Fifty Ways to Exploit Your Grandmother: The Status of Financial Abuse of the Elderly in Minnesota

Terrie M. Lewis

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FIFTY WAYS TO EXPLOIT YOUR GRANDMOTHER:
THE STATUS OF FINANCIAL ABUSE OF THE ELDERLY
IN MINNESOTA

Terrie Lewis†

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I. INTRODUCTION

She is very adamant about it. She wants her independence. She wants to live in her own home, tend her own yard, and grow her own garden. She wants to buy her own groceries, pay her own

† J.D. Candidate 2002, William Mitchell College of Law, B.S. Winona State University, 1973. I would like to thank my husband, Roger, and children Dawn, Chris, and Kelly, and their families for their unending support, patience, and understanding. A special thanks to my parents, Joe and Marge, who have taught us all by their example to be independent and to work towards our goals. Thanks to Susan Peterson and Andre LaMere for their suggestions and editing expertise.
bills, and make her own decisions. She wants responsibility for her own life. Your teenager? No. She is your widowed mother and she is 85 years old. Her health is fairly good, and her mind is still intact. Nevertheless, you are still worried. You are concerned that someone might take advantage of her, steal her money, or talk her into something that will harm her financially and emotionally. Are you overreacting? No.

Financial abuse of an elderly person is a real possibility. Interaction with the wrong people could cost an elderly person her house, her bank account, all of her assets, and her ability to remain independent. Financial abuse of the elderly can be split into two categories: abuse that takes place in institutions such as hospitals, nursing homes, and boarding or long-term care facilities (institutional abuse) and abuse that occurs while the elderly person is living in their own home or with family members (domestic abuse).

Attention to the problem of elder abuse was triggered in 1977 by a United States Senate Special Committee on Aging, Subcommittee on Long Term Care report, investigating provider fraud in the Medicaid Program. As a result of the investigation, extensive patient abuse in nursing homes came to light. Further research showed that these abuses were rarely prosecuted because of lack of education on the part of the prosecutors and police forces in the nature, extent, and ramifications of the abuse and a lack of funding to do anything about it. In 1978, Congress mandated state-run Medicaid Fraud Control Units (MFCUs) to investigate abuse in nursing homes, group homes and hospitals receiving Medicaid funds. Although assisted/residential living facilities were not included, some states have since included them in Medicaid payment waiver programs and have brought them under the auspices of the MFCUs.

Nationally, the MFCUs have convicted 8,000 perpetrators recovering...
Part II will examine Minnesota’s statutory protections for the elderly. Part III will describe misuse of assets and consumer fraud and explore specific examples of these types of exploitation. Part IV will examine the legislation, preventive programs, and redress available in other states, specifically California, Massachusetts, and Oregon. Part V, will present recommendations for a coordination of efforts in Minnesota to prevent, prosecute, and redress financial abuse of the elderly. These will include ideas for the general public, businesses, police departments, the legislature, the court system, and agencies dealing specifically with the elderly.

The incidence of elder abuse is increasing because of three factors. The first factor is the increase in the elderly population. Census Bureau estimates predict a national increase in the elderly population of between 72 and 194 percent by the year 2030. The millions of dollars in health-care fraud and patient abuse since their inception. Id. In 1996 alone, they investigated 4,000 allegations of patient abuse and neglect. Id. Between 1993 and 1995, Minnesota updated their system of investigation and prosecution. Id. at 34. A coalition was formed joining the efforts of the MFCUs, nursing home representatives, county adult protective services, law enforcement, and other affected parties. Id. As a result, legislation was updated and a single entry system, called a common entry point, was devised. Id.

A common entry point is the “unit responsible for receiving the report of suspected maltreatment . . . .” MINN. STAT. § 626.557, subd. 9(a)(2000). The common entry point must be staffed 24-hours a day. Id. The person taking the report must use a standardized form filling in information as required by statute. Id. at subd. 9(b)(1-13). Upon taking the report, the alleged abuse or exploitation is reported to other agencies depending upon the type of abuse and the source of the exploitation. Id. at subd. 9(a)-(b). The statute also requires data accumulation regarding the abuse or exploitation. Id. at subd. 12b. The effect of the statute is to streamline the process of reporting abuse.

3. For purposes of this paper, “elderly” will follow the traditional age of sixty-five as the breaking point between middle age and elderly. There are some instances where 50 or 55 is considered the dividing line, for example, Senior Citizen Discounts, SCAMS Act (Senior Citizens Against Marketing Scams Act, 18 U.S.C. § 2325-27 (1994) (part of the Federal Crime Bill of 1994)), and AARP membership.

4. Census Bureau population predictions are classified as “Low Series,” “Middle Series,” or “High Series” estimates. A “Low Series,” or conservative estimate, would predict a 2030 population in the 65-plus category of 58,869,000. U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES 17 tbl.17 (119th ed. 1999) [hereinafter CENSUS 1999]. A “Middle Series” projection estimates a 2030 population in the same age group of 69,379,000. CENSUS 1999 at 17 tbl.17; see also ADMINISTRATION ON AGING, Table No. 1—PROJECTIONS OF THE POPULATION, BY AGE AND SEX: 1995 TO 2050, available at http://www.aoa.dhhs.gov/aoa/stats/aging21/table1.html(estimating 2030 population for 65-plus using Census Bureau Middle Series calculations) (last visited Sept. 16, 2001). Percentage of increase is found by taking the Low 2030 population age 65 and above less Low 2000 population age 65 and above divided by Low 2000 population age 65 and
elderly population is expected to peak between 2030 and 2050.\footnote{Minnesota’s elderly population is likewise increasing, with a 15.1 percent increase expected between 2000 and 2010. The increase from 2000 to 2025 is projected to be 84 percent with a projected population of 65 and above at 1,099,000 in Minnesota by 2025.}

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The second factor affecting an increase in elder abuse is that a high percentage of seniors live alone.\footnote{The second factor affecting an increase in elder abuse is that a high percentage of seniors live alone. Living alone makes it easier for an elderly person to be abused. The third factor is that the elderly are worth exploiting. They average a net worth of over $250,000. Over seventy percent own their own vehicles and their own homes. The elderly own retirement accounts, mutual funds, and stocks. Exploitation can reap rewards for criminals who know how to reach the elderly.}

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II. MINNESOTA STATUTES

Minnesota has three statutes to protect the elderly. These statutes are the Vulnerable Adults Protection statutes (Vulnerable above.\footnote{Census 1999 at 17 tbl.17. The Census Bureau describes a liberal estimate in their tables as a “High” estimate. Id. Percentage of increase is found by taking the High 2050 population age 65 and above less High 2000 population age 65 and above divided by High 2000 population age 65 and above. Id.}

\footnote{Census 1999, supra note 4, at 17 tbl.17.}
\footnote{Id. at 36 tbl.36. Minnesota 65 and over projection for 2010 of 686,000 less 2000 projection of 596,000 divided by 2000 projection.}
\footnote{U.S. Census Bureau, Projections of the Populations, by Age and Sex, of States: 1995 to 2025, at http://www.census.gov/population/projections/state/stpjour.page.txt (last visited Sept. 16, 2001).}
\footnote{Census 1999, supra note 4, at 57 tbl.61. Nationally, in 1998, 9,923,000 out of 32,083,000 seniors lived alone. This is 30.9 percent. It is projected in Minnesota that the 65 and over population will reach 686,000 by the year 2010. Id. at 36, tbl.36. Applying the same 30.9 percent, there may be over 200,000 elderly people living alone in Minnesota by 2010.}
\footnote{Census 1999, supra note 4, at 488 tbl.771.}
\footnote{Id. at 489 tbl.772.}
\footnote{Id. at 518 tbl.801.}
\footnote{Since many scam artists operate through the mail or over the telephone, they may have no idea of the financial status of their victim. They could be taking from someone living on $10,000/month or $1000/month.}

http://open.mitchellhamline.edu/wmlr/vol28/iss2/6
Adults Protection Act), the Financial Exploitation of a Vulnerable Adult Act, and the Deceptive or Unfair Trade Practices; Elderly or Handicapped Victims Act.

A. Vulnerable Adults Protection Act

In 1980, Minnesota enacted the Vulnerable Adults Protection Act. This legislation was a grass roots movement brought on by the personal experience of a family with a loved one in a nursing home. Prior to the enactment, the defining attribute of a person to be protected was their place of care; an adult in need of protection had to be in the care of a hospital, nursing home, or other related facility. The 1980 statute expanded the laws

19. Minnesota has historically protected those who were vulnerable, even though the labels may have been different. In 1894, it was a misdemeanor to unlawfully confine in an unauthorized place a feebleminded, lunatic or insane person or to treat them in a harsh, cruel, or unkind manner. Minn. Gen. St. 1894, § 6610.

In 1963, the legislature mandated that institutional managers or employees who abused or ill-treated a mentally ill or physically disabled person confined in the institution could be sentenced to imprisonment for up to a year and/or pay a fine up to $3000. Minn. Stat. § 609.23 (1963) (amended at Minn. Stat. § 609.23 (2000)).

In 1973, the legislature broadened the laws regarding abuse by mandating the reporting of “physical injury inflicted upon . . . [persons being cared for in the facility (defined in Minn. Stat. § 626.555, subd. 1 (1973) (repealed 1980) as a hospital, nursing home, or other related institution)] by other than accidental means, when the injury appears to have been caused as a result of physical abuse or neglect.” Minn. Stat. § 626.555 (1973) (Reporting of Maltreatment of Patients) (repealed 1980). The legislation required reports to be made by any physician, surgeon, person engaged in the practice of healing, administrator of a hospital or nursing home, nurse or pharmacist. Minn. Stat. § 626.555, subd. 2 (1973) (repealed 1980). Failure to report the abuse or neglect was a misdemeanor. Minn. Stat. § 626.555, subd. 8 (1973) (repealed 1980). Note that at this point, the only people to be protected were those being cared for by the
protecting the elderly in four ways.

The first and most innovative area of expansion in the statute was the inclusion of the terminology “vulnerable adult.” The Vulnerable Adults Act stipulated that those to be protected were, first of all, adults—those over the age of eighteen. Secondly, a two-prong test could be applied to the victim of the abuse to determine whether the victim should be considered vulnerable.

The first prong incorporated the institutional setting required in Minnesota Statute Sections 626.555 and 245.813. If the adult was a resident or an inpatient of a hospital, nursing home, or other institution licensed by the departments of health or human services, the adult was presumed to be vulnerable. In addition, an adult could be found to be vulnerable if he or she received outpatient services at or from a daycare facility or any agency providing home social services. No judgment needed to be made about the capacity of the adult; the adult was presumed to be vulnerable by receipt of services from the institution.

The second prong provided that an adult could also be termed facility. There was no protection for those persons outside of a facility. In 1976, the legislature once again expanded the law in four areas: those classified as abusers, the type of abuse, the reporters, and the basis for the report. The abusers were expanded to not only include facility managers and employees, but also the operator of the facility or any volunteers working there. In addition, any operator who allowed conditions to exist in the facility resulting in the named abuse could also be held responsible. The type of abuse covered was expanded to include sexual abuse. The persons mandated to report the abuse were expanded to include any individual or their delegate in the social services, psychological or psychiatric treatment, childcare education, or law enforcement fields. Knowing that abuse existed was not the only criteria for reporting; abuse was to be reported if the reporter had “reasonable cause to believe a person” was being abused. In a separate penalty subdivision, nonreporting was held to be a misdemeanor.
vulnerable based upon his or her inability or unlikelihood to report abuse or neglect because of his or her mental or physical function or emotional status. Although these are more difficult requirements to meet, they provided protection for those who were not living in an institutional setting or receiving services from an institution.

