

SB3003



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB3003

Introduced 1/5/2022, by Sen. John F. Curran

SYNOPSIS AS INTRODUCED:

720 ILCS 5/12-4.4a

720 ILCS 5/17-56

was 720 ILCS 5/16-1.3

Amends the Criminal Code of 2012. Changes references in the statute concerning abuse or criminal neglect of a long term care facility resident from "an elderly person's or person with a disability's life" to "a resident's life". In the statute concerning financial exploitation of an elderly person or a person with a disability defines "undue influence".

LRB102 23238 RLC 32402 b

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
5 changing Sections 12-4.4a and 17-56 as follows:

6 (720 ILCS 5/12-4.4a)

7 Sec. 12-4.4a. Abuse or criminal neglect of a long term
8 care facility resident; criminal abuse or neglect of an
9 elderly person or person with a disability.

10 (a) Abuse or criminal neglect of a long term care facility
11 resident.

12 (1) A person or an owner or licensee commits abuse of a
13 long term care facility resident when he or she knowingly
14 causes any physical or mental injury to, or commits any
15 sexual offense in this Code against, a resident.

16 (2) A person or an owner or licensee commits criminal
17 neglect of a long term care facility resident when he or
18 she recklessly:

19 (A) performs acts that cause a resident's life to
20 be endangered, health to be injured, or pre-existing
21 physical or mental condition to deteriorate, or that
22 create the substantial likelihood that a resident's ~~an~~
23 ~~elderly person's or person with a disability's~~ life

1 will be endangered, health will be injured, or
2 pre-existing physical or mental condition will
3 deteriorate;

4 (B) fails to perform acts that he or she knows or
5 reasonably should know are necessary to maintain or
6 preserve the life or health of a resident, and that
7 failure causes the resident's life to be endangered,
8 health to be injured, or pre-existing physical or
9 mental condition to deteriorate, or that create the
10 substantial likelihood that a resident's ~~an elderly~~
11 ~~person's or person with a disability's~~ life will be
12 endangered, health will be injured, or pre-existing
13 physical or mental condition will deteriorate; or

14 (C) abandons a resident.

15 (3) A person or an owner or licensee commits neglect
16 of a long term care facility resident when he or she
17 negligently fails to provide adequate medical care,
18 personal care, or maintenance to the resident which
19 results in physical or mental injury or deterioration of
20 the resident's physical or mental condition. An owner or
21 licensee is guilty under this subdivision (a) (3), however,
22 only if the owner or licensee failed to exercise
23 reasonable care in the hiring, training, supervising, or
24 providing of staff or other related routine administrative
25 responsibilities.

26 (b) Criminal abuse or neglect of an elderly person or

1 person with a disability.

2 (1) A caregiver commits criminal abuse or neglect of
3 an elderly person or person with a disability when he or
4 she knowingly does any of the following:

5 (A) performs acts that cause the person's life to
6 be endangered, health to be injured, or pre-existing
7 physical or mental condition to deteriorate;

8 (B) fails to perform acts that he or she knows or
9 reasonably should know are necessary to maintain or
10 preserve the life or health of the person, and that
11 failure causes the person's life to be endangered,
12 health to be injured, or pre-existing physical or
13 mental condition to deteriorate;

14 (C) abandons the person;

15 (D) physically abuses, harasses, intimidates, or
16 interferes with the personal liberty of the person; or

17 (E) exposes the person to willful deprivation.

18 (2) It is not a defense to criminal abuse or neglect of
19 an elderly person or person with a disability that the
20 caregiver reasonably believed that the victim was not an
21 elderly person or person with a disability.

22 (c) Offense not applicable.

23 (1) Nothing in this Section applies to a physician
24 licensed to practice medicine in all its branches or a
25 duly licensed nurse providing care within the scope of his
26 or her professional judgment and within the accepted

1 standards of care within the community.

2 (2) Nothing in this Section imposes criminal liability
3 on a caregiver who made a good faith effort to provide for
4 the health and personal care of an elderly person or
5 person with a disability, but through no fault of his or
6 her own was unable to provide such care.

7 (3) Nothing in this Section applies to the medical
8 supervision, regulation, or control of the remedial care
9 or treatment of residents in a long term care facility
10 conducted for those who rely upon treatment by prayer or
11 spiritual means in accordance with the creed or tenets of
12 any well-recognized church or religious denomination as
13 described in Section 3-803 of the Nursing Home Care Act,
14 Section 1-102 of the Specialized Mental Health
15 Rehabilitation Act of 2013, Section 3-803 of the ID/DD
16 Community Care Act, or Section 3-803 of the MC/DD Act.

17 (4) Nothing in this Section prohibits a caregiver from
18 providing treatment to an elderly person or person with a
19 disability by spiritual means through prayer alone and
20 care consistent therewith in lieu of medical care and
21 treatment in accordance with the tenets and practices of
22 any church or religious denomination of which the elderly
23 person or person with a disability is a member.

24 (5) Nothing in this Section limits the remedies
25 available to the victim under the Illinois Domestic
26 Violence Act of 1986.

1 (d) Sentence.

2 (1) Long term care facility. Abuse of a long term care
3 facility resident is a Class 3 felony. Criminal neglect of
4 a long term care facility resident is a Class 4 felony,
5 unless it results in the resident's death in which case it
6 is a Class 3 felony. Neglect of a long term care facility
7 resident is a petty offense.

8 (2) Caregiver. Criminal abuse or neglect of an elderly
9 person or person with a disability is a Class 3 felony,
10 unless it results in the person's death in which case it is
11 a Class 2 felony, and if imprisonment is imposed it shall
12 be for a minimum term of 3 years and a maximum term of 14
13 years.

