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

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2011-2012 Regular Sessions

I N A S S E M B L Y

March 16, 2011

Introduced by M. of A. McENENY, MARKEY, AUBRY, GALEF, SCHIMEL, JAFFEE, WEISENBERG -- Multi-Sponsored by -- M. of A. BRENNAN, CAMARA, COOK, GABRYSZAK, GUNTHER, KELLNER, MENG, PHEFFER, N. RIVERA, SCARBOROUGH, STEVENSON, TOWNS -- read once and referred 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,

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

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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; 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) 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) 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) 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.

(E) 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.

(F) 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 (E) 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 (E) OF THIS SUBDIVISION.

(G) THE PROVISIONS OF PARAGRAPH (E) 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.

(H) 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.

(I) 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.

S 2. This act shall take effect on the sixtieth day after it shall have become a law.