



## Legislation Text

---

**File #:** Res 1623-2008, **Version:** \*

---

### Res. No. 1623

Resolution calling upon the New York Legislature to pass and the Governor to sign A.306 and S.951, which would amend the New York State Penal Law in relation to creating definitions with respect to larceny against a mentally disabled or mentally incapacitated person.

By Council Members Vallone Jr., Fidler, Gentile, Liu, Nelson, Sanders Jr., Weprin and Gerson

Whereas, According to a study released in 2005 by the National Center on Elder Abuse, there may be over five million elder financial abuse victims each year in the United States; and

Whereas, The National Conference of State Legislatures reports that as many as one in five Americans residing in the United States could be 65 years of age or older by the year 2050, which in turn could create a large population vulnerable to abuse and exploitation; and

Whereas, Criminal investigations of offenders who steal from impaired seniors are often closed with no arrest because prosecutors are faced with cognitively impaired victims whose exploitation takes place with few or no witnesses, and whose impairment renders them incompetent to testify in court; and

Whereas, Those accused of such exploitation often claim that the property or monies they acquired were willingly gifted; and

Whereas, In order to confront this situation, the victims of this crime, those who are mentally disabled and/or mentally incapacitated, must be further defined within the New York State Penal Law (Penal Law) as a class so that prosecutors can more readily bring charges against their abusers; and

Whereas, A.306, currently pending in the New York State Assembly, and companion bill S.951, currently pending in the New York State Senate, seek to amend the Penal Law by establishing definitions with respect to larceny from mentally disabled and/or mentally incapacitated persons; and

Whereas, A.306 and S.951 would enable prosecutors to more easily charge exploiters who knowingly and wrongfully take, obtain, or withhold property from a mentally disabled and/or mentally incapacitated owner; and

Whereas, A.306 and S.951 would, however, create an affirmative defense applicable to cases in which the defendant obtained property in the course of rendering assistance that benefited the mentally afflicted owner, as long as the value of the appropriated property is proportional to the benefit received; and

Whereas, District Attorneys in New York are not only seeing an increasing number of elder financial abuse cases, but are also finding that they cannot adequately prosecute these criminals because present larceny statutes do not specifically define this type of theft; and

Whereas, This legislation further clarifies that the wrongful taking, obtaining or withholding of property from a victim who is mentally disabled or mentally incapacitated is a criminal act and that a victim's mental capacity, or lack thereof, should be assessed in determining whether there was a wrongful taking of property; now, therefore, be it

Resolved, That the Council of the City of New York calls upon the New York Legislature to pass and the Governor to sign A.306 and S.951, which would amend the New York State Penal Law in relation to creating definitions with respect to larceny against a mentally disabled or mentally incapacitated person.

WJH  
LS# 5822  
8/21/08