



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB4024

Introduced 2/28/2005, by Rep. Sara Feigenholtz

SYNOPSIS AS INTRODUCED:

320 ILCS 20/2	from Ch. 23, par. 6602
320 ILCS 20/4	from Ch. 23, par. 6604
320 ILCS 20/5	from Ch. 23, par. 6605
320 ILCS 20/8	from Ch. 23, par. 6608
320 ILCS 20/8.5 new	
320 ILCS 20/9	from Ch. 23, par. 6609
320 ILCS 20/13	
720 ILCS 5/16-1.3	from Ch. 38, par. 16-1.3

Amends the Elder Abuse and Neglect Act and the Criminal Code of 1961. In the Elder Abuse and Neglect Act: (1) in the definition of "mandated reporter", removes references to "professional" and adds certain financial institutions as mandated reporters; (2) adds definitions of "protective services" and "self-neglect", and requires that suspected self-neglect be reported under the Act; (3) requires that a law enforcement officer accompany the representative of a provider agency on the first visit to a victim; (4) makes changes concerning the investigation of reports under the Act; (5) adds entities entitled to access to records of reports under the Act; (6) provides for cooperation between the Department on Aging and local law enforcement agencies; (7) authorizes actions to be taken in an emergency; and (8) makes other changes. In provisions of the Criminal Code of 1961 concerning the offense of financial exploitation of an elderly person or a person with a disability, (i) in the definition of "person with a disability", removes a reference to a "permanent" impairment and (ii) provides that "intimidation" also means the communication to an elderly person or a person with a disability that he or she will be unnecessarily moved from his or her current residence to another residence or to a facility.

LRB094 06198 DRJ 41857 b

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning aging.

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

4 Section 5. The Elder Abuse and Neglect Act is amended by
5 changing Sections 2, 4, 5, 8, 9, and 13 and by adding Section
6 8.5 as follows:

7 (320 ILCS 20/2) (from Ch. 23, par. 6602)

8 Sec. 2. Definitions. As used in this Act, unless the
9 context requires otherwise:

10 (a) "Abuse" means causing any physical, mental or sexual
11 injury to an eligible adult, including exploitation of such
12 adult's financial resources.

13 Nothing in this Act shall be construed to mean that an
14 eligible adult is a victim of abuse or neglect for the sole
15 reason that he or she is being furnished with or relies upon
16 treatment by spiritual means through prayer alone, in
17 accordance with the tenets and practices of a recognized church
18 or religious denomination.

19 Nothing in this Act shall be construed to mean that an
20 eligible adult is a victim of abuse because of health care
21 services provided or not provided by licensed health care
22 professionals.

23 (a-5) "Abuser" means a person who abuses, neglects, or
24 financially exploits an eligible adult.

25 (a-7) "Caregiver" means a person who either as a result of
26 a family relationship, voluntarily, or in exchange for
27 compensation has assumed responsibility for all or a portion of
28 the care of an eligible adult who needs assistance with
29 activities of daily living.

30 (b) "Department" means the Department on Aging of the State
31 of Illinois.

32 (c) "Director" means the Director of the Department.

1 (d) "Domestic living situation" means a residence where the
2 eligible adult lives alone or with his or her family or a
3 caregiver, or others, or a board and care home or other
4 community-based unlicensed facility, but is not:

5 (1) A licensed facility as defined in Section 1-113 of
6 the Nursing Home Care Act;

7 (2) A "life care facility" as defined in the Life Care
8 Facilities Act;

9 (3) A home, institution, or other place operated by the
10 federal government or agency thereof or by the State of
11 Illinois;

12 (4) A hospital, sanitarium, or other institution, the
13 principal activity or business of which is the diagnosis,
14 care, and treatment of human illness through the
15 maintenance and operation of organized facilities
16 therefor, which is required to be licensed under the
17 Hospital Licensing Act;

18 (5) A "community living facility" as defined in the
19 Community Living Facilities Licensing Act;

20 (6) A "community residential alternative" as defined
21 in the Community Residential Alternatives Licensing Act;
22 and

23 (7) A "community-integrated living arrangement" as
24 defined in the Community-Integrated Living Arrangements
25 Licensure and Certification Act.

