STATE OF NEW YORK

6427

2019-2020 Regular Sessions

IN SENATE

June 10, 2019

Introduced by Sen. MONTGOMERY -- 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 the standard of proof for unfounded and indicated reports of abuse or maltreatment and the admissibility of reports of child abuse and maltreatment; and to amend the social services law and the family court act, in relation to the administration of the statewide central register of child abuse and maltreatment

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivisions 6 and 7 of section 412 of the social services law, as added by chapter 1039 of the laws of 1973 and as renumbered by chapter 323 of the laws of 2008, are amended to read as follows:

6. An "unfounded report" means any report made pursuant to this title unless an investigation determines that [~~some credible evidence~~] **a fair preponderance of evidence** of the alleged abuse or maltreatment exists;

7. An "indicated report" means a report made pursuant to this title if an investigation determines that [~~some credible evidence~~] **a fair preponderance of evidence** of the alleged abuse or maltreatment exists.

§ 2. Section 651-a of the family court act, as amended by chapter 12 of the laws of 1996, is amended to read as follows:

§ 651-a. Reports of child abuse and maltreatment; admissibility. In any proceeding brought pursuant to this section to determine the custody or visitation of minors, a report made to the statewide central register of child abuse and maltreatment, pursuant to title six of article six of the social services law, or a portion thereof, which is otherwise admissible as a business record pursuant to rule forty-five hundred eighteen of the civil practice law and rules shall not be admissible in evidence, notwithstanding such rule, unless an investigation of such report conducted pursuant to title six of article six of the social services law has determined that there is [~~some credible~~] **a fair preponderance of**

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

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evidence of the alleged abuse or maltreatment, that the subject of the report has been notified that the report is indicated. In addition, if such report has been reviewed by the state commissioner of social services or his designee and has been determined to be unfounded, it shall not be admissible in evidence. If such report has been so reviewed and has been amended to delete any finding, each such deleted finding shall not be admissible. If the state commissioner of social services or his designee has amended the report to add any new finding, each such new finding, together with any portion of the original report not deleted by the commissioner or his designee, shall be admissible if it meets the other requirements of this section and is otherwise admissible as a business record. If such a report, or portion thereof, is admissible in evidence but is uncorroborated, it shall not be sufficient to make a fact finding of abuse or maltreatment in such proceeding. Any other evidence tending to support the reliability of such report shall be sufficient corroboration.

§ 3. Paragraph (c) of subdivision 2 of section 421 of the social services law, as amended by chapter 718 of the laws of 1986, is amended to read as follows:

(c) issue guidelines to assist local child protective services in the interpretation and assessment of reports of abuse and maltreatment made to the statewide central register described in section four hundred twenty-two of this article. Such guidelines shall include information, standards and criteria for the identification of [~~credible~~] **fair preponderance of** evidence of alleged abuse and maltreatment required to determine whether a report may be indicated.

§ 4. The opening paragraph of paragraph (a) of subdivision 5 of section 422 of the social services law, as amended by section 7 of part D of chapter 501 of the laws of 2012, is amended to read as follows:

Unless an investigation of a report conducted pursuant to this title determines that there is [~~some credible~~] **a fair preponderance of** evidence of the alleged abuse or maltreatment, all information identifying the subjects of the report and other persons named in the report shall be legally sealed forthwith by the central register and any local child protective services or the state agency which investigated the report. Such unfounded reports may only be unsealed and made available:

§ 5. Paragraph (c) of subdivision 5 of section 422 of the social services law, as added by chapter 555 of the laws of 2000, is amended to read as follows:

(c) Notwithstanding any other provision of law, the office of children and family services may, in its discretion, grant a request to expunge an unfounded report where: (i) the source of the report was convicted of a violation of subdivision three of section 240.55 of the penal law in regard to such report; or (ii) the subject of the report presents clear and convincing evidence that affirmatively refutes the allegation of abuse or maltreatment; provided however, that the absence of [~~credible~~] **a fair preponderance of** evidence supporting the allegation of abuse or maltreatment shall not be the sole basis to expunge the report. Nothing in this paragraph shall require the office of children and family services to hold an administrative hearing in deciding whether to expunge a report. Such office shall make its determination upon reviewing the written evidence submitted by the subject of the report and any records or information obtained from the state or local agency which investigated the allegations of abuse or maltreatment.

