

5579

2015-2016 Regular Sessions

I N S E N A T E

May 14, 2015

Introduced by Sen. AVELLA -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, in relation to the definition of mentally disabled and in relation to larceny; to amend the civil practice law and rules, in relation to the mental condition of a victim; to amend the criminal procedure law, in relation to examination of witnesses; and to amend the penal law, in relation to larceny

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

1 Section 1. Section 155.00 of the penal law is amended by adding a new
2 subdivision 10 to read as follows:
3 10. "MENTALLY DISABLED" MEANS THAT A PERSON SUFFERS FROM A MENTAL
4 DISEASE, DEFECT OR CONDITION WHICH RENDERS HIM OR HER INCAPABLE OF
5 APPRAISING THE NATURE OF THE CONDUCT CONSTITUTING THE TAKING, OBTAINING
6 OR WITHHOLDING OF HIS OR HER PROPERTY.
7 S 2. Section 155.10 of the penal law is amended to read as follows:
8 S 155.10 Larceny; no defense.
9 1. The crimes of (a) larceny committed by means of extortion and an
10 attempt to commit the same, and (b) bribe receiving by a labor official
11 as defined in section 180.20, and bribe receiving as defined in section
12 200.05, are not mutually exclusive, and it is no defense to a prosecution for larceny committed by means of extortion or for an attempt to
13 commit the same that, by reason of the same conduct, the defendant also
14 committed one of such specified crimes of bribe receiving.
15 2. IT IS NO DEFENSE TO A PROSECUTION FOR LARCENY THAT THE DEFENDANT
16 OBTAINED CONSENT TO TAKE, WITHHOLD, OR OBTAIN PROPERTY, WHERE SUCH
17 CONSENT WAS OBTAINED FROM A PERSON WHOM THE DEFENDANT KNEW OR HAD REASON
18 TO KNOW WAS MENTALLY DISABLED.
19 S 3. Section 4504 of the civil practice law and rules is amended by
20 adding a new subdivision (e) to read as follows:
21

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

LBD11105-01-5

1 (E) MENTAL CONDITION OF A VICTIM. UPON RECEIPT OF A GRAND JURY SUBPOE-
2 NA ISSUED PURSUANT TO SUBDIVISION TWO OF SECTION 610.20 OF THE CRIMINAL
3 PROCEDURE LAW AND ENDORSED BY A JUDGE OF A SUPERIOR COURT, A MEDICAL
4 PROVIDER MUST, AS INDICATED IN THIS SUBDIVISION, PROVIDE TO THE GRAND
5 JURY THE MEDICAL RECORDS OF THE PERSON NAMED IN THE SUBPOENA. A JUDGE OF
6 A SUPERIOR COURT SHALL ENDORSE SUCH A GRAND JURY SUBPOENA UPON AN EX
7 PARTE SWORN SHOWING BY A DISTRICT ATTORNEY, OR OTHER PROSECUTOR WHERE
8 APPROPRIATE, ESTABLISHING (1) THAT THERE IS REASONABLE CAUSE TO BELIEVE
9 THAT THE PERSON IN QUESTION IS A MENTALLY DISABLED PERSON, AND (2) THAT
10 THERE IS REASONABLE CAUSE TO BELIEVE THAT THE PERSON IN QUESTION HAS
11 BEEN THE VICTIM OF FINANCIAL EXPLOITATION. A PERSON IS "MENTALLY DISA-
12 BLED" FOR PURPOSES OF THIS SUBDIVISION WHEN THAT PERSON SUFFERS FROM A
13 MENTAL DISEASE, DEFECT OR CONDITION WHICH RENDERES HIM OR HER INCAPABLE
14 OF APPRAISING THE NATURE OF THE CONDUCT CONSTITUTING THE FINANCIAL
15 EXPLOITATION. UPON RECEIPT OF SUCH AN ENDORSED SUBPOENA A MEDICAL
16 PROVIDER, INCLUDING BUT NOT LIMITED TO A PHYSICIAN, PSYCHOLOGIST OR
17 NURSE, SHALL BE REQUIRED TO DISCLOSE INFORMATION RELATING TO THE MENTAL
18 OR COGNITIVE CONDITION OF THE PERSON IN QUESTION THAT THE MEDICAL
19 PROVIDER ACQUIRED IN ATTENDING THE PERSON IN A PROFESSIONAL CAPACITY,
20 AND WHICH WAS NECESSARY TO ENABLE HIM OR HER TO ACT IN THAT CAPACITY.

21 S 4. Subdivision 2 of section 660.20 of the criminal procedure law is
22 amended to read as follows:

23 2. Will not be amenable or responsive to legal process or available
24 as a witness at a time when his OR HER testimony will be sought, either
25 because he OR SHE is:

26 (a) About to leave the state and not return for a substantial period
27 of time; or

28 (b) Physically ill or [incapacitated.] INCAPACITATED; OR

29 (C) OF ADVANCED AGE WHICH, FOR THE PURPOSES OF THIS SUBDIVISION SHALL
30 MEAN A PERSON WHO HAS ATTAINED THE AGE OF SEVENTY-FIVE YEARS.

31 S 5. Paragraph (d) of subdivision 2 of section 155.05 of the penal law
32 is amended to read as follows:

33 (d) By false promise.

34 A person obtains property by false promise when, pursuant to a scheme
35 to defraud, he OR SHE obtains property of another by means of a repre-
36 sentation, express or implied, that he, SHE or a third person will in
37 the future engage in particular conduct, and when he OR SHE does not
38 intend to engage in such conduct or, as the case may be, does not
39 believe that the third person intends to engage in such conduct.

40 In any prosecution for larceny based upon a false promise, the defend-
41 ant's intention or belief that the promise would not be performed may
42 not be established by or inferred from the fact alone that such promise
43 was not performed. Such a finding may be based only upon evidence estab-
44 lishing that the facts and circumstances of the case are wholly consist-
45 ent with guilty intent or belief and wholly inconsistent with innocent
46 intent or belief, and excluding to a moral certainty every hypothesis
47 except that of the defendant's intention or belief that the promise
48 would not be performed; PROVIDED THAT PARTIAL PERFORMANCE OF SUCH PROM-
49 ISE DOES NOT, BY ITSELF, PRECLUDE A REASONABLE JURY FROM MAKING SUCH
50 FINDING FROM ALL THE FACTS AND CIRCUMSTANCES;

51 S 6. This act shall take effect immediately.