The second area expanded by the statute was in the definitions section. Here the statute broadened the meaning of abuse to include some additional types of sexual conduct. Failing to provide basic necessities such as food and clothing was included as neglect. In addition, Minnesota recognized abuse or neglect of the elderly by a caretaker who was a family member or a volunteer providing care for the vulnerable adult.

The third area of expansion in the statute was in the reporting requirements. In addition to having knowledge of abuse or reasonable cause to suspect abuse, reporting was required if the reporter had “knowledge that a vulnerable adult has sustained a physical injury which is not reasonably explained by the history of injuries reported by the caretaker or caretakers of the vulnerable adult . . . .”

25. Minn. Stat. § 626.557, subd. 2(b)(3) (amended at § 626.5572, subd. 21(4)(ii) (2000)).
27. Minn. Stat. § 626.557, subd. 2(d)(1) (1980) (amended at § 626.5572, subd. 2 (2000)). The statute expanded the definition of abuse to include prostitution and first, second, third, and fourth degree sexual conduct including conduct where it was known that the victim was physically or mentally impaired or helpless. Id.
28. Minn. Stat. § 626.557, subd. 2(e) (1980) (amended at § 626.5572, subd. 17 (2000)) (defining neglect as a caretaker failing to provide food, clothing, shelter, health care, or supervision). A caretaker is an “individual or facility who has responsibility for the care of a vulnerable adult as a result of family relationship, or who has assumed responsibility for all or a portion of the care of a vulnerable adult voluntarily, or by contract, or agreement.” Minn. Stat. § 626.557, subd. 2(c) (1980) (amended at § 626.557, subd. 2(c) (2000)).
29. Minn. Stat. § 626.557, subd. 2(c) (1980) (amended at § 626.5572, subd. 4 (2000)).
30. Minn. Stat. § 626.557, subd. 3 (1980) (amended at § 626.557, subd. 3 (2000)). An oral report was to be made immediately by telephone and a written report was to be made as soon as possible. Minn. Stat. § 626.557, subd. 4. Failure to report by a mandatory reporter was a misdemeanor. Minn. Stat. § 626.557, subd. 7(a) (1980) (amended at § 626.557, subd. 7 (2000)). In addition, intentionally failing to report also made the reporter liable for damages caused by the failure. Minn. Stat. § 626.557, subd. 7(b) (1980) (amended at § 626.557,
The fourth area of expansion in the statute was a requirement of abuse prevention plans for both the facilities and the employees and volunteers. As part of the plan, the facilities must implement written procedures for insuring that suspected cases of abuse or neglect were reported appropriately to a designated reporter and investigated promptly. Lack of swift compliance was grounds for denial of license renewal. In addition, the legislature mandated that the commissioner of public welfare was to "establish an aggressive program to educate those required to report, as well as the general public, about the requirements of this section using a variety of media."

B. Financial Exploitation of Vulnerable Adult Act

In 1995, Minnesota added a specific statute categorizing financial exploitation of a vulnerable adult as a crime. Several actions can trigger the penalties of this statute. First, failing to use a vulnerable adult’s financial resources to provide “food, clothing, shelter, health care, therapeutic conduct or supervision for the vulnerable adult” will trigger the penalty. Second, using undue influence, harassment, or duress to obtain or control the vulnerable adult’s property will trigger the penalty. Third, anyone who “forces, compels, coerces, or entices,” a vulnerable adult to provide a service that profits or provides an advantage for another, triggers the penalty. The penalties for financial exploitation of a vulnerable adult are based on the penalties for theft. The penalties range from

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38. Minn. Stat. § 609.2335, subd. 1(1).
41. Minn. Stat. § 609.52, subd. 3 (1987).
fine of not more than $700 to not more than $100,000 and imprisonment of not more than 90 days to not more than 20 years, depending upon the value of the property or the amount of the funds involved.\footnote{42} Except that a penalty can be applied for failure to provide necessities, there is no recognition that theft from those defined as a vulnerable person is more egregious than theft from the general public.

Financial abuse of the elderly can be difficult to define or to recognize, not only in Minnesota, but also across the rest of the country.\footnote{43} Because financial abuse is difficult to define or recognize, it is difficult to determine the extent of abuse. In 1996, a new study, \textit{The National Elder Abuse Incidence Study} \footnote{44} (\textit{Incidence Study}), was conducted in an attempt to determine the level of domestic\footnote{45} abuse\footnote{46} among the elderly nationwide. Previous studies had not differentiated between domestic and institutional abuse.\footnote{47} The Incidence Study estimated approximately 450,000 elderly over the age of sixty suffered from abuse and neglect in a domestic...

\footnote{42}{\textsc{Minn. Stat.} § 609.52, subd. 3 (1987).}
\footnote{43}{Paul A. Blunt, \textit{Financial Exploitation: The Best Kept Secret of Elder Abuse}, \textit{Aging Mag.}, at 62, 65 (U.S. Dept. of Health and Human Services, Admin. on Aging 1996). One of the major problems with financial exploitation is the lack of properly trained caseworkers to deal with this type of elder abuse. Most adult protection services caseworkers specialize in caregiving, not investigating transfers of funds or property. \textit{See also} Warren Wolfe, \textit{Exploiting the Elderly}, \textit{Mpls. Star Trib.}, Nov. 7, 1999, at E1. Hennepin County Attorney, Amy Klobuchar, is quoted as saying: “These can be difficult cases to investigate and prosecute. It takes some specialized knowledge—accounting, computers, handling stacks and stacks of documents—to make these cases.” \textit{Id.}
\footnote{45}{Tatara & Kuzmeskus, \textit{supra} note 2 (defining domestic abuse); \textit{see also} Hodge, \textit{supra} note 2 (discussing institutional abuse).
\footnote{46}{\textit{Incidence Study}, \textit{supra} note 44, at Ch. 3, \textit{Study Designs and Methods 2} (defining abuse as physical abuse, sexual abuse, emotional or psychological abuse, neglect, abandonment, financial and material exploitation and self-neglect).
\footnote{47}{\textsc{Select Comm. on Aging, 97th Cong.}}, \textit{Elder Abuse: An Examination of A Hidden Problem}, 17-18 (Comm. Print 1981) [hereinafter \textit{A Hidden Problem}]. The federal government initiated studies of elder abuse after Congressional hearings in 1977 on Medicaid fraud. \textit{Id.} At that time, it was estimated that nationally over one million cases of elder abuse occurred per year. \textit{Id.} Corrective measures were recommended. \textit{Id.} However, in 1990 a new report was published indicating a lack of progress—an estimated 1.5 million incidents occurred yearly. \textsc{Select Subcomm. on Aging, Subcomm. on Health and Long-Term Care, 101st Cong., 2d Sess, Elder Abuse; A Decade of Shame and Inaction} (Comm. Print 1990)[hereinafter \textit{Decade of Shame}]. These major studies did not differentiate between institutional or domestic abuse.}
The study indicated elderly females are abused more frequently than males and that more abuse occurs in the eighty and older category. In almost 90 percent of the cases, the victim knows the abuser. In addition, other studies indicate elders age 65 and over represent about 30 percent of scam victims. Sixty percent of all callers to the National Fraud Information Center describe themselves as senior citizens. Because of a lack of information in the state of Minnesota regarding elder abuse, trends and conclusions indicated by this national study can be helpful in predicting the level of elder abuse in the state of Minnesota.

C. Deceptive or Unfair Trade Practices; Elderly or Handicapped Victims Act

In addition to protecting the elderly through the Vulnerable Adults Act and the Financial Exploitation of a Vulnerable Adult statute, Minnesota also protects the elderly through the Deceptive or Unfair Trade Practices; Elderly or Handicapped Victims Act. This Act targets perpetrators who direct a charitable solicitation, consumer fraud, deceptive trade or false advertisement at a senior citizen sixty-five years of age or older, which causes the senior citizen to lose or limit the senior’s access to residence, retirement funds or other essential assets.

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48. INCIDENCE STUDY, supra note 44, at “Executive Summary” 1.
49. Id.
50. Id.
52. Id.
53. An electronic search of the archives from 1995–2000 for the Minneapolis Star Tribune and the St. Paul Pioneer Press, the Twin Cities two primary newspapers, yielded less than twenty articles published about senior citizens, vulnerable adults, financial exploitation, or scams. Four of the articles covered a single case of a former protective services employee misusing the assets of an elderly man he was caretaking. See infra notes 77-81 and accompanying text. In addition, Minnesota’s first publication of the report, Vulnerable Adult Maltreatment Allegations, was in August, 1999. See infra note 226 and accompanying text.
55. MINN. STAT. § 609.2335 (2000).
57. MINN. STAT. § 609.2336, subd. 2 (2000).
III. TYPES OF EXPLOITATION AND ABUSE

Paul Simon sang in the 1970s about “Fifty Ways to Leave Your Lover.”58 His new refrain for the 2000s could be “Fifty Ways to Exploit Your Grandmother.”59 In actuality, the number of ways to exploit the elderly probably numbers more than fifty. These can be broken down into four categories: (1) misuse of assets, (2) consumer fraud (scams), (3) theft, and (4) negligence in caring for the senior citizen’s assets.60 This article will focus on misuse of assets and consumer fraud—two categories dealt with in the preceding Minnesota Statutes.

A. Misuse of Assets

She was 85 years old, living in her own home, and needing some help taking care of her daily needs.61 So, she hired a young woman as a caretaker to assist her.62 The caretaker moved her boyfriend into the elderly woman’s home, and the two of them confined the elderly woman to her bedroom with no food, no light, and only the dog and the cockroaches to keep her company.63 Once in awhile they took her to the bank so she could withdraw money for them.64

Asset misuse is a particularly egregious type of financial abuse because it is perpetrated by someone the elderly person knows and trusts: most commonly, family members, caretakers, and other fiduciaries such as attorneys.65 The activity accounts for a large

58. Paul Simon, a pop singer/songwriter since the 1960s, recorded “Fifty Ways to Leave Your Lover” on STILL CRAZY AFTER ALL THESE YEARS, released October 1975.

59. Women are more likely than men are to be exploited. INCIDENCE STUDY, supra note 44 and accompanying text.


62. Id.

63. Id.

64. Id. The elderly woman is a widow and her bank account was depleted by her trips to the bank with her caretaker. Id.

65. Blunt, supra note 43, at 62-63. Mr. Blunt discusses the three categories of senior citizens susceptible to financial abuse: (1) those who are physically dependent upon a caregiver, (2) those who are “slipping” in their ability to take care of their own financial needs due to the effects of aging, and (3) those who have lost a spouse and are overwhelmed by the responsibilities and decisions connected with handling money, property and other assets. Id. In these three
percentage of financial exploitation of the elderly. On some occasions, the exploiter excuses the misuse by claiming he or she is entitled to the money. Misuse of assets includes unauthorized withdrawing of funds from automatic teller machines, writing checks on the elderly person’s account with a forged signature, cashing checks without authorization, and taking out loans on the elderly person’s property which can cause foreclosure proceedings due to nonpayment of the loan. In addition, valuable property such as jewelry, artwork or furniture can be removed from the elderly person’s home.

Bank employees, attorneys, caretakers, or family members can gain access to a senior citizen’s assets when the senior citizen grants them power of attorney. A power of attorney allows someone to “transfer an elder’s property, including houses, stocks, bonds and bank accounts.”

In one Minnesota case, a bank employee, appointed a senior citizen’s attorney-in-fact, became her exploiter. He was able to take advantage of the senior citizen because he remained her attorney-in-fact even after he left the bank’s employ. When the victim was hospitalized, the exploiter raided her accounts. He
wrote checks to himself, forging her name.\(^75\) Although he was ultimately charged and found guilty, the victim only received a portion of her absconded funds, and those were from the bank on which the funds were drawn, not from the exploiter.\(^76\)

The most highly publicized\(^77\) financial abuse case in Minnesota in the past ten years involved a part-time case aide who worked for Hennepin County’s Adult Protective Services.\(^78\) A social worker assigned to T. Wayne Williams gave the perpetrator, David Kopecky, permission to help Mr. Williams sort through some hospital bills.\(^79\) At the time, Mr. Williams was competent to handle his bills and finances.\(^80\) Without Protective Services’ knowledge, Mr. Williams hired David Kopecky as a personal manager and gave him power of attorney.\(^81\) Kopecky had access to Williams’ bank.

