Elder Financial Exploitation: a Growing Epidemic

Ohio Guardianship Association
13th Annual Conference
Keeping Independence in Guardianship
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Ohio Attorney General’s Office
Key Points

• Every year thousands of at-risk adults lose all or part of their life savings to financial exploitation.

• Many of these crimes occur within a family setting, and often are dismissed as a “civil matter”
Learning Objectives

1. Know the various definitions of elder financial exploitation.

2. Knows the dynamics of undue influence and deceptions.

3. Know the revisions to the Adult Protective Services laws.

4. Understands the parallels of a civil and criminal investigation.

5. Know how to develop collaborative strategies for conducting effective investigations.
What is elder abuse?

Physical abuse can range from slapping or shoving to severe beatings.

Neglect

Intentionally failing to meet the physical, social, or emotional needs of the older person.

Psychological

When caretakers give 'the silent treatment' or intimidate the individual by threatening them.

Financial

Financial abuse can range from misuse of funds to embezzlement.

From the American Psychological Association
What is Financial Exploitation?

• Illegal or improper use of an older adult's funds, property or assets

• Since not all older adults use the banking system, consider cash, gold, jewelry, antiques, and homes as assets
“It really is about money.”
Pure Exploitation

Financial Exploitation Only

- Perpetrators are non-relatives, not financially dependent on the victim and physically healthy
- Shorter duration than hybrid form; primarily fraud
- Lower financial loss per case
Hybrid Exploitation

Co-occurs with physical abuse or neglect

- Relatives financially dependent on the elderly victim
- Victim typically financially independent but physically dependent on the perpetrator
- Longer duration than pure form; primarily theft
- Greater loss per case

(Jackson and Hafemeister, 2011)
Types of Exploitation

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

• Civil resources
• Criminal resources
• Can it be both?
• How can we work together to best respond to elder victims?
Civil versus Criminal

Abuse Ignores Age
Adult Protective Services (APS)

**Case Acceptance** - assist adults age 60, risk of danger or harm, unable to protect themselves and have no one else to assist them.

**Age Criteria 60 (Plus) and ....**

1) Must be impaired and/or disabled;
2) Must have an allegation of abuse, neglect, self-neglect or exploitation;
3) Must reside in the community.

*ORC 5101.60*
Adult Protective Services (APS)

• Not a criminal investigation
• Limited by the ORC (5101.61-72) — Age, impairment, community
• Primary mission to put protective services in place
• Autonomy/self-determinations
• Adult has right to refuse services
Adult Protectives Services Laws

- Investigate allegations of abuse, neglect and exploitation
- Make referrals to law enforcement/service providers
- Focus on protective services not criminal justice
- Departments may petition for court order authorizing protective services for
  - Vulnerable adult who are being abuse
  - Lack the ability to consent for services
Ohio Budget Bill – HB 49

• HB 78 language was used in the budget
• Added mandatory reporters - to include bank employees, accountants, real estate brokers and financial advisers
• Expanded the definition of exploitation- (person, not caretaker)
• Added the definition of abandonment
• Allowing a county prosecutor to petition courts for orders related to the provision of adult protective services
• Codified the Elder Abuse Commission
Exploitation (ORC 5101.60)

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

(1) Without the adult’s consent or the consent of the person authorized to give consent on the adult's behalf;
Exploitation (ORC 5101.60)

(2) Beyond the scope of the express or implied consent of the adult or the person authorized to give consent on the adult's behalf;

- By deception;
- By threat;
- By intimidation.

[Effective 9/29/2018]
Indicators of Exploitation

Misappropriation of an Elders’ assets

– Taking the victim’s Social Security check
– Abusing a joint checking account, credit cards, assets and other resources
– Forging the victim’s signature on legal documents
– Coercion to deprive the victim of his or her assets such as forcible transfer of property
Mandatory Reporting

• Any mandatory reporter who has **reasonable cause** to believe
  – That an adult is being abused, neglected, or exploited; or
  – Is in a condition which is result of abuse, neglect, or exploitation

• Shall immediately report to the County Department of Jobs and Family Services

O.R.C. 5101.63
Immunity for Reporting

• Any person with **reasonable cause** to believe an adult is suffering abuse, neglect, or exploitation, who makes a report, testifies or acts responsibly in the discharge of their official duties:
  • Shall be immune from civil/criminal liability
  • Unless the person acted in bad faith or with malicious purpose

