

3306--A

2011-2012 Regular Sessions

I N S E N A T E

February 16, 2011

Introduced by Sens. MAZIARZ, RANZENHOFER, ADDABBO, DeFRANCISCO, FUSCHILLO, GALLIVAN, GOLDEN, GRISANTI, KENNEDY, KRUEGER, LARKIN, LIBOUS, MARTINS, McDONALD, OPPENHEIMER, PERKINS, ZELDIN -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 obtain a supervisor's approval or otherwise requiring such 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:

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

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1 3. promulgate regulations setting forth requirements for the perform-
2 ance by local social services departments of the duties and powers
3 imposed and conferred upon them by the provisions of this title and of
4 article ten of the family court act. Such regulations shall establish
5 uniform requirements for the investigation of reports of child abuse or
6 maltreatment under this title. The [department] OFFICE OF CHILDREN AND
7 FAMILY SERVICES shall also issue guidelines which shall set forth the
8 circumstances or conditions under which:

9 (a) personal contact shall be made with the child named in the report
10 and any other children in the same household, including interviewing
11 such child or children absent the subject of the report whenever possi-
12 ble and appropriate;

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

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

19 (D) INVESTIGATIONS SHALL BE MADE OF THE HOME OF THE CHILD NAMED IN THE
20 REPORT, INCLUDING BY THE AUTHORITY OF IMMEDIATE COURT ORDERS OBTAINED
21 FROM THE FAMILY COURT WHENEVER ACCESS THERETO IS DENIED; PROVIDED,
22 HOWEVER, SUCH GUIDELINES SHALL PRESUME THAT SUCH AN IMMEDIATE COURT
23 ORDER BE SOUGHT WHEN TWO OR MORE REPORTS ARE MADE IN REFERENCE TO THE
24 SAME PERSON RELATING TO THE ABUSE OR MALTREATMENT OF A CHILD, INCLUDING
25 UNFOUNDED AND/OR CLOSED CASES NOT FOUND TO BE MISTAKEN OR FALSE REPORTS,
26 AND THE LOCAL CHILD PROTECTIVE SERVICES ARE NOT ABLE TO LOCATE THE
27 SUBJECT CHILD OR HAS BEEN DENIED ACCESS TO THE HOME OR TO THE CHILD
28 NAMED IN THE REPORT OR TO ANY CHILDREN IN THE HOUSEHOLD. ANY DECISION
29 NOT TO SEEK SUCH AN ORDER MUST BE REVIEWED BY A SUPERVISOR OF THE SOCIAL
30 SERVICES DISTRICT AND DOCUMENTED IN THE INVESTIGATION FILE TO DETERMINE
31 THAT THE FACTORS REQUIRED UNDER SECTION ONE THOUSAND THIRTY-FOUR OF THE
32 FAMILY COURT ACT DO NOT EXIST.

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

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

54 6-a. upon receipt of such report and commencement of the appropriate
55 investigation, where the child protective service is not able to locate
56 the child or has been denied access to the home or denied access to the

1 child named in the report or to any children in the household, and where
2 the child protective investigator has cause to believe a child or chil-
3 dren's life or health may be in danger immediately advise the parent or
4 person legally responsible for the child's care or with whom the child
5 is residing that, when denied sufficient access to the child or other
6 children in the home, the child protective investigator may contact the
7 family court to seek an immediate court order to gain access to the home
8 and/or the child named in the report or any children in the household
9 without further notice and that while such request is being made to such
10 court, law enforcement may be contacted and if contacted shall respond
11 and shall remain where the child or children are or are believed to be
12 present; PROVIDED, HOWEVER, THAT WHEN TWO OR MORE REPORTS ARE MADE IN
13 REFERENCE TO THE SAME PERSON RELATING TO THE ABUSE OR MALTREATMENT OF A
14 CHILD, INCLUDING UNFOUNDED AND/OR CLOSED CASES NOT FOUND TO BE MISTAKEN
15 OR FALSE REPORTS, AND THE CHILD PROTECTIVE INVESTIGATOR IS NOT ABLE TO
16 LOCATE THE SUBJECT CHILD OR HAS BEEN DENIED ACCESS TO THE HOME OR TO THE
17 CHILD NAMED IN THE REPORT OR TO ANY CHILDREN IN THE HOUSEHOLD, THE CHILD
18 PROTECTIVE INVESTIGATOR SHOULD CONTACT THE FAMILY COURT TO SEEK SUCH AN
19 IMMEDIATE COURT ORDER, AND ANY DECISION NOT TO SEEK SUCH AN ORDER MUST
20 BE REVIEWED BY A SUPERVISOR OF THE SOCIAL SERVICES DISTRICT AND DOCU-
21 MENTED IN THE INVESTIGATION FILE TO DETERMINE THAT THE FACTORS REQUIRED
22 UNDER SECTION ONE THOUSAND THIRTY-FOUR OF THE FAMILY COURT ACT DO NOT
23 EXIST;

