

5746

2011-2012 Regular Sessions

I N   S E N A T E

June 14, 2011

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Introduced by Sen. SAVINO -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the social services law, in relation to access to records of the differential response program for child protection assessments or investigations

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

1     Section 1. Paragraph (c) of subdivision 4 of section 427-a of the  
2     social services law, as added by chapter 452 of the laws of 2007, is  
3     amended to read as follows:  
4     (c) For those reports which are included in the family assessment and  
5     services track, the social services district shall not be subject to the  
6     requirements of this title concerning initial investigation of reports  
7     of suspected abuse and maltreatment of children, including notification  
8     requirements. For reports assigned to the family assessment and services  
9     track, the social services district shall be responsible for ensuring  
10    that the children are safe in their homes. Such safety [check] ASSESS-  
11    MENT shall be commenced within twenty-four hours of receipt of the  
12    report and completed within seven days. Based on the initial safety  
13    [check] ASSESSMENT, the district shall determine if the report shall  
14    continue under the family assessment and services track. This safety  
15    [check] ASSESSMENT must be documented in the manner specified by the  
16    office of children and family services. Should the children be found to  
17    be safe in the home, the social services district shall then identify  
18    service needs and family issues, if any, that should be addressed.  
19    (i) Where the social services district determines, based on the  
20    initial safety [check] ASSESSMENT, that the report is appropriate to be  
21    included in the family assessment and services track, the social  
22    services district shall document the reason for that determination in  
23    the initial safety [check] ASSESSMENT and inform the statewide central  
24    register of child abuse and maltreatment that the report is part of the

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

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1 family assessment and services track and request that the records of the  
2 statewide central register of child abuse and maltreatment of such  
3 report be classified as an assessment track case and be legally sealed  
4 [in accordance with the provisions of paragraph (a) of subdivision five  
5 of section four hundred twenty-two of this title]. Such sealed reports  
6 shall be maintained at the statewide central register of child abuse and  
7 maltreatment for ten years after the report was made. ACCESS TO REPORTS  
8 ASSIGNED TO, AND RECORDS CREATED UNDER THE FAMILY ASSESSMENT AND  
9 SERVICES TRACK AND INFORMATION CONCERNING SUCH REPORTS AND RECORDS IS  
10 GOVERNED BY PARAGRAPH (D) OF SUBDIVISION FIVE OF THIS SECTION.

11 (ii) Where the social services district determines, based on the  
12 initial safety [check] ASSESSMENT, to investigate the report as a report  
13 of suspected child abuse or maltreatment, the social services district  
14 shall document the reason for that decision in the initial safety  
15 [check] ASSESSMENT. Where the social services district makes the deter-  
16 mination to investigate the report, all of the requirements of this  
17 title concerning investigations of reports of suspected child abuse and  
18 maltreatment shall apply, including the notification requirements. The  
19 report shall no longer be eligible to be included in the family assess-  
20 ment and services track.

21 S 2. Paragraph (b) of subdivision 5 of section 427-a of the social  
22 services law, as added by chapter 452 of the laws of 2007, is amended to  
23 read as follows:

24 (b) All records created as part of the family assessment and services  
25 track shall include, but not be limited to, documentation of the initial  
26 safety [check] ASSESSMENT, the examination of the family's strengths,  
27 concerns and needs, all services offered and accepted by the family, the  
28 plan for supportive services for the family, all evaluations and assess-  
29 ments of the family's progress, and all periodic risk assessments.

30 S 3. Subdivision 5-a of section 422 of the social services law, as  
31 added by chapter 452 of the laws of 2007, is amended to read as follows:

32 5-a. Upon notification from a local social services district, that a  
33 report is part of the family assessment and services track pursuant to  
34 subparagraph (i) of paragraph (c) of subdivision four of section four  
35 hundred twenty-seven-a of this title, the central register shall forth-  
36 with identify the report as an assessment track case and legally seal  
37 such report. ACCESS TO REPORTS ASSIGNED TO, AND RECORDS CREATED UNDER  
38 THE FAMILY ASSESSMENT AND SERVICES TRACK AND INFORMATION CONCERNING SUCH  
39 REPORTS AND RECORDS IS GOVERNED BY PARAGRAPH (D) OF SUBDIVISION FIVE OF  
40 SECTION FOUR HUNDRED TWENTY-SEVEN-A OF THIS TITLE.

