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VETO #260

CHAPTER \_\_\_\_\_

LAWS OF 20 04

SENATE BILL 4615

ASSEMBLY BILL \_\_\_\_\_

4615

2003-2004 Regular Sessions

**IN SENATE**

April 14, 2003

Introduced by Sen. LIBOUS -- read twice and ordered printed, and when printed to be committed to the Committee on Mental Health and Developmental Disabilities

AN ACT to amend the mental hygiene law and the public health law, in relation to peace officer powers of safety officers

*A 8623 Rules (P Rivera)*

DATE RECEIVED BY GOVERNOR:

OCT 22 2004

ACTION MUST BE TAKEN BY:

NOV 03 2004

DATE GOVERNOR'S ACTION TAKEN:

NOV 03 2004

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SENATE VOTE      \_\_\_ Y \_\_\_ N

HOME RULE MESSAGE      \_\_\_ Y \_\_\_ N

DATE \_\_\_\_\_

ASSEMBLY VOTE      \_\_\_ Y \_\_\_ N

DATE \_\_\_\_\_

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STATE OF NEW YORK  
EXECUTIVE CHAMBER  
ALBANY 12224

TO THE SENATE:

I am returning herewith, without my approval, the following bill:

Senate Bill Number 4615, entitled:

NOV 03 2004

**V E T O # 260** "AN ACT to amend the mental hygiene law and the public health law, in relation to peace officer powers of safety officers"

NOT APPROVED

This bill would amend the Mental Hygiene Law and the Public Health Law to require the Commissioners of the Office of Mental Health (OMH) and the Office of Mental Retardation and Developmental Disabilities (OMRDD), the in-patient facility directors at OMH and OMRDD, and the directors of hospitals within the Department of Health (DOH) to designate safety officers in their employ as special policemen. Special policeman so designated would possess all the powers of a peace officer, including the power to make warrantless arrests, use physical and deadly force when justified and execute warrantless searches. The bill would take effect immediately.

I disapproved similar legislation last year that would have eliminated the OMH Commissioner's discretion in designating security hospital treatment assistants as peace officers. (See: Veto No. 167 of 2003). In addition, I have twice disapproved legislation that would have mandated peace officer status for security officers at the Erie County Medical Center. (See: Veto No. 164 of 2003; Veto No. 5 of 2004).

In mandating that safety officers be granted peace officer status, this bill would eliminate the current statutory discretion of the Commissioners of OMH and OMRDD and their facility directors, as well as DOH hospital directors, to designate safety officers as peace officers in appropriate circumstances. I have not been advised of any instance in which the Commissioners or directors who possess this discretionary authority have denied or neglected to make such designation where necessary or appropriate. Therefore, because I have not been presented with any compelling evidence to justify the elimination of the discretionary power to grant peace officer status and the significant powers and privileges attendant to that status, I am constrained to disapprove this bill.

The bill is disapproved.

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

BILL NUMBER: S4615

SPONSOR: LIBOUS

TITLE OF BILL: An act to amend the mental hygiene law and the public health law, in relation to peace officer powers of safety officers

SUMMARY OF PROVISIONS: Section 1 of the bill amends section 7.25 of the Mental Hygiene Law to require the Commissioner and in-patient facility directors in OMH to designate safety officers as safety officers who would have all the powers of a peace officer as set forth in section 2.20 of the criminal procedure law.

Section 2 of the bill amends section 13.25 of the Mental Hygiene Law to require the Commissioner and directors of facilities under the jurisdiction of the Commissioner to designate safety officers as peace officers.

Section 3 of the bill requires the director of each hospital within the Department of Health to designate safety officers as peace officers.

JUSTIFICATION: Safety officers employed by OMH, OMRDD and the Health Department provide valuable law enforcement services to the people of New York State. Safety officers patrol and inspect treatment facilities, handle all safety and security issues and prevent endangerment of patients, employees, visitors and property. Their designation as "special policemen" pursuant to the provisions of the Mental Hygiene Law and the Public Health Law affords these individuals peace officer status under the Criminal Procedure Law. However, existing law does not mandate that they be designated as special policemen. Rather, such designation is discretionary.