§ 6. Subdivision 6 of section 422 of the social services law, as amended by section 7 of part D of chapter 501 of the laws of 2012, is amended to read as follows:

6. In all other cases, the record of the report to the statewide central register shall be expunged ten years after the eighteenth birthday of the youngest child named in the report. **Provided however, in cases where the report was indicated for maltreatment, the record of the report to the statewide central register shall be conditionally sealed eight years after the report is received by the statewide central register, so long as there are no other indicated reports of abuse or maltreatment with such individual named as the subject of the report. Provided, further, that if such individual is named as the subject of a report in any subsequent indicated abuse or maltreatment reports, such record shall be immediately unsealed. Reports conditionally sealed pursuant to this subdivision shall be maintained in the statewide central register, however such reports shall not be made available except to: (a) entities included in subdivision five of this section; (b) head start programs which are funded pursuant to title V of the federal economic opportunity act of 1964, early intervention services established pursuant to section twenty-five hundred forty of the public health law, preschool services established pursuant to section forty-four hundred ten of the education law, child day care providers as defined in section three hundred ninety of this article for purposes of determining employment; (c) authorized agencies that are considering licensing the subject of the report to become a foster or adoptive parent; and (d) child protective services that are considering recommending the subject of the report as a custodial or visitation resource.** In the case of a child in residential care the record of the report to the statewide central register shall be expunged ten years after the reported child's eighteenth birthday. In any case and at any time, the commissioner of the office of children and family services may amend any record upon good cause shown and notice to the subjects of the report and other persons named in the report.

§ 7. Paragraph (a) of subdivision 8 of section 422 of the social services law, as amended by chapter 12 of the laws of 1996, and subparagraph (ii) as amended by chapter 323 of the laws of 2008, is amended to read as follows:

(a) (i) At any time subsequent to the completion of the investigation [~~**but in no event later than ninety days after the subject of the report is notified that the report is indicated**~~] the subject may request the commissioner to amend the record of the report. [~~**If**~~] **Where a proceeding pursuant to article ten of the family court act based on the same allegations that were indicated is pending, the request to amend shall be stayed until the disposition of such family court proceeding or, if the petition is dismissed at the conclusion of an adjournment in contemplation of dismissal or suspensed judgment, at such time of the dismissal, whichever is later. Unless such request has been stayed, if** the commissioner does not amend the report in accordance with such request within ninety days of receiving the request, the subject shall have the right to a fair hearing, held in accordance with paragraph (b) of this subdivision, to determine whether the record of the report in the central register should be amended on the grounds that it is inaccurate or it is being maintained in a manner inconsistent with this title.

(ii) Upon receipt of a request to amend the record of a child abuse and maltreatment report the office of children and family services shall immediately send a written request to the child protective service or

the state agency which was responsible for investigating the allegations of abuse or maltreatment for all records, reports and other information maintained by the service or state agency pertaining to such indicated report. The service or state agency shall as expeditiously as possible but within no more than twenty working days of receiving such request, forward all records, reports and other information it maintains on such indicated report to the office of children and family services, including a copy of any petition or court order based on the allegations that were indicated. [~~The~~] Unless such request to amend has been stayed, the office of children and family services shall as expeditiously as possible but within no more than fifteen working days of receiving such materials from the child protective service or state agency, review all such materials in its possession concerning the indicated report and determine, after affording such service or state agency a reasonable opportunity to present its views, whether there is a fair preponderance of the evidence to find that the subject committed the act or acts of child abuse or maltreatment giving rise to the indicated report and whether, based on guidelines developed by the office of children and family services pursuant to subdivision five of section four hundred twenty-four-a of this title, such act or acts could be relevant and reasonably related to employment of the subject of the report by a provider agency, as defined by subdivision three of section four hundred twenty-four-a of this title, or relevant and reasonably related to the subject of the report being allowed to have regular and substantial contact with children who are cared for by a provider agency, or relevant and reasonably related to the approval or disapproval of an application submitted by the subject of the report to a licensing agency, as defined by subdivision four of section four hundred twenty-four-a of this title.

