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FINANCIAL EXPLOITATION OF THE ELDERLY*

Ariel Schaffner** and John W. McCaffrey***

I. INTRODUCTION

One of the tragedies of growing old in America is the fear of exploitation and abuse. In 1988, more than thirty-four million Americans were age sixty-five or older.¹ By the year 2000, twenty percent of the population will be seniors.² Although only twelve percent of the population, seniors now account for approximately thirty percent of all white-collar crime victims and sixty percent of all health-related fraud victims in the United States.³

Financial exploitation, although generally coupled with other forms of abuse, is one of the most prevalent forms of elder abuse.⁴ Many states have responded by enacting statutes which criminalize exploi-

Although only twelve percent of the population, seniors now account for approximately thirty percent of all white-collar crime victims and sixty percent of all health-related fraud victims in the United States.

tation of an elderly person's resources, or provide an increased sentence when a crime is committed against a senior.⁵ In addition, several states have enacted civil laws to specifically address consumer fraud schemes frequently used to victimize the elderly.⁶ As elder abuse has begun to capture national attention, many victims have come forward to expose financial exploitation. Nevertheless, many other victims remain unaware of available legal remedies and methods to avoid financial exploitation.

This article examines various types of financial exploitation of the elderly, the criminal and civil remedies available to the abused senior, and some methods by which seniors can avoid being financially exploited. Section II pro-

files the forms of elder abuse, its perpetrators and victims. Sections III and IV examine the federal and state responses to increased elder abuse, including criminal and civil punitive and remedial statutes, as well as adult protective service statutes and other means by which seniors can avoid financial exploitation. This article concludes by calling for more public education and additional federal and state legislation to protect the elderly from financial exploitation.

II. THE PROFILE OF ELDER ABUSE

A. The types of elder abuse

Elder abuse takes on many forms, including physical, emotional, psychological, sexual, and financial abuse.⁷ In Illinois, financial exploitation is the most common form of abuse perpetrated against elderly persons.⁸ Financial exploitation generally is defined as the improper use or appropriation of an elderly person's resources for personal advantage or profit.⁹ There are two basic types of financial exploitation: private exploitation and consumer exploitation.

Private financial exploitation is exploitation perpetrated by a senior's relative or caretaker, most often someone with whom the victim lives or upon whom the victim is dependent.¹⁰ This type of exploitation often involves stealing cash, welfare checks, and personal belongings, or selling property without the senior's consent and against the senior's best interest. Although this type of exploitation frequently involves deceit, it may also involve coercion, intimidation, or hollow promises of lifelong care and assistance in order to persuade a trusting or unknowing senior to turn over money and property.¹¹ Many instances involve seniors who lived independently until an injury or illness necessitated hospital treatment.¹² Upon discharge from the hospital, these seniors learn that their families have sold their homes or property, or worse, that their family has

committed them to a public institution as a means of obtaining their financial resources.¹³

The second type of financial exploitation, consumer exploitation, exists across the spectrum of consumer products and consumer services. Consumer exploitation is frequently directed toward the elderly because they are considered powerless and vulnerable. Many times, seniors do not receive timely information about consumer fraud schemes because they are less active in their local communities. For this reason, such schemes are often difficult to prevent and redress. Numerous consumer fraud schemes perpetrated against the elderly literally rob them of thousands of dollars, and in some cases their life savings. Many of these deceptions are particularly egregious because they prey on the desire of many seniors to supplement their fixed incomes.

B. The perpetrators and victims of financial exploitation

Although financial exploitation predominately occurs in the form of consumer fraud, quite frequently the abusers are the senior's own caretakers or family members.¹⁴ Particularly in the latter situation, fear of reprisal, embarrassment, or ignorance inhibit victims from coming forward and reporting that they have been abused.¹⁵ Many seniors fear that by reporting the abuse, they will be physically or verbally punished or

* The opinions expressed herein are those of the authors and do not necessarily reflect the official opinions of the Office of the Illinois Attorney General.

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placed in a nursing home.¹⁶ Experts estimate that, as a result, only one in five cases of elder abuse is reported to state authorities.¹⁷

While ascertaining the actual level of abuse remains difficult, experts have been able to piece together a general profile of the perpetrator and the victim of such abuse. The abuser is generally a

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family member who lives with the victim and upon whom the victim is dependent for some level of care. Statistically, the victim is more likely to be a woman over seventy years of age who has a physical or mental impairment.¹⁸ Nevertheless, elder abuse may befall any senior not exercising the requisite caution, lacking the basic information available on the types of financial exploitation, and not knowing of available resources to avoid financial exploitation.

