STATE OF NEW YORK

1967

2019-2020 Regular Sessions

IN SENATE

January 18, 2019

Introduced by Sen. GALLIVAN -- read twice and ordered printed, and when printed to be committed to the Committee on Social Services

AN ACT to amend the social services law, in relation to the reporting of child abuse; and to amend the penal law, in relation to falsely reporting an incident in the third degree

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

Section 1. Paragraph (a) of subdivision 1 of section 413 of the social services law, as amended by section 7 of part C of chapter 57 of the laws of 2018, 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

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

LBD08128-02-9

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; employees, who are expected to have regular and substantial contact with children, of a health home or health home care management agency contracting with a health home as designated by the department of health and authorized under section three hundred sixty-five-l of this chapter or such employees who provide home and community based services under a demonstration program pursuant to section eleven hundred fifteen of the federal social security act who are expected to have regular and substantial contact with children; peace officer; police officer; district attorney or assistant district attorney; investigator employed in the office of a district attorney; or other law enforcement official.

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

(e) Unless the person confessing or confiding waives the privilege pursuant to section forty-five hundred five of the civil practice law and rules, a member of the clergy 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) The provisions for paragraph (e) of this subdivision shall not be deemed to exempt a member of the clergy or Christian Science practitioner from any other requirements of law to prevent the perpetrator from committing additional acts of abuse.

(g) For the purposes of this subdivision the term "member of the clergy" shall have the same meaning as defined under subdivision four of section four hundred twenty-nine-a of this article.

§ 3. 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 law enforcement authorities.
429-c. Penalties for failure to report.
429-d. Immunity from liability.
429-e. Training.

§ 429-a. Definitions. For the purposes of this title the following terms shall have the following meanings:

1. "Child abuse" shall mean any of the following acts committed against a child by persons or officials defined under section four hundred twenty-nine-b of this title, who are eighteen years of age or older: (a) intentionally or recklessly inflicting physical injury, serious physical injury or death, or (b) intentionally or recklessly engag-

ing in conduct which creates a substantial risk of such physical injury, serious physical injury or death, or (c) conduct prohibited by article one hundred thirty or two hundred sixty-three of the penal law, or (d) the commission or attempted commission against a child of the crime of disseminating indecent materials to minors pursuant to article two hundred thirty-five of the penal law.

2. "Child" shall mean a person under the age of eighteen years.

3. "Law enforcement authorities" shall mean a municipal police department, sheriff's department, the division of state police or any officer thereof. 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.

4. "Member of the clergy" shall mean any duly authorized pastor, rector, deacon, priest, rabbi, pandit, swami, guru, granthi, imam, moulvi, maulana and a person having authority from, or in accordance with, the rules and regulations of the governing ecclesiastical body of the denomination or order, if any, to which the church belongs, or otherwise from the church or synagogue to preside over and direct the spiritual affairs of the church or synagogue.

5. "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.

§ 429-b. Persons and officials required to report cases of suspected child abuse to law enforcement authorities. 1. The following persons and officials are required to report or cause a report to be made to the appropriate law enforcement authorities when they have reasonable suspicion to believe that in their professional or official capacity an act of child abuse has occurred: 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; such school official, which includes but not limited to a 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, or full or part-time compensated school employee required to hold a temporary coaching license or professional coaching certificate; social services worker; 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 worker; provider of family or group family day care; employee or volunteer in a residential care facility or any other child care of foster care worker; mental health professional; substance abuse counselor; alcoholism counselor; peach officer; police officer; district attorney or assistant district attorney; investigator employed in the office of a district attorney; or other law enforcement official.

(a) Unless the person confessing or confiding waives the privilege, pursuant to section forty-five hundred five of the civil practice law and rules, a member of the clergy, or duly accredited Christian Science practitioner, shall not be required to make a report as required pursuant to 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 suspicion to believe that an act of child abuse has occurred based upon 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 this subdivision notwithstanding the fact that he or she may have also received a report of child 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.

2. 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-c. 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 to report.

§ 429-d. Immunity from liability. Any person who reasonably and in good faith makes a report of allegations of child abuse as required pursuant to this title shall have immunity from any liability, civil or criminal, that might otherwise result by reason of such actions.

§ 429-e. Training. 1. All persons or officials required to report cases of suspected child abuse to law enforcement employed on or after the effective date of this title shall be required to complete two hours of coursework or training regarding the identification and reporting of child abuse and maltreatment. The coursework or training shall be obtained form an institution or provider which has been approved by the department to provide such coursework or training. The coursework or training shall include information regarding the physical and behavioral indicators of child abuse and maltreatment and the statutory reporting requirements set forth under this title as well as section four hundred thirteen through four hundred twenty of this article, including but not limited to, when and how a report must be made, what other actions the reporter is mandated or authorized to take, the legal protections afforded reporters, and the consequences for failing to report. The department shall be authorized to publish a list of person who are not in compliance with this subdivision on its website.

2. The coursework or training required by this section shall not apply to those persons already required to undergo coursework or training regarding the identification and reporting of child abuse and maltreatment pursuant to any other pertinent section of law.

§ 4. Paragraph (b) of subdivision 4 of section 240.50 of the penal law, as amended by section 1 of part G of chapter 501 of the laws of 2012, is amended and a new paragraph (c) is added to read as follows:

(b) any person required to report cases of suspected child abuse or maltreatment pursuant to subdivision one of section four hundred thirteen of the social services law or to report cases of suspected abuse or neglect of a vulnerable person pursuant to section four hundred ninety-one of such law, knowing that the person is required to report such cases, and with the intent that such an alleged occurrence be reported

to the statewide central register or vulnerable persons' central register[~~.~~]**, or**

(c) any person required to report cases of suspected child abuse to law enforcement pursuant to title six-B of article six of the social services law.

§ 5. This act shall take effect on the ninetieth day after it shall have become a law; provided, however that the form used to report suspected cases of child abuse be revised, as necessary, by the office of children and family services prior to the effective date of this act so that it is applicable for reporting to law enforcement agencies.