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I N   S E N A T E

April 23, 2012

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Introduced by Sens. SALAND, SAVINO -- (at request of the Office for Prevention of Domestic Violence) -- read twice and ordered printed, and when printed to be committed to the Committee on Social Services

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 agency mandates that have been completed

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

1     Section 1. Subdivision 4 of section 575 of the executive law, as added  
2     by chapter 463 of the laws of 1992, paragraph (b) as amended by section  
3     99 of subpart B of part C of chapter 62 of the laws of 2011, paragraphs  
4     (c), (d), and (e) as amended by chapter 396 of the laws of 1994, is  
5     amended to read as follows:

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

14    (b) The advisory council shall consist of nine members and [thirteen]  
15    FIFTEEN ex-officio members. Each member shall be appointed to serve for  
16    a term of three years and shall continue in office until a successor  
17    appointed member is made. A member appointed to fill a vacancy shall be  
18    appointed for the unexpired term of the member he or she is to succeed.  
19    All of the members shall be individuals with expertise in the area of  
20    domestic violence. Three members shall be appointed by the governor, two  
21    members shall be appointed upon the recommendation of the temporary  
22    president of the senate, two members shall be appointed upon the recom-  
23    mendation of the speaker of the assembly, one member shall be appointed  
24    upon the recommendation of the minority leader of the senate, and one  
25    member shall be appointed upon the recommendation of the minority leader  
26    of the assembly. The ex-officio members of the advisory board shall

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

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1 consist of [one representative from the staff of each of the following  
2 state departments and divisions:] THE DIRECTOR OF THE OFFICE, WHO SHALL  
3 CHAIR THE COUNCIL, AND THE FOLLOWING MEMBERS OR THEIR DESIGNEES: THE  
4 COMMISSIONER OF THE office of temporary and disability [services]  
5 ASSISTANCE; THE COMMISSIONER OF THE department of health; THE COMMIS-  
6 SIONER OF THE education department; THE COMMISSIONER OF THE office of  
7 mental health; THE COMMISSIONER OF THE office of alcoholism and  
8 substance abuse services; THE COMMISSIONER OF THE division of criminal  
9 justice services; THE DIRECTOR OF THE office of probation and correc-  
10 tional alternatives; THE COMMISSIONER OF THE office of children and  
11 family services; THE DIRECTOR OF THE office of victim services; THE  
12 CHIEF ADMINISTRATIVE JUDGE OF THE office of court administration; THE  
13 COMMISSIONER OF THE department of labor; THE DIRECTOR OF THE state  
14 office for the aging; [and] THE COMMISSIONER OF THE department of  
15 corrections and community supervision; THE CHIEF EXECUTIVE OFFICER OF  
16 THE NEW YORK STATE COALITION AGAINST DOMESTIC VIOLENCE; AND THE EXECU-  
17 TIVE DIRECTOR OF THE NEW YORK STATE COALITION AGAINST SEXUAL ASSAULT.

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

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

23 [(e)] (D) The members of the advisory council shall receive no salary  
24 or other compensation for their services but shall be entitled to  
25 reimbursement for actual and necessary expenses incurred in the perform-  
26 ance of their duties within amounts made available by appropriation  
27 therefor subject to the approval of the director of the budget. The  
28 ex-officio members of the advisory council shall receive no additional  
29 compensation for their services on the advisory council above the salary  
30 they receive from the respective departments or divisions that employ  
31 them.

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

33 S 3. Subdivision 8 of section 575 of the executive law, as added by  
34 chapter 396 of the laws of 1994, is renumbered subdivision 7 and amended  
35 to read as follows:

36 7. [State domestic violence policy. (a) The office shall survey every  
37 state agency to determine any activities, programs, rules, regulations,  
38 guidelines or statutory requirements that have a direct or indirect  
39 bearing on the state's efforts and abilities to address the issue of  
40 domestic violence including, but not limited to, the provision of  
41 services to victims and their families. Within two years of the effec-  
42 tive date of this subdivision, the office shall compile such information  
43 and provide a report, with appropriate comments and recommendations, to  
44 the governor and the legislature. For the purposes of this subdivision,  
45 "state agency" shall have the same meaning as such term is defined in  
46 section two-a of the state finance law.

