STATE OF NEW YORK

5879

2023-2024 Regular Sessions

IN ASSEMBLY

March 23, 2023

Introduced by M. of A. SEAWRIGHT -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the county law, the criminal procedure law, the legislative law, the mental hygiene law, the private housing finance law, the public authorities law, the social services law and the New York state medical care facilities finance agency act, in relation to replacing the terms "mentally retarded" and "mental retardation" with "developmentally disabled" and "developmental disability"

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

Section 1. Subdivision 1 of section 707 of the county law, as added by chapter 1 of the laws of 1995, is amended to read as follows:

1. Notwithstanding any other provision of law to the contrary, upon a finding in an ex parte proceeding that expert services are reasonably necessary for the prosecution of the case whether in connection with issues relating to guilt or sentencing or that investigative services relating to a separate sentencing proceeding or [~~mental retardation~~] **developmental disability** hearing pursuant to section 400.27 of the criminal procedure law are reasonably necessary, the trial court shall authorize the payment of fees and expenses for such services. Upon a finding that timely procurement of such services could not practicably await prior authorization, the court may authorize the provision and payment for such services nunc pro tunc.

§ 2. Paragraph (b) of subdivision 9, paragraphs (a), (b), (c), (d), (e) and (f) of subdivision 12, paragraphs (a) and (c) of subdivision 13 and the opening paragraph of paragraph (a) and paragraph (c) of subdivision 14 of section 400.27 of the criminal procedure law, paragraph (b) of subdivision 9, paragraphs (a), (b), (c), (d), (e) and (f) of subdivision 12 and paragraph (a) of subdivision 13 as added by chapter 1 of the laws of 1995, paragraph (c) of subdivision 13 as amended by chapter 230 of the laws of 2004 and the opening paragraph of paragraph (a) and para-

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

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graph (c) of subdivision 14 as amended by section 9 of part LLL of chapter 59 of the laws of 2019, are amended to read as follows:

(b) The defendant was [~~mentally retarded~~] a person with developmental disabilities at the time of the crime, or the defendant's mental capacity was impaired or his ability to conform his conduct to the requirements of law was impaired but not so impaired in either case as to constitute a defense to prosecution;

(a) Upon the conviction of a defendant for the offense of murder in the first degree as defined in section 125.27 of the penal law, the court shall, upon oral or written motion of the defendant based upon a showing that there is reasonable cause to believe that the defendant is [~~mentally retarded~~] a person with developmental disabilities, promptly conduct a hearing without a jury to determine whether the defendant is [~~mentally retarded~~] a person with developmental disabilities. Upon the consent of both parties, such a hearing, or a portion thereof, may be conducted by the court contemporaneously with the separate sentencing proceeding in the presence of the sentencing jury, which in no event shall be the trier of fact with respect to the hearing. At such hearing the defendant has the burden of proof by a preponderance of the evidence that he or she is [~~mentally retarded~~] a person with developmental disabilities. The court shall defer rendering any finding pursuant to this subdivision as to whether the defendant is [~~mentally retarded~~] a person with developmental disabilities until a sentence is imposed pursuant to this section.

(b) In the event the defendant is sentenced pursuant to this section to life imprisonment without parole or to a term of imprisonment for the class A-I felony of murder in the first degree other than a sentence of life imprisonment without parole, the court shall not render a finding with respect to whether the defendant is [~~mentally retarded~~] a person with developmental disabilities.

(c) In the event the defendant is sentenced pursuant to this section to death, the court shall thereupon render a finding with respect to whether the defendant is [~~mentally retarded~~] a person with developmental disabilities. If the court finds the defendant is [~~mentally retarded~~] a person with developmental disabilities, the court shall set aside the sentence of death and sentence the defendant either to life imprisonment without parole or to a term of imprisonment for the class A-I felony of murder in the first degree other than a sentence of life imprisonment without parole. If the court finds the defendant is not [~~mentally retarded~~] a person with developmental disabilities, then such sentence of death shall not be set aside pursuant to this subdivision.

(d) In the event that a defendant is convicted of murder in the first degree pursuant to subparagraph (iii) of paragraph (a) of subdivision one of section 125.27 of the penal law, and the killing occurred while the defendant was confined or under custody in a state correctional facility or local correctional institution, and a sentence of death is imposed, such sentence may not be set aside pursuant to this subdivision upon the ground that the defendant is [~~mentally retarded~~] a person with developmental disabilities. Nothing in this paragraph or paragraph (a) of this subdivision shall preclude a defendant from presenting mitigating evidence of [~~mental retardation~~] developmental disability at the separate sentencing proceeding.

