# STATE OF NEW YORK

4923

2017-2018 Regular Sessions

# IN SENATE

March 3, 2017

Introduced by Sen. DIAZ -- read twice and ordered printed, and when printed to be committed to the Committee on Aging

AN ACT to amend the elder law and the penal law, in relation to enacting the senior anti-violence and enforcement act

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

Section 1. This act shall be known and may be cited as the "senior anti-violence and enforcement act" (SAVE).

§ 2. The elder law is amended by adding a new article 4 to read as follows:

**ARTICLE 4**
**PROTECTION OF THE ELDERLY**
**TITLE 1**
**SENIOR ANTI-VIOLENCE AND ENFORCEMENT ACT; REPORTS AND FINDINGS**


**Section 400. Definitions.**
**401. Statewide central registry established; requirements.**
**402. Disposition of reports received by the registry.**
**403. Availability of reports.**
**404. Release of information.**
**405. Unfounded reports.**
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**407. Persons required to report suspected senior abuse or maltreatment.**
**408. Any person permitted to report.**
**409. Reporting procedure.**
**410. Immunity from liability.**
**411. Penalties for failure to report.**
**412. Annual reports.**


**§ 400. Definitions. As used in this article:**

**1. "Senior" means a person sixty years of age or older.**

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

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2. "Registry" or "Central registry" means the statewide central registry for senior abuse and neglect in the state office for the aging.

3. "Office" means the state office for the aging.

4. "Council" means the council on elder abuse created pursuant to this article.

5. "Designated agency" has the same meaning as provided in section two hundred fourteen of this chapter.

6. "Local service" means those services and agencies that work with designated agencies as part of the team in investigating allegations of abuse of a senior.

7. "Abused senior" means and includes a senior abused in any of the following manners:

(a) "Physical abuse" means the non-accidental use of force that results in the suffering of bodily injury, physical pain or impairment resulting from the use of physical force against a senior, including but not limited to, striking with or without an object, hitting, beating, pushing, shoving, shaking, kicking, pinching, being slapped, burned, cut, bruised or improperly physically restrained. Also, any physical signs of impairment or of being subjected to punishment, or signs of being restrained, or a senior's report of being hit, slapped, kicked, or mistreated.

(b) "Sexual abuse" means non-consensual sexual contact of any kind with a senior, including but not limited to, unwanted touching, sexual assault or battery, rape, sodomy, coerced nudity, and sexually explicit photographing, forcing sexual contact or forcing sex with a third party.

(c) "Emotional or psychological abuse" means willful infliction of mental or emotional anguish by threat, humiliation, intimidation or other abusive conduct, including but not limited to, frightening or isolating an adult. Emotional or psychological abuse may also include the infliction of anguish, pain or distress through verbal or nonverbal acts, including but not limited to verbal assaults, insults, threats, intimidation, humiliation, and harassment, infantilizing a senior, isolating a senior from his or her family, friends or regular activities, or enforced social isolation, the results of which may be evinced by impairments including but not limited to the caregiver's refusal to allow visitors to see a senior alone, or changes in the senior's behavior that result in the senior being emotionally upset or agitated, being extremely withdrawn and noncommunicative or nonresponsive, unusual behavior usually attributed to dementia (e.g. sucking, biting, rocking).

(d) Neglect, including the refusal or failure to fulfill any part of a person's obligations or duties to a senior, failure of a person who has fiduciary responsibilities to provide care for a senior or the failure on the part of an in-home service provider to provide such necessary care, including the refusal or failure to provide an elderly person with such life necessities as food, water, clothing, shelter, personal hygiene, medicine, comfort, personal safety, and other essentials included in an implied or agreed-upon responsibility to such senior, the results of which may be evinced by such visible physical impairments as dehydration, malnutrition, untreated bed sores, and poor personal hygiene, unattended or untreated health problems, hazardous or unsafe living condition/arrangements, unsanitary and unclean living conditions (e.g. dirt, fleas, lice on person, soiled bedding, fecal/urine smell, inadequate clothing).

(e) Abandonment, including the desertion of a senior by an individual who has assumed responsibility for providing care for such senior, or by a person with physical custody of a senior, including but not limited to

the desertion of a senior at a hospital, a nursing facility, or other similar institution, or the desertion of a senior at a shopping center or other public location; or a senior's report of being abandoned.

(f) Financial or material exploitation, including the illegal or improper use of a senior's funds, property, or assets, including without limitation cashing a senior's checks without authorization or permission, forging a senior's signature, misusing or stealing a senior's money or possessions, coercing or deceiving a senior into signing a document such as a contract or a will, or improper use of conservatorship, guardianship, or power of attorney.

(g) Self-neglect, including the behavior of an elderly person that threatens his or her own health or safety through the refusal or failure to provide himself or herself with adequate food, water, clothing, shelter, personal hygiene, medication (when indicated), and safety precautions.

8. "Person legally responsible for a senior" means and includes the senior's custodian, guardian or any other person responsible formally or informally for the senior's care at the relevant time, any person acting with power of attorney, trustee appointed by a court, or any person who by consent, contract or legal order acts to arrange the affairs of the senior.

9. "Subject of the report" means a person reported to the central registry as being allegedly responsible for causing the injury, abuse or maltreatment that has resulted in a senior becoming an abused senior or who allegedly allows such injury, abuse or maltreatment to be inflicted on such senior and who is:

(a) a person legally responsible for a senior;

(b) a person, including a director, operator, employee, volunteer, or contractor, in a public, private, or not-for-profit entity providing goods or services to a senior pursuant to a contract or other arrangement;

(c) a person related to the senior by consanguinity or affinity; or

(d) a person who has gained access to or control formally or informally over a senior's finances, medication, living arrangements, such that such person may cause a senior to become an abused senior.

10. "Other persons named in the report" means persons other than the subject of the report who are named in a report of senior abuse. Other persons named in the report shall be limited to the senior who is reported to the registry, and such senior's guardian, custodian or other person legally responsible for the senior who has not been named in the report as allegedly responsible for causing the senior to become an abused senior.

11. An "unfounded report" means any report made pursuant to this title which is not an indicated report.

12. An "indicated report" is a report made pursuant to this title for which an investigation determines that credible evidence exists that a senior is an abused senior.

13. "Director" means the director of the office for the aging as described in section two hundred one of this chapter.

