

PROGRAM BILL #40

GOVERNOR'S PROGRAM BILL 2012

MEMORANDUM IN SUPPORT

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 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)

Purpose:

This bill would enhance protections for victims of domestic violence.

Part A

Summary of Provisions:

Section 1 of this part would amend Executive Law § 575(4) to add two new members to the Advisory Council on Domestic Violence and provide that the Executive Director of the Office for the Prevention of Domestic Violence (OPDV) is the chair of the council.

Section 2 of this part would repeal Executive Law § 575(10), which required OPDV to conduct a study of an address confidentiality program.

Section 3 of this part would add a new subdivision 10 to Executive Law § 575 to create a domestic violence fatality review team within OPDV.

Sections 4 of this part provides the effective date.

Existing Law:

Currently, each county is required to have a child fatality review team. New York City has a local law mandating aggregate city-wide domestic violence fatality reviews.

Statement in Support:

The primary purpose of a fatality review is to bring together domestic violence-related professionals to review domestic violence homicides and suicides, in an effort to understand more fully the factors involved and the sequence of events in a case, with the goal of identifying gaps in response or service delivery and determining how the system can be improved, in order to help prevent future deaths.

This legislation provides for a domestic violence fatality review team to be established by OPDV. The details of the reviews and identifying information obtained by the team would remain confidential, but OPDV would be required to report periodically to the Governor and the Legislature aggregate data and recommendations that result from the reviews. This structure would allow local communities to benefit from the review while providing important information to assist the State in identifying broader systemic challenges.

Legislative History:

This is a new proposal.

Budget Implications:

OPDV anticipates being able to implement this initiative within its existing resources.

Effective Date:

This part would take effect 180 days after it becomes a law.

Part B

Summary of Provisions:

Section 1 of this part adds a new paragraph (e) to subdivision 2 of Public Health Law § 4201 to provide that a person who is the subject of an Order of Protection protecting an

individual now deceased, or who has been charged with causing the death of such deceased person, shall not be eligible to exercise control of the disposition of the deceased's remains.

Section 2 of this part provides the effective date.

Existing Law:

Currently, Public Health Law § 4201 sets forth the priority of persons having the right to control the disposition of remains, without any consideration as to whether the person nominally entitled to exercise such right may have killed the deceased.

Statement in Support:

Recently, a woman in Western New York was brutally murdered, and her husband was charged with her murder. The husband refused, for an extended period of time, to make appropriate funeral arrangements, allowing the victim's body to remain in the county morgue. Because of the provisions of Public Health Law § 4201, the county was not authorized to allow other family members to lay this woman to rest. When the husband finally acted he disposed of her body in a way that her family believed was intentionally disrespectful and violated the woman's beliefs. People who exhibit extreme hostility towards a decedent, as evidenced by an order of protection or being the subject of criminal charges arising out of the treatment of such decedent, are not suitable persons to plan final funeral and burial arrangements.

Legislative History:

None.

Budget Implications:

None.

Effective Date:

This part would take effect 30 days after it becomes a law.

Part C

Summary of Provisions:

Section 1 of this part would amend Executive Law § 108(1) to add a definition of "public record" for purposes of state and local acceptance of substitute addresses and add a definition of "process" for purposes of service of process on the Secretary of State pursuant to the Address Confidentiality Program (ACP).

Section 2 of this part would amend Executive Law § 108 (2) to: (a) provide that applications for participation in the ACP may be affirmed rather than notarized; and (b) provide that other adult members of a program participant's household can participate in the program if necessary to ensure the safety of the primary participant, and require the other adult to consent to

participation and designate the Secretary of State as agent for service of process and receipt of mail.

Section 3 of this part would amend Executive Law § 108(4) to: (a) provide that law enforcement requests for actual address information be directed only to the Department of State by removing similar authority for state and local agencies that have been granted waivers to maintain actual address information; (b) allow a state or local agency to communicate an actual address to another agency if both agencies have waivers to maintain and communicate that information to each other; and (c) provide additional technical clarification regarding service of process on the Secretary of State.

Section 4 of this part would amend Executive Law § 108(6) to: (a) clarify that the Secretary of State will not release information about a program participant except in response to court orders and certain law enforcement requests; and (b) clarify that the Secretary of State may verify program participation by verifying information other than an actual address.

Section 5 of this part would amend section 2 of chapter 502 of the laws of 2011 to extend the effective date of the address confidentiality program legislation until July 15, 2012.

Existing Law:

L. 2011, c. 502 enacted Executive Law § 108 to establish an Address Confidentiality Program in the Department of State. This law is scheduled to take effect on June 23, 2012.

Statement in Support:

The ACP will allow victims of domestic violence to shield their actual addresses by allowing participants to use a substitute address maintained by the Department of State. Under this program, state and local governments must accept the substitute address, with extremely narrow exceptions, and the department will forward mail on to participants' actual addresses.

This part will make several clarifying and technical amendments to the ACP authorizing legislation to help ensure that the program meets the needs of participants and can be effectively implemented by the Department of State.

Legislative History:

This is a new proposal.

Budget Implications:

This part has no fiscal implications for the State.

Effective Date:

The bill would take effect immediately; provided that sections one through four of this part will take effect on the same date and in the same manner as L. 2011, c. 502.

Part D

Summary of Provisions:

Section 1 of this part would amend Criminal Procedure Law § 510.30 to require a court to consider certain factors when determining recognizance or bail for a defendant who is charged with an offense against a family or household member.

