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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, ABINANTI -- read once and referred to the Committee on Mental Health -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 OF A VULNERABLE PERSON OR PERSONS IN  
5     LIGHT OF THEIR CLINICAL, PERSONAL CONSIDERATIONS AND THE NEED FOR THE  
6     TIMELY COMPLETION OF AN EFFECTIVE INVESTIGATION. SUCH PROTOCOLS AND  
7     PROCEDURES SHALL BE DEVELOPED BY THE JUSTICE CENTER IN CONSULTATION WITH  
8     THE ADVISORY COUNCIL ESTABLISHED PURSUANT TO SECTION FIVE HUNDRED  
9     SIXTY-ONE OF THIS ARTICLE AND THE APPROPRIATE STATE AGENCY. PROTOCOLS  
10    AND PROCEDURES DEVELOPED JOINTLY BY THE DIRECTOR OF THE JUSTICE CENTER  
11    AND THE RESPECTIVE STATE OVERSIGHT AGENCY SHALL BE CONSIDERED FINAL UPON  
12    AGREEMENT BETWEEN THE DIRECTOR AND ANY SUCH COMMISSIONER AND SHALL NOT  
13    DEPEND ON A FINAL AGREEMENT BETWEEN THE DIRECTOR OF THE JUSTICE CENTER  
14    AND ALL AFFECTED AGENCY COMMISSIONERS. SUCH PROTOCOLS AND PROCEDURES  
15    SHALL INCLUDE:  
16    (A) IN THE EVENT THAT IT IS NECESSARY TO OBTAIN INFORMATION IN THE  
17    COURSE OF AN INVESTIGATION FROM A VULNERABLE PERSON, PROTOCOLS AND  
18    PROCEDURES SHALL BE ESTABLISHED FOR ASCERTAINING WHETHER OR NOT INTER-  
19    VIEWING SUCH PERSON IS CLINICALLY CONTRAINDICATED PRIOR TO SUCH INTER-  
20    VIEW TAKING PLACE. NOTHING IN THIS SUBDIVISION SHALL BE CONSTRUED TO  
21    REQUIRE A FORMAL CLINICAL ASSESSMENT PRIOR TO INTERVIEWING A VULNERABLE  
22    PERSON.  
23    (I) FOR THOSE VULNERABLE PERSONS SUBJECT TO AN INTERVIEW, THE JUSTICE  
24    CENTER SHALL DEVELOP APPROPRIATE PROCEDURES AND PROTOCOLS TO ENSURE THAT  
25    ANY INTERVIEW IS CONDUCTED SAFELY AND IN A TIMELY FASHION IN LIGHT OF  
26    RELEVANT CLINICAL, BEHAVIORAL AND OTHER FACTS RELATING TO THE INDIVID-

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

LBD15035-10-4

UAL'S DISABILITY, SAFETY AND WELLBEING. SUCH PROTOCOLS AND PROCEDURES SHALL ALSO RECOGNIZE ANY ABILITY THE VULNERABLE PERSON MAY HAVE TO ADVOCATE ON HIS OR HER OWN BEHALF BY PROVIDING INFORMATION TO FACILITATE AN INVESTIGATION TO ENHANCE HIS OR HER OWN SAFETY AND WELLBEING AND THE SAFETY AND WELLBEING OF OTHERS.