\(^75\) Id. The exploiter admitted he had forged the victim’s signature on a number of checks he wrote to himself to pay his own expenses and to use for gambling. Hoppe v. Kandiyohi County, No. C0-94-1627, 1995 WL 70167, at *1 (Minn. Ct. App. Feb. 21, 1995).

\(^76\) See Hoppe, 543 N.W.2d at 637.

\(^77\) David Chanen, County Worker Faces Charges in 23 Counts of Bilking Client, MPLS. STAR TRIB., Jan. 19, 1996, at B1; David Chanen, Dubious Doctor Helped Bilk Elderly Man, Prosecutors Say, MPLS. STAR TRIB., Apr. 5, 1996, at B2; Anne O’Connor, Ex-Health Aide Sent to Prison For Defrauding Elderly Client, MPLS. STAR TRIB., Aug. 13, 1996, at B3; Margaret Zack, Health Worker Guilty of Bilking Thousands from Elderly Man, MPLS. STAR TRIB., June 26, 1996, at B7. In these articles, the Star Tribune reported that David Kopecky involved two other men in his exploitation of a wealthy elderly gentleman. Dubious Doctor, supra. One was paid $22,000 for doing odd jobs around the victim’s home. Zack, supra. The other posed as a doctor to give the victim medical advice. Dubious Doctor, supra; Zack, supra. Kopecky received a thirty-five month sentence for unauthorized use of the victim’s ATM card, posing as a lawyer and son of the victim while having papers notarized to change the delivery of the victim’s mail to his own address, and depositing a certificate of deposit for more than $400,000 in a money market in David Kopecky’s own name. County Worker, supra; Dubious Doctor, supra; O’Connor, supra. The exploitation came to light when the victim’s bank became suspicious after Kopecky repeatedly withdrew $200 using the victim’s ATM card. Kopecky v. County of Hennepin, No. C8-94-2492, 1995 WL 311572, at *1 (Minn. Ct. App. May 23, 1995).

\(^78\) Kopecky, No. C8-94-2492, 1995 WL 311572, at *1. Kopecky sued Hennepin County for denial of his reemployment insurance claim due to a determination that he had been fired for gross misconduct. Id. He claimed that his withdrawal of William’s funds were not for his own benefit, even though he could not explain their disposition. Id. at *3. In the alternative, Kopecky argued that “his actions were not connected to his employment” and therefore, should not affect the reemployment insurance claim. Id. at *4. The court did not agree. Id. at *5.

\(^79\) Id. at *1.

\(^80\) Id.

\(^81\) Id.
accounts, ATM card and a certificate of deposit worth $400,000. Kopecky was charged and found guilty of financial exploitation for misappropriating almost a quarter of a million dollars. His sentence was 35 months in prison and restitution of $30,000. Caretakers or family members can exploit an elderly person even without power of attorney. House takeovers are one example of this kind of exploitation. In these cases, a caretaker, family member or even a stranger can confine an elderly person to their home, forcing them to give up bank accounts or even signing over their homes. In other cases, while an elderly person is hospitalized, family members enter the elderly person’s home and remove cash and possessions, even selling the home without the elderly person’s permission. Some elderly persons who need care have been placed in unlicensed care facilities and have had their checks forged or been forced to sign over funds.

B. Consumer Fraud

Con artists target senior citizens in a number of ways. These
include investment fraud, sweepstakes fraud, tax refund fraud, games to the elderly. See generally Erika Gosker, Note, The Marketing of Gambling to the Elderly, 7 Elder L.J. 185, 185 (1999) (discussing gambling and lottery games, their history and particularly marketing efforts aimed towards the elderly).

91. Investment fraud can be perpetrated through telemarketing. Internet bulletin boards, offers in the mail or in person. As an example, a widow lost over $800,000 because of fraudulent advice given by a telemarketing investment firm. Starnes, supra note 90, at 19 n.1 (citing The Nature and Extent of Telemarketing Fraud and Federal and State Law Enforcement Efforts to Combat It: Hearings Before the Commerce, Consumer and Monetary Affairs Subcomm. of the House Comm. on Government Operations, 101st Cong., 2nd Sess. 16 (1990)). She was persuaded to “convert all of her assets to risky investments suggested by a ‘Group America’ representative. They repeatedly promised her financial security [by] giving authentic-sounding investment information and providing this lonely widow with nearly constant attention.” Id.; see also TRIAD, CONSUMER REFERENCE GUIDE FOR SENIORS, Think You’re Cut Out to be a Fat Cat?, Topic I-1, and Worldwide Web of Cheaters, Liars and Thieves, Topic J-1, warn against investment frauds posted on computer bulletin boards. Id. As an example, a notice might appear offering a chance to invest in a new obesity drug, wireless television, a part-time greeting card business, franchises, or the latest medical breakthrough. Id. Promises are made to double your money while getting in on ground floor opportunities. Id. Get-rich-quick schemes cost consumers of all ages a billion dollars a year. Id. See also FEDERAL TRADE COMMISSION, HOW TO AVOID LOSING YOUR MONEY TO INVESTMENT FRAUDS, at http://readersdigest.com/rdmagazine/aug00/investfrauds.asp (last visited July 21, 2001)(on file with author). This article discussed the promises of fraudulent investment promotions (promising high-level financial connections, insider information, investment guarantees, phony statistics, big profits in a short time and no risks). Id. Suggestions from the Federal Trade Commission to avoid exploitation include verifying information about the company involved, being skeptical of unsolicited calls particularly from out-of-state salespeople, scrutinizing testimonials, and investing in opportunities the investor knows something about. Id. See also White, infra note 275 (noting an Internet fraud using audio presentations on Christian-based web sites allegedly defrauding the elderly and others of at least $28.3 million). In addition, the United States Postal Service estimates $100 million dollars are scammed from American consumers annually by international con artists. Fraud & Scams, supra note 51, at 13. The characteristics of investment fraud through the mail are the same as other scams—the investment opportunity is strictly confidential, it is a risk-free opportunity, and the end result is to get rich quick. Id. A warning from the United States Postal Service read:

An envelope arrives unexpectedly in your mailbox. It contains a confidential business proposal from a mysterious Nigerian government official who offers you a unique business opportunity to earn millions of dollars. Individuals who have fallen prey to the scheme are eventually invited to visit Nigeria or some other foreign country to finalize the transfer of funds, but instead are pressured to pay additional fees and expenses.

Id.

92. Use of Mass Mail to Defraud Consumers: Hearing Before the Senate Subcomm. on International Security, Proliferation, and Federal Services of the Comm. on Governmental Affairs, 105th Cong. 52 (1998) [hereinafter Mass Mail]. On September 1, 1998, the Senate Subcommittee heard testimony on mass mail used to defraud
insurance fraud, other door-to-door sales frauds, and one of the newest frauds to hit the marketplace—Internet frauds. Three of the most common types of fraud are telemarketing fraud, home repair fraud and health care fraud.

1. Telemarketing Fraud

A telemarketer can target the senior citizen’s bank accounts, consumers. Id. Of chief concern was the vulnerability of the elderly to the offers of big prizes packaged in solicitations that looked authentic. Id. The committee heard testimony regarding an elderly woman who wrote 148 checks to 56 contests in a five-day period of time. Id. One sweepstakes scam in New Jersey targeted the elderly and inundated them with 125 different mailings using four different company names coming from approximately 70 different addresses throughout the United States. Id. The intent was to confuse the victim and convince them to send a “judging fee” in order to collect their prize. Id.

93. FEDERAL TRADE COMMISSION, HOAX TARGETS ELDERLY AFRICAN AMERICANS, at http://www.ftc.gov/bcp/conline/pubs/alerts/hoaxalrt.htm. The Social Security Administration warned elderly African Americans about advertisements perpetrating a tax refund hoax. Id. The ad states that in order to receive the tax refund, they must be African Americans born before 1927. Id. To qualify for this “Slave Reparation Act” refund, they must supply their name, date of birth and social security number to a “National Victims Register.” Id. The exploiters use the information to open charge accounts, obtain car loans, and commit other crimes. Id.

94. Insurance Fraud Provides Basis for $1 Million Punitive Damages Award, ELDER L. ADVISORY, Feb. 1994, at 7. An illiterate elderly woman in her 70s with only her $400 Social Security check for income, was scammed by an insurance agent. Beginning in 1986, the agent visited the victim in her home. He persuaded her to purchase five different life insurance policies. He also suggested that she purchase a Medicare Supplement policy that was useless since she was covered by Medicaid and not eligible for Medicare. Her premiums totaled more than 25 percent of her monthly income. In a suit against the insurance company, the Alabama Supreme Court upheld a $1 million punitive damages award. Id. (discussing Foster v. Life Ins. Co. of Georgia, Lexis 17 (Ala. Jan. 14, 1994)).

95. Fraud & Scams, supra note 51, at 13. In January 1999, the Minnesota Attorney General’s Office initiated a suit against a company selling meat door to door. The salesperson claimed the meat was part of a VFW or local restaurant order but that the organization didn’t have enough room to take the full order. As a result, the salesperson had “extra” meat that was “restaurant quality” that the consumer could buy for a “discounted” rate.” Id. at 12. Not only was the price for the meat higher than normal, the quality of the product was poor. Id. at 12.

96. Elder Abuse in the Digital Economy, infra note 101 (reporting Attorney General Hardy Myers’ statement that any scam that can be perpetrated through the mails or over the phone can be perpetrated on the Internet; that online sales of prescription drugs, travel plans, work-at-home schemes, get-rich-quick opportunities, and pyramid scams are all areas of concern; that in 1997, Oregon had only one complaint about an Internet retailer; and that by 1999, Internet-related complaints were the ninth most popular complaint received).
investments, and credit cards.\textsuperscript{97} This is big business—$580 billion a year according to the National Fraud Information Center.\textsuperscript{98} Although there are benefits to the telemarketing business,\textsuperscript{99} it is estimated that there are 14,000 illegal telemarketing operations each year.\textsuperscript{100} Although the elderly are not the only ones who fall for a telemarketer’s fraudulent scheme, it is estimated that they absorb a majority of the estimated $40 billion\textsuperscript{101} a year taken from telemarketing victims.\textsuperscript{102} The illegal operations frequently target the elderly\textsuperscript{103} and the senior citizen often succumbs to the caller’s techniques.\textsuperscript{104} Sometimes the victim is lonely and just wants to talk to someone.\textsuperscript{105} More often than not, however, seniors’ good manners get the best of them—they grew up in an era where it was

\textsuperscript{97} National Fraud Information Center, Fighting Fraud Against Older Consumers (1999) at http://www.fraud.org/elderfraud/elderfraud.htm (last visited Sept. 16, 2001). Telemarketers, especially dishonest ones, are good at what they do. \textit{Id.} For example, telemarketers may persuade people to mortgage their homes to claim Sweepstakes or make investments. \textit{Id.}


\textsuperscript{99} Starnes, supra note 90, at 206. Telephone access to products and services, including catalog orders, provides an efficient and simple way for consumers to place orders in a legitimate way. \textit{Id.}

\textsuperscript{100} Philbin, supra note 98 (citing statistics from the National Fraud Information Center); see also National Fraud Information Center, supra note 97 (noting that “[s]urveys by the American Association of Retired Persons reveal[s] that over half of telemarketing fraud victims are age 50 or older.”).


