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

8037

I N S E N A T E

June 2, 2010

Introduced by Sen. MONTGOMERY -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families

AN ACT to amend the family court act and the social services law, in relation to administrative fair hearings regarding reports of child abuse or maltreatment in the statewide central registry

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

Section 1. Subdivision (f) of section 1039 of the family court act, as amended chapter 601 of the laws of 1985, is amended to read as follows:

(f) If the proceeding is not so restored to the calendar, the petition is, at the expiration of the adjournment period, deemed to have been dismissed by the court in furtherance of justice unless an application is pending pursuant to subdivision (e) of this section. If such application is granted, the petition shall not be dismissed and shall proceed in accordance with the provisions of such subdivision (e). THE PETITIONER SHALL NOTIFY THE OFFICE OF CHILDREN AND FAMILY SERVICES, IN ACCORDANCE WITH SECTIONS FOUR HUNDRED TWENTY-TWO AND FOUR HUNDRED TWENTY-FOUR-A OF THE SOCIAL SERVICES LAW, OF THE OUTCOME OF THE ADJOURNMENT IN CONTEMPLATION OF DISMISSAL, INCLUDING DISMISSAL OF THE PETITION UPON EXPIRATION OF THE ADJOURNMENT OR, WHERE THE PROCEEDING HAS BEEN RESTORED TO THE CALENDAR, OF ANY PROCEEDINGS UNDER THIS ARTICLE FOLLOWING SUCH RESTORATION.

S 2. Section 1051 of the family court act is amended by adding a new subdivision (g) to read as follows:

(G) THE PETITIONER SHALL NOTIFY THE OFFICE OF CHILDREN AND FAMILY SERVICES, IN ACCORDANCE WITH SECTIONS FOUR HUNDRED TWENTY-TWO AND FOUR HUNDRED TWENTY-FOUR-A OF THE SOCIAL SERVICES LAW, OF ANY FINDINGS OF ABUSE OR NEGLECT AND OF ANY ORDERS OF DISMISSAL ENTERED PURSUANT TO THIS SECTION.

S 3. Paragraph (a) of subdivision 4 of section 22 of the social services law, as amended by chapter 341 of the laws of 1988, 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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(a) Except as provided in paragraph (c) of subdivision two of section four hundred twenty-four-a of this chapter and in paragraph (b) of this subdivision, any appeal pursuant to this section must be requested within sixty days after the date of the action or failure to act complained of. HOWEVER, WHERE A PROCEEDING PURSUANT TO ARTICLE TEN OF THE FAMILY COURT ACT IS PENDING WITH RESPECT TO A CHILD NAMED IN A CHILD ABUSE OR MALTREATMENT REPORT THAT IS THE SUBJECT OF AN APPEAL PURSUANT TO SECTION FOUR HUNDRED TWENTY-TWO OR FOUR HUNDRED TWENTY-FOUR-A OF THIS CHAPTER, THE PERIOD TO REQUEST AN APPEAL SHALL NOT COMMENCE, ANY PENDING APPEAL SHALL BE STAYED AND THE APPEAL SHALL NOT BE DETERMINED UNTIL THE DISPOSITION OF SUCH FAMILY COURT PROCEEDING OR UNTIL THE CONCLUSION OF THE PERIOD OF ANY ADJOURNMENT OF SUCH PROCEEDING IN CONTEMPLATION OF DISMISSAL, WHICHEVER IS LATER.

S 4. Subparagraphs (i) and (ii) of paragraph (a) and subparagraphs (i) and (ii) of paragraph (b) of subdivision 8 of section 422 of the social services law, subparagraph (i) of paragraph (a) and subparagraphs (i) and (ii) of paragraph (b) as amended by chapter 12 of the laws of 1996 and subparagraph (ii) of paragraph (a) as amended by chapter 323 of the laws of 2008, are amended to read as follows:

(i) At any time subsequent to the completion of the investigation but in no event later than ninety days after the subject of the report is notified that the report is indicated the subject may request the commissioner OF THE OFFICE OF CHILDREN AND FAMILY SERVICES to amend the record of the report. If the commissioner does not amend the report in accordance with such request within ninety days of receiving the request, the subject shall have the right to a fair hearing, held in accordance with paragraph (b) of this subdivision, to determine whether the record of the report in the central register should be amended on the grounds that it is inaccurate or it is being maintained in a manner inconsistent with this title. WHERE A PROCEEDING PURSUANT TO ARTICLE TEN OF THE FAMILY COURT ACT IS PENDING WITH RESPECT TO A CHILD NAMED IN THE CHILD ABUSE OR MALTREATMENT REPORT THAT IS THE SUBJECT OF A REQUEST TO AMEND UNDER THIS SECTION, THE NINETY-DAY PERIOD TO REQUEST AN AMENDMENT OF THE REPORT AND THE NINETY-DAY PERIOD FOR THE COMMISSIONER OF THE OFFICE OF CHILDREN AND FAMILY SERVICES TO AMEND THE REPORT SHALL NOT COMMENCE AND ANY PENDING REQUEST TO AMEND THE REPORT SHALL BE STAYED UNTIL THE DISPOSITION OF SUCH FAMILY COURT PROCEEDING OR UNTIL THE CONCLUSION OF THE PERIOD OF ANY ADJOURNMENT OF SUCH PROCEEDING IN CONTEMPLATION OF DISMISSAL, WHICHEVER IS LATER.

(ii) Upon receipt of a request to amend the record of a child abuse and maltreatment report the office of children and family services shall immediately send a written request to the child protective service or the state agency which was responsible for investigating the allegations of abuse or maltreatment for all records, reports and other information maintained by the service or state agency pertaining to such indicated report. The service or state agency shall as expeditiously as possible but within no more than twenty working days of receiving such request, forward all records, reports and other information it maintains on such indicated report to the office of children and family services, INCLUDING A COPY OF ANY PETITION AND COURT ORDER OR ORDERS WITH RESPECT TO A PROCEEDING PURSUANT TO ARTICLE TEN OF THE FAMILY COURT ACT EITHER PENDING OR DISPOSED OF REGARDING SUCH REPORT. WHERE A PROCEEDING PURSUANT TO ARTICLE TEN OF THE FAMILY COURT ACT IS PENDING REGARDING A CHILD NAMED IN THE CHILD ABUSE OR MALTREATMENT REPORT THAT IS THE SUBJECT OF A REQUEST TO AMEND UNDER THIS SECTION, THE CHILD PROTECTIVE SERVICE OR STATE AGENCY, AS APPLICABLE, SHALL REPORT THE STATUS OF THE FAMILY COURT

PROCEEDING TO THE OFFICE OF CHILDREN AND FAMILY SERVICES, WHICH SHALL DEFER ITS REVIEW AND DETERMINATION PENDING THE DISPOSITION OF THE PROCEEDING OR CONCLUSION OF ANY PERIOD OF ADJOURNMENT OF THE PROCEEDING IN CONTEMPLATION OF DISMISSAL, WHICHEVER IS LATER. IMMEDIATELY UPON THE DISPOSITION OF THE PROCEEDING OR CONCLUSION OF ANY ADJOURNMENT IN CONTEMPLATION OF DISMISSAL, THE CHILD PROTECTIVE SERVICE OR STATE AGENCY, AS APPLICABLE, SHALL REPORT THE DISPOSITION OF THE PROCEEDING OR OUTCOME OF THE ADJOURNMENT IN CONTEMPLATION OF DISMISSAL, TO THE OFFICE OF CHILDREN AND FAMILY SERVICES. The office of children and family services shall as expeditiously as possible but within no more than fifteen working days of receiving such materials from the child protective service or state agency, review all such materials in its possession concerning the indicated report and determine, after affording such service or state agency a reasonable opportunity to present its views, whether there is a fair preponderance of the evidence to find that the subject committed the act or acts of child abuse or maltreatment giving rise to the indicated report and whether, based on guidelines developed by the office of children and family services pursuant to subdivision five of section four hundred twenty-four-a of this title, such act or acts could be relevant and reasonably related to employment of the subject of the report by a provider agency, as defined by subdivision three of section four hundred twenty-four-a of this title, or relevant and reasonably related to the subject of the report being allowed to have regular and substantial contact with children who are cared for by a provider agency, or relevant and reasonably related to the approval or disapproval of an application submitted by the subject of the report to a licensing agency, as defined by subdivision four of section four hundred twenty-four-a of this title. IN DETERMINING WHETHER THERE IS CREDIBLE EVIDENCE THAT THE SUBJECT COMMITTED THE ACT OR ACTS OF CHILD ABUSE OR MALTREATMENT GIVING RISE TO THE INDICATED REPORT, THE FACT THAT THERE IS A FAMILY COURT FINDING OF ABUSE OR NEGLECT AGAINST THE SUBJECT IN REGARD TO AN ALLEGATION CONTAINED IN THE REPORT SHALL CREATE AN IRREBUTTABLE PRESUMPTION THAT SAID ALLEGATION IS SUBSTANTIATED BY SOME CREDIBLE EVIDENCE.

