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

5208

2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

Introduced by Sens. HUNTLEY, BRESLIN -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, in relation to endangering the welfare of an incompetent or physically disabled person

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

Section 1. Section 260.30 of the penal law, as added by chapter 381 of the laws of 1998, is renumbered section 260.31.

S 2. Subdivision 1 of section 260.31 of the penal law, as added by chapter 381 of the laws of 1998, such section as renumbered by section one of this act, is amended to read as follows:

1. "Caregiver" means a person who (i) assumes responsibility for the care of a vulnerable elderly person, OR AN INCOMPETENT OR PHYSICALLY DISABLED PERSON pursuant to a court order; or (ii) receives monetary or other valuable consideration for providing care for a vulnerable elderly person, OR AN INCOMPETENT OR PHYSICALLY DISABLED PERSON.

S 3. Sections 260.32 and 260.34 of the penal law, as added by chapter 381 of the laws of 1998, subdivision 4 of section 260.32 as amended by chapter 1 of the laws of 2000, are amended to read as follows:

S 260.32 Endangering the welfare of a vulnerable elderly person, OR AN INCOMPETENT OR PHYSICALLY DISABLED PERSON in the second degree.

A person is guilty of endangering the welfare of a vulnerable elderly person, OR AN INCOMPETENT OR PHYSICALLY DISABLED PERSON in the second degree when, being a caregiver for a vulnerable elderly person, OR AN INCOMPETENT OR PHYSICALLY DISABLED PERSON:

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

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

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

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

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4. He or she subjects such person to sexual contact without the latter's consent. Lack of consent under this subdivision results from forcible compulsion or incapacity to consent, as those terms are defined in article one hundred thirty of this chapter, or any other circumstances in which the vulnerable elderly person, OR AN INCOMPETENT OR PHYSICALLY DISABLED PERSON does not expressly or impliedly acquiesce in the caregiver's conduct. In any prosecution under this subdivision in which the victim's alleged lack of consent results solely from incapacity to consent because of the victim's mental disability or mental incapacity, the provisions of section 130.16 of this chapter shall apply. In addition, in any prosecution under this subdivision in which the victim's lack of consent is based solely upon his or her incapacity to consent because he or she was mentally disabled, mentally incapacitated or physically helpless, it is an affirmative defense that the defendant, at the time he or she engaged in the conduct constituting the offense, did not know of the facts or conditions responsible for such incapacity to consent.

Endangering the welfare of a vulnerable elderly person, OR AN INCOMPETENT OR PHYSICALLY DISABLED PERSON in the second degree is a class E felony.

S 260.34 Endangering the welfare of a vulnerable elderly person, OR AN INCOMPETENT OR PHYSICALLY DISABLED PERSON in the first degree.

A person is guilty of endangering the welfare of a vulnerable elderly person, OR AN INCOMPETENT OR PHYSICALLY DISABLED PERSON in the first degree when, being a caregiver for a vulnerable elderly person, OR AN INCOMPETENT OR PHYSICALLY DISABLED PERSON:

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

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

Endangering the welfare of a vulnerable elderly person, OR AN INCOMPETENT OR PHYSICALLY DISABLED PERSON in the first degree is a class D felony.

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