

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:

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

3 TITLE 6-B

4 REPORTS OF CHILD ABUSE TO
5 LAW ENFORCEMENT

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

9 429-B. PENALTIES FOR FAILURE TO REPORT.

10 429-C. IMMUNITY FROM LIABILITY.

11 429-D. REVIEW OF EXISTING RECORDS FOR ALLEGATIONS THAT A CHILD
12 IS AN ABUSED CHILD; DISTRICT ATTORNEY; PENALTY.

13 S 429-A. PERSONS AND OFFICIALS REQUIRED TO REPORT CASES OF SUSPECTED
14 CHILD ABUSE TO APPROPRIATE LAW ENFORCEMENT AGENCY. 1. (A) THOSE PERSONS
15 AND OFFICIALS SET FORTH IN SUBDIVISION ONE OF SECTION FOUR HUNDRED THIR-
16 TEEN OF THIS ARTICLE SHALL BE REQUIRED TO REPORT OR CAUSE A REPORT TO BE
17 MADE TO AN APPROPRIATE LAW ENFORCEMENT AGENCY WHEN THEY HAVE REASONABLE
18 CAUSE TO SUSPECT IN THEIR PROFESSIONAL OR OFFICIAL CAPACITY THAT: (I) A
19 PERSON BEING EIGHTEEN YEARS OLD OR MORE HAS ENGAGED IN CONDUCT SET FORTH
20 IN PARAGRAPH (B) OF THIS SUBDIVISION WITH A PERSON LESS THAN FOURTEEN
21 YEARS OLD; OR (II) A PERSON BEING TWENTY-ONE YEARS OLD OR MORE HAS
22 ENGAGED IN CONDUCT SET FORTH IN PARAGRAPH (B) OF THIS SUBDIVISION WITH A
23 PERSON LESS THAN SEVENTEEN YEARS OLD AND THE PERSON BEING TWENTY-ONE
24 YEARS OLD OR MORE HAS AUTHORITY, PERCEIVED AUTHORITY, A POSITION OF
25 TRUST, SUPERVISORY OR DISCIPLINARY POWER OVER THE PERSON LESS THAN
26 SEVENTEEN YEARS OLD BY VIRTUE OF HIS OR HER LEGAL, PROFESSIONAL, OCCUPA-
27 TIONAL OR VOCATIONAL STATUS; OR (III) A PERSON HAS ENGAGED IN CONDUCT
28 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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1 TY-ONE YEARS OF AGE WHO HAS A HANDICAPPING CONDITION, AS DEFINED IN
2 SECTION FORTY-FOUR HUNDRED ONE OF THE EDUCATION LAW AND WHO IS ENTITLED
3 TO RESIDENTIAL CARE DUE TO SUCH HANDICAPPING CONDITION.

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

7 (I) INTENTIONALLY OR RECKLESSLY INFLECTING PHYSICAL INJURY, SERIOUS
8 PHYSICAL INJURY OR DEATH, OR

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

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

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

17 (C) FOR THE PURPOSES OF THIS SECTION THE TERM "LAW ENFORCEMENT AUTHOR-
18 ITIES" SHALL MEAN A MUNICIPAL POLICE DEPARTMENT, SHERIFF'S DEPARTMENT,
19 THE DIVISION OF STATE POLICE OR ANY OFFICER THEREOF OR A DISTRICT ATTOR-
20 NEY OR ASSISTANT DISTRICT ATTORNEY. NOTWITHSTANDING ANY OTHER PROVISION
21 OF LAW, LAW ENFORCEMENT AUTHORITIES SHALL NOT INCLUDE ANY CHILD PROTEC-
22 TIVE SERVICE OR ANY SOCIETY FOR THE PREVENTION OF CRUELTY TO CHILDREN AS
23 SUCH TERMS ARE DEFINED IN SECTION FOUR HUNDRED TWENTY-THREE OF THIS
24 ARTICLE.

25 2. REPORTS OF SUSPECTED CHILD ABUSE SHALL BE MADE IMMEDIATELY BY TELE-
26 PHONE OR BY TELEPHONE FACSIMILE ON A FORM SUPPLIED BY THE COMMISSIONER
27 OF THE OFFICE OF CHILDREN AND FAMILY SERVICES TO AN APPROPRIATE LAW
28 ENFORCEMENT AGENCY. SUCH TELEPHONE REPORTS SHALL BE FOLLOWED BY A
29 REPORT IN WRITING WITHIN TWENTY-FOUR HOURS AFTER SUCH ORAL REPORT. THE
30 PROVISIONS OF ARTICLE TWENTY-THREE-B OF THE EDUCATION LAW SHALL APPLY
31 WHEN ALLEGATIONS OF ABUSE OR MALTREATMENT BY AN EMPLOYEE OR VOLUNTEER
32 UNDER SUCH ARTICLE ARE MADE IN AN EDUCATIONAL SETTING. NOTHING IN THIS
33 SUBDIVISION SHALL REQUIRE A PERSON OR OFFICIAL REQUIRED TO REPORT CASES
34 OF SUSPECTED CHILD ABUSE TO ADDITIONALLY NOTIFY THE STATEWIDE REGISTER
35 OF CHILD ABUSE AND MALTREATMENT UNLESS THE RELATIONSHIP OF THE VICTIM TO
36 THE ALLEGED PERPETRATOR IS IN DOUBT. NOTWITHSTANDING ANY OTHER
37 PROVISION OF LAW, LAW ENFORCEMENT AGENCY SHALL NOT INCLUDE ANY CHILD
38 PROTECTIVE SERVICE OR ANY SOCIETY FOR THE PREVENTION OF CRUELTY TO CHIL-
39 DREN AS SUCH TERMS ARE DEFINED IN SECTION FOUR HUNDRED TWENTY-THREE OF
40 THIS ARTICLE.

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

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

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

52 2. ANY PERSON WHO REASONABLY AND IN GOOD FAITH MAKES A REPORT OF ALLE-
53 GATIONS OF CHILD ABUSE AS REQUIRED BY THIS TITLE, SHALL HAVE IMMUNITY
54 FROM CIVIL LIABILITY WHICH MIGHT OTHERWISE RESULT BY REASON OF SUCH
55 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.