
SYNOPSIS AS INTRODUCED:

720 ILCS 5/17-56 was 720 ILCS 5/16-1.3

Amends the Criminal Code of 2012. Provides that any person who assumes the responsibility of managing the financial affairs of an elderly person who is a resident of a facility licensed under the Nursing Home Care Act or person with a disability who is a resident of a facility licensed under the Nursing Home Care Act commits financial exploitation of an elderly person or person with a disability if that person assumes the responsibility of managing the financial affairs of the elderly person or person with a disability and fails to pay for the facility care of the elderly person or person with a disability from the assets or income of the elderly person or person with a disability. Provides that evidence of misappropriating funds and failure to pay for the care of an elderly or disabled person may include proof that the facility has sent to the person who has assumed responsibility of managing the financial affairs of an elderly person or person with a disability, by certified mail with confirmation receipt requested, notification of failure to pay facility care expenses incurred by the elderly person or person with a disability. Effective immediately.

CORRECTIONAL BUDGET AND IMPACT NOTE ACT MAY APPLY

FISCAL NOTE ACT MAY APPLY

A BILL FOR
AN ACT concerning criminal law.

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

Section 5. The Criminal Code of 2012 is amended by changing Section 17-56 as follows:

(720 ILCS 5/17-56) (was 720 ILCS 5/16-1.3)

Sec. 17-56. Financial exploitation of an elderly person or a person with a disability.

(a) A person commits financial exploitation of an elderly person or a person with a disability when he or she stands in a position of trust or confidence with the elderly person or a person with a disability and he or she knowingly and by deception or intimidation obtains control over the property of an elderly person or a person with a disability or illegally uses the assets or resources of an elderly person or a person with a disability.

(a-5) A person commits financial exploitation of an elderly person or a person with a disability when he or she assumes the responsibility of managing the financial affairs of an elderly person who is a resident of a facility licensed under the Nursing Home Care Act or person with a disability who is a resident of a facility licensed under the Nursing Home Care Act and fails to pay for the facility care of the elderly person or
person with a disability from the assets and income of the elderly person or person with a disability. For purposes of this subsection (a-5), a person assumes the responsibility of managing the financial affairs of an elderly person or a person with a disability when he or she receives, has access to, handles, or controls the funds of the elderly person or person with a disability, including, but not limited to, benefits under the federal Social Security Act, pension, cash, or other income.

(b) Sentence. Financial exploitation of an elderly person or a person with a disability is: (1) a Class 4 felony if the value of the property is $300 or less, (2) a Class 3 felony if the value of the property is more than $300 but less than $5,000, (3) a Class 2 felony if the value of the property is $5,000 or more but less than $50,000, and (4) a Class 1 felony if the value of the property is $50,000 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 the elderly person is 80 years of age or older and the value of the property is $5,000 or more.

(c) For purposes of this Section:

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

(2) "Person with a disability" means a person who suffers from a physical or mental impairment resulting from disease, injury, functional disorder or congenital
condition that impairs the individual's mental or physical ability to independently manage his or her property or 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 or conduct as provided in Section 12-6 of this Code.

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

The illegal use of the assets or resources of an elderly person or a person with a disability includes, but is not limited to, the misappropriation of those assets or resources by undue influence, breach of a fiduciary relationship, fraud, deception, extortion, or use of the assets or resources contrary to law.

A person stands in a position of trust and confidence with
an elderly person or person with a disability when he (i) is a
parent, spouse, adult child or other relative by blood or
marriage of the elderly person or person with a disability,
(ii) is a joint tenant or tenant in common with the elderly
person or person with a disability, (iii) has a legal or
fiduciary relationship with the elderly person or person with a
disability, (iv) is a financial planning or investment
professional, or (v) is a paid or unpaid caregiver for the
elderly person or person with a disability.

(d) Limitations. Nothing in this Section shall be construed
to limit the remedies available to the victim under the

(e) Good faith efforts. 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) Not a defense. 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 or person with a disability.

(g) Civil Liability. A civil cause of action exists for
financial exploitation of an elderly person or a person with a
disability as described in subsection (a) of this Section. A
person against whom a civil judgment has been entered for
financial exploitation of an elderly person or person with a
disability shall be liable to the victim or to the estate of
the victim in damages of treble the amount of the value of the
property obtained, plus reasonable attorney fees and court
costs. In a civil action under this subsection, the burden of
proof that the defendant committed financial exploitation of an
elderly person or a person with a disability as described in
subsection (a) of this Section shall be by a preponderance of
the evidence. This subsection shall be operative whether or not
the defendant has been charged or convicted of the criminal
offense as described in subsection (a) of this Section. This
subsection (g) shall not limit or affect the right of any
person to bring any cause of action or seek any remedy
available under the common law, or other applicable law,
arising out of the financial exploitation of an elderly person
or a person with a disability.

(h) If a person is charged with financial exploitation of
an elderly person or a person with a disability that involves
the taking or loss of property valued at more than $5,000, a
prosecuting attorney may file a petition with the circuit court
of the county in which the defendant has been charged to freeze
the assets of the defendant in an amount equal to but not
greater than the alleged value of lost or stolen property in
the defendant's pending criminal proceeding for purposes of
restitution to the victim. The burden of proof required to
freeze the defendant's assets shall be by a preponderance of
(i) Evidence of misappropriating funds and failure to pay for the facility care of an elderly person or person with a disability may include, but is not limited to, proof that the facility has sent to the person who has assumed responsibility of managing the financial affairs of an elderly person or person with a disability, by certified mail with confirmation receipt requested, notification of failure to pay facility care expenses incurred by the elderly person or person with a disability.

(Source: P.A. 99-272, eff. 1-1-16.)

Section 99. Effective date. This Act takes effect upon becoming law.