

1006

2009-2010 Regular Sessions

I N S E N A T E

January 22, 2009

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

AN ACT to amend the executive law, in relation to establishing a fatality review board and providing for such board's powers and duties

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

1 Section 1. Legislative intent. The legislature hereby declares that
2 domestic violence is a pervasive and frequently lethal problem in Ameri-
3 can society and in New York state. Nationwide, on average, approximately
4 ten women are killed by their batterers every day. Battering is the
5 single, major cause of injury to women, resulting in more injuries than
6 auto accidents, muggings, and rapes combined. Such abuse is also a
7 strong indicator that physical or sexual abuse of children is occurring
8 in the family. Domestic violence devastates its victims and threatens
9 the stability of the family and negatively affects all family members,
10 especially children who witness the violent abuse. Domestic violence
11 also affects the entire community. The incidence of domestic violence
12 adversely affects the safety, health, and welfare of communities as well
13 as societal economies by draining billions of dollars in social costs
14 associated with medical expenses, law enforcement, and lost productiv-
15 ity.

16 The legislature finds that multi-disciplinary domestic violence fatal-
17 ity review boards have been used successfully to ensure that incidents
18 of domestic violence are recognized and that agency involvement is
19 reviewed to improve the responsiveness of public agencies for the
20 reduction and eradication of domestic violence. The establishment of
21 such a board is similar to the time-honored mortality/morbidity review
22 conference utilized by the medical profession to ensure the provision of
23 quality medical care.

24 The legislature further finds that it is in the interest of the state
25 to provide for the creation of a fatality review board in New York. The

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

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1 board will facilitate communication among courts and agencies, allow for
2 the identification of preventable deaths, and provide for recommenda-
3 tions with a view toward improving the system's ability to prevent such
4 occurrences. The purpose of the inter-agency, multi-disciplinary review
5 is not punitive, but to increase the thoroughness and effectiveness of
6 systematic responses by developing recommendations for policies and
7 protocols for prevention and intervention initiatives. In addition to
8 reviewing cases, the fatality review board may also provide guidance and
9 protocols for the development and implementation of local reviews by
10 counties or other jurisdictions. The board may also identify trends and
11 patterns of domestic violence deaths and recognize the prevalence of
12 risk factors which exist in the population of victims and perpetrators.
13 This data could be helpful in the development of system interventions
14 and policy changes for persons who are at risk.

15 By enacting this legislation, the legislature seeks to provide a case
16 review process for the purpose of reducing the incidence of preventable
17 deaths from domestic violence.

18 S 2. The executive law is amended by adding a new section 837-s to
19 read as follows:

20 S 837-S. FATALITY REVIEW BOARD ESTABLISHED; POWERS AND DUTIES. 1. A.
21 THERE IS HEREBY ESTABLISHED AN INDEPENDENT FATALITY REVIEW BOARD. SUCH
22 BOARD IS EMPOWERED AND AUTHORIZED TO INVESTIGATE DEATHS APPEARING TO BE
23 FROM UNNATURAL CAUSES, WHERE THE DECEDENT APPEARS TO HAVE BEEN A VICTIM
24 OF DOMESTIC VIOLENCE.

25 B. SUCH INVESTIGATIONS MAY COMMENCE AFTER THE COMPLETION OF THE CRIMI-
26 NAL TRIAL OR TRIAL COURT PROCEEDINGS INVOLVING THE ALLEGED PERPETRATOR
27 OF THE HOMICIDE; PROVIDED, HOWEVER, THAT:

28 (I) THE INVESTIGATION MAY COMMENCE SIX MONTHS AFTER SUCH DEATH IF THE
29 BOARD REASONABLY BELIEVES, AS EVIDENCED BY A MAJORITY BOARD VOTE, THAT
30 THE ALLEGED PERPETRATOR IS UNAPPREHENDED, AND UNDER SUCH CIRCUMSTANCES
31 THE INVESTIGATION MAY CONTINUE ONLY SO LONG AS SUCH ALLEGED PERPETRATOR
32 REMAINS AT LARGE; OR

33 (II) THE INVESTIGATION MAY COMMENCE IMMEDIATELY IF THE BOARD REASON-
34 ABLY BELIEVES, AS EVIDENCED BY MAJORITY BOARD VOTE, THAT THE ALLEGED
35 PERPETRATOR IS DECEASED.

