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

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2011-2012 Regular Sessions

I N S E N A T E

January 18, 2011

Introduced by Sen. MONTGOMERY -- 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 and in relation to cross references to penal law provisions on filing a false report in the third degree

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

Section 1. Subdivision 3 of section 372-g of the social services law, as added by chapter 156 of the laws of 2000, is amended to read as follows:

3. establishment of toll-free telephone hotlines to provide information. ANY RECORDS THAT COULD IDENTIFY CALLERS TO ANY SUCH HOTLINE ARE CONFIDENTIAL. SHOULD THE OFFICE MAINTAIN ANY RECORDS CONCERNING CALLS TO ANY SUCH HOTLINE, INFORMATION CONCERNING THE CONTENT OF SUCH CALLS SHALL ALSO BE CONFIDENTIAL AND SHALL NOT BE AVAILABLE EXCEPT IN ACCORDANCE WITH A COURT ORDER WHERE THE COURT HAS MADE A FINDING THAT SUCH INFORMATION IS NECESSARY FOR THE DETERMINATION OF AN ISSUE BEFORE THE COURT. NOTHING IN THIS SUBDIVISION SHALL BE CONSTRUED TO REQUIRE THE OFFICE TO MAINTAIN ANY RECORD OF ANY CALL TO ANY SUCH HOTLINE.

S 2. Subparagraphs (i) and (iv) of paragraph (c) of subdivision 3 of section 390 of the social services law, subparagraph (i) as amended and subparagraph (iv) as added by chapter 416 of the laws of 2000, are amended to read as follows:

(i) The office of children and family services shall establish a toll-free statewide telephone number to receive inquiries about child day care homes, programs and facilities and complaints of violations of the requirements of this section or regulations promulgated under this section. ANY RECORDS THAT COULD IDENTIFY CALLERS COMPLAINING OF VIOLATIONS SHALL BE CONFIDENTIAL. The office of children and family 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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inspection, of such complaints. The office of children and family services may provide for such investigations through purchase of services. The office of children and family services shall develop a process for publicizing such toll-free telephone number to the public for making inquiries or complaints about child day care homes, programs or facilities.

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

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

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

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

(D) ANY RECORD MAINTAINED BY THE STATEWIDE CENTRAL REGISTER CONCERNING A CALL TO THE STATEWIDE CENTRAL REGISTER THAT DOES NOT CONSTITUTE A REPORT OF SUSPECTED CHILD ABUSE OR MALTREATMENT FOR A REASON OTHER THAN THAT SPECIFIED IN PARAGRAPH (C) OF THIS SUBDIVISION SHALL BE CONFIDENTIAL AND SHALL BE AVAILABLE ONLY TO AN APPROPRIATE LAW ENFORCEMENT AGENCY WHERE SUCH AGENCY STATES IN WRITING THAT SUCH INFORMATION IS NECESSARY TO CONDUCT A CRIMINAL INVESTIGATION OR CRIMINAL PROSECUTION, OR IN ACCORDANCE WITH A COURT ORDER WHERE THE COURT HAS MADE A FINDING THAT SUCH INFORMATION IS NECESSARY FOR THE DETERMINATION OF AN ISSUE BEFORE THE COURT. NOTHING IN THIS PARAGRAPH SHALL BE CONSTRUED TO REQUIRE THE STATEWIDE CENTRAL REGISTER TO MAINTAIN ANY RECORD NOT OTHERWISE REQUIRED BY LAW OF ANY CALL TO THE STATEWIDE CENTRAL REGISTER THAT DOES NOT CONSTITUTE A REPORT OF SUSPECTED CHILD ABUSE OR MALTREATMENT.

S 5. Subdivision 4 of section 422 of the social services law, as amended by chapter 677 of the laws of 1985, paragraph (A) as amended by chapter 12 of the laws of 1996, subparagraph (1) of paragraph (A) as amended by chapter 35 of the laws of 2001, subparagraphs (r) and (t) as amended by chapter 41 of the laws of 2010, clause (ii) of subparagraph (v) as amended and subparagraph (w) of paragraph (A) as added by chapter 136 of the laws of 1999 and subparagraphs (x) and (y) as amended and

subparagraph (z) of paragraph (A) as added by section 1 of part A of chapter 327 of the laws of 2007, is amended to read as follows:

4. (A) Reports made pursuant to this title [as well as] AND any other information obtained, reports written or photographs taken concerning such reports, AS WELL AS RECORDS PERTAINING TO TELEPHONE CALLS RECEIVED PURSUANT TO THIS SECTION, in the possession of the [department] OFFICE OF CHILDREN AND FAMILY SERVICES, local departments, or the commission on quality of care [for the mentally disabled] AND ADVOCACY FOR PERSONS WITH DISABILITIES, shall be confidential and shall only be made available to:

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

(b) a person authorized to place a child in protective custody when such person has before him or her a child whom he or she reasonably suspects may be abused or maltreated and such person requires the information in the record to determine whether to place the child in protective custody;

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

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

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

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

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

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

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

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

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

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

(l) a district attorney, an assistant district attorney or investigator employed in the office of a district attorney, a sworn officer of the division of state police, of the regional state park police, of a city police department, or of a county, town or village police department or county sheriff's office or department when such official requests such information stating that such information is necessary to conduct a criminal investigation or criminal prosecution of a person, that there is reasonable cause to believe that such person is the subject of a report, and that it is reasonable to believe that due to the nature of the crime under investigation or prosecution, such person is the subject of a report, and that it is reasonable to believe that due to that nature of the crime under investigation or prosecution, such records may be related to the criminal investigation or prosecution;

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

(n) chief executive officers of authorized agencies, directors of day care centers and directors of facilities operated or supervised by the department of education, the [division for youth] OFFICE OF CHILDREN AND FAMILY SERVICES, the office of mental health or the office [of mental retardation and] FOR PEOPLE WITH developmental disabilities, in connection with a disciplinary investigation, action, or administrative or judicial proceeding instituted by any of such officers or directors against an employee of any such agency, center or facility who is the subject of an indicated report when the incident of abuse or maltreatment contained in the report occurred in the agency, center, facility or program, and the purpose of such proceeding is to determine whether the employee should be retained or discharged; provided, however, a person given access to information pursuant to this subparagraph [(n)] shall, notwithstanding any inconsistent provision of law, be authorized to redisclose such information only if the purpose of such redisclosure is to initiate or present evidence in a disciplinary, administrative or judicial proceeding concerning the continued employment or the terms of employment of an employee of such agency, center or facility who has been named as a subject of an indicated report and, in addition, a person or agency given access to information pursuant to this subparagraph [(n)] shall also be given information not otherwise provided concerning the subject of an indicated report where the commission of an act or acts by such subject has been determined in proceedings pursuant to article ten of the family court act to constitute abuse or neglect;

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

family or to whom the child or the child's family have referred themselves at the request of the child protective service or social services district, where said child is reported to the register when the records, reports or other information are necessary to enable the provider or coordinator to establish and implement a plan of service for the child or the child's family, or to monitor the provision and coordination of services and the circumstances of the child and the child's family, or to directly provide services; provided, however, that a provider of services may include appropriate health care or school district personnel, as such terms shall be defined by the department; provided however, a provider or coordinator of services given access to information concerning a child pursuant to this subparagraph [(o)] shall, notwithstanding any inconsistent provision of law, be authorized to redisclose such information to other persons or agencies which also provide services to the child or the child's family only if the consolidated services plan prepared and approved pursuant to section thirty-four-a of this chapter describes the agreement that has been or will be reached between the provider or coordinator of service and the local district. An agreement entered into pursuant to this subparagraph shall include the specific agencies and categories of individuals to whom redisclosure by the provider or coordinator of services is authorized. Persons or agencies given access to information pursuant to this subparagraph may exchange such information in order to facilitate the provision or coordination of services to the child or the child's family;

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

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

(r) in relation to a report involving a child in residential care, the director or operator of the residential facility or program and, as appropriate, the local social services commissioner or school district placing the child, the [division for youth] OFFICE OF CHILDREN AND FAMILY SERVICES, the department of education, the commission on quality of care for the mentally disabled, the office of mental health, the office [of mental retardation and] FOR PEOPLE WITH developmental disabilities, and any attorney appointed to represent the child whose appointment has been continued by a family court judge during the term of the placement, subject to the limitations contained in subdivisions nine and ten of this section and subdivision five of section four hundred twenty-four-c of this title;

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

(t) an attorney for a child, appointed pursuant to the provisions of section one thousand sixteen of the family court act, at any time such appointment is in effect, in relation to any report in which the respondent in the proceeding in which the attorney for a child has been

appointed is the subject or another person named in the report, pursuant to sections one thousand thirty-nine-a and one thousand fifty-two-a of the family court act;

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

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

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

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

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

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

(z) an entity with appropriate legal authority in another state to license, certify or otherwise approve prospective foster and adoptive parents where disclosure of information regarding the prospective foster or adoptive parents and other persons over the age of eighteen residing

in the home of such prospective parents is required by paragraph twenty of subdivision (a) of section six hundred seventy-one of title forty-two of the United States code.

