



Legislation Text

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Res. No. 426

Resolution in support of pending legislation in the New York State Legislature, which would amend the New York State Penal Law to criminalize taking property from a mentally disabled or mentally incapacitated individual.

By Council Members Vallone, Chin, Greenfield, James, Koslowitz, Nelson, Palma, Vacca and Mendez

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 Pew Research Center reports that the nation's elderly population--individuals who are 65 years of age or older-- is projected to grow to 81 million by the year 2050, from 37 million in 2005; and

Whereas, This significant demographic change will create a large population vulnerable to abuse and exploitation; and

Whereas, The elderly are often the target of larceny crimes due to their vulnerability; and

Whereas, Prosecutors report that they face some difficulties prosecuting larceny cases with elderly victims; and

Whereas, Kristen Kane, Chief of the Elder Fraud Unit of the Queens District Attorney's Office stated at a New York City Council Public Safety Committee hearing on June 23, 2008, that proving the element of wrongful taking can be difficult; and

Whereas, Those accused of larceny often claim as their defense that the property or monies they acquired were willingly gifted; and

Whereas, Another challenging aspect of these larceny cases includes the fact that the criminal investigations 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, In order to address these challenges, 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 as a class so that prosecutors can more readily bring charges against their abusers; and

Whereas, Senator George Maziarz and Assemblywoman Barbara Clark introduced S.2150 and A.2585, respectively, which seek to amend the Penal Law by adding definitions of a mentally disabled and/or mentally incapacitated person and by adding language to make taking property from a mentally disabled and/or mentally incapacitated person a crime; and

Whereas, S.2150 and A.2585 would enable prosecutors to more easily bring charges against exploiters who knowingly and wrongfully take, obtain, or withhold property from a mentally disabled and/or mentally incapacitated owner; and

Whereas, S.2150 and A.2585 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 increase in the 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 supports pending legislation in the New York State Legislature, which would amend the New York State Penal Law to criminalize taking property from a mentally

disabled or mentally incapacitated individual.

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