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2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

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Introduced by M. of A. JACOBS, WEINSTEIN, CHRISTENSEN, JOHN -- Multi-Sponsored by -- M. of A. ARROYO, AUBRY, BRENNAN, BRODSKY, BUTLER, CANESTRARI, CLARK, COLTON, COOK, CYMBROWITZ, DINOWITZ, ESPAILLAT, GALEF, GANTT, GLICK, GOTTFRIED, HIKIND, HOOPER, LENTOL, V. LOPEZ, MARKEY, MCENENY, MILLMAN, NOLAN, ORTIZ, PHEFFER, PRETLOW, ROSENTHAL, SCARBOROUGH, SWEENEY, TOWNS, WEPRIN, WRIGHT -- read once and referred to the Committee on Social Services

AN ACT to amend the social services law, in relation to adoption of the family violence option of section 402 (a) (7) of the federal social security act by the state of New York

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

1 Section 1. Legislative intent. The legislature of the state of New
2 York finds that:
3 a. Domestic violence may make it difficult for some individuals to
4 attain economic self-sufficiency, because the physical and mental
5 effects of past or present abuse may hinder job performance; because
6 abusive partners may attempt to sabotage their victims' education,
7 training and employment to keep them economically dependent;
8 b. Attempts to escape violent living arrangements may disrupt work
9 and/or require relocation from another state;
10 c. In situations where there is a risk of domestic violence, cooper-
11 ation with child support and paternity establishment regulations may
12 increase the risk to individuals and/or their children;
13 d. No individual should be forced to remain in a violent living situ-
14 ation or place themselves or others at risk, in order to retain assist-
15 ance, or for economic survival, or because any applicable time limit has
16 expired; and
17 e. Domestic violence and welfare are interrelated, and addressing
18 domestic violence will reduce barriers to economic self-sufficiency.

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

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1 In recognition of the reality of family violence for some individuals
2 who may need temporary assistance for needy families (TANF) assistance,
3 and to ensure that applicants and recipients who are past or present
4 victims of domestic violence or those at risk of further domestic
5 violence are not placed at risk or unfairly penalized, the state of New
6 York adopts the Family Violence Option in section 402 (a) (7) of the
7 federal Social Security Act.

8 S 2. The social services law is amended by adding a new section
9 459-a-1 to read as follows:

10 S 459-A-1. IDENTIFICATION OF VICTIMS OF DOMESTIC VIOLENCE. THE
11 COMMISSIONER OF THE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE, IN
12 CONSULTATION WITH THE STATE OFFICE FOR THE PREVENTION OF DOMESTIC
13 VIOLENCE, SHALL DEVELOP AND MONITOR COMPLIANCE WITH PROCEDURES FOR THE
14 DEPARTMENT AND ITS EMPLOYEES, CONTRACTORS AND SUBCONTRACTORS, FOR IDEN-
15 TIFYING VICTIMS OF DOMESTIC VIOLENCE. THOSE PROCEDURES SHALL PROVIDE FOR
16 UNIVERSAL NOTIFICATION TO ALL APPLICANTS AND RECIPIENTS OF AID UNDER
17 THIS ARTICLE:

18 (A) THAT REFERRALS TO COUNSELING AND SUPPORTIVE SERVICES AS DETAILED
19 UNDER SECTION FOUR HUNDRED FIFTY-NINE-H OF THIS ARTICLE ARE AVAILABLE
20 FOR PAST OR PRESENT VICTIMS OF DOMESTIC VIOLENCE OR THOSE AT RISK OF
21 FURTHER DOMESTIC VIOLENCE;

22 (B) THAT ALL PAST OR PRESENT VICTIMS OF DOMESTIC VIOLENCE OR THOSE AT
23 RISK OF FURTHER DOMESTIC VIOLENCE SHALL UPON A SHOWING OF GOOD CAUSE
24 RECEIVE WAIVERS OF ANY PROGRAM REQUIREMENTS THAT WILL MAKE IT MORE
25 DIFFICULT FOR THEM TO ESCAPE FROM DOMESTIC VIOLENCE OR UNFAIRLY PENALIZE
26 THEM FOR BEING VICTIMS OR POTENTIAL VICTIMS OF SUCH VIOLENCE;

