

3786

2013-2014 Regular Sessions

I N S E N A T E

February 15, 2013

Introduced by Sen. ADAMS -- read twice and ordered printed, and when printed to be committed to the Committee on Social Services

AN ACT to amend the social services law, the criminal procedure law and the civil practice law and rules, in relation to assisting and protecting victims of domestic violence, child abuse and child neglect

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

1 Section 1. Legislative intent. Presently, a person convicted of  
2 harassment, which is only a violation under the penal law, enjoys an  
3 automatic seal on his or her criminal record. Harassment often includes  
4 matters of domestic violence. In subsequent proceedings between the  
5 victim of the violence and the convicted aggressor, the record of the  
6 criminal court, the police arrest and investigation, and the aggressor's  
7 conviction, admissions or orders of protection in the criminal matter  
8 are not available to the victim to prove that the domestic violence  
9 occurred; making it difficult for the victim to protect himself or  
10 herself against further aggression or obtain justice in family court or  
11 other civil proceedings. This act will allow the victim or victim's  
12 representative to obtain a judicial subpoena releasing such record to  
13 the family or supreme court.

14 Likewise, where an investigation by child protective services "indi-  
15 cates" the abuse or neglect of a child, the state law allows the subject  
16 of the report the ability to amend the report to "unfounded" without any  
17 notice or opportunity to object to the amendment being given to the  
18 victim of the abuse or neglect. As a result, if amended, even by  
19 default, the victim or co-parent cannot access the record of the inves-  
20 tigation in subsequent family or supreme court proceedings. Further,  
21 the person previously "indicated" can use the amended report as a weapon  
22 against the opposing party to show that their allegation, or belief in  
23 the allegation, was frivolous. Even where the "indicated" finding is  
24 properly amended to "unfounded," and the accused was frivolously victim-

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

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1 ized by the allegations of their opposing party, the reporting law  
2 shields the identity of the false reporter. This act, therefore,  
3 protects the victims of child abuse, child neglect and wrongful accusa-  
4 tions of child abuse and neglect by opening the records of the central  
5 registry by judicial subpoena.

6 Finally, the state legislature enacted a hearsay exception to a  
7 child's statements of abuse or neglect in section 1065 of the family  
8 court act. Justifiably, if not technically correct, the state's appel-  
9 late courts have expanded such section's exception to custody, divorce  
10 and child support proceedings. However, this exception is not currently  
11 available in every matter where domestic violence, child abuse or child  
12 neglect may be at issue (i.e. surrogate court matters, tort actions, or  
13 family offenses). This act allows the judges, parens patriae, to provide  
14 further protection to children in consideration of their particular  
15 emotional immaturity and fragility, while preventing convictions on only  
16 the allegations of a child.

17 S 2. Subparagraphs (iv) and (v) of paragraph (a) of subdivision 5 of  
18 section 422 of the social services law, as amended by chapter 555 of the  
19 laws of 2000, are amended to read as follows:

20 (iv) to the subject of the report; [and]

21 (v) to a district attorney, an assistant district attorney, an inves-  
22 tigator employed in the office of a district attorney, or to a sworn  
23 officer of the division of state police, of a city, county, town or  
24 village police department or of a county sheriff's office when such  
25 official verifies that the report is necessary to conduct an active  
26 investigation or prosecution of a violation of subdivision three of  
27 section 240.55 of the penal law; AND

28 (VI) ON JUDICIAL SUBPOENA OF THE FAMILY OR SUPREME COURT WHERE THE  
29 PROTECTION OF A CHILD OR A FALSE ALLEGATION OF CHILD ABUSE OR NEGLECT IS  
30 AT ISSUE AND THE SUBJECT OF THE REPORT IS A PARTY TO AN ACTION THEREIN.

31 S 3. Subdivision 7 of section 422 of the social services law, as  
32 amended by chapter 434 of the laws of 1989, is amended to read as  
33 follows:

34 7. At any time, a subject of a report [and], other persons named in  
35 the report OR THEIR GUARDIANS OR CUSTODIANS, AND THE FAMILY OR SUPREME  
36 COURT BY JUDICIAL SUBPOENA AND WHERE THE PROTECTION OF A CHILD OR FALSE  
37 ALLEGATIONS OF CHILD ABUSE OR NEGLECT IS AT ISSUE AND THE SUBJECT OF THE  
38 REPORT IS A PARTY TO AN ACTION THEREIN, may receive, upon request, a  
39 copy of all information contained in the central register; provided,  
40 however, that the commissioner is authorized, EXCEPT WHEN THE REQUEST IS  
41 MADE BY JUDICIAL SUBPOENA AND THE REPORTER IS A PARTY TO THE ACTION, to  
42 prohibit the release of data that would identify the person who made the  
43 report or who cooperated in a subsequent investigation or the agency,  
44 institution, organization, program or other entity where such person is  
45 employed or with which he is associated, which he reasonably finds will  
46 be detrimental to the safety or interests of such person.

