S T A T E O F N E W Y O R K

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I N S E N A T E

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Introduced by Sens. BRESLIN, DILAN, DUANE, HASSELL-THOMPSON, KLEIN, KRUEGER, KRUGER, MONTGOMERY, ONORATO, SCHNEIDERMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law and the social services law, in relation to dependent adults

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

Section 1. The penal law is amended by adding a new article 261 to read as follows:

ARTICLE 261
DEPENDENT ADULTS

SECTION 261.00 DEFINITIONS.
261.05 ABANDONMENT OF A DEPENDENT ADULT.
261.10 NON-SUPPORT OF A DEPENDENT ADULT.
261.15 ENDANGERING THE WELFARE OF A DEPENDENT ADULT.

S 261.00 DEFINITIONS.

AS USED IN THIS ARTICLE, THE FOLLOWING DEFINITIONS SHALL MEAN AND APPLY:

1. "DEPENDENT ADULT" MEANS ANY PERSON EIGHTEEN YEARS OR OLDER WHO IS UNABLE TO CARE FOR THEMSELVES BECAUSE OF MENTAL DISEASE OR DEFECT OR ONE WHO OTHERWISE CANNOT MANAGE HIS OR HER OWN AFFAIRS.

2. "CAREGIVER" MEANS THE PERSON WHO HAS ASSUMED RESPONSIBILITY FOR THE CARE OF A DEPENDENT ADULT AS EVIDENCED BY CONDUCT SHOWING CONTROL OVER SUCH DEPENDENT'S FINANCES, PROPERTY AND/OR CONDUCT.

3. "NEGLECT" MEANS THE REFUSAL OR FAILURE TO FULFILL A CARETAKING OBLIGATION INCLUDING BUT NOT LIMITED TO ABANDONMENT, FAILURE TO PROVIDE FOOD AND DENIAL OF MEDICAL SERVICES.

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

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4. "PHYSICAL ABUSE" MEANS THE INFLICTION OF PHYSICAL PAIN, INJURY OR COERCION INCLUDING BUT NOT LIMITED TO BEING BEATEN, SLAPPED, SHOVED, SEXUALLY MOLESTED, PHYSICALLY RESTRAINED OR BURNED.

5. "FINANCIAL ABUSE" MEANS THE ILLEGAL OR IMPROPER EXPLOITATION AND/OR USE OF FUNDS OR OTHER RESOURCES INCLUDING BUT NOT LIMITED TO EXTORTION, MISUSE OF DEPENDENT ADULT'S HOME, UNAUTHORIZED USE OF FUNDS OR VALUABLES AND TRANSFER OF REAL PROPERTY OR OTHER ASSETS.

6. "PSYCHOLOGICAL ABUSE" IS THE INFLICTION OF MENTAL ANGUISH INCLUDING BUT NOT LIMITED TO THREATENING, NAME CALLING, FRIGHTENING, INTIMIDATING, HUMILIATING, ISOLATING AND INFANTILIZING.

S 261.05 ABANDONMENT OF A DEPENDENT ADULT.

A PERSON IS GUILTY OF ABANDONMENT OF A DEPENDENT ADULT IF, THE PERSON DESERTS SUCH DEPENDENT ADULT IN ANY PLACE WITH INTENT TO WHOLLY ABANDON THE DEPENDENT ADULT.

ABANDONMENT OF A DEPENDENT ADULT IS A CLASS E FELONY.

S 261.10 NON-SUPPORT OF A DEPENDENT ADULT.

A PERSON IS GUILTY OF NON-SUPPORT OF A DEPENDENT ADULT WHEN, BEING A CAREGIVER OR OTHER PERSON LEGALLY CHARGED WITH THE CARE OR CUSTODY OF A DEPENDENT ADULT, HE OR SHE FAILS OR REFUSES WITHOUT LAWFUL EXCUSE TO PROVIDE SUPPORT FOR SUCH DEPENDENT ADULT WHEN HE OR SHE IS ABLE TO DO SO, OR BECOMES UNABLE TO DO SO WHEN, THOUGH EMPLOYABLE, HE OR SHE VOLUNTARILY TERMINATES HIS OR HER EMPLOYMENT, VOLUNTARILY REDUCES HIS OR HER EARNING CAPACITY OR FAILS TO DILIGENTLY SEEK EMPLOYMENT.

NON-SUPPORT OF A DEPENDENT ADULT IS A CLASS A MISDEMEANOR.

S 261.15 ENDANGERING THE WELFARE OF A DEPENDENT ADULT.

A PERSON IS GUILTY OF ENDANGERING THE WELFARE OF A DEPENDENT ADULT WHEN HE OR SHE KNOWINGLY PHYSICALLY OR PSYCHOLOGICALLY OR FINANCIALLY ABUSES, OR NEGLECTS, OR ACTS IN ANY MANNER LIKELY TO BE INJURIOUS TO THE PHYSICAL, MENTAL, FINANCIAL OR MORAL WELFARE OF A DEPENDENT ADULT.

