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I N S E N A T E

February 1, 2010

Introduced by Sens. HUNTLEY, MORAHAN, ESPADA -- 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:

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.

3 S 2. Subdivision 1 of section 260.31 of the penal law, as added by
4 chapter 381 of the laws of 1998, such section as renumbered by section
5 one of this act, is amended and a new subdivision 4 is added to read as
6 follows:

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

12 4. "INCOMPETENT OR PHYSICALLY DISABLED PERSON" MEANS AN INDIVIDUAL WHO
13 IS UNABLE TO CARE FOR HIMSELF OR HERSELF BECAUSE OF PHYSICAL DISABILITY,
14 MENTAL DISEASE OR DEFECT.

15 S 3. Sections 260.32 and 260.34 of the penal law, as added by chapter
16 381 of the laws of 1998, subdivision 4 of section 260.32 as amended by
17 chapter 1 of the laws of 2000, are amended to read as follows:

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

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

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

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

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

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

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

20 Endangering the welfare of a vulnerable elderly person, OR AN INCOMPE-
21 TENT OR PHYSICALLY DISABLED PERSON in the second degree is a class E
22 felony.

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

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

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

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

33 Endangering the welfare of a vulnerable elderly person, OR AN INCOMPE-
34 TENT OR PHYSICALLY DISABLED PERSON in the first degree is a class D
35 felony.

36 S 4. This act shall take effect on the sixtieth day after it shall
37 have become a law.