STATE OF NEW YORK

7302--A

2017-2018 Regular Sessions

IN ASSEMBLY

April 21, 2017

Introduced by M. of A. CUSICK, PICHARDO, CRESPO, TITONE, FITZPATRICK, COLTON, MALLIOTAKIS, WALKER, RA, MOSLEY, STECK, McDONALD, WALTER, GOODELL, GIGLIO, CASTORINA, BYRNE, D. ROSENTHAL -- read once and referred to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the criminal procedure law, in relation to the statute of limitations for sex offenses committed against a child; to amend the civil practice law and rules, the general municipal law, the court of claims act and the education law, in relation to the timeliness for commencing certain civil actions related to sex offenses; to amend the social services law, in relation to the reporting of child abuse; to amend the business corporation law, the not-for-profit corporation law, the religious corporations law and the cooperative corporations law, in relation to child protection and criminal history searches; and to amend part J of chapter 62 of the laws of 2003 amending the county law and other laws relating to fees collected, in relation to providing for the reimbursement of not-for-profit corporations for fees collected for criminal history searches by the office of court administration

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. This act shall be known and may be cited as the "New York State Child Protection Act of 2018".

§ 2. Paragraph (f) of subdivision 3 of section 30.10 of the criminal procedure law, as separately amended by chapters 3 and 320 of the laws of 2006, is amended to read as follows:

(f) [~~For purposes of a~~] **A** prosecution involving a sexual offense as defined in article one hundred thirty of the penal law, other than a sexual offense delineated in paragraph (a) of subdivision two of this

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

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section, committed against a child less than eighteen years of age, incest in the first, second or third degree as defined in sections 255.27, 255.26 and 255.25 of the penal law committed against a child less than eighteen years of age, or use of a child in a sexual performance as defined in section 263.05 of the penal law, [~~the period of limitation shall not begin to run until the child has reached the age of eighteen or the offense is reported to a law enforcement agency or statewide central register of child abuse and maltreatment, whichever occurs earlier~~] may be commenced at any time.

§ 3. The opening paragraph of section 208 of the civil practice law and rules is designated subdivision (a) and a new subdivision (b) is added to read as follows:

(b) Notwithstanding the provisions of subdivision (a) of this section, with respect to all civil claims or causes of action brought by any person for physical, psychological or other injury or condition suffered as a result of conduct of a defendant which would constitute a sexual offense as defined in article one hundred thirty of the penal law committed against a child less than eighteen years of age, incest as defined in section 255.25, 255.26 or 255.27 of the penal law committed against a child less than eighteen years of age, or the use of a child in a sexual performance as defined in section 263.05 of the penal law, or a predecessor statute that prohibited such conduct at the time of the act, which conduct was committed against a child less than eighteen years of age, the time within which the action must be commenced shall be extended to five years after the person reaches the age of twenty-three years.

§ 4. Subdivision 8 of section 50-e of the general municipal law, as amended by chapter 24 of the laws of 1988, is amended to read as follows:

8. Inapplicability of section. (a) This section shall not apply to claims arising under the provisions of the workers' compensation law, the volunteer firefighters' benefit law, or the volunteer ambulance workers' benefit law or to claims against public corporations by their own infant wards.

(b) This section shall not apply to any claim made for physical, psychological, or other injury or condition suffered as a result of conduct of a defendant which would constitute a sexual offense as defined in article one hundred thirty of the penal law committed against a child less than eighteen years of age, incest as defined in section 255.25, 255.26 or 255.27 of the penal law committed against a child less than eighteen years of age, or the use of a child in a sexual performance as defined in section 263.05 of the penal law committed against a child less than eighteen years of age.

§ 5. Section 50-i of the general municipal law is amended by adding a new subdivision 5 to read as follows:

5. Notwithstanding any provision of law to the contrary, this section shall not apply to any claim made against a city, county, town, village, fire district or school district for physical, psychological, or other injury or condition suffered as a result of conduct of a defendant which would constitute a sexual offense as defined in article one hundred thirty of the penal law committed against a child less than eighteen years of age, incest as defined in section 255.25, 255.26 or 255.27 of the penal law committed against a child less than eighteen years of age, or the use of a child in a sexual performance as defined in section 263.05 of the penal law committed against a child less than eighteen years of age.

