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2015-2016 Regular Sessions

I N   A S S E M B L Y

(PREFILED)

January 7, 2015

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Introduced by M. of A. SIMANOWITZ -- read once and referred to the  
Committee on Codes

AN ACT to amend the executive law, the family court act and the criminal  
procedure law, in relation to pre-dispositional and pre-sentence  
investigations in family offense cases

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

1     Section 1. Subdivision 4 of section 221-a of the executive law, as  
2     amended by chapter 368 of the laws of 2013, is amended to read as  
3     follows:  
4     4. Courts and law enforcement officials, including probation officers,  
5     and employees of local correctional facilities and the department of  
6     corrections and community supervision who are responsible for monitor-  
7     ing, supervising or classification of inmates or parolees shall have the  
8     ability to disclose and share information with respect to such orders  
9     and warrants consistent with the purposes of this section, subject to  
10    applicable provisions of the family court act, domestic relations law  
11    and criminal procedure law concerning the confidentiality, sealing and  
12    expungement of records. DESIGNATED REPRESENTATIVES OF A LOCAL PROBATION  
13    SERVICE SHALL HAVE ACCESS TO INFORMATION IN THE STATEWIDE REGISTRY OF  
14    ORDERS OF PROTECTION AND WARRANTS NECESSARY IN ORDER TO RESPOND TO A  
15    JUDICIAL REQUEST FOR INFORMATION PURSUANT TO SUBDIVISION SIX OF SECTION  
16    EIGHT HUNDRED TWENTY-ONE-A OF THE FAMILY COURT ACT, SUBDIVISION SIX-A OF  
17    SECTION 530.12 OF THE CRIMINAL PROCEDURE LAW OR, INsofar AS THEY INVOLVE  
18    VICTIMS OF DOMESTIC VIOLENCE AS DEFINED BY SECTION FOUR HUNDRED  
19    FIFTY-NINE-A OF THE SOCIAL SERVICES LAW, SECTION 530.13 OF THE CRIMINAL  
20    PROCEDURE LAW, OR TO PREPARE AN INVESTIGATION AND REPORT IN PROCEEDINGS  
21    CONDUCTED PURSUANT TO SECTIONS 351.1, SIX HUNDRED FORTY-TWO, SIX HUNDRED  
22    FIFTY-SIX, SIX HUNDRED SIXTY-TWO, SEVEN HUNDRED FIFTY, EIGHT HUNDRED  
23    THIRTY-FIVE AND SUBDIVISION (B) OF SECTION ONE THOUSAND FORTY-SEVEN OF

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

LBD00551-01-5

1 THE FAMILY COURT ACT OR ARTICLE THREE HUNDRED NINETY OF THE CRIMINAL  
2 PROCEDURE LAW.

3 S 2. The section heading and subdivision (a) of section 835 of the  
4 family court act, as amended by chapter 529 of the laws of 1963, are  
5 amended to read as follows:

6 Sequence of hearings; PROBATION INVESTIGATIONS AND REPORTS.

7 (a) Upon completion of the fact-finding hearing, the dispositional  
8 hearing may commence immediately after the required findings are made.  
9 IN AID OF ITS DISPOSITION, THE COURT MAY ADJOURN THE PROCEEDING FOR AN  
10 INVESTIGATION AND REPORT BY A LOCAL PROBATION SERVICE. FOR THE PURPOSES  
11 OF THIS ARTICLE, THE PROBATION INVESTIGATION AND REPORT MAY INCLUDE, BUT  
12 IS NOT LIMITED TO: THE PRESENCE OR ABSENCE OF AGGRAVATING FACTORS AS  
13 DEFINED IN PARAGRAPH (VII) OF SUBDIVISION (A) OF SECTION EIGHT HUNDRED  
14 TWENTY-SEVEN OF THIS ARTICLE, THE EXTENT OF INJURIES OR OUT-OF-POCKET  
15 LOSSES TO THE VICTIM WHICH MAY FORM THE BASIS FOR AN ORDER OF RESTITU-  
16 TION PURSUANT TO SUBDIVISION (E) OF SECTION EIGHT HUNDRED FORTY-ONE OF  
17 THIS ARTICLE, THE HISTORY OF THE RESPONDENT WITH RESPECT TO FAMILY  
18 OFFENSES AND ORDERS OF PROTECTION IN THIS OR OTHER COURTS, WHETHER THE  
19 RESPONDENT IS IN POSSESSION OF ANY FIREARMS AND, IF SO, WHETHER THE  
20 RESPONDENT IS LICENSED OR OTHERWISE AUTHORIZED TO BE IN POSSESSION OF  
21 SUCH FIREARMS.

