

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

6233--A

2013-2014 Regular Sessions

I N A S S E M B L Y

March 18, 2013

Introduced by M. of A. PRETLOW -- read once and referred to the Committee on Mental Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the mental hygiene law, in relation to reports of substantial risk or threat of harm by mental health professionals; and repealing certain provisions of such law relating thereto

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

1 Section 1. Section 9.46 of the mental hygiene law is REPEALED and a
2 new section 9.46 is added to read as follows:
3 S 9.46 REPORTS OF SUBSTANTIAL RISK OR THREAT OF HARM BY MENTAL HEALTH
4 PROFESSIONALS.
5 (A) FOR PURPOSES OF THIS SECTION, THE TERM "MENTAL HEALTH PROFES-
6 SIONAL" SHALL INCLUDE A PHYSICIAN LICENSED PURSUANT TO ARTICLE ONE
7 HUNDRED THIRTY-ONE OF THE EDUCATION LAW; A PSYCHOLOGIST LICENSED PURSU-
8 ANT TO ARTICLE ONE HUNDRED FIFTY-THREE OF THE EDUCATION LAW; A NURSE
9 PRACTITIONER LICENSED PURSUANT TO ARTICLE ONE HUNDRED THIRTY-NINE OF THE
10 EDUCATION LAW; OR A LICENSED CLINICAL SOCIAL WORKER LICENSED PURSUANT TO
11 ARTICLE ONE HUNDRED FIFTY-FOUR OF THE EDUCATION LAW.
12 (B) NOTWITHSTANDING ANY OTHER LAW TO THE CONTRARY, WHEN A MENTAL
13 HEALTH PROFESSIONAL, CURRENTLY PROVIDING MENTAL HEALTH TREATMENT
14 SERVICES TO A PERSON, DETERMINES THAT SUCH PERSON PRESENTS A SERIOUS AND
15 IMMINENT DANGER TO SELF OR OTHERS, HE OR SHE IS AUTHORIZED TO DISCLOSE
16 SUCH DETERMINATION AS FOLLOWS: (I) TO AN ENDANGERED INDIVIDUAL OR INDIVIDUALS,
17 IF IDENTIFIABLE; (II) TO A LAW ENFORCEMENT AGENCY AND (III) AS
18 SOON AS PRACTICAL, TO THE DIRECTOR OF COMMUNITY SERVICE OR THE DIRECTOR'S
19 DESIGNEE, IN SUCH MANNER AND FORM AS DIRECTED BY THE COMMISSIONER.
20 THE REASONS FOR SUCH DISCLOSURE SHALL BE FULLY DOCUMENTED IN THE TREAT-
21 MENT RECORD OF SUCH PERSON. THE DIRECTOR OF COMMUNITY SERVICE OR THE
22 DIRECTOR'S DESIGNEE SHALL REPORT TO THE DIVISION OF CRIMINAL JUSTICE
23 SERVICES WHENEVER HE OR SHE AGREES THAT THE PERSON PRESENTS A SERIOUS

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

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1 AND IMMINENT DANGER TO SELF OR OTHERS. INFORMATION TRANSMITTED TO THE
2 DIVISION OF CRIMINAL JUSTICE SERVICES SHALL BE LIMITED TO THE NAME AND
3 OTHER NON-CLINICAL IDENTIFYING INFORMATION REGARDING THE PERSON WHO IS
4 THE SUBJECT OF THE DISCLOSURE, WHICH MAY BE USED BY THE DIVISION OF
5 CRIMINAL JUSTICE SERVICES ONLY FOR DETERMINING WHETHER A LICENSE ISSUED
6 PURSUANT TO SECTION 400.00 OF THE PENAL LAW SHOULD BE SUSPENDED OR
7 REVOKED, OR FOR DETERMINING WHETHER A PERSON IS INELIGIBLE FOR A LICENSE
8 ISSUED PURSUANT TO SECTION 400.00 OF THE PENAL LAW, OR IS NO LONGER
9 PERMITTED UNDER STATE OR FEDERAL LAW TO POSSESS A FIREARM. FOR PURPOSES
10 OF THIS SECTION, THE TERM "LAW ENFORCEMENT AGENCY" SHALL INCLUDE THE NEW
11 YORK STATE POLICE AND THE POLICE DEPARTMENTS OF A COUNTY, TOWN, CITY OR
12 VILLAGE IN THE STATE.

13 (C) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO REQUIRE A MENTAL
14 HEALTH PROFESSIONAL TO TAKE ANY ACTION WHICH, IN THE PROFESSIONAL JUDG-
15 MENT OF THE MENTAL HEALTH PROFESSIONAL, WOULD ENDANGER SUCH MENTAL
16 HEALTH PROFESSIONAL OR INCREASE THE DANGER TO A POTENTIAL ENDANGERED
17 PERSON OR PERSONS.

18 (D) ABSENT MALICE OR INTENTIONAL MISCONDUCT, THE DECISION OF A MENTAL
19 HEALTH PROFESSIONAL TO DISCLOSE OR NOT TO DISCLOSE IN ACCORDANCE WITH
20 THIS SECTION SHALL NOT BE THE BASIS FOR ANY CIVIL OR CRIMINAL LIABILITY
21 OF SUCH MENTAL HEALTH PROFESSIONAL.

22 S 2. This act shall take effect immediately.