

Memorandum in Support

COMMITTEE ON CHILDREN AND THE LAW

Children #8

May 20, 2019

S. 2994-A
A. 2371

By: Senator Hoylman

By: M. of A. Dinowitz

Senate Committee: Health

Assembly Committee: Health

Effective Date: Immediately

AN ACT to repeal subdivision 9 of section 2164 of the public health law, in relation to exemption from vaccination due to religious beliefs.

LAW AND SECTIONS REFERRED TO: subdivision 9 of section 2164.

THE COMMITTEE ON CHILDREN AND THE LAW SUPPORTS THIS LEGISLATION

New York State has experienced a public health crisis with outbreaks of the measles, a serious illness that can be prevented by vaccination and is highly dangerous to children who contract it. Under section 2164 of the public health law, generally children are required to receive a number of immunizations, and to present a certificate of immunization in order to attend school. "School" as defined by the statute includes public, private and parochial child caring centers, day nurseries, day care agencies, nursery schools, kindergartens, and elementary, intermediate and secondary schools. However, the current statute allows for both medical and religious exemptions to the immunization requirements. The proposed amendment to public health law section 2164 would repeal all non-medical exemptions from immunization requirements for children. The religious exemption is not required by the federal or state constitutions and should be repealed, as it contributes to children not receiving vaccinations and undermines "herd immunity," putting children at risk.

Immunizations currently required are for poliomyelitis, mumps, measles, diphtheria, rubella, varicella, haemophilus influenzae type b (Hib), pertussis, tetanus, pneumococcal disease, meningococcal disease, and hepatitis B. Parents must provide proof of immunization in order for a child to attend school, unless an exemption to immunization applies. Because of New York's compulsory education law, this requirement helps to ensure that children are immunized. If a parent fails to provide a required certificate of immunization, the school must deny admission to the child and notify the local health authority.

Section 2164 currently has two types exemptions: exemptions for medical reasons, and exemptions based on religious beliefs. The medical exemption applies when a licensed physician certifies that immunization may be detrimental to a child’s health.

The religious exemption is set forth in subdivision 9 of section 2164. This subdivision states: “this section shall not apply to children whose parent, parents, or guardian hold genuine and sincere religious beliefs which are contrary to the practices herein required, and no certificate shall be required as a prerequisite to such children being admitted or received into school or attending school.”

The current public health crisis is a result of low immunization rates. Most of those who are impacted are children. Outbreaks affect children and adults who are not immunized; in rare circumstances, they also affect individuals who have been immunized. The chart below from the New York City Department of Health shows the age and vaccination status of individuals impacted for measles cases from September 1, 2018, to May 13, 2019:¹

New York City Department of Health
 Measles Cases by Age and Vaccination Status
 September 1, 2018 - May 13, 2019

Cases by Age and Vaccination Status					
Age Range	Unvaccinated	With One Prior MMR	With Two Prior MMR	With Unknown MMR	Total
Under 1 year	77	2	None	None	79
1 – 4 years	196	23	None	1	220
5 – 17 years	100	2	7	None	109
18 years and over	4	5	15	66	90
Total	377	32	22	67	498

Thus, out of 498 individuals with measles in New York City during this time period, 408 were under 18 years old. Most of these children had not received any dose of the Measles, Mumps and Rubella (“MMR”) vaccine, although some children who were vaccinated were impacted as well. In addition, Rockland County reported 225 cases of

¹ *Measles*, New York City Department of Health, <https://www1.nyc.gov/site/doh/health/health-topics/measles.page>.

measles as of May 10, 2019, and the following data concerning age and vaccination rates:²

Age groups for the confirmed measles cases in Rockland County as of May 2, 2019:

- Less than 1 year old: 12.9%
- 1-3 years: 26.8%
- 4-6 years: 14.3%
- 7-18 years: 28.1%
- 19+ years: 17.9%

Vaccination rates for confirmed measles cases in Rockland County as of May 8, 2019:

- 79.9% have had 0 MMRs
- 4.9% have had 1 MMR
- 3.1% have had 2 MMRs
- 12.1% unknown status

Again, the overwhelming impact of the disease in Rockland County has been on children.

Exemptions to vaccination requirements undermine “herd immunity,” the concept that if there are enough immune people, viruses - even those introduced by non-immune travelers - are less likely to spread and reach the few people in the community who are not immune and are susceptible to infection. Low percentages of immunized children may cause a domino-effect: non-immunized children are at risk of contracting a highly contagious disease such as measles, and of transmitting it to other non-immunized children – or in some cases, immunized children - in their communities or in other communities where they travel. Parents who opt not to vaccinate their children risk exposing their own children and other children to life-threatening and preventable diseases. While some individuals have cited their concerns that vaccinations are not safe or are linked to autism, scientific research has demonstrated that these concerns are unfounded.³

The Second Circuit has found that requiring vaccinations as a pre-requisite to attending school is within the State’s police power under the Constitution. “[M]andatory vaccination as a condition for admission to school does not violate the Free Exercise Clause,” and the religious exemption in New York’s statute thus “goes beyond what the Constitution requires.” *Phillips v. New York*, 775 F.3d 538, 541 (2d Cir. 2015). The United States Supreme Court has upheld the constitutionality of mandatory vaccinations. *Jacobson v. Massachusetts*, 197 U.S. 11, 26 (1905). The New York Court of Appeals has also held that the State may require vaccinations for public school attendance in order to protect public health. *Viemeister v. White*, 179 N.Y. 235, 238 (1904). Several other states do not have religious exemptions, including California, Mississippi and West Virginia.

² *Measles Information*, Rockland County, <http://rocklandgov.com/departments/health/measles-information/>.

³ U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, Vaccines Do Not Cause Autism, <https://www.cdc.gov/vaccinesafety/concerns/autism.html>.

California repealed its nonmedical exemptions in 2015 after a measles outbreak. Mississippi and West Virginia have long had no religious exemptions.⁴

Based on the foregoing, the NYSBA's Committee on Children and the Law **SUPPORTS** this legislation.

⁴ James Colgrove & Abigail Lowin, *A Tale Of Two States: Mississippi, West Virginia, And Exemptions To Compulsory School Vaccination Laws*, Health Affairs (Feb. 2016), <https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2015.1172>.