ENDANGERING THE WELFARE OF A DEPENDENT ADULT IS A CLASS A MISDEMEANOR.

S 2. Subdivision 2 of section 20 of the social services law is amended by adding two new paragraphs (b-1) and (b-2) to read as follows:

(B-1) ESTABLISH, OPERATE AND MAINTAIN A SINGLE STATEWIDE TOLL-FREE TELEPHONE NUMBER FOR THE PURPOSE OF RECEIVING TELEPHONE CALLS ALLEGING CRIMES COMMITTED AGAINST A DEPENDENT ADULT;

(B-2) ESTABLISH, OPERATE AND MAINTAIN A SINGLE STATEWIDE TOLL-FREE HELPLINE/HOTLINE TELEPHONE NUMBER FOR THE PURPOSE OF RECEIVING TELEPHONE CALLS FROM FRUSTRATED CAREGIVERS;

S 3. The social services law is amended by adding a new article 6-B to read as follows:

ARTICLE 6-B

DEPENDENT ADULTS

SECTION 459-L. DEFINITIONS.
459-M. REPORTING PROCEDURE.
459-N. REPORTING SUSPECTED CRIMES AGAINST DEPENDENT ADULT.
459-O. PENALTIES FOR FAILURE TO REPORT.
459-P. ACTION ON REPORTS.

S 459-L. DEFINITIONS. FOR THE PURPOSES OF THIS ARTICLE, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

1. "DEPENDENT ADULT" MEANS ANY PERSON EIGHTEEN YEARS OR OLDER WHO IS UNABLE TO CARE FOR THEMSELVES BECAUSE OF MENTAL DISEASE OR DEFECT OR ONE WHO OTHERWISE CANNOT MANAGE HIS OR HER OWN AFFAIRS.

2. "CAREGIVER" MEANS THE PERSON WHO HAS ASSUMED RESPONSIBILITY FOR THE CARE OF A DEPENDENT ADULT.

3. "NEGLECT" MEANS THE REFUSAL OR FAILURE TO FULFILL A CARETAKING OBLIGATION INCLUDING BUT NOT LIMITED TO ABANDONMENT, FAILURE TO PROVIDE FOOD AND DENIAL OF MEDICAL SERVICES.

4. "PHYSICAL ABUSE" MEANS THE INFLICTION OF PHYSICAL PAIN, INJURY OR COERCION INCLUDING BUT NOT LIMITED TO BEING BEATEN, SLAPPED, SHOVED, SEXUALLY MOLESTED, PHYSICALLY RESTRAINED OR BURNED.

5. "FINANCIAL ABUSE" MEANS THE ILLEGAL OR IMPROPER EXPLOITATION AND/OR USE OF FUNDS OR OTHER RESOURCES INCLUDING BUT NOT LIMITED TO EXTORTION, MISUSE OF DEPENDENT ADULT'S HOME, UNAUTHORIZED USE OF FUNDS OR VALUABLES AND TRANSFER OF REAL PROPERTY OR OTHER ASSETS.

6. "PSYCHOLOGICAL ABUSE" IS THE INFLICTION OF MENTAL ANGUISH INCLUDING BUT NOT LIMITED TO THREATENING, NAME CALLING, FRIGHTENING, INTIMIDATING, HUMILIATING, ISOLATING AND INFANTILIZING.

S 459-M. REPORTING PROCEDURE. 1. REPORTS OF SUSPECTED CRIMES AGAINST DEPENDENT ADULTS SHALL BE MADE IMMEDIATELY BY TELEPHONE TO THE LOCAL POLICE DEPARTMENT OR TO THE STATE-WIDE HOTLINE ESTABLISHED PURSUANT TO SECTION TWENTY OF THIS CHAPTER. ORAL REPORTS SHALL BE FOLLOWED BY A REPORT IN WRITING WITHIN FORTY-EIGHT HOURS AFTER SUCH ORAL REPORT AND SHOULD BE MADE TO THE APPROPRIATE LOCAL ADULT PROTECTIVE SERVICE.

2. SUCH REPORT SHOULD CONTAIN THE NAME AND ADDRESS OF THE VICTIM INVOLVED AND THE NAME AND ADDRESS OF THE CAREGIVER RESPONSIBLE FOR THE DEPENDENT ADULT, THE VICTIM'S AGE, SEX, RACE, ANY PHYSICAL OR MENTAL INCAPACITATION, NAME AND ADDRESS OF THE PERSON ALLEGED TO BE RESPONSIBLE FOR COMMITTING THE CRIME, THE SOURCE OF THE REPORT, THE PERSON MAKING THE REPORT AND WHERE HE OR SHE CAN BE REACHED, ACTIONS TAKEN BY THE REPORTING SOURCE INCLUDING THE TAKING OF PHOTOGRAPHS OR X-RAYS, VICTIM'S FAMILY COMPOSITION, ANY INFORMATION REGARDING THE NATURE AND EXTENT OF THE CRIME AND ANY OTHER INFORMATION WHICH THE REPORTER BELIEVES MIGHT BE HELPFUL IN AN INVESTIGATION OF THE CASE AND HELPFUL FOR THE PROTECTION OF SUCH DEPENDENT ADULT.

