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

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I N A S S E M B L Y

February 17, 2009

Introduced by M. of A. V. LOPEZ, CLARK, ALFANO, BARRA -- Multi-Sponsored by -- M. of A. COOK, GLICK, GOTTFRIED, P. RIVERA, TOWNS -- read once and referred to the Committee on Children and Families

AN ACT to amend the family court act and the social services law, in relation to enacting the child protection reform act and repealing certain provisions of such act and such law relating to child welfare

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 the "Child Protection Reform Act".

S 2. Section 1011 of the family court act, as added by chapter 962 of the laws of 1970, is amended to read as follows:

S 1011. Purpose. This article is designed to establish procedures to help protect children from injury or mistreatment IN THEIR OWN HOMES, TO PROTECT CHILDREN FROM UNNECESSARY SEPARATION FROM THEIR OWN HOMES AND FAMILIES, and to help safeguard their physical, mental, and emotional well-being. It is designed to provide a due process of law for determining when the state, through its family court, may intervene against the wishes of a parent on behalf of a child so that [his] THE CHILD'S needs are properly met.

S 3. Subdivisions (e) and (f) of section 1012 of the family court act are REPEALED and two new subdivisions (e) and (f) are added to read as follows:

(E) "ABUSED CHILD" MEANS A CHILD LESS THAN EIGHTEEN YEARS OF AGE WHEN THE RESPONDENT:

(I) INFLICTS, OR BY HIS OR HER CONDUCT, WITH KNOWLEDGE OR DELIBERATE INDIFFERENCE, ALLOWS TO BE INFLICTED, UPON SUCH CHILD, SERIOUS PHYSICAL INJURY BY OTHER THAN ACCIDENTAL MEANS WHICH CREATES A SUBSTANTIAL RISK OF DEATH OR CAUSES DEATH OR SERIOUS OR PROTRACTED DISFIGUREMENT, OR PROTRACTED IMPAIRMENT OF PHYSICAL HEALTH OR PROTRACTED LOSS OR IMPAIR-

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

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MENT OF THE FUNCTION OF ANY BODILY ORGAN, OR SERIOUS EMOTIONAL INJURY WHICH CAUSES SIGNIFICANT OR PROTRACTED PSYCHOLOGICAL DYSFUNCTION; OR

(II) COMMITS, OR BY HIS OR HER CONDUCT, WITH KNOWLEDGE OR DELIBERATE INDIFFERENCE, ALLOWS TO BE COMMITTED, A SEX OFFENSE AGAINST SUCH CHILD, AS DEFINED IN THE PENAL LAW OR, WITH KNOWLEDGE OR DELIBERATE INDIFFERENCE, ALLOWS SUCH CHILD TO ENGAGE IN ANY ACT DESCRIBED IN SECTION 230.25, 230.30 OR 230.32 OR ARTICLE TWO HUNDRED SIXTY-THREE OF THE PENAL LAW, PROVIDED, HOWEVER, THAT THE CORROBORATION REQUIREMENTS CONTAINED IN THE PENAL LAW SHALL NOT APPLY TO PROCEEDINGS UNDER THIS ARTICLE.

FOR THE PURPOSES OF THIS PARAGRAPH, THE FOLLOWING ACTS, WHEN COMMITTED INTENTIONALLY, SHALL BE PRESUMPTIVELY CONSIDERED TO BE ABUSE: BURNING, SCALDING, BURNING WITH CIGARETTE OR CIGAR, STARVATION, STRIKING A CHILD SO AS TO FRACTURE A BONE, OR STRIKING OR STABBING THE CHILD WITH AN INHERENTLY DANGEROUS INSTRUMENT.

