

3070

2009-2010 Regular Sessions

I N   A S S E M B L Y

January 22, 2009

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Introduced by M. of A. CHRISTENSEN -- read once and referred to the  
Committee on Codes

AN ACT to amend the executive law, the family court act and the criminal  
procedure law, in relation to pre-dispositional and pre-sentence  
investigations in family offense cases

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

1     Section 1. Subdivision 4 of section 221-a of the executive law, as  
2     amended by section 7 of part D of chapter 56 of the laws of 2008, is  
3     amended to read as follows:  
4     4. Courts and law enforcement officials, including probation officers,  
5     shall have the ability to disclose and share information with respect to  
6     such orders and warrants consistent with the purposes of this section,  
7     subject to applicable provisions of the family court act, domestic  
8     relations law and criminal procedure law concerning the confidentiality,  
9     sealing and expungement of records. DESIGNATED REPRESENTATIVES OF A  
10    LOCAL PROBATION SERVICE SHALL HAVE ACCESS TO INFORMATION IN THE STATE-  
11    WIDE REGISTRY OF ORDERS OF PROTECTION AND WARRANTS NECESSARY IN ORDER TO  
12    RESPOND TO A JUDICIAL REQUEST FOR INFORMATION PURSUANT TO SUBDIVISION  
13    SIX OF SECTION EIGHT HUNDRED TWENTY-ONE-A OF THE FAMILY COURT ACT,  
14    SUBDIVISION SIX-A OF SECTION 530.12 OF THE CRIMINAL PROCEDURE LAW OR,  
15    INsofar AS THEY INVOLVE VICTIMS OF DOMESTIC VIOLENCE AS DEFINED BY  
16    SECTION FOUR HUNDRED FIFTY-NINE-A OF THE SOCIAL SERVICES LAW, SECTION  
17    530.13 OF THE CRIMINAL PROCEDURE LAW, OR TO PREPARE AN INVESTIGATION AND  
18    REPORT IN PROCEEDINGS CONDUCTED PURSUANT TO SECTIONS 351.1, SIX HUNDRED  
19    FORTY-TWO, SIX HUNDRED FIFTY-SIX, SIX HUNDRED SIXTY-TWO, SEVEN HUNDRED  
20    FIFTY, EIGHT HUNDRED THIRTY-FIVE AND SUBDIVISION (B) OF SECTION ONE  
21    THOUSAND FORTY-SEVEN OF THE FAMILY COURT ACT OR ARTICLE THREE HUNDRED  
22    NINETY OF THE CRIMINAL PROCEDURE LAW.

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

LBD04878-01-9

1 S 2. The section heading and subdivision (a) of section 835 of the  
2 family court act, as amended by chapter 529 of the laws of 1963, are  
3 amended to read as follows:

4 Sequence of hearings; PROBATION INVESTIGATIONS AND REPORTS.

5 (a) Upon completion of the fact-finding hearing, the dispositional  
6 hearing may commence immediately after the required findings are made.  
7 IN AID OF ITS DISPOSITION, THE COURT MAY ADJOURN THE PROCEEDING FOR AN  
8 INVESTIGATION AND REPORT BY A LOCAL PROBATION SERVICE. FOR THE PURPOSES  
9 OF THIS ARTICLE, THE PROBATION INVESTIGATION AND REPORT MAY INCLUDE, BUT  
10 IS NOT LIMITED TO: THE PRESENCE OR ABSENCE OF AGGRAVATING FACTORS AS  
11 DEFINED IN PARAGRAPH (VII) OF SUBDIVISION (A) OF SECTION EIGHT HUNDRED  
12 TWENTY-SEVEN OF THIS ARTICLE, THE EXTENT OF INJURIES OR OUT-OF-POCKET  
13 LOSSES TO THE VICTIM WHICH MAY FORM THE BASIS FOR AN ORDER OF RESTITU-  
14 TION PURSUANT TO SUBDIVISION (E) OF SECTION EIGHT HUNDRED FORTY-ONE OF  
15 THIS ARTICLE, THE HISTORY OF THE RESPONDENT WITH RESPECT TO FAMILY  
16 OFFENSES AND ORDERS OF PROTECTION IN THIS OR OTHER COURTS, WHETHER THE  
17 RESPONDENT IS IN POSSESSION OF ANY FIREARMS AND, IF SO, WHETHER THE  
18 RESPONDENT IS LICENSED OR OTHERWISE AUTHORIZED TO BE IN POSSESSION OF  
19 SUCH FIREARMS.

