

**SOCIETY’S RESPONSE TO THE “INVISIBLE”  
ABUSE OF ELDERS: UNDERSTANDING AND  
ADDRESSING THE FINANCIAL ABUSE OF  
SOCIETY’S MOST VULNERABLE CITIZENS**

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*Elder financial abuse is more common than elder physical abuse and neglect, but it goes largely unreported, and is ignored by the public. Illinois is in need of legislative changes to address this growing problem. Mandatory reporting laws requiring bank personnel to report abuses would significantly address the issue of financial elder abuse. This Note describes elder financial abuse and examines its role in the elder population. Further, this Note examines current Illinois mandatory reporting laws for elder abuse and neglect, along with other reporting laws across the nation. Specifically, this Note analyzes two recently proposed mandatory reporting bills and discusses the legal implications of reporting requirements for financial institutions. Finally, this Note recommends that new legislation be passed requiring banks and other related entities to act as mandatory reporters for financial elder abuse, either by specifically naming such institutions as mandatory reporters, or by generally requiring elder financial abuse to be reported.*

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## I. Introduction

Illinois is one of twenty-five states that enacted mandatory reporting laws for elder abuse and neglect.<sup>1</sup> However, these laws are largely ineffective against financial abuse or fraud because current law identifies no mandatory reporters for financial abuse, and thus there is no entity in a position to act as a first line of defense in financial cases. Banks and financial institutions, entities uniquely situated to report such abuses, are currently not required by law to report elder financial abuse in Illinois.<sup>2</sup> Only in the last few years has financial elder abuse come into the public spotlight, having been largely ignored or denied previously by both the general public and Illinois legislators. In recent years, in-depth reports and investigative journalism have brought elder abuse to the attention of the entire nation.<sup>3</sup> However, when looking at those reports and articles, elder physical abuse and neglect still seems to be the main concern for both the news media and for the public absorbing the coverage. While the public may be interested in more visible forms of elder abuse, financial experts, medical professionals, and social workers agree that it is both more common and more likely that elders will be subjected to financial abuse and fraud.<sup>4</sup> These experts found—in a study released for a White House Symposium in 2012—that 99% of elder Americans were “very vulnerable” to financial scams because of their weakening mental capacity, as well as other mild cognitive impairments, making the elderly particularly susceptible.<sup>5</sup>

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1. *Financial Crimes Against the Elderly: 2013 Legislation*, NAT'L CONF. OF STATE LEGS., <http://www.ncsl.org/research/financial-services-and-commerce/financial-crimes-against-the-elderly-2013-legis.aspx#IL> (last visited Sept. 29, 2014).

2. *Id.*

3. See Veronica Haynes, *Stoughton police: woman charged in 'worst case of elder abuse'*, WCVB (Feb. 27, 2014), <http://www.wcvb.com/news/stoughton-police-woman-charged-in-worst-case-of-elder-abuse/24713294#!AQmi8>; see also Kennedy Ryan, *Daughter Charged With Elder Abuse, Murder in 85-Year-Old Mother's Death*, KTLA5 (Mar. 20, 2014), <http://ktla.com/2014/03/20/daughter-arrested-in-alleged-elder-abuse-murder-of-85-year-old-mother/#axzz2wdUdAJ1Q>. But see John Wasik, *Five Signs of Financial Elder Abuse You Can Spot Now*, FORBES (Mar. 14, 2014), <http://www.forbes.com/sites/johnwasik/2014/03/14/five-signs-of-financial-elder-abuse-you-can-spot-now/>.

4. Elizabeth A. Richards, *Stop the silence of elder abuse*, AM. NURSE TODAY (Aug. 2011), <http://www.americannursetoday.com/article.aspx?id=8112>; see also Maria Wood, *Study: Elder Financial Abuse on the Rise*, LIFEHEALTHPRO (June 15, 2012), <http://www.lifehealthpro.com/2012/06/15/study-elder-financial-abuse-on-the-rise>.

5. Richards, *supra* note 4; see also Wood, *supra* note 4.

While elder financial abuse is a growing problem, Illinois legislators are not taking the necessary steps to protect their elder citizens. Currently, Illinois is in a position to only protect its elder citizens *after* the financial abuse has occurred.<sup>6</sup> However, if legislators were to amend mandatory reporting laws to include bank personnel as mandatory reporters, such a step would serve a critical role in the fight against elder abuse.<sup>7</sup> In 2013, 57% of all elder abuse was financial; only 2.2% of those cases were reported by banks and other financial institutions.<sup>8</sup> If banks were required to be mandatory reporters, much of the elder abuse that goes unreported—because elders are too afraid or because it is just too late—could be stopped before extreme, financial damage is done, or even protected against future damage.<sup>9</sup> To properly protect elders, Illinois must amend its laws to include financial institutions as mandatory reporters.

The discussion proceeds as follows. Part II of this Note describes elder financial abuse and examines its current condition in the elder population. This section includes personal stories to help demonstrate that elder abuse is not just a rare phenomenon but actually a common occurrence within the elder population. Additionally, this section discusses why Illinois mandatory reporting laws are crafted in their current form, and examines mandatory reporting laws nationwide. Part III discusses the history of Illinois laws relating to elder abuse and the current status of such laws. Part III further analyzes the two most recent failed bills that have tried to make banks mandatory reporters. This section also examines the legal implications of, and the pushbacks from, legal institutions. Finally, the Note recommends in Part IV that Illinois mandatory reporting laws must include financial institutions if elders are to have a fighting chance at stopping financial abuse more proactively. This can be accomplished by taking one of two approaches: 1) explicitly stating in the law that banks and other financial institutions are mandatory reporters, or 2) making everyone mandatory reporters by specifying no one. It is nec-

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6. As will be discussed later in this Note, Illinois law currently does not protect elders from the prevention of financial abuse, it only provides for punishment of the offense. Oftentimes, there is not even a complete remedy available because the money has already been spent and cannot be fully recovered from the individual.

7. Richards, *supra* note 4; *see also* Wood, *supra* note 4.

8. Press Release, Ill. Dep't. of Fin. & Prof'l. Reg., Consumer Protection Training Completed at Illinois Banks and Credit Unions (Mar. 8, 2012), <http://www.idfpr.com/News/newsrsls/030812ConsumerProtectionTraining.asp>.

9. *Id.*

essary to amend child abuse mandatory reporting laws (where no financial abuse was involved) to help elders and stop financial elder abuse, and abandon unrealistic ideas of educating elders who have cognitive impairments and fear speaking out against their abuser(s). Child abuse mandatory reporting laws provide models for reporting, and mandatory reporters at financial institutions are needed as a first line of defense to combat increasing financial elder abuse in Illinois.

## II. Background

### A. What is Financial Elder Abuse?

Although adult protective services statutes in forty-nine states and the District of Columbia recognize “financial abuse or exploitation” as a reportable form of elder abuse,<sup>10</sup> the precise definition of the term “financial abuse or exploitation” varies considerably from state to state. Illinois defines “financial exploitation” as the use of an elder’s financial resources by another person to the disadvantage of the elder or for the profit or advantage of a person other than the elder.<sup>11</sup> In comparison, Alabama defines “exploitation” as the expenditure, diminution, or use of the elder’s property, assets, or other resources of a protected person without the express voluntary consent of that person or his or her legally authorized representative.<sup>12</sup> Louisiana’s definition of “financial abuse” focuses on the management of the elder’s, funds, assets, or property, or the use of his or her power of attorney or guardianship for one’s own profit or advantage.<sup>13</sup> On the other hand, Minnesota’s definition contrasts these general definitions by crafting a lengthy definition that attempts to encompass virtually all forms of financial abuse.<sup>14</sup> Regardless of the definition used, financial abuse can cause irreparable and devastating harm to the elder victim, which

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10. The Oregon Adult Protection Services (APS) statute is the only APS statute that does not identify financial abuse as a reportable form of abuse. The Oregon APS agency, however, has adopted administrative rules that contain an expanded definition of abuse. This expanded definition includes “Financial exploitation, which is wrongfully taking . . . the assets, funds, property, or medications belonging to or intended for the use of an adult.” OR. ADMIN. R. 411-020-0002(1)(e)(A) (2014), available at [http://arcweb.sos.state.or.us/rules/OARS\\_400/OAR\\_411/411\\_020.html](http://arcweb.sos.state.or.us/rules/OARS_400/OAR_411/411_020.html).

11. 320 ILL. COMP. STAT. 20/2 (2014).

12. ALA. CODE § 38-9-2(8) (2014).

13. LA REV. STAT. ANN. § 14:403.2(B)(6) (2013).

14. MINN. STAT. § 626.5572 subd. 9 (2014). See *id.* for an expansive definition of “Financial exploitation.”

is why state legislatures have put so much work in to crafting definitions that encompass as much financial exploitation and fraud as possible.

The National Center on Elder Abuse defines "elder financial or material exploitation" as "the illegal or improper use of an elder's funds, property or assets."<sup>15</sup> Examples include, but are not limited to: cashing an elder's check without authorization or permission; using an elder's ATM card without authorization or permission; forging an elder's signature; misusing or stealing an elder's money or possessions; coercing or deceiving an elder into signing any document (e.g., contracts or will); or the improper use of conservatorship, guardianship, executorship or power of attorney.<sup>16</sup>

There are signs and symptoms of elder financial exploitation that family members and financial institutions can use to determine whether an elder is being financially abused,<sup>17</sup> including for example: sudden changes in bank accounts or banking practices, including unexplained withdrawals of large sums of money by a person accompanying the elder at the time of the withdrawal; the inclusion or sudden addition of names on an elder's bank accounts or cards; unauthorized withdrawals of the elder's funds using the elder's ATM card; abrupt changes in a will or other financial documents; unexplained disappearances of funds or valuable possessions; unpaid, or unusually late payments on, bills despite the availability of funds, especially when someone else has been designated with the responsibility of paying the bills; discovery of the elder's signature being forged; the sudden appearance of previously uninvolved relatives claiming rights to the elder's affairs or possessions; unexplained sudden transfers of assets to a family member or someone outside of the family; securing services that are not necessary; an elder's report of financial abuse, or any other type of abuse; the signing of documents the elder does not understand; purchasing items the elder does not need and cannot use, and normally would not buy; and the appearance of a stranger who

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15. Nat'l Ctr. on Elder Abuse, Admin. on Aging, *Types of Abuse*, DEP'T OF HEALTH AND HUMAN SERVS., [http://ncea.aoa.gov/FAQ/Type\\_Abuse/#financial](http://ncea.aoa.gov/FAQ/Type_Abuse/#financial) (last visited Sept. 29, 2014).

16. *Id.*

17. *Id.*

begins a new close relationship and offers to manage the elder's finances and assets.<sup>18</sup>

Elder financial abuse is reported more than physical abuse or neglect,<sup>19</sup> but the elder is usually unaware of the abuse until it is too late to do anything in response.<sup>20</sup> At an age when people who have worked their entire lives are supposed to be enjoying their retirement, they are instead being taken advantage of by con artists, companies, supposed "professionals," and even their families and friends.<sup>21</sup> Because most elders are unaware of this financial abuse, the results are overwhelming, damaging and often irreversible (at least within their lifetime).<sup>22</sup>

### B. Taking a Closer Look

Although guardians, conservatorships, financial advisors or accountants, and attorneys can take financial advantage of elders, it is more common that elders will suffer financial abuse from family members, neighbors, caretakers, or strangers that insert themselves into the elder's life.<sup>23</sup> Financial abuse may begin on a small level: jewelry and valuables begin disappearing, social security checks are cashed without the elder's knowledge, and small amounts of money start disappearing from bank accounts.<sup>24</sup> Soon, however, financial abuse results in bank accounts transferred into the abuser's name, insurance policies transferred into the abuser's name and wills changed

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18. *Id.*; see also ELK GROVE POLICE DEP'T., FINANCIAL ELDER ABUSE, 5, 6, available at [http://www.elkgrovecpd.org/UserFiles/Servers/Server\\_118017/File/CrimeTips/financial-abuse.pdf](http://www.elkgrovecpd.org/UserFiles/Servers/Server_118017/File/CrimeTips/financial-abuse.pdf).

