

# STATE OF NEW YORK

3882--A

2009-2010 Regular Sessions

## IN SENATE

April 2, 2009

Introduced by Sen. MONTGOMERY -- (at request of the Office of Children and Family Services) -- 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 Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the social services law, in relation to the confidentiality of calls to certain hotlines operated by the office of children and family services and in relation to cross references to penal law provisions on filing a false report in the third degree

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

1 Section 1. Subdivision 3 of section 372-g of the social services law,  
2 as added by chapter 156 of the laws of 2000, is amended to read as  
3 follows:

4 3. establishment of toll-free telephone hotlines to provide informa-  
5 tion. **Any records that could identify callers to any such hotline are**  
6 **confidential. Should the office maintain any records concerning calls to**  
7 **any such hotline, information concerning the content of such calls shall**  
8 **also be confidential and shall not be available except in accordance**  
9 **with a court order where the court has made a finding that such informa-**  
10 **tion is necessary for the determination of an issue before the court.**  
11 **Nothing in this subdivision shall be construed to require the office to**  
12 **maintain any record of any call to any such hotline.**

13 § 2. Subparagraphs (i) and (iv) of paragraph (c) of subdivision 3 of  
14 section 390 of the social services law, subparagraph (i) as amended and  
15 subparagraph (iv) as added by chapter 416 of the laws of 2000, are  
16 amended to read as follows:

17 (i) The office of children and family services shall establish a toll-  
18 free statewide telephone number to receive inquiries about child day  
19 care homes, programs and facilities and complaints of violations of the

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

LBD09485-04-9

S. 3882--A

2

1 requirements of this section or regulations promulgated under this  
2 section. **Any records that could identify callers complaining of**  
3 **violations shall be confidential.** The office of children and family

4 services shall develop a system for investigation, which shall include  
5 inspection, of such complaints. The office of children and family  
6 services may provide for such investigations through purchase of  
7 services. The office of children and family services shall develop a  
8 process for publicizing such toll-free telephone number to the public  
9 for making inquiries or complaints about child day care homes, programs  
10 or facilities.

11 (iv) Nothing in this paragraph shall be construed to require or permit  
12 the disclosure either orally or in writing of any information that is  
13 confidential pursuant to law. The office shall not disclose any records  
14 that could identify persons who have made complaints to the toll-free  
15 telephone number except: with such person's written permission; to an  
16 appropriate law enforcement agency where such agency states in writing  
17 that such information is necessary to conduct a criminal investigation  
18 or criminal prosecution; or in accordance with a court order where the  
19 court has made a finding that such information is necessary for the  
20 determination of an issue before the court.

21 § 3. Paragraph (c) of subdivision 2 of section 422 of the social  
22 services law, as added by chapter 717 of the laws of 1986, is amended to  
23 read as follows:

24 (c) Whenever a telephone call to the statewide central register  
25 described in this section is received by the [~~department~~] office of  
26 children and family services, and the [~~department~~] office finds that the  
27 person allegedly responsible for abuse or maltreatment of a child cannot  
28 be a subject of a report as defined in subdivision four of section four  
29 hundred twelve of this chapter, but believes that the alleged acts or  
30 circumstances against a child described in the telephone call may  
31 constitute a crime or an immediate threat to the child's health or safe-  
32 ty, the [~~department~~] office shall convey by the most expedient means  
33 available the information contained in such telephone call to the appro-  
34 priate law enforcement agency, district attorney or other public offi-  
35 cial empowered to provide necessary aid or assistance. Any record of any  
36 such telephone call shall be confidential and shall not be disclosed  
37 except as provided in this paragraph.

38 § 4. Subdivision 2 of section 422 of the social services law is  
39 amended by adding a new paragraph (d) to read as follows:

40 (d) Any record maintained by the statewide central register concerning  
41 a call to the statewide central register that does not constitute a  
42 report of suspected child abuse or maltreatment for a reason other than  
43 that specified in paragraph (c) of this subdivision shall be confiden-  
44 tial and shall be available only to an appropriate law enforcement agen-  
45 cy where such agency states in writing that such information is neces-  
46 sary to conduct a criminal investigation or criminal prosecution, or in  
47 accordance with a court order where the court has made a finding that  
48 such information is necessary for the determination of an issue before  
49 the court. Nothing in this paragraph shall be construed to require the  
50 statewide central register to maintain any record not otherwise required  
51 by law of any call to the statewide central register that does not  
52 constitute a report of suspected child abuse or maltreatment.