47 S 4. Subparagraph (i) of paragraph (a) and subparagraphs (i) and (ii)  
48 of paragraph (b) of subdivision 8 of section 422 of the social services  
49 law, as amended by chapter 12 of the laws of 1996, are amended and a new  
50 paragraph (f) is added to read as follows:

51 (i) At any time subsequent to the completion of the investigation but  
52 in no event later than ninety days after the subject of the report is  
53 notified that the report is indicated the subject may request the  
54 commissioner to amend the record of the report. THE COMMISSIONER SHALL  
55 MAIL TO THE VICTIM'S PARENT, GUARDIAN OR CUSTODIAN NOTICE OF THE  
56 SUBJECT'S REQUEST TO AMEND AND THE BASIS UPON WHICH THE AMENDMENT IS

1 SOUGHT. SUCH PARENT, GUARDIAN OR CUSTODIAN MAY OBJECT TO THE AMENDMENT  
2 WITHIN THIRTY DAYS OF NOTICE BY MAILING HIS OR HER OBJECTION TO THE  
3 COMMISSIONER. If the commissioner does not amend the report in accord-  
4 ance with such request within ninety days of receiving the request, the  
5 subject shall have the right to a fair hearing, held in accordance with  
6 paragraph (b) of this subdivision, to determine whether the record of  
7 the report in the central register should be amended on the grounds that  
8 it is inaccurate or it is being maintained in a manner inconsistent with  
9 this title.

10 (i) If the department, within ninety days of receiving a request from  
11 the subject that the record of a report be amended, does not amend the  
12 record in accordance with such request, the department shall schedule a  
13 fair hearing and shall provide notice of the scheduled hearing date to  
14 the subject, the statewide central register [and, as appropriate, to],  
15 the child protective service or the state agency which investigated the  
16 report, THE ADULT VICTIM, OR THE MINOR VICTIM'S PARENT, GUARDIAN OR  
17 CUSTODIAN. SUCH PARENT, GUARDIAN OR CUSTODIAN MAY APPEAR IN PERSON, OR  
18 BY AN ATTORNEY, TO OBJECT TO THE REQUESTED AMENDMENT AND PRESENT  
19 WITNESSES, SWORN STATEMENTS AND OTHER EVIDENCE FOR PRESENTATION TO THE  
20 HEARING OFFICER.

21 (ii) The burden of proof in such a hearing shall be on the child  
22 protective service or the state agency which investigated the report,  
23 THE ADULT VICTIM, OR THE MINOR VICTIM'S PARENT, GUARDIAN OR CUSTODIAN,  
24 as the case may be. In such a hearing, the fact that there is a family  
25 court finding of abuse or neglect against the subject in regard to an  
26 allegation contained in the report shall create an irrebuttable presump-  
27 tion that said allegation is substantiated by some credible evidence.

28 (F) AN ADULT VICTIM, OR THE MINOR VICTIM'S PARENT, GUARDIAN OR CUSTO-  
29 DIAN MAY SEEK TO VACATE AN AMENDMENT MADE PURSUANT TO PARAGRAPH (E) OF  
30 THIS SUBDIVISION WITHIN ONE YEAR OF THE EFFECTIVE DATE OF THIS PARAGRAPH  
31 OR KNOWLEDGE THAT SUCH AN AMENDMENT HAS BEEN MADE WITHOUT SUCH PARENT,  
32 GUARDIAN OR CUSTODIAN RECEIVING NOTICE OF HEARING OR THE SUBJECT'S  
33 REQUEST TO AMEND. THE ADULT VICTIM, OR THE MINOR VICTIM'S PARENT, GUARD-  
34 IAN OR CUSTODIAN SEEKING TO VACATE AN UNNOTICED AMENDMENT SHALL STATE  
35 WITH PARTICULARITY THE DATE THAT THEY BECAME AWARE THAT AN AMENDMENT WAS  
36 MADE AND THE EVIDENCE HE OR SHE WILL PRESENT THAT DEMONSTRATES THE  
37 COMMISSIONER'S ERROR IN AMENDMENT. THE COMMISSIONER SHALL SCHEDULE A  
38 REHEARING DATE, AND SHALL IMMEDIATELY INFORM THE SUBJECT OF THE FORMERLY  
39 INDICATED REPORT, THE ADULT VICTIM OR MINOR VICTIM'S PARENT, GUARDIAN OR  
40 CUSTODIAN, AND THE CHILD PROTECTIVE SERVICE OR THE STATE AGENCY THAT  
41 INVESTIGATED THE REPORT.

