

PROGRAM BILL # 40

Legislative Bill Drafting Commission
12153-04-2

IN SENATE

Senate introducer's signature

The senators whose names are circled below wish to join me in the sponsorship of this proposal

S. _____
Senate

s20 Adams	s44 Farley	s58 Kennedy	s54 Nozzolio	s28 Serrano
s15 Addabbo	s02 Flanagan	s34 Klein	s53 O'Mara	s51 Seward
s55 Alesi	s08 Fuschillo	s26 Krueger	s37 Oppenheimer	s09 Skelos
s11 Avella	s59 Gallivan	s24 Lanza	s21 Parker	s14 Smith
s40 Ball	s12 Gianaris	s39 Larkin	s13 Peralta	s25 Squadron
s42 Bonacic	s22 Golden	s01 LaValle	s30 Perkins	s16 Stavisky
s46 Breslin	s47 Griffo	s52 Libous	s61 Ranzenhofer	s35 Stewart-Cousins
s38 Carlucci	s60 Grisanti	s45 Little	s48 Ritchie	
s50 DeFrancisco	s06 Hannon	s05 Marcellino	s33 Rivera	s27 Storobin
s32 Diaz	s36 Hassell-	s07 Martins	s56 Robach	s49 Valesky
s17 Dilan	Thompson	s62 Maziarz	s41 Saland	s57 Young
s29 Duane	s10 Huntley	s43 McDonald	s19 Sampson	s03 Zeldin
s31 Espalliat	s04 Johnson	s18 Montgomery	s23 Savino	

IN SENATE--Introduced by Sen

--read twice and ordered printed, and when printed to be committed to the Committee on

_____ A.
Assembly

IN ASSEMBLY

Assembly introducer's signature

The Members of the Assembly whose names are circled below wish to join me in the multi-sponsorship of this proposal:

IN ASSEMBLY--Introduced by M. of A.

a049 Abbate	a085 Crespo	a042 Jacobs	a121 Miller, D.	a067 Rosenthal
a092 Abinanti	a107 Crouch	a095 Jaffee	a102 Miller, J.	a118 Russell
a105 Amedore	a014 Curran	a057 Jeffries	a038 Miller, M.	a144 Ryan
a084 Arroyo	a063 Cusick	a135 Johns	a052 Millman	a012 Saladino
a035 Aubry	a045 Cymbrowitz	a112 Jordan	a015 Montesano	a113 Sayward
a124 Barclay	a034 DenDekker	a099 Ratz	a132 Morelle	a029 Scarborough
a103 Barrett	a081 Dinowitz	a074 Kavanagh	a039 Moya	a016 Schimel
a040 Barron	a114 Duprey	a145 Kearns	a003 Murray	a140 Schimminger
a082 Benedetto	a004 Englebright	a065 Kellner	a037 Nolan	a064 Silver
a122 Blankenbush	a054 Espinal	a129 Kolb	a128 Oaks	a027 Simanowitz
a055 Boyland	a071 Farrell	a025 Lancman	a069 O'Donnell	a036 Simotas
a008 Boyle	a123 Finch	a091 Latimer	a051 Ortiz	a100 Skartados
a026 Braunstein	a007 Fitzpatrick	a013 Lavine	a136 Palmesano	a146 Smardz
a044 Brennan	a137 Friend	a050 Lentol	a088 Paulin	a079 Stevenson
a116 Brindisi	a143 Gabryszak	a125 Lifton	a141 Peoples-	a011 Sweeney
a131 Bronson	a090 Galef	a072 Linares	Stokes	a110 Tedisco
a046 Brook-Krasny	a133 Gantt	a127 Lopez, P.	a058 Perry	a115 Tenney
a147 Burling	a077 Gibson	a053 Lopez, V.	a087 Pretlow	a002 Thiele
a117 Butler	a149 Giglio	a001 Losquadro	a073 Quart	a061 Titone
a101 Cahill	a066 Glick	a126 Lupardo	a021 Ra	a031 Titus
a096 Calhoun	a023 Goldfeder	a111 Magee	a097 Rabbitt	a062 Tobacco
a043 Camara	a150 Goodell	a120 Magnarelli	a009 Raia	a148 Walter
a106 Canestrari	a075 Gottfried	a059 Maisel	a006 Ramos	a041 Weinstein
a089 Castelli	a005 Graf	a060 Malliotakis	a134 Reilich	a020 Weisenberg
a086 Castro	a098 Gunther	a030 Markey	a109 Reilly	a024 Weprin
a138 Ceretto	a130 Hanna	a093 Meyer	a178 Rivera, J.	a070 Wright
a033 Clark	a139 Hawley	a019 McDonough	a080 Rivera, N.	a094 Zebrowski
a047 Colton	a083 Heastie	a104 McEneny	a076 Rivera, P.	
a010 Conte	a028 Hevesi	a017 McEvitt	a119 Roberts	
a032 Cook	a048 Hikind	a108 McLaughlin	a056 Robinson	
a142 Corwin	a018 Hooper	a022 Meng	a068 Rodriguez	

