

PROTOCOL FOR LAW ENFORCEMENT:
Responding to Victims of Elder Abuse,
Neglect and Exploitation



**Illinois Department on Aging
Illinois Family Violence Coordinating Councils**

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In February 2006, in partnership with the Illinois Department on Aging (IDoA), the Illinois Family Violence Coordinating Councils (IFVCC) convened a statewide Responding to Elder Abuse Committee. The purpose of the committee is to identify and develop resources to assist the courts, criminal justice systems and communities in responding to the needs of abused seniors.

According to the Illinois Department on Aging, about 4 to 5 percent of senior citizens experience some kind of mistreatment and only about 1 in 13 cases of elder abuse are ever reported. Of the seniors abused, almost 35 percent were living with their abusers. Of the abusers, 40 percent were children of the victim.

Due to the underreporting of elder abuse, the need for specialized training and the lack of resources for law enforcement the committee determined the need for a law enforcement protocol.

Acknowledgements

The following protocol is a revised version of the *TRIAD Crimes Against the Elderly Protocol* developed in the late 1990's. It was updated to reflect current laws and practices.

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***** The information contained in this protocol shall not preclude special projects between Illinois Law Enforcement Agencies and the Illinois Department on Aging's Elder Abuse and Neglect Program from further collaboration and development.**

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INTRODUCTION

I. Needs Statement

The population of Illinois has changed drastically over the past several years. According to the 2006 United States Census Bureau, there are over 2 million persons aged sixty years and older living here in Illinois. It is projected that by the year 2020, the population of those 60 years of age and older will increase by 41% and those aged 85 and older will increase by 84%.

As people live longer they also face more problems with chronic illness and disabilities. One in four elderly persons live alone and are among the most vulnerable and impoverished groups in Illinois.

The change in the composition of our population and the sheer number of older persons has had and will continue to have important implications for our law enforcement community. The number of elderly victims entering the criminal justice system can be expected to increase significantly.

Traditionally, law enforcement has dealt with crime committed by and against a younger population. This population shift, and the increase in crime targeted specifically against older persons, requires the development of specialized services to address elderly victims of crime.

Based on statistics gathered by the National Center on Elder Abuse, each year between 1 and 2 million Americans aged 65 and older have been injured, exploited, or otherwise mistreated by someone on whom they depended for care or protection.

It is estimated that for every one case of elder abuse, neglect, exploitation, or self-neglect reported to authorities, about five more go unreported.

Current estimates put the overall reporting of financial exploitation at only 1 in 25 cases, suggesting that there may be at least 5 million financial abuse victims each year. Elder abuse has no boundaries, crossing all racial, social, class, gender and geographic lines.

II. Purpose of Protocol

Differences in practices and policies by the many disciplines that provide service to elderly victims can lead to significant disparities in prevention, protection, reporting and service to those victims.

The purpose of this protocol is to institute a coordinated Law Enforcement response, so as to promote a comprehensive method of addressing abuse, neglect and exploitation of older persons.

This protocol will provide model guidelines and investigation procedures for law enforcement responding to abuse, neglect and exploitation against the elderly.

Implementation of this protocol will improve law enforcement's overall coordinated response to elderly victims of crime. In addition, it will enable officers to more clearly focus on the safety and well-being of the victim and the accountability of the offender.

Utilization of this protocol will ensure a more coordinated community response with law enforcement, by bringing together health care, social service and elder protective services in serving older victims of abuse, neglect and financial exploitation.

III. Definitions and Criminal Statutes of Crimes Against the Older Person

For the purpose of this protocol, the following terms as listed by their Illinois Compiled Statutes citations apply to elder abuse, neglect and financial exploitation and domestic violence, as well as other criminal charges:

1. ***Elderly person***: means a person 60 years of age or older who is, or is alleged to be, abused, neglected, or financially exploited by another individual.
2. ***Family or household members***: means spouses, former spouses, parents, children, stepchildren, and other persons related by blood or by present or prior marriage, persons who share or formerly shared a common dwelling, persons who have or allegedly have a child in common, persons who share or allegedly share a blood relationship through a child, persons who have or have had a dating or engagement relationship, and persons with disabilities and their personal assistants. For purposes of this paragraph, neither a casual acquaintanceship nor ordinary fraternization between two individuals in business or social contexts shall be deemed to constitute a dating relationship.
3. ***Caregiver***: means a person who has a duty to provide for an elderly person, including but limited to food and nutrition, shelter, hygiene, prescribed medication and medical care and treatment.
4. ***Abuser***: means a person who abuses, neglects, or financially exploits an elderly person.
5. ***Physical Abuse***: means causing the infliction of physical pain or injury to an elderly person, reckless use of physical force, confinement, or restraint, repeated and unnecessary sleep deprivation and/or reckless conduct which creates an immediate risk of physical harm.

Crimes associated with physical abuse are:

- a. Battery (720 ILCS 5/12-3)
- b. Domestic Battery (720 ILCS 5/12-3.2)
- c. Aggravated Battery (720 ILCS 5/12-4)
- d. Aggravated Battery of a Senior Citizen (720 ILCS 5/12-4.6)
- e. Intimidation (720 ILCS 5/12-6)
- f. Stalking (720 ILCS 5/12-7.3)

- g. Aggravated Stalking (720 ILCS 5/12-7.4)
 - h. Criminal Abuse or Neglect of an Elderly Person or Persons with a Disability (720 ILCS 5/12-21)
 - i. Abuse and Gross Neglect of a Long Term Care Facility Resident (720 ILCS 5/12-19)
6. ***Sexual Abuse:*** means touching, fondling, sexual threats, sexually inappropriate remarks, or any other sexual activity with an older person when the older person is unable to understand, unwilling to consent, is threatened or physically forced to engage in sexual behavior.
- Crimes associated with sexual abuse are:
- a. Sexual Relations within Families (720 ILCS 5/11-11)
 - b. Criminal Sexual Assault (720 Sec. 5/12-13)
 - c. Aggravated Criminal Sexual Assault (720 ILCS 5/12-14)
 - d. Criminal Sexual Abuse (720 ILCS 5/12-15)
 - e. Aggravated Criminal Sexual Abuse (720 ILCS 5/12-16)
7. ***Emotional Abuse:*** means verbal assaults, threats of maltreatment, harassment, or intimidation intended to compel the older person to engage in conduct from which she or he wishes and has a right to abstain, or to refrain from conduct in which the older person wishes and has a right to engage.
- Crimes associated with emotional abuse are:
- a. Assault (720 ILCS 5/12-1)
 - b. Aggravated Assault (720 ILCS 5/12-2)
 - c. Criminal Abuse or Neglect of an Elderly Person or Persons with a Disability (720 ILCS 5/12-21 (4))
 - d. Cyberstalking (720 ILCS 5/12-7.5)
 - e. Stalking (720 ILCS 5/12-7.3)
 - f. Aggravated Stalking (720 ILCS 5/12-7.4)
 - g. Transmission of Obscene Messages Prohibited (720 ILCS 135/1)
 - h. Harassment by Telephone (720 ILCS 135/1-1)
 - i. Intimidation (720 ILCS 5/12-6)
8. ***Passive Neglect:*** means another individual's failure to provide an older person with or willful withholding from an eligible adult the necessities of life including, but not limited to, food, clothing, shelter or medical care. Nothing in this directive

shall be construed to mean that an older person is a victim of neglect because of health care services provided or not provided by licensed health care professionals.

Crimes associated with passive neglect are:

- a. Criminal Abuse or Neglect of an Elderly Person or Persons with a Disability (720 ILCS 5/12-21 (2))

9. ***Willful Deprivation:*** means willfully denying an older person medication, medical care, shelter, food, a therapeutic device, or other physical assistance, and thereby exposing that person to the risk of physical, mental, or emotional harm – except when the older person has expressed an intent to forego such care.

Crimes associated with willful deprivation are:

- a. Criminal Neglect of an Elderly or Disabled Person (720 ILCS 5/12-21)
- b. Abuse and Gross Neglect of a Long Term Care Facility Resident (720 ILCS 5/12-19)

10. ***Confinement:*** means restraining or isolating, without legal authority, an older person for other than medical reasons, as ordered by a physician.

Crimes associated with confinement are:

- a. Unlawful Restraint (720 ILCS 5/10-3)
- b. Aggravated Stalking (720 ILCS 5/12-7.4)
- c. Criminal Abuse or Neglect of an Elderly Person or Persons with a Disability (720 ILCS 5/12-21 (4))

11. ***Interference with Personal Liberty:*** means committing or threatening physical abuse, harassment, intimidation, or willful deprivation of the older person so as to compel them to engage in conduct from which he has a right to abstain or to refrain from conduct in which he has a right to engage.

12. ***Intimidation of a Dependent:*** means subjecting a dependent older person to participation in, or the witnessing of physical force against another or physical confinement or restraint of another which constitutes physical abuse regardless of whether the abused person is a family member or household member.

13. ***Financial Exploitation:*** means the misuse or withholding of an older person's resources by another, to the disadvantage of the elderly person and/or the profit or advantage of someone else.

Crimes associated with financial exploitation are:

- a. Theft (720 ILCS 5/16-5/16-1)
- b. Deceptive Practices (720 ILCS 5/17-1)
- c. Forgery (720 ILCS 5/17-3)

- d. Credit Card Fraud (720 ILCS 250/3)
 - e. Aggravated Identity Theft (720 ILCS 5/16G-20)
 - f. Financial Exploitation of an Elderly or Disabled Person (720 ILCS 5/16-1.3)
 - g. Aggravated Home Repair Fraud (815 ILCS 515/5)
14. ***Financial Fraud/Scams/Cons:*** means the intentional deception of an elderly person for the profit or advantage of someone else.
- a. Identity Theft (720 ILCS 5/16 G-15)
 - b. Aggravated Identity Theft (720 ILCS 5/16 G-20)
 - c. Home Repair Fraud (815 ILCS 515/3)
 - d. Aggravated Home Repair Fraud (815 ILCS 515/5)
 - e. Anti-Phishing Actions (740 ILCS 7/15)
15. ***Domestic Violence:*** Attempting to cause or causing abuse of a family or household member or high-risk adult with disabilities, or attempting to cause or causing neglect or exploitation of a high-risk adult with disabilities which threatens the adult's health and safety, as defined in Section 103 of the Illinois Domestic Violence Act (IDVA) of 1986, as amended.

PROTOCOL GUIDELINES

The purpose of these model guidelines is to encourage a uniform approach for appropriate responses to crimes committed against an elderly person. The guidelines apply to offenses committed against persons aged sixty and older in Illinois. These guidelines demonstrate law enforcement's commitment to facilitate cooperation of the victim and to pursue a multi-agency approach in the reporting, investigating, and prosecuting crimes against the elderly.

IV. Policy Statement

It is the policy of (Department) to treat crimes against the elderly as high priority criminal behavior and to respond professionally and appropriately to reports of elderly victimization. In addition, it is the policy of (Department) that:

- A. Reports of abuse, serious neglect, and financial exploitation of older persons be fully investigated regardless of the relationship between the victim and the suspect(s).
- B. Collaboration and coordination of efforts with elder abuse provider agencies shall be made in response to elder abuse, neglect, financial exploitation and self-neglect.
- C. Expedient and full reporting be made to appropriate agencies on any case of confirmed or suspected abuse, neglect, and financial exploitation, including non-criminal acts, and organized scam/fraud. It is the policy of this protocol that officers utilize the arrest powers granted by law when there is probable cause to do so.
- D. Immediate effective assistance and protection to elderly victims of crime be provided and appropriate actions against offenders be taken. Further, the implementation of these solutions should not result in increased risk to the older person and should not exacerbate the situation.
- E. Officers, in an effort to improve their response to the special needs of elderly crime victims, participate in a coordinated response with other appropriate agencies including criminal justice, elder abuse, social service, financial, and medical. This response includes coordinated investigation of abuse, neglect, and/or financial exploitation reports with elder abuse provider agencies.
- F. Officers treat all older persons with dignity and respect including recognizing an older person's right to self determination. Self determination is a competent person's right to make his or her decisions, including the right to privacy and to refuse well-intended interventions.
- G. Trained elderly service officers are available in the jurisdiction.

V. Policy Components

In order to achieve an effective response to elderly crime victims, this law enforcement agency will utilize the model investigative procedures and promote the following goals

and responsibilities:

A. Interagency Cooperation

Interagency cooperation is a goal that requires a teamwork approach. Coordination of law enforcement, prosecutors, elder abuse, banking, medical, court, and victim advocate personnel is necessary for a thorough response to a case involving an elderly crime victim.

B. Training

Successfully addressing many of the crimes perpetrated against the elderly is complex and requires specialized intervention techniques. Therefore, members of the department who respond to cases involving the abuse, serious neglect, financial exploitation, and/or fraud of an older person should go through specialized training. Training will include laws impacting elderly crime victims, victim and offender profiles, interviewing techniques, investigative strategies, evidence collection and joint investigation procedures with elder abuse program personnel. Like any profession, continuing education is critical for the development of expertise. Law enforcement professionals, veterans and recruits, will participate in ongoing education opportunities.

C. Communications

The communications personnel will solicit information from callers to determine the facts of the report, the condition of the victim, explain the law enforcement response and needs to the caller, and initiate the appropriate law enforcement response. Referral information will also be provided, when applicable.

MODEL INVESTIGATION PROCEDURES

VI. Response Procedures

A. Pre-Investigation

The officer will:

1. Know the prosecution standards set by the State's Attorneys office for accepting the differing elderly crime cases including criminal neglect, financial exploitation, and abuse and neglect of a long term care facility resident.
2. Maintain an ongoing collaborative commitment to working with all agencies and institutions responding to crimes against the elderly including the local elder abuse provider agency.
3. Understand the role of police work in responding to elderly crime and its victims.
4. Understand the role of the elder abuse caseworker in supporting victims of abuse, neglect and financial exploitation.

VII. Law Enforcement's Responsibility

The responding officer will:

1. Safely and expeditiously respond to the complaint.
2. Ensure the safety of the victim and, if assistance is needed, notify the appropriate medical, law enforcement, and social service personnel. In cases of suspected abuse, neglect, and financial exploitation, submit a report to the elder abuse provider agency if a report has not been made by communications personnel.
3. Conduct a thorough preliminary investigation including: identify victim, suspects, and witnesses, identify and preserve the crime scene, tell the elderly victim what will be expected of her/him in the investigation, i.e., hospital, evidence collection, in-depth interview.
4. Respect and protect the confidentiality and the wishes of the elderly victim regarding the notification and participation of others throughout the investigation.
5. Complete the necessary reports, departmental notifications, and transfer information to the evidence collector and the continuing investigator, if another officer will assume those roles.

VIII. Mandated Reporting

Mandated reporter: means any of the following persons while engaged in carrying out their professional duties:

1. A professional or professional's delegate while engaged in: social services, **law enforcement**, education, the care of an elderly adult(s) or any of the occupations required to be licensed under the Clinical Psychologist Licensing Act, the Clinical Social Work and Social Work Practice Act, the Illinois Dental Practice Act, the Dietetic and Nutrition Services Practice Act, the Marriage and Family Therapy Licensing Act, the Medical Practice Act of 1987, the Naprapathic Practice Act, the Illinois Nursing Act of 1987, the Nursing Home Administrators Licensing and Disciplinary Act, the Illinois Occupational Therapy Practice Act, the Illinois Optometric Practice Act of 1987, the Pharmacy Practice Act of 1987, the Illinois Physical Therapy Act, the Physician Assistant Practice Act of 1987, the Podiatric Medical Practice Act of 1987, the Professional Counselor and Clinical Counselor Licensing Act, the Illinois Speech-Language Pathology and Audiology Practice Act, the Veterinary Medicine and Surgery Practice Act of 2004 and the Illinois Public Accounting Act;
2. An employee of a vocational rehabilitation facility prescribed or supervised by the Department of Human Services;
3. An administrator, employee, or person providing services in or through an unlicensed community-based facility;
4. Any religious practitioner who provides treatment by prayer or spiritual means alone in accordance with the tenets and practices of a recognized church or religious denomination, except as to information received in any confession or sacred communication enjoined by the discipline of the religious denomination to be held confidential;
5. Field personnel of the Department of Healthcare and Family Services, Department of Public Health, and Department of Human Services, and any county or municipal health department;
6. Personnel of the Department of Human Services, the Guardianship and Advocacy Commission, the State Fire Marshall, local fire departments, the Department on Aging and its subsidiary Area Agencies on Aging and provider agencies, and the Office of State Long Term Care Ombudsman;
7. Any employee of the State of Illinois not otherwise specified herein who is involved in providing services to older persons, including professionals providing medical or rehabilitation services and all other persons having direct contact with older persons; or
8. A person who performs the duties of a coroner or medical examiner;
9. A person who performs the duties of a paramedic or an emergency medical technician.

IX. Evidence Collection

The evidence collection technician or other officer who collects evidence will:

1. Determine available facts of the case by interviewing the appropriate responding and investigating officer(s).
2. Assess and preserve the crime scene as in any other crime.
3. Identify all possible evidence, depending on the nature of the crime and conduct a thorough evidence search. Photograph and videotape, when appropriate.
4. Complete the necessary reports, including documents to transfer evidence, and transfer information to the continuing investigator.

X. Continuing Investigation

1. Consult with the responding officer and any evidence collectors.
2. Develop an investigative strategy.
3. Conduct in-depth interviews with the victim, alleged offender(s), and witnesses.
4. Ensure that all evidence has been identified, collected, properly stored, and processed from the crime scene, the victim, the offender, and other sources (i.e., bank records, contracts, wills, etc.).
5. Ensure the victim has been referred to the elder abuse provider agency or other social service provider, as needed.
6. In cases of abuse, neglect, and exploitation, conduct a joint investigation of the allegations with the elder abuse provider agency in the jurisdiction.
7. In cases of fraud or scams, share information with the surrounding areas, the State's Attorney and the Illinois Financial Crime Task Force.
8. Complete the necessary reports and transfer information to the State's Attorney's Office for prosecution.
9. Respect and protect the confidentiality and the wishes of the elderly victim regarding the notification and participation of others throughout the investigation.

XI. Arrest

An officer will arrest without warrant when probable cause exists when a felony has been committed, a weapon has been used, a misdemeanor has been committed, resulting in injury, and/or when the offense was committed in the presence of the officer. If the offender is also the older person's primary caregiver, alternative care arrangements must be made prior to removing the caregiver in all but the most extreme cases.

