

2015-2016 Regular Sessions

I N   A S S E M B L Y

(PREFILED)

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Introduced by M. of A. ROZIC, ABINANTI, BARRETT, BORELLI, CAHILL, COOK, FAHY, JAFFEE, LAVINE, MAYER, MILLER, MOSLEY, O'DONNELL, PERRY, ROBERTS, ROBINSON, ROSENTHAL, SCARBOROUGH, SEPULVEDA, TITONE -- Multi-Sponsored by -- M. of A. BRENNAN, CLARK, GLICK, GOTTFRIED, HEASTIE, THIELE -- read once and referred 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:

1     Section 1. Short title. This act shall be known and may be cited as  
2     "The New York State Violence Against Women Act".  
3     S 2. Subparagraph (ii) of paragraph (b) and paragraph (c) of subdivi-  
4     sion 4 of section 140.10 of the criminal procedure law, subparagraph  
5     (ii) of paragraph (b) as amended by chapter 107 of the laws of 2004 and  
6     paragraph (c) as amended by chapter 4 of the laws of 1997, are amended  
7     to read as follows:  
8     (ii) The respondent or defendant commits a family offense as defined  
9     in subdivision one of section eight hundred twelve of the family court  
10    act or subdivision one of section 530.11 of this chapter in violation of  
11    such order of protection or special order of conditions. AN OFFICER  
12    MAKING AN ARREST UNDER THIS SUBPARAGRAPH SHALL NOT INQUIRE AS TO THE  
13    IMMIGRATION STATUS OF THE PERSON WHOM THE ORDER PROTECTS. IF SUCH  
14    STATUS IS ASCERTAINED AND WOULD RESULT IN ADVERSE IMMIGRATION CONSE-  
15    QUENCES TO SUCH PERSON, THE OFFICER SHALL NOT REPORT SUCH INFORMATION TO  
16    ANY LOCAL, STATE OR FEDERAL LAW ENFORCEMENT AGENCY.  
17    (c) a misdemeanor constituting a family offense, as described in  
18    subdivision one of section 530.11 of this chapter and section eight  
19    hundred twelve of the family court act, has been committed by such

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

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1 person against such family or household member, unless the victim  
2 requests otherwise. The officer shall neither inquire as to whether the  
3 victim seeks an arrest of such person nor threaten the arrest of any  
4 person for the purpose of discouraging requests for police intervention.  
5 THE OFFICER SHALL ALSO NOT INQUIRE AS TO THE IMMIGRATION STATUS OF THE  
6 VICTIM; NOR SHALL SUCH OFFICER, IF INFORMED OF SUCH STATUS, REPORT SUCH  
7 INFORMATION TO ANY LOCAL, STATE OR FEDERAL LAW ENFORCEMENT AGENCY.  
8 Notwithstanding the foregoing, when an officer has reasonable cause to  
9 believe that more than one family or household member has committed such  
10 a misdemeanor, the officer is not required to arrest each such person.  
11 In such circumstances, the officer shall attempt to identify and arrest  
12 the primary physical aggressor after considering: (i) the comparative  
13 extent of any injuries inflicted by and between the parties; (ii) wheth-  
14 er any such person is threatening or has threatened future harm against  
15 another party or another family or household member; (iii) whether any  
16 such person has a prior history of domestic violence that the officer  
17 can reasonably ascertain; and (iv) whether any such person acted defen-  
18 sively to protect himself or herself from injury. The officer shall  
19 evaluate each complaint separately to determine who is the primary phys-  
20 ical aggressor and shall not base the decision to arrest or not to  
21 arrest on the willingness of a person to testify or otherwise partic-  
22 ipate in a judicial proceeding.

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

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

28 S 4. The criminal procedure law is amended by adding a new section  
29 2.25 to read as follows:

30 S 2.25 PROHIBITIONS ON LAW ENFORCEMENT AGENCIES AND PEACE OFFICERS.

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

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

40 3. ALL INFORMATION RELATED TO A VICTIM OF DOMESTIC VIOLENCE'S IMMI-  
41 GRATION STATUS SHALL BE KEPT CONFIDENTIAL AND SHALL NOT BE DISCLOSED FOR  
42 ANY PURPOSE, INCLUDING SUCH INVESTIGATIONS THAT MAY BE CONDUCTED BY ANY  
43 LOCAL, STATE OR FEDERAL LAW ENFORCEMENT AGENCY RELATING TO SAID INDIVID-  
44 UAL'S IMMIGRATION STATUS.

