

# STATE OF NEW YORK

4736--C

2017-2018 Regular Sessions

## IN SENATE

February 27, 2017

Introduced by Sens. LANZA, ADDABBO, AKSHAR, ALCANTARA, AMEDORE, BAILEY, BONACIC, BOYLE, BROOKS, COMRIE, DILAN, FELDER, FUNKE, GALLIVAN, GOLDEN, GRIFFO, HAMILTON, HELMING, HOYLMAN, JACOBS, KAMINSKY, KENNEDY, KRUEGER, LARKIN, MARCELLINO, MARCHIONE, MONTGOMERY, MURPHY, O'MARA, ORTT, PARKER, PERALTA, PERSAUD, PHILLIPS, RITCHIE, RIVERA, ROBACH, SANDERS, SAVINO, SEPULVEDA, SERRANO, SEWARD, STAVISKY, TEDISCO -- 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 -- recommitted to the Committee on Mental Health and Developmental Disabilities in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee and committed to the Committee on Finance -- 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, subdivision 4 as amended  
3 by chapter 126 of the laws of 2014, subdivision 5 as added by chapter  
4 422 of the laws of 2017, is amended to read as follows:  
5 § 491. Duty to report incidents. 1. (a) Mandated reporters shall  
6 report allegations of reportable incidents to the vulnerable persons'  
7 central register as established by section four hundred ninety-two of  
8 this article and in accordance with the requirements set forth therein,  
9 and, in the case of all suspicious and unexplained injuries, including  
10 broken bones, hematomas, open wounds beyond minor first aid, black eyes,  
11 swollen noses, extreme and questionable bruising, choke marks, burns,

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

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1 all individuals served found unresponsive and all unexplained or suspi-  
2 cious deaths, to a 9-1-1 operator and the vulnerable persons' central  
3 register. All medical emergencies that threaten the health, safety or  
4 life of individuals served shall be reported immediately to a 9-1-1  
5 operator.

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

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

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

47 3. (a) Any human services professional required by this article to  
48 report a case of suspected abuse or neglect to the vulnerable persons'  
49 central register, or in the case of all suspicious and unexplained inju-  
50 ries, including broken bones, hematomas, open wounds beyond minor first  
51 aid, black eyes, swollen noses, extreme and questionable bruising, choke  
52 marks, burns, all individuals served found unresponsive and all unex-  
53 plained or suspicious deaths, to a 9-1-1 operator and the vulner-  
54 able persons' central register who knowingly and willfully fails to do so  
55 shall be guilty of a class A misdemeanor.

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

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

32 5. State oversight agencies shall ensure that all facilities or  
33 provider agencies operated, licensed, or certified by such state over-  
34 sight agencies have policies and procedures in place to identify and  
35 report possible crimes against a service recipient by a custodian. State  
36 oversight agencies shall provide guidance to facilities or provider  
37 agencies operated, licensed, or certified by such state oversight agen-  
38 cies that do not already have policies and procedures for the identifi-  
39 cation and reporting of possible crimes.

40 6. All state and private agencies with mandatory reporters shall  
41 ensure that all staff are trained on reporting to a 9-1-1 operator and  
42 all state and private websites, training manuals, informational  
43 brochures or pamphlets directing reporting shall state that all suspi-  
44 cious and unexplained injuries, including broken bones, hematomas, open  
45 wounds beyond minor first aid, black eyes, swollen noses, extreme and  
46 questionable bruising, choke marks, burns, all individuals served found  
47 unresponsive and all suspicious or unexplained deaths, be reported to a  
48 9-1-1 operator and the vulnerable persons' central register. All exist-  
49 ing posters and wallet cards and any other information directing the  
50 handling of reportable incidents will be updated as needed and posted in  
51 a conspicuously located and timely manner to reflect the new require-  
52 ments.

53 § 2. This act shall take effect on the first of November next succeed-  
54 ing the date on which it shall have become a law.