XII. Joint Investigations with Elder Abuse Investigators

A. Where to Report Abuse, Neglect, or Exploitation Situations

1. There are two primary agencies with responsibility to receive and investigate allegations of abuse, neglect, and exploitation, depending on where the older person resides.
2. For those older persons residing in a community or domestic setting, the Illinois Department on Aging and its local elder abuse provider agencies are designated to receive reports. A domestic setting includes a residence, board and care home or assisted living facility. A report can be made to 1-866-800-1409 or to the local elder abuse provider agency. The telephone numbers are listed in Attachment G.
3. Any allegations of abuse or neglect related to residents of licensed long term care facilities (e.g. nursing homes) are reported to the Illinois Department of Public Health. The Department of Public Health receives reports 24 hours a day at 1-800-252-4343.

B. Responsibility to Report - Law Enforcement to Elder Abuse Agencies

1. Law enforcement is to refer all allegations of abuse, neglect, or financial exploitation to the appropriate agency with statutory responsibility to receive and investigate such allegations. This does not relieve law enforcement's responsibility to also investigate the complaint to determine if criminal violations have occurred.
2. Under the Abused and Neglected Long Term Care Facility Residents Reporting Act (210 ILCS 30/4), law enforcement personnel are listed as mandated reporters and must report to Public Health when there is abuse or neglect suspected. The Elder Abuse and Neglect Act (320 ILCS 20/2 (f-5) (1) (ii)) only encourages that reports be made.
3. Even if the investigating officer does not believe the evidence rises to the level of a crime, a report must still be made to the appropriate elder abuse agency. The level of evidence required of the elder abuse agency to substantiate an allegation is generally less than that of a crime.

C. Responsibility to Report - Elder Abuse Agencies to Law Enforcement

1. For domestic abuse, neglect, and exploitation allegations, the Illinois Department on Aging has specific procedures that must be followed by their local agencies to report to law enforcement. The procedures require that all serious abuse and neglect allegations be reported immediately to local law enforcement. All other abuse, neglect, or financial exploitation allegations may only be reported to law enforcement by the elder abuse provider agency with the consent of the alleged victim.
2. The Department of Public Health will generally refer their cases to the Illinois State Police's Medicaid Fraud Unit for criminal investigation. Illinois State Police will then contact local law enforcement if they need assistance with their investigation. At

times, Public Health will contact local law enforcement if there is need for emergency response.

D. Joint Investigations

1. In situations where it is suspected that a crime has been committed against an older person, the elder abuse provider and law enforcement agency will discuss whether a joint intervention is appropriate.
2. The primary purposes of a joint intervention are to provide protection to the victim and to utilize law enforcement options that maybe available. Remember to be flexible. Each case is unique; therefore, the joint approach will vary depending on the circumstances of the situation.
3. To ensure a successful outcome, elder abuse and law enforcement agencies agree to work cooperatively and to develop intervention strategies in accordance with the respective roles of each agency. If a joint response is determined appropriate, the following guidelines should be followed:
 - a. The elder abuse caseworker and law enforcement officer will discuss the referral or incident information and determine what role each individual will play in the investigation. Information shared in accordance with confidentiality requirements of both agencies to facilitate the investigation. Decisions will be reached on who will be contacted (referral sources, victim, witness, alleged perpetrator), and where contacts will occur (home, office, police station, other protected setting).
 - b. Law enforcement staff will determine whether a crime has been committed against the elderly person. They will preserve the crime scene (which may include photographing evidence, injuries or conditions), obtain preliminary statements of the victim and witnesses and identify specific violations.
 - c. Elder abuse staff will assess the risks that are present for abuse, the elderly victim's ability to deal with the situation and willingness to accept assistance from others. Arrangements for care if medical or psychological problems exist which may affect the adult's ability to participate fully in the investigation process. Staff will also develop an intervention strategy that includes the coordination of medical care, supportive counseling, services or other resources in the community, including the need for emergency relocation to a protected setting, and victim assistance for support through the criminal justice system.
 - d. Law enforcement and elder abuse agencies will coordinate victim and witness interviews whenever possible. Initially, it may not be possible for a law enforcement officer to have an elder abuse caseworker present when the officer conducts preliminary interviews, however, at the later stages of the investigation, every effort should be made to coordinate interviews.
 - e. When a provider agency submits a petition for involuntary/judicial admission, law enforcement will assist the agency in enforcing the involuntary admission

of a senior citizen to an approved state licensed medical facility.

- f. Where an officer has reasonable cause to believe that an individual has committed a felony crime, the officer shall arrest the offender. The officer will not ask the victim whether or not there should be an arrest. There is no requirement that a crime (misdemeanor or felony) occur in the officer's presence. Consequently, a lawful arrest may be and often shall be founded upon factors other than the officer's observations, including but not limited to physical injury, property damage, signs of serious visible disruption and/or statements by the victim or other witnesses.
- g. Both entities agree to share information concerning the referred person which is necessary to conduct investigations and deliver services, to the extent permitted by applicable laws and policies.

INDICATORS OF ELDER ABUSE, NEGLECT, AND FINANCIAL EXPLOITATION

A. Physical Abuse

1. Indicators of Physical Abuse. Elderly persons may frequently exhibit signs of falls and accidents. These same signs may be indicators of physical abuse, especially when victims or suspects attempt to conceal their presence or offer inconsistent or irrational excuses for injuries. Investigators should consider the presence of any injury in their assessment of physical abuse cases. The following injuries are examples of indicators of abuse and should be considered together with an examination of the abuser/victim relationship, other evidence and observations.

(a) Bruises or welts. Older adults bruise more easily than younger people, and they are also at risk for a variety of injuries that lead to bruising. For this reason, it is often difficult to distinguish between bruises and other injuries that are accidental and those that were inflicted. There are, however, certain types of bruising or situations which may suggest abuse, including:

- (i) Bilateral bruises are rarely accidental. These are bruises on both sides of the body - for example, on the top of both shoulders, both sides of the face or inside both thighs. Bilateral bruising to the arms may indicate that the older person has been shaken, grabbed or restrained. Bilateral bruising of the inner thighs may indicate rape or other types of sexual abuse.
- (ii) "Wrap around" bruises are also unlikely to be accidental. These are bruises which encircle the older person's arms, legs, or torso. They indicate that the older person has been physically restrained.

The shape and location of bruising can tell you a lot. Sometimes pattern marks are visible that resemble the instrument used to cause the bruising. Rope or strap marks, for example, may indicate inappropriate restraint.

(b) Burns.

- (i) Caused by cigarettes, caustics, hot objects.
- (ii) Friction from ropes, chains or other physical restraints.

(c) Other injuries or conditions.

- (i) Fractures, sprains, lacerations, and abrasions.
- (ii) Injuries caused by biting, cutting, poking, punching, whipping or twisting of limbs.
- (c) Disorientation, stupor or other effects of deliberate over-

medication.

2. **Behavioral Indicators - the Victim**

Indications of abuse are not limited to visible wounds or injuries. The behavior of victims can reflect traits often associated with elder abuse. Presence of these indicators is not conclusive and should serve only to direct the focus of further investigation.

- (a) Easily frightened, agitated, or trembling.
- (b) Exhibiting denial.
- (c) Hesitant to talk openly.
- (d) Implausible explanations concerning injuries. Often when victims have injuries related to abuse, they are explained as the result of accidents. By carefully assessing the type of injury and the explanation, it is possible to discover inconsistencies. For example, a bruise which is explained as the result of an accidental fall may be on a part of the body which is unlikely to sustain impact in a fall.
- (e) Confusion or disorientation.

3. **Behavioral Indicators - the Suspect**

Individually, none of these indicators constitutes evidence of wrongdoing on the part of a caregiver. However, when one or more indicators are present along with injuries, further investigation is warranted.

- (a) Concealment of victim's injuries. For example, the victim is brought to a different facility for treatment each time there is an injury.
- (b) Inconsistent explanation for victim's injuries. Sometimes several family members provide different explanations of how injuries were sustained.
- (c) History of making threats.
- (d) History of substance or alcohol abuse.
- (e) Victim of abuse as a child.
- (f) Dependent on victim's income or assets.

B. Sexual Abuse

1. **Indicators of Sexual Abuse**

Physical indicators of sexual elder abuse should direct investigators to search for other corroborating evidence. Many of these indicators cannot be identified without physical examination. Indicators may include the following:

- (a) Torn, stained or bloody underclothing.
- (b) Genital and/or anal infection, irritation, discharges or bleeding, itching, bruising or pain.
- (c) Painful urination and/or defecation.
- (d) Difficulty walking or sitting due to anal or genital pain.
- (e) Psychosomatic pain such as stomach or headaches.
- (f) Physical evidence of pornography or prostitution.
- (g) Sexually transmitted disease.

2. **Behavioral Indicators - The Victim**

The embarrassment of recounting forced sexual activity often results in the refusal of an elderly victim to report and describe the crime. The following indicators are often present in (but not limited to) cases of sexual abuse.

- (a) Inappropriate, unusual or aggressive behavior or curiosity about sexual matters.
- (b) Self-exposure.
- (c) Intense fear reaction to an individual or people in general.
- (d) Extreme upset when assisted with bathing or other physical caregiving.
- (e) Direct or coded disclosure of sexual abuse.
- (f) Fecal soiling.
- (g) Depression or poor self-esteem.
- (h) Eating disturbances (overeating and under-eating).
- (i) tears, phobias, compulsive behavior.
- (j) Self-destructive behaviors such as head-banging or self-biting.
- (k) Regressive behavior such as bedwetting or thumb sucking
- (l) Sleep disorders (nightmares, fear of sleep, excessive sleeping).

3. **Behavioral Indicators - The Suspect**

An individual who is sexually abusing or exploiting an elderly person may take extreme measures to ensure the activity is concealed. This may be exhibited through such behaviors as the following:

- (a) Over protectiveness, dominance, hostility toward others.
- (b) Inappropriate sex-role relationship between victim and suspect.
- (c) Social isolation.

C. Emotional Abuse

1. Indicators of Emotional Abuse

There is usually a lack of physical evidence in cases of emotional abuse. Emotional abuse, however, is highly correlated with other types of abuse and officers should look for emotional abuse when other abuses are found.

2. Behavioral Indicators - The Victim

Although the presence of the following indicators may be reflections of abuse, they may also be symptoms of emotional disorders, dementia, or other conditions associated with aging. Officers must be mindful of this, but be careful not to arbitrarily attribute these symptoms to aging rather than possible abuse.

- (a) Sleep, eating, or speech disorders
- (b) Depression
- (c) Helplessness or hopelessness
- (d) Isolation
- (e) Agitation or anger
- (f) Confusion
- (g) Low self-esteem
- (h) Seeks attention and affection

3. Behavioral Indicators - The Suspect

Emotional abuse of an elderly person may stem from the suspect's own low self-esteem and his or her unrealistic expectations of the victim. The suspect may exhibit irrational behavior and:

- (a) Threaten the victim
- (b) Call the victim names
- (c) Speak poorly of the victim
- (d) Treat the victim as an infant
- (e) Use restrictive treatment
- (f) Ignore the victim and his or her needs

D. Neglect

1. Indicators of Neglect

It is common to observe a combination of indicators when neglect exists. Neglect may be found in varying degrees and may be recent or long-standing. Care should be taken to photograph and document evidence that will likely change with better care.

Note: that there are non-criminal influences (poverty, family background/culture, ignorance) that may contribute to the appearance of neglect which are consistent with normal living conditions of that elderly person's family. The need for action should be guided by the likelihood of harm to the elderly person if allowed to remain in those conditions. Indicators of neglect include but are not limited to:

- (a) Absence of necessities, including food, water, heat
- (b) Decubiti (bedsores), skin disorders or rashes
- (c) Untreated injuries or medical disorders
- (d) Signs of health and medication mismanagement - e.g., empty or unmarked bottles or outdated prescriptions, the absence of needed dentures, eyeglasses, hearing aids, walker, wheelchair, or braces.
- (e) Poor personal hygiene including soiled clothing, matted or lice-infested hair, odors or presence of feces, dirty nails/skin.
- (f) Hunger, malnutrition, dehydration (as evidenced by low urinary output, dry, fragile skin, dry, soar mouth, apathy, or lack of energy and mental confusion).
- (g) Pallor, sunken eyes or cheeks
- (h) Inadequate supply of food
- (i) Lack of clean bedding and clothing
- (j) Unsanitary or unsafe living conditions

2. Behavioral Indicators - The Victim

Continued neglect may lead to a number of the following behavioral characteristics. Existence of these conditions justifies further investigation, but in themselves they do not constitute adequate evidence of neglect.

- (a) Non-responsiveness or helplessness
- (b) Inability to care for self
- (c) Dependent behavior

(d) Detachment

3. **Behavioral Indicators - The Suspect**

When neglect results from the action or lack of action of a caregiver, one or more of the following characteristics may be present:

- (a) Substance abuse.
- (b) Mental illness.
- (c) Development disability.
- (d) Hostility towards others.
- (e) Apathetic/passive/detached/unresponsive.
- (f) Depression or irrational behavior.
- (g) Lack of concern for the victim.
- (h) Lack of necessary skills.

E. Financial Exploitation

1. **Indicators of Financial Exploitation**

As some elderly persons experience decreased mobility (loss of driving ability and personal mobility), they become dependent on others to assist with and sometimes take over financial matters. Although this increases the opportunity for abusive practices, caregivers and others (lawyers, bankers, friends, etc.) may have a need to conduct legitimate financial business or handle funds in order to provide care to the person. The presence of the following activities may justify closer examination.

- (a) A caregiver overly interested in the victim's financial situation; or with no means of support.
- (b) Unusual volume of banking activity or activity inconsistent with the victim's ability (i.e. use of ATM by another).
- (c) A bedridden victim.
- (d) Bank statements and canceled checks no longer come to the older person's home, suspicious signatures on checks or other documents.
- (e) Implausible explanations given about the elderly person's finances by the elder or the caregiver.
- (f) The older person is unaware of or does not understand financial arrangements that have been supposedly made on the elder's behalf.
- (g) Excessive concern by another over the cost of caring for the victim or a

reluctance to pay bills.

- (h) Recent acquaintances expressing interest in the older person's finances, promising to provide assistance or care, or ingratiating themselves to the older person.
- (i) Recent changes in ownership of the victim's property.
- (j) A will or other legal document (i.e. power of attorney) drawn by an older person who did not understand it when signing.
- (k) Placement, care or possessions of victim inconsistent with the victim's estate; missing items (silver, art, jewelry).
- (l) Caregiver isolates the elder from friends and other family.
- (m) Non-payment of bills leading to eviction notices or threats to discontinue utilities.
- (n) The quality of the elder's care is inconsistent with the size of the estate.
- (o) Absence of documentation about financial arrangements.

Adapted from the following source materials:

Elderly Protection Project: Advanced Law Enforcement Training Manual by the Massachusetts Attorney General's Office, 1995.
Improving the Police Response to Domestic Elder Abuse by Martha Plotkin, et. al., Police Executive Research Forum. 1995.
Elder Abuse: Causes, Diagnosis and Treatment by Mary J. Quinn and Susan K. Tomita. New York: Springer, 1986.

INTERVIEWING TECHNIQUES

A. Techniques for Interviewing Victims

- ❖ Make the victim as comfortable as possible.
- ❖ Tell the victim what to expect during the investigation.
- ❖ Minimize the number of interviews and the number of people present.
- ❖ Allow the victim to describe the incident in his or her own words.
- ❖ Be patient and reassuring. Some older people, particularly, those in crisis, may need time to collect their thoughts and may need to take frequent breaks.
- ❖ Avoid unnecessary pressure.
- ❖ Acknowledge the victim's anxiety and try to discern its cause. For example, you may say, " You seem anxious. Are you concerned that your son will find out that you have talked with me?"
- ❖ Keep it simple. Phrase questions in clear, concise fashion.
- ❖ Keep questions short.
- ❖ Ask open-ended questions that encourage further discussion.
- ❖ Accept and use victim's terminology and language for acts, body parts, etc.
- ❖ Avoid influencing the victim's account of the alleged offense.
- ❖ If you feel that the older person is having difficulty understanding or communicating, ask him or her if he or she has assistant devices or someone who can help.
- ❖ Ask the victim if he or she would like assistance. If so, ask how he or she would like to be assisted. Do not guess.
- ❖ Even if the victim appears to be somewhat confused, do not discount the information. Make every effort to obtain the fullest possible response before relying on information from others.
- ❖ If you need another person to assist in communicating or providing information for the victim, conduct the conversation in the victim's presence and look for signs of corroboration from the victim (e.g. nodding in agreement). Do not discuss the victim as if he or she is not in the room.
- ❖ Do not discount a complaint because the victim is unwilling to cooperate.
- ❖ Do not argue with the victim.
- ❖ Assess the likelihood of retaliation. If a threat is present, arrange for protection. The Elder Abuse Provider Agency in your area may be of assistance.
- ❖ Determine whom the victim first told about the abuse.
- ❖ Show the victim records or other documents that suggest abuse. Record his or her response to each one that is in dispute.

- ❖ Conclude the interview in such a fashion that the victim feels free to contact the investigator again.
- ❖ Ensure that the victim is capable and has the means for contact. If not, take measures to facilitate follow-up with the victim.

B. Techniques for Interviewing Witnesses

- ❖ Determine the witnesses' relationships to the victim and the suspect.
- ❖ Ask where and how they received their information.
- ❖ Try to determine their motivation for offering information
- ❖ Determine whether the witnesses are likely to be intimidated, made to feel guilty, or threatened with reprisal for providing testimony.
- ❖ Find out where they can be reached if follow-up is necessary.

C. Techniques for Interviewing Suspects

- ❖ Advise the suspect of his or her rights, if appropriate.
- ❖ Encourage the suspect to relate the incident in her or his own words.
- ❖ Note the suspect's attitude or demeanor during the interview.
- ❖ Determine the relationship between the suspect, victim, and witnesses.
- ❖ Look for behavioral indicators of abuse.
- ❖ If the suspect provide care to the victim:
 - get complete information about his or her duties, training- pay and length of service;
 - find out how involved the suspect is with the victim's care and what he or she expects of the victim - determine if this is reasonable;
 - find out whether the suspect is the only one caring for the victim; and
 - determine how well the suspect is coping with the caregiving responsibilities.
- ❖ Note statements that are inconsistent with other findings and evidence.
- ❖ If handwriting is an issue, collect handwriting samples.
- ❖ Do not communicate hostility or disbelief.
- ❖ Show disputed documents to the suspect one at a time and record his or her response to each one.
- ❖ If the suspect admits to abuse, ask him or her to specify precisely what he or she did and record it.

