STATE OF NEW YORK

7997

2021-2022 Regular Sessions

IN ASSEMBLY

June 4, 2021

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

AN ACT to amend the criminal procedure law, in relation to conditional examination of seniors before trial and a senior's participation in grand jury proceedings; and to amend the penal law, in relation to defenses to larceny when the victim is mentally disabled

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

Section 1. 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[~~.~~]**; or**

(c) Of an advanced age, which for the purposes of this section, shall mean seventy-five years of age or older.

§ 2. 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.

§ 3. 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

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

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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.

§ 4. Paragraph (h) of subdivision 3 of section 190.25 of the criminal procedure law, as amended by chapter 347 of the laws of 2014, is amended and a new paragraph (i) is added to read as follows:

(h) A social worker, rape crisis counselor, psychologist or other professional providing emotional support to a child witness twelve years old or younger[~~, or a social worker or informal caregiver, as provided in subdivision two of section two hundred six of the elder law, for a vulnerable elderly person as provided in subdivision three of section 260.31 of the penal law,~~] who is called to give evidence in a grand jury proceeding concerning a crime defined in article one hundred twenty-one, article one hundred thirty, article two hundred sixty, section 120.10, 125.10, 125.15, 125.20, 125.25, 125.26, 125.27, 255.25, 255.26 or 255.27 of the penal law provided that the district attorney consents. Such support person shall not provide the witness with an answer to any question or otherwise participate in such proceeding and shall first take an oath before the grand jury that he or she will keep secret all matters before such grand jury within his or her knowledge.

(i) A social worker or informal caregiver, as defined in subdivision two of section two hundred six of the elder law, for a vulnerable elderly person as defined in subdivision three of section 260.31 of the penal law, as added by chapter three hundred eighty-one of the laws of nineteen hundred ninety-eight, who is called to give evidence in a grand jury proceeding, concerning any type of offense, provided that the district attorney consents. Such support person shall not provide the witness with an answer to any question or otherwise participate in such proceeding and shall first take an oath before the grand jury that he or she will keep secret all matters before such grand jury within his or her knowledge.

§ 5. This act shall take effect immediately.