

3882

2009-2010 Regular Sessions

I N S E N A T E

April 2, 2009

Introduced by Sen. MONTGOMERY -- (at request of the Office of Children and Family Services) -- 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 confidentiality of calls to certain hotlines operated by the office of children and family services

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

1 Section 1. Subdivision 3 of section 372-g of the social services law,
2 as added by chapter 156 of the laws of 2000, is amended to read as
3 follows:
4 3. establishment of toll-free telephone hotlines to provide informa-
5 tion. ANY RECORDS THAT COULD IDENTIFY CALLERS TO ANY SUCH HOTLINE ARE
6 CONFIDENTIAL. SHOULD THE OFFICE MAINTAIN ANY RECORDS CONCERNING CALLS TO
7 ANY SUCH HOTLINE, INFORMATION CONCERNING THE CONTENT OF SUCH CALLS SHALL
8 ALSO BE CONFIDENTIAL AND SHALL NOT BE AVAILABLE EXCEPT IN ACCORDANCE
9 WITH A COURT ORDER WHERE THE COURT HAS MADE A FINDING THAT SUCH INFORMA-
10 TION IS NECESSARY FOR THE DETERMINATION OF AN ISSUE BEFORE THE COURT.
11 NOTHING IN THIS SUBDIVISION SHALL BE CONSTRUED TO REQUIRE THE OFFICE TO
12 MAINTAIN ANY RECORD OF ANY CALL TO ANY SUCH HOTLINE.
13 S 2. Subparagraphs (i) and (iv) of paragraph (c) of subdivision 3 of
14 section 390 of the social services law, subparagraph (i) as amended and
15 subparagraph (iv) as added by chapter 416 of the laws of 2000, are
16 amended to read as follows:
17 (i) The office of children and family services shall establish a toll-
18 free statewide telephone number to receive inquiries about child day
19 care homes, programs and facilities and complaints of violations of the
20 requirements of this section or regulations promulgated under this
21 section. ANY RECORDS THAT COULD IDENTIFY CALLERS COMPLAINING OF
22 VIOLATIONS SHALL BE CONFIDENTIAL. The office of children and family
23 services shall develop a system for investigation, which shall include

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

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1 inspection, of such complaints. The office of children and family
2 services may provide for such investigations through purchase of
3 services. The office of children and family services shall develop a
4 process for publicizing such toll-free telephone number to the public
5 for making inquiries or complaints about child day care homes, programs
6 or facilities.

7 (iv) Nothing in this paragraph shall be construed to require or permit
8 the disclosure either orally or in writing of any information that is
9 confidential pursuant to law. THE OFFICE SHALL NOT DISCLOSE ANY RECORDS
10 THAT COULD IDENTIFY PERSONS WHO HAVE MADE COMPLAINTS TO THE TOLL-FREE
11 TELEPHONE NUMBER EXCEPT: WITH SUCH PERSON'S WRITTEN PERMISSION; TO AN
12 APPROPRIATE LAW ENFORCEMENT AGENCY WHERE SUCH AGENCY STATES THAT SUCH
13 INFORMATION IS NECESSARY TO CONDUCT A CRIMINAL INVESTIGATION OR CRIMINAL
14 PROSECUTION; OR IN ACCORDANCE WITH A COURT ORDER WHERE THE COURT HAS
15 MADE A FINDING THAT SUCH INFORMATION IS NECESSARY FOR THE DETERMINATION
16 OF AN ISSUE BEFORE THE COURT.

