

2012 -- S 2730

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2012

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A N A C T

RELATING TO CRIMINAL OFFENSES -- ASSAULTS

Introduced By: Senators McCaffrey, Metts, and Jabour

Date Introduced: March 06, 2012

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 11-5-10.2, 11-5-11 and 11-5-12 of the General Laws in Chapter
2 11-5 entitled "Assaults" are hereby amended to read as follows:

3 **11-5-10.2. Assault on persons with severe impairments causing serious bodily injury.**

4 = (a) Any person who shall commit an assault or battery, or both, upon a person, with severe
5 impairments causing serious bodily injury, shall be deemed to have committed a felony and shall
6 be imprisoned for not less than two (2) years but not more than twenty (20) years, or fined not
7 more than five thousand dollars (\$5,000), or both. Every person so convicted shall be ordered to
8 make restitution to the victim of the offense or to perform up to five hundred (500) hours of
9 public community restitution work, or both, or any combination of them imposed by the
10 sentencing judge. The court may not waive the obligation to make restitution and/or public
11 community restitution work. The restitution and/or public community restitution work shall be in
12 addition to any fine or sentence which may be imposed and not in lieu of the fine or sentence.

13 (b) "Serious bodily injury" means physical injury that:

14 (1) Creates a substantial risk of death, serious disfigurement;

15 (2) Causes protracted loss or impairment of the function of any bodily part, member or
16 organ; or

17 (3) Causes serious permanent disfigurement.

18 (c) For the purposes of this section:

19 (1) "Adult" means a person over the age of eighteen (18).

1 (2) "Major life activities" means: (i) mobility; (ii) self-care; (iii) communication; (iv)
2 receptive and/or expressive language; (v) learning; (vi) self-direction; (vii) capacity for
3 independent living; or (viii) economic self-sufficiency.

4 (3) "Person with severe impairments" means a child or adult who has a disability which
5 is attributable to a mental or physical impairment or combination of mental and physical
6 impairments and results in substantial functional limitations in one or more major life activities.

7 (d) Violations of this section shall be reported to the local police department.

8 (e) After July 1, 2007 pursuant to section 40-8.5-2, the local police department ~~may~~ shall
9 request the department of ~~mental health, retardation,~~ behavioral healthcare, developmental
10 disabilities and hospitals provide crisis intervention services for the adult victim with severe
11 impairments when:

12 (1) Necessary to ensure the immediate health and safety of the adult victim; ~~and~~

13 (2) The adult victim relies on the person believed to have committed the assault and/or
14 battery, for assistance in performing three (3) or more major life activities; and

15 (3) After the victim is informed of his or her right to refuse crisis intervention and/or
16 supportive services.

17 **11-5-11. Assault on persons with severe impairments. --** (a) For the purposes of this
18 section:

19 (1) "adult" means a person over the age of eighteen (18).

20 (2) "major life activities" means: (i) mobility; (ii) self-care; (iii) communication; (iv)
21 receptive and/or expressive language; (v) learning; (vi) self-direction; (vii) capacity for
22 independent living; or (viii) economic self-sufficiency.

23 (3) "person with severe impairments" means a child or adult who has a disability which
24 is attributable to a mental or physical impairment or combination of mental and physical
25 impairments which results in a substantial limitation on the person's ability to function
26 independently in the family or community and in one or more major life activities.

27 (b) Any person who shall commit an assault and battery upon a person who is severely
28 impaired as defined in subsection (a) of this section, causing bodily injury, shall be deemed to
29 have committed a felony and shall be imprisoned not exceeding five (5) years, or fined not
30 exceeding two thousand dollars (\$2,000), or both.

31 (c) Violations of this section shall be reported to the local police department.