with M. of A. as co-sponsors

--read once and referred to the Committee on

EXECLA

(Enacts various provisions of law deemed necessary by the state including establishing a domestic violence fatality review team; and issues related to confidentiality)

Exec. domestic violence

AN ACT

to amend the executive law, in relation to establishing a domestic violence fatality review team, adding members to the advisory council, and repealing subdivision 10 of section 575 of such law relating to the New York state address confidentiality program (Part A); to amend the public health law, in relation to the disposition of remains (Part B); to amend the executive law, in

1) Single House Bill (introduced and printed separately in either or both houses). Uni-Bill (introduced simultaneously in both houses and printed as one bill. Senate and Assembly introducer sign the same copy of the bill).

2) Circle names of co-sponsors and return to introduction clerk with 2 signed copies of bill and 4 copies of memorandum in support (single house); or 4 signed copies of bill and 8 copies of memorandum in support (uni-bill).

relation to the address confidentiality program of the department of state; and to amend chapter 502 of the laws of 2011 amending the executive law relating to authorizing the secretary of state to accept service of process and receipt of mail on behalf of victims of domestic violence for the purpose of maintaining the confidentiality of the location of such victims, in relation to the effectiveness thereof (Part C); to amend the criminal procedure law, in relation to the consideration of certain factors when determining the issuance of an order of recognizance or bail; and to amend the penal law and the criminal procedure law, in relation to the creation of the crime of aggravated family offense (Part D); and to amend the insurance law, in relation to a reasonable request to receive communications of health information by alternative means or at alternative locations when disclosure of the information could endanger the person (Part E)

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

1 Section 1. This act enacts into law major components of legislation
2 relating to issues deemed necessary by the state. Each component is
3 wholly contained within a Part identified as Parts A through E. The
4 effective date for each particular provision contained within such Part
5 is set forth in the last section of such Part. Any provision in any
6 section contained within a Part, including the effective date of the
7 Part, which makes a reference to a section "of this act", when used in
8 connection with that particular component, shall be deemed to mean and
9 refer to the corresponding section of the Part in which it is found.
10 Section three of this act sets forth the general effective date of this
11 act.

12

PART A

13 Section 1. Subdivision 4 of section 575 of the executive law, as added
14 by chapter 463 of the laws of 1992, paragraph (b) as amended by section
15 99 of subpart B of part C of chapter 62 of the laws of 2011, paragraphs
16 (c), (d), and (e) as amended by chapter 396 of the laws of 1994, is
17 amended to read as follows:

18 4. Advisory council. (a) An advisory council is hereby established to
19 make recommendations on domestic violence related issues and effective
20 strategies for the prevention of domestic violence, to assist in the
21 development of appropriate policies and priorities for effective inter-
22 vention, public education and advocacy, and to facilitate and assure
23 communication and coordination of efforts among state agencies and
24 between different levels of government, state, federal, and municipal,
25 for the prevention of domestic violence.

