

1281

2009-2010 Regular Sessions

I N S E N A T E

January 28, 2009

Introduced by Sen. O. JOHNSON -- read twice and ordered printed, and
when printed to be committed to the Committee on Children and Families

AN ACT to amend the social services law, in relation to taking a child
into protective custody on the basis of an allegation of a parent or
guardian with Munchausen syndrome by proxy

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision 1 of section 417 of the social services law is
2 amended by adding two new paragraphs (c) and (d) to read as follows:
3 (C) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, NO
4 CHILD SHALL BE TAKEN INTO PROTECTIVE CUSTODY PURSUANT TO THIS SECTION
5 WHEN THE BASIS THEREOF IS AN ALLEGATION THAT A CUSTODIAL PARENT OR GUAR-
6 DIAN HAS MUNCHAUSEN SYNDROME BY PROXY, UNLESS AND UNTIL A FAMILY COURT
7 SHALL HAVE HELD A HEARING, WITH AN OPPORTUNITY FOR SUCH PARENT OR GUARD-
8 IAN TO BE HEARD, AND SHALL HAVE FOUND REASONABLE CAUSE TO BELIEVE SUCH
9 ALLEGATIONS ARE TRUE. THE PARENT OR GUARDIAN ALLEGED TO SUFFER FROM
10 MUNCHAUSEN SYNDROME BY PROXY SHALL, AT ANY SUCH HEARING, BE ALLOWED TO
11 PRESENT EVIDENCE, INCLUDING EXPERT TESTIMONY, THAT HE OR SHE DOES NOT
12 SUFFER FROM SUCH SYNDROME.
13 (D) IN ANY HEARING HELD PURSUANT TO PARAGRAPH (C) OF THIS SUBDIVISION,
14 IF THE CHILD'S PEDIATRICIAN, PRIMARY CARE PHYSICIAN OR SPECIALIST
15 CHARGED WITH TREATING SUCH CHILD DISPUTES THE ALLEGATION OF MUNCHAUSEN
16 SYNDROME BY PROXY MADE AGAINST THE CHILD'S PARENT OR GUARDIAN, AND IF
17 SUCH PHYSICIAN TESTIFIES, WHETHER BY AFFIDAVIT OR BEFORE THE COURT, THAT
18 THE CHILD'S MEDICAL TREATMENT IN QUESTION OR THE CHILD'S COURSE OF
19 TREATMENT IN GENERAL IS OR WAS NECESSARY FOR THE HEALTH AND WELL-BEING
20 OF SUCH CHILD, THEN THE FAMILY COURT SHALL FIND THAT THE ALLEGATION OF
21 MUNCHAUSEN SYNDROME BY PROXY HAS BEEN REBUTTED, AND SHALL NOT ENTER A
22 FINDING OF ABUSE OR NEGLECT BASED UPON MUNCHAUSEN SYNDROME BY PROXY
23 AGAINST THE CHILD'S PARENT OR GUARDIAN, AND SHALL NOT ORDER THAT THE

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

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1 CHILD BE TAKEN INTO PROTECTIVE CUSTODY FOR REASONS OF MUNCHAUSEN
2 SYNDROME BY PROXY.
3 S 2. This act shall take effect immediately, and shall apply to any
4 child in protective custody on or after such effective date.