

# STATE OF NEW YORK

6745

2019-2020 Regular Sessions

## IN ASSEMBLY

March 18, 2019

Introduced by M. of A. ASHBY -- read once and referred to the Committee on Governmental Operations

### CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY

proposing an amendment to section 7 of article 5 of the constitution, in relation to the public pension of a state employee

1 Section 1. Resolved (if the Senate concur), That section 7 of article  
2 5 of the constitution be amended by adding two new subdivisions (e) and  
3 (f) to read as follows:

4 (e) Notwithstanding subdivision (a) of this section, the public  
5 pension of a state employee who stands convicted of a felony constitut-  
6 ing physical abuse, sexual abuse, emotional abuse, active neglect,  
7 passive neglect or financial exploitation, as such terms are defined in  
8 subdivision (f) of this section, of an adult which such state employee  
9 is tasked to work with in the performance of the state employee's exist-  
10 ing duties, may be reduced or revoked, following notice and a hearing by  
11 an appropriate court, as provided by law. The court determination wheth-  
12 er to reduce or revoke such pension shall be based on the consideration  
13 of factors including the severity of the crime and the proportionality  
14 of a reduction or revocation of such pension to such crime. When a court  
15 issues an order to reduce or revoke such pension, the court shall  
16 consider and determine specific findings as to the amount of such  
17 forfeiture, if any, and whether forfeiture, in whole or in part, would  
18 result in undue hardship or other inequity upon any dependant children,  
19 spouse or other dependants; and other factors as provided by law. The  
20 legislature shall enact legislation to implement this amendment taking  
21 into account interests of justice.

22 (f) Definitions. As used in this section:

23 (i) "Physical abuse" means the non-accidental use of force that  
24 results in bodily injury, pain or impairment, including but not limited  
25 to, being slapped, burned, cut, bruised or improperly physically  
26 restrained.

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

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1 (ii) "Sexual abuse" means non-consensual sexual contact of any kind,  
2 including but not limited to, forcing sexual contact or forcing sex with  
3 a third party.

4 (iii) "Emotional abuse" means willful infliction of mental or  
5 emotional anguish by threat, humiliation, intimidation or other abusive  
6 conduct, including but not limited to, frightening or isolating an  
7 adult.

8 (iv) "Active neglect" means willful failure by the caregiver to  
9 fulfill the care-taking functions and responsibilities assumed by the  
10 caregiver, including but not limited to, abandonment, willful depri-  
11 vation of food, water, heat, clean clothing and bedding, eyeglasses or  
12 dentures, or health related services.

13 (v) "Passive neglect" means non-willful failure of a caregiver to  
14 fulfill care-taking functions and responsibilities assumed by the care-  
15 giver, including but not limited to, abandonment or denial of food or  
16 health related services because of inadequate caregiver knowledge,  
17 infirmity, or disputing the value of prescribed services.

18 (vi) "Financial exploitation" means improper use of an adult's funds,  
19 property or resources by another individual, including but not limited  
20 to, fraud, false pretenses, embezzlement, conspiracy, forgery, falsify-  
21 ing records, coerced property transfers or denial of access to assets.

22 § 2. Resolved (if the Senate concur), That the foregoing amendment be  
23 referred to the first regular legislative session convening after the  
24 next succeeding general election of members of the assembly, and, in  
25 conformity with section 1 of article 19 of the constitution, be  
26 published for 3 months previous to the time of such election.