

5274

2011-2012 Regular Sessions

I N S E N A T E

May 3, 2011

Introduced by Sen. BALL -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, establishing a mandatory senior anti-violence services fee imposed upon conviction of a criminal offense and offenses against the elderly and disabled

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

1 Section 1. The section heading and subdivision 1 of section 60.35 of
2 the penal law, as amended by section 1 of part E of chapter 56 of the
3 laws of 2004, subparagraphs (i), (ii) and (iii) of paragraph (a) of
4 subdivision 1 as amended by section 1 of part DD of chapter 56 of the
5 laws of 2008 and paragraph (b) of subdivision 1 as amended by chapter
6 320 of the laws of 2006, are amended to read as follows:
7 Mandatory surcharge, sex offender registration fee, DNA databank fee,
8 supplemental sex offender victim fee [and], crime victim assistance AND
9 A SENIOR ANTI-VIOLENCE SERVICES fee required in certain cases.
10 1. (a) Except as provided in section eighteen hundred nine of the
11 vehicle and traffic law and section 27.12 of the parks, recreation and
12 historic preservation law, whenever proceedings in an administrative
13 tribunal or a court of this state result in a conviction for a felony, a
14 misdemeanor, or a violation, as these terms are defined in section 10.00
15 of this chapter, there shall be levied at sentencing a mandatory
16 surcharge, sex offender registration fee, DNA databank fee [and], a
17 crime victim assistance fee AND A SENIOR ANTI-VIOLENCE SERVICES FEE in
18 addition to any sentence required or permitted by law, in accordance
19 with the following schedule:
20 (i) a person convicted of a felony shall pay a mandatory surcharge of
21 three hundred dollars [and], a crime victim assistance fee of twenty-
22 five dollars, AND A SENIOR ANTI-VIOLENCE SERVICES FEE OF FIFTY DOLLARS;
23 (ii) a person convicted of a misdemeanor shall pay a mandatory
24 surcharge of one hundred seventy-five dollars [and], a crime victim

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

LBD11393-01-1

1 assistance fee of twenty-five dollars, AND A SENIOR ANTI-VIOLENCE
2 SERVICES FEE OF FIFTY DOLLARS;
3 (iii) a person convicted of a violation shall pay a mandatory
4 surcharge of ninety-five dollars [and], a crime victim assistance fee of
5 twenty-five dollars, AND A SENIOR ANTI-VIOLENCE SERVICES FEE OF FIFTY
6 DOLLARS;
7 (iv) a person convicted of a sex offense as defined by subdivision two
8 of section one hundred sixty-eight-a of the correction law or a sexually
9 violent offense as defined by subdivision three of section one hundred
10 sixty-eight-a of the correction law shall, in addition to a mandatory
11 surcharge and crime victim assistance fee, pay a sex offender registra-
12 tion fee of fifty dollars[.], AND A SENIOR ANTI-VIOLENCE SERVICES FEE OF
13 FIFTY DOLLARS;
14 (v) a person convicted of a designated offense as defined by subdivi-
15 sion seven of section nine hundred ninety-five of the executive law
16 shall, in addition to a mandatory surcharge and crime victim assistance
17 fee, pay a DNA databank fee of fifty dollars, AND A SENIOR ANTI-VIOLENCE
18 SERVICES FEE OF FIFTY DOLLARS.
19 (b) When the felony or misdemeanor conviction in [subparagraphs]
20 SUBPARAGRAPH (i), (ii) or (iv) of paragraph (a) of this subdivision
21 results from an offense contained in article one hundred thirty of this
22 chapter, incest in the third, second or first degree as defined in
23 sections 255.25, 255.26 and 255.27 of this chapter or an offense
24 contained in article two hundred sixty-three of this chapter, the person
25 convicted shall pay a supplemental sex offender victim fee of one thou-
26 sand dollars, AND A SENIOR ANTI-VIOLENCE SERVICES FEE OF FIVE HUNDRED
27 DOLLARS, in addition to the mandatory surcharge and any other fee.
28 S 2. The penal law is amended by adding a new article 261 to read as
29 follows:

30 ARTICLE 261

31 OFFENSES AGAINST THE ELDERLY AND DISABLED

32 SECTION 261.00 ELDERLY, VULNERABLE ELDERLY AND DISABLED PERSONS; DEFINI- 33 TIONS.

34 261.01 CRIMES AGAINST THE ELDERLY AND DISABLED; PRESUMPTION.

35 261.02 ABANDONMENT OF AN ELDERLY OR DISABLED PERSON.

36 261.03 ABANDONMENT OF AN ELDERLY OR DISABLED PERSON; DEFENSE.

