

Preventing Elder Financial Exploitation by Family Members: Policy Considerations for Ohio



The Ohio Family Violence Prevention Project

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Seniors are the fastest growing segment of Ohio's population¹ and are living longer, often with chronic conditions and limitations that make them vulnerable to abuse, neglect and exploitation.² Increasingly policy makers not only recognize the profound suffering that maltreatment causes elders and their loved ones, but also the very real costs that are incurred by Medicaid, Medicare, government agencies and financial institutions in responding to the problem.³

In recent years, no aspect of elder abuse⁴ has gained more attention than financial exploitation. Media accounts regularly feature seniors as victims of fraud and theft,⁵ whereas research studies suggest that about 4-5% per year are a target of some type of financial exploitation.^{6,7} Most efforts to address the problem focus on *strangers* as perpetrators, even though the offenders are usually family members or caregivers. Indeed, many Ohio adults – driven by economic isolation, addiction or other factors – will try to exploit an elderly relative. As such, there is an unfortunate yet critical need to help protect seniors from people who have easy, regular access to their homes.

This policy brief reviews the scope of elder financial exploitation in Ohio, describes what our state is doing to prevent perpetration by family members, and considers some policy options that can strengthen prevention efforts.

What is elder financial exploitation? One legal definition is “the fraudulent or otherwise illegal, unauthorized, or improper act or process of an individual, including a caregiver or fiduciary that uses the resources of an elder for monetary or personal benefit, profit, or gain, or that results in depriving an elder of rightful access to, or use of, benefits, resources, belongings, or assets.”⁸ Examples include a son taking

¹ Since 2000 in Ohio, the number of seniors (60+ years old) has increased by 20.2%, whereas the number of residents under 60 has decreased by 2.1%. (US Census Bureau; 2000 Decennial Census and 2009-13 American Community Survey 5-year estimates.)

² Bonnie RL, Wallace RB (Eds.). *Elder maltreatment: Abuse, neglect and exploitation in an aging America*. Washington, DC: The National Academies Press; 2003.

³ Gunther J. *The Utah cost of financial exploitation*. Salt Lake City, UT: Utah Division of Aging and Adult Services; 2011. Available: http://vtdigger.org/vtdNewsMachine/wp-content/uploads/2011/08/20110807_utahCosts.pdf

⁴ Elder abuse (or maltreatment) occurs when a family member or caregiver neglects basic needs, financially exploits an elder, or inflicts physical, sexual and/or emotional abuse. Consistent with many states, we define “elder” as 60+ years old.

⁵ National Committee for the Prevention of Elder Abuse and MetLife Mature Market Institute. *The MetLife study of elder financial abuse: Crimes of occasion, desperation and predation against America's elders*. Westport, CT: Authors; 2011.

⁶ Acierno R, Hernandez MA, Amstadter AB, Resnick HS, Steve K, Muzzy W, Kilpatrick DG. Prevalence and correlates of emotional, physical, sexual and financial abuse and potential neglect in the United States: The National Elder Mistreatment Study. *Am J Public Health*, 2010;100 (2):292-297.

⁷ Lifespan of Greater Rochester Inc., Weill Cornell Medical Center, New York City Department for Aging. *Under the radar: New York State Elder Abuse Prevalence Study*. Rochester, NY: Lifespan of Greater Rochester Inc.; 2011. Available: <http://nyselderabuse.org/documents/ElderAbusePrevalenceStudy2011.pdf>

⁸ US Code, Title 42, Chapter 35, Subchapter I, § 3002, (18)(A).

money by surreptitiously selling his mother's television or cashing her social security checks without her permission. In Ohio, crimes like theft and fraud carry enhanced penalties if the victim is a senior or disabled adult.⁹

