

7638

I N S E N A T E

June 8, 2012

Introduced by Sens. SALAND, GOLDEN, LANZA, RANZENHOFER, BALL, KLEIN --
(at request of the Governor) -- read twice and ordered printed, and
when printed to be committed to the Committee on Rules

AN ACT to amend the executive law, in relation to establishing a domestic violence fatality review team, adding members to the advisory council, and repealing subdivision 10 of section 575 of such law relating to the New York state address confidentiality program (Part A); to amend the public health law, in relation to the disposition of remains (Part B); to amend the executive law, in relation to the address confidentiality program of the department of state; and to amend chapter 502 of the laws of 2011 amending the executive law relating to authorizing the secretary of state to accept service of process and receipt of mail on behalf of victims of domestic violence for the purpose of maintaining the confidentiality of the location of such victims, in relation to the effectiveness thereof (Part C); to amend the criminal procedure law, in relation to the consideration of certain factors when determining the issuance of an order of recognizance or bail; and to amend the penal law and the criminal procedure law, in relation to the creation of the crime of aggravated family offense (Part D); and to amend the insurance law, in relation to a reasonable request to receive communications of health information by alternative means or at alternative locations when disclosure of the information could endanger the person (Part E)

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

1 Section 1. This act enacts into law major components of legislation
2 relating to issues deemed necessary by the state. Each component is
3 wholly contained within a Part identified as Parts A through E. The
4 effective date for each particular provision contained within such Part
5 is set forth in the last section of such Part. Any provision in any
6 section contained within a Part, including the effective date of the
7 Part, which makes a reference to a section "of this act", when used in
8 connection with that particular component, shall be deemed to mean and
9 refer to the corresponding section of the Part in which it is found.

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

LBD12153-04-2

1 Section three of this act sets forth the general effective date of this
2 act.

3 PART A

4 Section 1. Subdivision 4 of section 575 of the executive law, as added
5 by chapter 463 of the laws of 1992, paragraph (b) as amended by section
6 99 of subpart B of part C of chapter 62 of the laws of 2011, paragraphs
7 (c), (d), and (e) as amended by chapter 396 of the laws of 1994, is
8 amended to read as follows:

9 4. Advisory council. (a) An advisory council is hereby established to
10 make recommendations on domestic violence related issues and effective
11 strategies for the prevention of domestic violence, to assist in the
12 development of appropriate policies and priorities for effective inter-
13 vention, public education and advocacy, and to facilitate and assure
14 communication and coordination of efforts among state agencies and
15 between different levels of government, state, federal, and municipal,
16 for the prevention of domestic violence.

17 (b) The advisory council shall consist of nine members and [thirteen]
18 FIFTEEN ex-officio members. Each member shall be appointed to serve for
19 a term of three years and shall continue in office until a successor
20 appointed member is made. A member appointed to fill a vacancy shall be
21 appointed for the unexpired term of the member he or she is to succeed.
22 All of the members shall be individuals with expertise in the area of
23 domestic violence. Three members shall be appointed by the governor, two
24 members shall be appointed upon the recommendation of the temporary
25 president of the senate, two members shall be appointed upon the recom-
26 mendation of the speaker of the assembly, one member shall be appointed
27 upon the recommendation of the minority leader of the senate, and one
28 member shall be appointed upon the recommendation of the minority leader
29 of the assembly. The ex-officio members of the advisory board shall
30 consist of [one representative from the staff of each of the following
31 state departments and divisions:] THE DIRECTOR OF THE OFFICE, WHO SHALL
32 CHAIR THE COUNCIL, AND THE FOLLOWING MEMBERS OR THEIR DESIGNEES: THE
33 COMMISSIONER OF THE office of temporary and disability [services]
34 ASSISTANCE; THE COMMISSIONER OF THE department of health; THE COMMIS-
35 SIONER OF THE education department; THE COMMISSIONER OF THE office of
36 mental health; THE COMMISSIONER OF THE office of alcoholism and
37 substance abuse services; THE COMMISSIONER OF THE division of criminal
38 justice services; THE DIRECTOR OF THE office of probation and correc-
39 tional alternatives; THE COMMISSIONER OF THE office of children and
40 family services; THE DIRECTOR OF THE office of victim services; THE
41 CHIEF ADMINISTRATIVE JUDGE OF THE office of court administration; THE
42 COMMISSIONER OF THE department of labor; THE DIRECTOR OF THE state
43 office for the aging; [and] THE COMMISSIONER OF THE department of
44 corrections and community supervision; THE CHIEF EXECUTIVE OFFICER OF
45 THE NEW YORK STATE COALITION AGAINST DOMESTIC VIOLENCE; AND THE EXECU-
46 TIVE DIRECTOR OF THE NEW YORK STATE COALITION AGAINST SEXUAL ASSAULT.

47 (c) [The governor shall appoint a member as chair of the advisory
48 council to serve at the pleasure of the governor.

49 (d)] The advisory council shall meet as often as deemed necessary by
50 the chair [or executive director] but in no event less than two times
51 per year.

52 [(e)] (D) The members of the advisory council shall receive no salary
53 or other compensation for their services but shall be entitled to
54 reimbursement for actual and necessary expenses incurred in the perform-

1 ance of their duties within amounts made available by appropriation
2 therefor subject to the approval of the director of the budget. The
3 ex-officio members of the advisory council shall receive no additional
4 compensation for their services on the advisory council above the salary
5 they receive from the respective departments or divisions that employ
6 them.

