

STATE OF NEW YORK

3228

2023-2024 Regular Sessions

IN SENATE

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Introduced by Sens. HOYLMAN-SIGAL, BROUK, KAVANAGH, KRUEGER, RIVERA, SALAZAR, SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law, the education law and the labor law, in relation to prohibiting participation in torture and improper treatment of incarcerated individuals by health care professionals

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

1 Section 1. Legislative policy and intent. This legislation is based
2 on, and is intended to give effect to, international treaties and stand-
3 ards; federal, state and local law; and professional standards relating
4 to torture, improper treatment of incarcerated individuals, and related
5 matters. It is guided by two basic principles: (1) health care profes-
6 sionals shall be dedicated to providing the highest standard of health
7 care, with compassion and respect for human dignity and rights; and (2)
8 torture and improper treatment of incarcerated individuals are wrong and
9 inconsistent with the practice of the health care professions. The
10 legislature finds that the conduct prohibited by this act violates the
11 ethical and legal obligations of licensed health care professionals.
12 This legislation will further protect the professionalism of New York
13 state licensed health care professionals by authorizing and obligating
14 them to refuse to participate in torture and improper treatment of
15 incarcerated individuals, which in turn will protect the life and health
16 of the people of the state and those with whom New York licensed health
17 care professionals interact. A health care professional who comes to
18 the aid of an incarcerated individual should not be presumed to be in
19 violation when she or he is fulfilling the ethical principle of benefi-
20 cence. In contrast, a health care professional who, for example, attends
21 to an incarcerated individual in order to allow torture or improper
22 treatment to commence or continue is not acting beneficently. Such
23 practices are inconsistent with professional ethics and standards and

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

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are violations of this legislation. The legislature is mindful that ordinarily there are limits on New York state's jurisdiction relating to conduct outside the state or under federal authority. However, it is proper for the state to regulate health care professional licensure in relation to a professional's conduct, even where the conduct occurs outside the state; certain wrongful out-of-state conduct is already grounds for professional discipline. Therefore, it is the legislature's intent that this legislation be applied to the fullest extent possible.

§ 2. The public health law is amended by adding a new section 25 to read as follows:

§ 25. Participation in torture or improper treatment of incarcerated individuals by health care professionals. 1. Definitions. As used in this section, the terms "torture" and "improper treatment" shall be interpreted in accordance with applicable law, including international treaties to which the United States is a party. However, for the purposes of this section, it shall not be an element of either "torture" or "improper treatment" that such acts be committed by a government or non-government actor, entity, or official; under color of law; or not under color of law. As used in this section, unless the context clearly requires otherwise, the following terms have the following meanings:

(a) "Health care professional" means any person licensed, registered, certified, or exempt to practice under (i) any of the following articles of the education law: one hundred thirty-one (medicine), one hundred thirty-one-B (physician assistants), one hundred thirty-one-C (specialist assistants), one hundred thirty-two (chiropractic), one hundred thirty-three (dentistry, dental hygiene, and registered dental assisting), one hundred thirty-six (physical therapy and physical therapist assistants), one hundred thirty-seven (pharmacy), one hundred thirty-nine (nursing), one hundred forty (professional midwifery practice act), one hundred forty-one (podiatry), one hundred forty-three (optometry), one hundred forty-four (ophthalmic dispensing), one hundred fifty-three (psychology), one hundred fifty-four (social work), one hundred fifty-five (massage therapy), one hundred fifty-six (occupational therapy), one hundred fifty-seven (dietetics and nutrition), one hundred fifty-nine (speech-language pathologists and audiologists), one hundred sixty (acupuncture), one hundred sixty-three (mental health practitioners), one hundred sixty-four (respiratory therapists and respiratory therapy technicians), one hundred sixty-five (clinical laboratory technology practice act), or one hundred sixty-six (medical physics practice), or (ii) article thirty-five of this chapter (practice of radiologic technology).

(b) "Torture" means any intentional act or intentional omission by which severe pain or suffering, whether physical or mental, is inflicted on a person for no lawful purpose or for such purposes as obtaining from the person or from a third person information or a confession, punishing or disciplining or retaliating against the person for an act the person or a third person has carried out (including the holding of a belief or membership in any group) or is suspected of having or perceived to have carried out, or intimidating or coercing the person or a third person, or for any reason based on discrimination of any kind.