Adapted from Improving the Police Response to Domestic Elder-Abuse by Martha Plotkin, et. al.. Police Executive Research Forum, 1995.

CAPACITY, CONSENT, AND UNDUE INFLUENCE

Three concepts that are integral to discussion about financial exploitation are capacity, consent, and undue influence. These terms refer to peoples' ability to exercise choice and free will. These factors are essential variables in the equation for determination if financial exploitation has, in fact, occurred.

Capacity

Capacity refers to an individual's ability to perform certain tasks. Mental capacity refers to the ability to perform mental tasks such as remembering, reasoning, and understanding the repercussions of one's actions. When these abilities are impaired, the individual becomes vulnerable to financial exploitation.

The level of capacity that is needed for performing tasks such as financial transactions depends on the specific nature of the transactions. The more complex the transaction, the more capacity is needed. For legal purposes, there are several levels of capacity: testamentary capacity, the capacity to contract, the capacity to give medical consent, and the capacity to testify. The types of capacity that generally come into question in financial abuse cases are testamentary capacity and the capacity to sign documents (i.e. contracts).

Testamentary capacity focuses on making wills. For a will to be legal, the individual must have sufficient mental capacity to be able to:

- 1) Understand the nature of the act:
- 2) Understand and recollect the nature and extent of his or her property: and
- 3) Remember and understand his or her relation to living descendants, spouse, and parents whose interests will be affected by the will.

Although there is no universal standard for what mental capacity is needed to enter into a contract, capacity for signing contracts is generally defined as understanding the nature and consequences of the transaction (i.e. the ability to know what one is doing and appreciate the effects of their actions). Some states have also addressed "volition" in assessing capacity. This relates to the fact that some individuals understand the nature and consequences of their actions but lack volitional control. An example is an individual suffering from manic depressive illness.

A myriad of problems surround discussion about capacity. This includes disagreement about what levels of capacity are needed for specific tasks. In Illinois, for example, courts have generally ruled that executing deeds requires the same level of capacity as executing contracts. However, in a recent court decision in another state, the court ruled that the level of capacity needed for executing deeds was testamentary.

Another inherent problem in discussing capacity is that mental status is usually measured through mental status examinations. These tests measure categories of mental functioning including cognition, memory, etc. It is not always clear how these measurements apply to the performance of specific legal functions. A variety of other issues further complicate assessments of capacity. Additionally, some severely impaired

individuals have periods of lucidity. For this reason, abusers who are charged with exploiting an older person's incapacity, can always claim that a victim was "lucid for a moment" (e.g. when they signed a contract or gave a gift). Consequently, financial exploitation investigators must consider how often a person is affected and how long the impairment lasts. Additionally, a mental impairment in and of itself does not render a person incompetent to make decisions, testify, etc. The seriousness or gravity of a situation also affects the degree of competency that is needed.

Consent

Determining whether financial exploitation has occurred may involve assessing if an individual consented to make purchases, accept assistance, or transact business. To exercise consent, an individual must have knowledge of the true nature of an actor transaction. They must also act freely and voluntarily and not under the influence of threats, force, or duress. They must further possess sufficient mental capacity to make intelligent choices about whether or not to do something that is proposed by another individual. Mere passivity does not amount to consent.

Undue Influence

Another factor which comes into play in the signing of contracts, executing wills, etc. is undue influence. Undue influence is a shorthand legal phrase that is used to describe excessive pressure or persuasion by a dominant person to someone who is vulnerable to pressure. It is a result of weakness on the side of the vulnerable party, strength on the other party's, or a combination of the two. When undue influence is exerted, the weaker party is prevented from acting according to his own wishes or judgment, or they are induced to do something that they would not do if left to act freely. If a contract is obtained through undue influence, the document is invalid. Courts will consider several factors when assessing if undue influence or over persuasion has been used (Neivod, 1992):

Discussion of the transaction at an unusual or inappropriate time

- (a) Consummation of the transaction in an unusual place
- (b) Consistent demand that the business be finished at once
- (c) Extreme emphasis on untoward consequences of delay
- (d) Use of multiple persuaders by the dominant side against the vulnerable party
- (e) Absence of third-party advisers to the vulnerable party

Adapted from Financial Abuse of the Elderly by Lisa Nerenberg, produced by the San Francisco Consortium for Elder Abuse

Prevention for the National Center on Elder Abuse, 1996.

FINANCIAL EXPLOITATION INVESTIGATIVE CHECKLIST

While the type of information which should be collected in financial exploitation cases will depend on the form of exploitation that is alleged and the reason for the investigation, the following guidelines can be instructive to law enforcement officers.

- ❖ Interview victims and alleged abusers separately.
- ❖ Determine the relationship between the parties: Is the suspect a member of the victim's family? Is he or she in a position of trust? Does he or she live with the victim?
- ❖ Find out the sources of income, dollar amounts and payment due dates. Where are checks deposited?
- ❖ Determine the extent of the victim's estate, including real properties, bank accounts, certificates of deposit, stocks, home furnishings, personal belongings, and vehicles, Where are these located? Are there safety deposit boxes? Where and who has keys and/or access to the box? Where are the personal belongings (jewelry, art, valuable collections) kept? Insurance policies? What kinds and who are beneficiaries?
- ❖ Find out who owns the victim's home, whose name is on the deed, who pays rent, and who pays the taxes.
- ❖ Find out whose names are on bank accounts, investment accounts, etc. Where, what type and approximate balance in each.
- ❖ Find out who is the representative payee, power of attorney, accountant, or guardian.
- ❖ Find out who pays the bills. What is the amount of monthly bills? Who writes and signs checks? What debts exist?
- ❖ Find out how the older person's pension, social security, or other income checks are received and deposited in the bank.
- ❖ Find out how cash is obtained. Are there credit cards or ATM cards? Does victim use them? Who else is listed on accounts?
- ❖ Determine if anyone is using the victim's residence or utilities without permission.
- ❖ Find out if loans and/or gifts have been recently made and to whom.
- ❖ Determine if there is a will and where it is located.
- ❖ Determine whether the victim is literate.
- ❖ Secure samples of the victim's and the alleged abuser's signature.
- ❖ Determine what documents signed by the victim have placed the estate in the

suspect's control. They may include powers of attorney, bank signature cards, and vehicle pink slips.

- ❖ Get copies of whatever documents were signed.
- ❖ Determine the income of the alleged abuser.
- ❖ Collect evidence from other agencies.
- ❖ Check for previous criminal charges against the alleged abuser. Find out whether the victim is receiving adequate medical care, food, clothing, etc.
- ❖ Determine the victim's mental status: Is the victim mentally capable of understanding documents, testifying, or assisting in the investigation?
- ❖ If the person is incapacitated, or his or her capacity is questionable, contact family members, friends, or, service providers to obtain mental health evaluations and histories. These should include information about the length of time that the victim has had diminished capacity in order to determine if he or she was able to give consent at the time it was given.
- ❖ If questionable purchases have been made, find out the value of the purchases, by and for whom they were made, the value of the purchases in relation to the abuser's salary and whether there has been a history of gift giving.
- ❖ Determine if the older person's estate is still at risk of theft, misappropriation, or embezzlement. If so, secure the estate as soon as possible.
- ❖ Follow the funds! Determine who has (or had) possession of all misappropriated funds or property.

Adapted from the Delaware Office of the Attorney General's Financial Exploitation Investigative Checklist and Financial Abuse of the Elderly by Lisa Nerenberg, produced by the San Francisco Consortium for Elder Abuse Prevention for the National Center on Elder Abuse, 1996.

RESOURCE DIRECTORY

Elder Abuse and Neglect Reporting:

Allegations of Abuse, Neglect and Exploitation in Domestic Settings:

Illinois Department on Aging

Toll-Free Number: 1-866-800-1409 (Voice) 1-888-206-1327 (TTY)

Local Agency: _____ **Phone:** _____

Allegations of Abuse and Neglect in Long Term Care Settings:

Illinois Department of Public Health

Toll-Free Number: 1-800-252-4343

Long Term Care Ombudsman Program:

Illinois Department on Aging

1-886-800-1409 (Voice) 1-888-206-1327 (TTY)

Local Sub-State Program: Phone: _____

Other Aging Network Programs:

Illinois Department on Aging

1-800-252-8966 (Voice) 1-888-206-1327 (TTY)

Local Numbers:

CCU: _____ **Phone:** _____

Legal Assistance _____ **Phone:** _____

Senior Center _____ **Phone:** _____

Home Delivered Meals _____ **Phone:** _____

Illinois Attorney General's Office

General Contact:

Domestic Violence Programs:

Illinois Coalition Against Domestic Violence

(217) 789-2830, ILCADV.org

Local DV Program: _____ **Phone:** _____

Illinois State Police

General Contact:

Regional Office: _____ **Phone:** _____

State Financial Crime Task Force
(217) 785-9052

Medicaid Fraud Unit (investigates Medicaid fraud and allegations of abuse and neglect in long term care facilities when it is believed a crime has occurred)

Chicago Area:

Downstate Area: (217) 786-7107

Sexual Assault Assistance:

Illinois Coalition Against Sexual Assault, ICASA.org

(217) 753-4117

Local Program: _____ **Phone:** _____

ELDER ABUSE PROVIDER AGENCY LISTING

The following is a list of Elder Abuse Provider Agencies designated by the Illinois Department on Aging to investigate reports of alleged mistreatment of older persons, and, where substantiated, to work with the older person to resolve the situation. Anyone suspecting abuse, neglect or financial exploitation of a person 60 years of age or older should call either the appropriate local provider agency or the Departments Senior Helpline 1-866-800-1409. A trained caseworker will respond within a specified period of time.

Illinois Department on Aging's Toll Free Number: 1-866-800-1409 (Voice or TDD) 1-888-206-1327 (TTY)

<u>PSA</u>	<u>COUNTIES SERVED</u>	<u>DESIGNATED ELDER ABUSE PROVIDER AGENCY</u>	<u>PHONE NUMBER</u>	<u>FAX</u>
01	DeKalb	Elderly Care Services of DeKalb County	(815) 758-6550	815/758-4239
01	Carroll, Lee, Ogle, Whiteside	Lutheran Social Services of Illinois-Intouch Svcs	(815) 626-7333	815/626-8752
01	JoDaviess, Stephenson	Stephenson County Senior Center	(815) 235-9777	815/235-9571
01	Boone, Winnebago	Visiting Nurses Association of the Rockford Area	(815) 971-3502	815/971-4339
02	Lake	Catholic Charities of the Archdiocese of Chicago Lake County	(847) 546-5733 (800) 942-3930	847/546-7114
02	Kankakee	Catholic Charities of the Diocese of Joliet, Inc.	(815) 932-1921	815/933-4601
02	DuPage	DuPage County Department of Human Resources	(630) 407-6500 (800) 942-9412	630/407-6501
02	Grundy	Grundy County Health Department	(815) 941-3143	815/941-2389
02	Kane	Senior Services Associates	(847) 741-0404 (Elgin) (630) 897-4035 (Aurora)	847/741-2163 630/897-6901
02	Kendall	Senior Services Associates	(630) 553-5777	630/553-6979
02	McHenry	Senior Services Associates	(815) 344-3555	815/344-3593
02	Will	Senior Services Center of Will County	(815) 740-4225 (800) 892-1412	815/729-3255

<u>PSA</u>	<u>COUNTIES SERVED</u>	<u>DESIGNATED ELDER ABUSE PROVIDER AGENCY</u>	<u>PHONE NUMBER</u>	<u>FAX</u>
03	Bureau, Henderson, Henry, Knox Putnam, Rock Island, Warren LaSalle, McDonough, Mercer,	Alternatives for the Older Adult, Inc	(309) 277-0168 (800) 798-0988	309/277-0163
04	Fulton Marshall, Peoria, Stark Tazewell, Woodford	SeniorStrength The Center for Prevention of Abuse	(309) 637-3905 (800) 279- 0400	309/637-3907
05	Ford, Iroquois	Elder Care Services of Ford-Iroquois Counties	(815) 432-2483	815/432-2198
05	DeWitt, Macon	Community Home Environmental Learning Project	(217) 422-9888	217/422-9650
05	Vermilion	CRIS Senior Services	(217) 443-2999	217/443-4288
05	Clark, Coles Cumberland, Douglas, Edgar, Moultrie, Shelby	Cumberland Associates. Inc	(217) 849-3065 (800) 626-7911	217/849-3804
05	Champaign, Piatt	Family Services of Champaign County	(217) 352-5100	217/352-1910
05	Livingston, McLean	PATH	(309) 828-1022	309/827-7485
06	Adams, Brown, Calhoun, Hancock, Pike, Schuyler	West Central Illinois Case Coordination Unit	(217) 222-1189 (800) 252-9027	217/222-1220
07	Macoupin, Christian	Locust Street Resource Center	(217) 854-4706 (800) 277-7078	217/854-3778
07	Montgomery	Montgomery County Health Department	(217) 532-2001	217/532-2089
07	Cass, Greene. Jersey, Morgan, Scott	Prairie Council on Aging	(217) 479-4600	217/245-6909
07	Logan, Mason, Menard, Sangamon	Senior Services of Central Illinois, Inc	(217) 528-4035 (800) 609-4000	217/528-4537
08	Bond, Clinton, Madison, Randolph, St. Clair. Washington Madison, Monroe	Southwestern Illinois Visiting Nurse Association	(618) 236-5863 (800) 642-5429	618/236-5859
09	Clay, Effingham, Fayette, Jefferson, Marion	Effingham City/County Committee on Aging	(217) 347-5569 (800) 232-1790	618/283-4828

<u>PSA</u>	<u>COUNTIES SERVED</u>	<u>DESIGNATED ELDER ABUSE PROVIDER AGENCY</u>	<u>PHONE NUMBER</u>	<u>FAX</u>
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10	Crawford, Edwards, Hamilton, Jasper, Lawrence, Richland, Wabash, Wayne, White	SWAN (Stop Women Abuse Now)	(618) 392-3556	618/392-5514
11	Alexander, Franklin, Gallatin, Hardin, Jackson, Johnson, Massac, Perry, Pope, Pulaski, Saline, Union, Williamson	Shawnee Alliance for Seniors	(618) 985-8322 (800) 642-7773	618/985-9096

COOK COUNTY

12	City of Chicago Sub-Area 1 (60626, 60640, 60645, 60659, 60660) Sub-Area 2 (60625, 60630, 60631, 60646, 60656) Sub-Area 3 (60634, 60635, 60639, 60641, 6066, 60707) Sub-Area 4 (60613, 60614, 60618, 60647 60657)	Catholic Charities Elder Protective Services	(773) 286-6041	773/286-6141
12	City of Chicago Sub-Area 5 (60601, 60602 60603, 60604, 60605, 60606 60607, 60610, 60611, 60622)	Healthcare Consortium of Illinois	(708) 841-9515	708/841-8036
12	City of Chicago Sub-Area 6 (60615, 60616 60637, 60649, 60653)	Centers for New Horizons	(773) 451-1377	773/924-3941
12	City of Chicago Sub-Area 7 (60609, 60623, 60629, 60632, 60638) Sub-Area 8 (60617, 60619, 60628, 60633, 60827) Sub-Area 9 (60620, 60621, 60643, 60652, 60655)	Metropolitan Family Services	(312) 986-4332	773/884-0003

<u>PSA</u>	<u>COUNTIES SERVED</u>	<u>DESIGNATED ELDER ABUSE PROVIDER AGENCY</u>	<u>PHONE NUMBER</u>	<u>FAX</u>
12	City of Chicago Sub-Area 10 (60608, 60612, 60624, 60644, 60651)	Sinai Community Institute	(773) 522-8640	773/257-2089

13	Berwyn, Cicero Townships Proviso Township (except for Brookfield & LaGrange Park)	Berwyn-Cicero Council on Aging	(708) 447-2448	708/447-2445
13	Barrington, Hanover, Palatine, Wheeling Townships	Catholic Charities of the Archdiocese of Chicago, The Northwest	(847) 253-5500	847/253-9597
13	Bloom, Breman, Calumet, Dixmoor, Harvey, Homewood, Markham of Thornton Township, Rich Township	Catholic Charities of the Archdiocese of Chicago, The (South Suburban Senior Services)	(708) 596- 2222	708/596-9567
13	Elk Grove, Schaumburg	Kenneth W. Young Centers, The (Senior Services – West)	(847) 524-8800	847/524-8824
13	Evanston, Niles	Metropolitan Family Services	(847) 328-2404	847/328-1295
13	Maine, New Trier, Northfield	North Shore Senior Center	(847) 784-6000	847/784-6088
13	Oak Park, River Forest	Oak Park Township (Senior Services)	(708) 383-8060	708/383-5168
13	Lemont, Orland, Palos, Worth	PLOWS Council on Aging	(708) 361-0219	708/361-9853
13	Leyden, Lyons, Riverside and Village of Brookfield and LaGrange Park	Southwest Suburban Council on Aging	(708) 354-1323	708/354-0282
13	Stickney Township	Stickney Township Office on Aging	(708)636-8850	708/636-9473

CRIMINAL STATUTES RELATED TO ABUSE

The following are synopsis of statutes as they relate to the elderly.

