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

7061

I N S E N A T E

April 23, 2014

Introduced by Sens. FELDER, GOLDEN -- 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 and the executive law, in relation to access to law enforcement records during an active investigation of suspected child abuse or maltreatment undertaken by a child protective service

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

Section 1. Section 424 of the social services law is amended by adding a new subdivision 15 to read as follows:

15. A. NOTWITHSTANDING ANY LAW, RULE OR REGULATION TO THE CONTRARY, THE STATE POLICE, THE DIVISION OF CRIMINAL JUSTICE SERVICES, THE DIVISION OF PAROLE AND ANY OTHER DEPARTMENT, AGENCY, OR DIVISION OF THE STATE THAT HOLDS RELEVANT RECORDS SHALL, WITHIN SEVENTY-TWO HOURS OF A REQUEST BY A CHILD PROTECTIVE SERVICE, PROVIDE TO SUCH CHILD PROTECTIVE SERVICE A FULL AND COMPLETE COPY OF ANY RECORDS THAT ARE NOT SEALED BY A COURT OF COMPETENT JURISDICTION PURSUANT TO NEW YORK STATE LAW, THAT PERTAIN TO AN ACTIVE INVESTIGATION OF SUSPECTED CHILD ABUSE OR MALTREATMENT UNDERTAKEN BY A CHILD PROTECTIVE SERVICE PURSUANT TO THIS TITLE. THE RECORDS THAT ARE SUBJECT TO THIS SUBDIVISION SHALL INCLUDE, BUT ARE NOT LIMITED TO, ARREST AND CONVICTION RECORDS, ORDERS OF PROTECTION, INFORMATION INDICATING THAT A PERSON NAMED IN A REPORT IS CURRENTLY UNDER SUPERVISION OF A PROBATION OR PAROLE AGENCY OF THE STATE OR OF A LOCAL GOVERNMENT AND THE CHARGE OR CHARGES RELATED THERETO, INFORMATION INDICATING IF THERE IS AN OUTSTANDING ARREST WARRANT, INFORMATION INDICATING IF A PERSON IS A REGISTERED SEX OFFENDER AND INFORMATION REGARDING REQUESTS FOR POLICE SERVICES OR A POLICE RESPONSE TO A SPECIFIED ADDRESS OR INVOLVING SPECIFIED PERSONS. SUCH REQUESTS FOR RECORDS MAY INCLUDE A REQUEST FOR RECORDS NAMING ALL PERSONS NAMED IN A REPORT OF SUSPECTED CHILD ABUSE OR MALTREATMENT. THIS SUBDIVISION DOES NOT AUTHORIZE THE RELEASE OF CONFIDENTIAL MEDICAL RECORDS OR OF MENTAL HEALTH RECORDS THAT MAY BE HELD BY AN AGENCY OF NEW YORK STATE. RECORDS OR PARTS THEREOF MAY BE WITHHELD TO THE EXTENT NECESSARY TO NOT COMPROMISE

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

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AN ACTIVE CRIMINAL INVESTIGATION THAT IS BEING UNDERTAKEN BY THE AGENCY THAT HOLDS SUCH RECORDS.