III. THE NATIONAL RESPONSE

In 1981 and 1985, the House of Representatives' Select Committee on Aging held extensive hearings on the issue of elder abuse.¹⁹ These hearings revealed not only that elder abuse was increasing, but that each year more than one million seniors may be victims of abuse.²⁰ In 1985, the Select Committee on Aging published a report ("the 1985 House Report") which revealed alarming facts about several government programs, such as Medicare, Medicaid, and Supplemental Security Income, which assist seniors and disabled individuals in meeting their financial needs. The 1985 House Report noted that "Federal polic[ies] under Medicare-Medicaid and the Supplemental Security Income program encourage the financial exploitation of the elderly."²¹ Such

financial exploitation originates in the decision to place an older person in a nursing home,²² because the average cost of residing in a nursing home exceeds \$24,000 per year.²³ Frequently the family cannot afford the nursing home bill, and therefore looks to outside sources for assistance. Medicare is unavailable to many seniors and in fact pays for only two percent of the total national nursing home bill.²⁴ Moreover, it is nearly impossible to find affordable insurance that will pay more than a modest amount of the nursing home bill.²⁵ Consequently, families often look for ways to qualify their loved ones for Medicaid, which is only available to the poor.²⁶ The 1985 House Report confirmed that many families have financially exploited elderly family members by divesting them of their resources and income in order to qualify them for Medicaid.²⁷

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Likewise, the Supplemental Security Income ("SSI") program carries the risk of encouraging financial exploitation. The SSI program provides a minimum income level for physically handicapped and low-income seniors.²⁸ However, SSI benefits are reduced by one-third if the senior receives financial support from or resides with another person.²⁹ The 1985 House Report emphasized that "[t]his cut in benefits does little to encourage hospitable attitudes on the part of family members who care for elderly persons."³⁰

In 1981, the House of Representatives proposed the Prevention, Identification, and Treatment of Elder Abuse Act ("PITEAA").³¹ PITEAA would have established a National Center on Elder Abuse to compile, publish, and disseminate information about the problems of elder abuse

and programs available to address abuse.³² PITEAA also would have provided funds to states in order to address instances of elder abuse and protect abused victims.³³ Although PITEAA was never enacted, in 1987 Congress did enact amendments to the Older Americans Act ("OAA Amendments") which authorize funding for a federal program to prevent elder abuse.³⁴ The OAA Amendments also address the Medicare, Medicaid, and SSI problems identified in the 1985 House Report by authorizing funds to study whether assistance could be provided to older Americans not eligible for benefits under those programs.³⁵

The OAA Amendments also provide leadership and financial support to states' efforts to combat elder abuse. The OAA Amendments require the federal program to be implemented in coordination with state adult protective service statutes and other state and local elder abuse programs.³⁶ Grants to such state programs are included in the funding authorized by Congress.³⁷ The federal program further establishes public education and outreach services in which elderly people are encouraged to participate.³⁸ The Amendments also provide for referring reports of elder abuse to the appropriate law enforcement or other governmental agency.³⁹

In addition, the Amendments authorize grants to a maximum of ten states to establish consumer protection projects.⁴⁰ These state projects are intended to evaluate the effectiveness of different approaches toward protecting seniors "with regard to services in the home."⁴¹ Such consumer protection projects include consumer education, consumer hotlines, and systems for receipt and resolution of consumer complaints.⁴²

IV. THE STATE RESPONSE

Most states have enacted laws which make elder abuse a criminal offense, as well as civil statutes which address specific types of consumer fraud committed against elderly individuals.⁴³ State statutes fall into one of two categories. The first category includes punitive and

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remedial statutes designed to punish the perpetrator and compensate the victim of elder abuse. The second category includes protective and preventative statutes by which seniors can learn about and prevent elder abuse. Exemplary statutes from both categories are outlined below.

A. Punitive and Remedial Statutes

1. Financial Exploitation and Theft by Deception.

The Illinois legislature has recently made it a criminal offense to financially exploit an elderly person.⁴⁴ However, the Financial Exploitation Act applies only if the elderly person suffers from a disease or infirmity which renders the person "incapable of avoiding or preventing" the exploitation.⁴⁵ Financial exploitation consists of using deception or intimidation to obtain control over an elderly person's property with the intent to permanently deprive him or her of the property.⁴⁶

Under the Financial Exploitation Act, the perpetrator must "stand in a position of trust" with the elderly victim.⁴⁷ A relative of the senior, by blood or marriage, as well as persons in a legal or fiduciary relationship with the senior are deemed to "stand in a position of trust."⁴⁸ The Illinois Attorney General's office has indicated that, because a fiduciary relationship exists between an investment adviser and an investor, the Financial Exploitation Act will address schemes in which an elderly person's property is obtained as part of a fraudulent investment scheme.⁴⁹ Persons convicted under the Financial Exploitation Act may be imprisoned for one to fifteen years and fined up to \$10,000, depending on the value of the property involved.⁵⁰ In addition to its criminal provisions, the Financial Exploitation Act establishes a civil remedy whereby an elderly victim can sue the abuser for money damages.⁵¹ A successful plaintiff may recover three times the value of the property illicitly appropriated, plus any attorney's

fees expended in bringing the suit.⁵² The treble damages are intended to provide an incentive for the elderly victim to file a lawsuit. Thus, the civil and criminal provisions of the Financial Exploitation Act will help the elderly fight back against the perpetrators of consumer fraud.