36 2. SUCH BOARD SHALL CONSIST OF THIRTEEN MEMBERS, TO BE APPOINTED AS
37 FOLLOWS:

38 A. FIVE MEMBERS SHALL BE APPOINTED BY THE GOVERNOR:

39 (I) ONE SUCH MEMBER SHALL BE APPOINTED UPON THE RECOMMENDATION OF A
40 STATEWIDE ORGANIZATION REPRESENTING SURVIVORS OF DOMESTIC VIOLENCE;

41 (II) ONE SUCH MEMBER SHALL BE A PERSON EXPERIENCED IN LAW ENFORCEMENT;

42 (III) ONE SUCH MEMBER, WHO SHALL BE APPOINTED UPON THE RECOMMENDATION
43 OF A STATEWIDE ORGANIZATION REPRESENTING PROSECUTORS, SHALL BE A REPRE-
44 SENTATIVE OF PROSECUTION SERVICES;

45 (IV) ONE SUCH MEMBER, WHO SHALL BE APPOINTED UPON THE RECOMMENDATION
46 OF A STATEWIDE ORGANIZATION REPRESENTING THE PUBLIC OR PRIVATE CRIMINAL
47 DEFENSE BAR, SHALL BE A REPRESENTATIVE OF CRIMINAL DEFENSE SERVICES; AND

48 (V) ONE SUCH MEMBER SHALL BE APPOINTED UPON THE RECOMMENDATION OF A
49 STATEWIDE ORGANIZATION REPRESENTING SOCIAL WORKERS.

50 B. THREE MEMBERS SHALL BE APPOINTED BY THE CHIEF JUDGE OF THE STATE.

51 C. ONE MEMBER SHALL BE APPOINTED BY THE OFFICE FOR THE PREVENTION OF
52 DOMESTIC VIOLENCE, WHO SHALL BE A REPRESENTATIVE OF THAT OFFICE.

53 D. TWO MEMBERS SHALL BE APPOINTED BY THE TEMPORARY PRESIDENT OF THE
54 SENATE, ONE OF WHOM SHALL BE APPOINTED ON THE RECOMMENDATION OF A STATE-
55 WIDE ORGANIZATION REPRESENTING CRIME VICTIMS.

1 E. TWO MEMBERS SHALL BE APPOINTED BY THE SPEAKER OF THE ASSEMBLY, ONE
2 OF WHOM SHALL BE APPOINTED ON THE RECOMMENDATION OF A STATEWIDE ORGAN-
3 IZATION REPRESENTING CRIME VICTIMS.

4 3. MEMBERS OF THE BOARD SHALL BE APPOINTED TO SERVE FOR A TERM OF
5 FOUR YEARS. FROM AMONG THE MEMBERS, A CHAIRPERSON SHALL BE ELECTED, WHO
6 SHALL SERVE FOR A PERIOD OF TWO YEARS. MEMBERS OF THE BOARD SHALL NOT
7 BE COMPENSATED FOR THEIR SERVICES, BUT SHALL BE ALLOWED THEIR ACTUAL AND
8 NECESSARY EXPENSES INCURRED IN THE PERFORMANCE OF THEIR DUTIES. NO
9 MEMBER OF THE BOARD SHALL BE DISQUALIFIED FROM HOLDING ANY PUBLIC OFFICE
10 OR EMPLOYMENT, NOR SHALL HE OR SHE FORFEIT ANY SUCH OFFICE OR EMPLOYMENT
11 BY VIRTUE OF HIS OR HER APPOINTMENT HEREUNDER. ANY VACANCY IN THE
12 MEMBERSHIP OF THE BOARD SHALL BE FILLED IN THE SAME MANNER AS THE
13 ORIGINAL APPOINTMENT.