(F) "NEGLECTED CHILD" MEANS A CHILD LESS THAN EIGHTEEN YEARS OF AGE:

(I) WHOSE PHYSICAL CONDITION HAS BEEN SUBSTANTIALLY IMPAIRED OR IS IN IMMINENT DANGER OF BECOMING SUBSTANTIALLY IMPAIRED AS A RESULT OF THE FAILURE OF THE RESPONDENT TO SUPPLY THE CHILD WITH FOOD, CLOTHING, SHELTER, EDUCATION, OR MEDICAL, DENTAL, OPTOMETRICAL OR SURGICAL CARE ALTHOUGH SUCH RESPONDENT HAS REASONABLE MEANS TO DO SO; OR AS A RESULT OF THE RESPONDENT MISUSING A DRUG OR DRUGS OR ALCOHOL; OR

(II) WHO IS EXPOSED TO A SUBSTANTIAL RISK OF SERIOUS PHYSICAL INJURY AS DEFINED IN PARAGRAPH (I) OF SUBDIVISION (E) OF THIS SECTION AS A RESULT OF THE FAILURE OF THE RESPONDENT TO EXERCISE A MINIMUM DEGREE OF CARE, UNLESS THE RESPONDENT WAS PREVENTED FROM EXERCISING SUCH CARE BY PHYSICAL VIOLENCE OR THE THREAT OF SUCH VIOLENCE; OR

(III) WHO HAS BEEN ABANDONED, IN ACCORDANCE WITH THE DEFINITION AND OTHER CRITERIA SET FORTH IN SUBDIVISION FIVE OF SECTION THREE HUNDRED EIGHTY-FOUR-B OF THE SOCIAL SERVICES LAW, BY SUCH RESPONDENT.

S 4. Subdivision (h) of section 1012 of the family court act is REPEALED.

S 5. Subdivision (c) of section 1051 of the family court act, as amended by chapter 187 of the laws of 1990, is amended to read as follows:

(c) If facts sufficient to sustain the petition under this article are not established, or if[, in a case of alleged neglect,] the court concludes that its aid is not required on the record before it, the court shall dismiss the petition and shall state on the record the grounds for the dismissal. THE COURT SHALL ALSO DISMISS A CASE OF ALLEGED NEGLECT IF IT FINDS THAT THE PETITIONER HAS FAILED TO PROVIDE OR OFFER THE SERVICES WHICH WOULD HAVE AMELIORATED THE CONDITION OF NEGLECT, UNLESS THE PETITIONER HAS SHOWN THAT PROVISION OF SUCH SERVICES WOULD NOT HAVE AMELIORATED THE CONDITIONS OF NEGLECT OR THAT SUCH SERVICES ARE NOT PART OF THE COMPREHENSIVE ANNUAL SERVICES PROGRAM PLAN THEN IN EFFECT.

S 6. Article 10 of the family court act is amended by adding a new part 9 to read as follows:

PART 9

CHILD WELFARE DIVERSION

SECTION 1085-A. CHILD WELFARE DIVERSION.
1085-B. PROCEDURES.
1085-C. ADJUSTMENT PROCESS.
1085-D. EVIDENCE.
1085-E. FINDINGS.

S 1085-A. CHILD WELFARE DIVERSION. THE FAMILY COURT IN EACH COUNTY MAY APPOINT A LOCAL PROBATION SERVICE, DULY INCORPORATED COURT APPOINTED

SPECIAL ADVOCATES, AN AUTHORIZED AGENCY AS DEFINED IN SECTION THREE HUNDRED SEVENTY-ONE OF THE SOCIAL SERVICES LAW, OR OTHER APPROPRIATE AGENCIES, TO SERVE, WITH THEIR CONSENT, AS AN ADJUSTMENT AGENCY FOR THE PURPOSE OF RECEIVING REFERRALS FROM THE FAMILY COURT IN ORDER TO DIVERT CASES FILED UNDER THIS ARTICLE AND TO AVERT THE NEED FOR PLACEMENT OF CHILDREN IN FOSTER CARE, BY ARRANGING AND COORDINATING SERVICES TO THE FAMILY. NOTHING HEREIN SHALL BE CONSTRUED TO ENTITLE A PERSON OR ORGANIZATION SERVING AS AN ADJUSTMENT AGENCY PROVIDING SUCH DIVERSION SERVICES TO ANY ADDITIONAL REIMBURSEMENT PURSUANT TO THIS SECTION BEYOND THE SUMS AUTHORIZED BY OTHER APPLICABLE PROVISIONS OF LAW.

