S T A T E  O F  N E W  Y O R K

824--A

2013-2014 Regular Sessions

I N  S E N A T E

(PREFILED)

January 9, 2013

Introduced by Sen. PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families -- recommitted to the Committee on Children and Families in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the social services law, in relation to the reporting of child abuse

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

Section 1. Paragraph (a) of subdivision 1 of section 413 of the social services law, as amended by section 3 of part D of chapter 501 of the laws of 2012, is amended to read as follows:

(a) The following persons and officials are required to report or cause a report to be made in accordance with this title when they have reasonable cause to suspect that a child coming before them in their professional or official capacity is an abused or maltreated child, or when they have reasonable cause to suspect that a child is an abused or maltreated child where the parent, guardian, custodian or other person legally responsible for such child comes before them in their professional or official capacity and states from personal knowledge facts, conditions or circumstances which, if correct, would render the child an abused or maltreated child: any physician; registered physician assistant; surgeon; medical examiner; coroner; dentist; dental hygienist; osteopath; optometrist; chiropractor; podiatrist; resident; intern; psychologist; registered nurse; social worker; emergency medical technician; licensed creative arts therapist; licensed marriage and family therapist; licensed mental health counselor; licensed psychoanalyst; hospital personnel engaged in the admission, examination, care or treatment of persons; A MEMBER OF THE CLERGY; a Christian Science practitioner; school official, which includes but is not limited to school teach-

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

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er, school guidance counselor, school psychologist, school social worker, school nurse, school administrator or other school personnel required to hold a teaching or administrative license or certificate; social services worker; director of a children's overnight camp, summer day camp or traveling summer day camp, as such camps are defined in section thirteen hundred ninety-two of the public health law; day care center worker; school-age child care worker; provider of family or group family day care; or any other child care or foster care worker; mental health professional; substance abuse counselor; alcoholism counselor; all persons credentialed by the office of alcoholism and substance abuse services; peace officer; police officer; district attorney or assistant district attorney; investigator employed in the office of a district attorney; or other law enforcement official.

S 2. Article 6 of the social services law is amended by adding a new title 6-B to read as follows:

TITLE 6-B

REPORTS OF CHILD ABUSE TO LAW ENFORCEMENT

SECTION 429-A. PERSONS AND OFFICIALS REQUIRED TO REPORT CASES OF SUSPECTED CHILD ABUSE TO APPROPRIATE LAW ENFORCEMENT AGENCY.

429-B. PENALTIES FOR FAILURE TO REPORT.

429-C. IMMUNITY FROM LIABILITY.

429-D. REVIEW OF EXISTING RECORDS FOR ALLEGATIONS THAT A CHILD IS AN ABUSED CHILD; DISTRICT ATTORNEY; PENALTY.

S 429-A. PERSONS AND OFFICIALS REQUIRED TO REPORT CASES OF SUSPECTED CHILD ABUSE TO APPROPRIATE LAW ENFORCEMENT AGENCY. 1. (A) THE FOLLOWING PERSONS AND OFFICIALS ARE REQUIRED TO REPORT OR CAUSE AN INDICATED REPORT AS DEFINED IN SUBDIVISION SEVEN OF SECTION FOUR HUNDRED TWELVE OF THIS ARTICLE TO BE MADE TO AN APPROPRIATE LAW ENFORCEMENT AGENCY WHEN THEY HAVE REASONABLE CAUSE TO SUSPECT IN THEIR PROFESSIONAL OR OFFICIAL CAPACITY THAT A CHILD IS AN ABUSED CHILD: ANY PHYSICIAN; REGISTERED PHYSICIAN ASSISTANT; SURGEON; MEDICAL EXAMINER; CORONER; DENTIST; DENTAL HYGIENIST; OSTEOPATH; OPTOMETRIST; CHIROPRACTOR; PODIATRIST; RESIDENT; INTERN; PSYCHOLOGIST; REGISTERED NURSE; EMERGENCY MEDICAL TECHNICIAN; HOSPITAL PERSONNEL ENGAGED IN THE ADMISSION, EXAMINATION, CARE OR TREATMENT OF PERSONS; MEMBER OF THE CLERGY; A CHRISTIAN SCIENCE PRACTITIONER; SCHOOL OFFICIAL; SOCIAL SERVICES WORKER; DAY CARE CENTER WORKER; PROVIDER OF FAMILY OR GROUP FAMILY DAY CARE; EMPLOYEE OR VOLUNTEER IN A RESIDENTIAL CARE FACILITY OR ANY OTHER CHILD CARE OR FOSTER CARE WORKER; MENTAL HEALTH PROFESSIONAL; SUBSTANCE ABUSE COUNSELOR; ALCOHOLISM COUNSELOR; PEACE OFFICER; POLICE OFFICER; DISTRICT ATTORNEY OR ASSISTANT DISTRICT ATTORNEY; INVESTIGATOR EMPLOYED IN THE OFFICE OF A DISTRICT ATTORNEY; OR OTHER LAW ENFORCEMENT OFFICIAL.