According to the Attorney General, the Financial Exploitation Act will complement the existing criminal "Theft-by-Deception" statute.⁵³ Unlike the Financial Exploitation Act, the Theft-by-Deception statute does not require that the accused "stand in a position of trust" with the victim.⁵⁴ Therefore, the Theft-by-Deception statute may be used in situations where the relationship between the accused and the victim is more tenuous. Furthermore, the Theft-by-Deception statute imposes aggravated penalties when the victim is sixty years or older.⁵⁵ Persons convicted under the Theft-by-Deception statute may be imprisoned for one to seven years and fined up to \$10,000.⁵⁶ Together, the Financial Exploitation and Theft-by-Deception statutes provide a considerable weapon for prosecutors in the war against elder abuse. In fact, the Attorney General's office recommends that, in appropriate situations, both charges be brought against the accused.⁵⁷

2. Consumer Fraud and Deceptive Business Practices

Most states have one or more statutes which address general consumer fraud schemes. In Illinois, the Consumer Fraud and Deceptive Business Practices Act ("the Consumer Fraud Act") addresses general consumer fraud schemes.⁵⁸ Under the Consumer Fraud Act, the Attorney General is empowered to protect individuals from fraudulent and unfair or deceptive acts in the course of trade or commerce.⁵⁹ Specifically, the Consumer Fraud Act guards against "the use of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any

material fact" employed in the conduct of trade or commerce.⁶⁰ Because of its broad language, the Consumer Fraud Act provides the most wide-ranging remedy against the creative fraud schemes which victimize the elderly.

Consumers also are provided a private right of action under the Consumer Fraud Act to recover for injury suffered from a consumer fraud scheme.⁶¹ The consumer need not prove all the elements of common law fraud to recover under the Act.⁶² For example, the consumer need not establish that the abuser *intended* to deceive anyone, but only that the consumer was misled by the perpetrator's material misrepresentations.⁶³

Consumer fraud committed against the elderly is a particularly egregious form of fraud because it exploits their vulnerabilities. Recognizing this, the California legislature recently amended its consumer fraud statute to provide treble damages for consumer fraud schemes committed against the elderly.⁶⁴ The treble damage provision implicitly recognizes the special nature of fraud committed against seniors and encourages lawsuits to deter such fraud.

3. Supplemental Health Insurance Fraud

Adequate health care is a top priority for seniors, who have a tremendous incentive to purchase

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better health insurance due to the likelihood of escalating health problems. The rising cost of health

care in recent years has exacerbated the pressure on the elderly to secure additional health insurance.

Most seniors must depend on Medicare to contribute to their health care bills. However, Medicare assistance alone is inadequate,⁶⁵ and thus seniors have an incentive to purchase supplemental insurance. Consequently, health insurance fraud perpetrated against seniors is a common problem. Many insurance fraud schemes perpetrated against elderly individuals involve the sale of fraudulent "medi-gap" insurance. Tragically, this insurance is often marketed through intimidation. The insurer falsely asserts that if the elderly person fails to purchase a "medi-gap" policy, his or her Medicare benefits will be inadequate. In other situations, the "medi-gap" insurance policy is duplicative, or is misrepresented as a complete supplement to Medicare.

Most states have addressed the sale of fraudulent "medi-gap" insurance by establishing disclosure

standards with which insurance policies must comply. Illinois' standards cover advertisements, direct mailings, and home solicitation by insurance agents.⁶⁶ For example, advertisements and correspondence must clearly identify the insurer and indicate its purpose.⁶⁷ The law prohibits using false, deceptive, or misleading representations to induce a person to purchase "medi-gap" coverage.⁶⁸ No advertisement for "medi-gap" insurance may imply that a failure to respond affects Medicare benefits.⁶⁹ In fact, the insurer must provide a statement that the insurance is in no way affiliated with the Medicare program.⁷⁰

Agents selling insurance policies door-to-door must also abide by specific guidelines. Each agent must identify himself or herself as an insurance agent and identify the company that the agent is licensed to represent.⁷¹ Perhaps most significantly, the agent must evaluate the customer's needs and determine which policy is "appropriate, suitable

and non-duplicative" and be able to prove that such a determination was made *before* the sale.⁷² In making this determination, the agent must complete a policy checklist which details the treatments covered, as well as how much of the treatment expense is covered by Medicare, the purchaser's existing coverage, the supplement being marketed, and the residual amount for which the purchaser remains responsible.⁷³

Moreover, at the time the purchaser applies for the supplemental coverage, the insurer must provide a disclosure statement outlining the policy terms.⁷⁴ The insurer must also disclose, in a separate statement, any revisions to the policy made between the time of application and the delivery of the policy.⁷⁵ Any person who violates the statute may be fined between \$250 and \$2,500 per violation, and the insurance company may be prohibited from selling Medicare supplemental insurance in the state.⁷⁶

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STATE AGENCIES FOR THE ELDERLY

The following are state agencies which seniors may call for further information on remedying and preventing elder abuse.