17 S 3. Paragraph (c) of subdivision 2 of section 422 of the social
18 services law, as added by chapter 717 of the laws of 1986, is amended to
19 read as follows:

20 (c) Whenever a telephone call to the statewide central register
21 described in this section is received by the [department] OFFICE OF
22 CHILDREN AND FAMILY SERVICES, and the [department] OFFICE finds that the
23 person allegedly responsible for abuse or maltreatment of a child cannot
24 be a subject of a report as defined in subdivision four of section four
25 hundred twelve of this chapter, but believes that the alleged acts or
26 circumstances against a child described in the telephone call may
27 constitute a crime or an immediate threat to the child's health or safe-
28 ty, the [department] OFFICE shall convey by the most expedient means
29 available the information contained in such telephone call to the appro-
30 priate law enforcement agency, district attorney or other public offi-
31 cial empowered to provide necessary aid or assistance. ANY RECORD OF ANY
32 SUCH TELEPHONE CALL SHALL BE CONFIDENTIAL AND SHALL NOT BE DISCLOSED
33 EXCEPT AS PROVIDED IN THIS PARAGRAPH.

34 S 4. Subdivision 2 of section 422 of the social services law is
35 amended by adding a new paragraph (d) to read as follows:

36 (D) ANY RECORD MAINTAINED BY THE STATEWIDE CENTRAL REGISTER CONCERNING
37 A CALL TO THE STATEWIDE CENTRAL REGISTER THAT DOES NOT CONSTITUTE A
38 REPORT OF SUSPECTED CHILD ABUSE OR MALTREATMENT FOR A REASON OTHER THAN
39 THAT SPECIFIED IN PARAGRAPH (C) OF THIS SUBDIVISION SHALL BE CONFIDEN-
40 TIAL AND SHALL BE AVAILABLE ONLY TO AN APPROPRIATE LAW ENFORCEMENT AGEN-
41 CY WHERE SUCH AGENCY STATES THAT SUCH INFORMATION IS NECESSARY TO
42 CONDUCT A CRIMINAL INVESTIGATION OR CRIMINAL PROSECUTION, OR IN ACCORD-
43 ANCE WITH A COURT ORDER WHERE THE COURT HAS MADE A FINDING THAT SUCH
44 INFORMATION IS NECESSARY FOR THE DETERMINATION OF AN ISSUE BEFORE THE
45 COURT. NOTHING IN THIS PARAGRAPH SHALL BE CONSTRUED TO REQUIRE THE
46 STATEWIDE CENTRAL REGISTER TO MAINTAIN ANY RECORD OF ANY CALL TO THE
47 STATEWIDE CENTRAL REGISTER THAT DOES NOT CONSTITUTE A REPORT OF
48 SUSPECTED CHILD ABUSE OR MALTREATMENT.

49 S 5. Subdivision 4 of section 422 of the social services law, as
50 amended by chapter 677 of the laws of 1985, paragraph (A) as amended and
51 subparagraph (v) and the closing paragraph of paragraph (A) as added by
52 chapter 12 of the laws of 1996, subparagraph (1) of paragraph (A) as
53 amended by chapter 35 of the laws of 2001, clause (ii) of subparagraph
54 (v) as amended and subparagraph (w) of paragraph (A) as added by chap-
55 ter 136 of the laws of 1999 and subparagraphs (x) and (y) as amended and

1 subparagraph (z) of paragraph (A) as added by section 1 of part A of
2 chapter 327 of the laws of 2007, is amended to read as follows:
3 4. (A) Reports made pursuant to this title [as well as] AND any other
4 information obtained, reports written or photographs taken concerning
5 such reports, AS WELL AS RECORDS PERTAINING TO TELEPHONE CALLS RECEIVED
6 PURSUANT TO THIS SECTION, in the possession of the [department] OFFICE
7 OF CHILDREN AND FAMILY SERVICES, local departments, or the commission on
8 quality of care [for the mentally disabled] AND ADVOCACY FOR PERSONS
9 WITH DISABILITIES, shall be confidential and shall only be made avail-
10 able to:

11 (a) a physician who has before him or her a child whom he or she
12 reasonably suspects may be abused or maltreated;

13 (b) a person authorized to place a child in protective custody when
14 such person has before him or her a child whom he or she reasonably
15 suspects may be abused or maltreated and such person requires the infor-
16 mation in the record to determine whether to place the child in protec-
17 tive custody;

