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

2943

2009-2010 Regular Sessions

I N A S S E M B L Y

January 22, 2009

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

AN ACT to amend the penal law, in relation to establishing the crime of criminal neglect of a vulnerable elderly person or a person with a disability

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

CRIMINAL NEGLECT OF A VULNERABLE ELDERLY PERSON OR A PERSON WITH A DISABILITY

SECTION 261.00 DEFINITIONS.
261.05 CRIMINAL NEGLECT OF A VULNERABLE ELDERLY PERSON OR A PERSON WITH A DISABILITY.
261.10 CRIMINAL NEGLECT: DEFENSE.
261.15 OTHER AVAILABLE REMEDIES.

S 261.00 DEFINITIONS.

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

1. "VULNERABLE ELDERLY PERSON" MEANS A PERSON SIXTY YEARS OF AGE OR OLDER WHO IS SUFFERING FROM A DISEASE OR INFIRMITY ASSOCIATED WITH ADVANCED AGE.

2. "PERSON WITH A DISABILITY" MEANS A PERSON WHO HAS A PHYSICAL, MENTAL OR MEDICAL IMPAIRMENT RESULTING FROM ANATOMICAL, PHYSIOLOGICAL, OR NEUROLOGICAL CONDITIONS THAT PREVENT THE EXERCISE OF A NORMAL BODILY FUNCTION OR THAT SUBSTANTIALLY IMPAIR COGNITIVE FUNCTION, AND INCLUDE BUT IS NOT LIMITED TO, IMPAIRMENTS REQUIRING THE USE OF AN ARTIFICIAL DEVICE TO MOVE, WALK, SEE, HEAR, OR BREATHE, SUCH AS A WHEELCHAIR, BRACES, CRUTCHES, RESPIRATOR, OR OTHER SUPPORTIVE EQUIPMENT, OR USE OF A GUIDE DOG OR OTHER GUIDING DEVICE, AND WHICH RENDERS SUCH PERSON INCAPABLE OF ADEQUATELY PROVIDING FOR HIS OR HER OWN HEALTH AND PERSONAL CARE.

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

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3. "CAREGIVER" MEANS A PERSON WHO PROVIDES FOR THE HEALTH AND PERSONAL CARE OF A VULNERABLE ELDERLY PERSON OR A PERSON WITH A DISABILITY, AT SUCH PERSON'S PLACE OF RESIDENCE, INCLUDING BUT NOT LIMITED TO, FOOD AND NUTRITION, SHELTER, HYGIENE, PRESCRIBED MEDICATION AND MEDICAL CARE OR TREATMENT.

CAREGIVER SHALL INCLUDE:

(A) A PARENT, SPOUSE, ADULT CHILD OR OTHER RELATIVE BY BLOOD OR MARRIAGE WHO RESIDES WITH OR RESIDES IN THE SAME BUILDING WITH AND WHO REGULARLY VISITS THE VULNERABLE ELDERLY PERSON OR THE PERSON WITH A DISABILITY, AND WHO KNOWS OR REASONABLY SHOULD KNOW OF SUCH PERSON'S PHYSICAL OR MENTAL IMPAIRMENT AND KNOWS OR REASONABLY SHOULD KNOW THAT SUCH PERSON IS UNABLE TO ADEQUATELY PROVIDE FOR HIS OR HER OWN HEALTH AND PERSONAL CARE;

(B) A PERSON EMPLOYED BY THE VULNERABLE ELDERLY PERSON OR A PERSON WITH A DISABILITY OR BY ANOTHER TO RESIDE WITH OR REGULARLY VISIT THE VULNERABLE ELDERLY PERSON OR THE PERSON WITH A DISABILITY AND PROVIDE FOR SUCH PERSON'S HEALTH AND PERSONAL CARE;

(C) A PERSON WHO HAS AGREED FOR CONSIDERATION TO RESIDE WITH OR REGULARLY VISIT THE VULNERABLE ELDERLY PERSON OR THE PERSON WITH A DISABILITY AND PROVIDE FOR SUCH PERSON'S HEALTH AND PERSONAL CARE;

(D) A PERSON WHO HAS BEEN APPOINTED BY A PRIVATE OR PUBLIC AGENCY OR BY A COURT OF COMPETENT JURISDICTION TO PROVIDE FOR THE HEALTH AND PERSONAL CARE OF THE VULNERABLE ELDERLY PERSON OR THE PERSON WITH A DISABILITY; AND

(E) A PERSON WHO HOLDS A POWER OF ATTORNEY OR OTHER LEGAL OR FIDUCIARY RELATIONSHIP THAT REQUIRES SUCH PERSON TO PROVIDE FOR THE HEALTH AND PERSONAL CARE OF THE VULNERABLE ELDERLY PERSON OR THE PERSON WITH A DISABILITY.

