

1802--A

2015-2016 Regular Sessions

I N   A S S E M B L Y

January 13, 2015

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Introduced by M. of A. LENTOL -- read once and referred to the Committee on Children and Families -- recommitted to the Committee on Children and Families in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

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1 against the opposing party to show that their allegation, or belief in  
2 the allegation, was frivolous. Even where the "indicated" finding is  
3 properly amended to "unfounded," and the accused was frivolously victim-  
4 ized by the allegations of their opposing party, the reporting law  
5 shields the identity of the false reporter. This act, therefore,  
6 protects the victims of child abuse, child neglect and wrongful accusa-  
7 tions of child abuse and neglect by opening the records of the central  
8 registry by judicial subpoena.

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

20 S 2. Subparagraphs (iv) and (v) of paragraph (a) of subdivision 5 of  
21 section 422 of the social services law, subparagraph (iv) as amended by  
22 chapter 555 of the laws of 2000 and subparagraph (v) as amended by chap-  
23 ter 256 of the laws of 2014, are amended to read as follows:

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

25 (v) to a district attorney, an assistant district attorney, an inves-  
26 tigator employed in the office of a district attorney, or to a sworn  
27 officer of the division of state police, of a city, county, town or  
28 village police department or of a county sheriff's office when such  
29 official verifies that the report is necessary to conduct an active  
30 investigation or prosecution of a violation of subdivision four of  
31 section 240.50 of the penal law; AND

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

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

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

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

55 (i) At any time subsequent to the completion of the investigation but  
56 in no event later than ninety days after the subject of the report is

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

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

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

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

46 S 5. Paragraph (d) of subdivision 1 of section 160.55 of the criminal  
47 procedure law, as amended by chapter 449 of the laws of 2015, is amended  
48 to read as follows:

49 (d) the records referred to in paragraph (c) of this subdivision shall  
50 be made available to the person accused or to such person's designated  
51 agent, and shall be made available to (i) a prosecutor in any proceeding  
52 in which the accused has moved for an order pursuant to section 170.56  
53 or 210.46 of this chapter, or (ii) a law enforcement agency upon ex  
54 parte motion in any superior court, or in any district court, city court  
55 or the criminal court of the city of New York provided that such court  
56 sealed the record, if such agency demonstrates to the satisfaction of

1 the court that justice requires that such records be made available to  
2 it, or (iii) any state or local officer or agency with responsibility  
3 for the issuance of licenses to possess guns, when the accused has made  
4 application for such a license, or (iv) the New York state department of  
5 corrections and community supervision when the accused is under parole  
6 supervision as a result of conditional release or parole release granted  
7 by the New York state board of parole and the arrest which is the  
8 subject of the inquiry is one which occurred while the accused was under  
9 such supervision, or (v) the probation department responsible for super-  
10 vision of the accused when the arrest which is the subject of the  
11 inquiry is one which occurred while the accused was under such super-  
12 vision, or (vi) a police agency, probation department, sheriff's office,  
13 district attorney's office, department of correction of any municipality  
14 and parole department, for law enforcement purposes, upon arrest in  
15 instances in which the individual stands convicted of harassment in the  
16 second degree, as defined in section 240.26 of the penal law, committed  
17 against a member of the same family or household as the defendant, as  
18 defined in subdivision one of section 530.11 of this chapter, and deter-  
19 mined pursuant to subdivision eight-a of section 170.10 of this title,  
20 OR (VII) UPON RECEIPT OF A JUDICIAL SUBPOENA, THE FAMILY OR THE SUPREME  
21 COURT IN A MATTER WHERE DOMESTIC VIOLENCE, THE PROTECTION OF A CHILD, OR  
22 A FALSE ALLEGATION OF DOMESTIC VIOLENCE, ABUSE OR NEGLECT IS AT ISSUE  
23 AND THE DEFENDANT IS A PARTY TO THE ACTION THEREIN; and

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

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

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

39 S 7. This act shall take effect immediately.