

Senate File 202 - Introduced

SENATE FILE 202

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A BILL FOR

1 An Act relating to older individuals and dependent adults and
2 creating certain criminal offenses and civil actions, and
3 providing penalties.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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DIVISION I

CRIMINAL AND CIVIL RELIEF FOR OLDER INDIVIDUALS

Section 1. NEW SECTION. 708.2D Older individual assault — mandatory minimums, penalties enhanced — extension of no-contact order.

1. For the purposes of this section:

a. "Older individual" means an individual who is sixty years of age or older.

b. "Older individual assault" means an assault, as defined in section 708.1, of an older individual.

2. On a first offense of older individual assault, the person commits:

a. A simple misdemeanor, except as otherwise provided.

b. A serious misdemeanor, if the older individual assault causes bodily injury or mental illness.

c. An aggravated misdemeanor, if the older individual assault is committed with the intent to inflict a serious injury upon an older individual, or if the person uses or displays a dangerous weapon in connection with the assault.

This paragraph does not apply if section 708.6 or 708.8 applies.

d. An aggravated misdemeanor, if the older individual assault is committed by knowingly impeding the normal breathing or circulation of the blood of an older individual by applying pressure to the throat or neck of the older individual or by obstructing the nose or mouth of the older individual.

3. Except as otherwise provided in subsection 2, on a second older individual assault, a person commits:

a. A serious misdemeanor if the first offense was classified as a simple misdemeanor and the second offense would otherwise be classified as a simple misdemeanor.

b. An aggravated misdemeanor if the first offense was classified as a simple or aggravated misdemeanor and the second offense would otherwise be classified as a serious misdemeanor, or the first offense was classified as a serious or aggravated

1 misdemeanor, and the second offense would otherwise be
2 classified as a simple or serious misdemeanor.

3 4. On a third or subsequent offense of older individual
4 assault, a person commits a class "D" felony.

5 5. For an older individual assault committed by knowingly
6 impeding the normal breathing or circulation of the blood of an
7 older individual by applying pressure to the throat or neck of
8 the older individual or by obstructing the nose or mouth of the
9 older individual, and causing bodily injury, the person commits
10 a class "D" felony.

11 6. *a.* A conviction for, deferred judgment for, or plea of
12 guilty to, a violation of this section which occurred more than
13 twelve years prior to the date of the violation charged shall
14 not be considered in determining that the violation charged is
15 a second or subsequent offense.

16 *b.* For the purpose of determining if a violation charged
17 is a second or subsequent offense, deferred judgments issued
18 pursuant to section 907.3 for violations of section 708.2 or
19 708.2A, or this section, which were issued on older individual
20 assaults, and convictions or the equivalent of deferred
21 judgments for violations in any other states under statutes
22 substantially corresponding to this section shall be counted
23 as previous offenses. The courts shall judicially notice the
24 statutes of other states which define offenses substantially
25 equivalent to the offenses defined in this section and can
26 therefore be considered corresponding statutes. Each previous
27 violation on which conviction or deferral of judgment was
28 entered prior to the date of the offense charged shall be
29 considered and counted as a separate previous offense.

30 *c.* An offense shall be considered a prior offense regardless
31 of whether it was committed upon the same victim.

32 7. *a.* A person convicted of violating subsection 2 or 3
33 shall serve a minimum term of two days of the sentence imposed
34 by law, and shall not be eligible for suspension of the minimum
35 sentence. The minimum term shall be served on consecutive

1 days. The court shall not impose a fine in lieu of the minimum
2 sentence, although a fine may be imposed in addition to the
3 minimum sentence. This section does not prohibit the court
4 from sentencing and the person from serving the maximum term
5 of confinement or from paying the maximum fine permitted
6 pursuant to chapters 902 and 903, and does not prohibit the
7 court from entering a deferred judgment or sentence pursuant
8 to section 907.3, if the person has not previously received
9 a deferred sentence or judgment for a violation of section
10 708.2 or 708.2A, or this section, which was issued on an older
11 individual assault.

12 b. A person convicted of violating subsection 4 shall
13 be sentenced as provided under section 902.9, subsection 1,
14 paragraph "e", and shall be denied parole or work release until
15 the person has served a minimum of one year of the person's
16 sentence. Notwithstanding section 901.5, subsections 1, 3, and
17 5, and section 907.3, the person cannot receive a suspended or
18 deferred sentence or a deferred judgment; however, the person
19 sentenced shall receive credit for any time the person was
20 confined in a jail or detention facility following arrest.

21 8. If a person is convicted for, receives a deferred
22 judgment for, or pleads guilty to a violation of this section,
23 the court shall modify the no-contact order issued upon initial
24 appearance in the manner provided in section 664A.5, regardless
25 of whether the person is placed on probation.