§ 401. Statewide central registry established; requirements. 1. The director shall establish in the office a statewide central registry to receive, maintain, and provide appropriate access to reports made pursuant to this title concerning the abuse and maltreatment of seniors.

2. Such registry shall be capable of receiving reports by telephone call, fax, e-mail, and any other forms of communication the director deems appropriate, alleging that a senior has become an abused senior,

of immediately identifying prior reports of abuse involving such senior or other persons named in the report, and shall be capable of monitoring the provision of services to such senior twenty-four hours a day, seven days a week. In furtherance of these requirements,

(a) The office shall maintain statewide toll-free telephone voice and fax numbers and an e-mail address which any person, whether mandated by law or not, may use to contact the registry to report an allegation that a senior has become an abused senior.

(b) The office shall additionally maintain an unlisted telephone number, fax number, e-mail address, and such other communication protocols as the director deems appropriate, which only persons mandated by this chapter may use to report an allegation that a senior has become an abused senior.

(c) The office shall assure that the communication protocols required by this section shall be capable of allowing all persons authorized by this title to determine the existence of prior reports in order to evaluate the condition or circumstances of a senior.

3. Information maintained in the registry shall include but not be limited to:

(a) the initial date or date of the contact with the registry alleging that a senior has become an abused senior;

(b) the time and date of the communication of such information to the designated agency, and the time and date of acknowledgement of receipt by the designated agency of such information;

(c) all information in the written report required by this title;

(d) a record of the final disposition of the report, including services offered and services accepted;

(e) the plan for rehabilitative treatment;

(f) names and identifying data, dates and circumstances of any person requesting or receiving information from the registry; and

(g) any other information the director deems will further the purposes and intent of this title.

§ 402. Disposition of reports received by the registry. 1. The director shall establish in the rules and regulations to implement the requirements of this section criteria for determining whether a report could reasonably constitute a report of abuse of a senior. The inability of a person making a report to identify the alleged perpetrator shall not constitute a sufficient reason for the registry to reject the allegation or to fail to transmit the allegation for investigation.

2. When an allegation reported to the registry could reasonably constitute a report of abuse of a senior, such allegation shall be transmitted by the fastest means possible by the office to the designated agency for investigation.

3. If the records indicate a previous report concerning a subject of the report, other persons named in the report or other pertinent information, the designated agency shall be notified of the fact.

4. Irrespective of whether a report reasonably constitutes a report of abuse of a senior,

(a) If a report could reasonably constitute a crime or could reasonably be construed as posing an immediate threat to the senior's health or safety, the office shall convey by the most expedient means available the information to the appropriate law enforcement agency, district attorney or other public official empowered to provide necessary aid or assistance.

(b) If a report could reasonably constitute institutional neglect of a senior in residential care, the office shall convey by the most expedi-

ent means available the information to the state agency responsible for the operation or supervision of the residential facility or program and, in the case of a facility operated or certified by an office of the department of mental hygiene, to the state commission on quality of care for the mentally disabled, for appropriate action.

5. Reports and records made pursuant to this title, including any previous report concerning a subject of the report, other persons named in the report or other pertinent information, involving seniors who reside in a facility licensed or operated by the office of mental health or the office for people with developmental disabilities, shall be transmitted immediately by the registry to the commission on quality of care for the mentally disabled, which shall commence an appropriate investigation in accordance with the mental hygiene law.

§ 403. Availability of reports. 1. Reports made pursuant to this title as well as any other information obtained, including reports written or photographs taken concerning such reports which are in the possession of the office, designated agencies, or the commission on quality of care for the mentally disabled, shall be confidential and shall only be made available to:

(a) a physician who, examining or having examined a senior, reasonably suspects that such senior may be an abused or maltreated senior;

(b) a person authorized to place a senior in protective custody when such person has before him or her a senior whom he or she reasonably suspects may be an abused or maltreated senior and such person requires the information to determine whether to place the senior in protective custody;

(c) a duly authorized agency having responsibility for the care or supervision of a senior who is reported to the registry;

(d) a person who is the subject of the report or other persons named in the report;

(e) a court, upon a finding that the information is necessary for determination of an issue before the court;

(f) a grand jury, upon a finding that the information is necessary for determination of charges before the grand jury; and

(g) an appropriate state legislative committee responsible for protective legislation of seniors.

2. Rules and regulations of the director shall establish a list of such other persons, agencies, investigative bodies, and auditing entities that may be given access to the registry, and shall establish requirements for confidentiality, limitations on re-disclosure of information, and such other requirements and limitations as the director shall deem necessary.

3. Any inconsistent provision of any other law to the contrary notwithstanding, the director may withhold all or part of any information which he or she is authorized to make available to persons or agencies identified in this section or identified by rule and regulation, if the director determines that such information is not related to the purposes for which such information is requested or that disclosure will be detrimental to the senior named in the report.

4. If a person or agency identified in this section, or by rule and regulation of the director, as one to whom access to reports and other information shall be granted, is denied such access, such person or agency may bring a proceeding for review of such denial pursuant to article seventy-eight of the civil practice law and rules.

5. Nothing contained in this article shall be construed to permit release, disclosure or identification of the names or identifying

descriptions of persons who report suspected abuse or maltreatment of a senior to the registry or such person's place of employment or with whom they have an association other than employment without such person's written permission except to such persons, officials, and agencies as the director determines in rule and regulation.

§ 404. Release of information. 1. Information concerning reports or investigations may be released to the public only by persons designated in the rules and regulations of the director to release such information. Information that may be provided shall be limited to the following:

(a) If a request for information is made prior to the completion of an investigation of a report, the released information shall be limited to whether the report is "indicated", "unfounded" or "under investigation", as the case may be.

(b) If the request for information is made after the completion of an investigation of a report, the released information shall be limited to whether the report is "indicated" or "unfounded," as the case may be.

