

1402

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. WRIGHT, TOBACCO, PHEFFER, ROBINSON, GREENE, CAHILL, KOON -- Multi-Sponsored by -- M. of A. COOK, GLICK, GOTTFRIED, JEFFRIES, SWEENEY -- read once and referred to the Committee on Social Services

AN ACT to amend the social services law, in relation to mandatory reporting of abuse of mentally or physically incapacitated persons

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The social services law is amended by adding a new article
2 9-C to read as follows:

3 ARTICLE 9-C

4 MANDATORY REPORTING OF ABUSE OF

5 MENTALLY OR PHYSICALLY INCAPACITATED PERSONS

6 SECTION 473-M. LEGISLATIVE FINDINGS AND PURPOSE.

7 473-N. DEFINITIONS.

8 473-O. MANDATORY REPORTING.

9 473-P. ANY PERSON PERMITTED TO REPORT.

10 473-Q. REPORTING PROCEDURE.

11 473-R. OBLIGATIONS OF PERSONS REQUIRED TO REPORT.

12 473-S. IMMUNITY FROM LIABILITY FOR REPORTING.

13 473-T. PENALTIES FOR FAILURE TO REPORT.

14 473-U. EDUCATION OF MANDATORY REPORTERS.

15 S 473-M. LEGISLATIVE FINDINGS AND PURPOSE. THE LEGISLATURE HEREBY
16 FINDS THAT THE PROBLEM OF ABUSE OF MENTALLY OR PHYSICALLY INCAPACITATED
17 PERSONS IS CONTINUING TO INCREASE IN SOCIETY TODAY. THIS TYPE OF ABUSE
18 OFTEN GOES UNREPORTED BECAUSE OF THE INABILITY OF THE VICTIM TO COMMUNI-
19 CATE THE ABUSE TO THE PROPER AUTHORITIES OR THE VICTIM'S UNWILLINGNESS
20 TO DISCLOSE THE ABUSE DUE TO EMBARRASSMENT, FEAR OR SHAME. THEREFORE,
21 IT IS NECESSARY TO INSTITUTE A SYSTEM WHICH WOULD MAKE THE INDIVIDUALS

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

LBD00475-01-9

1 TREATING OR COMING INTO CONTACT WITH PERSONS WHO HAVE PHYSICAL OR
2 EMOTIONAL SYMPTOMS OF ABUSE RESPONSIBLE FOR REPORTING THIS CRIME TO THE
3 PROPER AUTHORITIES SO THAT THE VICTIMS CAN RECEIVE PROPER PROTECTION
4 FROM FURTHER ABUSE.

5 S 473-N. DEFINITIONS. AS USED IN THIS ARTICLE, THE FOLLOWING TERMS
6 SHALL HAVE THE FOLLOWING MEANINGS UNLESS THE CONTEXT OTHERWISE REQUIRES:

7 1. "ABUSE" MEANS THE WILLFUL INFLECTION OF INJURY, UNREASONABLE
8 CONFINEMENT, VERBAL OR MENTAL INTIMIDATION, OR PUNISHMENT RESULTING IN
9 PHYSICAL HARM, PAIN, MENTAL ANGUISH OR FINANCIAL EXPLOITATION.

10 2. "PERSON" MEANS AN INDIVIDUAL OVER THE AGE OF EIGHTEEN WHO IS
11 MENTALLY OR PHYSICALLY INCAPACITATED TO SUCH A DEGREE AS TO BE UNABLE TO
12 DEFEND HIMSELF OR HERSELF PHYSICALLY OR WHO IS MENTALLY UNABLE TO INDE-
13 PENDENTLY CARE FOR HIMSELF OR HERSELF.

