

SENATE, No. 204

STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Senator CHRISTOPHER J. CONNORS

District 9 (Atlantic, Burlington and Ocean)

SYNOPSIS

Creates offense of financial exploitation of the elderly.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



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

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

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

9 2C:20-1. Definitions. In chapters 20 and 21, unless a different
10 meaning plainly is required:

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

17 b. "Fiduciary" means an executor, general administrator of an
18 intestate, administrator with the will annexed, substituted
19 administrator, guardian, substituted guardian, trustee under any
20 trust, express, implied, resulting or constructive, substituted trustee,
21 executor, conservator, curator, receiver, trustee in bankruptcy,
22 assignee for the benefit of creditors, partner, agent or officer of a
23 corporation, public or private, temporary administrator,
24 administrator, administrator pendente lite, administrator ad
25 prosequendum, administrator ad litem or other person acting in a
26 similar capacity.

27 c. "Financial institution" means a bank, insurance company,
28 credit union, savings and loan association, investment trust or other
29 organization held out to the public as a place of deposit of funds or
30 medium of savings or collective investment.

31 d. "Government" means the United States, any state, county,
32 municipality, or other political unit, or any department, agency or
33 subdivision of any of the foregoing, or any corporation or other
34 association carrying out the functions of government.

35 e. "Movable property" means property the location of which
36 can be changed, including things growing on, affixed to, or found in
37 land, and documents, although the rights represented thereby have
38 no physical location. "Immovable property" is all other property.

39 f. "Obtain" means: (1) in relation to property, to bring about a
40 transfer or purported transfer of a legal interest in the property,
41 whether to the obtainer or another; or (2) in relation to labor or
42 service, to secure performance thereof.

43 g. "Property" means anything of value, including real estate,
44 tangible and intangible personal property, trade secrets, contract
45 rights, choses in action and other interests in or claims to wealth,

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 admission or transportation tickets, captured or domestic animals,
2 food and drink, electric, gas, steam or other power, financial
3 instruments, information, data, and computer software, in either
4 human readable or computer readable form, copies or originals.

5 h. "Property of another" includes property in which any person
6 other than the actor has an interest which the actor is not privileged
7 to infringe, regardless of the fact that the actor also has an interest
8 in the property and regardless of the fact that the other person might
9 be precluded from civil recovery because the property was used in
10 an unlawful transaction or was subject to forfeiture as contraband.
11 Property in possession of the actor shall not be deemed property of
12 another who has only a security interest therein, even if legal title is
13 in the creditor pursuant to a conditional sales contract or other
14 security agreement.

15 i. "Trade secret" means the whole or any portion or phase of
16 any scientific or technical information, design, process, procedure,
17 formula or improvement which is secret and of value. A trade
18 secret shall be presumed to be secret when the owner thereof takes
19 measures to prevent it from becoming available to persons other
20 than those selected by the owner to have access thereto for limited
21 purposes.

22 j. "Dealer in property" means a person who buys and sells
23 property as a business.

24 k. "Traffic" means:

25 (1) To sell, transfer, distribute, dispense or otherwise dispose of
26 property to another person; or

27 (2) To buy, receive, possess, or obtain control of or use
28 property, with intent to sell, transfer, distribute, dispense or
29 otherwise dispose of such property to another person.

30 l. "Broken succession of title" means lack of regular
31 documents of purchase and transfer by any seller except the
32 manufacturer of the subject property, or possession of documents of
33 purchase and transfer by any buyer without corresponding
34 documents of sale and transfer in possession of seller, or possession
35 of documents of sale and transfer by seller without corresponding
36 documents of purchase and transfer in possession of any buyer.

37 m. "Person" includes any individual or entity or enterprise, as
38 defined herein, holding or capable of holding a legal or beneficial
39 interest in property.

40 n. "Anything of value" means any direct or indirect gain or
41 advantage to any person.

42 o. "Interest in property which has been stolen" means title or
43 right of possession to such property.

44 p. "Stolen property" means property that has been the subject
45 of any unlawful taking.

46 q. "Enterprise" includes any individual, sole proprietorship,
47 partnership, corporation, business trust, association, or other legal
48 entity, and any union or group of individuals associated in fact,

1 although not a legal entity, and it includes illicit as well as licit
2 enterprises and governmental as well as other entities.

3 r. "Attorney General" includes the Attorney General of New
4 Jersey, his assistants and deputies. The term shall also include a
5 county prosecutor or his designated assistant prosecutor, if a county
6 prosecutor is expressly authorized in writing by the Attorney
7 General to carry out the powers conferred on the Attorney General
8 by this chapter.

9 s. "Access device" means property consisting of any telephone
10 calling card number, credit card number, account number, mobile
11 identification number, electronic serial number, personal
12 identification number, or any other data intended to control or limit
13 access to telecommunications or other computer networks in either
14 human readable or computer readable form, either copy or original,
15 that can be used to obtain telephone service. Access device also
16 means property consisting of a card, code or other means of access
17 to an account held by a financial institution, or any combination
18 thereof, that may be used by the account holder for the purpose of
19 initiating electronic fund transfers.

