STATE OF NEW YORK

7857

2021-2022 Regular Sessions

IN ASSEMBLY

May 28, 2021

Introduced by M. of A. BYRNES -- read once and referred to the Committee on Children and Families

AN ACT to amend the social services law and the family court act, in relation to allowing previous investigations to be re-examined using a fair preponderance of the evidence standard

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 amended by section 1 of part R of chapter 56 of the laws of 2020, are amended to read as follows:

6. An "unfounded report" means any report made pursuant to this title unless an investigation[~~: (i) commenced on or before December thirty-first, two thousand twenty-one determines that some credible evidence of the alleged abuse or maltreatment exists; or (ii) commenced on or after January first, two thousand twenty-two~~] determines that a fair preponderance of the evidence of the alleged abuse or maltreatment exists; **or an investigation re-opened on or after January first, two thousand twenty-two determines that a fair preponderance of the evidence of the alleged abuse or maltreatment did not exist at the time of the original investigation.**

7. An "indicated report" means a report made pursuant to this title if an investigation[~~: (i) commenced on or before December thirty-first, two thousand twenty-one determines that some credible evidence of the alleged abuse or maltreatment exists; or (ii) commenced on or after January first, two thousand twenty-two~~] determines that a fair preponderance of the evidence of the alleged abuse or maltreatment exists; **or an investigation re-opened on or after January first, two thousand twenty-two determines that a fair preponderance of the evidence of the alleged abuse or maltreatment existed at the time of the original investigation.**

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

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§ 2. The opening paragraph of paragraph (a) of subdivision 5 of section 422 of the social services law, as amended by section 3 of part R of chapter 56 of the laws of 2020, is amended to read as follows:

Unless an investigation of a report conducted pursuant to this title [~~that is commenced on or before December thirty-first, two thousand twenty-one determines that there is some credible evidence of the alleged abuse or maltreatment or unless an investigation of a report conducted pursuant to this title that is commenced on or after January first, two thousand twenty-two~~] determines that there is a fair preponderance of the evidence that the alleged abuse or maltreatment occurred **or unless an investigation of a report conducted pursuant to this title that is re-opened on or after January first, two thousand twenty-one determines that a fair preponderance of the evidence of the alleged abuse or maltreatment occurred**, 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 which investigated the report. Such unfounded reports may only be unsealed and made available:

§ 3. Paragraph (c) of subdivision 5 of section 422 of the social services law, as amended by section 4 of part R of chapter 56 of the laws of 2020, 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 a fair preponderance of the evidence supporting the allegation of abuse or maltreatment shall not be the sole basis to expunge the report~~] **or (iii) the report was re-opened on or after January first, two thousand twenty-two and a determination was made that there was not a fair preponderance of the evidence supporting the allegation of abuse or maltreatment at the time of the original investigation**. 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.

§ 4. Section 651-a of the family court act, as amended by section 10 of part R of chapter 56 of the laws of 2020, 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 [~~commenced on or before December thirty-first, two thousand twenty-one has determined that there is some credible evidence of the alleged abuse or maltreatment, or unless an investigation of such report conducted pursuant to title six of article six of the social services~~

~~law commenced on or after January first, two thousand twenty-two~~] determines that there is a fair preponderance of the evidence of the alleged abuse or maltreatment**, or unless an investigation of such report conducted pursuant to title six of article six of the social services law that is re-opened on or after January first, two thousand twenty-one determines that a fair preponderance of the evidence of the alleged abuse or maltreatment occurred**, 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.

§ 5. Subparagraph (i) of paragraph (a) of subdivision 8 of section 422 of the social services law, as amended by chapter 12 of the laws of 1996, is amended and a new subparagraph (vi) is added to read as follows:

(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**, except where the investigation was completed prior to January first, two thousand twenty-two, and the subject requests that such report be re-opened pursuant to subparagraph (vi) of this paragraph,** the subject may request the commissioner to amend the record of the report. 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.

(vi) In cases where the investigation was completed prior to January first, two thousand twenty-two and it was determined at a fair hearing that there was credible evidence in the record to find that the subject committed an act or acts of child abuse or maltreatment, the subject of such report may request that such investigation be re-opened and re-examined using a standard of a fair preponderance of the evidence in the record to find that the subject committed an act or acts of child abuse or maltreatment within one year of the effective date of this subparagraph.

§ 6. Items (I) and (II) of clause (A) of subparagraph (i) and subparagraph (ii) of paragraph (e) of subdivision 1 of section 424-a of the social services law, as amended by section 9 of part R of chapter 56 of the laws of 2020, are amended to read as follows:

(I) the time for the subject of the report to request an amendment **or re-opening** of the record of the report pursuant to subdivision eight of section four hundred twenty-two has expired without any such request having been made; or

(II) such request was made within such time and a fair hearing regarding the request has been finally determined by the commissioner and the record of the report has not been amended **or re-opened** to unfound the report or delete the person as a subject of the report; and

(ii) If the subject of an indicated report of child abuse or maltreatment has not requested an amendment **or re-opening** of the record of the report and an inquiry is made to the office of children and family services pursuant to this subdivision concerning the subject of the report, 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 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 office of children and family services, including a copy of any petition or court order based on the allegations that were indicated. 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 stay determination of whether there is a fair preponderance of the evidence to support the indication until the disposition of such family court proceeding. Unless such determination has been stayed, 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 a fair preponderance of the evidence to find that the subject had committed the act or acts of child abuse or maltreatment giving rise to the indicated report.

§ 7. This act shall take effect on the same date and in the same manner as part R of chapter 56 of the laws of 2020 and shall apply to all reports filed in the statewide central register of child abuse and maltreatment.