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

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I N S E N A T E

January 22, 2010

Introduced by Sen. HASSELL-THOMPSON -- read twice and ordered printed, and when printed to be committed 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:

Section 1. Legislative intent. The legislature of the state of New York finds that:

a. Domestic violence may make it difficult for some individuals to attain economic self-sufficiency, because the physical and mental effects of past or present abuse may hinder job performance; because abusive partners may attempt to sabotage their victims' education, training and employment to keep them economically dependent;

b. Attempts to escape violent living arrangements may disrupt work and/or require relocation from another state;

c. In situations where there is a risk of domestic violence, cooperation with child support and paternity establishment regulations may increase the risk to individuals and/or their children;

d. No individual should be forced to remain in a violent living situation or place themselves or others at risk, in order to retain assistance, or for economic survival, or because any applicable time limit has expired; and

e. Domestic violence and welfare are interrelated, and addressing domestic violence will reduce barriers to economic self-sufficiency.

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

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

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

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

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

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

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

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

S 3. Section 459-h of the social services law, as renumbered by chapter 428 of the laws of 2009, is renumbered section 459-n and a new section 459-h is added to read as follows:

S 459-H. PROCEDURES FOR REFERRAL TO SERVICES. THE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE, IN CONSULTATION WITH THE STATE OFFICE FOR THE PREVENTION OF DOMESTIC VIOLENCE, SHALL DEVELOP AND MONITOR COMPLIANCE WITH PROCEDURES FOR THE AGENCY AND ITS EMPLOYEES, CONTRACTORS AND SUBCONTRACTORS, FOR REFERRING VICTIMS OF DOMESTIC VIOLENCE TO APPROPRIATE SERVICES. WHENEVER AN APPLICANT OR RECIPIENT OF AID SELF-IDENTIFIES, OR IS OTHERWISE IDENTIFIED, AS A PAST OR PRESENT VICTIM OF DOMESTIC VIOLENCE OR A PERSON AT RISK OF FURTHER DOMESTIC VIOLENCE, THE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE SHALL REFER THAT INDIVIDUAL TO AN EMPLOYEE TRAINED IN DOMESTIC VIOLENCE ISSUES WHO WILL PROVIDE INFORMATION ABOUT HOW TO CONTACT LOCAL SERVICES. SERVICES INCLUDE BUT ARE NOT LIMITED TO: SHELTERS FOR BATTERED INDIVIDUALS, MEDICAL SERVICES, DOMESTIC ABUSE HOTLINES, EMERGENCY AID FOR INDIVIDUALS FLEEING DOMESTIC VIOLENCE, LEGAL COUNSELING AND ADVOCACY, INITIATION OF CRIMINAL PROCEEDINGS, MENTAL HEALTH CARE, COUNSELING, SUPPORT GROUPS, AND FINANCIAL ASSISTANCE FOR VICTIMS OF CRIME.

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

S 459-I. WAIVERS OF PROGRAM REQUIREMENTS. 1. THE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE, IN CONSULTATION WITH THE STATE OFFICE FOR THE PREVENTION OF DOMESTIC VIOLENCE, SHALL DEVELOP AND MONITOR COMPLIANCE WITH PROCEDURES FOR THE AGENCY AND ITS EMPLOYEES, CONTRACTORS AND

SUBCONTRACTORS, OR WAIVERS OF PROGRAM REQUIREMENTS. WHENEVER AN APPLICANT OR RECIPIENT OF AID SELF-IDENTIFIES, OR IS OTHERWISE IDENTIFIED AS A PAST OR PRESENT VICTIM OF DOMESTIC VIOLENCE OR A PERSON AT RISK OF FURTHER DOMESTIC VIOLENCE, THE AGENCY SHALL NOTIFY THAT INDIVIDUAL THAT THEY MAY BE ELIGIBLE FOR A GOOD CAUSE WAIVER OF ANY POTENTIALLY APPLICABLE PROGRAM REQUIREMENTS OR PENALTY PROVISIONS, INCLUDING, BUT NOT LIMITED TO:

(A) TIME LIMITS ON RECEIPT OF ASSISTANCE;

(B) BENEFIT LEVEL REDUCTION;

(C) COMMUNITY SERVICE REQUIREMENTS;

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

(E) PATERNITY AND CHILD SUPPORT COOPERATION REQUIREMENTS;

(F) RESIDENCY REQUIREMENTS;

(G) FAMILY CAP PROVISIONS;

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

(I) EDUCATIONAL REQUIREMENTS;

(J) LEARNFARE;

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

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

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

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

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

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

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

4. DENIALS OF REQUESTS FOR WAIVERS OF PROGRAM REQUIREMENTS THAT WOULD PENALIZE A PAST OR PRESENT VICTIM OF DOMESTIC VIOLENCE OR A PERSON AT RISK OF FURTHER DOMESTIC VIOLENCE, OR WOULD MAKE IT MORE DIFFICULT FOR THAT INDIVIDUAL TO ESCAPE DOMESTIC VIOLENCE, SHALL BE IN WRITING AND SHALL STATE THE REASON FOR DENIAL. SUCH DENIALS WILL BE TRANSMITTED TO APPLICANTS OR RECIPIENTS IN ACCORDANCE WITH THE CONFIDENTIALITY PROCEDURES ESTABLISHED UNDER SECTION FOUR HUNDRED FIFTY-NINE-A-ONE OF THIS ARTICLE. SUCH DENIALS MAY BE APPEALED THROUGH THE FAIR HEARING PROCEDURE

APPLICABLE TO OTHER DETERMINATIONS OF TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) ELIGIBILITY, PROGRESS OR STATUS.

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

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

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

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

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

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

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

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

S 459-L. DOMESTIC VIOLENCE TRAINING. THE COMMISSIONER OF THE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE, IN CONSULTATION WITH THE STATE OFFICE FOR THE PREVENTION OF DOMESTIC VIOLENCE, SHALL ESTABLISH MANDATORY DOMESTIC VIOLENCE AND SEXUAL ABUSE TRAINING PROGRAMS FOR EMPLOYEES AND CONTRACTORS OF THE DEPARTMENT WHO WORK WITH APPLICANTS AND RECIPIENTS.

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

S 459-M. CONSULTATION WITH DOMESTIC VIOLENCE EXPERTS. IN ESTABLISHING PROCEDURES UNDER THIS ARTICLE FOR IDENTIFICATION OF VICTIMS OF DOMESTIC VIOLENCE, MAINTAINING CONFIDENTIALITY, REFERRAL TO SERVICES, GRANTING WAIVERS, AND DETERMINING EVIDENCE OF DOMESTIC VIOLENCE, THE COMMISSIONER OF THE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE AND THE STATE OFFICE FOR THE PREVENTION OF DOMESTIC VIOLENCE SHALL CONSULT WITH

EXPERTS ON BATTERING AND ADVOCATE ORGANIZATIONS, SUCH AS SHELTERS FOR BATTERED INDIVIDUALS, LEGAL SERVICE AGENCIES, AND STATE AND LOCAL DOMESTIC VIOLENCE AND SEXUAL ASSAULT COALITIONS AND RESOURCE CENTERS, TO ENSURE THAT THE PROCEDURES PROTECT THE SAFETY AND CONFIDENTIALITY OF VICTIMS, AND TO DEVELOP TRAINING AND EDUCATION PROGRAMS UNDER SECTION FOUR HUNDRED FIFTY-NINE-L OF THIS ARTICLE.

S 9. This act shall take effect on the first of July next succeeding the date on which it shall have become a law.