

CRIMES AGAINST ELDERLY AND DISABLED PERSONS

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Outline

- Overview of Criminal Law in Illinois
- Common Criminal Offenses against Elderly or Disabled Adults
- Frequently Asked Questions

Criminal Law in Illinois

- Criminal Code: Illinois Compiled Statutes Chapter 720
 - Lists elements of each criminal offense
- All criminal offenses are “classified”
 - Petty (no imprisonment)
 - Misdemeanors
 - Class A, B, or C
 - Range from fines/costs only up to 364 days jail
 - Felonies
 - Class 4, 3, 2, 1, X, or M
 - Range from community based sentence up to natural life in prison

Sentencing Ranges (730 ILCS 5/5-4.5-15)

Classification	Imprisonment	Periodic Imprisonment	Probation and Conditional Discharge	MSR (Parole)
Murder	20-60 Ext. Term: 60-100	N/a	N/a	3 years
Class X	6-30 Ext. Term: 30-60	N/a	N/a	3 years
Class 1	4-15 2 nd Deg. Murder: 4-20 Ext. Term: 15-30	3-4 years	Not more than 4 years	2 years
Class 2	3-7 Ext. Term 7-14	18-30 months	Not more than 4 years	2 years (4 years for Agg Dom Batt)
Class 3	2-5 Ext Term: 5-10	Up to 18 months	Not more than 30 months	1 year (4 years for Agg Stalking)
Class 4	1-3 Ext. Term: 3-6	Up to 18 months	Not more than 30 months	1 year (4 years for Dom Batt w/ Prior, VOP w/ Prior, and Stalking)
Class A	Less than 1 year	Less than 1 year	Not more than 2 years	N/a
Class B	Not more than 6 months	Up to 6 months	Not more than 2 years/ Supervision available (except for domestic battery, criminal sexual abuse, resisting, etc.)	N/a
Class C	Not more than 30 days	Up to 30 days	Not more than 2 years / Supervision available	N/a
Petty Offenses	N/a	N/a	Not more than six months/ Supervision available	N/a

Under Illinois law, every crime committed against a person who is elderly or has a disability is more serious.

- If a felony is committed against an elderly or disabled person, it is “extended term”
 - Maximum prison sentence doubled
 - Exception: where element of the crime is victim’s age or disability
- The fact that a victim is elderly or disabled is a “factor in aggravation” to be given weight by the court in imposing a more severe sentence

General Categories of Crimes Against Elderly and Disabled Persons

- Financial Abuse
- Emotional Abuse
- Neglect
- Physical Abuse
- Confinement
- Sexual Abuse

Disclaimer

- Basic overview and place to start
- Going over the most relevant applications of these statutes and sentencing rules
- Summaries and not verbatim statutory language
- Other sentencing rules that come into play

Questions?

- Throughout this presentation, please stop me if you have any questions or comments.

Why this should matter to you:

- Helpful if reporting a crime or assisting a victim in reporting a crime to be able to call it by name to law enforcement
- Officers may not be familiar with uncommonly-reported offenses

Financial Abuse

1. Theft (720 ILCS 5/16-1)
2. Theft by Deception (720 ILCS 5/16-1(a)(2))
3. Aggravated Identity Theft (720 ILCS 5/16-30(b))
4. Financial Exploitation of an Elderly Person or Person with a Disability (720 ILCS 5/17-56)
5. Aggravated Home Repair Fraud (815 ILCS 5/15/5)

Theft

- Obtains or exerts unauthorized control (or obtains by threat) over property of an owner, and either:
 - Intends to deprive owner permanently of use or benefit of property
 - Uses, conceals or abandons the property knowing that it will or probably will deprive the owner permanently of the use or benefit of the property
- Penalty: anywhere from Class A misdemeanor to Class X felony depending on amount, manner, victim, and priors
- Related offenses: Burglary/residential burglary
- Example: A grandson is visiting his grandmother in her home. While she's in the kitchen out of sight, he takes \$600 from her purse. This would be a Class 3 felony theft.

