S T A T E O F N E W Y O R K

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Introduced by M. of A. TOWNS, LANCMAN, CASTRO, KOLB, WEISENBERG, TOWNSEND, ERRIGO, EDDINGTON -- Multi-Sponsored by -- M. of A. CROUCH, GABRYSZAK, GIGLIO, GREENE, McDONOUGH, McENENY, QUINN, SALADINO, SCHIMEL, WALKER -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to establishing Nixzmary's law and allowing police officers to enter without a search warrant in certain cases; and to amend the social services law, in relation to care and custody of children with parents suffering with mental illness and establishing the child advocacy audit office

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

Section 1. This act shall be known and may be cited as "Nixzmary's law".

S 2. The criminal procedure law is amended by adding a new section 690.37 to read as follows:

S 690.37 SEARCH WARRANTS; SPECIAL PROVISIONS RELATING TO CHILD ABUSE AND MALTREATMENT.

1. BEFORE A PETITION HAS BEEN FILED, UNDER THE PROVISIONS OF ARTICLE TEN OF THE FAMILY COURT ACT, AND BEFORE A SEARCH WARRANT HAS BEEN ISSUED, UNDER THE PROVISIONS OF THIS ARTICLE, A POLICE OFFICER MAY ENTER AND CONDUCT A SEARCH OF A DESIGNATED PREMISES FOR THE PURPOSE OF INVESTIGATING:

(A) SEVERE AND REPEATED CHILD ABUSE AND MALTREATMENT; OR

(B) WHETHER THE SAFETY OF A CHILD IS ENDANGERED.

2. SUCH SEARCH SHALL BE SUBSTANTIATED WITH ALLEGATIONS OF FACT SUPPORTING THE STATEMENTS OF SEVERE AND REPEATED CHILD ABUSE AND MALTREATMENT. SUCH ALLEGATIONS OF FACT MAY BE BASED UPON PERSONAL KNOWLEDGE OF THE POLICE OFFICER OR UPON INFORMATION AND FACTUAL REPORTING, PROVIDED IN ACCORDANCE WITH THE PROVISIONS OF TITLE SIX OF ARTICLE SIX OF THE SOCIAL SERVICES LAW.

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

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3. THE ENTERING POLICE OFFICER SHALL INFORM SUCH PERSON OF HIS OR HER AUTHORITY AND PURPOSE, AND OF THE REASON FOR SUCH INVESTIGATION, UNLESS HE OR SHE ENCOUNTERS PHYSICAL RESISTANCE, FLIGHT OR OTHER FACTORS RENDERING SUCH INVESTIGATION IMPRACTICAL.

4. IN ORDER TO EFFECT SUCH AN INVESTIGATION, SUCH POLICE OFFICER MAY USE SUCH PHYSICAL FORCE, OTHER THAN DEADLY FORCE, AS IS NECESSARY TO EXECUTE THE INVESTIGATION; AND SUCH POLICE OFFICER MAY USE DEADLY PHYSICAL FORCE, IF HE OR SHE REASONABLY BELIEVES SUCH TO BE NECESSARY TO DEFEND HIMSELF OR HERSELF OR A THIRD PERSON FROM WHAT HE OR SHE REASONABLY BELIEVES TO BE THE USE OR IMMINENT USE OF DEADLY PHYSICAL FORCE.

5. FOLLOWING THE INVESTIGATION PURSUANT TO THIS SECTION AND UPON THE FINDINGS OF SEVERE OR REPEATED CHILD ABUSE AND MALTREATMENT AND CHILD ENDANGERMENT, THE POLICE OFFICER SHALL ALSO, WITHOUT UNNECESSARY DELAY, FILE A WRITTEN STATEMENT WITH THE COURT TO ISSUE A SEARCH WARRANT, IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE, FOR THE PURPOSES OF SEIZING PROPERTY OR MAKING AN ARREST.

