

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 legisla-
tive 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 "develop-
mentally disabled" and "developmental disability"

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

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

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

14 § 2. Paragraph (b) of subdivision 9, paragraphs (a), (b), (c), (d),
15 (e) and (f) of subdivision 12, paragraphs (a) and (c) of subdivision 13
16 and the opening paragraph of paragraph (a) and paragraph (c) of subdivi-
17 sion 14 of section 400.27 of the criminal procedure law, paragraph (b)
18 of subdivision 9, paragraphs (a), (b), (c), (d), (e) and (f) of subdivi-
19 sion 12 and paragraph (a) of subdivision 13 as added by chapter 1 of the
20 laws of 1995, paragraph (c) of subdivision 13 as amended by chapter 230
21 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

1 for an order directing that a [~~mental-retardation~~] developmental disa-
2 bility hearing be conducted prior to trial. If, upon review of the
3 defendant's motion and any response thereto, the court finds reasonable
4 cause to believe the defendant is [~~mentally-retarded~~] a person with
5 developmental disabilities, it shall promptly conduct a hearing without
6 a jury to determine whether the defendant is [~~mentally-retarded~~] a
7 person with developmental disabilities. In the event the court finds
8 after the hearing that the defendant is not [~~mentally-retarded~~] a person
9 with developmental disabilities, the court must, prior to commencement
10 of trial, enter an order so stating, but nothing in this paragraph shall
11 preclude a defendant from presenting mitigating evidence of [~~mental-~~
12 ~~retardation~~] developmental disability at a separate sentencing proceed-
13 ing. In the event the court finds after the hearing that the defendant,
14 based upon a preponderance of the evidence, is [~~mentally-retarded~~] a
15 person with developmental disabilities, the court must, prior to
16 commencement of trial, enter an order so stating. Unless the order is
17 reversed on an appeal by the people or unless the provisions of para-
18 graph (d) of this subdivision apply, a separate sentencing proceeding
19 under this section shall not be conducted if the defendant is thereafter
20 convicted of murder in the first degree. In the event a separate
21 sentencing proceeding is not conducted, the court, upon conviction of a
22 defendant for the crime of murder in the first degree, shall sentence
23 the defendant to life imprisonment without parole or to a sentence of
24 imprisonment for the class A-I felony of murder in the first degree
25 other than a sentence of life imprisonment without parole. Whenever a
26 [~~mental-retardation~~] developmental disability hearing is held and a
27 finding is rendered pursuant to this paragraph, the court may not
28 conduct a hearing pursuant to paragraph (a) of this subdivision. For
29 purposes of this subdivision and paragraph (b) of subdivision nine of
30 this section, [~~"mental-retardation"~~] "developmental disability" means
31 significantly subaverage general intellectual functioning existing
32 concurrently with deficits in adaptive behavior which were manifested
33 before the age of eighteen.

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

50 (a) As used in this subdivision, the term "psychiatric evidence" means
51 evidence of mental disease, defect or condition in connection with
52 either a mitigating factor defined in this section or a [~~mental-retarda-~~
53 ~~tion~~] developmental disability hearing pursuant to this section to be
54 offered by a psychiatrist, psychologist or other person who has received
55 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

1	committee	20,500
2	Chairman of assembly judiciary committee	18,000
3	Ranking minority member of assembly judiciary	
4	committee	11,000
5	Chairman of assembly codes committee	18,000
6	Ranking minority member of assembly codes	
7	committee	11,000
8	Chairman of assembly banks committee	15,000
9	Ranking minority member of assembly banks committee	9,500
10	Chairman of assembly committee on cities	15,000
11	Ranking minority member of assembly committee on cities	9,500
12	Chairman of assembly education committee	18,000
13	Ranking minority member of assembly education committee	11,000
14	Chairman of assembly health committee	15,000
15	Ranking minority member of assembly health committee	9,500
16	Chairman of assembly local governments committee	15,000
17	Ranking minority member of assembly local governments	
18	committee	9,500
19	Chairman of assembly agriculture committee	12,500
20	Ranking minority member of assembly agriculture committee	9,000
21	Chairman of assembly economic development, job creation,	
22	commerce and industry committee	18,000
23	Ranking minority member of assembly economic development,	
24	job creation, commerce and industry committee	11,000
25	Chairman of assembly environmental conservation committee	12,500
26	Ranking minority member of assembly environmental	
27	conservation committee	9,000
28	Chairman of assembly corporations, authorities	
29	and commissions committee	15,000
30	Ranking minority member of assembly corporations,	
31	authorities, and commissions committee	9,500
32	Chairman of assembly correction committee	12,500
33	Ranking minority member of assembly correction committee	9,000
34	Chairman of assembly ethics and guidance committee	12,500
35	Ranking minority member of assembly ethics and guidance	
36	committee	9,000
37	Chairman of assembly governmental employees committee	12,500
38	Ranking minority member of assembly governmental	
39	employees committee	9,000
40	Chairman of assembly governmental operations committee	12,500
41	Ranking minority member of assembly governmental	
42	operations committee	9,000
43	Chairman of assembly housing committee	12,500
44	Ranking minority member of assembly housing committee	9,000
45	Chairman of assembly insurance committee	12,500
46	Ranking minority member of assembly insurance committee	9,000
47	Chairman of assembly labor committee	14,000
48	Ranking minority member of assembly labor committee	9,000
49	Chairman of assembly racing and wagering committee	12,500
50	Ranking minority member of assembly racing and wagering	
51	committee	9,000
52	Chairman of assembly social services committee	12,500
53	Ranking minority member of assembly social services	
54	committee	9,000
55	Chairman of assembly small business committee	12,500
56	Ranking minority member of assembly small business	