27 (C) THE PROCEDURES FOR VOLUNTARILY AND CONFIDENTIALLY IDENTIFYING
28 ELIGIBILITY FOR REFERRALS TO SUPPORTIVE SERVICES AND WAIVERS AND THE
29 PROCEDURES FOR OBTAINING SERVICES OR APPLYING FOR WAIVERS; AND

30 (D) NOTIFICATION WILL BE BOTH IN WRITING AND ORALLY AT THE TIME OF
31 APPLICATION AND RECERTIFICATION, AT THE BEGINNING OF ANY JOB TRAINING OR
32 WORK PLACEMENT ASSISTANCE PROGRAM, AND AT ANY OTHER TIME AT WHICH A
33 DETERMINATION IS BEING MADE CONCERNING THE INDIVIDUAL'S PROGRESS, ELIGI-
34 BILITY OR STATUS UNDER TEMPORARY ASSISTANCE FOR NEEDY FAMILIES. NOTIFI-
35 CATION PROCEDURES WILL ALLOW APPLICANTS AND RECIPIENTS TO VOLUNTARILY
36 AND CONFIDENTIALLY DISCLOSE THEIR ELIGIBILITY FOR SERVICES OR WAIVERS AT
37 ANY TIME. AT NO TIME WILL AN APPLICANT OR RECIPIENT'S DECISION NOT TO
38 DISCLOSE ELIGIBILITY FOR SERVICES OR WAIVERS DUE TO DOMESTIC VIOLENCE
39 PRECLUDE DISCLOSURE AT A LATER DATE, NOR WILL IT PRECLUDE FUTURE ACCESS
40 TO SERVICES OR WAIVERS.

41 S 3. The social services law is amended by adding a new section 459-h
42 to read as follows:

43 S 459-H. PROCEDURES FOR REFERRAL TO SERVICES. THE OFFICE OF TEMPORARY
44 AND DISABILITY ASSISTANCE, IN CONSULTATION WITH THE STATE OFFICE FOR THE
45 PREVENTION OF DOMESTIC VIOLENCE, SHALL DEVELOP AND MONITOR COMPLIANCE
46 WITH PROCEDURES FOR THE AGENCY AND ITS EMPLOYEES, CONTRACTORS AND
47 SUBCONTRACTORS, FOR REFERRING VICTIMS OF DOMESTIC VIOLENCE TO APPROPRI-
48 ATE SERVICES. WHENEVER AN APPLICANT OR RECIPIENT OF AID SELF-IDENTIFIES,
49 OR IS OTHERWISE IDENTIFIED, AS A PAST OR PRESENT VICTIM OF DOMESTIC
50 VIOLENCE OR A PERSON AT RISK OF FURTHER DOMESTIC VIOLENCE, THE OFFICE OF
51 TEMPORARY AND DISABILITY ASSISTANCE SHALL REFER THAT INDIVIDUAL TO AN
52 EMPLOYEE TRAINED IN DOMESTIC VIOLENCE ISSUES WHO WILL PROVIDE INFORMA-
53 TION ABOUT HOW TO CONTACT LOCAL SERVICES. SERVICES INCLUDE BUT ARE NOT
54 LIMITED TO: SHELTERS FOR BATTERED INDIVIDUALS, MEDICAL SERVICES, DOMES-
55 TIC ABUSE HOTLINES, EMERGENCY AID FOR INDIVIDUALS FLEEING DOMESTIC
56 VIOLENCE, LEGAL COUNSELING AND ADVOCACY, INITIATION OF CRIMINAL