53 § 5. Subdivision 4 of section 422 of the social services law, as  
54 amended by chapter 677 of the laws of 1985, paragraph (A) as amended and  
55 subparagraph (v) and the closing paragraph of paragraph (A) as added by  
56 chapter 12 of the laws of 1996, subparagraph (1) of paragraph (A) as  
S. 3882--A

1 amended by chapter 35 of the laws of 2001, clause (ii) of subparagraph  
2 (v) as amended and subparagraph (w) of paragraph (A) as added by chap-

3 ter 136 of the laws of 1999 and subparagraphs (x) and (y) as amended and  
4 subparagraph (z) of paragraph (A) as added by section 1 of part A of  
5 chapter 327 of the laws of 2007, is amended to read as follows:

6 4. (A) Reports made pursuant to this title [~~as well as~~] and any other  
7 information obtained, reports written or photographs taken concerning  
8 such reports, as well as records pertaining to telephone calls received  
9 pursuant to this section, in the possession of the [~~department~~] office  
10 of children and family services, local departments, or the commission on  
11 quality of care [~~for the mentally disabled~~] and advocacy for persons  
12 with disabilities, shall be confidential and shall only be made avail-  
13 able to:

14 (a) a physician who has before him or her a child whom he or she  
15 reasonably suspects may be abused or maltreated;

16 (b) a person authorized to place a child in protective custody when  
17 such person has before him or her a child whom he or she reasonably  
18 suspects may be abused or maltreated and such person requires the infor-  
19 mation in the record to determine whether to place the child in protec-  
20 tive custody;

21 (c) a duly authorized agency having the responsibility for the care or  
22 supervision of a child who is reported to the central register of abuse  
23 and maltreatment;

24 (d) any person who is the subject of the report or other persons named  
25 in the report;

26 (e) a court, upon a finding that the information in the record is  
27 necessary for the determination of an issue before the court;

28 (f) a grand jury, upon a finding that the information in the record is  
29 necessary for the determination of charges before the grand jury;

30 (g) any appropriate state legislative committee responsible for child  
31 protective legislation;

32 (h) any person engaged in a bona fide research purpose provided,  
33 however, that no information identifying the subjects of the report or  
34 other persons named in the report shall be made available to the  
35 researcher unless it is absolutely essential to the research purpose and  
36 the department gives prior approval;

37 (i) a provider agency as defined by subdivision three of section four  
38 hundred twenty-four-a of this [~~chapter~~] title, or a licensing agency as  
39 defined by subdivision four of section four hundred twenty-four-a of  
40 this [~~chapter~~] title, subject to the provisions of such section;

41 (j) the state commission on quality of care for the mentally disabled  
42 in connection with an investigation being conducted by the commission  
43 pursuant to article forty-five of the mental hygiene law;

44 (k) a probation service conducting an investigation pursuant to arti-  
45 cle three or seven or section six hundred fifty-three of the family  
46 court act where there is reason to suspect the child or the child's  
47 sibling may have been abused or maltreated and such child or sibling,  
48 parent, guardian or other person legally responsible for the child is a  
49 person named in an indicated report of child abuse or maltreatment and  
50 that such information is necessary for the making of a determination or  
51 recommendation to the court; or a probation service regarding a person  
52 about whom it is conducting an investigation pursuant to article three  
53 hundred ninety of the criminal procedure law, or a probation service or  
54 the state division of parole regarding a person to whom the service or  
55 division is providing supervision pursuant to article sixty of the penal  
56 law or section two hundred fifty-nine-a of the executive law, where the  
S. 3882--A