14 S 473-O. MANDATORY REPORTING. 1. THE FOLLOWING PERSONS AND OFFICIALS
15 ARE REQUIRED TO REPORT OR CAUSE A REPORT TO BE MADE IN ACCORDANCE WITH
16 THIS ARTICLE WHEN THEY HAVE REASONABLE CAUSE TO SUSPECT THAT A PERSON
17 COMING BEFORE THEM IN THEIR PROFESSIONAL OR OFFICIAL CAPACITY IS ABUSED
18 OR MALTREATED, OR WHEN THEY HAVE REASONABLE CAUSE TO SUSPECT THAT A
19 PERSON IS ABUSED OR MALTREATED WHERE THE RELATIVE, GUARDIAN, CUSTODIAN
20 OR OTHER PERSON LEGALLY RESPONSIBLE FOR SUCH PERSON COMES BEFORE THEM IN
21 THEIR PROFESSIONAL OR OFFICIAL CAPACITY AND STATES FROM PERSONAL KNOW-
22 LEDGE FACTS, CONDITIONS OR CIRCUMSTANCES WHICH, IF CORRECT, WOULD RENDER
23 SUCH PERSON AN ABUSED OR MALTREATED INDIVIDUAL: ANY PHYSICIAN; REGIS-
24 TERED PHYSICIAN ASSISTANT; SURGEON; MEDICAL EXAMINER; CORONER; DENTIST;
25 DENTAL HYGIENIST; OSTEOPATH; OPTOMETRIST; CHIROPRACTOR; PODIATRIST;
26 RESIDENT; INTERN; PSYCHOLOGIST; REGISTERED NURSE; HOSPITAL PERSONNEL
27 ENGAGED IN THE ADMISSION, EXAMINATION, CARE OR TREATMENT OF PERSONS;
28 CERTIFIED EMERGENCY MEDICAL TECHNICIAN; HOME HEALTH CARE PROVIDER; PHYS-
29 ICAL THERAPIST; SPEECH THERAPIST; OR OCCUPATIONAL THERAPIST; SOCIAL
30 SERVICES WORKER; AN ADULT DAY CARE CENTER WORKER; PROVIDER OF ADULT DAY
31 CARE; EMPLOYEE OR VOLUNTEER IN A NURSING HOME AS DEFINED IN SUBDIVISION
32 ONE OF SECTION TWENTY-EIGHT HUNDRED NINETY-FIVE-A OF THE PUBLIC HEALTH
33 LAW, PEACE OFFICER; POLICE OFFICER; DISTRICT ATTORNEY OR ASSISTANT
34 DISTRICT ATTORNEY; INVESTIGATOR EMPLOYED IN THE OFFICE OF A DISTRICT
35 ATTORNEY; OR OTHER LAW ENFORCEMENT OFFICIAL. WHENEVER SUCH PERSON IS
36 REQUIRED TO REPORT UNDER THIS ARTICLE IN HIS OR HER CAPACITY AS A MEMBER
37 OF THE STAFF OF A MEDICAL OR OTHER PUBLIC OR PRIVATE INSTITUTION, FACIL-
38 ITY OR AGENCY, HE OR SHE SHALL IMMEDIATELY NOTIFY THE PERSON IN CHARGE
39 OF SUCH INSTITUTION, FACILITY OR AGENCY, OR HIS OR HER DESIGNATED AGENT,
40 WHO THEN ALSO SHALL BECOME RESPONSIBLE TO REPORT OR CAUSE REPORTS TO BE
41 MADE. HOWEVER, NOTHING IN THIS SECTION OR ARTICLE IS INTENDED TO REQUIRE
42 MORE THAN ONE REPORT FROM ANY SUCH INSTITUTION OR AGENCY.

43 2. ANY PERSON, INSTITUTION, FACILITY, AGENCY, ORGANIZATION, PARTNER-
44 SHIP OR CORPORATION WHICH EMPLOYS PERSONS MANDATED TO REPORT SUSPECTED
45 INCIDENTS OF ABUSE OR MALTREATMENT PURSUANT TO SUBDIVISION ONE OF THIS
46 SECTION SHALL PROVIDE ALL SUCH CURRENT AND NEW EMPLOYEES WITH WRITTEN
47 INFORMATION EXPLAINING THE REPORTING REQUIREMENTS AS PROVIDED IN SUBDI-
48 VISION ONE OF THIS SECTION AND IN SECTION FOUR HUNDRED SEVENTY-THREE-Q
49 OF THIS ARTICLE. THE EMPLOYERS SHALL BE RESPONSIBLE FOR THE COSTS ASSO-
50 CIATED WITH PRINTING AND DISTRIBUTING WRITTEN INFORMATION.

51 3. ANY STATE OR LOCAL GOVERNMENTAL AGENCY OR AUTHORIZED AGENCY WHICH
52 ISSUES A LICENSE, CERTIFICATE OR PERMIT TO AN INDIVIDUAL TO OPERATE AN
53 ADULT DAY CARE CENTER OR NURSING HOME SHALL PROVIDE EACH PERSON CURRENT-
54 LY HOLDING OR SEEKING SUCH A LICENSE, CERTIFICATE OR PERMIT WITH WRITTEN
55 INFORMATION EXPLAINING THE REPORTING REQUIREMENTS AS PROVIDED IN SUBDI-

1 VISION ONE OF THIS SECTION AND IN SECTION FOUR HUNDRED SEVENTY-THREE-Q
2 OF THIS ARTICLE.

3 S 473-P. ANY PERSON PERMITTED TO REPORT. IN ADDITION TO THOSE PERSONS
4 AND OFFICIALS REQUIRED TO REPORT SUSPECTED ABUSE OR MALTREATMENT OF
5 MENTALLY OR PHYSICALLY INCAPACITATED PERSONS, ANY PERSON MAY MAKE SUCH A
6 REPORT IF SUCH PERSON HAS REASONABLE CAUSE TO SUSPECT THAT A PERSON IS
7 ABUSED OR MALTREATED.

