

Child Abuse Offenses State Statutes 2006

Child Abuse

Financial Assistance

Compensation – [Executive Law §627\(3\)](#)

Creates a rebuttable presumption that where a child is missing for seven days, the child is considered a victim of a crime enabling family members to seek assistance from the Crime Victims Compensation Board (CVB).

Access to Justice

Abandonment of a Child & Endangering the Welfare of a Child Defense – Abandoned Infant Protection Act – [Penal Law §§260.03, 260.15](#)

Creates an affirmative defense against abandonment of a child and/or endangering the welfare of a child (§260.10) for a parent, guardian, or other person legally responsible for the care or custody of a child who intended to abandon the child not more than five days old, as long as the legally responsible person, intended that the child be safe from physical injury and cared for in an appropriate manner, left the child with an appropriate person or in a suitable location and promptly notified an appropriate person of the child's location.

Reckless Assault – Shaken Baby Syndrome – "Cynthia's Law" – [Penal Law §120.02](#); [Public Health Law §2745](#) *

Creates a class D felony for a person who seriously injures the brain of a child less than five years old by shaking, slamming or throwing the child. The Department of Health is responsible for developing and creating public educational and informational materials focusing on the harmful effects that may result from shaking infants and young children.

** Effective November 1, 2006

(* See note below.)

Guidelines for Fair Treatment of Child Victims as Witnesses – [Executive Law §642-a](#)

Sets forth special provisions for child victim witnesses to minimize the stress and trauma on the child. For example, it limits the number and length of court engagements and allows for the presence of a

supportive person such as a social worker, rape crisis counselor or psychologist during a child's (12 years of age or less) testimony. In addition, a child witness should be permitted in the discretion of the court to use anatomically correct dolls and drawings.

Testifying by Means of Closed-Circuit Television – [Criminal Procedure Law §§65.00, 65.10, 65.20, 65.30](#)

Authorizes the court to take the testimony of a child witness, 14 years of age or less, by means of live, two-way closed circuit television upon a court finding that the child is vulnerable. (*Sunsets September 1, 2007*)

Videotaped Testimony of Child Witness in a Grand Jury Proceeding – [Criminal Procedure Law §§190.30\(4\), 190.32\(1\)\(a-b\), \(2\)](#)

Allows for the testimony or examination by a district attorney of child victim, 12 years of age or less, to be videotaped and entered into evidence during grand jury proceedings. The prosecutor may ask the court for similar treatment if a witness over 12 years of age would suffer severe emotional or mental harm.

Providing Emotional Support to a Child Witness in a Grand Jury Proceeding – [Criminal Procedure Law §190.25\(3\)\(h\), 190.32\(5\)\(c\)](#)

Allows for the presence of a social worker, rape crisis counselor, psychologist or other professional providing emotional support to a child witness, 12 years of age or younger, during a grand jury proceeding.

Testifying by Means of an Anatomically Correct Doll – [Criminal Procedure Law §60.44](#)

Provides that the court may allow a child, 16 years of age or younger, to use an anatomically correct doll in testifying at certain criminal proceedings.

DNA State Databank – [Executive Law §§995\(7\), 995-c\(3\)](#)

Requires a person convicted of sex offenses including the promotion or possession of a child in an obscene sexual performance and kidnapping, among other crimes (misdemeanors and felonies), to submit a sample of their DNA to the State databank.

Uniform Child Custody Jurisdiction and Enforcement Act – [Domestic Relations Law §75 et seq.](#)

Provides that a court will not assess fees or costs against a parent where it is convinced that she or he fled from a custodial parent with a child to avoid domestic violence, abuse or mistreatment, unless clearly appropriate. This only applies in cases where the court declines jurisdiction and does not apply to the final custody determination. Additionally, the court can enforce an order for the return of the child. Where the parent has fled to another country or is returning to New York from another country with children, the Hague Convention on the Civil Aspects of Child Abduction (*International Child Abduction*

Remedies Act (1988), Public Law 100-300 may apply.

Medical and Health Services

Access to Clinical Mental Health Records – [Mental Hygiene Law §33.13\(c\)\(9\)\(ii\)](#)

Allows for persons and agencies needing information to locate missing persons who may be hospitalized to obtain limited clinical information in an effort to identify such persons with the consent of the Commissioner. Any disclosure will be limited to the information necessary for the reason of disclosure. Information disclosed must be kept confidential.

Access to Dental Records – [Executive Law §838\(5\)](#)

Allows for a family member or next of kin to authorize the release of the missing person's dental records, including x-rays, to the coroner's office as soon as the person has been missing for 30 days. The dental records will be compared with those received from the county medical examiner or coroner. In the absence of a next of kin, police may execute a written declaration to the same effect.

Recovering and Preventing Missing Children

Missing and Exploited Children Clearinghouse – [Executive Law §837-f](#)

Creates a missing and exploited children clearinghouse within the Division of Criminal Justice Services (DCJS) to coordinate efforts to protect children from abduction and to locate and recover missing children in NYS. Its activities include a database of current investigations of missing children, case management, a toll-free, twenty-four hour hotline for the public to provide information concerning missing children and an information outreach campaign. Given parental consent, a bulletin on missing children may be disseminated to every public and private school in the State. The clearinghouse also develops guidelines on the transmission and publication of biographical information and pictures of missing children to State agencies, departments and the Legislature to use in printing.

Statewide Central Register for Missing Children – [Executive Law §837-e](#)

Requires the names of missing children along with identifying information such as photographs, blood type, dental information and fingerprints to be filed in a statewide register within DCJS which is compatible with the national crime database. If DCJS has reason to believe that a missing child is currently enrolled in and attending a New York State school, it must notify the school and such school must cooperate.