S 1085-B. PROCEDURES. UPON FILING OF ANY PETITION UNDER SECTION ONE THOUSAND THIRTY-ONE OF THIS ARTICLE, THE COURT MAY REFER THE PROCEEDING TO A LOCAL ADJUSTMENT AGENCY FOR A PERIOD OF UP TO NINETY DAYS.

S 1085-C. ADJUSTMENT PROCESS. 1. THE ADJUSTMENT AGENCY SHALL CONFER WITH ALL NECESSARY PARTIES TO ASSIST THE CHILD AND FAMILY, TO DETERMINE WHAT SERVICES ARE NECESSARY AND TO ARRANGE FOR THE PROVISION OF SUCH SERVICES. THE ADJUSTMENT AGENCY MAY, AT ANY TIME, NOTIFY THE COURT THAT THE LOCAL DEPARTMENT OF SOCIAL SERVICES HAS FAILED TO PROVIDE NECESSARY SERVICES. UPON FINDING, AFTER A HEARING, THAT SUCH SERVICES ARE NEEDED BY THE FAMILY, THE COURT SHALL DIRECT THE LOCAL DEPARTMENT OF SOCIAL SERVICES TO PROVIDE SUCH SERVICES, PURSUANT TO SECTION ONE THOUSAND FIFTEEN-A OF THIS ARTICLE.

2. THE ADJUSTMENT AGENCY MAY, AT ANY TIME, NOTIFY THE COURT THAT ATTEMPTS AT ADJUSTMENT HAVE NOT BEEN SUCCESSFUL AND REQUEST THAT ADJUSTMENT SERVICES BE TERMINATED AND THAT THE PETITION BE RESTORED TO THE COURT'S CALENDAR.

3. AT ANY TIME, THE PETITIONER MAY FILE A PETITION TO TERMINATE THE ADJUSTMENT PROCESS AND RESTORE THE ORIGINAL PETITION TO THE COURT CALENDAR. THE PETITION SHALL, IN ADDITION TO THE REQUIREMENT OF SECTION ONE THOUSAND THIRTY-ONE OF THIS ARTICLE, ALLEGE THE CURRENT PROBLEMS OF THE FAMILY, SERVICES WHICH ARE NEEDED, EFFORTS MADE TO PROVIDE SUCH SERVICES, THE MANNER AND CIRCUMSTANCE UNDER WHICH THE PARENTS REFUSED TO ACCEPT SUCH SERVICES OR THE SERVICES FAILED TO ALLEVIATE THE CONDITIONS GIVING RISE TO THE PETITION. THE COURT SHALL ISSUE AN ORDER TERMINATING THE ADJUSTMENT PROCESS IF IT FINDS NO REASONABLE LIKELIHOOD THAT THE PROCESS WILL BE SUCCESSFUL OR THAT THE PARENT HAS FAILED OR REFUSED TO COOPERATE WITH THE ADJUSTMENT PROCESS. UPON ISSUING SUCH ORDER, THE PETITION ALLEGING ABUSE OR NEGLECT SHALL BE RESTORED TO THE COURT'S CALENDAR.

S 1085-D. EVIDENCE. STATEMENTS MADE BY RESPONDENT TO THE ADJUSTMENT AGENCY DURING THE ADJUSTMENT PROCESS SHALL NOT BE ADMISSIBLE AT ANY FACT-FINDING HEARING HELD PURSUANT TO THIS ARTICLE.

S 1085-E. FINDINGS. A REFERRAL TO CHILD WELFARE DIVERSION, THE FILING OF A PETITION PURSUANT TO THIS PART, OR PARTICIPATION IN THE ADJUSTMENT PROCESS SHALL NOT CONSTITUTE A FINDING OR ADMISSION OF NEGLECT, AND SHALL NOT BE ADMISSIBLE AGAINST THE INTEREST OF A RESPONDENT, EXCEPT TO SHOW THAT SUCH RESPONDENT WAS OFFERED SERVICES AND EITHER FAILED OR REFUSED TO ACCEPT THEM.

