

Ala. Code 1975, § 13A-6-196

Financial Exploitation of the Elderly Second Degree

The defendant is charged with financial exploitation of the elderly in the second degree.

A person commits the crime of financial exploitation of the elderly in the second degree if he/she takes the property of any elderly person the value of which exceeds \$500 but does not exceed \$2500.

To convict, the State must prove beyond a reasonable doubt each of the following elements:

- (1) The Defendant took property, **[describe the property]**;
- (2) The property belonged to an elderly person, **[insert name of person]**;
- (3) The property exceeded \$500 but did not exceed \$2500 in value; **(AND)**
- (4) The Defendant acted with intent to deprive.

Financial exploitation is the use of deception, intimidation, undue influence, force, or threat of force to obtain or exert unauthorized control over an elderly person's property with the intent to deprive the elderly person of his/her property or the breach of a fiduciary duty to an elderly person by the person's guardian, conservator, or agent under a power of attorney which results in an unauthorized appropriation, sale, or transfer of the elderly person's property. [13A-6-191(5)]

Deception occurs when a person knowingly:

- a. Creates or confirms another's impression which is false and which the defendant does not believe to be true.
- b. Fails to correct a false impression which the defendant previously has created or confirmed.
- c. Fails to correct a false impression when the defendant is under a duty to do so.
- d. Prevents another from acquiring information pertinent to the disposition of the property involved.
- e. Sells or otherwise transfers or encumbers property, failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether that impediment is or is not valid, or is not a matter of official record.
- f. Promises performance which the defendant does not intend to perform or knows will not be performed. [13A-6-191(2)]

Intimidation is a threat of physical or emotional harm to an elderly person, or the communication to an elderly person that he or she will be deprived of food and nutrition, shelter, property, prescribed medication, or medical care or treatment. [13A-6-191(6)]

Undue influence is the domination, coercion, manipulation, or any other act exercised by another person to the extent that an elderly person is prevented from exercising free judgment and choice. [13A-6-191(9)]

An *elderly person* is a person 60 years of age or older. [13A-6-191(3)]

A *person* is a human being. [13A-6-191(8)]

A person acts *intentionally* with respect to a result or to conduct described by a statute defining an offense, when his/her purpose is to cause that result or to engage in that conduct. [13A-2-2(1)]

[Read as appropriate]: It shall not be a defense to financial exploitation of an elderly person that the accused reasonably believed that the victim was not an elderly person. [13A-6-198(c)]

If you find from the evidence that the State has proved beyond a reasonable doubt each of the elements of the offense of financial exploitation of the elderly in the second degree, then you shall find the defendant guilty of financial exploitation of the elderly in the second degree.

If you find that the State has failed to prove beyond a reasonable doubt any one or more of the elements of the offense of financial exploitation of the elderly in the second degree, then you cannot find the defendant guilty of financial exploitation of the elderly in the second degree.

[If lesser-included offenses are included, the Court should instruct on those offenses at this point.]

[Approved 4-15-16.]