2. Notwithstanding any inconsistent provision of law to the contrary, the director or a designated agency director may disclose information regarding the abuse or maltreatment of a senior as set forth in this section, and the investigation thereof and any services related thereto if he or she determines that such disclosure shall not be contrary to the best interests of the senior, and any one of the following factors are present:

(a) the subject of the report has been charged in an accusatory instrument with committing a crime related to a report maintained in the registry; or

(b) the investigation of the abuse or maltreatment by the designated agency or the provision of services by such service has been publicly disclosed in a report required to be disclosed in the course of their official duties, by a law enforcement agency or official, a district attorney, any other state or local investigative agency or official or by judge of the unified court system; or

(c) there has been a prior knowing, voluntary, public disclosure by an individual concerning a report of abuse or maltreatment in which such individual is named as the subject of the report; or

(d) the senior in the report has died or the report involves the near fatality of a senior. For the purposes of this section, "near fatality" means an act that results in the senior being placed, as certified by a physician, in serious or critical condition.

3. For the purposes of this section, the following information may be disclosed:

(a) the name of the abused or maltreated senior;

(b) the determination by the designated agency or the state agency which investigated the report and the findings of the applicable investigating agency upon which such determination was based;

(c) identification of services provided or actions taken regarding the senior named in the report as a result of any such report or reports;

(d) whether any report of abuse or maltreatment regarding such senior has been "indicated" as maintained by the registry;

(e) actions taken by the designated agency in response to reports of abuse or maltreatment to the registry including but not limited to actions taken after each and every report of abuse or maltreatment of such senior and the dates of such reports;

(f) whether the senior has received care or services from the designated agency prior to each and every report of abuse or maltreatment of such senior; and

(g) any extraordinary or pertinent information concerning the circumstances of the abuse or maltreatment of the senior and the investigation thereof, where the director determines such disclosure is consistent with the public interest.

4. Information may be disclosed pursuant to this section as follows:

(a) information released prior to the completion of the investigation of a report shall be limited to a statement that a report is "under investigation";

(b) when there has been a prior disclosure pursuant to this subdivision, information released in a case in which the report has been unfounded shall be limited to the statement that "the investigation has been completed, and the report has been unfounded";

(c) if the report has been "indicated" then information may be released pursuant to subdivision two of this section.

5. Any disclosure of information pursuant to this section shall not identify or provide an identifying description of the source of the report, and shall not identify the name of the person legally responsible for the senior or any other members of the senior's household, other than the subject of the report.

6. In determining whether disclosure will be contrary to the best interests of the senior, the director or a designated agency director shall consider the interest in privacy of the senior and the senior's family and the effects which disclosure may have on efforts to provide services.

7. Whenever a disclosure of information is made pursuant to this section, the designated agency director shall make a written statement prior to disclosing such information to the chief county executive officer where the incident occurred setting forth the criteria upon which he or she is basing such disclosure.

8. Except as it applies directly to the cause of the abuse or maltreatment of the senior, nothing in this section shall be deemed to authorize the release or disclosure of the substance or content of any psychological, psychiatric, therapeutic, clinical or medical reports, evaluations or like materials or information pertaining to such senior or the senior's family. Prior to the release or disclosure of any psychological, psychiatric or therapeutic reports, evaluations or like materials or information pursuant to this subdivision, the local social services director shall consult with the personnel of the department of mental hygiene.

§ 405. Unfounded reports. 1. Unless an investigation of a report conducted pursuant to this title determines that there is credible evidence of the alleged abuse or maltreatment, all information identifying the subjects of the report and other persons named in the report shall be legally sealed by the registry and any designated agencies or the state agency which investigated the report, and the report shall be deemed "unfounded". Such unfounded reports may only be unsealed and made available to such persons and entities as shall be established by the director in rules and regulations for such purposes as review of a fatality or investigation of a subsequent report of suspected abuse or maltreatment involving a subject of the unfounded report. Such unfounded reports may be made available to the following persons and entities: a senior named in the unfounded report; other persons named in the report; the subject of the report; a district attorney or a state or local

police officer when such official verifies that the report is necessary to conduct an active criminal investigation or for prosecution of elder abuse; or other persons in keeping with the spirit and intent of this section as shall be determined in the rules and regulations of the director required to implement this section.

2. Persons given access to such unfounded reports shall not redisclose such reports except as necessary to conduct appropriate investigation or prosecution and shall request of the court that any copies of such reports produced in any court proceedings be redacted to remove the names of the subjects and other persons named in the reports or that the court issue an order protecting the names of the subjects and other persons named in the reports from public disclosure.

3. An unfounded report shall not be admissible in a judicial or administrative proceeding or action; provided, however, an unfounded report may be introduced into evidence:

(a) by the subject of the report where such subject is a respondent in a judicial proceeding pertaining to the allegation made in the report, or is a plaintiff or petitioner in a civil action or proceeding alleging the false reporting of senior abuse or maltreatment; or

(b) in a criminal court for the purpose of prosecuting a crime against a senior. Legally sealed unfounded reports shall be expunged ten years after the receipt of the report. Whenever the office determines that there is some credible evidence of abuse or maltreatment as a result of an investigation of a report conducted pursuant to the mental hygiene law, the office shall notify the commission on quality of care for the mentally disabled.

4. Notwithstanding any other provision of law, the office may in its discretion grant a request to expunge an unfounded report where: (a) the source of the report was convicted of a violation of the penal law in regard to such report; or (b) the subject of the report presents clear and convincing evidence that affirmatively refutes the allegation of abuse or maltreatment; provided however, that the absence of credible evidence supporting the allegation of abuse or maltreatment shall not be the sole basis to expunge the report. Nothing in this section shall require the office to conduct an administrative hearing in deciding whether to expunge a report. The office shall make its determination upon reviewing the written evidence submitted by the subject of the report and any records or information obtained from the state or local agency which investigated the allegations of abuse or maltreatment.

5. In any case and at any time, the director may amend any record upon good cause shown and notice to the subjects of the report and other persons named in the report.

6. At any time, a subject of a report and other persons named in the report may receive, upon request, a copy of all information contained in the registry; provided, however, that the director is authorized to prohibit the release of data that would identify the person who made the report or who cooperated in a subsequent investigation or the agency, institution, organization, program or other entity where such person is employed or with which he or she is associated, which he or she reasonably finds will be detrimental to the safety or interests of such person.

7. At any time subsequent to the completion of the investigation but in no event later than ninety days after the subject of the report is notified that the report is indicated the subject may request the director to amend the record of the report. If the director does not amend the report in accordance with such request within ninety days of receiv-

ing the request, the subject shall have the right to a fair hearing, conducted in accordance with this subdivision, to determine whether the record of the report in the registry should be amended on the grounds that it is inaccurate or it is being maintained in a manner inconsistent with this title.