S 7. Subdivisions 4-a and 4-b of section 371 of the social services law are REPEALED and a new subdivision 4 is added to read as follows:

4. "NEGLECTED CHILD" AND "ABUSED CHILD" SHALL HAVE THE SAME MEANING AS DEFINED IN SUBDIVISIONS (E) AND (F) OF SECTION ONE THOUSAND TWELVE OF THE FAMILY COURT ACT.

S 8. Subdivision 7 of section 384-b of the social services law is amended by adding a new paragraph (g) to read as follows:

(G) FOR THE PURPOSES OF THIS SECTION:

(I) THE FAMILY SERVICE PLAN SHALL MEAN THE PLAN PREPARED BY THE SOCIAL SERVICES OFFICIAL PURSUANT TO SECTION FOUR HUNDRED NINE-E OF THIS ARTICLE, AFTER CONSULTATION WITH THE PARENT, FILED WITH AND APPROVED OR MODIFIED BY THE FAMILY COURT SUBSEQUENT TO THE EFFECTIVE DATE OF THIS PARAGRAPH, IN AN ORDER ENTERED PURSUANT TO SECTION THREE HUNDRED FIFTY-EIGHT-A, OR MODIFIED PURSUANT TO SECTION THREE HUNDRED FIFTY-EIGHT-A OF THIS CHAPTER, OR ENTERED OR MODIFIED PURSUANT TO SECTION ONE THOUSAND FIFTY-FIVE OF THE FAMILY COURT ACT;

(II) WHERE A FAMILY SERVICE PLAN HAS BEEN APPROVED OR MODIFIED BY THE FAMILY COURT AFTER A HEARING AT WHICH THE PARENT WAS PRESENT AND REPRESENTED BY COUNSEL, AND THE PARENT WAS SERVED WITH A COPY OF THE PLAN AND INFORMED OF THE CONSEQUENCES OF THIS SECTION;

(A) A FINDING THAT THE AUTHORIZED AGENCY CARING FOR THE CHILD HAS FULLY COMPLIED WITH ITS OBLIGATIONS UNDER THE PLAN SHALL CONSTITUTE PRIMA FACIE EVIDENCE THAT THE AGENCY EXERCISED DILIGENT EFFORTS TO ENCOURAGE AND STRENGTHEN THE PARENTAL RELATIONSHIP; AND

(B) A FINDING THAT THE AUTHORIZED AGENCY CARING FOR THE CHILD HAS, WITHOUT GOOD CAUSE, FAILED SUBSTANTIALLY TO COMPLY WITH ITS OBLIGATIONS UNDER THE PLAN SHALL REQUIRE THE DISMISSAL OF THE PETITION; AND

(C) WHERE THE COURT FINDS THAT THE AUTHORIZED AGENCY HAS SUBSTANTIALLY BUT NOT FULLY COMPLIED WITH ITS OBLIGATIONS UNDER THE PLAN, THE COURT SHALL DETERMINE WHETHER SUCH SUBSTANTIAL COMPLIANCE CONSTITUTES DILIGENT EFFORTS PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION; AND

(D) A FINDING THAT THE PARENT HAS FAILED TO SUBSTANTIALLY COMPLY WITH HIS OR HER OBLIGATIONS UNDER THE FAMILY SERVICE PLAN SHALL CONSTITUTE PRIMA FACIE EVIDENCE OF FAILURE TO SUBSTANTIALLY PLAN AND CONTINUOUSLY PLAN FOR THE FUTURE OF THE CHILD, BUT SHALL NOT CONSTITUTE EVIDENCE THAT THE PARENT WAS PHYSICALLY AND FINANCIALLY ABLE TO DO SO; AND

(E) A FINDING THAT THE PARENT HAS SUBSTANTIALLY COMPLIED WITH HIS OR HER OBLIGATIONS UNDER THE FAMILY SERVICE PLAN SHALL REQUIRE THE DISMISSAL OF THE PETITION.

