

2691

2009-2010 Regular Sessions

I N S E N A T E

February 26, 2009

Introduced by Sen. SALAND -- 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 ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision 1 of section 413 of the social services law,
2 as amended by chapter 366 of the laws of 2008 and paragraph (a) as sepa-
3 rately amended by chapter 323 of the laws of 2008, is amended to read as
4 follows:
5 1. (a) The following persons and officials are required to report or
6 cause a report to be made in accordance with this title when they have
7 reasonable cause to suspect that a child coming before them in their
8 professional or official capacity is an abused or maltreated child, or
9 when they have reasonable cause to suspect that a child is an abused or
10 maltreated child where the parent, guardian, custodian or other person
11 legally responsible for such child comes before them in their profes-
12 sional or official capacity and states from personal knowledge facts,
13 conditions or circumstances which, if correct, would render the child an
14 abused or maltreated child: any physician; registered physician assist-
15 ant; surgeon; medical examiner; coroner; dentist; dental hygienist;
16 osteopath; optometrist; chiropractor; podiatrist; resident; intern;
17 psychologist; registered nurse; social worker; emergency medical techni-
18 cian; licensed creative arts therapist; licensed marriage and family
19 therapist; licensed mental health counselor; licensed psychoanalyst;
20 hospital personnel engaged in the admission, examination, care or treat-
21 ment of persons; MEMBER OF THE CLERGY; a Christian Science practitioner;
22 school official, which includes but is not limited to school teacher,
23 school guidance counselor, school psychologist, school social worker,
24 school nurse, school administrator or other school personnel required to
25 hold a teaching or administrative license or certificate; social

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

LBD00411-02-9

1 services worker; day care center worker; school-age child care worker;
2 provider of family or group family day care; employee or volunteer in a
3 residential care facility defined in subdivision four of section four
4 hundred twelve-a of this title or any other child care or foster care
5 worker; mental health professional; substance abuse counselor; alcohol-
6 ism counselor; all persons credentialed by the office of alcoholism and
7 substance abuse services; peace officer; police officer; district attor-
8 ney or assistant district attorney; investigator employed in the office
9 of a district attorney; or other law enforcement official.

10 (b) UNLESS THE PERSON CONFESSING OR CONFIDING WAIVES THE PRIVILEGE, A
11 MEMBER OF THE CLERGY, OR OTHER MINISTER OF ANY RELIGION OR DULY ACCRED-
12 ITED CHRISTIAN SCIENCE PRACTITIONER, SHALL NOT BE REQUIRED TO MAKE A
13 REPORT AS REQUIRED BY PARAGRAPH (A) OF THIS SUBDIVISION IF THE
14 CONFESSION OR CONFIDENCE WAS MADE TO HIM OR HER IN HIS OR HER PROFES-
15 SIONAL CHARACTER AS SPIRITUAL ADVISOR.

16 (c) WHEN A MEMBER OF THE CLERGY HAS REASONABLE CAUSE TO SUSPECT THAT A
17 CHILD IS AN ABUSED OR MALTREATED CHILD BASED UPON ANY INFORMATION
18 RECEIVED OTHER THAN THROUGH A CONFESSION OR CONFIDENCE MADE PURSUANT TO
19 PARAGRAPH (B) OF THIS SUBDIVISION, THEN SUCH MEMBER OF THE CLERGY SHALL
20 PROMPTLY MAKE A REPORT AS REQUIRED BY PARAGRAPH (A) OF THIS SUBDIVISION
21 NOTWITHSTANDING THE FACT THAT HE OR SHE MAY HAVE ALSO RECEIVED A REPORT
22 OF ABUSE OR MALTREATMENT THROUGH A CONFESSION OR CONFIDENCE MADE PURSU-
23 ANT TO PARAGRAPH (B) OF THIS SUBDIVISION.

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

27 (e) FOR THE PURPOSES OF THIS SUBDIVISION THE TERM "MEMBER OF THE CLER-
28 GY" SHALL HAVE THE SAME DEFINITION AS THE TERM "CLERGYMAN" AS SET FORTH
29 IN SECTION TWO OF THE RELIGIOUS CORPORATIONS LAW AND SHALL ALSO INCLUDE
30 ANY PERSON RESPONSIBLE FOR SUPERVISING A MEMBER OF THE CLERGY OF A RELI-
31 GIOUS INSTITUTION OR RESPONSIBLE FOR THE ADMINISTRATION OF A RELIGIOUS
32 INSTITUTION.