7 S 2. Subdivision 10 of section 575 of the executive law is REPEALED.

8 S 3. Section 575 of the executive law is amended by adding a new
9 subdivision 10 to read as follows:

10 10. FATALITY REVIEW TEAM. (A) THERE SHALL BE ESTABLISHED WITHIN THE
11 OFFICE A FATALITY REVIEW TEAM FOR THE PURPOSE OF ANALYZING, IN CONJUNC-
12 TION WITH LOCAL REPRESENTATION, THE DOMESTIC VIOLENCE-RELATED DEATH OR
13 NEAR DEATH OF INDIVIDUALS, WITH THE GOAL OF:

14 (I) EXAMINING THE TRENDS AND PATTERNS OF DOMESTIC VIOLENCE-RELATED
15 FATALITIES IN NEW YORK STATE;

16 (II) EDUCATING THE PUBLIC, SERVICE PROVIDERS, AND POLICYMAKERS ABOUT
17 DOMESTIC VIOLENCE FATALITIES AND STRATEGIES FOR INTERVENTION AND
18 PREVENTION; AND

19 (III) RECOMMENDING POLICIES, PRACTICES, PROCEDURES, AND SERVICES TO
20 REDUCE FATALITIES DUE TO DOMESTIC VIOLENCE.

21 (B) A DOMESTIC VIOLENCE-RELATED DEATH OR NEAR DEATH SHALL MEAN ANY
22 DEATH OR NEAR DEATH CAUSED BY A FAMILY OR HOUSEHOLD MEMBER AS DEFINED IN
23 SECTION EIGHT HUNDRED TWELVE OF THE FAMILY COURT ACT OR SECTION 530.11
24 OF THE CRIMINAL PROCEDURE LAW, EXCEPT THAT THERE SHALL BE NO REVIEW OF
25 THE DEATH OR NEAR DEATH OF A CHILD FOR THOSE CASES IN WHICH THE OFFICE
26 OF CHILDREN AND FAMILY SERVICES IS REQUIRED TO ISSUE A FATALITY REPORT
27 IN ACCORDANCE WITH SUBDIVISION FIVE OF SECTION TWENTY OF THE SOCIAL
28 SERVICES LAW.

29 (C) THE TEAM SHALL REVIEW DEATHS OR NEAR DEATHS IN CASES THAT HAVE
30 BEEN ADJUDICATED AND HAVE RECEIVED A FINAL JUDGMENT AND THAT ARE NOT
31 UNDER INVESTIGATION.

32 (D) MEMBERS OF A DOMESTIC VIOLENCE FATALITY REVIEW TEAM SHALL BE
33 APPOINTED BY THE EXECUTIVE DIRECTOR, IN CONSULTATION WITH THE ADVISORY
34 COUNCIL, AND SHALL INCLUDE, BUT NOT BE LIMITED TO, ONE REPRESENTATIVE
35 FROM THE OFFICE OF CHILDREN AND FAMILY SERVICES, THE OFFICE OF TEMPORARY
36 AND DISABILITY ASSISTANCE, THE DIVISION OF CRIMINAL JUSTICE SERVICES,
37 THE STATE POLICE, THE DEPARTMENT OF HEALTH, THE OFFICE OF COURT ADMINIS-
38 TRATION, THE OFFICE OF PROBATION AND CORRECTIONAL ALTERNATIVES, THE
39 DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION, AT LEAST ONE REPRE-
40 SENTATIVE FROM LOCAL LAW ENFORCEMENT, A COUNTY PROSECUTOR'S OFFICE, A
41 LOCAL SOCIAL SERVICES DISTRICT, A MEMBER OF THE JUDICIARY, AND A DOME-
42 STIC VIOLENCE SERVICES PROGRAM APPROVED BY THE OFFICE OF CHILDREN AND
43 FAMILY SERVICES. A DOMESTIC VIOLENCE FATALITY REVIEW TEAM MAY ALSO
44 INCLUDE REPRESENTATIVES FROM SEXUAL ASSAULT SERVICES PROGRAMS, PUBLIC
45 HEALTH, MENTAL HEALTH AND SUBSTANCE ABUSE AGENCIES, HOSPITALS, CLERGY,
46 LOCAL SCHOOL DISTRICTS, LOCAL DIVISIONS OF PROBATION, LOCAL OFFICES OF
47 THE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION, THE OFFICE OF
48 THE MEDICAL EXAMINER OR CORONER, ANY LOCAL DOMESTIC VIOLENCE TASK FORCE,
49 COORDINATING COUNCIL OR OTHER INTERAGENCY ENTITY THAT MEETS REGULARLY TO
50 SUPPORT A COORDINATED COMMUNITY RESPONSE TO DOMESTIC VIOLENCE, ANY OTHER
51 PROGRAM THAT PROVIDES SERVICES TO DOMESTIC VIOLENCE VICTIMS, OR ANY
52 OTHER PERSON NECESSARY TO THE WORK OF THE TEAM, INCLUDING SURVIVORS OF
53 DOMESTIC VIOLENCE.

54 (E) THE TEAM SHALL IDENTIFY POTENTIAL CASES AND SHALL SELECT WHICH
55 DEATHS OR NEAR DEATHS WILL BE REVIEWED EACH YEAR. LOCALITIES MAY REQUEST
56 THAT THE TEAM CONDUCT A REVIEW OF A PARTICULAR DEATH OR NEAR DEATH.

1 (F) THE TEAM SHALL WORK WITH OFFICIALS AND ORGANIZATIONS WITHIN THE
2 COMMUNITY WHERE THE DEATH OR NEAR DEATH OCCURRED TO CONDUCT EACH REVIEW.

3 (G) TEAM MEMBERS SHALL SERVE WITHOUT COMPENSATION BUT ARE ENTITLED TO
4 BE REIMBURSED FOR TRAVEL EXPENSES TO THE LOCALITIES WHERE A FATALITY
5 REVIEW WILL BE CONDUCTED AND MEMBERS WHO ARE FULL-TIME SALARIED OFFICERS
6 OR EMPLOYEES OF THE STATE OR OF ANY POLITICAL SUBDIVISION OF THE STATE
7 ARE ENTITLED TO THEIR REGULAR COMPENSATION.