26 9. The clerk of the district court shall provide notice
27 and copies of a judgment entered under this section to the
28 applicable law enforcement agencies and the twenty-four-hour
29 dispatcher for the law enforcement agencies, in the manner
30 provided for protective orders under chapter 235F. The
31 clerk shall provide notice and copies of modifications of the
32 judgment in the same manner.

33 Sec. 2. NEW SECTION. 714.2A Theft against an older
34 individual.

35 1. If a person commits theft against an individual who was

1 an older individual at the time the theft was committed and
2 knew or should have known the conduct was directed at an older
3 individual, notwithstanding the penalties specified in section
4 714.2, all of the following shall apply:

5 a. If a person commits theft in the first degree pursuant to
6 section 714.2, subsection 1, the person is guilty of a class
7 "B" felony.

8 b. If a person commits theft in the second degree pursuant
9 to section 714.2, subsection 2, the person is guilty of a class
10 "C" felony.

11 c. If a person commits theft in the third degree pursuant to
12 section 714.2, subsection 3, the person is guilty of a class
13 "D" felony.

14 d. If a person commits theft in the fourth degree pursuant
15 to section 714.2, subsection 4, the person is guilty of an
16 aggravated misdemeanor.

17 e. If a person commits theft in the fifth degree pursuant to
18 section 714.2, subsection 5, the person is guilty of a serious
19 misdemeanor.

20 2. For the purposes of this section, "*older individual*"
21 means an individual who is sixty years of age or older.

22 Sec. 3. Section 714.16A, Code 2021, is amended to read as
23 follows:

24 **714.16A Additional civil penalty for consumer frauds**
25 **committed against elderly older individuals — fund established.**

26 1. a. If a person violates [section 714.16](#), and the
27 violation is committed against an older person individual,
28 in an action brought by the attorney general, in addition to
29 any other civil penalty, the court may impose an additional
30 civil penalty not to exceed five thousand dollars for each
31 such violation. Additionally, the attorney general may
32 accept a civil penalty as determined by the attorney general
33 in settlement of an investigation of a violation of section
34 714.16, regardless of whether an action has been filed pursuant
35 to [section 714.16](#).

1 *b.* A civil penalty imposed by a court or determined and
2 accepted by the attorney general pursuant to [this section](#) shall
3 be paid to the treasurer of state, who shall deposit the money
4 in the elderly victim fund, a separate fund created in the
5 state treasury and administered by the attorney general for the
6 investigation and prosecution of frauds against the elderly.
7 Notwithstanding [section 8.33](#), any balance in the fund on June
8 30 of any fiscal year shall not revert to the general fund
9 of the state. An award of reimbursement pursuant to section
10 714.16 has priority over a civil penalty imposed by the court
11 pursuant to [this subsection](#).

12 2. In determining whether to impose a civil penalty under
13 subsection 1, and the amount of any such penalty, the court
14 shall consider the following:

15 *a.* Whether the defendant's conduct was in willful disregard
16 of the rights of the older ~~person~~ individual.

17 *b.* Whether the defendant knew or should have known that the
18 defendant's conduct was directed to an older ~~person~~ individual.

19 *c.* Whether the older ~~person~~ individual was substantially
20 more vulnerable to the defendant's conduct because of age, poor
21 health, infirmity, impaired understanding, restricted mobility,
22 or disability, than other persons.

23 *d.* Any other factors the court deems appropriate.

24 3. As used in [this section](#), "~~older person~~" "older
25 individual" means ~~a person who is sixty-five years of age or an~~
26 individual who is sixty years of age or older.

27 Sec. 4. NEW SECTION. 726.24 Elder abuse — initiation of
28 charges — penalty.

29 1. As used in this section unless the context otherwise
30 requires:

31 *a.* "*Abuse*" means the infliction of physical harm or the
32 deprivation of goods or services that are necessary to meet
33 essential needs or to avoid physical harm or psychological
34 harm.

35 *b.* "*Caregiver*" means an individual who has the

1 responsibility for the care or custody of an older individual,
2 whether voluntarily, by contract, by receipt of payment for
3 care, or as a result of the operation of law, and includes
4 but is not limited to a family member or other individual who
5 provides, whether on the individual's own behalf or on behalf
6 of a public or private entity, compensated or uncompensated
7 care to an older individual.

8 *c. "Elder abuse"* means the abuse, emotional abuse, neglect,
9 isolation, or sexual exploitation of an older individual.

10 *"Elder abuse"* does not include any of the following:

11 (1) Circumstances in which the older individual declines
12 medical treatment if the older individual holds a belief or is
13 an adherent of a religion whose tenets and practices call for
14 reliance on spiritual means in place of reliance on medical
15 treatment.