19. *Preventing Elder Abuse*, CAN. SAFETY COUNCIL: CAN. VOICE AND RES. FOR SAFETY (Nov. 2010), <https://canadasafetycouncil.org/campaigns/preventing-elder-abuse>.

20. Stuart Pfeifer, *L.A.-Area Priest Stole \$284,000 from Elderly Widow, Suit Alleges*, L.A. TIMES, Aug. 25, 2012, <http://articles.latimes.com/2012/aug/25/business/la-fi-priest-fraud-lawsuit-20120825>.

21. Richards, *supra* note 4; *Who Mistreats Elders?*, UNC CHAPEL HILL SCH. OF MED., <http://www.med.unc.edu/aging/eldermi.streatment/overview5.htm> (last visited Sept. 29, 2014).

22. OFFICE OF AGING AND DEV. SERVS., THE MAINE REPORTING PROJECT FOR FINANCIAL INSTITUTIONS: FIGHTING FINANCIAL EXPLOITATION 1, 2 (2014), available at <http://www.maine.gov/dhhs/oads/aging/aps/documents/Trainer-Manual3rdEdition.pdf>.

23. Richards, *supra* note 4; see also *Who Mistreats Elders?*, *supra* note 21.

24. CAL. ADVOCATES FOR NURSING HOME REFORM, FACT SHEET: ELDER FINANCIAL ABUSE, available at [http://www.canhr.org/factsheets/abuse\\_fs/PDFs/FS\\_FinanElderAbuse.pdf](http://www.canhr.org/factsheets/abuse_fs/PDFs/FS_FinanElderAbuse.pdf) (last updated Feb. 25, 2014).

so they are advantageous to the abuser.<sup>25</sup> If the abuse persists, it could result in an elder's home or bank account being signed over to the abuser (this could continue the financial abuse after the elder's death, impacting the family with unpaid debts and mortgages that are a direct result of the financial abuse).<sup>26</sup>

In one case, after the death of her husband, seventy-nine-year-old Michalana Jones, a devout Catholic, befriended her neighborhood priest.<sup>27</sup> Over the next seven years, they forged what seemed like a lifelong friendship, but in reality that is how long it took Father Peter Valdez to steal the life savings of an elderly widow and leave her feeling helpless and hopeless.<sup>28</sup> Father Valdez used this money to buy himself a new home and convinced Jones, the elderly widow, to attach the priest's name to all of her checking accounts, which she obeyed because she felt it was her duty to do so as a good Catholic.<sup>29</sup> These financial exploitations were not discovered until her son took over her finances in November in 2011 and by that time Father Valdez had embezzled nearly \$300,000 from his "friend."<sup>30</sup>

In another case, an elderly man was befriended by a woman who helped herself, and her daughter, to more than \$100,000 of this man's life savings within the first year of knowing him.<sup>31</sup> Within this first year, the woman and her daughter also moved in with him, forced him to pay for their living expenses, cosigned for the younger woman's school loans, took money from his retirement fund, and opened credit cards in his name.<sup>32</sup> After four years of living with the elder and increasing his debt by an additional \$29,000, the elderly man's children wanted to evict the woman and her daughter, but he did not want to throw them out on the street.<sup>33</sup>

Although elders are abused, they may feel powerless to stop the abuse, or even want to help the abusers.<sup>34</sup> While these may seem

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25. *What is Financial Exploitation?*, NAT'L ADULT PROTECTIVE SERVS. ASS'N (2013), <http://www.napsa-now.org/get-informed/what-is-financial-exploitation/>.

26. *Id.*

27. Pfeifer, *supra* note 20.

28. *Id.*

29. *Id.*

30. *Id.*

31. Tom Resnick, *Siblings Worry Dad's "Friend" is Now Legal Tenant*, DAILY HERALD (Nov. 3, 2013, 1:00 AM), <http://www.dailyherald.com/article/2013/11/03/entlife/711039943/>.

32. *Id.*

33. *Id.*

34. *Id.*

like extreme examples, the truth is that they are becoming a dangerous reality for an increasing number of elders.

Furthermore, anyone can fall victim to elder financial abuse. When a well-known actor publicly announced that he had fallen victim to financial elder abuse, and pleaded for the laws to change, the brutal reality of elder abuse started to sink in. Mickey Rooney, a famous American actor and entertainer, was forced to file restraining orders against his stepson and stepdaughter claiming both emotional and financial abuse, and spoke with courage to a Senate committee through great emotion.<sup>35</sup> At the Senate hearing, Rooney said that when the abuse is happening, "You can't believe it's happening to you . . . . You feel overwhelmed."<sup>36</sup> Even as a public figure, he suffered in silence for years.<sup>37</sup> The courage he needed to fight was replaced with fear, embarrassment, shock, and anger.<sup>38</sup> He was ignored, told to "shut up," and not believed by authorities and family members.<sup>39</sup> When he asked for information regarding his financial affairs he was told he could not have any information of his own, that it was none of his business, or that he did not know what he was talking about.<sup>40</sup> He wanted the committee to do just one thing, fight for the rights of those who are being abused and silenced: "I'm asking you to stop this elderly abuse. I mean stop it. Now. Not tomorrow, not next month, but now."<sup>41</sup> He shouted from the witness table that it is a crime and should not be allowed in America, and legislation should immediately be signed into law and sent to President Obama.<sup>42</sup> Rooney resonated the fact that he was not just fighting for himself when he stated, "I was unable to avoid becoming a victim of elder

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35. Justice for All: Ending Elder Abuse, Neglect, and Financial Exploitation: Hearing Before The Special Committee On Aging United States Senate, 112th Cong. 4-10 (2011) (statement of Mickey Rooney, Actor, Entertainment Legend, Elder Abuse Victim and Advocate) *available at* <http://www.gpo.gov/fdsys/pkg/CHRG-112shrg66957/html/CHRG-112shrg66957.htm> [hereinafter Mickey Rooney]; Tom Cohen, *Mickey Rooney Tells Senate Panel He Was Victim Of Elder Abuse*, CNN (Mar. 2, 2011), <http://www.cnn.com/2011/SHOWBIZ/03/02/rooney.elderly.abuse/>.

36. Cohen, *supra* note 35.

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. Mickey Rooney, *supra* note 35.

42. *Id.*

abuse . . . if it can happen to me, oh, God willing it—and unwilling it—it can happen to anyone."<sup>43</sup>

### C. Mandatory Reporting Laws: A Broader Look

The laws defining and detailing elder financial abuse vary from state to state. Some states, such as California and Illinois, have specific laws to address elder abuse.<sup>44</sup> Nevertheless, some states only have grass-roots organizations that elders can reach out to for help; despite their efforts to fill the gap that the lack of legislation has left, grass-roots organizations can only do so much without the aid of legislation to support their cause.<sup>45</sup> However, even with legislation and grass-roots efforts, existing laws and organizations often will not be able to intervene in enough time to prevent extreme loss.<sup>46</sup>

Illinois has historically had difficulty passing effective legislation to protect its elder citizens.<sup>47</sup> Whether it is poor drafting, difficul-

43. *Id.*

44. *See, e.g.*, CAL. WELF. & INST. CODE § 15610.30 (2014); 320 ILL. COMP. STAT. 20/8 (2014). *See also* CAL. CIV. CODE § 1575 (2014); 720 ILL. COMP. STAT. 5/17-56 (2014); 755 ILL. COMP. STAT. 5/2-6.2 (2014); 735 ILL. COMP. STAT. 5/8-2701 (2014); 320 ILL. COMP. STAT. 20/4 (2014); 725 ILL. COMP. STAT. 5/114-13.5 (2014); 755 ILL. COMP. STAT. 5/11a-10 (2014).

45. *See Elder Justice*, NCOA.ORG, <http://www.ncoa.org/public-policy-action/elder-justice> (last visited Sept. 29, 2014) (illustrating grass-roots organizations' support and need for legislation). *See, e.g.*, *About Elder Financial Protection Network*, ELDER FINANCIAL PROTECTION, <http://www.elderfinancialprotection.org> (last visited Sept. 29, 2014); *Elder and Dependent Abuse Prevention Month*, CWDA, [http://www.cwda.org/tools/events/pae\\_events\\_oam.php](http://www.cwda.org/tools/events/pae_events_oam.php) (last visited Sept. 29, 2014) (presenting California elder organization); *NYC Elder Abuse Center*, NYC ELDER ABUSE CENTER, <http://nyceac.com> (last visited Sept. 29, 2014) (presenting New York elder organization); *Women's Institute for a Secure Retirement*, WISER, <http://www.wiserwomen.org/index.php?id=661> (last visited Sept. 29, 2014) (presenting women's elder organization).

46. *Elder Abuse Prevention*, CAPE FEAR COUNCIL OF GOVERNMENTS, <http://www.capefearcog.org/Area-Agency-on-Aging/Elder-Abuse-Prevention> (last visited Sept. 29, 2014) (arguing that grass-roots organizations are beneficial for educating and bringing awareness to the public. However, this awareness cannot rescue individuals from financial abuse, these individuals cannot extend their arms beyond the law, and the members of such grass-roots organizations cannot create long-term solutions that help the masses).

47. The Illinois State Police Elder Abuse Squad only educates and advises after the abuse has occurred; B\*SAFE does not require mandatory reporting and thus does not make up for the financial abuse holes in Illinois' mandatory reporting laws. Press Release, Illinois State Police, Governor Blagojevich Announces Creation of ISP Elder Abuse Squad (Mar. 20, 2005), *available at* [http://archive-us.com/us/i/il.us/2013-07-24\\_2502467\\_42/Illinois\\_State\\_Police\\_Press\\_Release](http://archive-us.com/us/i/il.us/2013-07-24_2502467_42/Illinois_State_Police_Press_Release) [hereinafter *Elder Abuse Squad*]. *See also* Kathryn Tormey, *Crackdown on Elder Abuse: With Number of Financial Exploitation Cases on Rise, State Laws in Midwest Strengthen Prevention and Prosecution*, THE COUNCIL OF STATE GOV'TS. KNOWLEDGE

ty passing legislation, or relying on grassroots organizations to take the place of state protection, Illinois has often left elders defenseless and without remedies until it is too late.<sup>48</sup> Currently, Illinois employs a program called B\*SAFE that requires all bank employees be trained to spot elder financial abuse.<sup>49</sup> However, the program falls short in that it does not require reporting, nor are banks or their employees mandatory reporters.<sup>50</sup> So in short, a bank employee can spot the financial abuse of an elder and decide to do nothing; there will be no consequences for either the bank or its employee that decided not to report.<sup>51</sup> On the other hand, Illinois does recognize that elder financial abuse is a growing concern: HR 1689 stiffened the penalties for abusers by lowering the Class 1 felony threshold from \$100,000 in stolen property to \$50,000.<sup>52</sup>

Of the states with mandatory reporting laws, only three—Florida, Georgia and Mississippi<sup>53</sup>—identify banks as mandatory reporters.<sup>54</sup> Fifteen additional states require “any person” to report, which would include bank employees.<sup>55</sup> A few other states encourage, but do not mandate, reporting by banks. For example, the Virginia

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CTR. (Apr. 2012), <http://knowledgecenter.csg.org/kc/content/crackdown-elder-abuse-number-financial-exploitation-cases-rise-state-laws-midwest-strengthen>.

