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

8151

I N S E N A T E

June 14, 2016

Introduced by Sen. SERINO -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the social services law and the penal law, in relation to the reporting of child abuse

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

Section 1. Article 6 of the social services law is amended by adding a new title 6-B to read as follows:

TITLE 6-B

REPORTS OF CHILD ABUSE TO LAW ENFORCEMENT

SECTION 429-A. PERSONS AND OFFICIALS REQUIRED TO REPORT CASES OF SUSPECTED CHILD ABUSE TO APPROPRIATE LAW ENFORCEMENT AGENCY.

429-B. PENALTIES FOR FAILURE TO REPORT.

429-C. IMMUNITY FROM LIABILITY.

429-D. REVIEW OF EXISTING RECORDS FOR ALLEGATIONS THAT A CHILD IS AN ABUSED CHILD; DISTRICT ATTORNEY; PENALTY.

S 429-A. PERSONS AND OFFICIALS REQUIRED TO REPORT CASES OF SUSPECTED CHILD ABUSE TO APPROPRIATE LAW ENFORCEMENT AGENCY. 1. (A) THOSE PERSONS AND OFFICIALS SET FORTH IN SUBDIVISION ONE OF SECTION FOUR HUNDRED THIRTEEN OF THIS ARTICLE SHALL BE REQUIRED TO REPORT OR CAUSE A REPORT TO BE MADE TO AN APPROPRIATE LAW ENFORCEMENT AGENCY WHEN THEY HAVE REASONABLE CAUSE TO SUSPECT IN THEIR PROFESSIONAL OR OFFICIAL CAPACITY THAT: (I) A PERSON BEING EIGHTEEN YEARS OLD OR MORE HAS ENGAGED IN CONDUCT SET FORTH IN PARAGRAPH (B) OF THIS SUBDIVISION WITH A PERSON LESS THAN FOURTEEN YEARS OLD; OR (II) A PERSON BEING TWENTY-ONE YEARS OLD OR MORE HAS ENGAGED IN CONDUCT SET FORTH IN PARAGRAPH (B) OF THIS SUBDIVISION WITH A PERSON LESS THAN SEVENTEEN YEARS OLD AND THE PERSON BEING TWENTY-ONE YEARS OLD OR MORE HAS AUTHORITY, PERCEIVED AUTHORITY, A POSITION OF TRUST, SUPERVISORY OR DISCIPLINARY POWER OVER THE PERSON LESS THAN SEVENTEEN YEARS OLD BY VIRTUE OF HIS OR HER LEGAL, PROFESSIONAL, OCCUPATIONAL OR VOCATIONAL STATUS; OR (III) A PERSON HAS ENGAGED IN CONDUCT SET FORTH IN PARAGRAPH (B) OF THIS SUBDIVISION WITH A PERSON UNDER TWEN-

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

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TY-ONE YEARS OF AGE WHO HAS A HANDICAPPING CONDITION, AS DEFINED IN SECTION FORTY-FOUR HUNDRED ONE OF THE EDUCATION LAW AND WHO IS ENTITLED TO RESIDENTIAL CARE DUE TO SUCH HANDICAPPING CONDITION.

(B) THE FOLLOWING CONDUCT, IF COMMITTED BY A PERSON DEFINED IN PARAGRAPH (A) OF THIS SUBDIVISION SHALL, FOR THE PURPOSES OF THIS SECTION, CONSTITUTE "CHILD ABUSE" AND SHALL REQUIRE A REPORT:

(I) INTENTIONALLY OR RECKLESSLY INFLICTING PHYSICAL INJURY, SERIOUS PHYSICAL INJURY OR DEATH, OR

(II) INTENTIONALLY OR RECKLESSLY ENGAGING IN CONDUCT WHICH CREATES A SUBSTANTIAL RISK OF SUCH PHYSICAL INJURY, SERIOUS PHYSICAL INJURY OR DEATH, OR

(III) COMMITTING OR ATTEMPTING TO COMMIT AGAINST A CHILD THE CRIME OF DISSEMINATING INDECENT MATERIALS TO MINORS PURSUANT TO ARTICLE TWO HUNDRED THIRTY-FIVE OF THE PENAL LAW, OR

(IV) ENGAGING IN ANY CONDUCT PROHIBITED BY ARTICLE ONE HUNDRED THIRTY OR TWO HUNDRED SIXTY-THREE OF THE PENAL LAW.

(C) FOR THE PURPOSES OF THIS SECTION THE TERM "LAW ENFORCEMENT AUTHORITIES" SHALL MEAN A MUNICIPAL POLICE DEPARTMENT, SHERIFF'S DEPARTMENT, THE DIVISION OF STATE POLICE OR ANY OFFICER THEREOF OR A DISTRICT ATTORNEY OR ASSISTANT DISTRICT ATTORNEY. 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 THIS ARTICLE.

