

OFFICE OF CHILDREN AND FAMILY SERVICES

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| INFORMATIONAL LETTER |  
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TRANSMITTAL: 99 OCFS INF-5

DIVISION: Development and  
Prevention Services  
TO: Commissioners of  
Social Services

DATE: March 10, 1999

SUBJECT: Protective Services for Adults: Amendments to Penal  
Law Concerning Vulnerable Elderly Adults/ Chapter  
381 of the Laws of 1998

SUGGESTED

DISTRIBUTION: Directors of Services  
Protective Services for Adults staff  
Agency Attorneys

CONTACT PERSON: Any questions concerning this release should  
be directed to your district's Adult Services  
representative as follows:

Kathleen Crowe (518) 486-3451 or USERID ROF017  
Carole Fox (518) 474-3167 or USERID AX5050  
Michael Monahan (518) 474-9590 or USERID AY3860

ATTACHMENTS: Chapter 381 of the Laws of 1998

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref. SSL 473.5 Penal Law 260.25, 260.30, 260.32, and 260.34	Manual Ref.	Misc. Ref.
97 ADM-2					
95 INF-10					

The purpose of this release is to inform local districts of recent amendments to the Penal Law concerning crimes against physically disabled and vulnerable elderly persons. Local district Protective Services for Adults (PSA) staff need to be aware of these amendments since they are required, under SSL 473.5, to report to the police whenever they suspect that a criminal offense has been committed against a person being assessed for or receiving PSA. The amendments were enacted by Chapter 381 of the Laws of 1998 and took effect on November 1, 1998.

Section one of the recently enacted law expands the crime of Endangering the Welfare of an Incompetent Person (Penal Law Section 260.25) to include physically disabled persons. As amended, a person is guilty of this crime if he or she knowingly acts in a manner likely to be injurious to the physical, mental or moral welfare of a person unable to care for himself or herself due to physical disability, mental disease or defect. The crime remains a class A misdemeanor.

Sections four and five of the law establish new felony crimes of "Endangering the Welfare of a Vulnerable Elderly Person" in the second and first degree (Penal Law Sections 260.32 and 260.34). These laws significantly increase penalties where a person who is a caregiver assaults or sexually abuses a vulnerable elderly person in his or her care.

Penal Law section 260.30 defines a caregiver as a person who:

- \* assumes responsibility for the care of a vulnerable elderly person pursuant to a court order; or
- \* receives monetary or other valuable consideration for providing care for a vulnerable elderly person.

This definition may include guardians, licensed or certified home health care providers, private care providers, acquaintances or family members who may be receiving money or "other valuable consideration" for the care they provide.

Penal Law section 260.30 also defines a vulnerable elderly person as 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.

A violation of Penal Law section 260.32, a class E felony, occurs, for example, when a caregiver assaults such an elderly person causing physical injury, or exposes such person to unwanted sexual contact. A violation of Penal Law section 260.34, a class D felony, occurs, for example, when an assault by a caregiver results in serious physical injury to a vulnerable elderly person.

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These amendments to the Penal Law became effective November 1, 1998. Protective Services for Adults staff should be aware of the provisions of these new Penal Law amendments since they may be applicable to investigations of alleged abuse of physically impaired and/or vulnerable elderly adults. A copy of the law is attached. Also, you can access the law through the internet address <http://www.assembly.state.ny.us>. Search for Laws of 1998, Chapter 381.

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Donald K. Smith  
Deputy Commissioner  
Development and Prevention Services

New York State 1999 Chapters  
Chapter 381

LAWS OF NEW YORK, 1998  
CHAPTER 381

AN ACT to amend the penal law, in relation to establishing the crime of endangering the welfare of a vulnerable elderly person

Became a law July 14, 1998, with the approval of the Governor.

Passed by a majority vote, three-fifths being present.

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

Section 1. The article heading of article 260 of the penal law is amended to read as follows:

OFFENSES RELATING TO CHILDREN  
{AND INCOMPETENTS}, DISABLED PERSONS AND  
VULNERABLE ELDERLY PERSONS

S 2. Section 260.25 of the penal law is amended to read as follows:

S 260.25 Endangering the welfare of an incompetent OR PHYSICALLY DISABLED person.

A person is guilty of endangering the welfare of an incompetent OR PHYSICALLY DISABLED person when he knowingly acts in a manner likely to be injurious to the physical, mental or moral welfare of a person who is unable to care for himself OR HERSELF because of PHYSICAL DISABILITY, mental disease or defect.

Endangering the welfare of an incompetent OR PHYSICALLY DISABLED person is a class A misdemeanor.

S 3. The penal law is amended by adding a new section 260.30 to read as follows:

S 260.30 VULNERABLE ELDERLY PERSONS; DEFINITIONS.

FOR THE PURPOSE OF SECTIONS 260.32 AND 260.34 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.

S 4. The penal law is amended by adding a new section 260.32 to read as follows:

S 260.32 ENDANGERING THE WELFARE OF A VULNERABLE ELDERLY PERSON IN THE SECOND DEGREE.

A PERSON IS GUILTY OF ENDANGERING THE WELFARE OF A VULNERABLE ELDERLY PERSON IN THE SECOND DEGREE WHEN, BEING A CAREGIVER FOR A VULNERABLE ELDERLY 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 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 DEFECT 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 DEFECTIVE, 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 IN THE SECOND DEGREE IS A CLASS E FELONY.

S 5. The penal law is amended by adding a new section 260.34 to read as follows:

S 260.34 ENDANGERING THE WELFARE OF A VULNERABLE ELDERLY PERSON IN THE FIRST DEGREE.

A PERSON IS GUILTY OF ENDANGERING THE WELFARE OF A VULNERABLE ELDERLY PERSON IN THE FIRST DEGREE WHEN, BEING A CAREGIVER FOR A VULNERABLE ELDERLY 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 IN THE FIRST DEGREE IS A CLASS D FELONY.

S 6. This act shall take effect November 1, 1998.

The Legislature of the STATE OF NEW YORK SS:

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

JOSEPH L. BRUNO SHELDON SILVER

TEMPORARY PRESIDENT OF THE SENATE SPEAKER OF THE ASSEMBLY