S T A T E O F N E W Y O R K

1734

2009-2010 Regular Sessions

I N S E N A T E

February 5, 2009

Introduced by Sens. STAVISKY, ADAMS, DIAZ, DUANE, HUNTLEY, ONORATO -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the criminal procedure law and the executive law, in relation to procedures for providing victim notification of criminal justice processes affecting the interests of crime victims and to repeal section 440.50 of the criminal procedure law relating thereto

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

Section 1. Section 440.50 of the criminal procedure law is REPEALED.

S 2. Part 3 of the criminal procedure law is amended by adding a new title V to read as follows:

TITLE V-VICTIM NOTIFICATION ACT

ARTICLE 740-VICTIM NOTIFICATION

SECTION 740.10 DEFINITION OF TERMS.
740.15 ISSUANCE AND FILING OF VICTIM NOTICES.
740.20 NOTIFICATION OF VICTIM.
740.25 VICTIM FINANCIAL AND SOCIAL SERVICES ASSISTANCE INFORMATION.

S 740.10 DEFINITION OF TERMS.

AS USED IN THIS ARTICLE, THE FOLLOWING TERMS HAVE THE FOLLOWING MEANINGS:

1. "CRIME" MEANS CONDUCT DEFINED AS A FELONY OR A MISDEMEANOR IN THE PENAL LAW.

2. "VICTIM" MEANS A PERSON WHO, AS A RESULT OF A CRIME, HAS SUFFERED A DIRECT ADVERSE EFFECT CONSISTING OF: DEATH, PHYSICAL INJURY, RAPE, SODOMY, SEXUAL ABUSE OR LOSS OF PROPERTY.

3. "FAMILY MEMBER" MEANS (A) ANY PERSON RELATED TO A VICTIM WITHIN THE THIRD DEGREE OF CONSANGUINITY OR AFFINITY, OR (B) ANY PERSON RESIDING IN THE SAME HOUSEHOLD WITH A VICTIM.

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

4. "VICTIM NOTICE" MEANS A FORM PRESCRIBED BY THE COMMISSIONER OF CRIMINAL JUSTICE SERVICES AND DISTRIBUTED BY THE DIVISION OF CRIMINAL JUSTICE SERVICES ON WHICH A VICTIM MAY INDICATE A DEMAND THAT HE OR SHE BE ADVISED AS TO COURT PROCEEDINGS AND THAT HE OR SHE BE ADVISED OF CERTAIN OTHER CRIMINAL JUSTICE AND LAW ENFORCEMENT AGENCIES' ACTIONS AFFECTING THE INTERESTS OF SUCH VICTIM AS PRESCRIBED BY THIS ARTICLE IN ANY CRIMINAL ACTION THAT MAY BE BASED UPON THE CRIME OF WHICH HE OR SHE WAS A VICTIM. SUCH FORM SHALL BE DESIGNED TO INCLUDE AT LEAST THE FOLLOWING INFORMATION: THE NAME OF THE VICTIM; THE ADDRESS OF THE VICTIM; THE NATURE OF THE CRIME; A DESCRIPTION OF THE CRIME; THE ADVERSE EFFECTS SUFFERED BY THE VICTIM AND BY ANY FAMILY MEMBER; WHETHER OR NOT THE VICTIM WISHES TO BE ADVISED AS TO COURT PROCEEDINGS AND CERTAIN OTHER CRIMINAL JUSTICE AND LAW ENFORCEMENT AGENCIES' ACTIONS AFFECTING THE INTEREST OF SUCH VICTIM AS PRESCRIBED BY THIS ARTICLE IN ANY CRIMINAL ACTION INVOLVING THE CRIME; AND THE PLACE OR PLACES WHERE THE VICTIM MAY BE REACHED BY MAIL AND TELEPHONE.