Theft by Deception

- Obtains by deception control over property of the owner, and either:
 - Intends to deprive owner permanently of use or benefit of property
 - Uses, conceals or abandons the property knowing that it will or probably will deprive the owner permanently of the use or benefit of the property
- Penalty: Class A to Class X—enhanced penalties for elderly victims if amount is over \$5,000
- Example: Woman approaches an elderly lady and says she needs money to pay for her dying child to receive cancer treatment. Elderly lady gives her \$100. Woman has no child.

Aggravated Identity Theft

- Uses any personal identifying information of another (i.e. PIN number or signature) to fraudulently obtain credit, money, goods, services, or other property AND victim is 60 years of age or older or has a disability
- Penalty: Class 3 – X depending on amount
 - Second conviction is Class X regardless of amount
- Related offenses: Forgery/ Credit Card Fraud
- Example: Caregiver takes a credit card from her elderly patient and uses it to make a purchase from Walmart, signing the patient's name.

Financial Exploitation

- Stands in a position of trust or confidence with the elderly person or person with a disability, and either:
 - Knowingly and by deception or intimidation obtains control over the property of that person, OR
 - Illegally uses the assets or resources of that person
- Sticking point: “Position of Trust or Confidence” = special relationship (friendship not enough)—needs to change!
 - Defined as relative by blood or marriage, joint tenant, legal or fiduciary relationship (such as POA), financial professional, or paid or unpaid caregiver
- Related offenses: deceptive practices
- Penalty: Class 4 – 1 based on value and age of victim

Financial Exploitation (cont.)

- Examples:
 - An elderly woman asks her young neighbor to be her POA. The neighbor then drains the elderly victim's bank account and uses the money to go gambling.
 - An in-home caregiver for a young man with a disability tells the young man that if he doesn't give her \$100, he's going to hurt the man's beloved cat.

Aggravated Home Repair Fraud

- Offender enters into an agreement, written or oral, with a person for home repair, and either:
 - Misrepresents a material fact
 - Uses deception, false pretense, or false promises to induce agreement
 - Enters into an unconscionable agreement of at least \$4000
- Offender damages the property of a person with the intent to enter into an agreement for home repair
- Offender misrepresents himself to be a government or public utility employee with the intent to enter into an agreement for home repair
- Penalty: Class 3 – 2 felony
- Example: Example: Person enters into an agreement to “reseal” an elderly lady’s driveway for \$7,000. He paints it with black paint.

Emotional Abuse

1. Stalking (720 ILCS 5/12-7.3)
2. Harassment by Telephone (720 ILCS 5/26.5-2)
3. Harassment by Electronic Communications (720 ILCS 5/26.5-3)
4. Intimidation (720 ILCS 5/12-6)

Stalking

- Engages in a “course of conduct” (2 or more acts) which he knows or should know would cause a reasonable person to fear for her safety or the safety of another or suffer emotional distress
- Class 4 felony
 - Subsequent conviction is Class 3 felony
- Aggravated stalking: Stalking + bodily harm, restraint, or OP violation—Class 3 felony
- Example: A person repeatedly comes to the door of an elderly woman who lives alone and bangs on her door, demanding money and threatening to hurt her if she doesn't comply.
- **CAUTION: Recently declare unconstitutional & is in limbo**

Harassment by Telephone

- Using a telephone to:
 - Make a lewd or obscene comment with intent to offend
 - Make a call with intent to abuse, threaten, or harass (no conversation necessary)
 - Cause a phone to ring repeatedly with the intent to harass
- Normally a Class B misdemeanor
 - Enhanced to a Class 4 felony if 3 prior convictions, 1 prior conviction with the same victim or family, violates a judicial no contact condition, threatens to kill the victim or family member, previous conviction for forcible felony, victim under 18
- Example: A person calls a person with a disability, calls them a derogatory term, and threatens to hurt him next time they see him at the bus stop

