



*Investigating and
Prosecuting Financial
Crimes Against People
with Disabilities*

GLOUCESTER COUNTY PROSECUTOR'S OFFICE ELDER JUSTICE UNIT

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Who is a Vulnerable Adult?

A vulnerable adult is usually defined by social or medical care agencies and the definition can vary from one to another.

In general terms, it is an adult who has a learning, physical or mental disability or one who has limited physical or mental capacity.

Who is a Vulnerable Adult?

- ❖ Person over 18 who has a developmental disability
- ❖ Person who is found to be “incapacitated” by a court subsequently having a guardian assigned
- ❖ Person over the age of 60 years old who has a functional, mental or physical disability to care for self

Financial Exploitation

is a largely unrecognized and untreated social problem that threatens the right of people to lead a dignified life

Shame is one of the most common psychological effects which includes feelings of:

Learned helplessness

Humiliation

Indignity

Damaged self-esteem

A Belief that the elder contributed to or caused the abuse in some way

Alienation

Fear and Anxiety

Post Traumatic Stress

A Sense of Worthlessness

Rates of Victimization for People with Disabilities

People with disabilities are two and a half times more likely to be the victim of abuse, violent crime or exploitation than people without disabilities

People with disabilities are more likely to be victimized by someone they know well, a caregiver, family member or acquaintance

People with disabilities, like elderly persons, often do not report their victimization—Many people report that they simply do not know how or where to report.

Vulnerable Adults fail to report for a number of reasons:

No Family To Report Abuse To – May not have family members to talk to about abuse. If the abuse is occurring at the hand of a caretaker in a nursing home facility for example, and the person has no remaining family, they may not report the abuse.

Fear Of Retaliation – Being abused in a residential nursing facility may be fearful that reporting the abuse will only result in worse abuse from their caregivers. Fear of retaliation affects people living in all institutional or residential settings.

Shame In Regards To Abuse – May feel ashamed of abuse being directed towards them, and feel too embarrassed to talk about it with someone they trust. This is a common phenomenon that victims of any type of abuse may experience.

Vulnerable Adults fail to report for a number of reasons (cont'd):

Fear Of Loss Of Independence – This is particularly true of elders who still live alone, but have a caregiver who comes to their home. Because of a fear that they will be forced into a residential facility, they often don't report abuse at the hands of family members or private caregivers.

Lack Of Understanding Of How To Report – People may be reluctant to report abuse simply because they don't know who to report it to, or how to file a report.

Abuser could be:

Family Member/Friend

Caregiver/Neighbor

Financial Advisor

Contractor/Serv Providers



MOST SUSPECTS ARE KNOWN TO THE VICTIM

Examples of Financial Exploitation



Financial Exploitation:

Forgery

Identity Theft

Theft

Scams

Predatory Lending

Telemarketing fraud

Misuse of Power of Attorney

Power of Attorney

A person who obtains power of attorney over the affairs of another has **the ability to withdraw unlimited sums** of money from the person's bank account and can sign important financial documents on the person's behalf.

Powers of attorney can be beneficial when the person appointed as attorney is in fact acting in the best interest of the individual, but **when they are fraudulently obtained, they can wreak havoc on finances.**

Misuse of Power of Attorney

Improper use of Guardianship or Power of Attorney is misusing the powers provided in a legal document by exceeding the authority or scope of the power expressed in the agreement for the purpose of economic benefit.

Identity Theft

occurs when a person
steals personal information such as

social security number

bank account information

credit card numbers

passwords

for the purpose of using identity to commit fraud or other crimes.

See this most commonly with opening new credit card accounts

Scams

Some of these scams have been around for ages

Others have kept up with today's technology

- The Tree Cutting Scam
- The Driveway Coating Scam
- The Utility Scam
- The Lottery Scam
- The Grand Mother Scam

Are there any special considerations?

