



National Association of Social Workers
Robin Russel, J.D, PhD President

Memorandum **in** Opposition

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Bill S477--- Senator Saland

The New York State Chapter of the National Association of Social Workers Opposes S. 477, This legislation has been introduced to address the public's concern over the failure of *some* clergy to report child abuse.

While NASW ■ NYS supports much of this legislation, we are concerned that one section of the bill has the potential for creating serious barriers to minors seeking reproductive health care and other counseling, education or social services,

The legislation adds “members of the clergy” to the list of professionals in New York State who are required to report suspected child abuse or maltreatment to the State Central Register for Child Abuse and Maltreatment. The bill also creates a new category of "child abuse" and requires that mandatory reporters, including members of the clergy, notify the police when they suspect that any person in a position of authority with a minor has committed. an offense against the minor,

This bill also includes additional significant changes to the current child abuse reporting requirements that would undermine the confidentiality protections provided to young people regarding their sexual activity.

This legislation would require mandatory reporters to tell the police whenever the mandatory reporter believed that someone 19 or older had committed one of a number of designated offenses against a minor less than fourteen. The proposed legislation would define child abuse to include, among other crimes, all statutory sex offenses in Article 130 of the Penal Law. This provision is sweeping in scope, encompassing all sexual conduct even if consensual.

This legislation will discourage young people from obtaining needed health care out of fear that conversations with doctors and nurses will no longer be confidential. The bill itself gives recognition to the importance of confidentiality by preserving the privileged nature of the confessional and other Information offered in confidence to clergy - such communications are exempt from the mandatory reporting requirement. However, the bill fails to extend the same protections to other relationships usually privileged_ those between a patient and his or her doctor, nurse, or mental health professional. Upon learning that their conversations with health care providers may no longer be confidential, young people will be far less likely to seek or obtain necessary health care,

Advocates for adolescents and families recognize that police should not be brought into every situation involving sexual relations among young people. This section of the bill would not allow professional counselors, physicians, nurses, teachers and other qualified professionals to establish a relationship of trust with the minor and to use their judgment and training in how to appropriately involve family members in situations where a minor may be in an abusive, destructive or inappropriate relationship, It is important that qualified professionals decide when and if law enforcement needs to be involved.

NASW urges the members of the Senate not to pass S.477.

NYSCASA - New York State Coalition Against Sexual Assault

Memorandum of Opposition

The New York State Coalition *Against* Sexual Assault (NYSCASA) OPPOSES S.00477, an ACT to amend the social services law, in relation to the reporting of child abuse and urges the Senate NOT to pass this bill.

This bill was created in response to the clergy abuse allegations of recent years and the lack of procedures within religious institutions to respond internally and to the authorities charged with protecting children. The solution offered includes adding members of the clergy to the list of mandated reporters, filing reports directly with law enforcement rather than with the child abuse registry, creates a new requirement for filing reports against adults who are not family members or regular child care providers, calls for sanctions against persons 21 and over that are in positions of authority and requires a review of records for the past twenty years.

While the actions seem to address the need for clergy to respond more proactively to incidents of child abuse, get information more quickly to law enforcement for investigation and allow a wider range of adults to be subjects of reports, the provisions in actuality create more harm than help. The New York State Coalition Against Sexual Assault (NYSCASA) cannot support passage of a bill with

such dire consequences.

NYSCASA opposes the double standard regarding privilege. Adding clergy to the current list of mandated reporters would not be a problem. Some clergy are already trained, licensed educators and counselors, and have taken the required training on the definitions and how to recognize the various forms of abuse, maltreatment and neglect as well as the mechanism for reporting and resources for treatment. However, while this bill calls for the inclusion of clergy as mandated reporters it denies professional privileges to other reporters. If retaining the special nature of the confessional or spiritual counseling by clergy is seen as a need, so should the conversations between a youth and a health care professional, rape crisis counselor, mental health provider, school counselor, etc.

