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

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I N A S S E M B L Y

June 18, 2012

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Glick, Lentol, Barrett, Brindisi, Bronson, Cymbrowitz, Englebright, Gabryszak, Lifton, Magnarelli, Morelle, Paulin, Roberts, Russell, Skartados, Zebrowski) -- read once and referred to the Committee on Higher Education

AN ACT to amend the education law, in relation to child sexual abuse reporting and child abuse in higher educational settings

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

Section 1. The education law is amended by adding a new article 107 to read as follows:

ARTICLE 107

CHILD SEXUAL ABUSE IN HIGHER EDUCATIONAL SETTINGS

SECTION 5300. DEFINITIONS.
5301. DUTIES TO REPORT CHILD SEXUAL ABUSE IN A HIGHER EDUCATIONAL SETTING.
5302. CONFIDENTIALITY OF RECORDS.
5303. PENALTIES FOR FAILURE TO COMPLY.
5304. DUTIES OF THE COMMISSIONER; CHILD SEXUAL ABUSE IN A HIGHER EDUCATIONAL SETTING.
5305. UNREPORTED RESIGNATION AGAINST PUBLIC POLICY.

S 5300. DEFINITIONS. FOR THE PURPOSES OF THIS ARTICLE THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

1. "CHILD" OR "CHILDREN" SHALL MEAN A PERSON OR PERSONS UNDER THE AGE OF EIGHTEEN YEARS PRESENT IN A HIGHER EDUCATIONAL SETTING INCLUDING BUT NOT LIMITED TO A CHILD PARTICIPATING IN ANY SPORTS CAMP OR OTHER EDUCATIONAL PROGRAM CONDUCTED IN SUCH EDUCATIONAL SETTING, BUT SHALL NOT INCLUDE A STUDENT ENROLLED IN SUCH COLLEGE.

2. "CHILD SEXUAL ABUSE" SHALL MEAN THE FOLLOWING ACTS COMMITTED IN A HIGHER EDUCATIONAL SETTING BY AN EMPLOYEE OR VOLUNTEER AGAINST A CHILD: ANY CONDUCT PROHIBITED BY ARTICLE ONE HUNDRED THIRTY OR TWO HUNDRED SIXTY-THREE OF THE PENAL LAW.

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

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3. "COLLEGE" SHALL MEAN PUBLIC OR PRIVATE COLLEGES, TECHNICAL SCHOOLS, UNIVERSITIES AND OTHER INSTITUTIONS FOR HIGHER EDUCATION AUTHORIZED TO CONFER DEGREES.

4. "EMPLOYEE" SHALL MEAN ANY PERSON RECEIVING COMPENSATION FROM A COLLEGE, OR AN EMPLOYEE OF A CONTRACTED SERVICE PROVIDER PROVIDING SERVICES TO A COLLEGE OR SPORTS CAMP OR OTHER EDUCATIONAL PROGRAM CONDUCTED IN A HIGHER EDUCATIONAL SETTING. PROVIDED THAT THE DUTY TO TRANSMIT AN ORAL OR WRITTEN REPORT AS REQUIRED BY SECTION FIFTY-THREE HUNDRED ONE OF THIS ARTICLE SHALL ONLY APPLY TO THOSE EMPLOYEES WHO PROVIDE SERVICES ON A REGULAR BASIS IN A HIGHER EDUCATIONAL SETTING, IS EIGHTEEN YEARS OLD OR OLDER, AND, IS IN DIRECT CONTACT WITH CHILDREN.

5. "HIGHER EDUCATIONAL SETTING" SHALL MEAN THE FACILITIES, BUILDINGS AND GROUNDS OF A COLLEGE OR LEGALLY AFFILIATED WITH A COLLEGE, THE VEHICLES PROVIDED BY THE COLLEGE FOR THE TRANSPORTATION OF CHILDREN TO AND FROM SPORTS CAMPS OR OTHER EDUCATIONAL PROGRAMS CONDUCTED BY A COLLEGE, AND ALL CO-CURRICULAR AND EXTRA-CURRICULAR ACTIVITY SITES BOTH ON AND OFF COLLEGE GROUNDS.

6. "LAW ENFORCEMENT AUTHORITIES" SHALL MEAN A MUNICIPAL POLICE DEPARTMENT, SHERIFF'S DEPARTMENT, THE DIVISION OF STATE POLICE, OR ANY OFFICER WITH JURISDICTION UNDER PROVISIONS OF THE CRIMINAL PROCEDURE LAW OVER OFFENSES OCCURRING AT OR ON THE GROUNDS OF ANY INSTITUTION SUBJECT TO THE PROVISIONS OF THIS SECTION. 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 THE SOCIAL SERVICES LAW.