42 S 5. Paragraph (d) of subdivision 1 of section 160.55 of the criminal  
43 procedure law, as amended by section 74 of subpart B of part C of chap-  
44 ter 62 of the laws of 2011, is amended to read as follows:

45 (d) the records referred to in paragraph (c) of this subdivision shall  
46 be made available to the person accused or to such person's designated  
47 agent, and shall be made available to (i) a prosecutor in any proceeding  
48 in which the accused has moved for an order pursuant to section 170.56  
49 or 210.46 of this chapter, or (ii) a law enforcement agency upon ex  
50 parte motion in any superior court, if such agency demonstrates to the  
51 satisfaction of the court that justice requires that such records be  
52 made available to it, or (iii) any state or local officer or agency with  
53 responsibility for the issuance of licenses to possess guns, when the  
54 accused has made application for such a license, or (iv) the New York  
55 state department of corrections and community supervision when the  
56 accused is under parole supervision as a result of conditional release

1 or parole release granted by the New York state board of parole and the  
2 arrest which is the subject of the inquiry is one which occurred while  
3 the accused was under such supervision, or (v) the probation department  
4 responsible for supervision of the accused when the arrest which is the  
5 subject of the inquiry is one which occurred while the accused was under  
6 such supervision, or (vi) a police agency, probation department, sher-  
7 iff's office, district attorney's office, department of correction of  
8 any municipality and parole department, for law enforcement purposes,  
9 upon arrest in instances in which the individual stands convicted of  
10 harassment in the second degree, as defined in section 240.26 of the  
11 penal law, committed against a member of the same family or household as  
12 the defendant, as defined in subdivision one of section 530.11 of this  
13 chapter, and determined pursuant to subdivision eight-a of section  
14 170.10 of this title, OR (VII) UPON RECEIPT OF A JUDICIAL SUBPOENA, THE  
15 FAMILY OR SUPREME COURT IN A MATTER WHERE DOMESTIC VIOLENCE, THE  
16 PROTECTION OF A CHILD, OR A FALSE ALLEGATION OF DOMESTIC VIOLENCE, CHILD  
17 ABUSE OR NEGLECT IS AT ISSUE AND THE DEFENDANT IS A PARTY TO THE ACTION  
18 THEREIN; and

19 S 6. The civil practice law and rules is amended by adding a new  
20 section 4549 to read as follows:

21 S 4549. EVIDENCE OF CHILD'S STATEMENTS REGARDING DOMESTIC VIOLENCE,  
22 ABUSE OR NEGLECT. 1. PREVIOUS STATEMENTS MADE BY A CHILD RELATING TO ANY  
23 ALLEGATIONS OF DOMESTIC VIOLENCE OR CHILD ABUSE OR NEGLECT SHALL BE  
24 GENERALLY ADMISSIBLE IN EVIDENCE, BUT IF UNCORROBORATED, SUCH STATEMENT  
25 SHALL NOT BE SUFFICIENT TO MAKE A FACT-FINDING OF ABUSE OR NEGLECT. ANY  
26 OTHER EVIDENCE TENDING TO SUPPORT THE RELIABILITY OF THE CHILD'S PREVI-  
27 OUS STATEMENTS SHALL BE GENERALLY ADMISSIBLE AND SUFFICIENT CORROB-  
28 ORATION. THE TESTIMONY OF THE CHILD SHALL NOT BE NECESSARY TO MAKE A  
29 FACT-FINDING OF DOMESTIC VIOLENCE, ABUSE OR NEGLECT.

30 2. THE PRESIDING JUDGE MAY, HOWEVER, ISSUE AN ORDER PROHIBITING THE  
31 DIVULGING OF THE CONTENTS OF SUCH STATEMENTS TO ANY ENTITY OR PERSON  
32 OTHER THAN THE COURT, LITIGANTS, THEIR COUNSEL AND ANY WITNESS DEEMED  
33 NECESSARY TO THE PROCEEDINGS.

34 S 7. This act shall take effect immediately.