



## **BILL AND AMENDMENT SUMMARY**

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# **Elder Abuse SF 2239**

Status of Bill: House Floor  
Committee: Judiciary (21-0)  
Lead Democrats: Rep. Wolfe  
Floor Manager: Rep. Baltimore  
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### **Bill Summary**

“Older individual,” for protection throughout the bill, is defined as an individual 60 years of age or older.

The bill created an Elder Abuse Resource and Referral Program (EARRP) within the Department of Aging (IDA). The IDA would utilize the Area Agencies on Aging (AAA) to create a local stakeholder group to coordinate services for older Iowans. This program would serve as the primary entry point for individuals seeking information and assistance regarding elder abuse. The program would also include a public education component to increase awareness about elder abuse and services available.

The IDA is charged with collecting and maintaining information on incidents of elder abuse in the state. In addition, the department is charged with creating a method to collect data on elder abuse. IDA may then utilize this information to produce reports on elder abuse in Iowa.

Courts would be allowed to provide special dispositions following a finding of elder abuse. The court could remove a defendant from the residence of an elder individual, orders restraining a defendant from specific activities with the elder individual, protection for elderly individuals from elder abuse, and any other relief the court deems necessary. In addition, the bill allows a guardian ad litem to be appointed for an elderly individual.

The bill creates new crimes related to elder abuse. Elder abuse assault penalties range from a simple misdemeanor on a first offense to a class “D” felony for a third or subsequent offense, with increasing penalties depending on the extent of the injuries to the elderly individual or number of subsequent offenses. Financial Exploitation of an older individual would be when someone with a position of trust or confidence with an older individual uses any undue influence or similar means to gain control or use the assets of the older individual. The penalty for financial exploitation of an older individual would range from a serious misdemeanor to a Class “B” felony, depending on the value of the assets involved in the exploitation.

### **Amendment Summary**

#### **H-8119 by Baltimore (Strike After Amendment)**

##### **Definitions**

Defines a “vulnerable elder,” for protection throughout the bill, as a person 65 years of age or older that is “unable to protect himself or herself from elder abuse as a result of a mental or physical condition or advanced age.” The amendment specifically indicates that elder abuse does not include denying medical treatment to a

vulnerable elder for religious reasons, with the elder's consent, or if the elder is terminally ill. The amendment also creates a defense to elder abuse if a person acted in good faith to provide assistance to the elder.

## **Protective Orders**

The amendment allows for a vulnerable elder to receive a protective order. A vulnerable elder can receive a protective order if the minimum elements of elder abuse have been proven. This includes proving either the infliction of bodily injury by a caretaker on the elder, a sexual offense against the elder, neglect of the elder, or financial exploitation of the elder. A protective order may be issued if there is a preponderance of the evidence, or essentially it is more likely than not, that one of these situations has occurred.

The amendment provides the procedure to seek a protective order for an elder. A protective order may last up to a year, but an order may be extended if there is a finding the abuser still poses a threat. The procedure also includes the creation of standard forms that can be used by an elder to seek a protective order. The amendment details additional procedural steps to obtain an elder abuse protective order.

The court may, if justice requires, appoint a guardian ad litem for a vulnerable elder. The vulnerable elder's attorney cannot also serve as this guardian.

If a court finds there has been elder abuse, the court may order a variety of actions. This includes requiring the abuser to move out of the residence of the vulnerable elder, that the abuser provide suitable alternative housing for the elder, that a peace officer accompany the party leaving a residence to remove personal effects, restricting the abuser from entering or attempting to enter the premise of the elder, that the abuser not exercise any powers on behalf of the elder, restraining the abuser from abusing, intimidating, molesting, interfering with, menacing, or attempting any of these actions against the elder, and any other relief the court finds necessary to protect the safety and welfare of the vulnerable elder. If there is financial exploitation of an elder, the court may order anything necessary to prevent or remedy the exploitation, and the amendment includes a nonexclusive list of potential remedies.

A court may approve a consent agreement between two parties to bring about the end of any elder abuse. The amendment includes specific requirements of these consent agreements, including not allowing a consent agreement to limit the ability of a party to maintain a complaint against the other party. Consent agreements must be for a fixed term of up to a year, but can be extended.

Emergency orders can be granted by a district judge or a district associate judge if the court is closed. The emergency relief may be granted in the same way as a regular elder abuse protective order if good cause is shown. The proceeding is ex parte proceeding, meaning only the party applying for the order must be present. The amendment expressly states that present danger of elder abuse constitutes good cause for issuing an emergency order. An emergency order expires in 72 hours.

## **Financial Exploitation of Vulnerable Elders**

Creates a new class of crimes for financial exploitation of a vulnerable elder. Financial exploitation of a vulnerable elder occurs when a person has a position of trust or confidence with the vulnerable elder and knowingly uses undue influence, deception, coercion, fraud, or extortion obtains control or benefits from the property, resources, belongings, or assets of the vulnerable elder for the person's own benefit or gain. The amendment goes on to define the specific elements of the crime as these apply to financial exploitation of a vulnerable elder.

The degree of financial exploitation of a vulnerable elder depends on the value of the funds, benefits, property, resources, belongings, or assets that are exploited.

- Financial Exploitation in the Fifth Degree
  - o Value of the assets is \$200 or less
  - o Simple Misdemeanor (30 days in jail or a fine of up to \$500)

- Financial Exploitation in the Fourth Degree
  - o Value of the assets is less than \$500
  - o Serious Misdemeanor (1 year in jail and/or a fine of up to \$1,500)
- Financial Exploitation in the Third Degree
  - o Value of assets is less than \$1,000
  - o Aggravated Misdemeanor (2 year in jail and/or a fine of up to \$5,000)
- Financial Exploitation in the Second Degree
  - o Value of assets is less than \$10,000
  - o Class "D" felony (5 years in prison and fine of up to \$7,500)
- Financial Exploitation in the First Degree
  - o Value of assets exceeds \$10,000
  - o Class "C" felony (10 years in prison and a fine of up to \$10,000)

Financial exploitation of a vulnerable elder includes a defense if the person made a good-faith effort to assist a vulnerable elder in the management of the elder's assets, but through no fault of the person, has been unable to provide assistance or does not achieve the desired results.

### **Elder Abuse Prevention Task Force**

Instructs the Department of Aging to continue the task force on elder abuse prevention and intervention established in 2012, and to meet once during the 2014 legislative interim. The task force is instructed to review the 2013 elder abuse prevention report and create a unified implementation plan for the recommendations. The implementation report is to be submitted by August 15, 2014.

#### **H-8129 by Baltimore**

Clarifies the definition of "caretaker" for use in the new Elder Abuse code section.

#### **H-8143 by Baltimore**

Clarifies the definition of "caretaker" for use in the new Elder Abuse code section.

Clarifies that a guardian that may be a substitute petitioner is a family or household member.

Clarifies that an elder abuse protective order may require a defendant living in the same residence as the abused elder to move from the residence.

Adds "harassing" to the list of actions a defendant can be restrained from doing against an abused elder.

Clarifies that an elder abuse protective order may prevent a defendant from diverting an abused elder's assets.

Clarifies that a person that "stands in a position of trust or confidence" with an elder does not include an ordinary relationship with a bank or credit union.

Removes the continuation of the Elder Abuse Task Force. Requires the Department on Aging, Department of Human Services, Department of Inspections and Appeals, and the Attorney General to collaborate and provide written recommendations on strengthening Iowa's elder abuse prevent efforts. The recommendations are to be submitted to the general assembly, governor, and Department of Management by August 15, 2014.