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

4722

2011-2012 Regular Sessions

I N A S S E M B L Y

February 7, 2011

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

AN ACT to amend the executive law, in relation to requiring the superintendent of state police to develop and disseminate policies and procedures in regard to notifying a non-custodial parent of a minor child when such child has been the victim of violence or sexual abuse; to amend the criminal procedure law, in relation to notifying a non-custodial parent of the custodial parent's arrest for the commission of a felony; and to amend the family court act, in relation to requiring family courts to include such notice requirements within the text of child custody determinations

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

Section 1. Section 214-a of the executive law, as added by chapter 504 of the laws of 1988, is amended to read as follows:

S 214-a. Child abuse prevention. The superintendent shall, for all members of the state police:

(1) develop, maintain and disseminate written policies and procedures pursuant to title six of article six of the social services law and applicable provisions of article ten of the family court act, regarding the mandatory reporting of child abuse or neglect, reporting procedures and obligations of persons required to report, provisions for taking a child into protective custody, mandatory reporting of deaths, immunity from liability, penalties for failure to report and obligations for the provision of services and procedures necessary to safeguard the life or health of the child; [and]

(2) DEVELOP, MAINTAIN AND DISSEMINATE WRITTEN POLICIES AND PROCEDURES REGARDING MANDATORY NOTIFICATION TO A NON-CUSTODIAL PARENT OF A MINOR CHILD WHEN SUCH MINOR CHILD HAS BEEN THE VICTIM OF A CRIME OF VIOLENCE OR SEXUAL ABUSE; AND

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

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(3) establish, and implement on an ongoing basis, a training program for all current and new employees regarding the policies and procedures established pursuant to this section.

S 2. Subdivision 9 of section 170.10 of the criminal procedure law, as renumbered by chapter 449 of the laws of 1992, is renumbered subdivision 11 and two new subdivisions 9 and 10 are added to read as follows:

9. UPON THE ARRAIGNMENT, THE COURT SHALL INSTRUCT THE DEFENDANT THAT IF THE DEFENDANT IS THE CUSTODIAL PARENT OF A CHILD, THE DEFENDANT SHALL IMMEDIATELY MAKE AN APPROPRIATE PLAN FOR THE CHILD WHILE THE DEFENDANT REMAINS IN CUSTODY. THE COURT SHALL FURTHER INSTRUCT THE DEFENDANT THAT FAILURE TO MAKE AN APPROPRIATE PLAN FOR THE CHILD MAY BE CONSIDERED CHILD NEGLECT AND/OR ABUSE PURSUANT TO ARTICLE TEN OF THE FAMILY COURT ACT.

IF THE COURT DISCOVERS THAT THE DEFENDANT HAS LEFT A CHILD AT HOME WITHOUT ADULT SUPERVISION, THE COURT SHALL IMMEDIATELY CONTACT THE OFFICE OF CHILDREN AND FAMILY SERVICES.

10. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, IF A PERSON IS CHARGED WITH THE COMMISSION OF A FELONY, THE COURT SHALL:

(A) UPON THE ARRAIGNMENT, INQUIRE WHETHER THE DEFENDANT IS THE CUSTODIAL PARENT OF A MINOR CHILD. THE COURT SHALL EXERCISE DUE DILIGENCE IN OBTAINING THE WHEREABOUTS AND CONTACT INFORMATION OF SUCH MINOR CHILD AND THE NAME AND CONTACT INFORMATION OF THE NON-CUSTODIAL PARENT, IF ANY. FOR PURPOSES OF THIS SUBDIVISION, "NON-CUSTODIAL PARENT" SHALL MEAN ANY PERSON RECOGNIZED AS THE BIOLOGICAL PARENT OF A MINOR CHILD, INCLUDING, BUT NOT LIMITED TO, PERSONS NAMED ON SUCH MINOR CHILD'S BIRTH CERTIFICATE AND/OR NAMED WITHIN A CHILD SUPPORT OR CUSTODY/VISITATION ORDER ISSUED BY A COURT OF COMPETENT JURISDICTION, AND WHO DOES NOT HAVE PHYSICAL CUSTODY OF THE CHILD AT THE TIME OF THE PERSON'S ARREST; AND

(B) WITHIN TEN DAYS AFTER THE ARRAIGNMENT, CONTACT THE NON-CUSTODIAL PARENT AND INFORM SUCH PARENT OF SUCH ARREST.

(C) THE PROVISIONS OF THIS SUBDIVISION SHALL NOT APPLY WHERE AN ORDER OF PROTECTION HAS BEEN ISSUED AGAINST THE NON-CUSTODIAL PARENT BY A COURT OF COMPETENT JURISDICTION.

S 3. The family court act is amended by adding a new section 658 to read as follows:

S 658. REQUIRED CONDITIONS TO A CHILD CUSTODY DETERMINATION WHEN A PARTY TO THE CUSTODY AND/OR VISITATION PROCEEDING HAS BEEN PREVIOUSLY ARRESTED ON A FELONY CHARGE. WHERE A PARTY TO A CUSTODY AND/OR VISITATION PROCEEDING HAS BEEN PREVIOUSLY ARRESTED AND/OR CONVICTED ON A FELONY CHARGE, THE COURT SHALL NOT ACCEPT OR ISSUE A CHILD CUSTODY DETERMINATION WITHOUT REQUIRING THE FOLLOWING CONDITIONS:

(A) IF EITHER PARTY TO THE CUSTODY AND/OR VISITATION PROCEEDING IS SUBSEQUENTLY ARRESTED ON A FELONY CHARGE, SUCH PARTY SHALL IMMEDIATELY NOTIFY THE OTHER PARTY OF THEIR ARREST;

(B) IF EITHER PARTY TO THE CUSTODY AND/OR VISITATION PROCEEDING RELOCATES TO ANOTHER STATE, THE RELOCATING PARTY SHALL REGISTER THE CUSTODY AND/OR VISITATION DETERMINATION WITH THE OTHER STATE WITHIN THIRTY DAYS AFTER RELOCATION AND SUCH PARTY'S FAILURE TO REGISTER THE DETERMINATION WITHIN THE SPECIFIED TIME PERIOD SHALL BE CONSIDERED A PER SE VIOLATION OF THE CHILD CUSTODY DETERMINATION OF THIS STATE; AND

(C) BOTH PARTIES SHALL PROMPTLY NOTIFY THE STATE IN WHICH THE CHILD CURRENTLY RESIDES OF ANY CHANGE IN ADDRESS AND/OR OTHER CONTACT INFORMATION DEEMED APPROPRIATE.

S 4. This act shall take effect the first of January next succeeding the date on which it shall have become a law.