

# **Elder Financial Crimes: It's Just Not a Civil Matter**

**PRESENTED BY THE OHIO ATTORNEY GENERAL'S  
ELDER ABUSE COMMISSION**

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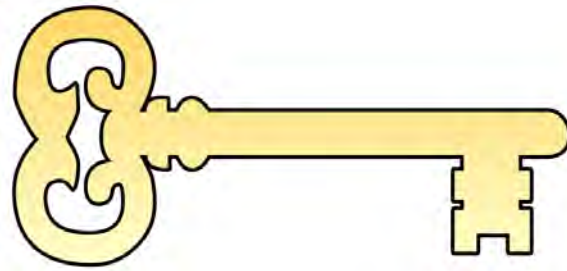
# Ohio Attorney General's Office



# Learning Objectives

- Know the types of elder financial exploitation, scam and crimes.
- Know the revisions to the Ohio Adult Protective Services laws.
- Understands the parallels of a civil and criminal investigation.
- Know how to develop collaborative strategies for conducting effective investigations

# Key Points



- Every year thousands of at-risk adults lose all or part of their life savings to financial exploitation.
- Many of these crimes occur within a family setting, and often are dismissed as a “civil matter”.

# Addressing Abuse is Important

- Adults over the age of 65 are the fastest growing portion of the population.
- Financial abuse costs older adults more than **\$2.9 billion dollars per year** nationally.
- Abuse threatens the economic security, lives, health and welfare of millions of older Americans.

# Widespread Problem

- **80%** of abusers are known to the victim.
- **1 in 10** seniors are victims of elder abuse.
- **1 - 14 cases** are actually reported to authorities.
- **50%** of adults with Alzheimer's are victims of elder abuse.
- Elder abuse can affects individuals regardless of income level, culture, gender, race or sexual orientation.

# **What is Financial Exploitation?**

- **Illegal or improper use of an older adult's funds, property or assets**
- **Since not all older adults use the banking system, consider cash, gold, jewelry, antiques, and homes as assets**



# Pure Versus Hybrid Exploitation

## Pure Exploitation

- Financial exploitation only
- Perpetrators are non-relatives
- Not financially dependent on the victim and physically healthy
- Shorter duration than hybrid form; primarily fraud

## Hybrid Exploitation

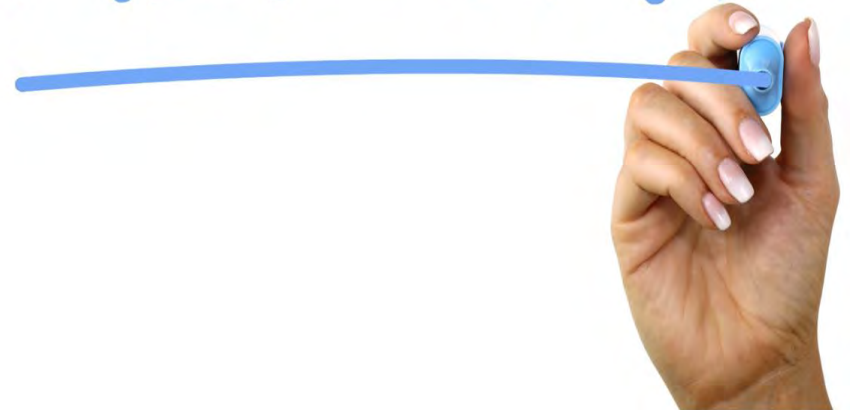
- Co-occurs with physical abuse or neglect
- Exploiter is financially dependent on the elderly victim
- Victim is financially independent but physically dependent on the abuser
- Longer duration than pure form; primarily theft



# Abuse is Rarely Reported

- By mandatory reporters
- By professionals who are not mandatory reporters
- By victims

REPORT



An iceberg floating in a blue ocean under a blue sky with wispy clouds. The tip of the iceberg is above the water, while the much larger, jagged base is submerged. The water is a deep blue, and the sky is a lighter blue with some white clouds.

For every one case  
of elder financial  
exploitation that is  
reported,

**1**

another forty-three cases  
never come to light.

