

# STATE OF NEW YORK

2158--C

Cal. No. 1334

2017-2018 Regular Sessions

## IN SENATE

January 12, 2017

Introduced by Sens. SERINO, AKSHAR, GALLIVAN, HELMING, MARCHIONE, RANZENHOFER -- 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 -- ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

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:

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. Definitions.

7 429-b. Persons and officials required to report cases of  
8 suspected child abuse to appropriate law enforcement.

9 429-c. Penalties for failure to report.

10 429-d. Immunity from liability.

11 § 429-a. Definitions. For the purposes of this title the term :

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

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

LBD04892-09-8

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 § 429-c. Penalties for failure to report. 1. Any person required by  
11 this title to report a case of suspected child abuse who willfully fails  
12 to do so shall be guilty of a class A misdemeanor.

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

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

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

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