48. See Elder Abuse Squad, *supra* note 47; see Tormey, *supra* note 47.

49. Tormey, *supra* note 47.

50. *Id.*

51. *Id.*

52. *Id.*

53. FLA. STAT. § 415.1034(1)(a)(8) (2014); GA. CODE ANN. § 30-5-4(a)(1)(B) (2014); MISS. CODE ANN. § 43-47-7(1)(a)(vii) (2013) (both Florida and Mississippi mandate reporting by “any person” but in addition list specific categories that are required to report abuse).

54. Kansas lists bank trust officers as mandatory reporters. KAN. STAT. ANN. § 39-1431(a) (2014). However, it is typically bank tellers and other bank employees who have frequent contact with customers, rather than bank trust officers, who are in a position to observe and report suspicious behavior. Therefore, in this note, Kansas is not considered a state in which banks are mandatory reporters of suspected elder financial abuse. *Id.*

55. These states are Delaware, DEL. CODE ANN. tit. 31 § 3910(a) (2014); Indiana, IND. CODE § 12-10-3-9(a) (2014); Kentucky, KY. REV. STAT. ANN. § 209.030(2) (West 2014); Louisiana, LA. REV. STAT. ANN. § 14:403.2(C) (West 2013); Missouri, MO. REV. STAT. § 660.255 (2013); New Hampshire, N.H. REV. STAT. ANN. § 161-F:46 (2014); New Mexico, N.M. STAT. ANN. § 27-7-30(A) (2014); North Carolina, N.C. GEN. STAT. § 108A-102(a) (2014); Oklahoma, OKLA. STAT. tit. 43A, § 10-104(a) (2014); Rhode Island, R.I. GEN. LAW § 42-66-8 (2014); South Carolina, S.C. CODE ANN. § 43-35-25(A) (2013) (South Carolina mandates reporting only by any person “who has actual knowledge” of abuse); Tennessee, TENN. CODE ANN. § 71-6-103(b)(1) (2014); Texas, TEX. HUM. RES. CODE ANN. §§ 48.051(a) & (c) (2013); Utah, UTAH CODE ANN. § 62A-3-305 (2014); and Wyoming, WYO. STAT. ANN. § 35-20-103(a) (2014).

Adult Protection Services statute states that any institution that suspects that an elder has been financially abused *may* report the abuse.<sup>56</sup> On the other hand, the Colorado statute *urges* bank personnel, savings and loan associations, credit unions, and other financial institutions to report suspected elder abuse.<sup>57</sup>

1. OTHER STATES' APPROACHES AND ALTERNATIVES TO MANDATORY REPORTING

*i. Oregon*

Similar to former Illinois Governor Blagojevich's 2005 program, some states involve banks and other financial institutions in the initiative to detect financial elder abuse.<sup>58</sup> For instance, the Oregon Elder Financial Exploitation Program is a partnership between the Oregon Department of Justice, several local agencies dedicated to serving the elderly, the Oregon Bankers Association, and AARP.<sup>59</sup> Funded by the U.S. Department of Justice's Office for Victims of Crime, the program educates bank personnel on the warning signs of elder financial abuse and the appropriate actions to take once exploitation is confirmed.<sup>60</sup> A key component of the entire Oregon program is to provide immunity to banks and their staff, encouraging them to report suspicions of elder financial abuse.<sup>61</sup>

*ii. California*

Likewise, the California Bankers Association supported AB 1664, the 2005 Elder Abuse Reporting Bill, authorizing the staff of financial institutions to report incidents of suspected financial abuses of elders or dependent adults.<sup>62</sup> The bill authorizes Adult Protection Services officials to access financial information of a bank client when

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56. VA. CODE ANN. § 63.1-55.3(D) (2014).

57. COLO. REV. STAT. § 26-3.1-102(b)(XIII) (2014).

58. Carrie Abner, The Council of State Gov'ts, *Stolen 'Golden Years': States Address the Silent Epidemic of Elderly Financial Victimization*, STATE NEWS 18, 21 (Aug. 2005), available at <http://www.csg.org/knowledgecenter/docs/sn0508StolenGoldenYears.pdf>

59. *Id.*

60. *Id.*

61. *Id.*

62. CA. LEG. COUNSEL, NO. 1664 (2014), [http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201320140AB1664](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB1664); ASSEMB. COMM. ON AGING AND LONG-TERM CARE, LEG. SUMMARY (2005-06), [ftp://www.leginfo.ca.gov/pub/0506/bill/asm/ab\\_16511700/ab\\_1664\\_bill\\_20050222\\_introduced.html](ftp://www.leginfo.ca.gov/pub/0506/bill/asm/ab_16511700/ab_1664_bill_20050222_introduced.html).

investigating the suspected financial abuse of the elder.<sup>63</sup> Current law authorizes financial institutions and their employees to report incidences of suspected financial abuse to government officials, so clearly California law takes an explicit stance on protecting the elderly against financial abuse.<sup>64</sup>

*iii. Maine*

Still other states, including Maine, use initiatives that do not involve financial institutions. Specifically, the Improvident Transfers of Title law allows seniors to request court orders demanding the return of property that was transferred as a result of undue influence.<sup>65</sup> This law applies to both financial and real property that was transferred to someone who had a confidential and fiduciary relationship to the elder, including financial advisors, brokers, accountants, health care providers, attorneys, caregivers, friends, and family members.<sup>66</sup>

*iv. Arizona*

In Arizona, individuals who are considered to hold a position of trust and use that position in a manner of deception or intimidation to gain permanent control of an elder's assets are considered guilty of theft, and are prosecuted accordingly.<sup>67</sup> Similarly, individuals who defraud elders are fined treble damages based on the monetary amount of suffering experienced and also forfeit their claims to that elder's estate.<sup>68</sup>

*v. Florida*

One of the more interesting programs employed is in Florida. Florida battles elder financial abuse by using the state's elders themselves.<sup>69</sup> As part of the Seniors vs. Crime Project, elders volunteer to

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63. *Id.*

64. *Id.*; CA. ASSEMB. AGING AND LONG-TERM CARE COMM., FINANCIAL ELDER ABUSE REPORTING: AGENDA ITEM 7, available at [http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=4&ved=0CEQQFjAD&url=http%3A%2F%2Fscgov.iqm2.com%2FCitizens%2FFileOpen.aspx%3FType%3D4%26ID%3D88530&ei=8CSVUq3hCsjQyAHst4G4Cg&usq=AFQjCNGQ56yKhJHXOF\\_wpbs8S1jwR\\_gnyg&sig2=OdBwh4qz6P9KWZ9kPZykFQ&bvm=bv.57155469,d.cGU](http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=4&ved=0CEQQFjAD&url=http%3A%2F%2Fscgov.iqm2.com%2FCitizens%2FFileOpen.aspx%3FType%3D4%26ID%3D88530&ei=8CSVUq3hCsjQyAHst4G4Cg&usq=AFQjCNGQ56yKhJHXOF_wpbs8S1jwR_gnyg&sig2=OdBwh4qz6P9KWZ9kPZykFQ&bvm=bv.57155469,d.cGU)

65. Abner, *supra* note 58, at 21.

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.* at 35.

educate their peers on the dangers of consumer fraud and possible warning signs of financial elder abuse, among other types of elder abuse.<sup>70</sup> A group of elders, known as "The Senior Sleuths," assist the Attorney General's office and other law enforcement agencies to detect fraud and abuse in their communities.<sup>71</sup>

Currently, there are more than two thousand Senior Sleuths working in this program and performing such tasks as checking to ensure that elder's prescriptions are filled correctly and conducting undercover sting operations to detect businesses using false or deceptive business practices.<sup>72</sup> With the help of the Senior Sleuths, the Attorney General's office has been successful in handling more than two thousand complaints of elder abuse, prosecuting over forty cases and recovering more than three million dollars since the program's inception.<sup>73</sup>

## 2. MULTI-AGENCY RESPONSE

The Center for Elders and the Courts, a project of the National Center for State Courts, reviewed the experiences of several jurisdictions in engaging in multi-agency collaboration in judicial responses to aging elders and determined which jurisdictions had the most promising Elder Justice Center and which had the best Elder Protection Court.<sup>74</sup> Courts are used to, and have extensive experience in, "applying problem-solving principles in cases that involve multiple and interrelated issues (e.g. drug courts, mental health courts, domestic violence courts, and family courts)".<sup>75</sup> These same problem-solving skills are similarly appropriate for solving the complexities involved in elder financial abuse cases where the challenge is providing an effective remedy and resolution within a timely manner.<sup>76</sup> "The key to developing elder-friendly programs is the use of specialized staff and/or case managers to create linkages between clients, courts, and

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70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

74. *Roles and Responses: Creating Multi-Agency Responses*, CTR. FOR ELDERS AND THE COURTS, <http://www.eldersandcourts.org/Aging/The-Role-of-the-Courts/Creating-MultiAgency-Responses.aspx> (last visited Sept. 29, 2014); Max B. Rothman & Burton D. Dunlop, *Judicial Responses to an Aging America*, 42 CT. REV. 8, 12-18 (2005), available at <http://aja.ncsc.dni.us/courtrv/cr42-1/CR%2042-1Rothman.pdf>.

75. *Id.*

76. *Id.*

local service providers.”<sup>77</sup> The general mission of both the Elder Justice Centers and the Elder Protection Courts is to “remove the barriers [from] the court system and to enhance linkages between elders, courts, and service providers.”<sup>78</sup>

*i. Promising Practice: Elder Justice Centers (EJCs)*

In Tampa, the Florida State Courts System and Hillsborough County collaborate to fund the Elder Justice Center, which assists elders aged sixty and over.<sup>79</sup> This facility was designated a promising practice to take note of.<sup>80</sup> This Florida Elder Justice Center has five primary functions: (1) to serve as a designated elder-friendly facility for elders over the age of sixty, even if just to serve as an information referral service; (2) to educate the elder public and staff members through outreach programs and public education; (3) to coordinate access to existing agencies that presently provide care to elders such as legal services, law enforcement, and long-term care facilities; (4) to provide short-term case management services and monitoring services, including review of guardianship records, guardianship annual reports, guardianship fee reports, and guardianship cases for wards of the court; and (5) to provide assistance to elder victims of abuse, neglect, or exploitation, including advocacy, victim services, and case coordination.<sup>81</sup>

*ii. Promising Practice: Elder Protection Courts*

The concept of the Elder Protection Court originated in the Superior Court of California in Alameda County; this court continues to be designated as a promising practice to take note of.<sup>82</sup> The program was guided by an Elder Access Committee, which consisted of judicial officers, other court divisions, agency partners, and the legal community.<sup>83</sup> This Court offers four particular services: (1) collaboration with

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77. *Id.*; *Assessment Resources and Coordination: Interagency Coordination*, CTR. FOR ELDER AND THE COURTS, <http://www.eldersandcourts.org/Elder-Abuse/Elder-Abuse-Assessment-Resources-and-Coordination.aspx> (last visited Sept. 29, 2014).

78. *Creating Multi-Agency Responses*, *supra* note 74.

79. *Id.*

80. *Id.*

81. *Id.*; *Elder Justice Center FAQs*, THIRTEENTH JUDICIAL CIRCUIT HILLSBOROUGH CNTY., <http://www.fljud13.org/CourtPrograms/ElderJusticeCenter/FAQs.aspx> (last visited Sept. 29, 2014).

82. *Creating Multi-Agency Responses*, *supra* note 74.