\textsuperscript{103} National Fraud Information Center, They Can’t Hang Up—Help for Elderly People Targeted by Fraud (1999) at http://www.fraud.org/elderfraud/eldset.htm (last visited Sept. 16, 2001). Seniors are targeted relentlessly, some receiving as many as 20 calls a day from scam artists. \textit{Id.} Once an elderly person has succumbed to a fraudulent telemarketing pitch, the chances are he or she will continue to receive additional solicitations. \textit{Id.} The senior’s name is placed on a “sucker list” and passed around or sold to other scam artists. \textit{Id.}

\textsuperscript{104} Starnes, supra note 90, at 207; see also Philbin, supra note 98.

\textsuperscript{105} Philbin, supra note 98. Discussion by Richard Potoczek, Supervisory Special Agent of the FBI’s Economic Crimes Unit.
not acceptable to be rude or to just hang up on someone.\footnote{106}

Telemarketing fraud can take many forms—bogus charity schemes, foreign lotteries,\footnote{107} illegal sweepstakes,\footnote{108} and travel fraud.\footnote{109} One charity scheme targeted thousands of senior citizens asking for their help for victims of natural disasters and the families of the Oklahoma City bombing victims.\footnote{110} Donors were promised cash awards and gifts in response to their generosity.\footnote{111} Victims who donated did receive cash bonuses amounting to ten percent of what they donated; gifts consisted of “cheap candleholders, crucifixes, calendars, or ceramic flowers.”\footnote{112}

Telemarketers offering “free” trips to exotic places, such as the Bahamas, often snare the elderly. The victim is told that all she
needs to do is pay some fees and taxes and she will win a trip. If the elderly person objects to paying the fees and taxes because she does not have enough money in her checking account, the telemarketer convinces her that she must give her commitment immediately or she will lose her trip—a credit card will work for payment. If tickets for a trip do arrive, they will either be missing something essential, like accommodations, or the victim will be contacted again and again, each time to pay for additional charges such as hotel taxes or service fees.

2. Home Repair Fraud

The Smiths were 91 and 92 years old. Both suffered from short-term memory loss and had difficulty remembering morning events in the afternoon. Three men approached the Smiths offering to do yard work and to put a new surface on their driveway. The Smiths “hired” them and they performed minimal work. Payment, however, was requested and received numerous times, including one day when multiple checks were written. In total, the three men collected $27,000.

Home repair frauds are frequently perpetrated against the elderly. Oftentimes exploiters drive through neighborhoods looking for signs of an elderly residence—wheelchair ramps, unkempt yards, and homes in need of maintenance. The perpetrator approaches the home, usually stating he or she is doing work in the area and noticed a problem that needed to be repaired. The exploiter offers to repair roofing, siding, insulation or a driveway. The exploiter claims to be able to fix

113. Federal Trade Commission, supra note 110; see also Fitzgerald, supra note 102.
114. Federal Trade Commission, supra note 110; see also Fitzgerald, supra note 102.
115. Federal Trade Commission, supra note 110; see also Fitzgerald, supra note 102.
116. Name was changed to protect privacy.
117. Interview with Mary McGurran, L.S.W. and Anita Raymond, L.I.S.W., Protective Services, Senior Resources Division, Volunteers of America, in Minneapolis, Minn. (Oct. 5, 2000).
118. Telephone Interview with Kris Maser, Maser and Amundson (Sept. 19, 2000).
119. Id.; see also Starnes, supra note 90, at 209-10.
120. Starnes, supra note 90, at 224 n.60 (citing various types of repairs promised by an exploiter as discussed in Consumer Frauds and Elderly Persons: A Growing Problem: Hearing Before the Staff of Senate Special Comm. on Aging, 98th Cong.
furnaces or chimneys or to waterproof a basement. Frequently, he or she offers a secret bargain price which cannot be communicated to anyone else. Almost always the perpetrator demands payment up front. The work is either completed poorly or not at all. Sometimes the contractor starts the work without permission from the elderly person and then demands payment for what has been completed. It is not unusual for an exploiter to watch the obituaries, looking for recent widows to target.

3. Health Care Fraud

Forming the largest group of victims, it is estimated that 60 percent of all victims of health care fraud are elderly. The elderly suffer in large numbers from three areas ripe for health care fraud: arthritis, cancer and the effects of aging. Approximately 30 million people spend an estimated $2 billion a year trying to cure or treat arthritis with unproven remedies. The threat of cancer brings feelings of fear and hopelessness. The scam artist’s promises

(1983)[hereinafter A Growing Problem].
121. Starnes, supra note 90, at 233 n.60 (citing A Growing Problem, supra note 119, at 6).
122. Id.
123. Id.
124. Id. at 209-10.
125. Id. at 210.
126. Id.
128. NATIONAL INSTITUTE ON AGING, supra note 127; see also Kurtzweil, supra note 127. While these three health problems receive a lot of attention in health care frauds, problems such as HIV/AIDS, Alzheimer’s, multiple sclerosis, and diabetes also receive a fair amount of attention. FEDERAL TRADE COMMISSION, FRAUDULENT HEALTH CLAIMS: DON’T BE FOOLED (1999), at http://readersdigest.com/rdmagazine/aug00/healthclaims.asp (last visited July 21, 2000)[hereinafter FRAUDULENT HEALTH CLAIMS] (on file with author).
129. FRAUDULENT HEALTH CLAIMS, supra note 128. These remedies include, but are not limited to: New Zealand green lipped mussel extract, vitamin pills, desiccated liver pills, shark cartilage, honey and vinegar mixtures, bottled seawater, and Chinese herbal medicines that have no herbs but do contain potentially dangerous drugs. Id.; see also NATIONAL INSTITUTE ON AGING, supra note 127.
of quick cures through various treatments brings hope to cancer victims. Frequently, the scam artists claim the medical profession or government is preventing a product from being on the market even though there are case histories with amazing results. In some cases, the victim is convinced to travel a distance to a “clinic” with an unlicensed physician.

Another favorite area to target the elderly is with products to prevent aging and improve their appearance. Some legitimate products will improve skin wrinkling or reverse baldness, but they do not interfere with the progression of the aging process. An elderly person can be the victim of a scam while believing he or she is improving health.

IV. SPECIALIZED SOLUTIONS IN OTHER STATES

A. California

1. Legislation

California’s statutes are recognized for their comprehensiveness in providing protection for the elderly.

130. FRAUDULENT HEALTH CLAIMS, supra note 128; see also NATIONAL INSTITUTE ON AGING, supra note 127.
131. FRAUDULENT HEALTH CLAIMS, supra note 128.
132. Id.
133. NATIONAL INSTITUTE ON AGING, supra note 127.
134. Id.
135. Id. Dietary supplements such as products containing vitamins, minerals, high potency amino acids, botanicals, enzymes, herbs, animal extracts, and bioflavanoids are commonly touted as having the ability to cure a multitude of problems including: being overweight or lacking in body mass, “shrinking tumors, curing insomnia, reversing hair loss, relieving stress, curing impotency, preventing memory loss, improving eye sight, and slowing the aging process.” FRAUDULENT HEALTH CLAIMS, supra note 128. Many of these supplements are not only useless but also unsafe, causing illness instead of curing it or interacting with other drugs in a dangerous manner. Id.
136. NERENBERG, supra note 9, at 52-53 (citing California statutes in a listing of Best Practices and Resources). But cf. CAL. WELF. & INST. CODE § 15610.07, Historical and Statutory Notes, 2001 Main Volume, Section 1 (a-e) of Stats. 1998, c. 946 (S.B.2199) (noting that 32 percent of the 225,000 annual cases of adult abuse, including elderly and dependent adults, were financial abuse; that more than 50% of those abused were unable to “meet their own needs due to frailty, untreated health conditions, mental or emotional problems, or family dysfunctions”; that the increase in number of abuse situations from 1986-87 to 1998 was 1000%; that California was unable to respond to 80% of the cases reported
There are five notable areas in California Statutes. First, California protects two categories of adults: an elder person, defined as someone residing in the state who is over the age of 65, and dependent adults, defined as those residing in the state between the ages of 18 and 64 either as an inpatient in a 24-hour health facility or with physical or mental limitations restricting their ability to care for or protect themselves. The critical part of the definition is protecting the elderly based upon their age rather than capacity.

Second, California recognizes by statute that not only is the level of abuse of elder adults rising but also that most of the abuse occurs in the home perpetrated by noncertified caregivers. The state takes on the responsibility of protecting these adults by demanding that caregivers be subjected to timely, affordable criminal background checks. While California recognizes that this will not end all abuse, it will contribute to some reduction of the number of instances where abuse is occurring.

Third, California’s required mandatory reporting list is broad: “any person who has assumed full or intermittent responsibility for care or custody of an elder . . . adult, whether or not that person receives compensation . . .”. While health practitioners, public and private facility employees, law enforcement personnel and adult protective services agencies are also mentioned, this language mandates reporting where the elder is not in a facility but instead is in a home-living environment. Family members or friends who occasionally care for or have custody of the elder are just as

due to lack of programs, personnel, telephone reporting lines, educational programs; that only 20% of the counties were able to respond to every report they received; and concluding, as a result, that it is “urgent that California establishes and funds a comprehensive adult protective services program statewide to maintain the safety of elders and dependent adults in the home and in the community”).

138. CAL. WELF. & INST. CODE § 15610.23.
139. CAL. WELF. & INST. CODE § 15670(a) (declaring that “[i]nstances of elder and dependent adult abuse are on the rise, with the majority of the abuse occurring in the home of elderly or dependent person by noncertified caregivers”).
140. CAL. WELF. & INST. CODE § 15670(b).
141. CAL. WELF. & INST. CODE § 15670(c-d).
142. CAL. WELF. & INST. CODE § 15670(c).
143. CAL. WELF. & INST. CODE § 15630(a) (emphasis added).
144. Id.
responsible for reporting abuse as those in an institutional setting. Failure to report abuse or exploitation is a misdemeanor.\textsuperscript{145}

Fourth, Alameda County Superior Court in California has clearly spelled out criteria for determining the capacity of an elder’s decision-making in the Due Process in Competency Determinations Act.\textsuperscript{146} Applying California’s Probate Code, the Rules demand that an elderly person be able to fully understand and communicate his or her rights, duties, and responsibilities\textsuperscript{147} before entering into contracts,\textsuperscript{148} making medical decisions,\textsuperscript{149} drafting a will,\textsuperscript{150} or making other decisions.\textsuperscript{151} The same criteria are applied to determine if a conservator should be assigned for the elderly person.\textsuperscript{152}

Fifth, California demands that, in addition to other remedies, those who are found guilty of financial abuse may have to pay attorney’s fees and costs.\textsuperscript{153} The defendant must be found guilty by clear and convincing evidence and must have been “guilty of recklessness, oppression, fraud, or malice in the commission of this abuse.”\textsuperscript{154} The legislature encourages attorneys to handle elder abuse cases by providing for fee payment, treble damages and post-mortem recoveries.\textsuperscript{155}