Missing and Exploited Children Clearinghouse Fund – [State Finance Law §92-w](#); [Tax Law §628](#)

Enables a taxpayer to designate a portion of his or her tax refund as a gift to the clearinghouse fund to support prevention education, investigative endeavors and outreach.

Responding to Missing Children – Amber Alert – [Executive Law §837-f \(14\)](#)

Creates a prompt notification and communications response plan by the State police and other agencies for use by local law enforcement and others. Information on a missing child may be immediately provided orally, electronically or by facsimile transmission to radio stations and other media outlets for broadcast and forwarded electronically to Internet and mobile service providers for further release. No dispatch of information concerning a missing child will take place if the police determine that the disclosure may jeopardize the investigation or safety of the child.

Internet Posting – [Executive Law §843\(3\)](#)

Allows the photo and identifying information of missing children who resided in New York at the time of their disappearance or whose parent resides in the State to be posted on the homepage of DCJS.

Closed Cases – [Executive Law §837-m](#)

Requires police to report closed cases of missing children to the clearinghouse within DCJS at least semi-annually, providing information on children arrested, found deceased, or victimized, as well as information on the abductor or killer.

Social Services and School Responsibilities

Central Register of Child Abuse and Maltreatment – [Social Services Law §422](#)

Establishes a statewide central register of child abuse and maltreatment with a toll-free, twenty-four hour hotline for anyone to call, whether mandated or not, to provide information on child abuse and maltreatment. A report alleging abuse is immediately transmitted orally or electronically to local child protective services for an investigation. Additionally, the register must identify any prior reports on the subject. The register maintains all the information in the report including a record of the plan for rehabilitative services, the final disposition of the case with services offered and accepted and the identifying information, dates and circumstances of any person requesting or receiving information from the register. Reports as well as any photographs are deemed confidential; they are available to a limited number of authorized persons. The statute provides for the disposition of unfounded reports and the expungement of reports 10 years after the eighteenth birthday of the youngest child named in the report.

Mandatory Reporters of Suspected Child Abuse, Neglect or Maltreatment – [Social Services Law §§413, 420](#)

Requires certain persons and officials in a professional or official capacity such as teachers, social service workers, school officials, law enforcement officials, registered nurses, physicians, medical examiners and day care center workers to report suspected child abuse, maltreatment or neglect to the statewide central register of child abuse and maltreatment. Willful failure on the part of any person required to report a case of suspected abuse is a class A misdemeanor, and may be the basis for a civil action for damages.

Mandated Reporter Immunity – [Social Services Law §419](#)

Protects mandated reporters from any civil or criminal liability when they make a report in good faith and within the scope of their employment and official duties.

Reporting Suspected Child Abuse, Neglect or Maltreatment – [Social Services Law §414](#)

Authorizes any person, including those who are not mandated reporters of child abuse or maltreatment, with reasonable cause to suspect that a child is being abused or maltreated to make a report to the central register.

Records, Reports and Duties of Government and Social Service Agencies – [Social Services Law §372\(7\)](#)

Mandates that any agency, society, institution or organization caring for children or any primary or secondary school that enrolls any child who may appear to be a missing person to contact the statewide central register for missing children within DCJS immediately.

Fatality Review Teams – [Social Services Law §422-b](#)

Authorizes the State Office of Children and Family Services to approve the creation of a fatality review team at a local and regional level to investigate the death of a child whose care and custody or guardianship had been transferred to an authorized agency or in cases where a report has been made to the State central register involving the death of a child.

Prevention Education – [Education Law §803-a](#)

Requires all pupils from kindergarten to eighth grade in public schools to receive instruction on preventing abduction.

School Absences – Attendance Policy – [Education Law §3213\(2\)\(c\), \(d\)](#)

Mandates elementary schools to alert parents of unreported absences, if such notification is desired. This provision allows families to begin their search for a missing child as soon as they realize that she or he did not arrive at school as expected.

School Records and Reporting – [Education Law §§3212\(2\)\(a\), 3222\(4\)](#).

Requires school authorities to inquire with the central register within DCJS when a child is enrolled by a parent or guardian without evidence of age and other required information. A school must flag the record of any child reported missing by the register and report to local law enforcement and DCJS any request concerning the flagged record or information as to the whereabouts of a missing child.

Access to Campus Crime Statistics and Investigations of Violent Felonies – Education Law §§6433, 6434 *

Requires each college receiving State aid to provide in their campus catalogs and handbooks how to access campus crime statistics that are filed with the U.S. Department of Education. Colleges must also include the campus crime statistics website for the U.S. Department of Education and the phone number of a campus contact who can provide crime statistics. A hard copy of a college's crime statistics report must be mailed within 10 days of a request. Institutions of higher learning are also required to have plans to investigate reports of violent felonies and missing students on campus and to cooperate with local law enforcement.

(* See note below.)

Birth Records – [Public Health Law §§4100\(2\)\(h\)\(i\), 4170\(h\), 4174\(8\)](#).

Requires the New York State and New York City Departments of Health, upon notification by DCJS, to flag the birth certificate record of a person born in the State that is considered missing. Requests concerning flagged birth records must immediately be reported to local law enforcement and DCJS. For in-person requests of flagged birth certificates, the person seeking the record is required to provide their name, address, phone number, Social Security number (SSN) and driver's license or other acceptable form of identification. Official personnel must also make note of the physical description of the person making the request.

*** Note: As of the date of this document's publication, Find Law has not updated its online posting of NYS law to reflect this new reference. Consult a hardcopy of the law.**

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