5. "DISCRETIONARY DISPOSITION" MEANS DISMISSAL IN FURTHERANCE OF JUSTICE, PURSUANT TO PARAGRAPH (G) OF SUBDIVISION ONE OF SECTION 170.30 AND SECTION 170.40 OF THIS CHAPTER; ADJOURNMENT IN CONTEMPLATION OF DISMISSAL PURSUANT TO SECTION 170.55 OF THIS CHAPTER; REDUCTION OF A FELONY CHARGE TO ONE FOR A NON-FELONY OFFENSE PURSUANT TO SECTION 180.50 OF THIS CHAPTER, OTHER THAN WHERE THE REDUCTION IS MADE PURSUANT TO PARAGRAPH (A) OF SUBDIVISION TWO THEREOF; REDUCTION OF A FELONY CHARGE TO A NON-FELONY OFFENSE PURSUANT TO SUBDIVISION THREE OF SECTION 180.70 OF THIS CHAPTER; DISMISSAL OF AN INDICTMENT IN THE INTERESTS OF JUSTICE PURSUANT TO PARAGRAPH (I) OF SUBDIVISION ONE OF SECTION 210.20 OF THIS CHAPTER AND SECTION 210.40 OF THIS CHAPTER; THE ENTRY OF A PLEA OF GUILTY TO ANY CRIME OTHER THAN ONE THAT IS NOT MORE THAN A SINGLE CLASSIFICATION BELOW THE HIGHEST CLASSIFICATION OF FELONY CHARGED IN THE INDICTMENT, OR THE ENTRY OF A PLEA OF GUILTY TO A CRIME CHARGED IN ANOTHER INDICTMENT TO CONSTITUTE A DISPOSITION OF THE INDICTMENT FOR THE CRIME UPON WHICH THE VICTIM NOTICE IS BASED; A DETERMINATION THAT AN ELIGIBLE YOUTH IS A YOUTHFUL OFFENDER; OR IMPOSITION OF SENTENCE.

6. "FILING" MEANS SUBMISSION, EITHER BY MAIL OR IN PERSON, OF THE VICTIM NOTIFICATION FORM BY THE VICTIM OR FAMILY MEMBER TO THE CRIMINAL JUSTICE AGENCY WHERE THE RECORD OF THE REPORT OF THE CRIME IS MAINTAINED OR IF A CRIMINAL ACTION HAS BEEN COMMENCED, WITH THE CLERK OF THE COURT WHERE THE ACTION IS PENDING.

S 740.15 ISSUANCE AND FILING OF VICTIM NOTICES.

1. WHENEVER A VICTIM SHALL GIVE INFORMATION IN PERSON TO A POLICE OFFICER OR TO A DISTRICT ATTORNEY OR AN EMPLOYEE OF A DISTRICT ATTORNEY CONCERNING A CRIME OF WHICH HE OR SHE IS A VICTIM SUCH OFFICER, DISTRICT ATTORNEY OR EMPLOYEE SHALL INQUIRE AS TO WHETHER THE VICTIM HAS RECEIVED A VICTIM NOTICE FORM AND, WHERE THE VICTIM INDICATES THAT HE OR SHE HAS NOT RECEIVED SUCH FORM, SHALL ISSUE OR SHALL MAKE ARRANGEMENT TO ISSUE TO THE VICTIM A VICTIM NOTICE FORM AND A COPY OF THE PROVISIONS OF THIS ARTICLE. IN THE EVENT THAT THE VICTIM IS DECEASED OR IS UNDER THE AGE OF EIGHTEEN OR IS UNABLE BY REASON OF MENTAL OR PHYSICAL DISABILITY TO FILL OUT A VICTIM NOTICE FORM, THE FORM AND A COPY OF THIS ARTICLE SHALL BE ISSUED TO ANY FAMILY MEMBER WHO APPEARS TO REPRESENT THE INTEREST OF THE VICTIM.