State Agency:	Telephone Number:
Alabama Commission on Aging	(205) 261-5743
Older Alaskans Commission	(907) 465-3250
Arizona Office on Aging and Adult Administration	(602) 255-4446
Arkansas Department of Human Services	(501) 371-2441
California Department of Aging	(916) 322-3887
Colorado Aging & Adult Services Division	(303) 866-5122
Connecticut Department on Aging	(203) 566-7772
Delaware Division on Aging	(302) 421-6791
District of Columbia Office on Aging	(202) 724-5622
Florida Aging and Adult Services	(904) 488-2881
Georgia Office of Aging	(404) 894-5333
Hawaii Executive Office on Aging	(808) 548-2593
Idaho Office on Aging	(208) 334-3833
Illinois Department on Aging	(217) 785-3356
Indiana Department of Human Services	(317) 232-7003
Iowa Commission on Aging	(515) 281-5187
Kansas Department on Aging	(913) 296-4986
Kentucky Division for Aging Services	(502) 564-6930
Louisiana Governor's Office of Elderly Affairs	(504) 925-1700
Maine Bureau of Elderly	(207) 289-2561
Maryland Office on Aging	(301) 225-1100
Massachusetts Department of Elder Affairs	(617) 727-7751
Michigan Office of Services to the Aging	(517) 373-8230

Minnesota Board on Aging	(612) 296-2770
Mississippi Council on Aging	(601) 949-2013
Missouri Division of Aging	(314) 751-3082
Montana Community Services Division	(406) 444-3865
Nebraska Department on Aging	(402) 471-2306
Nevada Division for Aging	(702) 885-4210
New Hampshire State Council on Aging	(603) 271-2751
New Jersey Division on Aging	(609) 292-4833
New Mexico State Agency on Aging	(505) 827-7640
New York State Office for the Aging	(518) 474-4425
North Carolina Division of Aging	(919) 733-3983
North Dakota Aging Services	(701) 224-2577
Ohio Department of Aging	(614) 466-5500
Oklahoma Services for the Aging	(405) 521-2327
Oregon Senior Services Division	(503) 378-4728
Pennsylvania Department of Aging	(717) 783-1549
Rhode Island Department of Elderly Affairs	(401) 277-2880
South Carolina Commission on Aging	(803) 735-0210
South Dakota Office of Adult Services and Aging	(605) 773-3656
Tennessee Commission on Aging	(615) 741-2056
Texas Department on Aging	(512) 444-2727
Utah Division of Aging and Adult Services	(801) 538-3910
Vermont Office on Aging	(802) 241-2400
Virginia Department for the Aging	(804) 225-2271
Washington State Aging and Adult Services Administration	(206) 753-2502
West Virginia Commission on Aging	(304) 348-3317
Wisconsin Office on Aging	(608) 266-2536
Wyoming Commission of Aging	(307) 777-6111 1-800-442-2766

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4. Fraud in Treating Illnesses

Financial exploitation of seniors also occurs during treatment of illnesses. Elderly persons are commonly the victims of medical "professionals" who promise cures for incurable infirmities. In Illinois, a false representation about the treatment of an incurable illness is a disciplinary violation under the Medical Practice Act of 1987.⁷⁷ The Medical Disciplinary Board has the power to suspend or revoke the license of any physician who makes "a false or misleading statement regarding [the physician's] skill or the efficacy or value of medicine, treatment or remedy . . . in the treatment of any disease or other condition of the body or mind"⁷⁸ or "promotes the sale of drugs, devices, appliances or goods . . . in such manner as to exploit the patient for financial gain of the physician."⁷⁹ Illinois' Medical Practice Act allows an elderly victim to pursue professional disciplinary action against an offending physician, in addition to civil and criminal actions under the statutes previously mentioned.⁸⁰ Together, these criminal, civil, and professional disciplinary proceedings will serve the elderly population by simultaneously providing relief to the elderly victim and deterring future abuse.

