

4797

2011-2012 Regular Sessions

I N   S E N A T E

April 25, 2011

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Introduced by Sen. VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law, in relation to evidence of abuse and legally sealed reports

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

1     Section 1. Paragraph (a) of subdivision 6 of section 2803-d of the  
2     public health law, as amended by chapter 340 of the laws of 1980, is  
3     amended to read as follows:  
4     (a) Upon receipt of a report made pursuant to this section, the  
5     commissioner shall cause an investigation to be made of the allegations  
6     contained in the report. Notification of the receipt of a report shall  
7     be made immediately by the department to the appropriate district attorney if a prior request in writing has been made to the department by the  
8     district attorney. THE INVESTIGATION MUST INCLUDE A REVIEW OF ALL PRIOR  
9     REPORTS, INCLUDING LEGALLY SEALED REPORTS, THAT INVOLVE THE SUBJECT OF  
10    THE CURRENT REPORT. Prior to the completion of the investigation by the  
11    department, every reasonable effort shall be made to notify, personally  
12    or by certified mail, any person under investigation for having committed an act of physical abuse, mistreatment or neglect. The commissioner  
13    shall make a written determination, based on the findings of the investigation, of whether or not [sufficient credible evidence exists to  
14    sustain the allegations contained in the report or would support] THERE  
15    IS SOME CREDIBLE EVIDENCE OF THE ALLEGED PHYSICAL ABUSE, NEGLIGENCE, OR  
16    MISTREATMENT, OR EVIDENCE SUPPORTING a conclusion that a person not  
17    named in such report has committed an act of physical abuse, neglect or  
18    mistreatment. A copy of such written determination, together with a  
19    notice of the right to a hearing as provided in this subdivision, shall  
20    be sent by registered or certified mail to each person [who] AGAINST  
21    WHOM the commissioner has determined THERE IS SOME CREDIBLE EVIDENCE  
22    THAT SUCH PERSON has committed an act of physical abuse, neglect or

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

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1 mistreatment. A letter shall be sent to any other person alleged in such  
2 report to have committed such an act stating that a determination has  
3 been made that there is [not sufficient] NO CREDIBLE evidence to sustain  
4 the allegations relating to such person. A copy of each such determi-  
5 nation and letter shall be sent to the facility in which the alleged  
6 incident occurred.

7 S 2. Paragraph (c) of subdivision 6 of section 2803-d of the public  
8 health law, as amended by chapter 414 of the laws of 1986, is amended to  
9 read as follows:

10 (c) All information relating to any allegation FOR which the commis-  
11 sioner has determined [would not be sustained] THERE IS NO CREDIBLE  
12 EVIDENCE OF THE ALLEGED PHYSICAL ABUSE, NEGLECT, OR MISTREATMENT, OR  
13 EVIDENCE SUPPORTING A CONCLUSION THAT A PERSON NOT NAMED IN SUCH REPORT  
14 HAS COMMITTED AN ACT OF PHYSICAL ABUSE, NEGLECT, OR MISTREATMENT, shall  
15 be [expunged] LEGALLY SEALED one hundred twenty days following notifica-  
16 tion of such determination to the person who made the report pursuant to  
17 this section, unless a proceeding pertaining to such allegation is pend-  
18 ing pursuant to article seventy-eight of the civil practice law and  
19 rules. Whenever information is [expunged] LEGALLY SEALED, the commis-  
20 sioner shall notify any official notified pursuant to paragraph (a) of  
21 this subdivision that the information has been [expunged] LEGALLY  
22 SEALED.

23 (I) LEGALLY SEALED REPORTS SHALL BE MADE AVAILABLE ONLY TO:

24 A. THE DEPARTMENT OF HEALTH, WHEN INVESTIGATING A SUBSEQUENT REPORT  
25 INVOLVING A SUBJECT OF THE SEALED REPORT OR WHEN CONDUCTING INTERNAL  
26 QUALITY ASSURANCE REVIEWS;

27 B. THE SUBJECT OF THE REPORT; OR

28 C. THE DISTRICT ATTORNEY, THE ATTORNEY GENERAL AND OTHER ENFORCEMENT  
29 OFFICIALS, WHEN THEY VERIFY THE REPORT IS NECESSARY TO CONDUCT AN ACTIVE  
30 INVESTIGATION OR PROSECUTION.

31 (II) A PERSON GIVEN ACCESS TO LEGALLY SEALED REPORTS PURSUANT TO  
32 CLAUSE C OF SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL NOT REDISCLOSE THEM  
33 EXCEPT AS NECESSARY FOR AN ACTIVE INVESTIGATION OR PROSECUTION. SUCH  
34 PERSONS SHALL REQUEST OF ANY COURT INVOLVED THAT ANY COPIES OF SUCH  
35 REPORTS PRODUCED IN ANY PROCEEDING FOR PUBLIC DISCLOSURE BE REDACTED TO  
36 REMOVE THE IDENTITIES OF THE SUBJECTS OF SUCH REPORTS.

37 (III) A LEGALLY SEALED REPORT SHALL NOT BE SUFFICIENT EVIDENCE TO  
38 SUSTAIN A SUBSEQUENT REPORT INVOLVING THE SAME SUBJECT OR SUBJECTS.

39 (IV) THE COMMISSIONER MAY GRANT A REQUEST TO EXPUNGE A LEGALLY SEALED  
40 REPORT WHERE:

41 A. THE SOURCE OF THE REPORT WAS CONVICTED OF A VIOLATION OF SECTION  
42 240.55 OF THE PENAL LAW; OR

43 B. THE SUBJECT OF THE REPORT PRESENTS CLEAR AND CONVINCING EVIDENCE  
44 THAT AFFIRMATIVELY REFUTES THE ALLEGATION. THE ABSENCE OF CREDIBLE  
45 EVIDENCE SUPPORTING THE ALLEGATION SHALL NOT BE THE SOLE BASIS TO  
46 EXPUNGE THE REPORT.

47 S 3. Paragraph (d) of subdivision 6 of section 2803-d of the public  
48 health law, as amended by chapter 622 of the laws of 1980, is amended to  
49 read as follows:

50 (d) At any time within thirty days of the receipt of a copy of a  
51 determination made pursuant to this section, a person named in such  
52 determination as having committed an act of physical abuse, neglect or  
53 mistreatment, or as having failed to report such an incident, may  
54 request in writing that the commissioner amend or [expunge] SEAL the  
55 record of such report, to the extent such report applies to such person,  
56 or such written determination. If the commissioner does not comply with

1 such request within thirty days, such person shall have the right to a  
2 fair hearing to determine whether the record of the report or the writ-  
3 ten determination should be amended or [expunged] SEALED on the grounds  
4 that the record is inaccurate or the determination is not supported by  
5 the evidence. The burden of proof in such hearing shall be on the  
6 department. Whenever information is [expunged] SEALED, the commissioner  
7 shall notify any official notified pursuant to paragraph (a) of this  
8 subdivision that the information has been [expunged] SEALED.

9 S 4. This act shall take effect immediately.