1 subject of investigation or supervision has been convicted of a felony

2 under article one hundred twenty, one hundred twenty-five or one hundred  
3 thirty-five of the penal law or any felony or misdemeanor under article  
4 one hundred thirty, two hundred thirty-five, two hundred forty-five, two  
5 hundred sixty or two hundred sixty-three of the penal law, or has been  
6 indicted for any such felony and, as a result, has been convicted of a  
7 crime under the penal law, where the service or division requests the  
8 information upon a certification that such information is necessary to  
9 conduct its investigation, that there is reasonable cause to believe  
10 that the subject of an investigation is the subject of an indicated  
11 report and that there is reasonable cause to believe that such records  
12 are necessary to the investigation by the probation service or the state  
13 division of parole, provided, however, that only indicated reports shall  
14 be furnished pursuant to this subdivision;

15 (l) a district attorney, an assistant district attorney or investi-  
16 gator employed in the office of a district attorney, a sworn officer of  
17 the division of state police, of the regional state park police, of a  
18 city police department, or of a county, town or village police depart-  
19 ment or county sheriff's office or department when such official  
20 requests such information stating that such information is necessary to  
21 conduct a criminal investigation or criminal prosecution of a person,  
22 that there is reasonable cause to believe that such person is the  
23 subject of a report, and that it is reasonable to believe that due to  
24 the nature of the crime under investigation or prosecution, such person  
25 is the subject of a report, and that it is reasonable to believe that  
26 due to that nature of the crime under investigation or prosecution, such  
27 records may be related to the criminal investigation or prosecution;

28 (m) the New York city department of investigation provided however,  
29 that no information identifying the subjects of the report or other  
30 persons named in the report shall be made available to the department of  
31 investigation unless such information is essential to an investigation  
32 within the legal authority of the department of investigation and the  
33 state department of social services gives prior approval;

34 (n) chief executive officers of authorized agencies, directors of day  
35 care centers and directors of facilities operated or supervised by the  
36 department of education, the [~~division for youth~~] office of children and  
37 family services, the office of mental health or the office of mental  
38 retardation and developmental disabilities, in connection with a disci-  
39 plinary investigation, action, or administrative or judicial proceeding  
40 instituted by any of such officers or directors against an employee of  
41 any such agency, center or facility who is the subject of an indicated  
42 report when the incident of abuse or maltreatment contained in the  
43 report occurred in the agency, center, facility or program, and the  
44 purpose of such proceeding is to determine whether the employee should  
45 be retained or discharged; provided, however, a person given access to  
46 information pursuant to this subparagraph [~~(n)~~] shall, notwithstanding  
47 any inconsistent provision of law, be authorized to redisclose such  
48 information only if the purpose of such redisclosure is to initiate or  
49 present evidence in a disciplinary, administrative or judicial proceed-  
50 ing concerning the continued employment or the terms of employment of an  
51 employee of such agency, center or facility who has been named as a  
52 subject of an indicated report and, in addition, a person or agency  
53 given access to information pursuant to this subparagraph [~~(n)~~] shall  
54 also be given information not otherwise provided concerning the subject  
55 of an indicated report where the commission of an act or acts by such  
S. 3882--A 5

1 subject has been determined in proceedings pursuant to article ten of

2 the family court act to constitute abuse or neglect;

3 (o) a provider or coordinator of services to which a child protective  
4 service or social services district has referred a child or a child's  
5 family or to whom the child or the child's family have referred them-  
6 selves at the request of the child protective service or social services  
7 district, where said child is reported to the register when the records,  
8 reports or other information are necessary to enable the provider or  
9 coordinator to establish and implement a plan of service for the child  
10 or the child's family, or to monitor the provision and coordination of  
11 services and the circumstances of the child and the child's family, or  
12 to directly provide services; provided, however, that a provider of  
13 services may include appropriate health care or school district person-  
14 nel, as such terms shall be defined by the department; provided however,  
15 a provider or coordinator of services given access to information  
16 concerning a child pursuant to this subparagraph [~~(e)~~] shall, notwith-  
17 standing any inconsistent provision of law, be authorized to redisclose  
18 such information to other persons or agencies which also provide  
19 services to the child or the child's family only if the consolidated  
20 services plan prepared and approved pursuant to section thirty-four-a of  
21 this chapter describes the agreement that has been or will be reached  
22 between the provider or coordinator of service and the local district.  
23 An agreement entered into pursuant to this subparagraph shall include  
24 the specific agencies and categories of individuals to whom redisclosure  
25 by the provider or coordinator of services is authorized. Persons or  
26 agencies given access to information pursuant to this subparagraph may  
27 exchange such information in order to facilitate the provision or coord-  
28 ination of services to the child or the child's family;

