

ASSEMBLY, No. 919

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

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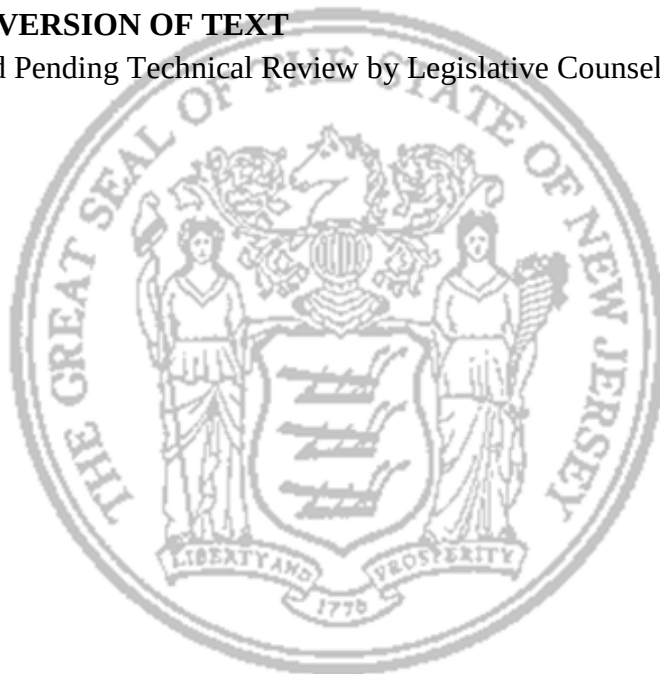
Assemblywomen N.Munoz, Tucker and Dunn

SYNOPSIS

Creates new offense of theft by financial exploitation of a vulnerable person.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 7/9/2020)

1 **AN ACT** creating the offense of theft by financial exploitation of a
2 vulnerable person, amending N.J.S.2C:20-1 and N.J.S.2C:20-2
3 and supplementing chapter 20 of Title 2C of the New Jersey
4 Statutes.

5

6 **BE IT ENACTED** *by the Senate and General Assembly of the State*
7 *of New Jersey:*

8

9 1. (New section) a. An actor commits the offense of theft by
10 financial exploitation of a vulnerable person when, being in a
11 position of trust to a person whom the actor knew was a senior
12 citizen or a person with a disability, the actor commits a violation of
13 an offense defined in Chapter 20 of Title 2C of the New Jersey
14 Statutes against the senior citizen or person with a disability.

15 b. As used in this act, a “senior citizen” and a “person with a
16 disability” shall have the same meaning as in subsections w. and x.
17 of N.J.S.2C:20-1. “Position of trust” shall have the meaning defined
18 in subsection y. of N.J.S.2C:20-1.

19 c. Notwithstanding the provisions of N.J.S.2C:1-8 or any other
20 provision of law to the contrary, a conviction of theft by financial
21 exploitation of a vulnerable person shall not merge with a
22 conviction of any of the underlying offenses referred to in
23 subsection a. of this section, nor shall any conviction for the
24 underlying offense merge with a conviction of theft by financial
25 exploitation of a vulnerable person. The court shall impose
26 separate sentences upon a conviction for theft by financial
27 exploitation of a vulnerable person and a conviction of the
28 underlying offense.

29

30 2. N.J.S.2C:20-1 is amended to read as follows:

31 2C:20-1. Definitions. In chapters 20 and 21, unless a different
32 meaning plainly is required:

33 a. "Deprive" means: (1) to withhold or cause to be withheld
34 property of another permanently or for so extended a period as to
35 appropriate a substantial portion of its economic value, or with
36 purpose to restore only upon payment of reward or other
37 compensation; or (2) to dispose or cause disposal of the property so
38 as to make it unlikely that the owner will recover it.

39 b. "Fiduciary" means an executor, general administrator of an
40 intestate, administrator with the will annexed, substituted
41 administrator, guardian, substituted guardian, trustee under any
42 trust, express, implied, resulting or constructive, substituted trustee,
43 executor, conservator, curator, receiver, trustee in bankruptcy,
44 assignee for the benefit of creditors, partner, agent or officer of a
45 corporation, public or private, temporary administrator,