1	committee	9,000
2	Chairman of assembly transportation committee	15,000
3	Ranking minority member of assembly transportation	
4	committee	9,500
5	Chairman of assembly veterans' affairs committee	12,500
6	Ranking minority member of assembly veterans' affairs	
7	committee	9,000
8	Chairman of assembly aging committee	12,500
9	Ranking minority member of assembly aging committee	9,000
10	Chairman of the assembly alcoholism and drug abuse	
11	committee	12,500
12	Ranking minority member of the assembly	
13	alcoholism and drug abuse committee	9,000
14	Chairman of assembly committee on mental health[7	
15	mental retardation and developmental disabilities]	12,500
16	Ranking minority member of assembly committee on mental health[7	
17	mental retardation and developmental disabilities]	9,000
18	Chairman of assembly higher education committee	12,500
19	Ranking minority member of assembly higher education	
20	committee	9,000
21	Chairman of assembly real property taxation committee	12,500
22	Ranking minority member of assembly real property	
23	taxation committee	9,000
24	Chairman of assembly election law committee	12,500
25	Ranking minority member of assembly election	
26	law committee	9,000
27	Chairman of assembly children and families committee	12,500
28	Ranking minority member of assembly children	
29	and families committee	9,000
30	Chairman of assembly consumer affairs and protection	
31	committee	12,500
32	Ranking minority member of assembly consumer affairs and	
33	protection committee	9,000
34	Chairman of the assembly energy committee	12,500
35	Ranking minority member of assembly energy committee	9,000
36	Chairman of assembly tourism, parks, arts and sports development	
37	committee	12,500
38	Ranking minority member of assembly tourism, parks, arts and	
39	sports development committee	9,000
40	Chairman of assembly oversight, analysis and investigation	
41	committee	12,500
42	Ranking minority member of assembly oversight,	
43	analysis and investigation committee	9,000
44	Chairman of assembly office of state-federal relations	12,500
45	Chairman of majority house operations	12,500
46	Chairman of minority house operations	9,000
47	Co-chairman of the administrative regulations review	
48	commission	12,500

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

52 a. "Community mental health and developmental disabilities facility"
53 shall mean a building, a unit within a building, a laboratory, a class-
54 room, a housing unit, a dining hall, an activities center, a library, or
55 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

1 of such real property, the depreciated cost of any community mental
2 health and [~~retardation~~] developmental disabilities facility or facili-
3 ties constructed, reconstructed, rehabilitated or improved thereon and
4 all other costs of the agency incident to the acquisition of such lands
5 and the financing of construction, reconstruction, rehabilitation or
6 improvement relating to such community mental health and [~~retardation~~]
7 developmental disabilities facility or facilities, all as provided in
8 the aforesaid lease, sublease or other financing agreement entered into
9 with the corporation. It is further provided that for the Corona unit of
10 the Bernard M. Fineson developmental disabilities services office, the
11 corporation may but is not required to pay to the agency an amount less
12 than or equal to the purchase price of the real property, the depreci-
13 ated cost of the sum of the community mental health and [~~retardation~~]
14 developmental disabilities facility constructed, reconstructed, rehabil-
15 itated, demolished or improved thereon and all other costs of the agency
16 incident to the acquisition of such lands and the financing of
17 construction, reconstruction, rehabilitation, demolition or improvement
18 relating to such community mental health and [~~retardation~~] developmental
19 disabilities facility, all as provided in the aforesaid lease, sublease
20 or other financing agreement entered into with the corporation.

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

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

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