32 (d) After July 1, 2007 pursuant to section 40-8.5-2, the local police department ~~may~~ shall
33 request the department of ~~mental health, retardation,~~ behavioral healthcare, developmental
34 disabilities and hospitals provide crisis intervention services for the adult victim with severe

1 impairments when:

2 (1) Necessary to ensure the immediate health and safety of the adult victim; ~~and~~

3 (2) The adult victim relies on the person believed to have committed the assault and/or
4 battery, for assistance in performing three (3) or more major life activities; and

5 (3) After the victim is informed of his or her right to refuse crisis intervention and/or
6 supportive services.

7 **11-5-12. Abuse, neglect and/or exploitation of adults with severe impairments. -- (a)**

8 Any person primarily responsible for the care of an adult with severe impairments who shall
9 willfully and knowingly abuse, neglect or exploit that adult shall be subject to a fine of not more
10 than two thousand dollars (\$2,000), or imprisoned not more than five (5) years, or both, and
11 ordered to make full restitution of any funds as the result of any exploitation which results in the
12 misappropriation of funds. Every person convicted of or placed on probation for violation of this
13 section shall be ordered by the sentencing judge to attend appropriate professional counseling to
14 address his or her abusive behavior.

15 (b) As used in this section:

16 (1) "Abuse" means the subjection of an adult with a severe impairment to willful
17 infliction of physical pain, willful deprivation of services necessary to maintain the physical or
18 mental health of the person, or unreasonable confinement.

19 (2) "Adult with severe impairments" means a person over the age of eighteen (18) who
20 has a disability which is attributable to a mental or physical impairment or combination of mental
21 and physical impairments and results in substantial functional limitations in one or more of the
22 following areas of major life activity: (i) mobility; (ii) self-care; (iii) communication; (iv)
23 receptive and/or expressive language; (v) learning; (vi) self-direction; (vii) capacity for
24 independent living; or (viii) economic self-sufficiency.

25 (3) "Exploitation" means an act or process of taking pecuniary advantage of impaired
26 persons by use of undue influence, harassment, duress, deception, false representation, false
27 pretenses, or misappropriation of funds.

28 (4) "Neglect" means the willful refusal to provide services necessary to maintain the
29 physical or mental health of an adult with severe impairments.

30 (5) "Person primarily responsible for care" or "caregiver" means any person who is for a
31 significant period of time the primary caregiver or is primarily responsible for the management of
32 the funds of an adult with severe impairments.

33 (c) Violations of this section shall be reported to the local police department.

34 (d) After July 1, 2007 pursuant to section 40-8.5-2, the local police department ~~may~~ shall

1 request the department of ~~mental health, retardation,~~ behavioral healthcare, developmental
2 disabilities and hospitals provide crisis intervention services for the adult victim with severe
3 impairments when:

- 4 (1) necessary to ensure the immediate health and safety of the adult victim; ~~and~~
- 5 (2) the adult victim relies on the person believed to have committed the abuse, neglect
6 and/or exploitation, for assistance in performing three (3) or more major life activities; and
- 7 (3) After the victim is informed of his or her right to refuse crisis intervention and/or
8 supportive services.

9 (e) Any person who fails to report known or suspected abuse or neglect shall be guilty of
10 a misdemeanor and upon conviction shall be subject to a fine of not more than five hundred
11 dollars (\$500).

12 (f) Nothing in this section shall be interpreted to apply to the discontinuance of life-
13 support systems or life-sustaining treatment for an adult for whom, if the treatment were
14 terminated, death may result.

15 (g) Any person participating in good faith in making a report pursuant to this chapter,
16 excluding any perpetrator or conspirator of the acts, shall have immunity from any civil liability
17 that might otherwise be incurred or imposed.

18 (h) Nothing in this section shall be interpreted to prohibit the use of any medical or
19 psychological treatment procedure designed and conducted in accordance with applicable
20 professional standards when performed by appropriately trained personnel under the supervision
21 of a person or facility licensed or approved by the state of Rhode Island and when any consent as
22 is required by law has been obtained.

23 (i) Nothing in this chapter shall be construed to mean a person is abused or neglected for
24 the sole reason that the person is being furnished or relies upon treatment by spiritual means
25 through prayer alone in accordance with the tenets and practices of a church or religious
26 denomination recognized by the laws of this state.