1 (b) The advisory council shall consist of nine members and [thirteen]
2 fifteen ex-officio members. Each member shall be appointed to serve for
3 a term of three years and shall continue in office until a successor
4 appointed member is made. A member appointed to fill a vacancy shall be
5 appointed for the unexpired term of the member he or she is to succeed.
6 All of the members shall be individuals with expertise in the area of
7 domestic violence. Three members shall be appointed by the governor, two
8 members shall be appointed upon the recommendation of the temporary
9 president of the senate, two members shall be appointed upon the recom-
10 mendation of the speaker of the assembly, one member shall be appointed
11 upon the recommendation of the minority leader of the senate, and one
12 member shall be appointed upon the recommendation of the minority leader
13 of the assembly. The ex-officio members of the advisory board shall
14 consist of [one representative from the staff of each of the following
15 state departments and divisions:] the director of the office, who shall
16 chair the council, and the following members or their designees: the
17 commissioner of the office of temporary and disability [services]
18 assistance; the commissioner of the department of health; the commis-
19 sioner of the education department; the commissioner of the office of
20 mental health; the commissioner of the office of alcoholism and
21 substance abuse services; the commissioner of the division of criminal
22 justice services; the director of the office of probation and correc-
23 tional alternatives; the commissioner of the office of children and
24 family services; the director of the office of victim services; the
25 chief administrative judge of the office of court administration; the
26 commissioner of the department of labor; the director of the state
27 office for the aging; [and] the commissioner of the department of
28 corrections and community supervision; the chief executive officer of

1 the New York state coalition against domestic violence; and the execu-
2 tive director of the New York state coalition against sexual assault.

3 (c) [The governor shall appoint a member as chair of the advisory
4 council to serve at the pleasure of the governor.

5 (d)] The advisory council shall meet as often as deemed necessary by
6 the chair [or executive director] but in no event less than two times
7 per year.

8 [(e)] (d) The members of the advisory council shall receive no salary
9 or other compensation for their services but shall be entitled to
10 reimbursement for actual and necessary expenses incurred in the perform-
11 ance of their duties within amounts made available by appropriation
12 therefor subject to the approval of the director of the budget. The
13 ex-officio members of the advisory council shall receive no additional
14 compensation for their services on the advisory council above the salary
15 they receive from the respective departments or divisions that employ
16 them.

17 § 2. Subdivision 10 of section 575 of the executive law is REPEALED.

18 § 3. Section 575 of the executive law is amended by adding a new
19 subdivision 10 to read as follows:

20 10. Fatality review team. (a) There shall be established within the
21 office a fatality review team for the purpose of analyzing, in conjunc-
22 tion with local representation, the domestic violence-related death or
23 near death of individuals, with the goal of:

24 (i) examining the trends and patterns of domestic violence-related
25 fatalities in New York state;

26 (ii) educating the public, service providers, and policymakers about
27 domestic violence fatalities and strategies for intervention and
28 prevention; and

1 (iii) recommending policies, practices, procedures, and services to
2 reduce fatalities due to domestic violence.

3 (b) A domestic violence-related death or near death shall mean any
4 death or near death caused by a family or household member as defined in
5 section eight hundred twelve of the family court act or section 530.11
6 of the criminal procedure law, except that there shall be no review of
7 the death or near death of a child for those cases in which the office
8 of children and family services is required to issue a fatality report
9 in accordance with subdivision five of section twenty of the social
10 services law.

11 (c) The team shall review deaths or near deaths in cases that have
12 been adjudicated and have received a final judgment and that are not
13 under investigation.

14 (d) Members of a domestic violence fatality review team shall be
15 appointed by the executive director, in consultation with the advisory
16 council, and shall include, but not be limited to, one representative
17 from the office of children and family services, the office of temporary
18 and disability assistance, the division of criminal justice services,
19 the state police, the department of health, the office of court adminis-
20 tration, the office of probation and correctional alternatives, the
21 department of corrections and community supervision, at least one repre-
22 sentative from local law enforcement, a county prosecutor's office, a
23 local social services district, a member of the judiciary, and a domes-
24 tic violence services program approved by the office of children and
25 family services. A domestic violence fatality review team may also
26 include representatives from sexual assault services programs, public
27 health, mental health and substance abuse agencies, hospitals, clergy,
28 local school districts, local divisions of probation, local offices of

1 the department of corrections and community supervision, the office of
2 the medical examiner or coroner, any local domestic violence task force,
3 coordinating council or other interagency entity that meets regularly to
4 support a coordinated community response to domestic violence, any other
5 program that provides services to domestic violence victims, or any
6 other person necessary to the work of the team, including survivors of
7 domestic violence.

8 (e) The team shall identify potential cases and shall select which
9 deaths or near deaths will be reviewed each year. Localities may request
10 that the team conduct a review of a particular death or near death.