14 4. A. THE BOARD SHALL REVIEW AND STUDY THE CIRCUMSTANCES OF SUCH
15 FATALITIES. IT SHALL ASSESS THE ACTIVITIES AND RESPONSES OF THE CRIMINAL
16 JUSTICE SYSTEM AND OF ANY OTHER PUBLIC ENTITIES WHICH MAY HAVE BEEN
17 INVOLVED IN, OR IN ANY MANNER ASSOCIATED WITH, THE CIRCUMSTANCES OF THE
18 FATALITY, ITS INVESTIGATION, OR THE RELEVANT HISTORY OF DOMESTIC
19 VIOLENCE.

20 B. THE BOARD SHALL PERIODICALLY ADVISE AND MAKE RECOMMENDATIONS TO THE
21 DIVISION OF CRIMINAL JUSTICE SERVICES, OFFICE OF COURT ADMINISTRATION,
22 DIVISION OF STATE POLICE, THE STATE OFFICE FOR THE PREVENTION OF DOMES-
23 TIC VIOLENCE, AND OTHER APPROPRIATE ENTITIES CONCERNING THEIR FINDINGS.
24 THE BOARD HAS THE AUTHORITY TO RECOMMEND APPROPRIATE CORRECTIVE ACTIONS,
25 BASED UPON ITS FINDINGS, TO IMPROVE THE MANAGEMENT, SUPERVISION AND
26 PROVISION OF SERVICES TO VICTIMS OF DOMESTIC VIOLENCE AND THEIR FAMILIES
27 AND TO MAKE RECOMMENDATIONS FOR ACTIONS, BASED UPON ITS FINDINGS, THAT
28 MAY REDUCE THE PREVALENCE OF DOMESTIC VIOLENCE.

29 C. THE BOARD SHALL ALSO PERFORM A RESEARCH AND REPORTING FUNCTION AND
30 IDENTIFY AREAS REQUIRING NEW PREVENTIVE AND PROTECTIVE STRATEGIES,
31 GUIDELINES, OR LEGISLATIVE CHANGES. THE BOARD SHALL REPORT ANNUALLY ON
32 ITS ACTIVITIES AND FINDINGS, INCLUDING ITS RECOMMENDATIONS, TO THE
33 GOVERNOR, LEGISLATURE, CHIEF JUDGE, DIVISION OF CRIMINAL JUSTICE
34 SERVICES, OFFICE OF COURT ADMINISTRATION, DIVISION OF STATE POLICE, AND
35 OFFICE FOR THE PREVENTION OF DOMESTIC VIOLENCE ON OR BEFORE THE
36 FIFTEENTH OF MARCH OF EACH YEAR. SUCH REPORT SHALL BE RELEASED AND MADE
37 AVAILABLE TO THE PUBLIC.

38 5. A. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, THE BOARD
39 IS ENTITLED TO EXAMINE AND RECEIVE WITHOUT CHARGE PHOTOCOPIES OR PHOTO-
40 GRAPHS OF THE FOLLOWING RECORDS AND DOCUMENTS WITHOUT THE NECESSITY OF A
41 SUBPOENA AND WITHOUT COURT APPROVAL:

42 (I) ALL UNSEALED COURT RECORDS, INCLUDING TRANSCRIPTS, EXHIBITS, AND
43 ITEMS ENTERED IN EVIDENCE, IN CRIMINAL OR FAMILY COURT PROCEEDINGS IN
44 WHICH THE DECEDENT OR THE ALLEGED PERPETRATOR WAS A COMPLAINANT, DEFEND-
45 ANT, OR RESPONDENT, INCLUDING ANY SUCH TRIAL OR PROCEEDING ARISING OUT
46 OF THE DECEDENT'S DEATH;

47 (II) ALL MEDICAL, HOSPITAL, CORONER'S, AND MEDICAL EXAMINER'S RECORDS
48 AND EXHIBITS CONCERNING THE DECEDENT; AND

49 (III) ALL RECORDS AND PUBLIC SAFETY AGENCY RECORDS AVAILABLE PURSUANT
50 TO ARTICLES SIX AND SIX-A OF THE PUBLIC OFFICERS LAW, EXCEPT THAT WHERE
51 AN AGENCY CLAIMS AN EXEMPTION FROM DISCLOSURE UNDER SUCH ARTICLE SIX OR
52 SIX-A, THEN, IN ADDITION TO ANY OTHER AVAILABLE REMEDY, THE BOARD MAY
53 PROCEED PURSUANT TO PARAGRAPH B OF THIS SUBDIVISION.