7. "PARENT" SHALL MEAN EITHER OR BOTH OF THE PARENTS OR OTHER PERSONS LEGALLY RESPONSIBLE FOR A CHILD INCLUDING BUT NOT LIMITED TO A CHILD PARTICIPATING IN ANY SPORTS CAMP OR OTHER EDUCATIONAL PROGRAM CONDUCTED IN SUCH EDUCATIONAL SETTING, BUT SHALL NOT INCLUDE ANY PARENT OR OTHER PERSON LEGALLY RESPONSIBLE FOR A STUDENT ENROLLED IN SUCH COLLEGE.

8. "PRESIDENT" SHALL MEAN THE CHIEF EXECUTIVE OFFICER OF A COLLEGE OR HIS OR HER DESIGNEE OR FOR THE STATE UNIVERSITY OF THE STATE OF NEW YORK, THE CHIEF ADMINISTRATIVE OFFICER OF A COLLEGE OR HIS OR HER DESIGNEE.

9. "SPORTS COACH" SHALL MEAN AN EMPLOYEE OR VOLUNTEER SERVING AS A COACH OF AN INTERSCHOOL, EXTRAMURAL, INTRAMURAL ATHLETIC TEAM OR SPORTS CAMP.

10. "VOLUNTEER" SHALL MEAN ANY PERSON, OTHER THAN AN EMPLOYEE, WHO PROVIDES SERVICES TO A COLLEGE OR SPORTS CAMP OR OTHER EDUCATIONAL PROGRAM CONDUCTED IN A HIGHER EDUCATIONAL SETTING. PROVIDED THAT THE DUTY TO TRANSMIT AN ORAL OR WRITTEN REPORT AS REQUIRED BY SECTION FIFTY-THREE HUNDRED ONE OF THIS ARTICLE SHALL ONLY APPLY TO A VOLUNTEER WHO IS EIGHTEEN YEARS OLD OR OLDER, WHO IS UNDER THE DIRECTION AND SUPERVISION OF A COLLEGE, SPORTS CAMP OR EDUCATIONAL PROGRAM AND PROVIDES SERVICES ON AN ARRANGED AND REGULAR BASIS DIRECTLY TO A SPORTS CAMP OR OTHER EDUCATIONAL PROGRAM CONDUCTED FOR THE EXCLUSIVE BENEFIT AND PARTICIPATION OF CHILDREN, AND WHO IS IN DIRECT CONTACT WITH SUCH CHILDREN.

S 5301. DUTIES TO REPORT CHILD SEXUAL ABUSE IN A HIGHER EDUCATIONAL SETTING. 1. (A) ANY EMPLOYEE OR VOLUNTEER, INCLUDING ADMINISTRATORS, PROFESSORS, SPORTS COACHES, OR ATHLETIC DIRECTORS OF A COLLEGE, WHO WITNESSES AN ACT OF CHILD SEXUAL ABUSE, AND KNOWS OR REASONABLY SHOULD HAVE KNOWN THAT THE CHILD IS UNDER EIGHTEEN YEARS OLD, IN A HIGHER EDUCATIONAL SETTING SHALL PROMPTLY, ORALLY OR IN WRITING, REPORT SUCH ABUSE TO LAW ENFORCEMENT AUTHORITIES. SUCH EMPLOYEE OR VOLUNTEER SHALL

ALSO PROMPTLY REPORT SUCH ABUSE ORALLY OR IN WRITING TO THE PRESIDENT WHO HAS OVERSIGHT OF THE HIGHER EDUCATIONAL SETTING IN WHICH THE ACT ALLEGEDLY OCCURRED AND PROVIDE REASONABLY AVAILABLE INFORMATION NECESSARY FOR THE PRESIDENT TO COMPLETE A WRITTEN REPORT AS REQUIRED BY SUBDIVISION TWO OF THIS SECTION.