(e) The foregoing provisions of this subdivision notwithstanding, at a reasonable time prior to the commencement of trial the defendant may, upon a written motion alleging reasonable cause to believe the defendant is [~~mentally retarded~~] a person with developmental disabilities, apply

for an order directing that a [~~mental retardation~~] **developmental disability** hearing be conducted prior to trial. If, upon review of the defendant's motion and any response thereto, the court finds reasonable cause to believe the defendant is [~~mentally retarded~~] **a person with developmental disabilities**, it shall promptly conduct a hearing without a jury to determine whether the defendant is [~~mentally retarded~~] **a person with developmental disabilities**. In the event the court finds after the hearing that the defendant is not [~~mentally retarded~~] **a person with developmental disabilities**, the court must, prior to commencement of trial, enter an order so stating, but nothing in this paragraph shall preclude a defendant from presenting mitigating evidence of [~~mental retardation~~] **developmental disability** at a separate sentencing proceeding. In the event the court finds after the hearing that the defendant, based upon a preponderance of the evidence, is [~~mentally retarded~~] **a person with developmental disabilities**, the court must, prior to commencement of trial, enter an order so stating. Unless the order is reversed on an appeal by the people or unless the provisions of paragraph (d) of this subdivision apply, a separate sentencing proceeding under this section shall not be conducted if the defendant is thereafter convicted of murder in the first degree. In the event a separate sentencing proceeding is not conducted, the court, upon conviction of a defendant for the crime of murder in the first degree, shall sentence the defendant to life imprisonment without parole or to a sentence of imprisonment for the class A-I felony of murder in the first degree other than a sentence of life imprisonment without parole. Whenever a [~~mental retardation~~] **developmental disability** hearing is held and a finding is rendered pursuant to this paragraph, the court may not conduct a hearing pursuant to paragraph (a) of this subdivision. For purposes of this subdivision and paragraph (b) of subdivision nine of this section, [~~"mental retardation"~~] **"developmental disability"** means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior which were manifested before the age of eighteen.

(f) In the event the court enters an order pursuant to paragraph (e) of this subdivision finding that the defendant is [~~mentally retarded~~] **a person with developmental disabilities**, the people may appeal as of right from the order pursuant to subdivision ten of section 450.20 of this chapter. Upon entering such an order the court must afford the people a reasonable period of time, which shall not be less than ten days, to determine whether to take an appeal from the order finding that the defendant is [~~mentally retarded~~] **a person with developmental disabilities**. The taking of an appeal by the people stays the effectiveness of the court's order and any order fixing a date for trial. Within six months of the effective date of this subdivision, the court of appeals shall adopt rules to ensure that appeals pursuant to this paragraph are expeditiously perfected, reviewed and determined so that pretrial delays are minimized. Prior to adoption of the rules, the court of appeals shall issue proposed rules and receive written comments thereon from interested parties.

(a) As used in this subdivision, the term "psychiatric evidence" means evidence of mental disease, defect or condition in connection with either a mitigating factor defined in this section or a [~~mental retardation~~] **developmental disability** hearing pursuant to this section to be offered by a psychiatrist, psychologist or other person who has received training, or education, or has experience relating to the identifica-

tion, diagnosis, treatment or evaluation of mental disease, mental defect or mental condition.

(c) When a defendant serves notice pursuant to this subdivision, the district attorney may make application, upon notice to the defendant, for an order directing that the defendant submit to an examination by a psychiatrist, licensed psychologist, or licensed clinical social worker designated by the district attorney, for the purpose of rebutting evidence offered by the defendant with respect to a mental disease, defect, or condition in connection with either a mitigating factor defined in this section, including whether the defendant was acting under duress, was mentally or emotionally disturbed or [~~mentally retarded~~] **was a person with developmental disabilities**, or was under the influence of alcohol or any drug. If the application is granted, the district attorney shall schedule a time and place for the examination, which shall be recorded. Counsel for the people and the defendant shall have the right to be present at the examination. A transcript of the examination shall be made available to the defendant and the district attorney promptly after its conclusion. The district attorney shall promptly serve on the defendant a written copy of the findings and evaluation of the examiner. If the court finds that the defendant has wilfully refused to cooperate fully in an examination pursuant to this paragraph, it shall, upon request of the district attorney, instruct the jury that the defendant did not submit to or cooperate fully in such psychiatric examination. When a defendant is subjected to an examination pursuant to an order issued in accordance with this subdivision, any statement made by the defendant for the purpose of the examination shall be inadmissible in evidence against him in any criminal action or proceeding on any issue other than that of whether a mitigating factor has been established or whether the defendant is [~~mentally retarded~~] **a person with developmental disabilities**, but such statement is admissible upon such an issue whether or not it would otherwise be deemed a privileged communication.

