

S6427-A MONTGOMERY Same as [A 8060-A](#) Jaffee [Veto No. 232 of 2019 Voting](#)

Text Versions: [S 6427-A](#), [S 6427](#)

S6427-A MONTGOMERY Same as [A 8060-A](#) Jaffee

ON FILE: 06/14/19 Social Services Law

TITLE....Relates to the standards of proof for unfounded and indicated reports of abuse or maltreatment and the admissibility of reports of child abuse and maltreatment

06/10/19 REFERRED TO RULES

06/14/19 AMEND AND RECOMMIT TO RULES

06/14/19 PRINT NUMBER 6427A

06/18/19 ORDERED TO THIRD READING CAL.1531

06/18/19 PASSED SENATE

06/18/19 DELIVERED TO ASSEMBLY

06/18/19 referred to ways and means

06/20/19 substituted for a8060a

06/20/19 ordered to third reading rules cal.608

06/20/19 passed assembly

06/20/19 returned to senate

12/06/19 DELIVERED TO GOVERNOR

12/13/19 VETOED MEMO.232

MONTGOMERY, LIU, PERSAUD

Amd §§412, 421, 422 & 424-a, Soc Serv L; amd §§651-a & 1051, Fam Ct Act

Relates to the standards of proof for unfounded and indicated reports of abuse or maltreatment and the admissibility of reports of child abuse and maltreatment and requires a fair preponderance of evidence of the alleged report; relates to the administration of the statewide central register of child abuse and maltreatment; makes related provisions.

VETO MESSAGE - No. 232

TO THE SENATE:

I am returning herewith, without my approval, the following bill:

Senate Bill Number 6427-A, entitled:

"AN ACT to amend the social services law, in relation to the stand-

ard 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"

NOT APPROVED

This bill would change the standard of evidence to indicate a child abuse or maltreatment case as founded from "some credible evidence" to "a fair preponderance of the evidence." The bill would also make a statutory change regarding the standard to uphold an indication of child abuse or maltreatment at administrative review and fair hearing from "some credible evidence" to a "fair preponderance of the evidence." In addition, the bill contains provisions that would require the Office of Court Administration (OCA) to create a system of alerting the Office of Children and Family Services (OCFS) to the outcome of an Article 10 family court case and for OCFS' systems to automatically seal certain cases based on the information transmitted from OCA.

Many of the provisions in this legislation have an immediate effective date, which would not allow for adequate time to implement necessary systems changes. There are significant fiscal implications associated with implementation that were not budgeted for, nor were funds identified in this legislation. Additionally, by operation of law, certain child abuse and maltreatment cases in the statewide central register (SCR) would be automatically sealed upon enactment. By allowing the records of individuals with serious histories of abuse or maltreatment of children to be sealed, New York can place children at risk of harm.

There are widely acknowledged reforms needed to New York's operation and administration of the SCR and child protective systems. Therefore, I am directing the Office of Children and Family Services to identify reforms to the SCR and child protective systems that can be implemented within existing resources, without jeopardizing safety.

The bill is disapproved.

(signed) ANDREW M. CUOMO

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

BILL NUMBER: S6427A

SPONSOR: MONTGOMERY

TITLE OF BILL:

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

PURPOSE:

This bill would make certain changes to State Central Registry as it relates to sealing of maltreatment records and standard of proof to determine indicated and unfounded reports of abuse or maltreatment. This bill also updates fair hearing rights as it relates to employment for subjects of maltreatment reports.

SUMMARY OF PROVISIONS:

Section 1 of the bill updates definitions of unfounded and indicated reports, changing the investigative standard of review from "some credible evidence" to "fair preponderance of evidence."

Section 2 amends section 651-a of the family court act requiring a fair preponderance of the evidence standard to determine a finding of abuse or neglect.

Sections 3, 4, and 5 make conforming changes to of Social Services Law changing the standard of review from "some credible evidence" to "fair preponderance of the evidence."