16 (2) Circumstances in which the older individual's caregiver
17 or fiduciary, acting in accordance with the older individual's
18 stated or implied consent, declines medical treatment if the
19 older individual holds a belief or is an adherent of a religion
20 whose tenets and practices call for reliance on spiritual means
21 in place of reliance on medical treatment.

22 (3) The withholding or withdrawing of health care from
23 an older individual who is terminally ill in the opinion of
24 a licensed physician, when the withholding or withdrawing of
25 health care is done at the request of the older individual or
26 at the request of the older individual's next of kin, attorney
27 in fact, or guardian pursuant to the applicable procedures
28 under chapter 125, 144A, 144B, 222, 229, or 633.

29 *d. "Emotional abuse"* means the willful or reckless
30 infliction of psychological harm, emotional or mental anguish,
31 or the use of physical or chemical restraint, medication, or
32 isolation as punishment or as a substitute for treatment or
33 care.

34 *e. "Fiduciary"* means a guardian, trustee, executor,
35 administrator, receiver, conservator, attorney in fact, or

1 any person, whether individual or corporate, acting in any
2 fiduciary capacity for or on behalf of any older individual.

3 *f.* (1) "*Isolate*" or "*isolation*" means preventing an older
4 individual from having contact with another person by any of
5 the following:

6 (a) Intentionally preventing the older individual from
7 receiving visitors, mail, or telephone calls, including,
8 without limitation, communicating to a person who comes to
9 visit the older individual or a person who telephones the older
10 individual that the older individual is not present or does
11 not want to meet with or talk to the visitor or caller while
12 knowing that the statement is false, contrary to the express
13 wishes of the older individual, and intended to prevent the
14 older individual from having contact with the visitor.

15 (b) Physically restraining the older individual to prevent
16 the older individual from meeting with a person who comes to
17 visit the older individual.

18 (c) Permitting any of the acts described in subparagraph
19 division (a) or (b) to be committed against an older
20 individual.

21 (2) "*Isolate*" or "*isolation*" does not mean an act intended
22 to protect the property or physical or mental welfare of
23 the older individual or an act performed pursuant to the
24 instructions of a physician of the older individual.

25 *g.* "*Neglect*" means the failure of a caregiver or fiduciary
26 to provide adequate food, shelter, clothing, supervision,
27 physical or mental health care, and goods or services necessary
28 to maintain the life, health, or safety of an older individual,
29 which if not provided would constitute denial of critical care.

30 *h.* "*Older individual*" means a person sixty years of age or
31 older who is unable to protect himself or herself from elder
32 abuse as a result of a mental or physical condition or because
33 of a personal circumstance which results in an increased risk
34 of harm to the person.

35 *i.* "*Older individual assault*" means the same as defined in

1 section 708.2D.

2 *j. "Physical harm"* means bodily injury, bodily pain,
3 impairment, or disease.

4 *k. "Psychological harm"* means an injury to the intellectual
5 functioning or emotional state of an older individual as
6 evidenced by an observable or measurable reduction in the older
7 adult's ability to function within that individual's customary
8 range of performance and that individual's behavior.

9 *l. "Serious injury"* means the same as defined in section
10 702.18.

11 *m. "Sexual exploitation"* means any sexual contact against
12 an older individual's will. This includes acts in which the
13 older individual is unable to understand the act or is unable
14 to communicate or is under undue influence and includes coerced
15 nudity; fondling, touching, or kissing; making the person
16 fondle someone else's genitals; forcing the person to observe
17 sexual acts; photographing the person in sexually explicit
18 ways whether for purposes of gratification or degradation; and
19 sexual assault.

20 *n. "Undue influence"* means when a person uses or knowingly
21 assists or causes another person to use that person's role,
22 relationship, or power to exploit the trust, dependency, or
23 fear of an older individual, or uses or knowingly assists or
24 causes another person to use that person's role, relationship,
25 or power to deceptively gain control over an older individual's
26 decision-making process.

27 2. It shall be unlawful for any person to abuse, emotionally
28 abuse, neglect, isolate, or sexually exploit any older
29 individual.

30 3. A charge of elder abuse may be initiated as a result of
31 an investigation by a social services agency, or on the direct
32 initiative of the attorney general, a county attorney, or a law
33 enforcement agency.

34 4. A person who commits a first offense of elder abuse is
35 guilty of the following, as applicable:

1 *a.* A person who intentionally commits elder abuse is guilty
2 of a class "C" felony if the intentional elder abuse results
3 in serious injury.

4 *b.* A person who recklessly commits elder abuse is guilty
5 of a class "D" felony if the reckless elder abuse results in
6 serious injury.

7 *c.* A person who intentionally commits elder abuse is guilty
8 of a class "D" felony if the intentional elder abuse results in
9 physical injury or psychological harm.

10 *d.* A person who recklessly commits elder abuse is guilty of
11 an aggravated misdemeanor if the reckless elder abuse results
12 in physical injury or psychological harm.