11 (f) The team shall work with officials and organizations within the
12 community where the death or near death occurred to conduct each review.

13 (g) Team members shall serve without compensation but are entitled to
14 be reimbursed for travel expenses to the localities where a fatality
15 review will be conducted and members who are full-time salaried officers
16 or employees of the state or of any political subdivision of the state
17 are entitled to their regular compensation.

18 (h) To the extent consistent with federal law, upon request the team
19 shall be provided client-identifiable information and records necessary
20 for the investigation of a domestic violence-related death or near death
21 incident, including, but not limited to:

22 (i) records maintained by a local social services district;

23 (ii) law enforcement records, except where the provision of such
24 records would interfere with an ongoing law enforcement investigation or
25 identify a confidential source or endanger the safety or welfare of an
26 individual;

27 (iii) court records;

28 (iv) probation and parole records;

1 (v) records from domestic violence residential or non-residential
2 programs;

3 (vi) records from any relevant service provider, program or organiza-
4 tion; and

5 (vii) all other relevant records in the possession of state and local
6 officials or agencies provided, however, no official or agency shall be
7 required to provide information or records concerning a person charged,
8 investigated or convicted in such death or near death in violation of
9 such person's attorney-client privilege.

10 (i) Any information or records otherwise confidential and privileged
11 in accordance with state law which are provided to the team shall remain
12 confidential as otherwise provided by law. All records received, meet-
13 ings conducted, reports and records made and maintained and all books
14 and papers obtained by the team shall be confidential and shall not be
15 open or made available, except by court order or as set forth in para-
16 graphs (k) and (l) of this subdivision.

17 (j) Any person who releases or permits the release of any information
18 protected under paragraph (i) of this subdivision to persons or agencies
19 not authorized to receive such information shall be guilty of a class A
20 misdemeanor.

21 (k) Team members and persons who present information to the team shall
22 not be questioned in any civil or criminal proceeding regarding any
23 opinions formed as a result of a meeting of the team. Nothing in this
24 section shall be construed to prevent a person from testifying as to
25 information which is obtained independently of the team or information
26 which is public.

1 (l) Team members are not liable for damages or other relief in any
2 action brought by reason of the reasonable and good faith performance of
3 a duty, function, or activity of the team.

4 (m) Consistent with all federal and state confidentiality protections,
5 the team may provide recommendations to any individual or entity for
6 appropriate actions to improve a community's response to domestic
7 violence.

8 (n) The team shall periodically submit a cumulative report to the
9 governor and the legislature incorporating the aggregate data and a
10 summary of the general findings and recommendations resulting from the
11 domestic violence fatality reviews completed pursuant to this subdivi-
12 sion. The cumulative report shall thereafter be made available to the
13 public, consistent with federal and state confidentiality protections.

14 § 4. This act shall take effect on the one hundred eightieth day after
15 it shall have become law.

16

PART B

17 Section 1. Subdivision 2 of section 4201 of the public health law is
18 amended by adding a new paragraph (e) to read as follows:

19 (e) No person who: (1) at the time of the decedent's death, was the
20 subject of an order of protection protecting the decedent; or (2) has
21 been arrested or charged with any crime set forth in article one hundred
22 twenty-five of the penal law as a result of any action allegedly causal-
23 ly related to the death of the decedent shall have the right to control
24 the disposition of the remains of the decedent. However, the application
25 of this paragraph in a particular case may be waived or modified in the
26 interest of justice by order of (i) the court that issued the order of

1 protection or in which the criminal action against the person is pend-
2 ing, or a superior court in which an action or proceeding under the
3 domestic relations law or the family court act between the person and
4 the decedent was pending at the time of the decedent's death, or (ii) if
5 proceeding in that court would cause inappropriate delay, a court in a
6 special proceeding.

7 § 2. This act shall take effect on the thirtieth day after it shall
8 have become a law.

9 PART C

10 Section 1. Subdivision 1 of section 108 of the executive law is
11 amended by adding two new paragraphs (g) and (h) to read as follows:

12 (g) "Public record" means any information kept, held, filed, produced
13 or reproduced by, with or for an agency, in any physical form whatsoever
14 including, but not limited to, reports, statements, examinations, memo-
15 randa, opinions, folders, files, books, manuals, pamphlets, forms,
16 papers, designs, drawings, maps, photos, letters, microfilms, computer
17 tapes or discs, rules, regulations or codes.

