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

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2009-2010 Regular Sessions

I N A S S E M B L Y

May 28, 2009

Introduced by M. of A. WEISENBERG -- read once and referred to the Committee on Mental Health, Mental Retardation and Developmental Disabilities

AN ACT to amend the mental hygiene law, in relation to required reporting of suspected abuse of adults in certain residential care facilities licensed or operated by the state

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

Section 1. The mental hygiene law is amended by adding two new sections 45.12 and 45.20 to read as follows:

S 45.12 ABUSE HOTLINE.

(A) THE COMMISSION SHALL BE CAPABLE OF RECEIVING TELEPHONE CALLS ALLEGING ABUSE OR MALTREATMENT OF ADULTS IN FACILITIES LICENSED PURSUANT TO ARTICLE SIXTEEN OR THIRTY-ONE OF THIS CHAPTER AND OF IMMEDIATELY IDENTIFYING PRIOR REPORTS OF ABUSE OR MALTREATMENT. TO EFFECTUATE THIS PURPOSE THERE SHALL BE A SINGLE STATEWIDE TELEPHONE NUMBER THAT ALL PERSONS, WHETHER MANDATED BY THE LAW OR NOT, MAY USE TO MAKE TELEPHONE CALLS ALLEGING SUCH ABUSE OR MALTREATMENT. IN ADDITION TO THE SINGLE STATEWIDE TELEPHONE NUMBER, THERE SHALL BE A SPECIAL UNLISTED EXPRESS TELEPHONE NUMBER AND A TELEPHONE FACSIMILE NUMBER FOR USE ONLY BY PERSONS MANDATED BY LAW TO MAKE TELEPHONE CALLS, OR TO TRANSMIT TELEPHONE FACSIMILE INFORMATION ON A FORM PROVIDED BY THE COMMISSIONER, ALLEGING ABUSE OR MALTREATMENT, AND FOR USE BY ALL PERSONS SO AUTHORIZED FOR DETERMINING THE EXISTENCE OF PRIOR REPORTS IN ORDER TO EVALUATE THE CONDITION OR CIRCUMSTANCES OF SUCH PERSON. WHEN ANY ALLEGATIONS CONTAINED IN SUCH TELEPHONE CALLS COULD REASONABLY CONSTITUTE A REPORT OF ABUSE OR MALTREATMENT, SUCH ALLEGATIONS SHALL BE IMMEDIATELY TRANSMITTED ORALLY OR ELECTRONICALLY TO THE COMMISSION FOR INVESTIGATION. THE INABILITY OF THE PERSON REPORTING THE ABUSE TO IDENTIFY THE ALLEGED PERPETRATOR SHALL, IN NO CIRCUMSTANCE, CONSTITUTE THE SOLE CAUSE TO

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

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REJECT SUCH ALLEGATION OR FAIL TO TRANSMIT SUCH ALLEGATION FOR INVESTIGATION.

(B) ANY TELEPHONE CALL MADE BY A PERSON REQUIRED TO REPORT CASES OF SUSPECTED ABUSE OR MALTREATMENT PURSUANT TO SECTION 45.20 OF THIS ARTICLE CONTAINING ALLEGATIONS, WHICH IF TRUE WOULD CONSTITUTE ABUSE OR MALTREATMENT SHALL CONSTITUTE A REPORT AND SHALL BE IMMEDIATELY TRANSMITTED ORALLY OR ELECTRONICALLY TO THE COMMISSION FOR INVESTIGATION.

(C) WHENEVER A TELEPHONE CALL TO THE STATEWIDE CENTRAL REGISTER DESCRIBED IN THIS SECTION IS RECEIVED BY THE COMMISSION AND THE COMMISSION BELIEVES THAT THE ALLEGED ACTS OR CIRCUMSTANCES AGAINST A PERSON DESCRIBED IN THE TELEPHONE CALL MAY CONSTITUTE A CRIME OR AN IMMEDIATE THREAT TO THE PERSON'S HEALTH OR SAFETY, THE COMMISSION SHALL CONVEY BY THE MOST EXPEDIENT MEANS AVAILABLE THE INFORMATION CONTAINED IN SUCH TELEPHONE CALL TO THE APPROPRIATE LAW ENFORCEMENT AGENCY, DISTRICT ATTORNEY OR OTHER PUBLIC OFFICIAL EMPOWERED TO PROVIDE NECESSARY AID OR ASSISTANCE.

