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

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2011-2012 Regular Sessions

I N S E N A T E

January 7, 2011

Introduced by Sens. PARKER, HUNTLEY, SAMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Crime Victims, Crime and Correction

AN ACT to amend the executive law, in relation to establishing the "protection of victims of domestic violence act"

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

Section 1. The executive law is amended by adding a new article 22-A to read as follows:

ARTICLE 22-A

PROTECTION OF VICTIMS OF DOMESTIC VIOLENCE

SECTION 636. SHORT TITLE.

637. CONDITIONS FOR RELEASING DEFENDANTS TO PROTECTIVE CONDITIONS.

S 636. SHORT TITLE. THIS ACT SHALL BE KNOWN AND MAY BE CITED AS THE "PROTECTION OF VICTIMS OF DOMESTIC VIOLENCE ACT".

S 637. CONDITIONS FOR RELEASING DEFENDANTS TO PROTECTIVE CONDITIONS. 1. A JUDGE MAY RELEASE UNDER THIS SECTION A DEFENDANT SUBJECT TO CONDITIONS REASONABLY NECESSARY FOR THE PROTECTION OF ONE OR MORE NAMED PERSONS. IF A JUDGE RELEASES UNDER THIS SECTION A DEFENDANT SUBJECT TO PROTECTIVE CONDITIONS, THE JUDGE SHALL MAKE A FINDING OF THE NEED FOR PROTECTIVE CONDITIONS AND INFORM THE DEFENDANT ON THE RECORD, EITHER ORALLY OR BY A WRITING THAT IS PERSONALLY DELIVERED TO THE DEFENDANT, OF THE SPECIFIC CONDITIONS IMPOSED AND THAT IF THE DEFENDANT VIOLATES A CONDITION OF RELEASE, HE OR SHE WILL BE SUBJECT TO ARREST WITHOUT A WARRANT AND MAY HAVE HIS OR HER BAIL FORFEITED OR REVOKED AND NEW CONDITIONS OF RELEASE IMPOSED, IN ADDITION TO ANY OTHER PENALTIES THAT MAY BE IMPOSED IF THE DEFENDANT IS FOUND IN CONTEMPT OF COURT.

2. AN ORDER OR AMENDED ORDER ISSUED UNDER SUBDIVISION ONE OF THIS SECTION SHALL CONTAIN ALL OF THE FOLLOWING:

(A) A STATEMENT OF THE DEFENDANT'S FULL NAME.

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

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(B) A STATEMENT OF THE DEFENDANT'S HEIGHT, WEIGHT, RACE, SEX, DATE OF BIRTH, HAIR COLOR, EYE COLOR, AND ANY OTHER IDENTIFYING INFORMATION THE JUDGE CONSIDERS APPROPRIATE.

(C) A STATEMENT OF THE DATE THE CONDITIONS BECOME EFFECTIVE.

(D) A STATEMENT OF THE DATE ON WHICH THE ORDER WILL EXPIRE.

(E) A STATEMENT OF THE CONDITIONS IMPOSED.

3. AN ORDER OR AMENDED ORDER ISSUED UNDER THIS SUBDIVISION AND SUBDIVISION ONE OF THIS SECTION MAY IMPOSE A CONDITION THAT THE DEFENDANT NOT PURCHASE OR POSSESS A FIREARM. HOWEVER, IF THE COURT ORDERS THE DEFENDANT TO CARRY OR WEAR A GLOBAL POSITIONING SYSTEM DEVICE AS A CONDITION OF RELEASE AS DESCRIBED IN SUBDIVISION SIX OF THIS SECTION, THE COURT SHALL ALSO IMPOSE A CONDITION THAT THE DEFENDANT NOT PURCHASE OR POSSESS A FIREARM.

4. THE JUDGE SHALL IMMEDIATELY DIRECT A LAW ENFORCEMENT AGENCY WITHIN THE JURISDICTION OF THE COURT, IN WRITING, TO ENTER AN ORDER OR AMENDED ORDER ISSUED UNDER SUBDIVISION ONE OF THIS SECTION OR SUBDIVISIONS ONE AND THREE OF THIS SECTION INTO THE COMPUTER SYSTEM TO CARRY INFORMATION OF ORDERS OF PROTECTION AND WARRANTS OF ARREST AS PROVIDED BY SECTION TWO HUNDRED TWENTY-ONE-A OF THIS CHAPTER. IF THE ORDER OR AMENDED ORDER IS RESCINDED, THE JUDGE SHALL IMMEDIATELY ORDER THE LAW ENFORCEMENT AGENCY TO REMOVE THE ORDER OR AMENDED ORDER FROM THE COMPUTER SYSTEM TO CARRY INFORMATION OF ORDERS OF PROTECTION AND WARRANTS OF ARREST.