2. Apprehension and Prosecutorial Procedures

Two groups are credited with successfully combating financial

\begin{itemize}
\item \textsuperscript{145} CAL. WELF. & INST. CODE § 15630(h) (mandating punishment of “not more than six months in the county jail or by a fine of not more than one thousand dollars ($1000) or by both that fine and imprisonment” unless the failure to report results in death or great bodily injury, which is “punishable by not more than one year in a county jail or by a fine of not more than five thousand dollars ($5000) or by both that fine and imprisonment”).
\item \textsuperscript{146} CAL. R. ALAMEDA SUPER. CT. R. 12.19 (West 2000).
\item \textsuperscript{148} CAL. R. ALAMEDA SUPER. CT. R. 12.19.2 (defining contractual capacity).
\item \textsuperscript{149} CAL. R. ALAMEDA SUPER. CT. R. 12.19.4 (defining informed consent for medical treatment).
\item \textsuperscript{150} CAL. R. ALAMEDA SUPER. CT. R. 12.19.1 (defining testamentary capacity).
\item \textsuperscript{151} CAL. R. ALAMEDA SUPER. CT. R. 12.19.5.
\item \textsuperscript{152} CAL. R. ALAMEDA SUPER. CT. R. 12.19.3 (defining the criteria for establishing a conservator).
\item \textsuperscript{153} CAL. WELF. & INST. CODE § 15657(a).
\item \textsuperscript{154} CAL. WELF. & INST. CODE § 15657.
\item \textsuperscript{155} NERENBERG, supra note 9, at 52 (citing California statutes in a listing of Best Practices and Resources).
\end{itemize}
abuse of the elderly in the Los Angeles area—the Los Angeles Fiduciary Abuse Specialist Team (FAST) and the Elder Person’s Estate Unit (EPEU), part of the Bunco-Forgery division of the Los Angeles Police Department.\footnote{Id. at 48 (citing FAST and EPEU as two of the best programs in a listing of Best Practices and Resources).} Their success is interrelated; EPEU attributes their success to its participation in FAST.\footnote{Id.}

FAST, a county-wide team working for the prevention, intervention, and appropriate response to financial exploitation of the elderly, was developed in 1993.\footnote{Id. at 48 (citing FAST and EPEU as two of the best programs in a listing of Best Practices and Resources).} Its funding is jointly provided by the County of Los Angeles Community and Senior Services, the City of Los Angeles Department of Aging through the Older Americans Act, and WISE Senior Services, a contract agency, which coordinates FAST.\footnote{SUSAN J. AZIZ, GUIDELINES FOR ESTABLISHING AND COORDINATING A FIDUCIARY ABUSE SPECIALIST TEAM, Preface (1997).} The team consists of members from law enforcement, probate court, senior services, government, health care, legal services, financial services, and real estate.\footnote{Id. at 48 (citing FAST and EPEU as two of the best programs in a listing of Best Practices and Resources).}

FAST distinguishes itself from other multidisciplinary teams in four ways. First, the team specializes in financial abuse.\footnote{Id.} Although it recognizes that financial abuse generally occurs in conjunction with other types of abuse, financial abuse is the focus.\footnote{Id. at 48 (citing FAST and EPEU as two of the best programs in a listing of Best Practices and Resources).} Other types of abuse are also addressed as needed.\footnote{Id.}

Second, members of the FAST team—bankers, insurance experts, securities and real estate brokers, protective services personnel, ombudsmen, public guardians—come from both the public and private sector.\footnote{Id.} Third, FAST members focus on both training and consultations on individual elder financial abuse cases.\footnote{Id. at 48 (citing FAST and EPEU as two of the best programs in a listing of Best Practices and Resources).} In addition to consultations at monthly meetings, members consult over the telephone on an emergency basis.\footnote{Id. at 48 (citing FAST and EPEU as two of the best programs in a listing of Best Practices and Resources).} Fourth, consultants commit to providing case consultations by telephone a maximum

\footnote{Id. at 48 (citing FAST and EPEU as two of the best programs in a listing of Best Practices and Resources).}
\footnote{Juliet Bruce, Swindlers Lose License to Steal in L.A.: Bunco Unit Teams Up With Aging Network to Protect Elderly, AGING MAG., at 74 (U.S. Dept. of Health and Human Services, Admin. on Aging 1996).}
\footnote{SUSAN J. AZIZ, GUIDELINES FOR ESTABLISHING AND COORDINATING A FIDUCIARY ABUSE SPECIALIST TEAM, Preface (1997).}
\footnote{Id. at 48 (citing FAST and EPEU as two of the best programs in a listing of Best Practices and Resources).}
\footnote{Council on Aging of Orange County, FAST Program, at http://www.coaoc.org/Pages/FFrame.html (last visited Sept. 17, 2001).}
\footnote{Id. supra note 158, at 1.}
\footnote{Id.}
\footnote{Id.}
\footnote{Id.}
\footnote{Id.}
\footnote{Id.}
\footnote{Id.}
\footnote{Id.}
\footnote{Id.}
of two hours per week.\textsuperscript{168} FAST’s program has grown since its inception; currently an additional 20 counties in California are modeling the FAST program.\textsuperscript{169} In addition, FAST has obtained national recognition for its work in elder financial abuse.\textsuperscript{170}

The Elder Person’s Estate Unit (EPEU) was established in 1987.\textsuperscript{171} From November, 1987 to February, 1995, the unit was responsible for the recovery and return of $31,000,000 in homes, vehicles and life savings to elderly victims\textsuperscript{172} or their heirs.\textsuperscript{173} Members of the EPEU consider the financial exploitation of the elderly to be a “hidden crime” rather than a civil matter.\textsuperscript{174} In conjunction with FAST, the EPEU has handled various cases—such as a contractor recommending unnecessary work on an elder’s home along with a financial institution to finance the deal\textsuperscript{175} and an elder whose “girlfriend” met him only at the bank every month so he could withdraw money for her use.\textsuperscript{176} The EPEU’s connection with FAST and specialization in only elder financial abuse and subsequent success has brought it national recognition.\textsuperscript{177}

\textbf{B. Oregon Civil Suit Legislation}

Oregon has the fifth highest percentage of elderly citizens of
any state in the United States.\footnote{Examining Legislation Authorizing Funds for Programs of The Older Americans Act, Focusing on Elder Abuse Prevention Provisions, The Preventing Elder Financial Exploitation Project, Medicaid Fraud Control Units, and the Long Term Care Ombudsman Program: Hearing Before the Senate Subcommittee on Aging of the Committee on Health Education, Labor, and Pensions, 106th Cong. 25 (1999)(statement of Stephen J. Schneider, Oregon Department of Justice Liaison, Senior and Disabled Services Division, Oregon Department of Human Resources, Salem, Oregon).} Between 1993 and 1997, the number of reported cases of financial exploitation of the elderly has tripled, becoming the most common type of elder abuse in the state.\footnote{Id.} As a result, Oregon has coordinated several programs and legislation to combat financial abuse of the elderly.

In 1994, the Oregon Attorney General’s office in conjunction with the Oregon Department of Justice, developed a Task Force on Elder Abuse.\footnote{Id.} The Task Force was influential in the passing of new laws directed towards the victims of elder abuse.\footnote{Elder Abuse in the Digital Economy, supra note 101 (statement of Roger Auerbach, Administrator of the Oregon Senior and Disabled Services Division).} Two goals were accomplished: to relieve banks of liability for releasing information regarding a potential financial abuse\footnote{OR. REV. STAT. § 192.575 (1995).} and to ease the procedures for suing an exploiter for financial abuse of the elderly.\footnote{OR. REV. STAT. § 124.100 (1999).} The bank legislation is credited with increasing the number of financial abuse cases prosecuted.\footnote{Elder Abuse in the Digital Economy, supra note 101 (statement of Roger Auerbach, Administrator of the Oregon Senior and Disabled Services Division).} The suit legislation allows an elderly person who suffers an injury due to financial abuse to bring an action against someone who has caused the abuse,\footnote{OR. REV. STAT. § 124.100(1)(1999).} permitted the abuse\footnote{Id.} or should have known of the abuse.\footnote{Id.} The statute allows the elder victim to recover economic\footnote{OR. REV. STAT. § 124.100(1)(a)(1999)(citing OR. REV. STAT. § 18.560(2)(a)(1987) (defining economic damages as “objectively verifiable monetary losses, including but not limited to reasonable charges necessarily incurred for medical, hospital, nursing and rehabilitative services and other health care services, burial and memorial expenses, loss of income and past and future impairment of earning capacity, reasonable and necessary expenses incurred for substitute domestic services, recurring loss to an estate, damage to reputation that is economically verifiable, reasonable and necessarily incurred costs due to loss of use of property and reasonable costs incurred for repair or for replacement of damaged property, whichever is less”).}
and non-economic damages, attorney fees, and “reasonable fees for the services of a conservator and guardian ad litem.” With these statutes, Oregon is working towards providing greater protection and remedies for its growing elderly population.

C. Massachusetts Bank Training

Bank employees frequently see signs of financial exploitation of the elderly and are not sure what to do about it. Since February 1996, that is not the case in Massachusetts. The Massachusetts Executive Office of Elder Affairs, the Massachusetts Attorney General’s office, the Office of Consumer Affairs, the Division of Banks, and the Massachusetts Bankers Association designed and implemented a program called the Bank Reporting Project. Since that time, the program has trained over 2,000 bank personnel and distributed over 1,900 trainer reference manuals and 3,000 employee training manuals. Additionally, over 250,000 consumer education brochures have been disseminated to senior citizens in Massachusetts.

189. OR. REV. STAT. § 124.100(1)(b) (1999) (citing OR. REV. STAT. § 18.560(2)(b) (1987)) (defining noneconomic damages as “subjective, nonmonetary losses, including but not limited to pain, mental suffering, emotional distress, humiliation, injury to reputation, loss of care, comfort, companionship and society, loss of consortium, inconvenience and interference with normal and usual activities apart from gainful employment”).

190. OR. REV. STAT. § 124.100(1)(c).

191. OR. REV. STAT. § 124.100(1)(d).


193. Id.

194. Id. The project’s mission has remained unchanged since its inception: “To help protect elders from financial exploitation by scam artists and unscrupulous caretakers without sacrificing the confidentiality and control that we all value in our personal financial affairs. [The Bank Reporting Project] seeks to establish an industry-wide standard that will help prevent victimization by both educating employees and by providing simple reporting procedures for banks that will enable more effective cooperation between bank officials, elder protective-services agencies and local law enforcement.” Id.


196. Id.
banks in Massachusetts participate in the program,\textsuperscript{197} which has now become a national model\textsuperscript{198} with eight other states instituting comparable training programs.\textsuperscript{199} The program provides financial institutions and their employees with protocol to follow\textsuperscript{200} and confidence to implement it when financial abuse is suspected.\textsuperscript{201} As a result, bank employees can intervene in a respectful manner without intruding on the senior citizen’s autonomy.\textsuperscript{202} Most importantly, the program works. One customer service representative was able to interrupt a senior citizen sending $3,700 to cover the taxes on a supposed $100,000 prize she received notice of over the telephone.\footnote{\textsuperscript{203}} This is just one example of the standardized guidelines helping financial institutions prevent exploitation of the elderly.