S 45.20 MANDATORY REPORTING OF SUSPECTED ABUSE OF ADULTS IN CERTAIN FACILITIES.

(A) THE FOLLOWING PERSONS AND OFFICIALS ARE REQUIRED TO REPORT OR CAUSE A REPORT TO BE MADE TO THE COMMISSION IN ACCORDANCE WITH THIS SECTION 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; PHYSICAL THERAPIST; SPEECH THERAPIST; OR OCCUPATIONAL THERAPIST; SOCIAL SERVICES WORKER; EMPLOYEE OR VOLUNTEER IN A FACILITY LICENSED OR OPERATED UNDER THE PROVISIONS OF ARTICLE SIXTEEN OR THIRTY-ONE OF THIS CHAPTER; 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 SECTION 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.

(B) ANY PERSON, INSTITUTION, FACILITY, AGENCY, ORGANIZATION, PARTNERSHIP OR CORPORATION WHICH EMPLOYS PERSONS MANDATED TO REPORT SUSPECTED INCIDENTS OF ABUSE OR MALTREATMENT PURSUANT TO SUBDIVISION (A) OF THIS SECTION SHALL PROVIDE ALL SUCH CURRENT AND NEW EMPLOYEES WITH WRITTEN INFORMATION EXPLAINING THE REPORTING REQUIREMENTS AS PROVIDED IN SUBDIVISION (A) OF THIS SECTION.

(C) REQUIRED REPORTS OF SUSPECTED ABUSE OR MALTREATMENT SHALL BE MADE IMMEDIATELY TO THE COMMISSION BY TELEPHONE OR BY TELEPHONE FACSIMILE MACHINE ON A FORM SUPPLIED BY THE COMMISSION, TO BE SUCCEEDED BY A WRITTEN REPORT WITHIN TWO DAYS 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 COMMISSION MAY, BY REGULATION, REQUIRE OR THE PERSON MAKING THE REPORT BELIEVES MIGHT BE HELPFUL, IN FURTHERANCE OF THE PURPOSES OF THIS SECTION. WRITTEN REPORTS FROM PERSONS OR OFFICIALS REQUIRED BY THIS SECTION TO REPORT SHALL BE ADMISSIBLE IN EVIDENCE IN ANY PROCEEDINGS RELATING TO ADULT ABUSE OR MALTREATMENT.

(D) 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.

(E) ANY PERSON, OFFICIAL OR INSTITUTION REQUIRED BY THIS SECTION TO REPORT A CASE OF SUSPECTED ABUSE OR MALTREATMENT WHO WILLFULLY FAILS TO DO SO SHALL BE GUILTY OF A CLASS A MISDEMEANOR.

S 2. Section 45.07 of the mental hygiene law is amended by adding a new subdivision (c-1) to read as follows:

(C-1) 1. WHERE THE COMMISSION RECEIVES SOME CREDIBLE EVIDENCE OF THE ALLEGED ABUSE OR MALTREATMENT OF AN ADULT BY A STAFF MEMBER OF A FACILITY, THE COMMISSION SHALL NOTIFY THE PARENTS OR LEGAL GUARDIANS OF SUCH PATIENT.

2. WHERE THE COMMISSION RECEIVES A REPORT OF SUSPECTED ABUSE OR MALTREATMENT OF AN ADULT IN RESIDENTIAL CARE THROUGH THE HOTLINE ESTABLISHED PURSUANT TO SECTION 45.12 OF THIS ARTICLE, FROM A MANDATED REPORTER OR THROUGH ANY OTHER SOURCE, AND THE COMMISSION DETERMINES THAT IT APPEARS LIKELY THAT A CRIME MAY HAVE BEEN COMMITTED AGAINST SUCH ADULT, REGARDLESS OF WHETHER A REPORT IS INDICATED OR UNFOUNDED, THE COMMISSION SHALL TRANSMIT A REPORT OF THE ALLEGATIONS AND FINDINGS TO THE APPROPRIATE DISTRICT ATTORNEY'S OFFICE.

S 3. This act shall take effect on the ninetieth day after 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.