20 S 3. Subdivision 3 of section 390.20 of the criminal procedure law is  
21 amended to read as follows:

22 3. Permissible in any case. For purposes of sentence, ISSUANCE OF AN  
23 ORDER OF PROTECTION PURSUANT TO SUBDIVISION FIVE OF SECTION 530.12 OF  
24 THIS CHAPTER OR, INSOFAR AS THEY INVOLVE VICTIMS OF DOMESTIC VIOLENCE AS  
25 DEFINED BY SECTION FOUR HUNDRED FIFTY-NINE-A OF THE SOCIAL SERVICES LAW,  
26 SECTION 530.13 OF THIS CHAPTER, the court may, in its discretion, order  
27 a pre-sentence investigation and report in any case, irrespective of  
28 whether such investigation and report is required by subdivision one or  
29 two OF THIS SECTION.

30 S 4. Subdivision 4 of section 390.30 of the criminal procedure law, as  
31 amended by chapter 618 of the laws of 1992, is amended to read as  
32 follows:

33 4. Abbreviated investigation and short form report. In lieu of the  
34 procedure set forth in subdivisions one, two and three OF THIS SECTION,  
35 where the conviction is of a misdemeanor OR FAMILY OFFENSE, AS DEFINED  
36 IN SUBDIVISION ONE OF SECTION 530.11 OF THIS CHAPTER, OTHER THAN A FELO-  
37 NY, the scope of the pre-sentence investigation may be abbreviated and a  
38 short form report may be made. The use of abbreviated investigations  
39 and short form reports, the matters to be covered therein and the form  
40 of the reports shall be in accordance with the general rules regulating  
41 methods and procedures in the administration of probation as adopted  
42 from time to time by the state director of probation and correctional  
43 alternatives pursuant to the provisions of article twelve of the execu-  
44 tive law. No such rule, however, shall be construed so as to relieve the  
45 agency conducting the investigation of the duty of investigating and  
46 reporting upon:

47 (a) the extent of the injury or economic loss and the actual out-of-  
48 pocket loss to the victim including the amount of restitution and repara-  
49 tion sought by the victim, after the victim has been informed of the  
50 right to seek restitution and reparation, or

51 (b) IN A CASE INVOLVING A FAMILY OFFENSE, AS DEFINED IN SUBDIVISION  
52 ONE OF SECTION 530.11 OF THIS CHAPTER, THE DEFENDANT'S HISTORY OF FAMILY  
53 OFFENSES AND ORDERS OF PROTECTION, INCLUDING VIOLATIONS, IN PROCEEDINGS  
54 OR ACTIONS IN THIS OR OTHER COURTS, THE EXTENT OF INJURIES OR THREATS OF  
55 INJURY TO THE COMPLAINANT OR MEMBERS OF COMPLAINANT'S FAMILY OR HOUSE-  
56 HOLD, THE USE OR THREATENED USE OF DANGEROUS INSTRUMENTS AGAINST THE

1 COMPLAINANT OR MEMBERS OF COMPLAINANT'S FAMILY OR HOUSEHOLD, WHETHER THE  
2 DEFENDANT IS IN POSSESSION OF ANY FIREARMS AND, IF SO, WHETHER DEFENDANT  
3 IS LICENSED OR OTHERWISE AUTHORIZED TO BE IN POSSESSION OF SUCH  
4 FIREARMS, THE EXTENT TO WHICH THE DEFENDANT POSES AN IMMEDIATE AND ONGO-  
5 ING DANGER TO THE COMPLAINANT OR MEMBERS OF THE COMPLAINANT'S FAMILY OR  
6 HOUSEHOLD AND ANY OTHER INFORMATION RELEVANT TO THE ISSUE OF WHETHER AN  
7 ORDER OF PROTECTION, IN ADDITION TO ANY OTHER DISPOSITION, SHOULD BE  
8 ISSUED IN ACCORDANCE WITH SUBDIVISION FIVE OF SECTION 530.12 OF THIS  
9 CHAPTER, OR  
10 (C) any matter relevant to the question of sentence OR ISSUANCE OF AN  
11 ORDER OF PROTECTION that the court directs to be included in particular  
12 cases.  
13 S 5. This act shall take effect on the ninetieth day after it shall  
14 have become a law.