Research studies^{3,6,7,10,11} consistently find that elder financial exploitation is most likely to be committed by adult children, grandchildren, other relatives or romantic partners of the victim.¹² Most exploitation follows one of three patterns: Crimes of *occasion* occur when the victim has a house, car, or other specific asset that the perpetrator wants. Crimes of *desperation* typically involve family members or friends who become desperate for money and coerce or trick the victim into providing them with cash or liquid assets. Many of these family members are already dependent on the elder relative for housing and money. Finally, crimes of *predation* occur when a perpetrator gains the trust of a victim (e.g., through a romantic or caregiver relationship) with the intention of committing financial abuse.⁵

Regardless of the type of exploitation, elders victimized by a family member are often reluctant to report the incident to authorities. This may be because of a long-standing dynamic where the perpetrator has a troubled history and the victim – perhaps an elderly parent – wants to protect an abusive child from further legal problems. In other situations, victims depend on their perpetrators for social, emotional and tangible support, so reporting the crime could antagonize the offender or send him or her to prison. Either way, the senior would risk losing whatever care that person provides.¹¹

How big a problem is it? Precise numbers are unavailable, but experts agree that elder financial exploitation is an enormous problem. The Ohio Family Violence Prevention Project estimates that each year, 105,000 Ohio seniors are abused, neglected or financially exploited by a family member – a figure comparable to the annual incidence of seniors injured in falls that require an emergency department visit (103,000) or those newly diagnosed with any type of cancer (123,358)¹³

Several different state agencies record data on financial exploitation, although the data system is not coordinated and the vast majority of incidents go unreported.¹⁴ Across Ohio, local adult protective service agencies annually investigate 2,374 allegations of exploitation of community-dwelling seniors, 56% of which are validated.¹⁵ In long-term-care facilities, the Attorney General's Medicaid Fraud Control Unit

⁹ Ohio Revised Code 29 § 13.02(c3)

¹⁰ National Center on Elder Abuse. (1998). *National Elder Abuse Incidence Study*. Washington, DC: US Department of Health and Human Services. Available: http://www.aoa.acl.gov/AoA_Programs/Elder_Rights/Elder_Abuse/docs/ABuseReport_Full.pdf

¹¹ Jackson SL, Hafemeister TL. *Financial abuse of elderly people vs. other forms of elder abuse: Assessing their dynamics, risk factors and society's response*. US Department of Justice Document # 233613. Washington, DC: National Institute of Justice; 2011. Available: <https://www.ncjrs.gov/pdffiles1/nij/grants/233613.pdf>

¹² Notably, the media are more likely to cover incidents of elder financial abuse perpetrated by strangers (see reference #5).

¹³ Ohio Colleges of Medicine Government Resource Center. *Elder Abuse in Ohio*. Columbus, OH: Author; 2014. Available: http://www.grcapps.osu.edu:3838/OFVPP/pdfs/OFVPP_2014_Ohio_ea.pdf

¹⁴ A study in New York state concluded that the incidence of elder financial exploitation was 42 times greater than the number of cases that were confirmed by authorities (see reference # 7).

¹⁵ Unpublished analyses by the Ohio Family Violence Prevention Project (OFVPP) of data from Adult Protective Services, Yearly Management Summary Reports, Ohio Department of Job and Family Services. It is unclear, however, exactly what these figures represent, since each county's APS agency may define "exploitation" differently. Please note that these figures differ from those that appear on the OFVPP online database. The online numbers represent all types of reports to adult protective services, not only exploitation.

investigates an average of 3,110 reports of “misappropriation” of funds each year, an unknown proportion of which involve elder financial exploitation.¹⁶ Finally, since 2011 Ohio banks have recorded suspected elder financial exploitation in “Suspicious Activity Reports” filed with the US Treasury Department. Reporting has been limited, however, by lack of familiarity with this classification and when to use it. A total of 496 such reports were filed in 2013 and 625 in 2014.¹⁷

Financial losses can even bankrupt the victim and his family members, with society then paying to feed, house and care the elder for the remainder of his life.

