

340--A

2013-2014 Regular Sessions

I N   S E N A T E

(PREFILED)

January 9, 2013

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Introduced by Sen. DeFRANCISCO -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the penal law and the social services law, in relation to mandatory orders of protection for personal information pertaining to victims; and to amend the civil practice law and rules and the criminal procedure law, in relation to service of a subpoena by a pro se litigant

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

1     Section 1. The penal law is amended by adding a new section 60.38 to  
2     read as follows:  
3     S 60.38 MANDATORY ORDER OF PROTECTION FOR PERSONAL INFORMATION PERTAIN-  
4     ING TO VICTIMS.  
5     1. WHENEVER PROCEEDINGS IN AN ADMINISTRATIVE TRIBUNAL OR A COURT OF  
6     THIS STATE RESULT IN A CONVICTION FOR A CRIME:  
7     (A) ENTAILING PHYSICAL INJURY; OR  
8     (B) INVOLVING AN OFFENSE DESCRIBED IN ARTICLE ONE HUNDRED THIRTY OF  
9     THIS CHAPTER,  
10    THERE SHALL BE ISSUED AT SENTENCING A MANDATORY PROTECTIVE ORDER PROHIB-  
11    ITING THE CONVICTED PERSON FROM OBTAINING ANY NON-PUBLIC RECORDS  
12    CONTAINING PERSONAL INFORMATION REGARDING THE VICTIM AGAINST WHOM THE  
13    CRIME WAS COMMITTED, INCLUDING, BUT NOT LIMITED TO MEDICAL, EDUCATIONAL,  
14    EMPLOYMENT AND FINANCIAL INFORMATION AND INFORMATION PERTAINING TO THE  
15    VICTIM'S LOCATION. THIS ORDER SHALL BE A PERMANENT ORDER WHICH SHALL NOT  
16    EXPIRE, PROVIDED THAT IF THE CONVICTION IS REVERSED ON APPEAL, OR  
17    VACATED PURSUANT TO ARTICLE FOUR HUNDRED FORTY OF THE CRIMINAL PROCEDURE  
18    LAW, THE ORDER MAY BE CONCOMITANTLY MODIFIED OR VACATED BY THE COURT.

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

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1 2. THE PROVISIONS OF THIS SECTION SHALL APPLY TO SENTENCES IMPOSED  
2 UPON A YOUTHFUL OFFENDER FINDING.

3 3. THE PROVISIONS OF THIS SECTION SHALL APPLY TO ALL CONVICTIONS AS  
4 DESCRIBED IN SUBDIVISION ONE OF THIS SECTION, REGARDLESS OF WHETHER THE  
5 SENTENCE WAS ONE INVOLVING IMPRISONMENT, PROBATION AND/OR A SUSPENDED  
6 SENTENCE.

7 S 2. Paragraph (d) of subdivision 2 of section 378-a of the social  
8 services law, as added by chapter 7 of the laws of 1999, is amended to  
9 read as follows:

10 (d) Notwithstanding any other provision of law to the contrary, the  
11 office of children and family services, upon receipt of a criminal  
12 history record from the division of criminal justice services, may  
13 request, and is entitled to receive, information pertaining to any  
14 offense contained in such criminal history record from any state or  
15 local law enforcement agency or court for the purposes of determining  
16 whether any ground relating to such criminal conviction or pending crim-  
17 inal charge exists for denying an application; PROVIDED THAT NOTHING IN  
18 THIS SECTION SHALL BE CONSTRUED TO ALLOW A PERSON TO ACCESS RECORDS OF  
19 HIS OR HER VICTIM IN VIOLATION OF A PROTECTIVE ORDER ISSUED PURSUANT TO  
20 SECTION 60.38 OF THE PENAL LAW.

21 S 3. Subdivision 5 of section 390-b of the social services law, as  
22 added by chapter 416 of the laws of 2000, is amended to read as follows:

23 5. Notwithstanding any other provision of law to the contrary, the  
24 office of children and family services, upon receipt of a criminal  
25 history record from the division of criminal justice services, may  
26 request, and is entitled to receive, information pertaining to any crime  
27 contained in such criminal history record from any state or local law  
28 enforcement agency, district attorney, parole officer, probation officer  
29 or court for the purposes of determining whether any ground relating to  
30 such criminal conviction or pending criminal charge exists for denying a  
31 license, registration, application or employment; PROVIDED THAT NOTHING  
32 IN THIS SECTION SHALL BE CONSTRUED TO ALLOW A PERSON TO ACCESS RECORDS  
33 OF HIS OR HER VICTIM IN VIOLATION OF A PROTECTIVE ORDER ISSUED PURSUANT  
34 TO SECTION 60.38 OF THE PENAL LAW.

35 S 4. The civil practice law and rules is amended by adding a new  
36 section 2303-b to read as follows:

37 S 2303-B. SERVICE OF A SUBPOENA BY A PRO SE LITIGANT. A PRO SE LITI-  
38 GANT MAY SERVE A SUBPOENA IN PERSON ONLY IF THE SUBPOENA IS A JUDICIAL  
39 SUBPOENA THAT EXPLICITLY PERMITS SUCH SERVICE.

40 S 5. Section 610.40 of the criminal procedure law is amended to read  
41 as follows:

42 S 610.40 Securing attendance of witnesses by subpoena; how and by whom  
43 subpoena may be served.

44 A subpoena may be served by any person more than eighteen years old.  
45 A SUBPOENA SERVED ON BEHALF OF A DEFENDANT IN A CRIMINAL PROCEEDING  
46 SHALL BE SERVED BY AN AGENT OF THE DEFENDANT AND NOT BY THE DEFENDANT IN  
47 PERSON EXCEPT AS PROVIDED IN SECTION TWENTY-THREE HUNDRED THREE-B OF THE  
48 CIVIL PRACTICE LAW AND RULES. Service must be made in the manner  
49 provided by the civil practice law and rules for the service of subpoe-  
50 nas in civil cases.

51 S 6. This act shall take effect on the ninetieth day after it shall  
52 have become a law.