STATE OF NEW YORK

9039

IN SENATE

April 11, 2024

Introduced by Sen. BROUK -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law, the county law, the executive law, the civil practice law and rules, the criminal procedure law and the labor law, in relation to prohibiting the use of the term excited delirium as a diagnosis, label, or cause of death

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

Section 1. Subdivision 4 of section 4141 of the public health law is amended by adding a new paragraph (e) to read as follows:

(e) No death certificate shall cite excited delirium as a diagnosis, label, cause of death, or contributing factor to any death. For the purposes of this paragraph, the term "excited delirium" shall mean a term used to describe a person's state of agitation, excitability, paranoia, extreme aggression, physical violence, and apparent immunity to pain that is not listed in the most current version of the Diagnostic and Statistical Manual of Mental Disorders, or for which the court finds there is insufficient scientific evidence or diagnostic criteria to be recognized as a medical condition. Excited delirium also includes excited delirium syndrome, excited delirium, hyperactive delirium, agitated delirium, and exhaustive mania.

§ 2. Section 677 of the county law is amended by adding a new subdivision 2-a to read as follows:

2-a. No report of any autopsy or other examination shall cite excited delirium as a cause or means or manner of death. For the purposes of this subdivision, the term "excited delirium" shall mean a term used to describe a person's state of agitation, excitability, paranoia, extreme aggression, physical violence, and apparent immunity to pain that is not listed in the most current version of the Diagnostic and Statistical Manual of Mental Disorders, or for which the court finds there is insufficient scientific evidence or diagnostic criteria to be recognized as a medical condition. Excited delirium also includes excited delirium syndrome, excited delirium, hyperactive delirium, agitated delirium, and exhaustive mania.

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

LBD13987-03-4

§ 3. The executive law is amended by adding a new section 837-y to read as follows:

§ 837-y. Prohibition of use of excited delirium. 1. No report by a law enforcement officer or peace officer shall reference excited delirium in such report.

2. No law enforcement officer or peace officer shall take any action with respect to an individual in response to such individual being diagnosed or labeled as having or being in a state of excited delirium. No training shall be provided that requires, encourages, or permits any action in response to an individual being diagnosed or labeled as having or being in a state of excited delirium.

3. For the purposes of this section, "excited delirium" shall mean a term used to describe a person's state of agitation, excitability, paranoia, extreme aggression, physical violence, and apparent immunity to pain that is not listed in the most current version of the Diagnostic and Statistical Manual of Mental Disorders, or for which the court finds there is insufficient scientific evidence or diagnostic criteria to be recognized as a medical condition. Excited delirium also includes excited delirium syndrome, excited delirium, hyperactive delirium, agitated delirium, and exhaustive mania.

§ 4. Subdivision (b) of section 3018 of the civil practice law and rules, as amended by chapter 504 of the laws of 1980, is amended to read as follows:

(b) Affirmative defenses. A party shall plead all matters which if not pleaded would be likely to take the adverse party by surprise or would raise issues of fact not appearing on the face of a prior pleading such as arbitration and award, collateral estoppel, culpable conduct claimed in diminution of damages as set forth in article fourteen-A **of this chapter**, discharge in bankruptcy, facts showing illegality either by statute or common law, fraud, infancy or other disability of the party defending, payment, release, res judicata, statute of frauds, or statute of limitation**; provided, however, that a party shall not use excited delirium as a basis for an affirmative defense. For the purposes of this subdivision, "excited delirium" shall mean a term used to describe a person's state of agitation, excitability, paranoia, extreme aggression, physical violence, and apparent immunity to pain that is not listed in the most current version of the Diagnostic and Statistical Manual of Mental Disorders, or for which the court finds there is insufficient scientific evidence or diagnostic criteria to be recognized as a medical condition. Excited delirium also includes excited delirium syndrome, excited delirium, hyperactive delirium, agitated delirium, and exhaustive mania**. The application of this subdivision shall not be confined to the instances enumerated.