18 (c) a duly authorized agency having the responsibility for the care or
19 supervision of a child who is reported to the central register of abuse
20 and maltreatment;

21 (d) any person who is the subject of the report or other persons named
22 in the report;

23 (e) a court, upon a finding that the information in the record is
24 necessary for the determination of an issue before the court;

25 (f) a grand jury, upon a finding that the information in the record is
26 necessary for the determination of charges before the grand jury;

27 (g) any appropriate state legislative committee responsible for child
28 protective legislation;

29 (h) any person engaged in a bona fide research purpose provided,
30 however, that no information identifying the subjects of the report or
31 other persons named in the report shall be made available to the
32 researcher unless it is absolutely essential to the research purpose and
33 the department gives prior approval;

34 (i) a provider agency as defined by subdivision three of section four
35 hundred twenty-four-a of this [chapter] TITLE, or a licensing agency as
36 defined by subdivision four of section four hundred twenty-four-a of
37 this [chapter] TITLE, subject to the provisions of such section;

38 (j) the state commission on quality of care for the mentally disabled
39 in connection with an investigation being conducted by the commission
40 pursuant to article forty-five of the mental hygiene law;

41 (k) a probation service conducting an investigation pursuant to arti-
42 cle three or seven or section six hundred fifty-three of the family
43 court act where there is reason to suspect the child or the child's
44 sibling may have been abused or maltreated and such child or sibling,
45 parent, guardian or other person legally responsible for the child is a
46 person named in an indicated report of child abuse or maltreatment and
47 that such information is necessary for the making of a determination or
48 recommendation to the court; or a probation service regarding a person
49 about whom it is conducting an investigation pursuant to article three
50 hundred ninety of the criminal procedure law, or a probation service or
51 the state division of parole regarding a person to whom the service or
52 division is providing supervision pursuant to article sixty of the penal
53 law or section two hundred fifty-nine-a of the executive law, where the
54 subject of investigation or supervision has been convicted of a felony
55 under article one hundred twenty, one hundred twenty-five or one hundred
56 thirty-five of the penal law or any felony or misdemeanor under article

1 one hundred thirty, two hundred thirty-five, two hundred forty-five, two
2 hundred sixty or two hundred sixty-three of the penal law, or has been
3 indicted for any such felony and, as a result, has been convicted of a
4 crime under the penal law, where the service or division requests the
5 information upon a certification that such information is necessary to
6 conduct its investigation, that there is reasonable cause to believe
7 that the subject of an investigation is the subject of an indicated
8 report and that there is reasonable cause to believe that such records
9 are necessary to the investigation by the probation service or the state
10 division of parole, provided, however, that only indicated reports shall
11 be furnished pursuant to this subdivision;

12 (l) a district attorney, an assistant district attorney or investi-
13 gator employed in the office of a district attorney, a sworn officer of
14 the division of state police, of the regional state park police, of a
15 city police department, or of a county, town or village police depart-
16 ment or county sheriff's office or department when such official
17 requests such information stating that such information is necessary to
18 conduct a criminal investigation or criminal prosecution of a person,
19 that there is reasonable cause to believe that such person is the
20 subject of a report, and that it is reasonable to believe that due to
21 the nature of the crime under investigation or prosecution, such person
22 is the subject of a report, and that it is reasonable to believe that
23 due to that nature of the crime under investigation or prosecution, such
24 records may be related to the criminal investigation or prosecution;

25 (m) the New York city department of investigation provided however,
26 that no information identifying the subjects of the report or other
27 persons named in the report shall be made available to the department of
28 investigation unless such information is essential to an investigation
29 within the legal authority of the department of investigation and the
30 state department of social services gives prior approval;

