

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. MAGNARELLI, STIRPE, CUSICK, LANCMAN, NOLAN, SCHIMMINGER, ZEBROWSKI, HOYT, COLTON, GABRYSZAK, FIELDS, GUNTHER, GALEF, WEISENBERG, ROBINSON, KOON, CHRISTENSEN, BENEDETTO, JAFFEE, MAISEL, MAYERSOHN, JOHN, CLARK, ESPAILLAT -- Multi-Sponsored by -- M. of A. ABBATE, BOYLAND, DelMONTE, DESTITO, HIKIND, HOOPER, HYER-SPENCER, MAGEE, MILLMAN, PERRY, PHEFFER, REILLY, SWEENEY, TOWNS -- read once and referred 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 ASSEMBLY, 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

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

LBD00618-01-9

ORDER DIRECTING THAT ANY SUCH MATERIAL SHALL BE USED FOR THE EXCLUSIVE PURPOSE OF PREPARING FOR THE DEFENSE OR PROSECUTION OF THE CRIMINAL ACTION. ALL SUCH SUBPOENAS SERVED ON BEHALF OF THE DEFENSE SHALL BE SERVED BY THE DEFENDANT'S AGENT.

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

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

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

(B) INVOLVING AN OFFENSE DESCRIBED IN ARTICLE ONE HUNDRED THIRTY OF THE PENAL LAW, DISCOVERY OF MATERIAL CONTAINING PERSONAL INFORMATION REGARDING THE VICTIM AGAINST WHOM THE FELONY WAS ALLEGEDLY COMMITTED IS ALLOWED, INCLUDING, BUT NOT LIMITED TO DISCOVERY OF MEDICAL, EDUCATIONAL, EMPLOYMENT AND FINANCIAL INFORMATION AND NON-PUBLIC INFORMATION PERTAINING TO THE VICTIM'S LOCATION, SHALL BE ALLOWED ONLY PURSUANT TO A SUBPOENA ISSUED BY THE COURT IN WHICH THE ACTION IS PENDING, AND A PROTECTIVE ORDER DIRECTING THAT ANY SUCH MATERIAL SHALL BE USED FOR THE EXCLUSIVE PURPOSE OF PREPARING FOR THE DEFENSE OR PRESENTMENT OF THE ACTION. ALL SUCH SUBPOENAS SERVED ON BEHALF OF THE PERSON ACCUSED OF COMMITTING THE FELONY SHALL BE SERVED BY SUCH PERSON'S AGENT.

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

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

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

(II) INVOLVING AN OFFENSE DESCRIBED IN ARTICLE ONE HUNDRED THIRTY OF THE PENAL LAW, DISCOVERY OF MATERIAL CONTAINING PERSONAL INFORMATION REGARDING THE VICTIM AGAINST WHOM THE FELONY WAS COMMITTED IS ALLOWED, INCLUDING, BUT NOT LIMITED TO DISCOVERY OF MEDICAL, EDUCATIONAL, EMPLOYMENT AND FINANCIAL INFORMATION AND NON-PUBLIC INFORMATION PERTAINING TO THE VICTIM'S LOCATION, SHALL BE ALLOWED ONLY PURSUANT TO A SUBPOENA ISSUED BY THE COURT IN WHICH THE ACTION IS PENDING, AND A PROTECTIVE ORDER DIRECTING THAT ANY SUCH MATERIAL SHALL BE USED FOR THE EXCLUSIVE PURPOSE OF PREPARING FOR THE DEFENSE OR PROSECUTION OF THE ACTION. ALL SUCH SUBPOENAS SERVED ON BEHALF OF THE PERSON ACCUSED OF COMMITTING THE FELONY SHALL BE SERVED BY SUCH PERSON'S AGENT.

S 4. The penal law is amended by adding a new section 60.36 to read as follows:

S 60.36 MANDATORY ORDER OF PROTECTION FOR PERSONAL INFORMATION PERTAINING TO VICTIMS OF VIOLENT CRIMES.

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

(A) ENTAILING SERIOUS PHYSICAL INJURY; OR

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

THERE SHALL BE ISSUED AT SENTENCING A MANDATORY PROTECTIVE ORDER PROHIBITING THE CONVICTED PERSON FROM OBTAINING ANY NON-PUBLIC RECORDS CONTAINING PERSONAL INFORMATION REGARDING THE VICTIM AGAINST WHOM THE FELONY WAS COMMITTED, INCLUDING, BUT NOT LIMITED TO MEDICAL, EDUCATIONAL, EMPLOYMENT AND FINANCIAL INFORMATION AND INFORMATION PERTAINING TO THE VICTIM'S LOCATION. THIS ORDER SHALL BE A PERMANENT ORDER WHICH

1 SHALL NOT EXPIRE, AND THE VICTIM SHALL NOT BE REQUIRED TO PERIODICALLY
2 RENEW OR REAPPLY FOR THE ORDER. SUBJECT TO THE PROVISIONS OF SUBDIVISION
3 TWO OF THIS SECTION, THE ORDER SHALL NOT BE SUBJECT TO VITIATION OR
4 MODIFICATION UPON APPLICATION BY THE CONVICTED PERSON, PROVIDED THAT IF
5 THE CONVICTION IS REVERSED ON APPEAL, THE ORDER MAY BE MODIFIED OR VITI-
6 ATED BY THE SUPERIOR COURT UPON APPLICATION BY THE DEFENDANT AND AFTER
7 APPROPRIATE NOTICE TO AN OPPORTUNITY TO BE HEARD BY THE VICTIM AND THE
8 PROSECUTOR IN THE CASE. THE PROTECTIVE ORDER ISSUED PURSUANT TO THIS
9 SECTION SHALL REPLACE ANY PROTECTIVE ORDER ISSUED DURING THE COURSE OF
10 THE ACTION RESULTING IN THE CONVICTION.