1 PROCEEDINGS, MENTAL HEALTH CARE, COUNSELING, SUPPORT GROUPS, AND FINAN-
2 CIAL ASSISTANCE FOR VICTIMS OF CRIME.

3 S 4. The social services law is amended by adding a new section 459-i
4 to read as follows:

5 S 459-I. WAIVERS OF PROGRAM REQUIREMENTS. 1. THE OFFICE OF TEMPORARY
6 AND DISABILITY ASSISTANCE, IN CONSULTATION WITH THE STATE OFFICE FOR THE
7 PREVENTION OF DOMESTIC VIOLENCE, SHALL DEVELOP AND MONITOR COMPLIANCE
8 WITH PROCEDURES FOR THE AGENCY AND ITS EMPLOYEES, CONTRACTORS AND
9 SUBCONTRACTORS, OR WAIVERS OF PROGRAM REQUIREMENTS. WHENEVER AN APPLI-
10 CANT OR RECIPIENT OF AID SELF-IDENTIFIES, OR IS OTHERWISE IDENTIFIED AS
11 A PAST OR PRESENT VICTIM OF DOMESTIC VIOLENCE OR A PERSON AT RISK OF
12 FURTHER DOMESTIC VIOLENCE, THE AGENCY SHALL NOTIFY THAT INDIVIDUAL THAT
13 THEY MAY BE ELIGIBLE FOR A GOOD CAUSE WAIVER OF ANY POTENTIALLY APPLICA-
14 BLE PROGRAM REQUIREMENTS OR PENALTY PROVISIONS, INCLUDING, BUT NOT
15 LIMITED TO:

16 (A) TIME LIMITS ON RECEIPT OF ASSISTANCE;

17 (B) BENEFIT LEVEL REDUCTION;

18 (C) COMMUNITY SERVICE REQUIREMENTS;

19 (D) PARTICIPATION IN WORK ACTIVITIES. FOR PURPOSES OF THIS SECTION,
20 WORK ACTIVITY INCLUDES SUBSIDIZED OR UNSUBSIDIZED EMPLOYMENT, OR ANY JOB
21 TRAINING, EDUCATIONAL, JOB READINESS, INCLUDING BUT NOT LIMITED TO
22 PARTICIPATION IN COUNSELING, MEDICAL, LEGAL AND OTHER SUPPORT SERVICES,
23 AND OTHER ACTIVITIES LEADING TO SELF-SUFFICIENCY, SUCH AS ENGLISH AS A
24 SECOND LANGUAGE AND NATURALIZATION CLASSES, DRUG TREATMENT PROGRAMS,
25 EDUCATION, WORK PLACEMENT ASSISTANCE OR COMMUNITY SERVICE PROGRAMS.
26 DEFINITION MUST ALLOW FOR LAPSES IN ABILITY TO ENGAGE IN WORK ACTIVITY
27 FOR ABSENTEEISM OR POOR JOB PERFORMANCE THAT IS RELATED TO DOMESTIC
28 VIOLENCE;

29 (E) PATERNITY AND CHILD SUPPORT COOPERATION REQUIREMENTS;

30 (F) RESIDENCY REQUIREMENTS;

31 (G) FAMILY CAP PROVISIONS;

32 (H) LIMITATIONS ON TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) FOR
33 NON-CITIZENS;

34 (I) EDUCATIONAL REQUIREMENTS;

35 (J) LEARNFARE;

36 (K) ANY OTHER PROGRAM REQUIREMENTS THAT WILL MAKE IT MORE DIFFICULT TO
37 ESCAPE VIOLENCE OR FURTHER PENALIZE PAST OR PRESENT VICTIMS OF DOMESTIC
38 VIOLENCE OR THOSE AT RISK OF FURTHER DOMESTIC VIOLENCE; OR

39 (L) ANY PENALTY OR SANCTION, INCLUDING REDUCTION OR TERMINATION OF
40 ASSISTANCE, FOR FAILURE TO COMPLY WITH ONE OF THE ABOVE REQUIREMENTS.

41 WITH THE APPLICANT OR RECIPIENT'S INFORMED CONSENT, THE DEPARTMENT
42 SHALL DETERMINE WHETHER GOOD CAUSE EXISTS FOR A WAIVER OF ANY POTENTIAL-
43 LY APPLICABLE PROGRAM REQUIREMENT OR PENALTY PROVISION.

44 2. GOOD CAUSE FOR WAIVER OF PROGRAM REQUIREMENTS OR PENALTY PROVISION
45 SHALL BE FOUND WHENEVER IMPOSITION OF THE REQUIREMENT OR PENALTY WOULD:

46 (A) MAKE IT MORE DIFFICULT FOR AN APPLICANT OR RECIPIENT TO ESCAPE
47 DOMESTIC VIOLENCE; OR

48 (B) UNFAIRLY PENALIZE APPLICANTS OR RECIPIENTS OF AID WHO ARE PAST OR
49 PRESENT VICTIMS, OR ARE AT RISK OF FURTHER DOMESTIC VIOLENCE.