2. REPORTS OF SUSPECTED CHILD ABUSE SHALL BE MADE IMMEDIATELY BY TELEPHONE OR BY TELEPHONE FACSIMILE ON A FORM SUPPLIED BY THE COMMISSIONER OF THE OFFICE OF CHILDREN AND FAMILY SERVICES TO AN APPROPRIATE LAW ENFORCEMENT AGENCY. SUCH TELEPHONE REPORTS SHALL BE FOLLOWED BY A REPORT IN WRITING WITHIN TWENTY-FOUR HOURS AFTER SUCH ORAL REPORT. THE PROVISIONS OF ARTICLE TWENTY-THREE-B OF THE EDUCATION LAW SHALL APPLY WHEN ALLEGATIONS OF ABUSE OR MALTREATMENT BY AN EMPLOYEE OR VOLUNTEER UNDER SUCH ARTICLE ARE MADE IN AN EDUCATIONAL SETTING. NOTHING IN THIS SUBDIVISION SHALL REQUIRE A PERSON OR OFFICIAL REQUIRED TO REPORT CASES OF SUSPECTED CHILD ABUSE TO ADDITIONALLY NOTIFY THE STATEWIDE REGISTER OF CHILD ABUSE AND MALTREATMENT UNLESS THE RELATIONSHIP OF THE VICTIM TO THE ALLEGED PERPETRATOR IS IN DOUBT. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, LAW ENFORCEMENT AGENCY 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 THIS ARTICLE.

S 429-B. PENALTIES FOR FAILURE TO REPORT. 1. ANY PERSON REQUIRED BY THIS TITLE TO REPORT A CASE OF SUSPECTED CHILD ABUSE WHO WILLFULLY FAILS TO DO SO SHALL BE GUILTY OF A CLASS A MISDEMEANOR.

2. ANY PERSON REQUIRED BY THIS TITLE TO REPORT A CASE OF SUSPECTED CHILD ABUSE WHO KNOWINGLY AND WILLFULLY FAILS TO DO SO SHALL BE CIVILLY LIABLE FOR THE DAMAGES PROXIMATELY CAUSED BY SUCH FAILURE.

S 429-C. IMMUNITY FROM LIABILITY. 1. ANY PERSON WHO IN GOOD FAITH MAKES A REPORT OF ALLEGATIONS OF CHILD ABUSE AS REQUIRED BY THIS TITLE, INCLUDING THOSE WHO IN GOOD FAITH MAKE A REPORT TO THE WRONG RECIPIENT, SHALL HAVE IMMUNITY FROM CRIMINAL LIABILITY WHICH MIGHT OTHERWISE RESULT BY REASON OF SUCH ACTIONS.

2. ANY PERSON WHO REASONABLY AND IN GOOD FAITH MAKES A REPORT OF ALLEGATIONS OF CHILD ABUSE AS REQUIRED BY THIS TITLE, SHALL HAVE IMMUNITY FROM CIVIL LIABILITY WHICH MIGHT OTHERWISE RESULT BY REASON OF SUCH ACTIONS.

S 429-D. REVIEW OF EXISTING RECORDS FOR ALLEGATIONS THAT A CHILD IS AN ABUSED CHILD; DISTRICT ATTORNEY; PENALTY. THE WILLFUL FAILURE OF AN INDIVIDUAL DEFINED IN PARAGRAPH (A) OF SUBDIVISION ONE OF SECTION FOUR HUNDRED TWENTY-NINE-A OF THIS TITLE TO REVIEW EXISTING RECORDS AND INFORMATION AND REPORT ALLEGATIONS CONTAINED THEREIN, AS PROVIDED BY THIS SECTION, SHALL BE A CLASS A MISDEMEANOR.

S 2. Section 130.00 of the penal law is amended by adding two new subdivisions 14 and 15 to read as follows:

14. "POSITION OF AUTHORITY" INCLUDES BUT IS NOT LIMITED TO ANY PERSON WHO IS A TEACHER, EMPLOYER, BABYSITTER, COACH, OR ANY OTHER PERSON WHO, NO MATTER HOW BRIEF, IS AT THE TIME OF THE ACT:

(A) ACTING IN THE PLACE OF A PARENT AND CHARGED WITH ANY OF A PARENT'S RIGHTS, DUTIES OR RESPONSIBILITIES TO A CHILD, OR

(B) A PERSON WHO IS CHARGED WITH ANY DUTY OR RESPONSIBILITY FOR THE HEALTH, WELFARE, OR SUPERVISION OF A CHILD, EITHER INDEPENDENTLY OR THROUGH ANOTHER.

15. "POSITION OF TRUST" INCLUDES BUT IS NOT LIMITED TO ANY PERSON WHO IS A TEACHER, EMPLOYER, BABYSITTER, COACH OR ANY OTHER PERSON WHO, BY REASON OF HIS POSITION, IS ABLE TO EXERCISE SIGNIFICANT INFLUENCE OVER A CHILD AT THE TIME OF THE ACT.

S 3. The commissioner of the office of children and family services shall review the reporting form used to report suspected child abuse pursuant to section 429-a of the social services law, as added by section one of this act, and, if necessary, shall revise such form to make it appropriate for reporting to law enforcement agencies.

S 4. This act shall take effect on the sixtieth day after it shall have become a law.