

STATE OF NEW YORK

7169--A

Cal. No. 686

IN SENATE

March 29, 2006

Introduced by Sens. MORAHAN, LARKIN -- read twice and ordered printed, and when printed to be committed to the Committee on Mental Health and Developmental Disabilities -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the mental hygiene law and the education law, in relation to reports concerning the abuse and mistreatment of mentally retarded and developmentally disabled adults

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

1 Section 1. Subdivision (d) of section 16.19 of the mental hygiene law,
2 as added by chapter 536 of the laws of 2005, is amended to read as
3 follows:

4 (d) (1) [~~In order to facilitate the purposes of this section, the~~
5 ~~following persons and officials are required to report to the commis-~~
6 ~~sioner when they have reason to believe that an adult who comes before~~
7 ~~them in their professional capacity has mental retardation or another~~
8 ~~developmental disability and has been abused or mistreated, or when the~~
9 ~~parent, guardian, custodian or other person legally responsible for such~~
10 ~~individual with mental retardation or other developmental disability~~
11 ~~states from personal knowledge facts, conditions or circumstances which,~~
12 ~~if correct, would render the adult with mental retardation or other~~
13 ~~developmental disability abused or mistreated: any physician, registered~~
14 ~~physician assistant, surgeon, medical examiner, coroner, dentist, dental~~
15 ~~hygienist, osteopath, optometrist, chiropractor, podiatrist, resident,~~
16 ~~intern, psychologist, physical therapist, occupational therapist, speech~~
17 ~~pathologist, rehabilitation counselor, registered nurse, social worker,~~
18 ~~emergency medical technician, hospital and outpatient clinic personnel~~
19 ~~engaged in the admission, examination, care or treatment of persons,~~
20 ~~school official, social services worker, day care center worker, mental~~
21 ~~health professional, substance abuse counselor, alcoholism counselor,~~
22 ~~peace officer, police officer, district attorney or assistant district~~
23 ~~attorney, investigator employed in the office of a district attorney, or~~

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

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1 ~~other law enforcement official. Whenever such person or official is~~
2 ~~required to report under this subdivision in his or her capacity as a~~
3 ~~member of the staff of a medical or other public or private institution,~~
4 ~~school, facility or agency, he or she shall immediately notify the~~
5 ~~person in charge of such institution, school, facility or agency, or his~~
6 ~~or her designated agent, who then also shall become responsible to~~
7 ~~report or cause reports to be made in such timely manner as the commis-~~
8 ~~sioner shall prescribe pursuant to regulation. However, nothing in this~~
9 ~~subdivision shall be construed to require more than one report from any~~
10 ~~such institution, school or agency. This section shall not preclude any~~
11 ~~adult in addition to those listed from making such a report if such~~
12 ~~person has reasonable cause to believe an adult with mental retardation~~
13 ~~or another developmental disability has been abused or maltreated. Nor~~
14 ~~shall this section relieve any person, professional or official from~~
15 ~~their obligation to report an allegation of child abuse as required by~~
16 ~~sections four hundred thirteen through four hundred twenty of the social~~
17 ~~services law.~~

18 (2) If, upon receiving a report [~~required by this subdivision~~] that
19 any adult thought to have mental retardation or another developmental
20 disability has been subjected to physical, sexual, or emotional abuse,
21 or active, passive or self neglect, and the commissioner has reason to
22 believe that [~~an adult~~] such adult is known by the commissioner to have
23 received services from providers duly authorized by the commissioner and
24 has been [~~abused or mistreated~~] subjected to such abuse or neglect, the
25 commissioner [~~may~~] shall intervene pursuant to [~~subdivisions (a), (b),~~
26 ~~or (c) of~~] this section or, if such adult has not received services from
27 said authorized providers, the commissioner shall, immediately or as
28 soon as practicable, notify adult protective services established pursu-
29 ant to section four hundred seventy-three of the social services law.
30 The commissioner shall, within forty-eight hours, forward copies of
31 reports made pursuant to this subdivision to the state commission of
32 quality of care and advocacy for persons with disabilities and indicate
33 if such report was referred to adult protective services.