O.R.C. 5101.63
NEW Mandated Reporters

- Pharmacist
- Dialysis Technician
- Hospital 5122.01
- Health Dept. Employee
- Humane Society Agent
- Firefighter
- Ambulance Driver
- EMT/First Responder
- Building Department
- CPA
- Real Estate Broker
- Notary Public
- Bank/S & L/Credit Union Employees
- Investment Advisor
- Financial Planner
Only Suspicion is Required

Why do you suspect exploitation?
What have you heard?
What did you observe?
  - Is missing money?
  - Are bills or rent not being paid?
  - Does the adult appear disheveled?
  - Is there a new best friend overseeing finances?
  - Was there an eyewitness to the transaction?
Theft (ORC 2913.02)

• No person, with purpose to deprive the owner of property or services, shall knowingly obtain or exert control over either the property or services:
• Without the consent of the owner or person authorized to give consent.
Theft (ORC 2913.02)

• Beyond the scope of the express or implied consent of the owner or person authorized to give consent.
  – By deception.
  – By threat.
  – By intimidation.
Enhanced Penalties

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

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

• Identity theft
• Theft
  – Coercion
  – Extortion
  – Deception
• Abuse of legal authority (i.e., Power of Attorney, Guardians, Reprehensive payee)
• Fraud
• Scams
Common Scams

• Computer Repair Scams
• Fake Check Scams
• Imposter Scams
• Romance or Sweetheart Scams
• Sweepstakes Scams
• Grandparents Scam
• Home Improvement Scam
• Phony Charities
Home Improvement Scams
Fake Sweepstake
Who Are the Exploiters?

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

Offenders/Exploiter often...

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

Abusers often:

– Lie
– Manipulate
– Charm
– Justify their behavior
– Blame the victim
Common Justifications

Blame the victim

• She is too clumsy, it was an accident
• She didn’t do what I wanted her to do
• She hit me first
• He is just too difficult to care for
Common Justifications

Abusers Make Excuses

• I have a problem with my temper
• I was drunk or high
• I am sick, it is not my fault
• He was a bad dad and hit me when I was a child
• In my culture, elders share their resources
Victims
Who are the Victims?

- Adults age 60 and over
- Majority of victims are female; but also older males
- All racial, ethnic, social-economic and religious backgrounds
Where Does Exploitation Occur?

• Private residences
  – Houses
  – Apartments
  – Group homes

• Public settings

• Facilities
  – Long-term care
  – Assisted Living/Group Homes
  – Hospitals
Challenges Victims Face

• Health concerns
• Balancing safety and relationships
• Limited or no options to relocate
• Pressure from family and friends
• Fears
Older Victims Often ... 

• **Want:**
  – Want the abuse to end but may also want a relationship with the abuser
  – To try to be a “good” parent
  – To be perceived as a “good” parent

• **May:**
  – Protect the adult child rather than self
  – Recant or be reluctant to work with authorities
When Do I Have Consent?

To consent to a transaction a person must:

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

• Consent is only **valid** if:
  – Freely
  – Knowingly
  – Voluntarily

• The Adult **must have the ability** to understand the nature and consequences of one’s acts
• If the adult has been unduly influenced
Cognitive Limitations

• A victim may suffer from dementia, a developmental disability or some other types of cognitive impairments

• Reversible dementias can be caused by; trauma, lack of food, water, sleep, medications (too much, not enough), infections, running a fever – Once the condition passes, cognitive skills usually improve
Manipulation
Undue Influence

“For God’s sake, think! Why is he being so nice to you?”
(IU) Psychological Definition

1. Use of power and control
2. Exploit trust, dependency and fear
3. Substitution of one person’s will for the true desires of another
4. Purpose: deceptively gaining control

Margaret Singer
Undue Influence

Method for committing the crime

• Financial Exploitation
• Sexual Abuse
• Elder Abuse
• Domestic violence
UI: Common Tactics

- Creates fear
- Prey on vulnerabilities
- Creates dependency
- Creates lack of faith in one's abilities
- Induces shame and secrecy
- Keeps the victim unaware
- Isolate from others and information
- Random acts of kindness
Victims of UI

Anyone – even someone with capacity can be a victim of UI

Vulnerability is enhanced by

- Bereavement
- Cognitive impairment
- Dependence on another
- Diminished capacity
- Fearfulness
- Illness
- Social Isolation/Loneliness
- Substance abuse
UI Criteria

- Victims’ vulnerability
- Factors accounting for influencers’ power
  - Example include fiduciaries, caregivers, advisors, family members, health or legal professionals, and spiritual leaders
- Unfair tactics or actions that rise to the threshold of “undue”
- Outcomes, consequences, transactions, or exchanges that diverge from accepted standards
Interview Questions

• **Mental Capacity**
  – Are you able to care for yourself?
  – Do you take medications?
  – How do you spend your time?