26 (e) "Eligible adult" means a person 60 years of age or
27 older who resides in a domestic living situation and is, or is
28 alleged to be, abused, neglected, or financially exploited by
29 another individual.

30 (f) "Emergency" means a situation in which an eligible
31 adult is living in conditions presenting a risk of death or
32 physical, mental or sexual injury and the provider agency has
33 reason to believe the eligible adult is unable to consent to
34 services which would alleviate that risk.

35 (f-5) "Mandated reporter" means any of the following
36 persons while engaged in carrying out their ~~professional~~

1 duties:

2 (1) a person ~~professional or professional's delegate~~
3 while engaged in: (i) social services, (ii) law
4 enforcement, (iii) education, (iv) the care of an eligible
5 adult or eligible adults, or (v) any of the occupations
6 required to be licensed under the Clinical Psychologist
7 Licensing Act, the Clinical Social Work and Social Work
8 Practice Act, the Illinois Dental Practice Act, the
9 Dietetic and Nutrition Services Practice Act, the Marriage
10 and Family Therapy Licensing Act, the Medical Practice Act
11 of 1987, the Naprapathic Practice Act, the Nursing and
12 Advanced Practice Nursing Act, the Nursing Home
13 Administrators Licensing and Disciplinary Act, the
14 Illinois Occupational Therapy Practice Act, the Illinois
15 Optometric Practice Act of 1987, the Pharmacy Practice Act
16 of 1987, the Illinois Physical Therapy Act, the Physician
17 Assistant Practice Act of 1987, the Podiatric Medical
18 Practice Act of 1987, the Respiratory Care Practice Act,
19 the Professional Counselor and Clinical Professional
20 Counselor Licensing Act, the Illinois Speech-Language
21 Pathology and Audiology Practice Act, the Veterinary
22 Medicine and Surgery Practice Act of 2004, and the Illinois
23 Public Accounting Act;

24 (2) an employee of a vocational rehabilitation
25 facility prescribed or supervised by the Department of
26 Human Services;

27 (3) an administrator, employee, or person providing
28 services in or through an unlicensed community based
29 facility;

30 (4) a Christian Science Practitioner;

31 (5) field personnel of the Department of Public Aid,
32 Department of Public Health, and Department of Human
33 Services, and any county or municipal health department;

34 (6) personnel of the Department of Human Services, the
35 Guardianship and Advocacy Commission, the State Fire
36 Marshal, local fire departments, the Department on Aging

1 and its subsidiary Area Agencies on Aging and provider
2 agencies, and the Office of State Long Term Care Ombudsman;

3 (7) any employee of the State of Illinois not otherwise
4 specified herein who is involved in providing services to
5 eligible adults, including professionals providing medical
6 or rehabilitation services and all other persons having
7 direct contact with eligible adults;

8 (8) a person who performs the duties of a coroner or
9 medical examiner; ~~or~~

10 (9) a person who performs the duties of a paramedic or
11 an emergency medical technician; ~~or~~

12 (10) any bank, savings and loan, or credit union
13 officer, trustee, or employee; or

14 (11) any ambulatory currency exchange or community
15 currency exchange, as defined in the Currency Exchange Act,
16 or the employees of such a currency exchange.

17 (g) "Neglect" means another individual's failure to
18 provide an eligible adult with or willful withholding from an
19 eligible adult the necessities of life including, but not
20 limited to, food, clothing, shelter or medical care. This
21 subsection does not create any new affirmative duty to provide
22 support to eligible adults. Nothing in this Act shall be
23 construed to mean that an eligible adult is a victim of neglect
24 because of health care services provided or not provided by
25 licensed health care professionals.