13 *e.* A person who otherwise intentionally commits elder abuse
14 is guilty of a serious misdemeanor.

15 5. On a second or subsequent offense of elder abuse under
16 subsection 4, paragraph "a", a person commits a class "B"
17 felony.

18 6. On a second or subsequent offense of elder abuse under
19 subsection 4, paragraph "b" or "c", a person commits a class "C"
20 felony.

21 7. On a second or subsequent offense of elder abuse under
22 subsection 4, paragraph "d" or "e", a person commits a class "D"
23 felony.

24 8. It does not constitute a defense to a prosecution for any
25 violation of this section that the alleged perpetrator did not
26 know the age of the victim.

27 9. In a criminal action in which an older individual is
28 a victim, the state may move the court to advance the trial
29 on the docket. The presiding judge, after consideration of
30 the age and health of the victim, may advance the trial on
31 the docket. The motion may be filed and served with the
32 information or charges at any time.

33 10. *a.* A conviction or deferred judgment for or plea of
34 guilty to a violation of this section which occurred more than
35 twelve years prior to the date of the violation charged shall

1 not be considered in determining that the violation charged is
2 a second or subsequent offense.

3 *b.* For the purpose of determining if a violation charged
4 is a second or subsequent offense, deferred judgments issued
5 pursuant to section 907.3 for violations of this section, or
6 judgments or deferred judgments issued pursuant to sections
7 708.2D and 714.2A, and convictions or the equivalent of
8 deferred judgments for violations in any other state under
9 statutes substantially corresponding to this section shall be
10 counted as previous offenses. The courts shall judicially
11 notice the statutes of other states which define offenses
12 substantially equivalent to the offenses defined in this
13 section and can therefore be considered corresponding statutes.
14 Each previous violation on which conviction or deferral of
15 judgment was entered prior to the date of the offense charged
16 shall be considered and counted as a separate previous offense.

17 *c.* An offense shall be considered a prior offense regardless
18 of whether it was committed upon the same victim.

19 11. If a person is convicted or receives a deferred judgment
20 for, or pleads guilty to a violation of this section, the
21 court shall modify the no-contact order issued upon initial
22 appearance in the manner provided in section 664A.5, regardless
23 of whether the person is placed on probation.

24 12. The clerk of the district court shall provide notice
25 and copies of a judgment entered under this section to the
26 applicable law enforcement agencies and the twenty-four-hour
27 dispatcher for the law enforcement agencies, in the manner
28 provided for protective orders under chapter 235F. The
29 clerk shall provide notice and copies of modifications of the
30 judgment in the same manner.

31 Sec. 5. NEW SECTION. **726.25 Financial exploitation of an**
32 **older individual.**

33 1. For the purposes of this section:

34 *a.* "Caregiver" means an individual who has the
35 responsibility for the care or custody of an older individual,

1 whether voluntarily, by contract, through employment, or as a
2 result of the operation of law, and includes but is not limited
3 to a family member or other individual who provides compensated
4 or uncompensated care to an older individual.

5 *b. "Coercion"* means communication or conduct which compels
6 an older individual to act or refrain from acting against the
7 older individual's will.

8 *c. "Older individual"* means an individual who is sixty years
9 of age or older.

10 *d. "Stands in a position of trust or confidence"* means the
11 person has any of the following relationships relative to the
12 older individual:

13 (1) Is a parent, spouse, adult child, or other relative by
14 consanguinity or affinity of the older individual.

15 (2) Is a joint tenant or tenant in common with the older
16 individual.

17 (3) Has a legal or fiduciary relationship with the older
18 individual. For the purposes of this paragraph, a legal or
19 fiduciary relationship with the older individual does not
20 include a legal or fiduciary relationship an older individual
21 may have with a bank incorporated under the provisions of any
22 state or federal law, any savings and loan association or
23 savings bank incorporated under the provisions of any state or
24 federal law, or any credit union organized under the provisions
25 of any state or federal law.

26 (4) Is a financial planning or investment professional
27 providing or offering to provide financial planning or
28 investment advice to the older individual.

29 (5) Is a beneficiary of the older individual in a governing
30 instrument.

31 (6) Is a caregiver for the older individual.

32 (7) Is a person who has otherwise formed a relationship
33 of trust or reliance with the older individual such that the
34 person should reasonably expect that the older individual would
35 likely rely upon the person to act in good faith for the older

1 individual's interest.

2 *e. "Undue influence"* means excessive persuasion by a person
3 that causes an older individual to act or refrain from acting
4 by overcoming an older individual's free will and results in
5 inequity. In determining whether a result was produced by
6 undue influence, all of the following shall be considered:

7 (1) *The vulnerability of the older individual.* Evidence of
8 vulnerability may include but is not limited to incapacity,
9 illness, disability, injury, age, education, impaired cognitive
10 function, emotional distress, isolation, or dependency, and
11 whether the person knew or should have known of the alleged
12 older individual's vulnerability.

