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

7942

2011-2012 Regular Sessions

I N A S S E M B L Y

May 25, 2011

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

AN ACT to amend the social services law, in relation to investigations of the homes of adults about whom reports have been filed and requiring officials to obtain a supervisor's approval or otherwise requiring application for a court order allowing access to the home; and to amend the penal law, in relation to criminalizing the act of denying access to an individual who is the subject of a report to child or adult protective services

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

Section 1. Short title. This act shall be known and may be cited as "Laura Cummings Law".

S 2. The section heading and opening paragraph of section 421 of the social services law, as amended by chapter 718 of the laws of 1986, are amended to read as follows:

Responsibility of the [department] OFFICE OF CHILDREN AND FAMILY SERVICES. The [department] OFFICE OF CHILDREN AND FAMILY SERVICES shall:

S 3. Paragraph (a) of subdivision 1 of section 473 of the social services law, as amended by chapter 395 of the laws of 1995, is amended to read as follows:

(a) receiving and investigating reports of seriously impaired individuals who may be in need of protection; SUCH INVESTIGATIONS SHALL INCLUDE INVESTIGATION OF THE HOME OF AN IMPAIRED INDIVIDUAL NAMED IN THE REPORT, INCLUDING BY THE AUTHORITY OF IMMEDIATE COURT ORDERS WHENEVER ACCESS THERETO IS DENIED AS SET FORTH IN SECTION FOUR HUNDRED SEVENTY-THREE-A OF THIS ARTICLE;

S 4. Section 473-c of the social services law is amended by adding a new subdivision 1-a to read as follows:

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

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1-A. EXCEPT IN A CITY WITH A POPULATION OF ONE MILLION OR MORE, IN EVERY SITUATION WHERE A SOCIAL SERVICES OFFICIAL OR CASEWORKER, WHO IS INVESTIGATING WHETHER AN ADULT IS IN NEED OF PROTECTIVE SERVICES, IS DENIED ACCESS TO THAT ADULT TO SUFFICIENTLY ASSESS IF THAT ADULT IS IN NEED OF SUCH SERVICES, THE OFFICIAL OR CASEWORKER SHALL IMMEDIATELY DISCUSS THE MATTER WITH THE SUPERVISOR OF THE ADULT SERVICES DIVISION OF THE SOCIAL SERVICES DISTRICT AS WELL AS WITH THE APPROPRIATE COUNTY LEGAL COUNSEL ASSIGNED TO SUCH MATTERS, AND A DECISION SHALL BE MADE AS TO THE APPROPRIATENESS OF SEEKING A COURT ORDER OF ACCESS PURSUANT TO THIS SECTION. IF THE DECISION IS MADE TO SEEK AN ORDER, THAT SHALL OCCUR FORTHWITH, AND IF THE DECISION IS NOT TO SEEK SUCH AN ORDER, IT SHALL BE RECORDED WITH THE RATIONALE FOR SUCH DECISION IN THE RECORDS.

S 5. Subdivision 4 of section 473-c of the social services law, as added by chapter 413 of the laws of 1986, is amended to read as follows:

4. If the court is satisfied that there is reasonable cause to believe that a person in need of protective services for adults may be found at the premises described in the application, that such person may be in need of protective services for adults, and that access to such person has been refused, it shall grant the application and issue an order authorizing the social services official and such other individuals as may be designated by the said official, accompanied by a police officer, to enter the premises to conduct an assessment to determine whether the person named in the application is in need of protective services for adults. The [standard for proof and] procedure for such an authorization shall be the same as for a search warrant under the criminal procedure law.