Mandating that safety officers be designated special policemen will ensure that safety officers have the ability to utilize their full peace officer powers while working at OMH, OMRDD or the Department of Health, thereby creating a safer environment for facility employees, patients and visitors. Moreover, the enactment of this bill will promote a uniform policy with respect to the treatment of New York's safety officers.

LEGISLATIVE HISTORY: New Bill

FISCAL IMPLICATIONS: None

EFFECTIVE DATE: This act shall take effect immediately.

B-203

BUDGET REPORT ON BILLS

Session Year 2004

SENATE:  
No. 4615

NO RECOMMENDATION  
Senator Libous

ASSEMBLY:

Title: AN ACT to amend the mental hygiene law and the public health law, in relation to peace officers powers of safety officers

The above bill has been referred to the Division of the Budget for comment. After careful review, we find that the bill has no appreciable effect on State finances or programs, and/or this office does not have the technical expertise to make a recommendation on the bill.

We therefore make no recommendation.

A handwritten signature in black ink, appearing to be "Sen. Libous", written in a cursive style.

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# STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower

The Governor Nelson A. Rockefeller Empire State Plaza

Albany, New York 12237

Antonia C. Novello, M.D., M.P.H., Dr. P.H.

Dennis P.

Whalen  
Commissioner

*Executive Deputy Commissioner*

## Memorandum

**To:** Richard Platkin, Counsel to the Governor  
**From:** Dennis Whalen, Executive Deputy Commissioner  
**Date:** August 26, 2004  
**Subject:** Senate 4615

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Your office has requested the Department of Health's comments on Senate 4615, which is before the Governor for executive action. Section 1 of this bill would amend 7.25 (a) of the Mental Hygiene Law (MHL) to require the Commissioner of the Office of Mental Health (OMH) and OMH in-patient facility directors to designate safety officers as special policemen who would have all the powers of a peace officer as set forth in Section 2.20 of the Criminal Procedure Law. Section 2 of the bill would amend MHL Section 13.25 (a) to require the Commissioner of the Office of Mental Retardation and Developmental Disabilities (OMRDD) and directors of facilities under the jurisdiction of the Commissioner to designate safety officers as peace officers. Section 3 of the bill would amend Section 455 of the Public Health Law to require the director of each hospital within the Department of Health to designate safety officers as special policemen with all the powers of a peace officer.

The Department of Health (DOH) operates the following facilities that are "hospitals" under the Public Health Law: Helen Hayes Hospital and veterans homes at Batavia, Montrose, Oxford and St. Albans. Under existing law, DOH has discretion to designate hospital employees as special policemen, but existing law does not mandate that employees be designated as special policemen. This bill would mandate that DOH designate safety officers as special policemen and would take away the discretion to designate employees other than safety officers as special policemen. In addition, the bill amends the Mental Hygiene Law to mandate that employees in facilities operated by the Office of Mental Health and the Office of Mental Retardation and Developmental Disabilities be designated as special policemen.

The Governor vetoed legislation earlier this session that would have extended peace officer status to persons employed by Erie County Medical Center as members of its security force (Veto Message #5). In that message the Governor said, "The broad powers granted

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to peace officers include the authority to make warrantless arrests, use physical and deadly force where justified, carry licensed firearms, and execute warrantless searches. Therefore, granting peace officer status is a serious matter with substantial legal, practical and public policy consequences. While I recognize that the Erie County Medical Center security officers perform an important safety function, I am constrained to disapprove this bill because I have not been provided with compelling evidence to justify conferring the appreciable powers of peace officers upon these officers'' .

The sponsors of this legislation have also not provided compelling evidence to justify the removal of DOH's discretion regarding designation of hospital safety officers as special policemen. There is also no clear evidence that mandating safety officers be designated special policemen will ensure a safer environment for facility employees, patients and visitors.

The Department of Health recommends disapproval of Senate 4615.



