**T.P.I. – CRIM. 29.14(b)**

**FINANCIAL EXPLOITATION OF *[AN ELDERLY] [A VULNERABLE]* ADULT**

**(for offenses committed on or after 7/1/17)**

Any person who commits the offense of financial exploitation of *[an elderly] [a vulnerable]* adult is guilty of a crime.

For you to find the defendant guilty of this offense, the state must have proven beyond a reasonable doubt the existence of the following essential elements:

(1) that the defendant knowingly financially exploited *[an elderly] [a vulnerable]* adult.

[If you find beyond a reasonable doubt that there was a transfer of property valued in excess of one thousand dollars ($1,000) in a twelve-month period, whether in a single transaction or multiple transactions, by *[an elderly]* *[a vulnerable]* adult to a non-relative whom the transferor has known for fewer than two (2) years before the first transfer and for which the transferor did not receive reciprocal value in goods or services, this may create an inference that the transfer was effectuated without the effective consent of the owner. This applies regardless of whether the transfer or transfers are denoted by the parties as a gift or loan, except that it shall not apply to a valid loan evidenced in writing and which includes definite repayment dates. ln the event repayment of any such loan is in default, in whole or in part, for more than sixty (60) days, the inference may apply. The inference does not apply to persons or entities that operate a legitimate financial institution, or to valid charitable donations to nonprofit organizations qualifying for tax exempt status under the internal revenue code. Although the law allows the jury to infer, if the above circumstances are proven beyond a reasonable doubt, that a transfer was effectuated without the effective consent of the owner with the intent to deprive the owner of the money or property, the jury is not required to make this inference. It is the exclusive province of the jury to determine whether the facts and circumstances shown by all the evidence in the case warrant the inference which the law permits the jury to draw. You may find a defendant guilty only if persuaded that each element of the offense has been proved beyond a reasonable doubt.]

[**Only for offenses committed prior to 10/1/21:** “Caregiver” means a relative or a person who has a legal duty to provide care, or who has assumed such duty by contract or conduct that a reasonable person would interpret as an assumption of the responsibility for *[an elderly] [a vulnerable]* adult's care, “Caregiver does not include a financial institution as a caregiver of property, funds, or other assets unless the financial institution has entered into an agreement, or has been appointed by a court of competent jurisdiction, to act as a trustee with regard to the property of the adult.**]**

or

**[Only for offenses committed on or after 10/1/21:** “Caregiver” means a relative or person who has a legal duty to provide care for *[an elderly] [a vulnerable]* adult, whether such duty arises by the relative or person's claim or conduct, contract, or in any other fashion; or a person who is married to or in a dating, romantic, or sexual relationship with someone who qualifies as a caregiver under that definition, and resides with or has regular contact with the elderly or vulnerable adult.**]**

[“Effective consent” means assent in fact, whether express or apparent, including assent by one legally authorized to act for another. Consent is not effective when:

[(a) induced by deception or coercion *[the trial judge should include in the instruction applicable language from the statutory definitions for deception or coercion if fairly raised in the proof]*;] or

[(b) given by a person the defendant knows is not authorized to act as an agent;] or

[(c) given by a person who, by reason of youth, mental disease or defect, or intoxication, is known by the defendant to be unable to make reasonable decisions regarding the subject matter;] or

[(d) given solely to detect the commission of an offense].]

"Elderly adult" means a person seventy (70) years of age or older.

"Financial exploitation" means:

(A) The use of deception, intimidation, undue influence, force, or threat of force to obtain or exert unauthorized control over an elderly or vulnerable adult's property with the intent to deprive the elderly or vulnerable adult of property;

or

(B) The breach of a fiduciary duty to an elderly or vulnerable adult by the person's guardian, conservator, or agent under a power of attorney which results in an appropriation, sale, or transfer of the elderly or vulnerable adult's property;

or

(C) The act of obtaining or exercising control over *[an elderly] [a vulnerable]* adult's property, **[only for offenses committed on or after 1/1/20:** without receiving the *[elderly] [vulnerable]* adult's effective consent,**]** by a caregiver **[only for offenses committed on or after 10/1/21:** or accomplice] committed with the intent to benefit the caregiver or other third party;]

“Relative” means a **[only for offenses committed on or after 10/1/21:** current or former**]** spouse; child, including stepchild, adopted child, or foster child; parent, including stepparent, adoptive parent, or foster parent; sibling of the whole or half-blood; step-sibling; grandparent, of any degree; grandchild, of any degree; and aunt, uncle, niece, and nephew, of any degree, who resides with or has frequent or prolonged contact with the elderly or vulnerable adult; and knows or reasonably should know that the elderly or vulnerable adult is unable to adequately provide for the adult's own care or financial resources.

"Vulnerable adult" means a person eighteen (18) years of age or older who, because of intellectual disability or physical dysfunction, is unable to fully manage the person's own resources, carry out all or a portion of the activities of daily living, or fully protect against neglect, exploitation, or hazardous or abusive situations without assistance from others.

"Knowingly" means that a person acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly with respect to a result of the person's conduct when the person is aware that the conduct is reasonably certain to cause the result.

[The requirement of “knowingly” is also established if it is shown that the defendant acted intentionally.]

"Intentionally" means that a person acts intentionally with respect to the nature of the conduct or to a result of the conduct when it is the person's conscious objective or desire to engage in the conduct or cause the result.