2. AT THE TIME A VICTIM NOTICE IS ISSUED AS PROVIDED IN SUBDIVISION ONE OF THIS SECTION, THE PERSON ISSUING SAID NOTICE SHALL INDICATE THEREON HIS OR HER OWN NAME AND (A) IF NO CRIMINAL ACTION HAS YET BEEN COMMENCED, THE PLACE WHERE THE RECORD OF THE REPORT OF THE CRIME WILL BE MAINTAINED, OR (B) IF A CRIMINAL ACTION HAS BEEN COMMENCED (I) THE COURT

WHERE SUCH ACTION PRESENTLY IS PENDING, (II) THE PART, IF KNOWN, TO WHICH SUCH ACTION HAS BEEN ASSIGNED, AND (III) THE DOCKET NUMBER, INDICTMENT NUMBER OR OTHER IDENTIFYING NUMBER, IF KNOWN, ASSIGNED TO THE CRIMINAL ACTION. THE PERSON ISSUING A VICTIM NOTICE FORM SHALL, ALSO AT THE TIME OF ISSUANCE, INFORM THE VICTIM OR FAMILY MEMBER OF THE MANNER AND PLACE WHERE SUCH FORM MUST BE FILED IF AN ELECTION TO FILE IS MADE.

3. A PERSON TO WHOM A VICTIM NOTICE HAS BEEN ISSUED PURSUANT TO THIS SECTION MAY, IF HE OR SHE SO ELECTS, FILE, BY MAIL OR IN PERSON, THE VICTIM NOTICE AT THE PLACE INDICATED IN PARAGRAPH (A) OR SUBPARAGRAPH (I) OF PARAGRAPH (B) OF SUBDIVISION TWO OF THIS SECTION. WHERE THE NOTICE HAS BEEN FILED AT THE PLACE SET FORTH IN PARAGRAPH (A) OF SUBDIVISION TWO OF THIS SECTION, IT SHALL BE THE DUTY OF THE POLICE OFFICER WHO APPEARS AT THE ARRAIGNMENT ON THE FIRST ACCUSATORY INSTRUMENT FILED IN ANY CRIMINAL ACTION BASED UPON THE CRIME TO SUBMIT THE VICTIM NOTICE TO THE CLERK OF THE COURT. WHERE A VICTIM NOTICE HAS BEEN SO SUBMITTED, OR WHERE A VICTIM NOTICE IS FILED WITH THE COURT INDICATED IN SUBPARAGRAPH (I) OF PARAGRAPH (B) OF SUBDIVISION TWO OF THIS SECTION, IT SHALL BE THE DUTY OF THE CLERK OF THE COURT OR THE CLERK OF THE PART TO ATTACH THE NOTICE TO THE ACCUSATORY INSTRUMENT.

4. A VICTIM NOTICE FILED WITH AN ACCUSATORY INSTRUMENT MUST BE TRANSMITTED TO ANY COURT THAT SUBSEQUENTLY ACQUIRES JURISDICTION OF THE CRIMINAL ACTION AND MUST BE ATTACHED TO THE ACCUSATORY INSTRUMENT FILED THEREIN. IT ALSO SHALL BE ATTACHED TO ALL SUPERSEDING ACCUSATORY INSTRUMENTS.

5. IF A SENTENCE IS IMPOSED OR OTHER COURT ORDER ISSUED REQUIRING CUSTODIAL PLACEMENT, THE CLERK OF THE COURT OR THE CLERK OF THE PART SHALL TRANSMIT A VICTIM NOTICE TO THE CUSTODIAL INSTITUTION WHERE PLACEMENT IS TO OCCUR. FURTHER, IF AT ANY TIME THE ORIGINAL CUSTODIAL INSTITUTION TRANSFERS AN INDIVIDUAL TO ANY OTHER CUSTODIAL INSTITUTION A VICTIM NOTICE SHALL ACCOMPANY SUCH TRANSFER.

S 740.20 NOTIFICATION OF VICTIM.