S 3. Subparagraph (iv) of paragraph (c) of subdivision 2 of section 384-a of the social services law, as amended by chapter 256 of the laws of 1990, is amended to read as follows:

(iv) that the parent, AUTHORIZED RELATIVE OR CLOSE FRIEND or guardian has a right to supportive services, which shall include preventive and other supportive services authorized to be provided pursuant to the state's consolidated services plan, to visit the child, and to determine jointly with the agency the terms and frequency of visitation;

S 4. Subparagraphs (i) and (ii) of paragraph (h) of subdivision 2 of section 384-a of the social services law, as added by chapter 477 of the laws of 2000, are amended to read as follows:

(i) Where a local social services official determines that a child is at significant risk of placement in the care and custody of the local commissioner of social services during the eighteen months immediately following review by such official because the custodial parent or legal guardian of such child is suffering from a progressively chronic or irreversibly fatal illness OR MENTAL ILLNESS and it is determined that there is neither a relative nor a close friend identified by the custodial parent or the legal guardian able to assume legal guardianship of the child, the custodial parent or legal guardian shall be assisted by the local social services district in transferring the care and custody of the child to an authorized agency by a written instrument in accordance with the provisions for this section which provides the transfer shall not take effect until the parent or legal guardian dies, becomes debilitated or incapacitated as defined in subdivision one of section seventeen hundred twenty-six of the surrogate's court procedure act.

(ii) Where a local social services official determines that a child is at significant risk of placement in the care and custody of the local commissioner of social services during the eighteen months immediately following a review of such official because the custodial parent or legal guardian is suffering from a progressively chronic or irreversibly fatal illness OR MENTAL ILLNESS and there is a relative or close friend identified by the custodial parent or legal guardian who is able and willing to assume care and custody of the child, but who requires foster care services and financial support thereof pursuant to section three hundred ninety-eight-a of this article, the custodial parent or legal guardian shall be assisted by the local social services district in transferring the care and custody of the child to an authorized agency by a written instrument in accordance with the provisions of this section. Such instrument shall provide that the transfer of custody

shall not take effect until the parent or legal guardian dies, becomes debilitated or incapacitated as defined in subdivision one of section seventeen hundred twenty-six of the surrogate's court procedure act. If otherwise qualified, the social services official shall assist the person identified to accept care and custody of the child to (A) become certified as a foster parent OR (B) RECEIVE SERVICES OR DEVELOP AN INDIVIDUALIZED PLAN, AGREED UPON BY THE CUSTODIAL PARENT OR LEGAL GUARDIAN AND THE RELATIVE OR CLOSE FRIEND IDENTIFIED TO ACCEPT CARE AND CUSTODY OF THE CHILD, WHICH AIDS SUCH RELATIVE OR CLOSE FRIEND IN THE CARE AND CUSTODY OF SUCH CHILD. SUCH SERVICES OR PLAN SHALL INCLUDE, BUT NOT BE LIMITED TO, TRAINING WITH COMMUNITY AGENCIES, RECEIVING SERVICES AND PARTICIPATING IN PROGRAMS WHICH PROVIDE ASSISTANCE WITH CHILD CARE AND FORMING PLANS DEVELOPED, IN THE BEST INTEREST OF THE CHILD, FOR THE PURPOSES OF PROVIDING A PERMANENT, STABLE LIVING SITUATION FOR SUCH CHILD.

S 5. The social services law is amended by adding a new section 422-d to read as follows:

S 422-D. ESTABLISHMENT OF THE CHILD ADVOCACY AUDIT OFFICE. 1. FOR THE PURPOSES OF THIS SECTION:

(A) "OFFICE" MEANS THE CHILD ADVOCACY AUDIT OFFICE ESTABLISHED UNDER THIS SECTION;

(B) "DEPARTMENT" MEANS THE DEPARTMENT OF HEALTH; AND

(C) "DIRECTOR" MEANS THE DIRECTOR OF THE CHILD ADVOCACY AUDIT OFFICE.

2. THE CHILD ADVOCACY AUDIT OFFICE IS HEREBY ESTABLISHED FOR THE PURPOSES OF ADMINISTERING AN AUDIT OF PROGRAMS PUBLICLY FUNDED AND SERVICES PROVIDED TO CHILDREN AND FAMILIES THROUGH THE OFFICE OF CHILDREN AND FAMILY SERVICES OR LOCAL SOCIAL SERVICES DISTRICTS.

3. THE CHILD ADVOCACY AUDIT OFFICE SHALL CONSIST OF REPRESENTATIVES FROM THE CHILD PROTECTIVE SERVICE, THE OFFICE OF CHILDREN AND FAMILY SERVICES AND THE DEPARTMENT. THE DIRECTOR SHALL BE APPOINTED BY THE GOVERNOR, IN CONSULTATION WITH THE DEPARTMENT, AND SHALL BE AN INDIVIDUAL WITH EXPERIENCE IN THE AREA OF CHILD WELFARE.

