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

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2009-2010 Regular Sessions

I N A S S E M B L Y

February 11, 2009

Introduced by M. of A. V. LOPEZ -- Multi-Sponsored by -- M. of A. COOK -- read once and referred to the Committee on Children and Families

AN ACT to amend the family court act, in relation to the conduct of child protective proceedings

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

Section 1. The family court act is amended by adding a new section 1046-a to read as follows:

S 1046-A. IN CAMERA TESTIMONY OF INFANTS. (A) DEFINITIONS. AS USED IN THIS SECTION:

(I) "TESTIMONY IN CAMERA" MEANS THE TESTIMONY OF A VULNERABLE CHILD TAKEN BY THE COURT IN A TESTIMONIAL ROOM OUTSIDE THE PRESENCE OF THE RESPONDENT.

(II) "TESTIMONIAL ROOM" MEANS ANY ROOM, SEPARATE AND APART FROM THE COURTROOM, WHICH IS FURNISHED COMFORTABLY AND LESS FORMALLY THAN A COURTROOM.

(B) A CHILD'S TESTIMONY MAY BE TAKEN IN CAMERA ONLY WHERE THE COURT HAS DETERMINED, PURSUANT TO SECTION ONE THOUSAND FORTY-SIX-B OF THIS PART, THAT THE CHILD IS A VULNERABLE CHILD.

(C) THE IN CAMERA EXAMINATION AND CROSS-EXAMINATION OF A VULNERABLE CHILD SHALL BE CONDUCTED IN THE SAME MANNER AS IF THE VULNERABLE CHILD HAD TESTIFIED IN THE COURTROOM, WITH COUNSEL FOR RESPONDENT AND THE CHILD'S LAW GUARDIAN PRESENT AND ABLE TO EXAMINE AND CROSS-EXAMINE THE CHILD.

(D) RECORDING OF IN CAMERA TESTIMONY OF A CHILD. THE COURT SHALL NOT TAKE THE TESTIMONY OF A CHILD IN ANY ACTION OR PROCEEDING BROUGHT UNDER THIS ARTICLE UNLESS A STENOGRAPHIC RECORD OF SUCH TESTIMONY IS MADE. ANY STENOGRAPHIC RECORD MADE PURSUANT TO THIS SUBDIVISION SHALL BE MADE AVAILABLE TO COUNSEL AND THE CHILD'S LAW GUARDIAN.

S 2. The family court act is amended by adding a new section 1046-b to read as follows:

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

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S 1046-B. VULNERABILITY HEARING. (A) DEFINITIONS. AS USED IN THIS SECTION:

(I) "VULNERABLE CHILD" MEANS THE SUBJECT OF A PROCEEDING UNDER THIS ARTICLE WHOM THE COURT HAS DECLARED TO BE VULNERABLE.

(II) "VULNERABILITY HEARING" MEANS A HEARING AT WHICH THE COURT DETERMINES IF THE CHILD IS A VULNERABLE CHILD WHOSE TESTIMONY WILL BE TAKEN IN CAMERA, RATHER THAN IN OPEN COURT. SUCH MOTION, TOGETHER WITH SUPPORTING PAPERS DEMONSTRATING THE NEED FOR THE RELIEF SOUGHT, MUST BE MADE UPON REASONABLE NOTICE TO ALL OTHER PARTIES AND THE LAW GUARDIAN. UNLESS ALL MATERIAL FACTS ALLEGED IN SUPPORT OF THE MOTION ARE UNCONTESTED, THE COURT SHALL CONDUCT A VULNERABILITY HEARING.

(B) ANY PARTY OR THE CHILD'S LAW GUARDIAN MAY APPLY TO THE COURT FOR AN ORDER DECLARING THAT A CHILD IS A VULNERABLE CHILD AND THAT THE CHILD'S TESTIMONY SHOULD BE TAKEN IN CAMERA. UNLESS ALL MATERIAL FACTS ALLEGED IN SUPPORT OF THE MOTION ARE UNCONTESTED, THE COURT SHALL CONDUCT A VULNERABILITY HEARING.

(C) THE CHILD WHO IS ALLEGED TO BE VULNERABLE MAY NOT BE COMPELLED TO TESTIFY AT HIS OR HER VULNERABILITY HEARING. PRIOR STATEMENTS MADE BY THE CHILD AS TO ANY ATTEMPT TO PREVENT, IMPEDE OR DETER THE CHILD FROM COOPERATING IN THE INVESTIGATION OR FACT-FINDING HEARING SHALL BE ADMISSIBLE AT THE VULNERABILITY HEARING, PROVIDED, HOWEVER, THAT A FINDING THAT A CHILD IS VULNERABLE MAY NOT BE BASED SOLELY UPON SUCH PRIOR STATEMENTS.