18 (h) "Process" means judicial process and all orders, demands, notices
19 or other papers required or permitted by law to be served on a program
20 participant.

21 § 2. The opening paragraph of subparagraph (i) of paragraph (a) of
22 subdivision 2 of section 108 of the executive law, as added by chapter
23 502 of the laws of 2011, is amended, subparagraph (v) is renumbered
24 subparagraph (vi) and a new subparagraph (v) is added to read as
25 follows:

1 [A] a signed written statement [made under oath] affirmed by the
2 applicant that:

3 (v) the name of any person who resides with the applicant who also
4 needs to be a program participant in order to ensure the safety of the
5 applicant and, if the person named in the application is eighteen years
6 of age or older, the consent of such person to be a program participant
7 and designation by such person of the secretary as agent for purposes of
8 service of process and for the purpose of receipt of mail; and

9 § 3. Subparagraph (i) of paragraph (b) and paragraph (c) of subdivi-
10 sion 4 of section 108 of the executive law, as added by chapter 502 of
11 the laws of 2011, are amended to read as follows:

12 (i) [if requested by a law enforcement agency for a legitimate law
13 enforcement purpose as determined by the law enforcement agency] there
14 is a bona fide statutory or administrative requirement for the communi-
15 cation of an actual address to another agency that has received a waiver
16 from the secretary, provided that each waiver specifically authorizes
17 such communication with the specified agency; or

18 (c) Upon receipt by the secretary of a process or mail for a partic-
19 ipant, the office of the secretary shall immediately forward all such
20 process or mail to the appropriate program participants [at their actual
21 address] at the address specified by the participant for that purpose,
22 and shall record the date of such forwarding. Service of process on a
23 program participant, a program participant's minor child, incapacitated
24 person or other adult member of the program participant's household
25 shall be complete when the secretary receives such process by mail or
26 otherwise.

27 § 4. Subdivision 6 of section 108 of the executive law, as added by
28 chapter 502 of the laws of 2011, is amended to read as follows:

1 6. Disclosure of [participant's address] participant information
2 prohibited; exceptions. (a) The secretary shall not make a program
3 participant's [address] information, other than the substitute address,
4 available for inspection or copying, except under any of the following
5 circumstances:

6 [(a)] (i) if requested by a law enforcement agency for a legitimate
7 law enforcement purpose as determined by the law enforcement agency; or

8 [(b)] (ii) to a person identified in a court order, upon the secre-
9 tary's receipt of that court order which specifically orders the disclo-
10 sure of a particular program participant's address and the reasons stat-
11 ed therefor[; or].

12 [(c) to] (b) The secretary may verify the participation of a specific
13 program participant, in which case the secretary may only confirm infor-
14 mation supplied by the requester.

15 § 5. Section 2 of chapter 502 of the laws of 2011, amending the execu-
16 tive law relating to authorizing the secretary of state to accept
17 service of process and receipt of mail on behalf of victims of domestic
18 violence for the purpose of maintaining the confidentiality of the
19 location of such victims, is amended to read as follows:

20 § 2. This act shall take effect [nine months after the date it shall
21 have become a law] July 15, 2012; provided, however, that the secretary
22 of state is authorized and directed to promulgate all rules, regulations
23 and forms necessary to implement the provisions of this act, on its
24 effective date, on or before such date.

25 § 6. This act shall take effect immediately; provided, however, that
26 sections one, two, three and four of this act shall take effect on the
27 same date and in the same manner as chapter 502 of the laws of 2011, as
28 amended takes effect.

1

PART D

2 Section 1. Subparagraphs (vii) and (viii) of paragraph (a) of subdivi-
3 sion 2 of section 510.30 of the criminal procedure law, as renumbered by
4 chapter 447 of the laws of 1977, are renumbered subparagraphs (viii) and
5 (ix) and a new subparagraph (vii) is added to read as follows:

6 (vii) Where the principal is charged with a crime or crimes against a
7 member or members of the same family or household as that term is
8 defined in subdivision one of section 530.11 of this title, the follow-
9 ing factors:

10 (A) any violation by the principal of an order of protection issued by
11 any court for the protection of a member or members of the same family
12 or household as that term is defined in subdivision one of section
13 530.11 of this title, whether or not such order of protection is
14 currently in effect; and

15 (B) the principal's history of use or possession of a firearm; and

16 § 2. The penal law is amended by adding a new section 240.75 to read
17 as follows:

18 § 240.75 Aggravated family offense.