(iii) If it is determined at the review held pursuant to this paragraph [~~(a)~~] that there is [~~no credible~~] not a fair preponderance of evidence in the record to find that the subject committed an act or acts of child abuse or maltreatment, the [~~department~~] office of children and family services shall amend the record to indicate that the report is "unfounded" and notify the subject forthwith.

(iv) If it is determined at the review held pursuant to this paragraph [~~(a)~~] that there is [~~some credible~~] a fair preponderance of evidence in the record to find that the subject committed such act or acts but that such act or acts could not be relevant and reasonably related to the employment of the subject by a provider agency or to the subject being allowed to have regular and substantial contact with children who are cared for by a provider agency or the approval or disapproval of an application which could be submitted by the subject to a licensing agency, the [~~department~~] office of children and family services shall be precluded from informing a provider or licensing agency which makes an inquiry to [~~the department~~] such office pursuant to the provisions of section four hundred twenty-four-a of this title concerning the subject that the person about whom the inquiry is made is the subject of an indicated report of child abuse or maltreatment. The [~~department~~] office of children and family services shall notify forthwith the subject of the report of such determinations and that a fair hearing has been scheduled pursuant to paragraph (b) of this subdivision. The sole issue at such hearing shall be whether the subject has been shown by [~~some credible~~] a fair preponderance of evidence to have committed the act or acts of child abuse or maltreatment giving rise to the indicated report.

(v) If it is determined at the review held pursuant to this paragraph [~~(a)~~] that there is [~~some credible~~] a fair preponderance of evidence in

the record to prove that the subject committed an act or acts of child abuse or maltreatment and that such act or acts could be relevant and reasonably related to the employment of the subject by a provider agency or to the subject being allowed to have regular and substantial contact with children cared for by a provider agency or the approval or disapproval of an application which could be submitted by the subject to a licensing agency, the [~~department~~] **office of children and family services** shall notify forthwith the subject of the report of such determinations and that a fair hearing has been scheduled pursuant to paragraph (b) of this subdivision.

§ 8. Subparagraphs (i) and (ii) of paragraph (b) of subdivision 8 of section 422 of the social services law, as amended by chapter 12 of the laws of 1996, are amended to read as follows:

(i) If the [~~department~~] **office of children and family services**, [~~within ninety days of~~] **upon** receiving a request from the subject that the record of a report be amended, does not amend the record in accordance with such request, [~~the department~~] **such office** shall schedule a fair hearing and shall provide notice of the scheduled hearing date to the subject, the statewide central register and, as appropriate, to the child protective service or the state agency which investigated the report.

(ii) The burden of proof in such a hearing shall be on the child protective service or the state agency which investigated the report, as the case may be. In such a hearing, the fact that there is a family court finding of abuse or neglect against the subject in regard to an allegation contained in the report shall create an irrebuttable presumption that said allegation is substantiated by [~~some credible~~] **a fair preponderance of** evidence. **Where the petitioning child protective agency withdraws with prejudice an allegation in a petition, or a family court finds on the merits that an allegation does not constitute abuse or neglect or a petition has been dismissed at the conclusion of either an adjournment in contemplation of dismissal or suspended judgment, or was not supported by a fair preponderance of the evidence, the office of children and family services shall amend such allegation to be unfounded.**

§ 9. Subparagraphs (i) and (ii) of paragraph (c) of subdivision 8 of section 422 of the social services law, as amended by chapter 12 of the laws of 1996, and the opening paragraph of subparagraph (ii) as amended by chapter 323 of the laws of 2008, are amended to read as follows:

(i) If it is determined at the fair hearing that there is [~~no credible~~] **not a fair preponderance of** evidence in the record to find that the subject committed an act or acts of child abuse or maltreatment, the [~~department~~] **office of children and family services** shall amend the record to reflect that such a finding was made at the administrative hearing, order any child protective service or state agency which investigated the report to similarly amend its records of the report, and shall notify the subject forthwith of the determination.

