

10514

I N A S S E M B L Y

April 2, 2010

Introduced by M. of A. TEDISCO, RAIA, TOWNSEND, TOBACCO, BOYLE, HAWLEY
-- Multi-Sponsored by -- M. of A. ALFANO, AMEDORE, BACALLES, BALL,
BARCLAY, BARRA, BURLING, BUTLER, CALHOUN, CONTE, CROUCH, DUPREY,
FINCH, FITZPATRICK, GIGLIO, HAYES, JORDAN, KOLB, P. LOPEZ, McDONOUGH,
McKEVITT, J. MILLER, MOLINARO, OAKS, O'MARA, QUINN, RABBITT, REILICH,
SALADINO, SAYWARD, SCOZZAFAVA, SPANO, THIELE -- read once and referred
to the Committee on Codes

AN ACT to amend the penal law and the criminal procedure law, in
relation to crimes against vulnerable elderly or disabled persons

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 260.30 of the penal law, as added by chapter 381 of
2 the laws of 1998, is renumbered section 260.29 and amended to read as
3 follows:
4 S 260.29 Vulnerable elderly persons; definitions.
5 For the purpose of sections 260.32 and 260.34 of this article, the
6 following definitions shall apply:
7 1. ["Caregiver" means a person who (i) assumes responsibility for the
8 care of a vulnerable elderly person pursuant to a court order; or (ii)
9 receives monetary or other valuable consideration for providing care for
10 a vulnerable elderly person.
11 2.] "Sexual contact" means any touching of the sexual or other inti-
12 mate parts of a person not married to the actor for the purpose of grat-
13 ifying sexual desire of either party. It includes the touching of the
14 actor by the victim, as well as the touching of the victim by the actor,
15 whether directly or through clothing.
16 [3.] 2. "Vulnerable elderly person" means a person sixty years of age
17 or older who is suffering from a disease or infirmity associated with
18 advanced age and manifested by demonstrable physical, mental or
19 emotional dysfunction to the extent that the person is incapable of
20 adequately providing for his or her own health or personal care OR A
21 PERSON SEVENTY YEARS OF AGE OR OLDER.
22 S 2. The opening paragraph and subdivision 4 of section 260.32 of the
23 penal law, the opening paragraph as added by chapter 381 of the laws of

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

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1 1998 and subdivision 4 as amended by chapter 1 of the laws of 2000, are
2 amended to read as follows:

3 A person is guilty of endangering the welfare of a vulnerable elderly
4 person in the second degree when[, being a caregiver for a vulnerable
5 elderly person]:

6 4. He or she subjects such person to sexual contact without the
7 latter's consent. Lack of consent under this subdivision results from
8 forcible compulsion or incapacity to consent, as those terms are defined
9 in article one hundred thirty of this [chapter] PART, or any other
10 circumstances in which the vulnerable elderly person does not expressly
11 or impliedly acquiesce [in the caregiver's conduct]. In any prosecution
12 under this subdivision in which the victim's alleged lack of consent
13 results solely from incapacity to consent because of the victim's mental
14 disability or mental incapacity, the provisions of section 130.16 of
15 this [chapter] PART shall apply. In addition, in any prosecution under
16 this subdivision in which the victim's lack of consent is based solely
17 upon his or her incapacity to consent because he or she was mentally
18 disabled, mentally incapacitated or physically helpless, it is an affir-
19 mative defense that the defendant, at the time he or she engaged in the
20 conduct constituting the offense, did not know of the facts or condi-
21 tions responsible for such incapacity to consent.