(a) If it is determined after review that there is no credible evidence in the record to find that the subject committed an act or acts of senior abuse or maltreatment, the office shall amend the record to indicate that the report is "unfounded" and notify the subject forthwith.

(b) If the office does not amend the record in accordance with such request and the provisions of this subdivision, the office shall schedule a fair hearing and shall provide notice of the scheduled hearing date to the subject, the registry and, as appropriate, to the designated agency or the state agency which investigated the report. The burden of proof in such a hearing shall be on the designated agency or the state agency which investigated the report, as the case may be.

(i) A court finding of abuse or neglect against the subject in regard to an allegation contained in the report shall create an irrebuttable presumption that said allegation is substantiated by some credible evidence.

(ii) If it is determined at the fair hearing that there is no credible evidence in the record to find that the subject committed an act or acts of abuse or maltreatment of a senior, the office shall amend the record to reflect that such a finding was made at the administrative hearing, order any designated agency or state agency which investigated the report to similarly amend its records of the report, and shall notify the subject forthwith of the determination.

(c) The director or his or her designated agent is authorized and empowered to make any appropriate order respecting the amendment of a record to make it accurate or consistent with the requirements of this section.

(d) Should the office grant the request of the subject of the report pursuant to this subdivision either through an administrative review or fair hearing to amend an indicated report to an unfounded report, such report shall be legally sealed and shall be released and expunged in accordance with the standards set forth in this section.

8. Written notice of any expungement or amendment of any record, made pursuant to this title, shall be served forthwith upon each subject of such record, other persons named in the report, the director, and such other persons and agencies the director shall deem appropriate. The designated agency or the state agency which investigated the report, upon receipt of such notice, shall take the appropriate similar action in regard to its registry and records and inform, for the same purpose, any other agency which received such record.

§ 406. Penalty for unauthorized disclosure. Unauthorized disclosure by any party of information obtained from the registry shall be a class A misdemeanor.

§ 407. Persons required to report suspected senior abuse or maltreatment. 1. The following persons are required to report or cause a report to be made in accordance with this title when, while acting in their professional or official capacity, they have reasonable cause to suspect that a senior coming before them is an abused senior, or when they have reasonable cause to suspect that a senior is an abused senior where the person legally responsible for such senior comes before them and states

from personal knowledge facts, conditions or circumstances which, if correct, would render the senior an abused senior:

(a) any health care worker, including any physician, physician assistant, surgeon, medical examiner, coroner, dentist, dental hygienist, osteopath, optometrist, chiropractor, podiatrist, resident, intern, psychologist, registered nurse, emergency medical technician, or any hospital or nursing home personnel engaged in the admission, examination, care or treatment of persons, or any other health care or health services practitioner, including a Christian Science practitioner, acupuncturist, or other such person;

(b) any social worker, social services worker, day care center worker, or any provider of family or group family day care;

(c) any mental health professional; substance abuse counselor; alcoholism counselor;

(d) any person, including a director, operator, employee, volunteer, or contractor, in a public, private, or not-for-profit facility which provides care to one or more seniors and which is licensed or registered pursuant to the provisions of the public health law, or the social services law;

(e) any peace officer, police officer, district attorney or assistant district attorney, investigator employed in the office of a district attorney or other law enforcement official;

(f) any banker, financial consultant, attorney, or paralegal with access to a senior's financial records or resources or legal documents or who possesses power of attorney for such senior.

The director shall further define and enumerate in regulations persons and occupations which are required to report when they suspect that a senior has become an abused senior.

2. A person required to report under this title in his or her capacity as a member of the staff of a medical or other public or private institution, facility or agency shall additionally and immediately notify the person in charge of such institution, facility or agency, or his or her designated agent, who then also shall become responsible to report or cause reports to be made, provided however that nothing in this section shall require more than one report from any such institution or agency. At the time of making a report, or at any time thereafter, such person or official may request the findings of an investigation made pursuant to this title.

§ 408. Any person permitted to report. In addition to persons and officials required to report suspected senior abuse pursuant to this chapter, any person may make such a report if such person has reasonable cause to suspect that a senior is an abused senior.

§ 409. Reporting procedure. 1. Reports of suspected abuse made pursuant to this title shall be made immediately by telephone, fax, e-mail or any other communication protocol on a form supplied by the director. Oral reports shall be followed by a report in writing within forty-eight hours after such oral report.

2. Written reports shall be made in a manner prescribed by and on forms supplied by the director and shall include the following information:

(a) the name and address of the senior;

(b) the person responsible for his or her care, if known;

(c) the name and address of the care facility or program in which the senior resides or is receiving care;

(d) the senior's age, sex and race;

(e) the nature and extent of the injuries, abuse or maltreatment, including any evidence of prior injuries, abuse or maltreatment;

(f) the name of the person or persons alleged to be responsible for causing the injury, abuse or maltreatment, if known;

(g) family composition, where appropriate;

(h) the source of the report;

(i) the person making the report and where he or she can be reached;

(j) the actions taken by the reporting source, including the taking of photographs and technological scans, or notifying the medical examiner or coroner; and

(k) any other information which the director may by regulation require, or which the person making the report believes might be helpful, in the furtherance of the intent and purposes of this title.

3. Any person or official required to report cases of suspected senior abuse and maltreatment may take or cause to be taken at public expense photographs or, if medically indicated, other technological or imaging scans including x-rays of the areas of trauma visible on a senior who is subject to a report. Any such photographs or scans taken shall be sent to the designated agency at the time the written report is sent, or as soon thereafter as possible. A person required to report under this title in his or her capacity as a member of the staff of a medical or other public or private institution, facility, or agency, shall immediately notify the person in charge of such institution, school, facility or agency, or the designated agent of such person, who shall then take or cause to be taken at public expense color photographs or, if medically indicated, other technological or imaging scans including x-rays, of the senior.

4. Except as otherwise provided in this chapter, written reports from persons or officials required by this title to report shall be admissible in evidence in any proceedings relating to senior abuse or maltreatment.

5. A person or official required to report suspected senior abuse or maltreatment who has reasonable cause to suspect that a senior died as a result of abuse or maltreatment shall report the fact to the appropriate medical examiner or coroner. The medical examiner or coroner shall accept the report for investigation and shall report his or her finding to the police, the appropriate district attorney, the local service, the office, and, if the institution making the report is a hospital, the hospital.