29 (p) a disinterested person making an investigation pursuant to section  
30 one hundred sixteen of the domestic relations law, provided that such  
31 disinterested person shall only make this information available to the  
32 judge before whom the adoption proceeding is pending;

33 (q) a criminal justice agency conducting an investigation of a missing  
34 child where there is reason to suspect such child or such child's  
35 sibling, parent, guardian or other person legally responsible for such  
36 child is a person named in an indicated report of child abuse or  
37 maltreatment and that such information is needed to further such inves-  
38 tigation;

39 (r) in relation to a report involving a child in residential care, the  
40 director or operator of the residential facility or program and, as  
41 appropriate, the local social services commissioner or school district  
42 placing the child, the division for youth, the department of education,  
43 the commission on quality of care for the mentally disabled, the office  
44 of mental health, the office of mental retardation and developmental  
45 disabilities, and any law guardian appointed to represent the child  
46 whose appointment has been continued by a family court judge during the  
47 term of the placement, subject to the limitations contained in subdivi-  
48 sions nine and ten of this section and subdivision five of section four  
49 hundred twenty-four-c of this title;

50 (s) a child protective service of another state when such service  
51 certifies that the records and reports are necessary in order to conduct  
52 a child abuse or maltreatment investigation within its jurisdiction of  
53 the subject of the report and shall be used only for purposes of  
54 conducting such investigation and will not be redisclosed to any other  
55 person or agency;

S. 3882--A

6

1 (t) a law guardian, appointed pursuant to the provisions of section

2 ten hundred sixteen of the family court act, at any time such appoint-  
3 ment is in effect, in relation to any report in which the respondent in  
4 the proceeding in which the law guardian has been appointed is the  
5 subject or another person named in the report, pursuant to sections ten  
6 hundred thirty-nine-a and ten hundred fifty-two-a of the family court  
7 act;

8 (u) a child care resource and referral program subject to the  
9 provisions of subdivision six of section four hundred twenty-four-a of  
10 this title;

11 (v)(i) officers and employees of the state comptroller or of the city  
12 comptroller of the city of New York, or of the county officer designated  
13 by law or charter to perform the auditing function in any county not  
14 wholly contained within a city, for purposes of a duly authorized  
15 performance audit, provided that such comptroller shall have certified  
16 to the keeper of such records that he or she has instituted procedures  
17 developed in consultation with the department to limit access to client-  
18 identifiable information to persons requiring such information for  
19 purposes of the audit and that appropriate controls and prohibitions are  
20 imposed on the dissemination of client-identifiable information  
21 contained in the conduct of the audit. Information pertaining to the  
22 substance or content of any psychological, psychiatric, therapeutic,  
23 clinical or medical reports, evaluations or like materials or informa-  
24 tion pertaining to such child or the child's family shall not be made  
25 available to such officers and employees unless disclosure of such  
26 information is absolutely essential to the specific audit activity and  
27 the department gives prior written approval.

28 (ii) any failure to maintain the confidentiality of client-identifia-  
29 ble information shall subject such comptroller or officer to denial of  
30 any further access to records until such time as the audit agency has  
31 reviewed its procedures concerning controls and prohibitions imposed on  
32 the dissemination of such information and has taken all reasonable and  
33 appropriate steps to eliminate such lapses in maintaining confidentiali-  
34 ty to the satisfaction of the office of children and family services.  
35 The office of children and family services shall establish the grounds  
36 for denial of access to records contained under this section and shall  
37 recommend as necessary a plan of remediation to the audit agency.  
38 Except as provided in this section, nothing in this subparagraph shall  
39 be construed as limiting the powers of such comptroller or officer to  
40 access records which he or she is otherwise authorized to audit or  
41 obtain under any other applicable provision of law. Any person given  
42 access to information pursuant to this subparagraph who releases data or  
43 information to persons or agencies not authorized to receive such infor-  
44 mation shall be guilty of a class A misdemeanor;