22 S 3. The opening paragraph of section 260.34 of the penal law, as
23 added by chapter 381 of the laws of 1998, is amended to read as follows:

24 A person is guilty of endangering the welfare of a vulnerable elderly
25 person in the first degree when[, being a caregiver for a vulnerable
26 elderly person]:

27 S 4. Paragraphs (c) and (d) of subdivision 1 of section 70.02 of the
28 penal law, as amended by chapter 7 of the laws of 2007, are amended to
29 read as follows:

30 (c) Class D violent felony offenses: an attempt to commit any of the
31 class C felonies set forth in paragraph (b); reckless assault of a child
32 as defined in section 120.02, assault in the second degree as defined in
33 section 120.05, menacing a police officer or peace officer as defined in
34 section 120.18, stalking in the first degree, as defined in subdivision
35 one of section 120.60, rape in the second degree as defined in section
36 130.30, criminal sexual act in the second degree as defined in section
37 130.45, sexual abuse in the first degree as defined in section 130.65,
38 course of sexual conduct against a child in the second degree as defined
39 in section 130.80, aggravated sexual abuse in the third degree as
40 defined in section 130.66, facilitating a sex offense with a controlled
41 substance as defined in section 130.90, criminal possession of a weapon
42 in the third degree as defined in subdivision five, six, seven or eight
43 of section 265.02, criminal sale of a firearm in the third degree as
44 defined in section 265.11, intimidating a victim or witness in the
45 second degree as defined in section 215.16, ENDANGERING THE WELFARE OF A
46 VULNERABLE ELDERLY PERSON IN THE FIRST DEGREE AS DEFINED IN SECTION
47 260.34, soliciting or providing support for an act of terrorism in the
48 second degree as defined in section 490.10, and making a terroristic
49 threat as defined in section 490.20, falsely reporting an incident in
50 the first degree as defined in section 240.60, placing a false bomb or
51 hazardous substance in the first degree as defined in section 240.62,
52 placing a false bomb or hazardous substance in a sports stadium or
53 arena, mass transportation facility or enclosed shopping mall as defined
54 in section 240.63, and aggravated unpermitted use of indoor pyrotechnics
55 in the first degree as defined in section 405.18.

1 (d) Class E violent felony offenses: ENDANGERING THE WELFARE OF A
 2 VULNERABLE ELDERLY PERSON IN THE SECOND DEGREE AS DEFINED IN SECTION
 3 260.32, an attempt to commit any of the felonies of criminal possession
 4 of a weapon in the third degree as defined in subdivision five, six,
 5 seven or eight of section 265.02 as a lesser included offense of that
 6 section as defined in section 220.20 of the criminal procedure law,
 7 persistent sexual abuse as defined in section 130.53, aggravated sexual
 8 abuse in the fourth degree as defined in section 130.65-a, falsely
 9 reporting an incident in the second degree as defined in section 240.55
 10 and placing a false bomb or hazardous substance in the second degree as
 11 defined in section 240.61.

12 S 5. Part 4 of the penal law is amended by adding a new title Y-2 to
 13 read as follows:

14 TITLE Y-2
 15 CRIMES AGAINST THE
 16 ELDERLY OR DISABLED
 17 ARTICLE 495
 18 CRIMES AGAINST THE
 19 ELDERLY OR DISABLED

20 SECTION 495.00 CRIMES AGAINST THE ELDERLY OR DISABLED.
 21 495.05 SENTENCING.

22 S 495.00 CRIMES AGAINST THE ELDERLY OR DISABLED.

23 1. A PERSON COMMITS A CRIME AGAINST THE ELDERLY OR DISABLED WHEN HE OR
 24 SHE COMMITS A SPECIFIED OFFENSE AND EITHER:

25 (A) INTENTIONALLY SELECTS THE PERSON AGAINST WHOM THE OFFENSE IS
 26 COMMITTED OR INTENDED TO BE COMMITTED IN WHOLE OR IN SUBSTANTIAL PART
 27 BECAUSE OF A BELIEF OR PERCEPTION REGARDING THE DISABILITY STATUS OR AGE
 28 RELATED INFIRMITY OR DISEASE OF A PERSON, REGARDLESS OF WHETHER THE
 29 BELIEF OR PERCEPTION IS CORRECT; OR

30 (B) INTENTIONALLY COMMITS THE ACT OR ACTS CONSTITUTING THE OFFENSE IN
 31 WHOLE OR IN SUBSTANTIAL PART BECAUSE OF A BELIEF OR PERCEPTION REGARDING
 32 DISABILITY STATUS OR AGE RELATED INFIRMITY OR DISEASE OF A PERSON,
 33 REGARDLESS OF WHETHER THE BELIEF OR PERCEPTION IS CORRECT.

