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

2080

2011-2012 Regular Sessions

I N S E N A T E

January 18, 2011

Introduced by Sen. KRUGER -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the executive law, in relation to establishing a fatality review board and providing for such board's powers and duties

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

Section 1. Legislative intent. The legislature hereby declares that domestic violence is a pervasive and frequently lethal problem in American society and in New York state. Nationwide, on average, approximately ten women are killed by their batterers every day. Battering is the single, major cause of injury to women, resulting in more injuries than auto accidents, muggings, and rapes combined. Such abuse is also a strong indicator that physical or sexual abuse of children is occurring in the family. Domestic violence devastates its victims and threatens the stability of the family and negatively affects all family members, especially children who witness the violent abuse. Domestic violence also affects the entire community. The incidence of domestic violence adversely affects the safety, health, and welfare of communities as well as societal economies by draining billions of dollars in social costs associated with medical expenses, law enforcement, and lost productivity.

The legislature finds that multi-disciplinary domestic violence fatality review boards have been used successfully to ensure that incidents of domestic violence are recognized and that agency involvement is reviewed to improve the responsiveness of public agencies for the reduction and eradication of domestic violence. The establishment of such a board is similar to the time-honored mortality/morbidity review conference utilized by the medical profession to ensure the provision of quality medical care.

The legislature further finds that it is in the interest of the state to provide for the creation of a fatality review board in New York. The

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

LBD06802-01-1

board will facilitate communication among courts and agencies, allow for the identification of preventable deaths, and provide for recommendations with a view toward improving the system's ability to prevent such occurrences. The purpose of the inter-agency, multi-disciplinary review is not punitive, but to increase the thoroughness and effectiveness of systematic responses by developing recommendations for policies and protocols for prevention and intervention initiatives. In addition to reviewing cases, the fatality review board may also provide guidance and protocols for the development and implementation of local reviews by counties or other jurisdictions. The board may also identify trends and patterns of domestic violence deaths and recognize the prevalence of risk factors which exist in the population of victims and perpetrators. This data could be helpful in the development of system interventions and policy changes for persons who are at risk.

By enacting this legislation, the legislature seeks to provide a case review process for the purpose of reducing the incidence of preventable deaths from domestic violence.

S 2. The executive law is amended by adding a new section 837-s to read as follows:

S 837-S. FATALITY REVIEW BOARD ESTABLISHED; POWERS AND DUTIES. 1. A. THERE IS HEREBY ESTABLISHED AN INDEPENDENT FATALITY REVIEW BOARD. SUCH BOARD IS EMPOWERED AND AUTHORIZED TO INVESTIGATE DEATHS APPEARING TO BE FROM UNNATURAL CAUSES, WHERE THE DECEDENT APPEARS TO HAVE BEEN A VICTIM OF DOMESTIC VIOLENCE.

B. SUCH INVESTIGATIONS MAY COMMENCE AFTER THE COMPLETION OF THE CRIMINAL TRIAL OR TRIAL COURT PROCEEDINGS INVOLVING THE ALLEGED PERPETRATOR OF THE HOMICIDE; PROVIDED, HOWEVER, THAT:

(I) THE INVESTIGATION MAY COMMENCE SIX MONTHS AFTER SUCH DEATH IF THE BOARD REASONABLY BELIEVES, AS EVIDENCED BY A MAJORITY BOARD VOTE, THAT THE ALLEGED PERPETRATOR IS UNAPPREHENDED, AND UNDER SUCH CIRCUMSTANCES THE INVESTIGATION MAY CONTINUE ONLY SO LONG AS SUCH ALLEGED PERPETRATOR REMAINS AT LARGE; OR

(II) THE INVESTIGATION MAY COMMENCE IMMEDIATELY IF THE BOARD REASONABLY BELIEVES, AS EVIDENCED BY MAJORITY BOARD VOTE, THAT THE ALLEGED PERPETRATOR IS DECEASED.