13 (2) *The person's apparent authority.* Evidence of
14 apparent authority may include but is not limited to status
15 as a fiduciary, family member, care provider, health care
16 professional, legal professional, spiritual advisor, expert,
17 or other qualifications.

18 (3) *The person's actions or tactics.* Evidence of actions
19 or tactics used may include but is not limited to all of the
20 following:

21 (a) Controlling necessities of life, medication, the older
22 individual's interactions with others, access to information,
23 or sleep.

24 (b) Use of affection, intimidation, or coercion.

25 (c) Initiation of changes in personal or property rights,
26 use of haste or secrecy in effecting those changes, effecting
27 changes at inappropriate times and places, and claims of
28 expertise in effecting changes.

29 (4) *The equity of the result.* Evidence of the equity of
30 the result may include but is not limited to the economic
31 consequences to the older individual; any divergence from the
32 older individual's prior intent, course of conduct, or dealing;
33 the relationship of the value conveyed to the value of any
34 services or consideration received; or the appropriateness
35 of the change in light of the length and nature of the

1 relationship. Evidence of an inequitable result, without more,
2 is not sufficient to prove undue influence.

3 2. A person commits financial exploitation of an older
4 individual when the person stands in a position of trust or
5 confidence with the older individual and knowingly and by undue
6 influence, deception, coercion, fraud, breach of fiduciary
7 duty, or extortion, obtains control over or otherwise uses the
8 benefits, property, resources, belongings, or assets of the
9 older individual.

10 3. A person who commits a first offense of financial
11 exploitation of an older individual is guilty of the following,
12 as applicable:

13 a. A serious misdemeanor if the value of the benefits,
14 property, resources, belongings, or assets is one hundred
15 dollars or less.

16 b. An aggravated misdemeanor if the value of the benefits,
17 property, resources, belongings, or assets exceeds one hundred
18 dollars but does not exceed one thousand dollars.

19 c. A class "D" felony if the value of the benefits,
20 property, resources, belongings, or assets exceeds one thousand
21 dollars but does not exceed ten thousand dollars.

22 d. A class "C" felony if the value of the benefits,
23 property, resources, belongings, or assets exceeds ten thousand
24 dollars but does not exceed fifty thousand dollars.

25 e. A class "B" felony if the value of the benefits,
26 property, resources, belongings, or assets exceeds fifty
27 thousand dollars, or if the older individual is seventy years
28 of age to eighty years of age and the value of the benefits,
29 property, resources, belongings, or assets is fifteen thousand
30 dollars or more, or if the older individual is eighty years
31 of age or older and the value of the benefits, property,
32 resources, belongings, or assets is five thousand dollars or
33 more.

34 4. On a second or subsequent offense of financial
35 exploitation of an older individual, a person commits a class

1 "C" felony if the value of the benefits, property, resources,
2 belongings, or assets does not exceed fifty thousand dollars
3 unless subsection 3, paragraph "e", applies.

4 5. Nothing in this section shall be construed to limit other
5 remedies available to the older individual including those
6 provided under chapters 235F and 236.

7 6. Nothing in this section shall be construed to impose
8 criminal liability on a person who has made a good-faith effort
9 to assist an older individual in the management of the older
10 individual's benefits, property, resources, belongings, or
11 assets, but through no fault of the person, the person has been
12 unable to provide such assistance.

13 7. Nothing in this section shall be construed to impose
14 criminal liability on a person based solely on the sale of a
15 product or service.

16 8. It shall not be a defense to financial exploitation of
17 an older individual that the alleged perpetrator did not know
18 the age of the older individual or reasonably believed that the
19 alleged victim was not an older individual.

20 9. In a criminal action in which an older individual is a
21 victim, the state may make a motion to the court to advance the
22 trial on the docket. The presiding judge, after consideration
23 of the age and health of the victim, may grant a motion to
24 advance the trial on the docket. The motion may be filed and
25 served with the information or charges at any time.

26 10. a. A conviction or deferred judgment for or plea of
27 guilty to a violation of this section which occurred more than
28 twelve years prior to the date of the violation charged shall
29 not be considered in determining whether the violation charged
30 is a second or subsequent offense.

31 b. For the purpose of determining if a violation charged
32 is a second or subsequent offense, deferred judgments issued
33 pursuant to section 907.3 for violations of this section or
34 judgments or deferred judgments issued pursuant to sections
35 708.2D and 714.2A, and convictions or the equivalent of

1 deferred judgments for violations in any other state under
2 statutes substantially corresponding to this section shall be
3 counted as previous offenses. The courts shall judicially
4 notice the statutes of other states which define offenses
5 substantially equivalent to the offenses defined in this
6 section and can therefore be considered corresponding statutes.
7 Each previous violation on which conviction or deferral of
8 judgment was entered prior to the date of the offense charged
9 shall be considered and counted as a separate previous offense.