§ 6. Section 10 of the court of claims act is amended by adding a new subdivision 10 to read as follows:

10. Notwithstanding any provision of law to the contrary, this section shall not apply to any claim to recover damages for physical, psychological, or other injury or condition suffered as a result of conduct of a defendant which would constitute a sexual offense as defined in article one hundred thirty of the penal law committed against a child less than eighteen years of age, incest as defined in section 255.25, 255.26 or 255.27 of the penal law committed against a child less than eighteen years of age, or the use of a child in a sexual performance as defined in section 263.05 of the penal law committed against a child less than eighteen years of age.

§ 7. Subdivision 2 of section 3813 of the education law, as amended by chapter 346 of the laws of 1978, is amended to read as follows:

2. Notwithstanding anything to the contrary hereinbefore contained in this section, no action or special proceeding founded upon tort shall be prosecuted or maintained against any of the parties named in this section or against any teacher or member of the supervisory or administrative staff or employee where the alleged tort was committed by such teacher or member or employee acting in the discharge of his duties within the scope of his employment and/or under the direction of the board of education, trustee or trustees, or governing body of the school unless a notice of claim shall have been made and served in compliance with section fifty-e of the general municipal law. Every such action shall be commenced pursuant to the provisions of section fifty-i of the general municipal law**, provided, however, that this section shall not apply to any claim to recover damages for physical, psychological, or other injury or condition suffered as a result of conduct of a defendant which would constitute a sexual offense as defined in article one hundred thirty of the penal law committed against a child less than eighteen years of age, incest as defined in section 255.25, 255.26 or 255.27 of the penal law committed against a child less than eighteen years of age, or the use of a child in a sexual performance as defined in section 263.05 of the penal law committed against a child less than eighteen years of age**.

§ 8. Paragraph (a) of subdivision 1 of section 413 of the social services law, as amended by section 2 of part Q of chapter 56 of the laws of 2017, is amended to read as follows:

(a) The following persons and officials are required to report or cause a report to be made in accordance with this title when they have reasonable cause to suspect that a child coming before them in their professional or official capacity is an abused or maltreated child, or when they have reasonable cause to suspect that a child is an abused or maltreated child where the parent, guardian, custodian or other person legally responsible for such child comes before them in their professional or official capacity and states from personal knowledge facts, conditions or circumstances which, if correct, would render the child an abused or maltreated 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; **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; peace officer; police officer; district attorney or assistant district attorney; investigator employed in the office of a district attorney; or other law enforcement official.

§ 9. Subdivision 1 of section 413 of the social services law is amended by adding five new paragraphs (e), (f), (g), (h) and (i) to read as follows:

(e) 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 paragraph (a) of this subdivision if the confession or confidence was made to him or her in his or her professional character as spiritual advisor.

(f) When a member of the clergy has reasonable cause to suspect that a child is an abused or maltreated child based upon any information received other than through a confession or confidence made pursuant to paragraph (e) of this subdivision, then such member of the clergy shall promptly make a report as required by paragraph (a) of this subdivision 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 paragraph (e) of this subdivision.

(g) The provisions of paragraph (e) of this subdivision 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.

(h) For the purposes of this subdivision the term "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.

(i) For the purposes of this subdivision the term "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.

§ 10. 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.

§ 429-a. Persons and officials required to report cases of suspected child abuse to appropriate law enforcement agency. 1. (a) 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; emergency medical technician; hospital personnel engaged in the admission, examination, care or treatment of persons; member of the clergy; a Christian Science practitioner; school official; social services worker; day care center worker; provider of family or group family day care; employee or volunteer in a residential care facility or any other child care or foster care worker; mental health professional; substance abuse counselor; alcoholism counselor; peace officer; police officer; district attorney or assistant district attorney; investigator employed in the office of a district attorney; or other law enforcement official.

(b) For the purposes of this section the term "abused child" shall mean a child under the age of eighteen years upon whom a person eighteen years of age or more who is defined in paragraph (a) of this subdivision and who is not the parent or other person legally responsible for such child's care:

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

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

(iii) 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

(iv) engages 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.

(d) For the purposes of this section the term "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.

(e) For the purposes of this section the term "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.

2. (a) 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 paragraph (a) of subdivision one of this section if the confession or confidence was made to him or her in his or her professional character as spiritual advisor.

(b) When a member of the clergy has reasonable cause to suspect that a child is an abused child based upon any information received other than through a confession or confidence made pursuant to paragraph (a) of this subdivision, then such member of the clergy shall promptly make a report as required by paragraph (a) of subdivision one of this section notwithstanding the fact that he or she may have also received a report of abuse through a confession or confidence made pursuant to paragraph (a) of this subdivision.