14 (e) Definitions. For the purposes of this Section:

15 "Abandon" means to desert or knowingly forsake a resident
16 or an elderly person or person with a disability under
17 circumstances in which a reasonable person would continue to
18 provide care and custody.

19 "Caregiver" means a person who has a duty to provide for an
20 elderly person or person with a disability's health and
21 personal care, at the elderly person or person with a
22 disability's place of residence, including, but not limited
23 to, food and nutrition, shelter, hygiene, prescribed
24 medication, and medical care and treatment, and includes any
25 of the following:

26 (1) A parent, spouse, adult child, or other relative

1 by blood or marriage who resides with or resides in the
2 same building with or regularly visits the elderly person
3 or person with a disability, knows or reasonably should
4 know of such person's physical or mental impairment, and
5 knows or reasonably should know that such person is unable
6 to adequately provide for his or her own health and
7 personal care.

8 (2) A person who is employed by the elderly person or
9 person with a disability or by another to reside with or
10 regularly visit the elderly person or person with a
11 disability and provide for such person's health and
12 personal care.

13 (3) A person who has agreed for consideration to
14 reside with or regularly visit the elderly person or
15 person with a disability and provide for such person's
16 health and personal care.

17 (4) A person who has been appointed by a private or
18 public agency or by a court of competent jurisdiction to
19 provide for the elderly person or person with a
20 disability's health and personal care.

21 "Caregiver" does not include a long-term care facility
22 licensed or certified under the Nursing Home Care Act or a
23 facility licensed or certified under the ID/DD Community Care
24 Act, the MC/DD Act, or the Specialized Mental Health
25 Rehabilitation Act of 2013, or any administrative, medical, or
26 other personnel of such a facility, or a health care provider

1 who is licensed under the Medical Practice Act of 1987 and
2 renders care in the ordinary course of his or her profession.

3 "Elderly person" means a person 60 years of age or older
4 who is incapable of adequately providing for his or her own
5 health and personal care.

6 "Licensee" means the individual or entity licensed to
7 operate a facility under the Nursing Home Care Act, the
8 Specialized Mental Health Rehabilitation Act of 2013, the
9 ID/DD Community Care Act, the MC/DD Act, or the Assisted
10 Living and Shared Housing Act.

11 "Long term care facility" means a private home,
12 institution, building, residence, or other place, whether
13 operated for profit or not, or a county home for the infirm and
14 chronically ill operated pursuant to Division 5-21 or 5-22 of
15 the Counties Code, or any similar institution operated by the
16 State of Illinois or a political subdivision thereof, which
17 provides, through its ownership or management, personal care,
18 sheltered care, or nursing for 3 or more persons not related to
19 the owner by blood or marriage. The term also includes skilled
20 nursing facilities and intermediate care facilities as defined
21 in Titles XVIII and XIX of the federal Social Security Act and
22 assisted living establishments and shared housing
23 establishments licensed under the Assisted Living and Shared
24 Housing Act.

25 "Owner" means the owner of a long term care facility as
26 provided in the Nursing Home Care Act, the owner of a facility

1 as provided under the Specialized Mental Health Rehabilitation
2 Act of 2013, the owner of a facility as provided in the ID/DD
3 Community Care Act, the owner of a facility as provided in the
4 MC/DD Act, or the owner of an assisted living or shared housing
5 establishment as provided in the Assisted Living and Shared
6 Housing Act.

7 "Person with a disability" means a person who suffers from
8 a permanent physical or mental impairment, resulting from
9 disease, injury, functional disorder, or congenital condition,
10 which renders the person incapable of adequately providing for
11 his or her own health and personal care.

12 "Resident" means a person residing in a long term care
13 facility.

14 "Willful deprivation" has the meaning ascribed to it in
15 paragraph (15) of Section 103 of the Illinois Domestic
16 Violence Act of 1986.

17 (Source: P.A. 98-104, eff. 7-22-13; 99-180, eff. 7-29-15;
18 99-642, eff. 7-28-16.)

19 (720 ILCS 5/17-56) (was 720 ILCS 5/16-1.3)

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

22 (a) A person commits financial exploitation of an elderly
23 person or a person with a disability when he or she stands in a
24 position of trust or confidence with the elderly person or a
25 person with a disability and he or she knowingly:

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

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

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

17 (c) For purposes of this Section:

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

20 (2) "Person with a disability" means a person who
21 suffers from a physical or mental impairment resulting
22 from disease, injury, functional disorder or congenital
23 condition that impairs the individual's mental or physical
24 ability to independently manage his or her property or
25 financial resources, or both.

26 (3) "Intimidation" means the communication to an

1 elderly person or a person with a disability that he or she
2 shall be deprived of food and nutrition, shelter,
3 prescribed medication or medical care and treatment or
4 conduct as provided in Section 12-6 of this Code.

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

16 (5) "Undue influence" means when a person:

17 (A) uses influence to take advantage of an elderly
18 person or person with a disability's mental or
19 physical impairment; or

20 (B) uses the person's role, relationship, or power
21 to:

22 (i) exploit, or knowingly assist or cause
23 another to exploit, the trust, dependency, or fear
24 of an elderly person or person with a disability;

25 or

26 (ii) gain control deceptively over the

1 decision making of the elderly person or person
2 with a disability.

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

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

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

23 (e) Good faith efforts. Nothing in this Section shall be
24 construed to impose criminal liability on a person who has
25 made a good faith effort to assist the elderly person or person
26 with a disability in the management of his or her property, but

1 through no fault of his or her own has been unable to provide
2 such assistance.

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

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

1 right of any person to bring any cause of action or seek any
2 remedy available under the common law, or other applicable
3 law, arising out of the financial exploitation of an elderly
4 person or a person with a disability.

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

16 (Source: P.A. 101-394, eff. 1-1-20; 102-244, eff. 1-1-22.)