(c) "Improper treatment" means (i) cruel, inhuman or degrading, treatment or punishment as defined by applicable international treaties including but not limited to the Convention Against Torture, and Other Cruel, Inhumane, or Degrading Treatment or Punishment, the International Covenant on Civil and Political Rights, the United Nations Standard Minimum Rules for Treatment of Prisoners, the Body of Principles for the

Protection of All Persons Under Any Form of Detention or Imprisonment, the Basic Principles for the Treatment of Prisoners and, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice and their corresponding interpreting bodies; and applicable New York state law governing the proper treatment of incarcerated individuals including, but not limited to, subdivisions twenty-three, thirty-three and thirty-four of section two, sections forty-five and one hundred thirty-seven, subdivision seven of section one hundred thirty-eight, and sections four hundred one, four hundred one-a and five hundred-k of the correction law, or applicable state or local law; or cruel and unusual punishment as defined in the United States Constitution or the New York state constitution; or (ii) any violation of subdivision three or four of this section; or (iii) any form of physical brutality, improper use of force, or deprivation of food, water, basic hygiene materials and access, or other basic human needs or living conditions.

(d) "Incarcerated individual" means any person who is subject to punishment, detention, incarceration, interrogation, intimidation or coercion, regardless of whether such action is performed or committed by a government or non-government actor, entity, or official; under color of law; or not under color of law.

(e) To "adversely affect" a person's physical or mental health or condition does not include causing adverse effects that may arise from treatment or care when that treatment or care is performed in accordance with generally applicable legal, health and professional standards and for the purposes of evaluating, treating, protecting or improving the person's health.

(f) "Interrogation" means the questioning related to law enforcement, the enforcement of rules or regulations of an institution in which people are detained through the criminal justice system or for military or national security reasons (such as a jail or other detention facility, police facility, prison, immigration facility, or military facility) or to military and national security intelligence gathering, whether by a government or non-government actor, entity or official. "Interrogation" shall also include questioning to aid or accomplish any illegal activity or purpose, whether by a government or non-government actor, entity or official. Interrogations are distinct from questioning used by health care professionals to assess the physical or mental condition of an individual.

2. Knowledge. It shall be an element of any violation of this section that the actor knew or reasonably should have known that his or her conduct is of the kind prohibited under this section. A health care professional who receives information that indicates that an incarcerated individual as defined by this section is being, may in the future be, or has been subjected to torture or improper treatment, must use due diligence, in order to assess the nature of his or her conduct as covered by this section.

3. General obligations of health care professionals. (a) Every health care professional shall provide every incarcerated individual under his or her professional care with care or treatment consistent with generally applicable legal, health and professional standards to the extent that he or she is reasonably able to do so under the circumstances, including protecting the confidentiality of patient information.

(b) In all clinical assessments relating to an incarcerated individual, whether for therapeutic or evaluative purposes, health care profes-

1 sionals shall exercise their professional judgment independent of the
2 interests of a government or other third party.

3 4. Certain conduct of health care professionals prohibited. (a) No
4 health care professional shall apply his or her knowledge or skills in
5 relation to, engage in any professional relationship with, or perform
6 professional services in relation to any incarcerated individual unless
7 the purpose is solely to evaluate, treat, protect, or improve the phys-
8 ical or mental health or condition of the incarcerated individual
9 (except as permitted by paragraph (b) or (c) of subdivision five of this
10 section).

11 (b) No health care professional shall engage, directly or indirectly,
12 in any act which constitutes participation in, complicity in, incitement
13 to, assistance in, planning or design of, cover up of, failure to docu-
14 ment, or attempt or conspiracy to commit torture or improper treatment
15 of an incarcerated individual. Prohibited forms of engagement include
16 but are not limited to:

17 (i) providing means, knowledge or skills, including clinical findings
18 or treatment, with the intent to facilitate the practice of torture or
19 improper treatment;

20 (ii) permitting his or her knowledge, skills or clinical findings or
21 treatment to be used in the process of or to facilitate torture or
22 improper treatment;

23 (iii) examining, evaluating, or treating an incarcerated individual to
24 certify whether torture or improper treatment can begin, be continued,
25 or be resumed;

26 (iv) being present while torture or improper treatment is being admin-
27 istered;

28 (v) omitting or suppressing indications of torture or improper treat-
29 ment from records or reports; and

30 (vi) altering health care records or reports to hide, misrepresent or
31 destroy evidence of torture or improper treatment.

32 (c) No health care professional shall apply his or her knowledge or
33 skills or perform any professional service in order to assist in the
34 punishment, detention, incarceration, intimidation, or coercion of an
35 incarcerated individual when such assistance is provided in a manner
36 that may adversely affect the physical or mental health or condition of
37 the incarcerated individual (except as permitted by paragraph (a) or (b)
38 of subdivision five of this section).

