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:

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

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

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

(b) "Missing person" shall include a "missing child" as defined in section eight hundred thirty-seven-e of this chapter, a "missing vulnerable adult" as defined in section eight hundred thirty-seven-f-1 of this chapter, and a "missing adult" as defined in section eight hundred thirty-seven-f-2 of this chapter, who is missing under circumstances where there is a reasonable concern for his or her safety or whose disappearance has been determined by law enforcement to have been involuntary.

(c) "Relative of a missing person" means (i) any person related to a missing person as defined in paragraph (b) of this subdivision within the third degree of consanguinity or affinity; (ii) any person maintaining a sexual relationship with such missing person; or (iii) any person 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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however, that such term shall not apply to any such person whom the investigating law enforcement agency reasonably suspects to have been involved in the missing person's disappearance; (iv) who has been convicted of a family offense as defined in subdivision one of section 530.11 of the criminal procedure law or section eight hundred twelve of the family court act committed against the missing person; (v) is the defendant or respondent or both in any family offense proceeding pending in criminal court or family court where the family offense is alleged to have been committed against the missing person; (vi) is or has been the subject of an order of protection in favor of the missing person; or (vii) whom the law enforcement agency has reasonable cause to believe has perpetrated a family offense or otherwise committed an act or acts of domestic violence against the missing person, regardless of whether any prosecution, family offense proceeding, or conviction resulted from such conduct.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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