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

642

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. CLARK, CANESTRARI -- Multi-Sponsored by -- M. of A. BUTLER, COLTON, COOK, DESTITO, GALEF, MAGEE, MAYERSOHN, SCARBOROUGH, SWEENEY -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to creating definitions with respect to larceny from a mentally disabled or mentally incapacitated person and establishing an affirmative defense thereto

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

Section 1. Section 155.00 of the penal law is amended by adding two new subdivisions 10 and 11 to read as follows:

10. "MENTALLY DISABLED" MEANS THAT A PERSON SUFFERS FROM A MENTAL DISEASE, DEFECT OR CONDITION WHICH RENDERS HIM OR HER INCAPABLE OF APPRAISING WHETHER TO GIVE OR WITHHOLD CONSENT TO THE TAKING, OBTAINING OR WITHHOLDING OF HIS OR HER PROPERTY.

11. "MENTALLY INCAPACITATED" MEANS THAT A PERSON IS RENDERED INCAPABLE OF APPRAISING WHETHER TO GIVE OR WITHHOLD CONSENT TO THE TAKING, OBTAINING OR WITHHOLDING OF HIS OR HER PROPERTY OWING TO THE INFLUENCE OF A CONTROLLED OR INTOXICATING SUBSTANCE.

S 2. Paragraph (a) of subdivision 2 of section 155.05 of the penal law is amended to read as follows:

(a) By conduct heretofore defined or known as common law larceny by trespassory taking, common law larceny by trick, embezzlement, or obtaining property by false pretenses, AND SUCH CONDUCT INCLUDES BUT IS NOT LIMITED TO, THE WRONGFUL TAKING, OBTAINING OR WITHHOLDING OF PROPERTY BY A PERSON WHO KNOWS OR HAS REASON TO KNOW THAT THE OWNER IS A MENTALLY DISABLED OR MENTALLY INCAPACITATED PERSON;

S 3. Section 155.15 of the penal law is amended by adding a new subdivision 3 to read as follows:

3. IN ANY PROSECUTION FOR LARCENY COMMITTED BY TRESPASSORY TAKING OR EMBEZZLEMENT FROM A MENTALLY DISABLED OR MENTALLY INCAPACITATED PERSON,

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

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IT IS AN AFFIRMATIVE DEFENSE THAT THE DEFENDANT APPROPRIATED SUCH PROPERTY IN THE COURSE OF RENDERING ASSISTANCE WHICH BENEFITTED SUCH PERSON IN THE MANAGEMENT OF HIS OR HER AFFAIRS, AND THE VALUE OF SUCH PROPERTY WAS COMMENSURATE WITH THE BENEFIT CONFERRED.

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