5. A LAW ENFORCEMENT AGENCY WITHIN THE JURISDICTION OF THE COURT SHALL IMMEDIATELY ENTER AN ORDER OR AMENDED ORDER INTO THE COMPUTER SYSTEM TO CARRY INFORMATION OF ORDERS OF PROTECTION AND WARRANTS OF ARREST AS PROVIDED BY SECTION TWO HUNDRED TWENTY-ONE-A OF THIS CHAPTER, OR SHALL REMOVE THE ORDER OR AMENDED ORDER FROM THE COMPUTER SYSTEM TO CARRY INFORMATION OF ORDERS OF PROTECTION AND WARRANTS OF ARREST UPON EXPIRATION OF THE ORDER OR AS DIRECTED BY THE COURT UNDER SUBDIVISION FOUR OF THIS SECTION.

6. IF A DEFENDANT WHO IS CHARGED WITH A CRIME INVOLVING DOMESTIC VIOLENCE IS RELEASED UNDER THIS SECTION, THE JUDGE MAY ORDER THE DEFENDANT TO CARRY OR WEAR A GLOBAL POSITIONING SYSTEM DEVICE AS A CONDITION OF RELEASE. WITH THE INFORMED CONSENT OF THE VICTIM, THE COURT MAY ALSO ORDER THE DEFENDANT TO PROVIDE THE VICTIM OF THE CHARGED CRIME WITH AN ELECTRONIC RECEPTOR DEVICE CAPABLE OF RECEIVING THE GLOBAL POSITIONING SYSTEM INFORMATION FROM THE DEVICE CARRIED OR WORN BY THE DEFENDANT THAT NOTIFIES THE VICTIM IF THE DEFENDANT IS LOCATED WITHIN A PROXIMITY TO THE VICTIM AS DETERMINED BY THE JUDGE IN CONSULTATION WITH THE VICTIM. THE VICTIM SHALL ALSO BE FURNISHED WITH A TELEPHONE CONTACT WITH THE LOCAL LAW ENFORCEMENT AGENCY TO REQUEST IMMEDIATE ASSISTANCE IF THE DEFENDANT IS LOCATED WITHIN THAT PROXIMITY TO THE VICTIM. IN ADDITION, THE VICTIM MAY PROVIDE THE COURT WITH A LIST OF AREAS FROM WHICH HE OR SHE WOULD LIKE THE DEFENDANT EXCLUDED. THE COURT SHALL CONSIDER THE VICTIM'S REQUEST AND SHALL DETERMINE WHICH AREAS THE DEFENDANT SHALL BE PROHIBITED FROM ACCESSING. THE COURT SHALL INSTRUCT THE GLOBAL POSITIONING SYSTEM TO NOTIFY THE PROPER AUTHORITIES IF THE DEFENDANT VIOLATES THE ORDER. IN DETERMINING WHETHER TO ORDER A DEFENDANT TO PARTICIPATE IN GLOBAL POSITIONING SYSTEM MONITORING, THE COURT SHALL CONSIDER THE LIKELIHOOD THAT THE DEFENDANT'S PARTICIPATION IN GLOBAL POSITIONING SYSTEM MONITORING WILL DETER THE DEFENDANT FROM SEEKING TO KILL, PHYSICALLY INJURE, STALK, OR OTHERWISE THREATEN THE VICTIM PRIOR TO TRIAL. THE VICTIM MAY REQUEST THE COURT TO TERMINATE THE VICTIM'S PARTICIPATION IN GLOBAL POSITIONING SYSTEM MONITORING OF THE DEFENDANT AT ANY TIME. THE COURT SHALL NOT IMPOSE SANCTIONS ON THE VICTIM FOR REFUSING TO PARTICIPATE IN GLOBAL POSITIONING SYSTEM MONITORING UNDER THIS SECTION. A

DEFENDANT DESCRIBED IN THIS SECTION SHALL ONLY BE RELEASED UNDER THIS SECTION IF HE OR SHE AGREES TO PAY THE COST OF THE DEVICE AND ANY MONITORING OF THE DEVICE AS A CONDITION OF RELEASE OR TO PERFORM COMMUNITY SERVICE WORK IN LIEU OF PAYING THAT COST. AS USED IN THIS SECTION:

(A) "DOMESTIC VIOLENCE" MEANS AN ACT WHICH WOULD CONSTITUTE A FAMILY OFFENSE PURSUANT TO SUBDIVISION ONE OF SECTION EIGHT HUNDRED TWELVE OF THE FAMILY COURT ACT.