54 B. (I) THE BOARD MAY ALSO REQUEST AUTHORIZATION FROM A COURT TO EXAM-
55 INE AND RECEIVE WITHOUT CHARGE PHOTOCOPIES OR PHOTOGRAPHS OF ANY OTHER
56 RECORD OR DOCUMENT IN THE POSSESSION OF ANY STATE OR LOCAL GOVERNMENTAL

ENTITY, WHERE SUCH RECORD MAY REASONABLY ASSIST THE BOARD IN CONDUCTING ITS INVESTIGATION. THIS INCLUDES, BUT IS NOT LIMITED TO:

(A) SEALED COURT RECORDS AND CONFIDENTIAL POLICE, PROSECUTION, AND LAW ENFORCEMENT AGENCY REPORTS AND RECORDS CONCERNING INVESTIGATIONS IN WHICH THE DECEDENT OR THE ALLEGED PERPETRATOR WAS A COMPLAINANT, RESPONDENT, DEFENDANT, WITNESS, OR ALLEGED VICTIM;

(B) RECORDS CONCERNING THE DECEDENT OR HER OR HIS CHILDREN MAINTAINED BY DOMESTIC VIOLENCE SHELTERS, AS DEFINED IN PARAGRAPH (A) OF SUBDIVISION FOUR OF SECTION FOUR HUNDRED FIFTY-NINE-A OF THE SOCIAL SERVICES LAW;

(C) RECORDS CONCERNING THE DECEDENT, HER OR HIS CHILDREN, OR THE ALLEGED PERPETRATOR MAINTAINED PURSUANT TO SECTION THREE HUNDRED SEVENTY-TWO OF THE SOCIAL SERVICES LAW;

(D) RECORDS CONCERNING THE DECEDENT, HER OR HIS CHILDREN, OR THE ALLEGED PERPETRATOR MAINTAINED BY THE DEPARTMENT OF FAMILY ASSISTANCE PURSUANT TO SECTION FOUR HUNDRED TWENTY-TWO OF THE SOCIAL SERVICES LAW; AND

(E) SEALED COURT RECORDS OF MATRIMONIAL ACTIONS OR PROCEEDINGS DESCRIBED IN SUBDIVISION ONE OF SECTION TWO HUNDRED THIRTY-FIVE OF THE DOMESTIC RELATIONS LAW INVOLVING THE DECEDENT OR THE ALLEGED PERPETRATOR.

(II) UNLESS A COURT ORDERS OTHERWISE, THE APPLICATION PURSUANT TO THIS PARAGRAPH SHALL BE MADE ON AT LEAST FIVE DAYS' NOTICE TO THE PERSON HAVING CUSTODY OF THE RECORD OR DOCUMENT, TO THE DISTRICT ATTORNEY OF THE JURISDICTION IN WHICH THE DECEDENT IS BELIEVED TO HAVE DIED, AND TO ALL PERSONS, INCLUDING SURVIVING FAMILY MEMBERS OF THE DECEDENT, BUT NOT INCLUDING THE ALLEGED PERPETRATOR, WHOM THE COURT DETERMINES WOULD REASONABLY HAVE AN INTEREST IN THE PRIVACY OF SUCH RECORD OR DOCUMENT.

(III) WHERE THE APPLICATION IS TO REVIEW A CONFIDENTIAL JUDICIAL RECORD, THE APPLICATION SHALL BE MADE TO THE COURT WHERE THE RECORD IS MAINTAINED.

(IV) WHERE THE APPLICATION IS TO REVIEW A CONFIDENTIAL RECORD OR DOCUMENT MAINTAINED BY A NON-JUDICIAL STATE OR LOCAL GOVERNMENT ENTITY, THE APPLICATION SHALL BE BROUGHT IN THE SUPREME COURT IN THE COUNTY SPECIFIED IN SUBDIVISION (B) OF SECTION FIVE HUNDRED SIX OF THE CIVIL PRACTICE LAW AND RULES, EXCEPT AS THAT SUBDIVISION OTHERWISE PROVIDES.