8 (H) TO THE EXTENT CONSISTENT WITH FEDERAL LAW, UPON REQUEST THE TEAM
9 SHALL BE PROVIDED CLIENT-IDENTIFIABLE INFORMATION AND RECORDS NECESSARY
10 FOR THE INVESTIGATION OF A DOMESTIC VIOLENCE-RELATED DEATH OR NEAR DEATH
11 INCIDENT, INCLUDING, BUT NOT LIMITED TO:

12 (I) RECORDS MAINTAINED BY A LOCAL SOCIAL SERVICES DISTRICT;

13 (II) LAW ENFORCEMENT RECORDS, EXCEPT WHERE THE PROVISION OF SUCH
14 RECORDS WOULD INTERFERE WITH AN ONGOING LAW ENFORCEMENT INVESTIGATION OR
15 IDENTIFY A CONFIDENTIAL SOURCE OR ENDANGER THE SAFETY OR WELFARE OF AN
16 INDIVIDUAL;

17 (III) COURT RECORDS;

18 (IV) PROBATION AND PAROLE RECORDS;

19 (V) RECORDS FROM DOMESTIC VIOLENCE RESIDENTIAL OR NON-RESIDENTIAL
20 PROGRAMS;

21 (VI) RECORDS FROM ANY RELEVANT SERVICE PROVIDER, PROGRAM OR ORGANIZA-
22 TION; AND

23 (VII) ALL OTHER RELEVANT RECORDS IN THE POSSESSION OF STATE AND LOCAL
24 OFFICIALS OR AGENCIES PROVIDED, HOWEVER, NO OFFICIAL OR AGENCY SHALL BE
25 REQUIRED TO PROVIDE INFORMATION OR RECORDS CONCERNING A PERSON CHARGED,
26 INVESTIGATED OR CONVICTED IN SUCH DEATH OR NEAR DEATH IN VIOLATION OF
27 SUCH PERSON'S ATTORNEY-CLIENT PRIVILEGE.

28 (I) ANY INFORMATION OR RECORDS OTHERWISE CONFIDENTIAL AND PRIVILEGED
29 IN ACCORDANCE WITH STATE LAW WHICH ARE PROVIDED TO THE TEAM SHALL REMAIN
30 CONFIDENTIAL AS OTHERWISE PROVIDED BY LAW. ALL RECORDS RECEIVED, MEET-
31 INGS CONDUCTED, REPORTS AND RECORDS MADE AND MAINTAINED AND ALL BOOKS
32 AND PAPERS OBTAINED BY THE TEAM SHALL BE CONFIDENTIAL AND SHALL NOT BE
33 OPEN OR MADE AVAILABLE, EXCEPT BY COURT ORDER OR AS SET FORTH IN PARA-
34 GRAPHS (K) AND (L) OF THIS SUBDIVISION.

35 (J) ANY PERSON WHO RELEASES OR PERMITS THE RELEASE OF ANY INFORMATION
36 PROTECTED UNDER PARAGRAPH (I) OF THIS SUBDIVISION TO PERSONS OR AGENCIES
37 NOT AUTHORIZED TO RECEIVE SUCH INFORMATION SHALL BE GUILTY OF A CLASS A
38 MISDEMEANOR.

39 (K) TEAM MEMBERS AND PERSONS WHO PRESENT INFORMATION TO THE TEAM SHALL
40 NOT BE QUESTIONED IN ANY CIVIL OR CRIMINAL PROCEEDING REGARDING ANY
41 OPINIONS FORMED AS A RESULT OF A MEETING OF THE TEAM. NOTHING IN THIS
42 SECTION SHALL BE CONSTRUED TO PREVENT A PERSON FROM TESTIFYING AS TO
43 INFORMATION WHICH IS OBTAINED INDEPENDENTLY OF THE TEAM OR INFORMATION
44 WHICH IS PUBLIC.

45 (L) TEAM MEMBERS ARE NOT LIABLE FOR DAMAGES OR OTHER RELIEF IN ANY
46 ACTION BROUGHT BY REASON OF THE REASONABLE AND GOOD FAITH PERFORMANCE OF
47 A DUTY, FUNCTION, OR ACTIVITY OF THE TEAM.

48 (M) CONSISTENT WITH ALL FEDERAL AND STATE CONFIDENTIALITY PROTECTIONS,
49 THE TEAM MAY PROVIDE RECOMMENDATIONS TO ANY INDIVIDUAL OR ENTITY FOR
50 APPROPRIATE ACTIONS TO IMPROVE A COMMUNITY'S RESPONSE TO DOMESTIC
51 VIOLENCE.

52 (N) THE TEAM SHALL PERIODICALLY SUBMIT A CUMULATIVE REPORT TO THE
53 GOVERNOR AND THE LEGISLATURE INCORPORATING THE AGGREGATE DATA AND A
54 SUMMARY OF THE GENERAL FINDINGS AND RECOMMENDATIONS RESULTING FROM THE
55 DOMESTIC VIOLENCE FATALITY REVIEWS COMPLETED PURSUANT TO THIS SUBDIVI-

SION. THE CUMULATIVE REPORT SHALL THEREAFTER BE MADE AVAILABLE TO THE PUBLIC, CONSISTENT WITH FEDERAL AND STATE CONFIDENTIALITY PROTECTIONS.

S 4. This act shall take effect on the one hundred eightieth day after it shall have become law.

PART B

Section 1. Subdivision 2 of section 4201 of the public health law is amended by adding a new paragraph (e) to read as follows:

(E) NO PERSON WHO: (1) AT THE TIME OF THE DECEDENT'S DEATH, WAS THE SUBJECT OF AN ORDER OF PROTECTION PROTECTING THE DECEDENT; OR (2) HAS BEEN ARRESTED OR CHARGED WITH ANY CRIME SET FORTH IN ARTICLE ONE HUNDRED TWENTY-FIVE OF THE PENAL LAW AS A RESULT OF ANY ACTION ALLEGEDLY CAUSALLY RELATED TO THE DEATH OF THE DECEDENT SHALL HAVE THE RIGHT TO CONTROL THE DISPOSITION OF THE REMAINS OF THE DECEDENT. HOWEVER, THE APPLICATION OF THIS PARAGRAPH IN A PARTICULAR CASE MAY BE WAIVED OR MODIFIED IN THE INTEREST OF JUSTICE BY ORDER OF (I) THE COURT THAT ISSUED THE ORDER OF PROTECTION OR IN WHICH THE CRIMINAL ACTION AGAINST THE PERSON IS PENDING, OR A SUPERIOR COURT IN WHICH AN ACTION OR PROCEEDING UNDER THE DOMESTIC RELATIONS LAW OR THE FAMILY COURT ACT BETWEEN THE PERSON AND THE DECEDENT WAS PENDING AT THE TIME OF THE DECEDENT'S DEATH, OR (II) IF PROCEEDING IN THAT COURT WOULD CAUSE INAPPROPRIATE DELAY, A COURT IN A SPECIAL PROCEEDING.