(B) FOR THE PURPOSES OF THIS SECTION THE TERM "ABUSED CHILD" SHALL MEAN A CHILD UNDER THE AGE OF EIGHTEEN YEARS UPON WHOM A PERSON EIGHTEEN YEARS OF AGE OR MORE WHO IS DEFINED IN PARAGRAPH (A) OF THIS SUBDIVISION AND WHO IS NOT THE PARENT OR OTHER PERSON LEGALLY RESPONSIBLE FOR SUCH CHILD'S CARE:

(I) INTENTIONALLY OR RECKLESSLY INFLICTS PHYSICAL INJURY, SERIOUS PHYSICAL INJURY OR DEATH, OR

(II) INTENTIONALLY OR RECKLESSLY ENGAGES IN CONDUCT WHICH CREATES A SUBSTANTIAL RISK OF SUCH PHYSICAL INJURY, SERIOUS PHYSICAL INJURY OR DEATH, OR

(III) COMMITS OR ATTEMPTS TO COMMIT AGAINST A CHILD THE CRIME OF DISSEMINATING INDECENT MATERIALS TO MINORS PURSUANT TO ARTICLE TWO HUNDRED THIRTY-FIVE OF THE PENAL LAW, OR

(IV) ENGAGES IN ANY CONDUCT PROHIBITED BY ARTICLE ONE HUNDRED THIRTY OR TWO HUNDRED SIXTY-THREE OF THE PENAL LAW.

(C) FOR THE PURPOSES OF THIS SECTION THE TERM "LAW ENFORCEMENT AUTHORITIES" SHALL MEAN A MUNICIPAL POLICE DEPARTMENT, SHERIFF'S DEPARTMENT, THE DIVISION OF STATE POLICE OR ANY OFFICER THEREOF OR A DISTRICT ATTORNEY OR ASSISTANT DISTRICT ATTORNEY. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, LAW ENFORCEMENT AUTHORITIES SHALL NOT INCLUDE ANY CHILD PROTECTIVE SERVICE OR ANY SOCIETY FOR THE PREVENTION OF CRUELTY TO CHILDREN AS SUCH TERMS ARE DEFINED IN SECTION FOUR HUNDRED TWENTY-THREE OF THIS ARTICLE.

(D) FOR THE PURPOSES OF THIS SECTION THE TERM "MEMBER OF THE CLERGY" SHALL HAVE THE SAME DEFINITION AS THE TERM "CLERGYMAN" AS SET FORTH IN SECTION TWO OF THE RELIGIOUS CORPORATIONS LAW AND SHALL ALSO INCLUDE ANY PERSON RESPONSIBLE FOR SUPERVISING A MEMBER OF THE CLERGY OF A RELIGIOUS INSTITUTION OR RESPONSIBLE FOR THE ADMINISTRATION OF A RELIGIOUS INSTITUTION.

(E) FOR THE PURPOSES OF THIS SECTION THE TERM "RELIGIOUS INSTITUTION" SHALL MEAN A RELIGIOUS CORPORATION CREATED TO ENABLE ITS MEMBERS TO MEET FOR DIVINE WORSHIP OR OTHER RELIGIOUS OBSERVANCES OR A CONGREGATION, SOCIETY, OR OTHER ASSEMBLAGE OF PERSONS WHO ARE ACCUSTOMED TO STATEDLY MEET FOR DIVINE WORSHIP OR OTHER RELIGIOUS OBSERVANCES, WITHOUT HAVING BEEN INCORPORATED FOR THAT PURPOSE, AS PROVIDED IN SECTION TWO OF THE RELIGIOUS CORPORATIONS LAW.

2. (A) UNLESS THE PERSON CONFESSING OR CONFIDING WAIVES THE PRIVILEGE, A MEMBER OF THE CLERGY, OR OTHER MINISTER OF ANY RELIGION OR DULY ACCREDITED CHRISTIAN SCIENCE PRACTITIONER, SHALL NOT BE REQUIRED TO MAKE A REPORT AS REQUIRED BY PARAGRAPH (A) OF SUBDIVISION ONE OF THIS SECTION IF THE CONFESSION OR CONFIDENCE WAS MADE TO HIM OR HER IN HIS OR HER PROFESSIONAL CHARACTER AS SPIRITUAL ADVISOR.

(B) WHEN A MEMBER OF THE CLERGY HAS REASONABLE CAUSE TO SUSPECT THAT A CHILD IS AN ABUSED CHILD BASED UPON ANY INFORMATION RECEIVED OTHER THAN THROUGH A CONFESSION OR CONFIDENCE MADE PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION, THEN SUCH MEMBER OF THE CLERGY SHALL PROMPTLY MAKE A REPORT AS REQUIRED BY PARAGRAPH (A) OF SUBDIVISION ONE OF THIS SECTION NOTWITHSTANDING THE FACT THAT HE OR SHE MAY HAVE ALSO RECEIVED A REPORT OF ABUSE THROUGH A CONFESSION OR CONFIDENCE MADE PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION.