(B) ANY EMPLOYEE OR VOLUNTEER, INCLUDING ADMINISTRATORS, PROFESSORS, SPORTS COACHES OR ATHLETIC DIRECTORS OF A COLLEGE, WHO, IN OTHER THAN A PRIVILEGED CAPACITY AS SET FORTH IN ARTICLE FORTY-FIVE OF THE CIVIL PRACTICE LAW AND RULES, RECEIVES AN ALLEGATION OF CHILD SEXUAL ABUSE IN A HIGHER EDUCATIONAL SETTING FROM A CHILD WHO HAS BEEN SUBJECTED TO SUCH ALLEGED ABUSE SHALL PROMPTLY, ORALLY OR IN WRITING, REPORT SUCH ABUSE TO LAW ENFORCEMENT AUTHORITIES UNLESS SUCH ALLEGATION IS RECEIVED BY A PERSON OR OFFICIAL DELINEATED IN SECTION FOUR HUNDRED THIRTEEN OF THE SOCIAL SERVICES LAW AND SUCH ALLEGATION WAS RECEIVED IN SUCH INDIVIDUAL'S PROFESSIONAL OR OFFICIAL CAPACITY. EMPLOYEES OR VOLUNTEERS REQUIRED TO REPORT TO LAW ENFORCEMENT AUTHORITIES SHALL ALSO PROMPTLY REPORT SUCH ABUSE ORALLY OR IN WRITING TO THE PRESIDENT WHO HAS OVERSIGHT OF THE HIGHER EDUCATIONAL SETTING IN WHICH THE ACT ALLEGEDLY OCCURRED AND PROVIDE THE INFORMATION NECESSARY, TO THE EXTENT REASONABLY AVAILABLE, FOR THE PRESIDENT TO COMPLETE THE WRITTEN REPORT AS REQUIRED BY SUBDIVISION TWO OF THIS SECTION.

2. UPON RECEIPT OF SUCH ALLEGATION A PRESIDENT SHALL (A) PROMPTLY COMPLETE A WRITTEN REPORT OF SUCH ALLEGATION INCLUDING THE FULL NAME OF THE CHILD ALLEGED TO BE ABUSED; THE NAME OF THE CHILD'S PARENT; THE IDENTITY OF THE PERSON MAKING THE ALLEGATION AND HIS OR HER RELATIONSHIP TO THE ALLEGED CHILD VICTIM; THE NAME OF THE PERSON AGAINST WHOM THE ALLEGATION WAS MADE; AND A LISTING OF THE SPECIFIC ALLEGATIONS OF CHILD SEXUAL ABUSE IN A HIGHER EDUCATIONAL SETTING; AND, (B) PROMPTLY REPORT SUCH ALLEGED ABUSE TO LAW ENFORCEMENT AUTHORITIES.

3. IF THE LAW ENFORCEMENT AUTHORITY TO WHICH THE PRESIDENT, EMPLOYEE, OR VOLUNTEER SUBMITS THEIR ORAL OR WRITTEN REPORT DOES NOT HAVE THE AUTHORITY PURSUANT TO LAW TO UNDERTAKE AN INVESTIGATION OF THE ALLEGATION OF CHILD SEXUAL ABUSE, THEN SUCH AUTHORITY SHALL ENSURE THAT SUCH REPORT IS PROMPTLY TRANSMITTED TO A MUNICIPAL POLICE DEPARTMENT, SHERIFF'S DEPARTMENT, THE DIVISION OF STATE POLICE OR ANY OFFICER THEREOF.

4. ANY PERSON WHO REASONABLY AND IN GOOD FAITH MAKES A REPORT OF ALLEGATIONS OF CHILD SEXUAL ABUSE IN A HIGHER EDUCATIONAL SETTING AS REQUIRED AND IN THE MANNER DESCRIBED IN THIS SECTION SHALL HAVE IMMUNITY FROM CIVIL LIABILITY WHICH MIGHT OTHERWISE RESULT BY REASON OF SUCH ACTIONS.

5. THE OBLIGATIONS CREATED BY THIS ARTICLE ARE IN ADDITION TO ANY OTHER MANDATED REPORTING REQUIREMENTS IMPOSED BY LAW.

S 5302. CONFIDENTIALITY OF RECORDS. REPORTS AND OTHER WRITTEN MATERIAL SUBMITTED PURSUANT TO THIS ARTICLE, AND PHOTOGRAPHS TAKEN CONCERNING SUCH REPORTS IN THE POSSESSION OF ANY PERSON AUTHORIZED TO RECEIVE SUCH INFORMATION, PURSUANT TO THIS ARTICLE, SHALL BE CONFIDENTIAL AND SHALL NOT BE REDISCLOSED EXCEPT TO A DISTRICT ATTORNEY'S OFFICE, LAW ENFORCEMENT AUTHORITIES INVOLVED IN AN INVESTIGATION OF CHILD SEXUAL ABUSE IN A HIGHER EDUCATIONAL SETTING OR AS EXPRESSLY AUTHORIZED OR REQUIRED BY STATE OF FEDERAL LAW OR PURSUANT TO A COURT-ORDERED SUBPOENA. THE PRESIDENT SHALL EXERCISE REASONABLE CARE IN PREVENTING SUCH UNAUTHORIZED DISCLOSURE. WILLFUL DISCLOSURE OF A WRITTEN RECORD REQUIRED TO BE KEPT CONFIDENTIAL PURSUANT TO THIS SECTION TO A PERSON NOT AUTHORIZED TO RECEIVE OR REVIEW SUCH RECORD IS A CLASS A MISDEMEANOR.

