

SENATE, No. 1691

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 23, 2020

Sponsored by:

Senator CHRISTOPHER J. CONNORS

District 9 (Atlantic, Burlington and Ocean)

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



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
 18 defined 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. "Fiduciary" shall also include an employee or an
4 agent of a cargo carrier, as the term is defined in subsection w. of
5 this section, while acting in that capacity, or an independent
6 contractor providing services to a cargo carrier as that term is
7 defined in subsection w. of this section.

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

12 d. "Government" means the United States, any state, county,
13 municipality, or other political unit, or any department, agency or
14 subdivision of any of the foregoing, or any corporation or other
15 association carrying out the functions of government.

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

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

24 g. "Property" means anything of value, including real estate,
25 tangible and intangible personal property, trade secrets, contract
26 rights, choses in action and other interests in or claims to wealth,
27 admission or transportation tickets, captured or domestic animals,
28 food and drink, electric, gas, steam or other power, financial
29 instruments, information, data, and computer software, in either
30 human readable or computer readable form, copies or originals.

31 h. "Property of another" includes property in which any person
32 other than the actor has an interest which the actor is not privileged
33 to infringe, regardless of the fact that the actor also has an interest
34 in the property and regardless of the fact that the other person might
35 be precluded from civil recovery because the property was used in
36 an unlawful transaction or was subject to forfeiture as contraband.
37 Property in possession of the actor shall not be deemed property of
38 another who has only a security interest therein, even if legal title is
39 in the creditor pursuant to a conditional sales contract or other
40 security agreement.

41 i. "Trade secret" means the whole or any portion or phase of
42 any scientific or technical information, design, process, procedure,
43 formula or improvement which is secret and of value. A trade
44 secret shall be presumed to be secret when the owner thereof takes
45 measures to prevent it from becoming available to persons other
46 than those selected by the owner to have access thereto for limited
47 purposes.

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

1 which has been removed, erased, defaced, altered, destroyed,
2 covered or otherwise changed in any manner from its original
3 configuration.

4 u. "Domestic companion animal" means any animal commonly
5 referred to as a pet or one that has been bought, bred, raised or
6 otherwise acquired, in accordance with local ordinances and State
7 and federal law for the primary purpose of providing
8 companionship to the owner, rather than for business or agricultural
9 purposes.

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

22 w. "Cargo carrier" means: (1) any business or establishment
23 regularly operating for the purpose of conveying goods or property
24 for compensation from one place to another by road, highway, rail,
25 water or air, by any means including but not limited to any pipeline
26 system, railroad car, motor truck, truck, trailer, semi-trailer,
27 commercial motor vehicle or other vehicle, any steamboat, vessel or
28 aircraft, and any business or establishment regularly engaged in the
29 temporary storage of goods or property incident to further
30 distribution of the goods or property elsewhere for commercial
31 purposes, including but not limited to businesses or establishments
32 operating a tank or storage facility, warehouse, terminal, station,
33 station house, platform, depot, wharf, pier, or from any ocean,
34 intermodal, container freight station or freight consolidation
35 facility; or (2) any business or establishment that conveys goods or
36 property which it owns or has title to, from one place to another, by
37 road, highway, rail, water or air by any means including but not
38 limited to any pipeline system, railroad car, motor truck, truck,
39 trailer, semi-trailer, commercial motor vehicle or other vehicle, any
40 steamboat, vessel or aircraft, and including the storage and
41 warehousing of goods and property incidental to their conveyance
42 from one place to another.

43 x. "Senior citizen" means a person 62 years of age or older.

44 y. "Person with a disability" means a person who by reason of
45 a pre-existing medically determinable physical or mental
46 impairment is substantially incapable of exercising normal physical
47 or mental power of resistance, and includes, but is not limited to, a
48 person determined to be disabled pursuant to Title II or XVI of the

1 Social Security Act (42 U.S.C.ss.401-433 or 42 U.S.C.ss.1381-
2 1383), or any other governmental retirement or benefits program
3 that uses substantially the same criteria for determining eligibility.

4 z. "Person in a position of trust" means a person who:

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

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

9 (c) has a fiduciary obligation to a senior citizen or person with a
10 disability; or

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

13 (e) lives with or provides some component of home care
14 services on a continuing basis to a senior citizen or person with a
15 disability including, but not limited to, a neighbor or friend who
16 does not provide such services on a compensated basis but has
17 access to a senior citizen or person with a disability based on such
18 relationship.

19 (cf: P.L.2013, c.58, s.1)

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

22 2C:20-2. a. Consolidation of Theft and Computer Criminal
23 Activity Offenses. Conduct denominated theft or computer
24 criminal activity in this chapter constitutes a single offense, but
25 each episode or transaction may be the subject of a separate
26 prosecution and conviction. A charge of theft or computer criminal
27 activity may be supported by evidence that it was committed in any
28 manner that would be theft or computer criminal activity under this
29 chapter, notwithstanding the specification of a different manner in
30 the indictment or accusation, subject only to the power of the court
31 to ensure fair trial by granting a bill of particulars, discovery, a
32 continuance, or other appropriate relief where the conduct of the
33 defense would be prejudiced by lack of fair notice or by surprise.