20 t. "Defaced access device" means any access device, in either
21 human readable or computer readable form, either copy or original,
22 which has been removed, erased, defaced, altered, destroyed,
23 covered or otherwise changed in any manner from its original
24 configuration.

25 u. "Domestic companion animal" means any animal commonly
26 referred to as a pet or one that has been bought, bred, raised or
27 otherwise acquired, in accordance with local ordinances and State
28 and federal law for the primary purpose of providing
29 companionship to the owner, rather than for business or agricultural
30 purposes.

31 v. "Personal identifying information" means any name, number
32 or other information that may be used, alone or in conjunction with
33 any other information, to identify a specific individual and includes,
34 but is not limited to, the name, address, telephone number, date of
35 birth, social security number, official State issued identification
36 number, employer or taxpayer number, place of employment,
37 employee identification number, demand deposit account number,
38 savings account number, credit card number, mother's maiden
39 name, unique biometric data, such as fingerprint, voice print, retina
40 or iris image or other unique physical representation, or unique
41 electronic identification number, address or routing code of the
42 individual.

43 w. "Elderly" means any person who is 60 years of age or older
44 and is suffering from a disease or infirmity associated with
45 advanced age or suffers from a mental disease, defect or condition
46 which renders the person incapable of deciding whether to give or
47 withhold consent to taking, obtaining or withholding of his
48 property.

1 x. "Person in a position of trust" means a person who:
2 (a) is the parent, spouse, adult child or other relative by blood or
3 affinity of an elderly person; or
4 (b) is a joint tenant or tenant in common with an elderly person;
5 or
6 (c) has a fiduciary obligation to an elderly person; or
7 (d) receives monetary or other valuable consideration for
8 providing care for the elderly person ; or
9 (e) lives with or provides some component of home care
10 services on a continuing basis to the elderly person including, but
11 not limited to, a neighbor or friend who does not provide such
12 services on a compensated basis but has access to the elderly person
13 based on such relationship.
14 (cf: P.L.2004, c.11)

15
16 2. N.J.S.2C:20-2 is amended to read as follows:
17 2C:20-2. Consolidation of Theft Offenses; Grading; Provisions
18 Applicable to Theft Generally.
19 2C:20-2. a. Consolidation of Theft and Computer Criminal
20 Activity Offenses. Conduct denominated theft or computer
21 criminal activity in this chapter constitutes a single offense, but
22 each episode or transaction may be the subject of a separate
23 prosecution and conviction. A charge of theft or computer criminal
24 activity may be supported by evidence that it was committed in any
25 manner that would be theft or computer criminal activity under this
26 chapter, notwithstanding the specification of a different manner in
27 the indictment or accusation, subject only to the power of the court
28 to ensure fair trial by granting a bill of particulars, discovery, a
29 continuance, or other appropriate relief where the conduct of the
30 defense would be prejudiced by lack of fair notice or by surprise.
31 b. Grading of theft offenses.
32 (1) Theft constitutes a crime of the second degree if:
33 (a) The amount involved is \$75,000.00 or more;
34 (b) The property is taken by extortion;
35 (c) The property stolen is a controlled dangerous substance or
36 controlled substance analog as defined in N.J.S.2C:35-2 and the
37 quantity is in excess of one kilogram;
38 (d) The property stolen is a person's benefits under federal or
39 State law, or from any other source, which the Department of
40 Human Services or an agency acting on its behalf has budgeted for
41 the person's health care and the amount involved is \$75,000.00 or
42 more; or
43 (e) The property stolen is human remains or any part thereof;
44 except that, if the human remains are stolen by deception or
45 falsification of a document by which a gift of all or part of a human
46 body may be made pursuant to P.L.2008, c.50 (C.26:6-77 et al.), the
47 theft constitutes a crime of the first degree.