50 3. WAIVERS SHALL BE AUTOMATICALLY OFFERED TO APPLICANTS OR RECIPIENTS
51 UPON A SHOWING OF GOOD CAUSE, FOR AS LONG AS NECESSARY. AN APPLICANT OR
52 RECIPIENT IS FREE TO DECLINE AN OFFER OF A WAIVER, OR TERMINATE AN
53 EXISTING WAIVER AT ANY TIME, WITHOUT PENALTY. GRANTING OF A WAIVER DOES
54 NOT RESTRICT OTHERWISE QUALIFIED APPLICANTS AND RECIPIENTS FROM VOLUN-
55 TARY PARTICIPATION IN ANY WORK, JOB TRAINING, EDUCATIONAL, JOB READ-
56 INESS, WORK PLACEMENT ASSISTANCE OR COMMUNITY SERVICE PROGRAM.

1 4. DENIALS OF REQUESTS FOR WAIVERS OF PROGRAM REQUIREMENTS THAT WOULD
2 PENALIZE A PAST OR PRESENT VICTIM OF DOMESTIC VIOLENCE OR A PERSON AT
3 RISK OF FURTHER DOMESTIC VIOLENCE, OR WOULD MAKE IT MORE DIFFICULT FOR
4 THAT INDIVIDUAL TO ESCAPE DOMESTIC VIOLENCE, SHALL BE IN WRITING AND
5 SHALL STATE THE REASON FOR DENIAL. SUCH DENIALS WILL BE TRANSMITTED TO
6 APPLICANTS OR RECIPIENTS IN ACCORDANCE WITH THE CONFIDENTIALITY PROCE-
7 DURES ESTABLISHED UNDER SECTION FOUR HUNDRED FIFTY-NINE-A-ONE OF THIS
8 ARTICLE. SUCH DENIALS MAY BE APPEALED THROUGH THE FAIR HEARING PROCEDURE
9 APPLICABLE TO OTHER DETERMINATIONS OF TEMPORARY ASSISTANCE FOR NEEDY
10 FAMILIES (TANF) ELIGIBILITY, PROGRESS OR STATUS.

11 5. NOTHING IN THIS SECTION SHALL BE INTERPRETED TO REQUIRE ANY ACTIONS
12 BY DOMESTIC VIOLENCE VICTIMS SUCH AS SEEKING ORDERS OF PROTECTION,
13 ATTENDING COUNSELING, OR OTHER ACTIONS THAT ARE NOT REQUIRED OF OTHER
14 APPLICANTS OR RECIPIENTS. NOTHING IN THIS SECTION SHALL BE INTERPRETED
15 AS ALLOWING DENIAL OR REDUCTION OF BENEFITS TO DOMESTIC VIOLENCE VICTIMS
16 BECAUSE THEY DO NOT TAKE ACTIONS NOT REQUIRED OF OTHER APPLICANTS OR
17 RECIPIENTS.

18 S 5. The social services law is amended by adding a new section 459-j
19 to read as follows:

20 S 459-J. PROTECTION OF BATTERED IMMIGRANTS. 1. UNDER THE FAMILY
21 VIOLENCE OPTION, NEW YORK STATE WILL WAIVE RESTRICTIONS ON TEMPORARY
22 ASSISTANCE FOR NEEDY FAMILIES (TANF), TITLE XX SOCIAL SERVICES AND MEDI-
23 CAID TO NON-CITIZENS, WHEN THE DENIAL OF ASSISTANCE WOULD MAKE IT MORE
24 DIFFICULT OR DANGEROUS TO ESCAPE DOMESTIC VIOLENCE OR CONSTITUTE AN
25 UNFAIR PENALTY.

26 2. TO ENSURE THAT IMMIGRANTS WHO HAVE BEEN BATTERED OR SUBJECTED TO
27 EXTREME CRUELTY, AS DEFINED BY SECTION 408(A)(7)(C)(III) OF THE FEDERAL
28 SOCIAL SECURITY ACT, BY A U.S. CITIZEN OR LAWFUL PERMANENT RESIDENT
29 SPOUSE OR PARENT, ARE NOT PLACED AT FURTHER RISK OF VIOLENCE OR UNFAIRLY
30 PENALIZED, NEW YORK STATE EXERCISES THE STATE OPTION TO PROVIDE TEMPO-
31 RARY ASSISTANCE FOR NEEDY FAMILIES (TANF), TITLE XX SOCIAL SERVICES AND
32 MEDICAID TO IMMIGRANTS AUTHORIZED UNDER SECTION 402(B)(1) OF THE FEDERAL
33 SOCIAL SECURITY ACT, AS AMENDED BY THE ILLEGAL IMMIGRATION REFORM AND
34 IMMIGRANT RESPONSIBILITY ACT, P.L. 104-208 SECTION 501.