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

PART C

Section 1. Subdivision 1 of section 108 of the executive law is amended by adding two new paragraphs (g) and (h) to read as follows:

(G) "PUBLIC RECORD" MEANS ANY INFORMATION KEPT, HELD, FILED, PRODUCED OR REPRODUCED BY, WITH OR FOR AN AGENCY, IN ANY PHYSICAL FORM WHATSOEVER INCLUDING, BUT NOT LIMITED TO, REPORTS, STATEMENTS, EXAMINATIONS, MEMORANDA, OPINIONS, FOLDERS, FILES, BOOKS, MANUALS, PAMPHLETS, FORMS, PAPERS, DESIGNS, DRAWINGS, MAPS, PHOTOS, LETTERS, MICROFILMS, COMPUTER TAPES OR DISCS, RULES, REGULATIONS OR CODES.

(H) "PROCESS" MEANS JUDICIAL PROCESS AND ALL ORDERS, DEMANDS, NOTICES OR OTHER PAPERS REQUIRED OR PERMITTED BY LAW TO BE SERVED ON A PROGRAM PARTICIPANT.

S 2. The opening paragraph of subparagraph (i) of paragraph (a) of subdivision 2 of section 108 of the executive law, as added by chapter 502 of the laws of 2011, is amended, subparagraph (v) is renumbered subparagraph (vi) and a new subparagraph (v) is added to read as follows:

[A] A signed written statement [made under oath] AFFIRMED by the applicant that:

(V) THE NAME OF ANY PERSON WHO RESIDES WITH THE APPLICANT WHO ALSO NEEDS TO BE A PROGRAM PARTICIPANT IN ORDER TO ENSURE THE SAFETY OF THE APPLICANT AND, IF THE PERSON NAMED IN THE APPLICATION IS EIGHTEEN YEARS OF AGE OR OLDER, THE CONSENT OF SUCH PERSON TO BE A PROGRAM PARTICIPANT AND DESIGNATION BY SUCH PERSON OF THE SECRETARY AS AGENT FOR PURPOSES OF SERVICE OF PROCESS AND FOR THE PURPOSE OF RECEIPT OF MAIL; AND

S 3. Subparagraph (i) of paragraph (b) and paragraph (c) of subdivision 4 of section 108 of the executive law, as added by chapter 502 of the laws of 2011, are amended to read as follows:

(i) [if requested by a law enforcement agency for a legitimate law enforcement purpose as determined by the law enforcement agency] THERE IS A BONA FIDE STATUTORY OR ADMINISTRATIVE REQUIREMENT FOR THE COMMUNICATION OF AN ACTUAL ADDRESS TO ANOTHER AGENCY THAT HAS RECEIVED A WAIVER FROM THE SECRETARY, PROVIDED THAT EACH WAIVER SPECIFICALLY AUTHORIZES SUCH COMMUNICATION WITH THE SPECIFIED AGENCY; or

(c) Upon receipt by the secretary of a process or mail for a participant, the office of the secretary shall immediately forward all such process or mail to the appropriate program participants [at their actual address] AT THE ADDRESS SPECIFIED BY THE PARTICIPANT FOR THAT PURPOSE, and shall record the date of such forwarding. SERVICE OF PROCESS ON A PROGRAM PARTICIPANT, A PROGRAM PARTICIPANT'S MINOR CHILD, INCAPACITATED PERSON OR OTHER ADULT MEMBER OF THE PROGRAM PARTICIPANT'S HOUSEHOLD SHALL BE COMPLETE WHEN THE SECRETARY RECEIVES SUCH PROCESS BY MAIL OR OTHERWISE.

S 4. Subdivision 6 of section 108 of the executive law, as added by chapter 502 of the laws of 2011, is amended to read as follows:

6. Disclosure of [participant's address] PARTICIPANT INFORMATION prohibited; exceptions. (A) The secretary shall not make a program participant's [address] INFORMATION, other than the substitute address, available for inspection or copying, except under any of the following circumstances:

[(a)] (I) if requested by a law enforcement agency for a legitimate law enforcement purpose as determined by the law enforcement agency; or

[(b)] (II) to a person identified in a court order, upon the secretary's receipt of that court order which specifically orders the disclosure of a particular program participant's address and the reasons stated therefor[; or].

[(c) to] (B) THE SECRETARY MAY verify the participation of a specific program participant, in which case the secretary may only confirm information supplied by the requester.

S 5. Section 2 of chapter 502 of the laws of 2011, amending the executive law relating to authorizing the secretary of state to accept service of process and receipt of mail on behalf of victims of domestic violence for the purpose of maintaining the confidentiality of the location of such victims, is amended to read as follows:

S 2. This act shall take effect [nine months after the date it shall have become a law] JULY 15, 2012; provided, however, that the secretary of state is authorized and directed to promulgate all rules, regulations and forms necessary to implement the provisions of this act, on its effective date, on or before such date.

S 6. This act shall take effect immediately; provided, however, that sections one, two, three and four of this act shall take effect on the same date and in the same manner as chapter 502 of the laws of 2011, as amended takes effect.