CAREGIVER SHALL NOT INCLUDE A LONG-TERM HEALTH CARE FACILITY LICENSED OR CERTIFIED UNDER THE PROVISIONS OF THE PUBLIC HEALTH LAW OR ANY ADMINISTRATIVE, MEDICAL OR OTHER PERSONNEL OF SUCH A FACILITY, OR A HEALTH CARE PROVIDER WHO IS LICENSED UNDER THE EDUCATION LAW AND RENDERS CARE IN THE ORDINARY COURSE OF HIS OR HER PROFESSION.

4. "ABANDON" MEANS TO DESERT A VULNERABLE ELDERLY PERSON WITH INTENT TO WHOLLY ABANDON HIM OR HER.

S 261.05 CRIMINAL NEGLECT OF A VULNERABLE ELDERLY PERSON OR A PERSON WITH A DISABILITY.

A PERSON IS GUILTY OF CRIMINAL NEGLECT OF A VULNERABLE ELDERLY PERSON OR A PERSON WITH A DISABILITY WHEN HE OR SHE IS A CAREGIVER AND:

1. KNOWINGLY ACTS IN A MANNER LIKELY TO CAUSE THE VULNERABLE ELDERLY PERSON OR THE PERSON WITH A DISABILITY'S LIFE TO BE ENDANGERED, HEALTH TO BE INJURED, OR PRE-EXISTING PHYSICAL OR MENTAL CONDITION TO DETERIORATE; OR

2. FAILS TO PERFORM ACTS WHICH HE OR SHE KNOWS OR REASONABLY SHOULD KNOW ARE NECESSARY TO MAINTAIN OR PRESERVE THE LIFE OR HEALTH OF THE VULNERABLE ELDERLY PERSON OR THE PERSON WITH A DISABILITY AND SUCH FAILURE CAUSES SAID PERSON'S LIFE TO BE ENDANGERED, HEALTH TO BE INJURED OR PRE-EXISTING PHYSICAL OR MENTAL CONDITION TO DETERIORATE; OR

3. ABANDONS THE VULNERABLE ELDERLY PERSON OR THE PERSON WITH A DISABILITY.

CRIMINAL NEGLECT OF A VULNERABLE ELDERLY PERSON OR A PERSON WITH A DISABILITY IS A CLASS A MISDEMEANOR.

S 261.10 CRIMINAL NEGLECT: DEFENSE.

1. NO PROVISION OF THIS ARTICLE SHALL BE DEEMED TO IMPOSE CRIMINAL LIABILITY UPON ANY PERSON WHO HAS MADE A GOOD FAITH EFFORT TO PROVIDE FOR THE HEALTH AND PERSONAL CARE OF THE VULNERABLE ELDERLY PERSON OR THE

PERSON WITH A DISABILITY BUT THROUGH NO FAULT OF HIS OR HER OWN HAS BEEN UNABLE TO PROVIDE SUCH CARE.

2. NO PROVISION OF THIS ARTICLE SHALL BE CONSTRUED AS PROHIBITING A PERSON FROM PROVIDING TREATMENT BY SPIRITUAL MEANS THROUGH PRAYER ALONE AND CARE CONSISTENT THEREWITH IN LIEU OF MEDICAL CARE AND TREATMENT IN ACCORDANCE WITH THE TENETS AND PRACTICES OF ANY CHURCH OR RELIGIOUS DENOMINATION OF WHICH THE VULNERABLE ELDERLY PERSON OR THE PERSON WITH A DISABILITY IS A MEMBER.

S 261.15 OTHER AVAILABLE REMEDIES.

NO PROVISION OF THIS ARTICLE SHALL BE CONSTRUED TO LIMIT THE REMEDIES AVAILABLE TO THE VULNERABLE ELDERLY PERSON OR THE PERSON WITH A DISABILITY UNDER ANY OTHER PROVISION OF LAW.

S 2. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.