

STATE OF NEW YORK

2171--A

2017-2018 Regular Sessions

IN SENATE

January 12, 2017

Introduced by Sens. SERINO, CARLUCCI, JACOBS, LITTLE -- read twice and ordered printed, and when printed to be committed to the Committee on Aging -- recommitted to the Committee on Aging in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the social services law and the executive law, in relation to creating a statewide central register of elder abuse and maltreatment reports and the elder justice coordinating council

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

STATEWIDE CENTRAL REGISTER OF ELDER ABUSE AND MALTREATMENT REPORTS

Section 473-m. Definitions.

473-n. Statewide central register of elder abuse and maltreatment reports.

473-o. Mandated reporters.

473-p. Penalties for failure to report.

473-q. Immunity from liability.

§ 473-m. Definitions. For the purposes of this article:

1. "Abused or maltreated elder" means any resident of New York state who is sixty years of age or older and who is alleged to be the victim of physical abuse, sexual abuse, emotional abuse, passive or self-neglect, or financial exploitation, as defined in subdivision six of section four hundred seventy-three of this chapter.

2. "Caregiver" means any person who has assumed full or intermittent responsibility for the care or custody of an elderly adult, whether or not he or she receives compensation.

§ 473-n. Statewide central register of elder abuse and maltreatment reports. 1. Subject to appropriation, there shall be established in the

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

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1 office of children and family services a statewide central register of
2 elder abuse and maltreatment reports made pursuant to this article.

3 2. The central register created by this section shall:

4 (a) be capable of receiving telephone calls alleging elder abuse or
5 maltreatment and of immediately identifying prior reports of elder abuse
6 or maltreatment and capable of monitoring the provision of adult protec-
7 tive services twenty-four hours a day, seven days a week. To effectuate
8 this purpose, there shall be a single statewide telephone number, in
9 addition to other special express reporting procedures, that all
10 persons, whether mandated by the law or not, may use to make telephone
11 calls alleging elder abuse or maltreatment and that all persons so
12 authorized may use for determining the existence of prior reports in
13 order to evaluate the condition of the elder;

14 (b) immediately transmit orally or electronically by the office of
15 children and family services to the appropriate adult protective service
16 for investigation, any allegations contained in such telephone calls
17 when they could reasonably constitute a report of elder abuse or
18 maltreatment, including such allegations and any previous reports to the
19 central registry involving the subject of such report or elder named in
20 such report, and any previous reports containing allegations of elder
21 abuse and maltreatment alleged to have occurred in other counties and
22 districts in New York state;

23 (c) immediately transmit orally or electronically to the appropriate
24 local adult protective service for investigation, any telephone call
25 made by a person required to report cases of suspected elder abuse or
26 maltreatment pursuant to this article containing allegations, which if
27 true would constitute elder abuse or maltreatment;

28 (d) convey by the most expedient means available to the appropriate
29 law enforcement agency, district attorney, or other public official
30 empowered to provide necessary aid or assistance, any information
31 contained in a telephone call to the register where the circumstances
32 despite not constituting abuse or maltreatment as defined in this arti-
33 cle, may constitute a crime or an immediate threat to the elder's health
34 or safety;

35 (e) maintain records including, but not limited to: all the informa-
36 tion in the written report; a record of the final disposition of the
37 report; information received from the local social services agency,
38 including services offered and services accepted, the names and identi-
39 fying data, dates and circumstances of any person requesting or receiv-
40 ing information from the register; and any other information which the
41 commissioner believes might be helpful in the furtherance of the
42 purposes of this article; and

43 (f) maintain the confidentiality of reports written, information
44 obtained, or photographs taken concerning such reports in the possession
45 of the office or local departments, except for law enforcement agencies
46 and others deemed by the commissioner of the office of children and
47 family services to have a relevant interest in the materials given their
48 legal or official status.

49 § 473-o. Mandated reporters. 1. The following persons and officials
50 are required to report or cause a report to be made to the central
51 registry under section four hundred seventy-three-n of this article when
52 they have reasonable cause to suspect that an elderly person coming
53 before them in their professional or official capacity is an abused or
54 maltreated elder; or when they have reasonable cause to suspect that the
55 individual is an abused or maltreated elder when the spouse, caregiver,
56 or guardian or other person legally responsible for the elder comes

1 before them in their professional or official capacity and states from
2 personal knowledge facts, conditions or circumstances which, if correct,
3 would render the elder an abused or maltreated elder: any physician;
4 registered physician assistant; surgeon; medical examiner; pharmacist;
5 coroner; dentist; dental hygienist; osteopath; optometrist; chiroprac-
6 tor; podiatrist; resident; intern; psychologist; registered nurse;
7 social worker; emergency medical technician; mental health professional;
8 licensed marriage and family therapist; licensed mental health counse-
9 lor; licensed psychoanalyst; licensed behavior analyst; hospital person-
10 nel engaged in admission, examination, care or treatment of persons;
11 substance abuse counselor; alcoholism counselor; all persons creden-
12 tialed by the office of alcoholism and substance abuse services;
13 licensed master social worker; licensed clinical social worker; any
14 administrator, employee or volunteer in a nursing home or residential
15 healthcare facility that is licensed, certified or operated by the
16 department of health; any employee of a personal care or home health
17 aide program; any person or employee of any corporation, partnership,
18 organization or other entity which is under contract to provide patient
19 care services in a residential health care facility; an employee of a
20 county adult protective services agency; police officer; district attor-
21 ney or assistant district attorney; peace officer; investigator employed
22 in the office of a district attorney; or other law enforcement official;
23 an attorney so long as it does not violate the New York state rules of
24 professional conduct.