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

- 1 administrator, administrator pendente lite, administrator ad
2 prosequendum, administrator ad litem or other person acting in a
3 similar capacity.
- 4 c. "Financial institution" means a bank, insurance company,
5 credit union, savings and loan association, investment trust or other
6 organization held out to the public as a place of deposit of funds or
7 medium of savings or collective investment.
- 8 d. "Government" means the United States, any state, county,
9 municipality, or other political unit, or any department, agency or
10 subdivision of any of the foregoing, or any corporation or other
11 association carrying out the functions of government.
- 12 e. "Movable property" means property the location of which
13 can be changed, including things growing on, affixed to, or found in
14 land, and documents, although the rights represented thereby have
15 no physical location. "Immovable property" is all other property.
- 16 f. "Obtain" means: (1) in relation to property, to bring about a
17 transfer or purported transfer of a legal interest in the property,
18 whether to the obtainer or another; or (2) in relation to labor or
19 service, to secure performance thereof.
- 20 g. "Property" means anything of value, including real estate,
21 tangible and intangible personal property, trade secrets, contract
22 rights, choses in action and other interests in or claims to wealth,
23 admission or transportation tickets, captured or domestic animals,
24 food and drink, electric, gas, steam or other power, financial
25 instruments, information, data, and computer software, in either
26 human readable or computer readable form, copies or originals.
- 27 h. "Property of another" includes property in which any person
28 other than the actor has an interest which the actor is not privileged
29 to infringe, regardless of the fact that the actor also has an interest
30 in the property and regardless of the fact that the other person might
31 be precluded from civil recovery because the property was used in
32 an unlawful transaction or was subject to forfeiture as contraband.
33 Property in possession of the actor shall not be deemed property of
34 another who has only a security interest therein, even if legal title is
35 in the creditor pursuant to a conditional sales contract or other
36 security agreement.
- 37 i. "Trade secret" means the whole or any portion or phase of
38 any scientific or technical information, design, process, procedure,
39 formula or improvement which is secret and of value. A trade
40 secret shall be presumed to be secret when the owner thereof takes
41 measures to prevent it from becoming available to persons other
42 than those selected by the owner to have access thereto for limited
43 purposes.
- 44 j. "Dealer in property" means a person who buys and sells
45 property as a business.
- 46 k. "Traffic" means:
47 (1) To sell, transfer, distribute, dispense or otherwise dispose of
48 property to another person; or

- 1 (2) To buy, receive, possess, or obtain control of or use
2 property, with intent to sell, transfer, distribute, dispense or
3 otherwise dispose of such property to another person.
- 4 l. "Broken succession of title" means lack of regular
5 documents of purchase and transfer by any seller except the
6 manufacturer of the subject property, or possession of documents of
7 purchase and transfer by any buyer without corresponding
8 documents of sale and transfer in possession of seller, or possession
9 of documents of sale and transfer by seller without corresponding
10 documents of purchase and transfer in possession of any buyer.
- 11 m. "Person" includes any individual or entity or enterprise, as
12 defined herein, holding or capable of holding a legal or beneficial
13 interest in property.
- 14 n. "Anything of value" means any direct or indirect gain or
15 advantage to any person.
- 16 o. "Interest in property which has been stolen" means title or
17 right of possession to such property.
- 18 p. "Stolen property" means property that has been the subject
19 of any unlawful taking.
- 20 q. "Enterprise" includes any individual, sole proprietorship,
21 partnership, corporation, business trust, association, or other legal
22 entity, and any union or group of individuals associated in fact,
23 although not a legal entity, and it includes illicit as well as licit
24 enterprises and governmental as well as other entities.
- 25 r. "Attorney General" includes the Attorney General of New
26 Jersey, his assistants and deputies. The term shall also include a
27 county prosecutor or his designated assistant prosecutor, if a county
28 prosecutor is expressly authorized in writing by the Attorney
29 General to carry out the powers conferred on the Attorney General
30 by this chapter.
- 31 s. "Access device" means property consisting of any telephone
32 calling card number, credit card number, account number, mobile
33 identification number, electronic serial number, personal
34 identification number, or any other data intended to control or limit
35 access to telecommunications or other computer networks in either
36 human readable or computer readable form, either copy or original,
37 that can be used to obtain telephone service. Access device also
38 means property consisting of a card, code or other means of access
39 to an account held by a financial institution, or any combination
40 thereof, that may be used by the account holder for the purpose of
41 initiating electronic fund transfers.
- 42 t. "Defaced access device" means any access device, in either
43 human readable or computer readable form, either copy or original,
44 which has been removed, erased, defaced, altered, destroyed,
45 covered or otherwise changed in any manner from its original
46 configuration.
- 47 u. "Domestic companion animal" means any animal commonly
48 referred to as a pet or one that has been bought, bred, raised or

1 otherwise acquired, in accordance with local ordinances and State
2 and federal law for the primary purpose of providing
3 companionship to the owner, rather than for business or agricultural
4 purposes.

