

2196

2009-2010 Regular Sessions

I N A S S E M B L Y

January 15, 2009

Introduced by M. of A. MORELLE, GABRYSZAK -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to endangering the welfare of a care dependent person

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, 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 260.31 and amended to read as
3 follows:
4 S 260.31 Vulnerable elderly OR CARE DEPENDENT 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 OR CARE DEPENDENT person pursuant to a
9 court order; or (ii) receives monetary or other valuable consideration
10 for providing care for a vulnerable elderly OR CARE DEPENDENT person.
11 2. "Sexual contact" means any touching of the sexual or other intimate
12 parts of a person not married to the actor for the purpose of gratifying
13 sexual desire of either party. It includes the touching of the actor by
14 the victim, as well as the touching of the victim by the actor, whether
15 directly or through clothing.
16 3. "Vulnerable elderly person" means a person sixty years of age or
17 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.
21 4. "CARE DEPENDENT PERSON" MEANS ANY PERSON WHO IS A PATIENT OR RESI-
22 DENT OF ANY HOSPITAL, NURSING HOME OR RESIDENTIAL HEALTH CARE FACILITY,
23 AS THOSE TERMS ARE DEFINED IN SECTION TWENTY-EIGHT HUNDRED ONE OF THE
24 PUBLIC HEALTH LAW.

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

LBD04926-01-9

1 S 2. Section 260.32 of the penal law, as added by chapter 381 of the
2 laws of 1998 and subdivision 4 as amended by chapter 1 of the laws of
3 2000, is amended to read as follows:

4 S 260.32 Endangering the welfare of a vulnerable elderly OR CARE DEPEND-
5 ENT person in the second degree.

6 A person is guilty of endangering the welfare of a vulnerable elderly
7 OR CARE DEPENDENT person in the second degree when, being a caregiver
8 for a vulnerable elderly person:

9 1. With intent to cause physical injury to such person, he or she
10 causes such injury to such person; or

11 2. He or she recklessly causes physical injury to such person; or

12 3. With criminal negligence, he or she causes physical injury to such
13 person by means of a deadly weapon or a dangerous instrument; or

14 4. He or she subjects such person to sexual contact without the
15 latter's consent. Lack of consent under this subdivision results from
16 forcible compulsion or incapacity to consent, as those terms are defined
17 in article one hundred thirty of this chapter, or any other circum-
18 stances in which the vulnerable elderly OR CARE DEPENDENT person does
19 not expressly or impliedly acquiesce in the caregiver's conduct. In any
20 prosecution under this subdivision in which the victim's alleged lack of
21 consent results solely from incapacity to consent because of the
22 victim's mental disability or mental incapacity, the provisions of
23 section 130.16 of this [chapter] PART shall apply. In addition, in any
24 prosecution under this subdivision in which the victim's lack of consent
25 is based solely upon his or her incapacity to consent because he or she
26 was mentally disabled, mentally incapacitated or physically helpless, it
27 is an affirmative defense that the defendant, at the time he or she
28 engaged in the conduct constituting the offense, did not know of the
29 facts or conditions responsible for such incapacity to consent.

30 Endangering the welfare of a vulnerable elderly OR CARE DEPENDENT
31 person in the second degree is a class E felony.

32 S 3. Section 260.34 of the penal law, as added by chapter 381 of the
33 laws of 1998, is amended to read as follows:

34 S 260.34 Endangering the welfare of a vulnerable elderly OR CARE DEPEND-
35 ENT person in the first degree.

36 A person is guilty of endangering the welfare of a vulnerable elderly
37 OR CARE DEPENDENT person in the first degree when, being a caregiver for
38 a vulnerable elderly OR CARE DEPENDENT person:

39 1. With intent to cause physical injury to such person, he or she
40 causes serious physical injury to such person; or

41 2. He or she recklessly causes serious physical injury to such person.

42 Endangering the welfare of a vulnerable elderly OR CARE DEPENDENT
43 person in the first degree is a class D felony.

44 S 4. This act shall take effect on the first of November next succeed-
45 ing the date on which it shall have become a law.