

STATE OF NEW YORK

2158

2017-2018 Regular Sessions

IN SENATE

January 12, 2017

Introduced by Sen. SERINO -- 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 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 § 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 (c) 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 (c) 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

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

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1 seventeen years old by virtue of his or her legal, professional, occupa-
2 tional or vocational status; or (iii) a person has engaged in conduct
3 set forth in paragraph (c) of this subdivision with a person under twen-
4 ty-one years of age who has a handicapping condition, as defined in
5 section forty-four hundred one of the education law and who is entitled
6 to residential care due to such handicapping condition.

7 (b) Any person, in his or her official or professional supervisory
8 capacity with a nonprofit or for-profit organization, shall be required
9 to report or cause a report to be made to an appropriate law enforcement
10 agency when they have reasonable cause to believe that a person over
11 whom he or she regularly exercises supervisory authority has engaged in
12 conduct set forth under this paragraph provided that the person alleged
13 to have engaged in such conduct is employed by, contracted by, or regu-
14 larly has unsupervised access to a child or children as part of the
15 employment, contract, or formal role with the organization, paid or
16 unpaid. Conduct which requires reporting under this article shall
17 include instances where: (i) a person being eighteen years old or more
18 has engaged in conduct set forth in paragraph (c) of this subdivision
19 with a person less than fourteen years old; or (ii) a person being twen-
20 ty-one years old or more has engaged in conduct set forth in paragraph
21 (c) of this subdivision with a person less than seventeen years old and
22 the person being twenty-one years old or more has authority, perceived
23 authority, a position of trust, supervisory or disciplinary power over
24 the person less than seventeen years old by virtue of his or her legal,
25 professional, occupational, organizational, or vocational status; or
26 (iii) a person has engaged in conduct set forth in paragraph (c) of this
27 subdivision with a person under twenty-one years of age who has a handi-
28 capping condition, as defined in section forty-four hundred one of the
29 education law and who is entitled to residential care due to such handi-
30 capping condition.

31 (c) The following conduct, if committed by a person defined in para-
32 graph (a) or (b) of this subdivision shall, for the purposes of this
33 section, constitute child abuse and shall require a report:

34 (i) intentionally or recklessly inflicting physical injury, serious
35 physical injury or death, or

36 (ii) intentionally or recklessly engaging in conduct which creates a
37 substantial risk of such physical injury, serious physical injury or
38 death, or

39 (iii) committing or attempting to commit against a child the crime of
40 disseminating indecent materials to minors pursuant to article two
41 hundred thirty-five of the penal law, or

42 (iv) engaging in any conduct prohibited by article one hundred thirty
43 or two hundred sixty-three of the penal law.

44 (d) For the purposes of this section the term:

45 (i) "law enforcement authorities" shall mean a municipal police
46 department, sheriff's department, the division of state police or any
47 officer thereof or a district attorney or assistant district attorney.
48 Notwithstanding any other provision of law, law enforcement authorities
49 shall not include any child protective service or any society for the
50 prevention of cruelty to children as such terms are defined in section
51 four hundred twenty-three of this article; and

52 (ii) "organization" shall mean a sole proprietor, partnership, corpo-
53 ration, limited liability company, trust, association, financial insti-
54 tution, governmental entity other than the federal government, and any
55 other individual or group engaged in a trade, occupation, enterprise,
56 governmental function, charitable function, or similar activity in this

1 state whether or not the entity is operated as a nonprofit or for-profit
2 entity.

3 2. Reports of suspected child abuse shall be made immediately by tele-
4 phone or by telephone facsimile on a form supplied by the commissioner
5 of the office of children and family services to an appropriate law
6 enforcement agency. Such telephone reports shall be followed by a
7 report in writing within twenty-four hours after such oral report. The
8 provisions of article twenty-three-B of the education law shall apply
9 when allegations of abuse or maltreatment by an employee or volunteer
10 under such article are made in an educational setting. Nothing in this
11 subdivision shall require a person or official required to report cases
12 of suspected child abuse to additionally notify the statewide register
13 of child abuse and maltreatment unless the relationship of the victim to
14 the alleged perpetrator is in doubt. Notwithstanding any other
15 provision of law, law enforcement agency shall not include any child
16 protective service or any society for the prevention of cruelty to chil-
17 dren as such terms are defined in section four hundred twenty-three of
18 this article.

19 § 429-b. Penalties for failure to report. 1. Any person required by
20 this title to report a case of suspected child abuse who willfully fails
21 to do so shall be guilty of a class A misdemeanor.

22 2. Any person required by this title to report a case of suspected
23 child abuse who knowingly and willfully fails to do so shall be civilly
24 liable for the damages proximately caused by such failure.

25 § 429-c. Immunity from liability. 1. Any person who in good faith
26 makes a report of allegations of child abuse as required by this title,
27 including those who in good faith make a report to the wrong recipient,
28 shall have immunity from criminal liability which might otherwise result
29 by reason of such actions.

30 2. Any person who reasonably and in good faith makes a report of alle-
31 gations of child abuse as required by this title, shall have immunity
32 from civil liability which might otherwise result by reason of such
33 actions.

34 § 429-d. Review of existing records for allegations that a child is an
35 abused child; district attorney; penalty. The willful failure of an
36 individual defined in paragraph (a) of subdivision one of section four
37 hundred twenty-nine-a of this title to review existing records and
38 information and report allegations contained therein, as provided by
39 this section, shall be a class A misdemeanor.

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

42 14. "Position of authority" includes but is not limited to any person
43 who is a teacher, employer, babysitter, coach, or any other person who,
44 no matter how brief, is at the time of the act:

45 (a) acting in the place of a parent and charged with any of a parent's
46 rights, duties or responsibilities to a child, or

47 (b) a person who is charged with any duty or responsibility for the
48 health, welfare, or supervision of a child, either independently or
49 through another.

50 15. "Position of trust" includes but is not limited to any person who
51 is a teacher, employer, babysitter, coach or any other person who, by
52 reason of his position, is able to exercise significant influence over a
53 child at the time of the act.

54 § 3. The commissioner of the office of children and family services
55 shall review the reporting form used to report suspected child abuse
56 pursuant to section 429-a of the social services law, as added by

1 section one of this act, and, if necessary, shall revise such form to
2 make it appropriate for reporting to law enforcement agencies.
3 § 4. This act shall take effect on the sixtieth day after it shall
4 have become a law.