27 (j) Nothing in this chapter shall be construed to mean a person is abused or neglected
28 when the parent or legal guardian of an adult with severe impairments, who is the person
29 primarily responsible for care of the adult, (1) decides, in good faith, not to accept support
30 services from a governmental agency, which in the opinion of the parent or legal guardian and the
31 adult, is considered to be inappropriate or inconsistent with the best interests of that adult; or (2)
32 decides, in good faith, to reduce or discontinue assistance to that adult who is developing,
33 acquiring or practicing independent decision-making or living skills.

34 SECTION 2. Sections 23-17.8-2 and 23-17.8-3.1 of the General Laws in Chapter 23-17.8

1 entitled "Abuse in Health Care Facilities" are hereby amended to read as follows:

2 **23-17.8-2. Duty to report.** -- (a) Any physician, medical intern, registered nurse,
3 licensed practical nurse, nurse's aide, orderly, certified nursing assistant, medical examiner,
4 dentist, optometrist, optician, chiropractor, podiatrist, coroner, police officer, emergency medical
5 technician, fire-fighter, speech pathologist, audiologist, social worker, pharmacist, physical or
6 occupational therapist, or health officer, or any person, within the scope of their employment at a
7 facility or in their professional capacity, who has knowledge of or reasonable cause to believe that
8 a patient or resident in a facility has been abused, mistreated, or neglected shall make, within
9 twenty-four (24) hours or by the end of the next business day, a telephone report to the director of
10 the department of health or his or her designee for those incidents involving health care facilities,
11 and in addition to the office of the state long-term care ombudsperson for those incidents
12 involving nursing facilities, assisted living residences, home care and home nursing care
13 providers, veterans' homes and long-term care units in Eleanor Slater Hospital, or to the director
14 of the department of ~~mental health, retardation,~~ [behavioral healthcare, developmental disabilities](#)
15 and hospitals or his or her designee for those incidents involving community residences for
16 people who are mentally retarded or persons with developmental disabilities. The report shall
17 contain:

18 (1) The name, address, telephone number, occupation, and employer's address and the
19 phone number of the person reporting;

20 (2) The name and address of the patient or resident who is believed to be the victim of
21 the abuse, mistreatment, or neglect;

22 (3) The details, observations, and beliefs concerning the incident(s);

23 (4) Any statements regarding the incident made by the patient or resident and to whom
24 they were made;

25 (5) The date, time, and place of the incident;

26 (6) The name of any individual(s) believed to have knowledge of the incident;

27 (7) The name of any individual(s) believed to have been responsible for the incident.

28 (b) In addition to those persons required to report pursuant to this section, any other
29 person may make a report if that person has reasonable cause to believe that a patient or resident
30 of a facility has been abused, mistreated, or neglected.

31 (c) Any person required to make a report pursuant to this section shall be deemed to have
32 complied with these requirements if a report is made to a high managerial agent of the facility in
33 which the alleged incident occurred. Once notified, the high managerial agent shall be required to
34 meet all reporting requirements of this section within the time frames specified by this chapter.

1 (d) Telephone reports made pursuant to subsection (a) shall be followed-up within three
2 (3) business days with a written report.

3 **23-17.8-3.1. Physician's, certified registered nurse practitioner's and physician**
4 **assistant's report of examination -- Duty of facility. --** Whenever a facility shall receive a
5 report by a person other than a physician or a certified registered nurse practitioner or physician
6 assistant that a patient or resident of the facility has been harmed as a result of abuse, neglect, or
7 mistreatment, the facility shall have the patient examined by a licensed physician or a certified
8 registered nurse practitioner or physician assistant. It shall be mandatory for the physician or
9 certified registered nurse practitioner or physician assistant to make a preliminary report of his or
10 her findings to the department of health for a health care facility, or to the department of ~~mental~~
11 ~~health, retardation,~~ behavioral healthcare, developmental disabilities and hospitals and hospitals
12 for a community residence for people who are mentally retarded or persons with developmental
13 disabilities and to the facility within forty-eight (48) hours after his or her examination, and a
14 written report within five (5) days after his or her examination.

