

STATE OF NEW YORK

8344

IN SENATE

June 16, 2006

Introduced by Sens. MEIER, SEWARD, BALBONI, BONACIC, BRUNO, DeFRANCISCO, FARLEY, FLANAGAN, FUSCHILLO, GOLDEN, HANNON, JOHNSON, LARKIN, LAVALLE, LEIBELL, LIBOUS, LITTLE, MALTESE, MARCELLINO, MAZIARZ, MORAHAN, PADAVAN, RATH, ROBACH, SALAND, SPANO, TRUNZO, VOLKER, WRIGHT, YOUNG -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the social services law and the family court act, in relation to abuse or maltreatment of children and the power to order investigations

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

1 Section 1. Section 424 of the social services law is amended by adding
2 two new subdivisions 6-a and 6-b to read as follows:

3 6-a. upon receipt of such report and commencement of the appropriate
4 investigation, where the child protective service is not able to locate
5 the child or has been denied access to the home or denied access to the
6 child named in the report or to any children in the household, and where
7 the child protective investigator has cause to believe a child or chil-
8 dren's life or health may be in danger immediately advise the parent or
9 person legally responsible for the child's care or with whom the child
10 is residing that, when denied sufficient access to the child or other
11 children in the home, the child protective investigator may contact the
12 family court to seek an immediate court order to gain access to the home
13 and/or the child named in the report or any children in the household
14 without further notice and that while such request is being made to such
15 court, law enforcement may be contacted and if contacted shall respond
16 and shall remain where the child or children are or are believed to be
17 present;

18 6-b. should the parent or persons legally responsible for the child's
19 care or with whom the child is residing continue to deny access to the
20 child, children and/or home sufficient to allow the child protective
21 investigator to determine their safety and if a child protective inves-
22 tigator seeks an immediate family court order to gain access to the
23 child, children and/or home, law enforcement may be contacted and if

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

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1 contacted shall respond and shall remain where the child or children are
2 or are believed to be present while the request is being made;

3 § 2. Subdivision 2 of section 1034 of the family court act, as amended
4 by chapter 627 of the laws of 1978, is amended to read as follows:

5 2. [~~Where~~] (a)(i) Before a petition is filed and where there is [~~prob-~~
6 ~~able~~] reasonable cause to [~~believe~~] suspect that [~~an abused or neglected~~
7 ~~child may be found on premises,~~] a child or children's life or health
8 may be in danger, child protective services may seek a court order based
9 upon:

10 (A) a report of suspected abuse or maltreatment under title six of
11 article six of the social services law as well as any additional infor-
12 mation that a child protective investigator has learned in the investi-
13 gation; and

14 (B) the fact that the investigator has been unable to locate the child
15 named in the report or any other children in the household or has been
16 denied access to the child or children in the household sufficient to
17 determine their safety; and

18 (C) the fact that the investigator has advised the parent or other
19 persons legally responsible for the child or children that, when denied
20 sufficient access to the child or other children in the household, the
21 child protective investigator may consider seeking an immediate court
22 order to gain access to the child or children without further notice to
23 the parent or other persons legally responsible.

24 (ii) Where a court order has been requested pursuant to this paragraph
25 the court may issue an order under this section [~~may authorize a person~~
26 ~~conducting the child protective investigation, accompanied by a police~~
27 ~~officer, to enter the premises to determine whether such a child is~~
28 ~~present. The standard of proof and procedure for such an authorization~~
29 ~~shall be the same as for a search warrant under the criminal procedure~~
30 ~~law.] requiring that the parent or other persons legally responsible for
31 the child or children produce the child or children at a particular
32 location which may include a child advocacy center, or to a particular
33 person for an interview of the child or children, and for observation of
34 the condition of the child, outside of the presence of the parent or
35 other person responsible.~~

36 (b)(i) Before a petition is filed and where there is probable cause to
37 believe that an abused or neglected child may be found on the premises,
38 child protective services may seek a court order based upon:

39 (A) a report of suspected abuse or maltreatment under title six of
40 article six of the social services law as well as any additional infor-
41 mation that a child protective investigator has learned in the investi-
42 gation; and

43 (B) the fact that the investigator has been denied access to the home
44 of the child or children in order to evaluate the home environment; and

45 (C) the fact that the investigator has advised the parent or other
46 person legally responsible for the child or children that, when denied
47 access to the home environment, the child protective investigator may
48 consider seeking an immediate court order to gain access to the home
49 environment without further notice to the parent or other person legally
50 responsible.

