

**SB3128**



**101ST GENERAL ASSEMBLY**

**State of Illinois**

**2019 and 2020**

**SB3128**

Introduced 2/6/2020, by Sen. Rachelle Crowe

**SYNOPSIS AS INTRODUCED:**

720 ILCS 5/17-56

was 720 ILCS 5/16-1.3

Amends the Criminal Code of 2012 concerning the offense of financial exploitation of an elderly person or a person with a disability. Expands the scope of "person who stands in a position of trust and confidence" to include a friend or acquaintance of the elderly person or person with a disability who is in a position of trust.

LRB101 20364 RLC 69910 b

CORRECTIONAL  
BUDGET AND  
IMPACT NOTE ACT  
MAY APPLY

**A BILL FOR**

1 AN ACT concerning criminal law.

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

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

6 (720 ILCS 5/17-56) (was 720 ILCS 5/16-1.3)

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

9 (a) A person commits financial exploitation of an elderly  
10 person or a person with a disability when he or she stands in a  
11 position of trust or confidence with the elderly person or a  
12 person with a disability and he or she knowingly:

13 (1) by deception or intimidation obtains control over  
14 the property of an elderly person or a person with a  
15 disability; or

16 (2) illegally uses the assets or resources of an  
17 elderly person or a person with a disability.

18 (b) Sentence. Financial exploitation of an elderly person  
19 or a person with a disability is: (1) a Class 4 felony if the  
20 value of the property is \$300 or less, (2) a Class 3 felony if  
21 the value of the property is more than \$300 but less than  
22 \$5,000, (3) a Class 2 felony if the value of the property is  
23 \$5,000 or more but less than \$50,000, and (4) a Class 1 felony

1 if the value of the property is \$50,000 or more or if the  
2 elderly person is over 70 years of age and the value of the  
3 property is \$15,000 or more or if the elderly person is 80  
4 years of age or older and the value of the property is \$5,000  
5 or more.

6 (c) For purposes of this Section:

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

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

15 (3) "Intimidation" means the communication to an  
16 elderly person or a person with a disability that he or she  
17 shall be deprived of food and nutrition, shelter,  
18 prescribed medication or medical care and treatment or  
19 conduct as provided in Section 12-6 of this Code.

20 (4) "Deception" means, in addition to its meaning as  
21 defined in Section 15-4 of this Code, a misrepresentation  
22 or concealment of material fact relating to the terms of a  
23 contract or agreement entered into with the elderly person  
24 or person with a disability or to the existing or  
25 pre-existing condition of any of the property involved in  
26 such contract or agreement; or the use or employment of any

1           misrepresentation, false pretense or false promise in  
2           order to induce, encourage or solicit the elderly person or  
3           person with a disability to enter into a contract or  
4           agreement.

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

11          A person stands in a position of trust and confidence with  
12          an elderly person or person with a disability when he (i) is a  
13          parent, spouse, adult child or other relative by blood or  
14          marriage of the elderly person or person with a disability,  
15          (ii) is a joint tenant or tenant in common with the elderly  
16          person or person with a disability, (iii) has a legal or  
17          fiduciary relationship with the elderly person or person with a  
18          disability, (iv) is a financial planning or investment  
19          professional, ~~or~~ (v) is a paid or unpaid caregiver for the  
20          elderly person or person with a disability, or (vi) is a friend  
21          or acquaintance in a position of trust.

22          (d) Limitations. Nothing in this Section shall be construed  
23          to limit the remedies available to the victim under the  
24          Illinois Domestic Violence Act of 1986.

25          (e) Good faith efforts. Nothing in this Section shall be  
26          construed to impose criminal liability on a person who has made

1 a good faith effort to assist the elderly person or person with  
2 a disability in the management of his or her property, but  
3 through no fault of his or her own has been unable to provide  
4 such assistance.

5 (f) Not a defense. It shall not be a defense to financial  
6 exploitation of an elderly person or person with a disability  
7 that the accused reasonably believed that the victim was not an  
8 elderly person or person with a disability. Consent is not a  
9 defense to financial exploitation of an elderly person or a  
10 person with a disability if the accused knew or had reason to  
11 know that the elderly person or a person with a disability  
12 lacked capacity to consent.

13 (g) Civil Liability. A civil cause of action exists for  
14 financial exploitation of an elderly person or a person with a  
15 disability as described in subsection (a) of this Section. A  
16 person against whom a civil judgment has been entered for  
17 financial exploitation of an elderly person or person with a  
18 disability shall be liable to the victim or to the estate of  
19 the victim in damages of treble the amount of the value of the  
20 property obtained, plus reasonable attorney fees and court  
21 costs. In a civil action under this subsection, the burden of  
22 proof that the defendant committed financial exploitation of an  
23 elderly person or a person with a disability as described in  
24 subsection (a) of this Section shall be by a preponderance of  
25 the evidence. This subsection shall be operative whether or not  
26 the defendant has been charged or convicted of the criminal

1 offense as described in subsection (a) of this Section. This  
2 subsection (g) shall not limit or affect the right of any  
3 person to bring any cause of action or seek any remedy  
4 available under the common law, or other applicable law,  
5 arising out of the financial exploitation of an elderly person  
6 or a person with a disability.

7 (h) If a person is charged with financial exploitation of  
8 an elderly person or a person with a disability that involves  
9 the taking or loss of property valued at more than \$5,000, a  
10 prosecuting attorney may file a petition with the circuit court  
11 of the county in which the defendant has been charged to freeze  
12 the assets of the defendant in an amount equal to but not  
13 greater than the alleged value of lost or stolen property in  
14 the defendant's pending criminal proceeding for purposes of  
15 restitution to the victim. The burden of proof required to  
16 freeze the defendant's assets shall be by a preponderance of  
17 the evidence.

18 (Source: P.A. 101-394, eff. 1-1-20.)