

June 14, 2016

LBD15577-02-6

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 INFLECTING 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.

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

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

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

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

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

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

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

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