

3940

2013-2014 Regular Sessions

I N   S E N A T E

February 27, 2013

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Introduced by Sen. O'BRIEN -- read twice and ordered printed, and when printed to be committed 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  
22     TREATING OR COMING INTO CONTACT WITH PERSONS WHO HAVE PHYSICAL OR  
23     EMOTIONAL SYMPTOMS OF ABUSE RESPONSIBLE FOR REPORTING THIS CRIME TO THE  
24     PROPER AUTHORITIES SO THAT THE VICTIMS CAN RECEIVE PROPER PROTECTION  
25     FROM FURTHER ABUSE.

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

LBD07011-01-3

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

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

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

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

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

47 3. ANY STATE OR LOCAL GOVERNMENTAL AGENCY OR AUTHORIZED AGENCY WHICH  
48 ISSUES A LICENSE, CERTIFICATE OR PERMIT TO AN INDIVIDUAL TO OPERATE AN  
49 ADULT DAY CARE CENTER OR NURSING HOME SHALL PROVIDE EACH PERSON CURRENT-  
50 LY HOLDING OR SEEKING SUCH A LICENSE, CERTIFICATE OR PERMIT WITH WRITTEN  
51 INFORMATION EXPLAINING THE REPORTING REQUIREMENTS AS PROVIDED IN SUBDI-  
52 VISION ONE OF THIS SECTION AND IN SECTION FOUR HUNDRED SEVENTY-THREE-Q  
53 OF THIS ARTICLE.

54 S 473-P. ANY PERSON PERMITTED TO REPORT. IN ADDITION TO THOSE PERSONS  
55 AND OFFICIALS REQUIRED TO REPORT SUSPECTED ABUSE OR MALTREATMENT OF  
56 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.

1 S 473-S. IMMUNITY FROM LIABILITY FOR REPORTING. ANY PERSON WHO REASON-  
2 ABLY AND IN GOOD FAITH MAKES A REPORT PURSUANT TO THIS SECTION SHALL  
3 HAVE IMMUNITY FROM ANY LIABILITY, CIVIL OR CRIMINAL, FOR HAVING MADE  
4 SUCH A REPORT.

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

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

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

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