While we recognize the limitation of the current registry to include only those cases involving parents, guardians and regular care providers, we are not convinced that reporting directly to law enforcement is the proper mechanism for handling all allegations of child abuse. The current system calls for Child Protective Services to investigate and devise safety plans that could include removal of the child and prosecution of the offender in family and/or criminal courts. By reporting directly to law enforcement, this bill would bypass the State Registry and local Child Protective Services and place the burden of not only investigation but service provision on law enforcement. Complex family matters that could be part of an allegation of child abuse require specialized training and time that law enforcement officers generally do not have. It is unclear what if any role CPS would play other than in cases where "the relationship of the victim to the alleged perpetrator is in doubt."

The provision that creates a new crime of "child abuse" would, in fact, deprive children and youth of confidentiality and access to much needed services. By requiring mandated reporters to make a report to law enforcement when they suspect or receive information, regarding any sexual conduct between a minor under fifteen and someone over nineteen, this provision would intrude upon healthy relationships of trust between children and teachers, counselors, health care workers, and restrict access to information and services regarding sexual and mental health. Youth engaged in sexual behavior will become less informed of the consequences of their actions, and possibly increase risk factors in their and their partner's lives that are more harmful and longer lasting than the sexual conduct. Studies have clearly established that healthier habits, lower rates of sexually transmitted infections including HIV, and fewer pregnancies result from teens making informed decisions. Even though the bill distinguishes between activities *of* a nineteen year old from those of a 21 year old in a position *of* authority, minors would not. NYSCASA would welcome a bill that prohibits sexual conduct *by* those in positions *of* authority against victims *of* any age such as in third degree sexual abuse 130.25, or third degree criminal sexual conduct 130.40 that addresses actions *by* health care or mental health professionals.

And finally, the provision calling for a twenty-year review to locate reports of abuse by clergy and submit them to the District Attorney does not specify what will be done with such reports after the statutes *of* limitation have expired. There is no provision for notifying the victim or their family so that services can be sought. NYSCASA would support a policy from any institution that interacts with children to review allegations and its internal *system of* response along with provision *of* information on local resources and how to access funding to cover needed services.

While the bill sponsor seeks to close serious loopholes that were noted in cases involving sexual abuse *by* clergy, the provisions would create a distinction between privileges *of* various mandated reporters, discourage youth from seeking information and services, bypass the state registry, and do not *fully* address what would take place after a twenty-year review is completed. Therefore,

NYSCASA urges the members of the Senate *NOT* to pass S.00477.

NYSCADV

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Memorandum of OPPOSITION

The New York State Coalition Against Domestic Violence *OPPOSES S.477 - Sa/and*

The New York State Coalition Against Domestic Violence (NYSCADV) **OPPOSES** S.477, which would amend the social services law in relation to the reporting of child abuse, and urges the Senate **NOT** to pass this bill.

Allegations of clergy abuse need to be taken seriously by religious institutions, and the lack of procedures within religious institutions regarding reports to the law enforcement need to be addressed. However, while this bill attempts to do that by requiring clergy to respond more proactively to incidents of child abuse the provisions actually creates more harm than help. NYSCADV is opposed to the provision that creates a new crime of "child abuse". This provision would deprive children and youth of confidentiality and access to much needed services. By requiring mandated reporters to make a report to law enforcement when they suspect or receive information regarding any sexual conduct between a minor under fourteen and someone over nineteen, the state imposes a breach in the trust between children and those in whom they might confide - teachers, counselors, and health care workers - that is crucial to providing youth with information and access to services regarding sexual and mental health. Youth engaged in consensual sexual behavior will become less informed of the consequences of their actions, and possibly increase risk factors in their and their partner's lives that are more harmful and longer lasting than the sexual conduct. Studies have long established that when teens make informed decisions, healthier habits, lower rates of sexually transmitted infections including HIV, and fewer pregnancies are the result.

Additionally, the proposed definition of child abuse includes non-sexual conduct,

creating a context for mandatory reporting of domestic violence for a relationship between a 21-year-old and a 16 year-old. While the conduct is undeniably objectionable, New York does not have mandatory reporting of domestic violence and should not create a back door for it through this legislation.

NYSCADV urges the members of the Senate NOT to pass S.477

NYCLU

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"I NEW YORK CIVIL LIBERTIES UNION

2005 LEGISLATIVE MEMORANDUM #7

Subject:

S.477/ Saland et al.

