

3306

2011-2012 Regular Sessions

I N S E N A T E

February 16, 2011

Introduced by Sens. MAZIARZ, RANZENHOFER, ADDABBO, DeFRANCISCO, FUSCHILLO, GALLIVAN, GRISANTI, KENNEDY, LARKIN, MARTINS, McDONALD, OPPENHEIMER, ZELDIN -- 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 requiring investigating officials of the department of social services or the office of children and family services to investigate the homes of children and adults about whom reports have been filed and requiring such officials to apply for a court order allowing access to the home if two or more such reports have been filed regarding such child or adult and access thereto has been denied; and to amend the penal law, in relation to criminalizing the act of denying access to an individual who is the subject of a report to child or adult protective services

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

1 Section 1. Short title. This act shall be known and may be cited as
2 "Laura Cummings Law".
3 S 2. The section heading and opening paragraph of section 421 of the
4 social services law, as amended by chapter 718 of the laws of 1986, are
5 amended to read as follows:
6 Responsibility of the [department] OFFICE OF CHILDREN AND FAMILY
7 SERVICES. The [department] OFFICE OF CHILDREN AND FAMILY SERVICES
8 shall:
9 S 3. Subdivision 3 of section 421 of the social services law, as
10 amended by chapter 718 of the laws of 1986, paragraph (a) as amended by
11 chapter 110 of the laws of 1989 and the closing paragraph as amended by
12 chapter 320 of the laws of 1990, is amended to read as follows:
13 3. promulgate regulations setting forth requirements for the perform-
14 ance by local social services departments of the duties and powers
15 imposed and conferred upon them by the provisions of this title and of
16 article ten of the family court act. Such regulations shall establish

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

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uniform requirements for the investigation of reports of child abuse or maltreatment under this title. The [department] OFFICE OF CHILDREN AND FAMILY SERVICES shall also issue guidelines which shall set forth the circumstances or conditions under which:

(a) personal contact shall be made with the child named in the report and any other children in the same household, including interviewing such child or children absent the subject of the report whenever possible and appropriate;

(b) photographs of visible physical injuries or trauma of children who may be the victims of abuse or maltreatment shall be taken or arranged for;

(c) medical examination of a child who may be a victim of abuse or maltreatment and documentation of findings of such examination, shall be required[.];

(D) INVESTIGATIONS SHALL BE MADE OF THE HOME OF THE CHILD NAMED IN THE REPORT, INCLUDING BY THE AUTHORITY OF IMMEDIATE COURT ORDERS OBTAINED FROM THE FAMILY COURT WHENEVER ACCESS THERETO IS DENIED; PROVIDED, HOWEVER, SUCH GUIDELINES SHALL REQUIRE THAT SUCH AN IMMEDIATE COURT ORDER BE SOUGHT WHEN TWO OR MORE REPORTS ARE MADE IN REFERENCE TO THE SAME PERSON RELATING TO THE ABUSE OR MALTREATMENT OF A CHILD, INCLUDING UNFOUNDED AND CLOSED CASES NOT FOUND TO BE MISTAKEN OR FALSE REPORTS, AND THE LOCAL CHILD PROTECTIVE SERVICES ARE NOT ABLE TO LOCATE THE SUBJECT CHILD OR HAS BEEN DENIED ACCESS TO THE HOME OR TO THE CHILD NAMED IN THE REPORT OR TO ANY CHILDREN IN THE HOUSEHOLD.

The [department] OFFICE OF CHILDREN AND FAMILY SERVICES shall promulgate regulations to establish standards for intervention, criteria for case closings, criteria for determining whether or not to initiate a child protective proceeding, and criteria for the formulation of treatment plans and for the delivery of child protective services including specification of the services to be classified as child protective services, which shall also apply to any society for the prevention of cruelty to children which has entered into a currently valid contract with a local department of social services to investigate child abuse or maltreatment reports. The [department] OFFICE OF CHILDREN AND FAMILY SERVICES shall promulgate regulations establishing minimum standards and practices for the delivery of child protective services in connection with monitoring and supervising respondents and their families as ordered by a family court pursuant to section ten hundred thirty-nine and paragraphs (i), (iii), (iv) and (v) of subdivision (a) of section ten hundred fifty-two of the family court act. Such regulations shall also require local child protective services to comply with notification requirements of the family court act in connection with such monitoring and supervisory responsibilities.

