



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

HB1398

Introduced 2/21/2007, by Rep. Esther Golar

#### SYNOPSIS AS INTRODUCED:

720 ILCS 5/12-21  
720 ILCS 5/16-1.3

from Ch. 38, par. 12-21  
from Ch. 38, par. 16-1.3

Amends the Criminal Code of 1961. Removes "permanent" from the definition of "person with a disability" in the statutes creating the offenses of criminal abuse or neglect of an elderly person or person with a disability and financial exploitation of an elderly person or a person with a disability.

LRB095 06656 RLC 26764 b

CORRECTIONAL  
BUDGET AND  
IMPACT 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 1961 is amended by changing  
5 Sections 12-21 and 16-1.3 as follows:

6 (720 ILCS 5/12-21) (from Ch. 38, par. 12-21)

7 Sec. 12-21. Criminal abuse or neglect of an elderly person  
8 or person with a disability.

9 (a) A person commits the offense of criminal abuse or  
10 neglect of an elderly person or person with a disability when  
11 he or she is a caregiver and he or she knowingly:

12 (1) performs acts that cause the elderly person or  
13 person with a disability's life to be endangered, health to  
14 be injured, or pre-existing physical or mental condition to  
15 deteriorate; or

16 (2) fails to perform acts that he or she knows or  
17 reasonably should know are necessary to maintain or  
18 preserve the life or health of the elderly person or person  
19 with a disability and such failure causes the elderly  
20 person or person with a disability's life to be endangered,  
21 health to be injured or pre-existing physical or mental  
22 condition to deteriorate; or

23 (3) abandons the elderly person or person with a

1 disability; or

2 (4) physically abuses, harasses, intimidates, or  
3 interferes with the personal liberty of the elderly person  
4 or person with a disability or exposes the elderly person  
5 or person with a disability to willful deprivation.

6 Criminal abuse or neglect of an elderly person or person  
7 with a disability is a Class 3 felony. Criminal neglect of an  
8 elderly person or person with a disability is a Class 2 felony  
9 if the criminal neglect results in the death of the person  
10 neglected for which the defendant, if sentenced to a term of  
11 imprisonment, shall be sentenced to a term of not less than 3  
12 years and not more than 14 years.

13 (b) For purposes of this Section:

14 (1) "Elderly person" means a person 60 years of age or  
15 older who is incapable of adequately providing for his own  
16 health and personal care.

17 (2) "Person with a disability" means a person who  
18 suffers from a ~~permanent~~ physical or mental impairment,  
19 resulting from disease, injury, functional disorder or  
20 congenital condition which renders such person incapable  
21 of adequately providing for his own health and personal  
22 care.

23 (3) "Caregiver" means a person who has a duty to  
24 provide for an elderly person or person with a disability's  
25 health and personal care, at such person's place of  
26 residence, including but not limited to, food and

1 nutrition, shelter, hygiene, prescribed medication and  
2 medical care and treatment.

3 "Caregiver" shall include:

4 (A) a parent, spouse, adult child or other relative  
5 by blood or marriage who resides with or resides in the  
6 same building with or regularly visits the elderly  
7 person or person with a disability, knows or reasonably  
8 should know of such person's physical or mental  
9 impairment and knows or reasonably should know that  
10 such person is unable to adequately provide for his own  
11 health and personal care;

12 (B) a person who is employed by the elderly person  
13 or person with a disability or by another to reside  
14 with or regularly visit the elderly person or person  
15 with a disability and provide for such person's health  
16 and personal care;

17 (C) a person who has agreed for consideration to  
18 reside with or regularly visit the elderly person or  
19 person with a disability and provide for such person's  
20 health and personal care; and

21 (D) a person who has been appointed by a private or  
22 public agency or by a court of competent jurisdiction  
23 to provide for the elderly person or person with a  
24 disability's health and personal care.

25 "Caregiver" shall not include a long-term care  
26 facility licensed or certified under the Nursing Home Care

1 Act or any administrative, medical or other personnel of  
2 such a facility, or a health care provider who is licensed  
3 under the Medical Practice Act of 1987 and renders care in  
4 the ordinary course of his profession.

5 (4) "Abandon" means to desert or knowingly forsake an  
6 elderly person or person with a disability under  
7 circumstances in which a reasonable person would continue  
8 to provide care and custody.

9 (5) "Willful deprivation" has the meaning ascribed to  
10 it in paragraph (15) of Section 103 of the Illinois  
11 Domestic Violence Act of 1986.

12 (c) Nothing in this Section shall be construed to limit the  
13 remedies available to the victim under the Illinois Domestic  
14 Violence Act.

15 (d) Nothing in this Section shall be construed to impose  
16 criminal liability on a person who has made a good faith effort  
17 to provide for the health and personal care of an elderly  
18 person or person with a disability, but through no fault of his  
19 own has been unable to provide such care.

20 (e) Nothing in this Section shall be construed as  
21 prohibiting a person from providing treatment by spiritual  
22 means through prayer alone and care consistent therewith in  
23 lieu of medical care and treatment in accordance with the  
24 tenets and practices of any church or religious denomination of  
25 which the elderly person or person with a disability is a  
26 member.

1 (f) It is not a defense to criminal abuse or neglect of an  
2 elderly person or person with a disability that the accused  
3 reasonably believed that the victim was not an elderly person  
4 or person with a disability.

5 (Source: P.A. 92-328, eff. 1-1-02; 93-301, eff. 1-1-04.)

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

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

9 (a) A person commits the offense of financial exploitation  
10 of an elderly person or a person with a disability when he or  
11 she stands in a position of trust or confidence with the  
12 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  
15 or illegally uses the assets or resources of an elderly person  
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  
18 includes, but is not limited to, the misappropriation of those  
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.

22 Financial exploitation of an elderly person or a person  
23 with a disability is a Class 4 felony if the value of the  
24 property is \$300 or less, a Class 3 felony if the value of the  
25 property is more than \$300 but less than \$5,000, a Class 2

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

7 (b) For purposes of this Section:

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

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

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

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

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

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

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

26          (g) Civil Liability. A person who is charged by information



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

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