34 [~~a. If notified by the commissioner, adult protective services shall~~
35 ~~take such action it deems appropriate no later than seventy-two hours~~
36 ~~after receiving such notification.~~

37 ~~b. Immediately after taking action with respect to an adult who is the~~
38 ~~subject of a report from the commissioner, adult protective services~~
39 ~~shall indicate and describe to the commissioner what action it has taken~~
40 ~~with respect to the adult who is the subject of the commissioner's~~
41 ~~report. Adult protective services shall also indicate what assistance it~~
42 ~~requires from the commissioner in order to ensure the safety and well~~
43 ~~being of the adult who is subject of the report. Upon receiving such~~
44 ~~request, the commissioner shall review all options available to comply~~
45 ~~with such request and shall report his or her conclusion to adult~~
46 ~~protective services within seventy-two hours. The commissioner shall~~
47 ~~include in such report the specific services available and if no~~
48 ~~services are available, if and when such services can be expected to be~~
49 ~~available. Copies of the report shall be submitted to the state commis-~~
50 ~~sion on quality of care and advocacy for persons with disabilities.~~

51 ~~e.]~~ (2) In order to carry out the provisions of this subdivision, the
52 commissioner and commissioner of the office of children and family
53 services shall develop a model memorandum of understanding which shall
54 be entered into between each developmental disability services office
55 and each local department of social services within its jurisdiction.
56 Such agreement shall define the responsibilities of each developmental

1 disability services office and social services district with respect to
2 reports pursuant to paragraph one of this subdivision and reasonable
3 time frames for implementing such responsibilities. Such agreement
4 entered into in accord with such memorandum of understanding shall be
5 finalized between all developmental disability services offices and all
6 local departments of social services no later than ninety days after the
7 effective date of this subdivision. A developmental disabilities
8 services office shall be deemed a provider of services for the purposes
9 of access to adult protective records under section four hundred seven-
10 ty-three-e of the social services law.

11 ~~(3) [Any person or official or institution subject to this section~~
12 ~~shall have immunity from prosecution for any liability, civil or crimi-~~
13 ~~nal, provided they have acted reasonably and in good faith. For the~~
14 ~~purposes of any proceeding, civil or criminal, the good faith of such~~
15 ~~person, official or institution shall be presumed, provided such person,~~
16 ~~official or institution was acting in discharge of his or her duties and~~
17 ~~within the scope of his or her employment, and that such liability did~~
18 ~~not result from the willful misconduct or gross negligence of such~~
19 ~~person, official or institution.~~

20 ~~(4)~~ The commissioner and the commissioner of children and family
21 services shall [summarize the reports of abuse or mistreatment made to
22 him or her pursuant to this subdivision and shall] submit [such summary]
23 a report on the physical, sexual, or emotional abuse, or active, passive
24 or self neglect of adults with mental retardation or other developmental
25 disabilities to the governor, temporary president of the senate and
26 speaker of the assembly by [September] January first, two thousand [six]
27 seven, and annually thereafter. In consultation with the commission on
28 quality of care and advocacy for persons with disabilities, the commis-
29 sioner and the commissioner of children and family services shall
30 include in such [summary] report a description of systemic issues
31 [revealed by such reports]; a summary of strategies used for intervening
32 in such cases; an evaluation of the success of such strategies; [and,
33 any recommendations the commissioner believes are necessary to protect
34 adults from abuse or mistreatment reported pursuant to this section] an
35 evaluation of the implementation of the memorandum of understanding
36 developed pursuant to paragraph two of this subdivision and the specific
37 status of developmental disabilities services offices and local depart-
38 ments of social services, with respect to entering into an agreement as
39 required by paragraph two of this subdivision; and any recommendations
40 the commissioner believes are necessary to protect adults from abuse or
41 mistreatment. The report shall also include the number of reports and a
42 summary of common situations and trends contained in such reports which
43 were:

44 a. made to the commissioner pursuant to paragraph one of this subdivi-
45 sion;

46 b. not referred to adult protective services, but in response to which
47 the commissioner intervened, and the outcome of such intervention; and

48 c. referred to adult protective services pursuant to paragraph one of
49 this subdivision and the outcome of such referral.

50 § 2. Subdivision (c) of section 16.19 of the mental hygiene law, as
51 amended by chapter 536 of the laws of 2005, is amended to read as
52 follows:

53 (c) In addition to any other remedies available under this article,
54 the commissioner may bring an action in the supreme court to enjoin any
55 person from unlawfully ~~abusing or mistreating~~ subjecting a mentally
56 retarded or developmentally disabled person to physical, sexual, or

1 emotional abuse, or active, passive or self neglect, or detaining a
2 mentally retarded or developmentally disabled person or providing inade-
3 quate, unskillful, cruel or unsafe care or supervision for such a
4 person.