45 (w) members of a local or regional fatality review team approved by  
46 the office of children and family services in accordance with section  
47 four hundred twenty-two-b of this title;

48 (x) members of a local or regional multidisciplinary investigative  
49 team as established pursuant to subdivision six of section four hundred  
50 twenty-three of this title;

51 (y) members of a citizen review panel as established pursuant to  
52 section three hundred seventy-one-b of this article; provided, however,  
53 members of a citizen review panel shall not disclose to any person or  
54 government official any identifying information which the panel has been  
55 provided and shall not make public other information unless otherwise  
56 authorized by statute; and

1 (z) an entity with appropriate legal authority in another state to  
2 license, certify or otherwise approve prospective foster and adoptive  
3 parents where disclosure of information regarding the prospective foster  
4 or adoptive parents and other persons over the age of eighteen residing  
5 in the home of such prospective parents is required by paragraph twenty  
6 of subdivision (a) of section six hundred seventy-one of title forty-two  
7 of the United States code.

8 After a child, other than a child in residential care, who is reported  
9 to the central register of abuse or maltreatment reaches the age of  
10 eighteen years, access to a child's record under subparagraphs (a) and  
11 (b) of this paragraph shall be permitted only if a sibling or off-spring  
12 of such child is before such person and is a suspected victim of child  
13 abuse or maltreatment. In addition, a person or official required to  
14 make a report of suspected child abuse or maltreatment pursuant to  
15 section four hundred thirteen of this chapter shall receive, upon  
16 request, the findings of an investigation made pursuant to this title or  
17 section 45.07 of the mental hygiene law. However, no information may be  
18 released unless the person or official's identity is confirmed by the  
19 ~~[department]~~ **office**. If the request for such information is made prior  
20 to the completion of an investigation of a report, the released informa-  
21 tion shall be limited to whether the report is "indicated", "unfounded"  
22 or "under investigation", whichever the case may be. If the request for  
23 such information is made after the completion of an investigation of a  
24 report, the released information shall be limited to whether the report  
25 is "indicated" or "unfounded", whichever the case may be. A person given  
26 access to the names or other information identifying the subjects of the  
27 report, or other persons named in the report, except the subject of the  
28 report or other persons named in the report, shall not divulge or make  
29 public such identifying information unless he or she is a district  
30 attorney or other law enforcement official and the purpose is to initi-  
31 ate court action or the disclosure is necessary in connection with the  
32 investigation or prosecution of the subject of the report for a crime  
33 alleged to have been committed by the subject against another person  
34 named in the report. Nothing in this section shall be construed to  
35 permit any release, disclosure or identification of the names ~~[or]~~,  
36 identifying descriptions, telephone numbers or other contact information  
37 of persons who have reported suspected child abuse or maltreatment to  
38 the statewide central register or the agency, institution, organization,  
39 program or other entity where such persons are employed or the agency,  
40 institution, organization or program with which they are associated  
41 without such persons' written permission except to persons, officials,  
42 and agencies enumerated in subparagraphs (e), (f), (h), (j), (l), (m)  
43 and (v) of this paragraph.

44 To the extent that persons or agencies are given access to information  
45 pursuant to subparagraphs (a), (b), (c), (j), (k), (l), (m)~~[r]~~ and (o)  
46 ~~[and (q)]~~ of this paragraph, such persons or agencies may give and  
47 receive such information to each other in order to facilitate an inves-  
48 tigation conducted by such persons or agencies.

49 (B) Notwithstanding any inconsistent provision of law to the contrary,  
50 a city or county social services commissioner may withhold, in whole or  
51 in part, the release of any information which he or she is authorized to  
52 make available to persons or agencies identified in subparagraphs (a),  
53 (k), (l), (m), (n)~~[r]~~ and (o)~~[r, (p) and (q)]~~ of paragraph (A) of this  
54 subdivision if such commissioner determines that such information is not  
55 related to the purposes for which such information is requested or when  
56 such disclosure will be detrimental to the child named in the report.

1 (C) A city or county social services commissioner who denies access by  
2 persons or agencies identified in subparagraphs (a), (k), (l), (m),  
3 (n)[~~r~~] **and** (o)[~~r~~-(~~p~~) and (~~q~~)] of paragraph (A) of this subdivision to  
4 records, reports or other information or parts thereof maintained by  
5 such commissioner in accordance with this title shall, within ten days  
6 from the date of receipt of the request fully explain in writing to the  
7 person requesting the records, reports or other information the reasons  
8 for the denial.