26 (g-5) "Protective services" means services to protect an
27 eligible adult from further occurrences of abuse,
28 self-neglect, neglect, or financial exploitation. Such
29 services may include, but are not limited to, protective
30 supervision, placement, and in-home or community-based
31 services.

32 (h) "Provider agency" means any public or nonprofit agency
33 in a planning and service area appointed by the regional
34 administrative agency with prior approval by the Department on
35 Aging to receive and assess reports of alleged or suspected
36 abuse, neglect, or financial exploitation.

1 (i) "Regional administrative agency" means any public or
2 nonprofit agency in a planning and service area so designated
3 by the Department, provided that the designated Area Agency on
4 Aging shall be designated the regional administrative agency if
5 it so requests. The Department shall assume the functions of
6 the regional administrative agency for any planning and service
7 area where another agency is not so designated.

8 (i-5) "Self-neglect" means an eligible person's failure,
9 without respect to cause, to perform essential self-care tasks,
10 including, but not limited to: providing essential food
11 clothing, shelter, and medical care; obtaining goods and
12 services necessary to maintain physical health, mental health,
13 emotional well-being, and general safety; or managing
14 financial affairs.

15 (j) "Substantiated case" means a reported case of alleged
16 or suspected abuse, neglect, or financial exploitation in which
17 a provider agency, after assessment, determines that there is
18 reason to believe abuse, neglect, or financial exploitation has
19 occurred.

20 (Source: P.A. 92-16, eff. 6-28-01; 93-281 eff. 12-31-03;
21 93-300, eff. 1-1-04; revised 9-22-03.)

22 (320 ILCS 20/4) (from Ch. 23, par. 6604)

23 Sec. 4. Reports of abuse or neglect.

24 (a) Any person who suspects the abuse, self-neglect,
25 neglect, or financial exploitation of an eligible adult may
26 report this suspicion to an agency designated to receive such
27 reports under this Act or to the Department.

28 (a-5) If any mandated reporter has reason to believe that
29 an eligible adult, ~~who because of dysfunction is unable to seek~~
30 ~~assistance for himself or herself,~~ has, within the previous 12
31 months, been subjected to abuse, self-neglect, neglect, or
32 financial exploitation, the mandated reporter shall, within 24
33 hours after developing such belief, report this suspicion to an
34 agency designated to receive such reports under this Act or to
35 the Department. Whenever a mandated reporter is required to

1 report under this Act in his or her capacity as a member of the
2 staff of a medical or other public or private institution,
3 facility, board and care home, or agency, he or she shall make
4 a report to an agency designated to receive such reports under
5 this Act or to the Department in accordance with the provisions
6 of this Act and may also notify the person in charge of the
7 institution, facility, board and care home, or agency or his or
8 her designated agent that the report has been made. Under no
9 circumstances shall any person in charge of such institution,
10 facility, board and care home, or agency, or his or her
11 designated agent to whom the notification has been made,
12 exercise any control, restraint, modification, or other change
13 in the report or the forwarding of the report to an agency
14 designated to receive such reports under this Act or to the
15 Department. The privileged quality of communication between
16 any professional person required to report and his or her
17 patient or client shall not apply to situations involving
18 abused, self-neglected, neglected, or financially exploited
19 eligible adults and shall not constitute grounds for failure to
20 report as required by this Act.

21 (a-7) A person making a report under this Act in the belief
22 that it is in the alleged victim's best interest shall be
23 immune from criminal or civil liability or professional
24 disciplinary action on account of making the report,
25 notwithstanding any requirements concerning the
26 confidentiality of information with respect to such eligible
27 adult which might otherwise be applicable.

28 (a-9) Law enforcement officers shall continue to report
29 incidents of alleged abuse pursuant to the Illinois Domestic
30 Violence Act of 1986, notwithstanding any requirements under
31 this Act.