83. *Id.*

system partners to provide legal and social services related to elder abuse; (2) development of procedures used to identify, track, and investigate elder abuse cases; (3) improvement in access to court proceedings and court records for elders; and (4) creation of a referral system that is run through the case manager for elder victims.<sup>84</sup>

#### D. Illinois Laws

##### 1. ILLINOIS MANDATORY REPORTING LAWS CONCERNING ELDER ABUSE AND ILLINOIS MANDATORY REPORTING LAWS CONCERNING CHILD WELFARE

When crafting the current mandatory reporting law, legislators thought it was best to model the mandatory reporting laws of similar laws governing child abuse and neglect.<sup>85</sup> However, this approach was flawed with regard to financial abuse, as children do not face financial fraud and thus do not need financially literate mandatory reporters.<sup>86</sup> Instead, mandatory reporting laws addressing child abuse primarily concern physical abuse and neglect, which when translated to elder abuse and neglect results in weak laws addressing elder financial abuse or exploitation. These laws also offer few remedies other than removal of the abused person from the setting where the abuse is occurring.<sup>87</sup> When a majority of the abuse that elders face is financial, they need protection from the front lines—the banks.<sup>88</sup>

When looking at Illinois child welfare laws, it is clear that mandatory reporting requires any professional or institution—aside from lawyers—who could possibly come in contact with an abused child to report the abuse.<sup>89</sup> Physicians, resident interns, surgeons, dentists, coroners, school personnel, members of school boards, nutritionists, social workers, law enforcement officers, counselors, psychologists, animal control officers, field personnel of the

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84. *Id.*

85. *Elder Abuse, Neglect, and Exploitation: Are We Doing Enough?: Hearing Before the Subcomm. On Crime, Corrections and Victims' Rights of the S. Comm. on the Judiciary*, 108th Cong. 16 (2003) (Statement of Lori A. Stiegel, Associate Staff Director, Commission of Law and Aging, American Bar Association, Washington, D.C.) [hereinafter Stiegel].

86. *Id.*

87. FACTS ABOUT LAW AND THE ELDERLY, AM. BAR ASS'N, 1, 5 (1998), available at [http://www.cdaaa.org/images/ABA--\\_Facts\\_about\\_Law\\_and\\_the\\_Elderly.pdf](http://www.cdaaa.org/images/ABA--_Facts_about_Law_and_the_Elderly.pdf).

88. *See id.*

89. 325 IL. COMP. STAT. 514 (2014); *see also* 720 IL. COMP. STAT. 5/11-20.2 (2014).

Department of Healthcare and Family Services, and numerous others are listed as required reporters of child abuse.<sup>90</sup> It is important to note that any possible reporter, who in the ordinary course of performing their jobs may encounter abuse of the protected person(s), has been listed in statutes and other forms of legislation.<sup>91</sup> Reports are required when a mandatory reporter has reasonable cause to believe that a child known to him or her in his or her professional capacity may be abused or neglected.<sup>92</sup> Illinois also provides for reporting by persons other than mandatory reporters.<sup>93</sup> Additionally, although the reporter's name, occupation, and contact information are taken while making the report, the reporter's identifiable information in the report is obscured to protect the identity of the person making the report as a means of encouraging reports of suspected abuse and compliance in cases of suspected abuse.<sup>94</sup>

There are also penalties for these persons not performing their reporting duties.<sup>95</sup> For instance, any physician who fails to report suspected child abuse or neglect is referred to the Illinois State Medical Disciplinary Board for further action in accordance with the Medical Practice Act of 1987.<sup>96</sup> Any mandatory reporter who willfully fails to report suspected child abuse or neglect is guilty of a Class A misdemeanor for a first time violation, and a Class 4 felony for subsequent violations.<sup>97</sup> Any mandatory reporter who fails to report acts as part of a plan or scheme to prevent child abuse or neglect to protect any person or entity (such as a school, daycare, etc.) from arrest or prosecution, is guilty of a Class 4 felony for a first offense,

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90. 325 IL. COMP. STAT. 514 (2014); *see also* 720 IL. COMP. STAT. 5/11-20.2 (2014).

91. CHILD WELFARE INFO. GATEWAY, MANDATORY REPORTERS OF CHILD ABUSE AND NEGLECT (2013), *available at* [https://www.childwelfare.gov/systemwide/laws\\_policies/statutes/manda.pdf](https://www.childwelfare.gov/systemwide/laws_policies/statutes/manda.pdf); ILL. DEP'T OF CHILDREN & FAMILY SERVS., MANUAL FOR MANDATED REPORTERS 5 (2014) *available at* [http://www.illinois.gov/dcfs/safekids/reporting/Documents/cfs\\_1050-21\\_mandated\\_reporter\\_manual.pdf](http://www.illinois.gov/dcfs/safekids/reporting/Documents/cfs_1050-21_mandated_reporter_manual.pdf).

92. CHILD WELFARE INFO. GATEWAY, *supra* note 91; ILL. DEP'T OF CHILDREN & FAMILY SERVS., *supra* note 91.

93. CHILD WELFARE INFO. GATEWAY, *supra* note 91; ILL. DEP'T OF CHILDREN & FAMILY SERVS., *supra* note 91.

94. *See generally* *Lessons from Penn State: A Call to Implement a New Pattern of Training for Mandated Reporters and Child Protection Professionalism*, UNIV. OF ILL. AT SPRINGFIELD (2013), <http://uishelix2.uis.edu/vod/vod/2013/CommunityResponsetoChildAbuse.html>.

95. CHILD WELFARE GATEWAY, *supra* note 91; *see also* ILL. DEP'T OF CHILDREN & FAMILY SERVS., *supra* note 91.

96. ILL. ADMIN. CODE tit. 89 § 300.30(b)(5)(B) (2013).

97. ILL. DEP'T OF CHILDREN & FAMILY SERVS., *supra* note 91, at 5.

and a Class 3 felony for subsequent offenses.<sup>98</sup> There are also penalties for false reporting. For example, mandatory reporters who knowingly transmit a false report to the department commit the offense of disorderly conduct a violation that constitutes a Class 4 felony.<sup>99</sup>

## 2. CURRENT ILLINOIS LAWS

Generally, Illinois elders currently have to rely on ordinary orders of protection, restraining orders, or federal laws to protect themselves from financial abuse or exploitation since the current laws are only aimed to protect them from physical abuse. Illinois has made multiple attempts at strengthening its elder financial abuse laws, but to date none have been successful in endowing elders with the protections they need.

### *i. Blagojevich's Initiative*

In March 2005, Illinois Governor Rod Blagojevich announced a new initiative, called the ISP Elder Abuse Squad, that he believed would combat the financial exploitation that appeared to be increasingly assailing the elderly population.<sup>100</sup> This program "would enable investigators to develop liaisons with senior service providers, prosecutors, other law enforcement agencies and financial representatives to more effectively refer cases."<sup>101</sup> Additionally, this program focused on educational programs for elders focused on warning signs of financial abuse and fraud.<sup>102</sup>

Another key aspect of the initiative is the support and guidance of the investigators throughout the investigation and prosecution process.<sup>103</sup> According to Illinois Criminal Justice Information Authority Executive Director Lori G. Levin, there is often a reluctance or even an inability of elders to come forward or cooperate with investigators in elder abuse cases,<sup>104</sup> due to: cognitive

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98. 325 ILL. COMP. STAT. 5/4.02 (2014).

99. 720 ILL. COMP. STAT. 5/26.1(a)(7) (2014); see CHILD WELFARE INFO. GATEWAY, *supra* note 91.

100. Press Release, *supra* note 47.

101. Abner, *supra* note 58, at 35.

102. *Id.*

103. *Id.*

104. Governor Blagojevich Announces Creation of State Police Elder Abuse Squad: Statewide Program Will Use Outreach and Advocacy to Educate the Elderly About Risks of Financial Exploitation, ILL. GOV'T NEWS NETWORK (Mar. 28, 2005), <http://www3.illinois.gov/PressRelease.cfm?subjectID=1&RecNum=3796> [hereinafter State Police Elder Abuse Squad].

impairments; fear of involuntary institutionalization; anxiety of people, especially those that are in the key positions that elders are supposed to reach out to for help; not being believed; and the potential for strained family relationships.<sup>105</sup>

The elders' fears, anxieties, and stresses are what make the outreach, education, and advocacy aspects of the program so important.<sup>106</sup> "Our seniors have worked hard, raised their families and they deserve a peaceful and safe retirement. Unfortunately, senior citizens are preyed upon by scam artists. . . who want to take away their hard earned money, their self-esteem and their independence," Governor Blagojevich said.<sup>107</sup> "We must do everything we can to guard the elderly from fraud and abuse and afford them the respect and security they deserve."<sup>108</sup>

This initiative has been largely unsuccessful, leaving elders encumbered and vulnerable. Unfortunately, the ISP Elder Abuse Squad does nothing to prevent the actual financial abuse of elders; it only helps them cope with the aftermath.<sup>109</sup> Further, Governor Blagojevich had a difficult time passing bills into laws while he was in office that could have complemented the ISP Elder Abuse Squad, such as a mandatory reporting law or a law protecting reporters of financial abuse of elders and was then plagued by scandal.<sup>110</sup> The end result was the creation of a special statewide unit that did not see much action past its creation in 2005.<sup>111</sup>

*ii. B\*SAFE*

B\*SAFE, Bankers and Seniors Against Financial Exploitations, partners bank personnel with training programs supported by the government in one of the first efforts in Illinois to combat the financial

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105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

110. *Authors of Blagojevich Book Discuss Reporting As Narrative, Book Research*, INDIANA UNIV. SCH. OF JOURNALISM (Nov. 12, 2012), <http://journalism.indiana.edu/general-news/notices/authors-of-bлагоjevich-book-discuss-reporting-as-narrative-balancing-of-work-book-research/>.

111. The author did an extensive search of all major databases and the only thing found was that the funding was for the first year and was presumably not renewed due to a lack of success.

aspect of the abuse that elders face.<sup>112</sup> Illinois requires that bank employees be trained to spot elder financial abuse, which accounts for approximately two percent of the twelve thousand reports of elder abuse that Illinois receives each year.<sup>113</sup> For over ten years, employees of Illinois' financial institutions have operated on a program called B\*SAFE, which trains employees at particular institutions to spot and report possible elder financial abuse.<sup>114</sup>

The program has two components. First, B\*SAFE certifies employees themselves to train their colleagues in spotting and reporting financial abuse.<sup>115</sup> Second, the program brings staff from the State's Department of Aging or elder-abuse agencies to the banks to conduct the training seminars.<sup>116</sup> Amending the Elder Abuse and Neglect Act, SB 3267 passed in 2010 and made all training mandatory for all employees as of February 1, 2012.<sup>117</sup> The program consists of a thirty-minute training session for each employee provided by each institution; every employee must be retrained every three years.<sup>118</sup> However, institutions do not have to use the State's B\*SAFE program's training model or program features, instead, these institutions can integrate the material into the training already provide to the employees.<sup>119</sup>

Unlike other states, Illinois does not require financial institutions to report suspected financial elder abuse, nor does Illinois provide immunity to banks or personnel who report the suspected abuse.<sup>120</sup> Any attempts to require banks to do so have been unsuccessful in the Illinois legislature thus far, however, they are

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112. *Elder Abuse Task Force*, ILL. DEP'T ON AGING (2010), [http://www.cbrx.il.gov/aging/1abuselegal/abuse\\_financial.htm](http://www.cbrx.il.gov/aging/1abuselegal/abuse_financial.htm).

113. Kathryn Tormey, *Crackdown On Elder Abuse: With Number of Financial Exploitation Cases On Rise, State Laws In Midwest Strengthen Prevention And Prosecution*, THE COUNCIL OF STATE GOV'TS KNOWLEDGE CTR. (July 27, 2012), <http://knowledgecenter.csg.org/kc/content/crackdown-elder-abuse-number-financial-exploitation-cases-rise-state-laws-midwest-strengthen>.

