STATE OF NEW YORK

3431

2023-2024 Regular Sessions

IN ASSEMBLY

February 3, 2023

Introduced by M. of A. PRETLOW -- read once and referred to the Committee on Mental Health

AN ACT to amend the mental hygiene law, in relation to reports of substantial risk or threat of harm by mental health professionals; and repealing certain provisions of such law relating thereto

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

Section 1. Section 9.46 of the mental hygiene law is REPEALED and a new section 9.46 is added to read as follows:

§ 9.46 Reports of substantial risk or threat of harm by mental health professionals.

(a) For purposes of this section, the term "mental health professional" shall include a physician licensed pursuant to article one hundred thirty-one of the education law; a psychologist licensed pursuant to article one hundred fifty-three of the education law; a nurse practitioner licensed pursuant to article one hundred thirty-nine of the education law; or a licensed clinical social worker licensed pursuant to article one hundred fifty-four of the education law.

(b) Notwithstanding any other law to the contrary, when a mental health professional, currently providing mental health treatment services to a person, determines that such person presents a serious and imminent danger to self or others, he or she is authorized to disclose such determination as follows: (i) to an endangered individual or individuals, if identifiable; (ii) to a law enforcement agency and (iii) as soon as practical, to the director of community service or the director's designee, in such manner and form as directed by the commissioner. The reasons for such disclosure shall be fully documented in the treatment record of such person. The director of community service or the director's designee shall report to the division of criminal justice services whenever he or she agrees that the person presents a serious and imminent danger to self or others. Information transmitted to the

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

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division of criminal justice services shall be limited to the name and other non-clinical identifying information regarding the person who is the subject of the disclosure, which may be used by the division of criminal justice services only for determining whether a license issued pursuant to section 400.00 of the penal law should be suspended or revoked, or for determining whether a person is ineligible for a license issued pursuant to section 400.00 of the penal law, or is no longer permitted under state or federal law to possess a firearm. For purposes of this section, the term "law enforcement agency" shall include the New York state police and the police departments of a county, town, city or village in the state.

(c) Nothing in this section shall be construed to require a mental health professional to take any action which, in the professional judgment of the mental health professional, would endanger such mental health professional or increase the danger to a potential endangered person or persons.

(d) Absent malice or intentional misconduct, the decision of a mental health professional to disclose or not to disclose in accordance with this section shall not be the basis for any civil or criminal liability of such mental health professional.

§ 2. This act shall take effect immediately.