



NEW YORK STATE SENATOR

Patrick M. Gallivan

## Senator Gallivan Announces Passage of Bills to Better Protect Seniors from Abuse

JIM RANNEY April 15, 2016

| ISSUE: **ELDER ABUSE, SENIORS**



Senator Patrick M. Gallivan (R-C-I, Elma) announces the Senate has passed a bill to make it easier for victims of elder abuse to provide testimony in criminal proceedings against their abuser. The legislation (S394) would allow elderly witnesses, age 75 or older, to be examined conditionally in order to preserve their testimony for future use.

“We have a responsibility to protect our senior citizens,” Gallivan said. “Elder abuse, whether physical, psychological or financial, is on the rise as our senior population continues to grow. This legislation helps ensure those who abuse and exploit the elderly are held accountable and do not go unpunished.”

The bill would allow recorded testimony from 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.

In a case prosecuted a few years ago, a man in his 90’s, said to be in good health for his age, was the victim of theft by his long-time home aide. He passed away after the aide’s arrest but before the case was presented to a Grand Jury. The case was prosecuted, but would have been improvable if the aide had not confessed.

“Offenders should not be able to game the system by delaying legal proceedings in the hope that an elderly witness will pass away before trial,” Gallivan said.

A conditional examination would preserve the testimony of witnesses who are of advanced age.

The Senate also approved legislation (S395) sponsored by Gallivan that would help prevent the financial exploitation of elderly individuals who suffer from a mental impairment. The bill would prevent a person from claiming he or she obtained consent to withhold or obtain property from a person they knew or had reason to know was mentally disabled.

The legislation also amends the Penal Law to update the definition of the term "mentally disabled" to include 'a person who suffers from a mental disease, defect or condition which

renders him or her incapable of consenting to the taking, obtaining or withholding of his or her property.'

“An elderly individual who suffers from an age-related cognitive disorder may not be able to fully understand their finances or remember signing important documents,” Gallivan said.

“Too often, older adults are not in the position to give meaningful consent to the transfer of property, real estate and financial accounts and fall victim to those trying to take advantage of them. This legislation will help prevent the financial exploitation of our seniors.”

Current law requires proof that a defendant wrongfully took or withheld property without consent. However, a mentally impaired individual may not be able to give meaningful consent and may be unable to testify against a defendant who wrongfully takes or obtains his or her property.

The legislation will codify a ruling stemming from *People v. Caminola*. The case involved a defendant who stole from an elderly woman over a two year period, claiming the funds he took were gifts from the victim. The trial court permitted the prosecution to introduce evidence of the victim’s mental condition at the time of the transfer, deeming it relevant to whether she had the capacity to consent.

Both bills have been sent to the State Assembly.

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#### RELATED LEGISLATION

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**2015-S394**

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- Introduced
- - In Committee Assembly
  - In Committee Senate
- - On Floor Calendar Assembly
  - On Floor Calendar Senate
- - Passed Assembly
  - Passed Senate
- Delivered to Governor
- Signed By Governor
- 

Relates to the examination of witnesses

December 24, 2014

In Assembly Committee

Sponsored by **Patrick M. Gallivan**

Do you support this bill?

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## 2015-S395

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- Introduced

- ○ In Committee Assembly
  - In Committee Senate
  
- ○ On Floor Calendar Assembly
  - On Floor Calendar Senate
  
- ○ Passed Assembly
  - Passed Senate
  
- Delivered to Governor
  
- Signed By Governor
  
- 

Relates to the definition of mentally disabled and the crime of larceny

December 24, 2014

In Assembly Committee

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Do you support this bill?