STATE OF NEW YORK  
**OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES**

44 HOLLAND AVENUE  
ALBANY, NEW YORK 12229-0001  
(518) 473-1997 • TDD (518) 474-3694  
www.omr.state.ny.us

October 26, 2004

Honorable Richard Platkin, Esq.  
Counsel to the Governor  
State Capitol Building  
Executive Chamber  
Albany, NY 12224

Re: S.4615; Requiring directors of in-patient facilities and hospitals to designate safety officers as special policemen/peace officers

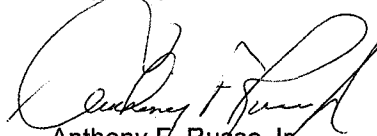
Dear Mr. Platkin:

The Office of Mental Retardation and Developmental Disabilities has reviewed the above referenced bill awaiting executive action which you forwarded to this office for comment.

Please be advised that OMRDD takes no position with respect to this bill which, in essence, would require that all safety officers, who are employed within the Office of Mental Retardation and Developmental Disabilities, the Office of Mental Health, and in Hospitals within the Department of Health, be designated as special policemen. This mandatory designation will provide these safety officers with all the powers of peace officers under the criminal procedure law .

Thank you for the opportunity to review and comment on this legislative proposal.

Very Truly Yours,



Anthony F. Russo Jr.  
Associate Attorney

cc: Paul Kietzman

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OFFICE OF MENTAL HEALTH

**COUNSEL**

Sharon E. Carpinello, RN, Ph.D.  
Commissioner

44 HOLLAND AVENUE  
ALBANY, NEW YORK 12229  
(518) 474-1331 § FAX (518) 473-7863 § TDD (518) 473-2714

JOHN V. TAURIELLO  
Deputy Commissioner and Counsel

July 15, 2004

Honorable Richard Platkin  
Counsel to the Governor  
Executive Chamber  
State Capitol Building  
Albany, NY 12224

**Re: Senate Bill # 4615**

Dear Mr. Platkin:

The Office of Mental Health (OMH) has no objection to the above bill, which is before the Governor for Executive action. This legislation would amend sections 7.25 and 13.25 of the Mental Hygiene Law (MHL), to require that safety officers employed respectively by OMH and the Office of Mental Retardation and Developmental Disabilities be designated as peace officers. It would also amend section 455 of the Public Health Law to require that safety officers employed by the Department of Health be designated as peace officers.

Although MHL section 7.25 now gives discretion to the Commissioner of Mental Health and directors of inpatient facilities in designating Safety Officers as peace officers, the Civil Service requirements for the position currently require that all Safety Officers be designated peace officers. Therefore enactment of this legislation will not change the peace officer status of any Safety Officer employed by OMH.

Thank you for the opportunity to comment on this proposal.

Sincerely,

John V. Tauriello  
Deputy Commissioner  
And Counsel

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**STATE OF NEW YORK  
DIVISION OF CRIMINAL JUSTICE SERVICES**

October 15, 2004  
VIA E-MAIL

Honorable Richard Platkin  
Counsel to the Governor  
Executive Chamber  
State Capitol - Room 225  
Albany, NY 12224

RE: Senate Bill Number 4615  
**No Recommendation**

Dear Mr. Platkin:

This is in response to your request for comment on the above-referenced legislation which amends the Mental Hygiene Law to require that the commissioner of the Office of Mental Health and directors of in-patient facilities designate safety officers as special policemen.

Currently, the commissioner and directors of in-patient facilities may, in their discretion, designate safety officers as special policemen. Once designated, special policemen are peace officers pursuant to section 1.20(12) of the Criminal Procedure Law. It is not clear from the sponsors' memorandum in support why the commissioner and directors' discretion to appoint special policemen should be eliminated. Nevertheless, since it does not appear that this legislation will have any significant impact on the operations of this agency, the Division of Criminal Justice Services makes **no recommendation on S.4615**.

Thank you for the opportunity to comment on this legislation.

Very truly yours,

Kimberly A. O'Connor  
Deputy Commissioner  
and Counsel

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**STATE OF NEW YORK  
DIVISION OF CRIMINAL JUSTICE SERVICES**

October 15, 2004  
VIA E-MAIL

Honorable Richard Platkin  
Counsel to the Governor  
Executive Chamber  
State Capitol - Room 225  
Albany, NY 12224

RE: Senate Bill Number 4615  
**No Recommendation**

Dear Mr. Platkin:

This is in response to your request for comment on the above-referenced legislation which amends the Mental Hygiene Law to require that the commissioner of the Office of Mental Health and directors of in-patient facilities designate safety officers as special policemen.