Harassment by Electronic Communication

- Using a electronic communication (email, text, facebook, etc.) to:
 - Make a lewd or obscene comment with intent to offend
 - Transmit a virus with intent to interrupt service or prevent the victim from using their device
 - Threaten injury to the person, their family, or their property
- Normally a Class B misdemeanor
 - Enhanced to a Class 4 felony if 3 prior convictions, 1 prior conviction with the same victim or family, violates a judicial no contact condition, threatens to kill the victim or family member, previous conviction for forcible felony, victim under 18
- Example: A person texts their elderly grandmother threatening to injure her cat

Intimidation

- With intent to cause another to perform or omit to perform any act, he communicates (by any means) a threat to do any of the following:
 - Inflict physical harm on the any person or on property
 - Confine or restrain the person
 - Commit a felony or Class A misdemeanor
 - Accuse any person of an offense
 - Expose a person to hatred, contempt, or ridicule
- Class 3 felony
- Example: Junior tells calls elderly neighbor and teller hs that if she doesn't wire him \$5,000, he will burn down her church

Neglect

1. Criminal Abuse or Neglect of an Elderly Person or Person with a Disability (720 ILCS 5/12-4.4a(b))
2. Criminal Abuse or Neglect of a Long Term Care Facility Residence (720 ILCS 5/12-4.4a(a))

Criminal Abuse or Neglect of an Elderly Person or Person with a Disability

- A caregiver knowingly:
 - Performs acts that cause the person's life to be endangered, health to be injured, or pre-existing physical or mental condition to deteriorate, or
 - Fails to perform acts that he knows are necessary to maintain or preserve the life or health of the person, and that failure causes the person's life to be endangered, health to be injured, or pre-existing physical or mental condition to deteriorate, or
 - Abandons the person
 - Physically abuses, harasses, intimidates, or interferes with the personal liberty of the person, or
 - Exposes the person to willful deprivation

Criminal Abuse or Neglect of an Elderly Person or Person with a Disability (cont.)

- “Caregiver”:
 - Parent, spouse, adult child, relative by blood or marriage who resides in the same building or regularly visits and knows or should know that the person cannot provide for themselves
 - Employed caregiver
 - A person who has agreed for consideration to reside with or visit the person
 - A person appointed by a court or agency to provide care
- “Willful deprivation”: Willfully denying a person required medication, medical care, shelter, services, food, therapeutic device, or physical assistance, thereby exposing them to risk of harm

Criminal Abuse or Neglect of an Elderly Person or Person with a Disability (cont.)

- Defense: Good faith effort
- Class 3 felony
 - If death results, Class 2 felony (3 -14 years)
- Example: An elderly woman with numerous physical disabilities resides in an upstairs apartment of a building owned and resided in by her adult daughter. The daughter knows what medication her mother needs to control her health issues and knows that her mother cannot obtain the medication on her own. The daughter fails to provide that medication, and the mother's condition deteriorates.

Criminal Abuse of a Long Term Care Facility Residence

- A person or an owner or licensee of a long-term care facility who knowingly causes any physical or mental injury to or commits any sexual offense against a resident
- Class 3 felony

Criminal Neglect of a Long Term Care Facility Resident

- A person or an owner or licensee of a long-term care facility who
 - Recklessly performs acts that cause the resident's life to be endangered, health to be injured, or pre-existing condition to deteriorate
 - Recklessly fails to perform acts that he knows or should know are necessary to preserve the life or health of the residence
 - Abandons a resident
- Class 4 felony
 - If death, Class 3

Neglect of a Long Term Care Facility Resident

- A person or an owner or licensee of a long-term care facility who negligently fails to provide adequate care resulting in physical or mental injury by failing to exercise reasonable care in the hiring, training, and supervising of staff
- Petty offense

Physical Abuse

1. Domestic Battery (720 ILCS 5/12-3.2)
2. Aggravated Domestic Battery (720 ILCS 5/12-3.3)
3. Aggravated Battery (720 ILCS 5/12-3.05)