(c) The provisions of paragraph (a) of this subdivision 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.

3. Nothing in this title shall be construed to require the report of information by a person required to report herein when such information is otherwise privileged from disclosure by law.

§ 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.

§ 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.

§ 429-d. Review of existing records for allegations that a child is an abused child; district attorney; penalty. 1. Within three months of the effective date of this section, all members of the clergy shall: (a) review all institutional records within their control and any other information they have obtained regarding allegations that a child is an abused child by a member of the clergy within twenty years prior to the effective date of this section; and (b) review whether they are aware of any other allegations that a child is an abused child alleged to have been abused by a member of the clergy who remains actively in the service of a religious institution, regardless of the date on which such allegation was made; and where such information or records raise reasonable cause to suspect that a child is an abused child, report such allegation to the district attorney. This section shall not apply to information obtained through confidential communications with clergy and privileged under law and no report need be made of allegations against a deceased individual.

2. 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.

§ 11. 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 ten of this act, and, if necessary, shall revise such form to make it appropriate for reporting to law enforcement agencies.

§ 12. The business corporation law is amended by adding a new section 113 to read as follows:

§ 113. Child protection and criminal history searches.

Any corporation as defined by section one hundred two of this article shall perform a criminal history search on all individuals that may work or otherwise have reason in their duties to be engaged in unsupervised activities with children under the age of eighteen; or individuals that may participate in activities with children under the age of eighteen in a setting without constant agency or parental oversight.

§ 13. The not-for-profit corporation law is amended by adding a new section 116 to read as follows:

§ 116. Child protection and criminal history searches.

Any corporation as defined by section one hundred two of this article shall perform a criminal history search on all individuals that may work or otherwise have reason in their duties to be engaged in unsupervised activities with children under the age of eighteen; or individuals that may participate in activities with children under the age of eighteen in a setting without constant agency or parental oversight.

§ 14. The religious corporations law is amended by adding a new section 28 to read as follows:

§ 28. Child protection and criminal history searches. Any religious corporation as defined by section two of this chapter shall perform a criminal history search on all individuals that may work or otherwise have reason in their duties to be engaged in unsupervised activities with children under the age of eighteen; or individuals that may participate in activities with children under the age of eighteen in a setting without constant agency or parental oversight.

§ 15. The cooperative corporations law is amended by adding a new section 6 to read as follows:

§ 6. Child protection and criminal history searches. Any cooperative corporation as defined by section three of this article shall perform a criminal history search on all individuals that may work or otherwise have reason in their duties to be engaged in unsupervised activities with children under the age of eighteen; or individuals that may participate in activities with children under the age of eighteen in a setting without constant agency or parental oversight.

§ 16. Section 14 of part J of chapter 62 of the laws of 2003 amending the county law and other laws relating to fees collected, as amended by section 7 of part K of chapter 56 of the laws of 2010, is amended to read as follows:

§ 14. Notwithstanding the provisions of any other law: (a) the fee collected by the office of court administration for the provision of criminal history searches and other searches for data kept electronically by the unified court system shall be sixty-five dollars; (b) thirty-five dollars of each such fee collected shall be deposited in the indigent legal services fund established by section 98-b of the state finance law, as added by section twelve of this act, (c) nine dollars of

each such fee collected shall be deposited in the legal services assistance fund established by section 98-c of the state finance law, as added by section nineteen of this act, (d) sixteen dollars of each such fee collected shall be deposited to the judiciary data processing offset fund established by section 94-b of the state finance law, [~~and~~] (e) the remainder shall be deposited in the general fund[~~.~~]**, and (f) provided, however, if a criminal history search or other searches for data kept electronically by the unified court system is being requested by or on the behalf of a not-for-profit corporation, to perform a criminal history search on an individual that would be working with children under the age of eighteen, the office of court administration shall, subject to the approval of the director of the budget, establish protocols to reimburse the not-for-profit corporation for searches conducted and such reimbursement shall come from the general fund. The division of budget shall also promulgate regulations to prevent not-for-profit corporations from over utilizing this reimbursement mechanism and to assure that all reimbursed search fees are used for criminal history searches of positions that would have direct interaction with children.**

§ 17. The provisions of this act shall be severable, and if any clause, sentence, paragraph, subdivision or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision or part thereof directly involved in the controversy in which such judgment shall have been rendered.

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