(B) "GLOBAL POSITIONING SYSTEM" MEANS A SYSTEM THAT ELECTRONICALLY DETERMINES AND REPORTS THE LOCATION OF AN INDIVIDUAL BY MEANS OF AN ANKLE BRACELET TRANSMITTER OR SIMILAR DEVICE WORN BY THE INDIVIDUAL THAT TRANSMITS LATITUDE AND LONGITUDE DATA TO MONITORING AUTHORITIES THROUGH GLOBAL POSITIONING SATELLITE TECHNOLOGY BUT DOES NOT CONTAIN OR OPERATE ANY GLOBAL POSITIONING SYSTEM TECHNOLOGY OR RADIO FREQUENCY IDENTIFICATION TECHNOLOGY OR SIMILAR TECHNOLOGY THAT IS IMPLANTED IN OR OTHERWISE INVADES OR VIOLATES THE CORPOREAL BODY OF THE INDIVIDUAL.

(C) "INFORMED CONSENT" MEANS THAT THE VICTIM WAS GIVEN INFORMATION CONCERNING ALL OF THE FOLLOWING BEFORE CONSENTING TO PARTICIPATE IN GLOBAL POSITIONING SYSTEM MONITORING:

(1) THE VICTIM'S RIGHT TO REFUSE TO PARTICIPATE IN GLOBAL POSITIONING SYSTEM MONITORING AND THE PROCESS FOR REQUESTING THE COURT TO TERMINATE THE VICTIM'S PARTICIPATION AFTER IT HAS BEEN ORDERED.

(2) THE MANNER IN WHICH THE GLOBAL POSITIONING SYSTEM MONITORING TECHNOLOGY FUNCTIONS AND THE RISKS AND LIMITATIONS OF THAT TECHNOLOGY, AND THE EXTENT TO WHICH THE SYSTEM WILL TRACK AND RECORD THE VICTIM'S LOCATION AND MOVEMENTS.

(3) THE BOUNDARIES IMPOSED ON THE DEFENDANT DURING THE GLOBAL POSITIONING SYSTEM MONITORING.

(4) SANCTIONS THAT THE COURT MAY IMPOSE ON THE DEFENDANT FOR VIOLATING AN ORDER ISSUED UNDER THIS SUBDIVISION.

(5) THE PROCEDURE THAT THE VICTIM IS TO FOLLOW IF THE DEFENDANT VIOLATES AN ORDER ISSUED UNDER THIS SUBDIVISION OR IF GLOBAL POSITIONING SYSTEM EQUIPMENT FAILS.

(6) IDENTIFICATION OF SUPPORT SERVICES AVAILABLE TO ASSIST THE VICTIM TO DEVELOP A SAFETY PLAN TO USE IF THE COURT'S ORDER ISSUED UNDER THIS SUBDIVISION IS VIOLATED OR IF GLOBAL POSITIONING SYSTEM EQUIPMENT FAILS.

(7) IDENTIFICATION OF COMMUNITY SERVICES AVAILABLE TO ASSIST THE VICTIM IN OBTAINING SHELTER, COUNSELING, EDUCATION, CHILD CARE, LEGAL REPRESENTATION, AND OTHER HELP IN ADDRESSING THE CONSEQUENCES AND EFFECTS OF DOMESTIC VIOLENCE.

(8) THE NONCONFIDENTIAL NATURE OF THE VICTIM'S COMMUNICATIONS WITH THE COURT CONCERNING GLOBAL POSITIONING SYSTEM MONITORING AND THE RESTRICTIONS TO BE IMPOSED UPON THE DEFENDANT'S MOVEMENTS.

7. THIS SECTION DOES NOT LIMIT THE AUTHORITY OF JUDGES TO IMPOSE PROTECTIVE OR OTHER RELEASE CONDITIONS UNDER OTHER APPLICABLE STATUTES OR COURT RULES.

S 2. This act shall take effect on the one hundred eightieth day after it shall have become a law.