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

27 (a) receiving and investigating reports of seriously impaired individ-
28 uals who may be in need of protection; WHICH INVESTIGATIONS SHALL
29 INCLUDE INVESTIGATION OF THE HOME OF AN IMPAIRED INDIVIDUAL NAMED IN THE
30 REPORT, INCLUDING BY THE AUTHORITY OF IMMEDIATE COURT ORDERS WHENEVER
31 ACCESS THERETO IS DENIED AS SET FORTH IN SECTION FOUR HUNDRED
32 SEVENTY-THREE-A OF THIS ARTICLE;

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

35 3-A. WHEN TWO OR MORE REPORTS ARE MADE IN REFERENCE TO THE SAME PERSON
36 RELATING TO THE ABUSE OR MALTREATMENT OF AN ADULT PURSUANT TO THIS ARTI-
37 CLE, OR OF SUCH PERSON AS A CHILD PURSUANT TO ARTICLE SIX OF THIS CHAP-
38 TER, INCLUDING UNFOUNDED AND/OR CLOSED CASES NOT FOUND TO BE MISTAKEN OR
39 FALSE REPORTS, AND THE SOCIAL SERVICES OFFICIAL IS NOT ABLE TO LOCATE
40 THE SUBJECT ADULT OR HAS BEEN DENIED ACCESS TO THE HOME OR TO THE ADULT
41 NAMED IN THE REPORT, THE SOCIAL SERVICES OFFICIAL SHALL SEEK AN IMMEDI-
42 ATE COURT ORDER AS DESCRIBED IN THIS SECTION. ANY DECISION NOT TO SEEK
43 SUCH AN ORDER MUST BE REVIEWED BY A SUPERVISOR OF THE SOCIAL SERVICES
44 DISTRICT AND DOCUMENTED IN THE INVESTIGATION FILE TO DETERMINE THAT THE
45 FACTORS REQUIRED UNDER SECTION ONE THOUSAND THIRTY-FOUR OF THE FAMILY
46 COURT ACT DO NOT EXIST.

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

52 (y) members of a citizen review panel as established pursuant to
53 section three hundred seventy-one-b of this article; provided, however,
54 members of a citizen review panel shall not disclose to any person or
55 government official any identifying information which the panel has been

provided and shall not make public other information unless otherwise authorized by statute; [and]

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

(AA) A SOCIAL SERVICES OFFICIAL WHO IS INVESTIGATING WHETHER AN ADULT IS IN NEED OF PROTECTIVE SERVICES IN ACCORDANCE WITH THE PROVISIONS OF SECTION FOUR HUNDRED SEVENTY-THREE OF THIS CHAPTER, AND WHEN SUCH OFFICIAL HAS REASONABLE CAUSE TO BELIEVE THAT SUCH PERSON MAY BE IN NEED OF PROTECTIVE SERVICES DUE TO THE ACTIONS OF AN INDIVIDUAL OR INDIVIDUALS THAT HAD ACCESS TO SUCH ADULT WHEN HE OR SHE WAS A CHILD, AND SUCH ADULT EITHER CURRENTLY RESIDES WITH SUCH INDIVIDUAL OR INDIVIDUALS, OR DID SO WITHIN THE LAST FIVE YEARS. UNDER THIS PARAGRAPH, INFORMATION IS LIMITED TO VERIFICATION BY THE CITY OR COUNTY SOCIAL SERVICES COMMISSIONER THAT THERE WAS OR WAS NOT AN INDICATED REPORT OF CHILD ABUSE OR NEGLECT INVOLVING SUCH ADULT AND SUCH INDIVIDUAL OR INDIVIDUALS.

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

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

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

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

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

S 195.05 Obstructing governmental administration in the second degree.

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

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

1 2. by means of interfering, whether or not physical force is involved,
2 with radio, telephone, television or other telecommunications systems
3 owned or operated by the state, or a county, city, town, village, fire
4 district or emergency medical service [or];
5 3. by means of releasing a dangerous animal under circumstances evinc-
6 ing the actor's intent that the animal obstruct governmental adminis-
7 tration; OR
8 4. BY, WITH INTENT TO CONCEAL ABUSE AND/OR NEGLECT, DENYING OR
9 ATTEMPTING TO DENY AN INVESTIGATION OF CHILD PROTECTIVE SERVICES OR OF
10 ADULT PROTECTIVE SERVICES, ACCESS TO INTERVIEW AN ALLEGED VICTIM.
11 Obstructing governmental administration IN THE SECOND DEGREE is a
12 class A misdemeanor.
13 S 10. This act shall take effect immediately.