STATE OF NEW YORK

9191

IN ASSEMBLY

February 12, 2024

Introduced by M. of A. HEVESI -- 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 prohibiting the removal of children into child protective custody based solely on conditions of poverty

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

Section 1. Subdivision 1 of section 417 of the social services law, as amended by chapter 677 of the laws of 1985, paragraph (a) as amended by chapter 329 of the laws of 2009, is amended to read as follows:

1. (a) Pursuant to the requirements and provisions of the family court act, a peace officer, acting pursuant to his or her special duties, a police officer, a law enforcement official, or a designated employee of a city or county department of social services, or an agent or employee of an Indian tribe that has entered into an agreement with the department pursuant to section thirty-nine of this chapter to provide child protective services shall take all appropriate measures to protect a child's life and health including, when appropriate, taking or keeping a child in protective custody without the consent of a parent or guardian if such person has reasonable cause to believe that the circumstances or condition of the child are such that continuing in his or her place of residence or in the care and custody of the parent, guardian, custodian or other person responsible for the child's care presents an imminent danger to the child's life or health. **Provided, however, no child shall be taken into protective custody based solely on conditions of poverty, including but not limited to the inability to provide or obtain clothing, home or property repair, or childcare, unless there is willful or negligent action or failure to act and a nexus to harm such that the child has suffered or there is a substantial risk the child will suffer serious physical, mental, or emotional impairment.**

(b) Any physician shall notify the appropriate police authorities or the local child protective service to take custody of any child such physician is treating whether or not additional medical treatment is required, if such physician has reasonable cause to believe that the

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

LBD13989-02-4

circumstances or condition of the child are such that continuing in his **or her** place of residence or in the care and custody of the parent, guardian, custodian or other person responsible for the child's care presents an imminent danger to the child's life or health. **Provided, however, conditions of poverty, including but not limited to, the inability to provide or obtain clothing, home or property repair, or childcare, shall not be the sole determining factor when providing notification to the appropriate police authorities or the local child protective service unless there is willful or negligent action or failure to act and a nexus to harm such that the child has suffered or there is a substantial risk the child will suffer serious physical, mental, or emotional impairment.**

§ 2. Section 1021 of the family court act, as amended by section 12 of part A of chapter 3 of the laws of 2005, is amended to read as follows:

§ 1021. Temporary removal with consent. A peace officer, acting pursuant to his or her special duties, or a police officer or an agent of a duly authorized agency, association, society or institution may temporarily remove a child from the place where he or she is residing with the written consent of his or her parent or other person legally responsible for his or her care, if the child is suspected to be an abused or neglected child under this article. **Provided however, no child shall be removed based solely on conditions of poverty, including but not limited to the inability to provide or obtain clothing, home or property repair, or childcare, unless there is willful or negligent action or failure to act and a nexus to harm such that the child has suffered or there is a substantial risk the child will suffer serious physical, mental, or emotional impairment.** The officer or agent shall, coincident with consent or removal, give written notice to the parent or other person legally responsible for the child's care of the right to apply to the family court for the return of the child pursuant to section one thousand twenty-eight of this [~~article~~] **part**, and of the right to be represented by counsel and the procedures for those who are indigent to obtain counsel in proceedings brought pursuant to this article. Such notice shall also include the name, title, organization, address and telephone number of the person removing the child; the name, address and telephone number of the authorized agency to which the child will be taken, if available; and the telephone number of the person to be contacted for visits with the child. A copy of the instrument whereby the parent or legally responsible person has given such consent to such removal shall be appended to the petition alleging abuse or neglect of the removed child and made a part of the permanent court record of the proceeding. A copy of such instrument and notice of the telephone number of the child protective agency to contact to ascertain the date, time and place of the filing of the petition and of the hearing that will be held pursuant to section one thousand twenty-seven of this [~~article~~] **part** shall be given to the parent or legally responsible person. Unless the child is returned sooner, a petition shall be filed within three court days from the date of removal. In such a case, a hearing shall be held no later than the next court day after the petition is filed and findings shall be made as required pursuant to section one thousand twenty-seven of this [~~article~~] **part**.

§ 3. Paragraph (i) of subdivision (a) of section 1022 of the family court act, as amended by section 13 of part A of chapter 3 of the laws of 2005, is amended to read as follows:

(i) The family court may enter an order directing the temporary removal of a child from the place where he or she is residing before the

filing of a petition under this article, if (A) the parent or other person legally responsible for the child's care is absent or, though present, was asked and refused to consent to the temporary removal of the child and was informed of an intent to apply for an order under this section and of the information required by section one thousand twenty-three of this part; and

(B) the child appears so to suffer from the abuse or neglect of his or her parent or other person legally responsible for his or her care that his or her immediate removal is necessary to avoid imminent danger to the child's life or health; **provided however, no child shall be removed based solely on conditions of poverty, including but not limited to the inability to provide or obtain clothing, home or property repair, or childcare, unless there is willful or negligent action or failure to act and a nexus to harm such that the child has suffered or there is a substantial risk the child will suffer serious physical, mental, or emotional impairment;** and

(C) there is not enough time to file a petition and hold a preliminary hearing under section one thousand twenty-seven of this part.

§ 4. Subdivision (a) of section 1024 of the family court act, as amended by chapter 329 of the laws of 2009, is amended to read as follows:

(a) A peace officer, acting pursuant to his or her special duties, police officer, or a law enforcement official, or a designated employee of a city or county department of social services shall take all necessary measures to protect a child's life or health including, when appropriate, taking or keeping a child in protective custody, and any physician shall notify the local department of social services or appropriate police authorities to take custody of any child such physician is treating, without an order under section one thousand twenty-two of this [~~article~~] **part** and without the consent of the parent or other person legally responsible for the child's care, regardless of whether the parent or other person legally responsible for the child's care is absent, if (i) such person has reasonable cause to believe that the child is in such circumstance or condition that his or her continuing in said place of residence or in the care and custody of the parent or person legally responsible for the child's care presents an imminent danger to the child's life or health; **provided however, no child shall be removed based solely on conditions of poverty, including but not limited to the inability to provide or obtain clothing, home or property repair, or childcare, unless there is willful or negligent action or failure to act and a nexus to harm such that the child has suffered or there is a substantial risk the child will suffer serious physical, mental, or emotional impairment;** and

(ii) there is not time enough to apply for an order under section one thousand twenty-two of this [~~article~~] **part**.

§ 5. This act shall take effect immediately.