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

7412

I N S E N A T E

May 10, 2012

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

AN ACT to amend the criminal procedure law, the social services law, the family court act, the penal law and the executive law, in relation to maintaining the confidentiality of immigration status for victims of domestic violence

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

Section 1. Short title. This act shall be known and may be cited as "The New York State Violence Against Women Act".

S 2. Subparagraph (ii) of paragraph (b) and paragraph (c) of subdivision 4 of section 140.10 of the criminal procedure law, subparagraph (ii) of paragraph (b) as amended by chapter 107 of the laws of 2004 and paragraph (c) as amended by chapter 4 of the laws of 1997, are amended to read as follows:

(ii) The respondent or defendant commits a family offense as defined in subdivision one of section eight hundred twelve of the family court act or subdivision one of section 530.11 of this chapter in violation of such order of protection or special order of conditions. AN OFFICER MAKING AN ARREST UNDER THIS SUBPARAGRAPH SHALL NOT INQUIRE AS TO THE IMMIGRATION STATUS OF THE PERSON FOR WHOM THE ORDER PROTECTS. IF SUCH STATUS IS ASCERTAINED AND WOULD RESULT IN ADVERSE IMMIGRATION CONSEQUENCES TO SUCH PERSON, THE OFFICER SHALL NOT REPORT SUCH INFORMATION TO ANY LOCAL, STATE OR FEDERAL LAW ENFORCEMENT AGENCY.

(c) a misdemeanor constituting a family offense, as described in subdivision one of section 530.11 of this chapter and section eight hundred twelve of the family court act, has been committed by such person against such family or household member, unless the victim requests otherwise. The officer shall neither inquire as to whether the victim seeks an arrest of such person nor threaten the arrest of any person for the purpose of discouraging requests for police intervention. THE OFFICER SHALL ALSO NOT INQUIRE AS TO THE IMMIGRATION STATUS OF THE VICTIM; NOR SHALL SUCH OFFICER, IF INFORMED OF SUCH STATUS, REPORT SUCH INFORMATION TO ANY LOCAL, STATE OR FEDERAL LAW ENFORCEMENT AGENCY.

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

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Notwithstanding the foregoing, when an officer has reasonable cause to believe that more than one family or household member has committed such a misdemeanor, the officer is not required to arrest each such person. In such circumstances, the officer shall attempt to identify and arrest the primary physical aggressor after considering: (i) the comparative extent of any injuries inflicted by and between the parties; (ii) whether any such person is threatening or has threatened future harm against another party or another family or household member; (iii) whether any such person has a prior history of domestic violence that the officer can reasonably ascertain; and (iv) whether any such person acted defensively to protect himself or herself from injury. The officer shall evaluate each complaint separately to determine who is the primary physical aggressor and shall not base the decision to arrest or not to arrest on the willingness of a person to testify or otherwise participate in a judicial proceeding.

S 3. Subdivision 2 of section 530.11 of the criminal procedure law is amended by adding a new paragraph (j) to read as follows:

(J) THAT ANY INFORMATION REGARDING THE PETITIONER'S IMMIGRATION STATUS SHALL BE KEPT CONFIDENTIAL AND WILL NOT BE REFERRED OR REPORTED TO ANY LOCAL, STATE OR FEDERAL LAW ENFORCEMENT AGENCY.

S 4. The criminal procedure law is amended by adding a new section 2.25 to read as follows:

S 2.25 PROHIBITIONS ON LAW ENFORCEMENT AGENCIES AND PEACE OFFICERS.

A LAW ENFORCEMENT AGENCY OF THE STATE OR A POLITICAL SUBDIVISION OF THE STATE OR A PEACE OFFICER MAY NOT INQUIRE AS TO THE NATIONALITY OR IMMIGRATION STATUS OF A VICTIM OF OR WITNESS TO DOMESTIC VIOLENCE, AS SUCH TERMS ARE DEFINED BY SECTION FOUR HUNDRED FIFTY-NINE-A OF THE SOCIAL SERVICES LAW, EXCEPT AS NECESSARY TO INVESTIGATE THE OFFENSE, NOR SHALL SUCH OFFICER REPORT OR REFER SUCH STATUS TO ANY LOCAL, STATE OR FEDERAL LAW ENFORCEMENT AGENCY.

S 5. Section 459-h of the social services law is amended by adding a new subdivision 3 to read as follows:

3. ALL INFORMATION RELATED TO A VICTIM OF DOMESTIC VIOLENCE'S IMMIGRATION STATUS SHALL BE KEPT CONFIDENTIAL AND SHALL NOT BE DISCLOSED FOR ANY PURPOSE, INCLUDING SUCH INVESTIGATIONS THAT MAY BE CONDUCTED BY ANY LOCAL, STATE OR FEDERAL LAW ENFORCEMENT AGENCY RELATING TO SAID INDIVIDUAL'S IMMIGRATION STATUS.