A. CONFINEMENT

1. **Unlawful Restraint (720 ILCS 5/10-3.1)**: A person commits the offense of unlawful restraint when he knowingly without legal authority detains another. Class 4 felony.
2. **Aggravated Unlawful Restraint (720 ILCS 5./10-3.1)**: A person commits the offense of aggravated unlawful restraint when he knowingly without legal authority detains another while using a deadly weapon. Class 3 felony.
3. **Aggravated Stalking (720ILCS 5/12-7.4)**: A person commits aggravated stalking when he or she, in conjunction with committing the offense of stalking, also does any of the following:
 - causes bodily harm to the victim;
 - confines or restrains the victim; or,
 - violates a temporary restraining order, an order of protection, or an injunction prohibiting the behavior described in subsection (b)(I) of Section 214 of the Illinois Domestic Violence Act of 1986. (*Class 3 felony. A second or subsequent conviction for aggravated stalking is a Class 2 felony.*)

B. PHYSICAL ABUSE

1. **Assault (720 ILCS 5/12-1)**: A person commits an assault when, without lawful authority, he engages, in conduct which places another in reasonable apprehension of receiving a battery. (*Class C misdemeanor.*)

Note: In addition to any other sentence that may be imposed, a court shall order any person convicted of assault to perform community service for not less than 30 and not more than 120 hours, if such service is available in the jurisdiction. The community service requirement does not apply if the court imposes a sentence of incarceration.
2. **Aggravated Assault (720 ILCS 5/ 12-2)**: A person commits an aggravated assault, when, in committing an assault, he commits one of several aggravating factors, including knowingly and without legal justification, commits an assault on a person 60 years of age or older. (*If the only aggravating factor is the age, the aggravated assault is a Class A misdemeanor.*)
3. **Battery (720 ILCS 5/12-3)**: A person commits battery if he intentionally or knowingly without legal justification and by any means, (1) causes bodily harm to an individual or (2) makes physical contact of an insulting or

provoking nature with an individual. (*Class A misdemeanor.*)

4. **Domestic Battery (720 ILCS 5/12-3.2):** A person commits Domestic Battery if he intentionally or knowingly without legal justification by any means:

causes bodily harm to any family or household member as defined in Subsection; or

makes physical contact of an insulting or provoking nature with any family or household member as defined in subsection (3) of Section II 2A-3 of the Code of Criminal Procedure of 1963, as amended. (*Class A Misdemeanor. No bond. A Second and subsequent violation is a Class 4 felony.*)
5. **Aggravated Battery (720 ILCS 5/12-4):** A person who, in committing a battery, intentionally or knowingly causes great bodily harm, or permanent disability or disfigurement commits aggravated battery; OR in committing a battery, a person commits aggravated battery if he or she...Knowingly and without legal justification and by any means causes bodily harm to an individual of 60 years of age or older; OR a person who administers to an individual or causes him to take, without his consent or by threat or deception, and for other than medical purposes, any intoxicating, poisonous, stupefying, narcotic or anesthetic substance commits aggravated battery; OR a person who knowingly gives to another person any food that contains any substance or object that is intended to cause physical injury if eaten, commits' aggravated battery. (*Class 3 felony.*)
6. **Heinous battery (720 ILCS 5/12-4. 1):** A person who, in committing a battery, knowingly causes severe and permanent disability, great bodily harm, or disfigurement by means of a caustic or flammable substance, a poisonous gas, a deadly biological or chemical contaminant or agent, a radioactive Substance, or bomb or explosive compound commits heinous battery. (*Class X felony.*)
7. **Tampering with food, drugs or cosmetics (720 ILCS 5/12-4.5):** Any person who knowingly puts any substance capable of causing death or great bodily harm to a human being into any food, drug or cosmetic offered for sale or consumption commits the offense of tampering with food, drugs or cosmetics. (*Class 2 felony.*)
8. **Aggravated battery of a senior citizen (720 ILCS 5/12-4.6):** A person who, in committing battery, intentionally or knowingly causes great bodily harm or permanent disability or disfigurement to an individual of 60 years of age or older commits aggravated battery of a senior citizen. (*Class 2 felony.*)
9. **Drug induced infliction of great bodily harm (720 ILCS 5/12-4.7):** Any person who violates Section 401 of the Illinois Controlled Substances Act by unlawfully delivering a controlled substance to another commits the offense of drug induced infliction of great bodily harm if any person

experiences great bodily harm or permanent disability as a result of the injection, inhalation or ingestion of any amount of that controlled substance. (*Class I felony.*)

10. **Intimidation (720 ILCS 5/12-6)**: A person commits intimidation when, with intent to cause another to perform or to omit the performance of any act, he communicates to another, whether in person, by telephone or by mail, a threat to perform without lawful authority any of the following acts:
- (1) Inflict physical harm on the person threatened or any other person or on property; or
 - (2) Subject any person to physical confinement or restraint; or
 - (3) Commit any criminal offense; or
 - (4) Accuse any person of an offense; or
 - (5) Expose any person to hatred, contempt or ridicule...

Intimidation is a Class 3 felony for which an offender may be sentenced to a term of imprisonment of not less than 2 years and not more than 10 years.

11. **Stalking (720 ILCS 5/ 12-7.3)**: A person commits stalking when he or she, knowingly and without lawful justification, on at least 2 separate occasions follows another person or places the person under surveillance or any combination thereof and: at any time transmits a threat to that person of immediate or
- a. future bodily harm, sexual assault, confinement or restraint and the threat is directed towards that person or a family member of that person; or
 - b. places that person in reasonable apprehension of immediate or future bodily harm, sexual assault, confinement or restraint; or
 - c. places that person in reasonable apprehension that a family member will receive immediate or future bodily harm, sexual assault, confinement, or restraint. (*Class 4 felony. A second or subsequent conviction for stalking is a Class 3 felony.*)

Note: For the purpose of this Section, a defendant "places a person under surveillance" by remaining present outside the person's school, place of employment, vehicle, other place occupied by the person, or residence other than the residence of the defendant; and "follows another person" does not include a following within the residence of the defendant.

12. **Aggravated stalking (720 ILCS S/ 12-7.4)**: A person commits aggravated stalking when he or she, in conjunction with committing the offense of stalking, also does any of the following:

- a. causes bodily harm to the victim;
- b. confines or restrains the victim; or violates a temporary restraining order, an order of protection, or an injunction prohibiting the behavior described in subsection (b)(1) of Section 214 of the Illinois Domestic Violence Act of 1986. (*Class 3 felony. A second or subsequent conviction for aggravated stalking is a Class 2 felony.*)

C. SEXUAL ABUSE

1. **Sexual Relations within Families (720 ILCS 5/11-11)**: A person commits sexual relations within families if he or she commits an act of sexual penetration and knows that he or she is related to the other person as follows: (i) Brother or sister, either of the whole blood or the half blood; or (ii) Father or mother, when the child, regardless of legitimacy and regardless of whether the child was of the whole blood or half-blood or was adopted, was 18 years of age or over when the act was committed; or (iii) Stepfather or stepmother, when the stepchild was 18 years of age or over when the act was committed. (*Class 3 felony.*)
2. **Solicitation of a Sexual Act (720 ILCS 5/ 11-14.1)**: Any person who offers a person not his or her spouse any money, property, token, object, or anything of value to perform any act of sexual penetration, as defined in section 12-12 of this code, touching or fondling of the sex organs of one person by another person for the purpose of sexual arousal or gratification, commits the offense of solicitation of a sexual act. (*Class B misdemeanor.*)
3. **(720 ILCS 5/12-12) (from Ch.38, par 12-12) Sec.12-12 Definitions.** For the purposes of Sections 12-13 through 12-18 of this Code, the terms used in these Sections shall have the following meanings ascribed to them:
 - a. "**Accused**" means a person accused of an offense prohibited by Section 12-13, 12-14, 12-15 or 12-16 of this Code or a person for whose conduct the accused is legally responsible under Article 5 of this Code.
 - b. "**Bodily harm**" means physical harm, and includes, but is not limited to, sexually transmitted disease, pregnancy and impotence.
 - c. "**Family member**" means a parent, grandparent, or child, whether by whole blood, half-blood or adoption and includes a step-grandparent, step-parent or step-child.
 - d. "**Force or threat of force**" means the use of force or violence, or the threat of force or violence, including but not limited to the following situations:
 - (1) When the accused threatens to use force or violence on the victim or on any other person, and the victim under the circumstances reasonably believed that the accused had the ability to execute that

threat; or

(2) When the accused has overcome the victim by use of superior strength or size, physical restraint or physical confinement.

- e. "***Sexual conduct***" means any intentional or knowing touching or fondling by the victim or the accused, either directly or through clothing, of the sex organs, anus or breast of the victim or the accused ... for the purpose of sexual gratification or arousal of the victim or the accused.
 - f. "***Sexual penetration***" means any contact, however slight, between the sex organ or anus of one person by an object, the sex organ, mouth or anus of another person, or any intrusion, however slight, of any part of the body of one person or of any animal or object into the sex organ or anus of another person, including but not limited to cunnilingus, fellatio or anal penetration. Evidence of emission of semen is not required to prove sexual penetration.
 - g. "***Victim***" means a person alleging to have been subjected to an offense prohibited by Section 12-13, 12-14, 12-15 or 12-16 of this Code
4. **Criminal Sexual Assault (720 ILCS 5/12-13)**: The accused commits criminal sexual assault if he or she commits an act of sexual penetration by the use of force or threat of force; or commits an act of sexual penetration and the accused knew that the victim was unable to understand the nature of the act or was unable to give knowing consent. (*Class I felony. A second or subsequent conviction may be a Class X felony.*)
 5. **Aggravated Criminal Sexual Assault (720 ILCS 5/12-14)**: The accused commits aggravated criminal sexual assault if he or she commits criminal sexual assault and ... the victim was 60 years of age or over when the offense was committed; or the accused commits an act of sexual penetration with a victim who was an institutionalized severely or profoundly mentally retarded person at the time the act was committed. (*Class X felony.*)
 6. **Criminal Sexual Abuse (720 ILCS 5/ 12-15)**: The accused commits criminal sexual abuse if he or she ... commits an act of sexual conduct and the accused knew that the victim was unable to understand the nature of the act or was unable to give knowing consent. (*Class 4 felony. A second or subsequent conviction may be a Class 2 felony.*)
 7. **Aggravated Criminal Sexual Abuse (720 ILCS 5/12-16)**: The accused commits aggravated criminal sexual abuse if he or she commits criminal sexual abuse ... and the victim was 60 years of age or over when the offense was committed; or the accused commits an act of sexual conduct with a victim who was an institutionalized severely or profoundly mentally retarded person at the time the act was committed. (*Class 2 felony.*)

D. EMOTIONAL ABUSE

1. **Transmission of Obscene Messages Prohibited (720 ILCS 135/ D):**
Any person in this State who sends messages or uses language or terms which are obscene, lewd or immoral with the intent to offend by means of or while using a telephone or telegraph facilities, equipment or wires of any person, firm or corporation engaged in the transmission of news or messages between states or within the State of Illinois is guilty of a Class B misdemeanor. A second or third violation is a Class A misdemeanor. A fourth or subsequent violation is a Class 4 felony. The use of language or terms which are obscene, lewd or immoral is prima facie evidence of the intent to offend.

2. **Harassment by Telephone (720 ILCS 135/1-2):** is use of telephone communication for any of the following purposes:
 - a. Making any comment, request, suggestion or proposal which is obscene, lewd, lascivious, filthy or indecent with an intent to offend; or
 - b. Making a telephone call, whether or not conversation ensues, with intent to abuse, threaten or harass any person at the called number; or
 - c. Making or causing the telephone of another repeatedly to ring, with intent to harass any person at the called number; or
 - d. Making repeated telephone calls, during which conversation ensues, solely to harass any person at the called number; or
 - e. Knowingly permitting any telephone under one's control to be used for any of the purposes mentioned herein.

Note: All telephone companies in this State shall cooperate with law enforcement agencies in using their facilities and personnel to detect and prevent violations of this Act. (*Class B misdemeanor. A second or third violation is a Class A misdemeanor. A fourth or subsequent violation is a Class 4 felony.*)

3. **Intimidation (720 ILCS 5/12-6):** A person commits intimidation when, with intent to cause another to perform or to omit the performance of any act, he communicates to another, whether in person, by telephone or by mail, a threat to perform without lawful authority any of the following acts:
 - a. Inflict physical harm on the person threatened or any other person or on property; or
 - b. Subject any person to physical confinement or restraint; or
 - c. Commit any criminal offense; or
 - d. Accuse any person of an offense; or

- e. Expose any person to hatred, contempt or ridicule.

Intimidation is a Class 3 felony for which an offender may be sentenced to a term of imprisonment of not less than 2 years and not more than 10 years.

E. FINANCIAL EXPLOITATION

1. Financial exploitation of elderly persons includes acts which constitute property crimes regardless of the age of the victim. This would include:
 - a. Theft (720 ILCS 5/16-I)
 - b. Deceptive practices (720 ILCS 5/ 17- 1)
 - c. Forgery (720 ILCS 5/17-3)
2. When a "threat" (720 ILCS 5/15-5) is an element of the crime, the elder is being subjected to emotional abuse.
3. Financial exploitation of an elderly or disabled person (720 ILCS 5/ 16-1.3):
 - a. A person commits the offense of financial exploitation of an elderly person when:
 - (1) he stands in a position of trust and confidence with the elderly or disabled person and
 - (2) he knowingly and by deception or intimidation obtains control over the elderly or disabled person's property
 - (3) with the intent to permanently deprive the elderly or disabled person of the use, benefit, or possession of his property.
 - b. Financial exploitation of an elderly or disabled person is a:
 - (1) Class 4 felony if value of property is \$300 or less,
 - (2) Class 3 felony if value of property is more than \$300 but less than \$5,000
 - (3) Class 2 felony if value of property is \$5,000 or more but less than \$100,000
 - (4) Class 1 felony if the value of the property is \$100,000 or more of if the elderly person is over 70 years of age and the value of the property is \$15,000 or more or if the elderly person is 80 years of age or older and the value of the property is \$5,000 or more.
 - c. Definitions for purposes of this Statute:
 - (1) "**Elderly persons**" means a person 60 years of age or older.

- (2) **"Disabled person"** means a person who suffers from a physical or mental impairment resulting from disease, injury, functional disorder or congenital condition which renders such person incapable of avoiding or preventing the commission of the offense.
 - (3) **"Intimidation"** means the communication to an elderly or disabled person that he shall be deprived of food and nutrition, shelter, prescribed medication or medical care and treatment.
 - (4) **"Deception"** means, in addition to its meaning as defined in Section 15-4 of this Code, a misrepresentation or concealment of material fact relating to the terms of a contract or agreement entered into with the elderly or disabled person or to the existing or pre-existing condition of any of the property involved in such contract or agreement; or the use or employment of any misrepresentation, false pretense or false promise in order to induce, encourage or solicit the elderly or disabled person to enter into a contract or agreement.
- d. For purposes of this Section, a person stands in a position of trust and confidence with an elderly or disabled person when he
- (1) is a parent, spouse, adult child or other relative by blood or marriage of the elderly or disabled person,
 - (2) is a joint tenant or tenant in common with the elderly or disabled person or
 - (3) has a legal or fiduciary relationship with the elderly or disabled person.
 - (4) is a financial planning or investment professional.
- e. Nothing in this Section shall be construed to limit the remedies available to the victim under the Illinois Domestic Violence Act.
- f. Nothing in this Section shall be construed to impose criminal liability on a person who has made a good faith effort to assist the elderly or disabled person in the management of his property, but through no fault of his own has been unable to provide such assistance.
- g. It shall not be a defense to financial exploitation of an elderly or disabled person that the accused reasonably believed that the victim was not an elderly or disabled person.

Note: Civil Liability. A person who is charged by information or indictment with the offense of financial exploitation of an elderly or disabled person and who fails or refuses to return the victim's property within 60 days following a written demand from the victim or the victim's legal representative shall be liable to the victim or to the estate of the victim

in damages of treble the amount of the value of the property obtained, plus reasonable attorney fees and court costs. The burden of proof that the defendant unlawfully obtained the victim's property shall be by a preponderance of the evidence. This subsection shall be operative whether or not the defendant has been convicted of the offense.

F. Serious Neglect / Willful Deprivation

1. **Criminal Abuse or Neglect of an Elderly or Disabled Person (720 ILCS 5/12-21):** A person commits the offense of criminal neglect of an elderly or disabled person when he is a caregiver and he knowingly; physically abuses, harasses, intimidates, or interferes with personal liberty of the elderly person or persons with a disability or exposes the elderly person or persons with a disability to willful deprivation.
 - a. performs acts which cause the elderly or disabled person's life to be endangered, health to be injured, or pre-existing physical or mental condition to deteriorate: or
 - b. fails to perform acts which he knows or reasonably should know are necessary to maintain or preserve the life or health of the elderly or disabled person and such failure causes the elderly or disabled person's life to be endangered, health to be injured or pre-existing physical or mental condition to deteriorate; or abandons the elderly or disabled person.
2. Class 3 felony.
3. Definitions for Criminal Neglect Statute:
 - a. "***Elderly person***" means a person 60 years of age or older who is incapable of adequately providing for his own health and personal care.
 - b. "***Disabled person***" means a person who suffers from a permanent physical or mental impairment, resulting from disease, injury, functional disorder or congenital condition which renders such person incapable of adequately providing for his own health and personal care.
 - c. "***Caregiver***" means a person who has a duty to provide for an elderly or disabled person's health and personal care, at such person's place of residence, including but not limited to, food and nutrition, shelter, hygiene, prescribed medication and medical care and treatment.

"***Caregiver***" shall include:
 - (1) parent, spouse, adult child other relative by blood or marriage who resides with or resides in the same building with and regularly visits the elderly or disabled person knows or reasonably should know of such person's physical or mental impairment and knows or

reasonably should know that such person is unable to adequately provide for his own health and personal care, or

- (2) person who is employed by the elderly or disabled person or by another to reside with or regularly visit the elderly or disabled person and provide for such person's health and personal care;
- (3) person who has agreed for consideration to reside with or regularly visit the elderly or disabled person and provide for such person's health and personal care;
- (4) a person who has been appointed by a private or public agency or by a court of competent jurisdiction to provide for the elderly or disabled person's health and personal care.

Note: "Caregiver" does not include a long-term care facility licensed or certified under the Nursing Home Care Act or any administrative, medical or other personnel of such a facility, or a health care provider who is licensed under the Medical Practice Act and renders care in the ordinary course of his profession.

- d. "**Abandon**" means to desert or knowingly forsake an elderly or disabled person under circumstances in which a reasonable person would continue to provide care and custody.
4. No criminal liability shall be imposed on a person who has made a good faith effort to provide for the health and personal care of an elderly or disabled person, but through no fault of his own has been unable to provide such care.
5. Nothing in this statute prohibits a person from providing treatment by spiritual means through prayer alone and care consistent therewith in lieu of medical care and treatment in accordance with the tenets and practices of any church or religious denomination of which the elderly or disabled person is a member.
6. It is not a defense that the accused reasonably believed that the victim was not an elderly or disabled person.

