

# STATE OF NEW YORK

4736--A

2017-2018 Regular Sessions

## IN SENATE

February 27, 2017

Introduced by Sens. LANZA, ADDABBO, AVELLA, BROOKS, GALLIVAN, HAMILTON, LARKIN, LATIMER, ORTT, ROBACH, SAVINO, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Mental Health and Developmental Disabilities -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the social services law, in relation to duty to report incidents to 9-1-1 and the county district attorney's office

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 491 of the social services law, as added by section  
2 1 of part B of chapter 501 of the laws of 2012 and subdivision 4 as  
3 amended by chapter 126 of the laws of 2014, is amended to read as  
4 follows:

5 § 491. Duty to report incidents. 1. (a) Mandated reporters shall  
6 report allegations of reportable incidents, all suspicious and unex-  
7 plained injuries to include broken bones, hematomas, open wounds beyond  
8 minor first aid, black eyes, swollen noses, extreme and questionable  
9 bruising, choke marks, burns, all individuals served found unresponsive  
10 and all deaths to a 9-1-1 operator, the county district attorney's  
11 office and the vulnerable persons' central register except for taunts,  
12 derogatory comments or ridicule which is required to be reported solely  
13 to the vulnerable persons' central register as established by section  
14 four hundred ninety-two of this article and in accordance with the  
15 requirements set forth therein. All medical emergencies that threaten  
16 the health, safety or life of individuals served shall be reported imme-  
17 diately to a 9-1-1 operator.

18 (b) Allegations of reportable incidents, all suspicious and unex-  
19 plained injuries to include broken bones, hematomas, open wounds beyond  
20 minor first aid, black eyes, swollen noses, extreme and questionable  
21 bruising, choke marks, burns, all individuals served found unresponsive

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

LBD09233-02-7

1 and all deaths shall be reported immediately to a 9-1-1 operator, the  
2 county district attorney's office and the vulnerable persons' central  
3 register upon discovery. For purposes of this article, "discovery"  
4 occurs when the mandated reporter witnesses a suspected reportable inci-  
5 dent or when another person, including the vulnerable person, comes  
6 before the mandated reporter in the mandated reporter's professional or  
7 official capacity and provides the mandated reporter with reasonable  
8 cause to suspect that the vulnerable person has been subjected to a  
9 reportable incident, all suspicious and unexplained injuries to include  
10 broken bones, hematomas, open wounds beyond minor first aid, black eyes,  
11 swollen noses, extreme and questionable bruising, choke marks, burns,  
12 all individuals served found unresponsive and all deaths. A report to  
13 the register shall include the name, title and contact information of  
14 every person known to the mandated reporter to have the same information  
15 as the mandated reporter concerning the reportable incident. [~~Nothing in~~  
16 ~~this subdivision shall be construed to prohibit a mandated reporter from~~  
17 ~~contacting or reporting to law enforcement or emergency services before~~  
18 ~~or after reporting to the vulnerable persons' central register.~~]

19 (c) The substance or content of any psychological, psychiatric, thera-  
20 peutic, clinical or medical reports, evaluations or like materials or  
21 information pertaining to the treatment of a patient or client of a  
22 mandatory reporter who reports a reportable incident of such patient or  
23 client pursuant to this article, must be provided by such mandatory  
24 reporter upon request of the justice center for the protection of people  
25 with special needs, local police and county district attorney if such  
26 records are essential for a full investigation of such allegation,  
27 notwithstanding any applicable privilege which would otherwise bar the  
28 disclosure of such materials and records pursuant to article forty-five  
29 of the civil practice law and rules or other provision of law except  
30 applicable federal law governing the disclosure of patient and related  
31 medical records.

32 2. Any person or official required to report allegations of reportable  
33 incidents pursuant to this section may take or cause to be taken color  
34 photographs of visible trauma and the face of the vulnerable person  
35 named in the report and upon the consent of a person authorized to  
36 consent to medical care for the vulnerable person, shall, if medically  
37 indicated, cause to be performed a radiological examination of the  
38 vulnerable person. Any photographs or radiological examinations taken  
39 shall be provided to the justice center, local police and county  
40 district attorney for use only for the purposes of an investigation of a  
41 reportable incident.