(ii) Upon a determination made at a fair hearing [~~held on or after January first, nineteen hundred eighty-six~~] scheduled pursuant to the provisions of subparagraph (v) of paragraph (a) of this subdivision that the subject has been shown by a fair preponderance of the evidence to have committed the act or acts of child abuse or maltreatment giving rise to the indicated report, the hearing officer shall determine, based on guidelines developed by the office of children and family services pursuant to subdivision five of section four hundred twenty-four-a of this title, whether such act or acts are relevant and reasonably related

to employment of the subject by a provider agency, as defined by subdivision three of section four hundred twenty-four-a of this title, or relevant and reasonably related to the subject being allowed to have regular and substantial contact with children who are cared for by a provider agency or relevant and reasonably related to the approval or disapproval of an application submitted by the subject to a licensing agency, as defined by subdivision four of section four hundred twenty-four-a of this title.

Upon a determination made at a fair hearing that the act or acts of abuse or maltreatment are relevant and reasonably related to employment of the subject by a provider agency or the subject being allowed to have regular and substantial contact with children who are cared for by a provider agency or the approval or denial of an application submitted by the subject to a licensing agency, the [~~department~~] **office of children and family services** shall notify the subject forthwith. The [~~department~~] **office of children and family services** shall inform a provider or licensing agency which makes an inquiry to [~~the department~~] **such office** pursuant to the provisions of section four hundred twenty-four-a of this title concerning the subject that the person about whom the inquiry is made is the subject of an indicated child abuse or maltreatment report.

The failure to determine at the fair hearing that the act or acts of abuse and maltreatment are relevant and reasonably related to the employment of the subject by a provider agency or to the subject being allowed to have regular and substantial contact with children who are cared for by a provider agency or the approval or denial of an application submitted by the subject to a licensing agency shall preclude the [~~department~~] **office of children and family services** from informing a provider or licensing agency which makes an inquiry to [~~the department~~] **such office** pursuant to the provisions of section four hundred twenty-four-a of this title concerning the subject that the person about whom the inquiry is made is the subject of an indicated child abuse or maltreatment report.

§ 10. Paragraph (e) of subdivision 8 of section 422 of the social services law, as added by chapter 12 of the laws of 1996, is amended to read as follows:

(e) Should the [~~department~~] **office of children and family services** grant the request of the subject of the report pursuant to this subdivision either through an administrative review or fair hearing to amend an indicated report to an unfounded report[~~. Such~~]**, such** report shall be legally sealed and shall be released and expunged in accordance with the standards set forth in subdivision five of this section.

§ 11. Subparagraphs (ii), (iii), and (v) of paragraph (e) of subdivision 1 of section 424-a of the social services law, subparagraphs (ii) and (iii) as amended by chapter 12 of the laws of 1996, and subparagraph (v) as amended by chapter 634 of the laws of 1988, are amended and six new subparagraphs (vi), (vii), (viii), (ix), (x) and (xi) are added to read as follows:

(ii) If the subject of an indicated report of child abuse or maltreatment has not requested an amendment of the record of the report [~~within the time specified in subdivision eight of section four hundred twenty-two of this title or if the subject had a fair hearing pursuant to such section prior to January first, nineteen hundred eighty-six~~] and an inquiry is made to the [~~department~~] **office of children and family services** pursuant to this subdivision concerning the subject of the report, [~~the department~~] **such office** shall, as expeditiously as possible but within no more than ten working days of receipt of the inquiry,

