

S. 7128

A. 9436

S E N A T E - A S S E M B L Y

April 30, 2014

IN SENATE -- Introduced by Sen. KENNEDY -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families

IN ASSEMBLY -- Introduced by M. of A. PEOPLES-STOKES -- read once and referred to the Committee on Children and Families

AN ACT to amend the social services law, in relation to false allegations of suspected child abuse and maltreatment

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 422 of the social services law is amended by adding
2 a new subdivision 15 to read as follows:
3 15. (A) IN ADDITION TO CRIMINAL PENALTIES AUTHORIZED BY ARTICLE TWO
4 HUNDRED FORTY OF THE PENAL LAW, THE OFFICE OF CHILDREN AND FAMILY
5 SERVICES, OR LOCAL CHILD PROTECTIVE SERVICES ACTING THROUGH ITS COMMIS-
6 SIONER, MAY SEEK A CIVIL PENALTY AGAINST ANY PERSON WHO BY WORD OR
7 ACTION KNOWINGLY OR WILLFULLY MAKES A REPORT TO THE STATEWIDE CENTRAL
8 REGISTER OF CHILD ABUSE AND MALTREATMENT OR MAKES A REPORT TO ANY PERSON
9 REQUIRED TO REPORT SUSPECTED CHILD ABUSE OR MALTREATMENT PURSUANT TO
10 SECTION FOUR HUNDRED THIRTEEN OF THIS TITLE KNOWING THAT THE PERSON IS
11 REQUIRED TO REPORT SUCH CASE, OF AN ALLEGED OCCURRENCE OF CHILD ABUSE OR
12 MALTREATMENT WHICH SAID PERSON KNEW DID NOT IN FACT OCCUR OR EXIST.
13 (B) THE MAXIMUM CIVIL PENALTY SHALL BE FIVE THOUSAND DOLLARS FOR THE
14 FIRST OCCURRENCE AND TEN THOUSAND DOLLARS FOR EACH SUBSEQUENT OCCUR-
15 RENCE. EACH FALSE REPORT CONSTITUTES A SEPARATE VIOLATION.
16 (C) IF THE OFFICE OF CHILDREN AND FAMILY SERVICES OR LOCAL CHILD
17 PROTECTIVE SERVICES ALLEGES THAT A PERSON HAS MADE A FALSE REPORT WITH
18 THE STATEWIDE CENTRAL REGISTER OF CHILD ABUSE AND MALTREATMENT, THE
19 OFFICE OR SERVICE MUST NOTIFY SUCH PERSON THAT A HEARING WILL BE HELD TO
20 DETERMINE IF A VIOLATION OF PARAGRAPH (A) OF THIS SUBDIVISION HAS
21 OCCURRED. THE PERSON SHALL BE GIVEN A FULL STATEMENT OF THE ALLEGATIONS
22 AGAINST HIM OR HER, A NOTICE THAT A HEARING WILL BE HELD IN FRONT OF A
23 NEUTRAL FACT FINDER WHO SHALL BE APPOINTED BY THE OFFICE OF CHILDREN AND
24 FAMILY SERVICES OR THE LOCAL CHILD PROTECTIVE SERVICES, THAT THEY HAVE A

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

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1 RIGHT TO BE REPRESENTED BY COUNSEL, TO PRESENT EVIDENCE AND TO CROSS-EX-
2 AMINE ANY WITNESSES AGAINST THEM AND THE RIGHT TO APPEAL ANY DECISION
3 THROUGH A FAIR HEARING. A FULL RECORD OF ANY PROCEEDING SHALL BE MADE.
4 NOTICE OF SUCH ALLEGATIONS AND OF THE HEARING SHALL BE SERVED UPON ANY
5 SUCH PERSON BY PERSONAL SERVICE, BY PROMINENTLY PLACING SUCH NOTICE UPON
6 THE PERSON'S DOOR AND MAILING THE NOTICE BY FIRST CLASS MAIL, OR THROUGH
7 CERTIFIED MAIL, RETURN RECEIPT REQUESTED TO THE PERSON'S LAST KNOWN
8 ADDRESS. THE OFFICE OR DISTRICT MUST ESTABLISH BY A PREPONDERANCE OF THE
9 EVIDENCE THAT A VIOLATION OF PARAGRAPH (A) OF THIS SUBDIVISION OCCURRED.

10 (D) IN DETERMINING THE AMOUNT OF FINE TO BE IMPOSED, IF ANY, THE
11 FOLLOWING FACTORS SHALL BE CONSIDERED:

12 (I) THE GRAVITY OF THE VIOLATION, INCLUDING THE PROBABILITY THAT SERI-
13 OUS PHYSICAL OR EMOTIONAL HARM TO ANY PERSON WILL RESULT OR HAS
14 RESULTED, THE SEVERITY OF THE ACTUAL OR POTENTIAL HARM, AND THE NATURE
15 OF THE FALSE ALLEGATION.

16 (II) ACTIONS TAKEN BY THE FALSE REPORTER TO RETRACT THE FALSE REPORT
17 AS AN ELEMENT OF MITIGATION, OR, IN CONTRAST, TO ENCOURAGE AN INVESTI-
18 GATION ON THE BASIS OF FALSE INFORMATION.

19 (III) ANY PREVIOUS FALSE REPORTS FILED BY THE SAME INDIVIDUAL.

20 (E) A PERSON WHO IS DETERMINED TO HAVE FILED A FALSE REPORT OF ABUSE
21 OR MALTREATMENT IS NOT ENTITLED TO CONFIDENTIALITY OTHERWISE REQUIRED
22 FOR ALL INFORMATION CONTAINED IN THE CENTRAL REGISTER. SUBSEQUENT TO THE
23 CONCLUSION OF ALL PROCEEDINGS WHERE IT IS DETERMINED THAT A FALSE REPORT
24 WAS FILED, THE NAME OF THE FALSE REPORTER AND THE NATURE OF THE FALSE
25 REPORT MAY BE MADE PUBLIC IN WHOLE OR IN PART. SUCH INFORMATION SHALL BE
26 ADMISSIBLE IN ANY CIVIL OR CRIMINAL PROCEEDING.

27 (F) ANY PERSON MAKING A REPORT WHO IS ACTING IN GOOD FAITH IS IMMUNE
28 FROM ANY LIABILITY UNDER THIS SECTION AND SHALL CONTINUE TO BE ENTITLED
29 TO HAVE THE CONFIDENTIALITY OF THEIR IDENTITY MAINTAINED.

30 S 2. This act shall take effect immediately.