S 6. Subparagraphs (y) and (z) of paragraph (A) of subdivision 4 of section 422 of the social services law, subparagraph (y) as amended and subparagraph (z) as added by section 1 of part A of chapter 327 of the laws of 2007, are amended and a new subparagraph (aa) is added to read as follows:

(y) members of a citizen review panel as established pursuant to section three hundred seventy-one-b of this article; provided, however, members of a citizen review panel shall not disclose to any person or government official any identifying information which the panel has been provided and shall not make public other information unless otherwise authorized by statute; [and]

(z) an entity with appropriate legal authority in another state to license, certify or otherwise approve prospective foster and adoptive parents where disclosure of information regarding the prospective foster or adoptive parents and other persons over the age of eighteen residing in the home of such prospective parents is required by paragraph twenty of subdivision (a) of section six hundred seventy-one of title forty-two of the United States code[.]; AND

(AA) A SOCIAL SERVICES OFFICIAL WHO IS INVESTIGATING WHETHER AN ADULT IS IN NEED OF PROTECTIVE SERVICES IN ACCORDANCE WITH THE PROVISIONS OF SECTION FOUR HUNDRED SEVENTY-THREE OF THIS CHAPTER, AND WHEN SUCH OFFICIAL STATES THAT HE OR SHE HAS REASONABLE CAUSE TO BELIEVE THAT SUCH PERSON MAY BE IN NEED OF PROTECTIVE SERVICES AND THAT SUCH PERSON MAY HAVE BEEN THE SUBJECT OF A CHILD PROTECTIVE REPORT WITHIN THE LAST FIVE YEARS. SUCH INFORMATION MAY BE REQUESTED AND RELEASED ACROSS ALL SOCIAL SERVICES DISTRICTS IN THE STATE.

S 7. Paragraphs (B), (C) and (D) of subdivision 4 of section 422 of the social services law, as amended by chapter 677 of the laws of 1985, are amended to read as follows:

(B) Notwithstanding any inconsistent provision of law to the contrary, a city or county social services commissioner may withhold, in whole or in part, the release of any information which he or she is authorized to make available to persons or agencies identified in subparagraphs (a), (k), [(l),] (m), (n)[,] AND (o)[, (p) and (q)] of paragraph (A) of this subdivision if such commissioner determines that such information is not related to the purposes for which such information is requested or when such disclosure will be detrimental to the child named in the report.

(C) A city or county social services commissioner who denies access by persons or agencies identified in subparagraphs (a), (k), [(l),] (m), (n)[,] AND (o)[, (p) and (q)] of paragraph (A) of this subdivision to records, reports or other information or parts thereof maintained by such commissioner in accordance with this title shall, within ten days from the date of receipt of the request fully explain in writing to the person requesting the records, reports or other information the reasons for the denial.

(D) A person or agency identified in subparagraphs (a), (k), [(l),] (m), (n)[,] AND (o)[, (p) and (q)] of paragraph (A) of this subdivision who is denied access to records, reports or other information or parts thereof maintained by a local department pursuant to this title may bring a proceeding for review of such denial pursuant to article seventy-eight of the civil practice law and rules.

S 8. Section 195.05 of the penal law, as amended by chapter 269 of the laws of 1998, is amended to read as follows:

S 195.05 Obstructing governmental administration in the second degree.

A person is guilty of obstructing governmental administration IN THE SECOND DEGREE when he OR SHE intentionally obstructs, impairs or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from performing an official function[,]:

1. by means of intimidation, physical force or interference, or by means of any independently unlawful act[, or];

2. by means of interfering, whether or not physical force is involved, with radio, telephone, television or other telecommunications systems owned or operated by the state, or a county, city, town, village, fire district or emergency medical service [or];

3. by means of releasing a dangerous animal under circumstances evincing the actor's intent that the animal obstruct governmental administration; OR

4. BY, WITH INTENT TO CONCEAL ABUSE AND/OR NEGLECT, DENYING OR ATTEMPTING TO DENY AN INVESTIGATION OF CHILD PROTECTIVE SERVICES OR OF ADULT PROTECTIVE SERVICES, ACCESS TO INTERVIEW AN ALLEGED VICTIM.

Obstructing governmental administration IN THE SECOND DEGREE is a class A misdemeanor.

S 9. This act shall take effect immediately.