



NEW YORK STATE SENATOR

Patrick M. Gallivan

## Senator Gallivan Announces Senate Passes Bills to Protect Senior Citizens from Abuse

PATRICK M. GALLIVAN June 16, 2015

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Senator Patrick M. Gallivan (R-C-I, Elma) announces the Senate has passed a package of 10 bills to protect vulnerable senior citizens from predatory financial schemes and physical and emotional abuse. The legislation would create a statewide elder abuse reporting system and increase public awareness of elder mistreatment, facilitate the prosecution of individuals who endanger the welfare of seniors, and help ensure adequate care for the elderly in long-term care facilities.

“We have a responsibility to protect our senior citizens. Elder abuse, whether physical, psychological or financial, cannot be tolerated. This legislation makes sure those who abuse and exploit the elderly are held accountable and do not go unpunished.”

By 2050, people age 65 years or older are projected to comprise 20 percent of the United States population. Data from the state Adult Protective Services agencies indicate a national increase in reports of elder abuse. However, a New York State study on the prevalence of elder abuse found that for every known case, 24 were unreported.

Legislation passed by the Senate includes:

Bill (S-394), sponsored by Senator Gallivan, would allow recorded testimony from certain elderly witnesses to be used as evidence at a later date in a criminal proceeding. Under current law, victims can only be examined conditionally – or record their testimony before a trial begins – if they suffer from a demonstrable physical illness or incapacity. Unfortunately, some victims who appear healthy at the outset of an investigation pass away before the trial begins.

The Senate also approved legislation to better protect mentally impaired victims from financial exploitation. Bill (S-624) would allow prosecutors to obtain patient medical records with a subpoena upon showing that the patient suffers from a mental disability and that the patient has been the victim of a crime. Some health care providers currently refuse to produce these records in response to grand jury subpoenas on the grounds that doing so would violate the physician-patient confidentiality privilege. Mentally impaired individuals are usually unable to waive this confidentiality privilege for prosecutors and, as a result, law enforcement efforts against elder fraud have suffered. By allowing prosecutors to obtain medical records of mentally impaired patients with a subpoena, this legislation would facilitate the prosecution of individuals who have preyed on vulnerable seniors.

The Senate passed “Peter Falk’s Law” (S-5154-A) to safeguard against the isolation of the elderly from family and friends. This bill would require guardians to notify adult children and other close relatives if the elderly individual enters the hospital, if he or she dies, and of burial and funeral information. Adult children would also be able to petition the court for visitation rights if the parent is unreasonably isolated from his or her relatives.

The Senate gave final passage to (S-5482) which would improve the ability of out-of-state guardians to best represent the interests of an elderly person, and further simplify the process for determining jurisdiction among multiple states in adult guardianship cases. The legislation clarifies that an adult guardian appointed in another state can appear in New York courts, if authorized to do so by the appointing court. The guardian would also be allowed to sell real estate using the same process as guardians appointed in New York, and without having to go through a duplicative state guardianship process.

The Senate also approved legislation (S-5905) that would broaden the focus of New York’s State Committee for the Coordination of Police Services to Elderly Persons. This committee studies and evaluates Triad Programs, which are partnerships between senior citizens, senior providers, and law enforcement to identify and respond to cases of elder abuse. Today’s legislation would authorize the committee to examine approaches to improving the quality of life for seniors in addition to the Triad Program to further protect elderly citizens from physical, emotional, and financial abuse.

Bill (S-639) authorizes banks to refuse to carry out a monetary transaction if there is reason to believe that it involves the financial exploitation of an elderly adult. The banking institution may also provide relevant records to law enforcement and social service officials investigating these crimes. By allowing a banking

organization to refuse to conduct a monetary transaction if there is evidence of financial exploitation, this bill would provide protection for all vulnerable adults who are 18 years of age or older.

In addition, legislation (S-641) would expand the definition of a caregiver in penal law in order to protect seniors from individuals who endanger their welfare. Currently, a caregiver is defined as a person who assumes responsibility of care of a vulnerable elderly, incompetent, or physically disabled person under court order, or who receive monetary or other compensation for providing such care. Law enforcement officers have been frustrated by the limitations of this description, which does not extend to unpaid individuals. Today's bill would broaden that definition to include someone who assumes responsibility of a vulnerable person without a court order, such as a volunteer caregiver, appointed guardian, or power of attorney, eliminating a crucial barrier to the prosecution of elder abuse.

The Senate approved a bill (S-852) to better identify and prevent incidences of elder abuse throughout New York State. Under this legislation, the state Office of Children and Family Services (OCFS), along with the state Office for the Aging, would be required to collect and analyze data on the mistreatment and neglect of seniors from state and local agencies, create an interagency elder abuse reporting system, and produce a report with recommendations to prevent these offenses from occurring.

In addition, a bill (S-5328) would increase awareness of the financial exploitation and neglect of senior citizens statewide. The legislation would authorize the state Office for the Aging to conduct a public relations campaign on preventing elder abuse, including its signs and symptoms, potential causes, resources available to assist in its prevention, and assistance with arranging personal care and shelter for the elderly.

The Senate passed legislation (S-5702) to extend the Long Term Care Ombudsman Program (LTCOP). The LTCOP is an important advocate for seniors in long-term care facilities such as nursing homes, assisted living facilities, and adult homes. Certified ombudsmen represent residents' interests and needs, and resolve issues surrounding the care and quality of life for seniors. Currently, the LTCOP is authorized to oversee managed long-term care plans, but these provisions are set to expire on December 31, 2015. By extending this program, this bill would enable further study on the role of LTCOP, and help ensure that seniors are receiving the best, most appropriate care.

The bills have been sent to the Assembly, except S-5482 and S-5905, which will be sent to the Governor for review.