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.* When the material is integrated into the program, there is no note that there is a quality assessment or assessment that the program is of the same grade as the State's B\*SAFE program, which could possibly lead to institutions attempting to save money but ultimately harming elders by not adequately educating the employees about financial elder abuse. *Id.*

120. *Id.*

encouraged to report any suspected elder abuse.<sup>121</sup> To encourage this reporting, financial institutions, and the employees that make the report, should be provided legal immunity when a report is made.<sup>122</sup>

Although providing training to bank employees in order to spot financial abuse is beneficial for many reasons, knowing what to look for and knowing what steps to take does not help an elder who is being financially abused if bank personnel are not mandatory reporters.<sup>123</sup> Sadly, even this initiative—one not requiring banks to report abuse—has slowly faded away, and the initiative ceased being enforced.<sup>124</sup>

*iii. HB 1689*

Illinois lawmakers have also stiffened the penalties for people who exploit seniors. Under HB 1689, passed in 2011, cases involving \$50,000 or more are now considered a Class 1 felony. Previously, the threshold for a Class 1 felony was \$100,000 or more in stolen property.<sup>125</sup>

*iv. Legislation Currently in Place That Only Protects Against Physical Abuse*

Currently, there are only four Illinois statutes that directly apply to abused elders: (1) the Elder Abuse and Neglect Act;<sup>126</sup> (2) the Abused and Neglected Long Term Care Residents;<sup>127</sup> (3) the Long Term Care Ombudsman Program;<sup>128</sup> and (4) the Financial Exploitation of an Elderly Person or a Person With a Disability.<sup>129</sup> The first three laws focus primarily on physical abuse, with little or no mention of financial abuse.<sup>130</sup> The Financial Exploitation of an Elderly Person With a Disability statute does deal with financial abuse, but does not

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121. *Id.*

122. *Id.*

123. *Advocating for Older Citizens: B\*SAFE Program*, ILL. ATTORNEY GEN. (2010), <http://illinoisattorneygeneral.gov/seniors/bsafe.html>.

124. *See* Tormey, *supra* note 113 (encouraging, but not requiring, contacting agencies about elder abuse). This policy has resulted in a “domino effect” of poorly trained employees training other employees—encouraging misinformation and a workforce that is unable to successfully spot elder financial abuse. *Id.*

125. *Id.*

126. 320 ILL. COMP. STAT. 20/1-20/14 (2014).

127. 210 ILL. COMP. STAT. 30/1-30/16 (2014).

128. 20 ILL. COMP. STAT. 105/4.04 (2014).

129. 720 ILL. COMP. STAT. 5/17-56 (2014).

130. 320 ILL. COMP. STAT. 20/1-20/14 (2014); 210 ILL. COMP. STAT. 30/1-30/16 (2014); 20 ILL. COMP. STAT. 105/4.04 (2014).

prevent the financial abuse.<sup>131</sup> Instead, this criminal offense punishes the abuser or exploiter after the financial abuse has already been endured by the elder, when full recovery of their financial assets is unlikely.<sup>132</sup> There is currently no legislation in place that stops the financial abuse before it happens, at the front lines (the banks or financial institutions), or before recovery becomes a lost cause.

### III. Analysis

"Every year an estimated 2.1 million older Americans are victims of elder abuse, neglect, or exploitation. And that's only part of the picture: Experts believe that for every case of elder abuse or neglect reported, as many as five cases go unreported."<sup>133</sup> "For many states, becoming aware of the threat and presence of elder financial abuse is the first step in developing any type of plan to respond to elder abuse."<sup>134</sup> "While limited information exists on the exact scope of the problem at the national level, individual cases,<sup>135</sup> underscore the serious threats [elders] face in protecting the assets on which they depend." Illinois' elders have worked their entire lives building and protecting these assets and are being left without recourse.<sup>136</sup>

Is a law modeled after protecting a class of citizens that were never concerned with financial abuse the best approach?

It is estimated that for each case of financial exploitation that is reported to the authorities, twenty-five more go unreported.<sup>137</sup> Illinois needs to implement a solution in order to protect the financial stability of elders. Laws need to be in place to not only define financial elder abuse, but to enable elders to regain their financial security in a more timely manner, or stop the exploitation before it happens.

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131. 720 ILL. COMP. STAT. 5/17-56 (2014).

132. *Id.*

133. See also *Protect Elders in the Year of Elder Abuse Prevention*, ADMIN. FOR CMTY. LIVING, [http://www.aoa.acl.gov/AoA\\_Programs/Elder\\_Rights/YEAP/index.aspx](http://www.aoa.acl.gov/AoA_Programs/Elder_Rights/YEAP/index.aspx) (last visited Sept. 29, 2014); Abner, *supra* note 58, at 18, 21, 22. According to the National Research Council, "The occurrence and severity of elder mistreatment are likely to increase markedly over the coming decades, as the population ages, caregiving responsibilities and relationships change, and increasing numbers of older persons require long-term care." *Id.*

134. *Id.* at 35.

135. *Id.* Like those of the elder woman abused by her Priest, the man abused by the woman that he "befriended," and well-known actor Mickey Rooney abused by his stepchildren.

136. *Id.*

137. Abner, *supra* note 58, at 22.

When looking to structure laws that address an increasing number of abused elders, building off existing mandatory reporting law for abused children may have been the first step, but now more needs to be done. Legislators need to consider with whom financially abused elders come into contact, who notices the abuse, and who would and should have the ability to report such abuse. However, when looking at the statute, Legislators clearly failed.<sup>138</sup> Mandatory reporters for all types of elder abuse include: social services, law enforcement, caregivers, nursing home administrators, professional counselors, employees of an entity providing developmental disability services, field personnel of the Department of Healthcare and Family Services, field personnel of the Department of Public Health, coroners, medical examiners, paramedics, emergency medical technicians, and other professionals who may come into contact with abused elders.<sup>139</sup> As one can see, since elder abuse mandatory reporting laws are modeled after child abuse mandatory reporting laws, the focus is placed on people who would notice physical abuse, not financial abuse.<sup>140</sup>

#### A. Stalled Proposed Legislation

For the past two years, the Illinois General Assembly has attempted to pass legislation that would make banks and financial institutions mandatory reporters.<sup>141</sup> Instead of adding them to the list of existing mandatory reporters, who have felony penalties for non-reporting, the proposed legislation has civil penalties for non-reporting in an attempt to ease banks and other financial institutions into accepting the legislation and lessening the pushback that they receive.<sup>142</sup> In 2012, Rep. Jerry F. Costello, seconded by Michelle

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138. 320 ILL. COMP. STAT. 20/2 (2014).

139. *Id.* at 20/2 (f-5) (2014) (defining “mandated reporter” as an inclusive list of professionals, including among others: professionals engaged in social services, law enforcement, education, the care of eligible adults, employees at the Department on Aging and any employee of the State of Illinois involved in providing services to eligible adults).

140. *Id.*

141. *Financial Crimes Against the Elderly 2012 Legislation*, NAT’L CONFERENCE OF STATE LEGS. (2013), <http://www.ncsl.org/research/financial-services-and-commerce/financial-crimes-against-the-elderly-2012-legis.aspx>; see also *Financial Crimes Against the Elderly 2013 Legislation*, NAT’L CONFERENCE OF STATE LEGISLATION (2014), <http://www.ncsl.org/research/financial-services-and-commerce/financial-crimes-against-the-elderly-2013-legis.aspx#IL>.

142. *Financial Crimes Against the Elderly 2012 Legislation*, *supra* note 141; see also *Financial Crimes Against the Elderly 2013 Legislation*, *supra* note 141.

Mussman, Lawrence Walsh, Jr., Keith Farnham, Daniel Biss, and others, introduced the Financial Institutions Elder Abuse Reporting Act.<sup>143</sup> The Act provides that a financial institution shall make a report if any employee of the financial institution has direct contact with the abused elder, reviews or approves documents related to the abused elder, or observes or obtains knowledge of the abused elder's behavior or unusual circumstances (including transactions) arise that lead the employee to know or have reasonable cause to suspect that the elder is being financially abused.<sup>144</sup> The Act provides protection for the reporter by providing confidentiality, and establishes a training program for financial institutions.<sup>145</sup> The Act would impose civil penalties for failures to report.<sup>146</sup>

In 2013, Rep. Costello again introduced the Financial Institutions Elder Abuse Reporting Act.<sup>147</sup> The contents of the Act remain exactly the same as before.<sup>148</sup> Since this session of the General Assembly is ongoing, it may still pass, but that is highly unlikely.<sup>149</sup> The assumption, based on other states, should be that financial institution pressure and resistance is what has kept the bill from passing and protecting Illinois elders who need this protection so desperately.

#### **B. Making Banks Mandatory Reporters: Industry Opposition**

In most states that have attempted to pass legislation to make banks and other financial institutions mandatory reporters, the financial industry has strongly opposed such efforts,<sup>150</sup> stating that, among other factors, the risks for failing to report are too high.<sup>151</sup> However, the risk in Illinois would be small. As discussed previously, the penalty for not reporting for financial institutions would be a civil

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143. HB6175, 97th General Assembly State of Illinois (Ill. 2012), available at <http://www.ilga.gov/legislation/97/HB/PDF/09700HB6175lv.pdf>.

144. *Id.*

145. *Id.*

146. *Id.*

147. H.B. 2914, 98th Gen. Assemb. Reg. Sess. (Ill. 2013), available at <http://www.ilga.gov/legislation/98/HB/PDF/09800HB2914lv.pdf>.

117. *Financial Crimes Against the Elderly 2013 Legislation*, *supra* note 141.

149. H.B. 2914, *supra* note 147.

150. SANDRA L. HUGHES, AMERICAN BAR ASS'N, CAN BANK TELLERS TELL?-LEGAL ISSUES RELATED TO BANKS REPORTING FINANCIAL ABUSE OF THE ELDERLY 11 (Am. Bar Ass'n ed. 2003), available at [http://www.americanbar.org/content/dam/aba/uncategorized/2011/2011\\_aging\\_ea\\_bank\\_rpg\\_paper\\_long.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/uncategorized/2011/2011_aging_ea_bank_rpg_paper_long.authcheckdam.pdf).

151. *Id.*

fine, specifically, not in excess of \$5,000.<sup>152</sup> The primary purpose of mandatory reporting laws is to induce those in a position to observe abuse to bring their suspicions to the attention of APS, not to severely punish those who fail to report it—which the maximum \$5,000 fine for a financial institution reflects.<sup>153</sup> Only four states have Adult Protection Services statutes that provide for specific liability damages when injuries are proximately caused by the failure to report.<sup>154</sup> Illinois is not one.<sup>155</sup>

More importantly, having a mandatory reporting law may actually better protect Illinois banks against suits for not adequately protecting their customers against fraud and abuse.<sup>156</sup> Banks voice objections to the reporting itself—stating that some of their customers object to the reporting entirely—but if it is mandatory, they are in a better position to defend themselves.<sup>157</sup> If the bank made a mandatory report, rather than a voluntary report, the bank would have the legal defense that it was legally obligated to make that report.<sup>158</sup>

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152. H.B. 2914, *supra* note 147.

153. *Financial Crimes Against the Elderly 2013 Legislation*, *supra* note 141.