10 c. An offense shall be considered a prior offense regardless
11 of whether it was committed upon the same victim.

12 11. If a person is convicted of, receives a deferred
13 judgment for, or pleads guilty to a violation of this section,
14 the court shall modify the no-contact order issued upon initial
15 appearance in the manner provided in section 664A.5, regardless
16 of whether the person is placed on probation.

17 12. The clerk of the district court shall provide notice
18 and copies of a judgment entered under this section to the
19 applicable law enforcement agencies and the twenty-four-hour
20 dispatcher for the law enforcement agencies, in the manner
21 provided for protective orders under chapter 235F. The
22 clerk shall provide notice and copies of modifications of the
23 judgment in the same manner.

24 Sec. 6. NEW SECTION. **726.26 Dependent adult abuse —**
25 **initiation of charges — penalty.**

26 1. For the purposes of this section, "*caretaker*", "*dependent*
27 *adult*", and "*dependent adult abuse*" mean the same as defined in
28 section 235B.2.

29 2. A charge of dependent adult abuse may be initiated
30 upon the complaint of a private individual, as a result of an
31 investigation by a social service agency, or on the direct
32 initiative of the office of the attorney general, a county
33 attorney, or a law enforcement agency.

34 3. A caretaker who intentionally commits dependent adult
35 abuse is guilty of a class "C" felony if the intentional

1 dependent adult abuse results in serious injury.

2 4. A caretaker who recklessly commits dependent adult abuse
3 is guilty of a class "D" felony if the reckless dependent adult
4 abuse results in serious injury.

5 5. A caretaker who intentionally commits dependent adult
6 abuse is guilty of a class "C" felony if the intentional
7 dependent adult abuse results in physical injury.

8 6. A caretaker who commits dependent adult abuse by
9 exploitation of a dependent adult is guilty of a class "D"
10 felony if the value of the property, assets, or resources
11 exceeds one hundred dollars.

12 7. A caretaker who recklessly commits dependent adult
13 abuse is guilty of an aggravated misdemeanor if the reckless
14 dependent adult abuse results in physical injury.

15 8. A caretaker who otherwise intentionally or knowingly
16 commits dependent adult abuse is guilty of a serious
17 misdemeanor.

18 9. A caretaker who commits dependent adult abuse by
19 exploitation of a dependent adult is guilty of a simple
20 misdemeanor if the value of the property, assets, or resources
21 is one hundred dollars or less.

22 10. A caretaker alleged to have committed dependent adult
23 abuse shall be charged with the respective offense cited,
24 unless a charge may be brought based upon a more serious
25 offense, in which case the charge of the more serious offense
26 shall supersede the less serious charge.

27 Sec. 7. REPEAL. Section 235B.20, Code 2021, is repealed.

28 Sec. 8. CODE EDITOR DIRECTIVES. The Code editor shall do
29 all of the following:

30 1. Create a new subchapter in chapter 726, entitled
31 "Resident, Dependent Adult, and Older Individual Protection
32 Act" that includes sections 726.24, 726.25, and 726.26, as
33 enacted in this Act.

34 2. a. Transfer sections 726.7 and 726.8, Code 2021, to
35 the new subchapter and renumber the transferred sections as

1 follows:

2 (1) Section 726.7 as section 726.27.

3 (2) Section 726.8 as section 726.28.

4 b. Correct internal references as necessary.

5 3. Amend the title of the chapter to read "Protections
6 for the family, dependent persons, residents of health care
7 facilities, and older individuals".

8 DIVISION II

9 CONFORMING CHANGES

10 Sec. 9. Section 13.2, subsection 1, Code 2021, is amended by
11 adding the following new paragraph:

12 NEW PARAGRAPH. *p.* Develop written procedures and policies
13 to be followed by prosecuting attorneys in the prosecution
14 of elder abuse, older individual assault, theft against an
15 older individual, consumer frauds committed against an older
16 individual, and financial exploitation of an older individual
17 under sections 708.2D, 714.2A, 714.16A, 726.24, and 726.25.

18 Sec. 10. Section 235E.4, Code 2021, is amended to read as
19 follows:

20 **235E.4 Chapter 235B and section 726.26 application.**

21 Sections 235B.4 through ~~235B.20~~ 235B.19 and section 726.26,
22 where not inconsistent with [this chapter](#), shall apply to this
23 chapter.

