



Law Enforcement Investigation of Financial Exploitation

AUGUST 9, 2017



DEPARTMENT OF JUSTICE
ElderJustice
INITIATIVE



OVCTTAC
OFFICE FOR VICTIMS OF CRIME Training and Technical Assistance Center

TECHNICAL OVERVIEW

- ▶ If you are experiencing any technical issues with the audio for this session, please let us know in the feedback box.
- ▶ If you have technical difficulties during the webinar, contact Jason Adams, who is providing technical support for this webinar. His email address is jadams@ovcttac.org.
- ▶ Today's session will be recorded and made available on the training website.
- ▶ If you have questions, type them in the feedback box. We will address as many as possible throughout the webinar.

TODAY'S WEBINAR

Law Enforcement Investigation of Financial Exploitation

ELDER JUSTICE INITIATIVE

- The **mission** is to support and coordinate the Department of Justice's enforcement and programmatic efforts to combat elder abuse, neglect, and financial fraud and scams that target older adults.
- The Initiative does so by—
 - Promoting justice for older adults.
 - Helping older victims and their families.
 - Enhancing state and local efforts through training and resources.
 - Supporting, organizing, and presenting research to improve elder abuse policy and practice.



Home » Elder Justice Initiative (EJI)

SHARE

en Español

SAFE EXIT

Elder Justice Initiative Home

About EJI

▶ Older Adults, Families, and Caregivers

▼ Financial Exploitation

Senior Scam Alert

Federal Resource Roadmap

▶ Prosecutors

Law Enforcement

▶ Victim Specialists

▶ Multidisciplinary Teams

▶ Researchers

▶ EJI Outreach

Contact Us

Search EJI

FINANCIAL EXPLOITATION

FIND HELP OR REPORT ABUSE

Learn about financial scams and find the right reporting agency



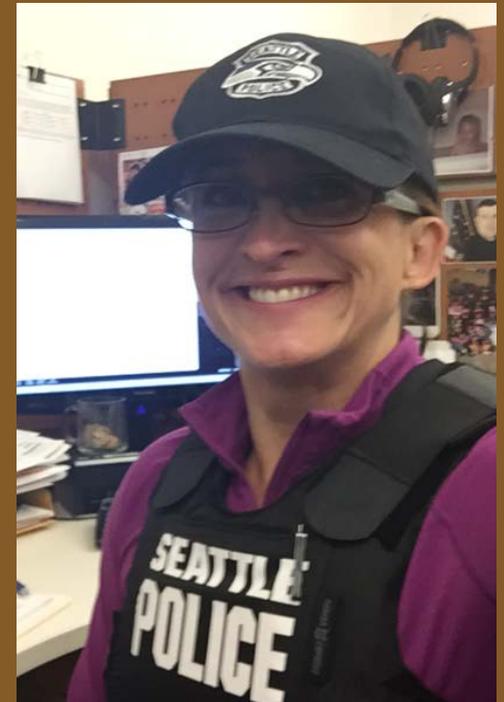
The Department of Justice is striving to combat financial crimes against older Americans. Learn about prevalent **financial scams** so you can guard against them, and get involved in making your community safer. If you need help, there is a **Elder Abuse Resource Roadmap** that can guide you to the right agency for your particular situation.