(D) IN DETERMINING WHETHER A CHILD IS VULNERABLE PURSUANT TO THIS SECTION, THE COURT SHALL MAKE FINDINGS OF FACT, BASED UPON CLEAR AND CONVINCING EVIDENCE, THAT THERE IS A CAUSAL RELATIONSHIP BETWEEN THE EXISTENCE OF ANY ONE OR MORE OF THE FOLLOWING FACTORS AND THE DETERMINATION THAT THE CHILD IS SO VULNERABLE AS TO REQUIRE HIS OR HER TESTIMONY TO BE TAKEN IN CAMERA:

(I) THE ALLEGED ABUSE OR NEGLECT WAS PARTICULARLY HEINOUS OR WAS CHARACTERIZED BY AGGRAVATING CIRCUMSTANCES;

(II) THE CHILD IS PARTICULARLY SUSCEPTIBLE TO PSYCHOLOGICAL HARM BECAUSE OF A PHYSICAL OR MENTAL CONDITION WHICH EXISTED PRIOR TO THE ALLEGED ABUSE OR NEGLECT;

(III) THE ALLEGED ABUSE OR NEGLECT WAS AN ONGOING COURSE OF CONDUCT, COMMITTED OVER AN EXTENDED PERIOD OF TIME;

(IV) A DEADLY WEAPON OR DANGEROUS INSTRUMENT WAS ALLEGEDLY USED IN THE ABUSE OR NEGLECT;

(V) THE ALLEGED ABUSE OR NEGLECT INVOLVED SERIOUS PHYSICAL INJURY TO THE CHILD;

(VI) THE RESPONDENT OR A PERSON ACTING ON BEHALF OF THE RESPONDENT, MADE A THREAT, EXPRESS OR IMPLIED, OF PHYSICAL VIOLENCE TO THE CHILD OR A THIRD PERSON IF THE CHILD WERE TO REPORT THE INCIDENT OR TO COOPERATE IN THE INVESTIGATION OR PROSECUTION OF THE ALLEGED ABUSE OR NEGLECT OR TO COOPERATE IN A FACT-FINDING HEARING PURSUANT TO THIS ARTICLE;

(VII) A WITNESS OTHER THAN THE CHILD HAS RECEIVED A THREAT OF PHYSICAL VIOLENCE BY OR ON BEHALF OF THE RESPONDENT;

(VIII) THE RESPONDENT, AT THE TIME OF THE MOTION, IS LIVING IN THE SAME HOUSEHOLD WITH THE CHILD, OR HAS READY ACCESS TO THE CHILD;

(IX) A COURT OF COMPETENT JURISDICTION HAS PREVIOUSLY ISSUED AN ORDER THAT THE CHILD WAS ABUSED; OR

(X) EXPERT TESTIMONY SHOWS THAT THE CHILD WOULD BE PARTICULARLY SUSCEPTIBLE TO PSYCHOLOGICAL HARM IF REQUIRED TO TESTIFY IN THE PHYSICAL PRESENCE OF THE RESPONDENT.

(E) IF THE COURT FINDS THAT THE CHILD IS VULNERABLE AND THAT, UNDER THE FACTS AND CIRCUMSTANCES OF THE CASE, THE RESPONDENT'S RIGHT TO DUE

PROCESS OF LAW WILL NOT BE IMPAIRED, IT MAY ENTER AN ORDER GRANTING THE APPLICATION TO TAKE THE CHILD'S TESTIMONY IN CAMERA IN ACCORDANCE WITH THE PROVISIONS SET FORTH IN SECTION ONE THOUSAND FORTY-SIX-A OF THIS PART.

(F) AT ANY TIME DURING THE HEARING, THE COURT, AT THE REQUEST OF ANY PARTY OR THE LAW GUARDIAN, OR ON ITS OWN MOTION, MAY DECLARE A CHILD TO BE VULNERABLE WHERE THE COURT OBSERVES THAT A CHILD WHO HAS BEEN CALLED TO TESTIFY IS SUFFERING SEVERE MENTAL OR EMOTIONAL HARM AND IS THEREFORE PHYSICALLY OR MENTALLY UNABLE TO TESTIFY OR TO CONTINUE TO TESTIFY IN THE PHYSICAL PRESENCE OF THE RESPONDENT. IF, UNDER THE FACTS AND CIRCUMSTANCES OF THE CASE, THE RESPONDENT'S RIGHT TO DUE PROCESS OF LAW WILL NOT BE IMPAIRED, THE COURT MAY TAKE THE CHILD'S TESTIMONY IN CAMERA IN ACCORDANCE WITH THE PROVISIONS SET FORTH IN SECTION ONE THOUSAND FORTY-SIX-A OF THIS PART.

S 3. This act shall take effect immediately and shall apply to proceedings conducted on or after such date.