31 (n) chief executive officers of authorized agencies, directors of day
32 care centers and directors of facilities operated or supervised by the
33 department of education, the division for youth, the office of mental
34 health or the office of mental retardation and developmental disabili-
35 ties, in connection with a disciplinary investigation, action, or admin-
36 istrative or judicial proceeding instituted by any of such officers or
37 directors against an employee of any such agency, center or facility who
38 is the subject of an indicated report when the incident of abuse or
39 maltreatment contained in the report occurred in the agency, center,
40 facility or program, and the purpose of such proceeding is to determine
41 whether the employee should be retained or discharged; provided, howev-
42 er, a person given access to information pursuant to this subparagraph
43 [(n)] shall, notwithstanding any inconsistent provision of law, be
44 authorized to redisclose such information only if the purpose of such
45 redisclosure is to initiate or present evidence in a disciplinary,
46 administrative or judicial proceeding concerning the continued employ-
47 ment or the terms of employment of an employee of such agency, center or
48 facility who has been named as a subject of an indicated report and, in
49 addition, a person or agency given access to information pursuant to
50 this subparagraph [(n)] shall also be given information not otherwise
51 provided concerning the subject of an indicated report where the commis-
52 sion of an act or acts by such subject has been determined in
53 proceedings pursuant to article ten of the family court act to consti-
54 tute abuse or neglect;

55 (o) a provider or coordinator of services to which a child protective
56 service or social services district has referred a child or a child's

1 family or to whom the child or the child's family have referred them-
2 selves at the request of the child protective service or social services
3 district, where said child is reported to the register when the records,
4 reports or other information are necessary to enable the provider or
5 coordinator to establish and implement a plan of service for the child
6 or the child's family, or to monitor the provision and coordination of
7 services and the circumstances of the child and the child's family, or
8 to directly provide services; provided, however, that a provider of
9 services may include appropriate health care or school district person-
10 nel, as such terms shall be defined by the department; provided however,
11 a provider or coordinator of services given access to information
12 concerning a child pursuant to this subparagraph [(o)] shall, notwith-
13 standing any inconsistent provision of law, be authorized to redisclose
14 such information to other persons or agencies which also provide
15 services to the child or the child's family only if the consolidated
16 services plan prepared and approved pursuant to section thirty-four-a of
17 this chapter describes the agreement that has been or will be reached
18 between the provider or coordinator of service and the local district.
19 An agreement entered into pursuant to this subparagraph shall include
20 the specific agencies and categories of individuals to whom redisclosure
21 by the provider or coordinator of services is authorized. Persons or
22 agencies given access to information pursuant to this subparagraph may
23 exchange such information in order to facilitate the provision or coord-
24 ination of services to the child or the child's family;

25 (p) a disinterested person making an investigation pursuant to section
26 one hundred sixteen of the domestic relations law, provided that such
27 disinterested person shall only make this information available to the
28 judge before whom the adoption proceeding is pending;

29 (q) a criminal justice agency conducting an investigation of a missing
30 child where there is reason to suspect such child or such child's
31 sibling, parent, guardian or other person legally responsible for such
32 child is a person named in an indicated report of child abuse or
33 maltreatment and that such information is needed to further such inves-
34 tigation;

35 (r) in relation to a report involving a child in residential care, the
36 director or operator of the residential facility or program and, as
37 appropriate, the local social services commissioner or school district
38 placing the child, the division for youth, the department of education,
39 the commission on quality of care for the mentally disabled, the office
40 of mental health, the office of mental retardation and developmental
41 disabilities, and any law guardian appointed to represent the child
42 whose appointment has been continued by a family court judge during the
43 term of the placement, subject to the limitations contained in subdivi-
44 sions nine and ten of this section and subdivision five of section four
45 hundred twenty-four-c of this title;

46 (s) a child protective service of another state when such service
47 certifies that the records and reports are necessary in order to conduct
48 a child abuse or maltreatment investigation within its jurisdiction of
49 the subject of the report and shall be used only for purposes of
50 conducting such investigation and will not be redisclosed to any other
51 person or agency;

