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

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:

Section 1. The section heading and subdivision 1 of section 60.35 of the penal law, as amended by section 1 of part E of chapter 56 of the laws of 2004, subparagraphs (i), (ii) and (iii) of paragraph (a) of subdivision 1 as amended by section 1 of part DD of chapter 56 of the laws of 2008 and paragraph (b) of subdivision 1 as amended by chapter 320 of the laws of 2006, are amended to read as follows:

Mandatory surcharge, sex offender registration fee, DNA databank fee, supplemental sex offender victim fee [and], crime victim assistance AND A SENIOR ANTI-VIOLENCE SERVICES fee required in certain cases.

1. (a) Except as provided in section eighteen hundred nine of the vehicle and traffic law and section 27.12 of the parks, recreation and historic preservation law, whenever proceedings in an administrative tribunal or a court of this state result in a conviction for a felony, a misdemeanor, or a violation, as these terms are defined in section 10.00 of this chapter, there shall be levied at sentencing a mandatory surcharge, sex offender registration fee, DNA databank fee [and], a crime victim assistance fee AND A SENIOR ANTI-VIOLENCE SERVICES FEE in addition to any sentence required or permitted by law, in accordance with the following schedule:

(i) a person convicted of a felony shall pay a mandatory surcharge of three hundred dollars [and], a crime victim assistance fee of twenty-five dollars, AND A SENIOR ANTI-VIOLENCE SERVICES FEE OF FIFTY DOLLARS;

(ii) a person convicted of a misdemeanor shall pay a mandatory 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

assistance fee of twenty-five dollars, AND A SENIOR ANTI-VIOLENCE SERVICES FEE OF FIFTY DOLLARS;

(iii) a person convicted of a violation shall pay a mandatory surcharge of ninety-five dollars [and], a crime victim assistance fee of twenty-five dollars, AND A SENIOR ANTI-VIOLENCE SERVICES FEE OF FIFTY DOLLARS;

(iv) a person convicted of a sex offense as defined by subdivision two of section one hundred sixty-eight-a of the correction law or a sexually violent offense as defined by subdivision three of section one hundred sixty-eight-a of the correction law shall, in addition to a mandatory surcharge and crime victim assistance fee, pay a sex offender registration fee of fifty dollars[.], AND A SENIOR ANTI-VIOLENCE SERVICES FEE OF FIFTY DOLLARS;

(v) a person convicted of a designated offense as defined by subdivision seven of section nine hundred ninety-five of the executive law shall, in addition to a mandatory surcharge and crime victim assistance fee, pay a DNA databank fee of fifty dollars, AND A SENIOR ANTI-VIOLENCE SERVICES FEE OF FIFTY DOLLARS.

(b) When the felony or misdemeanor conviction in [subparagraphs] SUBPARAGRAPH (i), (ii) or (iv) of paragraph (a) of this subdivision results from an offense contained in article one hundred thirty of this chapter, incest in the third, second or first degree as defined in sections 255.25, 255.26 and 255.27 of this chapter or an offense contained in article two hundred sixty-three of this chapter, the person convicted shall pay a supplemental sex offender victim fee of one thousand dollars, AND A SENIOR ANTI-VIOLENCE SERVICES FEE OF FIVE HUNDRED DOLLARS, in addition to the mandatory surcharge and any other fee.

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

ARTICLE 261
OFFENSES AGAINST THE ELDERLY AND DISABLED

SECTION 261.00 ELDERLY, VULNERABLE ELDERLY AND DISABLED PERSONS; DEFINITIONS.
261.01 CRIMES AGAINST THE ELDERLY AND DISABLED; PRESUMPTION.
261.02 ABANDONMENT OF AN ELDERLY OR DISABLED PERSON.
261.03 ABANDONMENT OF AN ELDERLY OR DISABLED PERSON; DEFENSE.
261.04 ENDANGERING THE WELFARE OF AN ELDERLY OR DISABLED PERSON.
261.05 ENDANGERING THE WELFARE OF AN ELDERLY OR DISABLED PERSON; CORROBORATION.
261.06 ENDANGERING THE WELFARE OF AN ELDERLY OR DISABLED PERSON; DEFENSE.
261.07 ENDANGERING THE WELFARE OF A VULNERABLE ELDERLY PERSON OR A DISABLED PERSON IN THE SECOND DEGREE.
261.08 ENDANGERING THE WELFARE OF A VULNERABLE ELDERLY PERSON OR A DISABLED PERSON IN THE FIRST DEGREE.

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

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

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

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

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

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

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

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

S 261.01 CRIMES AGAINST THE ELDERLY AND DISABLED; PRESUMPTION.

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

S 261.02 ABANDONMENT OF AN ELDERLY OR DISABLED PERSON.

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

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

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

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

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

A PERSON IS GUILTY OF ENDANGERING THE WELFARE OF AN ELDERLY OR DISABLED PERSON WHEN BEING A PERSON LEGALLY CHARGED WITH THE CARE OR CUSTODY OF AN ELDERLY OR DISABLED PERSON:

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

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

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

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

A PERSON SHALL NOT BE CONVICTED OF ENDANGERING THE WELFARE OF AN ELDERLY OR DISABLED PERSON, OR OF AN ATTEMPT TO COMMIT THE SAME, UPON THE TESTIMONY OF A VICTIM WHO IS INCAPABLE OF CONSENT BECAUSE OF MENTAL DEFECT OR MENTAL INCAPACITY AS TO CONDUCT THAT CONSTITUTES AN OFFENSE OR 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.

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

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

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

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

S 135.30 Kidnapping; defense.

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

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

S 5. Section 135.45 of the penal law is amended by adding a new subdivision 3 to read as follows:

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

S 6. Section 140.10 of the penal law is amended by adding a new subdivision (h) to read as follows:

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

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

S 8. This act shall take effect immediately.