41 S 4. Paragraph (d) of subdivision 5 of section 427-a of the social  
42 services law, as added by chapter 452 of the laws of 2007, is amended to  
43 read as follows:

44 (d) All REPORTS ASSIGNED TO, AND records created [as part of] UNDER,  
45 the family assessment and services track, INCLUDING BUT NOT LIMITED TO  
46 REPORTS MADE OR WRITTEN AS WELL AS ANY OTHER INFORMATION OBTAINED OR  
47 PHOTOGRAPHS TAKEN CONCERNING SUCH REPORTS OR RECORDS shall be confiden-  
48 tial and shall be made available only to:

49 (I) staff of the office of children and family services and persons  
50 designated by the office of children and family services;

51 (II) the social services district responsible for the FAMILY ASSESS-  
52 MENT AND SERVICES TRACK case;

53 (III) community-based agencies that have contracts with the social  
54 services district to carry out activities for the district under the  
55 family assessment and services track; [and]

1 (IV) providers of services under the family assessment and services  
2 track; [and]

3 (V) any social services district investigating a subsequent report of  
4 abuse or maltreatment involving the same subject or the same child or  
5 children named in the report;

6 (VI) A COURT, BUT ONLY WHILE THE FAMILY IS RECEIVING SERVICES PROVIDED  
7 UNDER THE FAMILY ASSESSMENT AND SERVICES TRACK AND ONLY PURSUANT TO A  
8 COURT ORDER OR JUDICIAL SUBPOENA, ISSUED AFTER NOTICE AND AN OPPORTUNITY  
9 FOR THE SUBJECT OF THE REPORT AND ALL PARTIES TO THE PRESENT PROCEEDING  
10 TO BE HEARD, BASED ON A JUDICIAL FINDING THAT SUCH REPORTS, RECORDS, AND  
11 ANY INFORMATION CONCERNING SUCH REPORTS AND RECORDS, ARE NECESSARY FOR  
12 THE DETERMINATION OF AN ISSUE BEFORE THE COURT. SUCH REPORTS, RECORDS  
13 AND INFORMATION TO BE DISCLOSED PURSUANT TO A JUDICIAL SUBPOENA SHALL BE  
14 SUBMITTED TO THE COURT FOR INSPECTION AND FOR SUCH DIRECTIONS AS MAY BE  
15 NECESSARY TO PROTECT CONFIDENTIALITY, INCLUDING BUT NOT LIMITED TO  
16 REDACTION OF PORTIONS OF THE REPORTS, RECORDS, AND INFORMATION AND TO  
17 DETERMINE ANY FURTHER LIMITS ON REDISCLOSURE IN ADDITION TO THE LIMITA-  
18 TIONS PROVIDED FOR IN THIS TITLE. A COURT SHALL NOT HAVE ACCESS TO THE  
19 SEALED FAMILY ASSESSMENT AND SERVICES REPORTS, RECORDS, AND ANY INFORMA-  
20 TION CONCERNING SUCH REPORTS AND RECORDS, AFTER THE CONCLUSION OF  
21 SERVICES PROVIDED UNDER THE FAMILY ASSESSMENT AND SERVICES TRACK; AND

22 (VII) THE SUBJECT OF THE REPORT INCLUDED IN THE RECORDS OF THE FAMILY  
23 ASSESSMENT AND SERVICES TRACK.

24 S 5. Subdivision 5 of section 427-a of the social services law is  
25 amended by adding a new paragraph (e) to read as follows:

26 (E) PERSONS GIVEN ACCESS TO SEALED REPORTS, RECORDS, AND ANY INFORMA-  
27 TION CONCERNING SUCH REPORTS AND RECORDS, PURSUANT TO PARAGRAPH (D) OF  
28 THIS SUBDIVISION SHALL NOT REDISCLOSE SUCH REPORTS, RECORDS AND INFORMA-  
29 TION EXCEPT AS FOLLOWS:

30 (I) THE OFFICE OF CHILDREN AND FAMILY SERVICES AND SOCIAL SERVICES  
31 DISTRICTS MAY DISCLOSE AGGREGATE, NON-CLIENT IDENTIFIABLE INFORMATION;