(AN ACT to amend the social services law, in relation to the reporting of child abuse)

Position: OPPOSED

This bill was initially introduced in response to widespread reports of child abuse committed by members of the clergy. Existing law requires the reporting only of suspected abuse against a minor by a family member. The current law does not address allegations of child abuse by clergy persons or the failure of religious institutions to respond to such allegations.

The proposed legislation includes two provisions that are intended to address these gaps in the law. First, the bill adds clergy to the list of "mandatory reporters" -those required to report suspected child abuse by family members to child welfare authorities. This list of mandatory reporters already includes health care providers, school staff, social services workers and others who provide services to youth. Second, the bill creates a new category of "child abuse" and requires that mandatory reporters notify the police when they suspect that any person in a position of authority with a minor - including a clergy person - has committed an offense against the minor. Willful failure to report a suspicion of abuse is punishable as a misdemeanor crime.

These provisions are designed to ensure that abuse committed by persons in positions of trust with young people, including clergy persons, is reported to police. The NYCLU does not oppose this legislative

intent or the provisions in S.477 that require a report of suspected offenses against young persons by clergy members and authority figures.

However, S.477 proposes an additional amendment to the Social Services Law that undermines the original intent of the legislation and, as a practical matter, will actually put children at risk of harm. (See proposed Title 6-B, Section 429-a(1)(a)(i).) This provision would require that mandatory reporters make a report to the police each and every time they suspect that someone nineteen or older has committed one of a number of designated offenses against a minor less than fourteen. The proposed legislation would define child abuse to include, among other crimes, all statutory sex offenses in Article 130 of the Penal Law. This provision is sweeping in scope, encompassing all sexual conduct - even if consensual. The proposed law

would compel a police report not only where sexual intercourse may be involved, but even where young people are suspected of engaging in sexual touching while fully clothed. 1

This provision, although well intentioned, will have significant harmful consequences. If enacted into law, this legislation will encourage law-enforcement officials to intrude upon and undermine relationships of trust between young people and the professionals young people turn to regarding matters of health, sexuality and interpersonal relationships: teachers, counselors, physicians, nurses. This will have the effect of discouraging young people from confiding in adults about matters of sexuality. Why? Because kids will quickly learn that the information they entrust to a teacher or counselor may well be turned over to the police. Teachers and other service providers will, in effect, be deputized as quasi law-enforcement agents. Under this scheme an issue that calls for instruction, counseling or sexual education becomes, in the eyes of young people, a criminal matter.

The bill will also discourage young people from obtaining needed health care out of a fear that conversations with doctors and nurses will no longer be confidential. The bill itself gives recognition to the importance of confidentiality by preserving the privileged nature of confessions and other information offered in confidence to clergy - such communications are exempt from the mandatory reporting requirement. However, the bill fails to extend the same protections to other relationships usually privileged: that between a patient and his or her doctor, nurse or mental health professional. Upon learning that their conversations with their health care providers may no longer be confidential, young people will be far less likely to seek or obtain necessary health care.2

Most teenagers will pay little mind to the distinctions made in the bill regarding age.

Once a teen learns that a trusted counselor, nurse or clinic is obliged to report "underage" sexual activity, trust is destroyed. Teens will assume that it is no longer safe to turn to health care providers and counselors for information, advice and treatment. The risk of a police report will discourage young people from confiding in adults about sexual issues when doing so could bring the police to their door and send their girlfriend or boyfriend to jail.

In fact, advocates for adolescents and families recognize that police should not be brought into every situation involving sexual relations among young people - situations that may entail great family conflict. It is well documented that law-enforcement officials are often grossly unprepared in responding to family disputes. Nonetheless, under this bill the professionals mandated to report, as well as the child's parents and the child who is the subject of a report, are afforded no discretion whatsoever in determining whether police involvement is advisable given the specific circumstances of a situation.

Even if one were to accept that it is appropriate to require a police report regarding any suspected sexual contact between someone who is nineteen and someone who is less than fourteen, this mandate is not nearly as straightforward as the bill would seem to suggest. After all, the age of a young person may often appear to be ambiguous if not indeterminate. But teachers and other authority figures will be compelled to make such determinations. And faced with a criminal misdemeanor charge for failing to notify the police of suspected "child abuse," teachers and others to whom a student turns for guidance will be under enormous pressure to act on assumptions about age and over-report.