42 3. (a) Any human services professional required by this article to  
43 report a case of suspected abuse or neglect, all suspicious and unex-  
44 plained injuries to include broken bones, hematomas, open wounds beyond  
45 minor first aid, black eyes, swollen noses, extreme and questionable  
46 bruising, choke marks, burns, all individuals served found unresponsive  
47 and all deaths to a 9-1-1 operator, the county district attorney's  
48 office and the vulnerable persons' central register who knowingly and  
49 willfully fails to do so shall be guilty of a class [~~A misdemeanor~~] E  
50 felony. Mandated reporters shall report non-criminal medical emergen-  
51 cies that threaten the health, safety or life of individuals served to a  
52 9-1-1 operator only. Mandated reporters who knowingly and willfully fail  
53 to report such medical emergencies to a 9-1-1 operator shall be guilty  
54 of a class E felony.

55 (b) A mandated reporter who knowingly and willfully fails to report a  
56 case of suspected abuse or neglect, all suspicious and unexplained inju-

1 ries to include broken bones, hematomas, open wounds beyond minor first  
2 aid, black eyes, swollen noses, extreme and questionable bruising, choke  
3 marks, burns, all individuals served found unresponsive and all deaths  
4 to a 9-1-1 operator, the county district attorney's office and the  
5 vulnerable persons' central register may be subject to termination,  
6 subject to any applicable collective bargaining agreement. Any person or  
7 official required by this article to report a case of suspected abuse or  
8 neglect, all suspicious and unexplained injuries to include broken  
9 bones, hematomas, open wounds beyond minor first aid, black eyes, swol-  
10 len noses, extreme and questionable bruising, choke marks, burns, all  
11 individuals served found unresponsive and all deaths to a 9-1-1 opera-  
12 tor, the county district attorney's office and the vulnerable persons'  
13 central register and any medical emergencies that threaten the health,  
14 safety or life of individuals served not reported immediately to a 9-1-1  
15 operator who knowingly and willfully fails to do so shall be civilly  
16 liable for the damages proximately caused by such failure.

17 4. A medical or other public or private institution, state agency,  
18 school, facility or provider agency or its vendors or contractors shall  
19 not take any retaliatory personnel action, as such term is defined in  
20 paragraph (e) of subdivision one of section seven hundred forty of the  
21 labor law, against an employee or agent or vendor or contractor because  
22 such employee or agent or vendor or contractor believes that he or she  
23 has reasonable cause to suspect that a vulnerable person has been  
24 subjected to a reportable incident and that employee or agent or vendor  
25 or contractor therefore makes a report in accordance with this section  
26 and/or cooperated with the investigation of a reportable incident. A  
27 court of competent jurisdiction may grant injunctive relief to any  
28 person determined to have been subjected to such retaliation.

29 5. All state and private agencies with mandatory reporters shall  
30 retrain all staff on reporting to a 9-1-1 operator and the county  
31 district attorney's office and all state and private websites, training  
32 manuals, informational brochures or pamphlets directing reporting shall  
33 state that such instances be reported to a 9-1-1 operator and the county  
34 district attorney's office and the vulnerable persons' central register.  
35 All former poster and wallet cards and any other information directing  
36 reportable incidents to only the vulnerable persons' central register  
37 will be replaced and updated in a conspicuously located and timely  
38 manner to direct reporting of reportable incidents, crimes, medical  
39 emergencies, suspicious and unexplained injuries to include broken  
40 bones, hematomas, open wounds beyond minor first aid, black eyes, swol-  
41 len noses, extreme and questionable bruising, choke marks, burns, all  
42 individuals served found unresponsive and all deaths to the vulnerable  
43 persons' central register, a 9-1-1 operator, and the county district  
44 attorney's office with the exception of non-criminal medical emergen-  
45 cies, which shall only be reported to a 9-1-1 operator.

46 § 2. This act shall take effect immediately.