STATE OF NEW YORK

11161

IN ASSEMBLY

June 12, 2018

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Galef) -- read once and referred to the Committee on Children and Families

AN ACT to amend the social services 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. Definitions.
429-b. Persons and officials required to report cases of suspected child abuse to appropriate law enforcement.
429-c. Penalties for failure to report.
429-d. Immunity from liability.

§ 429-a. Definitions. For the purposes of this title the term :

1. "abused child" shall mean a child under the age of eighteen years upon whom a person eighteen years of age or older who is not the parent or other person legally responsible for such child's care:

(a) intentionally or recklessly inflicts physical injury, serious physical injury or death, or

(b) intentionally or recklessly engages in conduct which creates a substantial risk of physical injury, serious physical injury or death, or

(c) commits or attempts 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

(d) engages in any conduct prohibited by article one hundred thirty or two hundred sixty-three of the penal law;

2. "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

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

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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;

3. "organization" shall mean a sole proprietor, partnership, corporation, limited liability company, trust, association, financial institution, governmental entity other than the federal government, and any other individual or group engaged in a trade, occupation, enterprise, governmental function, charitable function, or similar activity in this state whether or not the entity is operated as a nonprofit or for-profit entity;

4. "member of the clergy" shall have the same definition as the term "clergyman" as set forth in section two of the religious corporations law and shall also include any person responsible for supervising a member of the clergy of a religious institution or responsible for the administration of a religious institution;

5. "religious institution" shall mean a religious corporation created to enable its members to meet for divine worship or other religious observances or a congregation, society, or other assemblage of persons who are accustomed to statedly meet for divine worship or other religious observances, without having been incorporated for that purpose, as provided in section two of the religious corporations law.

§ 429-b. Persons and officials required to report cases of suspected child abuse to appropriate law enforcement. 1. The following persons and officials are 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 a child is an abused child: any physician; registered physician assistant; surgeon; medical examiner; coroner; dentist; dental hygienist; osteopath; optometrist; chiropractor; podiatrist; resident; intern; psychologist; registered nurse; social worker; emergency medical technician; licensed creative arts therapist; licensed marriage and family therapist; licensed mental health counselor; licensed psychoanalyst; licensed behavior analyst; certified behavior analyst assistant; hospital personnel engaged in the admission, examination, care or treatment of persons; a member of the clergy, a Christian Science practitioner; school official, which includes but is not limited to school teacher, school guidance counselor, school psychologist, school social worker, school nurse, school administrator or other school personnel required to hold a teaching or administrative license or certificate; full or part-time compensated school employee required to hold a temporary coaching license or professional coaching certificate; social services worker; employee of a publicly-funded emergency shelter for families with children; director of a children's overnight camp, summer day camp or traveling summer day camp, as such camps are defined in section thirteen hundred ninety-two of the public health law; day care center worker; school-age child care worker; provider of family or group family day care; employee or volunteer in a residential care facility for children that is licensed, certified or operated by the office of children and family services; or any other child care or foster care worker; mental health professional; substance abuse counselor; alcoholism counselor; all persons credentialed by the office of alcoholism and substance abuse services; employees, who are expected to have regular and substantial contact with children, of a health home or health home care management agency contracting with a health home as designated by the department of health and authorized under section three hundred sixty-five-l of this chapter or such employees who provide home and community based services under a demon-

stration program pursuant to section eleven hundred fifteen of the federal social security act who are expected to have regular and substantial contact with children; peace officer; police officer; district attorney or assistant district attorney; investigator employed in the office of a district attorney; other law enforcement official; or any person eighteen years of age or older, through his or her affiliation, or in his or her official, professional, or supervisory capacity, either paid or unpaid, with an organization that provides services, programming or supervision to a person less than eighteen years of age.

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.

3. Unless the person confessing or confiding waives the privilege, a member of the clergy, or other minister of any religion or duly accredited Christian Science practitioner, shall not be required to make a report as required by subdivision two of this section if the confession or confidence was made to him or her in his or her professional character as spiritual advisor.

4. When a member of the clergy has reasonable cause to suspect that conduct described under this section has occurred based upon any information received other than through a confession or confidence made pursuant to subdivision three of this section, then such member of the clergy shall promptly make a report as required by subdivision two of this section notwithstanding the fact that he or she may have also received a report of abuse or maltreatment through a confession or confidence made pursuant to subdivision three of this section.

5. The provisions of subdivision three of this section shall not be deemed to exempt a member of the clergy from any other requirements of law to prevent the perpetrator from committing additional acts of abuse.

6. Persons and officials required to report cases of suspected child abuse to appropriate law enforcement agencies are required to complete a training program in the identification and reporting of child abuse. Such program shall be approved by the office of children and family services. The commissioner shall provide public notice that mandated reporting training materials and information have been updated and shall prescribe a period of compliance for mandated reporters to receive updated training information, including but not limited to, training distributed by the office on its public website.

§ 429-c. 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.

§ 429-d. 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.

§ 2. This act shall take effect one year after it shall have become a law.