Currently, the commissioner and directors of in-patient facilities may, in their discretion, designate safety officers as special policemen. Once designated, special policemen are peace officers pursuant to section 1.20(12) of the Criminal Procedure Law. It is not clear from the sponsors' memorandum in support why the commissioner and directors' discretion to appoint special policemen should be eliminated. Nevertheless, since it does not appear that this legislation will have any significant impact on the operations of this agency, the Division of Criminal Justice Services makes **no recommendation on S.4615**.

Thank you for the opportunity to comment on this legislation.

Very truly yours,

Kimberly A. O'Connor  
Deputy Commissioner  
and Counsel

*PAV*

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## New York State Correctional Officers & Police Benevolent Association, Inc.

102 Hackett Boulevard ♦ Albany, NY 12209  
Tel. (518) 427-1551 ♦ Fax (518) 426-1635  
www.nyscopba.org ♦ nyscopba@nyscopba.org



October 28, 2004

Hon. George E. Pataki  
Governor of the State of New York  
Executive Chamber  
New York State Capitol  
Albany, NY 12224

PRESIDENT  
*Richard Harcrow*

EXECUTIVE VICE PRESIDENT  
*Carl Canterbury*

RECORDING SECRETARY  
*Diane Davis*

TREASURER  
*Dan Stuart*

VICE PRESIDENT,  
NORTHERN REGION  
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*Mitzie Altagracia Vilsaint*

VICE PRESIDENT,  
CENTRAL REGION  
*Anthony Farda*

VICE PRESIDENT,  
WESTERN REGION  
*Grant Marin*

VICE PRESIDENT,  
SOUTHERN REGION  
*Paul Mikolajczyk*

Re: S.4615/A.3623

Dear Governor Pataki:

On behalf of the New York State Correctional Officers and Police Benevolent Association, Inc. ("NYSCOPBA"), which represents more than 23,000 members from various state law enforcement titles, including more than 700 safety and security officers ("SSOs") employed within the Office of Mental Health ("OMH"), the Office of Mental Retardation and Developmental Disabilities ("OMRDD") and the Department of Health, I respectfully request that you sign into law the above-referenced legislation which would require the Commissioners and facility directors of the above referenced agencies to designate SSOs "special policemen."

SSOs employed within the state agencies referenced above provide essential safety and security services at treatment facilities maintained by OMH, OMRDD and the Department of Health. For example, they perform routine patrols of assigned areas which serve to deter criminal activity on facility grounds. They inspect buildings and property to determine the existence of any environmental, health or safety problems and report such problems to ensure abatement activities occur. These officers also ensure an orderly flow of vehicular traffic on facility grounds and are authorized to issue traffic tickets if necessary. In sum, the efforts of these SSOs promote a safe environment for patients, employees and visitors of these health facilities.

SSOs are deemed peace officers under the Criminal Procedure Law provided they receive proper designation as "special policemen" pursuant to Mental Hygiene Law and Public Health Law provisions (see Mental Hygiene Law §§ 7.25 and 13.25; see Public Health Law § 455). These statutory provisions are permissive in that they authorize, but do not mandate, that SSOs be designated as "special policemen." This discretionary authority not only results in a non-uniform policy with respect to the treatment of SSOs, but can also create uncertainty and indecisiveness on the part of SSOs in performing their facility duties which, in turn, could lead to compromised safety at the SSO work sites.

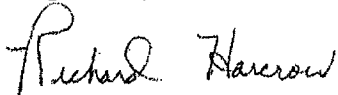
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Hon. George E. Pataki  
October 28, 2004  
Page 2

The enactment of this legislation will ensure that all SSOs receive their proper designation as special policemen. This, in turn, will promote a more uniform policy with respect to the treatment of New York's SSOs and will ensure safer health and mental health facilities within New York State.