1. WHEN A VICTIM NOTICE HAS BEEN FILED PURSUANT TO SECTION 740.15 OF THIS ARTICLE AND A VICTIM OR A FAMILY MEMBER HAS INDICATED THEREIN A WISH TO BE ADVISED AS TO COURT PROCEEDINGS IN THE CRIMINAL ACTION INVOLVING THE CRIME, THEN NO COURT SHALL MAKE ANY DISCRETIONARY DISPOSITION IN THE ACTION UNLESS THE VICTIM OR FAMILY MEMBER WHO HAS FILED THE NOTICE IS PRESENT OR THE COURT HAS ASCERTAINED THAT REASONABLE EFFORTS HAVE BEEN MADE TO GIVE SUCH PERSON AT LEAST TWENTY-FOUR HOURS ADVANCE NOTICE OF THE FACT THAT A DISCRETIONARY DISPOSITION IS TO BE MADE IN THE ACTION.

2. WHERE THE VICTIM OR FAMILY MEMBER WHO HAS FILED THE NOTICE IS PRESENT, THE COURT SHALL NOT MAKE ANY DISCRETIONARY DISPOSITION IN THE ACTION UNLESS THE COURT FIRST ADVISES SUCH PERSON OF THE SUBJECT MATTER OF THE DISPOSITION TO BE MADE AND ASKS SUCH PERSON WHETHER HE OR SHE WISHES TO MAKE A STATEMENT WITH RESPECT THERETO. IF SUCH PERSON WISHES TO MAKE A STATEMENT, THE COURT SHALL GRANT HIM OR HER AN OPPORTUNITY TO DO SO BEFORE MAKING A DISCRETIONARY DISPOSITION.

3. WHETHER OR NOT A VICTIM OR FAMILY MEMBER WHO HAS FILED A VICTIM NOTICE APPEARS IN COURT, THE CLERK OF THE COURT SHALL PROMPTLY FORWARD BY MAIL TO ANY PERSON WHO HAS FILED A VICTIM NOTICE A NOTIFICATION AS TO THE FOLLOWING EVENTS:

(A) ANY DISCRETIONARY DISPOSITION, INCLUDING THE SPECIFICS THEREOF;

(B) ANY DISMISSAL OF THE ACCUSATORY INSTRUMENT; AND

(C) ANY REVERSAL OR MODIFICATION OF THE JUDGMENT BY AN APPELLATE COURT.

4. WHEN A VICTIM NOTICE HAS BEEN TRANSMITTED PURSUANT TO SUBDIVISION FIVE OF SECTION 740.15 OF THIS ARTICLE AND A VICTIM OR FAMILY MEMBER HAS INDICATED THEREIN A WISH TO BE ADVISED OF CRIMINAL JUSTICE AGENCY ACTIONS, THEN NO CUSTODIAL INSTITUTION SHALL RELEASE, DISCHARGE, PAROLE, FURLOUGH, GRANT TEMPORARY PASS, GRANT WORK RELEASE PRIVILEGES TO A PERSON IN ITS CUSTODY UNLESS IT SHALL FORWARD BY MAIL NOTICE, AT LEAST EIGHT DAYS, EXCLUDING SATURDAYS, SUNDAYS AND HOLIDAYS, IN ADVANCE OF SUCH PERSON'S CHANGE OF STATUS, TO THE VICTIM OR FAMILY MEMBER.

5. WHEN A VICTIM NOTICE HAS BEEN FILED PURSUANT TO SECTION 740.15 OF THIS ARTICLE AND A VICTIM OR A FAMILY MEMBER HAS INDICATED THEREIN A WISH TO BE ADVISED OF CRIMINAL JUSTICE AND LAW ENFORCEMENT AGENCIES' ACTIONS THEN IT SHALL BE THE DUTY, WHENEVER POSSIBLE, OF THE INVESTIGATING POLICE OFFICER AND DISTRICT ATTORNEY OR AN EMPLOYEE OF THE DISTRICT ATTORNEY TO INFORM A VICTIM, UPON ORAL OR WRITTEN REQUEST, OF THE PROGRESS, STATUS OR RESULTS OF AN INVESTIGATION OR THE PROGRESS OR STATUS OF A CASE WHICH IS BASED UPON THE CRIME OF WHICH HE OR SHE WAS A VICTIM. HOWEVER, DISCLOSURE OF INFORMATION MAY BE WITHHELD FROM A VICTIM IF SUCH INFORMATION IS CONFIDENTIAL OR COULD POTENTIALLY COMPROMISE THE RESULTS OF AN INVESTIGATION OR PROSECUTION AS THE CASE MAY BE.

