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

245

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:

Section 1. Section 240.50 of the criminal procedure law is amended by adding a new subdivision 5 to read as follows:

5. NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE, IN THE CASE OF A CRIMINAL 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

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

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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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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