S 5303. PENALTIES FOR FAILURE TO COMPLY. WILLFUL FAILURE BY AN EMPLOYEE OR VOLUNTEER WHO HAS RECEIVED TRAINING AND NOTICE THAT HE OR SHE IS

REQUIRED TO PROVIDE OR TRANSMIT AN ORAL OR WRITTEN REPORT OF AN ALLEGATION OF CHILD SEXUAL ABUSE AS REQUIRED BY THIS ARTICLE, TO PROVIDE OR TRANSMIT SUCH REPORT, SHALL BE A CLASS A MISDEMEANOR.

S 5304. DUTIES OF THE COMMISSIONER; CHILD SEXUAL ABUSE IN A HIGHER EDUCATIONAL SETTING. 1. THE COMMISSIONER SHALL PREPARE A FORM FOR THE RECORDING AND TRANSMITTING OF ALLEGATIONS OF CHILD SEXUAL ABUSE IN A HIGHER EDUCATIONAL SETTING. SUCH FORM SHALL INCLUDE: (I) ALL DEFINITIONS SET OUT IN SECTION FIVE THOUSAND THREE HUNDRED OF THIS ARTICLE; AND (II) ADEQUATE SPACE FOR THE INCLUSION OF ANY OTHER INFORMATION WHICH THE PERSON MAKING OR FILING THE REPORT BELIEVES WOULD BE HELPFUL IN DESCRIBING OR EXPLAINING THE CIRCUMSTANCES SURROUNDING AN ALLEGATION OF CHILD SEXUAL ABUSE IN A HIGHER EDUCATIONAL SETTING IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE.

2. THE COMMISSIONER SHALL PROMULGATE RULES AND REGULATIONS FOR TRAINING NECESSARY BY COLLEGES FOR THE IMPLEMENTATION OF THIS ARTICLE. SUCH RULES AND REGULATIONS SHALL PROVIDE THAT: (A) NOTICE BE GIVEN TO EMPLOYEES AND VOLUNTEERS REQUIRED TO PROVIDE OR TRANSMIT A REPORT OF AN ALLEGATION OF CHILD SEXUAL ABUSE PURSUANT TO THIS ARTICLE OF THEIR OBLIGATION TO REPORT AND THE PENALTIES FOR FAILURE TO PROVIDE OR TRANSMIT SUCH REPORT; (B) POLICIES AND PROCEDURES, WHICH SHALL BE AVAILABLE IN WRITTEN OR ELECTRONIC FORM, BE PROVIDED TO EMPLOYEES AND VOLUNTEERS REQUIRED TO PROVIDE OR TRANSMIT A REPORT OF AN ALLEGATION OF CHILD SEXUAL ABUSE PURSUANT TO THIS ARTICLE, REGARDING THE DUTY TO REPORT CHILD SEXUAL ABUSE. SUCH POLICIES AND PROCEDURES SHALL INCLUDE THE PROCEDURE BY WHICH SUCH REPORTS ARE MADE; AND (C) TRAINING PROVIDED BE AT NOMINAL OR NO COST TO A COLLEGE, BUT IN NO EVENT SHALL FEES OR COSTS BE CHARGED TO EMPLOYEES OR VOLUNTEERS.

S 5305. UNREPORTED RESIGNATION AGAINST PUBLIC POLICY. 1. A PRESIDENT SHALL NOT MAKE ANY AGREEMENT TO WITHHOLD FROM LAW ENFORCEMENT AUTHORITIES THE FACT THAT AN ALLEGATION OF CHILD SEXUAL ABUSE IN A HIGHER EDUCATIONAL SETTING WAS MADE AGAINST AN EMPLOYEE OR VOLUNTEER IN RETURN FOR THE RESIGNATION OR VOLUNTARY SUSPENSION OF SUCH INDIVIDUAL FROM HIS OR HER POSITION.

2. EACH VIOLATION OF SUBDIVISION ONE OF THIS SECTION SHALL CONSTITUTE A CLASS E FELONY, AND MAY ALSO BE PUNISHABLE BY A CIVIL PENALTY NOT TO EXCEED TWENTY THOUSAND DOLLARS.

S 2. This act shall take effect immediately, provided that the duty to submit or transmit a report as required by article 107 of the education law as added by this act shall take effect on the one hundred eightieth day after this act shall have become a law and shall only apply to those reportable incidents which occur on or after the effective date of this act.