Complexity of Financial Exploitation Cases

- ❖ These type of cases can be very complex involving a number of accounts/multiple banks and institutions and/or frequent fund transfers
- ❖ Victims may not know how long the exploitation has been going on so how far back are the requests for records? If know when the suspect became involved with the victim, investigation will subpoena records 6 months prior to help establish the victim's spending patterns before exploitation

Civil Matter versus Criminal Matters

- ❖ Many times there will be components of both Civil and Criminal
- ❖ not necessarily exclusively just one or the other

Barriers to Successful Prosecution

Victim may be reluctant if perpetrator a family member or caregiver

May be unable to testify due to mental or physical impairments

May die before trials

Is the matter Civil or Criminal? *IT CAN BE BOTH*

How do we make these Cases Prosecutable?

Build case without relying on testimony of the victim; Gather evidence

“Evidence-Based” Prosecution

What Signs should be looked for?

- ❖ Deviations in financial habits
 - ❖ Numerous unpaid bills
 - ❖ Checks made to cash
- ❖ Disparity between lifestyle and assets
 - ❖ Personal belongings missing
 - ❖ Unprecedented transfer of assets
- ❖ Person unaware of monthly income

Are there any special considerations?

Capacity of the Victim: can be a moving target, that is, an Elder's capacity can change day by day, moment to moment, based on variables including:

- ❖ The Assessor
- ❖ Disease Diagnosis & Stage
- ❖ Recent Life Events (especially Traumatic)
- ❖ Location
- ❖ Lack of Sleep
- ❖ Time of Day
- ❖ Others present in the room
- ❖ Medication (even under or over medicating)
- ❖ Diet/Nutrition
- ❖ May have capacity to make some decisions and not others

**May Need A Geriatric Psychiatrist or Medical records to help determine, **

Does the suspect need to know vulnerable adult's Capacity or lack thereof?

Absolutely! Most times, suspect will say that the vulnerable person told them to take/access the funds/money/property. Especially in cases where the vulnerable adult is not available to deny that claim (i.e., passed away, no longer has capacity), we must be able to prove that the suspect knew or would have known. Law Enforcement can use the following as evidence that suspect was aware of capacity:

- Doctor's notes (may mention that suspect was in room during any evaluations)
- Formal evaluation/diagnosis/psychiatrist
- Specific references such as Assessments by APS, Home Services, Attorney

Statements made by the victim

- ❖ Document excited utterance by victim.
- ❖ Document victim's demeanor.
- ❖ Check for excited utterances to friends, EMTs, first police at scene, doctors, nurses, 911 caller.

Capacity Issues:

Capacity = ability to perform a task

Mental capacity focuses on mental processes (e.g., remembering, reasoning, understanding consequences)

Decisional capacity = ability to make an informed decision

Defendant's statements

- ❖ Document all statements, no matter how insignificant they may seem.
- ❖ Check statements made to neighbors, landlord, friends/family, employer, EMTs, hospital personnel, jail/prison officials, parole/probation officers.
- ❖ Police need to get a statement.

Is there Mandatory Reporting?

In 2010, New Jersey's APS law (N.J.S.A. 52:27D-406 to 426) was amended to require health care professionals, law enforcement officers, firefighters, paramedics or emergency medical technicians who have reasonable cause to believe that a vulnerable adult is the subject of abuse, neglect or exploitation to report that information to the county Adult Protection Services.

What can APS do?

Within 72 hours of a referral's receipt, a face-to-face meeting with the adult by a trained APS social worker is required. During this meeting the potential client is interviewed in private. Every effort is made to determine the competence of the adult.

An APS worker cannot:

Remove a vulnerable adult from his or her home without a court order

Force an adult with capacity to accept services

Move an individual to an alternate living situation without his/her agreement or a legal representative's agreement

Stephen Komninos Law

(effective October 2017)

Takes effect in May 2018

Intended to strengthen oversight for people living in supported settings

Dept. of Human Services is required to make two annual unannounced visits to community-based, licensed residential programs, such as group homes and supervised apartments to look for instances of abuse, neglect or exploitation of people with disabilities

Financial Abuse Prevention Steps

Best Practices

- Get Background information
- Prepare Advanced Planning Tools
- Secure Valuables/Check on Valuables
- Monitor Bills and manage personal finances
- Maintain control of credit and debit cards
- Get a free copy of your credit report

Financial Abuse Prevention Steps Best Practices

- Shred, tear into small pieces, or cut up documents that contain Social Security, bank and credit cards
- Pay attention to accounts

Questions?????

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