15 SECTION 3. Section 40-8.5-2 of the General Laws in Chapter 40-8.5 entitled "Health
16 Care for Elderly and Disabled Residents Act" is hereby amended to read as follows:

17 **40-8.5-2. ~~Services for adult victims with severe impairments of abuse, neglect and/or~~**
18 **exploitation Crisis intervention services for adult victims with severe impairments of abuse,**
19 **neglect and/or exploitation. --** (a) As used in this section the terms:

20 (1) "Adult victim with severe impairments" means:

21 (i) A person over the age of eighteen (18) who has a disability which is attributable to a
22 mental or physical impairment or combination of mental and physical impairments and results in
23 substantial functional limitations in three (3) or more major life activities;

24 (ii) Is an alleged victim of abuse, neglect or exploitation pursuant to section 11-5-12; or
25 assault pursuant to section 11-5-10.2 or 11-5-11 by a caregiver of the victim;

26 (iii) The adult victim relies on the person believed to have committed the abuse, neglect,
27 and/or exploitation, for assistance in performing three (3) or more major life activities; and

28 (iv) Crisis intervention services are necessary to ensure the immediate health and safety
29 of the adult victim.

30 (2) "Crisis intervention services" means the short term provision of health care and
31 residential services in the immediate hours and days following the abuse, neglect and/or
32 exploitation of an adult victim with severe impairments;

33 (3) "Major life activities" mean: (i) mobility; (ii) self-care; (iii) communication; (iv)
34 receptive and/or expressive language; (v) learning; (vi) self-direction; (vii) capacity for

1 independent living; or (viii) economic self-sufficiency; ~~and~~

2 (4) "Secretary" means the secretary of the executive office of health and human services;
3 and

4 ~~(4)~~(5) "Supportive services" means longer term support services for an adult victim with
5 severe impairments, and when appropriate that victim's family.

6 (b) After July 1, 2007, local police departments may request the department of ~~mental~~
7 ~~health, retardation,~~ behavioral healthcare, developmental disabilities and hospitals provide crisis
8 intervention services for the adult victim with severe impairments when:

9 (1) Necessary to ensure the immediate health and safety of the adult victim; and

10 (2) The adult victim with severe impairments relies on the person believed to have
11 committed the abuse, neglect and/or exploitation for assistance in performing three (3) or more
12 major life activities-;

13 (3) After the victim is informed of his or her right to refuse crisis intervention and/or
14 supportive services.

15 (c) (1) If the department of ~~mental health, retardation,~~ behavioral healthcare,
16 developmental disabilities and hospitals and hospitals determines that longer term supportive
17 services are necessary, the victim and when appropriate that victim's family will be referred to the
18 public and private agencies and departments whose supportive services are within its statutory
19 and/or regulatory responsibility, as are needed by the victim.

20 (2) In developing the supportive services care plan, the adult victim with severe
21 impairments' rights to self-determination and lifestyle preferences commensurate with his or her
22 needs shall be of prime consideration.

23 (3) If the adult victim with severe impairments withdraws consent or refuses to accept
24 crisis intervention or supportive services, the services shall not be provided.

25 (d) The department of human services is hereby authorized to seek federal approval of a
26 state plan amendment to its title XIX state plan to initiate crisis intervention services and support
27 services for adults who qualify for title XIX services and are adult victims ~~of~~ with severe
28 impairments of abuse, assault, neglect or exploitation.

29 (e) The secretary shall provide, for the use of the general public, a statewide toll free
30 twenty-four (24) hour, seven (7) day a week telephone line, to report abuse, neglect and
31 exploitation and/or request crisis intervention and/or supportive services for adult victim with
32 severe impairments.