33 (f) FOR THE PURPOSES OF THIS SUBDIVISION THE TERM "RELIGIOUS INSTITU-
34 TION" SHALL MEAN A RELIGIOUS CORPORATION CREATED TO ENABLE ITS MEMBERS
35 TO MEET FOR DIVINE WORSHIP OR OTHER RELIGIOUS OBSERVANCES OR A CONGRE-
36 GATION, SOCIETY, OR OTHER ASSEMBLAGE OF PERSONS WHO ARE ACCUSTOMED TO
37 STATEDLY MEET FOR DIVINE WORSHIP OR OTHER RELIGIOUS OBSERVANCES, WITHOUT
38 HAVING BEEN INCORPORATED FOR THAT PURPOSE, AS PROVIDED IN SECTION TWO OF
39 THE RELIGIOUS CORPORATIONS LAW.

40 (g) Whenever such person is required to report under this title in his
41 or her capacity as a member of the staff of a medical or other public or
42 private institution, school, facility or agency, he or she shall make
43 the report as required by this title and immediately notify the person
44 in charge of such institution, school, facility or agency, or his or her
45 designated agent. Such person in charge, or the designated agent of such
46 person, shall be responsible for all subsequent administration necessi-
47 tated by the report. Any report shall include the name, title and
48 contact information for every staff person of the institution who is
49 believed to have direct knowledge of the allegations in the report.
50 Nothing in this section or title is intended to require more than one
51 report from any such institution, school or agency.

52 [(c)] (h) A medical or other public or private institution, school,
53 facility or agency shall not take any retaliatory personnel action, as
54 such term is defined in paragraph (e) of subdivision one of section
55 seven hundred forty of the labor law, against an employee because such
56 employee believes that he or she has reasonable cause to suspect that a

1 child is an abused or maltreated child and that employee therefore makes
 2 a report in accordance with this title. No school, school official,
 3 child care provider, foster care provider, residential care facility
 4 provider, hospital, medical institution provider or mental health facil-
 5 ity provider shall impose any conditions, including prior approval or
 6 prior notification, upon a member of their staff specifically required
 7 to report under this title. At the time of the making of a report, or at
 8 any time thereafter, such person or official may exercise the right to
 9 request, pursuant to paragraph (A) of subdivision four of section four
 10 hundred twenty-two of this title, the findings of an investigation made
 11 pursuant to this title or section 45.07 of the mental hygiene law.

12 [(d)] (I) Social services workers are required to report or cause a
 13 report to be made in accordance with this title when they have reason-
 14 able cause to suspect that a child is an abused or maltreated child
 15 where a person comes before them in their professional or official
 16 capacity and states from personal knowledge facts, conditions or circum-
 17 stances which, if correct, would render the child an abused or maltreat-
 18 ed child.

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

21 TITLE 6-B
 22 REPORTS OF CHILD ABUSE TO
 23 LAW ENFORCEMENT

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

27 429-B. PENALTIES FOR FAILURE TO REPORT.

28 429-C. IMMUNITY FROM LIABILITY.

29 429-D. REVIEW OF EXISTING RECORDS FOR ALLEGATIONS THAT A CHILD
 30 IS AN ABUSED CHILD; DISTRICT ATTORNEY; PENALTY.