(i) If the [department] OFFICE OF CHILDREN AND FAMILY SERVICES, within ninety days of receiving a request from the subject that the record of a report be amended, does not amend the record in accordance with such request, the [department] OFFICE OF CHILDREN AND FAMILY SERVICES shall schedule a fair hearing and shall provide notice of the scheduled hearing date to the subject, the statewide central register and, as appropriate, to the child protective service or the state agency which investigated the report. WHERE A PROCEEDING PURSUANT TO ARTICLE TEN OF THE FAMILY COURT ACT IS PENDING WITH RESPECT TO A CHILD NAMED IN A CHILD ABUSE OR MALTREATMENT REPORT THAT IS THE SUBJECT OF A REQUEST TO AMEND UNDER THIS SECTION, THE PERIOD TO SCHEDULE THE FAIR HEARING REGARDING THE FAILURE TO AMEND SHALL NOT COMMENCE, ANY PENDING FAIR HEARING SHALL BE STAYED AND THE FAIR HEARING SHALL NOT BE DETERMINED UNTIL THE DISPOSITION OF SUCH FAMILY COURT PROCEEDING OR UNTIL THE CONCLUSION OF THE PERIOD OF ANY ADJOURNMENT OF SUCH PROCEEDING IN CONTEMPLATION OF DISMISSAL, WHICHEVER IS LATER. WHERE A PROCEEDING PURSUANT TO ARTICLE TEN OF THE FAMILY COURT ACT IS PENDING, THE CHILD PROTECTIVE SERVICE OR STATE AGENCY, AS APPLICABLE, SHALL REPORT THE STATUS OF THE FAMILY COURT PROCEEDING TO THE OFFICE OF CHILDREN AND FAMILY SERVICES. IMMEDIATELY UPON THE DISPOSITION OF THE PROCEEDING OR CONCLUSION OF ANY ADJOURNMENT IN CONTEMPLATION OF DISMISSAL, WHICHEVER IS LATER, THE CHILD PROTECTIVE SERVICE OR STATE AGENCY, AS APPLICABLE, SHALL REPORT THE DISPOSITION OF

THE PROCEEDING OR OUTCOME OF THE ADJOURNMENT IN CONTEMPLATION OF DISMISSAL, TO THE OFFICE OF CHILDREN AND FAMILY SERVICES.

(ii) The burden of proof in such a hearing shall be on the child protective service or the state agency which investigated the report, as the case may be. In such a hearing, the fact that there is a family court finding of abuse or neglect against the subject in regard to an allegation contained in the report shall create an irrebuttable presumption that said allegation is substantiated by some credible evidence. WHERE A PROCEEDING PURSUANT TO ARTICLE TEN OF THE FAMILY COURT ACT IS PENDING WITH RESPECT TO A CHILD NAMED IN THE CHILD ABUSE OR MALTREATMENT REPORT THAT IS THE SUBJECT OF A FAIR HEARING UNDER THIS SECTION, THE OFFICE OF CHILDREN AND FAMILY SERVICES SHALL DEFER ITS DETERMINATION UNTIL THE DISPOSITION OF SUCH FAMILY COURT PROCEEDING OR UNTIL THE CONCLUSION OF THE PERIOD OF ANY ADJOURNMENT OF SUCH PROCEEDING IN CONTEMPLATION OF DISMISSAL, WHICHEVER IS LATER.