32 (b) Any person, institution or agency participating in the
33 making of a report, providing information or records related to
34 a report, assessment, or services, or participating in the
35 investigation of a report under this Act in good faith, or
36 taking photographs or x-rays as a result of an authorized

1 assessment, shall have immunity from any civil, criminal or
2 other liability in any civil, criminal or other proceeding
3 brought in consequence of making such report or assessment or
4 on account of submitting or otherwise disclosing such
5 photographs or x-rays to any agency designated to receive
6 reports of alleged or suspected abuse or neglect. Any person,
7 institution or agency authorized by the Department to provide
8 assessment, intervention, or administrative services under
9 this Act shall, in the good faith performance of those
10 services, have immunity from any civil, criminal or other
11 liability in any civil, criminal, or other proceeding brought
12 as a consequence of the performance of those services. For the
13 purposes of any civil, criminal, or other proceeding, the good
14 faith of any person required to report, permitted to report, or
15 participating in an investigation of a report of alleged or
16 suspected abuse, neglect, or financial exploitation shall be
17 presumed.

18 (c) The identity of a person making a report of alleged or
19 suspected abuse or neglect under this Act may be disclosed by
20 the Department or other agency provided for in this Act only
21 with such person's written consent or by court order.

22 (d) The Department shall by rule establish a system for
23 filing and compiling reports made under this Act.

24 (e) Any physician who willfully fails to report as required
25 by this Act shall be referred to the Illinois State Medical
26 Disciplinary Board for action in accordance with subdivision
27 (A)(22) of Section 22 of the Medical Practice Act of 1987. Any
28 dentist or dental hygienist who willfully fails to report as
29 required by this Act shall be referred to the Department of
30 Professional Regulation for action in accordance with
31 paragraph 19 of Section 23 of the Illinois Dental Practice Act.
32 Any other mandated reporter required by this Act to report
33 suspected abuse, neglect, or financial exploitation who
34 willfully fails to report the same is guilty of a Class A
35 misdemeanor.

36 (Source: P.A. 93-300, eff. 1-1-04; 93-301, eff. 1-1-04.)

1 (320 ILCS 20/5) (from Ch. 23, par. 6605)

2 Sec. 5. Procedure.

3 (a) A provider agency designated to receive reports of
4 alleged or suspected abuse, self-neglect, neglect, or
5 financial exploitation under this Act shall, upon receiving
6 such a report, conduct a face-to-face assessment with respect
7 to such report. The assessment shall include, but not be
8 limited to, a visit to the residence of the eligible adult who
9 is the subject of the report and may include interviews or
10 consultations with service agencies or individuals who may have
11 knowledge of the eligible adult's circumstances. A law
12 enforcement officer shall accompany the representative of the
13 provider agency on the first visit to the alleged victim. If,
14 after the assessment, the provider agency determines that the
15 case is substantiated it shall develop a service care plan for
16 the eligible adult. In developing the plan, the provider agency
17 may consult with any other appropriate provider of services,
18 and such providers shall be immune from civil or criminal
19 liability on account of such acts. The plan shall include
20 alternative suggested or recommended services which are
21 appropriate to the needs of the eligible adult and which
22 involve the least restriction of the eligible adult's
23 activities commensurate with his or her needs. Only those
24 services to which consent is provided in accordance with
25 Section 9 of this Act shall be provided, contingent upon the
26 availability of such services.

27 (b) A provider agency shall refer evidence of crimes
28 against an eligible adult to the appropriate law enforcement
29 agency according to Department policies. A referral to law
30 enforcement may be made at intake or any time during the case.
31 Where a provider agency has reason to believe the death of an
32 eligible adult may be the result of abuse or neglect, the
33 agency shall immediately report the matter to the coroner or
34 medical examiner and shall cooperate fully with any subsequent
35 investigation.

1 (c) If any person refuses to allow the provider agency to
2 begin an investigation, interferes with the provider agency's
3 ability to conduct an investigation, or refuses to give access
4 to an eligible adult, the appropriate law enforcement agency
5 must be contacted to assist in the investigation.