Section 2 of this part would establish the crime of "Aggravated Family Offense" as a class E felony, and outline the conduct that would constitute the new offense.

Section 3 of this part provides that a special information may be included with an indictment of an aggravated family offense. This section also sets forth the procedure for trying the case.

Section 4 of this part would amend Penal Law § 240.30 to add a new class A misdemeanor of "Aggravated Harassment in the Second Degree", committed when a defendant, with intent to harass, annoy, threaten or alarm another person, subjects such person to certain physical contact and thereby causes physical injury to such person or to such person's family or household member.

Section 5 of this part provides the effective date.

Existing Law:

Currently, a court need not consider any special factors when determining recognizance or bail in a family offense case. Moreover, there are no existing provisions to enhance penalties for domestic violence offenders who repeatedly commit misdemeanor level offenses.

Statement in Support:

Domestic violence is a problem of enormous prevalence and impact. It has been identified by the Surgeon General of the United States as the number one health problem affecting American women, and it floods the justice system of New York State as well as the courts of every other state in the nation. These amendments to the Penal Law and Criminal Procedure Law will provide additional protections to domestic violence victims.

First, under the Criminal Procedure Law, perpetrators of domestic violence offenses may be set free on low bail and thereby allowed to stalk, harm and sometimes kill their specifically targeted victims. If judges determining recognizance and bail in domestic violence cases were required to consider well established risk factors, such as an offender's prior violation of an order of protection and the accused's access to guns, many victims and their children would be spared additional harm and, in some tragic incidences, their lives. However, the bail statute currently does not consider the unique nature of domestic violence cases. This legislation permits judges to take such factors into account.

In addition to such preventative measures, many domestic violence abusers repeatedly commit low-level offenses against an intended victim, which result in those victims being subject to continuing harm and fear of harm. The record is replete with examples of repeat offenders who do are not subject to progressive discipline. For example, in New York City, a defendant with a long misdemeanor domestic violence history, involving multiple assaults and violations of orders of protection, chased his girlfriend down the street with a machete, biting and clawing at her in front of her three-year-old child. He was not charged as a felon. In another case, a defendant with 132 prior convictions, many of which stemmed from assaults against his partner, served nine months in jail for an assault against his daughter. Since his release on that case, the defendant has been arrested again for domestic assault.

This bill would amend the Penal Law to provide that a defendant with a history of domestic violence who repeatedly commits misdemeanor offenses could be prosecuted as a felon. It would create a new E felony crime of "Aggravated Family Offense," committed when a defendant commits a specified misdemeanor offense, and he or she was previously convicted of a "specified offense" against a family or household member in the previous five years.

It also would create a new class A misdemeanor of "Aggravated Harassment in the Second Degree", committed when a defendant, with intent to harass, annoy, threaten or alarm another person, subjects such person to certain physical contact and thereby causes physical injury to such person or to such person's family or household member.

Legislative History:

Similar bills have been introduced in previous years.

Budget Implications:

None.

Effective Date:

The revisions to the bail statute and the new Aggravated Harassment in the Second Degree would take effect 60 days after it becomes a law, and the new Aggravated Family Offense would take effect 90 days after becoming a law.

Part E

Summary of Provisions:

Section 1 of this part would amend Insurance Law § 2612(c)(2) by including within the definition of "insurer" a municipal cooperative health benefit plan established pursuant to Article 47 of the Insurance Law.

Section 2 of this part would amend Insurance Law § 2612 by adding a new subsection (h), which would define, for the purposes of that subsection, "health insurer," and "claim related

information” and require a health insurer to accommodate a reasonable request by a person covered by an insurance policy to receive communications or claim related information by alternative means or at alternative locations if so requested. It would apply only to a policy of accident and health insurance or a policy of salary protection insurance, as defined in Insurance Law § 1113(a).

Except with the express consent of the person making a request, a health insurer could not disclose to the policyholder the address, telephone number, or any other personally identifying information of the person who made the request or child for whose benefit the request was made; the nature of the health care services provided; or the name or address of the provider of the covered services.

Section 3 provides for the effective date of the bill.

Existing Law:

Insurance Law § 2612 states that if a person covered under an insurance policy delivers to the insurer a valid order of protection against another person covered by the insurance policy, then the insurer is prohibited for the duration of the order of protection from disclosing to the person against whom the order was issued, the address and telephone number of the insured. In the absence of such an order, § 2612 does not require a health insurer to accommodate a reasonable request by a person to receive communications of claim related information from the health insurer by alternative means or at an alternative location.

Statement in Support:

This legislation allows persons who may be in danger, such as victims of domestic violence, to seek medical and mental health services and to use their health insurance to pay for those services without fear that insurance claims, forms, or billing correspondence will be sent to the address of the policyholder, which may be the same address as the alleged abuser. Such individuals would have the opportunity to designate alternative contact information so they may receive health insurance correspondence in a safe location of their own choosing, such as the home of a friend or family member, a post office box, or a shelter. While § 2612 currently bars disclosure of an address and phone number where an order of protection is in place, this bill will greatly expand the information to be protected and not require such an order, thereby affording greater protection for victims of domestic violence.

Legislative History:

This is a new bill.

Budget Implications:

None.

Effective Date:

This bill will take effect on January 1 of the year next succeeding the date upon which it becomes law. The Superintendent may immediately promulgate, amend or repeal rules and regulations to effectuate the bill.