

3306--B

Cal. No. 405

2011-2012 Regular Sessions

I N   S E N A T E

February 16, 2011

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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 -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the social services law, in relation to investigations of the homes of adults about whom reports have been filed and requiring officials to obtain a supervisor's approval or otherwise requiring application for a court order allowing access to the home; 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. Paragraph (a) of subdivision 1 of section 473 of the social  
10    services law, as amended by chapter 395 of the laws of 1995, is amended  
11    to read as follows:  
12    (a) receiving and investigating reports of seriously impaired individ-  
13    uals who may be in need of protection; SUCH INVESTIGATIONS SHALL INCLUDE

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

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1 INVESTIGATION OF THE HOME OF AN IMPAIRED INDIVIDUAL NAMED IN THE REPORT,  
2 INCLUDING BY THE AUTHORITY OF IMMEDIATE COURT ORDERS WHENEVER ACCESS  
3 THERETO IS DENIED AS SET FORTH IN SECTION FOUR HUNDRED SEVENTY-THREE-A  
4 OF THIS ARTICLE;

5 S 4. Section 473-c of the social services law is amended by adding a  
6 new subdivision 1-a to read as follows:

7 1-A. EXCEPT IN A CITY WITH A POPULATION OF ONE MILLION OR MORE, IN  
8 EVERY SITUATION WHERE A SOCIAL SERVICES OFFICIAL OR CASEWORKER, WHO IS  
9 INVESTIGATING WHETHER AN ADULT IS IN NEED OF PROTECTIVE SERVICES, IS  
10 DENIED ACCESS TO THAT ADULT TO SUFFICIENTLY ASSESS IF THAT ADULT IS IN  
11 NEED OF SUCH SERVICES, THE OFFICIAL OR CASEWORKER SHALL IMMEDIATELY  
12 DISCUSS THE MATTER WITH THE SUPERVISOR OF THE ADULT SERVICES DIVISION OF  
13 THE SOCIAL SERVICES DISTRICT AS WELL AS WITH THE APPROPRIATE COUNTY  
14 LEGAL COUNSEL ASSIGNED TO SUCH MATTERS, AND A DECISION SHALL BE MADE AS  
15 TO THE APPROPRIATENESS OF SEEKING A COURT ORDER OF ACCESS PURSUANT TO  
16 THIS SECTION. IF THE DECISION IS MADE TO SEEK AN ORDER, THAT SHALL OCCUR  
17 FORTHWITH, AND IF THE DECISION IS NOT TO SEEK SUCH AN ORDER, IT SHALL BE  
18 RECORDED WITH THE RATIONALE FOR SUCH DECISION IN THE RECORDS.

19 S 5. Subdivision 4 of section 473-c of the social services law, as  
20 added by chapter 413 of the laws of 1986, is amended to read as follows:

21 4. If the court is satisfied that there is reasonable cause to believe  
22 that a person in need of protective services for adults may be found at  
23 the premises described in the application, that such person may be in  
24 need of protective services for adults, and that access to such person  
25 has been refused, it shall grant the application and issue an order  
26 authorizing the social services official and such other individuals as  
27 may be designated by the said official, accompanied by a police officer,  
28 to enter the premises to conduct an assessment to determine whether the  
29 person named in the application is in need of protective services for  
30 adults. The [standard for proof and] procedure for such an authorization  
31 shall be the same as for a search warrant under the criminal procedure  
32 law.

33 S 6. Subparagraphs (y) and (z) of paragraph (A) of subdivision 4 of  
34 section 422 of the social services law, subparagraph (y) as amended and  
35 subparagraph (z) as added by section 1 of part A of chapter 327 of the  
36 laws of 2007, are amended and a new subparagraph (aa) is added to read  
37 as follows:

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

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

51 (AA) A SOCIAL SERVICES OFFICIAL WHO IS INVESTIGATING WHETHER AN ADULT  
52 IS IN NEED OF PROTECTIVE SERVICES IN ACCORDANCE WITH THE PROVISIONS OF  
53 SECTION FOUR HUNDRED SEVENTY-THREE OF THIS CHAPTER, AND WHEN SUCH OFFI-  
54 CIAL STATES THAT HE OR SHE HAS REASONABLE CAUSE TO BELIEVE THAT SUCH  
55 PERSON MAY BE IN NEED OF PROTECTIVE SERVICES AND THAT SUCH PERSON MAY  
56 HAVE BEEN THE SUBJECT OF A CHILD PROTECTIVE REPORT WITHIN THE LAST FIVE

1 YEARS. SUCH INFORMATION MAY BE REQUESTED AND RELEASED ACROSS ALL SOCIAL  
2 SERVICES DISTRICTS IN THE STATE.

3 S 7. 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 8. 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, WITH INTENT TO CONCEAL ABUSE AND/OR NEGLECT, DENYING OR  
46 ATTEMPTING TO DENY AN INVESTIGATION OF CHILD PROTECTIVE SERVICES OR OF  
47 ADULT PROTECTIVE SERVICES, ACCESS TO INTERVIEW AN ALLEGED VICTIM.

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

50 S 9. This act shall take effect immediately.