

# STATE OF NEW YORK

8412--A

2021-2022 Regular Sessions

## IN ASSEMBLY

November 3, 2021

Introduced by M. of A. ANDERSON, ABINANTI, GALLAGHER, BURGOS, KELLES, SIMON, TAPIA, GOTTFRIED, ZINERMAN, DAVILA, DE LOS SANTOS -- read once and referred to the Committee on Governmental Operations -- recommitted to the Committee on Governmental Operations in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the executive law, in relation to enacting "Destini Smothers' law" to require collaboration between law enforcement agencies in missing persons investigations and to provide support for relatives of such missing persons

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. This act shall be known and may be cited as "Destini Smothers' law".

2  
3 § 2. Section 640 of the executive law is amended by adding a new  
4 subdivision 3 to read as follows:

5 3. (a) For the purposes of this article, the term "crime victim" shall  
6 include a relative of a missing person as defined in paragraph (c) of  
7 this subdivision.

8 (b) "Missing person" shall include a "missing child" as defined in  
9 section eight hundred thirty-seven-e of this chapter, a "missing vulner-  
10 able adult" as defined in section eight hundred thirty-seven-f-1 of this  
11 chapter, and a "missing adult" as defined in section eight hundred thir-  
12 ty-seven-f-2 of this chapter, who is missing under circumstances where  
13 there is a reasonable concern for his or her safety or whose disappear-  
14 ance has been determined by law enforcement to have been involuntary.

15 (c) "Relative of a missing person" means (i) any person related to a  
16 missing person as defined in paragraph (b) of this subdivision within  
17 the third degree of consanguinity or affinity; (ii) any person maintain-  
18 ing a sexual relationship with such missing person; or (iii) any person  
19 residing in the same household with such missing person; provided,

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

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1 however, that such term shall not apply to any such person whom the  
2 investigating law enforcement agency reasonably suspects to have been  
3 involved in the missing person's disappearance; (iv) who has been  
4 convicted of a family offense as defined in subdivision one of section  
5 530.11 of the criminal procedure law or section eight hundred twelve of  
6 the family court act committed against the missing person; (v) is the  
7 defendant or respondent or both in any family offense proceeding pending  
8 in criminal court or family court where the family offense is alleged to  
9 have been committed against the missing person; (vi) is or has been the  
10 subject of an order of protection in favor of the missing person; or  
11 (vii) whom the law enforcement agency has reasonable cause to believe  
12 has perpetrated a family offense or otherwise committed an act or acts  
13 of domestic violence against the missing person, regardless of whether  
14 any prosecution, family offense proceeding, or conviction resulted from  
15 such conduct.

16 (d) All fair treatment standards and criteria required pursuant to  
17 this article, and any services and supports provided to crime victims in  
18 connection therewith, shall be available to relatives of missing persons  
19 to the extent such fair treatment standards are applicable at the rele-  
20 vant stage of a missing persons investigation.

21 § 3. Paragraph (b) of subdivision 1 of section 641 of the executive  
22 law, as added by chapter 94 of the laws of 1984, is amended to read as  
23 follows:

24 (b) availability of appropriate public or private programs that  
25 provide counseling, treatment or support for crime victims, including  
26 but not limited to the following: rape crisis centers, victim/witness  
27 assistance programs, elderly victim services, trauma-informed inter-  
28 vention services, emotional support services, mental health care  
29 services, victim assistance hotlines and domestic violence shelters;

30 § 4. Subdivision 5 of section 642 of the executive law, as amended by  
31 chapter 263 of the laws of 1986, is amended to read as follows:

32 5. Victim assistance education and training, with special consider-  
33 ation to be given to victims of domestic violence, sex offense victims,  
34 sex trafficking victims, elderly victims, child victims, relatives of  
35 missing persons, and the families of homicide victims, shall be given to  
36 persons taking courses at state law enforcement training facilities and  
37 by district attorneys so that victims may be promptly, properly and  
38 completely assisted.

39 § 5. The executive law is amended by adding a new section 837-f-3 to  
40 read as follows:

41 § 837-f-3. Law enforcement collaboration in missing persons investi-  
42 gations. 1. The division shall, on or before January first, two thousand  
43 twenty-three, in consultation with the division of state police, every  
44 police agency in this state, every district attorney in this state, and  
45 such other qualified agencies the department deems appropriate, develop,  
46 adopt, implement and thereafter regularly update a uniform plan for  
47 collaboration between police agencies in missing persons investigations.  
48 Such plan shall involve a pro-active, coordinated response, planned in  
49 advance, that is triggered immediately upon confirmation by a police  
50 officer, peace officer or police agency of a report of a missing person.

51 2. Such plans shall, at a minimum, require that:

52 (a) the name of the missing person, a description of the person and  
53 other pertinent information be immediately dispatched over the police  
54 communication system to all local and state agencies;

55 (b) there shall be no presumption that persons between the ages of  
56 nineteen and sixty-four are not missing;

1 (c) the agency shall ascertain whether the missing person is or has  
2 been the victim of a family offense as defined in subdivision one of  
3 section 530.11 of the criminal procedure law or section eight hundred  
4 twelve of the family court act, and if so, the agency shall immediately  
5 transmit such information along with any records in its possession  
6 relating thereto to every local and state agency, and shall immediately  
7 request and obtain any such records in the possession of another local  
8 or state agency;

9 (d) relatives of missing persons are provided with the services and  
10 information required to be given to crime victims pursuant to section  
11 six hundred forty-one of this chapter; and

12 (e) routine notification of relatives of missing persons of the status  
13 of the missing persons investigation, to the extent such information  
14 will not jeopardize the investigation or the safety of the missing  
15 person or another person.

16 3. Police agencies not connected with the basic police communication  
17 system in use in such jurisdiction shall transmit such information to  
18 the nearest or most convenient teletypewriter point, from which point it  
19 shall be immediately dispatched, in conformity with the orders, rules or  
20 regulations governing the system.

21 4. In the event that a police agency receives a report of an adult  
22 missing person as defined in section eight hundred thirty-seven-f-2 of  
23 this article and such agency knows or has reasonable cause to believe  
24 that such missing adult person is or has been the victim of a family  
25 offense as defined in subdivision one of section 530.11 of the criminal  
26 procedure law or section eight hundred twelve of the family court act,  
27 or has otherwise been the victim of domestic violence, regardless of  
28 whether any family offense proceeding or criminal prosecution was  
29 commenced, there shall be a presumption that such person is missing  
30 under circumstances where there is a reasonable concern for his or her  
31 safety.

32 5. No dispatch or transmission of a report concerning missing persons  
33 shall be required by such plan if the investigating police department  
34 determines that the release of such information would jeopardize the  
35 investigation or the safety of the person, or otherwise requires  
36 forbearance.

37 § 6. This act shall take effect January 1, 2023. Effective immediate-  
38 ly, the addition, amendment and/or repeal of any rule or regulation  
39 necessary for the implementation of this act on its effective date are  
40 authorized to be made and completed on or before such effective date.