PART D

Section 1. Subparagraphs (vii) and (viii) of paragraph (a) of subdivision 2 of section 510.30 of the criminal procedure law, as renumbered by chapter 447 of the laws of 1977, are renumbered subparagraphs (viii) and (ix) and a new subparagraph (vii) is added to read as follows:

(VII) WHERE THE PRINCIPAL IS CHARGED WITH A CRIME OR CRIMES AGAINST A MEMBER OR MEMBERS OF THE SAME FAMILY OR HOUSEHOLD AS THAT TERM IS DEFINED IN SUBDIVISION ONE OF SECTION 530.11 OF THIS TITLE, THE FOLLOWING FACTORS:

1 (A) ANY VIOLATION BY THE PRINCIPAL OF AN ORDER OF PROTECTION ISSUED BY
2 ANY COURT FOR THE PROTECTION OF A MEMBER OR MEMBERS OF THE SAME FAMILY
3 OR HOUSEHOLD AS THAT TERM IS DEFINED IN SUBDIVISION ONE OF SECTION
4 530.11 OF THIS TITLE, WHETHER OR NOT SUCH ORDER OF PROTECTION IS
5 CURRENTLY IN EFFECT; AND

6 (B) THE PRINCIPAL'S HISTORY OF USE OR POSSESSION OF A FIREARM; AND

7 S 2. The penal law is amended by adding a new section 240.75 to read
8 as follows:

9 S 240.75 AGGRAVATED FAMILY OFFENSE.

10 1. A PERSON IS GUILTY OF AGGRAVATED FAMILY OFFENSE WHEN HE OR SHE
11 COMMITS A MISDEMEANOR DEFINED IN SUBDIVISION TWO OF THIS SECTION AS A
12 SPECIFIED OFFENSE AND HE OR SHE HAS BEEN CONVICTED OF ONE OR MORE SPECI-
13 FIED OFFENSES WITHIN THE IMMEDIATELY PRECEDING FIVE YEARS. FOR THE
14 PURPOSES OF THIS SUBDIVISION, IN CALCULATING THE FIVE YEAR PERIOD, ANY
15 PERIOD OF TIME DURING WHICH THE DEFENDANT WAS INCARCERATED FOR ANY
16 REASON BETWEEN THE TIME OF THE COMMISSION OF ANY OF SUCH PREVIOUS
17 OFFENSES AND THE TIME OF COMMISSION OF THE PRESENT CRIME SHALL BE
18 EXCLUDED AND SUCH FIVE YEAR PERIOD SHALL BE EXTENDED BY A PERIOD OR
19 PERIODS EQUAL TO THE TIME SERVED UNDER SUCH INCARCERATION.

20 2. A "SPECIFIED OFFENSE" IS AN OFFENSE DEFINED IN SECTION 120.00
21 (ASSAULT IN THE THIRD DEGREE); SECTION 120.05 (ASSAULT IN THE SECOND
22 DEGREE); SECTION 120.10 (ASSAULT IN THE FIRST DEGREE); SECTION 120.13
23 (MENACING IN THE FIRST DEGREE); SECTION 120.14 (MENACING IN THE SECOND
24 DEGREE); SECTION 120.15 (MENACING IN THE THIRD DEGREE); SECTION 120.20
25 (RECKLESS ENDANGERMENT IN THE SECOND DEGREE); SECTION 120.25 (RECKLESS
26 ENDANGERMENT IN THE FIRST DEGREE); SECTION 120.45 (STALKING IN THE
27 FOURTH DEGREE); SECTION 120.50 (STALKING IN THE THIRD DEGREE); SECTION
28 120.55 (STALKING IN THE SECOND DEGREE); SECTION 120.60 (STALKING IN THE
29 FIRST DEGREE); SECTION 121.11 (CRIMINAL OBSTRUCTION OF BREATHING OR
30 BLOOD CIRCULATION); SECTION 121.12 (STRANGULATION IN THE SECOND DEGREE);
31 SECTION 121.13 (STRANGULATION IN THE FIRST DEGREE); SUBDIVISION ONE OF
32 SECTION 125.15 (MANSLAUGHTER IN THE SECOND DEGREE); SUBDIVISION ONE, TWO
33 OR FOUR OF SECTION 125.20 (MANSLAUGHTER IN THE FIRST DEGREE); SECTION
34 125.25 (MURDER IN THE SECOND DEGREE); SECTION 130.20 (SEXUAL MISCON-
35 DUCT); SECTION 130.30 (RAPE IN THE SECOND DEGREE); SECTION 130.35 (RAPE
36 IN THE FIRST DEGREE); SECTION 130.40 (CRIMINAL SEXUAL ACT IN THE THIRD
37 DEGREE); SECTION 130.45 (CRIMINAL SEXUAL ACT IN THE SECOND DEGREE);
38 SECTION 130.50 (CRIMINAL SEXUAL ACT IN THE FIRST DEGREE); SECTION 130.52
39 (FORCIBLE TOUCHING); SECTION 130.53 (PERSISTENT SEXUAL ABUSE); SECTION
40 130.55 (SEXUAL ABUSE IN THE THIRD DEGREE); SECTION 130.60 (SEXUAL ABUSE
41 IN THE SECOND DEGREE); SECTION 130.65 (SEXUAL ABUSE IN THE FIRST
42 DEGREE); SECTION 130.66 (AGGRAVATED SEXUAL ABUSE IN THE THIRD DEGREE);
43 SECTION 130.67 (AGGRAVATED SEXUAL ABUSE IN THE SECOND DEGREE); SECTION
44 130.70 (AGGRAVATED SEXUAL ABUSE IN THE FIRST DEGREE); SECTION 130.91
45 (SEXUALLY MOTIVATED FELONY); SECTION 130.95 (PREDATORY SEXUAL ASSAULT);
46 SECTION 130.96 (PREDATORY SEXUAL ASSAULT AGAINST A CHILD); SECTION
47 135.05 (UNLAWFUL IMPRISONMENT IN THE SECOND DEGREE); SECTION 135.10
48 (UNLAWFUL IMPRISONMENT IN THE FIRST DEGREE); SECTION 135.60 (COERCION IN
49 THE SECOND DEGREE); SECTION 135.65 (COERCION IN THE FIRST DEGREE);
50 SECTION 140.20 (BURGLARY IN THE THIRD DEGREE); SECTION 140.25 (BURGLARY
51 IN THE SECOND DEGREE); SECTION 140.30 (BURGLARY IN THE FIRST DEGREE);
52 SECTION 145.00 (CRIMINAL MISCHIEF IN THE FOURTH DEGREE); SECTION 145.05
53 (CRIMINAL MISCHIEF IN THE THIRD DEGREE); SECTION 145.10 (CRIMINAL
54 MISCHIEF IN THE SECOND DEGREE); SECTION 145.12 (CRIMINAL MISCHIEF IN THE
55 FIRST DEGREE); SECTION 145.14 (CRIMINAL TAMPERING IN THE THIRD DEGREE);
56 SECTION 215.50 (CRIMINAL CONTEMPT IN THE SECOND DEGREE); SECTION 215.51