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

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

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

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

54 IN MATTERS DIVESTED TO A CRIMINAL COURT UNDER SECTION EIGHT HUNDRED  
55 TWELVE OF THE FAMILY COURT ACT, OR WHERE SUCH COURT EXERCISES CONCURRENT  
56 JURISDICTION UNDER SUCH SECTION AND IN MATTERS REFERRED TO A CRIMINAL

1 COURT UNDER ARTICLE SIX-A OF THE SOCIAL SERVICES LAW, WHERE THE RESPOND-  
2 ENT THREATENS TO EXPOSE A WITNESS OR A VICTIM'S IMMIGRATION STATUS IN  
3 ORDER TO COERCE SUCH VICTIM OR WITNESS OR CONCEAL SUCH OFFENSE, SHALL  
4 RESULT IN THE FOLLOWING ENHANCEMENT OF SUCH SENTENCE:

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

7 (B) FOR OFFENSES COMMITTED UNDER SECTION 120.05 OF THIS CHAPTER, THE  
8 SENTENCE SHALL REFLECT A CLASS C FELONY;

9 (C) FOR OFFENSES COMMITTED UNDER SECTION 120.10 OF THIS CHAPTER, THE  
10 SENTENCE SHALL REFLECT A CLASS A FELONY;

11 (D) FOR OFFENSES COMMITTED UNDER SECTION 120.13 OF THIS CHAPTER, THE  
12 SENTENCE SHALL REFLECT A CLASS D FELONY;

13 (E) FOR OFFENSES COMMITTED UNDER SECTION 120.14 OF THIS CHAPTER, THE  
14 SENTENCE SHALL REFLECT A CLASS E FELONY;

15 (F) FOR OFFENSES COMMITTED UNDER SECTION 120.15 OF THIS CHAPTER, THE  
16 SENTENCE SHALL REFLECT A CLASS A MISDEMEANOR;

17 (G) FOR OFFENSES COMMITTED UNDER SECTION 120.20 OF THIS CHAPTER, THE  
18 SENTENCE SHALL REFLECT A CLASS E FELONY;

19 (H) FOR OFFENSES COMMITTED UNDER SECTION 120.25 OF THIS CHAPTER, THE  
20 SENTENCE SHALL REFLECT A CLASS C FELONY;

21 (I) FOR OFFENSES COMMITTED UNDER SECTION 120.45 OF THIS CHAPTER, THE  
22 SENTENCE SHALL REFLECT A CLASS A MISDEMEANOR;

23 (J) FOR OFFENSES COMMITTED UNDER SECTION 120.50 OF THIS CHAPTER, THE  
24 SENTENCE SHALL REFLECT A CLASS E FELONY;

25 (K) FOR OFFENSES COMMITTED UNDER SECTION 120.55 OF THIS CHAPTER, THE  
26 SENTENCE SHALL REFLECT A CLASS D FELONY;

27 (L) FOR OFFENSES COMMITTED UNDER SECTION 120.60 OF THIS CHAPTER, THE  
28 SENTENCE SHALL REFLECT A CLASS C FELONY;

29 (M) FOR OFFENSES COMMITTED UNDER SECTION 121.11 OF THIS CHAPTER, THE  
30 SENTENCE SHALL REFLECT A CLASS E FELONY;

31 (N) FOR OFFENSES COMMITTED UNDER SECTION 121.12 OF THIS CHAPTER, THE  
32 SENTENCE SHALL REFLECT A CLASS C FELONY;

33 (O) FOR OFFENSES COMMITTED UNDER SECTION 121.13 OF THIS CHAPTER, THE  
34 SENTENCE SHALL REFLECT A CLASS B FELONY;

35 (P) FOR OFFENSES COMMITTED UNDER SECTION 130.25 OF THIS CHAPTER, THE  
36 SENTENCE SHALL REFLECT A CLASS D FELONY;

37 (Q) FOR OFFENSES COMMITTED UNDER SECTION 130.30 OF THIS CHAPTER, THE  
38 SENTENCE SHALL REFLECT A CLASS C FELONY;

39 (R) FOR OFFENSES COMMITTED UNDER SECTION 130.35 OF THIS CHAPTER, THE  
40 SENTENCE SHALL REFLECT A CLASS A FELONY;