3. ANY PERSON MAKING SUCH REPORT SHALL HAVE IMMUNITY FROM ANY LIABILITY, CIVIL OR CRIMINAL, THAT MIGHT OTHERWISE RESULT BY REASON OF SUCH ACTIONS.

S 459-N. REPORTING SUSPECTED CRIMES AGAINST DEPENDENT ADULT. THE FOLLOWING PERSONS AND OFFICIALS ARE REQUIRED TO REPORT OR CAUSE A REPORT TO BE MADE, FOLLOWING THE REPORTING PROCEDURE OUTLINED IN THIS SECTION, WHEN THEY HAVE REASONABLE CAUSE TO SUSPECT THAT A DEPENDENT ADULT COMING BEFORE THEM IN THEIR PROFESSIONAL OR OFFICIAL CAPACITY HAS BEEN THE VICTIM OF A CRIME: ANY PHYSICIAN, SURGEON, PODIATRIST, RESIDENT, INTERN, PSYCHOLOGIST, REGISTERED NURSE, HOSPITAL PERSONNEL ENGAGED IN THE ADMISSION, EXAMINATION, CARE OR TREATMENT OF PERSONS, CHRISTIAN SCIENCE PRACTITIONER, SOCIAL SERVICES WORKER OR ANY OTHER HEALTH PROFESSIONAL, PEACE OFFICER, POLICE OFFICER OR LAW ENFORCEMENT OFFICIAL, ADULT CARE FACILITY ADMINISTRATORS, ANY PERSON PAID FOR CARING FOR A DEPENDENT ADULT, ANY STAFF PERSON EMPLOYED BY AN ADULT CARE FACILITY, MEDICAL EXAMINER, DENTIST, OSTEOPATH, OPTOMETRIST, CHIROPRACTOR, CORONER, CLERGYMEN, PHARMACIST, PHYSICAL THERAPIST, PSYCHOLOGIST, PSYCHIATRIST OR ANY OTHER MENTAL HEALTH PRACTITIONER, ANY ATTORNEY, ACCOUNTANT, TRUSTEE, GUARDIAN, CONSERVATOR OR OTHER PERSON WHO HAS RESPONSIBILITY FOR PREPARING THE TAX RECORDS OF A DEPENDENT ADULT OR A PERSON WHO HAS A FIDUCIARY RESPONSIBILITY FOR ANY OTHER ACTION CONCERNING THE USE OR PRESERVATION OF A DEPENDENT ADULT'S PROPERTY, WHO HAS A REASONABLE BASIS TO BELIEVE THAT A DEPENDENT ADULT IS BEING PHYSICALLY OR PSYCHOLOGICALLY MISTREATED, NEGLECTED, OR FINANCIALLY EXPLOITED ACCORDING TO THE DEFINITIONS STATED ABOVE.

S 459-O. PENALTIES FOR FAILURE TO REPORT. 1. ANY PERSON, OFFICIAL OR INSTITUTION REQUIRED BY THIS ARTICLE TO REPORT ANY CASE OF SUSPECTED CRIMES AGAINST DEPENDENT ADULTS WHO WILLFULLY FAILS TO DO SO SHALL BE GUILTY OF A CLASS A MISDEMEANOR.

2. ANY PERSON, OFFICIAL OR INSTITUTION REQUIRED BY THIS ARTICLE TO REPORT A CASE OF A SUSPECTED CRIME AGAINST A DEPENDENT ADULT WHO KNOWINGLY AND WILLFULLY FAILS TO DO SO SHALL BE CIVILLY LIABLE FOR THE DAMAGES PROXIMATELY CAUSED BY SUCH FAILURE.

S 459-P. ACTION ON REPORTS. THE COMMISSIONER OF THE OFFICE OF CHILDREN AND FAMILY SERVICES UPON RECEIVING A REPORT OF SUSPECTED CRIMES BEING COMMITTED AGAINST A DEPENDENT ADULT, SHALL CAUSE A PROMPT AND THOROUGH EVALUATION TO BE MADE, THROUGH THE APPROPRIATE LOCAL OR COUNTY DEPARTMENT OF SOCIAL SERVICES TO DETERMINE THE SITUATION RELATIVE TO THE CONDITION OF THE DEPENDENT ADULT AND WHAT ACTIONS OR SERVICES, IF ANY, ARE REQUIRED.

S 4. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.