

STATE OF NEW YORK

2158--A

2017-2018 Regular Sessions

IN SENATE

January 12, 2017

Introduced by Sens. SERINO, HELMING -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

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

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

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

37 (i) intentionally or recklessly inflicting physical injury, serious
38 physical injury or death, or

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

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

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

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

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

55 (ii) "organization" shall mean a sole proprietor, partnership, corpo-
56 ration, limited liability company, trust, association, financial insti-

1 tution, governmental entity other than the federal government, and any
2 other individual or group engaged in a trade, occupation, enterprise,
3 governmental function, charitable function, or similar activity in this
4 state whether or not the entity is operated as a nonprofit or for-profit
5 entity.

6 (e) Unless the person confessing or confiding waives the privilege, a
7 member of the clergy, or other minister of any religion or duly accred-
8 ited Christian Science practitioner, shall not be required to make a
9 report as required by paragraph (a) or (b) of this subdivision if the
10 confession or confidence was made to him or her in his or her profes-
11 sional character as spiritual advisor.

12 (f) When a member of the clergy has reasonable cause to suspect that
13 conduct described under this section has occurred based upon any infor-
14 mation received other than through a confession or confidence made
15 pursuant to paragraph (e) of this subdivision, then such member of the
16 clergy shall promptly make a report as required by paragraph (a) or (b)
17 of this subdivision notwithstanding the fact that he or she may have
18 also received a report of abuse or maltreatment through a confession or
19 confidence made pursuant to paragraph (e) of this subdivision.

20 (g) The provisions of paragraph (e) of this subdivision shall not be
21 deemed to exempt a member of the clergy from any other requirements of
22 law to prevent the perpetrator from committing additional acts of abuse.

23 (h) For the purposes of this subdivision the term "member of the cler-
24 gy" shall have the same definition as the term "clergyman" as set forth
25 in section two of the religious corporations law and shall also include
26 any person responsible for supervising a member of the clergy of a reli-
27 gious institution or responsible for the administration of a religious
28 institution.

29 (i) For the purposes of this subdivision the term "religious institu-
30 tion" shall mean a religious corporation created to enable its members
31 to meet for divine worship or other religious observances or a congre-
32 gation, society, or other assemblage of persons who are accustomed to
33 statedly meet for divine worship or other religious observances, without
34 having been incorporated for that purpose, as provided in section two of
35 the religious corporations law.

36 2. Reports of suspected child abuse shall be made immediately by tele-
37 phone or by telephone facsimile on a form supplied by the commissioner
38 of the office of children and family services to an appropriate law
39 enforcement agency. Such telephone reports shall be followed by a
40 report in writing within twenty-four hours after such oral report. The
41 provisions of article twenty-three-B of the education law shall apply
42 when allegations of abuse or maltreatment by an employee or volunteer
43 under such article are made in an educational setting. Nothing in this
44 subdivision shall require a person or official required to report cases
45 of suspected child abuse to additionally notify the statewide register
46 of child abuse and maltreatment unless the relationship of the victim to
47 the alleged perpetrator is in doubt. Notwithstanding any other
48 provision of law, law enforcement agency shall not include any child
49 protective service or any society for the prevention of cruelty to chil-
50 dren as such terms are defined in section four hundred twenty-three of
51 this article.

52 § 429-b. Penalties for failure to report. 1. Any person required by
53 this title to report a case of suspected child abuse who willfully fails
54 to do so shall be guilty of a class A misdemeanor.

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

4 § 429-c. Immunity from liability. 1. Any person who in good faith
5 makes a report of allegations of child abuse as required by this title,
6 including those who in good faith make a report to the wrong recipient,
7 shall have immunity from criminal liability which might otherwise result
8 by reason of such actions.

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

13 § 429-d. Review of existing records for allegations that a child is an
14 abused child; district attorney; penalty. The willful failure of an
15 individual defined in paragraph (a) of subdivision one of section four
16 hundred twenty-nine-a of this title to review existing records and
17 information and report allegations contained therein, as provided by
18 this section, shall be a class A misdemeanor.

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

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

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

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

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

33 § 3. The commissioner of the office of children and family services
34 shall review the reporting form used to report suspected child abuse
35 pursuant to section 429-a of the social services law, as added by
36 section one of this act, and, if necessary, shall revise such form to
37 make it appropriate for reporting to law enforcement agencies.

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