S 5. Subparagraphs (i), (ii) and (iii) of paragraph (e) of subdivision 1 of section 424-a of the social services law, as amended by chapter 12 of the laws of 1996, are amended to read as follows:

(i) Subject to the provisions of subparagraph (ii) of this paragraph, the [department] OFFICE OF CHILDREN AND FAMILY SERVICES shall inform the provider or licensing agency, or child care resource and referral programs pursuant to subdivision six of this section whether or not the person is the subject of an indicated child abuse and maltreatment report only if: (a) the time for the subject of the report to request an amendment of the record of the report pursuant to subdivision eight of section four hundred twenty-two OF THIS TITLE has expired without any such request having been made; or (b) such request was made within such time and a fair hearing regarding the request has been finally determined by the commissioner OF THE OFFICE OF CHILDREN AND FAMILY SERVICES and the record of the report has not been amended to unfound the report or delete the person as a subject of the report. WHERE A REQUEST FOR AN AMENDMENT OF THE RECORD AND/OR A FAIR HEARING HAS BEEN MADE REGARDING AN INDICATED REPORT, BUT ACTION ON SUCH REQUEST HAS BEEN DEFERRED BECAUSE OF THE PENDENCY OF A PROCEEDING PURSUANT TO ARTICLE TEN OF THE FAMILY COURT ACT, THE OFFICE OF CHILDREN AND FAMILY SERVICES SHALL INFORM THE PROVIDER OR LICENSING AGENCY OR CHILD CARE RESOURCE AND REFERRAL PROGRAM THAT THERE IS AN INDICATED REPORT THAT IS THE SUBJECT OF A PENDING FAMILY COURT PROCEEDING. ONCE THE OFFICE OF CHILDREN AND FAMILY SERVICES IS INFORMED BY THE CHILD PROTECTIVE SERVICE OR STATE AGENCY, AS APPLICABLE, THAT A DISPOSITION OF THE FAMILY COURT PROCEEDING HAS BEEN ORDERED OR A PERIOD OF ANY ADJOURNMENT OF SUCH PROCEEDING IN CONTEMPLATION OF DISMISSAL HAS CONCLUDED, WHICHEVER IS LATER, AND THE OFFICE OF CHILDREN AND FAMILY SERVICES HAS TAKEN ACTION REGARDING THE REQUEST TO AMEND OR THE FAIR HEARING, THE OFFICE OF CHILDREN AND FAMILY SERVICES SHALL INFORM THE PROVIDER OR LICENSING AGENCY OR CHILD CARE RESOURCE AND REFERRAL PROGRAM OF ITS ACTION REGARDING THE INDICATED REPORT.

(ii) If the subject of an indicated report of child abuse or maltreatment has not requested an amendment of the record of the report within the time specified in subdivision eight of section four hundred twenty-two of this title or if the subject had a fair hearing pursuant to such section prior to January first, nineteen hundred eighty-six and an inquiry is made to the [department] OFFICE OF CHILDREN AND FAMILY SERVICES pursuant to this subdivision concerning the subject of the report OR WHERE A REQUEST FOR AN AMENDMENT OF THE RECORD AND/OR A FAIR HEARING HAS BEEN MADE REGARDING AN INDICATED REPORT, BUT ACTION ON SUCH REQUEST HAS BEEN DEFERRED BECAUSE OF THE PENDENCY OF PROCEEDING PURSUANT