9 (D) A person or agency identified in subparagraphs (a), (k), (l), (m),  
10 (n)[~~r~~] **and** (o)[~~r~~-(~~p~~) and (~~q~~)] of paragraph (A) of this subdivision who  
11 is denied access to records, reports or other information or parts ther-  
12 eof maintained by a local department pursuant to this title may bring a  
13 proceeding for review of such denial pursuant to article seventy-eight  
14 of the civil practice law and rules.

15 § 6. Subparagraph (v) of paragraph (a), paragraphs (b) and (c) of  
16 subdivision 5 and subdivision 14 of section 422 of the social services  
17 law, subparagraph (v) of paragraph (a) and paragraph (b) of subdivision  
18 5 as amended, and paragraph (c) of subdivision 5 as added by chapter 555  
19 of the laws of 2000 and subdivision 14 as added by chapter 477 of the  
20 laws of 1989, are amended to read as follows:

21 (v) to a district attorney, an assistant district attorney, an inves-  
22 tigator employed in the office of a district attorney, or to a sworn  
23 officer of the division of state police, of a city, county, town or  
24 village police department or of a county sheriff's office when such  
25 official verifies that the report is necessary to conduct an active  
26 investigation or prosecution of a violation of subdivision [~~three~~] **four**  
27 of section [~~240.55~~] **240.50** of the penal law.

28 (b) Persons given access to unfounded reports pursuant to subparagraph  
29 (v) of paragraph (a) of this subdivision shall not redisclose such  
30 reports except as necessary to conduct such appropriate investigation or  
31 prosecution and shall request of the court that any copies of such  
32 reports produced in any court proceeding be redacted to remove the names  
33 of the subjects and other persons named in the reports or that the court  
34 issue an order protecting the names of the subjects and other persons  
35 named in the reports from public disclosure. The local child protective  
36 service or state agency shall not indicate the subsequent report solely  
37 based upon the existence of the prior unfounded report or reports.  
38 Notwithstanding section four hundred fifteen of this title, section one  
39 thousand forty-six of the family court act, or, except as set forth  
40 herein, any other provision of law to the contrary, an unfounded report  
41 shall not be admissible in any judicial or administrative proceeding or  
42 action; provided, however, an unfounded report may be introduced into  
43 evidence: (i) by the subject of the report where such subject is a  
44 respondent in a proceeding under article ten of the family court act or  
45 is a plaintiff or petitioner in a civil action or proceeding alleging  
46 the false reporting of child abuse or maltreatment; or (ii) in a crimi-  
47 nal court for the purpose of prosecuting a violation of subdivision  
48 [~~three~~] **four** of section [~~240.55~~] **240.50** of the penal law. Legally sealed  
49 unfounded reports shall be expunged ten years after the receipt of the  
50 report. Whenever the office of children and family services determines  
51 that there is some credible evidence of abuse or maltreatment as a  
52 result of an investigation of a report conducted pursuant to subdivision  
53 (c) of section 45.07 of the mental hygiene law, the office of children  
54 and family services shall notify the commission on quality of care for  
55 the mentally disabled.

1 (c) Notwithstanding any other provision of law, the office of children  
2 and family services may, in its discretion, grant a request to expunge  
3 an unfounded report where: (i) the source of the report was convicted of  
4 a violation of subdivision [~~three~~] four of section [~~240.55~~] 240.50 of  
5 the penal law in regard to such report; or (ii) the subject of the  
6 report presents clear and convincing evidence that affirmatively refutes  
7 the allegation of abuse or maltreatment; provided however, that the  
8 absence of credible evidence supporting the allegation of abuse or  
9 maltreatment shall not be the sole basis to expunge the report. Nothing  
10 in this paragraph shall require the office of children and family  
11 services to hold an administrative hearing in deciding whether to  
12 expunge a report. Such office shall make its determination upon review-  
13 ing the written evidence submitted by the subject of the report and any  
14 records or information obtained from the state or local agency which  
15 investigated the allegations of abuse or maltreatment.

