STATE OF NEW YORK

1490

2017-2018 Regular Sessions

IN SENATE

January 9, 2017

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:

Section 1. Section 155.00 of the penal law is amended by adding a new subdivision 10 to read as follows:

10. "Mentally disabled" means that a person suffers from a mental disease, defect or condition which renders him or her incapable of appraising the nature of the conduct constituting the taking, obtaining or withholding of his or her property.

§ 2. Section 155.10 of the penal law is amended to read as follows:

§ 155.10 Larceny; no defense.

1. The crimes of (a) larceny committed by means of extortion and an attempt to commit the same, and (b) bribe receiving by a labor official as defined in section 180.20, and bribe receiving as defined in section 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 commit the same that, by reason of the same conduct, the defendant also committed one of such specified crimes of bribe receiving.

2. It is no defense to a prosecution for larceny that the defendant obtained consent to take, withhold, or obtain property, where such consent was obtained from a person whom the defendant knew or had reason to know was mentally disabled.

§ 3. Section 4504 of the civil practice law and rules is amended by adding a new subdivision (e) to read as follows:

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

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(e) Mental condition of a victim. Upon receipt of a grand jury subpoena issued pursuant to subdivision two of section 610.20 of the criminal procedure law and endorsed by a judge of a superior court, a medical provider must, as indicated in this subdivision, provide to the grand jury the medical records of the person named in the subpoena. A judge of a superior court shall endorse such a grand jury subpoena upon an ex parte sworn showing by a district attorney, or other prosecutor where appropriate, establishing (1) that there is reasonable cause to believe that the person in question is a mentally disabled person, and (2) that there is reasonable cause to believe that the person in question has been the victim of financial exploitation. A person is "mentally disabled" for purposes of this subdivision when that person suffers from a mental disease, defect or condition which renders him or her incapable of appraising the nature of the conduct constituting the financial exploitation. Upon receipt of such an endorsed subpoena a medical provider, including but not limited to a physician, psychologist or nurse, shall be required to disclose information relating to the mental or cognitive condition of the person in question that the medical provider acquired in attending the person in a professional capacity, and which was necessary to enable him or her to act in that capacity.

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

2. Will not be amenable or responsive to legal process or available as a witness at a time when his or her testimony will be sought, either because he or she is:

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

(b) Physically ill or [~~incapacited.~~] incapacitated; or

(c) Of advanced age which, for the purposes of this subdivision shall mean a person who has attained the age of seventy-five years.

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

(d) By false promise.

A person obtains property by false promise when, pursuant to a scheme to defraud, he or she obtains property of another by means of a representation, express or implied, that he, she or a third person will in the future engage in particular conduct, and when he or she does not intend to engage in such conduct or, as the case may be, does not believe that the third person intends to engage in such conduct.

In any prosecution for larceny based upon a false promise, the defendant's intention or belief that the promise would not be performed may not be established by or inferred from the fact alone that such promise was not performed. Such a finding may be based only upon evidence establishing that the facts and circumstances of the case are wholly consistent with guilty intent or belief and wholly inconsistent with innocent intent or belief, and excluding to a moral certainty every hypothesis except that of the defendant's intention or belief that the promise would not be performed; provided that partial performance of such promise does not, by itself, preclude a reasonable jury from making such finding from all the facts and circumstances;

§ 6. This act shall take effect immediately.