(CRIMINAL CONTEMPT IN THE FIRST DEGREE); SECTION 215.52 (AGGRAVATED CRIMINAL CONTEMPT); SECTION 240.25 (HARASSMENT IN THE FIRST DEGREE); SUBDIVISION ONE, TWO OR FOUR OF SECTION 240.30 (AGGRAVATED HARASSMENT IN THE SECOND DEGREE); AGGRAVATED FAMILY OFFENSE AS DEFINED IN THIS SECTION OR ANY ATTEMPT OR CONSPIRACY TO COMMIT ANY OF THE FOREGOING OFFENSES WHERE THE DEFENDANT AND THE PERSON AGAINST WHOM THE OFFENSE WAS COMMITTED WERE MEMBERS OF THE SAME FAMILY OR HOUSEHOLD AS DEFINED IN SUBDIVISION ONE OF SECTION 530.11 OF THE CRIMINAL PROCEDURE LAW.

3. THE PERSON AGAINST WHOM THE CURRENT SPECIFIED OFFENSE IS COMMITTED MAY BE DIFFERENT FROM THE PERSON AGAINST WHOM THE PREVIOUS SPECIFIED OFFENSE WAS COMMITTED AND SUCH PERSONS DO NOT NEED TO BE MEMBERS OF THE SAME FAMILY OR HOUSEHOLD.

AGGRAVATED FAMILY OFFENSE IS A CLASS E FELONY.

S 3. The criminal procedure law is amended by adding a new section 200.63 to read as follows:

S 200.63 INDICTMENT; SPECIAL INFORMATION FOR AGGRAVATED FAMILY OFFENSE.

1. WHENEVER A PERSON IS CHARGED WITH THE COMMISSION OR ATTEMPTED COMMISSION OF AN AGGRAVATED FAMILY OFFENSE AS DEFINED IN SECTION 240.75 OF THE PENAL LAW, AN INDICTMENT OR INFORMATION FOR SUCH OFFENSE SHALL BE ACCOMPANIED BY A SPECIAL INFORMATION, FILED BY THE DISTRICT ATTORNEY WITH THE COURT, ALLEGING THAT THE DEFENDANT WAS PREVIOUSLY CONVICTED OF A SPECIFIED OFFENSE AS DEFINED IN SUBDIVISION TWO OF SECTION 240.75 OF THE PENAL LAW, THAT AT THE TIME OF THE PREVIOUS OFFENSE THE DEFENDANT AND THE PERSON AGAINST WHOM THE OFFENSE WAS COMMITTED WERE MEMBERS OF THE SAME FAMILY OR HOUSEHOLD AS DEFINED IN SUBDIVISION ONE OF SECTION 530.11 OF THIS CHAPTER, AND THAT SUCH PREVIOUS CONVICTION TOOK PLACE WITHIN THE TIME PERIOD SPECIFIED IN SUBDIVISION ONE OF SECTION 240.75 OF THE PENAL LAW. EXCEPT AS PROVIDED HEREIN, THE PEOPLE MAY NOT REFER TO SUCH SPECIAL INFORMATION DURING TRIAL NOR ADDUCE ANY EVIDENCE CONCERNING THE ALLEGATIONS THEREIN.

2. PRIOR TO THE COMMENCEMENT OF THE TRIAL, THE COURT, IN THE ABSENCE OF THE JURY, MUST ARRAIGN THE DEFENDANT UPON SUCH INFORMATION AND ADVISE HIM OR HER THAT HE OR SHE MAY ADMIT EACH SUCH ALLEGATION, DENY ANY SUCH ALLEGATION OR REMAIN MUTE WITH RESPECT TO ANY SUCH ALLEGATION. DEPENDING UPON THE DEFENDANT'S RESPONSE, THE TRIAL OF THE INDICTMENT OR INFORMATION MUST THEN PROCEED AS FOLLOWS:

(A)(I) IF THE PREVIOUS CONVICTION IS FOR AN AGGRAVATED FAMILY OFFENSE AS DEFINED IN SECTION 240.75 OF THE PENAL LAW, AND THE DEFENDANT ADMITS THE PREVIOUS CONVICTION OR THAT IT TOOK PLACE WITHIN THE TIME PERIOD SPECIFIED IN SUBDIVISION ONE OF SECTION 240.75 OF THE PENAL LAW, SUCH ADMITTED ALLEGATION OR ALLEGATIONS SHALL BE DEEMED ESTABLISHED FOR THE PURPOSES OF THE PRESENT PROSECUTION, INCLUDING SENTENCING PURSUANT TO SECTION 70.00 OF THE PENAL LAW. THE COURT MUST SUBMIT THE CASE TO THE JURY AS IF SUCH ADMITTED ALLEGATION OR ALLEGATIONS WERE NOT ELEMENTS OF THE OFFENSE.

