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I N   A S S E M B L Y

May 9, 2014

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Introduced by M. of A. GUNTHER -- read once and referred to the Committee on Mental Health

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:

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

3     28. TO CARRY OUT INVESTIGATIONS BY OBSERVING CRITICAL PROTOCOLS AND  
4     PROCEDURES TO ENSURE THE SAFETY AND RIGHTS OF AN INDIVIDUAL WITH A DISA-  
5     BILITY OR A VULNERABLE PERSON. SUCH PROTOCOLS AND PROCEDURES SHALL BE  
6     DEVELOPED BY THE JUSTICE CENTER IN CONSULTATION WITH THE ADVISORY COUN-  
7     CIL ESTABLISHED PURSUANT TO SECTION FIVE HUNDRED SIXTY-ONE OF THIS ARTI-  
8     CLE AND THE APPROPRIATE STATE AGENCY AND SHALL INCLUDE:

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

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

18    (II) FOR THOSE INDIVIDUALS WITH A DISABILITY OR VULNERABLE PERSONS  
19    SUBJECT TO AN INTERVIEW OR INTERROGATION, THE JUSTICE CENTER SHALL  
20    DEVELOP PROCEDURES AND PROTOCOLS TO ENSURE THAT ANY INTERVIEW OR INTER-  
21    ROGATION IS CONDUCTED SAFELY IN LIGHT OF ALL RELEVANT CLINICAL, BEHAV-  
22    IORAL AND OTHER FACTS RELATING TO THE INDIVIDUAL'S DISABILITY, SAFETY  
23    AND WELLBEING.

24    (B) PROCEDURES TO ASCERTAIN WHETHER AN INDIVIDUAL WITH A DISABILITY OR  
25    A VULNERABLE PERSON HAS THE LEGAL CAPACITY TO UNDERSTAND QUESTIONS POSED  
26    TO HIM OR HER DURING AN INTERVIEW OR INTERROGATION AND WHETHER SUCH  
27    INDIVIDUAL HAS THE LEGAL CAPACITY TO UNDERSTAND WHAT RIGHTS HE OR SHE  
28    HAS IN THE COURSE OF AN INTERVIEW OR INTERROGATION, INCLUDING BUT NOT

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

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1 LIMITED TO THE RIGHT TO CONSENT TO A SEARCH OF THEIR PERSON OR PROPERTY.  
2 SUCH PROCEDURES SHALL INCLUDE:

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

6 (II) AN APPROPRIATE MEANS OF INTERVIEWING AN INDIVIDUAL WITH A DISA-  
7 BILITY OR A VULNERABLE PERSON GIVEN THE LIMITATIONS SUCH INDIVIDUAL MAY  
8 HAVE IN COMPREHENDING QUESTIONS;

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

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

18 (C) PROCEDURES FOR TIMELY NOTIFICATION OF THE APPROPRIATE ADMINISTRA-  
19 TIVE AGENCY PERSONNEL PROVIDING SERVICES TO AN INDIVIDUAL WITH A DISA-  
20 BILITY OR A VULNERABLE PERSON THAT SUCH INDIVIDUAL MAY POSSESS INFORMA-  
21 TION WHICH IS CRITICAL TO AN INVESTIGATION AND THAT SUCH INDIVIDUAL WILL  
22 BE INTERVIEWED. PROCEDURES FOR OBTAINING INFORMATION FROM A PROVIDER  
23 AGENCY SERVING AN INDIVIDUAL WITH A DISABILITY OR A VULNERABLE PERSON  
24 WHICH MAY BE CRITICAL TO PROTECTING SUCH INDIVIDUAL'S HEALTH AND SAFETY  
25 AND BEST INTERESTS.

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

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

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

43 S 4. This act shall take effect immediately.