At a reasonable time prior to the sentencing proceeding or a [~~mental retardation~~] **developmental disability** hearing:

(c) If, after complying with the provisions of this section or an order pursuant thereto, a party finds either before or during a sentencing proceeding or [~~mental retardation~~] **developmental disability** hearing, additional material subject to discovery or covered by court order, the party shall promptly make disclosure or apply for a protective order.

§ 3. Subdivision 10 of section 450.20 of the criminal procedure law, as added by chapter 1 of the laws of 1995, is amended to read as follows:

10. An order, entered pursuant to paragraph (e) of subdivision twelve of section 400.27, finding that the defendant is [~~mentally retarded~~] **a person with developmental disabilities**.

§ 4. That portion of subdivision 1 of section 5-a of the legislative law entitled "ASSEMBLYMEN SERVING IN SPECIAL CAPACITY", as amended by section 3 of part XX of chapter 56 of the laws of 2009, is amended to read as follows:

ASSEMBLYMEN SERVING IN SPECIAL CAPACITY

Chairman of assembly ways and means committee 34,000
Ranking minority member of assembly ways and means

committee 20,500
Chairman of assembly judiciary committee 18,000
Ranking minority member of assembly judiciary committee 11,000
Chairman of assembly codes committee 18,000
Ranking minority member of assembly codes committee 11,000
Chairman of assembly banks committee 15,000
Ranking minority member of assembly banks committee 9,500
Chairman of assembly committee on cities 15,000
Ranking minority member of assembly committee on cities 9,500
Chairman of assembly education committee 18,000
Ranking minority member of assembly education committee 11,000
Chairman of assembly health committee 15,000
Ranking minority member of assembly health committee 9,500
Chairman of assembly local governments committee 15,000
Ranking minority member of assembly local governments committee 9,500
Chairman of assembly agriculture committee 12,500
Ranking minority member of assembly agriculture committee 9,000
Chairman of assembly economic development, job creation, commerce and industry committee 18,000
Ranking minority member of assembly economic development, job creation, commerce and industry committee 11,000
Chairman of assembly environmental conservation committee 12,500
Ranking minority member of assembly environmental conservation committee 9,000
Chairman of assembly corporations, authorities and commissions committee 15,000
Ranking minority member of assembly corporations, authorities, and commissions committee 9,500
Chairman of assembly correction committee 12,500
Ranking minority member of assembly correction committee 9,000
Chairman of assembly ethics and guidance committee 12,500
Ranking minority member of assembly ethics and guidance committee 9,000
Chairman of assembly governmental employees committee 12,500
Ranking minority member of assembly governmental employees committee 9,000
Chairman of assembly governmental operations committee 12,500
Ranking minority member of assembly governmental operations committee 9,000
Chairman of assembly housing committee 12,500
Ranking minority member of assembly housing committee 9,000
Chairman of assembly insurance committee 12,500
Ranking minority member of assembly insurance committee 9,000
Chairman of assembly labor committee 14,000
Ranking minority member of assembly labor committee 9,000
Chairman of assembly racing and wagering committee 12,500
Ranking minority member of assembly racing and wagering committee 9,000
Chairman of assembly social services committee 12,500
Ranking minority member of assembly social services committee 9,000
Chairman of assembly small business committee 12,500
Ranking minority member of assembly small business