determine whether, in fact, the person about whom an inquiry is made is the subject of an indicated report. Upon making a determination that the person about whom the inquiry is made is the subject of an indicated report of child abuse and maltreatment, the [~~department~~] **office of children and family services** shall immediately send a written request to the child protective service or state agency which was responsible for investigating the allegations of abuse or maltreatment for all records, reports and other information maintained by the service or state agency on the subject. The service or state agency shall, as expeditiously as possible but within no more than twenty working days of receiving such request, forward all records, reports and other information it maintains on the indicated report to the [~~department~~] **office of children and family services, including a copy of any petition or court order based on the allegations that were indicated**. [~~The department~~] **Where a proceeding pursuant to article ten of the family court act is pending based on the same allegations that were indicated, the office of children and family services shall defer determination of whether there is a fair preponderance of the evidence to support the indication until the disposition of such family court proceeding or if the petition is dismissed at the conclusion of an adjournment in contemplation of dismissal or suspended judgment, at such time of the dismissal, whichever is later. Unless such determination has been deferred, the office of children and family services** shall, within fifteen working days of receiving such records, reports and other information from the child protective service or state agency, review all records, reports and other information in its possession concerning the subject and determine whether there is [~~some credible~~] **a fair preponderance of** evidence to find that the subject had committed the act or acts of child abuse or maltreatment giving rise to the indicated report.

(iii) If it is determined, after affording such service or state agency a reasonable opportunity to present its views, that there is [~~no credible~~] **not a fair preponderance of** evidence in the record to find that the subject committed such act or acts, the [~~department~~] **office of children and family services** shall amend the record to indicate that the report was unfounded and notify the inquiring party that the person about whom the inquiry is made is not the subject of an indicated report. [~~If the subject of the report had a fair hearing pursuant to subdivision eight of section four hundred twenty-two of this title prior to January first, nineteen hundred eighty-six and the fair hearing had been finally determined by the commissioner and the record of the report had not been amended to unfound the report or delete the person as a subject of the report, then the department shall determine that there is some credible evidence to find that the subject had committed the act or acts of child abuse or maltreatment giving rise to the indicated report.~~]

(v) If it is determined after a review by the [~~department~~] **office of children and family services** of all records, reports and information in its possession concerning the subject of the report that there is [~~some credible~~] **a fair preponderance of** evidence to prove that the subject committed the act or acts of abuse or maltreatment giving rise to the indicated report [~~and that such act or acts are relevant and reasonably related to issues concerning the employment of the subject by a provider agency or to the subject being allowed to have regular and substantial contact with children cared for by a provider agency or the approval or disapproval of an application which has been submitted by the subject to a licensing agency, the department shall inform the inquiring party that~~

~~the person about whom the inquiry is made is the subject of an indicated report of child abuse and maltreatment; the department shall also notify the subject of the inquiry of his or her fair hearing rights granted pursuant to paragraph (c) of subdivision two of this section~~], the office of children and family services shall notify the subject of the determination of such report and of the subject's right to request a fair hearing within ninety days. If the subject shall request a hearing within ninety days, the office of children and family services shall schedule a fair hearing and shall provide notice of the scheduled hearing date to the subject, the statewide central register and, as appropriate, to the child protective service or state agency which investigated such report.

(vi) The burden of proof in such a hearing shall be on the child protective service or state agency which investigated the report. In such a hearing, the fact that there is a family court finding of abuse or neglect against the subject in regard to an allegation contained in such report shall create an irrebuttable presumption that said allegation is substantiated by a fair preponderance of evidence. Where the petitioning child protective agency withdraws with prejudice an allegation in a petition, or a family court finds on the merits that an allegation does not constitute abuse or neglect or a petition has been dismissed at the conclusion of either an adjournment in contemplation of a dismissal or suspended judgment, or was not supported by a fair preponderance of the evidence, the office of children and family services shall amend that allegation to be unfounded.

(vii) If it shall be determined at the fair hearing that there is no fair preponderance of evidence in the record to find that the subject committed an act or acts of child abuse or maltreatment, the office of children and family services shall amend the record to reflect that such a finding was made at the administrative hearing, order any child protective service or state agency which investigated the report to similarly amend its records of such report, notify the subject of the determination, and notify the inquiring party that the person about whom such inquiry was made is not the subject of an indicated report.