(II) IN THE EVENT THAT AN INTERVIEW IS CLINICALLY CONTRAINDICATED, DESPITE THE PROVISION OF APPROPRIATE PROCEDURES AND PROTOCOLS, INCLUDING SPECIAL ACCOMMODATIONS FOR EFFECTIVELY AND SAFELY OBTAINING TIMELY INFORMATION IN LIGHT OF THE PERSON'S CLINICAL CHARACTERISTICS SUCH AS THE PRESENCE OF A PERSONAL REPRESENTATIVE AS DEFINED IN SECTION FOUR HUNDRED EIGHTY-EIGHT OF THE SOCIAL SERVICES LAW, THE VULNERABLE PERSON SHALL BE EXEMPT FROM SUCH INTERVIEW. HOWEVER, THE JUSTICE CENTER MAY DETERMINE NOT TO GRANT SUCH EXEMPTION IF, IN ACCORDANCE WITH PROTOCOLS AND PROCEDURES DEVELOPED PURSUANT TO THIS SECTION, IT DETERMINES THAT THERE EXISTS AN OVERRIDING HEALTH AND SAFETY NEED TO PROCEED WITH AN INTERVIEW OF THE VULNERABLE PERSON AND PROVIDED THAT THE JUSTICE CENTER TAKES NECESSARY MEANS TO PROTECT SUCH VULNERABLE PERSON'S HEALTH, SAFETY AND WELLBEING DURING SUCH INTERVIEW.

(B) PROCEDURES TO INFORM A VULNERABLE PERSON AND/OR THEIR PERSONAL REPRESENTATIVE OF THE PROTOCOLS USED IN AN INTERVIEW AND THAT SUCH INTERVIEW IS VOLUNTARY. FURTHER, IF APPLICABLE AS DETERMINED BY THE JUSTICE CENTER, THE VULNERABLE PERSON SHALL BE INFORMED THAT ANY SEARCH OF THE VULNERABLE INDIVIDUAL'S PERSON OR PROPERTY SHALL ALSO BE DONE VOLUNTARILY. SUCH PROCEDURES SHALL INCLUDE:

(I) APPROPRIATE NOTIFICATION TO A VULNERABLE PERSON AS TO WHAT TO EXPECT IN AN INTERVIEW;

(II) AN APPROPRIATE MEANS OF INTERVIEWING A VULNERABLE PERSON GIVEN THE LIMITATIONS SUCH INDIVIDUAL MAY HAVE IN COMPREHENDING QUESTIONS AS WELL AS GIVEN LINGUISTIC AND CULTURAL BARRIERS TO SUCH UNDERSTANDING;

(III) APPROPRIATE NOTIFICATION, WHEN AT ALL ADVISABLE GIVEN THE NATURE OF AN INVESTIGATION TO A PERSONAL REPRESENTATIVE THAT A VULNERABLE PERSON SHALL BE QUESTIONED OR SUBJECT TO AN INTERVIEW AND TO ENABLE SUCH PERSONAL REPRESENTATIVE TO PROVIDE ANY INFORMATION WHICH THEY BELIEVE IS NECESSARY TO PROTECT THE INDIVIDUAL;

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

(C) PROCEDURES TO FACILITATE THE PREPARATION OF PERTINENT INFORMATION, INCLUDING CLINICAL INFORMATION, NECESSARY TO SAFELY CONDUCT AN INVESTIGATION PURSUANT TO THIS SECTION, INCLUDING TIMELY NOTIFICATION BY THE JUSTICE CENTER TO THE APPROPRIATE ADMINISTRATIVE PERSONNEL OF THE AGENCY SERVING SUCH VULNERABLE PERSON THAT SUCH INFORMATION WILL BE REQUIRED. SUCH INFORMATION SHALL BE READILY AVAILABLE TO THE JUSTICE CENTER ON A FORM IT PRESCRIBES PRIOR TO ANY CONTACT BETWEEN THE JUSTICE CENTER AND SUCH INDIVIDUAL.

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 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;

1 [and] (e) PROTOCOLS AND PROCEDURES PURSUANT TO SUBDIVISION TWENTY-EIGHT  
2 OF THIS SECTION; AND (F) employees' rights pursuant to this article;  
3 S 3. Protocols and procedure required by this act shall be developed  
4 by January 1, 2015 and shall be submitted to the majority leader of the  
5 senate and the speaker of the assembly and implemented by the justice  
6 center by March 1, 2015. Regulations describing and implementing such  
7 protocols and procedures shall be finalized no later than April 1, 2015.  
8 S 4. This act shall take effect immediately.