24 Sec. 11. Section 272C.15, subsection 4, paragraph b, Code
25 2021, is amended to read as follows:

26 *b.* The amount of time that has passed since the commission
27 of the crime. There is a rebuttable presumption that an
28 applicant is rehabilitated and an appropriate candidate
29 for licensure five years after the date of the applicant's
30 release from incarceration, provided that the applicant was
31 not convicted of sexual abuse in violation of [section 709.4](#),
32 a sexually violent offense as defined in [section 229A.2](#),
33 dependent adult abuse in violation of [section ~~235B.20~~ 726.26](#),
34 a forcible felony as defined in [section 702.11](#), or domestic
35 abuse assault in violation of [section 708.2A](#), and the applicant

1 has not been convicted of another crime after release from
2 incarceration.

3 Sec. 12. Section 664A.1, subsection 2, Code 2021, is amended
4 to read as follows:

5 2. "*Protective order*" means a protective order issued
6 pursuant to [chapter 232](#), a court order or court-approved
7 consent agreement entered pursuant to [this chapter](#) or chapter
8 235F, a court order or court-approved consent agreement entered
9 pursuant to [chapter 236](#) or [236A](#), including a valid foreign
10 protective order under [section 236.19, subsection 3](#), or section
11 236A.19, subsection 3, a temporary or permanent protective
12 order or order to vacate the homestead under [chapter 598](#), or an
13 order that establishes conditions of release or is a protective
14 order or sentencing order in a criminal prosecution arising
15 from a domestic abuse assault under [section 708.2A](#) or older
16 individual assault under section 708.2D, or a civil injunction
17 issued pursuant to [section 915.22](#).

18 Sec. 13. Section 664A.2, subsection 1, Code 2021, is amended
19 to read as follows:

20 1. [This chapter](#) applies to no-contact orders issued for
21 violations or alleged violations of [sections 708.2A](#), [708.2D](#),
22 [708.7](#), [708.11](#), [709.2](#), [709.3](#), and [709.4](#), and any other public
23 offense for which there is a victim.

24 Sec. 14. Section 664A.7, subsection 5, Code 2021, is amended
25 to read as follows:

26 5. Violation of a no-contact order entered for the offense
27 or alleged offense of domestic abuse assault in violation
28 of [section 708.2A](#), the offense or alleged offense of older
29 individual assault in violation of section 708.2D, or a
30 violation of a protective order issued pursuant to chapter
31 232, [235F](#), [236](#), [236A](#), [598](#), or [915](#) constitutes a public offense
32 and is punishable as a simple misdemeanor. Alternatively,
33 the court may hold a person in contempt of court for such a
34 violation, as provided in [subsection 3](#).

35 Sec. 15. Section 671A.2, subsection 1, paragraph b, Code

1 2021, is amended to read as follows:

2 *b.* The employee, agent, or independent contractor was
3 convicted of any of the following:

4 (1) A public offense that was committed while performing
5 duties substantially similar to those reasonably expected to
6 be performed in the employment or under the relationship or
7 contract, or under conditions substantially similar to those
8 reasonably expected to be encountered in the employment or
9 under the relationship or contract, taking into consideration
10 all of the following factors:

11 (a) The nature and seriousness of the public offense.

12 (b) The extent and nature of the employee, agent, or
13 independent contractor's past criminal activity.

14 (c) The age of the employee, agent, or independent
15 contractor when the public offense was committed.

16 (d) The amount of time that has elapsed since the employee,
17 agent, or independent contractor's last criminal activity.

18 (2) A sexually violent offense as defined in [section 229A.2](#).

19 ~~(3) The offense of dependent adult abuse as provided for~~
20 ~~under [section 235B.20](#).~~

21 ~~(4)~~ (3) The offense of murder in the first degree under
22 section 707.2.

23 ~~(5)~~ (4) The offense of murder in the second degree under
24 section 707.3.

25 ~~(6)~~ (5) The offense of assault as defined in [section 708.1](#)
26 that is a felony under [section 708.2](#).

27 ~~(7)~~ (6) The offense of domestic abuse assault as defined
28 in [section 708.2A](#).

29 ~~(8)~~ (7) The offense of kidnapping in the first degree under
30 section 710.2.

31 ~~(9)~~ (8) The offense of robbery in the first degree under
32 section 711.2.

33 ~~(10)~~ (9) An offense committed on certain real property for
34 which an enhanced penalty was received under [section 124.401A](#)
35 or [124.401B](#).

1 a simple misdemeanor to a class "D" felony depending on the
2 circumstances of the assault. The bill also provides for the
3 determination of whether a violation is a second or subsequent
4 offense and provides for minimum sentencing for offenders.

5 The bill establishes the crime of theft against an older
6 individual which enhances the penalties for the existing crime
7 of theft by one degree.

8 The bill changes the existing additional civil penalty for
9 consumer frauds committed against elders (those 60 years of age
10 or older) to apply to older individuals consistent with other
11 provisions relating to older individuals under the bill.