34 2. FOR THE PURPOSE OF THIS SECTION: (A) WHEN A PERSON REASONABLY
 35 APPEARS TO HAVE A DISABILITY OR AN AGE RELATED INFIRMITY OR DISEASE,
 36 THERE SHALL BE A REBUTTABLE PRESUMPTION THE DEFENDANT SELECTED THE
 37 PERSON AGAINST WHOM THE OFFENSE OR ACT IS COMMITTED OR INTENDED TO BE
 38 COMMITTED, IN WHOLE OR IN PART BECAUSE OF A BELIEF OR PERCEPTION REGARD-
 39 ING THE DISABILITY STATUS OR AGE RELATED INFIRMITY OR DISEASE OF SUCH
 40 PERSON; AND (B) WHEN A PERSON IS SEVENTY YEARS OLD OR MORE, THERE SHALL
 41 BE A REBUTTABLE PRESUMPTION THAT SUCH PERSON APPEARS TO HAVE A DISABILI-
 42 TY OR AN AGE RELATED INFIRMITY.

43 3. A "SPECIFIED OFFENSE" IS AN OFFENSE DEFINED BY ANY OF THE FOLLOWING
 44 PROVISIONS OF THIS CHAPTER: SECTION 120.00 (ASSAULT IN THE THIRD
 45 DEGREE); SECTION 120.05 (ASSAULT IN THE SECOND DEGREE); SECTION 120.10
 46 (ASSAULT IN THE FIRST DEGREE); SECTION 120.12 (AGGRAVATED ASSAULT UPON A
 47 PERSON LESS THAN ELEVEN YEARS OLD); SECTION 120.13 (MENACING IN THE
 48 FIRST DEGREE); SECTION 120.14 (MENACING IN THE SECOND DEGREE); SECTION
 49 120.15 (MENACING IN THE THIRD DEGREE); SECTION 120.20 (RECKLESS ENDAN-
 50 GERMENT IN THE SECOND DEGREE); SECTION 120.25 (RECKLESS ENDANGERMENT IN
 51 THE FIRST DEGREE); SECTION 120.45 (STALKING IN THE FOURTH DEGREE);
 52 SECTION 120.50 (STALKING IN THE THIRD DEGREE); SECTION 120.55 (STALKING
 53 IN THE SECOND DEGREE); SECTION 120.60 (STALKING IN THE FIRST DEGREE);
 54 SUBDIVISION ONE OF SECTION 125.15 (MANSLAUGHTER IN THE SECOND DEGREE);
 55 SUBDIVISION ONE, TWO OR FOUR OF SECTION 125.20 (MANSLAUGHTER IN THE
 56 FIRST DEGREE); SECTION 125.25 (MURDER IN THE SECOND DEGREE); SUBDIVISION