19 1. A person is guilty of aggravated family offense when he or she
20 commits a misdemeanor defined in subdivision two of this section as a
21 specified offense and he or she has been convicted of one or more speci-
22 fied offenses within the immediately preceding five years. For the
23 purposes of this subdivision, in calculating the five year period, any
24 period of time during which the defendant was incarcerated for any
25 reason between the time of the commission of any of such previous
26 offenses and the time of commission of the present crime shall be

1 excluded and such five year period shall be extended by a period or
2 periods equal to the time served under such incarceration.

3 2. A "specified offense" is an offense defined in section 120.00
4 (assault in the third degree); section 120.05 (assault in the second
5 degree); section 120.10 (assault in the first degree); section 120.13
6 (menacing in the first degree); section 120.14 (menacing in the second
7 degree); section 120.15 (menacing in the third degree); section 120.20
8 (reckless endangerment in the second degree); section 120.25 (reckless
9 endangerment in the first degree); section 120.45 (stalking in the
10 fourth degree); section 120.50 (stalking in the third degree); section
11 120.55 (stalking in the second degree); section 120.60 (stalking in the
12 first degree); section 121.11 (criminal obstruction of breathing or
13 blood circulation); section 121.12 (strangulation in the second degree);
14 section 121.13 (strangulation in the first degree); subdivision one of
15 section 125.15 (manslaughter in the second degree); subdivision one, two
16 or four of section 125.20 (manslaughter in the first degree); section
17 125.25 (murder in the second degree); section 130.20 (sexual miscon-
18 duct); section 130.30 (rape in the second degree); section 130.35 (rape
19 in the first degree); section 130.40 (criminal sexual act in the third
20 degree); section 130.45 (criminal sexual act in the second degree);
21 section 130.50 (criminal sexual act in the first degree); section 130.52
22 (forcible touching); section 130.53 (persistent sexual abuse); section
23 130.55 (sexual abuse in the third degree); section 130.60 (sexual abuse
24 in the second degree); section 130.65 (sexual abuse in the first
25 degree); section 130.66 (aggravated sexual abuse in the third degree);
26 section 130.67 (aggravated sexual abuse in the second degree); section
27 130.70 (aggravated sexual abuse in the first degree); section 130.91
28 (sexually motivated felony); section 130.95 (predatory sexual assault);

1 section 130.96 (predatory sexual assault against a child); section
2 135.05 (unlawful imprisonment in the second degree); section 135.10
3 (unlawful imprisonment in the first degree); section 135.60 (coercion in
4 the second degree); section 135.65 (coercion in the first degree);
5 section 140.20 (burglary in the third degree); section 140.25 (burglary
6 in the second degree); section 140.30 (burglary in the first degree);
7 section 145.00 (criminal mischief in the fourth degree); section 145.05
8 (criminal mischief in the third degree); section 145.10 (criminal
9 mischief in the second degree); section 145.12 (criminal mischief in the
10 first degree); section 145.14 (criminal tampering in the third degree);
11 section 215.50 (criminal contempt in the second degree); section 215.51
12 (criminal contempt in the first degree); section 215.52 (aggravated
13 criminal contempt); section 240.25 (harassment in the first degree);
14 subdivision one, two or four of section 240.30 (aggravated harassment in
15 the second degree); aggravated family offense as defined in this section
16 or any attempt or conspiracy to commit any of the foregoing offenses
17 where the defendant and the person against whom the offense was commit-
18 ted were members of the same family or household as defined in subdivi-
19 sion one of section 530.11 of the criminal procedure law.

20 3. The person against whom the current specified offense is committed
21 may be different from the person against whom the previous specified
22 offense was committed and such persons do not need to be members of the
23 same family or household.

24 Aggravated family offense is a class E felony.

25 § 3. The criminal procedure law is amended by adding a new section
26 200.63 to read as follows:

27 § 200.63 Indictment; special information for aggravated family offense.