5. Home Repair Fraud

As with most Americans, the home usually represents a senior's largest single asset, and sometimes constitutes the senior's entire net worth. Consequently, home maintenance and repair are major concerns for elderly persons with fixed incomes. Unfortunately, fraudulent home repair schemes are a common form of fraud committed against seniors. Seniors often contract for home repairs that are represented by a contractor to be "absolutely necessary." After making payments, the senior discovers that the work was never done. Even in cases where the contractor actually performs the work, many times the repairs are either incom-

plete or improper. Because of the home's importance and value, the results of such schemes can be devastating to an elderly person.

In Illinois, the Home Repair Fraud Act protects individuals from contractors' fraudulent representations and provides increased penalties when the victim is age sixty years or older.⁸¹ A person violates the Home Repair Fraud Act by knowingly misrepresenting a material fact of an agreement or using any deception, false pretense, or false promise in order to induce a person into an agreement for home repair.⁸² An individual also violates the Home Repair Fraud

In Illinois, the Home Repair Fraud Act protects individuals from contractors' fraudulent representations and provides increased penalties when the victim is age sixty years or older.

Act by entering into an unconscionable agreement for home repair which exceeds four thousand dollars.⁸³ An agreement is presumed to be unconscionable if the purchaser paid more than four times the fair market value for the contractor's services.⁸⁴ Finally, intentionally damaging a homeowner's property with the intent to elicit an agreement for repairs is also illegal.⁸⁵ Violations of the Home Repair Act are punishable by a prison term of one to five years and a fine of up to \$10,000, depending on the value of the agreement and the number of violations.⁸⁶ When the fraud is perpetrated against a person age sixty years or older, the perpetrator can be imprisoned for up to seven years.⁸⁷

6. Land Sales Fraud

Land sales fraud most often is perpetrated by advertising property as a future retirement paradise or an exceptional real estate invest-

ment, when in fact the land is uninhabitable or undevelopable.⁸⁸ In other situations, the seller misleads the purchaser into believing that water, natural gas, or other utilities are included in the sale, but afterwards the purchaser discovers that drilling or installation is required to obtain these necessities.⁸⁹

The Illinois Land Sales Registration Act of 1989 ("the Illinois Land Sales Act") directly addresses the problem of land sale fraud.⁹⁰ The Land Sales Act makes it illegal for anyone to knowingly authorize, direct, or aid in publishing or distributing a misrepresentation or false statement concerning land offered for sale.⁹¹ Violation of the statute carries a possible prison term of one to three years and up to \$10,000 in fines.⁹²

The Land Sales Act also requires sellers of subdivided land to register with the state a declaration of the land's owner, the terms and conditions of the sale, a map and legal description of the land, applicable zoning ordinances, and the availability of utilities.⁹³ In addition, the seller must post a bond with the state sufficient to protect purchasers and ensure that the seller complies with the sales agreement.⁹⁴ A willful failure to comply with the registration requirement carries a maximum fine of \$2,000.⁹⁵

7. Business Opportunity Fraud

Seniors who are tied to limited fixed incomes are most susceptible to fraudulent schemes which purport to offer business opportunities. Fraudulent business opportunities aimed at seniors range from at-home craft projects to the sale of equipment used in starting a business. Generally, these schemes involve a seller misrepresenting the expected return on a business opportunity or assuring a guaranteed income to the purchasers by falsely promising to buy back the finished product of the business.

Georgia has enacted the Business Opportunity Act to prevent

such schemes.⁹⁶ The Business Opportunity Act defines a business opportunity as the sale or lease of products, equipment, supplies or services for the purpose of enabling the purchaser to start a business.⁹⁷ A seller's conduct is within the scope of the Business Opportunity Act if the seller represents that all products produced will be purchased, or guarantees that the purchaser will derive income in excess of the purchase price.⁹⁸ At least forty-eight hours before the purchaser signs a business opportunity agreement, the seller must provide a disclosure statement containing the name of the seller, the length of time the seller has been in business, a copy of the company's current financial statement, and a full description of the services promised.⁹⁹ If the seller makes any statement about projected sales or earnings, the seller must disclose the seller's "track record," namely, the number of past purchasers and which purchasers actually received the claimed earnings within the last three years.¹⁰⁰ The statement also must disclose that the state does not approve or endorse such business opportunities and has not verified the statements in the document.¹⁰¹ The seller must place eighty-five percent of the purchase price in escrow, to be collected only upon complete performance of the contract.¹⁰² In addition, if the seller has promised that the purchaser will make a profit, the seller also must post a bond of not less than \$75,000 against which an injured purchaser may recover damages.¹⁰³ Finally, the purchaser may cancel the contract if the products, equipment, supplies, or services purchased are not delivered within forty-five days of the promised delivery date.¹⁰⁴

The Georgia Business Opportunity Act disclosure requirements strike at the heart of business opportunity fraud by helping elderly purchasers make educated business decisions. Further, the escrow and bond requirements protect industrious seniors from financial ruin by ensuring that funds exist to compensate those who are victimized by business opportunity fraud.

