

2331

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:

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 IN WRITING  
13 THAT SUCH INFORMATION IS NECESSARY TO CONDUCT A CRIMINAL INVESTIGATION  
14 OR CRIMINAL PROSECUTION; OR IN ACCORDANCE WITH A COURT ORDER WHERE THE  
15 COURT HAS MADE A FINDING THAT SUCH INFORMATION IS NECESSARY FOR THE  
16 DETERMINATION 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 IN WRITING THAT SUCH INFORMATION IS NECES-  
42 SARY TO CONDUCT A CRIMINAL INVESTIGATION OR CRIMINAL PROSECUTION, OR IN  
43 ACCORDANCE WITH A COURT ORDER WHERE THE COURT HAS MADE A FINDING THAT  
44 SUCH INFORMATION IS NECESSARY FOR THE DETERMINATION OF AN ISSUE BEFORE  
45 THE COURT. NOTHING IN THIS PARAGRAPH SHALL BE CONSTRUED TO REQUIRE THE  
46 STATEWIDE CENTRAL REGISTER TO MAINTAIN ANY RECORD NOT OTHERWISE REQUIRED  
47 BY LAW OF ANY CALL TO THE STATEWIDE CENTRAL REGISTER THAT DOES NOT  
48 CONSTITUTE A REPORT OF 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 by  
51 chapter 12 of the laws of 1996, subparagraph (1) of paragraph (A) as  
52 amended by chapter 35 of the laws of 2001, subparagraphs (r) and (t) as  
53 amended by chapter 41 of the laws of 2010, 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] OFFICE OF CHILDREN AND  
34 FAMILY SERVICES, the office of mental health or the office [of mental  
35 retardation and] FOR PEOPLE WITH developmental disabilities, in  
36 connection with a disciplinary investigation, action, or administrative  
37 or judicial proceeding instituted by any of such officers or directors  
38 against an employee of any such agency, center or facility who is the  
39 subject of an indicated report when the incident of abuse or maltreat-  
40 ment contained in the report occurred in the agency, center, facility or  
41 program, and the purpose of such proceeding is to determine whether the  
42 employee should be retained or discharged; provided, however, a person  
43 given access to information pursuant to this subparagraph [(n)] shall,  
44 notwithstanding any inconsistent provision of law, be authorized to  
45 redisclose such information only if the purpose of such redisclosure is  
46 to initiate or present evidence in a disciplinary, administrative or  
47 judicial proceeding concerning the continued employment or the terms of  
48 employment of an employee of such agency, center or facility who has  
49 been named as a subject of an indicated report and, in addition, a  
50 person or agency given access to information pursuant to this subpara-  
51 graph [(n)] shall also be given information not otherwise provided  
52 concerning the subject of an indicated report where the commission of an  
53 act or acts by such subject has been determined in proceedings pursuant  
54 to article ten of the family court act to constitute 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] OFFICE OF CHILDREN AND FAMI-  
39 LY SERVICES, the department of education, the commission on quality of  
40 care for the mentally disabled, the office of mental health, the office  
41 [of mental retardation and] FOR PEOPLE WITH developmental disabilities,  
42 and any attorney appointed to represent the child whose appointment has  
43 been continued by a family court judge during the term of the placement,  
44 subject to the limitations contained in subdivisions nine and ten of  
45 this section and subdivision five of section four hundred twenty-four-c  
46 of this title;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 8. refer suspected cases of falsely reporting child abuse and  
18 maltreatment in violation of subdivision [three] FOUR of section  
19 [240.55] 240.50 of the penal law to the appropriate law enforcement  
20 agency or district attorney;

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

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

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

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