STATE OF NEW YORK

7927--A

2021-2022 Regular Sessions

IN ASSEMBLY

June 1, 2021

Introduced by M. of A. GUNTHER -- read once and referred to the Committee on Mental Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the executive law, the county law and the criminal procedure law, in relation to the justice center for the protection of people with special needs and providing for the repeal of certain provisions upon expiration thereof

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

Section 1. Section 552 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:

§ 552. Organization of the justice center. 1. The justice center shall house the vulnerable persons' central register created in section four hundred ninety-two of the social services law and shall perform all of the necessary functions related to the receipt and acceptance of reports of allegations of reportable incidents involving vulnerable persons, the investigation of such accepted reports and the review of substantiated findings of abuse or neglect, as defined in subdivision eleven of section four hundred eighty-eight of the social services law, including conducting any disciplinary proceedings for state employees resulting from such substantiated findings (for state entities bound by collective bargaining, the disciplinary process established through collective bargaining shall govern). The justice center shall contain two separate units, headed by two distinct deputies, one responsible for the [~~prosecution~~] **investigation** of criminal matters and one for the **investigation and** resolution of non-criminal matters. If, during an investigation, what appeared to be a non-criminal matter warrants consideration for criminal charges, the matter shall be promptly referred to the criminal unit **as well as the law enforcement agencies with jurisdiction over such matter**. Information collected during such investigations may only be

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

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shared between such units in accordance with state and federal constitutional protections and laws and the secrecy provisions contained in article one hundred ninety of the criminal procedure law, unless so ordered by a court in a pending proceeding.

2. (a) The justice center also shall employ a special prosecutor and inspector general for the protection of people with special needs ("special prosecutor"), who shall be appointed by the governor. Other state agencies shall be required to make facilities available for office space throughout the state and to assist when requested with respect to the duties of the office. Pursuant to the provisions of this section, such special prosecutor shall have the duty and power: (i) to investigate and**, upon the consent of a district attorney,** prosecute offenses involving abuse or neglect, as defined in subdivision eleven of section four hundred eighty-eight of the social services law, committed against vulnerable persons by custodians as defined in subdivision two of section four hundred eighty-eight of the social services law; and (ii) to cooperate with and assist district attorneys and other local law enforcement officials in their efforts against such abuse or neglect of vulnerable persons. Provided that nothing herein shall **diminish or** interfere with the ability of district attorneys at any time to receive complaints, investigate [~~and~~] **or maintain the ultimate authority to** prosecute any **offense involving the** suspected abuse or neglect **of a vulnerable person,** or for any persons, whether a mandated reporter or not, to report a complaint to a district attorney or other appropriate law enforcement official. The special prosecutor may request and shall receive, from any agency, department, division, board, bureau or commission of the state, or any political subdivision thereof, cooperation and assistance in the performance of his or her duties, and may provide technical and other assistance to any district attorney or law enforcement official requesting assistance in the investigation or prosecution of **offenses involving the** abuse or neglect of vulnerable persons.

(b) The special prosecutor**, or one of his or her assistants, duly authorized pursuant to paragraph (a) of this subdivision,** is empowered to apply for search warrants pursuant to article six hundred ninety of the criminal procedure law, and, except in exigent circumstances, shall give prior notice of the application to the district attorney of the county in which such a warrant is to be executed, and in such exigent circumstances shall give such notice as soon thereafter as is practicable; provided, however that the failure to give notice of a search warrant application to a district attorney shall not be a ground to suppress the evidence seized in executing the warrant. [~~He or she may designate an assistant to exercise any of such powers.~~]

(c) The special prosecutor or one of his or her assistants **duly authorized pursuant to paragraph (a) of this subdivision,** may[~~, after consultation with the district attorney as to the time and place of such attendance or appearance,~~] attend in person any term of [~~the county~~] court [~~or supreme court~~] having appropriate jurisdiction, including an extraordinary special or trial term of the supreme court when one is appointed pursuant to section one hundred forty-nine of the judiciary law, or appear before the grand jury thereof, for the purpose of managing and conducting in such court or before such jury a criminal action or proceeding concerned with an offense where any conduct constituting or requisite to the completion of or in any other manner related to such offense involved the abuse or neglect of a vulnerable person, as defined in subdivision eleven of section four hundred eighty-eight of the social services law. [~~In such case, such special prosecutor or his or her~~

~~assistant so attending may exercise all the powers and perform all the duties in respect of such actions or proceedings which the district attorney would otherwise be authorized or required to exercise or perform.~~]

§ 2. Subdivision 1 of section 700 of the county law, as amended by chapter 560 of the laws of 1991, is amended to read as follows:

1. Except as provided in section seven hundred one of this chapter, it shall be the duty of every district attorney to conduct**, or cause to be conducted,** all prosecutions for crimes and offenses cognizable by the courts of the county for which he or she shall have been elected or appointed; except when the place of trial of an indictment is changed from one county to another, it shall be the duty of the district attorney of the county where the indictment is found to conduct the trial of the indictment so removed, and it shall be the duty of the district attorney of the county to which such trial is changed to assist in such trial upon the request of the district attorney of the county where the indictment was found. He or she shall perform such additional and related duties as may be prescribed by law and directed by the board of supervisors.

§ 3. Section 702 of the county law is amended by adding a new subdivision 8 to read as follows:

8. Notwithstanding any provision of law with respect to the requirements of residence or number of appointments, a district attorney may appoint the special prosecutor and/or one or more of his or her assistants employed by the justice center for the protection of people with special needs as special assistant district attorneys with respect to any investigation or prosecution involving abuse or neglect, as defined in subdivision eleven of section four hundred eighty-eight of the social services law, committed against a vulnerable person by a custodian as defined in subdivision two of section four hundred eighty-eight of the social services law. Nothing herein shall limit the duration of such appointment, provided however, that such appointment may be rescinded at any time by the district attorney.

§ 4. Subdivision 32 of section 1.20 of the criminal procedure law, as amended by section 2 of part PPP of chapter 59 of the laws of 2017, is amended to read as follows:

32. "District attorney" means a district attorney, an assistant district attorney or a special district attorney, and, where appropriate, the attorney general, an assistant attorney general, a deputy attorney general, a special deputy attorney general, or the special prosecutor and inspector general for the protection of people with special needs or his or her assistants when acting [~~pursuant to their duties~~] in [~~matters arising under~~] **accordance with** article twenty of the executive law, or the inspector general of New York for transportation or his or her deputies when acting pursuant to article four-B of the executive law.

§ 5. Subdivision 34 of section 1.20 of the criminal procedure law is amended by adding a new paragraph (w) to read as follows:

(w) A sworn investigator employed by the justice center for the protection of people with special needs.

§ 6. Subdivision 34 of section 1.20 of the criminal procedure law is amended by adding a new paragraph (w) to read as follows:

(w) A sworn investigator employed by the justice center for the protection of people with special needs where such department or force is certified in accordance with paragraph (d) of subdivision one of section eight hundred forty-six-h of the executive law.

§ 7. This act shall take effect immediately, provided, however that section five of this act shall expire and be deemed repealed on the same date as section 13 of part BBB of chapter 59 of the laws of 2021 takes effect, when upon such date the provisions of section six of this act shall take effect.