2. SUCH BOARD SHALL CONSIST OF THIRTEEN MEMBERS, TO BE APPOINTED AS FOLLOWS:

A. FIVE MEMBERS SHALL BE APPOINTED BY THE GOVERNOR:

(I) ONE SUCH MEMBER SHALL BE APPOINTED UPON THE RECOMMENDATION OF A STATEWIDE ORGANIZATION REPRESENTING SURVIVORS OF DOMESTIC VIOLENCE;

(II) ONE SUCH MEMBER SHALL BE A PERSON EXPERIENCED IN LAW ENFORCEMENT;

(III) ONE SUCH MEMBER, WHO SHALL BE APPOINTED UPON THE RECOMMENDATION OF A STATEWIDE ORGANIZATION REPRESENTING PROSECUTORS, SHALL BE A REPRESENTATIVE OF PROSECUTION SERVICES;

(IV) ONE SUCH MEMBER, WHO SHALL BE APPOINTED UPON THE RECOMMENDATION OF A STATEWIDE ORGANIZATION REPRESENTING THE PUBLIC OR PRIVATE CRIMINAL DEFENSE BAR, SHALL BE A REPRESENTATIVE OF CRIMINAL DEFENSE SERVICES; AND

(V) ONE SUCH MEMBER SHALL BE APPOINTED UPON THE RECOMMENDATION OF A STATEWIDE ORGANIZATION REPRESENTING SOCIAL WORKERS.

B. THREE MEMBERS SHALL BE APPOINTED BY THE CHIEF JUDGE OF THE STATE.

C. ONE MEMBER SHALL BE APPOINTED BY THE OFFICE FOR THE PREVENTION OF DOMESTIC VIOLENCE, WHO SHALL BE A REPRESENTATIVE OF THAT OFFICE.

D. TWO MEMBERS SHALL BE APPOINTED BY THE TEMPORARY PRESIDENT OF THE SENATE, ONE OF WHOM SHALL BE APPOINTED ON THE RECOMMENDATION OF A STATEWIDE ORGANIZATION REPRESENTING CRIME VICTIMS.

E. TWO MEMBERS SHALL BE APPOINTED BY THE SPEAKER OF THE ASSEMBLY, ONE OF WHOM SHALL BE APPOINTED ON THE RECOMMENDATION OF A STATEWIDE ORGANIZATION REPRESENTING CRIME VICTIMS.

3. MEMBERS OF THE BOARD SHALL BE APPOINTED TO SERVE FOR A TERM OF FOUR YEARS. FROM AMONG THE MEMBERS, A CHAIRPERSON SHALL BE ELECTED, WHO SHALL SERVE FOR A PERIOD OF TWO YEARS. MEMBERS OF THE BOARD SHALL NOT BE COMPENSATED FOR THEIR SERVICES, BUT SHALL BE ALLOWED THEIR ACTUAL AND NECESSARY EXPENSES INCURRED IN THE PERFORMANCE OF THEIR DUTIES. NO MEMBER OF THE BOARD SHALL BE DISQUALIFIED FROM HOLDING ANY PUBLIC OFFICE OR EMPLOYMENT, NOR SHALL HE OR SHE FORFEIT ANY SUCH OFFICE OR EMPLOYMENT BY VIRTUE OF HIS OR HER APPOINTMENT HEREUNDER. ANY VACANCY IN THE MEMBERSHIP OF THE BOARD SHALL BE FILLED IN THE SAME MANNER AS THE ORIGINAL APPOINTMENT.

4. A. THE BOARD SHALL REVIEW AND STUDY THE CIRCUMSTANCES OF SUCH FATALITIES. IT SHALL ASSESS THE ACTIVITIES AND RESPONSES OF THE CRIMINAL JUSTICE SYSTEM AND OF ANY OTHER PUBLIC ENTITIES WHICH MAY HAVE BEEN INVOLVED IN, OR IN ANY MANNER ASSOCIATED WITH, THE CIRCUMSTANCES OF THE FATALITY, ITS INVESTIGATION, OR THE RELEVANT HISTORY OF DOMESTIC VIOLENCE.

