

STATE OF NEW YORK

2158--B

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2017-2018 Regular Sessions

IN SENATE

January 12, 2017

Introduced by Sens. SERINO, HELMING, MARCHIONE -- 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 -- recommitted to the Committee on Children and Families in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee and committed to the Committee on Finance -- reported favorably from said committee, ordered to first report, amended on first report, ordered to a second report and ordered reprinted, retaining its place in the order of second report

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 more 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

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

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

4 (c) commits or attempts to commit against a child the crime of dissem-
5 inating indecent materials to minors pursuant to article two hundred
6 thirty-five of the penal law, or

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

9 2. "law enforcement authorities" shall mean a municipal police depart-
10 ment, sheriff's department, the division of state police or any officer
11 thereof or a district attorney or assistant district attorney. Notwith-
12 standing any other provision of law, law enforcement authorities shall
13 not include any child protective service or any society for the
14 prevention of cruelty to children as such terms are defined in section
15 four hundred twenty-three of this article;

16 3. "organization" shall mean a sole proprietor, partnership, corpo-
17 ration, limited liability company, trust, association, financial insti-
18 tution, governmental entity other than the federal government, and any
19 other individual or group engaged in a trade, occupation, enterprise,
20 governmental function, charitable function, or similar activity in this
21 state whether or not the entity is operated as a nonprofit or for-profit
22 entity;

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

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

34 § 429-b. Persons and officials required to report cases of suspected
35 child abuse to appropriate law enforcement. 1. The following persons and
36 officials are required to report or cause a report to be made to an
37 appropriate law enforcement agency when they have reasonable cause to
38 suspect in their professional or official capacity that a child is an
39 abused child: any physician; registered physician assistant; surgeon;
40 medical examiner; coroner; dentist; dental hygienist; osteopath; optome-
41 trist; chiropractor; podiatrist; resident; intern; psychologist; regis-
42 tered nurse; social worker; emergency medical technician; licensed crea-
43 tive arts therapist; licensed marriage and family therapist; licensed
44 mental health counselor; licensed psychoanalyst; licensed behavior
45 analyst; certified behavior analyst assistant; hospital personnel
46 engaged in the admission, examination, care or treatment of persons; a
47 member of the clergy, a Christian Science practitioner; school official,
48 which includes but is not limited to school teacher, school guidance
49 counselor, school psychologist, school social worker, school nurse,
50 school administrator or other school personnel required to hold a teach-
51 ing or administrative license or certificate; full or part-time compen-
52 sated school employee required to hold a temporary coaching license or
53 professional coaching certificate; social services worker; employee of a
54 publicly-funded emergency shelter for families with children; director
55 of a children's overnight camp, summer day camp or traveling summer day
56 camp, as such camps are defined in section thirteen hundred ninety-two

1 of the public health law; day care center worker; school-age child care
2 worker; provider of family or group family day care; employee or volun-
3 teer in a residential care facility for children that is licensed,
4 certified or operated by the office of children and family services; or
5 any other child care or foster care worker; mental health professional;
6 substance abuse counselor; alcoholism counselor; all persons creden-
7 tialed by the office of alcoholism and substance abuse services; employ-
8 ees, who are expected to have regular and substantial contact with chil-
9 dren, of a health home or health home care management agency contracting
10 with a health home as designated by the department of health and author-
11 ized under section three hundred sixty-five-1 of this chapter or such
12 employees who provide home and community based services under a demon-
13 stration program pursuant to section eleven hundred fifteen of the
14 federal social security act who are expected to have regular and
15 substantial contact with children; peace officer; police officer;
16 district attorney or assistant district attorney; investigator employed
17 in the office of a district attorney; other law enforcement official; or
18 any person, through his or her affiliation, or in his or her official,
19 professional, or supervisory capacity, either paid or unpaid, with an
20 organization that provides services, programming or supervision to a
21 person less than eighteen years of age.

22 2. Reports of suspected child abuse shall be made immediately by tele-
23 phone or by telephone facsimile on a form supplied by the commissioner
24 of the office of children and family services to an appropriate law
25 enforcement agency. Such telephone reports shall be followed by a report
26 in writing within twenty-four hours after such oral report. The
27 provisions of article twenty-three-B of the education law shall apply
28 when allegations of abuse or maltreatment by an employee or volunteer
29 under such article are made in an educational setting. Nothing in this
30 subdivision shall require a person or official required to report cases
31 of suspected child abuse to additionally notify the statewide register
32 of child abuse and maltreatment unless the relationship of the victim to
33 the alleged perpetrator is in doubt. Notwithstanding any other provision
34 of law, law enforcement agency shall not include any child protective
35 service or any society for the prevention of cruelty to children as such
36 terms are defined in section four hundred twenty-three of this article.

37 3. Unless the person confessing or confiding waives the privilege, a
38 member of the clergy, or other minister of any religion or duly accred-
39 ited Christian Science practitioner, shall not be required to make a
40 report as required by subdivision two of this section if the confession
41 or confidence was made to him or her in his or her professional charac-
42 ter as spiritual advisor.

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

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

54 6. Persons and officials required to report cases of suspected child
55 abuse to appropriate law enforcement agencies are required to complete a
56 training program in the identification and reporting of child abuse.

1 Such program shall be approved by the office of children and family
2 services. The commissioner shall provide public notice that mandated
3 reporting training materials and information have been updated and shall
4 prescribe a period of compliance for mandated reporters to receive
5 updated training information, including but not limited to, training
6 distributed by the office on its public website.

7 § 429-c. Penalties for failure to report. 1. Any person required by
8 this title to report a case of suspected child abuse who willfully fails
9 to do so shall be guilty of a class A misdemeanor.

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

13 § 429-d. Immunity from liability. 1. Any person who in good faith
14 makes a report of allegations of child abuse as required by this title,
15 including those who in good faith make a report to the wrong recipient,
16 shall have immunity from criminal liability which might otherwise result
17 by reason of such actions.

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

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