The sponsor of S477 has advanced the legislature's deliberation upon the issue of clergy abuse. The bill provides clarity regarding the circumstances that should compel a report of suspected child abuse involving a person twenty-one or older in a position of authority over a person less than seventeen. But the section that would require the reporting of teen sexual activity constitutes a serious flaw in the bill. It would be a grave error to pass this legislation, however well intentioned, if it includes this provision.

The NYCLU *opposes* passage of this bill.

¹ NY Penal Code § 130.55 (McKinney 2004) (sexual abuse in the third degree).

² Studies repeatedly indicate that adolescents who are assured of confidentiality are far more likely to seek and receive "sensitive" health care than those who are not. See: T.L. Cheung et al., Confidentiality in Health Care: A Survey of Knowledge, Perceptions, and Attitudes Among High School Students, 269 IAMA 1404 (1993); Diane M. Reddy et al., Effect of Mandatory Parental Notification of Adolescent Girls' Use of Sexual Health Care Services, 288 IAMA 710 (2002).

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MEMORANDUM IN OPPOSITION 2005

Re:

S. 477 (Saland, et.al.)

AN ACT to amend the social services law, in relation to the reporting of child abuse'

This legislation has been introduced to address the public's concerns over the failure of some clergy to report child sexual abuse. While Family Planning Advocates supports much of the legislation as currently written, one section of the bill has the potential for creating serious barriers to minors seeking reproductive health care and other counseling, education or social services.

FPA agrees with the addition of "members of the clergy" to the list of professionals in New York

State required to report suspected child abuse or maltreatment to the State Central Register for Child Abuse and Maltreatment.

Family Planning Advocates does not oppose the legislative intent or the provisions in S.477 that require a report of suspected offenses against young persons by clergy members and authority figures.

The bill also creates a new category of "child abuse" and requires that mandatory reporters notify the police when they suspect that any person in a position of authority with a minor-including a clergy person--has committed an offense against the minor. Willful failure to report a suspicion of abuse is punishable as a misdemeanor crime.

These provisions are designed to ensure that abuse committed by persons in positions of trust with young people, including clergy persons, is reported to police. Unfortunately this bill includes additional significant changes to current child abuse reporting requirements that would undermine the confidentiality protections provided to young people regarding their sexual activity.

But this proposed legislation would define child abuse beyond crimes committed by persons in positions of authority to include, among others, all statutory sex offenses in Article 130 of the Penal Law, even those that are not considered crimes by the general population. This provision could encompass a wide range of sexual activity between teens, including consensual contact.

The bill will discourage young people from obtaining needed health care out of fear that conversations with doctors and nurses will no longer be confidential. The bill itself gives recognition to the importance of confidentiality by preserving the privileged nature of confessions and other information offered in confidence to clergy-such communications are exempt from the mandatory reporting requirement. However, the bill fails to extend the same protections to other relationships usually privileged: those between a patient and his or her doctor, nurse or mental health professional. Upon learning that their conversations with health care providers may no longer be confidential, young people will be far less likely to seek or obtain necessary health care.

Most teenagers will not understand the distinctions made in the bill regarding age. Once a teen learns that a trusted counselor, nurse or clinic is obliged to report "underage" sexual activity, trust is destroyed. Teens will assume that it is no longer safe to turn to health care providers and counselors for information, advice and treatment. The risk of a police report will discourage young people from confiding in adults about sexual issues when doing so could bring the police to their door-and send their girl friend or boy friend to jail.

Without access to safe, confidential healthland counseling services. provided by caring, mature professionals, many teens will turn to friends or strangers on the street or the Internet. Misinformation and fear could keep a teen from getting HIV testing and counseling putting them at further. risk for contracting and passing on HIV / AIDS. Teens worried about pregnancy may never get medical care. Consider a teen who is diabetic and pregnant who might not go to her doctor because she has "heard from friends" that her boyfriend could be arrested. She puts her life and health in great jeopardy.

Advocates for adolescents and families recognize that police should not be brought into every situation involving sexual relations among young people. This section of the bill would hamper the ability of professional counselors, physicians, nurses, teachers, and other qualified professionals to establish a relationship of trust with the minor.