16 14. The department shall refer suspected cases of falsely reporting  
17 child abuse and maltreatment in violation of subdivision [~~three~~] four of  
18 section [~~240.55~~] 240.50 of the penal law to the appropriate law enforce-  
19 ment agency or district attorney.

20 § 7. Subdivision 8 of section 424 of the social services law, as added  
21 by chapter 477 of the laws of 1989, is amended to read as follows:

22 8. refer suspected cases of falsely reporting child abuse and  
23 maltreatment in violation of subdivision [~~three~~] four of section  
24 [~~240.55~~] 240.50 of the penal law to the appropriate law enforcement  
25 agency or district attorney;

26 § 8. Subdivision 12 of section 422 of the social services law, as  
27 added by chapter 1039 of the laws of 1973 and renumbered by chapter 676  
28 of the laws of 1985, is amended to read as follows:

29 12. (a) Any person who willfully discloses, permits [~~and any person~~  
30 ~~who~~] the disclosure of, or encourages the release of any data and infor-  
31 mation contained in the central register to persons or agencies not  
32 permitted by this title shall be guilty of a class A misdemeanor.

33 (b) Any person who willfully and wrongfully accesses or discloses  
34 information or records that are confidential under this section shall be  
35 guilty of a class A misdemeanor.

36 § 9. This act shall take effect immediately; except that section eight  
37 of this act shall take effect on the first of November next succeeding  
38 the date on which it shall have become a law.

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**NEW YORK STATE SENATE**  
**INTRODUCER'S MEMORANDUM IN SUPPORT**  
**submitted in accordance with Senate Rule VI. Sec 1**

**BILL NUMBER:** S3882A

**SPONSOR:** MONTGOMERY

**TITLE OF BILL:** An act to amend the social services law, in relation to the confidentiality of calls to certain hotlines operated by the office of children and family services and in relation to cross references to penal law provisions on filing a false report in the third degree

**PURPOSE OF THE BILL:** This bill would enhance statutory provisions that protect the identity of callers to the Statewide Central Register of Child Abuse and Maltreatment (SCR) and other hotlines operated by the Office of Children and Family Services (OCFS) and strengthen the protection of confidential information maintained by OCFS.

**SUMMARY OF PROVISIONS:** Section 1 of the bill would amend Social Services Law (SSL) § 372-g(3) to protect from disclosure the identity of a caller to the Abandoned Infant Protection Act (AIPA) toll-free hotline. AIPA hotline records would be confidential and disclosable only by court order. However, the amendment would make clear that OCFS is not required to maintain any record pertaining to a call to the AIPA hotline.

Section 2 of the bill would amend SSL § 390(3)(c) to protect from disclosure the identity of a person making a complaint to the OCFS toll-free telephone line for inquiries and complaints about child day care programs. Any records that could identify a complainant would be confidential and would not be disclosed without that person's written permission, except where a law enforcement agency states that the information is necessary for a criminal investigation or prosecution, or where disclosure is ordered by a court upon a finding that the information is necessary to determine an issue before the court.

Section 3 of the bill would amend SSL § 422(2)(c) to protect from disclosure any record pertaining to a telephone call to the SCR that does not constitute a report of suspected child abuse or maltreatment because the person responsible cannot legally be the subject of a report. The amendment would clarify that these records are confidential and are not disclosable except to a law enforcement agency where the circumstances described in the call may constitute a crime or an immediate threat to the health or safety a child.

Section 4 of the bill would add a new paragraph (d) to SSL § 422(2) to protect from disclosure any record pertaining to a telephone call to the SCR that does not constitute a report of suspected child abuse or maltreatment for a reason other than specified in paragraph (c). The amendment would clarify that these records are confidential and are not disclosable except to a law enforcement agency where the agency states that the information is necessary for a criminal investigation or prosecution, or where disclosure is ordered by a court upon a finding that the information is necessary to determine an issue before the court. New paragraph (d) also would make clear that the SCR is not required to maintain any record pertaining to a call that is not accepted as a report.

Section 5 of the bill would amend SSL § 422(4) to make certain technical clarifications and protect from disclosure telephone records identifying the numbers from which calls are made to the SCR. The amendments would make it clear that a caller's telephone number and other contact information are confidential.