37 261.04 ENDANGERING THE WELFARE OF AN ELDERLY OR DISABLED PERSON.

38 261.05 ENDANGERING THE WELFARE OF AN ELDERLY OR DISABLED PERSON;
39 CORROBORATION.

40 261.06 ENDANGERING THE WELFARE OF AN ELDERLY OR DISABLED PERSON;
41 DEFENSE.

42 261.07 ENDANGERING THE WELFARE OF A VULNERABLE ELDERLY PERSON OR
43 A DISABLED PERSON IN THE SECOND DEGREE.

44 261.08 ENDANGERING THE WELFARE OF A VULNERABLE ELDERLY PERSON OR
45 A DISABLED PERSON IN THE FIRST DEGREE.

46 S 261.00 ELDERLY, VULNERABLE ELDERLY AND DISABLED PERSONS; DEFINITIONS.

47 FOR THE PURPOSE OF THIS ARTICLE, THE FOLLOWING DEFINITIONS SHALL
48 APPLY:

49 1. "CAREGIVER" MEANS A PERSON WHO (I) ASSUMES RESPONSIBILITY FOR THE
50 CARE OF A VULNERABLE ELDERLY PERSON PURSUANT TO A COURT ORDER; OR (II)
51 RECEIVES MONETARY OR OTHER VALUABLE CONSIDERATION FOR PROVIDING CARE FOR
52 A VULNERABLE ELDERLY PERSON.

53 2. "SEXUAL CONTACT" MEANS ANY TOUCHING OF THE SEXUAL OR OTHER INTIMATE
54 PARTS OF A PERSON NOT MARRIED TO THE ACTOR FOR THE PURPOSE OF GRATIFYING

1 SEXUAL DESIRE OF EITHER PARTY. IT INCLUDES THE TOUCHING OF THE ACTOR BY
2 THE VICTIM, AS WELL AS THE TOUCHING OF THE VICTIM BY THE ACTOR, WHETHER
3 DIRECTLY OR THROUGH CLOTHING.

4 3. "VULNERABLE ELDERLY PERSON" MEANS A PERSON SIXTY YEARS OF AGE OR
5 OLDER WHO IS SUFFERING FROM A DISEASE OR INFIRMITY ASSOCIATED WITH
6 ADVANCED AGE AND MANIFESTED BY DEMONSTRABLE PHYSICAL, MENTAL OR
7 EMOTIONAL DYSFUNCTION TO THE EXTENT THAT THE PERSON IS INCAPABLE OF
8 ADEQUATELY PROVIDING FOR HIS OR HER OWN HEALTH OR PERSONAL CARE.

9 4. "ELDERLY PERSON" MEANS A PERSON SIXTY YEARS OF AGE OR OLDER.

10 5. "DISABLED PERSON" MEANS A PERSON WHO HAS A PHYSICAL OR MENTAL
11 IMPAIRMENT THAT SUBSTANTIALLY LIMITS A MAJOR LIFE ACTIVITY.

12 S 261.01 CRIMES AGAINST THE ELDERLY AND DISABLED; PRESUMPTION.

13 IN ANY CASE IN WHICH IT SHALL BE SHOWN THAT A PERSON INTENDED TO
14 COMMIT A SPECIFIED OFFENSE PURSUANT TO SECTION 485.05 OF THIS CHAPTER,
15 IT SHALL BE A REBUTTAL PRESUMPTION THAT THE PERSON SELECTED THE VICTIM
16 OR COMMITTED OR INTENDED TO COMMIT THE ACT OR ACTS CONSTITUTING THE
17 OFFENSE IN WHOLE OR IN SUBSTANTIAL PART BECAUSE OF A BELIEF THAT SUCH
18 VICTIM IS ELDERLY OR DISABLED.

19 S 261.02 ABANDONMENT OF AN ELDERLY OR DISABLED PERSON.

20 A PERSON IS GUILTY OF ABANDONMENT OF AN ELDERLY OR DISABLED PERSON
21 WHEN, BEING A PERSON LEGALLY CHARGED WITH THE CARE OR CUSTODY OF AN
22 ELDERLY OR DISABLED PERSON, HE OR SHE DESERTS SUCH PERSON IN ANY PLACE
23 WITH INTENT TO WHOLLY ABANDON HIM OR HER.