S 4. Subdivision 6-a of section 424 of the social services law, as added by chapter 740 of the laws of 2006, is amended to read as follows:

6-a. upon receipt of such report and commencement of the appropriate investigation, where the child protective service is not able to locate the child or has been denied access to the home or denied access to the child named in the report or to any children in the household, and where the child protective investigator has cause to believe a child or children's life or health may be in danger immediately advise the parent or person legally responsible for the child's care or with whom the child is residing that, when denied sufficient access to the child or other children in the home, the child protective investigator may contact the family court to seek an immediate court order to gain access to the home and/or the child named in the report or any children in the household

1 without further notice and that while such request is being made to such
2 court, law enforcement may be contacted and if contacted shall respond
3 and shall remain where the child or children are or are believed to be
4 present; PROVIDED, HOWEVER, THAT WHEN TWO OR MORE REPORTS ARE MADE IN
5 REFERENCE TO THE SAME PERSON RELATING TO THE ABUSE OR MALTREATMENT OF A
6 CHILD, INCLUDING UNFOUNDED AND CLOSED CASES NOT FOUND TO BE MISTAKEN OR
7 FALSE REPORTS, AND THE CHILD PROTECTIVE INVESTIGATOR IS NOT ABLE TO
8 LOCATE THE SUBJECT CHILD OR HAS BEEN DENIED ACCESS TO THE HOME OR TO THE
9 CHILD NAMED IN THE REPORT OR TO ANY CHILDREN IN THE HOUSEHOLD, THE CHILD
10 PROTECTIVE INVESTIGATOR SHALL CONTACT THE FAMILY COURT TO SEEK SUCH AN
11 IMMEDIATE COURT ORDER;

12 S 5. Paragraph (a) of subdivision 1 of section 473 of the social
13 services law, as amended by chapter 395 of the laws of 1995, is amended
14 to read as follows:

15 (a) receiving and investigating reports of seriously impaired individ-
16 uals who may be in need of protection; WHICH INVESTIGATIONS SHALL
17 INCLUDE INVESTIGATION OF THE HOME OF AN IMPAIRED INDIVIDUAL NAMED IN THE
18 REPORT, INCLUDING BY THE AUTHORITY OF IMMEDIATE COURT ORDERS OBTAINED
19 FROM THE FAMILY COURT WHENEVER ACCESS THERETO IS DENIED AS SET FORTH IN
20 SECTION FOUR HUNDRED SEVENTY-THREE-A OF THIS ARTICLE;

21 S 6. Section 473-c of the social services law is amended by adding a
22 new subdivision 3-a to read as follows:

23 3-A. WHEN TWO OR MORE REPORTS ARE MADE IN REFERENCE TO THE SAME PERSON
24 RELATING TO THE ABUSE OR MALTREATMENT OF AN ADULT, INCLUDING UNFOUNDED
25 AND CLOSED CASES NOT FOUND TO BE MISTAKEN OR FALSE REPORTS, AND THE
26 SOCIAL SERVICES OFFICIAL IS NOT ABLE TO LOCATE THE SUBJECT ADULT OR HAS
27 BEEN DENIED ACCESS TO THE HOME OR TO THE ADULT NAMED IN THE REPORT, THE
28 SOCIAL SERVICES OFFICIAL SHALL CONTACT THE FAMILY COURT TO SEEK SUCH AN
29 IMMEDIATE COURT ORDER AS DESCRIBED IN THIS SECTION.

30 S 7. Subparagraphs (y) and (z) of paragraph (A) of subdivision 4 of
31 section 422 of the social services law, subparagraph (y) as amended and
32 subparagraph (z) as added by section 1 of part A of chapter 327 of the
33 laws of 2007, are amended and a new subparagraph (aa) is added to read
34 as follows:

35 (y) members of a citizen review panel as established pursuant to
36 section three hundred seventy-one-b of this article; provided, however,
37 members of a citizen review panel shall not disclose to any person or
38 government official any identifying information which the panel has been
39 provided and shall not make public other information unless otherwise
40 authorized by statute; [and]

41 (z) an entity with appropriate legal authority in another state to
42 license, certify or otherwise approve prospective foster and adoptive
43 parents where disclosure of information regarding the prospective foster
44 or adoptive parents and other persons over the age of eighteen residing
45 in the home of such prospective parents is required by paragraph twenty
46 of subdivision (a) of section six hundred seventy-one of title forty-two
47 of the United States code[.]; AND

