

STATE OF NEW YORK

8047

2021-2022 Regular Sessions

IN ASSEMBLY

June 11, 2021

Introduced by M. of A. BYRNES -- read once and referred to the Committee on Children and Families

AN ACT to amend the social services law and the family court act, in relation to allowing certain previous investigations to be re-examined using a fair preponderance of the evidence standard

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivisions 6 and 7 of section 412 of the social services
2 law, as amended by section 1 of part R of chapter 56 of the laws of
3 2020, are amended to read as follows:

4 6. An "unfounded report" means any report made pursuant to this title
5 unless an investigation: (i) commenced on or before December thirty-
6 first, two thousand twenty-one determines that some credible evidence of
7 the alleged abuse or maltreatment exists; or (ii) commenced on or after
8 January first, two thousand twenty-two determines that a fair preponder-
9 ance of the evidence of the alleged abuse or maltreatment exists; or
10 (iii) commenced at any time in which the subject of the report is a
11 victim of domestic violence and the sole basis for such report is that
12 such subject failed to provide adequate guardianship due to engaging in
13 acts of domestic violence determines that a fair preponderance of the
14 evidence of the alleged abuse or maltreatment exists;

15 7. An "indicated report" means a report made pursuant to this title if
16 an investigation: (i) commenced on or before December thirty-first, two
17 thousand twenty-one determines that some credible evidence of the
18 alleged abuse or maltreatment exists; or (ii) commenced on or after
19 January first, two thousand twenty-two determines that a fair preponder-
20 ance of the evidence of the alleged abuse or maltreatment exists; or
21 (iii) commenced at any time in which the subject of the report is a
22 victim of domestic violence and the sole basis for such report is that
23 such subject failed to provide adequate guardianship due to engaging in

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

LBD10966-01-1

1 acts of domestic violence determines that a fair preponderance of the
2 evidence of the alleged abuse or maltreatment exists;

3 § 2. The opening paragraph of paragraph (a) of subdivision 5 of
4 section 422 of the social services law, as amended by section 3 of part
5 R of chapter 56 of the laws of 2020, is amended to read as follows:

6 Unless an investigation of a report conducted pursuant to this title
7 that is commenced on or before December thirty-first, two thousand twen-
8 ty-one determines that there is some credible evidence of the alleged
9 abuse or maltreatment or unless an investigation of a report conducted
10 pursuant to this title that is commenced on or after January first, two
11 thousand twenty-two determines that there is a fair preponderance of the
12 evidence that the alleged abuse or maltreatment occurred or unless an
13 investigation of a report conducted pursuant to this title that is
14 commenced at any time in which the subject of the report is a victim of
15 domestic violence and the sole basis for such report is that such
16 subject failed to provide adequate guardianship due to engaging in acts
17 of domestic violence determines that a fair preponderance of the
18 evidence of the alleged abuse or maltreatment occurred, all information
19 identifying the subjects of the report and other persons named in the
20 report shall be legally sealed forthwith by the central register and any
21 local child protective services which investigated the report. Such
22 unfounded reports may only be unsealed and made available:

23 § 3. Paragraph (c) of subdivision 5 of section 422 of the social
24 services law, as amended by section 4 of part R of chapter 56 of the
25 laws of 2020, is amended to read as follows:

26 (c) Notwithstanding any other provision of law, the office of children
27 and family services may, in its discretion, grant a request to expunge
28 an unfounded report where: (i) the source of the report was convicted of
29 a violation of subdivision three of section 240.55 of the penal law in
30 regard to such report; or (ii) the subject of the report presents clear
31 and convincing evidence that affirmatively refutes the allegation of
32 abuse or maltreatment; provided however, that the absence of a fair
33 preponderance of the evidence supporting the allegation of abuse or
34 maltreatment shall not be the sole basis to expunge the report, except
35 that any report in which the subject of such report is a victim of
36 domestic violence and the sole basis for such report is that such
37 subject failed to provide adequate guardianship due to engaging in acts
38 of domestic violence may be expunged where the absence of a fair prepon-
39 derance of the evidence supporting the allegation of abuse or maltreat-
40 ment is the sole basis to expunge such report. Nothing in this para-
41 graph shall require the office of children and family services to hold
42 an administrative hearing in deciding whether to expunge a report. Such
43 office shall make its determination upon reviewing the written evidence
44 submitted by the subject of the report and any records or information
45 obtained from the state or local agency which investigated the allega-
46 tions of abuse or maltreatment.

47 § 4. Section 651-a of the family court act, as amended by section 10
48 of part R of chapter 56 of the laws of 2020, is amended to read as
49 follows:

50 § 651-a. Reports of child abuse and maltreatment; admissibility. In
51 any proceeding brought pursuant to this section to determine the custody
52 or visitation of minors, a report made to the statewide central register
53 of child abuse and maltreatment, pursuant to title six of article six of
54 the social services law, or a portion thereof, which is otherwise admis-
55 sible as a business record pursuant to rule forty-five hundred eighteen
56 of the civil practice law and rules shall not be admissible in evidence,