1 ONE OF SECTION 130.35 (RAPE IN THE FIRST DEGREE); SUBDIVISION ONE OF
2 SECTION 130.50 (CRIMINAL SEXUAL ACT IN THE FIRST DEGREE); SUBDIVISION
3 ONE OF SECTION 130.65 (SEXUAL ABUSE IN THE FIRST DEGREE); PARAGRAPH (A)
4 OF SUBDIVISION ONE OF SECTION 130.67 (AGGRAVATED SEXUAL ABUSE IN THE
5 SECOND DEGREE); PARAGRAPH (A) OF SUBDIVISION ONE OF SECTION 130.70
6 (AGGRAVATED SEXUAL ABUSE IN THE FIRST DEGREE); SECTION 135.05 (UNLAWFUL
7 IMPRISONMENT IN THE SECOND DEGREE); SECTION 135.10 (UNLAWFUL IMPRISON-
8 MENT IN THE FIRST DEGREE); SECTION 135.20 (KIDNAPPING IN THE SECOND
9 DEGREE); SECTION 135.25 (KIDNAPPING IN THE FIRST DEGREE); SECTION 135.60
10 (COERCION IN THE SECOND DEGREE); SECTION 135.65 (COERCION IN THE FIRST
11 DEGREE); SECTION 140.10 (CRIMINAL TRESPASS IN THE THIRD DEGREE); SECTION
12 140.15 (CRIMINAL TRESPASS IN THE SECOND DEGREE); SECTION 140.17 (CRIMI-
13 NAL TRESPASS IN THE FIRST DEGREE); SECTION 140.20 (BURGLARY IN THE THIRD
14 DEGREE); SECTION 140.25 (BURGLARY IN THE SECOND DEGREE); SECTION 140.30
15 (BURGLARY IN THE FIRST DEGREE); SECTION 145.00 (CRIMINAL MISCHIEF IN THE
16 FOURTH DEGREE); SECTION 145.05 (CRIMINAL MISCHIEF IN THE THIRD DEGREE);
17 SECTION 145.10 (CRIMINAL MISCHIEF IN THE SECOND DEGREE); SECTION 145.12
18 (CRIMINAL MISCHIEF IN THE FIRST DEGREE); SECTION 150.05 (ARSON IN THE
19 FOURTH DEGREE); SECTION 150.10 (ARSON IN THE THIRD DEGREE); SECTION
20 150.15 (ARSON IN THE SECOND DEGREE); SECTION 150.20 (ARSON IN THE FIRST
21 DEGREE); SECTION 155.25 (PETIT LARCENY); SECTION 155.30 (GRAND LARCENY
22 IN THE FOURTH DEGREE); SECTION 155.35 (GRAND LARCENY IN THE THIRD
23 DEGREE); SECTION 155.40 (GRAND LARCENY IN THE SECOND DEGREE); SECTION
24 155.42 (GRAND LARCENY IN THE FIRST DEGREE); SECTION 160.05 (ROBBERY IN
25 THE THIRD DEGREE); SECTION 160.10 (ROBBERY IN THE SECOND DEGREE);
26 SECTION 160.15 (ROBBERY IN THE FIRST DEGREE); SECTION 240.25 (HARASSMENT
27 IN THE FIRST DEGREE); SUBDIVISION ONE, TWO OR FOUR OF SECTION 240.30
28 (AGGRAVATED HARASSMENT IN THE SECOND DEGREE); OR ANY ATTEMPT OR CONSPIR-
29 ACY TO COMMIT ANY OF THE FOREGOING OFFENSES.

30 4. FOR THE PURPOSES OF THIS SECTION:

31 (A) A PERSON HAS AN AGE RELATED INFIRMITY OR DISEASE WHEN, BEING SIXTY
32 YEARS OLD OR MORE, SUCH PERSON HAS A PHYSICAL OR MENTAL DISEASE OR
33 INFIRMITY, TYPICALLY ASSOCIATED WITH ADVANCED AGE, WHICH SUBSTANTIALLY
34 LIMITS A MAJOR LIFE ACTIVITY;

35 (B) THE TERM "SUBSTANTIAL PART" INCLUDES BUT IS NOT LIMITED TO CIRCUM-
36 STANCES IN WHICH A DEFENDANT SELECTS A PERSON AGAINST WHOM TO COMMIT OR
37 ATTEMPT TO COMMIT A CRIME DUE TO A BELIEF OR PERCEPTION THAT SUCH PERSON
38 IS LESS LIKELY TO RESIST OR BE ABLE TO RESIST SUCH CRIME DUE TO THEIR
39 DISABILITY OR AGE RELATED INFIRMITY OR DISEASE, REGARDLESS OF WHETHER
40 SUCH BELIEF OR PERCEPTION IS CORRECT;

41 (C) THE TERM "DISABILITY" MEANS A PHYSICAL OR MENTAL IMPAIRMENT THAT
42 SUBSTANTIALLY LIMITS A MAJOR LIFE ACTIVITY; AND

43 (D) THE TERM "RESIST" INCLUDES, IN ADDITION TO ITS REGULAR MEANING,
44 REPORTING SUCH CRIME TO LAW ENFORCEMENT, OBSERVING, RECALLING, OR
45 REPORTING KEY FEATURES OF ANY ACT OR CHARACTERISTIC OF A DEFENDANT
46 RELATED TO SUCH CRIME, OR PROVIDING EVIDENCE TO AID IN THE INVESTIGATION
47 OR PROSECUTION OF SUCH CRIME.

