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:

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

(d) (1) [In order to facilitate the purposes of this section, the following persons and officials are required to report to the commissioner when they have reason to believe that an adult who comes before them in their professional capacity has mental retardation or another developmental disability and has been abused or mistreated, or when the parent, guardian, custodian or other person legally responsible for such individual with mental retardation or other developmental disability states from personal knowledge facts, conditions or circumstances which, if correct, would render the adult with mental retardation or other developmental disability abused or mistreated: any physician; registered physician assistant; surgeon; medical examiner; coroner; dentist; dental hygienist; osteopath; optometrist; chiropractor; podiatrist; resident; intern; psychologist; physical therapist; occupational therapist; speech pathologist; rehabilitation counselor; registered nurse; social worker; emergency medical technician; hospital and outpatient clinic personnel engaged in the admission, examination, care or treatment of persons; school official; social services worker; day care center worker; mental health professional; substance abuse counselor; alcoholism counselor; peace officer; police officer; district attorney or assistant—district 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.
other law enforcement official. Whenever such person or official is required to report under this subdivision in his or her capacity as a member of the staff of a medical or other public or private institution, school, facility or agency, he or she shall immediately notify the person in charge of such institution, school, facility or agency, or his or her designated agent, who then also shall become responsible to report or cause reports to be made in such timely manner as the commissioner shall prescribe pursuant to regulation. However, nothing in this subdivision shall be construed to require more than one report from any such institution, school or agency. This section shall not preclude any adult in addition to those listed from making such a report if such person has reasonable cause to believe an adult with mental retardation or another developmental disability has been abused or maltreated. Nor shall this section relieve any person, professional or official from their obligation to report an allegation of child abuse as required by sections four hundred thirteen through four hundred twenty of the social services law.

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

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

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

c. [2] (2) In order to carry out the provisions of this subdivision, the commissioner and commissioner of the office of children and family services shall develop a model memorandum of understanding which shall be entered into between each developmental disability services office and each local department of social services within its jurisdiction. Such agreement shall define the responsibilities of each developmental
disability services office and social services district with respect to reports pursuant to paragraph one of this subdivision and reasonable time frames for implementing such responsibilities. Such agreement entered into in accord with such memorandum of understanding shall be finalized between all developmental disability services offices and all local departments of social services no later than ninety days after the effective date of this subdivision. A developmental disabilities services office shall be deemed a provider of services for the purposes of access to adult protective records under section four hundred seventy-three-e of the social services law.

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

(4) The commissioner and the commissioner of children and family services shall summarize the reports of abuse or mistreatment made to him or her pursuant to this subdivision and shall submit such summary report on the physical, sexual, or emotional abuse, or active, passive or self neglect of adults with mental retardation or other developmental disabilities to the governor, temporary president of the senate and speaker of the assembly by September January first, two thousand six, and annually thereafter. In consultation with the commission on quality of care and advocacy for persons with disabilities, the commissioner and the commissioner of children and family services shall include in such summary report a description of systemic issues revealed by such reports; a summary of strategies used for intervening in such cases; an evaluation of the success of such strategies; and, any recommendations the commissioner believes are necessary to protect adults from abuse or mistreatment reported pursuant to this section; an evaluation of the implementation of the memorandum of understanding developed pursuant to paragraph two of this subdivision and the specific status of developmental disabilities services offices and local departments of social services, with respect to entering into an agreement as required by paragraph two of this subdivision; and any recommendations the commissioner believes are necessary to protect adults from abuse or mistreatment. The report shall also include the number of reports and a summary of common situations and trends contained in such reports which were:

a. made to the commissioner pursuant to paragraph one of this subdivision;

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

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

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

(c) In addition to any other remedies available under this article, the commissioner may bring an action in the supreme court to enjoin any person from unlawfully [abusing or mistreating] subjecting a mentally retarded or developmentally disabled person to physical, sexual, or
emotional abuse, or active, passive or self neglect, or detaining a
mentally retarded or developmentally disabled person or providing inade-
quate, unskillful, cruel or unsafe care or supervision for such a
person.
§ 3. Paragraph a of subdivision 3 of section 6507 of the education
law, as amended by chapter 536 of the laws of 2005, is amended to read
as follows:
a. Establish standards for preprofessional and professional education,
experience and licensing examinations as required to implement the artic-
le for each profession. Notwithstanding any other provision of law, the
commissioner shall establish standards requiring that all persons apply-
ing, on or after January first, nineteen hundred ninety-one, initially,
or for the renewal of, a license, registration or limited permit to be a
physician, chiropractor, dentist, registered nurse, podiatrist, optome-
trist, psychiatrist, psychologist, licensed master social worker,
licensed clinical social worker, licensed creative arts therapist,
licensed marriage and family therapist, licensed mental health counsel-
or, licensed psychoanalyst, or dental hygienist shall, in addition to
all the other licensure, certification or permit requirements, have
completed two hours of coursework or training regarding the identifica-
tion and reporting of child abuse and maltreatment. The coursework or
training shall be obtained from an institution or provider which has
been approved by the department to provide such coursework or training.
The coursework or training shall include information regarding the phys-
ical and behavioral indicators of child abuse and maltreatment and the
statutory reporting requirements set out in sections four hundred thir-
ten through four hundred twenty of the social services law, including
but not limited to, when and how a report must be made, what other
actions the reporter is mandated or authorized to take, the legal
protections afforded reporters, and the consequences for failing to
report. Such coursework or training may also include information regard-
ing the physical and behavioral indicators of the abuse of individuals
with mental retardation and other developmental disabilities [and the
statutory reporting requirements set out in subdivision (d) of section
16.19 of the mental hygiene law] and voluntary reporting of abused or
neglected adults to the office of mental retardation and developmental
disabilities or the local adult protective services unit. Each applicant
shall provide the department with documentation showing that he or she
has completed the required training. The department shall provide an
exemption from the child abuse and maltreatment training requirements to
any applicant who requests such an exemption and who shows, to the
department's satisfaction, that there would be no need because of the
nature of his or her practice for him or her to complete such training;
§ 4. The commissioner of the office of mental retardation and develop-
mental disabilities shall promulgate any necessary rules and regu-
lations.
§ 5. This act shall take effect immediately, and shall be deemed to
have been in full force and effect on and after February 12, 2006.
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.