Elder financial exploitation is also a serious problem due to its profound consequences. Most directly, financial losses may bankrupt the victim and even other family members. In such cases, the elder may become a ward of the state, with society paying to feed, house and care for the elder for the remainder of his life. Frontline workers even know of incidents where a relative, impatient for an inheritance, hastens a senior’s death by smothering or withholding food, care or medication.¹⁸ More commonly, victims experience a loss of dignity, social isolation, diminished quality of life and declining health status.² One study found that 73% of financially exploited elders experience additional consequences beyond the direct impact of the financial loss.¹¹

What is Ohio currently doing to prevent elder financial exploitation? Many state, federal and private agencies are building awareness of the problem.¹⁹ Yet most efforts either address financial exploitation as one aspect of elder abuse or else focus on financial crimes perpetrated by strangers (e.g., “protect your personal information”). Such campaigns are valuable, but are less helpful when the perpetrator is a family member or caregiver with easy access to the senior’s home.

Several banks and other financial institutions in Ohio already provide staff training on how to detect elder financial exploitation and report suspected incidents.²⁰ It is unclear, however, exactly how widespread and effective the training is. One local investigator noted that he regularly got reports from certain banks, but rarely if ever heard from others.²¹ Similarly, many banking and financial professionals’ will work with

¹⁶ Unpublished analyses by the Ohio Family Violence Prevention Project (OFVPP) of spreadsheets provided by Christy Haenszel, Medicaid Fraud Control Unit, Attorney General of Ohio. A large, but unknown percentage of these reports involve allegations other than elder financial exploitation; for example, simple theft by a fellow resident. . Please note that these figures differ from those that appear on the OFVPP online database. The online numbers represent all types of reports investigated by the Medicaid Fraud Control Unit, not only misappropriation.

¹⁷ US Department of Treasury. *Financial Crimes Enforcement Network. 2013 and 2014 FinCEN Suspicious Activity Report by Depository Institutions*. Washington, DC: Author; 2014. Available: http://www.fincen.gov/news_room/rp/files/SAR01/QT1/BSAR_DI_States/Ohio.xls

¹⁸ Personal communication, Carol Dayton, Ohio Coalition of Adult Protective Services, February 11, 2015. See also: Accettura PM. *Blood and money*. Farmington Hills, MI: Collinwood Press; 2011.

¹⁹ See: Center of Excellence on Elder Abuse and Neglect, University of California, Irvine - School of Medicine. *Public Awareness*. Available: http://www.centeronelderabuse.org/Public_Awareness.asp . US Government Accountability Office. *National strategy needed to effectively combat elder financial exploitation*. Report # GAO 13-110. Washington, DC: Author; 2013. Available: <http://www.gao.gov/assets/660/650074.pdf> . Consumer Financial Protection Bureau. *Financial protection for older Americans*. Washington, DC: Author; 2014. Available: <http://www.consumerfinance.gov/older-americans/>

²⁰ Ohio Bankers League. *Preventing Elder Financial Abuse Video Toolkit*. Columbus, OH: Author; 2014. Available: http://www.ohiobankersleague.com/aws/OBL/pt/sd/news_article/90386/PARENT/layout_details/false

²¹ Personal communication, David Kessler, Fairfield County (OH) Prosecutor’s Office, October 30, 2014.

family members who are concerned about vulnerable elders, but such efforts are guided as much by goodwill and relationships as by formal privacy policies.

Banks and other institutions typically want to act responsibly and report suspected abuse, yet it is also important to acknowledge the barriers to them doing so. Despite recent efforts to clarify how and when to report suspected incidents,²² some financial professionals remain cautious about violating state and federal privacy regulations. Reporting suspected abuse can also hassle customers by unnecessarily freezing their accounts or subjecting them to an investigation that too often leads nowhere. Because investigations rarely lead to a resolution, many institutions question whether the benefits of reporting outweigh the costs.²³

For their part, law enforcement and adult protective service agencies note that they often lack the expertise, time and resources to investigate allegations. While a handful of agencies have staff with considerable training and experience with financial crimes, they are too few in number and too scattered to handle the thousands of reports filed statewide.