52 (t) a law guardian, appointed pursuant to the provisions of section
53 ten hundred sixteen of the family court act, at any time such appoint-
54 ment is in effect, in relation to any report in which the respondent in
55 the proceeding in which the law guardian has been appointed is the
56 subject or another person named in the report, pursuant to sections ten

1 hundred thirty-nine-a and ten hundred fifty-two-a of the family court
2 act;

3 (u) a child care resource and referral program subject to the
4 provisions of subdivision six of section four hundred twenty-four-a of
5 this title;

6 (v)(i) officers and employees of the state comptroller or of the city
7 comptroller of the city of New York, or of the county officer designated
8 by law or charter to perform the auditing function in any county not
9 wholly contained within a city, for purposes of a duly authorized
10 performance audit, provided that such comptroller shall have certified
11 to the keeper of such records that he or she has instituted procedures
12 developed in consultation with the department to limit access to client-
13 identifiable information to persons requiring such information for
14 purposes of the audit and that appropriate controls and prohibitions are
15 imposed on the dissemination of client-identifiable information
16 contained in the conduct of the audit. Information pertaining to the
17 substance or content of any psychological, psychiatric, therapeutic,
18 clinical or medical reports, evaluations or like materials or informa-
19 tion pertaining to such child or the child's family shall not be made
20 available to such officers and employees unless disclosure of such
21 information is absolutely essential to the specific audit activity and
22 the department gives prior written approval.

23 (ii) any failure to maintain the confidentiality of client-identifia-
24 ble information shall subject such comptroller or officer to denial of
25 any further access to records until such time as the audit agency has
26 reviewed its procedures concerning controls and prohibitions imposed on
27 the dissemination of such information and has taken all reasonable and
28 appropriate steps to eliminate such lapses in maintaining confidentiali-
29 ty to the satisfaction of the office of children and family services.
30 The office of children and family services shall establish the grounds
31 for denial of access to records contained under this section and shall
32 recommend as necessary a plan of remediation to the audit agency.
33 Except as provided in this section, nothing in this subparagraph shall
34 be construed as limiting the powers of such comptroller or officer to
35 access records which he or she is otherwise authorized to audit or
36 obtain under any other applicable provision of law. Any person given
37 access to information pursuant to this subparagraph who releases data or
38 information to persons or agencies not authorized to receive such infor-
39 mation shall be guilty of a class A misdemeanor;

40 (w) members of a local or regional fatality review team approved by
41 the office of children and family services in accordance with section
42 four hundred twenty-two-b of this title;

43 (x) members of a local or regional multidisciplinary investigative
44 team as established pursuant to subdivision six of section four hundred
45 twenty-three of this title;

46 (y) members of a citizen review panel as established pursuant to
47 section three hundred seventy-one-b of this article; provided, however,
48 members of a citizen review panel shall not disclose to any person or
49 government official any identifying information which the panel has been
50 provided and shall not make public other information unless otherwise
51 authorized by statute; and

52 (z) an entity with appropriate legal authority in another state to
53 license, certify or otherwise approve prospective foster and adoptive
54 parents where disclosure of information regarding the prospective foster
55 or adoptive parents and other persons over the age of eighteen residing
56 in the home of such prospective parents is required by paragraph twenty

1 of subdivision (a) of section six hundred seventy-one of title forty-two
2 of the United States code.