1 1. Whenever a person is charged with the commission or attempted
2 commission of an aggravated family offense as defined in section 240.75
3 of the penal law, an indictment or information for such offense shall be
4 accompanied by a special information, filed by the district attorney
5 with the court, alleging that the defendant was previously convicted of
6 a specified offense as defined in subdivision two of section 240.75 of
7 the penal law, that at the time of the previous offense the defendant
8 and the person against whom the offense was committed were members of
9 the same family or household as defined in subdivision one of section
10 530.11 of this chapter, and that such previous conviction took place
11 within the time period specified in subdivision one of section 240.75 of
12 the penal law. Except as provided herein, the people may not refer to
13 such special information during trial nor adduce any evidence concerning
14 the allegations therein.

15 2. Prior to the commencement of the trial, the court, in the absence
16 of the jury, must arraign the defendant upon such information and advise
17 him or her that he or she may admit each such allegation, deny any such
18 allegation or remain mute with respect to any such allegation. Depending
19 upon the defendant's response, the trial of the indictment or informa-
20 tion must then proceed as follows:

21 (a)(i) If the previous conviction is for an aggravated family offense
22 as defined in section 240.75 of the penal law, and the defendant admits
23 the previous conviction or that it took place within the time period
24 specified in subdivision one of section 240.75 of the penal law, such
25 admitted allegation or allegations shall be deemed established for the
26 purposes of the present prosecution, including sentencing pursuant to
27 section 70.00 of the penal law. The court must submit the case to the

1 jury as if such admitted allegation or allegations were not elements of
2 the offense.

3 (ii) If the defendant denies the previous conviction or remains mute
4 with respect to it, the people may prove, beyond a reasonable doubt,
5 that element of the offense before the jury as a part of their case.

6 (iii) If the defendant denies that the previous conviction took place
7 within the time period specified in subdivision one of section 240.75 of
8 the penal law, or remains mute with respect to that matter, the people
9 may prove, beyond a reasonable doubt, before the jury as part of their
10 case, that the previous conviction took place within the time period
11 specified.

12 (b)(i) If the previous conviction is for a specified offense as
13 defined in subdivision two of section 240.75 of the penal law, other
14 than an aggravated family offense, and the defendant admits such previ-
15 ous conviction, that it took place within the time period specified in
16 subdivision one of section 240.75 of the penal law, or that the defend-
17 ant and the person against whom the offense was committed were members
18 of the same family or household as defined in subdivision one of section
19 530.11 of this chapter, such admitted allegation or allegations shall be
20 deemed established for the purposes of the present prosecution, includ-
21 ing sentencing pursuant to section 70.00 of the penal law. The court
22 must submit the case to the jury as if the admitted allegation or alle-
23 gations were not elements of the offense.

24 (ii) If the defendant denies the previous conviction or remains mute
25 with respect to it, the people may prove, beyond a reasonable doubt,
26 that element of the offense before the jury as a part of their case.

27 (iii) If the defendant denies that the previous conviction took place
28 within the time period specified in subdivision one of section 240.75 of

1 the penal law, or remains mute with respect to that matter, the people
2 may prove, beyond a reasonable doubt, before the jury as part of their
3 case, that the previous conviction took place within the time period
4 specified.

5 (iv) If the defendant denies that the defendant and the person against
6 whom the previous offense was committed were members of the same family
7 or household as defined in subdivision one of section 530.11 of this
8 chapter, or remains mute with respect to that matter, the people may
9 prove, beyond a reasonable doubt, that element of the offense before the
10 jury as a part of their case.

11 § 4. Subdivisions 4 and 5 of section 240.30 of the penal law are
12 renumbered subdivisions 5 and 6 and a new subdivision 4 is added to read
13 as follows:

14 4. Strikes, shoves, kicks or otherwise subjects another person to
15 physical contact thereby causing physical injury to such person or to a
16 family or household member of such person as defined in section 530.11
17 of the criminal procedure law.

18 § 5. This act shall take effect on the sixtieth day after it shall
19 have become a law; provided that sections two and three of this act
20 shall take effect on the ninetieth day after it shall have become a law.