1 notwithstanding such rule, unless an investigation of such report
2 conducted pursuant to title six of article six of the social services
3 law commenced on or before December thirty-first, two thousand twenty-
4 one has determined that there is some credible evidence of the alleged
5 abuse or maltreatment, or unless an investigation of such report
6 conducted pursuant to title six of article six of the social services
7 law commenced on or after January first, two thousand twenty-two deter-
8 mines that there is a fair preponderance of the evidence of the alleged
9 abuse or maltreatment, or unless an investigation of such report
10 conducted pursuant to title six of article six of the social services
11 law commenced at any time in which the subject of the report is a victim
12 of domestic violence and the sole basis for such report is that such
13 subject failed to provide adequate guardianship due to engaging in acts
14 of domestic violence determines that there is a fair preponderance of
15 the evidence of the alleged abuse or maltreatment, that the subject of
16 the report has been notified that the report is indicated. In addition,
17 if such report has been reviewed by the state commissioner of social
18 services or his designee and has been determined to be unfounded, it
19 shall not be admissible in evidence. If such report has been so reviewed
20 and has been amended to delete any finding, each such deleted finding
21 shall not be admissible. If the state commissioner of social services or
22 his designee has amended the report to add any new finding, each such
23 new finding, together with any portion of the original report not
24 deleted by the commissioner or his designee, shall be admissible if it
25 meets the other requirements of this section and is otherwise admissible
26 as a business record. If such a report, or portion thereof, is admissi-
27 ble in evidence but is uncorroborated, it shall not be sufficient to
28 make a fact finding of abuse or maltreatment in such proceeding. Any
29 other evidence tending to support the reliability of such report shall
30 be sufficient corroboration.

31 § 5. Subparagraph (i) of paragraph (a) of subdivision 8 of section 422
32 of the social services law, as amended by chapter 12 of the laws of
33 1996, is amended and a new subparagraph (vi) is added to read as
34 follows:

35 (i) At any time subsequent to the completion of the investigation but
36 in no event later than ninety days after the subject of the report is
37 notified that the report is indicated, except where the investigation
38 was completed prior to January first, two thousand twenty-two and the
39 subject of such report is a victim of domestic violence and the sole
40 basis for such report is that such subject failed to provide adequate
41 guardianship due to engaging in acts of domestic violence, and the
42 subject requests that such report be re-opened pursuant to subparagraph
43 (vi) of this paragraph, the subject may request the commissioner to
44 amend the record of the report. If the commissioner does not amend the
45 report in accordance with such request within ninety days of receiving
46 the request, the subject shall have the right to a fair hearing, held in
47 accordance with paragraph (b) of this subdivision, to determine whether
48 the record of the report in the central register should be amended on
49 the grounds that it is inaccurate or it is being maintained in a manner
50 inconsistent with this title.

51 (vi) In cases where the investigation was completed prior to January
52 first, two thousand twenty-two and it was determined at a fair hearing
53 that there was credible evidence in the record to find that the subject
54 committed an act or acts of child abuse or maltreatment, and the subject
55 of the report is a victim of domestic violence and the sole basis for
56 such report is that such subject failed to provide adequate guardianship

1 due to engaging in acts of domestic violence, the subject of such report
2 may request that such case be re-opened and re-examined using a standard
3 of a fair preponderance of the evidence in the record to find that the
4 subject committed an act or acts of child abuse or maltreatment within
5 one year of the effective date of this subparagraph.

6 § 6. Items (I) and (II) of clause (A) of subparagraph (i) and subpara-
7 graph (ii) of paragraph (e) of subdivision 1 of section 424-a of the
8 social services law, as amended by section 9 of part R of chapter 56 of
9 the laws of 2020, are amended to read as follows:

10 (I) the time for the subject of the report to request an amendment or
11 re-opening of the record of the report pursuant to subdivision eight of
12 section four hundred twenty-two has expired without any such request
13 having been made; or

14 (II) such request was made within such time and a fair hearing regard-
15 ing the request has been finally determined by the commissioner and the
16 record of the report has not been amended or re-opened to unfound the
17 report or delete the person as a subject of the report; and

18 (ii) If the subject of an indicated report of child abuse or maltreat-
19 ment has not requested an amendment or re-opening of the record of the
20 report and an inquiry is made to the office of children and family
21 services pursuant to this subdivision concerning the subject of the
22 report, such office shall, as expeditiously as possible but within no
23 more than ten working days of receipt of the inquiry, determine whether,
24 in fact, the person about whom an inquiry is made is the subject of an
25 indicated report. Upon making a determination that the person about whom
26 the inquiry is made is the subject of an indicated report of child abuse
27 and maltreatment, the office of children and family services shall imme-
28 diately send a written request to the child protective service or state
29 agency which was responsible for investigating the allegations of abuse
30 or maltreatment for all records, reports and other information main-
31 tained by the service or state agency on the subject. The service or
32 state agency shall, as expeditiously as possible but within no more than
33 twenty working days of receiving such request, forward all records,
34 reports and other information it maintains on the indicated report to
35 the office of children and family services, including a copy of any
36 petition or court order based on the allegations that were indicated.
37 Where a proceeding pursuant to article ten of the family court act is
38 pending based on the same allegations that were indicated, the office of
39 children and family services shall stay determination of whether there
40 is a fair preponderance of the evidence to support the indication until
41 the disposition of such family court proceeding. Unless such determi-
42 nation has been stayed, the office of children and family services
43 shall, within fifteen working days of receiving such records, reports
44 and other information from the child protective service or state agency,
45 review all records, reports and other information in its possession
46 concerning the subject and determine whether there is a fair preponder-
47 ance of the evidence to find that the subject had committed the act or
48 acts of child abuse or maltreatment giving rise to the indicated report.

49 § 7. This act shall take effect on the same date and in the same
50 manner as part R of chapter 56 of the laws of 2020 and shall apply to
51 all reports filed in the statewide central register of child abuse and
52 maltreatment.