5 § 3. Paragraph a of subdivision 3 of section 6507 of the education
6 law, as amended by chapter 536 of the laws of 2005, is amended to read
7 as follows:

8 a. Establish standards for preprofessional and professional education,
9 experience and licensing examinations as required to implement the arti-
10 cle for each profession. Notwithstanding any other provision of law, the
11 commissioner shall establish standards requiring that all persons apply-
12 ing, on or after January first, nineteen hundred ninety-one, initially,
13 or for the renewal of, a license, registration or limited permit to be a
14 physician, chiropractor, dentist, registered nurse, podiatrist, optome-
15 trist, psychiatrist, psychologist, licensed master social worker,
16 licensed clinical social worker, licensed creative arts therapist,
17 licensed marriage and family therapist, licensed mental health counse-
18 lor, licensed psychoanalyst, or dental hygienist shall, in addition to
19 all the other licensure, certification or permit requirements, have
20 completed two hours of coursework or training regarding the identifica-
21 tion and reporting of child abuse and maltreatment. The coursework or
22 training shall be obtained from an institution or provider which has
23 been approved by the department to provide such coursework or training.
24 The coursework or training shall include information regarding the phys-
25 ical and behavioral indicators of child abuse and maltreatment and the
26 statutory reporting requirements set out in sections four hundred thir-
27 teen through four hundred twenty of the social services law, including
28 but not limited to, when and how a report must be made, what other
29 actions the reporter is mandated or authorized to take, the legal
30 protections afforded reporters, and the consequences for failing to
31 report. Such coursework or training may also include information regard-
32 ing the physical and behavioral indicators of the abuse of individuals
33 with mental retardation and other developmental disabilities [~~and the~~
34 ~~statutory reporting requirements set out in subdivision (d) of section~~
35 ~~16.19 of the mental hygiene law~~] and voluntary reporting of abused or
36 neglected adults to the office of mental retardation and developmental
37 disabilities or the local adult protective services unit. Each applicant
38 shall provide the department with documentation showing that he or she
39 has completed the required training. The department shall provide an
40 exemption from the child abuse and maltreatment training requirements to
41 any applicant who requests such an exemption and who shows, to the
42 department's satisfaction, that there would be no need because of the
43 nature of his or her practice for him or her to complete such training;

44 § 4. The commissioner of the office of mental retardation and develop-
45 mental disabilities shall promulgate any necessary rules and regu-
46 lations.

47 § 5. This act shall take effect immediately, and shall be deemed to
48 have been in full force and effect on and after February 12, 2006.

NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1

BILL NUMBER: S7169A

SPONSOR: MORAHAN

TITLE OF BILL:

An act to amend the mental hygiene law and the education law, in relation to reports concerning the abuse and mistreatment of mentally retarded and developmentally disabled adults

PURPOSE:

This bill is a chapter amendment to Chapter 536 of the laws of 2005.

SUMMARY OF PROVISIONS:

The bill spells out clearly that reports regarding persons having previously received services from OMRDD shall be made to that agency and others shall be reported to adult protective services. The bill requires the commissioners from those respective agencies to develop a memorandum of understanding (MOU) to be entered into by each county DDSO and department of Social Services outlining the responsibility of each and how this shall be implemented. A report is required by January 1, 2007 and annually thereafter to the Governor and the Legislature detailing reported abuses that were brought to light by this section; a description of systemic issues, strategies being used for intervention purposes, an evaluation of the implementation of the MOU described above, and recommendations to further protect this vulnerable population.

JUSTIFICATION:

The purpose of Chapter 536 of the Laws of 2005 was to provide a mechanism for reporting possible abuse of developmentally disabled adults who live in the community. Those persons who live in licensed facilities are already so protected. The Governor's office asked for some changes to expedite the implementation of this measure. This bill makes those changes.

LEGISLATIVE HISTORY:

New bill.

FISCAL IMPLICATIONS:

None.

EFFECTIVE DATE:

Immediately, and shall be deemed to have been in effect on February 12, 2006 - the effective date of Chapter 536.
