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2009-2010 Regular Sessions

I N S E N A T E

(PREFILED)

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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:

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

3 ARTICLE 261
4 DEPENDENT ADULTS

5 SECTION 261.00 DEFINITIONS.

6 261.05 ABANDONMENT OF A DEPENDENT ADULT.

7 261.10 NON-SUPPORT OF A DEPENDENT ADULT.

8 261.15 ENDANGERING THE WELFARE OF A DEPENDENT ADULT.

9 S 261.00 DEFINITIONS.

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

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

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

18 3. "NEGLECT" MEANS THE REFUSAL OR FAILURE TO FULFILL A CARETAKING
19 OBLIGATION INCLUDING BUT NOT LIMITED TO ABANDONMENT, FAILURE TO PROVIDE
20 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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1 4. "PHYSICAL ABUSE" MEANS THE INFLICTION OF PHYSICAL PAIN, INJURY OR
2 COERCION INCLUDING BUT NOT LIMITED TO BEING BEATEN, SLAPPED, SHOVED,
3 SEXUALLY MOLESTED, PHYSICALLY RESTRAINED OR BURNED.

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

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

11 S 261.05 ABANDONMENT OF A DEPENDENT ADULT.

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

15 ABANDONMENT OF A DEPENDENT ADULT IS A CLASS E FELONY.

16 S 261.10 NON-SUPPORT OF A DEPENDENT ADULT.

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

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

25 S 261.15 ENDANGERING THE WELFARE OF A DEPENDENT ADULT.

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

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

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

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

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

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

41 ARTICLE 6-B
42 DEPENDENT ADULTS

43 SECTION 459-L. DEFINITIONS.

44 459-M. REPORTING PROCEDURE.

45 459-N. REPORTING SUSPECTED CRIMES AGAINST DEPENDENT ADULT.

46 459-O. PENALTIES FOR FAILURE TO REPORT.

47 459-P. ACTION ON REPORTS.

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

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

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

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

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

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

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

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

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

31 3. ANY PERSON MAKING SUCH REPORT SHALL HAVE IMMUNITY FROM ANY LIABIL-
32 ITY, CIVIL OR CRIMINAL, THAT MIGHT OTHERWISE RESULT BY REASON OF SUCH
33 ACTIONS.

34 S 459-N. REPORTING SUSPECTED CRIMES AGAINST DEPENDENT ADULT. THE
35 FOLLOWING PERSONS AND OFFICIALS ARE REQUIRED TO REPORT OR CAUSE A REPORT
36 TO BE MADE, FOLLOWING THE REPORTING PROCEDURE OUTLINED IN THIS SECTION,
37 WHEN THEY HAVE REASONABLE CAUSE TO SUSPECT THAT A DEPENDENT ADULT
38 COMING BEFORE THEM IN THEIR PROFESSIONAL OR OFFICIAL CAPACITY HAS BEEN
39 THE VICTIM OF A CRIME: ANY PHYSICIAN, SURGEON, PODIATRIST, RESIDENT,
40 INTERN, PSYCHOLOGIST, REGISTERED NURSE, HOSPITAL PERSONNEL ENGAGED IN
41 THE ADMISSION, EXAMINATION, CARE OR TREATMENT OF PERSONS, CHRISTIAN
42 SCIENCE PRACTITIONER, SOCIAL SERVICES WORKER OR ANY OTHER HEALTH PROFES-
43 SIONAL, PEACE OFFICER, POLICE OFFICER OR LAW ENFORCEMENT OFFICIAL, ADULT
44 CARE FACILITY ADMINISTRATORS, ANY PERSON PAID FOR CARING FOR A DEPENDENT
45 ADULT, ANY STAFF PERSON EMPLOYED BY AN ADULT CARE FACILITY, MEDICAL
46 EXAMINER, DENTIST, OSTEOPATH, OPTOMETRIST, CHIROPRACTOR, CORONER, CLER-
47 GYMN, PHARMACIST, PHYSICAL THERAPIST, PSYCHOLOGIST, PSYCHIATRIST OR ANY
48 OTHER MENTAL HEALTH PRACTITIONER, ANY ATTORNEY, ACCOUNTANT, TRUSTEE,
49 GUARDIAN, CONSERVATOR OR OTHER PERSON WHO HAS RESPONSIBILITY FOR PREPAR-
50 ING THE TAX RECORDS OF A DEPENDENT ADULT OR A PERSON WHO HAS A FIDUCIARY
51 RESPONSIBILITY FOR ANY OTHER ACTION CONCERNING THE USE OR PRESERVATION
52 OF A DEPENDENT ADULT'S PROPERTY, WHO HAS A REASONABLE BASIS TO BELIEVE
53 THAT A DEPENDENT ADULT IS BEING PHYSICALLY OR PSYCHOLOGICALLY
54 MISTREATED, NEGLECTED, OR FINANCIALLY EXPLOITED ACCORDING TO THE DEFI-
55 NITIONS STATED ABOVE.

1 S 459-O. PENALTIES FOR FAILURE TO REPORT. 1. ANY PERSON, OFFICIAL OR
2 INSTITUTION REQUIRED BY THIS ARTICLE TO REPORT ANY CASE OF SUSPECTED
3 CRIMES AGAINST DEPENDENT ADULTS WHO WILLFULLY FAILS TO DO SO SHALL BE
4 GUILTY OF A CLASS A MISDEMEANOR.
5 2. ANY PERSON, OFFICIAL OR INSTITUTION REQUIRED BY THIS ARTICLE TO
6 REPORT A CASE OF A SUSPECTED CRIME AGAINST A DEPENDENT ADULT WHO KNOW-
7 INGLY AND WILLFULLY FAILS TO DO SO SHALL BE CIVILLY LIABLE FOR THE
8 DAMAGES PROXIMATELY CAUSED BY SUCH FAILURE.
9 S 459-P. ACTION ON REPORTS. THE COMMISSIONER OF THE OFFICE OF CHILDREN
10 AND FAMILY SERVICES UPON RECEIVING A REPORT OF SUSPECTED CRIMES BEING
11 COMMITTED AGAINST A DEPENDENT ADULT, SHALL CAUSE A PROMPT AND THOROUGH
12 EVALUATION TO BE MADE, THROUGH THE APPROPRIATE LOCAL OR COUNTY DEPART-
13 MENT OF SOCIAL SERVICES TO DETERMINE THE SITUATION RELATIVE TO THE
14 CONDITION OF THE DEPENDENT ADULT AND WHAT ACTIONS OR SERVICES, IF ANY,
15 ARE REQUIRED.
16 S 4. This act shall take effect on the first of November next succeed-
17 ing the date on which it shall have become a law.