S T A T E O F N E W Y O R K

7232

I N S E N A T E

May 7, 2014

Introduced by Sen. CARLUCCI -- 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 executive law, in relation to ensuring the safety and rights of an individual with a disability or a vulnerable person

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 553 of the executive law is amended by adding a new subdivision 28 to read as follows:

28. TO CARRY OUT INVESTIGATIONS BY OBSERVING CRITICAL PROTOCOLS AND PROCEDURES TO ENSURE THE SAFETY AND RIGHTS OF AN INDIVIDUAL WITH A DISABILITY OR A VULNERABLE PERSON. SUCH PROTOCOLS AND PROCEDURES SHALL BE DEVELOPED BY THE JUSTICE CENTER IN CONSULTATION WITH THE ADVISORY COUNCIL ESTABLISHED PURSUANT TO SECTION FIVE HUNDRED SIXTY-ONE OF THIS ARTICLE AND THE APPROPRIATE STATE AGENCY AND SHALL INCLUDE:

(A) IN THE EVENT THAT IT IS NECESSARY TO OBTAIN INFORMATION IN THE COURSE OF AN INVESTIGATION FROM AN INDIVIDUAL WITH A DISABILITY OR A VULNERABLE PERSON, PROTOCOLS AND PROCEDURES SHALL BE ESTABLISHED FOR ASCERTAINING WHETHER OR NOT INTERVIEWING OR INTERROGATING SUCH PERSON IS CLINICALLY CONTRAINDICATED PRIOR TO SUCH INTERVIEW OR INTERROGATION TAKING PLACE.

(I) IN THE EVENT THAT AN INTERVIEW OR INTERROGATION IS CLINICALLY CONTRAINDICATED, THE INDIVIDUAL WITH A DISABILITY OR VULNERABLE PERSON SHALL BE EXEMPT FROM SUCH INTERVIEW OR INTERROGATION.

(II) FOR THOSE INDIVIDUALS WITH A DISABILITY OR VULNERABLE PERSONS SUBJECT TO AN INTERVIEW OR INTERROGATION, THE JUSTICE CENTER SHALL DEVELOP PROCEDURES AND PROTOCOLS TO ENSURE THAT ANY INTERVIEW OR INTERROGATION IS CONDUCTED SAFELY IN LIGHT OF ALL RELEVANT CLINICAL, BEHAVIORAL AND OTHER FACTS RELATING TO THE INDIVIDUAL'S DISABILITY, SAFETY AND WELLBEING.

(B) PROCEDURES TO ASCERTAIN WHETHER AN INDIVIDUAL WITH A DISABILITY OR A VULNERABLE PERSON HAS THE LEGAL CAPACITY TO UNDERSTAND QUESTIONS POSED TO HIM OR HER DURING AN INTERVIEW OR INTERROGATION AND WHETHER SUCH INDIVIDUAL HAS THE LEGAL CAPACITY TO UNDERSTAND WHAT RIGHTS HE OR SHE

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

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HAS IN THE COURSE OF AN INTERVIEW OR INTERROGATION, INCLUDING BUT NOT LIMITED TO THE RIGHT TO CONSENT TO A SEARCH OF THEIR PERSON OR PROPERTY. SUCH PROCEDURES SHALL INCLUDE:

(I) APPROPRIATE NOTIFICATION TO AN INDIVIDUAL WITH A DISABILITY OR A VULNERABLE PERSON AS TO WHAT RIGHTS SHALL BE ACCORDED TO HIM OR HER IN AN INTERVIEW, INCLUDING THE RIGHT NOT TO PARTICIPATE IN SUCH INTERVIEW;

(II) AN APPROPRIATE MEANS OF INTERVIEWING AN INDIVIDUAL WITH A DISABILITY OR A VULNERABLE PERSON GIVEN THE LIMITATIONS SUCH INDIVIDUAL MAY HAVE IN COMPREHENDING QUESTIONS;

(III) APPROPRIATE NOTIFICATION OF A QUALIFIED PERSON AS DEFINED IN SECTION 33.16 OF THE MENTAL HYGIENE LAW INFORMING SUCH QUALIFIED PERSON THAT AN INDIVIDUAL WITH A DISABILITY OR A VULNERABLE PERSON SHALL BE QUESTIONED OR SUBJECT TO AN INTERVIEW OR INTERROGATION AND TO ENABLE SUCH QUALIFIED PERSON TO PROVIDE ANY INFORMATION WHICH THEY BELIEVE IS NECESSARY TO PROTECT THE INDIVIDUAL;

(IV) PROCEDURES FOR DETERMINING UNDER WHAT CIRCUMSTANCE A QUALIFIED PERSON SHALL ACCOMPANY AN INDIVIDUAL WITH A DISABILITY OR A VULNERABLE PERSON DURING AN INTERVIEW OR INTERROGATION.

(C) PROCEDURES FOR TIMELY NOTIFICATION OF THE APPROPRIATE ADMINISTRATIVE AGENCY PERSONNEL PROVIDING SERVICES TO AN INDIVIDUAL WITH A DISABILITY OR A VULNERABLE PERSON THAT SUCH INDIVIDUAL MAY POSSESS INFORMATION WHICH IS CRITICAL TO AN INVESTIGATION AND THAT SUCH INDIVIDUAL WILL BE INTERVIEWED. PROCEDURES FOR OBTAINING INFORMATION FROM A PROVIDER AGENCY SERVING AN INDIVIDUAL WITH A DISABILITY OR A VULNERABLE PERSON WHICH MAY BE CRITICAL TO PROTECTING SUCH INDIVIDUAL'S HEALTH AND SAFETY AND BEST INTERESTS.

S 2. Subdivision 4 of section 553 of the executive law, as added by section 3 of part A of chapter 501 of the laws of 2012, is amended to read as follows:

4. To develop standards and training curricula for investigators who will be assigned to investigate reportable incidents involving vulnerable persons AND INDIVIDUALS WITH DISABILITIES, and to provide periodic training to such investigators. Such standards, curricula and training shall address topics including, but not limited to: (a) how to identify and investigate reportable incidents; (b) the duty to report reportable incidents; (c) the requirements of all codes of conduct; (d) all applicable disciplinary processes; [and] (e) PROTOCOLS AND PROCEDURES PURSUANT TO PARAGRAPH TWENTY-EIGHT OF THIS SECTION; AND (F) employees' rights pursuant to this article;

S 3. Protocols and procedure required by this act shall be developed by January 1, 2015 and shall be submitted to the majority leader of the senate and the speaker of the assembly and implemented by the justice center by March 1, 2015.

S 4. This act shall take effect immediately.