• **Knowledge of True Nature of Act**
  – Tell me how did you come of sign those documents?
  – Please explain the documents that you signed?
  – What do you think will happen to you now that you have signed this document?

• **Acted freely and voluntarily**
  – Were your rushed to act?
  – Who else was present”
  – Did you have time to think this over?
Protections

• Evicting or removing the influencer from the victim’s home
• Seeking, opposing, limiting or terminating guardianship or conservatorship; mental health commitment.
• Obtaining financial records accountings
• Recover assets by rescinding transfers or voiding documents
Intervention by Perspectives

• APS/LTCOP/Law Enforcement/Others:
  – investigate, protect/prevent

• Prosecutors: investigate, prove lack of/
  – challenge defense of consent

• Civil Lawyer: undo actions, protect/prevent

• Psychologists/Others: assess capacity

• Judges: undo actions, protect/prevent

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Follow the Money

• Where did the money go?
• How was the money spent/withdrawn?
• Was the deal transparent?
• What was the money spent on?
Investigate This...
Joint Bank Accounts

I. Timing is important
II. Where does the money come from?
III. Was the victim in the loop
IV. What was the money spent on?
V. Where did the transaction take place?
Explore the Relationship

- Evidence of Impairment
- Position of Trust
- Inability to Act Independently
- Fear or Anxiety
- Never Comes Alone
- Promises of Wealth or Prizes
- Romance
Legal Surrogates

• **Power of Attorney**
  – An instrument which delegates authority to make decisions or financial management to another

• **Guardianship**
  – A court order granting certain powers to a family member, other individual, governmental agency, or institution to control the affairs of another person
Criminal Misuse

• Determine if guardian or person with power of attorney spent victim’s money on themselves rather than to benefit victim
• Get copy of power of attorney/guardianship documents
• Check for prior complaints or investigations involving either the victim or suspect
• Work with local experts – probate court
Screening Questions

• Who manages your money day to day?
• Do you run out of money at the end of the month?
• Do you regret or worry at the end of the month?
• Do you worry about financial decisions?
• Have you given power of attorney to another person?
• Do you have a will?
• Has anyone changed it?
Actions to Consider

- Consider whether the alleged victim had capacity to make the decision in question
- Need for capacity assessment is needed
  - Limitation of the Mini Mental
  - Seek an expert skilled in conducting assessments
- Consider if the victim was coerced, intimidated, misrepresented or threaten
Collaborative Approach

- Common Goal
- Requires a Trusting Relationship
- Shared Expertise
- Open Communication
- Motivated Partners
- Action Plan/Results
Interdisciplinary Response

Local County Adult Protective Services I-Teams
Community Plans of Cooperation, MOU’s and APS I-Team are currently mandated in the ORC

- Team Players
- APS
- Domestic Violence
- Law Enforcement
- Legal
- Aging Network
- Mental Health
Partners

• Ohio Attorney General
• Some District Attorneys have set up specialized elder abuse investigation and prosecution units
• Adult Protective Services Interdisciplinary Teams (APS I-Team)
• Triads
Pending Legislation

• SB – 158 – Senator Steve Wilson, R-Maineville

  – The Bill aims to add protection to Ohio’s elderly from financial harm and exploitation.
  – Add Mandatory Reporters
  – Public awareness, educate professionals and hold suspects accountable
Summary

- The exploiter is often family, a caregiver or other loved one
- Exploiters may use various tactics to unlawfully obtain a victim’s “consent” to obtain assets
- Guardianships and Powers of Attorney are not licenses to steal
- Take action to protect the victim’s remaining assets
Resources

- Ohio Attorney General  https://www.ohioattorneygeneral.gov/
- Ohio Department of Aging  https://www.aging.ohio.gov/information/oda/
- Ohio Long Term-Care Ombudsman -  https://www.aging.ohio.gov/services/ombudsman/
- Ohio Department of Job and Family Services Office for Children and Families – Adult Protective Services  https://www.jfs.ohio.gov/ocf/aps.stm
Questions
This is just the tip of the iceberg!


www.OhioAttorneyGeneral.gov/EmailUpdates

www.OhioProtects.org

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