B. THE BOARD SHALL PERIODICALLY ADVISE AND MAKE RECOMMENDATIONS TO THE DIVISION OF CRIMINAL JUSTICE SERVICES, OFFICE OF COURT ADMINISTRATION, DIVISION OF STATE POLICE, THE STATE OFFICE FOR THE PREVENTION OF DOMESTIC VIOLENCE, AND OTHER APPROPRIATE ENTITIES CONCERNING THEIR FINDINGS. THE BOARD HAS THE AUTHORITY TO RECOMMEND APPROPRIATE CORRECTIVE ACTIONS, BASED UPON ITS FINDINGS, TO IMPROVE THE MANAGEMENT, SUPERVISION AND PROVISION OF SERVICES TO VICTIMS OF DOMESTIC VIOLENCE AND THEIR FAMILIES AND TO MAKE RECOMMENDATIONS FOR ACTIONS, BASED UPON ITS FINDINGS, THAT MAY REDUCE THE PREVALENCE OF DOMESTIC VIOLENCE.

C. THE BOARD SHALL ALSO PERFORM A RESEARCH AND REPORTING FUNCTION AND IDENTIFY AREAS REQUIRING NEW PREVENTIVE AND PROTECTIVE STRATEGIES, GUIDELINES, OR LEGISLATIVE CHANGES. THE BOARD SHALL REPORT ANNUALLY ON ITS ACTIVITIES AND FINDINGS, INCLUDING ITS RECOMMENDATIONS, TO THE GOVERNOR, LEGISLATURE, CHIEF JUDGE, DIVISION OF CRIMINAL JUSTICE SERVICES, OFFICE OF COURT ADMINISTRATION, DIVISION OF STATE POLICE, AND OFFICE FOR THE PREVENTION OF DOMESTIC VIOLENCE ON OR BEFORE THE FIFTEENTH OF MARCH OF EACH YEAR. SUCH REPORT SHALL BE RELEASED AND MADE AVAILABLE TO THE PUBLIC.

5. A. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, THE BOARD IS ENTITLED TO EXAMINE AND RECEIVE WITHOUT CHARGE PHOTOCOPIES OR PHOTOGRAPHS OF THE FOLLOWING RECORDS AND DOCUMENTS WITHOUT THE NECESSITY OF A SUBPOENA AND WITHOUT COURT APPROVAL:

(I) ALL UNSEALED COURT RECORDS, INCLUDING TRANSCRIPTS, EXHIBITS, AND ITEMS ENTERED IN EVIDENCE, IN CRIMINAL OR FAMILY COURT PROCEEDINGS IN WHICH THE DECEDENT OR THE ALLEGED PERPETRATOR WAS A COMPLAINANT, DEFENDANT, OR RESPONDENT, INCLUDING ANY SUCH TRIAL OR PROCEEDING ARISING OUT OF THE DECEDENT'S DEATH;

(II) ALL MEDICAL, HOSPITAL, CORONER'S, AND MEDICAL EXAMINER'S RECORDS AND EXHIBITS CONCERNING THE DECEDENT; AND

(III) ALL RECORDS AND PUBLIC SAFETY AGENCY RECORDS AVAILABLE PURSUANT TO ARTICLES SIX AND SIX-A OF THE PUBLIC OFFICERS LAW, EXCEPT THAT WHERE AN AGENCY CLAIMS AN EXEMPTION FROM DISCLOSURE UNDER SUCH ARTICLE SIX OR SIX-A, THEN, IN ADDITION TO ANY OTHER AVAILABLE REMEDY, THE BOARD MAY PROCEED PURSUANT TO PARAGRAPH B OF THIS SUBDIVISION.

