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New Law Shields 'Good Faith' Abuse Accuser in Custody Cases

BY JOEL STASHENKO

ALBANY—Child abuse allegations made in good faith by one party against the other in a child custody case, even if the accusation is unfounded, should not be used to penalize the accuser by rescinding custody or limiting visitation rights, legislation signed by Governor David A. Paterson stipulates.

The governor also has signed a bill designed to give employers some protections in wrongful hiring litigation stemming from the actions of employees with criminal histories. And he has vetoed a measure that would have made more information available sooner to the public about actions by governmental boards and commissions.

Assemblyman Jonathan L. Bing, D-Manhattan, said he sponsored the child custody legislation (A7089/S6201) after being approached by Bridget Marks and Patricia Duff, two women who became embroiled in high-profile custody fights with the fathers of their children.

Ms. Marks initially lost custody of her then-4-year-old twin daughters when Manhattan Family Court Judge Arlene D. Goldberg determined



Governor Paterson

the mother had coached the girls to make unfounded charges that their father, casino tycoon John Aylsworth, had acted in a lewd manner around them. The custody determination was later overturned by an Appellate Division,

First Department, panel (NYLJ, April 4, 2005).

Ms. Duff, a Democratic Party activist, dueled with Revlon Chairman Ronald Perelman for nearly two years in a custody dispute over their daughter. Ms. Duff and Mr. Perelman accused each other of abusing their daughter Caleigh, who is now 13.

The case ended with both parents sharing equal custody.

Mr. Bing said both Ms. Marks and Ms. Duff believe they made accusations of abuse against Messrs. Aylsworth and Perelman in good faith, yet ended up being penalized in the custody proceedings.

"They had both been in situations where they made good-faith claims of abuse," Mr. Bing said yesterday in an interview. "Regardless if the court determined they were valid, they used these claims against them in their child custody proceedings."

The legislation signed by Mr. Paterson, which takes effect immediately, stipulates that "if a parent makes a good faith allegation on a reasonable belief supported by facts that the child is the victim of abuse then the parent will not be deprived custody, visitation or contact, based solely on that belief or the reasonable actions taken based on that belief."

In cases where abuse allegations are not supported by police reports, other evidence or corroborating evidence by the children, it will be up to judges to determine the veracity of the child abuse allegations and weight they should be given in custody and visitation determinations, Mr. Bing said.

"If a party makes a bad-faith claim in order to make the spouse's life miserable, or it was just used to get a favorable ruling, obviously that is something that would not be protected," Mr. Bing said.

He said the National Organization for Women's New York chapter supported his legislation, which is similar to statutes in other states.

He said his Manhattan district has the highest per capita income in the state and that it is not infrequent that his constituents become entangled in custody disputes where one spouse has far greater financial resources than the other.

"Judges may sometimes be intimidated by the party with the significant wealth advantage," Mr. Bing said.

The measure was sponsored in the Senate by Thomas K. Duane, D-Manhattan. It was a rare instance in recent years where the Republican Senate majority allowed a Senate Democrat to be the prime sponsor of a bill with statewide significance.

Sponsors estimated that 60,000 children a year are abused in New York and that disqualifying a parent from having custody decisions based on reporting abuse suspicions could have a chilling effect on parents who believe mistreatment is occurring.

"Previously, adults were afraid to say anything if they weren't 1,000 percent certain," Mr. Duane said yesterday. "Now, this allows a judge to say, 'You know, there was good faith and there was good reason to suspect abuse. So I am not going to punish you.'"

Employee Criminal Records

In other action by Mr. Paterson:

- He signed A7847/S4956, immediately creating a rebuttable presumption in favor of excluding from evidence in a negligent hiring action against an employer information that an employee had a criminal record.

The Senate sponsor, Codes Committee Chairman Dale Volker, R-Depew, said the legislation is one of a package of bills the Senate and Assembly worked out this year to improve the job prospects of former prison inmates and others with criminal records.

"What we're trying to do is find ways so that ex-offenders can find jobs without creating a problem for people who find them jobs," Mr. Volker said in an interview. Ex-offenders "have a big problem, even years and years after they've been out of prison."

State Human Rights Law §296(15) and New York Correction Law Article 23-A state that it is in the state's public policy interests not to bar employment to people with criminal histories, except where there is a "direct relationship" between that criminal activity and their employment or when employment creates an unreasonable risk of damage to property and individuals.

The new law signed by Mr. Paterson will buttress the actions of employers by creating a rebuttable presumption against admitting into evidence the record of incarceration or conviction of workers if employers made a "reasonable, good faith determination" that their past histories of wrongdoing mitigated in favor of their employment.

According to the David Rothenberg Center for Public Policy at the Fortune Society, 60 percent of former inmates report being unemployed one year after release from New York state prisons.

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