

May 13, 2008

Assemblyman Joseph R. Lentol  
New York State Assembly  
Legislative Office Building  
Room 632  
Albany, New York 12248

Re: A9813/S7942

Dear Assemblyman Lentol:

I write on behalf of the District Attorneys Association of the State of New York regarding the above-referenced bill. This legislation amends section 190.65 of the Penal Law, the crime of Scheme to Defraud in the First Degree, making it a felony to engage in such a scheme when it involves more than one vulnerable elderly person, as defined in subsection 3 of section 260.30 of the Penal Law.

As the sponsors' memorandum indicates, under current law, a misdemeanor-level scheme to defraud becomes a felony when the defendant intends to defraud 10 or more persons, or obtains property in excess of \$1000 from one or more persons. The collective experience of the members of the District Attorneys Association has shown that vulnerable elderly persons are often the most susceptible to financial exploitation, and they are frequently targeted by predators for that precise reason. Additionally, most vulnerable elderly persons have lost earning power and may find it especially difficult to recover from financial harm. In recognition of this unfortunate reality, we certainly agree that vulnerable elderly persons should be given extra protection under the Penal Law. We believe that A9813/S7942 is a step in the right direction and extend our support for this bill. In addition, I write to ask you to consider expanding this important public safety goal to cover more elderly victims of financial crimes.

The Legislature could even more strongly discourage the targeting of vulnerable elderly individuals by amending the larceny statute, Article 155 of the Penal Law, so that a petit larceny from a vulnerable elderly person or a person who has reached a specific advanced age, like 65, could be prosecuted as a felony. There are an increasing number of cases reported to law enforcement involving thefts by victims' family members, home aides or fiduciaries, in which defendants claim that the money was voluntarily transferred by an elderly victim who was clearly impaired. Although Article 130 of the Penal Law delineates when a victim is "incapable of consent" in defining sex offenses, Article 155 is silent on this issue with respect to impaired victims who are incapable of consenting to transfers of their property. Correcting this void in the larceny statute would greatly improve the ability of prosecutors to charge exploiters who prey on disabled or incapacitated persons, including seniors. Such an amendment would also provide protection for vulnerable elderly victims who are targeted individually rather than as part of an ongoing scheme.

In light of the growing number of New Yorkers who are living longer, we support the changes made by A9813/S7942 and encourage you to consider our suggestions for further measures to protect our seniors from abuse and exploitation.

Respectfully,

James A. Murphy, III  
President

cc: Senator John J. Flanagan