39 (d) No health care professional shall participate in the interrogation
40 of an incarcerated individual, including being present in the interro-
41 gation room, asking or suggesting questions, advising on the use of
42 specific interrogation techniques, monitoring the interrogation, or
43 medically or psychologically evaluating a person for the purpose of
44 identifying potential interrogation methods or strategies. However, this
45 paragraph shall not bar a health care professional from engaging in
46 conduct under paragraph (d) of subdivision five of this section.

47 5. Certain conduct of health care professionals permitted. A health
48 care professional may engage in the following conduct so long as it does
49 not violate subdivision three or four of this section, it does not
50 adversely affect the physical or mental health or condition of an incar-
51 cerated individual or potential subject, and is not otherwise unlawful:

52 (a) appropriately participating or aiding in the investigation, prose-
53 cution, or defense of a criminal, administrative or civil matter;

54 (b) participating in an act that restrains an incarcerated individual
55 or temporarily alters the physical or mental activity of an incarcerated
56 individual, where the act complies with generally applicable legal,

1 health and professional standards, is necessary for the protection of
2 the physical or mental health, condition or safety of the incarcerated
3 individual, other incarcerated individuals, or persons caring for,
4 guarding or confining the incarcerated individual;

5 (c) conducting bona fide human subject research in accordance with
6 generally accepted legal, health and professional standards where the
7 research includes safeguards for human subjects equivalent to those
8 required by federal law, including informed consent and institutional
9 review board approval where applicable;

10 (d) training related to the following purposes, so long as it is not
11 provided in support of specific ongoing or anticipated interrogations:

12 (i) recognizing and responding to persons with physical or mental
13 illness or conditions,

14 (ii) the possible physical and mental effects of particular techniques
15 and conditions of interrogation, or

16 (iii) the development of effective interrogation strategies not
17 involving the practice of torture or improper treatment.

18 6. Duty to report. A health care professional who has reasonable
19 grounds (not based solely on publicly available information) to believe
20 that torture, improper treatment or other conduct in violation of this
21 section has occurred, is occurring, or will occur shall, as soon as is
22 possible without jeopardizing the physical safety of himself or herself,
23 the incarcerated individual, or other parties, report such conduct to:

24 (a) a government agency that the health care professional reasonably
25 believes has legal authority to punish or prevent the continuation of
26 torture or the improper treatment of an incarcerated individual or
27 conduct in violation of this section and is reasonably likely to attempt
28 to do so; or

29 (b) a governmental or non-governmental entity that the health care
30 professional reasonably believes will notify such a government agency of
31 the torture or the improper treatment of an incarcerated individual or
32 conduct in violation of this section or take other action to publicize
33 or prevent such torture, treatment or conduct; and

34 (c) in addition to reporting under paragraph (a) or (b) of this subdi-
35 vision: (i) in the case of an alleged violation by a health care profes-
36 sional licensed under article one hundred thirty-one, one hundred thir-
37 ty-one-B or one hundred thirty-one-C of the education law, a report
38 shall be filed with the office of professional medical conduct; and (ii)
39 in the case of an alleged violation by any other health care profes-
40 sional licensed, registered or certified under title eight of the educa-
41 tion law, a report shall be filed with the office of professional disci-
42 pline; provided that for the purpose of this paragraph, where a person
43 holds a license, registration or certification under the laws of a
44 jurisdiction other than the state of New York that is for a profession
45 substantially comparable to one listed in paragraph (a) of subdivision
46 one of this section, the person shall be deemed to be a health care
47 professional and the person's license, registration or certification
48 shall be deemed to be under the appropriate article of title eight of
49 the education law.

50 7. Mitigation. The following may be considered in full or partial
51 mitigation of a violation of this section by the health care profes-
52 sional:

53 (a) compliance with subdivision six of this section; or

54 (b) cooperation in good faith with an investigation of a violation of
55 this section.

1 8. Applicability. This section shall apply to conduct taking place
2 within or outside New York state, and without regard to whether the
3 conduct is committed by a governmental or non-governmental entity, offi-
4 cial, or actor or under actual or asserted color of law.

5 9. Scope of practice not expanded. This section shall not be construed
6 to expand the lawful scope of practice of any health care professional.

7 § 3. Section 6509 of the education law is amended by adding a new
8 subdivision 15 to read as follows:

9 (15) Any violation of section twenty-five of the public health law
10 (relating to participation in torture or improper treatment of incarcer-
11 ated individuals by health care professionals), subject to mitigation
12 under that section.

13 § 4. Section 6530 of the education law is amended by adding a new
14 subdivision 51 to read as follows:

15 51. Any violation of section twenty-five of the public health law
16 (relating to participation in torture or improper treatment of incarcer-
17 ated individuals by health care professionals), subject to mitigation
18 under that section.