G. OTHER CRIMINAL STATUTES WHICH MAY APPLY IN ANY TYPE OF ABUSE OR NEGLECT

1. ***Violation of an Order of Protection (720 ILCS 5/12-30) (No Bond, see Supreme Court Rule 528 (d)): A person commits violation of an order of protection if he/she has done the following.***
 - a. Commits an act which was prohibited by a court or fails to commit an act which was ordered by a court in violation of a remedy in a valid order of protection authorized under paragraphs (1), (2), (3), (14) or (14.5) of subsection (b) of Section 214 of the Illinois Domestic Violence

Act of 1986, or any other remedy when the act constitutes a crime against the protected parties as the term protected parties is defined in Section 112A-4 of the Code of Criminal Procedure of 1963.

Such violation occurs after the offender has been served notice of the contents of the order, pursuant to the Illinois Domestic Violence Act, or otherwise has acquired actual knowledge of the contents of the order.

- b. For purposes of this Section, an "order of protection" may have been issued by any circuit or associate judge in a criminal or civil proceeding.
- c. Violation of an order of protection is a Class A misdemeanor. A second conviction or a prior conviction is a Class 4 felony. It is a Class 4 felony if the defendant has prior convictions of various violent crimes (see 720 ILCS 5/12-30(2) (d)). Other fines and penalties may also apply.

- 2. *Resisting or obstructing a peace officer or correctional institution employee (720 ILCS 5/31- I):*** A person who knowingly resists or obstructs the performance by one known to the person to be a peace officer or correctional institution employee of any authorized act within his official capacity commits a Class A misdemeanor. If the officer receives an injury the convicted is guilty of a Class 4 felony.

In addition to any other sentence that may be imposed, court shall order the convicted imprisonment of a minimum of 48 hours or community service of not less than 100 hours.

- 3. *Violation of bail bond (720 ILCS 5/32-10) (see Supreme Court Rule 528 and 725 ILCS 5/110-10):***

- a. Whoever, having been admitted to bail for appearance before any court of this State, incurs a forfeiture of the bail and willfully fails to surrender himself within 30 days following the date of such forfeiture, commits, if the bail was given in connection with a charge of felony or pending appeal or after conviction of any offense, a felony of the next lower Class or a Class A misdemeanor if the underlying offense was a Class 4 felony; or, if the bail was given in a connection with a charge of committing a misdemeanor, or for appearance as a witness, commits a misdemeanor, or for appearance as a witness, commits a misdemeanor of the next lower Class but not less than a Class C misdemeanor.
- b. Any person who violates a condition of bail bond by possessing a firearm commits a Class 4 felony for a first violation and a Class 3 felony for a second violation.
- c. Whoever, having been admitted to bail for appearance before any court of this State, while charged with a criminal offense in which the victim is a family or household member as defined in Article 112A of the Code of Criminal Procedure of 1963, commits a Class A misdemeanor.

- d. Whoever, having been admitted to bail for appearance before any court of this State for a felony, Class A misdemeanor or a criminal offense in which the victim is a family or household member as defined in Article 112A of the Code of Criminal Procedure of 1963, is charged with an offense which violates condition of bail, must appear in court before bail is statutorily set.

4. Rights to present victim impact statement (725 ILCS 120/6)

- a. In any case where a defendant has been convicted of a violent crime or a juvenile has been adjudicated a delinquent for a violent crime and a victim of the violent crime or the victim's spouse, guardian, parent, grandparent, or other immediate family or household member is present in the courtroom at the time of the sentencing or the disposition hearing, the victim or his or her representative shall have the right and the victim's spouse, guardian, parent, grandparent, and other immediate family or household member upon his, her, or their request may be permitted by the court to address the court regarding the impact that the defendant's criminal conduct or the juvenile's delinquent conduct has had upon them and the victim. The court has discretion to determine the number of oral presentations of victim impact statements. Any impact statement must have been prepared in writing in conjunction with the Office of the State's Attorney prior to the initial hearing or sentencing, before it can be presented orally or in writing at the sentencing hearing. In conjunction with the Office of the State's Attorney, a victim impact statement that is presented orally may be done so by the victim or the victim's spouse, guardian, parent, grandparent, or other immediate family or household member or his, her, or their representative. At the sentencing hearing, the prosecution may introduce that evidence either in its case in chief or in rebuttal. The court shall consider any impact statement admitted along with all other appropriate factors in determining the sentence of the defendant or disposition of such juvenile.
- b. The crime victim has the right to prepare a victim impact statement and present it to the Office of the State's Attorney at any time during the proceedings. Any written victim impact statement submitted to the Office of the State's Attorney shall be considered by the court during its consideration of aggravation and mitigation in plea proceedings under Supreme Court Rule 402
- c. This Section shall apply to any victims of a violent crime during any dispositional hearing under Section 5-705 of the Juvenile Court Act of 1987 which takes place pursuant to an adjudication or trial or plea of delinquency for any such offense.

H. CRIMINAL STATUTES APPLICABLE IN THE EVENT OF DEATH

1. First Degree Murder (720 ILCS 5/9-1):

- a. A person who kills an individual without lawful justification commits first degree murder if, in performing the acts which cause the death:
 - (1) he either intends to kill or do great bodily harm to that individual or another, or knows that such acts will cause death to that individual or another; or
 - (2) he knows that such acts create a strong probability of death or great bodily harm to that individual or another; or
 - (3) he is attempting or committing a forcible felony other than second degree murder.
- b. Aggravating Factors. A defendant who at the time of the commission of the offense has attained the age of 18 or more and who has been found guilty of first degree murder may be sentenced to death if:
 - (1) the murdered individual was a peace officer or fireman killed in the course of performing his official duties, to prevent the performance of his official duties, or in retaliation for performing his official duties, and the defendant knew or should have known that the murdered individual was a peace officer or fireman; or
 - (2) the murdered individual was an employee of an institution or facility of the Department of Corrections, or any similar local correctional agency, killed in the course of performing his official duties, to prevent the performance of his official duties, or in retaliation for performing his official duties, or the murdered individual was an inmate at such institution or facility and was killed on the grounds thereof, or the murdered individual was otherwise present in such institution or facility with the knowledge and approval of the chief administrative officer thereof; or
 - (3) the defendant has been convicted of murdering two or more individuals under subsection (a) of this Section or under any law of the United States or of any state which is substantially similar to subsection (a) of this Section regardless of whether the deaths occurred as the result of the same act or of several related or unrelated acts so long as the deaths were the result of either an intent to kill more than one person or of separate acts which the defendant knew would cause death or create a strong probability of death or great bodily harm to the murdered individual or another; or
 - (4) the murdered individual was killed as a result of the hijacking of an airplane, train, ship, bus or other public conveyance; or
 - (5) the defendant committed the murder pursuant to a contract, agreement or understanding by which he was to receive money or anything of value in return for committing the murder or procured another to commit the murder for money or anything of value; or

- (6) the murdered individual was killed in the course of another felony if:
 - a. the murdered individual:
 - (1) was actually killed by the defendant, or
 - (2) received physical injuries personally
 - b. in performing the acts which caused the death inflicted by the defendant substantially contemporaneously with physical injuries caused by one or more persons for whose conduct the defendant is legally accountable under Section 5-2 of this Code, and the physical injuries inflicted by either the defendant or the other person or persons for whose conduct he is legally accountable caused the death of the murdered individual; and of the murdered individual or which resulted in physical injuries personally inflicted by the defendant on the murdered individual under the circumstances of subdivision (ii) of subparagraph (a) of paragraph (6) of subsection (b) of this Section, the defendant acted with the intent to kill the murdered individual or with the knowledge that his acts created a strong probability of death or great bodily harm to the murdered individual or another; and
 - c. the other felony was an inherently violent crime or the attempt to commit an inherently violent crime. In this subparagraph (c), "inherently violent crime" includes, but is not limited to, armed robbery, robbery, predatory criminal sexual assault of a child, aggravated criminal sexual assault, aggravated kidnapping, aggravated vehicular hijacking, aggravated arson, aggravated stalking, residential burglary, and home invasion; or
- (7) the murdered individual was under 12 years of age and the death resulted from exceptionally brutal or heinous behavior indicative of wanton cruelty; or
- (8) the defendant committed the murder with intent to prevent the murdered individual from testifying or participating in any criminal investigation or prosecution or giving material assistance to the State in any investigation or prosecution, either against the defendant or another; or the defendant committed the murder because the murdered individual was a witness in any prosecution or gave material assistance to the State in any investigation or prosecution, either against the defendant or another; for purposes of this paragraph (8), "participating in any criminal investigation or prosecution" is intended to include those appearing in the proceedings in any capacity such as trial judges, prosecutors, defense attorneys, investigators, witnesses, or jurors; or
- (9) the defendant, while committing an offense punishable under Sections 401, 401.1, 401.2, 405, 405.2, 407 or 407.1 or subsection (b) of Section 404 of the Illinois Controlled Substances Act, or while engaged in a conspiracy

or solicitation to commit such offense, intentionally killed an individual or counseled, commanded, induced, procured or caused the intentional killing of the murdered individual; or

- (10) the defendant was incarcerated in an institution or facility of the Department of Corrections at the time of the murder, and while committing an offense punishable as a felony under Illinois law, or while engaged in a conspiracy or solicitation to commit such offense, intentionally killed an individual or counseled, commanded, induced, procured or caused the intentional killing of the murdered individual; or
- (11) the murder was committed in a cold, calculated and premeditated manner pursuant to a preconceived plan, scheme or design to take a human life by unlawful means, and the conduct of the defendant created a reasonable expectation that the death of a human being would result there from; or
- (12) the murdered individual was an emergency medical technician, ambulance emergency medical technician, intermediate emergency medical technician, paramedic, ambulance driver, or other medical assistance or first aid personnel, employed by a municipality or other governmental unit, killed in the course of performing his official duties, to prevent the performance of his official duties, or in retaliation for performing his official duties, and the defendant knew or should have known that the murdered individual was an emergency medical technician - ambulance, emergency medical technician - intermediate, emergency medical technician - paramedic, ambulance driver, or other medical assistance or first aid personnel; or
- (13) the defendant was a principal administrator, organizer, or leader of a calculated criminal drug conspiracy consisting of a hierarchical position of authority superior to that of all other members of the conspiracy, and the defendant counseled, commanded, induced, procured, or caused the intentional killing of the murdered person; or
- (14) the murder was intentional and involved the infliction of torture. For the purpose of this Section torture means the infliction of or subjection to extreme physical pain, motivated by an intent to increase or prolong the pain, suffering or agony of the victim; or
- (15) the murder was committed as a result of the intentional discharge of a firearm by the defendant from a motor vehicle and the victim was not present within the motor vehicle; or
- (16) the murdered individual was 60 years of age or older and the death resulted from exceptionally brutal or heinous behavior indicative of wanton cruelty; or
- (17) the murdered individual was a disabled person and the defendant knew or should have known that the murdered individual was disabled. For

purposes of this paragraph (17), "disabled person" means a person who suffers from a permanent physical or mental impairment resulting from disease, an injury, a functional disorder, or a congenital condition that renders the person incapable of adequately providing for his or her own health or personal care; or

- (18) the murder was committed by reason of any person's activity as a community policing volunteer or to prevent any person from engaging in activity as a community policing volunteer; or
- (19) the murdered individual was subject to an order of protection and the murder was committed by a person against whom the same order of protection was issued under the Illinois Domestic Violence Act of 1986; or
- (20) the murdered individual was known by the defendant to be a teacher or other person employed in any school and the teacher or other employee is upon the grounds of a school or grounds adjacent to a school, or is in any part of a building used for school purposes; or
- (21) the murder was committed by the defendant in connection with or as a result of the offense of terrorism as defined in Section 29D-30 of this Code.

2. **Second degree murder (720 ILCS 5/9-2):** A person commits the offense of second degree murder when he commits the offense of first degree murder and either of the following mitigating factors are present:

- a. At the time of the killing he is acting under a sudden and intense passion resulting from serious provocation by the individual killed or another whom the offender endeavors to kill, but he negligently or accidentally causes the death of the individual killed; or
- b. At the time of the killing he believes. The circumstances to be such that, if they existed, would justify or exonerate the killing under the principles stated in Article 7 of this Code, but his belief is unreasonable.
- c. Serious provocation is conduct sufficient to excite an intense passion in a reasonable person. Class 1 felony.

3. **Involuntary manslaughter and reckless homicide (720 ILCS 5/9-3)**

- a. A person who unintentionally kills an individual without lawful justification commits involuntary manslaughter if his acts whether lawful or unlawful which cause the death are such as are likely to cause death or great bodily harm to some individual, and he performs them recklessly, except in cases in which the cause of the death consists of the driving of a motor vehicle or operating a snowmobile, all-terrain vehicle, or watercraft, in which case the person commits reckless homicide. A person commits reckless homicide if he or she unintentionally kills an individual while driving a vehicle and using an incline in a roadway, such as a railroad crossing, bridge approach, or hill, to cause the

vehicle to become airborne. (*Penalties are Class 3 felonies, other factors may apply which could change the penalties to a Class 2 felonies.*)

4. Attempt (720 ILCS 5/8-4): A person commits an attempt when, with intent to commit a specific offense, he does any act which constitutes a substantial step toward the commission of that offense. It is not a defense that due to a misapprehension of the circumstances it would have been impossible to commit the offense attempted.

STATUTES RELATED TO CONSUMER FRAUD TYPE ABUSES

A. HOME REPAIR

1. Home Repair Fraud (815 ILCS 515/3)

- (a) A person commits the offense of home repair fraud when he knowingly enters into an agreement or contract, written or oral, with a person for home repair, and he knowingly:
 - (1) misrepresents a material fact relating to the terms of the contract or agreement or the preexisting or existing condition of any portion of the property involved, or creates or confirms another's impression which is false and which he does not believe to be true, or promises performance which he does not intend to perform or knows will not be performed; or
 - (2) uses or employs any deception, false pretense or false promises in order to induce, encourage or solicit such person to enter into any contract or agreement; or
 - (3) enters into an unconscionable agreement or contract requiring payment to the contractor of at least \$4,000. A contract is unconscionable within the meaning of this Act when an unreasonable difference exists between the value of the services, materials and work to be performed and the amount charged for those services, materials and work. For purposes of this Section, prima facie evidence shall exist that the contract or agreement is unconscionable if the total payment called for by the contract or agreement is in excess of four times the fair market value for those services, materials and work; or
 - (4) fails to comply with the provisions of "An Act in relation to the use of an assumed name in the conduct or transaction of business in this State", approved July 17, 1941, as amended, and misrepresents or conceals either his real name, the name of his business, or his business address.
- (b) A person commits the offense of home repair fraud when he knowingly:
 - (1) damages the property of a person with the intent to enter into an agreement or contract for home repair; or

- (2) misrepresents himself or another to be an employee or agent of any unit of the federal, State or municipal government or any other governmental unit, or an employee or agent of any public utility, with the intent to cause a person to enter into, with himself or another, any contract or agreement for home repair
- (c) For purposes of subsection (a), paragraph (1), it shall be a rebuttable presumption of intent or knowledge that a person promises performance which he does not intend to perform and knows will not be performed when, after no performance or no substantial performance of a contract or agreement for home repair, he fails or refuses to return payments made by the victim and he:
- (1) fails to acknowledge or respond to a written demand for commencement or completion of home repair within 10 days after such demand is mailed or presented to him by the victim or by the victim's legal representative or by a law enforcement or consumer agency acting on behalf of the victim; or
 - (2) fails to notify the victim in writing of a change of business name or address prior to the completion of the home repair; or
 - (3) makes false statements or representations to the victim to excuse his non-performance or non-substantial performance; or
 - (4) uses deception to obtain the victim's consent to modification of the terms of the original contract or agreement; or
 - (5) fails to employ qualified personnel necessary to perform the home repair; or
 - (6) fails to order or purchase the basic materials required for performance of the home repair; or
 - (7) fails to comply with municipal, county, State or federal regulations or codes relating to the performance of home repair.

Intent and knowledge shall be determined by an evaluation of all circumstances surrounding a transaction and the determination shall not be limited to the time of contract or agreement. Substantial performance shall not include work performed in a manner of little or no value or work that fails to comply with the appropriate municipal, county, State or federal regulations or codes.

Depending upon the specific violation and the amount involved, the violation maybe a Class A misdemeanor, a Class 4 felony, or a Class 3 felony.

B. CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES

1. Chain referral sales and pyramid sales (815 ILCS 505/2A) are unlawful. In a chain arrangement, a buyer is induced to purchase on seller's promise that if buyer

furnishes seller names of prospective buyers, seller will contact and if a sale results, rebate or commission to referring buyer.

2. Failure to comply with the "right to cancel" (815 ILCS 505/2B): In a sale of merchandise involving \$25 or more, where seller is physically present at consumer's residence, the consumer may avoid the contract by notifying the seller within 3 full business days and returning in original condition, any merchandise. Seller, at the time the sale is made, must furnish a complete receipt or contract, and a NOTICE which complies with the statutory requirements. It is unlawful to fail to complete copies of the Notice of Cancellation fully before giving to the consumer, to include any waiver of the right to cancel, to fail to inform orally of the right to cancel, to misrepresent the right, to use any undue influence to interfere with the right, to fail to honor a valid notice of cancellation, to assign indebtedness to third party prior to fifth business day following contract signing, or fail to notify whether seller will repossess or abandon shipped goods.
3. Disclosure of legal name and business address or mail order or catalog businesses (815 ILCS 505/2B.1): It is unlawful for such business utilizing a post office box to fail to disclose legal name and complete street address where business is actually conducted.
4. Selling Consumer Records (815 ILCS 505/2B.2): is an unlawful practice if these records can be obtained by the consumer from governmental agencies or credit reporting agencies. It is allowed if the seller includes notice per statute of availability of records from other sources.
5. Failure to return down payment if credit application rejected (815 ILCS 505/2C) is unlawful.
6. Negotiable instruments in connection with installment sales defenses against assignee (815 ILCS 505/2D) are not barred unless notice to buyer given per statute.
7. Repeated violations of certain acts (815 ILCS 505/2E): Any person regularly engaged in the business of providing merchandise to consumers or in making loans to consumers, and who has committed in any calendar year 3 or more violations of "Consumer Finance Act", "Consumer Installment Loan Act", "Retail Installment Sales Act", "Motor Vehicle Retail Installment Sales Act", "An Act to revise the law in relation to the rate of interest... .", or "An Act to promote the welfare of wage-earners by regulating the assignment of wages. ..." is guilty of an unlawful practice. The person can also be prosecuted under the Acts specified.
8. Persons held in civil or criminal proceedings for violation of law regarding credit (815 ILCS 505/2F): can be prosecuted under the statute violated and be found guilty of an unlawful practice under this act.
9. Resale of repossessed goods to person not a good faith purchaser (815 ILCS 505/2G) in order to increase a deficiency recovery is guilty of unlawful practice.
10. Collection of obligation from spouse of obligor (815 ILCS 505/2H) is an unlawful practice and a Class C misdemeanor unless the spouse was a cosigner on the

obligation or the obligation is in default of at least 30 days or the goods and services furnished were necessities for which the spouse would be liable to pay under law.