35 S 6. The social services law is amended by adding a new section 459-k
36 to read as follows:

37 S 459-K. EVIDENCE OF DOMESTIC VIOLENCE. 1. ALLEGATIONS OF DOMESTIC
38 VIOLENCE BY A VICTIM SHALL BE SUFFICIENT TO ESTABLISH DOMESTIC VIOLENCE
39 WHERE THE AGENCY HAS NO INDEPENDENT, REASONABLE BASIS TO FIND THE RECIP-
40 IENT NOT CREDIBLE. EVIDENCE MAY ALSO INCLUDE, BUT IS NOT LIMITED TO,
41 POLICE, GOVERNMENT AGENCY OR COURT RECORDS; DOCUMENTATION FROM A SHELTER
42 WORKER, LEGAL, CLERICAL, MEDICAL OR OTHER PROFESSIONAL FROM WHOM THE
43 APPLICANT OR RECIPIENT HAS SOUGHT ASSISTANCE IN DEALING WITH DOMESTIC
44 VIOLENCE; OR OTHER CORROBORATING EVIDENCE, SUCH AS A STATEMENT FROM ANY
45 OTHER INDIVIDUAL WITH KNOWLEDGE OF THE CIRCUMSTANCES WHICH PROVIDE THE
46 BASIS FOR THE CLAIM, OR PHYSICAL EVIDENCE OF DOMESTIC VIOLENCE, OR ANY
47 OTHER EVIDENCE THAT SUPPORTS THE STATEMENT.

48 2. EVIDENCE OF DOMESTIC VIOLENCE MAY BE ESTABLISHED AT ANY TIME.

49 S 7. The social services law is amended by adding a new section 459-l
50 to read as follows:

51 S 459-L. DOMESTIC VIOLENCE TRAINING. THE COMMISSIONER OF THE OFFICE OF
52 TEMPORARY AND DISABILITY ASSISTANCE, IN CONSULTATION WITH THE STATE
53 OFFICE FOR THE PREVENTION OF DOMESTIC VIOLENCE, SHALL ESTABLISH MANDATO-
54 RY DOMESTIC VIOLENCE AND SEXUAL ABUSE TRAINING PROGRAMS FOR EMPLOYEES
55 AND CONTRACTORS OF THE DEPARTMENT WHO WORK WITH APPLICANTS AND RECIPI-
56 ENTS.

1 S 8. The social services law is amended by adding a new section 459-m
2 to read as follows:
3 S 459-M. CONSULTATION WITH DOMESTIC VIOLENCE EXPERTS. IN ESTABLISHING
4 PROCEDURES UNDER THIS ARTICLE FOR IDENTIFICATION OF VICTIMS OF DOMESTIC
5 VIOLENCE, MAINTAINING CONFIDENTIALITY, REFERRAL TO SERVICES, GRANTING
6 WAIVERS, AND DETERMINING EVIDENCE OF DOMESTIC VIOLENCE, THE COMMISSIONER
7 OF THE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE AND THE STATE
8 OFFICE FOR THE PREVENTION OF DOMESTIC VIOLENCE SHALL CONSULT WITH
9 EXPERTS ON BATTERING AND ADVOCATE ORGANIZATIONS, SUCH AS SHELTERS FOR
10 BATTERED INDIVIDUALS, LEGAL SERVICE AGENCIES, AND STATE AND LOCAL DOMES-
11 TIC VIOLENCE AND SEXUAL ASSAULT COALITIONS AND RESOURCE CENTERS, TO
12 ENSURE THAT THE PROCEDURES PROTECT THE SAFETY AND CONFIDENTIALITY OF
13 VICTIMS, AND TO DEVELOP TRAINING AND EDUCATION PROGRAMS UNDER SECTION
14 FOUR HUNDRED FIFTY-NINE-L OF THIS ARTICLE.
15 S 9. This act shall take effect on the first of July next succeeding
16 the date on which it shall have become a law.