33 SECTION 4. Section 40.1-5-40.1 of the General Laws in Chapter 40.1-5 entitled "Mental
34 Health Law" is hereby amended to read as follows:

1 **40.1-5-40.1. Duty to report.** -- Any employee who has reasonable cause to believe that
2 an assault or a battery has been committed upon a patient shall make an immediate report,
3 including the identity of parties and witnesses and details of the incident, to the director of the
4 department of ~~mental health, retardation,~~ [behavioral healthcare, developmental disabilities](#) and
5 hospitals and hospitals or his or her designee. The director of the department shall cause the
6 report to be investigated immediately and further shall notify the mental health advocate and
7 appropriate law enforcement agencies of the investigation. Any person who fails to make a report
8 shall be guilty of a misdemeanor punishable by a fine of not more than five hundred dollars
9 (\$500).

10 SECTION 5. Section 40.1-5.3-17 of the General Laws in Chapter 40.1-5.3 entitled
11 "Incompetency to Stand Trial and Persons Adjudged Not Guilty by Reason of Insanity" is hereby
12 amended to read as follows:

13 **40.1-5.3-17. Penalties for deprivation of rights -- Disciplinary action -- Duty to**
14 **report.** -- (a) Any person who willfully withholds from or denies to a person committed to a
15 facility pursuant to this chapter any of his or her rights as herein granted, shall, on conviction
16 thereof, be fined not exceeding two thousand dollars (\$2,000) or imprisoned not exceeding two
17 (2) years.

18 (b) Any employee of a facility who shall deny to or withhold from any person any right
19 granted him or her by this chapter shall, independently of the above criminal sanctions, be subject
20 to such disciplinary action as the officer in charge shall see fit to impose, after notice, a hearing,
21 and a finding of a violation of the right.

22 (c) Any employee who has reasonable cause to believe that an assault or a battery has
23 been committed upon a committed person shall make an immediate report, including the identity
24 of parties and witnesses and details of the incident, to the director of the department of ~~mental~~
25 ~~health, retardation,~~ [behavioral healthcare, developmental disabilities](#) and hospitals and hospitals
26 or his or her designee. The director of the department shall cause the report to be investigated
27 immediately and further shall notify the mental health advocate and appropriate law enforcement
28 agencies of the results of the investigation. Any person who fails to make such a report shall be
29 guilty of a misdemeanor punishable by a fine of not more than five hundred dollars (\$500).

30 SECTION 6. Sections 40.1-27-2, 40.1-27-3 and 40.1-27-5 of the General Laws in
31 Chapter 40.1-27 entitled "Penalties for Abuse of Persons with Developmental Disabilities" are
32 hereby amended to read as follows:

33 **40.1-27-2. Duty to report.** -- (a) Any person within the scope of their employment at a
34 program or in their professional capacity who has knowledge of or reasonable cause to believe

1 that a participant in a program has been abused, mistreated or neglected shall make, within
2 twenty-four (24) hours or by the end of the next business day, a written report to the director of
3 the department of ~~mental health, retardation,~~ [behavioral healthcare, developmental disabilities](#)
4 and hospitals and hospitals or his or her designee. The report shall contain:

5 (1) The name, address, telephone number, occupation, and employer's address and the
6 phone number of the person reporting;

7 (2) The name and address of the participant who is believed to be the victim of the
8 abuse, mistreatment, or neglect;

9 (3) The details, observations, and beliefs concerning the incident(s);

10 (4) Any statements regarding the incident made by the participant and to whom they
11 were made;

12 (5) The date, time, and place of the incident;

13 (6) The name of any individual(s) believed to have knowledge of the incident; and

14 (7) The name of any individual(s) believed to have been responsible for the incident.

15 (b) In addition to those persons required to report pursuant to this section, any other
16 person may make a report if that person has reasonable cause to believe that a participant has
17 been abused, mistreated, or neglected.