- 1 (2) Theft constitutes a crime of the third degree if:
- 2 (a) The amount involved exceeds \$500.00 but is less than
- 3 \$75,000.00;
- 4 (b) The property stolen is a firearm, motor vehicle, vessel, boat,
- 5 horse, domestic companion animal or airplane;
- 6 (c) The property stolen is a controlled dangerous substance or
- 7 controlled substance analog as defined in N.J.S.2C:35-2 and the
- 8 amount involved is less than \$75,000.00 or is undetermined and the
- 9 quantity is one kilogram or less;
- 10 (d) It is from the person of the victim;
- 11 (e) It is in breach of an obligation by a person in his capacity as
- 12 a fiduciary;
- 13 (f) It is by threat not amounting to extortion;
- 14 (g) It is of a public record, writing or instrument kept, filed or
- 15 deposited according to law with or in the keeping of any public
- 16 office or public servant;
- 17 (h) The property stolen is a person's benefits under federal or
- 18 State law, or from any other source, which the Department of
- 19 Human Services or an agency acting on its behalf has budgeted for
- 20 the person's health care and the amount involved is less than
- 21 \$75,000.00;
- 22 (i) The property stolen is any real or personal property related
- 23 to, necessary for, or derived from research, regardless of value,
- 24 including, but not limited to, any sample, specimens and
- 25 components thereof, research subject, including any warm-blooded
- 26 or cold-blooded animals being used for research or intended for use
- 27 in research, supplies, records, data or test results, prototypes or
- 28 equipment, as well as any proprietary information or other type of
- 29 information related to research;
- 30 (j) The property stolen is a New Jersey Prescription Blank as
- 31 referred to in R.S.45:14-14;
- 32 (k) The property stolen consists of an access device or a defaced
- 33 access device; or
- 34 (l) The property stolen consists of anhydrous ammonia and the
- 35 actor intends it to be used to manufacture methamphetamine.
- 36 (3) Theft constitutes a crime of the fourth degree if the amount
- 37 involved is at least \$200.00 but does not exceed \$500.00; except
- 38 that if the theft involved financial exploitation of the elderly
- 39 pursuant to section 3 of P.L. , c. (C.) (now pending before the
- 40 Legislature as this bill), the theft constitutes a crime of the third
- 41 degree.
- 42 (4) Theft constitutes a disorderly persons offense if:
- 43 (a) The amount involved was less than \$200.00; except that if
- 44 the theft involved financial exploitation of the elderly pursuant to
- 45 section 3 of P.L. , c. (C.) (now pending before the Legislature
- 46 as this bill), the theft constitutes a crime of the third degree.; or

1 (b) The property stolen is an electronic vehicle identification
2 system transponder.

3 (5) The amount involved in a theft or computer criminal activity
4 shall be determined by the trier of fact. The amount shall include,
5 but shall not be limited to, the amount of any State tax avoided,
6 evaded or otherwise unpaid, improperly retained or disposed of.
7 Amounts involved in thefts or computer criminal activities
8 committed pursuant to one scheme or course of conduct, whether
9 from the same person or several persons, may be aggregated in
10 determining the grade of the offense.

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

13 (1) Was unaware that the property or service was that of
14 another;

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

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

21 d. Theft from spouse. It is no defense that theft or computer
22 criminal activity was from or committed against the actor's spouse,
23 except that misappropriation of household and personal effects, or
24 other property normally accessible to both spouses, is theft or
25 computer criminal activity only if it occurs after the parties have
26 ceased living together.

27 (cf: P.L.2011, c.1, s.1)

28

29 3. (New section) Financial exploitation of the elderly.

30 a. A person obtains property by financial exploitation of the
31 elderly when, being a person in a position of trust, he compels or
32 induces an elderly person to deliver such property to him or to a
33 third person by means of fraud, false promise, extortion or
34 intimidation.

35 b. No provision of this paragraph shall be deemed to impose
36 criminal liability upon any person who in good faith seeks to assist
37 an elderly person in the management of his property, but through no
38 fault of such person is unable to assist the elderly person.

39 c. In any prosecution for theft committed by financial
40 exploitation of the elderly, it is an affirmative defense that the
41 defendant did not know, or could not have known, the facts or
42 conditions which render the person an elderly person as defined in
43 subsection w. of N.J.S. 2C:20-1.

44

45 4. This act shall take effect immediately.

1 STATEMENT

2
3 This bill creates the offense of Financial Exploitation of the
4 Elderly. Under the bill, a person obtains property by financial
5 exploitation of the elderly when, being a person in a position of
6 trust, he compels or induces an elderly person to deliver such
7 property to him or to a third person by means of fraud, false
8 promise, extortion or intimidation. "Elderly person" is defined as
9 any person who is 60 years of age or older and is suffering from a
10 disease or infirmity associated with advanced age or who suffers
11 from a mental disease, defect or condition which renders the person
12 incapable of deciding whether to give or withhold consent to taking,
13 obtaining or withholding of his or her property.

14 A "person in a position of trust" means a person who:

15 (a) is the parent, spouse, adult child or other relative by blood or
16 affinity of an elderly person; or (b) is a joint tenant or tenant in
17 common with an elderly person; or (c) has a fiduciary obligation to
18 an elderly person; or (d) receives monetary or other valuable
19 consideration for providing care for the elderly person ; or (e) lives
20 with or provides some component of home care services on a
21 continuing basis to the elderly person including, but not limited to,
22 a neighbor or friend who does not provide such services but has
23 access to the elderly person based on such relationship. The offense
24 is graded as a crime of the third degree punishable by up to five
25 years imprisonment, a fine of up to \$15,000, or both when the
26 amount involved is at least \$200.00 but does not exceed \$500.00.
27 Ordinarily thefts of this amount are graded as crimes of the fourth
28 degree. The bill also upgrades theft when the amount is less than
29 \$200.00 to a crime of the fourth degree from a disorderly persons
30 offense.

31 Theft from an elderly person when the amount involved exceeds
32 \$500.00 but is less than \$75,000.00 continues to be a crime of the
33 third degree.