

# STATE OF NEW YORK

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1967

2019-2020 Regular Sessions

## IN SENATE

January 18, 2019

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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:

1 Section 1. Paragraph (a) of subdivision 1 of section 413 of the social  
2 services law, as amended by section 7 of part C of chapter 57 of the  
3 laws of 2018, is amended to read as follows:

4 (a) The following persons and officials are required to report or  
5 cause a report to be made in accordance with this title when they have  
6 reasonable cause to suspect that a child coming before them in their  
7 professional or official capacity is an abused or maltreated child, or  
8 when they have reasonable cause to suspect that a child is an abused or  
9 maltreated child where the parent, guardian, custodian or other person  
10 legally responsible for such child comes before them in their profes-  
11 sional or official capacity and states from personal knowledge facts,  
12 conditions or circumstances which, if correct, would render the child an  
13 abused or maltreated child: any physician; registered physician assist-  
14 ant; surgeon; medical examiner; coroner; dentist; dental hygienist;  
15 osteopath; optometrist; chiropractor; podiatrist; resident; intern;  
16 psychologist; registered nurse; social worker; emergency medical techni-  
17 cian; licensed creative arts therapist; licensed marriage and family  
18 therapist; licensed mental health counselor; licensed psychoanalyst;  
19 licensed behavior analyst; certified behavior analyst assistant; hospi-  
20 tal personnel engaged in the admission, examination, care or treatment  
21 of persons; member of the clergy; a Christian Science practitioner;  
22 school official, which includes but is not limited to school teacher,  
23 school guidance counselor, school psychologist, school social worker,  
24 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

1 hold a teaching or administrative license or certificate; full or part-  
2 time compensated school employee required to hold a temporary coaching  
3 license or professional coaching certificate; social services worker;  
4 employee of a publicly-funded emergency shelter for families with chil-  
5 dren; director of a children's overnight camp, summer day camp or trav-  
6 eling summer day camp, as such camps are defined in section thirteen  
7 hundred ninety-two of the public health law; day care center worker;  
8 school-age child care worker; provider of family or group family day  
9 care; employee or volunteer in a residential care facility for children  
10 that is licensed, certified or operated by the office of children and  
11 family services; or any other child care or foster care worker; mental  
12 health professional; substance abuse counselor; alcoholism counselor;  
13 all persons credentialed by the office of alcoholism and substance abuse  
14 services; employees, who are expected to have regular and substantial  
15 contact with children, of a health home or health home care management  
16 agency contracting with a health home as designated by the department of  
17 health and authorized under section three hundred sixty-five-1 of this  
18 chapter or such employees who provide home and community based services  
19 under a demonstration program pursuant to section eleven hundred fifteen  
20 of the federal social security act who are expected to have regular and  
21 substantial contact with children; peace officer; police officer;  
22 district attorney or assistant district attorney; investigator employed  
23 in the office of a district attorney; or other law enforcement official.

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

27 (e) Unless the person confessing or confiding waives the privilege  
28 pursuant to section forty-five hundred five of the civil practice law  
29 and rules, a member of the clergy or duly accredited Christian Science  
30 practitioner shall not be required to make a report as required by para-  
31 graph (a) of this subdivision if the confession or confidence was made  
32 to him or her in his or her professional character as spiritual advisor.

33 (f) The provisions for paragraph (e) of this subdivision shall not be  
34 deemed to exempt a member of the clergy or Christian Science practition-  
35 er from any other requirements of law to prevent the perpetrator from  
36 committing additional acts of abuse.

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

40 § 3. Article 6 of the social services law is amended by adding a new  
41 title 6-B to read as follows:

#### 42 TITLE 6-B

#### 43 REPORTS OF CHILD ABUSE TO LAW ENFORCEMENT

#### 44 Section 429-a. Definitions.

45 429-b. Persons and officials required to report cases of  
46 suspected child abuse to law enforcement authorities.

47 429-c. Penalties for failure to report.

48 429-d. Immunity from liability.

49 429-e. Training.

50 § 429-a. Definitions. For the purposes of this title the following  
51 terms shall have the following meanings:

52 1. "Child abuse" shall mean any of the following acts committed  
53 against a child by persons or officials defined under section four  
54 hundred twenty-nine-b of this title, who are eighteen years of age or  
55 older: (a) intentionally or recklessly inflicting physical injury, seri-  
56 ous 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; peace 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

1 was made to him or her in his or her professional character as spiritual  
2 advisor.

3 (b) When a member of the clergy has reasonable suspicion to believe  
4 that an act of child abuse has occurred based upon information received  
5 other than through a confession or confidence made pursuant to paragraph  
6 (a) of this subdivision, then such member of the clergy shall promptly  
7 make a report as required by this subdivision notwithstanding the fact  
8 that he or she may have also received a report of child abuse through a  
9 confession or confidence made pursuant to paragraph (a) of this subdivi-  
10 sion.

11 (c) The provisions of paragraph (a) of this subdivision shall not be  
12 deemed to exempt a member of the clergy from any other requirements of  
13 law to prevent the perpetrator from committing additional acts of abuse.

14 2. Nothing in this title shall be construed to require the report of  
15 information by a person required to report herein when such information  
16 is otherwise privileged from disclosure by law.

17 § 429-c. Penalties for failure to report. 1. Any person required by  
18 this title to report a case of suspected child abuse who willfully fails  
19 to do so shall be guilty of a class A misdemeanor.

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

23 § 429-d. Immunity from liability. Any person who reasonably and in  
24 good faith makes a report of allegations of child abuse as required  
25 pursuant to this title shall have immunity from any liability, civil or  
26 criminal, that might otherwise result by reason of such actions.

27 § 429-e. Training. 1. All persons or officials required to report  
28 cases of suspected child abuse to law enforcement employed on or after  
29 the effective date of this title shall be required to complete two hours  
30 of coursework or training regarding the identification and reporting of  
31 child abuse and maltreatment. The coursework or training shall be  
32 obtained from an institution or provider which has been approved by the  
33 department to provide such coursework or training. The coursework or  
34 training shall include information regarding the physical and behavioral  
35 indicators of child abuse and maltreatment and the statutory reporting  
36 requirements set forth under this title as well as section four hundred  
37 thirteen through four hundred twenty of this article, including but not  
38 limited to, when and how a report must be made, what other actions the  
39 reporter is mandated or authorized to take, the legal protections  
40 afforded reporters, and the consequences for failing to report. The  
41 department shall be authorized to publish a list of person who are not  
42 in compliance with this subdivision on its website.

43 2. The coursework or training required by this section shall not apply  
44 to those persons already required to undergo coursework or training  
45 regarding the identification and reporting of child abuse and maltreat-  
46 ment pursuant to any other pertinent section of law.

47 § 4. Paragraph (b) of subdivision 4 of section 240.50 of the penal  
48 law, as amended by section 1 of part G of chapter 501 of the laws of  
49 2012, is amended and a new paragraph (c) is added to read as follows:

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

1 to the statewide central register or vulnerable persons' central regis-  
2 ter[-], or

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

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