§ 410. Immunity from liability. A person, official, or institution participating in good faith in providing of services pursuant to this title, the making of a report, the taking of photographs, the removal or keeping of a senior pursuant to this title, or the disclosure of information in compliance with this title and rules and regulations promulgated thereunder, shall be immune from any liability, civil or criminal, that might otherwise result by reason of such actions. For the purpose of any proceeding, civil or criminal, the good faith of any such person, official, or institution required to report cases of senior abuse or maltreatment or providing a service pursuant to this title shall be presumed, provided such person, official or institution was acting in discharge of their duties and within the scope of their employment, and that such liability did not result from the willful misconduct or gross negligence of such person, official or institution.

§ 411. Penalties for failure to report. A person, official or institution required by this title to report a case of suspected abuse or

maltreatment of a senior who willfully fails to do so shall be guilty of a class A misdemeanor.

Any person, official or institution required by this chapter to report a case of suspected senior abuse or maltreatment who knowingly and willfully fails to do so shall be civilly liable for the damages proximately caused by such failure.

§ 412. Annual reports. The director shall report prior to December fifteenth of each year on the operations of the registry and the various designated agencies. The report shall include a full statistical analysis of the reports made to the registry together with a report on the implementation of this article, an evaluation of services offered and recommendations for additional legislation to fulfill the purposes of this article. Such report shall indicate the number of abuse and maltreatment reports and cases received by the registry by each designated agency in the preceding year, the number of such cases determined to have been indicated and the number of such cases determined to be unfounded by each district in the preceding year, the number of such cases which have not been indicated or unfounded within the time period required by this chapter by each designated agency in the preceding year and the number of workers assigned to the designated agency in the preceding year. The report shall also contain data on the protection of seniors in residential care from abuse and maltreatment, including reports received, results of investigations by types of facilities and programs, types of corrective action taken, as well as efforts undertaken by the office to provide training pursuant to this chapter.

## TITLE 2
## DUTIES AND RESPONSIBILITIES OF THE OFFICE AND THE COUNCIL

Section 420. Duties and responsibilities of the office.
421. Council on elder abuse; creation and powers.
422. Cooperation of other agencies.
423. Implementation.
424. Senior anti-violence services responsibilities and organization.
425. Duties of the SAVS unit.
426. Local and regional fatality review teams.

§ 420. Duties and responsibilities of the office. The office shall:

1. Encourage the fullest degree of reporting of suspected senior abuse or maltreatment by conducting continuing publicity and education programs for persons and officials who are required to report as well as other appropriate persons.

2. Provide technical assistance on an ongoing basis, or as needed, or upon request to designated agencies regarding case planning, provision of services, and performance or other responsibilities pursuant to this title.

3. Develop protocols and issue guidelines to assist designated agencies in evaluating and establishing investigative priorities for reports describing situations or events which may pose a clear and present danger to the life, health or safety of a senior and/or which require immediate, personal contact between the designated agency and the subject of the report, the subject's family, or other persons named in the report.

4. Issue guidelines to assist designated agencies in the interpretation and assessment of reports of abuse and maltreatment made to the registry, including information, standards and criteria for the iden-

tification of credible evidence of alleged abuse and maltreatment required to determine whether a report may be indicated.

5. Set forth requirements for the performance by designated agencies of the duties and powers imposed and conferred upon them by the provisions of this title, including uniform requirements for the investigation of reports of abuse or maltreatment, standards for intervention, criteria for case closings, criteria for determining whether to initiate a proceeding, and criteria for the formulation of treatment plans and for the delivery of services.

6. Set forth training requirements which shall specify, among other things, that all appropriate persons hired by a designated agency shall have satisfactorily completed within the first three months of their employment a course approved by the office in the principles and techniques of investigations, relationships with other investigative bodies, legal issues, and methods of remediation, diagnosis, treatment and prevention.

7. Take all reasonable and necessary actions to assure that the designated agencies are kept apprised on a current basis of the laws, regulations and policies of the office concerning senior abuse and maltreatment.

8. Monitor and supervise the performance of the local services.

§ 421. Council on elder abuse; creation and powers. 1. The council on elder abuse is hereby created whose purpose shall be to advise and consult with the director on the development of programs and initiatives to combat elder abuse as authorized or required by this title. The council shall have power by affirmative vote of a majority of its members to establish, and from time to time, amend and repeal rules and regulations required to be promulgated pursuant to this title, subject to approval by the director.

2. The council shall consist of fifteen persons appointed by the governor by and with the advice and consent of the senate. Four members shall be appointed on recommendation of the temporary president of the senate, and four on recommendation of the speaker of the assembly. The governor shall appoint a chairperson and a vice-chairperson as he or she deems appropriate.

3. Membership on the council shall reflect the diversity of the state's population including, but not limited to, the various geographic areas of the state. Each appointee shall at the time of appointment have had at least five years experience in the field of elder abuse, in law enforcement, the judicial system, the provision of services, medicine, advocacy, or other similar field that assures that the appointee has recognized expertise in the subject area.

4. Each appointee shall serve a term of four years, provided that of members first appointed, eight shall serve for terms of two years, and the remainder for terms of four years, respectively, from January first next succeeding their appointment. Any vacancy occurring otherwise than by expiration of term shall be filled in the same manner as the original appointment for the balance of the unexpired term. Members of the council shall continue in office until their successors are appointed and shall have qualified.

5. The council may employ either directly or by contractual arrangement such personnel as it shall deem necessary for the performance of its functions, within amounts made available by appropriation therefor. In addition, the director, on his or her initiative and through the powers hereby provided him or her, may provide the council with up to two loaned officers or employees from the office, along with such admin-

istrative-secretarial support staff as shall be required, the duties and work of whom are hereby declared to be an essential state purpose. Such loaned employees shall suffer no diminution of their compensation or benefits as a result of such assignment, provided that no such transfer shall be made except with the approval of the director of the budget, and in compliance with the rules and regulations of the civil service commission of the state.

6. Members shall receive no salary or other compensation, but shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of official duties. Any other provision of this or any other law to the contrary notwithstanding, no officer or employee of the state, or of any civil division thereof, shall be deemed to have forfeited or shall forfeit his or her office or employment or any benefits provided under the retirement and social security law by reason of acceptance of membership on the council on elder abuse, provided, however, that a member who holds such other public office or employment shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of such services but shall receive no additional compensation for services rendered pursuant to this section.