**43**

**Source: NYS Elder Abuse Prevalence Study; Weill Cornell Medical College, NYC Department for the Aging; Lifespan; (2011)**

# Barriers to Reporting

- Uncertainty about the diagnosis.
- Lack of training in recognition.
- Discomfort confronting the perpetrator.
- Fear of retaliation against the victim.
- Unaware of report procedures.
- Disinclination to be involved in the legal system.
- Perception that proof of abuse is inadequate.
- Lack of professional protocols for elder abuse.
- Societal perceptions such as ageism.
- Lack of public and professional awareness.

# **Why Victims Often Don't Report**

- **Fear of losing independence.**
- **Fear of retaliation by perpetrator.**
- **Lack of knowledge or disbelief that exploitation is occurring.**
- **Emotional dependence on perpetrator.**
- **Dementia and related cognitive disorders.**

# Differences Between Criminal and Civil Law

## Civil Law

- ❑ The burden of proof in a civil trial is “*preponderance of the evidence*” which sometimes is defined as “more likely than not” (at least 50% of the evidence supports the guilty claim)
- ❑ Who has the burden of proof?
  - ❑ The Plaintiff

## Criminal Law

- ❑ The burden of proof in a criminal trial is proof “*beyond a reasonable doubt*”
  - ❑ The vast majority of the evidence (90%) supports the guilty verdict
- ❑ Who has the burden of proof?
  - ❑ The federal or state government

# Burdens of Proof

## LEVELS OF PROOF



# **Adult Protective Services (APS)**

- **Not a criminal investigation.**
- **Limited by the ORC (5101.60 - 5101.741).**
  - **Age, impairment/ vulnerabilities and community residence**
- **Primary mission to put protective services in place.**
- **Autonomy/self-determinations.**
- **Adult has right to refuse services.**

# Duty to Report Abuse

- Any mandatory reporter who has **reasonable cause to believe;**
  - that an adult is being abused, neglected, or exploited; or
  - is in a condition which is result of abuse, neglect, or exploitation
- Shall **immediately report** to the County Department of Jobs and Family Services or designee.

**O.R.C. 5101.60**



# Immunity for Reporting

Any person with reasonable cause to believe an adult is suffering abuse, neglect, or exploitation, who makes a report, testifies or acts responsibly in the discharge of their official duties:

shall be immune from civil/criminal liability unless the person acted in bad faith or with malicious purpose

**O.R.C. 5101.63**

# **Only Suspicion is Required**

- **Why do you suspect exploitation?**
- **What was reported to you?**
- **What have you observed?**
  - **Is missing money?**
  - **Are bills or rent not being paid?**
  - **Does the adult appear disheveled?**
  - **Is there a new best friend overseeing finances?**
  - **Was there an eyewitness to the transaction?**

# Penalty For Not Reporting

Fined not more than five hundred dollars



**ORC 5101.99**

# Six Types of Elder Abuse Exist

## Physical

Hitting, kicking, pushing, slapping, burning, or force causing injury

## Sexual

Engaging in sexual act without consent

## Emotional

Harming self-worth or emotional well-being, name calling, & scaring

## Neglect

Failing to meet basic needs like food, housing, clothing, & medical care

## Abandonment

Leaving elder alone or no longer providing care

## Financial

Illegally misusing an elder's money, property, or assets

Learn how signs of elder abuse differ from normal aging to prevent elder abuse before it happens.



# Learn the Warning Signs

- Changes in the older adult's physical appearances
- Changes in the older adult's personality
- Observing a dominating or threatening caregiver
- Observing changes in the older adult's home environment

# **Factors that Contribute to Abuse/Exploitation**

- **Isolation** – self imposed or lack of mobility
- **Dementia** or other type of cognitive decline
- **Increasing senior population**
- **Adult children** have a sense of entitlement
- **Seniors** are trusting and believe “pitches”
- **Substance abuse** problems or mental illness

# Exploitation ORC 5101.60

The unlawful or improper act of a person using, in one or more transactions, an adult or an adult's resources for monetary or personal benefit, profit, or gain when the person obtained or exerted control over the adult or the adult's resources in any of the following ways:

# Continued

1. **without the adult's consent** or the consent of the person authorized to give consent on the adult's behalf; or
2. **beyond the scope** of the express or implied consent of the adult or the person authorized to give consent on the adult's behalf;
  - **By deception;**
  - **By threat;**
  - **By intimidation.**



# Signs of Financial Exploitation

- **Unpaid bills** and termination of utilities
- **Property liens** or foreclosures notices
- Oversight of finances
- Checks written out to “**cash**”
- Disappearance of valuables
- Changes to **wills and estate documents**



# Changes in Documents

- **New Power of Attorney** is executed; especially if senior is confused.
- Changes in property titles, trust and/or wills.
- **Someone who handles the older adult 's affairs withdraws cash with no apparent benefit to the senior.**
- **Financial statements and share drafts are no longer being sent to the senior's home address.**
- Implausible reasons for banking activity given by the older adult or by the accompanying person.