B. NOTWITHSTANDING ANY LAW, RULE OR REGULATION TO THE CONTRARY, LOCAL MUNICIPAL POLICE DEPARTMENTS, COUNTY SHERIFF OFFICES, ALL FIRE DEPARTMENTS WHETHER VOLUNTEER OR NOT, ALL 911 DISPATCH OPERATIONS, PAROLE AGENCIES OR DEPARTMENTS, ALL AMBULANCE SERVICES WHETHER PUBLIC OR PRIVATE AND ANY OTHER DEPARTMENT, AGENCY, OR DIVISION OF A LOCAL GOVERNMENT THAT HOLD RELEVANT RECORDS SHALL, WITHIN SEVENTY-TWO HOURS OF A REQUEST BY A CHILD PROTECTIVE SERVICE, PROVIDE TO SUCH CHILD PROTECTIVE SERVICE A FULL AND COMPLETE COPY OF ANY RECORDS THAT ARE NOT SEALED BY A COURT OF COMPETENT JURISDICTION PURSUANT TO NEW YORK STATE LAW, THAT PERTAIN TO AN ACTIVE INVESTIGATION OF SUSPECTED CHILD ABUSE OR MALTREATMENT UNDERTAKEN BY A CHILD PROTECTIVE SERVICE PURSUANT TO THIS TITLE. THE RECORDS THAT ARE SUBJECT TO THIS SUBDIVISION SHALL INCLUDE, BUT ARE NOT LIMITED TO, ARREST AND CONVICTION RECORDS, ORDERS OF PROTECTION, INFORMATION INDICATING THAT A PERSON NAMED IN A REPORT IS CURRENTLY UNDER SUPERVISION OF A PROBATION OR PAROLE AGENCY OR DEPARTMENT OF THE STATE OR OF A LOCAL GOVERNMENT AND THE CHARGE OR CHARGES RELATED THERETO, INFORMATION INDICATING IF THERE IS AN OUTSTANDING ARREST WARRANT, INFORMATION INDICATING IF A PERSON IS A REGISTERED SEX OFFENDER AND INFORMATION REGARDING REQUESTS FOR POLICE SERVICES, INFORMATION THAT THERE HAS BEEN A REQUEST FOR A POLICE RESPONSE OR OTHER EMERGENCY RESPONSE TO A SPECIFIED ADDRESS OR INVOLVING SPECIFIED PERSONS. SUCH REQUESTS FOR RECORDS MAY INCLUDE A REQUEST FOR RECORDS NAMING ALL PERSONS NAMED IN A REPORT OF SUSPECTED CHILD ABUSE OR MALTREATMENT. THIS SUBDIVISION DOES NOT AUTHORIZE THE RELEASE OF CONFIDENTIAL MEDICAL RECORDS OR OF MENTAL HEALTH RECORDS THAT MAY BE HELD BY AN AGENCY OF NEW YORK STATE. RECORDS OR PARTS THEREOF MAY BE WITHHELD TO THE EXTENT NECESSARY TO NOT COMPROMISE AN ACTIVE CRIMINAL INVESTIGATION THAT IS BEING UNDERTAKEN BY THE AGENCY THAT HOLDS SUCH RECORDS.

C. RECORDS OBTAINED BY A CHILD PROTECTIVE SERVICE PURSUANT TO PARAGRAPH A OR B OF THIS SUBDIVISION SHALL BE CONSIDERED PART OF A REPORT OF SUSPECTED CHILD ABUSE OR MALTREATMENT AND SHALL BE CONFIDENTIAL AS PROVIDED FOR IN SECTION FOUR HUNDRED TWENTY-TWO OF THIS ARTICLE AND MAY ONLY BE DISCLOSED AS AUTHORIZED IN SUBDIVISION FOUR OF SECTION FOUR HUNDRED TWENTY-TWO OF THIS ARTICLE. THE PENALTIES PRESCRIBED IN SUBDIVISION TWELVE OF SECTION FOUR HUNDRED TWENTY-TWO OF THIS ARTICLE APPLY TO ANY UNAUTHORIZED RELEASE OF ANY REPORT OBTAINED PURSUANT TO THIS SUBDIVISION.

D. ALL RECORDS THAT ARE TO BE PROVIDED TO A CHILD PROTECTIVE SERVICE PURSUANT TO PARAGRAPHS A AND B OF THIS SUBDIVISION SHALL BE PROVIDED AT NO COST TO THE CHILD PROTECTIVE SERVICE THAT HAS REQUESTED SUCH RECORD.

S 2. Subdivision 19 of section 837 of the executive law, as added by chapter 1 of the laws of 2013, is amended and a new subdivision 20 is added to read as follows:

19. Receive names and other non-clinical identifying information pursuant to section 9.46 of the mental hygiene law; provided, however, any such information shall be destroyed five years after such receipt, or pursuant to a proceeding brought under article seventy-eight of the civil practice law and rules determining that an individual is eligible for a license pursuant to section 400.00 of the penal law and otherwise permitted to possess a firearm[.];

20. SUPPLY ALL RECORDS REQUESTED BY A CHILD PROTECTIVE SERVICE AS AUTHORIZED BY SUBDIVISION FIFTEEN OF SECTION FOUR HUNDRED TWENTY-FOUR OF THE SOCIAL SERVICES LAW.

S 3. Section 223 of the executive law is amended by adding a new subdivision 3 to read as follows:

3. THE SUPERINTENDENT SHALL FULLY AND PROMPTLY PROVIDE ALL RELEVANT RECORDS THAT ARE REQUESTED BY A CHILD PROTECTIVE SERVICE PURSUANT TO SUBDIVISION FIFTEEN OF SECTION FOUR HUNDRED TWENTY-FOUR OF THE SOCIAL SERVICES LAW UNLESS SUCH RECORD OR PART THEREOF IS ALLOWED TO BE WITHHELD BY SUBDIVISION FIFTEEN OF SECTION FOUR HUNDRED TWENTY-FOUR OF THE SOCIAL SERVICES LAW. ALL RELEVANT RECORDS THAT ARE CONTAINED WITHIN OR AVAILABLE THROUGH THE BASIC SYSTEM ESTABLISHED BY SECTION TWO HUNDRED EIGHTEEN OF THIS ARTICLE AND THE COMPUTER SYSTEM ESTABLISHED BY SECTION TWO HUNDRED TWENTY-ONE-A OF THIS ARTICLE SHALL BE PROVIDED TO A CHILD PROTECTIVE SERVICE. IN ADDITION, ANY RELEVANT RECORD THAT IS CONTAINED IN ANY OTHER SYSTEM UNDER THE CONTROL OR SUPERVISION OF THE SUPERINTENDENT THAT NOW EXISTS OR IS CREATED IN THE FUTURE SHALL BE PROVIDED TO A CHILD PROTECTIVE SERVICE.