\textbf{D. TRIAD – Reducing Crime Against the Elderly}

TRIAD is a national organization working within counties in many states across the country.\textsuperscript{205} Started in 1988 with a cooperative agreement between the American Association of Retired Persons (AARP), International Association of Chiefs of Police, and the National Sheriffs’ Association,\textsuperscript{206} TRIAD works with law enforcement, community organizations, and the elderly to foster crime prevention and post-crime support services for the elderly.\textsuperscript{207} TRIAD’s services in a community are facilitated through an advisory council, usually called S.A.L.T.\textsuperscript{208} The TRIAD activities are varied, including facilitating training of law enforcement

\begin{thebibliography}{9}
\bibitem{197} Id.
\bibitem{198} NERENBERG, supra note 9, at 53 (citing The Massachusetts Bank Reporting Project as a recommended program and giving information on ordering its manual).
\bibitem{199} \textit{A New Training Cycle}, supra note 192.
\bibitem{200} \textit{Community Bank}, supra note 195, at 9, 34.
\bibitem{201} \textit{See A New Training Cycle}, supra note 192.
\bibitem{202} Id.
\bibitem{203} Community Bank, supra note 195, at 8.
\bibitem{205} Telephone Interview with Terri Hicks, Triad (Sept. 29, 2000).
\bibitem{206} \textit{TRIAD, AN IMPLEMENTATION HANDBOOK}, Foreword (1993).
\bibitem{207} Id. at Introduction.
\bibitem{208} Id. at 34 (explaining S.A.L.T. stands for Seniors and Lawmen together).
\end{thebibliography}
personnel,\textsuperscript{209} preparing senior citizens to give canned responses to suspicious-sounding telephone solicitations,\textsuperscript{210} and fostering volunteer buddy relationships to help detect and prevent abuse and exploitation of the elderly.\textsuperscript{211} When a TRIAD organization comes into a county or city, it is common for reports of abuse or exploitation to escalate as awareness increases and then to decline as senior citizens, law enforcement personnel and the community are better equipped to prevent and intervene in abuse and exploitation situations.\textsuperscript{212}

V. MINNESOTA BATTLES AGAINST ELDER ABUSE

Preventing, recognizing, and remedying financial abuse of the elderly is like weaving a spider web. First, the main strands must be spun, then the crossbars woven in. The more strands and crossbars, the tighter the web and the more secure the surface. In Minnesota, the Vulnerable Adult,\textsuperscript{213} Financial Exploitation,\textsuperscript{214} and Deceptive or Unfair Trade Practices\textsuperscript{215} statutes are the beginnings of the web’s strands. To make the web firm, statutes must be strengthened, support and education programs must be expanded, and prosecution of financial exploitation of the elderly must occur.

A. Strengthening Minnesota Statutes

1. Vulnerable Adult Versus Age Classifications

Minnesota protects its elderly primarily through three statutes: The Vulnerable Adults Act,\textsuperscript{216} Financial Exploitation of a Vulnerable Adult Act,\textsuperscript{217} and the Deceptive or Unfair Trade Practices; Elderly or Handicapped Victims Act.\textsuperscript{218} Between these three statutes, Minnesota makes it clear that certain actions are not acceptable: (1) failing to provide basic necessities for a vulnerable

\textsuperscript{209} Id. at 85.
\textsuperscript{210} Id. at 65.
\textsuperscript{211} Id. at 63.
\textsuperscript{212} Telephone Interview with Terri Hicks, supra note 205.
\textsuperscript{213} MINN. STAT. § 626.557 (2000).
\textsuperscript{214} MINN. STAT. § 609.2335.
\textsuperscript{215} MINN. STAT. § 609.2336.
\textsuperscript{216} MINN. STAT. §§ 626.557, 626.5572.
\textsuperscript{217} MINN. STAT. § 609.2335.
\textsuperscript{218} MINN. STAT. § 609.2336.
adult when there is a duty to do so, (2) using undue influence or coercion to acquire a vulnerable adult’s funds or property, (3) maltreating a vulnerable adult, (4) directing a charitable solicitation, consumer fraud, deceptive trade, or false advertising violation at a senior citizen who is 65 years of age or older, which causes the senior citizen to lose or limit the senior’s access to residence, retirement funds or other essential assets. The interesting thing to note is that the first three unacceptable actions rely on an assessment of the physical, emotional or mental capability of the elderly person. The last unacceptable action relies on an age assessment. Although a “vulnerable adult” or similar classification is used in most states, the question must be asked:

219. MINN. STAT. § 609.2335, subd. 1(1).
220. MINN. STAT. § 609.2335, subd. (1),(2) (i-ii).
221. MINN. STAT. § 626.557, subd. 1 (requiring reporting of maltreatment of vulnerable adults); see also MINN. STAT. § 626.5572, subd. 15 (defining maltreatment as abuse as defined in § 626.5572, subd. 2, or neglect as defined in § 626.5572, subd. 17, or financial exploitation as defined in § 626.5572, subd. 9).
222. MINN. STAT. § 325F.71, subd. 2(a), (b) (2000).
223. Protecting an elderly person defined as a Vulnerable Adult as defined in MINN. STAT. § 626.5572, subd. 21.
224. Protecting a senior citizen as defined in Minnesota Statutes § 325F.71, subd. 1(a) (2000).
225. ALA. CODE § 38-9-2 (2001)(defining an aged or disabled adult as someone the age of eighteen or older that is incapable of protecting self from exploitation); ALASKA STAT. § 47.24.900(16) (Michie 1994) (defining a vulnerable adult as “a person eighteen years of age or older who, because of physical or mental impairment, is unable to meet [their] own needs or to seek help without assistance”); ARIZ. REV. STAT. ANN. § 46-451(A)(10) (West 1997) (defining a vulnerable adult as an individual who is 18 or older “who is unable to protect himself from abuse, neglect or exploitation by others because of a physical or mental impairment”); ARK. CODE ANN. § 5-28-101(4)(a)-(b) (Michie 1999) (defining an impaired adult as an adult eighteen or older who suffers from mental or physical disease or defect and as a consequence thereof is unable to protect himself or herself from abuse, sexual abuse, neglect, or exploitation or an adult resident of a long-term care facility); COLO. REV. STAT. ANN. § 26-3.1-101(1) (West 2001) (defining an at-risk adult as “an individual eighteen or older who is susceptible to mistreatment . . . because the individual is unable to perform or obtain services necessary for the individual’s health, safety, or welfare or lacks sufficient understanding or capacity to make or communicate responsible decisions concerning the individual’s person or affairs”); CONN. GEN. STAT. § 17b-450 (1998) (protecting an elderly person defined as any person who is sixty or older “in need of protective services’ if such person is unable to perform or obtain services which are necessary to maintain physical and mental health”); DEL. CODE ANN. tit. 31 § 3902 (1999) (protecting an infirm adult defined as any person “eighteen or over who, because of physical or mental disability, is substantially impaired in the ability to provide adequately for the person’s own care and custody”); FLA. STAT. ch. 415.102(26) (2000 & Supp. 2001) (protecting a vulnerable adult defined as “a person 18 years of age or older whose ability to
perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, physical, or developmental disability or dysfunctioning, or brain damage, or the infirmities of aging”); GA. CODE ANN. § 30-5-3(6 & 7.1) (2000) (defining a “disabled adult” as “a person 18 years of age or older who is not a resident of a long-term care facility . . . but who is mentally or physically incapacitated” and an “elder person” as “a person 65 years of age or older who is not a resident of a long-term care facility”); HAW. REV. STAT. ANN. § 346-222 (Michie 1990) (defining a dependent adult as “any adult who, because of mental or physical impairment is dependent upon another person, a care organization, or a care facility for personal health, safety, or welfare”); IDAHO CODE § 18-1505 (Michie 1994) (defining a vulnerable adult as a person eighteen or older “who is unable to protect himself from abuse, neglect or exploitation due to physical or mental impairment”); IND. CODE ANN. § 12-10-3-2 (West 1997 & Supp. 2001) (defining an endangered adult as “(1) an individual who is at least eighteen; (2) incapable by reason of mental illness, mental retardation, dementia, habitual drunkenness, excessive use of drugs, or other physical or mental incapacity of managing or directing the management of the individual’s property or providing or directing the provision of self-care; and (3) harmed or threatened with harm as a result of (A) neglect, (B) battery, or (C) exploitation of the individual’s personal services or property”); IOWA CODE ANN. § 235B.2(4) (West 2000) (protecting a dependent adult defined as “a person eighteen or older who is unable to protect the person’s own interests or unable to adequately perform or obtain services necessary to meet essential human needs, as a result of a physical or mental condition which requires assistance from another”); KAN. STAT. ANN. § 39-1430(a) (2000) (protecting an adult defined as “an individual 18 or older alleged to be unable to protect their own interest and who is harmed or threatened with harm through action or inaction by either another individual or through their own action or inaction” when residing in the person’s own home, the home of a family member or the home of a friend or an adult family home or is receiving services through a provider of community services and affiliates); KY. REV. STAT. ANN. § 209.020(4)(a) (Michie 2000 & Supp. 2001) (protecting an adult eighteen or older, “who because of mental or physical dysfunctioning, is unable to manage his own resources or carry out the activity of daily living or protect himself from neglect, or a hazardous or abusive situation without assistance from others, and who may be in need of protective services”); ME. REV. STAT. ANN. tit. 22 § 3472(10) (West 1992) (protecting an incapacitated adult defined as “any adult who is impaired by reason of mental illness, mental deficiency, physical illness or disability to the extent that that individual lacks sufficient understanding or capacity to make or communicate responsible decisions concerning that individual’s person, or to the extent the adult cannot effectively manage or apply that individual’s estate to necessary ends”); Md. CODE ANN., Family Law § 14-101(q) (1999) (protecting a vulnerable adult defined as “an adult who lacks the physical or mental capacity to provide for the adult’s daily needs”); Mich. Comp. LAWS ANN. § 400.11(b) (West 1997) (protecting an adult eighteen or older who is “unable to protect himself or herself because of a mental or physical impairment or because of advanced age”); MISS. CODE ANN. § 43-47-5(m) (1999 & Supp. 2001) (protecting a vulnerable adult defined as “a person eighteen (18) years of age or older or any minor whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, physical or developmental disability or dysfunction, or brain damage or the infirmities of aging”); MONT. CODE ANN. § 52-3-803(8) (1999) (protecting an older person defined as someone at least 60 years of age who is “unable to provide
personal protection because of frailties or dependencies brought about by advanced age); Neb. Rev. Stat. § 28-371 (1995) (protecting a vulnerable adult defined as “any person eighteen . . . or older who has a substantial mental or functional impairment or for whom a guardian has been appointed”); N.H. Rev. Stat. Ann. § 161-F:43(I & VIII) (1994) (protecting an incapacitated adult defined as a person eighteen or older whose physical, mental or emotional ability interferes with the person’s ability to manage “personal, home, or financial affairs”); N.J. Stat. Ann. § 52:27D-407 (West 2001) (protecting a vulnerable adult defined as a person eighteen or older, residing “in a community setting, and who, because of a physical or mental illness, disability or deficiency, lacks sufficient understanding or capacity to make, communicate or carry out decisions concerning his well-being”); N.Y. Social Services Law § 473-a (McKinney 1995 & Supp. 2001) (defining an endangered adult as a person 18 or older who lacks capacity to understand that he/she is in a situation posing risk of imminent death or serious harm); see also N.Y. [Social Services] Law § 473 (McKinney 1995 & Supp. 2001) (noting that financial exploitation is of an adult, not an endangered adult); N.C. Gen. Stat. § 108A-101(e) (1999) (protecting a disabled adult defined as a person in need of protective services due to his physical or mental incapacity); N.D. Cent. Code § 50-25.241(17) (1999) (protecting a vulnerable adult defined as “an adult who has a substantial mental or functional impairment”); Ohio Rev. Code Ann. § 5101.60(B) (West 1999 & Supp. 2001) (protecting an adult defined as a person sixty or older, living in a private home, apartment, trailer or rooming house, “who is handicapped by the infirmities of aging or who has a physical or mental impairment which prevents the person from providing for the person’s own care or protection”); Okla. Stat. Ann. tit. 43A § 10-103(A)(5) (West 2001) (protecting a vulnerable adult defined as someone who, because of physical disability or incapacity, is impaired in the ability to adequately care for self or manage his or her property and financial affairs effectively); Or. Rev. Stat. § 125.005(5) (1995 & Supp. 1998) (protecting an incapacitated person defined as a person whose “ability to receive and evaluate information effectively” is impaired to the extent they are unable to meet their physical needs); see also Or. Rev. Stat. § 125.005(3) (1995 & Supp. 1998) (protecting a person who is financially incapable of managing financial resources); S.C. Code Ann. § 43-35-10 (Law. Co-op. 1993 & Supp. 2000) (protecting a vulnerable adult defined as a person who has a physical or mental condition, including the infirmities of old age, “which substantially impairs the person from adequately providing for his or her own care or protection”); S.D. Codified Laws § 22-46-1(2) (Michie 1998) (protecting a disabled adult defined as a person eighteen or older who is unable to protect himself or provide for his own care due to the infirmities of old age); Tenn. Code Ann. § 71-6-102(2) (1996 & Supp. 2000) (protecting an adult eighteen or older who is unable to manage his/her own resources or carry out the activities of daily living, or protect self from abuse due to mental or physical dysfunctioning); Va. Code Ann. § 63.1-55.2 (Michie 1995) (protecting an incapacitated adult defined as a person who is incapacitated by advanced age such that they lack “understanding or capacity to make, communicate or carry out responsible decisions”); Wash. Rev. Code Ann. § 74.34.020(13) (West 2001) (protecting a vulnerable adult defined as someone sixty years of age or older who is physically or mentally unable to take care of self); W. Va. Code § 9-6-1 (Supp. 2000) (protecting an incapacitated adult defined as any person unable to carry on daily activities of life due to physical, mental or other infirmities); Wyo. Stat. Ann. § 46.90(1)(c) (West 1999 & Supp. 2000) (protecting an elder person “who is 60 or older or . . . subject to the infirmities of aging”); Wyo. Stat. Ann. § 35-20-102(a)(vi) (Michie 2001)
why do two of the statutes use a vulnerable adult classification and the third use an age classification? There are four significant consequences to the use of a vulnerable classification instead of an age classification.