7. Members may engage in private employment, or in a profession or business, subject to the limitations contained in sections seventy-three and seventy-four of the public officers law. The council on elder abuse shall, for the purposes of sections seventy-three and seventy-four of the public officers law, be a "state agency," and its directors shall be "officers" of the authority for the purposes of such sections.

8. Eight members of the council on elder abuse shall constitute a quorum for transaction of business or the exercise of any power of the council, and the council shall have power to act by majority of the members present at any meeting at which a quorum is in attendance. Nothing contained in this title shall prevent the members from conducting its meetings by tele-video or teleconference, or by telephone conference, provided that a quorum shall be physically present.

9. The council shall meet at least four times each year, and additionally as frequently as its business may require.

10. The council shall enact and from time to time may amend by-laws in relation to its meetings and the transaction of its business.

11. No civil action shall be brought in any court against any member of the council for any act done, failure to act, or statement or opinion made, while discharging duties as a member of the council, and no member shall be liable for damages in any action if the member shall have acted in good faith, with reasonable care and upon probable cause.

12. The director shall consult with the council on any matter required by this title relating to elder abuse, and the council shall consider any such matter and advise the director thereon. The director shall take no action required by this title without first consulting with the council, provided however that the council's failure to respond within thirty business days to any such request for advice and consultation shall not be deemed an impairment of the director's power, ability, or responsibility to implement provisions of this title. The council may from time to time submit to the director, the governor, and the legislature, any recommendations it may have relating to elder abuse.

§ 422. Cooperation of other agencies. 1. The office and the office of children and family services are herewith empowered to and shall enter into a memorandum of understanding to execute the purposes and intent of this article. Such memorandum of understanding shall establish the office, designated agencies, and "SAVS units" (as described in section

four hundred twenty-four of this title) as the lead agencies for investigation of abuse and maltreatment of seniors, shall assure that adult protective services units are an integral part of the local services teams, shall assure appropriate sharing of information, and insure that appropriate amendments are made to local services plans.

2. To effectuate the purposes of this title, the director may request and shall receive from offices, boards, bureaus, or other agencies of the state, or any of its political subdivisions, or any duly authorized agency, or any other agency providing services to seniors such assistance and data as will enable the office and designated agencies to fulfill their responsibilities.

3. In relation to an investigation of a report of abuse or maltreatment involving a senior in residential care, such data may include, but need not be limited to, the case records of the senior who allegedly was abused or maltreated and any other senior who allegedly witnessed the abuse or maltreatment and, consistent with appropriate collective bargaining agreements and applicable provisions of the civil service law, those portions of the employment record of the subject of the report considered by the subject's employer to be relevant and reasonably related to the allegations being investigated by the office.

§ 423. Implementation. The director, after consultation with the council, shall establish timelines for completing the requirements of this title, as follows:

1. Within one year of the effective date of this title, the director shall:

(a) Establish planning protocols for establishment of the statewide central registry for abuse and neglect;

(b) Establish a training regime for designated agencies and teams of local services;

(c) Establish investigatory protocols for designated agencies and teams of local services;

(d) Establish a website to convey information about senior abuse and maltreatment, and the provisions of this title; and

(e) Complete agreements as necessary or required pursuant to this title with other state, local, and federal agencies regarding the implementation of the provisions of this title.

2. Within eighteen months of the effective date of this title, the director shall:

(a) Promulgate regulations concerning persons who shall have access to information and data contained in the registry, and the confidentiality requirements governing such access.

(b) Promulgate regulations concerning sharing of information, data, and reports to the registry for investigatory purposes.

(c) Complete training of designated agencies and teams of local services in at least fifty percent of the counties of the state.

3. Within two years of the effective date of this title, the director shall:

(a) Establish the statewide central registry for abuse and neglect.

(b) Complete training of the designated agencies and teams of local services.

§ 424. Senior anti-violence services responsibilities and organization. 1. Every designated agency shall establish a senior anti-violence service (SAVS) unit within such agency. The service shall perform those functions assigned by this title to it and others that further the purposes of this title.

2. Every designated agency shall provide to the SAVS unit any information available to it or in its possession which is relevant to the investigation of a report of abuse or maltreatment of a senior or to the provision of services, where the confidentiality of such information is not expressly protected by law.

3. The SAVS unit shall have a sufficient staff of persons with sufficient qualifications to fulfill the purposes of this title, organized so as to maximize the continuity of responsibility, care and service to seniors. A designated agency shall have flexibility in assigning staff to the SAVS unit provided that such staff has the qualifications and has received the training required by the office.

4. Consistent with appropriate collective bargaining agreements and applicable provisions of the civil service law, every SAVS unit shall establish a procedure to review and evaluate the backgrounds of and information supplied by applicants for employment. Such procedures shall include but not be limited to requirements that the applicant set forth his or her employment history, provide personal and employment references and relevant experiential and educational information, and sign a sworn statement indicating whether the applicant, to the best of his or her knowledge, has ever been convicted of a crime in this state or any other jurisdiction.

5. Any other provision of any other law to the contrary notwithstanding, the SAVS unit shall be the lead entity responsible for receiving and investigating reports of abuse or maltreatment of seniors and for coordinating services to such seniors. It may purchase and utilize the services of any appropriate public or voluntary agency in providing or arranging for such services. Services purchased by the SAVS unit pursuant to this title shall be reimbursed by the state to the locality.

6. Each designated agency shall submit to the director, after consultation with local law enforcement agencies, the family court and appropriate public voluntary agencies and after a public hearing, a district-wide senior anti-violence enforcement plan, as prescribed by the director which shall describe the implementation of this title including the organization, staffing, mode of operations and financing of the SAVS unit as well as the provisions made for purchase of service and inter-agency relations. Each designated agency shall prepare and submit annual implementation reports including information related to its SAVS unit to the office for its review and approval.