6 (d) A representative of a provider agency or a law
7 enforcement officer, while investigating a report of alleged or
8 suspected abuse, self-neglect, neglect, or financial
9 exploitation, may take or cause to be taken photographs,
10 videotapes, and digital or electronic recordings of the
11 eligible adult, and of his or her environment, that are
12 relevant to the investigation. All photographs, videotapes,
13 and digital or electronic recordings taken during the course of
14 the investigation are to be treated as records and shall be
15 used only as other records are allowed to be used under this
16 Act.

17 (e) If a provider agency has reason to believe that records
18 not in its possession would be of assistance in an
19 investigation of suspected abuse, self-neglect, neglect, or
20 financial exploitation under this Act, then the provider agency
21 may petition the chief judge, or another judge designated by
22 the chief judge, of the judicial circuit in which the eligible
23 adult resides for the issuance of a subpoena to the holder of
24 the records sought by the provider agency. Upon a showing by
25 the provider agency that the records are relevant to the
26 investigation and upon notice to the holder of the records and
27 notice to the eligible adult or his or her guardian, the court
28 shall direct that a subpoena shall issue to the holder of the
29 records. All records disclosed pursuant to a subpoena issued
30 under this Section shall be treated as records under Section 8
31 of this Act.

32 (Source: P.A. 90-628, eff. 1-1-99.)

33 (320 ILCS 20/8) (from Ch. 23, par. 6608)

34 Sec. 8. Access to records. All records concerning reports
35 of elder abuse, neglect, and financial exploitation and all

1 records generated as a result of such reports shall be
2 confidential and shall not be disclosed except as specifically
3 authorized by this Act or other applicable law. Access to such
4 records, but not access to the identity of the person or
5 persons making a report of alleged abuse, neglect, or financial
6 exploitation as contained in such records, shall be allowed to
7 the following persons and for the following persons:

8 (1) Department staff, provider agency staff, other aging
9 network staff, and regional administrative agency staff in the
10 furtherance of their responsibilities under this Act or the
11 Illinois Act on the Aging;

12 (2) A law enforcement agency investigating known or
13 suspected elder abuse, neglect, or financial exploitation.
14 Where a provider agency has reason to believe that the death of
15 an eligible adult may be the result of abuse or neglect, the
16 agency shall immediately provide the appropriate law
17 enforcement agency with all records pertaining to the eligible
18 adult;

19 (3) A physician who has before him or her or who is
20 involved in the treatment of an eligible adult whom he or she
21 reasonably suspects may be abused, neglected, or financially
22 exploited or who has been referred to the Elder Abuse and
23 Neglect Program;

24 (4) An eligible adult reported to be abused, neglected, or
25 financially exploited, or such adult's guardian unless such
26 guardian is the abuser or the alleged abuser;

27 (5) A court or a guardian ad litem, upon its or his or her
28 finding that access to such records may be necessary for the
29 determination of an issue before the court. However, such
30 access shall be limited to an in camera inspection of the
31 records, unless the court determines that disclosure of the
32 information contained therein is necessary for the resolution
33 of an issue then pending before it;

34 (6) A grand jury, upon its determination that access to
35 such records is necessary in the conduct of its official
36 business;

1 (7) Any person authorized by the Director, in writing, for
2 audit or bona fide research purposes;

3 (8) A coroner or medical examiner who has reason to believe
4 that an eligible adult has died as the result of abuse,
5 neglect, or financial exploitation. The provider agency shall
6 immediately provide the coroner or medical examiner with all
7 records pertaining to the eligible adult; ~~and~~

8 (9) Department of Professional Regulation staff and
9 members of the Social Work Examining and Disciplinary Board in
10 the course of investigating alleged violations of the Clinical
11 Social Work and Social Work Practice Act by provider agency
12 staff; ~~and~~

13 (10) The State's Attorney of the judicial circuit in which
14 the eligible adult resides or in which the alleged crime
15 occurred or the Office of the Attorney General, or their
16 authorized representatives, after the law enforcement agency
17 with jurisdiction over the matter opens a criminal
18 investigation; and

19 (11) Municipal, county, or other governmental departments
20 or units with a primary responsibility of addressing aging
21 issues, the City of Chicago Department on Aging, State Area
22 Agencies on Aging, and their delegate agencies or councils,
23 after a provider agency has initiated an investigation.