11. Collection of obligation by communication with employer (815 ILCS 505/21) unless default for at least 30 days and at least 5 days notice is unlawful. Violation is an unlawful practice and person is liable in civil action for damages.
12. Advertisement of price and periodic payments (815 ILCS 505/2J) by seller must set forth clearly the cash sale price, down payment, and details of payments, with annual percentage rate. Failure is an unlawful practice. Compliance with federal Truth in Lending Act is compliance herein.
13. Coupons issued by retail seller or motor vehicle dealer (815 ILCS 505/2J.1): must state discount or fact that featured price is a "sale" price.
14. Automatic price look ups (815 ILCS 505/2J.2) must have conspicuously displayed price information. Violation is unlawful practice.
15. Advertisement of credit rates (815 ILCS 505/2K) as "bank rates" by a business not a bank, bank association or trust company authorized to do business is an unlawful practice.
16. Retail sale of motor vehicle (815 ILCS 505/2L): It is an unlawful practice if the dealer fails to assume liability for a portion of the cost of repair, depending on the age of the vehicle, of Power Train components in compliance with statute, unless there is notice that the vehicle is sold as is with no warranty as to mechanical condition.
17. Advertisement of factory authorized service (815 ILCS 505/2M): No one can so advertise unless authorized and able to supply proof on demand. A violation is an unlawful practice and a Class C misdemeanor.
18. Non-English language translation of contract (815 ILCS 505/2N): To fail to provide a written agreement in the same language as the negotiations is an unlawful practice.
19. Offers of free prizes, gifts or gratuities (818 ILCS 505/2P): must clearly set out the conditions.
20. Home improvement or repair businesses (815 ILCS 505/2Q): No person or entity engaged in business of making home improvements or repairs shall operate under a name other than real names of individuals, an assumed corporate name (Business Corporation Act of 1983 or Assumed Business Name Act) or as subcontractor of business in compliance. First violation may be treated as both an unlawful practice and a Class A misdemeanor; second or subsequent violation is a Class 4 felony. In conformity with Home Repair Fraud Act, notice must be given to consumer within 10 days of any change in business name or address, and failure to commence or complete work shall result in return of down payment and any additional payments within 10 days after proper demand.

21. Telephone directory advertisements sales (815 ILCS 505/2R): It is unlawful for person who sells to fail to disclose number of directories in previous edition, name of publisher, and affiliation with telecommunications carrier.
22. Cosigners of obligations are entitled to notice prior to a report of adverse information (815 ILCS 505/2S) to consumer reporting agency. Violation is an unlawful practice and there is liability for damage up to \$250 plus attorney's fees.
23. Conditions of making loans secured by an interest in real estate (815 ILCS 505/2T): Consumer who will-use his residential real property as security cannot be required to use a particular company for title insurance or to pay for title policy other than commitment at request of seller, borrower, mortgagor or other debtor. Lender can require title insurance.
24. Misrepresentation of the capabilities of a device for detecting and measuring radon or radon progeny (815 ILCS 505/2U) is an unlawful practice and a Class A misdemeanor.
25. Misrepresentation of results of test to detect or measure radon or radon progeny (815 ILCS 505/2V) is an unlawful practice and a Class A misdemeanor.
26. Performance of act or service to reduce radon without objective basis to believe act or service performed will reduce radon or radon progeny as represented (815 ILCS 505/2W) if for compensation is an unlawful practice and a Class A misdemeanor. Person injured from violation may maintain action in circuit court for damages and be awarded 3 times actual damages and cost/fees.
27. Simulated checks used as advertising (815 ILCS 505/2X): It is unlawful practice to promote or advertise using a simulated check unless it has printed upon front and back "This is not a check." A sample or specimen instrument may be distributed if clearly marked as non-negotiable sample.
28. Misrepresentation of effect of use of gasohol on motor vehicle warranties (815 ILCS 505/2Y) is an unlawful practice and violator may be fined from \$501 to \$1000.
29. Violation of other Acts (815 ILCS 505/2Z):
Any person who knowingly violates the Automotive Repair Act, the Automotive Collision Repair Act, the Home Repair and Remodeling Act, the Dance Studio Act, the Physical Fitness Services Act, the Hearing Instrument Consumer Protection Act, the Illinois Union Label Act, the Job Referral and Job Listing Services Consumer Protection Act, the Travel Promotion Consumer Protection Act, the Credit Services Organizations Act, the Automatic Telephone Dialers Act, the Pay-Per-Call Services Consumer Protection Act, the Telephone Solicitations Act, the Illinois Funeral or Burial Funds Act, the Cemetery Care Act, the Safe and Hygienic Bed Act, the Pre-Need Cemetery Sales Act, the High Risk Home Loan Act, the Payday Loan Reform Act, the Mortgage Rescue Fraud Act, subsection (a) or (b) of Section 3-10 of the Cigarette Tax Act, the Payday Loan Reform Act, subsection (a) or (b) of Section 3-10 of the Cigarette Use Tax Act, the Electronic Mail Act, paragraph (6) of subsection (k) of Section 6-305 of the Illinois Vehicle Code,

Section 18d-115, 18d-120, 18d-125, 18d-135, or 18d-150 of the Illinois Vehicle Code, Article 3 of the Residential Real Property Disclosure Act, the Automatic Contract Renewal Act, or the Personal Information Protection Act commits an unlawful practice within the meaning of this Act.

30. Immigration services (815 ILCS 505/2AA): Immigration assistance services for compensation are, regulated by this Act, which lists the services which may be performed and the notices required to be given to consumers. The Attorney General may issue rules. Violation of provisions is a Class A misdemeanor for first offense and a Class 3 felony for second or subsequent offense within 5 years of previous conviction for same offense. Civil penalties may be pursued by the Attorney General or any State's Attorney for injunctive relief and a penalty up to \$50,000.
31. Assembly, drafting, execution and funding of living trust documents by corporations or nonlawyers (815 ILCS 505/2BB) is an unlawful act and a Class A misdemeanor for the first violation; Class 4 felony for subsequent convictions. This is not applicable to institutions with certificate of authority for exercise of trust powers under the Illinois Corporate Fiduciary Act, or to institution under Illinois Credit Union Act.
32. Wholesale advertising (81 S ILCS 505/2CC): It is an unlawful practice to represent that a person is a wholesaler or offers to sell or sells at wholesale to the public unless 'the person makes a substantial number of sales for resale in ordinary course of business and can substantiate savings as compared to identical merchandise offered for sale by retailers in the trade area.
33. Telecommunication service provider selection (815 ILCS 505/2DD): No telecommunication carrier shall change a subscriber's selection of the provider of telecommunications service except in accordance with the rules of the FCC or ICC. Violation is an unlawful practice.

Elder Abuse and Neglect Act

Section:

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Sec. 1. Short title.

This Act shall be known and may be cited as the “Elder Abuse and Neglect Act.”

Sec. 2. Definitions.

As used in this Act, unless the context requires otherwise:

- (a) **“Abuse”** means causing any physical, mental or sexual injury to an eligible adult, including exploitation of such adult’s financial resources.

Nothing in this Act shall be construed to mean that an eligible adult is a victim of abuse, neglect, or self-neglect for the sole reason that he or she is being furnished with or relies upon treatment by spiritual means through prayer alone, in accordance with the tenets and practices of a recognized church or religious denomination.

Nothing in this Act shall be construed to mean that an eligible adult is a victim of abuse because of health care services provided or not provided by licensed health care professionals.

- (a-5) **“Abuser”** means a person who abuses, neglects, or financially exploits an eligible adult.
- (a-7) **“Caregiver”** means a person who either as a result of a family relationship, voluntarily, or in exchange for compensation has assumed responsibility for all or a portion of the care of an eligible adult who needs assistance with activities of daily living.
- (b) **“Department”** means the Department on Aging of the State of Illinois.
- (c) **“Director”** means the Director of the Department.
- (d) **“Domestic living situation”** means a residence where the eligible adult lives alone or with his or her family or a caregiver, or others, or a board and care home or other community-based unlicensed facility, but is not:
- (1) A licensed facility as defined in Section 1-113 of the Nursing Home Care Act;
 - (2) A “life care facility” as defined in the Life Care Facilities Act;
 - (3) A home, institution, or other place operated by the federal government or agency thereof or by the State of Illinois;
 - (4) A hospital, sanitarium, or other institution, the principle activity or business of which is the diagnosis, care, and treatment of human illness through the maintenance and operation of organized facilities therefore, which is required to be licensed under the Hospital Licensing Act;
 - (5) A “community living facility” as defined in the Community Living Facilities Licensing Act;

- (6) A “community residential alternative” as defined in the Community Residential Alternatives Licensing Act;
 - (7) A “community-integrated living arrangement” as defined in the Community-Integrated Living Arrangements Licensure and Certification Act;
 - (8) An assisted living or shared housing establishment as defined in the Assisted Living and Shared Housing Act; or
 - (9) A “supportive living facility” as described in Section 5-5.01a of the Illinois Public Aid Code [305 ILCS 5/5-5.01a].
- (e) **“Eligible adult”** means a person 60 years of age or older who resides in a domestic living situation and is, or is alleged to be, abused, neglected, or financially exploited by another individual or who neglects himself or herself.
- (f) **“Emergency”** means a situation in which an eligible adult is living in conditions presenting a risk of death or physical, mental or sexual injury and the provider agency has reason to believe the eligible adult is unable to consent to services which would alleviate that risk.
- (f-5) **“Mandated reporter”** means any of the following persons while engaged in carrying out their professional duties:
- (1) a professional or professional’s delegate while engaged in: (i) social services, (ii) law enforcement, (iii) education, (iv) the care of an eligible adult or eligible adults, or (v) any of the occupations required to be licensed under the Clinical Psychologist Licensing Act, the Clinical Social Work and Social Work Practice Act, the Illinois Dental Practice Act, the Dietetic and Nutrition Services Practice Act, the Marriage and Family Therapy Licensing Act, the Medical Practice Act of 1987, the Naprapathic Practice Act, the Nursing and Advanced Practice Nursing Act, the Nursing Home Administrators Licensing and Disciplinary Act, the Illinois Occupational Therapy Practice Act, the Illinois Optometric Practice Act of 1987, the Pharmacy Practice Act of 1987, the Illinois Physical Therapy Act, the Physician Assistant Practice Act of 1987, the Podiatric Medical Practice Act of 1987, the Respiratory Care Practice Act, the Professional Counselor and Clinical Professional Counselor Licensing Act, the Illinois Speech-Language Pathology and Audiology Practice Act, the Veterinary Medicine and Surgery Practice Act of 2004, and the Illinois Public Accounting Act;
 - (2) an employee of a vocational rehabilitation facility prescribed or supervised by the Department of Human Services;
 - (3) an administrator, employee, or person providing services in or through an unlicensed community-based facility;
 - (4) any religious practitioner who provides treatment by prayer or spiritual means alone in accordance with the tenets and practices of a recognized church or religious denomination, except as to information received in any

confession or sacred communication enjoined by the discipline of the religious denomination to be held confidential;

- (5) field personnel of the Department of Healthcare and Family Services, Department of Public Health, and Department of Human Services, and any county or municipal health department;
 - (6) personnel of the Department of Human Services, the Guardianship and Advocacy Commission, the State Fire Marshal, local fire departments, the Department on Aging and its subsidiary Area Agencies on Aging and provider agencies, and the Office of State Long Term Care Ombudsman;
 - (7) any employee of the state of Illinois not otherwise specified herein who is involved in providing services to eligible adults, including professionals providing medical or rehabilitation services and all other persons having direct contact with eligible adults;
 - (8) a person who performs the duties of a coroner or medical examiner; or
 - (9) a person who performs the duties of a paramedic or an emergency medical technician.
- (g) **“Neglect”** means another individual’s failure to provide an eligible adult with or willful withholding from an eligible adult the necessities of life including, but not limited to, food, clothing, shelter or health care. This subsection does not create any new affirmative duty to provide support to eligible adults. Nothing in this Act shall be construed to mean that an eligible adult is a victim of neglect because of health care services provided or not provided by licensed health care professionals.
- (h) **“Provider agency”** means any public or nonprofit agency in a planning and service area appointed by the regional administrative agency with prior approval by the Department on Aging to receive and assess reports of alleged or suspected abuse, neglect, or financial exploitation.
- (i) **“Regional administrative agency”** means any public or nonprofit agency in a planning and service area so designated by the Department, provided that the designated Area Agency on Aging shall be designated the regional administrative agency if it so requests. The Department shall assume the functions of the regional administrative agency for any planning and service area where another agency is not so designated.
- (i-5) **“Self-neglect”** means a condition that is the result of an eligible adult’s inability, due to physical or mental impairments, or both, or a diminished capacity, to perform essential self-care tasks that substantially threaten his or her own health, including: providing essential food, clothing, shelter, and health care; and obtaining goods and services necessary to maintain physical health, mental health, emotional well-being, and general safety.
- (j) **“Substantiated case”** means a reported case of alleged or suspected abuse,

neglect, financial exploitation, or self-neglect in which a provider agency, after assessment, determines that there is reason to believe abuse, neglect, or financial exploitation has occurred. (Source: P.A. 86-820; 87-265.)

Sec. 3. Responsibilities

- (a) The Department shall establish, design and manage a program of response and services for persons 60 years of age and older who have been, or are alleged to be, victims of abuse, neglect, financial exploitation, or self-neglect. The Department shall contract with or fund or, contract with and fund, regional administrative agencies, provider agencies, or both, for the provision of those functions, and, contingent on adequate funding, with attorneys or legal services provider agencies for the provision of legal assistance pursuant to this Act.
- (b) Each regional administrative agency shall designate provider agencies within its planning and service area with prior approval by the Department on Aging, monitor the use of services, provide technical assistance to the provider agencies and be involved in program development activities.
- (c) Provider agencies shall assist, to the extent possible, eligible adults who need agency services to allow them to continue to function independently. Such assistance shall include but not be limited to receiving reports of alleged or suspected abuse, neglect, financial exploitation, or self-neglect, conducting face-to-face assessments of such reported cases, determination of substantiated cases, referral of substantiated cases for necessary support services, referral of criminal conduct to law enforcement in accordance with Department guidelines, and provision of case work and follow-up services on substantiated cases.

In the case of a report of alleged or suspected abuse or neglect that places an eligible adult at risk of injury or death, a provider agency shall respond to the report on an emergency basis in accordance with guidelines established by the Department by administrative rule and shall ensure that it is capable of responding to such a report 24 hours per day, 7 days per week. A provider agency may use an on-call system to respond to reports of alleged or suspected abuse or neglect after hours and on weekends.

- (d) By January 1, 2008, the Department on Aging, in cooperation with an Elder Self-Neglect Steering Committee, shall by rule develop protocols, procedures, and policies for (i) responding to reports of possible self-neglect, (ii) protecting the autonomy, rights, privacy, and privileges of adults during investigations of possible self-neglect and consequential judicial proceedings regarding competency, (iii) collecting and sharing relevant information and data among the Department, provider agencies, regional administrative agencies, and relevant seniors, (iv) developing working agreements between provider agencies and law enforcement, where practicable, and (v) developing procedures for collecting data regarding incidents of self-neglect. The Elder Self-Neglect Steering Committee shall be comprised of one person selected by the Elder Abuse Advisory Committee of the Department on Aging; 3 persons selected, on the request of the Director of Aging, by State or regional organizations that advocate for the rights of seniors, at

least one of whom shall be a legal assistance attorney who represents seniors in competency proceedings; 2 persons selected, on the request of the Director of Aging, by statewide organizations that represent social workers and other persons who provide direct intervention and care to housebound seniors who are likely to neglect themselves; an expert on geropsychiatry, appointed by the Secretary of Human Services; an expert on issues of physical health associated with seniors, appointed by the Director of Public Health; one representative of a law enforcement agency; one representative of the Chicago Department on Aging; and 3 other persons selected by the Director of Aging, including an expert from an institution of higher education who is familiar with the relevant areas of data collection and study.

Sec. 3.5. Other Responsibilities

The Department shall also be responsible for the following activities, contingent upon adequate funding:

- (a) promotion of a wide range of endeavors for the purpose of preventing elder abuse, neglect, financial exploitation, and self-neglect in both domestic and institutional settings, including, but not limited to, promotion of public and professional education to increase awareness of elder abuse, neglect, financial exploitation, and self-neglect, to increase reports, and to improve response by various legal, financial, social, and health systems;
- (b) coordination of efforts with other agencies, councils, and like entities, to include but not be limited to, the Office of the Attorney General, the State Police, the Illinois Law Enforcement Training Standards Board, the State Triad, the Illinois Criminal Justice Information Authority, the Departments of Public Health, Healthcare and Family Services, and Human Services, the Illinois Family Violence Coordinating Councils, the Illinois Violence Prevention Authority, and other entities which may impact awareness of, and response to, elder abuse, neglect, financial exploitation, and self-neglect;
- (c) collection and analysis of data;
- (d) monitoring of the performance of regional administrative agencies and elder abuse provider agencies;
- (e) promotion of prevention activities;
- (f) establishing and coordinating an aggressive training program on the unique nature of elder abuse cases with other agencies, councils, and like entities, to include but not be limited to the Office of the Attorney General, the State Police, the Illinois Law Enforcement Training Standards Board, the State Triad, the Illinois Criminal Justice Information Authority, the State Departments of Public Health, Healthcare and Family Services, and Human Services, the Family Violence Coordinating Council, the Illinois Violence Prevention Authority, and other entities that may impact awareness of and response to elder abuse, neglect, financial exploitation, and self-neglect;

- (g) solicitation of financial institutions for the purpose of making information available to the general public warning of financial exploitation of the elderly and related financial fraud or abuse, including such information and warnings available through signage or other written materials provided by the Department on the premises of such financial institutions, provided that the manner of displaying or distributing such information is subject to the sole discretion of each financial institution; and
- (h) coordinating efforts with utility and electric companies to send notices in utility bills to explain to persons 60 years of age or older their rights regarding telemarketing and home repair fraud.

