



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB6079

Introduced 2/11/2016, by Rep. Tom Demmer

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.

LRB099 20555 MJP 45106 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

FISCAL NOTE ACT
MAY APPLY

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 and by
13 deception or intimidation obtains control over the property of
14 an elderly person or a person with a disability or illegally
15 uses the assets or resources of an elderly person or a person
16 with a disability.

17 (a-5) A person commits financial exploitation of an elderly
18 person or a person with a disability when he or she assumes the
19 responsibility of managing the financial affairs of an elderly
20 person who is a resident of a facility licensed under the
21 Nursing Home Care Act or person with a disability who is a
22 resident of a facility licensed under the Nursing Home Care Act
23 and fails to pay for the facility care of the elderly person or

1 person with a disability from the assets and income of the
2 elderly person or person with a disability. For purposes of
3 this subsection (a-5), a person assumes the responsibility of
4 managing the financial affairs of an elderly person or a person
5 with a disability when he or she receives, has access to,
6 handles, or controls the funds of the elderly person or person
7 with a disability, including, but not limited to, benefits
8 under the federal Social Security Act, pension, cash, or other
9 income.

10 (b) Sentence. Financial exploitation of an elderly person
11 or a person with a disability is: (1) a Class 4 felony if the
12 value of the property is \$300 or less, (2) a Class 3 felony if
13 the value of the property is more than \$300 but less than
14 \$5,000, (3) a Class 2 felony if the value of the property is
15 \$5,000 or more but less than \$50,000, and (4) a Class 1 felony
16 if the value of the property is \$50,000 or more or if the
17 elderly person is over 70 years of age and the value of the
18 property is \$15,000 or more or if the elderly person is 80
19 years of age or older and the value of the property is \$5,000
20 or more.

21 (c) For purposes of this Section:

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

24 (2) "Person with a disability" means a person who
25 suffers from a physical or mental impairment resulting from
26 disease, injury, functional disorder or congenital

1 condition that impairs the individual's mental or physical
2 ability to independently manage his or her property or
3 financial resources, or both.

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

9 (4) "Deception" means, in addition to its meaning as
10 defined in Section 15-4 of this Code, a misrepresentation
11 or concealment of material fact relating to the terms of a
12 contract or agreement entered into with the elderly person
13 or person with a disability or to the existing or
14 pre-existing condition of any of the property involved in
15 such contract or agreement; or the use or employment of any
16 misrepresentation, false pretense or false promise in
17 order to induce, encourage or solicit the elderly person or
18 person with a disability to enter into a contract or
19 agreement.

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

26 A person stands in a position of trust and confidence with

1 an elderly person or person with a disability when he (i) is a
2 parent, spouse, adult child or other relative by blood or
3 marriage of the elderly person or person with a disability,
4 (ii) is a joint tenant or tenant in common with the elderly
5 person or person with a disability, (iii) has a legal or
6 fiduciary relationship with the elderly person or person with a
7 disability, (iv) is a financial planning or investment
8 professional, or (v) is a paid or unpaid caregiver for the
9 elderly person or person with a disability.

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

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

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

23 (g) Civil Liability. A civil cause of action exists for
24 financial exploitation of an elderly person or a person with a
25 disability as described in subsection (a) of this Section. A
26 person against whom a civil judgment has been entered for

1 financial exploitation of an elderly person or person with a
2 disability shall be liable to the victim or to the estate of
3 the victim in damages of treble the amount of the value of the
4 property obtained, plus reasonable attorney fees and court
5 costs. In a civil action under this subsection, the burden of
6 proof that the defendant committed financial exploitation of an
7 elderly person or a person with a disability as described in
8 subsection (a) of this Section shall be by a preponderance of
9 the evidence. This subsection shall be operative whether or not
10 the defendant has been charged or convicted of the criminal
11 offense as described in subsection (a) of this Section. This
12 subsection (g) shall not limit or affect the right of any
13 person to bring any cause of action or seek any remedy
14 available under the common law, or other applicable law,
15 arising out of the financial exploitation of an elderly person
16 or a person with a disability.

17 (h) If a person is charged with financial exploitation of
18 an elderly person or a person with a disability that involves
19 the taking or loss of property valued at more than \$5,000, a
20 prosecuting attorney may file a petition with the circuit court
21 of the county in which the defendant has been charged to freeze
22 the assets of the defendant in an amount equal to but not
23 greater than the alleged value of lost or stolen property in
24 the defendant's pending criminal proceeding for purposes of
25 restitution to the victim. The burden of proof required to
26 freeze the defendant's assets shall be by a preponderance of

1 the evidence.

2 (i) Evidence of misappropriating funds and failure to pay
3 for the facility care of an elderly person or person with a
4 disability may include, but is not limited to, proof that the
5 facility has sent to the person who has assumed responsibility
6 of managing the financial affairs of an elderly person or
7 person with a disability, by certified mail with confirmation
8 receipt requested, notification of failure to pay facility care
9 expenses incurred by the elderly person or person with a
10 disability.

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

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