The first consequence of a vulnerable adult classification is that it is difficult to ascertain how many elderly people are abused or exploited in the state of Minnesota. In August 1999, Minnesota published its first Report of Vulnerable Adult Maltreatment Allegations. It is impossible to tell how many of the allegations related to vulnerable adults who were elderly and how many related to adults who were vulnerable for other reasons.

While financial exploitation or consumer fraud can be devastating for any vulnerable adult, an elderly person who has spent 50 years acquiring assets such as real estate, investments, and retirement accounts may be more significantly impacted than an 18-year-old vulnerable adult. It is important to know whether the victim of financial exploitation is an elderly person.

The second consequence of a vulnerable adult classification is reluctance on the part of the elderly person to disclose the misuse of his or her assets. To acquire relief under the Vulnerable Adult Act, the senior citizen living in a home environment has to be found physically, emotionally or mentally incompetent.

(protecting a disabled adult defined as a person eighteen or older who is unable to “take care of himself or his property [due to] advanced age, physical or mental disability”).

226. MINN. DEP'T. OF HUM. SERVS., REP. OF VULNERABLE ADULT MALTREATMENT ALLEGATIONS (1999) [hereinafter MINN. ABUSE REPORT].

227. Id. at 6 (showing the ages of the victims of the alleged abuse without showing the type of abuse or the reasons for the vulnerable adult classifications), at 7 (showing that 2,571 were due to frailty of aging without showing the type of abuse or if the victim had other reasons for being vulnerable), at 10 (showing 1,294 allegations of financial abuse but no explanation as to type of vulnerable adult).

228. Lori A. Stiegel, What Can Courts Do About Elder Abuse?, 35 JUDGES J. 38, 42 (1996) (“Elder abuse may have a particularly devastating impact on older persons. They may have fewer options for resolving or avoiding the abusive situation due to their age, health, or limited resources . . . . Older persons may have less ability to recover from financial exploitation if they are already retired or because of their short remaining life span.”).

229. NERENBERG, supra note 9, at 4 (stating that many elderly who have been exploited are embarrassed or shameful that this has happened to them); see also Starnes, supra 90 (reporting an 81-year-old man committed suicide rather than disclose he had lost his life savings).

230. MINN. STAT. ANN. § 626.5572, subd. 21 (West 2000); see supra notes 20-36 and accompanying text defining a vulnerable adult.
Although this may help to punish an exploiter or to recover assets, it may also lead to a change in the elderly person’s living situation. Many elderly persons are fearful of losing their independence and being required to enter a nursing home or other type of care facility. The elderly person may make the choice not to report the exploitation to maintain some semblance of independence.

The third consequence of a vulnerable adult classification is an inability to prosecute in cases where the elderly person is not impaired. One study showed that as many as 49 percent of the elder abuse cases were financial abuse. Of these, 21.5 percent of all the victims had no impairment. Most times impairment is a gradual process and an elder person may not show on an exam that impairment exists. An elderly person may be unduly influenced or coerced even though he or she is not classified as a vulnerable adult.

The fourth consequence of a vulnerable adult classification is that sometimes actions are not taken against alleged exploiters because the assessment of the elderly person is not made. This is either due to reluctance on the part of the assessing agency or an inability to apply the standards. As a result, no action is taken at
all and an exploiter is free to exploit again.\textsuperscript{241} Twelve states use an age categorization.\textsuperscript{242} Minnesota uses an age categorization for charitable solicitation, consumer fraud, deceptive trade practice and false advertising violations.\textsuperscript{243} Minnesota’s policy should be to base both the misuse of an elderly person’s assets and consumer fraud against the elderly on an age categorization rather than on a vulnerable adult categorization.

2. Mandatory Reporters

Minnesota has a lengthy list of those required to report suspected abuse or exploitation of a vulnerable adult.\textsuperscript{244} The mandatory reporters are all professionals or a professional’s delegate falling into five categories: those providing health care or psychological services,\textsuperscript{245} law enforcement,\textsuperscript{246} educational\textsuperscript{247} or social

Minneapolis, Minn. (Oct. 5, 2000) (stating that prosecution of misuse of assets or fraud is difficult for many reasons, one of which is assessment of vulnerable adult).

\textsuperscript{241} Warren Wolfe, Exploiting the Elderly, MPLS. STAR TRIB., Nov. 7, 1999, at E1 (quoting Linda Malzahn, Minnesota’s only full-time police officer investigating abuse of vulnerable adults, “[u]sually the best we can do is stop the stealing, tell the bad guys we’re on to them, then let them go—maybe to find another victim.”)

\textsuperscript{242} CAL. WELF. & INST. § 15701.2 (West 1999) (protecting an elder adult defined as any person who is sixty-five years of age or older); 320 ILL. COMP. STAT. ANN. 20/2(e) (West 2000) (defining an eligible adult as a person sixty years of age or older who resides in a domestic situation and is, or is alleged to be, abused, neglected, or financially exploited by another individual); LA. REV. STAT. ANN. § 14:403.2(B)(2) (West 2000) (defining an adult as any person sixty years of age or older); MASS. GEN. LAWS ANN. ch. 19A § 14 (West 1994) (protecting an elderly person defined as an individual sixty years of age or older); MO. ANN. STAT. § 660.250(5) (West 2000) (defining an eligible adult as a person sixty years of age or older); NEV. REV. STAT. ANN. 200.5092(5) (Michie 1999) (protecting an older person defined as someone sixty years of age or older); N.M. STAT. ANN. § 27-7-16(B) (Michie 1997) (protecting an adult eighteen or older); 35 PA. CONS. STAT. ANN. § 10225.103 (West 1997) (protecting an older adult defined as a person sixty years of age or older); R.I. GEN. LAWS § 42-66-8 (1991) (protecting elderly persons defined as someone sixty years of age or older); TEX. [HUM RES.] CODE ANN. § 48.002(1) (Vernon 2001) (protecting an elderly person defined as someone sixty-five years of age or older); UTAH CODE ANN. § 62A-3-301(8) (1998) (protecting an elder adult defined as someone sixty-five years of age or older); VT. STAT. ANN. tit. 33 § 6902(6) (1993) (protecting an elder adult defined as a person sixty years of age or older).

\textsuperscript{244} MINN. STAT. ANN. § 325F.71 (West 2000); \textit{see supra} note 224 and accompanying text.

\textsuperscript{245} MINN. STAT. § 626.5572, subd. 16 (2000).

\textsuperscript{246} For a full list of those required to report under the health care category see § 214.01(2), § 626.5572, subd. 6 referring to §§ 144.50-144.58 hospitals and other similar entities, § 144A.02 nursing homes, §§ 245A.01-245A.16 residential and nonresidential adult care
services personnel. Other states have included additional categories: pharmacists, attorneys, clergy and financial institution employees, supervisors and managers. Studies show that 56 percent of senior citizens attend church weekly and 80 percent belong to a religious body. As shown in Massachusetts and Oregon, financial institutions such as banks can have a major impact on interrupting a financial exploitation of the elderly. Minnesota should add clergy and employees of financial institutions to its list of mandatory reporters.

facilities, § 144A.46, § 256B.04, subd. 16, § 256B.0625, subd. 19a and § 256B.0627
home and personal care services. Id.
246. Minn. Stat. § 626.5572, subd. 16(2).
247. Minn. Stat. § 626.5572, subd. 16(3,6).
248. Minn. Stat. § 626.5572, subd. 16(1).
254. Supra notes 178-191 and accompanying text (detailing Oregon’s civil suit legislation); see also supra notes 192-204 and accompanying text (detailing Massachusetts banking program).
255. Powell, supra note 61 (detailing the alleged neglect and financial exploitation of a Minneapolis elderly woman that came to light when her bank notified police of suspicious withdrawals from her account); see also Mo. Rev. Stat. § 660.255(1) (West 1999) (requiring anyone who knows of an eligible adult likely to suffer serious physical harm must report); Miss. Code Ann. § 43-47-7(1) (1999) (requiring anyone having a reasonable cause to believe that a vulnerable adult has been or is being abused to report the abuse). A discussion of whether or not mandatory reporting is effective in preventing or reducing abuse or exploitation of vulnerable adults is beyond the scope of this paper. For additional information on this subject see generally, Molly Dickinson Velick, Mandatory Reporting Statutes: A Necessary Yet Underutilized Response to Elder Abuse, 3 Elder L.J. 165, 165 (1995).
3. Increase Penalties for Exploiting the Elderly

Minnesota recognizes that deceptive and unfair trade practices can be perpetrated against the elderly and that vulnerable adults can be financially exploited. A perpetrator who is caught and found guilty of these actions will be punished. The perpetrator’s sentences should be more stringent. Deceptive and unfair trade practices are currently classified as a gross misdemeanor which carries a maximum fine of $3,000 and/or a sentence of not more than 90 days. Financial exploitation of a vulnerable adult carries penalties equal to theft without recognizing the different types of victims. Some states recognize the egregiousness of crimes against the elderly and classify these crimes as felonies. Minnesota should increase penalties for financial exploitation of the elderly.

In addition, while Minnesota’s system expedites reporting of...
4. Mandatory Restitution

A charge of financial abuse and exploitation, which results in an indictment, rarely yields restitution for the victim. First of all, most prosecutors do not ask for restitution, and judges do not usually order restitution. Even if the prosecution and judges do their part and order restitution, victims do not know what steps to take to recover the restitution owed to them. In addition, exploiters have frequently concealed or exhausted the funds or property they have misappropriated. These are not unmanageable problems.