committee 9,000
Chairman of assembly transportation committee 15,000
Ranking minority member of assembly transportation committee 9,500
Chairman of assembly veterans' affairs committee 12,500
Ranking minority member of assembly veterans' affairs committee 9,000
Chairman of assembly aging committee 12,500
Ranking minority member of assembly aging committee 9,000
Chairman of the assembly alcoholism and drug abuse committee 12,500
Ranking minority member of the assembly alcoholism and drug abuse committee 9,000
Chairman of assembly committee on mental health[~~, mental retardation and developmental disabilities~~] 12,500
Ranking minority member of assembly committee on mental health[~~, mental retardation and developmental disabilities~~] 9,000
Chairman of assembly higher education committee 12,500
Ranking minority member of assembly higher education committee 9,000
Chairman of assembly real property taxation committee 12,500
Ranking minority member of assembly real property taxation committee 9,000
Chairman of assembly election law committee 12,500
Ranking minority member of assembly election law committee 9,000
Chairman of assembly children and families committee 12,500
Ranking minority member of assembly children and families committee 9,000
Chairman of assembly consumer affairs and protection committee 12,500
Ranking minority member of assembly consumer affairs and protection committee 9,000
Chairman of the assembly energy committee 12,500
Ranking minority member of assembly energy committee 9,000
Chairman of assembly tourism, parks, arts and sports development committee 12,500
Ranking minority member of assembly tourism, parks, arts and sports development committee 9,000
Chairman of assembly oversight, analysis and investigation committee 12,500
Ranking minority member of assembly oversight, analysis and investigation committee 9,000
Chairman of assembly office of state-federal relations 12,500
Chairman of majority house operations 12,500
Chairman of minority house operations 9,000
Co-chairman of the administrative regulations review commission 12,500

§ 5. Paragraph a of subdivision 1 of section 47-b of the private housing finance law, as amended by chapter 479 of the laws of 2022, is amended to read as follows:

a. "Community mental health and developmental disabilities facility" shall mean a building, a unit within a building, a laboratory, a classroom, a housing unit, a dining hall, an activities center, a library, or any structure on or improvement to real property of any kind or

description, including fixtures and equipment which are an integral part of such building, unit or structure or improvement, a walkway, a roadway or a parking lot and improvements and connections for water, sewer, gas, electrical, telephone, heating, air conditioning and other utility services, or a combination of any of the foregoing, whether for patient care and treatment or staff, staff family or service use, located in a city, or in a county not wholly included within a city, authorized to provide community mental health services in accordance with the provisions of article forty-one of title E of the mental hygiene law, which is utilized or to be utilized for the administration and conduct of programs for people living with either mental illness or developmental disabilities, or both, and for the provision of services therefor. A community mental health and [~~retardation~~] **developmental disabilities** facility shall also mean and include a residential facility to be operated as a community residence for the mentally disabled, and a treatment facility for use in the conduct of an alcoholism treatment program or of a substance abuse treatment program as defined in the mental hygiene law.

§ 6. An undesignated paragraph of paragraph (b) of subdivision 2 of section 1676 of the public authorities law, as added by chapter 433 of the laws of 1988, is amended to read as follows:

New Hope Community, Inc., a not-for-profit corporation, for the financing, construction and development of residences for [~~mentally retarded and developmentally disabled~~] adults **with a developmental disability** on forty acres of land purchased from Leon and Dave Scharf, d.b.a. New Hope Rehabilitation Center, located on State Route 52 in the Town of Fallsburg, to replace existing residential facilities operated by New Hope Rehabilitation Center.

§ 7. An undesignated paragraph of paragraph (b) of subdivision 2 of section 1676 of the public authorities law, as added by chapter 384 of the laws of 1998, is amended to read as follows:

Terence Cardinal Cooke Health Care Center for the, financing, refinancing, construction, reconstruction, renovation, development, improvement, expansion, and equipping of facilities to serve aged, disabled, **and** chronically impaired, [~~mentally retarded and developmentally disabled persons~~] **and persons who have a developmental disability**.

§ 8. An undesignated paragraph of subdivision 1 of section 1680 of the public authorities law, as added by chapter 433 of the laws of 1988, is amended to read as follows:

New Hope Community, Inc., a not-for-profit corporation, for the financing, construction and development of residences for [~~mentally retarded and developmentally disabled~~] adults **with a developmental disability** on forty acres of land purchased from Leon and Dave Scharf, d.b.a. New Hope Rehabilitation Center, located on State Route 52 in the Town of Fallsburg, to replace existing residential facilities operated by New Hope Rehabilitation Center.

§ 9. An undesignated paragraph of subdivision 1 of section 1680 of the public authorities law, as added by chapter 384 of the laws of 1998, is amended to read as follows:

Terence Cardinal Cooke Health Care Center for the financing, refinancing, construction, reconstruction, renovation, development, improvement, expansion, and equipping of facilities to serve aged, disabled, **and** chronically impaired, [~~mentally retarded and developmentally disabled persons~~] **and persons who have a developmental disability**.