TO ARTICLE TEN OF THE FAMILY COURT ACT, the [department] OFFICE OF CHILDREN AND FAMILY SERVICES shall, as expeditiously as possible but within no more than ten working days of receipt of the inquiry, determine whether, in fact, the person about whom an inquiry is made is the subject of an indicated report. Upon making a determination that the person about whom the inquiry is made is the subject of an indicated report of child abuse and maltreatment, the [department] OFFICE OF CHILDREN AND FAMILY SERVICES shall immediately send a written request to the child protective service or state agency which was responsible for investigating the allegations of abuse or maltreatment for all records, reports and other information maintained by the service or state agency on the subject. The service or state agency shall, as expeditiously as possible but within no more than twenty working days of receiving such request, forward all records, reports and other information it maintains on the indicated report to the [department] OFFICE OF CHILDREN AND FAMILY SERVICES, INCLUDING A COPY OF ANY PETITION AND COURT ORDER OR ORDERS WITH RESPECT TO A PROCEEDING PURSUANT TO ARTICLE TEN OF THE FAMILY COURT ACT EITHER PENDING OR DISPOSED OF REGARDING SUCH REPORT. The [department] OFFICE OF CHILDREN AND FAMILY SERVICES shall, within fifteen working days of receiving such records, reports and other information from the child protective service or state agency, review all records, reports and other information in its possession concerning the subject, and determine whether there is some credible evidence to find that the subject had committed the act or acts of child abuse or maltreatment giving rise to the indicated report. WHERE A PROCEEDING PURSUANT TO ARTICLE TEN OF THE FAMILY COURT ACT IS PENDING WITH RESPECT TO A CHILD NAMED IN THE CHILD ABUSE OR MALTREATMENT REPORT, THE CHILD PROTECTIVE SERVICE OR STATE AGENCY, AS APPLICABLE, SHALL REPORT THE STATUS OF THE PROCEEDING TO THE OFFICE OF CHILDREN AND FAMILY SERVICES, WHICH SHALL DEFER ITS REVIEW AND DETERMINATION UNTIL THE DISPOSITION OF SUCH PROCEEDING OR UNTIL THE CONCLUSION OF THE PERIOD OF ANY ADJOURNMENT OF SUCH PROCEEDING IN CONTEMPLATION OF DISMISSAL, WHICHEVER IS LATER. IMMEDIATELY UPON THE DISPOSITION OF THE PROCEEDING OR CONCLUSION OF ANY ADJOURNMENT IN CONTEMPLATION OF DISMISSAL, THE CHILD PROTECTIVE SERVICE OR STATE AGENCY, AS APPLICABLE, SHALL REPORT THE DISPOSITION OF THE PROCEEDING OR OUTCOME OF THE ADJOURNMENT IN CONTEMPLATION OF DISMISSAL, TO THE OFFICE OF CHILDREN AND FAMILY SERVICES.

(iii) If it is determined, after affording such service or state agency a reasonable opportunity to present its views, that there is no credible evidence in the record to find that the subject committed such act or acts, the [department] OFFICE OF CHILDREN AND FAMILY SERVICES shall amend the record to indicate that the report was unfounded and notify the inquiring party that the person about whom the inquiry is made is not the subject of an indicated report. IN DETERMINING WHETHER THERE IS CREDIBLE EVIDENCE THAT THE SUBJECT COMMITTED THE ACT OR ACTS OF CHILD ABUSE OR MALTREATMENT GIVING RISE TO THE INDICATED REPORT, THE FACT THAT THERE IS A FAMILY COURT FINDING OF ABUSE OR NEGLECT AGAINST THE SUBJECT IN REGARD TO AN ALLEGATION CONTAINED IN THE REPORT SHALL CREATE AN IRREBUTTABLE PRESUMPTION THAT THE ALLEGATION IS SUBSTANTIATED BY SOME CREDIBLE EVIDENCE. If the subject of the report had a fair hearing pursuant to subdivision eight of section four hundred twenty-two of this title prior to January first, nineteen hundred eighty-six and the fair hearing had been finally determined by the commissioner OF THE OFFICE OF CHILDREN AND FAMILY SERVICES and the record of the report had not been amended to unfound the report or delete the person as a subject of the report, then the [department] OFFICE OF CHILDREN AND FAMILY SERVICES

shall determine that there is some credible evidence to find that the subject had committed the act or acts of child abuse or maltreatment giving rise to the indicated report.

S 6. This act shall take effect immediately and shall apply to requests for appeals and fair hearings pending on or after such effective date.