48 S 495.05 SENTENCING.

49 1. WHEN A PERSON IS CONVICTED OF A CRIME AGAINST THE ELDERLY OR DISA-
50 BLED PURSUANT TO THIS ARTICLE, AND THE SPECIFIED OFFENSE IS A VIOLENT
51 FELONY OFFENSE, AS DEFINED IN SECTION 70.02 OF THIS CHAPTER, THE CRIME
52 AGAINST THE ELDERLY OR DISABLED SHALL BE DEEMED A VIOLENT FELONY
53 OFFENSE.

54 2. WHEN A PERSON IS CONVICTED OF A CRIME AGAINST THE ELDERLY OR DISA-
55 BLED PURSUANT TO THIS ARTICLE AND THE SPECIFIED OFFENSE IS A MISDEMEANOR
56 OR A CLASS C, D OR E FELONY, THE CRIME AGAINST THE ELDERLY OR DISABLED

1 SHALL BE DEEMED TO BE ONE CATEGORY HIGHER THAN THE SPECIFIED OFFENSE THE
2 DEFENDANT COMMITTED, OR ONE CATEGORY HIGHER THAN THE OFFENSE LEVEL
3 APPLICABLE TO THE DEFENDANT'S CONVICTION FOR AN ATTEMPT OR CONSPIRACY TO
4 COMMIT A SPECIFIED OFFENSE, WHICHEVER IS APPLICABLE.

5 3. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, WHEN A PERSON IS
6 CONVICTED OF A CRIME AGAINST THE ELDERLY OR DISABLED PURSUANT TO THIS
7 ARTICLE AND THE SPECIFIED OFFENSE IS A CLASS B FELONY OFFENSE:

8 (A) THE MAXIMUM TERM OF THE INDETERMINATE SENTENCE MUST BE AT LEAST
9 SIX YEARS IF THE DEFENDANT IS SENTENCED PURSUANT TO SECTION 70.00 OF
10 THIS CHAPTER;

11 (B) THE TERM OF THE DETERMINATE SENTENCE MUST BE AT LEAST EIGHT YEARS
12 IF THE DEFENDANT IS SENTENCED PURSUANT TO SECTION 70.02 OF THIS CHAPTER;

13 (C) THE TERM OF THE DETERMINATE SENTENCE MUST BE AT LEAST TWELVE YEARS
14 IF THE DEFENDANT IS SENTENCED PURSUANT TO SECTION 70.04 OF THIS CHAPTER;

15 (D) THE MAXIMUM TERM OF THE INDETERMINATE SENTENCE MUST BE AT LEAST
16 FOUR YEARS IF THE DEFENDANT IS SENTENCED PURSUANT TO SECTION 70.05 OF
17 THIS CHAPTER; AND

18 (E) THE MAXIMUM TERM OF THE INDETERMINATE SENTENCE OR THE TERM OF THE
19 DETERMINATE SENTENCE MUST BE AT LEAST TEN YEARS IF THE DEFENDANT IS
20 SENTENCED PURSUANT TO SECTION 70.06 OF THIS CHAPTER.

21 4. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, WHEN A PERSON IS
22 CONVICTED OF CRIME AGAINST THE ELDERLY OR DISABLED PURSUANT TO THIS
23 ARTICLE AND THE SPECIFIED OFFENSE IS A CLASS A-1 FELONY, THE MINIMUM
24 PERIOD OF THE INDETERMINATE SENTENCE SHALL BE NOT LESS THAN TWENTY
25 YEARS.

