

Financial Exploitation of the Elderly: Legislative Update

By Elizabeth Henry Klampert and Malya Levin

This article is part of an ongoing series brought to you by the Section's Elder Abuse Committee.

Financial abuse of the elderly is on the rise across the United States, as several recent studies have revealed.¹ In response, there has been a flurry of legislation introduced on the national and state levels.



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In September 2013, Matthew Cartwright (D, PA) reintroduced the Elder Protection and Abuse Prevention Act, HR 3090. This bill would expand the definition of elder abuse, neglect and exploitation, as well as incorporate elder abuse prevention trainings, screenings, and reporting protocols into all senior service access points that receive federal funding under the bill. Although the bill now has 52 cosponsors (51 Democrats, 1 Republican) and is now in the House Education and the Workforce Committee, its chances of passing, according to Govtrak.us, are slim to none.

The future for bills like this is, however, brighter on the state front. In the past year, scores of bills dealing with financial elder abuse were introduced in a number of state legislatures, including the following: California, Colorado, Florida, Georgia, Hawaii, Iowa, Indiana, Mississippi, New Hampshire, New Jersey, New York, South Carolina, Tennessee, and West Virginia. Among the states that passed financial abuse legislation that was signed into law are:

- Colorado: SB 98, which establishes the new crime of criminal exploitation of an at-risk elder, was signed into law on April 7, 2014.
- Florida: HB 409, which, among other provisions, revises when an out-of-court statement by an elderly person or disabled adult is admissible in certain proceedings, was signed into law on June 20, 2014, to take effect on October 1, 2014.
- Iowa: Of the three bills introduced dealing with elder financial abuse, only SF 2239, which, among other provisions, creates new crimes related to elder abuse and providing penalties, was signed into law on May 23, 2014, effective July 1, 2014.
- New Hampshire: HB 1555, which protects the elderly and disabled residents from financial ex-

ploitation, was signed into law on June 19, 2014, effective January 1, 2015.

- West Virginia: SB 397, which expands the scope of activities considered financial exploitation of the elderly, was signed into law on March 18, 2014, effective June 6, 2014.



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New York

Both the New York Senate and Assembly introduced a number of bills in the 2013-14 sessions. While at least one has passed both houses (S.1788), none has yet been signed into law.

They include:

- **Senate Bill 143** (same as A4655-A): The purpose of this bill is to protect the elderly from financial exploitation through education. It proposes to do so by providing for a financial exploitation prevention outreach, education and training program, and by funding and authorizing the director of the Office of the Aging to award grants to qualified agencies to establish local elderly exploitation outreach, education and training programs, and outlines elements of such programs. The bill is currently in the Aging Committees of both houses.
- **Senate Bill 720** (same as A133-A): The purpose of this bill is to create the "Senior Anti-Violence and Enforcement Act (SAVE)," which will provide new protections for seniors, including mandatory reporting of crimes or abuse and the creation of a statewide abuse registry, establishment of new investigatory procedures, provision for research on senior violence, and establishment of new criminal penalties for crimes against seniors. The bill defines "a senior" as an individual 60 years of age or older. The bill is currently in the Senate's Codes Committee and the Assembly's Aging Committee.
- **Senate Bill 2323-A** (same as A591A): The purpose of this bill is to require the Office of Children and Family Services to track and report elder abuse. The bill passed the Senate on June 12, 2014,

and has been referred to the Assembly Codes Committee.

- **Senate Bill 2951** (same as A2781): This bill's purpose is to expand the definition of caregiver under the Penal Law to include a person who voluntarily, or otherwise under operation of law (e.g., appointed guardian or power of attorney), assumes responsibility of an elderly person so that they would be tried under the "endangering the welfare of a vulnerable elderly person" law. The bill passed the Senate on June 12, 2014, and was referred to the Assembly Codes Committee.
- **Senate Bill 6221** (no same as): The purpose of this bill is to authorize a banking organization, social services official, or law enforcement agency that reasonably believes that the financial exploitation of a vulnerable adult has occurred or may occur, to refuse to conduct any transaction that requires the dispersal of moneys in the account of a vulnerable adult or moneys held for the benefit of such adult. The legislation also authorizes a banking organization to provide access to or copies of historical records or recent transactions relevant to suspected financial exploitation of a vulnerable adult to law enforcement agencies and social service officials responsible for administering the provisions of this article. The term financial exploitation of an adult is as defined in Social Services Law section 473. The bill passed the Senate on June 12, 2014, and was referred to the Assembly Banks Committee.
- **Senate Bill 7177** (same as A8777-A): The purpose of this bill is to amend the Penal Law to state that, "it is no defense to a prosecution for larceny that the defendant obtained consent to take, withhold, or obtain property, where such consent was obtained from a person who the defendant knew or had reason to know was mentally disabled" and defines "mentally disabled." The bill passed the Senate on June 12, 2014, and was referred to the Assembly Codes Committee.
- **Senate Bill 7178** (same as A8779): This bill's purpose is to add elderly witnesses, age 75 years or older, to the category of witnesses who may be eligible to be examined conditionally, pursuant to Article 660 of the Criminal Procedure Law, in order that such testimony may be received into evidence at subsequent proceedings in or related to the action. The bill passed the Senate on June 10, 2014, and was referred to the Assembly Codes Committee.
- **Senate Bill 7179** (same as A8778): The purpose of this bill is to allow a prosecutor to obtain medical records, without a privilege waiver, with a subpoena, based upon a showing that the patient suffers from a medical disability, and that the patient

has been a victim of a crime of financial exploitation. The bill passed the Senate on June 12, 2014, and was referred to Assembly Codes Committee.

- **Senate Bill 7187** (same as A8781): This bill's purpose is to amend the Penal Law to explicitly state that in a prosecution for larceny by false promise, partial performance, by itself, does not prevent a reasonable jury from making such a finding from all the facts and circumstances. The bill passed the Senate on June 12, 2014, and was referred to the Assembly Codes Committee.
- **Senate Bill 7188** (same as A8780): This bill will provide that, with the consent of the prosecutor, a caregiver or social worker will be allowed to accompany a vulnerable elderly person who is testifying in front of a grand jury. The bill passed the Senate on June 10, 2014, and was passed by the Assembly and returned to the Senate on June 11, 2014.

The New York legislative session ended on June 19, 2014, but we expect that these bills will be revisited and the Elder Abuse Committee will keep an eye not only on them, but any new bills that are introduced in New York and other states.

Endnote

1. See, e.g., National Association of Professional Geriatric Care Managers (2014, March). *Financial abuse of elderly on the rise*. Available at <http://www.prweb.com/releases/2014/03/prweb11655452.htm>.

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