Section 6 of the bill would amend SSL § 422(12) to provide that any person who willfully discloses, permits the disclosure of, or encourages the release of any data and information contained in the SCR in

violation of law is a class A misdemeanor.

Section 7 of the bill provides for an immediate effective date, except that section 6 of the bill would take effect on the first November first after the bill becomes law.

**EXISTING LAW:**

SSL § 372-g establishes the AIPA and requires that OCFS implement a public information program to inform the public about the provisions of the AIPA, through the availability of educational materials in various media, public service announcements, and a toll-free hotline.

SSL § 390(3) authorizes OCFS to make announced and unannounced inspections of licensed and registered child day care providers and to investigate reports of persons who may be providing child day care without the appropriate license or registration. The monitoring authority in SSL § 390(3) includes a requirement that OCFS establish a toll-free statewide telephone number to receive inquiries about child day care and complaints regarding statutory and regulatory violations.

SSL § 422(4) makes SCR records confidential and governs their disclosure. SSL § 422(12) provides that a person who willfully permits and a person who encourages the release of confidential SCR data to an unauthorized person is guilty of a class A misdemeanor.

SSL § 422(12) provides that it is a Class A misdemeanor to permit or encourage the release of any data or information in the SCR.

**PRIOR LEGISLATIVE HISTORY:** This is a new bill.

**STATEMENT IN SUPPORT:** OCFS is concerned about maintaining the confidentiality of sensitive information received through the SCR and other hotlines operated by OCFS. This bill would strengthen existing confidentiality provisions governing the SCR to better protect the identity of callers and the confidentiality of SCR records. The bill would also address the need to protect the identity of callers to the AIPA hotline and complainants who call the OCFS child day care toll-free telephone line.

SSL § 422 sets forth the responsibilities of the SCR to receive reports of suspected child abuse and maltreatment, refer accepted reports for investigation and provide due process for subjects who wish to challenge an "indicated" report. SSL § 422(4) makes SCR records and the identity of a person who reports suspected child abuse or maltreatment to the SCR confidential. This bill would amend SSL § 422 to clarify that telephone records that identify the numbers from which calls to the SCR were made are also confidential. In addition, information concerning a call to the SCR, even if the call is not accepted as a report, and any records generated by such call, are also confidential. This bill would also amend SSL § 422(12) to provide that a person who willfully and wrongfully accesses or discloses confidential information from the SCR is guilty of a class A misdemeanor. The current statute only provides for the crime of wrongfully releasing confidential SCR information, not the

crime of wrongfully accessing such information. This bill also safeguards the confidentiality of the identity of callers to the AIPA hotline and to the OCFS child day care toll-free telephone line.

The purpose of the AIPA is to encourage a person who is considering abandoning his or her newborn baby to instead leave the baby with an appropriate person, or in a suitable location and promptly notify an appropriate person. Where a baby is safely abandoned, the Penal Law provides an affirmative defense to prosecution for abandonment. Guaranteeing the confidentiality of the identity of callers would encourage persons to call the AIPA hotline without fear of retribution or adverse consequences. Although OCFS does not maintain any records pertaining to calls to the AIPA hotline, this bill clarifies that a court order would be necessary to compel any disclosure. Similarly, this bill makes clear that the identity of complainants calling the OCFS toll-free number to report child day care violations is confidential. This should encourage reporting and better protect the safety of persons calling the day care complaint line. Reports to the toll-free telephone line are an important means for OCFS to find out that someone is operating an illegal unlicensed or unregistered child day care program. Parents and other individuals also call the hotline to express their concerns about possible regulatory or statutory violations in licensed or registered child day care programs. Sometimes, the caller does not want the child day care provider to know who made the complaint. The bill makes these toll-free telephone line records confidential and limits disclosure to where the complainant consents in writing, disclosure is required by court order, or where law enforcement states that the information is necessary for a criminal investigation or prosecution.

**BUDGET IMPLICATIONS:** This bill has no fiscal implications.

**EFFECTIVE DATE:** This bill would take effect immediately, except section 6, which would take effect on the first November first after it becomes law.