7. A SAVS unit shall establish a multidisciplinary investigative team or teams for the purpose of investigating reports of suspected abuse or maltreatment of seniors. Such multidisciplinary investigative team may include, but is not limited to, representatives from the adult protective service, office of the district attorney or local law enforcement, the medical profession, public health agencies, mental health agencies, medical facilities, including hospitals or other appropriate agencies or institutions and personnel of any existing senior advocacy or service centers. Notwithstanding any other provision of law to the contrary, members of a multidisciplinary investigative team may share with other team members client-identifiable information concerning the senior or senior's family to facilitate the investigation of suspected abuse or maltreatment. Nothing herein shall preclude the creation of multidisciplinary teams which include more than one designated agency. Each team shall develop a written protocol for investigation of abuse and for interviewing abuse and maltreatment victims.

8. A SAVS unit shall plan with other public, private and voluntary agencies including but not limited to health, mental health, aging,

legal and law enforcement agencies, for the purpose of assuring maximum local understanding, coordination and cooperative action in the provision of appropriate services.

§ 425. Duties of the SAVS unit. 1. A SAVS unit shall receive on a twenty-four hour, seven day a week basis all reports of suspected abuse or maltreatment of a senior in accordance with this title, the local plan and the regulations of the director, and shall maintain and keep up-to-date a registry of all cases reported under this title together with any additional information obtained and a record of the final disposition of the report, including services offered and accepted.

2. Upon receipt of a written report, the SAVS unit shall transmit a copy to the state registry, and within seven days after receipt of the initial report, shall send a preliminary written report of the initial investigation, including evaluation and actions taken or contemplated, to the registry. Follow-up reports shall be made at regular intervals thereafter in a manner and form prescribed by the director by regulation to the end that the state registry is kept fully informed and up-to-date concerning the handling of reports.

3. A SAVS unit shall give telephone notice and forward immediately a copy of reports made pursuant to this title which involve the death of a senior to the appropriate district attorney. In addition, telephone notice shall be given and a copy of any or all reports made pursuant to this title shall be forwarded immediately to the appropriate district attorney if a prior request in writing for such notice and copies has been made to the unit by the district attorney, and if the director shall approve. Such request shall specify the kinds of allegations concerning which the district attorney requires such notice and copies and shall provide a copy of the relevant provisions of law.

4. Upon receipt of a report, the SAVS unit shall within twenty-four hours commence an investigation of the risk for the senior to remain in the existing environment, a determination of the nature, extent and cause of any condition enumerated in the report, and, after seeing to the safety of the senior, notify the subjects of the report and other persons named in the report in writing of the existence of the report and each person's respective rights pursuant to this title in regard to amendment.

5. The SAVS unit shall determine, within sixty days, whether the report is "indicated" or "unfounded".

6. The unit shall refer any suspected cases of falsely reporting abuse and maltreatment of a senior to the appropriate law enforcement agency or district attorney.

7. The SAVS unit shall take appropriate action to protect a senior from further abuse or maltreatment, including offering appropriate services and in cases in which an offer of service is refused and the SAVS unit determines that the best interests of the senior require court action, initiate the appropriate proceeding or make a referral to the appropriate district attorney, or both.

8. Any designated agency or SAVS unit official authorized or required to determine the need for and/or provide or arrange for the provision of services to seniors in accordance with the provisions of this title shall have immunity from any civil liability that might otherwise result by reason of providing such services, provided such official was acting within the scope of employment and in the discharge of official duties, and that such liability did not result from the willful act or gross negligence of such official or his or her designee.

9. When a SAVS official shall have reason to believe that a criminal offense has been committed against a senior who has become an abused senior, the official shall report this information to the appropriate police or sheriff's department and the district attorney's office when such office has requested such information be reported by a local social services official or his or her designee.

§ 426. Local and regional fatality review teams. 1. A fatality review team may be established at a local or regional level, with the approval of the office, for the purpose of investigating the death of any senior in the case of a report made to the registry. Notwithstanding any other provision of law to the contrary and to the extent consistent with federal law, such local or regional fatality review team shall have access to those client-identifiable records necessary for the preparation of the report, as authorized in accordance with this title.

2. A local or regional fatality review team must include representatives from the local service, the office, the office of the district attorney or local law enforcement, office of the medical examiner or coroner, and a physician or comparable medical professional. A local or regional fatality review team may also include representatives from public health agencies, mental health agencies, and medical facilities, including hospitals or other appropriate agencies or institutions.

§ 3. The penal law is amended by adding a new article 261 to read as follows:

ARTICLE 261

OFFENSES AGAINST THE ELDERLY AND DISABLED

Section 261.00 Elderly, vulnerable elderly and disabled persons; definitions.
261.01 Crimes against the elderly and disabled; presumption.
261.02 Abandonment of an elderly or disabled person.
261.03 Abandonment of an elderly or disabled person; defense.
261.04 Endangering the welfare of an elderly or disabled person.
261.05 Endangering the welfare of an elderly or disabled person; corroboration.
261.06 Endangering the welfare of an elderly or disabled person; defense.
261.07 Endangering the welfare of a vulnerable elderly person or a disabled person in the second degree.
261.08 Endangering the welfare of a vulnerable elderly person or a disabled person in the first degree.

§ 261.00 Elderly, vulnerable elderly and disabled persons; definitions.

For the purpose of this article, the following definitions shall apply:

1. "Caregiver" means a person who (i) assumes responsibility for the care of a vulnerable elderly person pursuant to a court order; or (ii) receives monetary or other valuable consideration for providing care for a vulnerable elderly person.

2. "Sexual contact" means any touching of the sexual or other intimate parts of a person not married to the actor for the purpose of gratifying sexual desire of either party. It includes the touching of the actor by the victim, as well as the touching of the victim by the actor, whether directly or through clothing.

3. "Vulnerable elderly person" means a person sixty years of age or older who is suffering from a disease or infirmity associated with advanced age and manifested by demonstrable physical, mental or

emotional dysfunction to the extent that the person is incapable of adequately providing for his or her own health or personal care.

4. "Elderly person" means a person sixty years of age or older.

5. "Disabled person" means a person who has a physical or mental impairment that substantially limits a major life activity.

§ 261.01 Crimes against the elderly and disabled; presumption.

In any case in which it shall be shown that a person intended to commit a specified offense pursuant to section 485.05 of this chapter, it shall be a rebuttal presumption that the person selected the victim or committed or intended to commit the act or acts constituting the offense in whole or in substantial part because of a belief that such victim is elderly or disabled.

§ 261.02 Abandonment of an elderly or disabled person.

A person is guilty of abandonment of an elderly or disabled person when, being a person legally charged with the care or custody of an elderly or disabled person, he or she deserts such person in any place with intent to wholly abandon him or her.