41 (S) FOR OFFENSES COMMITTED UNDER SECTION 130.40 OF THIS CHAPTER, THE  
42 SENTENCE SHALL REFLECT A CLASS D FELONY;

43 (T) FOR OFFENSES COMMITTED UNDER SECTION 130.45 OF THIS CHAPTER, THE  
44 SENTENCE SHALL REFLECT A CLASS C FELONY;

45 (U) FOR OFFENSES COMMITTED UNDER SECTION 130.50 OF THIS CHAPTER, THE  
46 SENTENCE SHALL REFLECT A CLASS A FELONY;

47 (V) FOR OFFENSES COMMITTED UNDER SECTION 130.55 OF THIS CHAPTER, THE  
48 SENTENCE SHALL REFLECT A CLASS A MISDEMEANOR;

49 (W) FOR OFFENSES COMMITTED UNDER SECTION 130.60 OF THIS CHAPTER, THE  
50 SENTENCE SHALL REFLECT A CLASS E FELONY;

51 (X) FOR OFFENSES COMMITTED UNDER SECTION 130.65 OF THIS CHAPTER, THE  
52 SENTENCE SHALL REFLECT A CLASS C FELONY;

53 (Y) FOR OFFENSES COMMITTED UNDER SECTION 130.65-A OF THIS CHAPTER, THE  
54 SENTENCE SHALL REFLECT A CLASS D FELONY;

55 (Z) FOR OFFENSES COMMITTED UNDER SECTION 130.66 OF THIS CHAPTER, THE  
56 SENTENCE SHALL REFLECT A CLASS C FELONY;

1 (AA) FOR OFFENSES COMMITTED UNDER SECTION 130.67 OF THIS CHAPTER, THE  
2 SENTENCE SHALL REFLECT A CLASS B FELONY;

3 (BB) FOR OFFENSES COMMITTED UNDER SECTION 130.70 OF THIS CHAPTER, THE  
4 SENTENCE SHALL REFLECT A CLASS A FELONY;

5 (CC) FOR OFFENSES COMMITTED UNDER SECTION 135.05 OF THIS CHAPTER, THE  
6 SENTENCE SHALL REFLECT A CLASS E FELONY;

7 (DD) FOR OFFENSES COMMITTED UNDER SECTION 135.10 OF THIS CHAPTER, THE  
8 SENTENCE SHALL REFLECT A CLASS D FELONY;

9 (EE) FOR OFFENSES COMMITTED UNDER SECTION 135.20 OF THIS CHAPTER, THE  
10 SENTENCE SHALL REFLECT A CLASS A FELONY;

11 (FF) FOR OFFENSES COMMITTED UNDER SECTION 135.45 OF THIS CHAPTER, THE  
12 SENTENCE SHALL REFLECT A CLASS E FELONY;

13 (GG) FOR OFFENSES COMMITTED UNDER SECTION 135.50 OF THIS CHAPTER, THE  
14 SENTENCE SHALL REFLECT A CLASS D FELONY.

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

17 S 844. INQUIRY INTO IMMIGRATION STATUS PROHIBITED IN CERTAIN CIRCUM-  
18 STANCES. IN CONDUCTING AN INVESTIGATORY ACTIVITY, INCLUDING AN INTER-  
19 VIEW, INTO ANY INCIDENT OF DOMESTIC VIOLENCE, AS SUCH TERM IS DEFINED IN  
20 ARTICLE SIX-A OF THE SOCIAL SERVICES LAW, A LAW ENFORCEMENT AGENCY OR A  
21 LAW ENFORCEMENT OFFICIAL SHALL NOT INQUIRE ABOUT OR SEEK PROOF OF A  
22 PERSON'S IMMIGRATION STATUS, NOR SHALL SUCH OFFICER, IF INFORMED OF SUCH  
23 STATUS, REFER OR REPORT ANY FINDINGS REGARDING SUCH STATUS TO ANY LOCAL,  
24 STATE OR FEDERAL LAW ENFORCEMENT AGENCY. ANY INFORMATION OBTAINED IN  
25 SUCH INVESTIGATORY ACTIVITY REGARDING A PERSON'S IMMIGRATION STATUS  
26 SHALL BE KEPT CONFIDENTIAL.

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