B. (I) THE BOARD MAY ALSO REQUEST AUTHORIZATION FROM A COURT TO EXAMINE AND RECEIVE WITHOUT CHARGE PHOTOCOPIES OR PHOTOGRAPHS OF ANY OTHER RECORD OR DOCUMENT IN THE POSSESSION OF ANY STATE OR LOCAL GOVERNMENTAL

ENTITY, WHERE SUCH RECORD MAY REASONABLY ASSIST THE BOARD IN CONDUCTING ITS INVESTIGATION. THIS INCLUDES, BUT IS NOT LIMITED TO:

(A) SEALED COURT RECORDS AND CONFIDENTIAL POLICE, PROSECUTION, AND LAW ENFORCEMENT AGENCY REPORTS AND RECORDS CONCERNING INVESTIGATIONS IN WHICH THE DECEDENT OR THE ALLEGED PERPETRATOR WAS A COMPLAINANT, RESPONDENT, DEFENDANT, WITNESS, OR ALLEGED VICTIM;

(B) RECORDS CONCERNING THE DECEDENT OR HER OR HIS CHILDREN MAINTAINED BY DOMESTIC VIOLENCE SHELTERS, AS DEFINED IN PARAGRAPH (A) OF SUBDIVISION FOUR OF SECTION FOUR HUNDRED FIFTY-NINE-A OF THE SOCIAL SERVICES LAW;

(C) RECORDS CONCERNING THE DECEDENT, HER OR HIS CHILDREN, OR THE ALLEGED PERPETRATOR MAINTAINED PURSUANT TO SECTION THREE HUNDRED SEVENTY-TWO OF THE SOCIAL SERVICES LAW;

(D) RECORDS CONCERNING THE DECEDENT, HER OR HIS CHILDREN, OR THE ALLEGED PERPETRATOR MAINTAINED BY THE DEPARTMENT OF FAMILY ASSISTANCE PURSUANT TO SECTION FOUR HUNDRED TWENTY-TWO OF THE SOCIAL SERVICES LAW; AND

(E) SEALED COURT RECORDS OF MATRIMONIAL ACTIONS OR PROCEEDINGS DESCRIBED IN SUBDIVISION ONE OF SECTION TWO HUNDRED THIRTY-FIVE OF THE DOMESTIC RELATIONS LAW INVOLVING THE DECEDENT OR THE ALLEGED PERPETRATOR.

(II) UNLESS A COURT ORDERS OTHERWISE, THE APPLICATION PURSUANT TO THIS PARAGRAPH SHALL BE MADE ON AT LEAST FIVE DAYS' NOTICE TO THE PERSON HAVING CUSTODY OF THE RECORD OR DOCUMENT, TO THE DISTRICT ATTORNEY OF THE JURISDICTION IN WHICH THE DECEDENT IS BELIEVED TO HAVE DIED, AND TO ALL PERSONS, INCLUDING SURVIVING FAMILY MEMBERS OF THE DECEDENT, BUT NOT INCLUDING THE ALLEGED PERPETRATOR, WHOM THE COURT DETERMINES WOULD REASONABLY HAVE AN INTEREST IN THE PRIVACY OF SUCH RECORD OR DOCUMENT.

(III) WHERE THE APPLICATION IS TO REVIEW A CONFIDENTIAL JUDICIAL RECORD, THE APPLICATION SHALL BE MADE TO THE COURT WHERE THE RECORD IS MAINTAINED.

(IV) WHERE THE APPLICATION IS TO REVIEW A CONFIDENTIAL RECORD OR DOCUMENT MAINTAINED BY A NON-JUDICIAL STATE OR LOCAL GOVERNMENT ENTITY, THE APPLICATION SHALL BE BROUGHT IN THE SUPREME COURT IN THE COUNTY SPECIFIED IN SUBDIVISION (B) OF SECTION FIVE HUNDRED SIX OF THE CIVIL PRACTICE LAW AND RULES, EXCEPT AS THAT SUBDIVISION OTHERWISE PROVIDES.

