

MEMORANDUM OF SUPPORT

A.6665 (Gottfried)/S.4495 (Duane)

An Act to amend the public health law, the education law and the labor law, in relation to prohibiting participation in torture and improper treatment of prisoners by health care professionals.

The Legal Aid Society of the City of New York is a private organization that has provided free legal assistance to indigent persons in New York City for nearly 135 years. Through its Criminal Defense Practice, its Juvenile Rights Practice, its Prisoners' Rights Project and its Immigration Law Unit, Legal Aid staff members represent persons under civil and criminal confinement who are vulnerable to physical abuse and medical neglect in institutional settings ranging from police lockups to adult and juvenile jails and prisons and forensic wards.

Legal Aid strongly supports this bill. The prohibitions on the involvement of health care professionals in torture and in interrogations are essential from a public policy standpoint, based on recent well-publicized events at the national level. There must be accountability, not impunity, for such conduct. In this context, the duty to report that the bill provides is as important as its substantive prohibitions.

But the bill also addresses matters of more local concern. Institutionalized persons in New York State and City often report the failure of health care professionals to provide essential medical and mental health care to persons in custody who cannot make their own health care arrangements and are therefore dependent on institutional personnel and services. Civil rights class actions (of which Legal Aid has brought several) can remedy systemic violations of the fundamental human and constitutional rights to medical care in prisons and jails, but they do not address the conduct of individual malefactors in the health care professions. Nor do malpractice suits or individual damages suits, since damage awards or settlements are typically paid by the government employer. An effective response to egregious misconduct by health care professionals must address their licensure and their continuing ability to mistreat patients, and this bill provides an appropriate way to do so.

The provisions prohibiting the omission of "indications of torture or improper treatment from records or reports" and of "altering health records or reports to hide, misrepresent or destroy evidence of torture or improper treatment," are also important. While we do not uncover such instances often, they do exist, and of course there are likely to be others that we do *not* uncover. Certainly we have noticed a persistent tendency in jail medical records to give minimal descriptions of injuries sustained after use of force incidents, and we believe there is often explicit or implicit pressure to minimize reports of such injuries. Establishing a clear duty on the part of medical professionals to report their observations will empower those who wish to do the right thing as well as deter those who do not.