S 4. Section 223 of the executive law, as amended by chapter 843 of the laws of 1980, is amended to read as follows:

S 223. Duties and powers of the superintendent of state police and of members of the state police. 1. It shall be the duty of the superintendent of the state police and of members of the state police to prevent and detect crime and apprehend criminals. They shall also be subject to the call of the governor and are empowered to co-operate with any other department of the state or with local authorities. They shall have power to arrest, without a warrant, any person committing or attempting to commit within their presence or view a breach of the peace or other violation of law, to serve and execute warrants of arrest or search issued by proper authority and to exercise all other powers of police officers of the state of New York. Any such warrants issued by any magistrate of the state may be executed by them in any part of the state according to the tenor thereof without indorsement. But they shall not exercise their powers within the limits of any city to suppress rioting and disorder except by direction of the governor or upon the request of the mayor of the city with the approval of the governor. Any member of the rank of sergeant or above may take pre-arraignment bail from any defendant in the amounts and under the circumstances and conditions that police may take bail.

2. THE SUPERINTENDENT SHALL FULLY AND PROMPTLY PROVIDE ALL RELEVANT RECORDS THAT ARE REQUESTED BY A CHILD PROTECTIVE SERVICE PURSUANT TO SUBDIVISION FIFTEEN OF SECTION FOUR HUNDRED TWENTY-FOUR OF THE SOCIAL SERVICES LAW UNLESS SUCH RECORD OR PART THEREOF IS ALLOWED TO BE WITHHELD BY SUBDIVISION FIFTEEN OF SECTION FOUR HUNDRED TWENTY-FOUR OF THE SOCIAL SERVICES LAW. ALL RELEVANT RECORDS THAT ARE CONTAINED WITHIN OR AVAILABLE THROUGH THE BASIC SYSTEM ESTABLISHED BY SECTION TWO HUNDRED EIGHTEEN OF THIS ARTICLE AND THE COMPUTER SYSTEM ESTABLISHED BY SECTION TWO HUNDRED TWENTY-ONE-A OF THIS ARTICLE SHALL BE PROVIDED TO A CHILD PROTECTIVE SERVICE. IN ADDITION, ANY RELEVANT RECORD THAT IS CONTAINED IN ANY OTHER SYSTEM UNDER THE CONTROL OR SUPERVISION OF THE SUPERINTENDENT THAT NOW EXISTS OR IS CREATED IN THE FUTURE SHALL BE PROVIDED TO A CHILD PROTECTIVE SERVICE.

S 5. Section 259-k of the executive law is amended by adding a new subdivision 5 to read as follows:

5. THE DIVISION OF PAROLE SHALL SUPPLY ALL RECORDS REQUESTED BY A CHILD PROTECTIVE SERVICE AS AUTHORIZED BY SUBDIVISION FIFTEEN OF SECTION FOUR HUNDRED TWENTY-FOUR OF THE SOCIAL SERVICES LAW.

S 6. Section 256-a of the executive law, as added by chapter 707 of the laws of 1992, is amended to read as follows:

S 256-a. Providing information to child protection services. Upon a determination by a probation agency or department that its records regarding an individual presently under the supervision of the agency or department are relevant to an investigation of child abuse or maltreatment conducted by a child protective service pursuant to title six of article six of the social services law, the probation agency or department shall provide the records or portions thereof determined to be relevant to the child protective service conducting the investigation. Each probation agency or department shall make provisions for the transmission of records required to be provided under this section. EACH PROBATION AGENCY OR DEPARTMENT SHALL SUPPLY ALL RECORDS REQUESTED BY A CHILD PROTECTIVE SERVICE AS AUTHORIZED BY SUBDIVISION FIFTEEN OF SECTION FOUR HUNDRED TWENTY-FOUR OF THE SOCIAL SERVICES LAW.

S 7. This act shall take effect immediately, provided that the amendments to section 223 of the executive law made by section three of this act shall be subject to the expiration and reversion of such section pursuant to section 3 of chapter 428 of the laws of 1999, as amended, when upon such date the provisions of section four of this act shall take effect.