Sec. 4. Reports of abuse or neglect.

- (a) Any person who suspects the abuse, neglect, financial exploitation, or self-neglect of an eligible adult may report this suspicion to an agency designated to receive such reports under this Act or to the Department.
- (a-5) If any mandated reporter has reason to believe that an eligible adult, who because of dysfunction is unable to seek assistance for himself or herself, has, within the previous 12 months, been subjected to abuse, neglect, or financial exploitation, the mandated reporter shall, within 24 hours after developing such belief, report this suspicion to an agency designated to receive such reports under this Act or to the Department. Whenever a mandated reporter is required to report under this Act in his or her capacity as a member of the staff of a medical or other public or private institution, facility, board and care home, or agency, he or she shall make a report to an agency designated to receive such reports under this Act or to the Department in accordance with the provisions of this Act and may also notify the person in charge of the institution, facility, board and care home, or agency or his or her designated agent that the report has been made. Under no circumstances shall any person in charge of such institution, facility, board and care home, or agency, or his or her designated agent to whom the notification has been made, exercise any control, restraint, modification, or other change in the report or the forwarding of the report to an agency designated to receive such reports under this Act or to the Department. The privileged quality of communication between any professional person required to report and his or her patient or client shall not apply to situations involving abused, neglected, or financially exploited eligible adults and shall not constitute grounds for failure to report as required by this Act.
- (a-7) A person making a report under this Act in the belief that it is in the alleged victim's best interest shall be immune from criminal or civil liability or professional disciplinary action on account of making the report, notwithstanding any requirements concerning the confidentiality of information with respect to such eligible adult which might otherwise be applicable.
- (a-9) Law enforcement officers shall continue to report incidents of alleged abuse pursuant to the Illinois Domestic Violence Act of 1986, notwithstanding any requirements under this Act.

- (b) Any person, institution or agency participating in the making of a report, providing information or records related to a report, assessment, or services, or participating in the investigation of a report under this Act in good faith, or taking photographs or x-rays as a result of an authorized assessment, shall have immunity from any civil, criminal or other liability in any civil, criminal or other proceeding brought in consequence of making such report or assessment or on account of submitting or otherwise disclosing such photographs or x-rays to any agency designated to receive reports of alleged or suspected abuse or neglect. Any person, institution or agency authorized by the Department to provide assessment, intervention, or administrative services under this Act shall, in the good faith performance of those services, have immunity from any civil, criminal or other liability in any civil, criminal, or other proceeding brought as a consequence of the performance of those services. For the purposes of any civil, criminal, or other proceeding, the good faith of any person required to report, permitted to report, or participating in an investigation of a report of alleged or suspected abuse, neglect, or financial exploitation shall be presumed.
- (c) The identity of a person making a report of alleged or suspected abuse or neglect under this Act may be disclosed by the Department or other agency provided for in this Act only with such person's written consent or by court order.
- (d) The Department shall by rule establish a system for filing and compiling reports made under this Act.
- (e) Any physician who willfully fails to report as required by this Act shall be referred to the Illinois State Medical Disciplinary Board for action in accordance with subdivision (A)(22) of Section 22 of the Medical Practice Act of 1987. Any dentist or dental hygienist who willfully fails to report as required by this Act shall be referred to the Department of Professional Regulation for action in accordance with paragraph 19 of Section 23 of the Illinois Dental Practice Act. Any other mandated reporter required by this Act to report suspected abuse, neglect, or financial exploitation who willfully fails to report the same is guilty of Class A misdemeanor.

Sec. 4.1. Employer Discrimination

No employer shall discharge, demote or suspend, or threaten to discharge, demote or suspend, or in any manner discriminate against any employee who makes any good faith oral or written report of suspected elder abuse, neglect, or financial exploitation or who is or will be a witness or testify in any investigation or proceeding concerning a report of suspected elder abuse, neglect, or financial exploitation.

Sec. 4.2. Testimony by Mandated Reporter and Investigator

Any mandated reporter who makes a report or any person who investigates a report under this Act shall testify fully in any judicial proceeding resulting from such report, as to any evidence of abuse, neglect, or financial exploitation or the cause thereof. Any mandated reporter who is required to report a suspected case of abuse, neglect, or financial exploitation under Section 4 of this Act shall testify fully in any administrative

hearing resulting from such report, as to any evidence of abuse, neglect, or financial exploitation or the cause thereof. No evidence shall be excluded by reason of any common law or statutory privilege relating to communications between the alleged abuser or the eligible adult subject of the report under this Act and the person making or investigating the report.

Sec. 5. Procedure

- (a) A provider agency designated to receive reports of alleged or suspected abuse, neglect, financial exploitation, or self-neglect under this Act shall, upon receiving such a report, conduct a face-to-face assessment with respect to such report, in accord with established law and Department protocols, procedures, and policies. Face-to-face assessments, casework, and follow-up of reports of self-neglect by the provider agencies designated to receive reports of self-neglect shall be subject to sufficient appropriation for statewide implementation of assessments, casework, and follow-up of reports of self-neglect. In the absence of sufficient appropriation for statewide implementation of assessments, casework, and follow-up of reports of self-neglect, the designated elder abuse provider agency shall refer all reports of self-neglect to the appropriate agency or agencies as designated by the Department for any follow-up. The assessment shall include, but not be limited to, a visit to the residence of the eligible adult who is the subject of the report and may include interviews or consultations with service agencies or individuals who may have knowledge of the eligible adult's circumstances. If, after the assessment, the provider agency determines that the case is substantiated, it shall develop a service care plan for the eligible adult and may report its findings to the appropriate law enforcement agency in accord with established law and Department protocols, procedures, and policies. In developing the plan, the provider agency may consult with any other appropriate provider of services, and such providers shall be immune from civil or criminal liability on account of such acts. The plan shall include alternative suggested or recommended services which are appropriate to the needs of the eligible adult and which involve the least restriction of the eligible adult's activities commensurate with his or her needs. Only those services to which consent is provided in accordance with Section 9 of this Act shall be provided, contingent upon the availability of such services.
- (b) A provider agency shall refer evidence of crimes against an eligible adult to the appropriate law enforcement agency according to Department policies. A referral to law enforcement may be made at intake or any time during the case. Where a provider agency has reason to believe the death of an eligible adult may be the result of abuse or neglect, the agency shall immediately report the matter to the coroner or medical examiner and shall cooperate fully with any subsequent investigation.
- (c) If any person other than the alleged victim refuses to allow the provider agency to begin an investigation, interferes with the provider agency's ability to conduct an investigation, or refuses to give access to an eligible adult, the appropriate law enforcement agency must be consulted regarding the investigation.

Sec. 6. Time

The Department shall by rule establish the period of time within which an assessment shall begin and within which a service care plan shall be implemented. Such rules shall provide for an expedited response to emergency situations.

Sec. 7. Review

All services provided to an eligible adult shall be reviewed by the provider agency on at least a quarterly basis for up to one year to determine whether the service care plan should be continued or modified, except that, upon review, the Department may grant a waiver to extend the service care plan for up to one additional year.

Sec. 8. Access to records

(a) All records concerning reports of elder abuse, neglect, financial exploitation, or self-neglect and all records generated as a result of such reports shall be confidential and shall not be disclosed except as specifically authorized by this Act or other applicable law. In accord with established law and Department protocols, procedures, and policies, access to such records, but not access to the identity of the person or persons making a report of alleged abuse, neglect, financial exploitation, or self-neglect as contained in such records, shall be provided, upon request, to the following persons and for the following persons:

- (1) Department staff, provider agency staff, other aging network staff, and regional administrative agency staff, including staff of the Chicago Department on Aging while that agency is designated as a regional administrative agency, in the furtherance of their responsibilities under this Act;
- (2) A law enforcement agency investigating known or suspected elder abuse, neglect, financial exploitation, or self-neglect. Where a provider agency has reason to believe that the death of an eligible adult may be the result of abuse or neglect, the agency shall immediately provide the appropriate law enforcement agency with all records pertaining to the eligible adult;
- (3) A physician who has before him or her or who is involved in the treatment of an eligible adult whom he or she reasonably suspects may be abused, neglected, financially exploited, or self-neglected or who has been referred to the Elder Abuse and Neglect Program;
- (4) An eligible adult reported to be abused, neglected, financially exploited, or self-neglected, or such adult's guardian unless such guardian is the abuser or the alleged abuser;
- (5) In cases regarding elder abuse, neglect, or financial exploitation, a court or a guardian ad litem, upon its or his or her finding that access to such records may be necessary for the determination of an issue before the court. However, such access shall be limited to an in camera inspection of the records, unless the court determines that disclosure of the information

contained therein is necessary for the resolution of an issue then pending before it;

- (5.5) In cases regarding self-neglect, a guardian ad litem;
- (6) A grand jury, upon its determination that access to such records is necessary in the conduct of its official business;
- (7) Any person authorized by the Director, in writing, for audit or bona fide research purposes;
- (8) A coroner or medical examiner who has reason to believe that an eligible adult has died as the result of abuse, neglect, financial exploitation, or self-neglect. The provider agency shall immediately provide the coroner or medical examiner with all records pertaining to the eligible adult; and
- (9) Department of Professional Regulation staff and members of the Social Work Examining and Disciplinary Board in the course of investigating alleged violations of the Clinical Social Work and Social Work Practice Act by provider agency staff.

Sec. 9. Authority to consent to services

- (a) If an eligible adult consents to services being provided according to the service care plan, such services shall be arranged to meet the adult's needs, based upon the availability of resources to provide such services. If an adult withdraws his or her consent or refuses to accept such services, the services shall not be provided.
- (b) If it reasonably appears to the Department or other agency designated under this Act that a person is an eligible adult and lacks the capacity to consent to necessary services, including an assessment, the Department or other agency may seek the appointment of a guardian as provided in Article XIa of the Probate Act of 1975 for the purpose of consenting to such services.
- (c) A guardian of the person of an eligible adult may consent to services being provided according to the service care plan. If a guardian withdraws his or her consent or refuses to allow services to be provided to the eligible adult, the Department, an agency designated under this Act, or the office of the Attorney General may request a court order seeking appropriate remedies, and may in addition request removal of the guardian and appointment of a successor guardian.
- (d) If an emergency exists and the Department or other agency designated under this Act reasonably believes that a person is an eligible adult and lacks the capacity to consent to necessary services, the Department or other agency may request an ex parte order from the circuit court of the county in which the petitioner or respondent resides or in which the alleged abuse, neglect, financial exploitation, or self-neglect occurred, authorizing an assessment of a report of alleged or suspected abuse, neglect, financial exploitation, or self-neglect or the provision of necessary services, or both, including relief available under the Illinois Domestic

Violence Act of 1986 in accordance with established law and Department protocols, procedures, and policies. Petitions filed under this subsection shall be treated as expedited proceedings.

- (e) Within fifteen 15 days after the entry of the ex parte emergency order, the order shall expire or, if the need for assessment or services continues, the provider agency shall petition for the appointment of a guardian as provided in Article XIa of the Probate Act of 1975 for the purpose of consenting to such assessment or services or to protect the eligible adult from further harm.
- (f) If the court enters an ex parte order under subsection (d) for an assessment of a report of alleged or suspected self-neglect, or for the provision of necessary services in connection with alleged or suspected self-neglect, or for both, the court, as soon as is practicable thereafter, shall appoint a guardian ad litem for the eligible adult who is the subject of the order, for the purpose of reviewing the reasonableness of the order. The guardian ad litem shall review the order and, if the guardian ad litem reasonably believes that the order is unreasonable, the guardian ad litem shall file a petition with the court stating the guardian ad litem's belief and requesting that the order be vacated.

Sec. 9.5. Commencement of action for ex parte authorization orders; filing Fees; process

- (a) Actions for ex parte authorization orders are commenced:
 - (1) independently, by filing a petition for an ex parte authorization order in the circuit court;
 - (2) in conjunction with other civil proceedings, by filing a petition for an ex parte authorization order under the same case number as a guardianship proceeding under the Probate Act of 1975 where the eligible adult is the alleged disabled adult.
- (b) No fee shall be charged by the clerk for filing petitions or certifying orders. No fee shall be charged by a sheriff for service by the sheriff of a petition, rule, motion, or order in an action commenced under this Section.
- (c) Any action for an ex parte authorization order commenced independently is a distinct cause of action and requires that a separate summons be issued and served. Service of summons is not required prior to entry of emergency ex parte authorization orders.
- (d) Summons may be served by a private person over 18 years of age and not a party to the action. The return by that private person shall be by affidavit. The summons may be served by a sheriff or other law enforcement officer, and if summons is placed for service by the sheriff, it shall be made at the earliest time practicable and shall take precedence over other summonses except those of a similar emergency nature.

Sec. 10. Rules

The Department shall adopt such rules and regulations as it deems necessary to implement this Act.

Sec. 11. Annual Reports

The Department shall file with the Governor and the General Assembly, within 270 days after the end of each fiscal year, a report concerning its implementation of this Act during such fiscal year, together with any recommendations for future implementation.

Sec. 12. (Repealed)

Sec. 13. Access

- (a) In accord with established law and Department protocols, procedures, and policies, the designated provider agencies shall have access to eligible adults who have been reported or found to be victims of abuse, neglect, financial exploitation, or self-neglect in order to assess the validity of the report, assess other needs of the eligible adult, and provide services in accordance with this Act.
- (b) Where access to an eligible adult is denied, the Office of the Attorney General, the Department, or the provider agency may petition the court for an order to require appropriate access where:
 - (1) a caregiver or third party has interfered with the assessment or service plan, or
 - (2) the agency has reason to believe that the eligible adult is denying access because of coercion, extortion, or justifiable fear of future abuse, neglect, or financial exploitation.
- (c) The petition for an order requiring appropriate access shall be afforded an expedited hearing in the circuit court.
- (d) If the elder abuse provider agency has substantiated financial exploitation against an eligible adult, and has documented a reasonable belief that the eligible adult will be irreparably harmed as a result of the financial exploitation, the Office of the Attorney General, the Department, or the provider agency may petition for an order freezing the assets of the eligible adult. The petition shall be filed in the county or counties in which the assets are located. The court's order shall prohibit the sale, gifting, transfer, or wasting of the assets of the eligible adult, both real and personal, owned by, or vested in, the eligible adult, without the expressed permission of the court. The petition to freeze the assets of the eligible adult shall be afforded an expedited hearing in the circuit court.

Sec. 13.5. Commencement of action for access; filing fees; process; notice; duration of orders

- (a) Actions for orders seeking access to an eligible adult or freezing assets of an eligible adult are commenced:
 - (1) independently, by filing a petition for access to an eligible adult or freezing

the assets of an eligible adult in circuit court;

- (2) in conjunction with other civil proceedings, by filing a petition for access to an eligible adult or freezing the assets of an eligible adult under the same case number as another civil proceeding involving the parties, including, but not limited to:
 - (i) a guardianship proceeding under the Probate Act of 1975;
 - (ii) a proceeding for involuntary commitment under the Mental Health and Developmental Disabilities Code;
 - (iii) any other proceeding, provided that the eligible adult or the respondent is a party to or the subject of that proceeding.
- (b) No fee shall be charged by the clerk for filing petitions or certifying orders. No fee shall be charged by a sheriff for service by the sheriff of such a petition, rule, motion or order in an action commenced under this Section.
- (c) Any action for an order for access to an eligible adult or freezing assets of an eligible adult, whether commenced independently or in conjunction with another proceeding, is a distinct cause of action and requires that a separate summons be issued and served, except that in pending cases the following methods may be used:
 - (1) Delivery of the summons to respondent personally in open court in pending civil or criminal cases.
 - (2) Mailing to the defendant, or, if represented, to the defendant's attorney of record in the civil cases in which the defendant has filed a general appearance. The summons shall be in the form prescribed by subsection (d) of Supreme Court Rule 101, except that it shall require the respondent to answer or appear within 7 days. Attachments to the summons or notice shall include the petition for access to an eligible adult or freezing assets of an eligible adult and supporting affidavits, if any, and any emergency order for access to an eligible adult or freezing assets of an eligible adult that has been issued.
- (d) Summons may be served by a private person over 18 years of age and not a party to the action. The return by that private person shall be by affidavit. The summons may be served by a sheriff or other law enforcement officer, and if summons is placed for service by the sheriff, it shall be made at the earliest time practicable and shall take precedence over other summonses except those of a similar emergency nature.
- (e) Except as otherwise provided in this Section, notice of hearings on petitions or motions shall be served in accordance with Supreme Court Rules 11 and 12 unless notice is excused by the Code of Civil Procedure, Supreme Court Rules, or local rules, as now or hereafter amended.

- (f) Original notice of a hearing on a petition for access to an eligible adult or freezing assets of an eligible adult may be given, and the documents served, in accordance with Supreme Court Rules 11 and 12. When, however, an emergency order is sought in such a case on an ex parte application, the notice rules set forth in Section 11-101 of the Code of Civil Procedure shall apply.
- (g) An order entered in accordance with Sections 13 and 13.5 shall be valid for a fixed period of time, not to exceed 2 years.

Sec. 14. Volunteer corps

Qualified volunteers may be used for the purpose of increasing public awareness and providing companion-type services, as prescribed by rule, to eligible adults. A qualified volunteer must undergo training as prescribed by the Department by rule, and must adhere to all confidentiality requirements as required by law.

Sec. 15. Elder abuse fatality review teams

- (a) In this Section, “review team” means a regional interagency elder abuse fatality review team established under this Section.
- (b) The Department, or any other State or county agency with Department approval, may establish regional interagency elder abuse fatality review teams (i) to assist local agencies in identifying and reviewing suspicious deaths of elderly victims of alleged, suspected, or substantiated abuse or neglect in domestic living situations and (ii) to facilitate communications between officials responsible for autopsies and inquests and persons involved in reporting or investigating alleged or suspected cases of abuse, neglect, or financial exploitation of persons 60 years of age or older. Each such team shall be composed of representatives of entities and individuals including, but not limited to, the Department on Aging, coroners or medical examiners (or both), State’s Attorneys, local police departments, forensic units, and providers of services for persons 60 years of age or older in domestic living situations.
- (c) A review team shall review cases of deaths of persons 60 years of age or older in domestic living situations (i) involving blunt force trauma or an undetermined manner or suspicious cause of death, (ii) if requested by the deceased’s attending physician, (iii) upon referral by a health care provider, or (iv) constituting an open or closed case from a senior protective services agency, law enforcement agency, or State’s Attorney’s office that involves alleged or suspected abuse, neglect, or financial exploitation. A team may also review other cases of deaths of persons 60 years of age or older if the alleged abuse or neglect occurred while the person was residing in a domestic living situation.