8 S 473-Q. REPORTING PROCEDURE. REPORTS OF SUSPECTED ABUSE OR MALTREAT-
9 MENT OF MENTALLY OR PHYSICALLY INCAPACITATED PERSONS MADE PURSUANT TO
10 THIS ARTICLE SHALL BE MADE IMMEDIATELY BY TELEPHONE OR BY TELEPHONE
11 FACSIMILE MACHINE ON A FORM SUPPLIED BY THE COMMISSIONER OF CHILDREN AND
12 FAMILY SERVICES, TO BE SUCCEEDED BY A WRITTEN REPORT WHICH SHALL
13 INCLUDE, THE NAME AND AGE OF THE ABUSED ADULT; THE NAME AND ADDRESS OF
14 THE FACILITY WHERE THE ABUSED ADULT RESIDES OR IS RECEIVING CARE; THE
15 NAMES AND ADDRESSES OF FAMILY MEMBERS OR ANY OTHER PERSON RESPONSIBLE
16 FOR THE CARE OF THE ABUSED ADULT; THE NATURE AND EXTENT OF THE ABUSED
17 ADULT'S INJURIES, INCLUDING ANY EVIDENCE OF PRIOR INJURIES; THE NAME OF
18 THE PERSON OR PERSONS ALLEGED TO BE RESPONSIBLE FOR CAUSING THE INJU-
19 RIES, ABUSE OR MALTREATMENT, IF KNOWN; THE NAME OF THE PERSON MAKING THE
20 REPORT AND WHERE HE OR SHE MAY BE REACHED; THE DATE OF THE INCIDENT; THE
21 ACTIONS TAKEN BY THE REPORTING SOURCE, INCLUDING THE TAKING OF X-RAYS
22 AND PHOTOGRAPHS; AND ANY OTHER INFORMATION WHICH THE COMMISSIONER OF
23 CHILDREN AND FAMILY SERVICES MAY, BY REGULATION, REQUIRE OR THE PERSON
24 MAKING THE REPORT BELIEVES MIGHT BE HELPFUL, IN FURTHERANCE OF THE
25 PURPOSES OF THIS ARTICLE. WRITTEN REPORTS FROM PERSONS OR OFFICIALS
26 REQUIRED BY THIS ARTICLE TO REPORT SHALL BE ADMISSIBLE IN EVIDENCE IN
27 ANY PROCEEDINGS RELATING TO ADULT ABUSE OR MALTREATMENT. THESE REPORTS
28 SHALL BE MADE WITHIN TWO BUSINESS DAYS AFTER THE ORAL REPORT, AS
29 FOLLOWS:

30 1. IF THE SUSPECTED ABUSE IS BELIEVED TO HAVE OCCURRED IN A LONG-TERM
31 CARE FACILITY OTHER THAN A STATE MENTAL HEALTH HOSPITAL OR A STATE
32 DEVELOPMENTAL CENTER, THE WRITTEN REPORT SHALL BE MADE TO THE OFFICE OF
33 CHILDREN AND FAMILY SERVICES.

34 2. IF THE SUSPECTED ABUSE IS BELIEVED TO HAVE OCCURRED IN A STATE
35 MENTAL HEALTH HOSPITAL OR A STATE DEVELOPMENTAL CENTER, THE WRITTEN
36 REPORT SHALL BE MADE EITHER TO THE COMMISSION ON THE QUALITY OF CARE FOR
37 THE MENTALLY DISABLED OR TO THE QUALITY ASSURANCE DIVISION OF THE OFFICE
38 OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES.

39 3. IF THE SUSPECTED ABUSE IS BELIEVED TO HAVE OCCURRED IN ANY PLACE
40 OTHER THAN ONE DESCRIBED IN SUBDIVISION ONE OR TWO OF THIS SECTION, THE
41 WRITTEN REPORT SHALL BE MADE TO THE COUNTY PROTECTIVE ADULT SERVICES
42 OFFICE IN THE COUNTY WHERE THE PERSON RESIDES AND TO LOCAL LAW ENFORCE-
43 MENT.

