## 96TH GENERAL ASSEMBLY

## State of Illinois

# 2009 and 2010

#### HB1016

Introduced 2/11/2009, by Rep. Careen M Gordon

### SYNOPSIS AS INTRODUCED:

720 ILCS 5/16-1.3

from Ch. 38, par. 16-1.3

Amends the Criminal Code of 1961. Makes a technical change in a Section concerning financial exploitation of an elderly person or a person with a disability.

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AN ACT concerning criminal law.

# 2 Be it enacted by the People of the State of Illinois, 3 represented in the General Assembly:

Section 5. The Criminal Code of 1961 is amended by changing
Section 16-1.3 as follows:

6 (720 ILCS 5/16-1.3) (from Ch. 38, par. 16-1.3)

Sec. 16-1.3. Financial exploitation of an elderly person or
a person with a disability.

9 A person commits the the offense of financial (a) exploitation of an elderly person or a person with a disability 10 when he or she stands in a position of trust or confidence with 11 12 the elderly person or a person with a disability and he or she 13 knowingly and by deception or intimidation obtains control over 14 the property of an elderly person or a person with a disability or illegally uses the assets or resources of an elderly person 15 16 or a person with a disability. The illegal use of the assets or 17 resources of an elderly person or a person with a disability includes, but is not limited to, the misappropriation of those 18 19 assets or resources by undue influence, breach of a fiduciary 20 relationship, fraud, deception, extortion, or use of the assets 21 or resources contrary to law.

Financial exploitation of an elderly person or a person with a disability is a Class 4 felony if the value of the

property is \$300 or less, a Class 3 felony if the value of the 1 2 property is more than \$300 but less than \$5,000, a Class 2 3 felony if the value of the property is \$5,000 or more but less than \$100,000 and a Class 1 felony if the value of the property 4 5 is \$100,000 or more or if the elderly person is over 70 years of age and the value of the property is \$15,000 or more or if 6 7 the elderly person is 80 years of age or older and the value of 8 the property is \$5,000 or more.

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(b) For purposes of this Section:

10 (1) "Elderly person" means a person 60 years of age or11 older.

12 (2) "Person with a disability" means a person who suffers from a physical or mental impairment resulting from 13 14 disease, injury, functional disorder or congenital 15 condition that impairs the individual's mental or physical 16 ability to independently manage his or her property or 17 financial resources, or both.

(3) "Intimidation" means the communication to an
elderly person or a person with a disability that he or she
shall be deprived of food and nutrition, shelter,
prescribed medication or medical care and treatment.

(4) "Deception" means, in addition to its meaning as
defined in Section 15-4 of this Code, a misrepresentation
or concealment of material fact relating to the terms of a
contract or agreement entered into with the elderly person
or person with a disability or to the existing or

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1 pre-existing condition of any of the property involved in 2 such contract or agreement; or the use or employment of any 3 misrepresentation, false pretense or false promise in 4 order to induce, encourage or solicit the elderly person or 5 person with a disability to enter into a contract or 6 agreement.

(c) For purposes of this Section, a person stands in a 7 position of trust and confidence with an elderly person or 8 9 person with a disability when he (1) is a parent, spouse, adult 10 child or other relative by blood or marriage of the elderly 11 person or person with a disability, (2) is a joint tenant or 12 tenant in common with the elderly person or person with a 13 disability, (3) has a legal or fiduciary relationship with the 14 elderly person or person with a disability, or (4) is a 15 financial planning or investment professional.

16 (d) Nothing in this Section shall be construed to limit the 17 remedies available to the victim under the Illinois Domestic 18 Violence Act of 1986.

(e) Nothing in this Section shall be construed to impose criminal liability on a person who has made a good faith effort to assist the elderly person or person with a disability in the management of his or her property, but through no fault of his or her own has been unable to provide such assistance.

(f) It shall not be a defense to financial exploitation of an elderly person or person with a disability that the accused reasonably believed that the victim was not an elderly person

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1 or person with a disability.

2 (g) Civil Liability. A person who is charged by information or indictment with the offense of financial exploitation of an 3 elderly person or person with a disability and who fails or 4 5 refuses to return the victim's property within 60 days 6 following a written demand from the victim or the victim's legal representative shall be liable to the victim or to the 7 estate of the victim in damages of treble the amount of the 8 9 value of the property obtained, plus reasonable attorney fees 10 and court costs. The burden of proof that the defendant 11 unlawfully obtained the victim's property shall be by a 12 preponderance of the evidence. This subsection shall be 13 operative whether or not the defendant has been convicted of the offense. 14

15 (Source: P.A. 95-798, eff. 1-1-09.)

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