32 (II) SOCIAL SERVICES DISTRICTS, COMMUNITY-BASED AGENCIES THAT HAVE  
33 CONTRACTS WITH A SOCIAL SERVICES DISTRICT TO CARRY OUT ACTIVITIES FOR  
34 THE DISTRICT UNDER THE FAMILY ASSESSMENT AND SERVICES TRACK, AND PROVID-  
35 ERS OF SERVICES UNDER THE FAMILY ASSESSMENT AND SERVICES TRACK, MAY  
36 EXCHANGE SUCH REPORTS, RECORDS AND INFORMATION CONCERNING SUCH REPORTS  
37 AND RECORDS AS NECESSARY TO CARRY OUT ACTIVITIES AND SERVICES RELATED TO  
38 THE SAME PERSON OR PERSONS ADDRESSED IN THE RECORDS OF A FAMILY ASSESS-  
39 MENT AND SERVICES TRACK CASE;

40 (III) THE CHILD PROTECTIVE SERVICE OF A SOCIAL SERVICES DISTRICT MAY  
41 UNSEAL A REPORT, RECORD AND INFORMATION CONCERNING SUCH REPORT AND  
42 RECORD OF A CASE UNDER THE FAMILY ASSESSMENT AND SERVICES TRACK IN THE  
43 EVENT SUCH REPORT, RECORD OR INFORMATION IS RELEVANT TO A SUBSEQUENT  
44 REPORT OF SUSPECTED CHILD ABUSE OR MALTREATMENT. INFORMATION FROM SUCH  
45 AN UNSEALED REPORT OR RECORD THAT IS RELEVANT TO THE SUBSEQUENT REPORT  
46 OF SUSPECTED CHILD ABUSE AND MALTREATMENT MAY BE USED BY THE CHILD  
47 PROTECTIVE SERVICE FOR PURPOSES OF INVESTIGATION AND FAMILY COURT ACTION  
48 CONCERNING THE SUBSEQUENT REPORT AND MAY BE INCLUDED IN THE RECORD OF  
49 THE INVESTIGATION OF THE SUBSEQUENT REPORT. IF THE SOCIAL SERVICES  
50 DISTRICT INITIATES A PROCEEDING UNDER ARTICLE TEN OF THE FAMILY COURT  
51 ACT IN CONNECTION WITH SUCH A SUBSEQUENT REPORT OF SUSPECTED CHILD ABUSE  
52 AND MALTREATMENT AND THERE IS INFORMATION IN THE REPORT OR RECORD OF A  
53 PREVIOUS CASE UNDER THE FAMILY ASSESSMENT AND SERVICES TRACK THAT IS  
54 RELEVANT TO THE PROCEEDING, THE SOCIAL SERVICES DISTRICT SHALL INCLUDE  
55 SUCH INFORMATION IN THE RECORD OF THE INVESTIGATION OF THE SUBSEQUENT  
56 REPORT OF SUSPECTED CHILD ABUSE OR MALTREATMENT AND SHALL MAKE THAT

1 INFORMATION AVAILABLE TO THE FAMILY COURT AND THE OTHER PARTIES FOR USE  
2 IN SUCH PROCEEDING PROVIDED, HOWEVER, THAT THE INFORMATION INCLUDED FROM  
3 THE PREVIOUS CASE UNDER THE FAMILY ASSESSMENT AND SERVICES TRACK SHALL  
4 THEN BE SUBJECT TO ALL LAWS AND REGULATIONS REGARDING CONFIDENTIALITY  
5 THAT APPLY TO THE RECORD OF THE INVESTIGATION OF SUCH SUBSEQUENT REPORT  
6 OF SUSPECTED CHILD ABUSE OR MALTREATMENT. THE FAMILY COURT MAY CONSIDER  
7 THE INFORMATION FROM THE PREVIOUS CASE UNDER THE FAMILY ASSESSMENT AND  
8 SERVICES TRACK THAT IS RELEVANT TO SUCH PROCEEDING IN MAKING ANY DETER-  
9 MINATIONS IN THE PROCEEDING; AND

