

7638

I N S E N A T E

June 8, 2012

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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-

1 SION. THE CUMULATIVE REPORT SHALL THEREAFTER BE MADE AVAILABLE TO THE  
2 PUBLIC, CONSISTENT WITH FEDERAL AND STATE CONFIDENTIALITY PROTECTIONS.  
3 S 4. This act shall take effect on the one hundred eightieth day after  
4 it shall have become law.

5 PART B

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

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

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

24 PART C

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

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

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

36 S 2. The opening paragraph of subparagraph (i) of paragraph (a) of  
37 subdivision 2 of section 108 of the executive law, as added by chapter  
38 502 of the laws of 2011, is amended, subparagraph (v) is renumbered  
39 subparagraph (vi) and a new subparagraph (v) is added to read as  
40 follows:

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

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

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

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

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

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

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

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

25 [(b)] (II) to a person identified in a court order, upon the secre-  
26 tary's receipt of that court order which specifically orders the disclo-  
27 sure of a particular program participant's address and the reasons stat-  
28 ed therefor[; or].

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

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

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

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

46 PART D

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

51 (VII) WHERE THE PRINCIPAL IS CHARGED WITH A CRIME OR CRIMES AGAINST A  
52 MEMBER OR MEMBERS OF THE SAME FAMILY OR HOUSEHOLD AS THAT TERM IS  
53 DEFINED IN SUBDIVISION ONE OF SECTION 530.11 OF THIS TITLE, THE FOLLOW-  
54 ING 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

1 (CRIMINAL CONTEMPT IN THE FIRST DEGREE); SECTION 215.52 (AGGRAVATED  
2 CRIMINAL CONTEMPT); SECTION 240.25 (HARASSMENT IN THE FIRST DEGREE);  
3 SUBDIVISION ONE, TWO OR FOUR OF SECTION 240.30 (AGGRAVATED HARASSMENT IN  
4 THE SECOND DEGREE); AGGRAVATED FAMILY OFFENSE AS DEFINED IN THIS SECTION  
5 OR ANY ATTEMPT OR CONSPIRACY TO COMMIT ANY OF THE FOREGOING OFFENSES  
6 WHERE THE DEFENDANT AND THE PERSON AGAINST WHOM THE OFFENSE WAS COMMIT-  
7 TED WERE MEMBERS OF THE SAME FAMILY OR HOUSEHOLD AS DEFINED IN SUBDIVI-  
8 SION ONE OF SECTION 530.11 OF THE CRIMINAL PROCEDURE LAW.

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

13 AGGRAVATED FAMILY OFFENSE IS A CLASS E FELONY.

14 S 3. The criminal procedure law is amended by adding a new section  
15 200.63 to read as follows:

16 S 200.63 INDICTMENT; SPECIAL INFORMATION FOR AGGRAVATED FAMILY OFFENSE.

17 1. WHENEVER A PERSON IS CHARGED WITH THE COMMISSION OR ATTEMPTED  
18 COMMISSION OF AN AGGRAVATED FAMILY OFFENSE AS DEFINED IN SECTION 240.75  
19 OF THE PENAL LAW, AN INDICTMENT OR INFORMATION FOR SUCH OFFENSE SHALL BE  
20 ACCOMPANIED BY A SPECIAL INFORMATION, FILED BY THE DISTRICT ATTORNEY  
21 WITH THE COURT, ALLEGING THAT THE DEFENDANT WAS PREVIOUSLY CONVICTED OF  
22 A SPECIFIED OFFENSE AS DEFINED IN SUBDIVISION TWO OF SECTION 240.75 OF  
23 THE PENAL LAW, THAT AT THE TIME OF THE PREVIOUS OFFENSE THE DEFENDANT  
24 AND THE PERSON AGAINST WHOM THE OFFENSE WAS COMMITTED WERE MEMBERS OF  
25 THE SAME FAMILY OR HOUSEHOLD AS DEFINED IN SUBDIVISION ONE OF SECTION  
26 530.11 OF THIS CHAPTER, AND THAT SUCH PREVIOUS CONVICTION TOOK PLACE  
27 WITHIN THE TIME PERIOD SPECIFIED IN SUBDIVISION ONE OF SECTION 240.75 OF  
28 THE PENAL LAW. EXCEPT AS PROVIDED HEREIN, THE PEOPLE MAY NOT REFER TO  
29 SUCH SPECIAL INFORMATION DURING TRIAL NOR ADDUCE ANY EVIDENCE CONCERNING  
30 THE ALLEGATIONS THEREIN.

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

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

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

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

55 (B)(I) IF THE PREVIOUS CONVICTION IS FOR A SPECIFIED OFFENSE AS  
56 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.

1 (B) "HEALTH INSURER" MEANS AN INSURER LICENSED TO WRITE ACCIDENT AND  
2 HEALTH INSURANCE OR SALARY PROTECTION INSURANCE IN THIS STATE, A CORPO-  
3 RATION ORGANIZED PURSUANT TO ARTICLE FORTY-THREE OF THIS CHAPTER, A  
4 MUNICIPAL COOPERATIVE HEALTH BENEFIT PLAN ESTABLISHED PURSUANT TO ARTI-  
5 CLE FORTY-SEVEN OF THIS CHAPTER, A HEALTH MAINTENANCE ORGANIZATION  
6 CERTIFIED PURSUANT TO ARTICLE FORTY-FOUR OF THE PUBLIC HEALTH LAW OR A  
7 PROVIDER ISSUED A SPECIAL CERTIFICATE OF AUTHORITY PURSUANT TO SECTION  
8 FOUR THOUSAND FOUR HUNDRED THREE-A OF SUCH LAW, OR AN AGENT, REPRESEN-  
9 TATIVE OR DESIGNEE THEREOF REGULATED PURSUANT TO THIS CHAPTER.

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

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

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

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

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

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

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

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

50 S 3. This act shall take effect on the first of January next succeed-  
51 ing the date on which it shall have become a law, provided, however,  
52 that effective immediately the addition, amendment or repeal of any rule  
53 or regulation necessary for the implementation of this act on its effec-  
54 tive date is authorized.

55 S 2. Severability clause. If any clause, sentence, paragraph, subdivi-  
56 sion, 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.