51 (ii) Where a court order has been requested pursuant to this paragraph
52 the court may issue an order under this section authorizing the person
53 conducting the child protective investigation to enter the home in order
54 to determine whether such child or children are present and/or to
55 conduct a home visit and evaluate the home environment of the child or
56 children.

1 (c) The procedure for granting an order pursuant to this subdivision
2 shall be the same as for a search warrant under article six hundred
3 ninety of the criminal procedure law. If an order is issued in accord-
4 ance with this subdivision the court shall specify which action may be
5 taken and by whom in the order.

6 (d) In determining if such orders shall be made, the court shall
7 consider all relevant information, including but not limited to:

8 (i) the nature and seriousness of the allegations made in the report;

9 (ii) the age and vulnerability of the child or children;

10 (iii) the potential harm to the child or children if a full investi-
11 gation is not completed;

12 (iv) the relationship of the source of the report to the family,
13 including the source's ability to observe that which has been alleged;
14 and

15 (v) the child protective or criminal history, if any, of the family
16 and any other relevant information that the investigation has already
17 obtained.

18 (e) The court shall assess which actions are necessary in light of the
19 child or children's safety, provided, however, that such actions shall
20 be the least intrusive to the family.

21 (f) The court shall be available at all hours to hear such requests by
22 the social services district which shall be permitted to make such
23 requests either in writing or orally, pursuant to section 690.36 of the
24 criminal procedure law, in person to the family court during hours that
25 the court is open and orally by telephone or in person, pursuant to
26 section 690.36 of the criminal procedure law, to a family court judge
27 when the court is not open. While the request is being made, law
28 enforcement shall remain where the child or children are or are believed
29 to be present if the child protective services investigator has
30 requested law enforcement assistance. Provided, however, that law
31 enforcement may not enter the premises where the child or children are
32 believed to be present without a search warrant or another constitu-
33 tional basis for such entry.

34 (g) Where the court issues an order under this section, the child
35 protective investigator shall within three business days prepare a
36 report to the court detailing his or her findings and any other actions
37 that have been taken pertaining to the child named in the report and any
38 other children in the household.

39 (h) Nothing in this section shall limit the court's authority to issue
40 any appropriate order in accordance with the provisions of this article
41 after a petition has been filed.

42 § 3. This act shall take effect on the one hundred twentieth day after
43 it shall have become a law.

NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1

BILL NUMBER: S8344

SPONSOR: MEIER

TITLE OF BILL:

An act to amend the social services law and the family court act, in

relation to abuse or maltreatment of children and the power to order investigations

PURPOSE:

The purpose of this bill is to provide child protective investigators with the tools they need through Family Court to gain access to children who have been named in a child abuse or maltreatment report and whose life or health are believed to be in immediate danger when the parent or responsible person has denied CPS the necessary access to the child or children in order to investigate the report or reports. CPS workers will have the ability to seek a family court order to have the child produced when they have reasonable cause to suspect that the child's life or health is in immediate danger and to enter the home when they have a report and have probable cause to suspect that an abused or neglected child may be found on the premises.

SUMMARY OF PROVISIONS:

Section one amends section 424 of the social services law which outlines the duties of child protective services (CPS) regarding reports of child abuse or maltreatment by adding two new subdivisions to provide that where a CPS investigator has been unable to locate a child or been denied access to the home or the child named in the report or any children in the household, and where the CPS investigator has reason to believe the child(ren)'s life or health may be in danger, they may seek an immediate court order to gain access to the home and or the child or children. If a request for a court order is made, law enforcement may be contacted and if contacted shall respond and shall remain where the child or children are or are believed to be present while the request is being made.