48 (AA) A SOCIAL SERVICES OFFICIAL WHO IS INVESTIGATING WHETHER AN ADULT
49 IS IN NEED OF PROTECTIVE SERVICES IN ACCORDANCE WITH THE PROVISIONS OF
50 SECTION FOUR HUNDRED SEVENTY-THREE OF THIS CHAPTER, AND WHEN SUCH OFFI-
51 CIAL HAS REASONABLE CAUSE TO BELIEVE THAT SUCH PERSON MAY BE IN NEED OF
52 PROTECTIVE SERVICES DUE TO THE ACTIONS OF AN INDIVIDUAL OR INDIVIDUALS
53 THAT HAD ACCESS TO SUCH ADULT WHEN HE OR SHE WAS A CHILD, AND SUCH ADULT
54 EITHER CURRENTLY RESIDES WITH SUCH INDIVIDUAL OR INDIVIDUALS, OR DID SO
55 WITHIN THE LAST FIVE YEARS. UNDER THIS PARAGRAPH, INFORMATION IS LIMITED
56 TO VERIFICATION BY THE CITY OR COUNTY SOCIAL SERVICES COMMISSIONER THAT

1 THERE WAS OR WAS NOT AN INDICATED REPORT OF CHILD ABUSE OR NEGLECT
2 INVOLVING SUCH ADULT AND SUCH INDIVIDUAL OR INDIVIDUALS.

3 S 8. Paragraphs (B), (C) and (D) of subdivision 4 of section 422 of
4 the social services law, as amended by chapter 677 of the laws of 1985,
5 are amended to read as follows:

6 (B) Notwithstanding any inconsistent provision of law to the contrary,
7 a city or county social services commissioner may withhold, in whole or
8 in part, the release of any information which he or she is authorized to
9 make available to persons or agencies identified in subparagraphs (a),
10 (k), [(l),] (m), (n)[,] AND (o)[, (p) and (q)] of paragraph (A) of this
11 subdivision if such commissioner determines that such information is not
12 related to the purposes for which such information is requested or when
13 such disclosure will be detrimental to the child named in the report.

14 (C) A city or county social services commissioner who denies access by
15 persons or agencies identified in subparagraphs (a), (k), [(l),] (m),
16 (n)[,] AND (o)[, (p) and (q)] of paragraph (A) of this subdivision to
17 records, reports or other information or parts thereof maintained by
18 such commissioner in accordance with this title shall, within ten days
19 from the date of receipt of the request fully explain in writing to the
20 person requesting the records, reports or other information the reasons
21 for the denial.

22 (D) A person or agency identified in subparagraphs (a), (k), [(l),]
23 (m), (n)[,] AND (o)[, (p) and (q)] of paragraph (A) of this subdivision
24 who is denied access to records, reports or other information or parts
25 thereof maintained by a local department pursuant to this title may
26 bring a proceeding for review of such denial pursuant to article seven-
27 ty-eight of the civil practice law and rules.

28 S 9. Section 195.05 of the penal law, as amended by chapter 269 of the
29 laws of 1998, is amended to read as follows:

30 S 195.05 Obstructing governmental administration in the second degree.

31 A person is guilty of obstructing governmental administration IN THE
32 SECOND DEGREE when he OR SHE intentionally obstructs, impairs or
33 perverts the administration of law or other governmental function or
34 prevents or attempts to prevent a public servant from performing an
35 official function[,]:

36 1. by means of intimidation, physical force or interference, or by
37 means of any independently unlawful act[, or];

38 2. by means of interfering, whether or not physical force is involved,
39 with radio, telephone, television or other telecommunications systems
40 owned or operated by the state, or a county, city, town, village, fire
41 district or emergency medical service [or];

42 3. by means of releasing a dangerous animal under circumstances evinc-
43 ing the actor's intent that the animal obstruct governmental adminis-
44 tration; OR

45 4. BY DENYING OR ATTEMPTING TO DENY AN INVESTIGATION OF CHILD PROTEC-
46 TIVE SERVICES OR OF ADULT PROTECTIVE SERVICES, ACCESS TO INTERVIEW AN
47 ALLEGED VICTIM.

48 Obstructing governmental administration IN THE SECOND DEGREE is a
49 class A misdemeanor.

50 S 10. This act shall take effect immediately.