

# STATE OF NEW YORK

4736--D

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 -- 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, 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

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

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1 office and the vulnerable persons' central register except for taunts,  
2 derogatory comments or ridicule which is required to be reported solely  
3 to the vulnerable persons' central register as established by section  
4 four hundred ninety-two of this article and in accordance with the  
5 requirements set forth therein. All medical emergencies that threaten  
6 the health, safety or life of individuals served shall be reported imme-  
7 diately to a 9-1-1 operator.

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

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

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

53 3. (a) Any human services professional required by this article to  
54 report a case of suspected abuse or neglect, all suspicious and unex-  
55 plained injuries to include broken bones, hematomas, open wounds beyond  
56 minor first aid, black eyes, swollen noses, extreme and questionable

1 bruising, choke marks, burns, all individuals served found unresponsive  
2 and all deaths to a 9-1-1 operator, the county district attorney's  
3 office and the vulnerable persons' central register who knowingly and  
4 willfully fails to do so shall be guilty of a class A misdemeanor.  
5 Mandated reporters shall report non-criminal medical emergencies that  
6 threaten the health, safety or life of individuals served to a 9-1-1  
7 operator only. Mandated reporters who knowingly and willfully fail to  
8 report such medical emergencies to a 9-1-1 operator shall be guilty of a  
9 class E felony.

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

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

40 5. State oversight agencies shall ensure that all facilities or  
41 provider agencies operated, licensed, or certified by such state over-  
42 sight agencies have policies and procedures in place to identify and  
43 report possible crimes against a service recipient by a custodian. State  
44 oversight agencies shall provide guidance to facilities or provider  
45 agencies operated, licensed, or certified by such state oversight agen-  
46 cies that do not already have policies and procedures for the identifi-  
47 cation and reporting of possible crimes.

48 6. All state and private agencies with mandatory reporters shall  
49 retrain all staff on reporting to a 9-1-1 operator and the county  
50 district attorney's office and all state and private websites, training  
51 manuals, informational brochures or pamphlets directing reporting shall  
52 state that such instances be reported to a 9-1-1 operator and the county  
53 district attorney's office and the vulnerable persons' central register.  
54 All former poster and wallet cards and any other information directing  
55 reportable incidents to only the vulnerable persons' central register  
56 will be replaced and updated in a conspicuously located and timely

1 manner to direct reporting of reportable incidents, crimes, medical  
2 emergencies, suspicious and unexplained injuries to include broken  
3 bones, hematomas, open wounds beyond minor first aid, black eyes, swol-  
4 len noses, extreme and questionable bruising, choke marks, burns, all  
5 individuals served found unresponsive and all deaths to the vulnerable  
6 persons' central register, a 9-1-1 operator, and the county district  
7 attorney's office with the exception of non-criminal medical emergen-  
8 cies, which shall only be reported to a 9-1-1 operator.

9 § 2. This act shall take effect immediately.