S 6. Subdivision 2 of section 812 of the family court act is amended by adding a new paragraph (h) to read as follows:

(H) THAT ANY INFORMATION REGARDING THE PETITIONER'S IMMIGRATION STATUS SHALL BE KEPT CONFIDENTIAL AND WILL NOT BE REFERRED OR REPORTED TO ANY LOCAL, STATE OR FEDERAL LAW ENFORCEMENT AGENCY.

S 7. The penal law is amended by adding a new section 70.11 to read as follows:

S 70.11 SENTENCES OF IMPRISONMENT FOR DOMESTIC VIOLENCE; AGGRAVATING FACTORS.

IN MATTERS DIVESTED TO A CRIMINAL COURT UNDER SECTION EIGHT HUNDRED TWELVE OF THE FAMILY COURT ACT, OR WHERE SUCH COURT EXERCISES CONCURRENT JURISDICTION UNDER SUCH SECTION AND IN MATTERS REFERRED TO A CRIMINAL COURT UNDER ARTICLE SIX-A OF THE SOCIAL SERVICES LAW, WHERE THE RESPONDENT THREATENS TO EXPOSE A WITNESS OR A VICTIM'S IMMIGRATION STATUS IN ORDER TO COERCE SUCH VICTIM OR WITNESS OR CONCEAL SUCH OFFENSE, SHALL RESULT IN THE FOLLOWING ENHANCEMENT OF SUCH SENTENCE:

(A) FOR OFFENSES COMMITTED UNDER SECTION 120.00 OF THIS CHAPTER, THE SENTENCE SHALL REFLECT A CLASS E FELONY;

(B) FOR OFFENSES COMMITTED UNDER SECTION 120.05 OF THIS CHAPTER, THE SENTENCE SHALL REFLECT A CLASS C FELONY;
(C) FOR OFFENSES COMMITTED UNDER SECTION 120.10 OF THIS CHAPTER, THE SENTENCE SHALL REFLECT A CLASS A FELONY;
(D) FOR OFFENSES COMMITTED UNDER SECTION 120.13 OF THIS CHAPTER, THE SENTENCE SHALL REFLECT A CLASS D FELONY;
(E) FOR OFFENSES COMMITTED UNDER SECTION 120.14 OF THIS CHAPTER, THE SENTENCE SHALL REFLECT A CLASS E FELONY;
(F) FOR OFFENSES COMMITTED UNDER SECTION 120.15 OF THIS CHAPTER, THE SENTENCE SHALL REFLECT A CLASS A MISDEMEANOR;
(G) FOR OFFENSES COMMITTED UNDER SECTION 120.20 OF THIS CHAPTER, THE SENTENCE SHALL REFLECT A CLASS E FELONY;
(H) FOR OFFENSES COMMITTED UNDER SECTION 120.25 OF THIS CHAPTER, THE SENTENCE SHALL REFLECT A CLASS C FELONY;
(I) FOR OFFENSES COMMITTED UNDER SECTION 120.45 OF THIS CHAPTER, THE SENTENCE SHALL REFLECT A CLASS A MISDEMEANOR;
(J) FOR OFFENSES COMMITTED UNDER SECTION 120.50 OF THIS CHAPTER, THE SENTENCE SHALL REFLECT A CLASS E FELONY;
(K) FOR OFFENSES COMMITTED UNDER SECTION 120.55 OF THIS CHAPTER, THE SENTENCE SHALL REFLECT A CLASS D FELONY;
(L) FOR OFFENSES COMMITTED UNDER SECTION 120.60 OF THIS CHAPTER, THE SENTENCE SHALL REFLECT A CLASS C FELONY;
(M) FOR OFFENSES COMMITTED UNDER SECTION 121.11 OF THIS CHAPTER, THE SENTENCE SHALL REFLECT A CLASS E FELONY;
(N) FOR OFFENSES COMMITTED UNDER SECTION 121.12 OF THIS CHAPTER, THE SENTENCE SHALL REFLECT A CLASS C FELONY;
(O) FOR OFFENSES COMMITTED UNDER SECTION 121.13 OF THIS CHAPTER, THE SENTENCE SHALL REFLECT A CLASS B FELONY;
(P) FOR OFFENSES COMMITTED UNDER SECTION 130.25 OF THIS CHAPTER, THE SENTENCE SHALL REFLECT A CLASS D FELONY;
(Q) FOR OFFENSES COMMITTED UNDER SECTION 130.30 OF THIS CHAPTER, THE SENTENCE SHALL REFLECT A CLASS C FELONY;
(R) FOR OFFENSES COMMITTED UNDER SECTION 130.35 OF THIS CHAPTER, THE SENTENCE SHALL REFLECT A CLASS A FELONY;
(S) FOR OFFENSES COMMITTED UNDER SECTION 130.40 OF THIS CHAPTER, THE SENTENCE SHALL REFLECT A CLASS D FELONY;
(T) FOR OFFENSES COMMITTED UNDER SECTION 130.45 OF THIS CHAPTER, THE SENTENCE SHALL REFLECT A CLASS C FELONY;
(U) FOR OFFENSES COMMITTED UNDER SECTION 130.50 OF THIS CHAPTER, THE SENTENCE SHALL REFLECT A CLASS A FELONY;
(V) FOR OFFENSES COMMITTED UNDER SECTION 130.55 OF THIS CHAPTER, THE SENTENCE SHALL REFLECT A CLASS A MISDEMEANOR;
(W) FOR OFFENSES COMMITTED UNDER SECTION 130.60 OF THIS CHAPTER, THE SENTENCE SHALL REFLECT A CLASS E FELONY;
(X) FOR OFFENSES COMMITTED UNDER SECTION 130.65 OF THIS CHAPTER, THE SENTENCE SHALL REFLECT A CLASS C FELONY;
(Y) FOR OFFENSES COMMITTED UNDER SECTION 130.65-A OF THIS CHAPTER, THE SENTENCE SHALL REFLECT A CLASS D FELONY;
(Z) FOR OFFENSES COMMITTED UNDER SECTION 130.66 OF THIS CHAPTER, THE SENTENCE SHALL REFLECT A CLASS C FELONY;
(AA) FOR OFFENSES COMMITTED UNDER SECTION 130.67 OF THIS CHAPTER, THE SENTENCE SHALL REFLECT A CLASS B FELONY;
(BB) FOR OFFENSES COMMITTED UNDER SECTION 130.70 OF THIS CHAPTER, THE SENTENCE SHALL REFLECT A CLASS A FELONY;
(CC) FOR OFFENSES COMMITTED UNDER SECTION 135.05 OF THIS CHAPTER, THE SENTENCE SHALL REFLECT A CLASS E FELONY;