44 S 473-R. OBLIGATIONS OF PERSONS REQUIRED TO REPORT. ANY PERSON OR
45 OFFICIAL REQUIRED TO REPORT CASES OF SUSPECTED ABUSE AND MALTREATMENT OF
46 MENTALLY OR PHYSICALLY INCAPACITATED PERSONS MAY TAKE OR CAUSE TO BE
47 TAKEN AT PUBLIC EXPENSE PHOTOGRAPHS OF THE AREAS OF TRAUMA VISIBLE ON
48 THE PERSON WHO IS THE SUBJECT OF THE REPORT AND, IF MEDICALLY INDICATED,
49 CAUSE TO BE PERFORMED A RADIOLOGICAL EXAMINATION ON SUCH PERSON. ANY
50 PHOTOGRAPHS OR X-RAYS TAKEN SHALL BE SENT TO THE BUREAU, COMMISSION,
51 DIVISION OR LOCAL LAW ENFORCEMENT WITH WHICH THE WRITTEN REPORT IS FILED
52 AT THE TIME THE WRITTEN REPORT IS SENT OR AS SOON THEREAFTER AS POSSI-
53 BLE. WHENEVER SUCH PERSON IS REQUIRED TO REPORT UNDER THIS ARTICLE IN
54 HIS OR HER CAPACITY AS A MEMBER OF THE STAFF OF A MEDICAL OR OTHER
55 PUBLIC OR PRIVATE INSTITUTION, FACILITY OR AGENCY, HE OR SHE SHALL IMME-
56 DIATELY NOTIFY THE PERSON IN CHARGE OF SUCH INSTITUTION, FACILITY OR

1 AGENCY, OR HIS OR HER DESIGNATED AGENT, WHO SHALL THEN TAKE OR CAUSE TO
2 BE TAKEN AT PUBLIC EXPENSE COLOR PHOTOGRAPHS OF VISIBLE TRAUMA AND
3 SHALL, IF MEDICALLY INDICATED, CAUSE TO BE PERFORMED A RADIOLOGICAL
4 EXAMINATION OF SUCH PERSON.

5 S 473-S. IMMUNITY FROM LIABILITY FOR REPORTING. ANY PERSON WHO IN GOOD
6 FAITH MAKES A REPORT PURSUANT TO THIS SECTION SHALL HAVE IMMUNITY FROM
7 ANY LIABILITY, CIVIL OR CRIMINAL, FOR HAVING MADE SUCH A REPORT. FOR
8 THE PURPOSE OF ANY PROCEEDING, CIVIL OR CRIMINAL, THE GOOD FAITH OF ANY
9 PERSON REQUIRED TO REPORT INSTANCES OF PHYSICAL ABUSE, MISTREATMENT, OR
10 NEGLECT SHALL BE PRESUMED.

11 S 473-T. PENALTIES FOR FAILURE TO REPORT. 1. ANY PERSON, OFFICIAL OR
12 INSTITUTION REQUIRED BY THIS ARTICLE TO REPORT A CASE OF SUSPECTED ABUSE
13 OR MALTREATMENT WHO WILLFULLY FAILS TO DO SO SHALL BE GUILTY OF A CLASS
14 A MISDEMEANOR.

15 2. ANY PERSON, OFFICIAL OR INSTITUTION REQUIRED BY THIS ARTICLE TO
16 REPORT A CASE OF SUSPECTED ABUSE OR MALTREATMENT OF MENTALLY OR PHYS-
17 ICALLY INCAPACITATED PERSONS WHO KNOWINGLY AND WILLFULLY FAILS TO DO SO
18 SHALL BE CIVILLY LIABLE FOR THE DAMAGES PROXIMATELY CAUSED BY SUCH FAIL-
19 URE.

20 S 473-U. EDUCATION OF MANDATORY REPORTERS. THE DEPARTMENT OF CHILDREN
21 AND FAMILY SERVICES SHALL IN CONJUNCTION WITH THE OFFICE FOR THE AGING
22 AND LOCAL PROTECTIVE ADULT SERVICES OFFICES, CONDUCT AN EDUCATION
23 PROGRAM FOR LOCAL SOCIAL SERVICE'S OFFICE STAFF, PERSONS AND OFFICIALS
24 REQUIRED TO REPORT UNDER THIS ARTICLE AND ANY OTHER APPROPRIATE PERSONS
25 TO ENCOURAGE THE FULLEST DEGREE OF REPORTING ADULT ABUSE OR MALTREAT-
26 MENT. SUCH PROGRAM SHALL BE DEVELOPED AND IMPLEMENTED IN COORDINATION
27 WITH THAT ESTABLISHED UNDER SECTION TWO HUNDRED NINETEEN OF THE ELDER
28 LAW. THE PROGRAM SHALL INCLUDE BUT NOT BE LIMITED TO RESPONSIBILITIES,
29 OBLIGATIONS, AND POWERS UNDER THIS ARTICLE AND CHAPTER AS WELL AS DIAG-
30 NOSIS OF ABUSE AND MALTREATMENT OF ADULTS AND THE PROCEDURES OF ADULT
31 PROTECTIVE SERVICES.

32 S 2. This act shall take effect on the first of November next succeed-
33 ing the date on which it shall have become a law provided, however, that
34 effective immediately, the addition, amendment and/or repeal of any rule
35 or regulation necessary for the implementation of this act on its effec-
36 tive date are authorized and directed to be made and completed on or
37 before such effective date.