

2356

2013-2014 Regular Sessions

I N A S S E M B L Y

January 14, 2013

Introduced by M. of A. SCARBOROUGH, PEOPLES-STOKES, CERETTO, TITUS,
MONTESANO, ROBINSON -- Multi-Sponsored by -- M. of A. BARCLAY, COLTON,
GRAF -- 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:

1 Section 1. Short title. This act shall be known and may be cited as
2 "Laura Cummings Law".
3 S 2. The section heading and opening paragraph of section 421 of the
4 social services law, as amended by chapter 718 of the laws of 1986, are
5 amended to read as follows:
6 Responsibility of the [department] OFFICE OF CHILDREN AND FAMILY
7 SERVICES. The [department] OFFICE OF CHILDREN AND FAMILY SERVICES
8 shall:
9 S 3. Paragraph (a) of subdivision 1 of section 473 of the social
10 services law, as amended by chapter 395 of the laws of 1995, is amended
11 to read as follows:
12 (a) receiving and investigating reports of seriously impaired individuals who may be in need of protection; SUCH INVESTIGATIONS SHALL INCLUDE
13 INVESTIGATION OF THE HOME OF AN IMPAIRED INDIVIDUAL NAMED IN THE REPORT,
14 INCLUDING BY THE AUTHORITY OF IMMEDIATE COURT ORDERS WHENEVER ACCESS
15 THERETO IS DENIED AS SET FORTH IN SECTION FOUR HUNDRED SEVENTY-THREE-A
16 OF THIS ARTICLE;
17

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

LBD02746-01-3

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

3 1-A. EXCEPT IN A CITY WITH A POPULATION OF ONE MILLION OR MORE, IN
4 EVERY SITUATION WHERE A SOCIAL SERVICES OFFICIAL OR CASEWORKER, WHO IS
5 INVESTIGATING WHETHER AN ADULT IS IN NEED OF PROTECTIVE SERVICES, IS
6 DENIED ACCESS TO THAT ADULT TO SUFFICIENTLY ASSESS IF THAT ADULT IS IN
7 NEED OF SUCH SERVICES, THE OFFICIAL OR CASEWORKER SHALL IMMEDIATELY
8 DISCUSS THE MATTER WITH THE SUPERVISOR OF THE ADULT SERVICES DIVISION OF
9 THE SOCIAL SERVICES DISTRICT AS WELL AS WITH THE APPROPRIATE COUNTY
10 LEGAL COUNSEL ASSIGNED TO SUCH MATTERS, AND A DECISION SHALL BE MADE AS
11 TO THE APPROPRIATENESS OF SEEKING A COURT ORDER OF ACCESS PURSUANT TO
12 THIS SECTION. IF THE DECISION IS MADE TO SEEK AN ORDER, THAT SHALL OCCUR
13 FORTHWITH, AND IF THE DECISION IS NOT TO SEEK SUCH AN ORDER, IT SHALL BE
14 RECORDED WITH THE RATIONALE FOR SUCH DECISION IN THE RECORDS.

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

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

29 S 6. Subparagraphs (z) and (aa) of paragraph (A) of subdivision 4 of
30 section 422 of the social services law, subparagraph (z) as amended and
31 subparagraph (aa) as added chapter 440 of the laws of 2011, are amended
32 and a new subparagraph (bb) is added to read as follows:

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

40 (aa) a social services official who is investigating whether an adult
41 is in need of protective services in accordance with the provisions of
42 section four hundred seventy-three of this chapter, when such official
43 has reasonable cause to believe such adult may be in need of protective
44 services due to the conduct of an individual or individuals who had
45 access to such adult when such adult was a child and that such reports
46 and information are needed to further the present investigation[.]; AND

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

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

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

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

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

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

28 S 195.05 Obstructing governmental administration in the second degree.

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

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

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

40 3. by means of releasing a dangerous animal under circumstances evinc-
41 ing the actor's intent that the animal obstruct governmental adminis-
42 tration; OR

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

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

48 S 9. This act shall take effect immediately.