(V) IN ANY SUCH PROCEEDING, THE COURT MAY ISSUE A PROTECTIVE ORDER DENYING, LIMITING, OR CONDITIONING ACCESS TO THE CONFIDENTIAL RECORD OR DOCUMENT WHEN PRODUCING THE RECORD OR DOCUMENT WOULD ENDANGER THE INTEGRITY OF PHYSICAL EVIDENCE, CREATE A SUBSTANTIAL RISK OF PHYSICAL HARM, INTIMIDATION, ECONOMIC COERCION, OR BRIBERY, OR HAVE A SERIOUSLY ADVERSE EFFECT UPON THE LEGITIMATE NEEDS OF LAW ENFORCEMENT.

C. IN CONNECTION WITH AN APPLICATION UNDER THIS SECTION OR ANY APPEAL THEREFROM OR ANY OTHER LEGAL MATTER, THE BOARD SHALL BE ENTITLED TO REPRESENTATION BY PRIVATE COUNSEL OF ITS CHOICE WHENEVER THE ATTORNEY GENERAL DETERMINES, BASED UPON HIS OR HER INVESTIGATION AND REVIEW OF THE FACTS AND CIRCUMSTANCES, THAT REPRESENTATION BY THE DEPARTMENT OF LAW WOULD BE INAPPROPRIATE. THE ATTORNEY GENERAL SHALL NOTIFY THE BOARD IN WRITING OF SUCH DETERMINATION THAT THE BOARD IS ENTITLED TO PRIVATE COUNSEL. IF THE BOARD IS ENTITLED TO REPRESENTATION BY PRIVATE COUNSEL UNDER THE PROVISIONS OF THIS PARAGRAPH, THE ATTORNEY GENERAL SHALL SO CERTIFY TO THE COMPTROLLER. REASONABLE ATTORNEYS' FEES AND LITIGATION EXPENSES SHALL BE PAID BY THE STATE TO SUCH PRIVATE COUNSEL FOR SUCH REPRESENTATION UPON THE AUDIT AND WARRANT OF THE COMPTROLLER.

6. NEITHER THE BOARD NOR ANY MEMBER THEREOF SHALL DISCLOSE ANY INFORMATION OBTAINED BY THE BOARD OR A BOARD MEMBER WHICH IS CONFIDENTIAL BY

1 LAW. UNAUTHORIZED DISCLOSURE OF SUCH CONFIDENTIAL INFORMATION BY A
2 MEMBER OF THE BOARD MAY RESULT IN REMOVAL OF SUCH MEMBER BY MAJORITY
3 BOARD VOTE, AFTER NOTICE TO SUCH MEMBER AND AN OPPORTUNITY TO BE HEARD.
4 7. THE BOARD SHALL BE ENTITLED TO REQUEST AND RECEIVE, AND SHALL
5 UTILIZE AND BE PROVIDED WITH, SUCH FACILITIES AND RESOURCES FROM ANY
6 DEPARTMENT, DIVISION, BOARD, BUREAU, COMMISSION, OR ANY AGENCY OF THE
7 STATE OR ANY POLITICAL SUBDIVISION THEREOF AS ARE REASONABLY NECESSARY
8 TO CARRY OUT ITS RESPONSIBILITIES. IF REQUESTED BY THE BOARD, THE OFFICE
9 FOR THE PREVENTION OF DOMESTIC VIOLENCE SHALL FURNISH REASONABLE OFFICE
10 SPACE AND DAY-TO-DAY STAFF SUPPORT TO THE BOARD WITHIN ITS AVAILABLE
11 RESOURCES.
12 8. AS USED IN THIS SECTION:
13 A. "ALLEGED PERPETRATOR" MEANS THE PERSON OR PERSONS WHOM THE BOARD
14 REASONABLY BELIEVES TO HAVE TAKEN OR PROCURED THE TAKING OF THE LIFE OF
15 THE DECEDENT.
16 B. "DECEDENT" MEANS THE PERSON WHOSE DEATH THE BOARD IS INVESTIGATING.
17 S 3. This act shall take effect on the thirtieth day after it shall
18 have become a law.