Domestic Battery

- Causing bodily harm to or making physical contact of an insulting or provoking nature with any family or household member
- “Family or Household Member”: related by blood or marriage, reside together, dating, shared child, etc.
- Class A misdemeanor up to Class 2 felony
- Example: An elderly man hits his elderly wife, giving her a black eye

Aggravated Domestic Battery

- Causing great bodily harm to a family or household member
- Strangling a family or household member
- Class 2 felony
- Example: An adult daughter pushes her elderly mother down in a rage, causing her arm to fracture

Aggravated Battery

- Knowingly causing bodily harm to or making physical contact of an insulting or provoking nature with an elderly person or a disabled person
- Class 3 felony
- Class X felony if great bodily harm to severely and profoundly intellectually disabled person
- Class 2 felony if great bodily harm to elderly person
- Example: The caregiver for a severely intellectually disabled person hits him repeatedly, causing a laceration to his face that requires numerous stitches to close

Confinement

1. Unlawful Restraint (720 ILCS 5/10-3)

Unlawful Restraint

- Knowingly and without authority detaining a person
- Class 4 felony
 - Aggravated unlawful restraint: detaining while using a deadly weapon—Class 3 felony
- Example: An adult daughter locks her elderly mother in the basement because she is angry at her

Sexual Abuse

1. Sexual Relations within Families (720 ILCS 5/11-11)
2. Aggravated Criminal Sexual Assault (720 ILCS 5/12-1.30)
3. Aggravated Criminal Sexual Abuse (720 ILCS 5/12-1.60)

Sexual Relations Within Families

- Commits an act of sexual penetration with a person he knows is related to him as follows:
 - Brother or sister (whole or half)
 - Father or mother (child over 18)
 - Stepfather or stepmother (stepchild over 18)
 - Aunt or uncle (niece or nephew over 18)
 - Great-aunt or great-uncle (niece or nephew over 18)
 - Grandparent or step-grandparent (grandchild over 18)
- Class 3 felony
- Example: Adult nephew lives with his elderly great aunt. He is her caretaker and she relies on him. He convinces her to have sex with him.

Aggravated Criminal Sexual Abuse

- Commits an act of sexual conduct by force or threat of force, or where the victim is unable to consent, with a person age 60 or older
 - “Sexual conduct”: touching or fondling, under or over clothing, of sex organs, breasts, or anus, for purpose of sexual gratification
 - Class 2 felony
- Example: The in-home caregiver for an elderly woman fondles her sex organs while she’s sleeping.

Aggravated Criminal Sexual Assault

- Commits an act of sexual penetration by force or threat of force, or where the victim is unable to consent, and the victim is 60 years of age or older
- Class X felony
- Example: The adult brother of a disabled adult woman forces her to have sexual intercourse with him by threatening to kill her if she doesn't comply

Frequently Asked Questions

Q. Are police required to pass investigations on to the State's Attorney's Office even if they do not think there is sufficient evidence to proceed?

Q. What happens if the police don't feel there is enough evidence to pass the investigation on to the State's Attorney's Office?

A. Police are NOT required to pass cases on if they don't think there is sufficient evidence to proceed.

- Administratively close out
- Whether or not it is passed on depends on relationship between prosecutors office and police—varies immensely
- An active M-Team helps to build those relationships!

Frequently Asked Questions

Q. How do prosecutors deal with uncooperative victims?

A. Varies by county

- Some prosecutors offices, usually those with a more robust domestic violence program, are confident in handling cases with uncooperative victims and will proceed as long as proof is there

A. Varies by type and strength of evidence

- In the context of violence cases, more likely to proceed and succeed the worse the injury is
- In the context of financial cases, more likely to proceed and succeed without victim the more infirm the victim is (mentally or physically)
 - Very difficult to proceed on financial cases with a competent, uncooperative victim

A note on uncooperative/unavailable victims

- Don't be afraid to ask you prosecutors office--“Have you considered proceeding without the victim?”
 - Prosecutors can become so busy and set in our ways that we fail to get creative and think outside of the box
 - Remember—the most difficult and important cases in the criminal justice system have no victim cooperation at trial—MURDER CASES

Any other questions?



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