154. The four states are Arkansas, Iowa, Minnesota and Michigan. In each of these states, the mandatory reporter is liable only for the damages proximately caused by the failure to report. The Arkansas APS statute provides that “[a]ny person or caregiver required by this chapter to report a case of suspected abuse, neglect, or exploitation who purposely fails to do so shall be civilly liable for damages proximately caused by the failure.” ARK. CODE ANN. §5-28-202(b) (West 2014). The Iowa APS statute provides in relevant part that “[a] person required by this section to report a suspected case of dependent adult abuse who knowingly and willfully fails to do so . . . is civilly liable for the damages proximately caused by the failure.” IOWA CODE § 235B.3(10) (2014). The Michigan APS law provides that “[a] person required to do a report pursuant to section 11a who fails to do so is civilly liable for the damages proximately caused by the failure to report . . . .” MICH. COMP. LAWS. ANN. § 400.11e(1) (West 2014). The Minnesota APS statute provides that “[a] mandated reporter who negligently or intentionally fails to report is liable for damages caused by the failure.” MINN. STAT. ANN. § 626.557 (West 2014). The Minnesota courts have held that the damages for such a negligent or intentional failure to report are limited to any additional damages that resulted from the failure to report. *Thelen By and Through Helen Thelen v. St. Cloud Hosp.*, 379 N.W.2d 189 (Minn. App. 1985). In addition, the following language in the Washington APS statute could be interpreted as implying that there can be liability for failure to file a mandatory report: “The making of permissive reports as allowed in this chapter does not create a duty to report and no civil liability shall attach for any failure to make a permissive report as allowed under this chapter.” WASH. REV. CODE ANN. § 74.34.050(1) (West 2014).

155. *Id.*

156. Hughes, *supra* note 150, at 13.

157. *Id.*

158. *Id.*

### C. Federal Bank Privacy Laws

Another main argument that banks use to fight mandatory reporting laws for financial institutions is the possibility of being charged with a violation of federal statutes that govern the disclosure of private financial records.

Federal law protecting the privacy of financial records derives from *United States v. Miller*.<sup>159</sup> In *Miller*, the Supreme Court held that a bank customer has "no legitimate 'expectation of privacy'" when it came to the customer's banking transactions and that the federal government therefore acted constitutionally when it obtained subpoenaed bank records without prior notice to the customer.<sup>160</sup> The Supreme Court reasoned that the documents obtained through the subpoena, "including financial statements and deposit slips, contain only information voluntarily conveyed to the banks and exposed to their employees in the ordinary course of business."<sup>161</sup> The Court determined that the depositor takes a risk when revealing his or her affairs to another; so when banking transactions are made, that information can be conveyed to the government.<sup>162</sup>

However, Congress passed the Right to Financial Privacy Act (RFPA)<sup>163</sup> in 1978, overruling *Miller* and recognizing that bank customers generally expect their banks to keep their transactions confidential.<sup>164</sup> However, the Act is limited in that it applies only to the federal government.<sup>165</sup> As a result, it places no restrictions on the actions of state or local authorities in obtaining financial records, thus not affecting a state mandatory reporting law for financial institutions.<sup>166</sup>

### D. State Bank Privacy Laws

Most states have statutes and case law that protect the privacy of records and transactions maintained by banks. These statutes and rulings specify the circumstances under which banks can lawfully disclose customer information. Unfortunately, the statutory

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159. *United States v. Miller*, 425 U.S. 435, 442 (1976).

160. *Id.* at 445.

161. *Id.* at 442.

162. *Id.* at 443.

163. H.R. REP. NO. 95-1383, at 28 (1978).

164. 12 U.S.C. § 3401 (2012).

165. *Id.*

166. *Id.*

provisions regulating these disclosures of financial records vary greatly from state to state, making it nearly impossible to generalize about disclosure violations or make a federal rule encompassing every state's existing laws.

Illinois is one of the states with a fairly strict disclosure policy.<sup>167</sup> Illinois prohibits the disclosure of any financial information or documentation to any person, except the customer or his duly authorized agent.<sup>168</sup> However, exceptions to this rule exist. These exceptions include, but are not limited to, the Department of Aging and its regional administrative agencies, the Department of Human Services Office of the Inspector General, public guardians, and subpoenas.<sup>169</sup> Reporting elder financial abuse was arguably built into this statute. That the Department of Aging appears in the language of the statute suggests the drafters intended to safeguard the welfare of aging and vulnerable elders.<sup>170</sup> Furthermore, even if such caveats did not exist, they could be created by statute without violating any rights. Illinois banks and financial institutions need to interpret state bank privacy laws with the intent of the drafters in mind: to protect Illinois elders from financial abuse and make banks a first-line of defense against defrauders, scammers, and abusers.

#### **E. Federal Laws: Do They Only Protect Against Physical Abuse?**

There are countless government agencies that attempt to combat Elder Financial Exploitation, but how many of these government agencies have enacted specific legislation targeting this financial abuse? Elder financial abuse is a complex problem that spans nationwide. Addressing the issue at various state levels may likely not be enough to effectively combat the growing exploitation elders encounter. For the most effective systems and procedures to be put in place, support and guidance at the federal level is a must.

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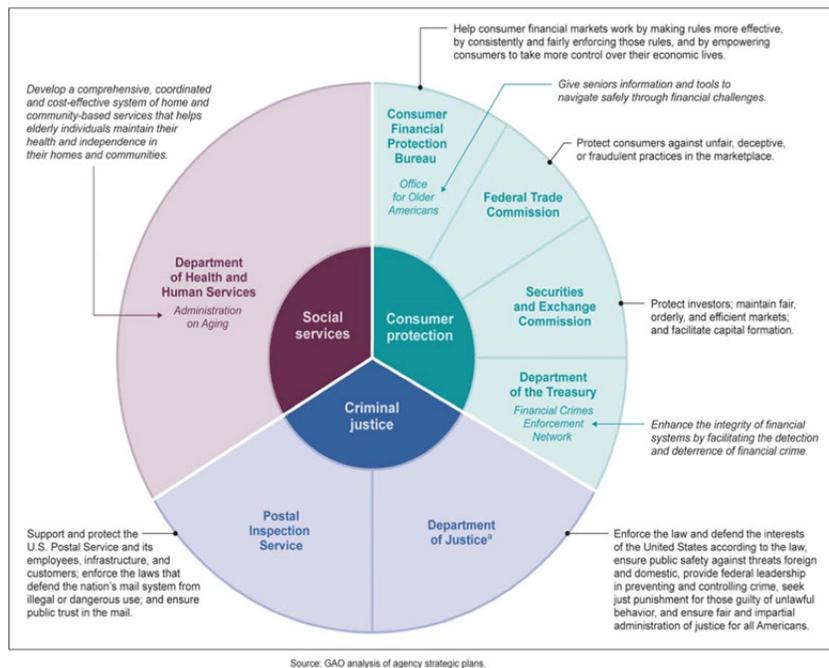
167. 205 ILL. COMP. STAT. 5/48.1 (2014).

168. *Id.*

169. *Id.*

170. *Id.*

FIGURE 1: FEDERAL AGENCIES WITH MISSIONS THAT INVOLVE COMBATING ELDER FINANCIAL EXPLOITATION<sup>171</sup>



## 1. CURRENT LEGISLATION

### i. Elder Justice Act of 2009

The Elder Justice Act of 2009 was enacted in March of 2010 as part of the Patient Protection and Affordable Care Act.<sup>172</sup> The Elder Justice Act coordinates federal elder abuse detection and prevention programs within the Office of the Secretary of Health and Human Services.<sup>173</sup>

The Elder Justice Act authorizes funding in several areas, including: (1) stationary and mobile elder abuse forensic centers to

171. U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-13-626T, ELDER JUSTICE: FEDERAL GOVERNMENT HAS TAKEN SOME STEPS BUT COULD DO MORE TO COMBAT ELDER FINANCIAL EXPLOITATION (2013), available at <http://www.gao.gov/assets/660/654663.pdf>.

172. *Elder Abuse Laws*, CTR. FOR ELDERERS AND THE COURTS, <http://www.eldersandcourts.org/Elder-Abuse/Basics/Elder-Abuse-Laws.aspx> (last visited Sept. 29, 2014).

173. *Id.*

develop forensic markers, methodologies for intervention, forensic expertise, and capacity to collect forensic evidence; (2) enhancement of long-term care through programs to recruit, train and retain long-term care staff; programs to improve management practices; and adoption of standards for electronic exchange of clinical data; (3) grants to enhance the provision of adult protective services by state and local agencies and to conduct demonstration programs to test training on and methods to detect and prevent elder abuse and financial exploitation; (4) grants to support long-term care ombudsman programs; (5) evaluations of grant funded activities; and (6) a national institute for training, technical assistance, and development of best practices to improve investigations of elder abuse reported in long-term care facilities.<sup>174</sup>

This Act also requires owners, operators, and employees of long-term care facilities to report suspected abuse, neglect, exploitation, or other crimes against elders.<sup>175</sup> They must also provide sixty days written notice to the HHS Secretary and the state of a facility's impending closure; this notice must include a plan for transfer of all residents.<sup>176</sup> Another provision of the Act requires the HHS Secretary to establish a nationwide program for national and state background checks on prospective "direct patient access employees" of long-term care facilities and providers.<sup>177</sup>

According to the GAO, their studies have shown that state and local law enforcement officials have consistently had difficulty identifying the correct individuals to contact in elder abuse situations.<sup>178</sup> "Cases that local officials do not refer to a federal agency due to a lack of correct contact information may not be investigated or prosecuted by either federal or local authorities."<sup>179</sup>

The Elder Justice Act of 2009 established the Elder Justice Coordinating Council (EJCC)- "a group of federal agency heads charged with setting priorities, coordinating federal efforts, and recommending actions to ensure elder justice nationwide-" that is perfectly positioned to develop a more cohesive and deliberate national strategy.<sup>180</sup> The GAO believes that through the EJCC, and

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174. *Id.*

175. *Id.*

176. *Id.*

177. *Id.*

178. GAO-13-626T, *supra* note 171 at 7.

179. *Id.*

180. GAO-13-626T, *supra* note 171 at 12.

thus the Elder Justice Act of 2009, the federal government has the best vehicle for both defining and implementing an effective strategy for reforming elder financial exploitation laws nationwide.<sup>181</sup> The GAO recommended in November 2012 that the EJCC develop a written national strategy for combating elder financial exploitation- ensuring coordination of public awareness activities across federal agencies, promoting agency collaboration, and promoting investigation and prosecution of elder financial exploitation.<sup>182</sup>

On May 13, 2013, EJCC held an official meeting, addressing a number of recommendations, including the following: enhancing interagency collaboration, strategically promoting public awareness, and combating financial exploitation.<sup>183</sup> In the future, the GAO plans to gather public comments and draft a federal agenda for elder justice activities for EJCC consideration.<sup>184</sup>

*ii. The Older Americans Act*

The Older Americans Act contains elder abuse definitions and authorizes federal funding for the National Center on Elder Abuse (NCEA), a program of the U.S. Administration on Aging.<sup>185</sup> The NCEA has collaborated with several organizations to promote and support elder abuse awareness initiatives, multidisciplinary responses to elder maltreatment, and professional training and education.<sup>186</sup> The NCEA partners for 2011-2013 are the University of California Irvine's Center of Excellence on Elder Abuse & Neglect and the University of North Dakota's Center for Rural Health Native Indigenous Elder Justice Initiative (NIEJI).<sup>187</sup> The NCEA and NIEJI focus their attention on developing culturally appropriate information and community education materials on elder abuse, neglect and exploitation in Indian Country.<sup>188</sup> NCEA partners from 2007 to 2011 were the University of Delaware's Clearinghouse on Abuse and Neglect of the Elderly

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181. *Id.*

182. *Id.*

183. *Id.*

184. *Id.*

185. 42 U.S.C. 35 § 3002 (2012).

186. DEP'T OF HEALTH AND HUMAN SERVS., NAT'L CTR. ON ELDER ABUSE, MISSION STATEMENT, <http://www.ncea.aoa.gov/About/NCEA/index.aspx>.