Section 6 allows SCR reports of indicated maltreatment cases be conditionally sealed after eight years so long as there are no subsequent indicated reports of abuse or maltreatment. Reports may be immediately unsealed if there is a subsequent finding of abuse or maltreatment. Reports will be maintained by the SCR but will not be disclosed to employers with certain exceptions for employment requiring significant and substantial contact with children.

Section 7 eliminates specified timeframe for amending report; if pending CPS proceeding on same allegations, request to amend stayed until Family Court disposition of the proceeding or if petition dismissed at conclusion of ACD or suspended judgment, whichever is later.

Section 8 requires OCFS to amend allegation as unfounded when CPS withdraws with prejudice an allegation in a petition, Family Court finds allegation does not constitute abuse or maltreatment, or petition dismissed at conclusion of ACD or suspended judgment, or not supported by a fair preponderance of evidence.

Section 9 makes conforming changes updating the standard of evidence.

Section 10 makes conforming changes updating the language of "department" to "Office of Children and Family Services."

Section 11 makes changes to the fair hearing rights relating to denial of employment based SCR reports. Conforming changes are made to update the standard of review for SCR fair hearings to comport with modern constitutional requirements.

Section 12 requires the petitioner to notify OCFS regarding the outcome of an adjournment in contemplation of dismissal.

Section 13 requires the petitioner to notify OCFS of any findings of abuse or neglect or orders of dismissal.

Section 14 requires maltreatment reports to be conditionally sealed after eight years.

Section 15 requires the petitioner to notify OCFS regarding the outcome of a suspended judgement.

Section 16 provides an effective date.

JUSTIFICATION:

The vast majority of allegations made to the SCR involve poverty-related neglect and not child abuse. Common allegations of neglect include lack of adequate housing, failure to provide adequate childcare, failure to provide adequate education, and parental substance abuse. Under current law, there is no distinction in the employment consequences imposed for poverty-related neglect from the employment consequences for caregivers who have committed the most egregious types of physical and sexual abuse.

This legislation 'makes necessary conforming changes in line with constitutional requirements regarding the standard of review from "some credible evidence" to "preponderance of the evidence." Doyle v. Camelot Care Ctrs., Inc., 160 F. Supp. 2d 891: Similarly, the New York statutory scheme at issue in Valmonte v. Bane, 18 F.3d 992, 1004 (2nd Cir. 1994), directed that the names of persons indicated of abuse under merely a "credible evidence" standard be placed on the State Central Register. The Second Circuit concluded that practice violated those individuals' right to due process. Instead, the court found that individuals should be placed on such a list only after they had been found guilty of abuse by a "preponderance of the evidence." Id. In Lee TT, 87 N.Y.2d at 700, the Court of Appeals of New York, following the Second Circuit, found that, while there is no constitutional prohibition against the State maintaining a list of suspected abusers, the use of the "credible evidence" standard to substantiate reports that are put on the State Central Register violates the protected liberty interest plaintiffs had in their present and future employment in the child care field. The court therefore held that the credible evidence standard is permissible at the investigative stage, but a report of abuse must be substantiated by a preponderance of the evidence before information concerning the subject may be disseminated to employers in child care agencies. Id. at 703, 711.

New York is overdue to update antiquated Social Services Law to limit collateral consequences for parents, streamline court processes to make the system more efficient and fair. Many employers are required to do SCR background checks before hiring. These include not only childcare and educational providers, but a variety of entities providing services such as healthcare and transportation if they serve children as well as adults. Consequently, an indicated report on the SCR severely limits a person's ability to secure employment. This bill supports increased access to employment for thousands of New York families every year at limited cost to the state.

LEGISLATIVE HISTORY:

This is new legislation.

FISCAL IMPLICATIONS:

To be determined.

EFFECTIVE DATE:

This act shall take effect immediately.

[http://public.leginfo.state.ny.us/navigate.cgi?NVDTO:](http://public.leginfo.state.ny.us/navigate.cgi?NVDTO)