10 (IV) A SUBJECT OF THE REPORT MAY, AT HIS OR HER DISCRETION, PRESENT A  
11 REPORT, RECORDS AND INFORMATION CONCERNING SUCH REPORT AND RECORDS FROM  
12 THE FAMILY ASSESSMENT AND SERVICES TRACK CASE, IN WHOLE OR IN PART, IN  
13 ANY PROCEEDING UNDER ARTICLE TEN OF THE FAMILY COURT ACT IN WHICH THE  
14 SUBJECT IS A RESPONDENT. A SUBJECT OF THE REPORT ALSO MAY, AT HIS OR HER  
15 DISCRETION, PRESENT A REPORT, RECORDS AND INFORMATION CONCERNING SUCH  
16 REPORT AND RECORDS FROM THE FAMILY ASSESSMENT AND SERVICES TRACK, IN  
17 WHOLE OR IN PART, IN ANY PROCEEDING INVOLVING THE CUSTODY OF, OR VISITA-  
18 TION WITH THE SUBJECT'S CHILDREN, OR IN ANY OTHER RELEVANT PROCEEDING.  
19 IN MAKING ANY DETERMINATION IN SUCH A PROCEEDING, THE COURT MAY CONSIDER  
20 ANY PORTION OF THE FAMILY ASSESSMENT AND SERVICE TRACK REPORT, RECORDS  
21 AND ANY INFORMATION CONCERNING SUCH REPORT AND RECORDS PRESENTED BY THE  
22 SUBJECT OF THE REPORT THAT IS RELEVANT TO THE PROCEEDING. NOTHING IN  
23 THIS SUBPARAGRAPH, HOWEVER, SHALL BE INTERPRETED TO AUTHORIZE A COURT TO  
24 ORDER THE SUBJECT TO PRODUCE SUCH REPORT, RECORDS OR INFORMATION  
25 CONCERNING SUCH REPORT AND RECORDS, IN WHOLE OR IN PART.

26 S 6. Section 426 of the social services law, as amended by chapter 676  
27 of the laws of 1985, is amended to read as follows:

28 S 426. Annual reports. The commissioner shall prepare for inclusion in  
29 the annual report required by subdivision (d) of section seventeen of  
30 this chapter to be filed with the governor and the legislature prior to  
31 December fifteenth of each year, a report on the operations of the state  
32 central register of child abuse and maltreatment and the various local  
33 child protective services. The report shall include a full statistical  
34 analysis of the reports made to the central register together with a  
35 report on the implementation of this title, his evaluation of services  
36 offered under this chapter and his recommendations for additional legis-  
37 lation to fulfill the purposes of this title. Such report shall indicate  
38 the number of child abuse and maltreatment reports and cases received by  
39 the statewide central register of child abuse and maltreatment by each  
40 district in the preceding year, the number of such cases determined to  
41 have been indicated and the number of such cases determined to be  
42 unfounded by each district in the preceding year, the number of such  
43 cases which have not been indicated or unfounded within the time period  
44 required by subdivision seven of section four hundred twenty-four of  
45 this chapter by each district in the preceding year and the number of  
46 workers assigned to the child protective service in each district in the  
47 preceding year. SUCH REPORT SHALL INCLUDE, AMONG OTHER INFORMATION,  
48 AVAILABLE DEMOGRAPHIC INFORMATION AND AVAILABLE INFORMATION CONCERNING  
49 THE RACIAL AND ETHNIC CHARACTERISTICS OF THE FAMILY MEMBERS AND PERSONS  
50 SERVED BY THE DIFFERENTIAL RESPONSE PROGRAM PURSUANT TO SECTION FOUR  
51 HUNDRED TWENTY-SEVEN-A OF THE SOCIAL SERVICES LAW, AS WELL AS AVAILABLE  
52 INFORMATION CONCERNING THE RACIAL AND ETHNIC CHARACTERISTICS OF THE  
53 FAMILY MEMBERS AND PERSONS SERVICED UNDER THE TRADITIONAL CHILD PROTEC-  
54 TIVE SERVICES PROGRAM, IN EACH LOCAL SOCIAL SERVICES DISTRICT IN THE  
55 STATE. The report shall also contain data on the protection of children  
56 in residential care from abuse and maltreatment, including reports

1 received, results of investigations by types of facilities and programs,  
2 types of corrective action taken, as well as efforts undertaken by the  
3 department, the division for youth and the state education department to  
4 provide training pursuant to standards established by section four  
5 hundred sixty-two of this chapter, section five hundred one of the exec-  
6 utive law and sections forty-four hundred three, forty-three hundred  
7 fourteen, forty-three hundred fifty-eight and forty-two hundred twelve  
8 of the education law.  
9 S 7. This act shall take effect immediately; provided that section six  
10 of this act shall take effect January 1, 2014.