§ 5. The civil practice law and rules is amended by adding a new section 4551 to read as follows:

§ 4551. Excited delirium. 1. Evidence that a plaintiff, or decedent on whose behalf a wrongful death action has been filed, suffered from excited delirium shall be inadmissible, including but not limited to evidence presented by expert witnesses; provided, however, that this section shall not be construed to limit the ability of a defendant to describe the factual circumstances surrounding the subject of the action, including the behavior of a plaintiff, or decedent on whose behalf a wrongful death action has been filed, so long as no diagnosis, cause of death, or label fitting the definition of excited delirium is used.

2. For the purposes of this section, "excited delirium" shall mean a term used to describe a person's state of agitation, excitability, paranoia, extreme aggression, physical violence, and apparent immunity to pain that is not listed in the most current version of the Diagnostic and Statistical Manual of Mental Disorders, or for which the court finds there is insufficient scientific evidence or diagnostic criteria to be recognized as a medical condition. Excited delirium also includes excited delirium syndrome, excited delirium, hyperactive delirium, agitated delirium, and exhaustive mania.

§ 6. The criminal procedure law is amended by adding a new section 60.80 to read as follows:

§ 60.80 Rules of evidence; excited delirium.

1. Excited delirium shall not be used as a defense in a prosecution for any criminal offense.

2. Evidence that an alleged victim of a crime suffered from excited delirium shall be inadmissible by a defendant in a criminal proceeding, including but not limited to evidence presented by expert witnesses.

3. This section shall not be construed to limit the ability of a defendant to describe the factual circumstances surrounding the subject of a criminal proceeding, including the behavior of an alleged victim, so long as no diagnosis, cause of death, or label fitting the definition of excited delirium is used.

4. For the purposes of this section, "excited delirium" shall mean a term used to describe a person's state of agitation, excitability, paranoia, extreme aggression, physical violence, and apparent immunity to pain that is not listed in the most current version of the Diagnostic and Statistical Manual of Mental Disorders, or for which the court finds there is insufficient scientific evidence or diagnostic criteria to be recognized as a medical condition. Excited delirium also includes excited delirium syndrome, excited delirium, hyperactive delirium, agitated delirium, and exhaustive mania.

§ 7. The labor law is amended by adding a new section 203-g to read as follows:

§ 203-g. Prohibition of use of excited delirium. 1. As used in this section:

(a) "Contractor" means any person, firm, partnership, corporation, association, company, organization or other similar entity, or any combination thereof, including any subcontractor thereof, that employs employees to perform work pursuant to an agreement with a public agency.

(b) "Public agency" means the state, and any department, agency, board, bureau, commission, division, council or office of the state or any political subdivision thereof, as defined in section one hundred of the general municipal law, a municipal corporation as defined in section sixty-six of the general construction law and any district thereof, a public benefit corporation, or local or state authority as defined in section two of the public authorities law, and any other entity authorized and empowered to enter into any contract or arrangement to conduct economic development activity on behalf of any such public agency.

(c) "Excited delirium" means a term used to describe a person's state of agitation, excitability, paranoia, extreme aggression, physical violence, and apparent immunity to pain that is not listed in the most current version of the Diagnostic and Statistical Manual of Mental Disorders, or for which the court finds there is insufficient scientific evidence or diagnostic criteria to be recognized as a medical condition. Excited delirium also includes excited delirium syndrome, excited delirium, hyperactive delirium, agitated delirium, and exhaustive mania.

2. No employee of a public agency or contractor or employee of a contractor shall issue a diagnosis of excited delirium, report excited delirium as a cause of death or a contributing factor to a death, or conduct any trainings or share materials attesting to the validity of excited delirium as a cause of death.

3. No public agency or contractor shall adopt or maintain any policy or procedure, including but not limited to police manuals and trainings, that acknowledges the validity of the diagnosis, cause of death, or label of excited delirium.

§ 8. This act shall take effect immediately.