Section 2 amends section 1034 of the family court act to:

* Authorize that before a petition is filed in Family Court a child protective worker may seek an immediate court order from Family Court where there is reasonable cause to suspect that a child or children's life or health may be in danger, there has been a report of child abuse or maltreatment, the child protective worker has been unable to locate the child, or other children in the household, has been denied access to the child or other children in the household and the child protective worker has advised the parent or person legally responsible for the child or children in the household that a court order can be obtain under these circumstances; furthermore, Family Court may order that the parent or other person legally responsible for the child or children to produce the child or children an a particular location, such as a child advocacy center, or to a particular person for an interview and observation outside of the presence of the parent or other person legally responsible;

* Authorize that before a petition is filed in Family Court a child protective worker may seek an immediate court order from Family Court where there is probable cause to suspect that an abused or neglected child may be found at a specific location, there has been a report of child abuse or maltreatment, the child protective worker has been denied access to the home of the child or children to evaluate the home environment, and the child protective worker has advised the parent or person legally responsible for the child or children in the household

that a court order can be obtain under these circumstances; furthermore, Family Court may provide an order authorizing the child protective worker to enter the home to determine if the child or children are present and/or to conduct a home visit and evaluation of the home environment;

* Require that the procedure for Family Court to grant an order must be the same procedure for granting a search warrant under criminal procedure law and must specify which actions may be taken and by whom;

* Require Family Court to consider the nature and seriousness of the allegations, the age and vulnerability of the child or children, the potential harm to the child or children if a full investigation is not completed, the relationship between the source of the report and the family including the source's ability to observe the allegations, any child protective or criminal history of the family and assess which actions are necessary and are the least intrusive to the family before the issuance of a court order;

* Require Family Court to be available at all hours to hear such requests either in writing or orally, in person or via telephone; and,

* Require that when the court issues a order, the child protective worker prepare a report to the court detailing their findings and any other actions taken pertaining to the child or other children in the household within three business days.

Section three would provide for an effective date of 120 days after enactment.

EXISTING LAW:

Section 424 of the social services law outlines the duties of child protective services (CPS) regarding reports of child abuse or maltreatment. Section 1034 of the family court act governs the provisions related to the court's powers to order investigations

JUSTIFICATION:

Several tragic child abuse cases around the state have highlighted the lack of tools child protective workers have at their disposal when faced with a child abuse report and information that leads them to believe a child or children's health or life may be in immediate danger, yet the parent or caregiver repeatedly refuses to provide access to the children or home sufficient to make an adequate determination as to the children's safety. Under current law when responding to a report of child abuse or maltreatment CPS investigators are required to "...commence, within twenty-four hours, an appropriate investigation which shall include an evaluation of the environment of the child named in the report and any other children in the same home and a determination of the risk to such children if they continue to remain in the existing home environment, as well as a determination of the nature, extent and cause of any condition enumerated in such report..." However, parents or those legally responsible for the children have the right to refuse a CPS investigator access to the children and home. When access to a child or children is repeatedly refused, a CPS investigator must have either enough evidence to show probable cause comparable to that required for a criminal search warrant to enter the home, or enough evidence to have reasonable cause to believe that the child is in such circumstance or condition that his continuing in said place or under such care presents an "imminent danger to the child's life or health," in which case they

may do an emergency removal of the child into custody without a court order. In many cases CPS workers do not have sufficient evidence to either obtain a court order to go into the home or to do an emergency removal. They are left without the tools necessary to assess the child's condition and must make repeated and failed attempts to interview the child and assess the home while the child may be suffering continued and repeated abuse. The bill gives the court discretion to determine whether the CPS investigator shall have access to the child or the home or both, which ever is least intrusive to the family. The Family Courts would be made available on a 24 hour basis. Case history has shown that children have been killed by a parent or caregiver while the child protective workers are attempting to complete their investigation and the parents refused them access to the children and home. As such, this bill gives CPS workers the ability to seek a family court order to have the child produced when they have reasonable cause to suspect that the child's life or health is in immediate danger and to enter the home when they have a report and have probable cause to suspect that an abused or neglected child may be found on the premises. We must provide' CPS investigators with the tools they need to access children who are suspected of being abused before it is too late. This bill provides those tools necessary to adequately investigate child abuse and deserves quick passage into law.

LEGISLATIVE HISTORY:

New bill.

FISCAL IMPLICATIONS:

Minimal for OCA.

LOCAL FISCAL IMPLICATIONS:

None.

EFFECTIVE DATE:

120 days after enactment.
