



NEW YORK STATE SENATOR

Shirley L. Huntley

## 3/24/2010: New law will increase punishments for caregivers who harm disabled and incompetent persons

SHIRLEY L. HUNTLEY March 23, 2010

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In the photo (From left) Assemblymen James Tedisco and Tim Gordon, Michael Carey and Senator Shirley L. Huntley celebrate a new law that establishes felony offenses for endangering the welfare of an incompetent or physically disabled person

Legislation that establishes felony offenses for endangering the welfare of an incompetent or physically disabled person was signed into law by Gov. David A. Paterson last Wednesday.

"This law was drafted to better protect the most vulnerable residents among us," said Assemblyman Tim Gordon, I-Bethlehem, the Assembly sponsor of the new law. "Previously, it was a felony to endanger the welfare of an elderly vulnerable person, but only a misdemeanor to endanger a younger person. That's just wrong."

This legislation (S.6728/A.9534) follows the passage of Jonathan's Law in 2007, which was passed by the Legislature after a 13-year-old autistic boy, Jonathan Carey, died in February 2007. Carey stopped breathing after he was restrained while in the care of two health aids employed by the state's O.D. Heck Developmental Center in Schenectady County.

"This vital piece of legislation will finally provide a necessary deterrent to abuse and offer better protection for vulnerable children and adults with disabilities," said Michael Carey, Jonathan's father. "It is an important step in reforming the state's mental health care system."

The new law mandates that caregivers found guilty of harming a disabled or incompetent individual in their care will face Class E or D felony charges, punishable by up to seven years in prison. Previously, this offense was punishable only as a class A misdemeanor, which carries a maximum sentence of up to one year in jail.

Paterson vetoed a version of this legislation in 2009 citing the lack of a definition for the term "incompetent." In his veto message, Paterson said the term, as written in the legislation, was too broad and covered a range of disabilities. There was also concern that victims would be asked to prove their disability in court, as a way to prove competence or incompetence, which could be construed as an invasion of privacy.

The law now includes the definition of incompetent to mean individuals who are unable to care for themselves because of a physical disability, mental disease or defect.

"Disabled individuals are often in a vulnerable position, as they must rely on caregivers for many of their basic needs," said the Senate sponsor Shirley Huntley, D-Queens. "I know firsthand how dedicated and loving caregivers are. However, as with any group, there are some people who should not be caregivers and must be held accountable."

Assemblyman James Tedisco, R-Schenectady, the champion of Buster's Law which was signed in 1999 to protect animals from cruelty by making such actions a felony, has been a strong supporter of this legislation.

"If we have a felony for cruelty to animals, we certainly should have a felony for any individuals who abuse disabled people," said Tedisco.

The new law will go into effect in 60 days.

Photo by Karla Cruz, The Legislative Gazette.