3 After a child, other than a child in residential care, who is reported
4 to the central register of abuse or maltreatment reaches the age of
5 eighteen years, access to a child's record under subparagraphs (a) and
6 (b) of this paragraph shall be permitted only if a sibling or off-spring
7 of such child is before such person and is a suspected victim of child
8 abuse or maltreatment. In addition, a person or official required to
9 make a report of suspected child abuse or maltreatment pursuant to
10 section four hundred thirteen of this chapter shall receive, upon
11 request, the findings of an investigation made pursuant to this title or
12 section 45.07 of the mental hygiene law. However, no information may be
13 released unless the person or official's identity is confirmed by the
14 [department] OFFICE. If the request for such information is made prior
15 to the completion of an investigation of a report, the released informa-
16 tion shall be limited to whether the report is "indicated", "unfounded"
17 or "under investigation", whichever the case may be. If the request for
18 such information is made after the completion of an investigation of a
19 report, the released information shall be limited to whether the report
20 is "indicated" or "unfounded", whichever the case may be. A person given
21 access to the names or other information identifying the subjects of the
22 report, or other persons named in the report, except the subject of the
23 report or other persons named in the report, shall not divulge or make
24 public such identifying information unless he or she is a district
25 attorney or other law enforcement official and the purpose is to initi-
26 ate court action or the disclosure is necessary in connection with the
27 investigation or prosecution of the subject of the report for a crime
28 alleged to have been committed by the subject against another person
29 named in the report. Nothing in this section shall be construed to
30 permit any release, disclosure or identification of the names [or],
31 identifying descriptions, TELEPHONE NUMBERS OR OTHER CONTACT INFORMATION
32 of persons who have reported suspected child abuse or maltreatment to
33 the statewide central register or the agency, institution, organization,
34 program or other entity where such persons are employed or the agency,
35 institution, organization or program with which they are associated
36 without such persons' written permission except to persons, officials,
37 and agencies enumerated in subparagraphs (e), (f), (h), (j), (l), (m)
38 and (v) of this paragraph.

39 To the extent that persons or agencies are given access to information
40 pursuant to subparagraphs (a), (b), (c), (j), (k), (l), (m)[,] AND (o)
41 [and (q)] of this paragraph, such persons or agencies may give and
42 receive such information to each other in order to facilitate an inves-
43 tigation conducted by such persons or agencies.

44 (B) Notwithstanding any inconsistent provision of law to the contrary,
45 a city or county social services commissioner may withhold, in whole or
46 in part, the release of any information which he or she is authorized to
47 make available to persons or agencies identified in subparagraphs (a),
48 (k), (l), (m), (n)[,] AND (o)[, (p) and (q)] of paragraph (A) of this
49 subdivision if such commissioner determines that such information is not
50 related to the purposes for which such information is requested or when
51 such disclosure will be detrimental to the child named in the report.

52 (C) A city or county social services commissioner who denies access by
53 persons or agencies identified in subparagraphs (a), (k), (l), (m),
54 (n)[,] AND (o)[, (p) and (q)] of paragraph (A) of this subdivision to
55 records, reports or other information or parts thereof maintained by
56 such commissioner in accordance with this title shall, within ten days

1 from the date of receipt of the request fully explain in writing to the
2 person requesting the records, reports or other information the reasons
3 for the denial.

4 (D) A person or agency identified in subparagraphs (a), (k), (l), (m),
5 (n)[,] AND (o)[, (p) and (q)] of paragraph (A) of this subdivision who
6 is denied access to records, reports or other information or parts there-
7 of maintained by a local department pursuant to this title may bring a
8 proceeding for review of such denial pursuant to article seventy-eight
9 of the civil practice law and rules.

10 S 6. Subdivision 12 of section 422 of the social services law, as
11 added by chapter 1039 of the laws of 1973 and renumbered by chapter 676
12 of the laws of 1985, is amended to read as follows:

13 12. (A) Any person who willfully DISCLOSES, permits [and any person
14 who] THE DISCLOSURE OF, OR encourages the release of any data and infor-
15 mation contained in the central register to persons or agencies not
16 permitted by this title shall be guilty of a class A misdemeanor.

17 (B) ANY PERSON WHO WILLFULLY AND WRONGFULLY ACCESSES OR DISCLOSES
18 INFORMATION OR RECORDS THAT ARE CONFIDENTIAL UNDER THIS SECTION SHALL BE
19 GUILTY OF A CLASS A MISDEMEANOR.

20 S 7. This act shall take effect immediately; except that section six
21 of this act shall take effect on the first of November next succeeding
22 the date on which it shall have become a law.