4. (A) THE CHILD ADVOCACY AUDIT OFFICE SHALL CONDUCT A DETAILED PERFORMANCE EVALUATION OF THE DELIVERY OF SERVICES BY THE OFFICE OF CHILDREN AND FAMILY SERVICES, LOCAL SOCIAL SERVICES DISTRICTS AND VOLUNTARY AGENCIES, TO CHILDREN IN THE CARE, CUSTODY, OR GUARDIANSHIP OF THE OFFICE OF CHILDREN AND FAMILY SERVICES OR A LOCAL SOCIAL SERVICES DISTRICT, AND THEIR FAMILIES. THE EVALUATION SHALL REVIEW PROGRAMS OF PUBLIC EDUCATION, REVIEW THE INTERACTION WITH COMMUNITY-LINKED SERVICES ASSISTING FAMILIES IN PREVENTING CHILD ABUSE, REVIEW THE PROCESS CONDUCTED BY CHILD PROTECTIVE SERVICES OF ACCEPTING, SCREENING AND ASSESSING REPORTS OF CHILD ABUSE AND DETERMINE HOW EFFECTIVE CHILD PROTECTIVE SERVICES INVESTIGATE CHILD ABUSE REPORTS.

(B) SUCH EVALUATION SHALL BE CONDUCTED EVERY TWO YEARS AND SHALL BE CONSOLIDATED INTO A REPORT WHICH THE DIRECTOR SHALL SUBMIT TO THE GOVERNOR, THE LEGISLATURE, AND THE COMMISSIONER OF THE OFFICE OF CHILDREN AND FAMILY SERVICES. SUCH REPORT SHALL INCLUDE RECOMMENDATIONS OF THE OFFICE FOR THE PURPOSES OF IMPROVING PROGRAMS AND SERVICES ADMINISTERED BY THE OFFICE OF CHILDREN AND FAMILY SERVICES OR A LOCAL SOCIAL SERVICES DISTRICT.

5. THE AUDIT REQUIRED PURSUANT TO SUBDIVISION FOUR OF THIS SECTION SHALL TAKE APPROPRIATE ACTIONS FOR THE BEST INTEREST OF THE CHILD PLACED INTO THE CARE, CUSTODY, OR GUARDIANSHIP OF THE OFFICE OF CHILDREN AND FAMILY SERVICES OR LOCAL SOCIAL SERVICES DISTRICTS. THE OFFICE IS AUTHORIZED FOR THE PURPOSES OF THIS AUDIT AND REPORT TO REVIEW PROGRAMS OF PUBLIC EDUCATION, PROVIDE INTENSIVE INTERACTION AND VOLUNTARY REFER-

RALS WITH PROGRAMS OR COMMUNITY-LINKED SERVICES TO ASSIST FAMILIES IN THE PREVENTION OF CHILD ABUSE; VISIT FACILITIES, CENTERS AND PROGRAMS UNDER THE OFFICE OF CHILDREN AND FAMILY SERVICES OR LOCAL SOCIAL SERVICES DISTRICTS; AND REVIEW AND INVESTIGATE COMPLAINTS MADE OF PUBLICLY FUNDED PROGRAMS THAT SERVICE CHILDREN AND FAMILIES ADMINISTERED BY THE OFFICE OF CHILDREN AND FAMILY SERVICES.

S 6. Paragraph (e) of subdivision 1 of section 423 of the social services law, as amended by chapter 309 of the laws of 1996, is amended to read as follows:

(e) Except as set forth in paragraph (f) of this subdivision, the child protective service shall be the sole public agency responsible for receiving and investigating, WHICH SHALL INCLUDE BUT NOT BE LIMITED TO AN INTERVIEW WITH THE CHILD WITHIN FOURTEEN DAYS OF THE REPORT OF CHILD ABUSE OR MALTREATMENT, or arranging with the appropriate society for the prevention of cruelty to children to investigate all reports of child abuse or maltreatment made pursuant to this title for the purpose of providing protective services to prevent further abuses or maltreatment to children and to coordinate, provide or arrange for and monitor the provision of those services necessary to safeguard and ensure the child's well-being and development and to preserve and stabilize family life wherever appropriate.

S 7. This act shall take effect on the ninetieth day after it shall have become a law.