For these reasons, on behalf of NYSCOPBA, I strongly support the enactment of this legislation and respectfully request that you sign this measure into law.

Respectfully submitted,



Richard Harcrow  
President

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**STATE OF NEW YORK**

4615

2003-2004 Regular Sessions

**IN SENATE**

April 14, 2003

Introduced by Sen. LIBOUS -- read twice and ordered printed, and when printed to be committed to the Committee on Mental Health and Developmental Disabilities

AN ACT to amend the mental hygiene law and the public health law, in relation to peace officer powers of safety officers

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

1 Section 1. Subdivision (a) of section 7.25 of the mental hygiene law,  
2 as amended by chapter 22 of the laws of 1984, is amended to read as  
3 follows:

4 (a) The commissioner and the directors of in-patient facilities in the  
5 office of mental health ~~may~~ shall designate safety officers to act as  
6 special policemen whose duty it shall be, under orders of the appropri-  
7 ate officer, to preserve peace and good order in facilities of such  
8 office and to fully protect the grounds, buildings, and patients. Such  
9 safety officers acting as special policemen shall possess all the powers  
10 of peace officers, as set forth in section 2.20 of the criminal proce-  
11 dure law, while performing duties in or arising out of the course of  
12 their employment. Such peace officers when acting pursuant to their  
13 special duties may issue and serve a simplified traffic information and  
14 appearance ticket, in the form prescribed by the commissioner of motor  
15 vehicles pursuant to section two hundred seven of the vehicle and traf-  
16 fic law, upon a person when he has reasonable cause to believe that such  
17 person has committed a traffic infraction in his presence, and shall  
18 have the power to issue and serve an appearance ticket as defined in  
19 section 150.10 of the criminal procedure law for an offense other than a  
20 felony in lieu of an arrest.

21 § 2. Subdivision (a) of section 13.25 of the mental hygiene law, as  
22 amended by chapter 969 of the laws of 1983, is amended to read as  
23 follows:

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

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S. 4615

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1 (a) The commissioner and the directors of facilities under his juris-  
2 diction ~~[may]~~ shall designate safety officers to act as special police-  
3 men whose duty it shall be, under orders of the appropriate officer, to  
4 preserve peace and good order in such facilities and to fully protect  
5 the grounds, buildings, and patients. Such safety officers acting as  
6 special policemen shall possess all the powers of peace officers, as set  
7 forth in section 2.20 of the criminal procedure law, while performing  
8 duties in or arising out of the course of their employment. Such peace  
9 officers when acting pursuant to their special duties may issue and  
10 serve a simplified traffic information and appearance ticket, in the  
11 form prescribed by the commissioner of motor vehicles pursuant to  
12 section two hundred seven of the vehicle and traffic law, upon a person  
13 when he has reasonable cause to believe that such person has committed a  
14 traffic infraction in his presence, and shall have the power to issue  
15 and serve an appearance ticket as defined in section 150.10 of the crim-  
16 inal procedure law for an offense other than a felony in lieu of an  
17 arrest.

18 § 3. Section 455 of the public health law, as amended by chapter 843  
19 of the laws of 1980, is amended to read as follows:

20 § 455. Hospitals; special policemen; powers and duties. 1. The direc-  
21 tor of each hospital in the department ~~[may]~~ shall designate ~~[attendants~~  
22 ~~or other employees]~~ safety officers to act as special policemen whose  
23 duty it shall be under the orders of the director to protect the  
24 grounds, buildings and patients of the hospital and to eject therefrom  
25 disorderly persons. Such ~~[attendants and employees, acting as special~~  
26 ~~policemen,]~~ safety officers shall possess all the powers of peace offi-  
27 cers, as set forth in section 2.20 of the criminal procedure law, on the  
28 grounds and premises.

29 2. The designation of such ~~[attendants and employees]~~ safety officers  
30 as special policemen in pursuance hereof, shall not be deemed to super-  
31 sede, on the grounds and premises of such hospital, the authority of  
32 peace or police officers of the jurisdiction within which such hospital  
33 is located.

34 § 4. This act shall take effect immediately.