12 The bill establishes criminal penalties for elder abuse
13 ranging from a serious misdemeanor to a class "C" felony
14 depending on the circumstances and resulting injuries of
15 the abuse. Elder abuse is defined as the abuse, emotional
16 abuse, neglect, isolation, or sexual exploitation of an older
17 individual.

18 The bill establishes the crime of financial exploitation of
19 an older individual. A person commits financial exploitation
20 of an older individual when the person stands in a position of
21 trust or confidence with the older individual and knowingly
22 and by undue influence, deception, coercion, fraud, breach of
23 fiduciary duty, or extortion, obtains control over or otherwise
24 uses the benefits, property, resources, belongings, or assets
25 of the older individual. The criminal penalties range from a
26 serious misdemeanor to a class "B" felony based on the amount
27 of benefits, property, resources, belongings, or assets of the
28 older individual involved.

29 The bill relocates the criminal penalties for dependent
30 adult abuse as they currently exist from Code chapter 235B
31 (dependent adult abuse) to Code chapter 726 (relating to the
32 protection of the family and dependent persons).

33 DIVISION II — CONFORMING CHANGES. The bill makes
34 conforming changes throughout the Code.

35 Code section 13.2: The bill adds as a duty of the attorney

1 general to develop written procedures and policies to be
2 followed by prosecuting attorneys in the prosecution of
3 elder abuse, older individual assault, theft against an
4 older individual, consumer frauds committed against an older
5 individual, and financial exploitation of an older individual.

6 Code section 234E.4: Due to the repeal of Code section
7 235B.20 and the relocation of the criminal penalties for
8 dependent adult abuse as they currently exist in that section
9 to Code section 726.26, the bill provides that Code section
10 726.26, where not inconsistent with Code chapter 235E
11 (dependent adult abuse in facilities and programs), shall apply
12 to Code chapter 235E.

13 Code section 272C.15: Due to the repeal of Code section
14 235B.20 and the relocation of the criminal penalties for
15 dependent adult abuse as they currently exist in that section
16 to Code section 726.26, the bill updates the reference to Code
17 section 726.26 relative to the existing rebuttable presumption
18 that an applicant for a professional or occupational license
19 as defined in Code section 272C.1 is rehabilitated and an
20 appropriate candidate for licensure five years after the date
21 of the applicant's release from incarceration, provided that
22 the applicant was not convicted of certain crimes including
23 dependent adult abuse in violation of Code section 726.26, and
24 the applicant has not been convicted of another crime after
25 release from incarceration.

26 Code section 664A.1: The bill includes in the definition
27 of "protective orders" under Code chapter 664A (relating to
28 no-contact and enforcement of protective orders), a protective
29 order or sentencing order in a criminal prosecution arising
30 from older individual assault.

31 Code section 664A.2: The bill provides that the Code chapter
32 is applicable to no-contact orders issued for violations or
33 alleged violations related to older individual assault.

34 Code section 664A.7: The bill provides that violation of a
35 no-contact order for the offense of older individual assault

1 constitutes a public offense and is punishable as a simple
2 misdemeanor. Alternatively, the court may hold a person in
3 contempt of court for such violation.

4 Code section 671A.2: Due to the repeal of Code section
5 235B.20 and the relocation of the criminal penalties for
6 dependent adult abuse as they currently exist in that section
7 to Code section 726.26, the bill updates the reference to Code
8 section 726.26 relative to existing liability protections for
9 negligent hiring to provide that Code chapter 671A (negligent
10 hiring — limitations on liability) does not preclude a cause
11 of action for negligent hiring based on evidence that the
12 employee, agent, or independent contractor has been convicted
13 of a public offense as defined in Code section 701.2, if
14 certain criteria are met including that the employee, agent,
15 or independent contractor was convicted of the offense of
16 dependent adult abuse as provided for under Code section
17 726.26.

18 Code section 901C.3: Due to the repeal of Code section
19 235B.20 and the relocation of the criminal penalties for
20 dependent adult abuse as they currently exist in that section
21 to Code section 726.26, the bill updates the existing reference
22 under Code section 901C.3 (misdemeanor — expungement) that
23 provides that a misdemeanor for a conviction of dependent adult
24 abuse shall not be expunged, to include the prohibition against
25 such expungement under the existing reference in Code section
26 901C.3(2)(u) to a conviction under Code chapter 726 which
27 includes the more specific new Code section 726.26.

28 Code section 915.22: The bill provides that under Code
29 chapter 915 (victim rights), the clerk of the district court
30 shall provide notice and copies of restraining orders in a
31 criminal case involving alleged older individual assault to the
32 applicable law enforcement agencies and the 24-hour dispatcher
33 for the law enforcement agencies, in the manner provided for
34 protective orders under Code section 235F.6. The clerk shall
35 provide notice and copies of modifications or vacations of

1 these orders in the same manner.