B. Protective Service Statutes and Private Solutions

1. Adult Protective Services Statutes

Thirty-eight states have enacted adult protective service statutes.¹⁰⁵ An adult protective service statute employs the state's social service resources to aid and counsel victims of elder abuse, and to prevent subsequent abuse. While these statutes vary from state to state, most include a provision which directs "all persons who know or have reasonable cause to suspect [elder] abuse" to report the abuse to a state agency.¹⁰⁶ A confirmed report of abuse triggers corresponding provisions which provide the victim with appropriate medical treatment, counseling, shelter, and other appropriate support.¹⁰⁷

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relatives frequently are the abusers, often elder abuse involves an unrelated party. As discussed above, financial exploitation commonly occurs as a result of consumer fraud directed at the elderly. Moreover, many adult protective service statutes are limited to physical, sexual, and psychological abuse of seniors, and do not address financial exploitation.¹⁰⁹ Protective service statutes should require that state agencies inform elderly financial exploitation victims of available legal remedies and provide counseling so that victims could avoid subsequent abuse.

2. Private Preventive Measures

A variety of legal arrangements are available to the elderly to combat financial exploitation. These private solutions protect seniors

from both consumer and private exploitation. In the case of private financial exploitation, victims may be unwilling to pursue criminal or civil actions against a family member or caretaker. Therefore, private solutions, such as direct deposit programs, representative payees, joint tenancy accounts, and trusts, are often viable options for many seniors. These private solutions may be used to halt ongoing exploitation or prevent exploitation from occurring. However, none of the legal arrangements discussed here confer faultless protection. Each arrangement could result in abuse if seniors, in seeking assistance for the financial and physical aspects of their lives, do not choose a capable and trustworthy person or entity. For this reason, an elderly person must approach these arrangements with caution.

Thousands of social security checks are stolen each year by individuals looting mailboxes. For this reason, direct deposit is advisable for seniors who receive SSI benefits, Social Security benefits, Railroad or Veteran retirement benefits, or other regular benefits. Most banks have arrangements whereby checks can be mailed to the bank and directly deposited into the appropriate account. The chance of checks being stolen or lost is nearly eliminated by direct deposit. Moreover, consistent direct deposit transactions make it easier for banks and seniors to closely monitor the account in order to detect abuse.

Establishing a representative payee is another option for the elderly. A representative payee is given the authority to receive, sign, and cash another person's public benefit check. In addition, the payee is responsible for helping the individual manage his or her finances. The representative payee should be trustworthy because the accounting requirements may be minimal and there are few automatic safeguards. The Social Security Administration provides guidelines for such arrangements and can investigate allegations of misused funds. In many instances, the Salvation Army will act as a representative payee for seniors

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who do not wish to designate a relative or friend as a representative payee.

Joint tenancy is another useful arrangement for an elderly person's bank account and property. Two or more people are named in a joint tenancy account, each having equal legal access to and control over the funds in the account. A joint tenancy is convenient in that it provides the elderly person access to the account for the purpose of writing checks, while the other person does the banking for the elderly person. In some cases, the joint tenancy is used as an inexpensive method to pass on property without incurring probate costs. Joint tenancy arrangements must be approached with care because both joint tenants have power over the entire account. Seniors should be aware that under a joint tenancy arrangement it is difficult to ensure that the other joint tenant acts in the senior's best interest.¹¹⁰ In order to curb misuse, an attorney should be retained to draft a joint tenancy agreement which clearly sets forth each tenant's rights, responsibilities, and duties.

Creating a trust is another way to protect elderly persons from financial exploitation. A trust arrangement entails a trustee, usually a bank, trust company, or individual, designated by the senior with the responsibility of managing the property in the trust. This option is most appropriate for seniors with assets in excess of \$100,000, the minimum amount required before most banks or trust companies will act as trustee. Trusts can be useful as a planning tool, allowing an elderly person to avoid problems in the event of later incapacitation. However, before entering into a trust, seniors should be cautioned that trusts are costly and may never become necessary if the trust is contingent on incapacitation.

V. CONCLUSION

In the past decade, the financial pressures of caring for the elderly, as well as the increase in consumer fraud, have made financial exploi-

tation one of the most common forms of elder abuse. As the percentage of elderly individuals in the country continues to grow, so should the efforts to combat elder abuse. The federal government should provide increased financial and technical leadership to the states in this battle, including the establishment of a national center devoted specifically to the study of elder abuse prevention.