34 b. Grading of theft offenses.

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

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

37 (b) The property is taken by extortion;

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

41 (d) 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 \$75,000.00 or
45 more;

46 (e) The property stolen is human remains or any part thereof;
47 except that, if the human remains are stolen by deception or
48 falsification of a document by which a gift of all or part of a human

1 body may be made pursuant to P.L.2008, c.50 (C.26:6-77 et al.), the
2 theft constitutes a crime of the first degree; or

3 (f) It is in breach of an obligation by a person in his capacity as
4 a fiduciary and the amount involved is \$50,000.00 or more.

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

6 (a) The amount involved exceeds \$500.00 but is less than
7 \$75,000.00;

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

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

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

15 (e) It is in breach of an obligation by a person in his capacity as
16 a fiduciary and the amount involved is less than \$50,000.00;

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

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

21 (h) The property stolen is a person's benefits under federal or
22 State law, or from any other source, which the Department of
23 Human Services or an agency acting on its behalf has budgeted for
24 the person's health care and the amount involved is less than
25 \$75,000.00;

26 (i) The property stolen is any real or personal property related
27 to, necessary for, or derived from research, regardless of value,
28 including, but not limited to, any sample, specimens and
29 components thereof, research subject, including any warm-blooded
30 or cold-blooded animals being used for research or intended for use
31 in research, supplies, records, data or test results, prototypes or
32 equipment, as well as any proprietary information or other type of
33 information related to research;

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

36 (k) The property stolen consists of an access device or a defaced
37 access device; or

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

40 (3) Theft constitutes a crime of the fourth degree if the amount
41 involved is at least \$200.00 but does not exceed \$500.00.

42 (4) Theft constitutes a disorderly persons offense if:

43 (a) The amount involved was less than \$200.00; or

44 (b) The property stolen is an electronic vehicle identification
45 system transponder.

46 The amount involved in a theft or computer criminal activity
47 shall be determined by the trier of fact. The amount shall include,
48 but shall not be limited to, the amount of any State tax avoided,

1 evaded or otherwise unpaid, improperly retained or disposed of.
2 Amounts involved in thefts or computer criminal activities
3 committed pursuant to one scheme or course of conduct, whether
4 from the same person or several persons, may be aggregated in
5 determining the grade of the offense.

6 (5) Theft by financial exploitation of a vulnerable person shall
7 be graded as a crime of the fourth degree if the underlying offense
8 referred to in subsection a. of section 1 of P.L. , c. (C.)
9 (pending before the Legislature as this bill) is a disorderly persons
10 offense or petty disorderly persons offense. Otherwise, it is a crime
11 one degree higher than the most serious underlying offense referred
12 to in subsection a. of section 1 of P.L. , c. (C.)(pending before
13 the Legislature as this bill).

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

16 (1) Was unaware that the property or service was that of
17 another;

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

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

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

30 (cf: P.L.2013, c.58, s.2)

31
32 4. This act shall take effect immediately.
33
34

35 STATEMENT

36
37 This bill creates the new offense of theft by financial exploitation
38 of vulnerable person. Under the bill, an actor commits this offense
39 when, being in a position of trust in relation to a senior citizen or a
40 person with a disability, he commits a theft offense against that
41 person. The bill amends N.J.S.A.2C:20-1 to define a senior citizen
42 as a person 62 years of age or older. A "person with a disability"
43 means a person who by reason of a pre-existing medically
44 determinable physical or mental impairment is substantially
45 incapable of exercising normal physical or mental power of
46 resistance, and includes, but is not limited to, a person determined
47 to be disabled pursuant to Title II or XVI of the Social Security Act
48 (42 U.S.C.ss.401-433 or 42 U.S.C.ss.1381-1383), or any other

1 governmental retirement or benefits program that uses substantially
2 the same criteria for determining eligibility.

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

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

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

8 (c) has a fiduciary obligation to a senior citizen or person with a
9 disability; or

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

12 (e) lives with or provides some component of home care
13 services on a continuing basis to a senior citizen or person with a
14 disability including, but not limited to, a neighbor or friend who
15 does not provide such services on a compensated basis but has
16 access to a senior citizen or person with a disability based on such
17 relationship.

18 The bill provides that theft by financial exploitation of a
19 vulnerable person shall be graded as a crime of the fourth degree if
20 the underlying offense is a disorderly persons offense or petty
21 disorderly persons offense. Otherwise, it is a crime one degree
22 higher than the most serious underlying theft offense.