47 (b) Within three years of the effective date of this subdivision the  
48 office shall recommend a state domestic violence policy consistent with  
49 statute and best practice, policies, procedures and protocols to the  
50 governor and the legislature. The purpose of such model policy shall be  
51 to provide consistency and coordination by and between state agencies  
52 and departments to address the issue of domestic violence. In developing  
53 such model policy, the office shall consult with a statewide advocacy  
54 organization for the prevention of domestic violence, and shall assure  
55 that the advisory council reviews all data and recommendations and shall  
56 not submit such model policy until approved by the advisory council.

1 Such recommendations shall be provided exclusive of any study or report  
2 the office is required to undertake pursuant to a chapter of the laws of  
3 nineteen hundred ninety-four, entitled "the family protection and domes-  
4 tic violence intervention act of 1994".

5 (c)] No state agency shall promulgate a rule pursuant to the state  
6 administrative procedure act, or adopt a guideline or other procedure,  
7 including a request for proposals, directly or indirectly affecting the  
8 provision of services to victims of domestic violence, or the provision  
9 of services by residential or non-residential domestic violence  
10 programs, as such terms are defined in section four hundred fifty-nine-a  
11 of the social services law, or establish a grant program directly or  
12 indirectly affecting such victims of domestic violence or providers of  
13 service, without first consulting the office, which shall provide all  
14 comments in response to such rules, guidelines or procedures in writing  
15 directly to the chief executive officer of such agency, to the adminis-  
16 trative regulations review committee and to the appropriate committees  
17 of the legislature having jurisdiction of the subject matter addressed  
18 within two weeks of receipt thereof, provided that failure of the office  
19 to respond as required herein shall not otherwise impair the ability of  
20 such state agency to promulgate a rule. This paragraph shall not apply  
21 to an appropriation which finances a contract with a not-for-profit  
22 organization which has been identified for a state agency without the  
23 use of a request for proposals.

24 S 4. Section 575 of the executive law is amended by adding a new  
25 subdivision 8 to read as follows:

26 8. FATALITY REVIEW TEAM. (A) THERE SHALL BE ESTABLISHED WITHIN THE  
27 OFFICE A FATALITY REVIEW TEAM FOR THE PURPOSE OF ANALYZING, IN CONJUNC-  
28 TION WITH LOCAL REPRESENTATION, THE DOMESTIC VIOLENCE-RELATED DEATH OR  
29 NEAR DEATH OF INDIVIDUALS, WITH THE GOAL OF:

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

32 (II) EDUCATING THE PUBLIC, SERVICE PROVIDERS, AND POLICYMAKERS ABOUT  
33 DOMESTIC VIOLENCE FATALITIES AND STRATEGIES FOR INTERVENTION AND  
34 PREVENTION; AND

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

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

44 (C) THE TEAM SHALL REVIEW FATALITIES IN CASES THAT HAVE BEEN ADJUDI-  
45 CATED AND HAVE RECEIVED A FINAL JUDGMENT AND THAT ARE NOT UNDER INVESTI-  
46 GATION.

47 (D) MEMBERS OF A DOMESTIC VIOLENCE FATALITY REVIEW TEAM SHALL BE  
48 APPOINTED BY THE EXECUTIVE DIRECTOR, IN CONSULTATION WITH THE ADVISORY  
49 COUNCIL, AND SHALL INCLUDE, BUT NOT BE LIMITED TO, ONE REPRESENTATIVE  
50 FROM THE OFFICE OF CHILDREN AND FAMILY SERVICES, THE OFFICE OF TEMPORARY  
51 AND DISABILITY ASSISTANCE, THE DIVISION OF CRIMINAL JUSTICE SERVICES,  
52 THE STATE POLICE, THE DEPARTMENT OF HEALTH, THE OFFICE OF COURT ADMINIS-  
53 TRATION, THE OFFICE OF PROBATION AND CORRECTIONAL ALTERNATIVES, THE  
54 DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION, AT LEAST ONE REPRE-  
55 SENTATIVE FROM LOCAL LAW ENFORCEMENT, A COUNTY PROSECUTOR'S OFFICE, A  
56 LOCAL SOCIAL SERVICES DISTRICT, A MEMBER OF THE JUDICIARY, AND A DOMES-