# **Commons Methods**

- **Joint banking accounts cleaned out**
- **Unmet promises of care in exchange for money or property**
- **Theft of valuables**
- **Physical abuse**
- **Threats**
- **Intimidation**
- **Neglect**

# Law Enforcement



# Theft

No person, with purpose to deprive the owner of property or services, shall knowingly obtain or exert control over either the property or services:

- **without the consent** of the owner or person authorized to give consent or
- **beyond the scope** of the express or implied consent of the owner or person authorized to give consent.
  - **By deception.**
  - **By threat.**
  - **By intimidation.**

**ORC 2913.02**

# Enhanced Penalties

- **"Elderly person"**
  - 65 or older
- **"Disabled adult"**
  - some impairment of body or mind
  - unable to work at any substantially remunerative employment 12 months
  - without any present indication of recovery
  - certified as permanently and totally disabled by an agency of this state or the United States

# Enhanced Penalties

- **Identity Fraud - 2913.49**
- **Unauthorized Use of Property - 2913.04**
- **Misuse of Credit Card - 2913.21**
- **Unauthorized Use of M/V - 2913.03**
- **Forgery - 2913.21**
- **Securing writings by Deception - 2913.43**
- **Theft - 2913.02**



# Types of Exploitation

- Scams
- Identity theft
- Theft
- Coercion and extortion
- Fraud and deception
- Abuse of legal authority (i.e., Power of Attorney)
- Manipulation





# Exploiters

- Family members, partners, and trusted individuals
- Caregivers
- Faith leaders and representatives
- Interpreters/translators who have a unique trust relationship
- Con artists
- Scammers

# **Exploiter Characteristics**

- **Depend on the victim for housing or other types of financial support.**
- **Have a substance abuse problem that needs financial support.**
- **Make false promises “lifelong care” to the elder in exchange for money but may not follow through on the promise.**

# Exploiter Behaviors

## Often...

- Lie
- Manipulate
- Charm
- Justify their behavior
- Blame the victim



# Excuses/Justifications

- “She’s like a mother to me, therefore, we share resources.”
- “We’re in love/married/in a relationship.”
- “We’re family, she/he wanted me to have it.”
- Purchase was made as part of caregiving
- She/he freely gave me use of her/his car as a favor to me.”

Excuses  
Excuses  
Excuses  
Excuses  
Excuses

# **Victims**

- Want the abuse to end but may also want a relationship with the abuser**
- Protect the exploiter rather than self**
- They may fear escalation of abuse or exploitation**
- They may not want legal ramifications against the exploiter**
- May recant or be reluctant to work with authorities**

# Red Flags



- **Social Isolation**
- **Bereavement**
- Cognitive decline
- Dependence on another to provide care
- Financially responsible for adult child or spouse
- Substance abuse
- Depression or other mental issues

# **When Do I Have Consent?**

**To consent to a transaction a person must:**

- **Act freely & voluntarily & not under the influence of threats, force or duress.**
- **Have knowledge of the true nature of the act or transaction involved.**
- **Possess the mental capacity to make an intelligent choice whether or not to do something proposed by another person.**

# Capacity vs Competence

## Capacity

- Can be fluid
- Can fluctuate with environmental factors
- Determined by a clinician based on the adult's ability to demonstrate specific knowledge

## Competency

- Legal definition established by the courts
- A clinician's recommendation can influence a judicial ruling
- Law presumes competence unless otherwise proven



# Consent as a Defense

Legal consent is generally only **valid** if:

- **Freely**
  - **Knowingly**
  - **Voluntarily**
- Adult must have the ability to understand the nature and consequences of one's acts
  - **Undue influence will negate consent**

# Undue Influence

## Method for committing the crime

- “Manipulation in over drive”