187. *Id.*

188. *Id.*

(CANE), the National Committee for the Prevention of Elder Abuse, and the National Adult Protective Services Association.<sup>189</sup>

When federal literacy is released addressing elder financial abuse, the goal is to broaden the scope rather than focus on any particular type of elder financial exploitation. For instance, the literacy could address public awareness, banks, safety tips, collaboration among agencies, and data collection.<sup>190</sup>

### iii. Violence Against Women Act

The Violence Against Women Act established federal domestic violence crimes that may be applied in cases of elder abuse.<sup>191</sup> These federal crimes are limited, however, to abuse that occurs in the federal territories or involves crossing state, federal or tribal boundaries to commit or attempt to commit a crime of violence against an intimate partner,<sup>192</sup> to stalk or harass (in person or by mail or computer),<sup>193</sup> or to violate a qualifying protection order.<sup>194</sup>

Additionally, the recently passed Violence Against Women Reauthorization Act of 2013 also includes language that will help protect elders from financial abuse.<sup>195</sup>

Although these legislative efforts do include passages indicating financial protection of elders, and creating a federal infrastructure that included funding, there is room for improvement. The current levels of collaboration between state and federal officials are inadequate, and the federal government can more effectively combat the problem by issuing stronger mandates.<sup>196</sup> For example, several organizations- both government and grassroots- advocate for more comprehensive elder abuse prevention laws using the models of prevention for child abuse laws.<sup>197</sup>

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189. *Elder Abuse Laws*, *supra* note 172.

190. GAO-13-626T, *supra* note 171 at 8.

191. 42 U.S.C. § 13925 (2012).

192. 18 U.S.C. § 2261 (2012).

193. 18 U.S.C. § 2261A (2012).

194. 18 U.S.C. § 2262 (2012).

195. *Elder Abuse Provisions Included in Violence Against Women Act*, AM. LIVING FED'N OF AMERICA, <http://www.alfa.org/News/3039/Elder-Abuse-Provisions-Included-in-Violence-Against-Women-Act> (last visited January 5, 2015).

196. NAT'L OLDER WOMEN'S LEAGUE, ELDER ABUSE: A WOMEN'S ISSUE MOTHER'S DAY REPORT 10-11 (2009), available at [http://www.owl-national.org/Mothers\\_Day\\_Reports\\_files/OWL\\_MothersDay\\_Report\\_09\\_Final\\_2.pdf](http://www.owl-national.org/Mothers_Day_Reports_files/OWL_MothersDay_Report_09_Final_2.pdf).

197. *Id.*

*iv. The Enhanced Training and Services to End Violence and Abuse of Women Later in Life Program*

This federal law is a section in the Violence Against Women Act of 2005.<sup>198</sup> The Office on Violence Against Women (OVW) administers this relatively small program, which offers discretionary grant funding for training and services to address elder abuse, neglect, and exploitation involving victims who are fifty years of age or older.<sup>199</sup> In FY 2011 OVW awarded nine grants totaling \$3.3 million.<sup>200</sup>

The training program that the Violence Against Women Act of 2005 offers is no doubt beneficial; one could argue that some training is better than no training. However, there are still some drawbacks to the training being offered. The standard definition of "elder abuse" does not necessarily include financial exploitation: "The term "elder abuse" means any action against a person who is 50 years of age or older that constitutes the willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical harm, pain, or mental anguish, or deprivation by a person, including a caregiver, of goods or services with the intent to cause physical harm, mental anguish, or mental illness."<sup>201</sup> Clearly, the focus has been placed on the physical components of injury to the elder and the mental effects the injuries have on the elder.<sup>202</sup> To improve upon training services, the government needs to inform their trainees of *ALL* aspects of abuse that elders could face including physical abuse, financial abuse, mental abuse, self-abuse, sexual abuse, and any other type of violence, abuse, or mistreatment an elder may encounter.

*v. Elder Abuse Victims Act of 2009*

The Elder Abuse Victims Act of 2009 would authorize federal grant funding to train state and local prosecutors, courts, and law enforcement personnel handling elder justice-related matters.<sup>203</sup> It also would establish the Elder Serve Victim grant program to facilitate and coordinate emergency services for victims of elder abuse. These provisions were removed from the Elder Justice Act of 2009, enacted in

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198. *Elder Abuse Laws, supra* note 172.

199. *Id.*

200. *Id.*

201. U.S. Department of Justice, Office on Violence Against Women (OVW), *Enhanced Training and Services to End Violence Against and Abuse of Women Later in Life Program*, 1122-0020 (2013).

202. *Id.*

203. *Elder Abuse Laws, supra* note 172.

March of 2010.<sup>204</sup> The Elder Abuse Victims Act of 2009 (H.R. 448 (111th)) was introduced to the 111th Congress on January 9, 2009 and passed by the House on February 11, 2009.<sup>205</sup> However it was never passed by the Senate and has been pending in the Senate Judiciary Committee since February of 2009.<sup>206</sup>

#### IV. Recommendation

Despite efforts some state legislatures and grass-roots organizations are making, existing efforts will not be able to intervene rapidly enough in instances of elder financial abuse to prevent extreme loss.<sup>207</sup> Each year, an increasing number of elders are becoming victims of elder financial abuse perpetrated by strangers, friends, and even family members.<sup>208</sup> Illinois needs to implement a solution that protects the financial stability of elders and prevents elder financial abuse.<sup>209</sup>

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204. *Id.*

205. H.R. 448 (111th): *Elder Abuse Victims Act of 2009*, GOVTRACK.US, <https://www.govtrack.us/congress/bills/111/hr448> (last visited January 5, 2015). Congress overwhelmingly voted to pass H.R. 488 (111th) with 92 percent of the votes cast in favor of the bill, with 6 percent voting against and 2 percent abstaining from the vote. *Id.* The vote was taken under a procedure called "suspension of the rules," which is typically used when non-controversial bills are put to a vote. *Id.* When "suspension of the rules" is used, passage requires a 2/3rds majority of the votes. *Id.* However, if the bill fails to gain the 2/3rds majority required, under the rules of the "suspension of the rules," a failed vote can be taken again. *Id.* Due to the unanimous passage and support of this bill, questions have been raised as to why H.R. 488 (111th) has not yet been passed by the Senate. *Id.*

206. *Id.*; *Elder Abuse Laws*, *supra* note 172.

207. ILL. DEP'T ON AGING, ELDER ABUSE PROVIDER AGENCIES (2012) available at [https://www.illinois.gov/aging/Resources/Documents/elder\\_abuse.pdf](https://www.illinois.gov/aging/Resources/Documents/elder_abuse.pdf); *Preventing Abuse of Older Persons and Adults With Disabilities Who Live in the Community*, ILL. DEP'T ON AGING, <http://www.state.il.us/aging/1abuselegal/abuse.htm> (last visited on Sept. 29, 2014); *Nursing Homes in Illinois*, ILL. DEP'T. OF PUB. HEALTH, <http://www.idph.state.il.us/healthca/nursinghometestjava.htm> (last visited Sept. 29, 2014); *Illinois Long-Term Care Ombudsman Program: Protecting the Rights of Older Persons Who Live in Long-Term Care Facilities*, ILL. DEP'T. ON AGING, <http://www.illinois.gov/aging/ProtectionAdvocacy/LTCOmbudsmen/Pages/default.aspx> (last visited Sept. 29, 2014); Lisa Madigan, *Advocating for Older Citizens*, ILL. ATTORNEY GEN., <http://www.illinoisattorneygeneral.gov/seniors/index.html> (last visited Sept. 29, 2014); *State Resource Directory*, NAT'L CTR. ELDER ABUSE: ADMIN. ON AGING, [http://ncea.aoa.gov/Stop\\_Abuse/Get\\_Help/State/Directory.aspx?state\\_id=IL](http://ncea.aoa.gov/Stop_Abuse/Get_Help/State/Directory.aspx?state_id=IL) (last visited Sept. 29, 2014).

208. *Frequently Asked Questions*, NAT'L CTR. ELDER ABUSE: ADMIN. ON AGING (NCEA), <http://ncea.aoa.gov/faq/index.aspx> (last visited Sept. 29, 2014).

209. *Id.*

### A. Mandatory Reporting: Crafting a New Law

Laws need to be in place to not only detail elder financial abuse, but also enable elders to regain their financial security in a more timely manner.<sup>210</sup> This requires expanding on the mandatory reporting laws that currently only protect against physical abuse.<sup>211</sup> When crafting this new mandatory reporting law for financially abused elders, legislators need to think of the people who, in their professional capacity, would not only have contact with abused elders but would be able to spot the abuse and report it.<sup>212</sup> The following entities should be required by law to be mandatory reporters:<sup>213</sup>

1. Financial institutions, their employees, or their staff members;
2. Care custodians, guardians, power of attorneys, executors of estates, or licensed attorneys;
3. Physicians, residents, interns, hospital administrators and personnel, surgeons, dentists, dental hygienists, chiropractors, podiatrists, physician assistants, or substance abuse treatment personnel;
4. Funeral home directors or employees, coroners, or medical examiners;
5. Emergency medical technicians, acupuncturists, crisis line or hotline personnel, employees of law enforcement agencies, or employees of fire departments;
6. Respiratory care practitioners, caretakers, nurses, assisted living staff and administrators, nursing home staff, and administrators or hospice workers;
7. Psychologists, psychiatrists, or their assistants;
8. Field personnel of the Department of Public Health, Human Services, Human Rights, Healthcare and Family Services, or any county welfare departments;
9. Employees of environmental health and building code enforcement;

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210. See, e.g., 320 ILL. COMP. STAT. 20/1 (2014); 320 ILL. COMP. STAT. 20/10 (2014).

211. See, e.g., 320 ILL. COMP. STAT. 20/1 et. seq. (2014).

212. See, e.g., ILL. DEP'T ON AGING, ELDER ABUSE AND NEGLECT ACT AND RELATED LAWS: INCLUDING MANDATED REPORTERS AND ELDER ABUSE PROVIDER AGENCIES (2011), available at <http://www.lakecountyil.gov/Sheriff/Community%20Services/Documents/elderabuseSOI.pdf> [hereinafter *Elder Abuse and Neglect Act*]; *Mandating Reporting of Elder/Adult At-Risk Abuse & Neglect*, WIS. COAL. AGAINST SEXUAL ASSAULT, INC. (June 2010), [http://www.wcasa.org/file\\_open.php?id=183](http://www.wcasa.org/file_open.php?id=183) [hereinafter *Wisconsin Mandated Reporting*].

213. *Elder Abuse and Neglect Act*, supra note 212; *Wisconsin Mandated Reporting*, supra note 212; *Mandated Reporters*, DEP'T OF AGING & ADULT SERVICES, <http://www.sfhsa.org/415.htm> (last visited Sept. 19, 2014).

10. Employees of humane societies and animal control agencies;
11. Supervisors and administrators of general assistance under the Illinois Public Aid Code;
12. Members of the clergy;
13. Any other protective, public, sectarian, mental health, private assistance, or advocacy agency, or person providing health services or social services to elders, or dependent adults; and
14. Any person who has assumed full or intermittent responsibility for care or custody of an elder or dependent adult.

The importance of having mandatory reporters that come into contact with elders that have been financially abused is having people that are able to spot and recognize the signs of abuse. These mandatory reporters could possibly be the only way that an abused elder has of receiving help.