21 PART E

22 Section 1. Paragraph 2 of subsection (c) of section 2612 of the insur-
23 ance law, as amended by chapter 246 of the laws of 2005, is amended to
24 read as follows:

25 (2) "insurer" shall mean an insurer, a corporation organized pursuant
26 to article forty-three of this chapter, a municipal cooperative health

1 benefit plan established pursuant to article forty-seven of this chap-
2 ter, a health maintenance organization certified pursuant to article
3 forty-four of the public health law or a provider issued a special
4 certificate of authority pursuant to section four thousand four hundred
5 three-a of such law, or an agent, representative or designee thereof
6 regulated pursuant to this chapter.

7 § 2. Section 2612 of the insurance law is amended by adding a new
8 subsection (h) to read as follows:

9 (h)(1) For purposes of this subsection:

10 (A) "Claim related information" means all claim or billing information
11 relating specifically to an insured, subscriber or person covered by an
12 insurance policy or contract issued by the health insurer.

13 (B) "Health insurer" means an insurer licensed to write accident and
14 health insurance or salary protection insurance in this state, a corpo-
15 ration organized pursuant to article forty-three of this chapter, a
16 municipal cooperative health benefit plan established pursuant to arti-
17 cle forty-seven of this chapter, a health maintenance organization
18 certified pursuant to article forty-four of the public health law or a
19 provider issued a special certificate of authority pursuant to section
20 four thousand four hundred three-a of such law, or an agent, represen-
21 tative or designee thereof regulated pursuant to this chapter.

22 (2)(A) A health insurer shall accommodate a reasonable request by a
23 person covered by an insurance policy or contract issued by the health
24 insurer to receive communications of claim related information from the
25 health insurer by alternative means or at alternative locations if the
26 person clearly states that disclosure of all or part of the information
27 could endanger the person.

1 (B) If a child is covered by an insurance policy or contract issued by
2 the health insurer, then the child's parent or guardian may make a
3 request to the health insurer pursuant to subparagraph (A) of this para-
4 graph.

5 (3) A health insurer may require: a person to make a request pursuant
6 to paragraph two of this subsection in writing; the request to contain a
7 statement that disclosure of all or part of the claim related informa-
8 tion to which the request pertains could endanger the person or child;
9 and the specification of an alternative address, telephone number or
10 other method of contact.

11 (4) With respect to an insurer authorized to write accident and health
12 insurance in this state, this subsection shall apply only to a policy of
13 accident and health insurance or a policy of salary protection insur-
14 ance, as defined in subsection (a) of section one thousand one hundred
15 thirteen of this chapter.

16 (5) Nothing in this subsection shall prevent, hinder, or otherwise
17 affect the entry of an appropriate order made in the best interests of a
18 child by a court of competent jurisdiction adjudicating disputed issues
19 of child welfare or custody.

20 (6) Except with the express consent of the person making a request
21 pursuant to subparagraph (A) of paragraph two of this subsection, a
22 health insurer shall not disclose to the policyholder (i) the address,
23 telephone number, or any other personally identifying information of the
24 person who made the request or child for whose benefit a request was
25 made; (ii) the nature of the health care services provided; or (iii) the
26 name or address of the provider of the covered services.

1 (7) A health insurer that makes reasonable and good faith efforts to
2 comply with this subsection shall not be subject to civil or criminal
3 liability on the ground of non-compliance with this subsection.

4 (8) The superintendent, in consultation with the commissioner of
5 health, the office of children and family services and the office for
6 the prevention of domestic violence, shall promulgate rules to guide
7 health insurers in guarding against the disclosure of the information
8 protected pursuant to this subsection.

9 § 3. This act shall take effect on the first of January next succeed-
10 ing the date on which it shall have become a law, provided, however,
11 that effective immediately the addition, amendment or repeal of any rule
12 or regulation necessary for the implementation of this act on its effec-
13 tive date is authorized.

14 § 2. Severability clause. If any clause, sentence, paragraph, subdivi-
15 sion, section or part of this act shall be adjudged by any court of
16 competent jurisdiction to be invalid, such judgment shall not affect,
17 impair, or invalidate the remainder thereof, but shall be confined in
18 its operation to the clause, sentence, paragraph, subdivision, section
19 or part thereof directly involved in the controversy in which such judg-
20 ment shall have been rendered. It is hereby declared to be the intent of
21 the legislature that this act would have been enacted even if such
22 invalid provisions had not been included herein.

23 § 3. This act shall take effect immediately provided, however, that
24 the applicable effective date of Parts A through E of this act shall be
25 as specifically set forth in the last section of such Parts.