(II) IF THE DEFENDANT DENIES THE PREVIOUS CONVICTION OR REMAINS MUTE WITH RESPECT TO IT, THE PEOPLE MAY PROVE, BEYOND A REASONABLE DOUBT, THAT ELEMENT OF THE OFFENSE BEFORE THE JURY AS A PART OF THEIR CASE.

(III) IF THE DEFENDANT DENIES THAT THE PREVIOUS CONVICTION TOOK PLACE WITHIN THE TIME PERIOD SPECIFIED IN SUBDIVISION ONE OF SECTION 240.75 OF THE PENAL LAW, OR REMAINS MUTE WITH RESPECT TO THAT MATTER, THE PEOPLE MAY PROVE, BEYOND A REASONABLE DOUBT, BEFORE THE JURY AS PART OF THEIR CASE, THAT THE PREVIOUS CONVICTION TOOK PLACE WITHIN THE TIME PERIOD SPECIFIED.

(B)(I) IF THE PREVIOUS CONVICTION IS FOR A SPECIFIED OFFENSE AS DEFINED IN SUBDIVISION TWO OF SECTION 240.75 OF THE PENAL LAW, OTHER

1 THAN AN AGGRAVATED FAMILY OFFENSE, AND THE DEFENDANT ADMITS SUCH PREVI-
2 OUS CONVICTION, THAT IT TOOK PLACE WITHIN THE TIME PERIOD SPECIFIED IN
3 SUBDIVISION ONE OF SECTION 240.75 OF THE PENAL LAW, OR THAT THE DEFEND-
4 ANT AND THE PERSON AGAINST WHOM THE OFFENSE WAS COMMITTED WERE MEMBERS
5 OF THE SAME FAMILY OR HOUSEHOLD AS DEFINED IN SUBDIVISION ONE OF SECTION
6 530.11 OF THIS CHAPTER, SUCH ADMITTED ALLEGATION OR ALLEGATIONS SHALL BE
7 DEEMED ESTABLISHED FOR THE PURPOSES OF THE PRESENT PROSECUTION, INCLUD-
8 ING SENTENCING PURSUANT TO SECTION 70.00 OF THE PENAL LAW. THE COURT
9 MUST SUBMIT THE CASE TO THE JURY AS IF THE ADMITTED ALLEGATION OR ALLE-
10 GATIONS WERE NOT ELEMENTS OF THE OFFENSE.

11 (II) IF THE DEFENDANT DENIES THE PREVIOUS CONVICTION OR REMAINS MUTE
12 WITH RESPECT TO IT, THE PEOPLE MAY PROVE, BEYOND A REASONABLE DOUBT,
13 THAT ELEMENT OF THE OFFENSE BEFORE THE JURY AS A PART OF THEIR CASE.

14 (III) IF THE DEFENDANT DENIES THAT THE PREVIOUS CONVICTION TOOK PLACE
15 WITHIN THE TIME PERIOD SPECIFIED IN SUBDIVISION ONE OF SECTION 240.75 OF
16 THE PENAL LAW, OR REMAINS MUTE WITH RESPECT TO THAT MATTER, THE PEOPLE
17 MAY PROVE, BEYOND A REASONABLE DOUBT, BEFORE THE JURY AS PART OF THEIR
18 CASE, THAT THE PREVIOUS CONVICTION TOOK PLACE WITHIN THE TIME PERIOD
19 SPECIFIED.

20 (IV) IF THE DEFENDANT DENIES THAT THE DEFENDANT AND THE PERSON AGAINST
21 WHOM THE PREVIOUS OFFENSE WAS COMMITTED WERE MEMBERS OF THE SAME FAMILY
22 OR HOUSEHOLD AS DEFINED IN SUBDIVISION ONE OF SECTION 530.11 OF THIS
23 CHAPTER, OR REMAINS MUTE WITH RESPECT TO THAT MATTER, THE PEOPLE MAY
24 PROVE, BEYOND A REASONABLE DOUBT, THAT ELEMENT OF THE OFFENSE BEFORE THE
25 JURY AS A PART OF THEIR CASE.

26 S 4. Subdivisions 4 and 5 of section 240.30 of the penal law are
27 renumbered subdivisions 5 and 6 and a new subdivision 4 is added to read
28 as follows:

29 4. STRIKES, SHOVES, KICKS OR OTHERWISE SUBJECTS ANOTHER PERSON TO
30 PHYSICAL CONTACT THEREBY CAUSING PHYSICAL INJURY TO SUCH PERSON OR TO A
31 FAMILY OR HOUSEHOLD MEMBER OF SUCH PERSON AS DEFINED IN SECTION 530.11
32 OF THE CRIMINAL PROCEDURE LAW.

33 S 5. This act shall take effect on the sixtieth day after it shall
34 have become a law; provided that sections two and three of this act
35 shall take effect on the ninetieth day after it shall have become a law.

36 PART E

37 Section 1. Paragraph 2 of subsection (c) of section 2612 of the insur-
38 ance law, as amended by chapter 246 of the laws of 2005, is amended to
39 read as follows:

40 (2) "insurer" shall mean an insurer, a corporation organized pursuant
41 to article forty-three of this chapter, A MUNICIPAL COOPERATIVE HEALTH
42 BENEFIT PLAN ESTABLISHED PURSUANT TO ARTICLE FORTY-SEVEN OF THIS CHAP-
43 TER, a health maintenance organization certified pursuant to article
44 forty-four of the public health law or a provider issued a special
45 certificate of authority pursuant to section four thousand four hundred
46 three-a of such law, or an agent, representative or designee thereof
47 regulated pursuant to this chapter.

48 S 2. Section 2612 of the insurance law is amended by adding a new
49 subsection (h) to read as follows:

50 (H)(1) FOR PURPOSES OF THIS SUBSECTION:

51 (A) "CLAIM RELATED INFORMATION" MEANS ALL CLAIM OR BILLING INFORMATION
52 RELATING SPECIFICALLY TO AN INSURED, SUBSCRIBER OR PERSON COVERED BY AN
53 INSURANCE POLICY OR CONTRACT ISSUED BY THE HEALTH INSURER.