We urge you to appropriately limit any legislation to respect these privacy and public health concerns.

**Family Planning Advocates of NYS supports Assembly bill A. 912 sponsored
By Assemblymember McEneny.**

Planned Parenthood

Of New York City, Inc.

MEMORANDUM IN OPPOSITION

Planned Parenthood of New York City Opposes S.477

BACKGROUND

In light of extremely disturbing events involving the abuse of young people by members of the clergy, members of the New York State legislature have responded with proposed legislation intended to prevent further abuse. The New York State Senate has proposed a bill that would address the issue of reporting child abuse committed by persons other than family members. Current NYS law requires only the reporting by- those individual who are defined under state law as mandatory reporters of suspected abuse against a minor by a family member. Such reporting is not to the police but to child welfare authorities. The proposed law would add members of the clergy to the list of mandatory reporters. In addition, the proposed bill mandates that all mandatory reporters, including clergy, report *to the police* when they suspect that *any* person in a position of authority with a minor - not just a family member -- has committed an offense against the minor. These changes in the law are intended to ensure that abuse committed by trusted adults in positions of authority over young people are reported to the 'police. The ultimate goal of this bill to keep young people safe from abuse. Planned Parenthood of New York City does not oppose this section of S477.

Regrettably, S. 477 also amends the current Social Service in such a way as to undermine the intended goals of this bill. Because of other proposed changes in SA77, this bill could actually work in such a way as to isolate - not protect -- children from help and keep them in harm's way.

The bill defines a new set of behaviors that constitute "child abuse." and requires that mandatory reporters officially report behaviors that fall within this new definition of "child abuse" to the police. Under this proposal mandatory reporters would have to tell the police whenever the mandatory reporter believed that someone 19 or older had committed against a minor under the age of 14 any statutory sex offense as set forth in Article 130 of the NYS Penal Law. On its face this may seem like this is in the best interests of the minor, however in reality this provision is likely to have just the opposite effect. In reality, because of the harsh punitive sanctions, this proposed requirement is very likely to function as a deterrent for young people to seek help and care when they need it.

RATIONALE

The proposed bill would undermine the relationships between young people and the trusted adults in their lives.

Young people will be fearful to confide in teachers, counselors, nurses, doctors, social workers, etc. because they will know that instead of help and advice what they will get is the police. Conversely, the trusted adults may be more reticent to allow the young person to open up for fear of learning something they may be required to report to the police or face misdemeanor charges. Contrary to the goal of this bill-- keeping young people out of harm's way, this provision will likely isolate the minor from the support and guidance he or she needs most. Rather than seeking out advice and help from the trusted adults in their lives, young people will turn to less informed sources or simply go it alone.

The proposed bill would act as a deterrent to accessing health care services.

It should seem fairly obvious that if an adolescent believes that seeking health treatment means that the police could show up at her boyfriend's door and arrest him, the likelihood of that adolescent seeking necessary health care will be remote. The failure to access necessary healthcare can have serious and dangerous long-term consequences.

S.477 recognizes the importance of confidentiality when it comes to the counseling offered by members of the clergy but fails to do so for other professions that also rely on confidentiality. The proposed bill protects the confidential nature of the relationship between the clergy member and the young person and provides an exemption from mandatory reporting requirements if the information was offered in confidence to the clergy member. However, the bill provides this exemption for *only* the clergy as if confidentiality is only essential to services provided by the clergy. For many other professionals -- the psychologist, the nurse, the doctor, the school social worker, to name but a few - that same confidentiality and trust is key to establishing the kind of relationship that a young person may need in a time of crisis. Not all young people turn to members of the clergy for help or guidance; many look to other qualified professionals. Thus rather than respecting the confidential nature of the relationship between the young person and the mental health professional, for example, this bill turns the mental health professional into an agent of the police. This bill leaves only one option available to a young person where he or she will know that confidentiality is protected: the clergy.

For these reasons, Planned Parenthood of New York City opposes Senate bill S. 477.

¹ This list already includes health care providers, social workers, school staff and others who are in a professional capacity of providing services to young people.

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