Similar to B\*SAFE, mandatory reporters should train through employment-provided seminars on how to spot financial abuse and elders in need of help.<sup>214</sup> They should be trained not only on how to spot elders in need, but also on how to handle the situation swiftly and effectively,<sup>215</sup> and file abuse reports.<sup>216</sup> In order for the Illinois state agency to be made aware of an elder being financially abused, this report must be filed.<sup>217</sup> A reporter should be made to file a report when: the victim reports abuse or has knowledge of abuse; the mandated reporter observed an incidence of abuse; or when an injury or condition reasonably leads the mandated reporter to suspect that abuse has occurred.<sup>218</sup> Although the reporter's name and other information would be taken, like Illinois child abuse mandatory reporting laws, the reporter's information would not be disclosed and would be kept confidential to encourage reporting of suspected abuse.<sup>219</sup>

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214. *Elder Abuse and Neglect Act, supra note 212; Wisconsin Mandated Reporting, supra note 212; Mandated Reporters, supra note 212.*

215. *Elder Abuse and Neglect Act, supra note 212; Wisconsin Mandated Reporting, supra note 212; Mandated Reporters, supra note 212.*

216. *Elder Abuse and Neglect Act, supra note 212; Wisconsin Mandated Reporting, supra note 212; Mandated Reporters, supra note 212.*

217. *Elder Abuse and Neglect Act, supra note 212; Wisconsin Mandated Reporting, supra note 212; Mandated Reporters, supra note 212.*

218. *Elder Abuse and Neglect Act, supra note 212; Wisconsin Mandated Reporting, supra note 212; Mandated Reporters, supra note 212.*

219. *Elder Abuse and Neglect Act, supra note 212; Wisconsin Mandated Reporting, supra note 212; Mandated Reporters, supra note 212.*

The law for mandatory reporting of elder abuse should require that mandated reporters make reports immediately or as soon as reasonably possible.<sup>220</sup> Failure to make this report, similar to the child abuse mandatory reporting laws previously discussed, should have consequences.<sup>221</sup> A mandated reporter's failure to report elder abuse should follow the guidelines set out in the mandatory reporting laws for child abuse.<sup>222</sup> For instance, any licensed professional who fails to report suspected elder abuse would be referred to the professional's respective disciplinary board for further action (this would include medical professionals and attorneys).<sup>223</sup> Any mandatory reporter who willfully fails to report suspected elder abuse would be guilty of a Class A misdemeanor for a first time violation and a Class 4 felony for any subsequent violations.<sup>224</sup> Any mandatory reporter who acted as part of a plan or scheme that aimed to prevent the discovery of the abuse of an elder for the purpose of protecting any person or entity from arrest or prosecution, would be guilty of a Class 3 felony for a first offense and a Class 2 felony for any subsequent offenses.<sup>225</sup>

There would also be penalties for false reporting: mandatory reporters who knowingly transmit a false report to the department commit the offense of disorderly conduct under 720 ILCS 5/26-1(a)(7), a violation which constitutes a Class 4 felony.<sup>226</sup> As Gov. Blagojevich said, scam artists are working to take away elders' hard earned money, self-esteem, and independence; it is Illinois's job to protect its elderly citizens by implementing and enforcing this mandatory reporting law to afford them the protection that they so desperately need and deserve.<sup>227</sup>

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220. *Elder Abuse and Neglect Act, supra* note 212; *Wisconsin Mandated Reporting, supra* note 212; *Mandated Reporters, supra* note 212.

221. *Elder Abuse and Neglect Act, supra* note 212; *Wisconsin Mandated Reporting, supra* note 212; *Mandated Reporters, supra* note 212.

222. *Elder Abuse and Neglect Act, supra* note 212; *Wisconsin Mandated Reporting, supra* note 212; *Mandated Reporters, supra* note 212.

223. *Elder Abuse and Neglect Act, supra* note 212; *Wisconsin Mandated Reporting, supra* note 212; *Mandated Reporters, supra* note 212.

224. *Elder Abuse and Neglect Act, supra* note 212; *Wisconsin Mandated Reporting, supra* note 212; *Mandated Reporters, supra* note 212.

225. *Elder Abuse and Neglect Act, supra* note 212; *Wisconsin Mandated Reporting, supra* note 212; *Mandated Reporters, supra* note 212.

226. *Elder Abuse and Neglect Act, supra* note 212; *Wisconsin Mandated Reporting, supra* note 212; *Mandated Reporters, supra* note 212.

227. LISA NERENBERG, NAT'L CTR. ON ELDER ABUSE FORGOTTEN VICTIMS OF ELDER FINANCIAL CRIME AND ABUSE: A REPORT AND RECOMMENDATIONS 33 (1999), available at [http://www.popcenter.org/problems/crimes\\_against\\_elderly/PDFs/nerenberg-1999.pdf](http://www.popcenter.org/problems/crimes_against_elderly/PDFs/nerenberg-1999.pdf); State Police Elder Abuse Squad, *supra* note 104.

For financial institutions, failure to report financial abuse should be a civil punishment, not exceeding 5000 dollars, consistently applied with the proposed bills discussed previously. The fine would incentivize the reporters to actually report the abuse, but not punish them or make them fearful of contacting authorities. Illinois must also continue to protect the confidentiality of reporters to encourage them to call the hotlines and agencies to report financial abuse.

## B. Other Statutory Reform

The Illinois legislature needs to promote the development of criminal statutes that facilitate the prosecution of elder financial abuse, allow for means of recovery, preserve assets to as great an extent as possible, and serve as a deterrent to future abuse (to the abuser themselves as well as other abusers) by creating stiffer penalties for perpetrators.<sup>228</sup> When people intentionally target elders, prison sentences should be mandatory; however, the law should clearly distinguish criminal conduct from financial mismanagement, negligence, or improper (but not illegal) conduct.<sup>229</sup> Statutes should make it easier for law enforcement to access financial records from financial institutions when financial abuse is suspected by the financial institution, family members, or other reporter as outlined in the statute.<sup>230</sup> Statutes should specify certain provisions for prosecuting financial crimes committed by caregivers and other people who are in positions of trust.<sup>231</sup> And perhaps most important to the elder—and their family during this time of abuse, broken trust, and hurt—statutes need to provide for a means of securing and preserving assets (both physical and financial) while investigations are ongoing.<sup>232</sup>

### 1. CIVIL STATUTORY REFORM

Most important, all forms of financial abuse need to be covered, regardless of the relationship that the perpetrator has with the elder victim; a child or grandchild can make an elder feel just as powerless as a trained con artist that has a background in banking and finance. Another common theme among elder victims is that they are

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228. Nerenberg, *supra* note 227, at 33.

229. *Id.*

230. *Id.*

231. *Id.*

232. *Id.*

silenced. Attorneys need to give them a voice, and civil law can do that by providing attorneys with incentives (e.g. providing adequate legal fees, ensuring that legal fees can be recovered, and ensuring that cases continue even after an elder victim dies). The courts' ability to expand the range of protective interventions they can offer gives them greater flexibility in shaping responses to the specific needs of the vulnerable elder in the case at hand. Additionally, courts need to make the process easier for elders; for instance, making court terminology "friendly" will minimize embarrassment upon filing for guardianship or making the courthouse accessible by promoting assistance throughout the process of suing for financial abuse.<sup>233</sup>

## 2. PROCEDURAL REFORM: HOW TO MAKE THE PROCESS EASIER ON THE ELDER VICTIM

Countless procedural reforms can be implemented to not only make elders more comfortable, but also make difficult cases more expedient and efficient. For example, states should promote the development of specialized units within the prosecutors' offices to work with elder victims to assist them with court processes, particularly those with physical or mental impairments, and training staff members to work with elder victims, familiarizing them with their needs.<sup>234</sup> Reforms should promote special procedures that: allow for prosecution of alleged abusers even when elder victims do not want to prose-

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233. *Id.* Certain terms such as guardianship or conservatorship can scare elders from bringing court actions. When a person is already suffering from abuse, harassment, embarrassment, and anger, he or she may not want to be subjected to what he or she believes to be more stigma or embarrassment. Issues of competency and capacity could arise; the elder could be portrayed as incompetent, a fear that person may not want to confront despite being abused. In addition, the court also has to take into account that elders are not familiar with the court system and will need help. Elders may need help getting around large courthouses, understanding the processes of criminal civil proceedings, finding the right attorney, filing the right paperwork, understanding what the judge is saying, and understanding the court process in general. If states want elders to report, and if states want to be able to prosecute, financial elder abuse, they should employ people at the courthouse to whom elders can turn and ask for help throughout the court proceedings. If at any time the elder becomes so confused and frustrated that coming back to the courthouse seems too frustrating or humiliating, then the system has not only failed that elder, but has failed to prevent all elder financial abuse. *Id.*; *Prosecuting Elder Abuse Cases: Basic Tools and Strategies*, NATIONAL CTR. FOR STATE COURTS, <http://www.eldersandcourts.org/Elder-Abuse/~media/Microsites/Files/cec/Prosecution%20Guide.ashx> (last visited Sept. 29, 2014) [*hereinafter Prosecuting Elder Abuse Cases*].

234. Nerenberg, *supra* note 227, at 36.

cute, allow for expedited investigations and return of property, and allow for videotaping of testimony of elder victims.<sup>235</sup>

### 3. IMPACT ON COMMUNITY WHEN REFORM IS NOT SOUGHT

Although financial abuse of elders continues to increase, the long-term harms associated with such abuse are not yet known, though studies note that they are most likely significant.<sup>236</sup> The abuse goes beyond the elders left in financial ruin, leaving family and friends to pick up the pieces. “When elder abuse victims lose their homes or financial resources through exploitation and end up in a nursing home on Medicaid or in government-subsidized housing, the taxpayers pick up those costs,” declared Lori Stiegel of the American Bar Association’s Commission on Law and Aging at a hearing of the U.S. Judiciary Committee.<sup>237</sup> Stiegel continued, “When elder abuse victims need services from adult protection programs, long-term care ombudsman programs, state regulatory agencies, law enforcement agencies, prosecutors, public guardians or the resources of a court system to help protect them from further abuse, the taxpayers bear those costs.”<sup>238</sup>

It is important to also recognize that financial abuse victims are not uncommonly exposed to other forms of abuse.<sup>239</sup> “Too often the research and anecdotal experience show [the court] that in elder abuse when there is financial abuse there is often physical abuse or neglect, and vice versa.”<sup>240</sup> A group of prosecutors that assembled a report for the National Center for State Courts wrote:

It can be daunting to try and address complex financial crimes of intercepting checks and pensions that were siphoned off for the defendant’s drug or gambling habit, and also show that the money was not used for the care of the neglected victim. If you present your case graphically and vividly—showing how the defendant bought alcohol (with the empty bottles now stacked up in the kitchen), and filled their own prescriptions, yet let the victim starve in a bare garage—the jury sees the connection.<sup>241</sup>

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235. *Id.*

236. Abner, *supra* note 58, at 20.

237. *Id.*; see also Stiegel, *supra* note 85.

238. Abner, *supra* note 58, at 20; see also Stiegel, *supra* note 85.

239. Prosecuting Elder Abuse Cases, *supra* note 233, at 32.

240. *Id.*

241. *Id.*

## V. Conclusion

Elder financial abuse is an increasing, highly underreported problem that states need to recognize and quickly address.<sup>242</sup> Consequently, Illinois needs to learn from state legislatures that incorporate banks into the process to more quickly and readily spot elder financial abuse. This not only allows for authorities to be called earlier in the abuse cycle, but it also ends the abuse earlier when the authorities are brought in sooner.<sup>243</sup> Although there are some federal and state laws that afford protection, they are not adequate. Thus, statutory reform is clearly needed in attempting to resolve elder financial abuse issues.<sup>244</sup> A key reform needed is to pass legislation making banks mandatory reporters. Without this, nothing will change. Banks serve as the first-line of defense when it comes to financial abuse. When discussing an elder who may have cognitive disabilities such as dementia or Alzheimer's and is also afraid or too weak to speak out against their abuse, banks have to play an active role in stopping the abuse before it is either too late or there is no remedy available. Reiterating the brave, powerful and emotional words of Mickey Rooney, "[I]f it can happen to me, oh, god willing it—and unwilling it—it can happen to anyone."<sup>245</sup>

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242. Abner, *supra* note 58, at 18, 21, 22.

243. *Id.* at 21.

244. Nerenberg, *supra* note 227, at 33-35.

245. Mickey Rooney, *supra* note 35.