26 S 6. Subdivisions 4 and 7 of section 200.50 of the criminal procedure
27 law, as amended by chapter 7 of the laws of 2007, are amended to read as
28 follows:

29 4. A statement in each count that the grand jury, or, where the accu-
30 satory instrument is a superior court information, the district attor-
31 ney, accuses the defendant or defendants of a designated offense,
32 provided that in any prosecution under article four hundred eighty-five
33 of the penal law, the designated offense shall be the specified offense,
34 as defined in subdivision three of section 485.05 of the penal law,
35 followed by the phrase "as a hate crime", [and] provided further that in
36 any prosecution under section 490.25 of the penal law, the designated
37 offense shall be the specified offense, as defined in subdivision three
38 of section 490.05 of the penal law, followed by the phrase "as a crime
39 of terrorism"; AND PROVIDED FURTHER THAT IN ANY PROSECUTION UNDER
40 SECTION 495.00 OF THE PENAL LAW, THE DESIGNATED OFFENSE SHALL BE THE
41 SPECIFIED OFFENSE, AS DEFINED IN SUBDIVISION THREE OF SECTION 495.00 OF
42 THE PENAL LAW, FOLLOWED BY THE PHRASE "AS A CRIME AGAINST THE ELDERLY OR
43 DISABLED"; and provided further that in any prosecution under section
44 130.91 of the penal law, the designated offense shall be the specified
45 offense, as defined in subdivision two of section 130.91 of the penal
46 law, followed by the phrase "as a sexually motivated felony"; and

47 7. A plain and concise factual statement in each count which, without
48 allegations of an evidentiary nature,

49 (a) asserts facts supporting every element of the offense charged and
50 the defendant's or defendants' commission thereof with sufficient preci-
51 sion to clearly apprise the defendant or defendants of the conduct which
52 is the subject of the accusation; and

53 (b) in the case of any armed felony, as defined in subdivision forty-
54 one of section 1.20, states that such offense is an armed felony and
55 specifies the particular implement the defendant or defendants

1 possessed, were armed with, used or displayed or, in the case of an
2 implement displayed, specifies what the implement appeared to be; and
3 (c) in the case of any hate crime, as defined in section 485.05 of the
4 penal law, specifies, as applicable, that the defendant or defendants
5 intentionally selected the person against whom the offense was committed
6 or intended to be committed; or intentionally committed the act or acts
7 constituting the offense, in whole or in substantial part because of a
8 belief or perception regarding the race, color, national origin, ances-
9 try, gender, religion, religious practice, age, disability or sexual
10 orientation of a person; and

11 (d) in the case of a crime of terrorism, as defined in section 490.25
12 of the penal law, specifies, as applicable, that the defendant or
13 defendants acted with intent to intimidate or coerce a civilian popu-
14 lation, influence the policy of a unit of government by intimidation or
15 coercion, or affect the conduct of a unit of government by murder,
16 assassination or kidnapping; and

17 (e) in the case of a sexually motivated felony, as defined in section
18 130.91 of the penal law, asserts facts supporting the allegation that
19 the offense was sexually motivated; and

20 (F) IN THE CASE OF ANY CRIME AGAINST THE ELDERLY OR DISABLED, AS
21 DEFINED IN SECTION 495.00 OF THE PENAL LAW, SPECIFIES, AS APPLICABLE,
22 THAT THE DEFENDANT OR DEFENDANTS INTENTIONALLY SELECTED THE PERSON
23 AGAINST WHOM THE OFFENSE WAS COMMITTED OR INTENDED TO BE COMMITTED; OR
24 INTENTIONALLY COMMITTED THE ACT OR ACTS CONSTITUTING THE OFFENSE, IN
25 WHOLE OR IN SUBSTANTIAL PART BECAUSE OF A BELIEF OR PERCEPTION REGARDING
26 THE DISABILITY STATUS OR AGE RELATED INFIRMITY OR DISEASE OF A PERSON;
27 AND

28 S 7. This act shall take effect on the first of November next succeed-
29 ing the date on which it shall have become a law.