A review team shall meet not less than 6 times a year to discuss cases for its possible review. Each review team, with the advice and consent of the Department, shall establish criteria to be used by review teams in discussing cases of alleged, suspected, or substantiated abuse or neglect for review.

- (d) Any document or oral or written communication shared within or produced by a

review team relating to a case discussed or reviewed by the review team is confidential and is not subject to disclosure to or discoverable by another party.

Any document or oral or written communication provided to a review team by an individual or entity, and created by that individual or entity solely for the use of the review team, is confidential and is not subject to disclosure to or discoverable by another party.

Each entity or individual represented on an elder abuse fatality review team may share with other members of the team information in the entity's or individual's possession concerning the decedent who is the subject of the review or concerning any person who was in contact with the decedent, as well as any other information deemed by the entity or individual to be pertinent to the review. Any such information shared by an entity or individual with other members of a team is confidential. The intent of this paragraph is to permit the disclosure to members of a team of any information deemed confidential or privileged or prohibited from disclosure by any other provision of law. Release of confidential communication between domestic violence advocates and a domestic violence victim shall follow subsection (d) of Section 227 of the Illinois Domestic Violence Act of 1986 which allows for the waiver of privilege afforded to guardians, executors, or administrators of the estate of the domestic violence victim. This provision relating to the release of confidential communication between domestic violence advocates and a domestic violence victim shall exclude adult protective service providers. A coroner's or medical examiner's office may share with a review team medical records that have been made available to the coroner's or medical examiner's office in connection with that office's investigation of a death.

- (e) A review team's recommendation in relation to a case discussed or reviewed by the review team, including, but not limited to, a recommendation concerning an investigation or prosecution in relation to such a case, may be disclosed by the review team upon the completion of its review and at the discretion of a majority of its members who reviewed the case.
- (f) The Department, in consultation with coroners, medical examiners, and law enforcement agencies, shall use aggregate data gathered by review teams and review teams' recommendations to create an annual report and may use those data and recommendations to develop education, prevention, prosecution, or other strategies designed to improve the coordination of services for persons 60 years of age or older and their families. The Department or other State or county agency, in consultation with coroners, medical examiners, and law enforcement agencies, also may use aggregate data gathered by review teams to create a database of at-risk individuals.

ABUSED AND NEGLECTED LONG TERM CARE FACILITY RESIDENTS REPORTING ACT

RESPONSIBILITY TO INTERVENE IN ELDER ABUSE AND NEGLECT IN A LONG TERM CARE SETTING

The Illinois Legislature has given the Illinois Department of Public Health the responsibility of protecting residents in long term care facilities from abuse and neglect. The Long Term Care Facility Act defines those responsibilities. Law enforcement involvement is indicated in the act.

A. Definitions within the Abused and Neglected Long Term Care Facility Residents Reporting Act (2 10 ILCS 30/3)

1. Resident means a person residing in and receiving personal care from a long term care facility, or residing in a mental health facility or developmental disability facility.
2. Long term care facility has the same meaning ascribed to such term in the Nursing Home Care Act, except that the term as used in this Act shall include any mental health facility or developmental disability facility as defined in the Mental Health and Developmental Disabilities Code.

Note: The Nursing Home Care Act (210 ILCS 45/1-113) defines long-term care facility as a private home, institution, building, residence, or any other place, whether operated for profit or not, or a county home for the infirm and chronically ill operated pursuant to Division 5-21 or 5-22 of the Counties Code, or any similar institution operated by a political subdivision of the State of Illinois, which provides, through its ownership or management, personal care, sheltered care or nursing for 3 or more persons, not related to the applicant or owner by blood or marriage. It includes skilled nursing facilities and intermediate care facilities as those terms are defined in Title XVIII and Title XIX of the Federal Social Security Act. Long-term care facility does not include:

- (i) a home, institution, or other place operated by the federal government or agency thereof, or by the State of Illinois;
- (ii) a hospital, sanitarium, or other institution whose principal activity or business is the diagnosis, care, and treatment of human illness through the maintenance and operation as organized facilities therefore, which is required to be licensed under the Hospital Licensing Act;
- (iii) any facility for child care as defined in the Child Care Act of 1969;
- (iv) any community living facility as defined in the Community Living Facilities Licensing Act;
- (v) any community residential alternative as defined in the Community Residential Alternatives Licensing Act;

- (vi) any nursing home or sanatorium operated solely by and for persons who rely exclusively upon treatment by spiritual means through prayer, in accordance with the creed or tenets of any well-recognized church or religious denomination. However, such nursing home or sanatorium shall comply with all local laws and rules relating to sanitation and safety;
 - (vii) any facility licensed by the Department of Mental Health and Developmental Disabilities as a community-integrated living arrangement as defined in the Community-Integrated Living Arrangements Licensure and Certification Act; or
 - (viii) any supportive residence licensed under the Supportive Residences Licensing Act.
3. Abuse means any physical injury, sexual abuse or mental injury inflicted on a resident other than by accidental means.
 4. Neglect means a failure in a long term care facility to provide adequate medical or personal care or maintenance, which failure results in physical or mental injury to a resident or in the deterioration of a resident's physical or mental condition.
 5. Protective services means services provided to a resident who has been abused or neglected, which may include, but are not limited to alternative temporary institutional placement, nursing care, counseling, other social services provided at the nursing home where the resident resides or at some other facility, personal care and such protective services of voluntary agencies as are available.

B. Persons Required to Report (210 ILCS 30/4): Any long term care facility administrator, agent or employee or any physician... law enforcement officer... having reasonable cause to believe any resident with whom they have direct contact has been subjected to abuse or neglect shall immediately report or cause a report to be made to the Department of Public Health.

In addition to the above persons required to report suspected resident abuse and neglect, any other person may make a report to the Department, or to any law enforcement officer, if such person has reasonable cause to suspect a resident has been abused or neglected.

This Section also applies to residents whose death occurs from suspected abuse or neglect before being found or brought to a hospital.

A person required to make reports or cause reports to be made under this Section who fails to comply with the requirements of this Section is guilty of a Class A. misdemeanor.

C. Photographs and X-Rays of Abuse and Neglect Report Subjects (210ILCS 30/5): Any person required to investigate cases of suspected resident abuse or neglect may take or cause to be taken, at the resident's expense color photographs and x-rays of the area of trauma on the resident who is the subject of a report.

D. Reports, Investigations, Cooperation with Law Enforcement Agencies (210 ILCS 30/6): All reports of suspected abuse or neglect made under this Act shall be made immediately by telephone to the Department's central register established under Section 14 on the State-wide, toll-free telephone number established under Section 13, or in person or by telephone through the nearest Department office.

Reports shall also be made in writing deposited in the U.S. mail, postage prepaid, within 24 hours after having reasonable cause to believe that the condition of the resident resulted from abuse or neglect. Such reports may in addition be made to the local law enforcement agency in the same manner. However, in the event a report is made to the local law enforcement agency, the reporter also shall immediately so inform the Department of Public Health. The Department shall initiate an investigation of each report of resident abuse and neglect under this Act, whether oral or written, as provided for in Section 3-702 of the Nursing Home Care Act, except that reports of abuse which indicate that a resident's life or safety is in imminent danger shall be investigated within 24 hours of such report. The Department may delegate to law enforcement officials or other public agencies the duty to perform such investigations.

When requested by the Director of the Guardianship and Advocacy Commission or the agency designated by the Governor pursuant to the Protection and Advocacy for Developmentally Disabled Persons Act, the Department, the Department of Mental Health and Developmental Disabilities and the Department of State Police shall make available a copy of the final investigative report regarding investigations conducted by their respective agencies on incidents of suspected abuse or neglect of residents of institutions under the jurisdiction of the Department of Mental Health and Developmental Disabilities. Such final investigative report shall not contain witness statements, investigation notes, draft summaries, results of lie detector tests, investigative files or other raw data which was used to compile the final investigative report. Specifically, the final investigative report of the Department of State Police shall mean the Director's final transmittal letter.

With respect to investigations of reported resident abuse or neglect, the Department of Public Health shall effect with appropriate law enforcement agencies formal agreements concerning methods and procedures for the conduct of investigations into the criminal histories of any administrator, staff assistant or employee of the nursing home or other person responsible for the residents care, as well as for other residents in the nursing home who may be in a position to abuse, neglect or exploit the patient. Pursuant to the formal agreements entered into with appropriate law enforcement agencies, the Department may request

information with respect to whether the person or persons set forth in this paragraph have ever been charged with a crime and if so, the disposition of those charges. Unless the criminal histories of the subjects involved crimes of violence or resident abuse or neglect, the Department shall be entitled only to information limited in scope to charges of their dispositions. In cases where prior crimes-of violence or resident abuse or neglect are involved, a more detailed report can be made available to authorized representatives of the Department, pursuant to the agreements entered into with appropriate law enforcement agencies.

The Department shall effect formal agreements with appropriate law enforcement agencies in the various counties and communities to encourage cooperation and coordination in the handling of resident abuse or neglect cases pursuant to this Act.

- E. Report Requirements (210 ILCS 30/7):** The report required by this Act shall include the name of the resident, the name and address of the nursing home at which the resident resides, the residents age, the nature of the resident's condition including any evidence of previous injuries or disabilities, and any other information that the reporter believes might be helpful in establishing the cause of such abuse or neglect and the identity of the person believed to have caused such abuse or neglect.
- F. Immunity from Liability (210 ILCS 30/8):** Any person, institution or investigation of such a report or in the taking of photographs or x-rays under this Act shall have immunity from liability, civil, criminal, or otherwise, that might result by reason of such actions.
- G. Testimony in Judicial Proceedings-Evidentiary Exclusions (210 ILCS 30/9):** Any person who makes a report or who investigates a report under this Act shall testify fully in any judicial proceeding resulting from such report, as to any evidence of abuse or neglect, or the cause thereof. No evidence shall be excluded by reason of any privilege relating to the communications between the alleged perpetrator of abuse or neglect, or the resident subject of the report under this Act and the person making or investigating the report.
- H. Criminal Acts Discovered in the Course of Investigation-Referral (210 ILCS 30/ 10):** If during the investigation of a report made pursuant to this Act, the Department obtains information indicating possible criminal acts, the Department shall refer the matter to the appropriate law enforcement agency or agencies for further investigation or prosecution. The Department shall make the entire file of its investigation available to the appropriate law enforcement agencies.

ELDER ABUSE AND DOMESTIC VIOLENCE

Because perpetrators of elder abuse and neglect are often in domestic relationships with older persons who are victimized, the Illinois Domestic Violence Act of 1986 (750 ILCS 60/101 et al) and the Code of Criminal Procedure of 1963, Domestic Violence Order of Protection (725 ILCS 5/ 111-8) will be utilized as in those cases of domestic violence involving younger victims. Law enforcement officers should observe the domestic violence protocols already established.

There are some provisions of the Illinois Domestic Violence Act of 1986 which specifically apply to older adults. These are summarized:

A. Definitions Unique to Elderly Victims or Disabled Adults (750 ILCS 60/103)

1. **“Adult with Disabilities”** means an elder adult with disabilities or a high-risk adult with disabilities. A person may be an adult with disabilities for purposes of this Act even though he or she has never been adjudicated an incompetent adult. However, no court proceeding may be initiated or continued on behalf of an adult with disabilities over that adult’s objection, unless such proceeding is approved by his or her legal guardian, if any

If the elder objects, however, no court proceeding may be initiated or continued on behalf of him or her unless his or her legal guardian consents.

Note: While the elder may fall within the category of a protected person because of advanced age or disabilities, the elder is able to refuse assistance like any other adult. If there is a question of capacity for informed consent and appears to be serious imminent risk, action under the Mental Health Code or the Probate Act may be needed, and if no. immediate risk, refer to the Elder Abuse Provider Agency for follow-up.

2. Elder adult with disabilities means an adult who because of advanced age is unable to take action to protect himself or herself from abuse by a family or household member.
3. High-risk adult with disabilities includes any person aged 18 or over whose physical or mental disability impairs his or her ability to seek protection from abuse, neglect or exploitation.
4. **“Exploitation”** means illegal, including tortuous use of a high risk adult with disabilities or of the assets or resources of a high-risk adult with disabilities. Exploitation includes, but is not limited to, the misappropriation of assets or resource of a high- risk adult with disabilities by under influence, by breach of a fiduciary relationship, by fraud, deception, or extortion, or the use of such assets or resources in a manner contrary to law.
5. **“Neglect”** means the failure to exercise that degree of care toward a high-risk adult with disabilities which a reasonable person would exercise under the circumstances and includes but is not limited to:

- (i) the failure to take reasonable steps to protect a high-risk adult with disabilities from acts of abuse;
 - (ii) the repeated, careless imposition of unreasonable confinement;
 - (iii) the failure to provide food, shelter, clothing, and personal hygiene to a high-risk adult with disabilities who requires such assistance;
 - (iv) the failure to provide medical and rehabilitative care for the physical and mental health needs of a high-risk adult with disabilities; or
 - (v) the failure to protect a high-risk adult with disabilities from health and safety hazards
6. Willful deprivation means willfully denying a person who because of age, health or disability requires medication, medical care, shelter, food, etc., and thereby exposing the person to risk of harm.

Note: The provisions related to care do not impose a requirement that someone give assistance to an elder who refuses it, unless a court orders, and there is no new affirmative duty created to provide support to an elder. An elder may have expressed through a durable power of attorney an intent to forego medical care or treatment.

B. Any person may file a petition for an Order of Protection on behalf of an adult who has been abused by a family or household member and who, because of age, health, disability, or inaccessibility, cannot file the petition or on behalf of a high-risk adult with disabilities who has been abused, neglected, or exploited by a family or household member. (750 ILCS 60/201)

C. Access of high-risk adults. (750 ILCS 60/201.1)

1. If access is obstructed The Domestic Violence Act prevents anyone from obstructing access of a high-risk adult with disabilities to any agency authorized to file a petition for an Order of Protection for the purpose of a private visit relating to legal rights, entitlements, claims and services under the Act. If someone obstructs or impedes access, law enforcement agencies shall assist in petitioning for a search warrant or an ex pane injunctive order upon showing of probable cause to believe:

The high-risk adult with disabilities is the subject of abuse, neglect, or exploitation which constitutes a criminal offense or that any other criminal offense is occurring, which affects the interests or welfare of the high-risk adult with disabilities.

2. If law enforcement officer personally observes that it appears probable that delay of entry to obtain a warrant or order would cause the high-risk adult with disabilities to be in imminent danger of death or great bodily harm, entry may be made by the officer after an announcement of the officer's authority and purpose.

D. Guardianship

1. It is important to note that an elder may be the subject of a guardianship proceeding under the Probate Act of 1975, and a petition for an Order of Protection could be filed in that proceeding. (750 ILCS 60/202)
 2. If the high-risk adult with disabilities has a guardian who is named as a respondent in a petition for an Order of Protection, the court shall appoint a temporary substitute guardian. (750 ILCS 60/213.3)
- E. Officers should record any statements of the elder, since there is a hearsay exception in actions for orders of protection on behalf of a high risk adult with disabilities. The following evidence will be admitted whether or not the elder is available as a witness: a statement relating to a startling event made spontaneously and under the contemporaneous or continuing stress of excitement caused by the event. (750 ILCS 60/213.1)
- F. The requirements and remedies for Orders of Protection for elders is the same as for all other petitioners under the Domestic Violence Act.

G. Immunity from Prosecution:

A good faith reporter of abuse of a person 60 years or older is immune from criminal or civil liability if providing information to appropriate law enforcement agency, assisting in the investigation, assisting in providing services ordered under an Order of Protection. (750 ILCS 60/225)

Some provisions of the Illinois Domestic Violence Act specifically pertain to law enforcement officers. The most important provisions are summarized:

- a. **Arrest Without Warrant (750 ILCS 60/301):** Any law enforcement officer may make an arrest without a warrant if the officer has probable cause to believe that the person has committed or is committing any crime, including but not limited to violation of an order of protection, under Section 12-30 of the Criminal Code, even if the crime was not committed in the presence of the officer. The officer may verify the existence of an order of protection by telephone or radio communication with his or her law enforcement agency or by referring to the copy of the order provided by the petitioner or respondent.
- b. **Assistance by law enforcement officers (750 ILCS 60/304):** Whenever a law enforcement officer has reason to believe that a person has been abused, neglected or exploited by a family or household member, the officer shall immediately use all reasonable means to prevent further abuse, neglect, or exploitation, including:
 - (1) Arresting the abusing party where appropriate;
 - (2) Seizing and taking inventory of weapons if there is probable cause to believe that particular weapons were used to commit the abuse (subject

to constitutional limitations);

- (3) Accompanying the victim to his or her place of residence for a reasonable period of time to remove necessary personal belongings and possessions;
- (4) Offering the victim immediate and adequate information (written in appropriate language, Braille, or sign language), which shall include a summary of the procedures and relief available to victims of abuse under subsection (c) of Section 217 and the officer's name and badge number;
- (5) Providing the victim with one referral to an accessible service agency;
- (6) Advising the victim about seeking medical attention and preserving evidence (specifically including photographs of injury or damage and damaged clothing or other property);
- (7) Providing or arranging transportation for the victim to a medical facility for treatment of injuries or to a nearby place of shelter. After the close of court business hours, providing or arranging transportation for the victim to the nearest available circuit judge or associate judge so the victim may file a petition for an emergency order of protection under subsection (c) of Section 217.

Whenever an officer does not exercise arrest powers or otherwise initiate criminal proceedings, the officer shall:

- (1) Make a police report of the investigation of any bona fide allegation of an incident of abuse, neglect, or exploitation and the disposition of the investigation;
- (2) Inform the victim of the victim's right to request that a criminal proceeding be initiated where appropriate, including specific times and places for meeting with the State's Attorney's office, a warrant officer, or other official in accordance with local procedure; and
- (3) Advise the victim of the importance of seeking medical attention and preserving evidence (photographs of injury or damage and damaged clothing or other property).

NOTE: Except as provided by Section 24-C of the Criminal Code or under a court order, any weapon seized under subsection (a) (2) shall be returned forthwith to the person from whom it was seized when it is no longer needed for evidentiary purposes.