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2015-2016 Regular Sessions

I N A S S E M B L Y

January 8, 2015

Introduced by M. of A. JAFFEE, ROBINSON, COOK -- Multi-Sponsored by --
M. of A. DINOWITZ, GOTTFRIED -- read once and referred 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 information.
5 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 INFORMATION IS NECESSARY FOR THE DETERMINATION OF AN ISSUE BEFORE THE COURT.
10 NOTHING IN THIS SUBDIVISION SHALL BE CONSTRUED TO REQUIRE THE OFFICE TO
11 MAINTAIN ANY RECORD OF ANY CALL TO ANY SUCH HOTLINE.
12 S 2. Subparagraphs (i) and (iv) of paragraph (c) of subdivision 3 of
13 section 390 of the social services law, subparagraph (i) as amended and
14 subparagraph (iv) as added by chapter 416 of the laws of 2000, are
15 amended to read as follows:
16 (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
17 VIOLATIONS SHALL BE CONFIDENTIAL. The office of children and family

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

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

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

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

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

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

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

50 S 5. Subdivision 4 of section 422 of the social services law, as
51 amended by chapter 677 of the laws of 1985, paragraph (A) as amended by
52 chapter 12 of the laws of 1996, the opening paragraph and subparagraph
53 (j) of paragraph (A) as amended by section 6 of part D of chapter 501 of
54 the laws of 2012, subparagraph (k) of paragraph (A) as amended by
55 section 153 of subpart B of part C of chapter 62 of the laws of 2011,
56 subparagraph (1) of paragraph (A) as amended by chapter 35 of the laws

1 of 2001, subparagraph (t) of paragraph (A) as amended by chapter 41 of
2 the laws of 2010, clause (ii) of subparagraph (v) of paragraph (A) as
3 amended and subparagraph (w) of paragraph (A) as added by chapter 136 of
4 the laws of 1999, subparagraph (x) of paragraph (A) as amended by
5 section 1 of part A of chapter 327 of the laws of 2007 and subparagraphs
6 (y) and (z) of paragraph (A) as amended and subparagraph (aa) of para-
7 graph (A) as added by chapter 440 of the laws of 2011, is amended to
8 read as follows:

9 4. (A) Reports made pursuant to this title [as well as] AND any other
10 information obtained, reports written or photographs taken concerning
11 such reports, AS WELL AS RECORDS PERTAINING TO TELEPHONE CALLS RECEIVED
12 PURSUANT TO THIS SECTION, in the possession of the office or local
13 departments shall be confidential and shall only be made available to:

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

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

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

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

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

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

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

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

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

41 (j) the justice center for the protection of people with special needs
42 or a delegate investigatory entity in connection with an investigation
43 being conducted under article eleven of this chapter;

44 (k) a probation service conducting an investigation pursuant to arti-
45 cle three or seven or section six hundred fifty-three of the family
46 court act where there is reason to suspect the child or the child's
47 sibling may have been abused or maltreated and such child or sibling,
48 parent, guardian or other person legally responsible for the child is a
49 person named in an indicated report of child abuse or maltreatment and
50 that such information is necessary for the making of a determination or
51 recommendation to the court; or a probation service regarding a person
52 about whom it is conducting an investigation pursuant to article three
53 hundred ninety of the criminal procedure law, or a probation service or
54 the department of corrections and community supervision regarding a
55 person to whom the service or department is providing supervision pursu-
56 ant to article sixty of the penal law or article eight of the correction

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

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

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

34 (n) chief executive officers of authorized agencies, directors of day
35 care centers and directors of facilities operated or supervised by the
36 department of education, the [division for youth] OFFICE OF CHILDREN AND
37 FAMILY SERVICES, the office of mental health or the office [of mental
38 retardation and] FOR PEOPLE WITH developmental disabilities, in
39 connection with a disciplinary investigation, action, or administrative
40 or judicial proceeding instituted by any of such officers or directors
41 against an employee of any such agency, center or facility who is the
42 subject of an indicated report when the incident of abuse or maltreat-
43 ment contained in the report occurred in the agency, center, facility or
44 program, and the purpose of such proceeding is to determine whether the
45 employee should be retained or discharged; provided, however, a person
46 given access to information pursuant to this subparagraph [(n)] shall,
47 notwithstanding any inconsistent provision of law, be authorized to
48 redisclose such information only if the purpose of such redisclosure is
49 to initiate or present evidence in a disciplinary, administrative or
50 judicial proceeding concerning the continued employment or the terms of
51 employment of an employee of such agency, center or facility who has
52 been named as a subject of an indicated report and, in addition, a
53 person or agency given access to information pursuant to this subpara-
54 graph [(n)] shall also be given information not otherwise provided
55 concerning the subject of an indicated report where the commission of an

1 act or acts by such subject has been determined in proceedings pursuant
2 to article ten of the family court act to constitute abuse or neglect;

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

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

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

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

45 (t) an attorney for a child, appointed pursuant to the provisions of
46 section one thousand sixteen of the family court act, at any time such
47 appointment is in effect, in relation to any report in which the
48 respondent in the proceeding in which the attorney for a child has been
49 appointed is the subject or another person named in the report, pursuant
50 to sections one thousand thirty-nine-a and one thousand fifty-two-a of
51 the family court act;

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

55 (v)(i) officers and employees of the state comptroller or of the city
56 comptroller of the city of New York, or of the county officer designated

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

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

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

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

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

45 (z) an entity with appropriate legal authority in another state to
46 license, certify or otherwise approve prospective foster and adoptive
47 parents where disclosure of information regarding the prospective foster
48 or adoptive parents and other persons over the age of eighteen residing
49 in the home of such prospective parents is required by paragraph twenty
50 of subdivision (a) of section six hundred seventy-one of title forty-two
51 of the United States code; and

52 (aa) a social services official who is investigating whether an adult
53 is in need of protective services in accordance with the provisions of
54 section four hundred seventy-three of this chapter, when such official
55 has reasonable cause to believe such adult may be in need of protective
56 services due to the conduct of an individual or individuals who had

access to such adult when such adult was a child and that such reports and information are needed to further the present investigation.

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

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 thereof maintained by a local department pursuant to this title may bring a
7 proceeding for review of such denial pursuant to article seventy-eight
8 of the civil practice law and rules.

10 S 6. Paragraph (c) of subdivision 5 of section 422 of the social
11 services law, as added by chapter 555 of the laws of 2000, is amended to
12 read as follows:

13 (c) Notwithstanding any other provision of law, the office of children
14 and family services may, in its discretion, grant a request to expunge
15 an unfounded report where: (i) the source of the report was convicted of
16 a violation of subdivision [three] FOUR of section [240.55] 240.50 of
17 the penal law in regard to such report; or (ii) the subject of the
18 report presents clear and convincing evidence that affirmatively refutes
19 the allegation of abuse or maltreatment; provided however, that the
20 absence of credible evidence supporting the allegation of abuse or
21 maltreatment shall not be the sole basis to expunge the report. Nothing
22 in this paragraph shall require the office of children and family
23 services to hold an administrative hearing in deciding whether to
24 expunge a report. Such office shall make its determination upon reviewing the written evidence submitted by the subject of the report and any
25 records or information obtained from the state or local agency which
26 investigated the allegations of abuse or maltreatment.

28 S 7. Subdivision 12 of section 422 of the social services law, as
29 added by chapter 1039 of the laws of 1973 and renumbered by chapter 676
30 of the laws of 1985, is amended to read as follows:

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

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

38 S 8. This act shall take effect immediately; except that section seven
39 of this act shall take effect on the first of November next succeeding
40 the date on which it shall have become a law.