

1793

2009-2010 Regular Sessions

I N S E N A T E

February 6, 2009

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

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 ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Paragraph (a) of subdivision 1 of section 413 of the social
2 services law, as amended by chapter 366 of the laws of 2008, is amended
3 to read as follows:
4 (a) The following persons and officials are required to report or
5 cause a report to be made in accordance with this title when they have
6 reasonable cause to suspect that a child coming before them in their
7 professional or official capacity is an abused or maltreated child, or
8 when they have reasonable cause to suspect that a child is an abused or
9 maltreated child where the parent, guardian, custodian or other person
10 legally responsible for such child comes before them in their profes-
11 sional or official capacity and states from personal knowledge facts,
12 conditions or circumstances which, if correct, would render the child an
13 abused or maltreated child: any physician; registered physician assist-
14 ant; surgeon; medical examiner; coroner; dentist; dental hygienist;
15 osteopath; optometrist; chiropractor; podiatrist; resident; intern;
16 psychologist; registered nurse; social worker; emergency medical techni-
17 cian; licensed creative arts therapist; licensed marriage and family
18 therapist; licensed mental health counselor; licensed psychoanalyst;
19 hospital personnel engaged in the admission, examination, care or treat-
20 ment of persons; MEMBER OF THE CLERGY; a Christian Science practitioner;
21 school official, which includes but is not limited to school teacher,
22 school guidance counselor, school psychologist, school social worker,
23 school nurse, school administrator or other school personnel required to
24 hold a teaching or administrative license or certificate; social
25 services worker; day care center worker; provider of family or group
26 family day care; employee or volunteer in a residential care facility
27 defined in subdivision seven of section four hundred twelve of this
28 title or any other child care or foster care worker; mental health

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

LBD03378-01-9

1 professional; substance abuse counselor; alcoholism counselor; all
2 persons credentialed by the office of alcoholism and substance abuse
3 services; peace officer; police officer; district attorney or assistant
4 district attorney; investigator employed in the office of a district
5 attorney; or other law enforcement official.

6 S 2. Paragraph (a) of subdivision 1 of section 413 of the social
7 services law, as separately amended by chapters 323 and 366 of the laws
8 of 2008, is amended to read as follows:

9 (a) The following persons and officials are required to report or
10 cause a report to be made in accordance with this title when they have
11 reasonable cause to suspect that a child coming before them in their
12 professional or official capacity is an abused or maltreated child, or
13 when they have reasonable cause to suspect that a child is an abused or
14 maltreated child where the parent, guardian, custodian or other person
15 legally responsible for such child comes before them in their profes-
16 sional or official capacity and states from personal knowledge facts,
17 conditions or circumstances which, if correct, would render the child an
18 abused or maltreated child: any physician; registered physician assist-
19 ant; surgeon; medical examiner; coroner; dentist; dental hygienist;
20 osteopath; optometrist; chiropractor; podiatrist; resident; intern;
21 psychologist; registered nurse; social worker; emergency medical techni-
22 cian; licensed creative arts therapist; licensed marriage and family
23 therapist; licensed mental health counselor; licensed psychoanalyst;
24 hospital personnel engaged in the admission, examination, care or treat-
25 ment of persons; A MEMBER OF THE CLERGY; a Christian Science practition-
26 er; school official, which includes but is not limited to school teach-
27 er, school guidance counselor, school psychologist, school social
28 worker, school nurse, school administrator or other school personnel
29 required to hold a teaching or administrative license or certificate;
30 social services worker; day care center worker; school-age child care
31 worker; provider of family or group family day care; employee or volun-
32 teer in a residential care facility defined in subdivision four of
33 section four hundred twelve-a of this title or any other child care or
34 foster care worker; mental health professional; substance abuse counse-
35 lor; alcoholism counselor; all persons credentialed by the office of
36 alcoholism and substance abuse services; peace officer; police officer;
37 district attorney or assistant district attorney; investigator employed
38 in the office of a district attorney; or other law enforcement official.

39 S 3. Article 6 of the social services law is amended by adding a new
40 title 6-B to read as follows:

41 TITLE 6-B

42 REPORTS OF CHILD ABUSE TO
43 LAW ENFORCEMENT

44 SECTION 429-N. PERSONS AND OFFICIALS REQUIRED TO REPORT CASES OF
45 SUSPECTED CHILD ABUSE TO APPROPRIATE LAW ENFORCEMENT
46 AGENCY.