(DD) FOR OFFENSES COMMITTED UNDER SECTION 135.10 OF THIS CHAPTER, THE SENTENCE SHALL REFLECT A CLASS D FELONY;
(EE) FOR OFFENSES COMMITTED UNDER SECTION 135.20 OF THIS CHAPTER, THE SENTENCE SHALL REFLECT A CLASS A FELONY;
(FF) FOR OFFENSES COMMITTED UNDER SECTION 135.45 OF THIS CHAPTER, THE SENTENCE SHALL REFLECT A CLASS E FELONY;
(GG) FOR OFFENSES COMMITTED UNDER SECTION 135.50 OF THIS CHAPTER, THE SENTENCE SHALL REFLECT A CLASS D FELONY.

S 8. The executive law is amended by adding a new section 844 to read as follows:

S 844. INQUIRY INTO IMMIGRATION STATUS PROHIBITED IN CERTAIN CIRCUMSTANCES. IN CONDUCTING AN INVESTIGATORY ACTIVITY, INCLUDING AN INTERVIEW, INTO ANY INCIDENT OF DOMESTIC VIOLENCE, AS SUCH TERM IS DEFINED IN ARTICLE SIX-A OF THE SOCIAL SERVICES LAW, A LAW ENFORCEMENT AGENCY OR A LAW ENFORCEMENT OFFICIAL SHALL NOT INQUIRE ABOUT OR SEEK PROOF OF A PERSON'S IMMIGRATION STATUS, NOR SHALL SUCH OFFICER, IF INFORMED OF SUCH STATUS, REFER OR REPORT ANY FINDINGS REGARDING SUCH STATUS TO ANY LOCAL, STATE OR FEDERAL LAW ENFORCEMENT AGENCY. ANY INFORMATION OBTAINED IN SUCH INVESTIGATORY ACTIVITY REGARDING A PERSON'S IMMIGRATION STATUS SHALL BE KEPT CONFIDENTIAL.

S 9. This act shall take effect immediately, provided that the amendments to subdivision 4 of section 140.10 of the criminal procedure law made by section two of this act shall not affect the repeal of such subdivision and shall be deemed repealed therewith.