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

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

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

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

47 6. WHEN A PERSON WHO IS CONVICTED OF A VIOLENT CRIME AND SENTENCED TO
48 A TERM OF IMPRISONMENT HAS FAILED TO PAY THE PROTECTIVE ORDER COSTS
49 REQUIRED BY THIS SECTION, THE CLERK OF THE COURT THAT RENDERED THE
50 CONVICTION SHALL NOTIFY THE SUPERINTENDENT OR THE MUNICIPAL OFFICIAL OF
51 THE FACILITY WHERE THE PERSON IS CONFINED. THE SUPERINTENDENT OR THE
52 MUNICIPAL OFFICIAL SHALL CAUSE ANY AMOUNT OWING TO BE COLLECTED FROM
53 SUCH PERSON DURING HIS OR HER TERM OF IMPRISONMENT FROM MONEYS TO THE
54 CREDIT OF AN INMATES' FUND OR SUCH MONEYS AS MAY BE EARNED BY A PERSON
55 IN A WORK RELEASE PROGRAM PURSUANT TO SECTION EIGHT HUNDRED SIXTY OF THE
56 CORRECTION LAW. SUCH MONEYS SHALL BE PAID OVER TO THE STATE COMPTROLLER

1 TO THE CREDIT OF THE CRIMINAL JUSTICE IMPROVEMENT ACCOUNT ESTABLISHED BY
2 SECTION NINETY-SEVEN-BB OF THE STATE FINANCE LAW, EXCEPT THAT ANY SUCH
3 MONEYS COLLECTED PERTAINING TO COSTS LEVIED IN RELATION TO CONVICTIONS
4 OBTAINED IN A TOWN OR VILLAGE JUSTICE COURT SHALL BE PAID WITHIN THIRTY
5 DAYS AFTER THE RECEIPT THEREOF BY THE SUPERINTENDENT OR MUNICIPAL OFFI-
6 CIAL OF THE FACILITY TO THE JUSTICE OF THE COURT IN WHICH THE CONVICTION
7 WAS OBTAINED. FOR THE PURPOSES OF COLLECTING SUCH FEE, THE STATE SHALL
8 BE LEGALLY ENTITLED TO THE MONEY TO THE CREDIT OF AN INMATES' FUND OR
9 MONEY WHICH IS EARNED BY AN INMATE IN A WORK RELEASE PROGRAM. FOR
10 PURPOSES OF THIS SUBDIVISION, THE TERM "INMATES' FUND" SHALL MEAN MONEYS
11 IN THE POSSESSION OF AN INMATE AT THE TIME OF HIS OR HER ADMISSION INTO
12 SUCH FACILITY, FUNDS EARNED BY HIM OR HER AS PROVIDED FOR IN SECTION ONE
13 HUNDRED EIGHTY-SEVEN OF THE CORRECTION LAW AND ANY OTHER FUNDS RECEIVED
14 BY HIM OR HER OR ON HIS OR HER BEHALF AND DEPOSITED WITH SUCH SUPER-
15 INTENDENT OR MUNICIPAL OFFICIAL.

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

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

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

40 10. THE PROVISIONS OF THIS SECTION SHALL APPLY TO ALL CONVICTIONS AS
41 DESCRIBED IN SUBDIVISION ONE OF THIS SECTION, REGARDLESS OF WHETHER THE
42 SENTENCE WAS ONE INVOLVING IMPRISONMENT, PROBATION AND/OR A SUSPENDED
43 SENTENCE.

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

47 (d) Notwithstanding any other provision of law to the contrary, the
48 office of children and family services, upon receipt of a criminal
49 history record from the division of criminal justice services, may
50 request, and is entitled to receive, information pertaining to any
51 offense contained in such criminal history record from any state or
52 local law enforcement agency or court for the purposes of determining
53 whether any ground relating to such criminal conviction or pending crim-
54 inal charge exists for denying an application; PROVIDED THAT NOTHING IN
55 THIS CHAPTER SHALL BE CONSTRUED TO ALLOW A PERSON CONVICTED OF A FELONY

1 TO ACCESS RECORDS OF HIS OR HER VICTIM IN VIOLATION OF A PROTECTIVE
2 ORDER ISSUED PURSUANT TO SECTION 60.36 OF THE PENAL LAW.

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

5 5. Notwithstanding any other provision of law to the contrary, the
6 office of children and family services, upon receipt of a criminal
7 history record from the division of criminal justice services, may
8 request, and is entitled to receive, information pertaining to any crime
9 contained in such criminal history record from any state or local law
10 enforcement agency, district attorney, parole officer, probation officer
11 or court for the purposes of determining whether any ground relating to
12 such criminal conviction or pending criminal charge exists for denying a
13 license, registration, application or employment; PROVIDED THAT NOTHING
14 IN THIS CHAPTER SHALL BE CONSTRUED TO ALLOW A PERSON CONVICTED OF A
15 FELONY TO ACCESS RECORDS OF HIS OR HER VICTIM IN VIOLATION OF A PROTEC-
16 TIVE ORDER ISSUED PURSUANT TO SECTION 60.36 OF THE PENAL LAW.

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

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

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