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

3831

2011-2012 Regular Sessions

I N S E N A T E

March 7, 2011

Introduced by Sen. JOHNSON -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families

AN ACT to amend the social services law, in relation to taking a child into protective custody on the basis of an allegation of a parent or guardian with Munchausen syndrome by proxy

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

Section 1. Subdivision 1 of section 417 of the social services law is amended by adding two new paragraphs (c) and (d) to read as follows:

(C) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, NO CHILD SHALL BE TAKEN INTO PROTECTIVE CUSTODY PURSUANT TO THIS SECTION WHEN THE BASIS THEREOF IS AN ALLEGATION THAT A CUSTODIAL PARENT OR GUARDIAN HAS MUNCHAUSEN SYNDROME BY PROXY, UNLESS AND UNTIL A FAMILY COURT SHALL HAVE HELD A HEARING, WITH AN OPPORTUNITY FOR SUCH PARENT OR GUARDIAN TO BE HEARD, AND SHALL HAVE FOUND REASONABLE CAUSE TO BELIEVE SUCH ALLEGATIONS ARE TRUE. THE PARENT OR GUARDIAN ALLEGED TO SUFFER FROM MUNCHAUSEN SYNDROME BY PROXY SHALL, AT ANY SUCH HEARING, BE ALLOWED TO PRESENT EVIDENCE, INCLUDING EXPERT TESTIMONY, THAT HE OR SHE DOES NOT SUFFER FROM SUCH SYNDROME.

(D) IN ANY HEARING HELD PURSUANT TO PARAGRAPH (C) OF THIS SUBDIVISION, IF THE CHILD'S PEDIATRICIAN, PRIMARY CARE PHYSICIAN OR SPECIALIST CHARGED WITH TREATING SUCH CHILD DISPUTES THE ALLEGATION OF MUNCHAUSEN SYNDROME BY PROXY MADE AGAINST THE CHILD'S PARENT OR GUARDIAN, AND IF SUCH PHYSICIAN TESTIFIES, WHETHER BY AFFIDAVIT OR BEFORE THE COURT, THAT THE CHILD'S MEDICAL TREATMENT IN QUESTION OR THE CHILD'S COURSE OF TREATMENT IN GENERAL IS OR WAS NECESSARY FOR THE HEALTH AND WELL-BEING OF SUCH CHILD, THEN THE FAMILY COURT SHALL FIND THAT THE ALLEGATION OF MUNCHAUSEN SYNDROME BY PROXY HAS BEEN REBUTTED, AND SHALL NOT ENTER A FINDING OF ABUSE OR NEGLECT BASED UPON MUNCHAUSEN SYNDROME BY PROXY AGAINST THE CHILD'S PARENT OR GUARDIAN, AND SHALL NOT ORDER THAT THE

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

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CHILD BE TAKEN INTO PROTECTIVE CUSTODY FOR REASONS OF MUNCHAUSEN SYNDROME BY PROXY.

S 2. This act shall take effect immediately, and shall apply to any child in protective custody on or after such effective date.