

STATE OF NEW YORK

8822

2017-2018 Regular Sessions

IN ASSEMBLY

December 6, 2017

Introduced by M. of A. SIMON -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to deeming a person in custody of any police officer, peace officer or police department as incapable of consent

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

1 Section 1. This at shall be known and may be cited as "Anna's law".
2 § 2. Paragraph (i) of subdivision 3 of section 130.05 of the penal
3 law, as added by section 2 of part G of chapter 501 of the laws of 2012,
4 is amended and a new paragraph (j) is added to read as follows:
5 (i) a resident or inpatient of a residential facility operated,
6 licensed or certified by (i) the office of mental health; (ii) the
7 office for people with developmental disabilities; or (iii) the office
8 of alcoholism and substance abuse services, and the actor is an employee
9 of the facility not married to such resident or inpatient. For purposes
10 of this paragraph, "employee" means either: an employee of the agency
11 operating the residential facility, who knows or reasonably should know
12 that such person is a resident or inpatient of such facility and who
13 provides direct care services, case management services, medical or
14 other clinical services, habilitative services or direct supervision of
15 the residents in the facility in which the resident resides; or an offi-
16 cer or other employee, consultant, contractor or volunteer of the resi-
17 dential facility, who knows or reasonably should know that the person is
18 a resident of such facility and who is in direct contact with residents
19 or inpatients; provided, however, that the provisions of this paragraph
20 shall only apply to a consultant, contractor or volunteer providing
21 services pursuant to a contractual arrangement with the agency operating
22 the residential facility or, in the case of a volunteer, a written
23 agreement with such facility, provided that the person received written
24 notice concerning the provisions of this paragraph; provided further,

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

LBD13695-01-7

1 however, "employee" shall not include a person with a developmental
2 disability who is or was receiving services and is also an employee of a
3 service provider and who has sexual contact with another service recipi-
4 ent who is a consenting adult who has consented to such contact[~~red~~]; or
5 (j) arrested, detained, or otherwise committed to the care and custody
6 of any police officer, peace officer or police department, and the actor
7 knows or reasonably should know that such person is committed to the
8 care and custody or supervision of such officer or department.
9 § 3. This act shall take effect immediately.