§ 10. Paragraph (e) of subdivision 6 of section 384-b of the social services law, as amended by chapter 691 of the laws of 1991, is amended to read as follows:

(e) In every proceeding upon a ground set forth in paragraph (c) of subdivision four the judge shall order the parent to be examined by, and shall take the testimony of, a qualified psychiatrist or a psychologist licensed pursuant to article one hundred fifty-three of the education law as defined in section 730.10 of the criminal procedure law in the case of a parent alleged to be mentally ill or [~~retarded~~] **a person with developmental disabilities**, such psychologist or psychiatrist to be appointed by the court pursuant to section thirty-five of the judiciary law. The parent and the authorized agency shall have the right to submit other psychiatric, psychological or medical evidence. If the parent refuses to submit to such court-ordered examination, or if the parent renders himself **or herself** unavailable therefor whether before or after the initiation of a proceeding under this section, by departing from the state or by concealing himself **or herself** therein, the appointed psychologist or psychiatrist, upon the basis of other available information, including, but not limited to, agency, hospital or clinic records, may testify without an examination of such parent, provided that such other information affords a reasonable basis for his **or her** opinion.

§ 11. Paragraphs a and b of subdivision 7 of section 9-a of section 1 of chapter 392 of the laws of 1973, constituting the New York state medical care facilities finance agency act, paragraph a as added by chapter 58 of the laws of 1987 and paragraph b as amended by chapter 506 of the laws of 1997, are amended to read as follows:

a. The agency shall have the power to acquire by lease or deed from the facilities development corporation any real property acquired by the corporation pursuant to the provisions of subdivision six of section nine of the facilities development corporation act (i) for the purpose of constructing, reconstructing, rehabilitating or improving thereon one or more community mental health and [~~retardation~~] **developmental disabilities** facilities or (ii) for the purpose of financing or refinancing the acquisition, construction, reconstruction, rehabilitation or improvement thereon of one or more community mental health and [~~retardation~~] **developmental disabilities** facilities, pursuant to the provisions of this act and the facilities development corporation act. The agency is hereby authorized to lease or sublease such real property and facilities thereon to the corporation for the purpose of making the same available to a city or a county not wholly within a city, for use and occupancy in accordance with the provisions of a lease, sublease or other agreement between the corporation and such city or county.

b. In the event that the agency shall fail, within five years after the date of a lease or conveyance of such real property from property from such city or county to the corporation, to construct, reconstruct, rehabilitate or improve the community mental health and [~~retardation~~] **developmental disabilities** facility or facility thereon for which such lease or conveyance was made, as provided for in a lease, sublease or other financing agreement entered into by such city or county and the corporation, then, subject to the terms of any lease, sublease or other financing agreement undertaken by the agency, such real property and any facilities thereon shall revert to the corporation with right of re-entry thereupon, and such lease or deed shall be made subject to such condition of reverter and re-entry. Provided, however, that as a condition precedent to the exercise of such right of re-entry the corporation shall pay to the agency an amount equal to the sum of the purchase price

of such real property, the depreciated cost of any community mental health and [~~retardation~~] **developmental disabilities** facility or facilities constructed, reconstructed, rehabilitated or improved thereon and all other costs of the agency incident to the acquisition of such lands and the financing of construction, reconstruction, rehabilitation or improvement relating to such community mental health and [~~retardation~~] **developmental disabilities** facility or facilities, all as provided in the aforesaid lease, sublease or other financing agreement entered into with the corporation. It is further provided that for the Corona unit of the Bernard M. Fineson developmental disabilities services office, the corporation may but is not required to pay to the agency an amount less than or equal to the purchase price of the real property, the depreciated cost of **the** sum of the community mental health and [~~retardation~~] **developmental disabilities** facility constructed, reconstructed, rehabilitated, demolished or improved thereon and all other costs of the agency incident to the acquisition of such lands and the financing of construction, reconstruction, rehabilitation, demolition or improvement relating to such community mental health and [~~retardation~~] **developmental disabilities** facility, all as provided in the aforesaid lease, sublease or other financing agreement entered into with the corporation.

§ 12. This act shall take effect immediately; provided, however, that:

(a) the amendments to an undesignated paragraph of paragraph (b) of subdivision 2 of section 1676 of the public authorities law made by section seven of this act shall not affect the expiration of such undesignated paragraph and shall be deemed repealed therewith; and

(b) the amendments to an undesignated paragraph of subdivision 1 of section 1680 of the public authorities law made by section nine of this act shall not affect the expiration of such undesignated paragraph and shall be deemed repealed therewith.