5 v. "Personal identifying information" means any name, number
6 or other information that may be used, alone or in conjunction with
7 any other information, to identify a specific individual and includes,
8 but is not limited to, the name, address, telephone number, date of
9 birth, social security number, official State issued identification
10 number, employer or taxpayer number, place of employment,
11 employee identification number, demand deposit account number,
12 savings account number, credit card number, mother's maiden
13 name, unique biometric data, such as fingerprint, voice print, retina
14 or iris image or other unique physical representation, or unique
15 electronic identification number, address or routing code of the
16 individual.

17 w. "Senior citizen" means a person 62 years of age or older.

18 x. "Person with a disability" means a person who by reason of
19 a pre-existing medically determinable physical or mental
20 impairment is substantially incapable of exercising normal physical
21 or mental power of resistance, and includes, but is not limited to, a
22 person determined to be disabled pursuant to Title II or XVI of the
23 Social Security Act (42 U.S.C.ss.401-433 or 42 U.S.C.ss.1381-
24 1383), or any other governmental retirement or benefits program
25 that uses substantially the same criteria for determining eligibility.

26 y. "Person in a position of trust" means a person who:

27 (a) is the parent, spouse, adult child, or other relative by blood
28 or affinity of a senior citizen or person with a disability; or

29 (b) is a joint tenant or tenant in common with a senior citizen or
30 person with a disability; or

31 (c) has a fiduciary obligation to a senior citizen or person with a
32 disability; or

33 (d) receives monetary or other valuable consideration for
34 providing care for a senior citizen or person with a disability; or

35 (e) lives with or provides some component of home care
36 services on a continuing basis to a senior citizen or person with a
37 disability including, but not limited to, a neighbor or friend who
38 does not provide such services on a compensated basis but has
39 access to a senior citizen or person with a disability based on such
40 relationship.

41 (cf: P.L.2004, c.11)

42

43 3. N.J.S.2C:20-2 is amended to read as follows:

44 2C:20-2. a. Consolidation of Theft and Computer Criminal
45 Activity Offenses. Conduct denominated theft or computer
46 criminal activity in this chapter constitutes a single offense, but
47 each episode or transaction may be the subject of a separate
48 prosecution and conviction. A charge of theft or computer criminal

1 activity may be supported by evidence that it was committed in any
2 manner that would be theft or computer criminal activity under this
3 chapter, notwithstanding the specification of a different manner in
4 the indictment or accusation, subject only to the power of the court
5 to ensure fair trial by granting a bill of particulars, discovery, a
6 continuance, or other appropriate relief where the conduct of the
7 defense would be prejudiced by lack of fair notice or by surprise.

8 b. Grading of theft offenses.

9 (1) Theft constitutes a crime of the second degree if:

10 (a) The amount involved is \$75,000.00 or more;

11 (b) The property is taken by extortion;

12 (c) The property stolen is a controlled dangerous substance or
13 controlled substance analog as defined in N.J.S.2C:35-2 and the
14 quantity is in excess of one kilogram;

15 (d) The property stolen is a person's benefits under federal or
16 State law, or from any other source, which the Department of
17 Human Services or an agency acting on its behalf has budgeted for
18 the person's health care and the amount involved is \$75,000.00 or
19 more; or

20 (e) The property stolen is human remains or any part thereof;
21 except that, if the human remains are stolen by deception or
22 falsification of a document by which a gift of all or part of a human
23 body may be made pursuant to P.L.2008, c.50 (C.26:6-77 et al.), the
24 theft constitutes a crime of the first degree.

25 (2) Theft constitutes a crime of the third degree if:

26 (a) The amount involved exceeds \$500.00 but is less than
27 \$75,000.00;

28 (b) The property stolen is a firearm, motor vehicle, vessel, boat,
29 horse, domestic companion animal or airplane;

30 (c) The property stolen is a controlled dangerous substance or
31 controlled substance analog as defined in N.J.S.2C:35-2 and the
32 amount involved is less than \$75,000.00 or is undetermined and the
33 quantity is one kilogram or less;

34 (d) It is from the person of the victim;

35 (e) It is in breach of an obligation by a person in his capacity as
36 a fiduciary;

37 (f) It is by threat not amounting to extortion;

38 (g) It is of a public record, writing or instrument kept, filed or
39 deposited according to law with or in the keeping of any public
40 office or public servant;

41 (h) The property stolen is a person's benefits under federal or
42 State law, or from any other source, which the Department of
43 Human Services or an agency acting on its behalf has budgeted for
44 the person's health care and the amount involved is less than
45 \$75,000.00;