S 740.25 VICTIM FINANCIAL AND SOCIAL SERVICES ASSISTANCE INFORMATION.

NOTWITHSTANDING THE ABSENCE OF FILING A VICTIM NOTICE, WHENEVER A VICTIM SHALL GIVE INFORMATION TO A POLICE OFFICER OR TO A DISTRICT ATTORNEY OR AN EMPLOYEE OF A DISTRICT ATTORNEY CONCERNING A CRIME OF WHICH HE OR SHE IS A VICTIM, SUCH OFFICER, DISTRICT ATTORNEY OR EMPLOYEE SHALL, TO THE BEST OF THEIR ABILITY, PROVIDE THE VICTIM WITH INFORMATION ABOUT FINANCIAL AND SOCIAL SERVICES ASSISTANCE AVAILABLE TO CRIME VICTIMS. THIS INFORMATION SHALL INCLUDE, BUT IS NOT LIMITED TO, INFORMATION ABOUT AVAILABLE: RAPE CRISIS CENTERS; VICTIM/WITNESS ASSISTANCE PROGRAMS; ELDERLY VICTIM PROJECTS; THE CRIME VICTIMS BOARD; VICTIM ASSISTANCE HOTLINES; AND DOMESTIC VIOLENCE SHELTERS AND PROGRAMS.

S 3. Subparagraph (A) of paragraph (c) of subdivision 2 of section 259-i of the executive law, as separately amended by chapters 40 and 126 of the laws of 1999, is amended to read as follows:

(A) Discretionary release on parole shall not be granted merely as a reward for good conduct or efficient performance of duties while confined but after considering if there is a reasonable probability that, if such inmate is released, he will live and remain at liberty without violating the law, and that his release is not incompatible with the welfare of society and will not so deprecate the seriousness of his crime as to undermine respect for law. In making the parole release decision, the guidelines adopted pursuant to subdivision four of section two hundred fifty-nine-c of this article shall require that the following be considered: (i) the institutional record including program goals and accomplishments, academic achievements, vocational education, training or work assignments, therapy and interpersonal relationships with staff and inmates; (ii) performance, if any, as a participant in a temporary release program; (iii) release plans including community resources, employment, education and training and support services available to the inmate; (iv) any deportation order issued by the federal government against the inmate while in the custody of the department of correctional services and any recommendation regarding deportation made by the commissioner of the department of correctional services pursuant to section one hundred forty-seven of the correction law; and (v) any statement made to the board by the crime victim or the victim's representative, where the crime victim is deceased or is mentally or physically incapacitated. The board shall provide toll free telephone

access for crime victims. [In the case of an oral statement made in accordance with subdivision one of section 440.50 of the criminal procedure law, the parole board member shall present a written report of the statement to the parole board.] A crime victim's representative shall mean the crime victim's closest surviving relative, the committee or guardian of such person, or the legal representative of any such person. Such statement submitted by the victim or victim's representative may include information concerning threatening or intimidating conduct toward the victim, the victim's representative, or the victim's family, made by the person sentenced and occurring after the sentencing. Such information may include, but need not be limited to, the threatening or intimidating conduct of any other person who or which is directed by the person sentenced. Notwithstanding the provisions of this section, in making the parole release decision for persons whose minimum period of imprisonment was not fixed pursuant to the provisions of subdivision one of this section, in addition to the factors listed in this paragraph the board shall consider the factors listed in paragraph (a) of subdivision one of this section.

S 4. Paragraph (b) of subdivision 2 of section 646-a of the executive law, as added by chapter 67 of the laws of 1994, is amended to read as follows:

(b) the rights of crime victims to routine notification of judicial proceedings relating to their case as provided in section six hundred forty-one of this article[,] AND in section 330.20[, and section 440.50] of the criminal procedure law [and section one hundred forty-nine-a of the correction law];

S 5. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.