22 S 3. Subdivision 3 of section 390.20 of the criminal procedure law is  
23 amended to read as follows:

24 3. Permissible in any case. For purposes of sentence, ISSUANCE OF AN  
25 ORDER OF PROTECTION PURSUANT TO SUBDIVISION FIVE OF SECTION 530.12 OF  
26 THIS CHAPTER OR, INSOFAR AS THEY INVOLVE VICTIMS OF DOMESTIC VIOLENCE AS  
27 DEFINED BY SECTION FOUR HUNDRED FIFTY-NINE-A OF THE SOCIAL SERVICES LAW,  
28 SECTION 530.13 OF THIS CHAPTER, the court may, in its discretion, order  
29 a pre-sentence investigation and report in any case, irrespective of  
30 whether such investigation and report is required by subdivision one or  
31 two OF THIS SECTION.

32 S 4. Subdivision 4 of section 390.30 of the criminal procedure law, as  
33 amended by chapter 618 of the laws of 1992, the opening paragraph as  
34 amended by section 50 of part A of chapter 56 of the laws of 2010, is  
35 amended to read as follows:

36 4. Abbreviated investigation and short form report. In lieu of the  
37 procedure set forth in subdivisions one, two and three of this section,  
38 where the conviction is of a misdemeanor OR FAMILY OFFENSE, AS DEFINED  
39 IN SUBDIVISION ONE OF SECTION 530.11 OF THIS CHAPTER, OTHER THAN A FELO-  
40 NY, the scope of the pre-sentence investigation may be abbreviated and a  
41 short form report may be made. The use of abbreviated investigations  
42 and short form reports, the matters to be covered therein and the form  
43 of the reports shall be in accordance with the general rules regulating  
44 methods and procedures in the administration of probation as adopted  
45 from time to time by the commissioner of the division of criminal  
46 justice services pursuant to the provisions of article twelve of the  
47 executive law. No such rule, however, shall be construed so as to  
48 relieve the agency conducting the investigation of the duty of investi-  
49 gating and reporting upon:

50 (a) the extent of the injury or economic loss and the actual out-of-  
51 pocket loss to the victim including the amount of restitution and repara-  
52 tion sought by the victim, after the victim has been informed of the  
53 right to seek restitution and reparation, or

54 (b) IN A CASE INVOLVING A FAMILY OFFENSE, AS DEFINED IN SUBDIVISION  
55 ONE OF SECTION 530.11 OF THIS CHAPTER, THE DEFENDANT'S HISTORY OF FAMILY  
56 OFFENSES AND ORDERS OF PROTECTION, INCLUDING VIOLATIONS, IN PROCEEDINGS

1 OR ACTIONS IN THIS OR OTHER COURTS, THE EXTENT OF INJURIES OR THREATS OF  
2 INJURY TO THE COMPLAINANT OR MEMBERS OF COMPLAINANT'S FAMILY OR HOUSE-  
3 HOLD, THE USE OR THREATENED USE OF DANGEROUS INSTRUMENTS AGAINST THE  
4 COMPLAINANT OR MEMBERS OF COMPLAINANT'S FAMILY OR HOUSEHOLD, WHETHER THE  
5 DEFENDANT IS IN POSSESSION OF ANY FIREARMS AND, IF SO, WHETHER DEFENDANT  
6 IS LICENSED OR OTHERWISE AUTHORIZED TO BE IN POSSESSION OF SUCH  
7 FIREARMS, THE EXTENT TO WHICH THE DEFENDANT POSES AN IMMEDIATE AND ONGO-  
8 ING DANGER TO THE COMPLAINANT OR MEMBERS OF THE COMPLAINANT'S FAMILY OR  
9 HOUSEHOLD AND ANY OTHER INFORMATION RELEVANT TO THE ISSUE OF WHETHER AN  
10 ORDER OF PROTECTION, IN ADDITION TO ANY OTHER DISPOSITION, SHOULD BE  
11 ISSUED IN ACCORDANCE WITH SUBDIVISION FIVE OF SECTION 530.12 OF THIS  
12 CHAPTER, OR

13 (C) any matter relevant to the question of sentence OR ISSUANCE OF AN  
14 ORDER OF PROTECTION that the court directs to be included in particular  
15 cases.

16 S 5. This act shall take effect on the ninetieth day after it shall  
17 have become a law.