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State legislatures can improve their laws to better combat elder abuse by adopting criminal and civil statutes to specifically address financial exploitation of the elderly. As in California, state legislatures should amend their current consumer fraud statutes to include treble damages and attorney's fees for fraud schemes committed against the elderly. Increased civil damages for exploitation of the elderly will assist victims in recovering from abuse, and will send a clear signal that this type of fraudulent behavior will be very costly to perpetrators. In addition, all states should have adult protective service statutes which provide counseling and assistance to elderly victims of financial exploitation.

Finally, we must recognize that the financial pressures of caring for elderly persons are at the core of private financial exploitation. Thus, resolution of pressing issues such as rising health care costs and welfare programs for seniors will have a positive impact on the effort to end financial exploitation of the elderly. But most importantly,

public knowledge of the scope and impact of elder abuse must be heightened and corresponding outreach programs expanded and strengthened. Together these efforts will ensure that seniors are fully armed and prepared for the battle against elder abuse.

ENDNOTES

1. Mathews, *The Not-So-Golden Years: The Legal Response to Elder Abuse*, 15 PEPPERDINE L. REV., 653, 657 (1988).
2. U.S. DEPARTMENT OF JUSTICE BUREAU OF STATISTICS. *Crimes Against the Elderly in 26 Cities*, p. 1 (1981).
3. HOUSE SELECT COMM. ON AGING, *Quackery A \$10 Billion Scandal*, Comm. Pub. No. 98-435, 98th Cong., 1st Sess., 183 (1984).
4. ILLINOIS DEPARTMENT ON AGING, *Elder Abuse: The Illinois Department on Aging's Final Report on the Elder Abuse Demonstration Program Act*, p. 29 (May, 1988) [hereinafter "The IDA Report"].
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6. *E.g.*, ILL. REV. STAT. ch. 38, para. 16-1.3(1987).
7. *E.g.*, ILL. REV. STAT. ch. 121 1/2, para. 261 (1987); ILL. REV. STAT. ch. 73, para. 975a (1987); CAL. CIV. CODE 1780 (West 1989); GA. CODE ANN. § 106-1501 (Harrison 1989).
8. The IDA Report, *supra* note 4, at p. 29.
9. *Id.* at 3.
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11. HOUSE SELECT COMM. ON AGING, *Elder Abuse: An Examination of a Hidden Problem*, H.R. REP. NO. 277, 97th Cong., 1st Sess. (1981) [hereinafter 1981 House Report]. HOUSE SELECT COMM. ON AGING, *Elder Abuse: A National Disgrace*, COMM. PUB. NO. 99-502, 99th Cong., 1st Sess. (1985) [hereinafter 1985 House Report].
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13. *Id.*
14. Mathews, *supra* note 1, at 655.
15. *Id.*
16. *Id.* at 663 n.86.
17. *Id.* at 663.
18. *Id.* at 655.
19. 1985 House Report at 11.
20. *Id.* at 3.
21. *Id.* at 11
22. *Id.*
23. *Id.*
24. *Id.*