46 (i) The property stolen is any real or personal property related
47 to, necessary for, or derived from research, regardless of value,
48 including, but not limited to, any sample, specimens and

1 components thereof, research subject, including any warm-blooded
2 or cold-blooded animals being used for research or intended for use
3 in research, supplies, records, data or test results, prototypes or
4 equipment, as well as any proprietary information or other type of
5 information related to research;

6 (j) The property stolen is a New Jersey Prescription Blank as
7 referred to in R.S.45:14-14;

8 (k) The property stolen consists of an access device or a defaced
9 access device; or

10 (l) The property stolen consists of anhydrous ammonia and the
11 actor intends it to be used to manufacture methamphetamine.

12 (3) Theft constitutes a crime of the fourth degree if the amount
13 involved is at least \$200.00 but does not exceed \$500.00. If the
14 amount involved was less than \$200.00 the offense constitutes a
15 disorderly persons offense.

16 (4) The amount involved in a theft or computer criminal activity
17 shall be determined by the trier of fact. The amount shall include,
18 but shall not be limited to, the amount of any State tax avoided,
19 evaded or otherwise unpaid, improperly retained or disposed of.
20 Amounts involved in thefts or computer criminal activities
21 committed pursuant to one scheme or course of conduct, whether
22 from the same person or several persons, may be aggregated in
23 determining the grade of the offense;

24 (5) Theft by financial exploitation of a vulnerable person shall
25 be graded as a crime of the fourth degree if the underlying offense
26 referred to in subsection a. of section 1 of P.L. , c. (C.)
27 (pending before the Legislature as this bill) is a disorderly persons
28 offense or petty disorderly persons offense. Otherwise, it is a crime
29 one degree higher than the most serious underlying offense referred
30 to in subsection a. of section 1 of P.L. , c. (C.)(pending before the
31 Legislature as this bill).

32 c. Claim of right. It is an affirmative defense to prosecution
33 for theft that the actor:

34 (1) Was unaware that the property or service was that of
35 another;

36 (2) Acted under an honest claim of right to the property or
37 service involved or that he had a right to acquire or dispose of it as
38 he did; or

39 (3) Took property exposed for sale, intending to purchase and
40 pay for it promptly, or reasonably believing that the owner, if
41 present, would have consented.

42 d. Theft from spouse. It is no defense that theft or computer
43 criminal activity was from or committed against the actor's spouse,
44 except that misappropriation of household and personal effects, or
45 other property normally accessible to both spouses, is theft or
46 computer criminal activity only if it occurs after the parties have
47 ceased living together.

48 (cf: P.L.2008, c.50, s.21)

1 4. This act shall take effect immediately.

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3

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STATEMENT

5

6 This bill creates the new offense of theft by financial exploitation
7 of vulnerable person. Under the bill, an actor commits this offense
8 when, being in a position of trust in relation to a senior citizen or a
9 person with a disability, he commits a theft offense against that
10 person. The bill amends N.J.S.A.2C:20-1 to define a senior citizen
11 as a person 62 years of age or older. A “person with a disability”
12 means a person who by reason of a pre-existing medically
13 determinable physical or mental impairment is substantially
14 incapable of exercising normal physical or mental power of
15 resistance, and includes, but is not limited to, a person determined
16 to be disabled pursuant to Title II or XVI of the Social Security Act
17 (42 U.S.C.ss.401-433 or 42 U.S.C.ss.1381-1383), or any other
18 governmental retirement or benefits program that uses substantially
19 the same criteria for determining eligibility.

20 Further, a "person in a position of trust" means a person who:

21 (a) is the parent, spouse, adult child, or other relative by blood
22 or affinity of a senior citizen or person with a disability; or

23 (b) is a joint tenant or tenant in common with a senior citizen or
24 person with a disability; or

25 (c) has a fiduciary obligation to a senior citizen or person with a
26 disability; or

27 (d) receives monetary or other valuable consideration for
28 providing care for a senior citizen or person with a disability; or

29 (e) lives with or provides some component of home care
30 services on a continuing basis to a senior citizen or person with a
31 disability including, but not limited to, a neighbor or friend who
32 does not provide such services on a compensated basis but has
33 access to a senior citizen or person with a disability based on such
34 relationship.

35 The bill provides that theft by financial exploitation of a
36 vulnerable person shall be graded as a crime of the fourth degree if
37 the underlying offense is a disorderly persons offense or petty
38 disorderly persons offense. Otherwise, it is a crime one degree
39 higher than the most serious underlying theft offense.