24 (Source: P.A. 89-387, eff. 8-20-95; 90-628, eff. 1-1-99.)

25 (320 ILCS 20/8.5 new)

26 Sec. 8.5. Cooperation with law enforcement agencies.

27 (a) Within one year after the effective date of this
28 amendatory Act of the 94th General Assembly, the Department
29 shall enter into working agreements with the jurisdictionally
30 responsible county sheriff's office or local police department
31 or, when applicable, both, that will be the lead law
32 enforcement agency when conducting any criminal investigation
33 arising from allegations of abuse, neglect, or financial
34 exploitation of an eligible adult. The working agreements must
35 specify how the requirements of this Act will be met.

1 (b) The Department and all provider agencies shall work
2 with any law enforcement agency conducting any criminal
3 investigation arising from allegations of abuse, neglect, or
4 financial exploitation of an eligible adult. The Department,
5 all provider agencies, and law enforcement agencies shall
6 cooperate to allow the criminal investigation to proceed
7 concurrently with, and not be hindered by, any investigations
8 conducted by provider agencies.

9 (c) Upon request of the law enforcement agency, the
10 Department and all provider agencies shall provide, to any law
11 enforcement agency conducting any criminal investigation
12 arising from allegations of abuse, neglect, or financial
13 exploitation of an eligible adult, all relevant information and
14 records from provider agency investigations.

15 (d) Any law enforcement officer may make an arrest without
16 a warrant if the officer has probable cause to believe that the
17 person has committed or is committing any crime, including, but
18 not limited to, criminal abuse or neglect of an elderly person
19 under Section 12-21 of the Criminal Code of 1961 or a violation
20 of an order of protection under Section 12-30 of the Criminal
21 Code of 1961, even if the crime was not committed in the
22 presence of the officer. The law enforcement officer may verify
23 the existence of an order of protection under Section 12-30 of
24 the Criminal Code of 1961 by telephone or radio communication
25 with his or her law enforcement agency or by referring to the
26 copy of the order provided by the petitioner or respondent.

27 (320 ILCS 20/9) (from Ch. 23, par. 6609)

28 Sec. 9. Authority to consent to services.

29 (a) If an eligible adult consents to services being
30 provided according to the service care plan, such services
31 shall be arranged to meet the adult's needs, based upon the
32 availability of resources to provide such services. If an adult
33 withdraws his or her consent or refuses to accept such
34 services, the services shall not be provided, except as allowed
35 under subsection (f) of this Section.

1 (b) If it reasonably appears to the Department or other
2 agency designated under this Act that a person is an eligible
3 adult and lacks the capacity to consent to necessary services,
4 including an assessment, the Department or other agency may
5 seek the appointment of a guardian as provided in Article XIa
6 of the Probate Act of 1975 for the purpose of consenting to
7 such services.

8 (c) A guardian of the person of an eligible adult may
9 consent to services being provided according to the service
10 care plan. If a guardian withdraws his or her consent or
11 refuses to allow services to be provided to the eligible adult,
12 the Department, an agency designated under this Act, or the
13 office of the Attorney General may request a court order
14 seeking appropriate remedies, and may in addition request
15 removal of the guardian and appointment of a successor
16 guardian.

17 (d) If an emergency exists and the Department or other
18 agency designated under this Act reasonably believes that a
19 person is an eligible adult and lacks the capacity to consent
20 to necessary services, the Department or other agency may
21 request an ex parte order from the circuit court of the county
22 in which the petitioner or respondent resides or in which the
23 alleged abuse, neglect, or financial exploitation occurred,
24 authorizing an assessment of a report of alleged or suspected
25 abuse, neglect, or financial exploitation or the provision of
26 necessary services, or both, including relief available under
27 the Illinois Domestic Violence Act of 1986. Petitions filed
28 under this subsection shall be treated as expedited
29 proceedings. This subsection does not limit the actions allowed
30 under subsection (f) of this Section.