25. *Id.*
 26. *Id.*
 27. *Id.*
 28. *Id.*; See 42 U.S.C. 1381 (1982 & Supp. V 1987).
 29. *Id.* at § 1382a(A)(i).
 30. Mathews, *supra* note 1, at 673.
 31. H.R. 769, 97th Cong., 1st Sess. (1981).
 32. *Id.*
 33. *Id.*
 34. Pub. L. No. 100-175 144b, 42 U.S.C. 3023g (1982 & Supp. V 1987).
 35. 1987 U.S. CONG. CODE & Admin. NEWS, 100th Congress, 1st Session, at 880.
 36. 42 U.S.C. § 3023g.
 37. 42 U.S.C. § 3027(16).
 38. *Id.* at § 3030p.
 39. *Id.*
 40. *Id.* at § 3035g.
 41. *Id.* at § 3035g(a)(2).
 42. *Id.* at § 3035g(e) (the statute does not apply to medical services).
 43. *E.g.*, ILL. REV. STAT. ch. 38, para. 16-1.3 (1987); CAL. PENAL CODE 368 (West 1989).
 44. ILL. REV. STAT. ch. 38, para. 16-1.3 (1987).
 45. *Id.* at para. 16-1.3(b)(1).
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 49. ILLINIOS ATTORNEY GENERAL, *The Illinois Attorney General's Question and Answer Information Sheet on 16-1.3*, at 2 (Jn. 1989).
 50. ILL. REV. STAT. ch. 38, paras. 16-1.3(a), 1005-8-1, 1005-8-3 (1987).
 51. ILL. REV. STAT. ch. 38, para. 16-1.3(g).
 52. *Id.*
 53. ILL. REV. STAT. ch. 38, para. 16-1 (1987).
 54. *Id.*
 55. *Id.* at para. 16-1(b)(7).
 56. ILL. REV. STAT. ch. 38, paras. 16-1, 1005-8-1, 1005-8-3 (1987).
 57. ILLINIOS ATTORNEY GENERAL, *The Illinois Attorney General's Question and Answer Information Sheet on 16-1.3*, at 2 (Jn. 1989).
 58. ILL. REV. STAT. ch. 121 1/2, para. 261 - 272 (1987).
 59. *Id.* at para. 263.
 60. *Id.* at para. 262.
 61. *Id.* at para. 270(a).
 62. *Duhl v. Nash Realty, Inc.*, 102 Ill. App. 3d 483, 495, 429 N.E.2d 1267, 1277 (1st Dist. 1982).
 63. *Id.*
 64. CAL. CIV. CODE 1780 (West Supp. 1989).
 65. 1985 House Report at 11.
 66. ILL. REV. STAT. ch. 73, para. 975a(2),(3) (1987).
 67. *Id.* at para. 975a(2)(c).
 68. *Id.* at para. 975a(4)(a).
 69. *Id.* at para. 975a(2)(a).
 70. *Id.* at para. 975a(2)(b).
 71. *Id.* at para. 975a(3)(a),(b).
 72. *Id.* at para. 975a(3)(d).
 73. *Id.* at para. 975a(3)(f).
 74. *Id.* at para. 975a(6)(a).
 75. *Id.* at para. 975a(6)(b)(ii).
 76. *Id.* at para. 975a(11)(b).
 77. ILL. REV. STAT. ch. 111, paras. 4400-1 to 4400-63 (1987).
 78. *Id.* at para. 4400-22(10).
 79. *Id.* at para. 4400-22(18).
 80. *Id.* at para. 4400-24.
 81. ILL. REV. STAT. ch. 121 1/2, paras. 1601 - 1605 (1987).
 82. *Id.* at para. 1603(a)(1) and (2).
 83. *Id.* at para. 1603(a)(3).
 84. *Id.*
 85. *Id.* at para. 1603(b)(1).
 86. *Id.* at paras. 1604, 1605; ILL. REV. STAT. ch. 38, para. 1005-8-1(a) (1987).
 87. *Id.* at para. 1605.
 88. BUREAU OF THE BUDGET AND DEPARTMENT OF PROFESSIONAL REGULATION, *The Governor's Sunset Report on the Illinois Land Sales Act*, 3-4 (1988).
 89. *Id.*
 90. 1989 Ill. P.A. 86-1007.
 91. *Id.* at Section 14.
 92. *Id.*; ILL. REV. STAT. ch. 38, para. 1005-8-1(a) (1987).
 93. 1989 Ill. P.A. 86-1007 at Section 6 (a), (b), (g), (h) and (i).
 94. *Id.* at Section 6.
 95. *Id.* at Section 16.
 96. GA. CODE ANN. §§ 106-1501 to 106-1507 (Harrison 1989).
 97. *Id.* at § 106-1501(a).
 98. *Id.* at § 106-1501(a)(3) and (4).
 99. *Id.* at § 106-1502(a)(1)-(7).
 100. *Id.* at § 106-1502(a)(10).
 101. *Id.* at § 106-1502(a).
 102. *Id.* at § 106-1503(b).
 103. *Id.* at § 106-1503(a).
 104. *Id.* at § 106-1502(a)(9).
 105. Metcalf, *A Response To The Problem Of Elder Abuse: Florida's Revised Adult Protective Services Act*, 14 FLA. ST. U.L. REV. 745 n.3 (1986). See *e.g.*, ALA. CODE § 38-9-1 (1986); FLA. STAT. ANN. §§ 415.101 - 425.112 (West 1986); ILL. REV. STAT. ch. 23, paras. 6301 - 6510 (1987); N.Y. SOC. SERV. LAW § 473 (McKinney 1985); TEXAS HUM. RES. CODE ANN. §§ 48.001 - 48.084 (Vernon 1986).
 106. See, *e.g.*, TEXAS HUM. RES. CODE ANN. § 48.036(a) (Vernon Supp. 1987). The issue of whether voluntary or mandatory reporting is advisable is outside the scope of this article. For a more extensive discussion of this issue see Mathews, *supra* note 1, at 661.
 107. See, *e.g.*, ILL. REV. STAT. ch. 23, para. 6605 (1987).
 108. See, *e.g.*, ALA. CODE. 38-9-2(6),(7) (Supp. 1985); ALASKA STAT. 47.24.100 (1984); LA. REV. STAT. ANN. § 403.2 (1986).
 109. See, *e.g.*, Mo. ANN. STAT. §§ 660.250 to 660.295 (Vernon 1986 & Supp. 1990).
 110. The Illinois Financial Exploitation of the Elderly statute includes joint tenants and tenants in common as persons who "stand in a position of trust" with an elderly person. ILL. REV. STAT. ch. 38, para. 16-1.3(c)(2). See *supra* notes 44-52 and accompanying text.