18 **40.1-27-3. Duties of the director of the department of mental health, retardation,**
19 **and hospitals Duties of the director of the department of behavioral healthcare,**
20 **developmental disabilities and hospitals. --** The director of the department of ~~mental health,~~
21 ~~retardation,~~ [behavioral healthcare, developmental disabilities](#) and hospitals and hospitals or his or
22 her designee shall:

23 (1) Notify the attorney general or his or her designee, the chair of the program's human
24 rights committee forthwith upon receipt of an oral or written report made pursuant to section
25 40.1-27-2;

26 (2) Investigate and evaluate or cause to be investigated and evaluated the information
27 reported in those reports. The investigation and evaluation shall be made within twenty-four (24)
28 hours if the director of the department of ~~mental health, retardation,~~ [behavioral healthcare,](#)
29 [developmental disabilities](#) and hospitals and hospitals has reasonable cause to believe the
30 participant's health or safety is in immediate danger of further abuse or neglect and within seven
31 (7) days for all other reports. The investigations shall include a visit to the program, an interview
32 with the participant allegedly abused, mistreated or neglected, an interview with all witnesses to
33 the alleged incident, a determination of the nature, extent, and cause or causes of the injuries, the
34 identity of the person or persons responsible therefor, all other pertinent facts and

1 recommendations to prevent further abuse, mistreatment or neglect of the participant or other
2 program participants. The determination shall be in writing;

3 (3) Evaluate the environment in the program named in the report and make a written
4 determination of the risk of physical or emotional injury to any other participants in the same
5 program;

6 (4) Forward to the attorney general and the chair of the program's human rights
7 committee within fifteen (15) days after a case is initially reported pursuant to section 40.1-27-2 a
8 summary of the findings and recommendations on each case;

9 (5) If the director of the department of ~~mental health, retardation,~~ behavioral healthcare,
10 developmental disabilities and hospitals and hospitals has reasonable cause to believe that a
11 participant had died as a result of abuse, mistreatment, or neglect, immediately report the death to
12 the attorney general and to the office of the medical examiner. The office of the medical examiner
13 shall investigate the report and communicate its preliminary findings, orally within seventy-two
14 (72) hours, and in writing within seven (7) working days to the attorney general and to the
15 department of ~~mental health, retardation,~~ behavioral healthcare, developmental disabilities and
16 hospitals and hospitals. The office of the medical examiner shall also communicate its final
17 findings and conclusions, with the basis therefore to the same parties within sixty (60) days;

18 (6) Promulgate such regulations as may be necessary to implement the provisions of this
19 chapter; and

20 (7) Maintain a file of the written reports prepared pursuant to this chapter. The written
21 reports shall be confidential, but shall be released to the attorney general, to a court of competent
22 jurisdiction, and upon written request to the participant, his or her counsel, the reporting person or
23 agency, the appropriate review board or a social worker assigned to the case.

24 **40.1-27-5. Physician's report of examination -- Duty of program. --** Whenever a
25 program shall receive a report by a person other than a physician that a participant has been
26 harmed as a result of abuse, neglect, or mistreatment, the program shall have the patient examined
27 by a licensed physician. It shall be mandatory for the physician to make a preliminary report of
28 his or her findings to the director of the department of ~~mental health, retardation,~~ behavioral
29 healthcare, developmental disabilities and hospitals and hospitals and to the program within forty-
30 eight (48) hours after his or her examination, and a written report within five (5) days after his or
31 her examination.

32 SECTION 7. This act shall take effect on July 1, 2012.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO CRIMINAL OFFENSES -- ASSAULTS

1 This act would replace references to the department of mental health, retardation, and
2 hospitals with the department of behavioral healthcare, developmental disabilities and hospitals in
3 the criminal assault and abuse laws protecting adults with severe impairments. The act would also
4 require a statewide toll free, twenty-four (24) hour a day, seven (7) day a week telephone line, to
5 report abuse, neglect, and exploitation and/or request crisis intervention and/or supportive
6 services for adult victim with severe impairments. The act would clarify the right of an adult
7 victim with severe impairments of an assault, to refuse crisis intervention and/or supportive
8 services.

9 This act would take effect on July 1, 2012.

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