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

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

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

(C) A city or county social services commissioner who denies access by persons or agencies identified in subparagraphs (a), (k), (l), (m), (n)[,] AND (o)[, (p) and (q)] of paragraph (A) of this subdivision to records, reports or other information or parts thereof maintained by

such commissioner in accordance with this title shall, within ten days from the date of receipt of the request fully explain in writing to the person requesting the records, reports or other information the reasons for the denial.

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

S 6. Subparagraph (v) of paragraph (a), paragraphs (b) and (c) of subdivision 5 and subdivision 14 of section 422 of the social services law, subparagraph (v) of paragraph (a) and paragraph (b) of subdivision 5 as amended, and paragraph (c) of subdivision 5 as added by chapter 555 of the laws of 2000 and subdivision 14 as added by chapter 477 of the laws of 1989, are amended to read as follows:

(v) to a district attorney, an assistant district attorney, an investigator employed in the office of a district attorney, or to a sworn officer of the division of state police, of a city, county, town or village police department or of a county sheriff's office when such official verifies that the report is necessary to conduct an active investigation or prosecution of a violation of subdivision [three] FOUR of section [240.55] 240.50 of the penal law.

(b) Persons given access to unfounded reports pursuant to subparagraph (v) of paragraph (a) of this subdivision shall not redisclose such reports except as necessary to conduct such appropriate investigation or prosecution and shall request of the court that any copies of such reports produced in any court proceeding be redacted to remove the names of the subjects and other persons named in the reports or that the court issue an order protecting the names of the subjects and other persons named in the reports from public disclosure. The local child protective service or state agency shall not indicate the subsequent report solely based upon the existence of the prior unfounded report or reports. Notwithstanding section four hundred fifteen of this title, section one thousand forty-six of the family court act, or, except as set forth herein, any other provision of law to the contrary, an unfounded report shall not be admissible in any judicial or administrative proceeding or action; provided, however, an unfounded report may be introduced into evidence: (i) by the subject of the report where such subject is a respondent in a proceeding under article ten of the family court act or is a plaintiff or petitioner in a civil action or proceeding alleging the false reporting of child abuse or maltreatment; or (ii) in a criminal court for the purpose of prosecuting a violation of subdivision [three] FOUR of section [240.55] 240.50 of the penal law. Legally sealed unfounded reports shall be expunged ten years after the receipt of the report. Whenever the office of children and family services determines that there is some credible evidence of abuse or maltreatment as a result of an investigation of a report conducted pursuant to subdivision (c) of section 45.07 of the mental hygiene law, the office of children and family services shall notify the commission on quality of care for the mentally disabled.

(c) Notwithstanding any other provision of law, the office of children and family services may, in its discretion, grant a request to expunge an unfounded report where: (i) the source of the report was convicted of a violation of subdivision [three] FOUR of section [240.55] 240.50 of the penal law in regard to such report; or (ii) the subject of the

report presents clear and convincing evidence that affirmatively refutes the allegation of abuse or maltreatment; provided however, that the absence of credible evidence supporting the allegation of abuse or maltreatment shall not be the sole basis to expunge the report. Nothing in this paragraph shall require the office of children and family services to hold an administrative hearing in deciding whether to expunge a report. Such office shall make its determination upon reviewing the written evidence submitted by the subject of the report and any records or information obtained from the state or local agency which investigated the allegations of abuse or maltreatment.

14. The department shall refer suspected cases of falsely reporting child abuse and maltreatment in violation of subdivision [three] FOUR of section [240.55] 240.50 of the penal law to the appropriate law enforcement agency or district attorney.

S 7. Subdivision 8 of section 424 of the social services law, as added by chapter 477 of the laws of 1989, is amended to read as follows:

8. refer suspected cases of falsely reporting child abuse and maltreatment in violation of subdivision [three] FOUR of section [240.55] 240.50 of the penal law to the appropriate law enforcement agency or district attorney;

S 8. Subdivision 12 of section 422 of the social services law, as added by chapter 1039 of the laws of 1973 and renumbered by chapter 676 of the laws of 1985, is amended to read as follows:

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

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

S 9. This act shall take effect immediately; except that section eight of this act shall take effect on the first of November next succeeding the date on which it shall have become a law.