What might Ohio consider doing? Ohio could focus on improving how to prevent elder financial exploitation as well as how to respond to suspected incidents. Based on consultation with experts and a review of research literature, the following three approaches are particularly promising:

1. Educate seniors and their concerned family members. Public awareness campaigns are an important tool for prevention, as seniors and concerned family members can identify an elder's vulnerability and then act to reduce the likelihood of exploitation. Public education materials are already widely available,¹⁹ yet they often fail to focus on elder financial exploitation perpetrated by family members or caregivers. Focused awareness activities will be more effective than general information about elder abuse.²⁴ Ohio could become a national leader in this area by revising existing materials and tailoring their dissemination to the appropriate audiences.

Ohio can be a national leader in promoting public awareness of elder financial exploitation perpetrated by family members and caregivers

Public awareness campaigns directed at seniors and concerned relatives could focus on how to:

- Identify changes that increase the risk for financial exploitation (e.g., new living arrangements; diminished cognitive capacity; a relative with a drug or gambling addiction);
- Prevent exploitation from starting (e.g., meet with a certified financial planner; organize family and neighbors to regularly check in); and
- Recognize exploitation (e.g., atypical banking behavior, like ATM use by a physically disabled elder) and how to report it.

²² Williams M. Banks now can report suspected elder abuse. *Columbus Dispatch* September 29, 2013. Available: <http://www.dispatch.com/content/stories/business/2013/09/29/banks-now-can-report-suspected-elder-abuse.html>

²³ Representatives of financial institutions, law enforcement and adult protective services voiced such concerns at a landmark October 2014 symposium on Elder Financial Abuse convened by Attorney General Mike DeWine. The symposium report will be released in early 2015.

²⁴ Reeves S, Wysong J. Strategies to address financial abuse. *J Elder Abuse Neglect*, 2010:3-4:328-334.

II. Create a clear policy environment for financial institutions. Uncertainty about state and federal regulations hampers financial institutions' efforts to prevent exploitation. While a thorough policy review is beyond the scope of this brief, certain changes may be particularly helpful.

One key change would be to enable a competent elder to designate a trusted individual to monitor the elder's finances. Many states already permit "convenience accounts" that enable a designated party to monitor an elder's account (as well as deposit and withdraw funds). Unlike joint accounts, transactions must be for the benefit of the primary account holder,²⁵ and the account shields both the elder and the "helper" party from liability for debts incurred by the other. In this way, they make the elder less vulnerable to exploitation. Unfortunately such accounts are not widely known in Ohio,²⁶ and it is unclear whether state regulations formally permit them. Clarifying the regulations in this area could help financial institutions work with elders and their families to promote this valuable prevention approach in our state.

It would also be helpful to highlight the ability of financial institutions to report suspected cases of exploitation. The Gramm-Leach-Bliley Act is federal privacy legislation that regulates how financial institutions can use customers' personal data and prohibits the sharing of "nonpublic personal information" with nonaffiliated third parties. One exception to this general rule is a disclosure that protects against actual or potential fraud. Thus, making a report of suspected exploitation to adult protective services would not violate federal privacy laws. Nonetheless, some frontline professionals are unfamiliar with this exception and may be reluctant to submit reports for fear of violating privacy rules. Clarifying regulations in this area can help financial institutions increase reports of suspected abuse.

Ohio could also consider classifying that financial service professionals as mandated reporters of elder financial exploitation. Many states classify financial institutions already do so, including California, Colorado, Florida, Hawaii, Iowa, Maryland and Utah. Others, like Massachusetts and Oregon, found that voluntary reporting was initially necessary to secure the support of banking associations and ultimately has proved successful in practice.²⁷ Of course, reporting guidelines are of limited value unless they are accompanied by training of frontline professionals. Many training materials and programs already exist,^{20,28} and several states fund online training of mandated reporters.²⁹

III. Improve how incidents are investigated and recorded. To improve investigations, one promising approach is the creation of elder abuse forensic centers. These centers engage professionals from the justice system, mental health, adult protective services and other fields, who meet regularly and offer a