(viii) Upon a determination at the fair hearing that the subject has been shown, by a fair preponderance of the evidence, to have committed the act or acts of child abuse or maltreatment giving rise to the indicated report, the hearing officer shall determine, based on guidelines developed by the office of children and family services pursuant to subdivision five of this section, whether such act or acts are relevant and reasonably related to the subject being allowed to have regular and substantial contact with children who are cared for by a provider agency, or relevant and reasonably related to the approval or disapproval of an application submitted by the subject to a licensing agency.

(ix) Upon a determination made at a fair hearing that the act or acts of abuse or maltreatment are relevant and reasonably related to the employment of the subject by a provider agency, the subject being allowed to have regular and substantial contact with children who are cared for by a provider agency or the approval or denial of an application submitted by the subject to a licensing agency, the office of children and family services shall notify the subject and shall inform the inquiring party that the person about whom such inquiry was made is the subject of an indicated report of child abuse or maltreatment.

(x) The failure to determine at the fair hearing that the act or acts of abuse and maltreatment are relevant and reasonably related to the employment of the subject by a provider agency, the subject being

allowed to have regular and substantial contact with children who are cared for by a provider agency or the approval or denial of an application submitted by the subject to a licensing agency shall preclude the office of children and family services from informing a provider or licensing agency that such person is the subject of an indicated report of child abuse or maltreatment.

(xi) Should the office of children and family services grant the request of the subject of the report pursuant to this subdivision, either through an administrative review or fair hearing, to amend an indicated report to an unfounded report, such report shall be legally sealed and shall be released and expunged in accordance with the standards set forth in subdivision five of section four hundred twenty-two of this title.

§ 12. Section 1039 of the family court act is amended by adding a new subdivision (h) to read as follows:

(h) The petitioner shall notify the office of children and family services, in accordance with sections four hundred twenty-two and four hundred twenty-four-a of the social services law, of the outcome of an adjournment in contemplation of dismissal pursuant to this section, including dismissal of the petition upon expiration of such adjournment or, where the proceeding has been restored to the calendar, of the status and disposition of any proceedings under this article following such restoration.

§ 13. Section 1051 of the family court act is amended by adding a new subdivision (g) to read as follows:

(g) The petitioner shall notify the office of children and family services, in accordance with sections four hundred twenty-two and four hundred twenty-four-a of the social services law, of any findings of abuse or neglect and of any orders of dismissal entered pursuant to this section.

§ 14. Paragraph (iii) of subdivision (f) of section 1051 of the family court act, as added by chapter 430 of the laws of 1994, is amended to read as follows:

(iii) that the report made to the state central register of child abuse and maltreatment upon which the petition is based will remain on file until ten years after the eighteenth birthday of the youngest child named in such report, that the respondent will be unable to obtain expungement of such report, that if such report is for maltreatment, it shall be legally conditionally sealed after eight years unless a determination is made to seal it earlier so long as such individual is not named as the subject of the report in any subsequent indicated reports of abuse or maltreatment, and that the existence of such [~~report~~] reports which are not sealed may be made known to employers seeking to screen employee applicants [~~in the field of child care,~~] for positions involving potential contact with children, and that sealed reports may be available to child protective services and law enforcement conducting subsequent investigations and to [~~child care~~] authorized agencies if the respondent applies to become a foster parent [~~or~~], adoptive parent or seeks custody of or visitation with a child.

Any finding upon such an admission or consent made without such notice being given by the court shall be vacated upon motion of any party. In no event shall a person other than the respondent, either in person or in writing, make an admission or consent to a finding of neglect or abuse.

§ 15. Section 1053 of the family court act is amended by adding a new subdivision (d) to read as follows:

(d) The petitioner shall notify the office of children and family services, in accordance with sections four hundred twenty-two and four hundred twenty-four-a of the social services law, of the outcome of a suspended judgement pursuant to this section, including a dismissal of the petition upon expiration of such suspended judgement, or where the proceeding has been restored to the calendar, of the status and disposition of any proceedings under this article following such restoration.

§ 16. This act shall take effect immediately; provided, however, that sections six, eight and twelve of this act shall take effect on the one hundred eightieth day after it shall have become a law; and section seven of this act shall take effect on the thirtieth day after it shall have become a law.