

**Fifty-fifth Legislative Assembly, State of North Dakota, begun in the
Capitol in the City of Bismarck, on Monday, the sixth day of January,
one thousand nine hundred and ninety-seven**

HOUSE BILL NO. 1112
(Representatives Brown, Martin, Wald)
(Senators Urlacher, Goetz)

AN ACT to create and enact two new sections to chapter 12.1-31 of the North Dakota Century Code, relating to the exploitation of a disabled or vulnerable elderly adult; to amend and reenact section 12.1-31-07 of the North Dakota Century Code, relating to the definition of disabled or vulnerable elderly adult; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-31-07 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12.1-31-07. Endangering a vulnerable elderly adult - Penalty.

1. In this ~~section~~ chapter, unless the context otherwise requires:
 - a. "Caregiver" means a person who is responsible for the care of a disabled adult or vulnerable elderly adult as a result of a familial or legal relationship, or a person who has assumed responsibility for the care of a disabled adult or vulnerable elderly adult. The term does not include a licensed health care provider who is acting within the provider's legal scope of practice in providing appropriate care or assistance to a disabled adult or vulnerable elderly adult who is the patient or client of the licensed health care provider.
 - b. "Disabled adult" means a person eighteen years of age or older who suffers from a condition of physical or mental incapacitation due to a developmental disability or organic brain damage or mental illness or who has one or more physical or mental limitations that restrict the person's ability to perform the normal activities of daily living.
 - c. "Vulnerable elderly adult" means a person sixty years of age or older who is suffering from a disease or infirmity associated with advanced age and manifested by physical, mental, or emotional dysfunctioning to the extent that the person is incapable of adequately providing for the person's own health or personal care.
2. Except as provided for by chapters 23-06.4, 23-06.5, and 30.1-30, a caregiver who knowingly performs an act that causes a disabled adult's or vulnerable elderly adult's life to be endangered, health to be injured, or preexisting physical or mental condition to deteriorate, or a caregiver who fails to perform acts that the caregiver knows are necessary to maintain or preserve the life or health of the disabled adult or vulnerable elderly adult and the failure causes the disabled adult's or vulnerable elderly adult's life to be endangered, health to be injured, or preexisting physical or mental condition to deteriorate, is guilty of a class ~~C~~ B felony.

SECTION 2. Two new sections to chapter 12.1-31 of the North Dakota Century Code are created and enacted as follows:

Exploitation of a vulnerable adult - Penalty.

1. A person is guilty of exploitation of a disabled adult or vulnerable elderly adult if:

- a. The person stands in a position of trust and confidence or has a business relationship with the disabled adult or vulnerable elderly adult and knowingly, by deception or intimidation, obtains or uses, or attempts to obtain or use, the disabled adult's or vulnerable elderly adult's funds, assets, or property with the intent to temporarily or permanently deprive the disabled adult or vulnerable elderly adult of the use, benefit, or possession of the property, for the benefit of someone other than the disabled adult or vulnerable elderly adult; or
 - b. The person knows that the disabled adult or vulnerable elderly adult lacks the capacity to consent, and obtains or uses, or attempts to obtain or use, or assists another in obtaining or using or attempting to obtain or use, the disabled adult's or vulnerable elderly adult's funds, assets, or property with the intent to temporarily or permanently deprive the disabled adult or vulnerable elderly adult of the use, benefit, or possession of the property for the benefit of someone other than the disabled adult or vulnerable elderly adult.
2. Exploitation of a disabled adult or vulnerable elderly adult is:
- a. A class A felony if the value of the exploited funds, assets, or property exceeds one hundred thousand dollars.
 - b. A class B felony if the value of the exploited funds, assets, or property exceeds twenty thousand dollars but does not exceed one hundred thousand dollars.
 - c. A class C felony if the value of the exploited funds, assets, or property is in excess of one thousand dollars but does not exceed twenty thousand dollars.
3. It is not a defense to a prosecution of a violation of this section that the accused did not know the age of the victim.
4. This section does not impose criminal liability on a person who has:
- a. Managed the disabled adult's or vulnerable elderly adult's funds, assets, or property in a manner that clearly gives primacy to the needs and welfare of that person or is consistent with any explicit written authorization; or
 - b. Made a good faith effort to assist in the management of the disabled adult's or vulnerable elderly adult's funds, assets, or property.

Criminal proceeding involving a vulnerable adult - Speedy trial. In a criminal proceeding in which a disabled adult or vulnerable elderly adult is a victim, the court and state's attorney shall take appropriate action to ensure a speedy trial to minimize the length of time the disabled adult or vulnerable elderly adult must endure the stress of involvement in the proceedings. In ruling on any motion or other request for a delay or a continuance of proceedings, the court shall consider and give weight to any adverse impact the delay or continuance may have on the well-being of the disabled adult or vulnerable elderly adult.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-fifth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1112.

House Vote: Yeas 94 Nays 0 Absent 3

Senate Vote: Yeas 42 Nays 3 Absent 4

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 1997.

Approved at _____ M. on _____, 1997.

Governor

Filed in this office this _____ day of _____, 1997,
at _____ o'clock _____ M.

Secretary of State