(C) THE PROVISIONS OF PARAGRAPH (A) OF THIS SUBDIVISION SHALL NOT BE DEEMED TO EXEMPT A MEMBER OF THE CLERGY FROM ANY OTHER REQUIREMENTS OF LAW TO PREVENT THE PERPETRATOR FROM COMMITTING ADDITIONAL ACTS OF ABUSE.

3. NOTHING IN THIS TITLE SHALL BE CONSTRUED TO REQUIRE THE REPORT OF INFORMATION BY A PERSON REQUIRED TO REPORT WHEN SUCH INFORMATION IS OTHERWISE PRIVILEGED FROM DISCLOSURE BY LAW.

S 429-B. PENALTIES FOR FAILURE TO REPORT. 1. ANY PERSON REQUIRED BY THIS TITLE TO REPORT A CASE OF SUSPECTED CHILD ABUSE WHO WILLFULLY FAILS TO DO SO SHALL BE GUILTY OF A CLASS A MISDEMEANOR FOR THE FIRST OFFENSE, A CLASS E FELONY FOR THE SECOND OFFENSE AND A CLASS D FELONY FOR THE THIRD OFFENSE OR ANY SUBSEQUENT OFFENSE.

2. ANY PERSON REQUIRED BY THIS TITLE TO REPORT A CASE OF SUSPECTED CHILD ABUSE WHO KNOWINGLY AND WILLFULLY FAILS TO DO SO SHALL BE CIVILLY LIABLE FOR THE DAMAGES PROXIMATELY CAUSED BY SUCH FAILURE.

S 429-C. IMMUNITY FROM LIABILITY. 1. ANY PERSON WHO IN GOOD FAITH MAKES A REPORT OF ALLEGATIONS OF CHILD ABUSE AS REQUIRED BY THIS TITLE,

INCLUDING THOSE WHO IN GOOD FAITH MAKE A REPORT TO THE WRONG RECIPIENT, SHALL HAVE IMMUNITY FROM CRIMINAL LIABILITY WHICH MIGHT OTHERWISE RESULT BY REASON OF SUCH ACTIONS.

2. ANY PERSON WHO REASONABLY AND IN GOOD FAITH MAKES A REPORT OF ALLEGATIONS OF CHILD ABUSE AS REQUIRED BY THIS TITLE, SHALL HAVE IMMUNITY FROM CIVIL LIABILITY WHICH MIGHT OTHERWISE RESULT BY REASON OF SUCH ACTIONS.

S 429-D. REVIEW OF EXISTING RECORDS FOR ALLEGATIONS THAT A CHILD IS AN ABUSED CHILD; DISTRICT ATTORNEY; PENALTY. 1. WITHIN THREE MONTHS OF THE EFFECTIVE DATE OF THIS SECTION, ALL MEMBERS OF THE CLERGY SHALL: (A) REVIEW ALL INSTITUTIONAL RECORDS WITHIN THEIR CONTROL AND ANY OTHER INFORMATION THEY HAVE OBTAINED REGARDING ALLEGATIONS THAT A CHILD IS AN ABUSED CHILD BY A MEMBER OF THE CLERGY WITHIN FIFTY YEARS PRIOR TO THE EFFECTIVE DATE OF THIS SECTION; (B) REVIEW WHETHER THEY ARE AWARE OF ANY OTHER ALLEGATIONS THAT A CHILD IS AN ABUSED CHILD ALLEGED TO HAVE BEEN ABUSED BY A MEMBER OF THE CLERGY WHO REMAINS ACTIVELY IN THE SERVICE OF A RELIGIOUS INSTITUTION, REGARDLESS OF THE DATE ON WHICH SUCH ALLEGATION WAS MADE; AND WHERE SUCH INFORMATION OR RECORDS RAISE REASONABLE CAUSE TO SUSPECT THAT A CHILD IS AN ABUSED CHILD, REPORT SUCH ALLEGATION TO THE DISTRICT ATTORNEY. THIS SECTION SHALL NOT APPLY TO INFORMATION OBTAINED THROUGH CONFIDENTIAL COMMUNICATIONS WITH CLERGY AND PRIVILEGED UNDER LAW.

2. ANY INDIVIDUAL, AS DEFINED IN PARAGRAPH (A) OF SUBDIVISION ONE OF SECTION FOUR HUNDRED TWENTY-NINE-A OF THIS TITLE, REQUIRED BY THIS SECTION TO REVIEW EXISTING RECORDS AND INFORMATION AND REPORT ALLEGATIONS CONTAINED THEREIN WHO WILLFULLY FAILS TO DO SO SHALL BE GUILTY OF A CLASS A MISDEMEANOR FOR THE FIRST OFFENSE, A CLASS E FELONY FOR THE SECOND OFFENSE AND A CLASS D FELONY FOR THE THIRD OFFENSE OR ANY SUBSEQUENT OFFENSE.

S 3. This act shall take effect on the sixtieth day after it shall have become a law.