31 (e) Within 15 days after the entry of the ex parte
32 emergency order, the order shall expire, or, if the need for
33 assessment or services continues, the provider agency shall
34 petition for the appointment of a guardian as provided in
35 Article XIa of the Probate Act of 1975 for the purpose of
36 consenting to such assessment or services or to protect the

1 eligible adult from further harm.

2 (f) If the Department or a provider agency has reasonable
3 cause to believe that an emergency exists, as "emergency" is
4 defined in this Act, the Department or the provider agency may
5 take action under this subsection. If the eligible adult has
6 the capacity to consent and refuses to consent to protective
7 services, emergency protective services may not be provided.

8 If, upon arrival at the residence or temporary residence of
9 the eligible adult, (i) consent is not obtained for access to
10 the eligible adult for purposes of conducting an investigation
11 under this Act, (ii) the Department or provider agency has
12 reason to believe that an emergency exists, as emergency is
13 defined in this Act, and (iii) the situation presents a risk of
14 death or serious physical or sexual injury, a representative of
15 the Department or the provider agency and a law enforcement
16 officer may forcibly enter the premises. If, after obtaining
17 access to the eligible adult, it is determined through a
18 personal assessment of the situation that no emergency exists
19 and there is no basis for protective services intervention
20 under this subsection, the Department, provider agency, and law
21 enforcement officer shall terminate the emergency entry.

22 If a forcible entry under this subsection occurs and if,
23 from the personal observations of the representative of the
24 Department or the representative of the provider agency or the
25 law enforcement officer, it is likely that the eligible adult
26 will incur a risk of death or serious physical or sexual injury
27 if such person is not immediately removed from the premises,
28 then the representative of the Department or provider agency
29 shall transport or arrange for the transportation of the
30 eligible adult to an appropriate medical or protective services
31 facility in order to provide protective services. Law
32 enforcement personnel have a duty to transport when medical
33 transportation is not available or needed and the eligible
34 adult presents a threat of injury to self or others. If the
35 eligible adult's caregiver or guardian is present, the
36 Department, provider agency, or law enforcement officer must

1 seek the caregiver's or guardian's consent before the eligible
2 adult may be removed from the premises, unless the Department,
3 provider agency, or law enforcement officer suspects that the
4 eligible adult's caregiver or guardian has caused the abuse or
5 neglect. Within 24 hours after providing or arranging for
6 emergency removal of the eligible adult, excluding Saturdays,
7 Sundays, and legal holidays, the Department or provider agency
8 shall petition for the appointment of a guardian as provided in
9 Article XIa of the Probate Act of 1975 for the purposes of
10 consenting to protective services.

11 If, upon an eligible adult's admission to a medical
12 facility, it is the opinion of the medical staff that immediate
13 medical treatment is necessary to prevent serious physical
14 injury or death and that such treatment does not violate a
15 health care advance directive prepared by the eligible adult
16 and received by the medical staff, the medical facility may
17 proceed with treatment of the eligible adult. If a person with
18 legal authority to give consent for the provision of medical
19 treatment to an eligible adult has not given or has refused to
20 give such consent, examination and treatment must be limited to
21 reasonable examination of the patient to determine the medical
22 condition of the patient and treatment reasonably necessary to
23 alleviate the emergency medical condition or to stabilize the
24 patient pending court determination of a petition for the
25 appointment of a guardian as provided in Article XIa of the
26 Probate Act of 1975.

27 This Section does not limit in any way the authority of a
28 court, a law enforcement agency, a State's Attorney, the Office
29 of the Attorney General, or their authorized representatives or
30 any other duly appointed official, to intervene in emergency
31 circumstances under any other provision of law. This Section
32 does not limit the authority of any person to file a petition
33 for guardianship.