²⁵ The federal Uniform Multiple-Person Accounts Act provides a model for regulating such accounts and has been enacted in Florida, Alabama, Nebraska, Montana and Arizona. Many other states, but not Ohio, have adopted similar provisions as part of their probate codes. (Stephenson HG. *How much do you know about Joint Bank Accounts?* Columbus, OH: Ohio State Bar Association; 2013. <https://www.ohioabar.org/ForPublic/Resources/LawYouCanUse/Pages/LawYouCanUse-96.aspx>)

²⁶ Sabatino CP. Damage prevention and control for financial incapacity. *JAMA* 2011;305(7):707-708.

²⁷ Hughes SL. *Legal issues related to bank reporting of elder financial abuse*. Chicago: American Bar Association; 2003. Available: http://www.ncea.aoa.gov/Resources/Publication/docs/bank_reporting_summary_final_52703.pdf

²⁸ California Bankers Association. *How to spot elder financial abuse*. Available: <http://legacy.cuna.org/training/trainers/download/980-ow%20To%20Spot%20Elder%20Financial%20Abuse.pdf>

²⁹ See for example, Colorado Department of Human Services. *Mandatory reporting*. Denver, CO: State of Colorado; 2015. Available: <http://www.colorado.gov/cs/Satellite/CDHS-VetDis/CBON/1251649998057>

one-stop shop for investigating and addressing incidents of abuse.³⁰ A recent evaluation found that such centers can markedly increase the rates of prosecution for elder financial exploitation.³¹ Similar models for child maltreatment and intimate partner violence already exist in Ohio³² and could serve as a template.

Ohio could also consider improving how incidents are recorded. Currently, no single database captures the scope of the problem in Ohio (or in other states, for that matter). Suspected incidents may be variously reported to law enforcement, adult protective services, the Office of the Long Term Care Ombudsman or elsewhere. A single statewide reporting phone number would simplify how to report suspected incidents and would enable the creation of a coordinated database. Such a system could serve as a registry of people investigated for elder financial exploitation or other types of elder abuse.³³ It could help define the scope of the problem and identify trends and regional differences that could help Ohio employ prevention resources most efficiently.

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More than other types of elder abuse, financial exploitation often involves interaction with an institution. Thus, financial institutions and others have opportunities to document exploitation and to intervene early and often. Focusing on elder financial exploitation expands the range of potential partners involved in prevention: from financial institutions and law enforcement to adult protective services and advocates, a wide range of stakeholders can create new approaches to prevention.

For more information about elder abuse:

National Center on Elder Abuse
www.ncea.aoa.gov (855) 500-3537

For local data on elder abuse in Ohio, visit:

Ohio Family Violence Prevention Project
grc.osu.edu/familyviolenceprevention

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³⁰ Navarro AE, Wilber KH, Yonashira JY, Homeier DC. Do we really need another meeting? Lessons from the Los Angeles County Elder Abuse Forensic Center. *The Gerontologist*, 2010;50:702-11.

³¹ Navarro AE, Gassoumis ZD, Wilber KH. Holding abusers accountable: An elder abuse forensic center increases criminal prosecution of financial exploitation. *The Gerontologist*, 2012;53:303-12.

³² See the Center for Family Safety and Healing at Nationwide Children's Hospital: www.nationwidechildrens.org/tcfsh

³³ In 2006, 19 states had such registries (Stiegel L, Klem E. *Abuse registries: comparison chart by provision in adult protective services laws with citations by state*. Chicago: American Bar Association Commission on Law and Aging; 2007. Available: <http://www.americanbar.org/content/dam/aba/migrated/aging/about/pdfs/AbuseRegistriesComparisonChart.authcheckdam.pdf>). More recent online examples include Tennessee (<https://health.state.tn.us/abuseregistry/default.aspx>) and Delaware (<http://dhss.delaware.gov/dhss/dltcrp/default.aspx>).