(B) "HEALTH INSURER" MEANS AN INSURER LICENSED TO WRITE ACCIDENT AND HEALTH INSURANCE OR SALARY PROTECTION INSURANCE IN THIS STATE, A CORPORATION ORGANIZED PURSUANT TO ARTICLE FORTY-THREE OF THIS CHAPTER, A MUNICIPAL COOPERATIVE HEALTH BENEFIT PLAN ESTABLISHED PURSUANT TO ARTICLE FORTY-SEVEN OF THIS CHAPTER, A HEALTH MAINTENANCE ORGANIZATION CERTIFIED PURSUANT TO ARTICLE FORTY-FOUR OF THE PUBLIC HEALTH LAW OR A PROVIDER ISSUED A SPECIAL CERTIFICATE OF AUTHORITY PURSUANT TO SECTION FOUR THOUSAND FOUR HUNDRED THREE-A OF SUCH LAW, OR AN AGENT, REPRESENTATIVE OR DESIGNEE THEREOF REGULATED PURSUANT TO THIS CHAPTER.

(2)(A) A HEALTH INSURER SHALL ACCOMMODATE A REASONABLE REQUEST BY A PERSON COVERED BY AN INSURANCE POLICY OR CONTRACT ISSUED BY THE HEALTH INSURER TO RECEIVE COMMUNICATIONS OF CLAIM RELATED INFORMATION FROM THE HEALTH INSURER BY ALTERNATIVE MEANS OR AT ALTERNATIVE LOCATIONS IF THE PERSON CLEARLY STATES THAT DISCLOSURE OF ALL OR PART OF THE INFORMATION COULD ENDANGER THE PERSON.

(B) IF A CHILD IS COVERED BY AN INSURANCE POLICY OR CONTRACT ISSUED BY THE HEALTH INSURER, THEN THE CHILD'S PARENT OR GUARDIAN MAY MAKE A REQUEST TO THE HEALTH INSURER PURSUANT TO SUBPARAGRAPH (A) OF THIS PARAGRAPH.

(3) A HEALTH INSURER MAY REQUIRE: A PERSON TO MAKE A REQUEST PURSUANT TO PARAGRAPH TWO OF THIS SUBSECTION IN WRITING; THE REQUEST TO CONTAIN A STATEMENT THAT DISCLOSURE OF ALL OR PART OF THE CLAIM RELATED INFORMATION TO WHICH THE REQUEST PERTAINS COULD ENDANGER THE PERSON OR CHILD; AND THE SPECIFICATION OF AN ALTERNATIVE ADDRESS, TELEPHONE NUMBER OR OTHER METHOD OF CONTACT.

(4) WITH RESPECT TO AN INSURER AUTHORIZED TO WRITE ACCIDENT AND HEALTH INSURANCE IN THIS STATE, THIS SUBSECTION SHALL APPLY ONLY TO A POLICY OF ACCIDENT AND HEALTH INSURANCE OR A POLICY OF SALARY PROTECTION INSURANCE, AS DEFINED IN SUBSECTION (A) OF SECTION ONE THOUSAND ONE HUNDRED THIRTEEN OF THIS CHAPTER.

(5) NOTHING IN THIS SUBSECTION SHALL PREVENT, HINDER, OR OTHERWISE AFFECT THE ENTRY OF AN APPROPRIATE ORDER MADE IN THE BEST INTERESTS OF A CHILD BY A COURT OF COMPETENT JURISDICTION ADJUDICATING DISPUTED ISSUES OF CHILD WELFARE OR CUSTODY.

(6) EXCEPT WITH THE EXPRESS CONSENT OF THE PERSON MAKING A REQUEST PURSUANT TO SUBPARAGRAPH (A) OF PARAGRAPH TWO OF THIS SUBSECTION, A HEALTH INSURER SHALL NOT DISCLOSE TO THE POLICYHOLDER (I) THE ADDRESS, TELEPHONE NUMBER, OR ANY OTHER PERSONALLY IDENTIFYING INFORMATION OF THE PERSON WHO MADE THE REQUEST OR CHILD FOR WHOSE BENEFIT A REQUEST WAS MADE; (II) THE NATURE OF THE HEALTH CARE SERVICES PROVIDED; OR (III) THE NAME OR ADDRESS OF THE PROVIDER OF THE COVERED SERVICES.

(7) A HEALTH INSURER THAT MAKES REASONABLE AND GOOD FAITH EFFORTS TO COMPLY WITH THIS SUBSECTION SHALL NOT BE SUBJECT TO CIVIL OR CRIMINAL LIABILITY ON THE GROUND OF NON-COMPLIANCE WITH THIS SUBSECTION.

(8) THE SUPERINTENDENT, IN CONSULTATION WITH THE COMMISSIONER OF HEALTH, THE OFFICE OF CHILDREN AND FAMILY SERVICES AND THE OFFICE FOR THE PREVENTION OF DOMESTIC VIOLENCE, SHALL PROMULGATE RULES TO GUIDE HEALTH INSURERS IN GUARDING AGAINST THE DISCLOSURE OF THE INFORMATION PROTECTED PURSUANT TO THIS SUBSECTION.

S 3. This act shall take effect on the first of January next succeeding the date on which it shall have become a law, provided, however, that effective immediately the addition, amendment or repeal of any rule or regulation necessary for the implementation of this act on its effective date is authorized.

S 2. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of

1 competent jurisdiction to be invalid, such judgment shall not affect,
2 impair, or invalidate the remainder thereof, but shall be confined in
3 its operation to the clause, sentence, paragraph, subdivision, section
4 or part thereof directly involved in the controversy in which such judg-
5 ment shall have been rendered. It is hereby declared to be the intent of
6 the legislature that this act would have been enacted even if such
7 invalid provisions had not been included herein.
8 S 3. This act shall take effect immediately provided, however, that
9 the applicable effective date of Parts A through E of this act shall be
10 as specifically set forth in the last section of such Parts.