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

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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:

Section 1. Subdivision 1 of section 413 of the social services law, as amended by chapter 366 of the laws of 2008 and paragraph (a) as separately amended by chapter 323 of the laws of 2008, is amended to read as follows:

1. (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; MEMBER OF THE CLERGY; a Christian Science practitioner; school official, which includes but is not limited to school teacher, 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

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

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services worker; day care center worker; school-age child care worker; provider of family or group family day care; employee or volunteer in a residential care facility defined in subdivision four of section four hundred twelve-a of this title 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.

(b) 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 THIS SUBDIVISION IF THE CONFESSION OR CONFIDENCE WAS MADE TO HIM OR HER IN HIS OR HER PROFESSIONAL CHARACTER AS SPIRITUAL ADVISOR.

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

(D) THE PROVISIONS OF PARAGRAPH (B) 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.

(E) FOR THE PURPOSES OF THIS SUBDIVISION 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.

(F) FOR THE PURPOSES OF THIS SUBDIVISION 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.

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

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

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

[(d)] (I) Social services workers 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 is an abused or maltreated child where a person 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.

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) THOSE PERSONS AND OFFICIALS SET FORTH IN SUBDIVISION ONE OF SECTION FOUR HUNDRED THIRTEEN OF THIS ARTICLE SHALL BE REQUIRED TO REPORT OR CAUSE A REPORT TO BE MADE TO AN APPROPRIATE LAW ENFORCEMENT AGENCY WHEN THEY HAVE REASONABLE CAUSE TO SUSPECT IN THEIR PROFESSIONAL OR OFFICIAL CAPACITY THAT: (I) A PERSON BEING NINETEEN YEARS OLD OR MORE HAS ENGAGED IN CONDUCT SET FORTH IN PARAGRAPH (B) OF THIS SUBDIVISION WITH A PERSON LESS THAN FOURTEEN YEARS OLD; OR (II) A PERSON BEING TWENTY-ONE YEARS OLD OR MORE HAS ENGAGED IN CONDUCT SET FORTH IN PARAGRAPH (B) OF THIS SUBDIVISION WITH A PERSON LESS THAN SEVENTEEN YEARS OLD AND THE PERSON BEING TWENTY-ONE YEARS OLD OR MORE HAS AUTHORITY, PERCEIVED AUTHORITY, SUPERVISORY OR DISCIPLINARY POWER OVER THE PERSON LESS THAN SEVENTEEN YEARS OLD BY VIRTUE OF HIS OR HER CLERICAL, LEGAL, PROFESSIONAL, OCCUPATIONAL OR VOCATIONAL STATUS; OR (III) A PERSON HAS ENGAGED IN CONDUCT SET FORTH IN PARAGRAPH (B) OF THIS SUBDIVISION WITH A PERSON UNDER TWENTY-ONE YEARS OF AGE WHO HAS A HANDICAPPING CONDITION, AS DEFINED IN SECTION FORTY-FOUR HUNDRED ONE OF THE EDUCATION LAW AND WHO IS ENTITLED TO RESIDENTIAL CARE DUE TO SUCH HANDICAPPING CONDITION.

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

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

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

(III) COMMITTING OR ATTEMPTING 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) ENGAGING 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. REPORTS OF SUSPECTED CHILD ABUSE SHALL BE MADE IMMEDIATELY BY TELEPHONE OR BY TELEPHONE FACSIMILE ON A FORM SUPPLIED BY THE COMMISSIONER OF THE OFFICE OF CHILDREN AND FAMILY SERVICES TO AN APPROPRIATE LAW ENFORCEMENT AGENCY. SUCH TELEPHONE REPORTS SHALL BE FOLLOWED BY A REPORT IN WRITING WITHIN TWENTY-FOUR HOURS AFTER SUCH ORAL REPORT. THE PROVISIONS OF ARTICLE TWENTY-THREE-B OF THE EDUCATION LAW SHALL APPLY WHEN ALLEGATIONS OF ABUSE OR MALTREATMENT BY AN EMPLOYEE OR VOLUNTEER UNDER SUCH ARTICLE ARE MADE IN AN EDUCATIONAL SETTING. NOTHING IN THIS SUBDIVISION SHALL REQUIRE A PERSON OR OFFICIAL REQUIRED TO REPORT CASES OF SUSPECTED CHILD ABUSE TO ADDITIONALLY NOTIFY THE STATEWIDE REGISTER OF CHILD ABUSE AND MALTREATMENT UNLESS THE RELATIONSHIP OF THE VICTIM TO THE ALLEGED PERPETRATOR IS IN DOUBT. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, LAW ENFORCEMENT AGENCY 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.

3. (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.

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.

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 TWENTY 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 AND NO REPORT NEED BE MADE OF ALLEGATIONS AGAINST A DECEASED INDIVIDUAL.

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

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

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