(V) IN ANY SUCH PROCEEDING, THE COURT MAY ISSUE A PROTECTIVE ORDER DENYING, LIMITING, OR CONDITIONING ACCESS TO THE CONFIDENTIAL RECORD OR DOCUMENT WHEN PRODUCING THE RECORD OR DOCUMENT WOULD ENDANGER THE INTEGRITY OF PHYSICAL EVIDENCE, CREATE A SUBSTANTIAL RISK OF PHYSICAL HARM, INTIMIDATION, ECONOMIC COERCION, OR BRIBERY, OR HAVE A SERIOUSLY ADVERSE EFFECT UPON THE LEGITIMATE NEEDS OF LAW ENFORCEMENT.

C. IN CONNECTION WITH AN APPLICATION UNDER THIS SECTION OR ANY APPEAL THEREFROM OR ANY OTHER LEGAL MATTER, THE BOARD SHALL BE ENTITLED TO REPRESENTATION BY PRIVATE COUNSEL OF ITS CHOICE WHENEVER THE ATTORNEY GENERAL DETERMINES, BASED UPON HIS OR HER INVESTIGATION AND REVIEW OF THE FACTS AND CIRCUMSTANCES, THAT REPRESENTATION BY THE DEPARTMENT OF LAW WOULD BE INAPPROPRIATE. THE ATTORNEY GENERAL SHALL NOTIFY THE BOARD IN WRITING OF SUCH DETERMINATION THAT THE BOARD IS ENTITLED TO PRIVATE COUNSEL. IF THE BOARD IS ENTITLED TO REPRESENTATION BY PRIVATE COUNSEL UNDER THE PROVISIONS OF THIS PARAGRAPH, THE ATTORNEY GENERAL SHALL SO CERTIFY TO THE COMPTROLLER. REASONABLE ATTORNEYS' FEES AND LITIGATION EXPENSES SHALL BE PAID BY THE STATE TO SUCH PRIVATE COUNSEL FOR SUCH REPRESENTATION UPON THE AUDIT AND WARRANT OF THE COMPTROLLER.

6. NEITHER THE BOARD NOR ANY MEMBER THEREOF SHALL DISCLOSE ANY INFORMATION OBTAINED BY THE BOARD OR A BOARD MEMBER WHICH IS CONFIDENTIAL BY

LAW. UNAUTHORIZED DISCLOSURE OF SUCH CONFIDENTIAL INFORMATION BY A MEMBER OF THE BOARD MAY RESULT IN REMOVAL OF SUCH MEMBER BY MAJORITY BOARD VOTE, AFTER NOTICE TO SUCH MEMBER AND AN OPPORTUNITY TO BE HEARD.

7. THE BOARD SHALL BE ENTITLED TO REQUEST AND RECEIVE, AND SHALL UTILIZE AND BE PROVIDED WITH, SUCH FACILITIES AND RESOURCES FROM ANY DEPARTMENT, DIVISION, BOARD, BUREAU, COMMISSION, OR ANY AGENCY OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF AS ARE REASONABLY NECESSARY TO CARRY OUT ITS RESPONSIBILITIES. IF REQUESTED BY THE BOARD, THE OFFICE FOR THE PREVENTION OF DOMESTIC VIOLENCE SHALL FURNISH REASONABLE OFFICE SPACE AND DAY-TO-DAY STAFF SUPPORT TO THE BOARD WITHIN ITS AVAILABLE RESOURCES.

8. AS USED IN THIS SECTION:

A. "ALLEGED PERPETRATOR" MEANS THE PERSON OR PERSONS WHOM THE BOARD REASONABLY BELIEVES TO HAVE TAKEN OR PROCURED THE TAKING OF THE LIFE OF THE DECEDENT.

B. "DECEDENT" MEANS THE PERSON WHOSE DEATH THE BOARD IS INVESTIGATING.

S 3. This act shall take effect on the thirtieth day after it shall have become a law.