47 429-O. PENALTIES FOR FAILURE TO REPORT.

48 429-P. IMMUNITY FROM LIABILITY.

49 429-Q. REVIEW OF EXISTING RECORDS FOR ALLEGATIONS THAT A CHILD
50 IS AN ABUSED CHILD; DISTRICT ATTORNEY; PENALTY.

51 S 429-N. PERSONS AND OFFICIALS REQUIRED TO REPORT CASES OF SUSPECTED
52 CHILD ABUSE TO APPROPRIATE LAW ENFORCEMENT AGENCY. 1. (A) THE FOLLOWING
53 PERSONS AND OFFICIALS ARE REQUIRED TO REPORT OR CAUSE A REPORT TO BE
54 MADE TO AN APPROPRIATE LAW ENFORCEMENT AGENCY WHEN THEY HAVE REASONABLE
55 CAUSE TO SUSPECT IN THEIR PROFESSIONAL OR OFFICIAL CAPACITY THAT A CHILD
56 IS AN ABUSED CHILD: ANY PHYSICIAN; REGISTERED PHYSICIAN ASSISTANT;

1 SURGEON; MEDICAL EXAMINER; CORONER; DENTIST; DENTAL HYGIENIST; OSTEO-
2 PATH; OPTOMETRIST; CHIROPRACTOR; PODIATRIST; RESIDENT; INTERN; PSYCHOL-
3 OGIST; REGISTERED NURSE; EMERGENCY MEDICAL TECHNICIAN; HOSPITAL PERSON-
4 NEL ENGAGED IN THE ADMISSION, EXAMINATION, CARE OR TREATMENT OF PERSONS;
5 MEMBER OF THE CLERGY; A CHRISTIAN SCIENCE PRACTITIONER; SCHOOL OFFICIAL;
6 SOCIAL SERVICES WORKER; DAY CARE CENTER WORKER; PROVIDER OF FAMILY OR
7 GROUP FAMILY DAY CARE; EMPLOYEE OR VOLUNTEER IN A RESIDENTIAL CARE
8 FACILITY DEFINED IN SUBDIVISION SEVEN OF SECTION FOUR HUNDRED TWELVE OF
9 THIS ARTICLE OR ANY OTHER CHILD CARE OR FOSTER CARE WORKER; MENTAL
10 HEALTH PROFESSIONAL; SUBSTANCE ABUSE COUNSELOR; ALCOHOLISM COUNSELOR;
11 PEACE OFFICER; POLICE OFFICER; DISTRICT ATTORNEY OR ASSISTANT DISTRICT
12 ATTORNEY; INVESTIGATOR EMPLOYED IN THE OFFICE OF A DISTRICT ATTORNEY; OR
13 OTHER LAW ENFORCEMENT OFFICIAL.

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

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

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

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

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

29 (C) FOR THE PURPOSES OF THIS SECTION THE TERM "LAW ENFORCEMENT AUTHOR-
30 ITIES" SHALL MEAN A MUNICIPAL POLICE DEPARTMENT, SHERIFF'S DEPARTMENT,
31 THE DIVISION OF STATE POLICE OR ANY OFFICER THEREOF OR A DISTRICT ATTOR-
32 NEY OR ASSISTANT DISTRICT ATTORNEY. NOTWITHSTANDING ANY OTHER PROVISION
33 OF LAW, LAW ENFORCEMENT AUTHORITIES SHALL NOT INCLUDE ANY CHILD PROTEC-
34 TIVE SERVICE OR ANY SOCIETY FOR THE PREVENTION OF CRUELTY TO CHILDREN AS
35 SUCH TERMS ARE DEFINED IN SECTION FOUR HUNDRED TWENTY-THREE OF THIS
36 ARTICLE.

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

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

50 2. (A) UNLESS THE PERSON CONFESSING OR CONFIDING WAIVES THE PRIVILEGE,
51 A MEMBER OF THE CLERGY, OR OTHER MINISTER OF ANY RELIGION OR DULY
52 ACCREDITED CHRISTIAN SCIENCE PRACTITIONER, SHALL NOT BE REQUIRED TO MAKE
53 A REPORT AS REQUIRED BY PARAGRAPH (A) OF SUBDIVISION ONE OF THIS SECTION
54 IF THE CONFESSION OR CONFIDENCE WAS MADE TO HIM OR HER IN HIS OR HER
55 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-O. 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-P. 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-Q. 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-N 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 4. This act shall take effect on the sixtieth day after it shall have become a law.