S 9. Subdivision 2 of section 422 of the social services law is amended by adding a new paragraph (e) to read as follows:

(E) WHENEVER THE DEPARTMENT DETERMINES THAT THE FACTS RELATED IN A TELEPHONE CALL OR FACSIMILE DO NOT CONSTITUTE NEGLECT OR ABUSE AS DEFINED IN SECTION ONE THOUSAND TWELVE OF THE FAMILY COURT ACT BUT MAY OCCASION THE NEED FOR SERVICES TO A FAMILY, INCLUDING PREVENTIVE SERVICES AS DEFINED IN SECTION FOUR HUNDRED NINE OF THIS CHAPTER, THE DEPARTMENT SHALL FORTHWITH CONVEY SUCH INFORMATION TO THE APPROPRIATE LOCAL DEPARTMENT OF SOCIAL SERVICES FOR THE PROVISIONS OF NECESSARY SERVICES AND ASSISTANCE WHICH SUCH CHILD AND FAMILY MIGHT OTHERWISE BE ENTITLED.

S 10. Subdivision 7 of section 424 of the social services law, as amended by chapter 164 of the laws of 1991, is amended to read as follows:

7. determine, within sixty days, whether [the] A report OF ABUSE is "indicated" or "unfounded"; WITH RESPECT TO A REPORT OF NEGLECT, THE CHILD PROTECTIVE SERVICE SHALL CONCLUDE, WITHIN SIXTY DAYS, AN INVESTIGATION OF WHETHER OR NOT SOME CREDIBLE EVIDENCE OF NEGLECT EXISTS. IF THE CHILD PROTECTIVE SERVICE FINDS THAT NO CREDIBLE EVIDENCE EXISTS, IT SHALL DETERMINE THAT SUCH REPORT IS UNFOUNDED. IF THE CHILD PROTECTIVE SERVICE DETERMINES THAT SOME CREDIBLE EVIDENCE EXISTS, IT SHALL REFER SUCH REPORT TO THE APPROPRIATE UNIT OF THE LOCAL DEPARTMENT OF SOCIAL SERVICES FOR THE PROVISIONS OF SERVICES AND ASSISTANCE TO THE CHILD AND FAMILY, INCLUDING PREVENTIVE SERVICES AS DEFINED IN SECTION FOUR HUNDRED NINE OF THIS CHAPTER. THE CHILD PROTECTIVE SERVICE SHALL MONITOR THE

DELIVERY AND EFFICACY OF THE PROVISION OF SERVICES AND ASSISTANCE TO THE FAMILY TO AMELIORATE THE PROBLEMS GIVING RISE TO THE REPORT AND, WITHIN ONE HUNDRED TWENTY DAYS FOLLOWING THE CONCLUSION OF ITS INVESTIGATION, DETERMINE WHETHER OR NOT THE CHILD IS AT CONTINUED RISK OF NEGLECT. IF THE CHILD PROTECTIVE SERVICE FINDS THAT SUCH RISK EXISTS, OR THAT THE FAMILY HAS DECLINED THE PROVISION OF SERVICES OR ASSISTANCE WITHOUT DUE CAUSE, OR THAT THE PROVISION OF SERVICES AND ASSISTANCE WOULD NOT AMELIORATE THE CONDITIONS GIVING RISE TO THE REPORT, AT ANY TIME AFTER THE CONCLUSION OF ITS INVESTIGATION, IT SHALL DETERMINE THAT SUCH REPORT IS "INDICATED," AND SHALL FILE A PETITION PURSUANT TO ARTICLE TEN OF THE FAMILY COURT ACT. IF THE CHILD PROTECTIVE SERVICE FINDS THAT THE APPROPRIATE SERVICES AND ASSISTANCE HAVE BEEN OR ARE BEING PROVIDED AND/OR THAT THE CHILD IS NOT AT CONTINUED RISK OF NEGLECT, OR THAT THE FAMILY HAS AGREED TO THE PROVISION OF SERVICES AND ASSISTANCE BUT THAT SUCH SERVICES AND ASSISTANCE ARE NOT AVAILABLE, IT SHALL DETERMINE THAT SUCH REPORT IS "UNFOUNDED". NOTHING IN THIS SUBDIVISION SHALL PRECLUDE THE REMOVAL OF A CHILD FROM HIS OR HER HOME PURSUANT TO THE APPLICABLE PROVISIONS OF THE FAMILY COURT ACT;

S 11. This act shall take effect on the ninetieth day after it shall have become a law.