24 ABANDONMENT OF AN ELDERLY OR DISABLED PERSON IS A CLASS E FELONY.

25 S 261.03 ABANDONMENT OF AN ELDERLY OR DISABLED PERSON; DEFENSE.

26 IN ANY PROSECUTION FOR ABANDONMENT OF AN ELDERLY OR DISABLED PERSON,
27 PURSUANT TO SECTION 261.02 OF THIS ARTICLE, BASED UPON AN ALLEGED
28 DESERTION OF AN ELDERLY OR DISABLED PERSON WITH AN INTENT TO WHOLLY
29 ABANDON SUCH AN ELDERLY OR DISABLED PERSON, IT IS AN AFFIRMATIVE DEFENSE
30 THAT, WITH THE INTENT THAT THE ELDERLY OR DISABLED PERSON BE SAFE FROM
31 PHYSICAL INJURY AND CARED FOR IN AN APPROPRIATE MANNER, THE DEFENDANT
32 LEFT THE ELDERLY OR DISABLED PERSON WITH AN APPROPRIATE PERSON OR IN A
33 SUITABLE LOCATION AND PROMPTLY NOTIFIED AN APPROPRIATE PERSON OF THE
34 ELDERLY OR DISABLED PERSON'S LOCATION.

35 S 261.04 ENDANGERING THE WELFARE OF AN ELDERLY OR DISABLED PERSON.

36 A PERSON IS GUILTY OF ENDANGERING THE WELFARE OF AN ELDERLY OR DISA-
37 BLED PERSON WHEN BEING A PERSON LEGALLY CHARGED WITH THE CARE OR CUSTODY
38 OF AN ELDERLY OR DISABLED PERSON:

39 1. HE OR SHE KNOWINGLY ACTS IN A MANNER LIKELY TO BE INJURIOUS TO THE
40 PHYSICAL, MENTAL OR MORAL WELFARE OF AN ELDERLY OR DISABLED PERSON, OR
41 DIRECTS OR AUTHORIZES SUCH AN ELDERLY OR DISABLED PERSON, TO ENGAGE IN
42 AN OCCUPATION INVOLVING A SUBSTANTIAL RISK OF DANGER TO HIS OR HER LIFE
43 OR HEALTH; OR

44 2. HE OR SHE FAILS OR REFUSES TO EXERCISE REASONABLE DILIGENCE IN THE
45 CONTROL OF SUCH ELDERLY OR DISABLED PERSON TO PREVENT HIM OR HER FROM
46 PHYSICAL, MENTAL OR MORAL INJURY, OR FROM ENGAGING IN ACTS INVOLVING A
47 SUBSTANTIAL RISK OF DANGER TO HIS OR HER LIFE OR HEALTH.

48 ENDANGERING THE WELFARE OF AN ELDERLY OR DISABLED PERSON IS A CLASS A
49 MISDEMEANOR.

50 S 261.05 ENDANGERING THE WELFARE OF AN ELDERLY OR DISABLED PERSON;
51 CORROBORATION.

52 A PERSON SHALL NOT BE CONVICTED OF ENDANGERING THE WELFARE OF AN
53 ELDERLY OR DISABLED PERSON, OR OF AN ATTEMPT TO COMMIT THE SAME, UPON
54 THE TESTIMONY OF A VICTIM WHO IS INCAPABLE OF CONSENT BECAUSE OF MENTAL
55 DEFECT OR MENTAL INCAPACITY AS TO CONDUCT THAT CONSTITUTES AN OFFENSE OR
56 AN ATTEMPT TO COMMIT AN OFFENSE REFERRED TO IN SECTION 130.16 OF THIS

CHAPTER, WITHOUT ADDITIONAL EVIDENCE SUFFICIENT PURSUANT TO SECTION 130.16 OF THIS CHAPTER TO SUSTAIN A CONVICTION OF AN OFFENSE REFERRED TO IN SECTION 130.16 OF THIS CHAPTER, OR OF AN ATTEMPT TO COMMIT THE SAME. S 261.06 ENDANGERING THE WELFARE OF AN ELDERLY OR DISABLED PERSON; DEFENSE.

IN ANY PROSECUTION FOR ENDANGERING THE WELFARE OF AN ELDERLY OR DISABLED PERSON, PURSUANT TO SECTION 261.04 OF THIS ARTICLE:

1. BASED UPON AN ALLEGED FAILURE OR REFUSAL TO PROVIDE PROPER MEDICAL CARE OR TREATMENT TO AN ELDERLY OR DISABLED PERSON, WHO IS ILL, IT IS AN AFFIRMATIVE DEFENSE THAT THE ELDERLY OR DISABLED PERSON IS A MEMBER OR ADHERENT OF AN ORGANIZED CHURCH OR RELIGIOUS GROUP THE TENETS OF WHICH PRESCRIBE PRAYER AS THE PRINCIPAL TREATMENT FOR ILLNESS, AND THAT THE ELDERLY OR DISABLED PERSON WAS TREATED IN ACCORDANCE WITH SUCH TENETS; OR

2. BASED UPON AN ALLEGED DESERTION OF AN ELDERLY OR DISABLED PERSON, IT IS AN AFFIRMATIVE DEFENSE THAT, WITH THE INTENT THAT THE PERSON BE SAFE FROM PHYSICAL INJURY AND CARED FOR IN AN APPROPRIATE MANNER, THE DEFENDANT LEFT THE PERSON WITH AN APPROPRIATE PERSON OR IN A SUITABLE LOCATION AND PROMPTLY NOTIFIED AN APPROPRIATE PERSON OF THE PERSON'S LOCATION.