# Victims of UI

- **Anyone can be a victim of UI – even someone with capacity**
- **Vulnerability is enhanced by:**
  - Social Isolation
  - Illness
  - Diminished capacity
  - Cognitive impairment
  - Bereavement
  - Dependence on another
  - Fear
  - Substance abuse
  - Power and control
  - Exploit trust

# Interview Questions

- **Mental Capacity**
  - Are you able to care for yourself?
  - Do you take medications?
  - How do you spend your time?
- **Knowledge of True Nature of Act**
  - Tell me how did you come of sign those documents?
  - Please explain the documents that you signed?
  - What do you think will happen to you now that you have signed this document?
- **Acted freely and voluntarily**
  - Were your rushed to act?
  - Who else was present”
  - Did you have time to think this over?

# Investigations



# Follow the Money

- Where did the money go?
- How was the money spent/withdrawn?
- Was the deal transparent?
- Who benefited from the use of the money?



# Joint Bank Accounts

- Timing is important
- Patterns of usage is important
- Who is depositing the money?
- How is the money being spent?
- Who is benefiting from the purchases?



# Explore the Relationship

- Evidence of impairment
- Position of trust
- Inability to act independently
- Fear or anxiety
- Never alone
- Promises
- Romance





# Legal Surrogates

## Power of Attorney

- An instrument which delegates authority to make decisions or financial management to another.

## Guardianship

- A court order granting certain powers to a family member, other individual, governmental agency, or institution to control the affairs of another person.

# **Criminal Misuse**

- **Get copy of power of attorney/guardianship documents**
- **Determine if guardian or person with power of attorney spent victim's money on themselves rather than to benefit victim.**
- **Check for prior complaints or investigations involving either the victim or suspect.**
- **If necessary, work with local experts – probate court.**

# **Consider the History**

- **When was the POA created?**
- **Who created the POA?**
- **Where there any witnesses? Who?**
- **What was the older adult's cognitive function?**
- **What was the older adult's understanding of what she/he was doing?**
- **What were the surrounding circumstances?**

# **Actions to Consider**

**Consider whether the alleged victim had capacity to make the decision in question.**

**Need for capacity assessment is needed;**

- **Limitation of the Mini Mental Examination**
- **Seek an expert skilled in conducting geriatric assessments.**

**Consider if the victim was coerced, intimidated, misrepresented or threaten.**

# Think Beyond the Surface

- Don't take exploiter's claim of consent at face value.
- **Interview victim alone, away from suspect.**
- Contact APS and/or law enforcement.
- **Document pattern of conduct and concerns expressed by others.**
- Involve local prosecutor to discuss further legal actions or charging decisions.

# Collaborative Approach

- **Common goals**
- Requires a trusting relationship
- **Share expertise**
- Open communication
- Motivated partners
- Action plan/results



# **Ohio's Reporting Structure**

**It is important that you always report and contact the proper authority**

- Adult Protective Services (community)**
- Long-Term Care Ombudsman (facility)**
- Ohio Department of Health (facility)**
- OAG - Health Care Fraud Unit (facility)**
- Law Enforcement (community and facility)**

# Resources

- [Ohio Attorney General](http://www.ohioattorneygeneral.gov) [www.ohioattorneygeneral.gov](http://www.ohioattorneygeneral.gov)
- [Ohio Department of Aging](http://aging.ohio.gov/information/oda)  
[aging.ohio.gov/information/oda](http://aging.ohio.gov/information/oda)
- [Ohio Long Term-Care Ombudsman](http://www.aging.ohio.gov/services/ombudsman) -  
[www.aging.ohio.gov/services/ombudsman](http://www.aging.ohio.gov/services/ombudsman)
- [Ohio Department of Job and Family Services Office for Children and Families – Adult Protective Services](http://www.jfs.ohio.gov/ocf/aps.stm)  
[www.jfs.ohio.gov/ocf/aps.stm](http://www.jfs.ohio.gov/ocf/aps.stm)
- [Ohio Department of Health, Division of Quality Assurance](http://www.odh.ohio.gov/landing/phs_quality/quality.aspx)  
[www.odh.ohio.gov/landing/phs\\_quality/quality.aspx](http://www.odh.ohio.gov/landing/phs_quality/quality.aspx)



# Questions





# How to contact us

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