occurred while the accused was under such
2 supervision, OR (VII) THE FATALITY REVIEW TEAM OF THE NEW YORK STATE
3 OFFICE FOR THE PREVENTION OF DOMESTIC VIOLENCE RELATING TO THOSE RECORDS
4 SUCH TEAM IS AUTHORIZED TO UTILIZE PURSUANT TO SUBPARAGRAPH (II) OF
5 PARAGRAPH (H) OF SUBDIVISION TEN OF SECTION FIVE HUNDRED SEVENTY-FIVE OF
6 THE EXECUTIVE LAW, SUBJECT TO THE CONFIDENTIALITY PROVISIONS OF PARA-
7 GRAPHS (I) AND (J) OF SUCH SUBDIVISION; and

8 S 7. Paragraph (d) of subdivision 1 of section 160.55 of the criminal
9 procedure law, as amended by section 74 of subpart B of part C of chap-
10 ter 62 of the laws of 2011, is amended to read as follows:

11 (d) the records referred to in paragraph (c) of this subdivision shall
12 be made available to the person accused or to such person's designated
13 agent, and shall be made available to (i) a prosecutor in any proceeding
14 in which the accused has moved for an order pursuant to section 170.56
15 or 210.46 of this chapter, or (ii) a law enforcement agency upon ex
16 parte motion in any superior court, if such agency demonstrates to the
17 satisfaction of the court that justice requires that such records be
18 made available to it, or (iii) any state or local officer or agency with
19 responsibility for the issuance of licenses to possess guns, when the
20 accused has made application for such a license, or (iv) the New York
21 state department of corrections and community supervision when the
22 accused is under parole supervision as a result of conditional release
23 or parole release granted by the New York state board of parole and the
24 arrest which is the subject of the inquiry is one which occurred while
25 the accused was under such supervision, or (v) the probation department
26 responsible for supervision of the accused when the arrest which is the
27 subject of the inquiry is one which occurred while the accused was under
28 such supervision, or (vi) a police agency, probation department, sher-
29 iff's office, district attorney's office, department of correction of
30 any municipality and parole department, for law enforcement purposes,
31 upon arrest in instances in which the individual stands convicted of
32 harassment in the second degree, as defined in section 240.26 of the
33 penal law, committed against a member of the same family or household as
34 the defendant, as defined in subdivision one of section 530.11 of this
35 chapter, and determined pursuant to subdivision eight-a of section
36 170.10 of this title, OR (VII) THE FATALITY REVIEW TEAM OF THE NEW YORK
37 STATE OFFICE FOR THE PREVENTION OF DOMESTIC VIOLENCE RELATING TO THOSE
38 RECORDS SUCH TEAM IS AUTHORIZED TO UTILIZE PURSUANT TO SUBPARAGRAPH (II)
39 OF PARAGRAPH (H) OF SUBDIVISION TEN OF SECTION FIVE HUNDRED SEVENTY-FIVE
40 OF THE EXECUTIVE LAW, SUBJECT TO THE CONFIDENTIALITY PROVISIONS OF PARA-
41 GRAPHS (I) AND (J) OF SUCH SUBDIVISION; and

42 S 8. Subdivision 6 of section 160.58 of the criminal procedure law, as
43 added by section 3 of part AAA of chapter 56 of the laws of 2009, is
44 amended to read as follows:

45 6. Records sealed pursuant to this subdivision shall be made available
46 to:

- 47 (a) the defendant or the defendant's designated agent;
- 48 (b) qualified agencies, as defined in subdivision nine of section
49 eight hundred thirty-five of the executive law, and federal and state
50 law enforcement agencies, when acting within the scope of their law
51 enforcement duties; or
- 52 (c) any state or local officer or agency with responsibility for the
53 issuance of licenses to possess guns, when the person has made applica-
54 tion for such a license; or
- 55 (d) any prospective employer of a police officer or peace officer as
56 those terms are defined in subdivisions thirty-three and thirty-four of

1 section 1.20 of this chapter, in relation to an application for employ-
2 ment as a police officer or peace officer; provided, however, that every
3 person who is an applicant for the position of police officer or peace
4 officer shall be furnished with a copy of all records obtained under
5 this paragraph and afforded an opportunity to make an explanation there-
6 to[.]; OR
7 (E) THE FATALITY REVIEW TEAM OF THE NEW YORK STATE OFFICE FOR THE
8 PREVENTION OF DOMESTIC VIOLENCE RELATING TO THOSE RECORDS SUCH TEAM IS
9 AUTHORIZED TO UTILIZE PURSUANT TO SUBPARAGRAPH (II) OF PARAGRAPH (H) OF
10 SUBDIVISION TEN OF SECTION FIVE HUNDRED SEVENTY-FIVE OF THE EXECUTIVE
11 LAW, SUBJECT TO THE CONFIDENTIALITY PROVISIONS OF PARAGRAPHS (I) AND (J)
12 OF SUCH SUBDIVISION.
13 S 9. This act shall take effect immediately.