25 2. Any person who is required to investigate reports of abuse or
26 maltreatment and who has reasonable cause to suspect that a victim died
27 as a result of maltreatment or abuse shall immediately report the suspi-
28 cion to the central registry which shall convey the report through the
29 most expedient means available to the appropriate medical examiner and
30 law enforcement authorities, notwithstanding the existence of a death
31 certificate signed by a practicing physician. The medical examiner shall
32 accept the report for investigation and shall report the findings of the
33 investigation, in writing, to the appropriate law enforcement authori-
34 ties.

35 3. Reports of suspected elder abuse shall be made immediately by tele-
36 phone or by telephone facsimile on a form supplied by the commissioner
37 of the office of children and family services to the central registry.
38 Such telephone reports shall be followed by a report in writing within
39 twenty-four hours after such oral report.

40 § 473-p. Penalties for failure to report. Any person required by this
41 article to report a cause of suspected elder abuse or maltreatment who
42 willfully fails to do so shall be guilty of a class A misdemeanor. Any
43 person required by this article to report a case of suspected elder
44 abuse or maltreatment who knowingly and willfully fails to do so shall
45 be civilly liable for the damages proximately caused by such failure.

46 § 473-q. Immunity from liability. Any person who in good faith makes a
47 report of allegations of elder abuse or maltreatment as required by this
48 title, including those who in good faith make a report to the wrong
49 recipient, shall have immunity from criminal liability which otherwise
50 result by reason of such actions. Any person who reasonably and in good
51 faith makes a report of allegations of elder abuse or maltreatment as
52 required by this title, shall have immunity from civil liability which
53 might otherwise result by reason of such actions.

54 § 2. The executive law is amended by adding a new article 28 to read
55 as follows:

ARTICLE 28ELDER JUSTICE COORDINATING COUNCILSection 830. Elder justice coordinating council.

§ 830. Elder justice coordinating council. 1. The elder justice coordinating council is hereby created within the executive department to facilitate interagency planning and review specific agency initiatives for their impact on the reporting and investigation of elder abuse and maltreatment in the state, and to provide a forum for concerns and discussion related to the formation of a comprehensive state policy relating to elder abuse and maltreatment. The council shall have and exercise the functions, powers, and duties provided by this article and any other provision of law.

2. The council shall be comprised of twenty-one members as follows: the commissioner of the office of children and family services, the director of the office for the aging, the commissioner of the division of criminal justice services, the commissioner of the department of health, and the commissioner of the office of alcohol and substance abuse services, and a representative from the department of law, who shall serve ex officio and who may designate representatives to act on their behalf. The governor shall appoint seven other members with expertise in elder abuse and maltreatment issues, at least two of whom shall represent not-for-profit corporations whose primary purpose is to provide access to experts for the development of elder abuse and maltreatment services and intervention, and at least two of whom shall represent law enforcement agencies that have expertise in the investigation and prosecution of elder abuse or maltreatment. Eight members shall be appointed by the governor on the recommendation of the legislative leaders as follows: the temporary president of the senate and the speaker of the assembly shall each recommend three members to the council. One of the three members recommended by the temporary president and one of the three members recommended by the speaker shall be a family member, caregiver, or advocate of a person who has suffered from elder abuse or maltreatment. One member shall be appointed on the recommendation of the minority leader of the senate and one member shall be appointed on the recommendation of the minority leader of the assembly. The commissioner of the office of children and family services and the director of the office for the aging shall serve, ex officio, as co-chairs of the council. Administrative duties shall be the responsibility of the office. The members of the council shall receive no compensation for their services.

3. Within one year after the effective date of this section the council shall establish community forums to gain input from consumers, providers, key law enforcement agencies, medical professionals and other interested parties to provide input and direction on developing a New York state plan for the identification, investigation, and intervention into cases of elder abuse and maltreatment. A community forum shall be established in each of the following regions of the state: Long Island, New York city, Northern Metropolitan New York, Northwestern New York, Utica area, central New York, Rochester area, and western New York. Such state plan shall include but not be limited to recommendations for the implementation of a statewide central registry for the reporting of suspected elder abuse and maltreatment, recommendations for the implementation of mandated reporting guidelines across the state, best practices in identifying elder abuse and maltreatment signs and symptoms, the identification of best practices for law enforcement officials in the identification, investigation, and prosecution of these cases, an

1 accounting of the incidence of these cases statewide, in addition to a
2 community assessment of the strengths and gaps in community and state
3 support services, in order to coordinate services among various systems
4 and agencies, and any other recommendations.

5 4. The council shall meet quarterly or more frequently if its business
6 shall require. The community forums in the first year of implementation
7 count as a formal meeting of the council. The members of the council
8 shall receive no compensation but shall be reimbursed for travel and
9 other expenses actually and necessarily incurred in the performance of
10 their duties. The council shall provide reports to the governor and the
11 legislature on or before October first, two thousand nineteen, and by
12 October first of every other year thereafter. Such reports shall include
13 recommendations for state policy relating to elder abuse and maltreat-
14 ment and a review of services initiated and coordinated among public and
15 private agencies to meet the needs of victims.

16 5. The office of children and family services shall serve as the focal
17 point to develop comprehensive coordinated responses of the various
18 state and local agencies with regard to elder abuse and maltreatment and
19 thus to ensure timely and appropriate responses to reports and investi-
20 gations.

21 6. The office of children and family services, in consultation with
22 the council, shall utilize data and information compiled and maintained
23 pursuant to this article to coordinate state funded research efforts to
24 ensure the most efficient use of funds available for the purposes of
25 this article.

26 § 3. This act shall take effect October 1, 2018; provided that section
27 one of this act shall take effect January 1, 2020.