34 (Source: P.A. 90-628, eff. 1-1-99.)

1 Sec. 13. Access.

2 (a) The designated provider agencies shall have access to
3 eligible adults who have been reported or found to be victims
4 of abuse, neglect, or financial exploitation in order to assess
5 the validity of the report, assess other needs of the eligible
6 adult, and provide services in accordance with this Act.

7 (b) Where access to an eligible adult is denied, the Office
8 of the Attorney General, the Department, or the provider agency
9 may petition the court for an order to require appropriate
10 access where:

11 (1) a caregiver or third party has interfered with the
12 assessment or service plan, or

13 (2) the agency has reason to believe that the eligible
14 adult is denying access because of coercion, extortion, or
15 justifiable fear of future abuse, neglect, or financial
16 exploitation.

17 (c) The petition for an order requiring appropriate access
18 shall be afforded an expedited hearing in the circuit court.

19 (d) If the elder abuse provider agency has substantiated
20 financial exploitation against an eligible adult, and has
21 documented a reasonable belief that the eligible adult will be
22 irreparably harmed as a result of the financial exploitation,
23 the Office of the Attorney General, the Department, or the
24 provider agency may petition for an order freezing the assets
25 of the eligible adult. The petition shall be filed in the
26 county or counties in which the assets are located. The court's
27 order shall prohibit the sale, gifting, transfer, or wasting of
28 the assets of the eligible adult, both real and personal, owned
29 by, or vested in, the eligible adult, without the express
30 permission of the court. The petition to freeze the assets of
31 the eligible adult shall be afforded an expedited hearing in
32 the circuit court.

33 (e) This Section does not prohibit the actions authorized
34 in subsection (f) of Section 9 of this Act.

35 (Source: P.A. 90-628, eff. 1-1-99.)

1 Section 10. The Criminal Code of 1961 is amended by
2 changing Section 16-1.3 as follows:

3 (720 ILCS 5/16-1.3) (from Ch. 38, par. 16-1.3)

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

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

19 Financial exploitation of an elderly person or a person
20 with a disability is a Class 4 felony if the value of the
21 property is \$300 or less, a Class 3 felony if the value of the
22 property is more than \$300 but less than \$5,000, a Class 2
23 felony if the value of the property is \$5,000 or more but less
24 than \$100,000 and a Class 1 felony if the value of the property
25 is \$100,000 or more or if the elderly person is over 70 years
26 of age and the value of the property is \$15,000 or more or if
27 the elderly person is 80 years of age or older and the value of
28 the property is \$5,000 or more.

29 (b) For purposes of this Section:

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

32 (2) "Person with a disability" means a person who
33 suffers from a ~~permanent~~ physical or mental impairment
34 resulting from disease, injury, functional disorder or
35 congenital condition that impairs the individual's mental

1 or physical ability to independently manage his or her
2 property or financial resources, or both.

3 (3) "Intimidation" means the communication to an
4 elderly person or a person with a disability that he or she
5 shall be deprived of food and nutrition, shelter,
6 prescribed medication, ~~or~~ medical care and treatment, or
7 contact with that person's family members or care provider.
8 "Intimidation" also means the communication to an elderly
9 person or a person with a disability that he or she will be
10 unnecessarily moved from his or her current residence to
11 another residence or to a facility.

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

23 (c) For purposes of this Section, a person stands in a
24 position of trust and confidence with an elderly person or
25 person with a disability when he (1) is a parent, spouse, adult
26 child or other relative by blood or marriage of the elderly
27 person or person with a disability, (2) is a joint tenant or
28 tenant in common with the elderly person or person with a
29 disability, (3) has a legal or fiduciary relationship with the
30 elderly person or person with a disability, or (4) is a
31 financial planning or investment professional.

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

35 (e) Nothing in this Section shall be construed to impose
36 criminal liability on a person who has made a good faith effort

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

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

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

21 (Source: P.A. 92-808, eff. 8-21-02; 93-301, eff. 1-1-04.)