31 S 429-A. PERSONS AND OFFICIALS REQUIRED TO REPORT CASES OF SUSPECTED
 32 CHILD ABUSE TO APPROPRIATE LAW ENFORCEMENT AGENCY. 1. (A) THOSE PERSONS
 33 AND OFFICIALS SET FORTH IN SUBDIVISION ONE OF SECTION FOUR HUNDRED THIR-
 34 TEEN OF THIS ARTICLE SHALL BE REQUIRED TO REPORT OR CAUSE A REPORT TO BE
 35 MADE TO AN APPROPRIATE LAW ENFORCEMENT AGENCY WHEN THEY HAVE REASONABLE
 36 CAUSE TO SUSPECT IN THEIR PROFESSIONAL OR OFFICIAL CAPACITY THAT: (I) A
 37 PERSON BEING NINETEEN YEARS OLD OR MORE HAS ENGAGED IN CONDUCT SET FORTH
 38 IN PARAGRAPH (B) OF THIS SUBDIVISION WITH A PERSON LESS THAN FOURTEEN
 39 YEARS OLD; OR (II) A PERSON BEING TWENTY-ONE YEARS OLD OR MORE HAS
 40 ENGAGED IN CONDUCT SET FORTH IN PARAGRAPH (B) OF THIS SUBDIVISION WITH A
 41 PERSON LESS THAN SEVENTEEN YEARS OLD AND THE PERSON BEING TWENTY-ONE
 42 YEARS OLD OR MORE HAS AUTHORITY, PERCEIVED AUTHORITY, SUPERVISORY OR
 43 DISCIPLINARY POWER OVER THE PERSON LESS THAN SEVENTEEN YEARS OLD BY
 44 VIRTUE OF HIS OR HER CLERICAL, LEGAL, PROFESSIONAL, OCCUPATIONAL OR
 45 VOCATIONAL STATUS; OR (III) A PERSON HAS ENGAGED IN CONDUCT SET FORTH IN
 46 PARAGRAPH (B) OF THIS SUBDIVISION WITH A PERSON UNDER TWENTY-ONE YEARS
 47 OF AGE WHO HAS A HANDICAPPING CONDITION, AS DEFINED IN SECTION
 48 FORTY-FOUR HUNDRED ONE OF THE EDUCATION LAW AND WHO IS ENTITLED TO RESI-
 49 DENTIAL CARE DUE TO SUCH HANDICAPPING CONDITION.

50 (B) THE FOLLOWING CONDUCT, IF COMMITTED BY A PERSON DEFINED IN PARA-
 51 GRAPH (A) OF THIS SUBDIVISION SHALL, FOR THE PURPOSES OF THIS SECTION,
 52 CONSTITUTE "CHILD ABUSE" AND SHALL REQUIRE A REPORT:

53 (I) INTENTIONALLY OR RECKLESSLY INFLECTING PHYSICAL INJURY, SERIOUS
 54 PHYSICAL INJURY OR DEATH, OR

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

4 (III) COMMITTING OR ATTEMPTING TO COMMIT AGAINST A CHILD THE CRIME OF
5 DISSEMINATING INDECENT MATERIALS TO MINORS PURSUANT TO ARTICLE TWO
6 HUNDRED THIRTY-FIVE OF THE PENAL LAW, OR

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

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

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

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

30 2. REPORTS OF SUSPECTED CHILD ABUSE SHALL BE MADE IMMEDIATELY BY TELE-
31 PHONE OR BY TELEPHONE FACSIMILE ON A FORM SUPPLIED BY THE COMMISSIONER
32 OF THE OFFICE OF CHILDREN AND FAMILY SERVICES TO AN APPROPRIATE LAW
33 ENFORCEMENT AGENCY. SUCH TELEPHONE REPORTS SHALL BE FOLLOWED BY A
34 REPORT IN WRITING WITHIN TWENTY-FOUR HOURS AFTER SUCH ORAL REPORT. THE
35 PROVISIONS OF ARTICLE TWENTY-THREE-B OF THE EDUCATION LAW SHALL APPLY
36 WHEN ALLEGATIONS OF ABUSE OR MALTREATMENT BY AN EMPLOYEE OR VOLUNTEER
37 UNDER SUCH ARTICLE ARE MADE IN AN EDUCATIONAL SETTING. NOTHING IN THIS
38 SUBDIVISION SHALL REQUIRE A PERSON OR OFFICIAL REQUIRED TO REPORT CASES
39 OF SUSPECTED CHILD ABUSE TO ADDITIONALLY NOTIFY THE STATEWIDE REGISTER
40 OF CHILD ABUSE AND MALTREATMENT UNLESS THE RELATIONSHIP OF THE VICTIM TO
41 THE ALLEGED PERPETRATOR IS IN DOUBT. NOTWITHSTANDING ANY OTHER
42 PROVISION OF LAW, LAW ENFORCEMENT AGENCY SHALL NOT INCLUDE ANY CHILD
43 PROTECTIVE SERVICE OR ANY SOCIETY FOR THE PREVENTION OF CRUELTY TO CHIL-
44 DREN AS SUCH TERMS ARE DEFINED IN SECTION FOUR HUNDRED TWENTY-THREE OF
45 THIS ARTICLE.