First of all, Minnesota’s public policy should be to see that elderly victims are compensated for their losses. Restitution in elderly exploitation or fraud cases should be mandatory. To help

264. MINN. STAT. § 626.557, subd. (3,4)(2000).
265. MINN. STAT. § 626.557, subd. 9a.
266. MINN. STAT. § 626.557, subd. 9b.
267. MINN. STAT. § 626.557, subd. 12b.
268. MINN. STAT. § 626.557, subd. 9c.
269. See supra notes 183-191 and accompanying text (regarding improving the ability of the elderly to recover from exploitation).
270. NERENBERG, supra note 9, at 26-27; see also 18 U.S.C. §§ 2325-2327 (1994)[hereinafter SCAMS]. The Federal government has specifically addressed telemarketing fraud perpetrated against the elderly in the “Senior Citizens Marketing Act of 1994.” The SCAMS Act provides for enhanced penalties and mandatory restitution if the specific fraudulent act targeted one person over the age of 55 or “victimized ten or more people over the age of 55.” 18 U.S.C. §§ 2326(1)(B), 2327. The fraud must be the result of an interstate telephone call placed with the intention of inducing an illegal purchase of goods or services. 18 U.S.C. § 2325. If the perpetrator commits one of these frauds against the covered victims, the length of the sentence as stipulated by the particular fraud is automatically increased by ten years, and restitution is mandatory. 18 U.S.C. §§ 2326(2), 2327; see also MINN. STAT. § 325F.71, subd. 3 (giving restitution a priority over civil penalties in consumer fraud against the elderly, but not making restitution mandatory).
271. NERENBERG, supra note 9, at 27.
272. Id. at 28.
273. Id. at 24.
274. Some states have specific ramifications for exploitation against the elderly. In Illinois, if an exploiter fails to or refuses to return property within 60
ensure restitution can take place, assets of an alleged exploiter should be immediately frozen so the misappropriated assets cannot be disposed of or concealed. The process between discovery and prosecution in elderly exploitation cases should be streamlined. The shorter the time, the less likely the victim will become incapacitated or worse yet, die. A system to support victims in recovery of their assets needs to be set up. Finally, the state needs to be creative in the methods used to see that restitution takes place. Besides having the exploiter compensate the victim for funds or property taken, other solutions can be used. The exploiter could provide property maintenance services for the victim. Another solution might be for the exploiter to give community service or money to a community program. If the exploiter can misappropriate $250,000 worth of funds and property and only pay back $30,000, the elderly person has suffered a serious days of a written demand, he or she is liable to the victim or the victim’s estate for three times the value of the property obtained. 720 ILL. COMP. STAT. ANN. 5/16-13 (West 1993). This is true even if the exploiter is not convicted of financial exploitation. The exploiter is also responsible for attorney fees and court costs. The exploiter could provide property maintenance services for the victim. Another solution might be for the exploiter to give community service or money to a community program. If the exploiter can misappropriate $250,000 worth of funds and property and only pay back $30,000, the elderly person has suffered a serious
loss and the exploiter has hardly been held responsible.  

5. **Expand Hearsay Rules**

One of the major problems in prosecuting financial exploitation of the elderly is relying on the victim to testify. Exploiters depend on the elderly providing ineffective testimony or no testimony (depending on their competence level or even whether they are still alive), which allows the exploiter to get away with the crime. Delaware allows hearsay testimony in a hearsay exception for infirm adults. Illinois allows hearsay testimony in an exception for elder adults. Other states allow hearsay testimony under certain circumstances. The trial judge generally has the discretion to determine whether the evidence should be admitted. In Illinois, the jury can hear the evidence and decide whether it wants to include it in their deliberations. In Delaware, out-of-court statements may be admitted if the victim is unavailable due to death, total failure of memory or an inability to communicate. Prior to admission of the out-of-court statements, the court considers many factors including the trustworthiness of the statements, the victim’s abilities to communicate, any motives the victim might have had in making the statement or who might have heard the statement.

Although hearsay evidence is generally inadmissible in a court proceeding, Minnesota does make an exception when a declarant is unavailable as a witness due to lack of memory, physical or mental illness or infirmity. However, this is not a specific exception applicable to cases of financial abuse of the elderly. A specific hearsay exception for financial abuse of the elderly would encourage prosecutors and the court to carefully examine elements

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283. *Supra* notes 77-85 and accompanying text.
285. *Id*.
287. 725 ILL. COMP. STAT. ANN. 5/115-10.3 (West 1999).
288. California allows hearsay in physical abuse of the elderly cases where a law enforcement officer has videotaped the victim. CAL. EVID. CODE § 1380 (West 1999).
289. DEL. CODE ANN. tit. 11, § 3516 (1998); 725 ILL. COMP. STAT. ANN. 5/115-10.3 (West 1999).
290. 725 ILL. COMP. STAT. ANN. 5/115-10.3 (West 1999).
292. *Id*.
of the situation such as the type of relationship between the victim and the suspect, the history of the victim in her spending habits and her current financial needs, and whether the victim was isolated from her family and friends. The prosecutor and court should be able to determine whether any hearsay evidence would be valid. Minnesota should look to Illinois and Delaware to develop a statutory hearsay exception in the case of financial exploitation of the elderly.

B. Expand Support and Education Programs

1. Implement a TRIAD-Type Program in Every County

TRIAD has approximately twenty groups operating in the state of Minnesota. If TRIAD were to operate in each county, Minnesota would have ninety TRIAD groups spreading the word about exploitation of the elderly. Some recent projects in Minnesota include calling seniors to warn about specific scams—fake lotteries, tricks to get a senior’s social security or credit card number, visiting disabled people to check that doors, windows, locks and outside lights work properly, and placing Alzheimer’s patients on a national registry used to identify lost and confused people. Although Minnesota does not have to use the TRIAD

294. Interview with Mary McGurran, L.S.W. and Anita Raymond, L.I.S.W., Protective Services, Senior Resources Division, Volunteers of America, in Minneapolis, Minn. (Oct. 5, 2000) (stating that an examination of the elderly person’s past spending habits and financial needs can indicate that financial transactions involving a caretaker or family do not make any sense).
295. Warren Wolfe, Exploiting the Elderly, MPLS. STAR TRIB., Nov. 7, 1999, at E1. Amy Klobuchar, Hennepin County Attorney, discusses isolation from family and friends as an indicator that the elderly person may be a victim of financial exploitation. Id.
296. Id. at 4-5.
298. Id. Although a national registry for Alzheimer’s patients appears on the surface to have no connection to elder abuse, that may not be the case. In one situation, an elderly woman with decreasing cognitive abilities was befriended by a young man who moved into her home, subsequently depleted her assets and gained title to the house. Kathleen H. Wilbur & Sandra L. Reynolds, Introducing a Framework for Defining Financial Abuse of the Elderly, J. ELDER ABUSE & NEGLECT 61, 72 (1996). Once everything was in his possession, he put her on a plane with a one-way ticket, knowing that she was confused enough to be unable to tell anyone who she was, where she was from, or what had happened to her. Id. If she had been on a national registry, it might have been easier to return her to her home.
program, the fact that it is established and already has specific procedures for prevention and education programs is a plus. Minnesota needs a state-wide program targeting prevention of exploitation of the elderly.

2. Bank Employee Training

The success of Massachusetts’ bank program should be inspirational to Minnesota. Training employees to recognize abuse and work with senior citizens is an effective, low-cost method of reducing the incidence of financial exploitation. Minnesota should follow Massachusetts’ lead and institute a similar program.

3. Increase the Level of Prosecution

California has shown the impact of a successful program on protecting senior citizens. Minnesota should follow California’s lead and put together Minnesota FAST teams. Minnesota’s first report on Vulnerable Adult Maltreatment Allegations detailed the types of allegations reported in each county in 1998. The seven county Minneapolis/St. Paul area reported 384 allegations of financial exploitation of vulnerable adults. However, not all allegations were substantiated, not all were senior citizens, and the reports do not include scams. Applying the “iceberg theory,” 384 allegations would indicate somewhere between 3,000 and 5,400 cases of financial exploitation in the Twin Cities in 1998. Assuming that an average exploitation is $5,000, between $15

299. Supra notes 192-204 and accompanying text (detailing Massachusetts banking program).
300. Id.; see also Powell, supra note 61 (describing bank employees as instrumental in intervening in financial abuse of an elderly woman).
301. Supra notes 136-177 and accompanying text (detailing California’s legislation and elder abuse prevention programs).
302. MINN. ABUSE REPORT, supra note 226, at 15-56.
303. Id. at 55-56.
304. Id.
305. Toshio Tatara & Lisa M. Kuzmeskus, Trends in Elder Abuse in Domestic Settings, NATIONAL CENTER ON ELDER ABUSE, Elder Abuse Information Series No. 2 (estimating one out of fourteen domestic elder abuse cases are reported); see also Decade of Shame, supra note 47, at 1 (estimating one in eight cases of elder abuse are reported). The “iceberg theory” is commonly understood to mean, in this context, that reported abuse is a small fraction of the abuse that actually occurs.
306. Decade of Shame, supra note 47, at 3. Three-hundred and eighty-four reported cases times eight equals 3,072. See id. Three-hundred and eighty-four reported cases times 14 equals 5,376. See Tatara & Kuzmeskus, supra note 305.
million and $26 million worth of assets could have been exploited in 1998 from senior citizens in the Minneapolis/St. Paul area alone.\textsuperscript{307} Even if a skeptic accepted only one-third of these incidents as occurring, the financial loss in the Minneapolis/St. Paul area because of misuse of an elderly person’s assets alone could be $5 million to $9 million.\textsuperscript{308} Obviously, the financial loss across the state could be even greater.

4. Court Systems Friendly to Senior Citizens

Going to court can be an intimidating process for any citizen; for a senior citizen, it is even more so.\textsuperscript{309} Florida’s “Elder Court” has relieved some of this anxiety for its senior citizens.\textsuperscript{310} Florida established an Elder Justice Center to meet the needs of its seniors.\textsuperscript{311} A separate waiting room is available for the elderly who need to make a court appearance.\textsuperscript{312} The center provides educational programs for the elderly and their families.\textsuperscript{313} Senior citizens who have been repeat victims are recognized and helped out of the victim role.\textsuperscript{314}

In 1996, the ABA issued “Recommended Guidelines for State Courts Handling Cases Involving Elder Abuse.”\textsuperscript{315} The recommendations included allowing senior citizen’s testimony to be videotaped before capacity changes,\textsuperscript{316} ensuring that judges, court staff, prosecutors and other professionals are trained about elder abuse,\textsuperscript{317} and allowing hearings to be held in less frightening locations.\textsuperscript{318} Other suggestions are to determine a senior citizen’s special needs before a court appearance.\textsuperscript{319} A senior citizen may

\begin{footnotes}
\footnote{307. Supra notes 305-306. Five-thousand dollars times 3,072 equals $15,360,000; $5,000 times 5,376 equals $26,880,000.}
\footnote{308. Supra note 307. Fifteen-million, three-hundred, sixty thousand dollars times one-third equals $5,120,000; $26,880,000 times one-third equals $8,960,000.}
\footnote{309. April D. Hill & K. Angela Smith, The Elder Justice Center A Court Program that Recognizes the Unique Needs of the Elderly, 15 NELA Q. 22, 22 (2000).}
\footnote{310. Id. at 23.}
\footnote{311. Id.}
\footnote{312. Id.}
\footnote{313. Id.}
\footnote{314. Hill, supra note 308, at 23.}
\footnote{315. Stiegel, supra note 227, at 45.}
\footnote{316. Id. at 46.}
\footnote{317. Id. at 45.}
\footnote{318. Id. at 46.}
\footnote{319. Greenwood, supra note 108, at 1, 3.}
\end{footnotes}
need a wheelchair, oxygen, or other assistance. The court system needs to accommodate the needs of senior citizens to ensure that they are able to recover what they have lost through abuse and exploitation.

VI. CONCLUSION

The result of financial exploitation can be devastating to elderly individuals, and has a very real impact on their future quality of life. Financial exploitation of an elderly person is not just a ‘routine theft’ of a person’s money or property. Typically, the elderly individuals’ assets and income are fixed. They do not have the ability to work or otherwise overcome the financial setback, and insurance does not cover these types of losses. The person’s choices about where they will live, how they will live and who they will live with are taken from them by financial exploitation.

The population in Minnesota, like the rest of the country, is shifting. The number of senior citizens is dramatically increasing. When laws and public policy allow exploitation and scams to be perpetrated on the elderly without remedies providing for punishment of the perpetrators and wherever possible, restitution for the victim, the system has gone awry. These are our mothers, our fathers, our grandmothers and grandfathers, our aunts and our uncles, and someday, it will be us.

320. Id.
321. See generally Stiegel, supra note 226.