S 261.07 ENDANGERING THE WELFARE OF A VULNERABLE ELDERLY PERSON OR A DISABLED PERSON IN THE SECOND DEGREE.

A PERSON IS GUILTY OF ENDANGERING THE WELFARE OF A VULNERABLE ELDERLY PERSON OR A DISABLED PERSON IN THE SECOND DEGREE WHEN, BEING A CAREGIVER FOR A VULNERABLE ELDERLY PERSON OR A 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

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 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 A DISABLED PERSON IN THE SECOND DEGREE IS A CLASS E FELONY.

S 261.08 ENDANGERING THE WELFARE OF A VULNERABLE ELDERLY PERSON OR A DISABLED PERSON IN THE FIRST DEGREE.

A PERSON IS GUILTY OF ENDANGERING THE WELFARE OF A VULNERABLE ELDERLY PERSON OR A DISABLED PERSON IN THE FIRST DEGREE WHEN, BEING A CAREGIVER FOR A VULNERABLE ELDERLY PERSON OR 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.

1 ENDANGERING THE WELFARE OF A VULNERABLE ELDERLY PERSON OR A DISABLED
2 PERSON IN THE FIRST DEGREE IS A CLASS D FELONY.

3 S 3. Section 120.05 of the penal law is amended by adding a new subdi-
4 vision 13 to read as follows:

5 13. BEING EIGHTEEN YEARS OLD OR MORE AND WITH INTENT TO CAUSE PHYSICAL
6 INJURY TO A PERSON SIXTY YEARS OLD OR MORE, OR TO A PERSON WHO HAS A
7 PHYSICAL OR MENTAL IMPAIRMENT THAT SUBSTANTIALLY LIMITS A MAJOR LIFE
8 ACTIVITY, THE DEFENDANT CAUSES SUCH INJURY TO SUCH PERSON.

9 S 4. Section 135.30 of the penal law is amended to read as follows:

10 S 135.30 Kidnapping; defense.

11 In any prosecution for kidnapping, it is an affirmative defense that
12 (a) the defendant was a relative of the person abducted, and (b) his OR
13 HER sole purpose was to assume control of such person.

14 THIS SECTION SHALL NOT APPLY IN THE CASE WHEN THE PERSON WHO IS
15 ABDUCTED IS SIXTY YEARS OLD OR MORE, OR TO A PERSON WHO HAS A PHYSICAL
16 OR MENTAL IMPAIRMENT THAT SUBSTANTIALLY LIMITS A MAJOR LIFE ACTIVITY,
17 AND THE KIDNAPPING WAS DONE WITH THE INTENTION OF COMPELLING SUCH PERSON
18 TO TRANSFER AN ASSET TO THE DEFENDANT OR TO A THIRD PARTY.

19 S 5. Section 135.45 of the penal law is amended by adding a new subdi-
20 vision 3 to read as follows:

21 3. KNOWING THAT HE OR SHE HAS NO LEGAL RIGHT TO DO SO, HE OR SHE TAKES
22 OR ENTICES ANY PERSON SIXTY YEARS OF AGE OR MORE, OR A PERSON WHO HAS A
23 PHYSICAL OR MENTAL IMPAIRMENT THAT SUBSTANTIALLY LIMITS A MAJOR LIFE
24 ACTIVITY, FROM THE CUSTODY OF ANOTHER PERSON OR INSTITUTION.

25 S 6. Section 140.10 of the penal law is amended by adding a new subdi-
26 vision (h) to read as follows:

27 (H) WHICH IS A DWELLING OCCUPIED BY A PERSON SIXTY YEARS OF AGE OR
28 OLDER, OR A PERSON WHO HAS A PHYSICAL OR MENTAL IMPAIRMENT THAT SUBSTAN-
29 Tially LIMITS A MAJOR LIFE ACTIVITY.

30 S 7. Severability. If any provision of this act or the application
31 thereof to any person or circumstances is held to be invalid, the
32 remainder of the act and the application of such provision to other
33 persons or circumstances shall not be affected thereby.

34 S 8. This act shall take effect immediately.