19 § 5. Paragraphs (b) and (c) of subdivision 2 of section 740 of the
20 labor law, as amended by chapter 522 of the laws of 2021, are amended
21 and a new paragraph (d) is added to read as follows:

22 (b) provides information to, or testifies before, any public body
23 conducting an investigation, hearing or inquiry into any such activity,
24 policy or practice by such employer; ~~or~~

25 (c) objects to, or refuses to participate in any such activity, policy
26 or practice~~[-]; or~~

27 (d) reports or threatens to report any violation of section twenty-
28 five of the public health law (relating to participation in torture or
29 improper treatment of incarcerated individuals by health care profes-
30 sionals).

31 § 6. Subdivision 3 of section 740 of the labor law, as amended by
32 chapter 522 of the laws of 2021, is amended to read as follows:

33 3. Application. The protection against retaliatory action provided by
34 paragraph (a) of subdivision two of this section pertaining to disclo-
35 sure to a public body shall not apply to an employee who makes such
36 disclosure to a public body unless the employee has made a good faith
37 effort to notify his or her employer by bringing the activity, policy or
38 practice to the attention of a supervisor of the employer and has
39 afforded such employer a reasonable opportunity to correct such activ-
40 ity, policy or practice. Such employer notification shall not be
41 required where: (a) there is an imminent and serious danger to the
42 public health or safety; (b) the employee reasonably believes that
43 reporting to the supervisor would result in a destruction of evidence or
44 other concealment of the activity, policy or practice; (c) such activ-
45 ity, policy or practice could reasonably be expected to lead to endan-
46 gering the welfare of a minor; (d) the employee reasonably believes that
47 reporting to the supervisor would result in physical harm to the employ-
48 ee or any other person; or (e) the employee reasonably believes that the
49 supervisor is already aware of the activity, policy or practice and will
50 not correct such activity, policy or practice. However, this subdivi-
51 sion shall not apply to any report of a violation under section twenty-
52 five of the public health law (participation in torture or improper
53 treatment of incarcerated individuals by health care professionals).

54 § 7. Paragraphs (a) and (b) of subdivision 2 of section 741 of the
55 labor law, as amended by chapter 117 of the laws of 2020, are amended
56 and a new paragraph (c) is added to read as follows:

1 (a) discloses or threatens to disclose to a supervisor, to a public
2 body, to a news media outlet, or to a social media forum available to
3 the public at large, an activity, policy or practice of the employer or
4 agent that the employee, in good faith, reasonably believes constitutes
5 improper quality of patient care or improper quality of workplace safe-
6 ty; ~~[or]~~

7 (b) objects to, or refuses to participate in any activity, policy or
8 practice of the employer or agent that the employee, in good faith,
9 reasonably believes constitutes improper quality of patient care or
10 improper quality of workplace safety~~[or]~~; or

11 (c) reports or threatens to report any violation of section twenty-
12 five of the public health law (participation in torture or improper
13 treatment of incarcerated individuals by health care professionals).

14 § 8. Subdivision 3 of section 741 of the labor law, as amended by
15 chapter 117 of the laws of 2020, is amended to read as follows:

16 3. Application. The protection against retaliatory personnel action
17 provided by subdivision two of this section shall not apply unless the
18 employee has brought the improper quality of patient care or improper
19 quality of workplace safety to the attention of a supervisor and has
20 afforded the employer a reasonable opportunity to correct such activity,
21 policy or practice. This subdivision shall not apply to an action or
22 failure to act described in paragraph (a) of subdivision two of this
23 section where the improper quality of patient care or improper quality
24 of workplace safety described therein presents an imminent threat to
25 public health or safety or to the health of a specific patient or
26 specific health care employee and the employee reasonably believes in
27 good faith that reporting to a supervisor would not result in corrective
28 action. However, this subdivision shall not apply to any report of a
29 violation under section twenty-five of the public health law (partic-
30 ipation in torture or improper treatment of incarcerated individuals by
31 health care professionals).

32 § 9. The introduction or enactment of this act shall not be construed
33 to mean that: (a) conduct described by this act does not already violate
34 state law or constitute professional misconduct; or (b) conduct other
35 than that described by this act does not violate other state law or
36 otherwise constitute professional misconduct.

37 § 10. Severability. If any provision of this act, or any application
38 of any provision of this act, is held to be invalid, that shall not
39 affect the validity or effectiveness of any other provision of this act
40 or any other application of any provision of this act.

41 § 11. This act shall take effect on the first of January next
42 succeeding the date on which it shall have become a law.