

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:

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

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

24 (b) Any physician shall notify the appropriate police authorities or
25 the local child protective service to take custody of any child such
26 physician is treating whether or not additional medical treatment is
27 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.

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

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

15 § 1021. Temporary removal with consent. A peace officer, acting pursu-
16 ant to his or her special duties, or a police officer or an agent of a
17 duly authorized agency, association, society or institution may tempo-
18 rarily remove a child from the place where he or she is residing with
19 the written consent of his or her parent or other person legally respon-
20 sible for his or her care, if the child is suspected to be an abused or
21 neglected child under this article. Provided however, no child shall be
22 removed based solely on conditions of poverty, including but not limited
23 to the inability to provide or obtain clothing, home or property repair,
24 or childcare, unless there is willful or negligent action or failure to
25 act and a nexus to harm such that the child has suffered or there is a
26 substantial risk the child will suffer serious physical, mental, or
27 emotional impairment. The officer or agent shall, coincident with
28 consent or removal, give written notice to the parent or other person
29 legally responsible for the child's care of the right to apply to the
30 family court for the return of the child pursuant to section one thou-
31 sand twenty-eight of this [article] part, and of the right to be repres-
32 ented by counsel and the procedures for those who are indigent to obtain
33 counsel in proceedings brought pursuant to this article. Such notice
34 shall also include the name, title, organization, address and telephone
35 number of the person removing the child; the name, address and telephone
36 number of the authorized agency to which the child will be taken, if
37 available; and the telephone number of the person to be contacted for
38 visits with the child. A copy of the instrument whereby the parent or
39 legally responsible person has given such consent to such removal shall
40 be appended to the petition alleging abuse or neglect of the removed
41 child and made a part of the permanent court record of the proceeding. A
42 copy of such instrument and notice of the telephone number of the child
43 protective agency to contact to ascertain the date, time and place of
44 the filing of the petition and of the hearing that will be held pursuant
45 to section one thousand twenty-seven of this [article] part shall be
46 given to the parent or legally responsible person. Unless the child is
47 returned sooner, a petition shall be filed within three court days from
48 the date of removal. In such a case, a hearing shall be held no later
49 than the next court day after the petition is filed and findings shall
50 be made as required pursuant to section one thousand twenty-seven of
51 this [article] part.

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

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

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

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

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

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

22 (a) A peace officer, acting pursuant to his or her special duties,
23 police officer, or a law enforcement official, or a designated employee
24 of a city or county department of social services shall take all neces-
25 sary measures to protect a child's life or health including, when appro-
26 priate, taking or keeping a child in protective custody, and any physi-
27 cian shall notify the local department of social services or appropriate
28 police authorities to take custody of any child such physician is treat-
29 ing, without an order under section one thousand twenty-two of this
30 ~~article~~ part and without the consent of the parent or other person
31 legally responsible for the child's care, regardless of whether the
32 parent or other person legally responsible for the child's care is
33 absent, if (i) such person has reasonable cause to believe that the
34 child is in such circumstance or condition that his or her continuing in
35 said place of residence or in the care and custody of the parent or
36 person legally responsible for the child's care presents an imminent
37 danger to the child's life or health; provided however, no child shall
38 be removed based solely on conditions of poverty, including but not
39 limited to the inability to provide or obtain clothing, home or property
40 repair, or childcare, unless there is willful or negligent action or
41 failure to act and a nexus to harm such that the child has suffered or
42 there is a substantial risk the child will suffer serious physical,
43 mental, or emotional impairment; and

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

46 § 5. This act shall take effect immediately.