S T A T E O F N E W Y O R K

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:

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

ARTICLE 9-C
MANDATORY REPORTING OF ABUSE OF
MENTALLY OR PHYSICALLY INCAPACITATED PERSONS

SECTION 473-M. LEGISLATIVE FINDINGS AND PURPOSE.
473-N. DEFINITIONS.
473-O. MANDATORY REPORTING.
473-P. ANY PERSON PERMITTED TO REPORT.
473-Q. REPORTING PROCEDURE.
473-R. OBLIGATIONS OF PERSONS REQUIRED TO REPORT.
473-S. IMMUNITY FROM LIABILITY FOR REPORTING.
473-T. PENALTIES FOR FAILURE TO REPORT.
473-U. EDUCATION OF MANDATORY REPORTERS.

S 473-M. LEGISLATIVE FINDINGS AND PURPOSE. THE LEGISLATURE HEREBY FINDS THAT THE PROBLEM OF ABUSE OF MENTALLY OR PHYSICALLY INCAPACITATED PERSONS IS CONTINUING TO INCREASE IN SOCIETY TODAY. THIS TYPE OF ABUSE OFTEN GOES UNREPORTED BECAUSE OF THE INABILITY OF THE VICTIM TO COMMUNICATE THE ABUSE TO THE PROPER AUTHORITIES OR THE VICTIM'S UNWILLINGNESS TO DISCLOSE THE ABUSE DUE TO EMBARRASSMENT, FEAR OR SHAME. THEREFORE, 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.

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

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

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

2. "PERSON" MEANS AN INDIVIDUAL OVER THE AGE OF EIGHTEEN WHO IS MENTALLY OR PHYSICALLY INCAPACITATED TO SUCH A DEGREE AS TO BE UNABLE TO DEFEND HIMSELF OR HERSELF PHYSICALLY OR WHO IS MENTALLY UNABLE TO INDEPENDENTLY CARE FOR HIMSELF OR HERSELF.

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

2. ANY PERSON, INSTITUTION, FACILITY, AGENCY, ORGANIZATION, PARTNERSHIP OR CORPORATION WHICH EMPLOYS PERSONS MANDATED TO REPORT SUSPECTED INCIDENTS OF ABUSE OR MALTREATMENT PURSUANT TO SUBDIVISION ONE OF THIS SECTION SHALL PROVIDE ALL SUCH CURRENT AND NEW EMPLOYEES WITH WRITTEN INFORMATION EXPLAINING THE REPORTING REQUIREMENTS AS PROVIDED IN SUBDIVISION ONE OF THIS SECTION AND IN SECTION FOUR HUNDRED SEVENTY-THREE-Q OF THIS ARTICLE. THE EMPLOYERS SHALL BE RESPONSIBLE FOR THE COSTS ASSOCIATED WITH PRINTING AND DISTRIBUTING WRITTEN INFORMATION.

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

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

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

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

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

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

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

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

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

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

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

2. ANY PERSON, OFFICIAL OR INSTITUTION REQUIRED BY THIS ARTICLE TO REPORT A CASE OF SUSPECTED ABUSE OR MALTREATMENT OF MENTALLY OR PHYSICALLY INCAPACITATED PERSONS WHO KNOWINGLY AND WILLFULLY FAILS TO DO SO SHALL BE CIVILLY LIABLE FOR THE DAMAGES PROXIMATELY CAUSED BY SUCH FAILURE.

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

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