1 TIC VIOLENCE SERVICES PROGRAM APPROVED BY THE OFFICE OF CHILDREN AND  
2 FAMILY SERVICES. A DOMESTIC VIOLENCE FATALITY REVIEW TEAM MAY ALSO  
3 INCLUDE REPRESENTATIVES FROM SEXUAL ASSAULT SERVICES PROGRAMS, PUBLIC  
4 HEALTH, MENTAL HEALTH AND SUBSTANCE ABUSE AGENCIES, HOSPITALS, CLERGY,  
5 LOCAL SCHOOL DISTRICTS, LOCAL DIVISIONS OF PROBATION, LOCAL OFFICES OF  
6 THE DIVISION OF PAROLE, THE OFFICE OF THE MEDICAL EXAMINER OR CORONER,  
7 ANY LOCAL DOMESTIC VIOLENCE TASK FORCE, COORDINATING COUNCIL OR OTHER  
8 INTERAGENCY ENTITY THAT MEETS REGULARLY TO SUPPORT A COORDINATED COMMU-  
9 NITY RESPONSE TO DOMESTIC VIOLENCE, ANY OTHER PROGRAM THAT PROVIDES  
10 SERVICES TO DOMESTIC VIOLENCE VICTIMS, OR ANY OTHER PERSON NECESSARY TO  
11 THE WORK OF THE TEAM, INCLUDING SURVIVORS OF DOMESTIC VIOLENCE.

12 (E) THE TEAM SHALL IDENTIFY POTENTIAL CASES AND SHALL SELECT WHICH  
13 FATALITIES WILL BE REVIEWED EACH YEAR. LOCALITIES MAY REQUEST THAT THE  
14 TEAM CONDUCT A REVIEW OF A PARTICULAR FATALITY.

15 (F) THE TEAM SHALL WORK WITH OFFICIALS AND ORGANIZATIONS WITHIN THE  
16 COMMUNITY WHERE THE FATALITY OCCURRED TO CONDUCT EACH REVIEW.

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

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

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

27 (II) LAW ENFORCEMENT RECORDS, EXCEPT WHERE THE PROVISION OF SUCH  
28 RECORDS WOULD INTERFERE WITH AN ONGOING LAW ENFORCEMENT INVESTIGATION OR  
29 IDENTIFY A CONFIDENTIAL SOURCE OR ENDANGER THE SAFETY OR WELFARE OF AN  
30 INDIVIDUAL;

31 (III) COURT RECORDS;

32 (IV) PROBATION AND PAROLE RECORDS;

33 (V) RECORDS FROM DOMESTIC VIOLENCE RESIDENTIAL OR NON-RESIDENTIAL  
34 PROGRAMS;

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

37 (VII) ALL OTHER RELEVANT RECORDS IN THE POSSESSION OF STATE AND LOCAL  
38 OFFICIALS OR AGENCIES.

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

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

50 (K) TEAM MEMBERS AND PERSONS WHO PRESENT INFORMATION TO THE TEAM SHALL  
51 NOT BE COMPELLED TO DISCLOSE INFORMATION ABOUT THE REVIEW PROCESS OR ANY  
52 DISCUSSION, DETERMINATION, CONCLUSION OR RECOMMENDATION OF THE TEAM  
53 THROUGH DISCOVERY OR TESTIMONY IN A CIVIL OR CRIMINAL PROCEEDING. NOTH-  
54 ING IN THIS SECTION SHALL BE CONSTRUED TO PREVENT A PERSON FROM TESTIFY-  
55 ING AS TO INFORMATION WHICH IS OBTAINED INDEPENDENTLY OF THE TEAM OR  
56 INFORMATION WHICH IS PUBLIC.

1 (L) TEAM MEMBERS ARE NOT LIABLE FOR DAMAGES OR OTHER RELIEF IN ANY  
2 ACTION BROUGHT BY REASON OF THE PERFORMANCE OF A DUTY, FUNCTION, OR  
3 ACTIVITY OF THE TEAM.

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

8 (N) THE TEAM SHALL PERIODICALLY SUBMIT A CUMULATIVE REPORT TO THE  
9 GOVERNOR AND THE LEGISLATURE INCORPORATING THE AGGREGATE DATA AND A  
10 SUMMARY OF THE GENERAL FINDINGS AND RECOMMENDATIONS RESULTING FROM THE  
11 DOMESTIC VIOLENCE FATALITY REVIEWS COMPLETED PURSUANT TO THIS SUBDIVI-  
12 SION. THE CUMULATIVE REPORT MAY THEREAFTER BE MADE AVAILABLE TO THE  
13 PUBLIC, CONSISTENT WITH FEDERAL AND STATE CONFIDENTIALITY PROTECTIONS.

14 S 5. Subdivision 9 of section 575 of the executive law is REPEALED.

15 S 6. Subdivision 10 of section 575 of the executive law is REPEALED.

16 S 7. This act shall take effect on the one hundred eightieth day after  
17 it shall have become law.