Abandonment of an elderly or disabled person is a class E felony.

§ 261.03 Abandonment of an elderly or disabled person; defense.

In any prosecution for abandonment of an elderly or disabled person, pursuant to section 261.02 of this article, based upon an alleged desertion of an elderly or disabled person with an intent to wholly abandon such an elderly or disabled person, it is an affirmative defense that, with the intent that the elderly or disabled person be safe from physical injury and cared for in an appropriate manner, the defendant left the elderly or disabled person with an appropriate person or in a suitable location and promptly notified an appropriate person of the elderly or disabled person's location.

§ 261.04 Endangering the welfare of an elderly or disabled person.

A person is guilty of endangering the welfare of an elderly or disabled person when being a person legally charged with the care or custody of an elderly or disabled person:

1. He or she knowingly acts in a manner likely to be injurious to the physical, mental or moral welfare of an elderly or disabled person, or directs or authorizes such an elderly or disabled person, to engage in an occupation involving a substantial risk of danger to his or her life or health; or

2. He or she fails or refuses to exercise reasonable diligence in the control of such elderly or disabled person to prevent him or her from physical, mental or moral injury, or from engaging in acts involving a substantial risk of danger to his or her life or health.

Endangering the welfare of an elderly or disabled person is a class A misdemeanor.

§ 261.05 Endangering the welfare of an elderly or disabled person; corroboration.

A person shall not be convicted of endangering the welfare of an elderly or disabled person, or of an attempt to commit the same, upon the testimony of a victim who is incapable of consent because of mental defect or mental incapacity as to conduct that constitutes an offense or an attempt to commit an offense referred to in section 130.16 of this chapter, without additional evidence sufficient pursuant to section 130.16 of this chapter to sustain a conviction of an offense referred to in section 130.16 of this chapter, or of an attempt to commit the same.

§ 261.06 Endangering the welfare of an elderly or disabled person; defense.

In any prosecution for endangering the welfare of an elderly or disabled person, pursuant to section 261.04 of this article:

1. based upon an alleged failure or refusal to provide proper medical care or treatment to an elderly or disabled person, who is ill, it is an affirmative defense that the elderly or disabled person is a member or adherent of an organized church or religious group the tenets of which prescribe prayer as the principal treatment for illness, and that the elderly or disabled person was treated in accordance with such tenets; or

2. based upon an alleged desertion of an elderly or disabled person, it is an affirmative defense that, with the intent that the person be safe from physical injury and cared for in an appropriate manner, the defendant left the person with an appropriate person or in a suitable location and promptly notified an appropriate person of the person's location.

§ 261.07 Endangering the welfare of a vulnerable elderly person or a disabled person in the second degree.

A person is guilty of endangering the welfare of a vulnerable elderly person or a disabled person in the second degree when, being a caregiver for a vulnerable elderly person or a disabled person:

1. With intent to cause physical injury to such person, he or she causes such injury to such person; or

2. He or she recklessly causes physical injury to such person; or

3. With criminal negligence, he or she causes physical injury to such person by means of a deadly weapon or a dangerous instrument; or

4. He or she subjects such person to sexual contact without the latter's consent. Lack of consent under this subdivision results from forcible compulsion or incapacity to consent, as those terms are defined in article one hundred thirty of this chapter, or any other circumstances in which the vulnerable elderly person or disabled person does not expressly or impliedly acquiesce in the caregiver's conduct.

In any prosecution under this subdivision in which the victim's alleged lack of consent results solely from incapacity to consent because of the victim's mental disability or mental incapacity, the provisions of section 130.16 of this chapter shall apply. In addition, in any prosecution under this subdivision in which the victim's lack of consent is based solely upon his or her incapacity to consent because he or she was mentally disabled, mentally incapacitated or physically helpless, it is an affirmative defense that the defendant, at the time he or she engaged in the conduct constituting the offense, did not know of the facts or conditions responsible for such incapacity to consent.

Endangering the welfare of a vulnerable elderly person or a disabled person in the second degree is a class E felony.

§ 261.08 Endangering the welfare of a vulnerable elderly person or a disabled person in the first degree.

A person is guilty of endangering the welfare of a vulnerable elderly person or a disabled person in the first degree when, being a caregiver for a vulnerable elderly person or disabled person:

1. With intent to cause physical injury to such person, he or she causes serious physical injury to such person; or

2. He or she recklessly causes serious physical injury to such person.

Endangering the welfare of a vulnerable elderly person or a disabled person in the first degree is a class D felony.

§ 4. Section 120.05 of the penal law is amended by adding a new subdivision 15 to read as follows:

**15. Being eighteen years old or more and with intent to cause physical injury to a person sixty years old or more, or to a person who has a physical or mental impairment that substantially limits a major life activity, the defendant causes such injury to such person.**

§ 5. Section 135.30 of the penal law is amended to read as follows:

§ 135.30 Kidnapping; defense.

In any prosecution for kidnapping, it is an affirmative defense that (a) the defendant was a relative of the person abducted, and (b) his **or her** sole purpose was to assume control of such person.

**This section shall not apply in the case when the person who is abducted is sixty years old or more, or to a person who has a physical or mental impairment that substantially limits a major life activity, and the kidnapping was done with the intention of compelling such person to transfer an asset to the defendant or to a third party.**

§ 6. Section 135.45 of the penal law is amended by adding a new subdivision 3 to read as follows:

**3. Knowing that he or she has no legal right to do so, he or she takes or entices any person sixty years of age or more, or a person who has a physical or mental impairment that substantially limits a major life activity, from the custody of another person or institution.**

§ 7. Subdivision (g) of section 140.10 of the penal law, as amended by chapter 176 of the laws of 2011, is amended and a new subdivision (h) is added to read as follows:

(g) where the property consists of a right-of-way or yard of a railroad or rapid transit railroad which has been designated and conspicuously posted as a no-trespass railroad zone[~~.~~]**; or**

**(h) which is a dwelling occupied by a person sixty years of age or older, or a person who has a physical or mental impairment that substantially limits a major life activity.**

§ 8. Severability. If any provision of this act or the application thereof to any person or circumstances is held to be invalid, the remainder of the act and the application of such provision to other persons or circumstances shall not be affected thereby.

§ 9. This act shall take effect immediately.