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

52 (B) WHEN A MEMBER OF THE CLERGY HAS REASONABLE CAUSE TO SUSPECT THAT A
53 CHILD IS AN ABUSED CHILD BASED UPON ANY INFORMATION RECEIVED OTHER THAN
54 THROUGH A CONFESSION OR CONFIDENCE MADE PURSUANT TO PARAGRAPH (A) OF
55 THIS SUBDIVISION, THEN SUCH MEMBER OF THE CLERGY SHALL PROMPTLY MAKE A
56 REPORT AS REQUIRED BY PARAGRAPH (A) OF SUBDIVISION ONE OF THIS SECTION

1 NOTWITHSTANDING THE FACT THAT HE OR SHE MAY HAVE ALSO RECEIVED A REPORT
2 OF ABUSE THROUGH A CONFESSION OR CONFIDENCE MADE PURSUANT TO PARAGRAPH
3 (A) OF THIS SUBDIVISION.

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

7 S 429-B. PENALTIES FOR FAILURE TO REPORT. 1. ANY PERSON REQUIRED BY
8 THIS TITLE TO REPORT A CASE OF SUSPECTED CHILD ABUSE WHO WILLFULLY FAILS
9 TO DO SO SHALL BE GUILTY OF A CLASS A MISDEMEANOR.

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

13 S 429-C. IMMUNITY FROM LIABILITY. 1. ANY PERSON WHO IN GOOD FAITH
14 MAKES A REPORT OF ALLEGATIONS OF CHILD ABUSE AS REQUIRED BY THIS TITLE,
15 INCLUDING THOSE WHO IN GOOD FAITH MAKE A REPORT TO THE WRONG RECIPIENT,
16 SHALL HAVE IMMUNITY FROM CRIMINAL LIABILITY WHICH MIGHT OTHERWISE RESULT
17 BY REASON OF SUCH ACTIONS.

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

22 S 429-D. REVIEW OF EXISTING RECORDS FOR ALLEGATIONS THAT A CHILD IS AN
23 ABUSED CHILD; DISTRICT ATTORNEY; PENALTY. 1. WITHIN THREE MONTHS OF THE
24 EFFECTIVE DATE OF THIS SECTION, ALL MEMBERS OF THE CLERGY SHALL: (A)
25 REVIEW ALL INSTITUTIONAL RECORDS WITHIN THEIR CONTROL AND ANY OTHER
26 INFORMATION THEY HAVE OBTAINED REGARDING ALLEGATIONS THAT A CHILD IS AN
27 ABUSED CHILD BY A MEMBER OF THE CLERGY WITHIN TWENTY YEARS PRIOR TO THE
28 EFFECTIVE DATE OF THIS SECTION; (B) REVIEW WHETHER THEY ARE AWARE OF ANY
29 OTHER ALLEGATIONS THAT A CHILD IS AN ABUSED CHILD ALLEGED TO HAVE BEEN
30 ABUSED BY A MEMBER OF THE CLERGY WHO REMAINS ACTIVELY IN THE SERVICE OF
31 A RELIGIOUS INSTITUTION, REGARDLESS OF THE DATE ON WHICH SUCH ALLEGATION
32 WAS MADE; AND WHERE SUCH INFORMATION OR RECORDS RAISE REASONABLE CAUSE
33 TO SUSPECT THAT A CHILD IS AN ABUSED CHILD, REPORT SUCH ALLEGATION TO
34 THE DISTRICT ATTORNEY. THIS SECTION SHALL NOT APPLY TO INFORMATION
35 OBTAINED THROUGH CONFIDENTIAL COMMUNICATIONS WITH CLERGY AND PRIVILEGED
36 UNDER LAW AND NO REPORT NEED BE MADE OF ALLEGATIONS AGAINST A DECEASED
37 INDIVIDUAL.

38 2. THE WILLFUL FAILURE OF AN INDIVIDUAL DEFINED IN PARAGRAPH (A) OF
39 SUBDIVISION ONE OF SECTION FOUR HUNDRED TWENTY-NINE-A OF THIS TITLE TO
40 REVIEW EXISTING RECORDS AND INFORMATION AND REPORT ALLEGATIONS CONTAINED
41 THEREIN, AS PROVIDED BY THIS SECTION, SHALL BE A CLASS A MISDEMEANOR.

42 S 3. The commissioner of the office of children and family services
43 shall review the reporting form used to report suspected child abuse
44 pursuant to section 429-a of the social services law and, if necessary,
45 shall revise such form to make it appropriate for reporting to law
46 enforcement agencies.

47 S 4. This act shall take effect on the sixtieth day after it shall
48 have become a law.