

# 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.