Introducing



Karen Webber, CPA, CFE
Webber CPA, PLLC



Detective Nicole Freutel
Seattle Police Department

Law Enforcement Investigation of Financial Exploitation

A Forensic Accountant's Perspective

Karen Webber, CPA, CFE

Webber CPA, PLLC

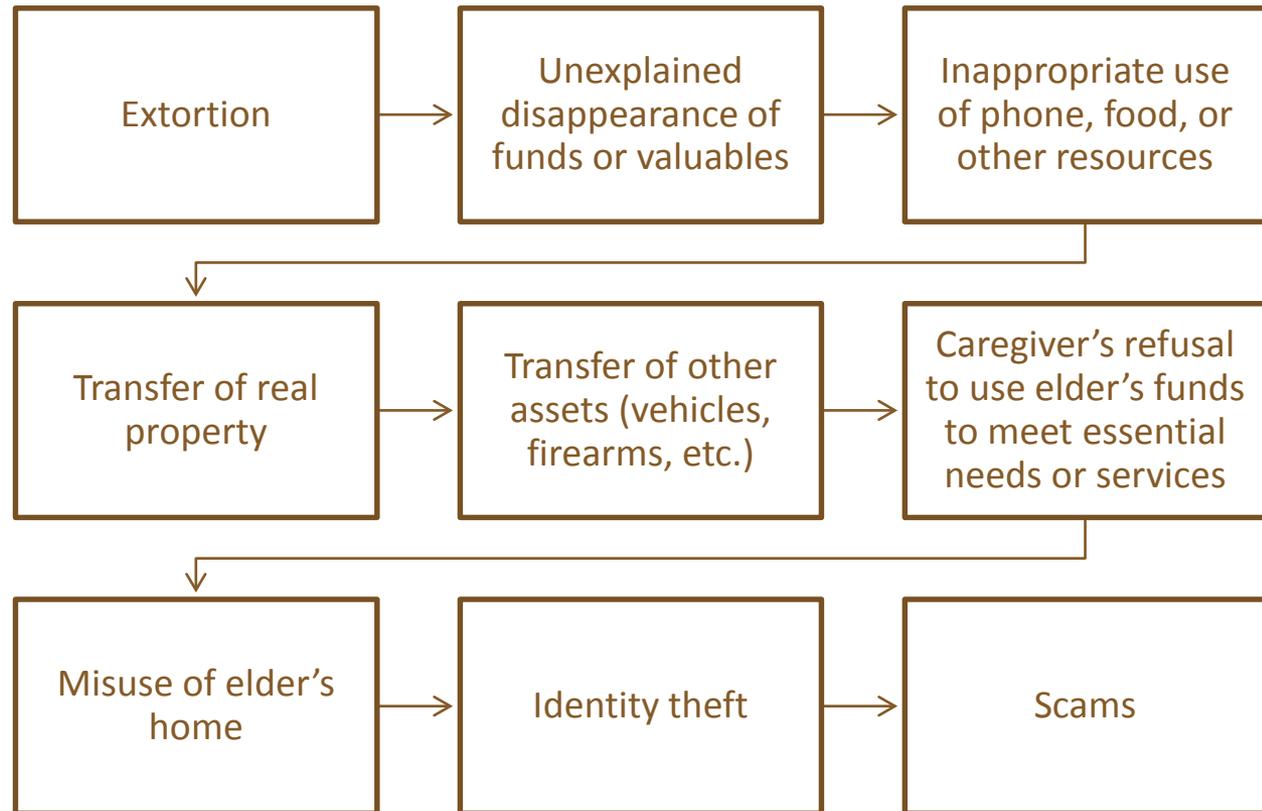
Rochester, New York

FINANCIAL EXPLOITATION

NYS Social Services Law §473(6)(g)

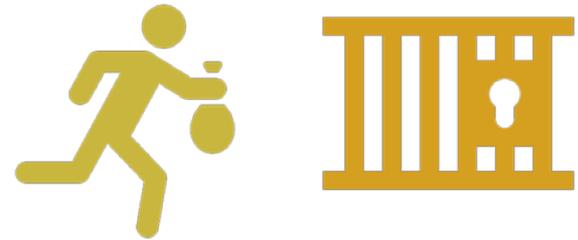
- Financial exploitation is the improper use of an adult's funds, property, or resources by another individual, including, but not limited to, fraud, false pretenses, embezzlement, conspiracy, forgery, falsifying records, coerced property transfers, or denial of access to assets.

COMMON EXAMPLES



THE ISSUES

- Civil vs. Criminal
- Capacity
- Complexity
- Cooperation (or lack thereof)



CIVIL VS. CRIMINAL (NYS)



Civil

- General Obligations Law §5-1501 (POA)

Criminal

- Penal Law §155.25-43 (Larceny)
- Penal Law §260.25 (Welfare endangerment)

<http://public.leginfo.state.ny.us/lawssrch.cgi?NVLWO>

CAPACITY

Assessments can vary based on—

- Assessor
- Disease diagnosis and stage
- Recent life events
- Location
- Time of day
- Others in the room
- Medication
- Diet/nutrition

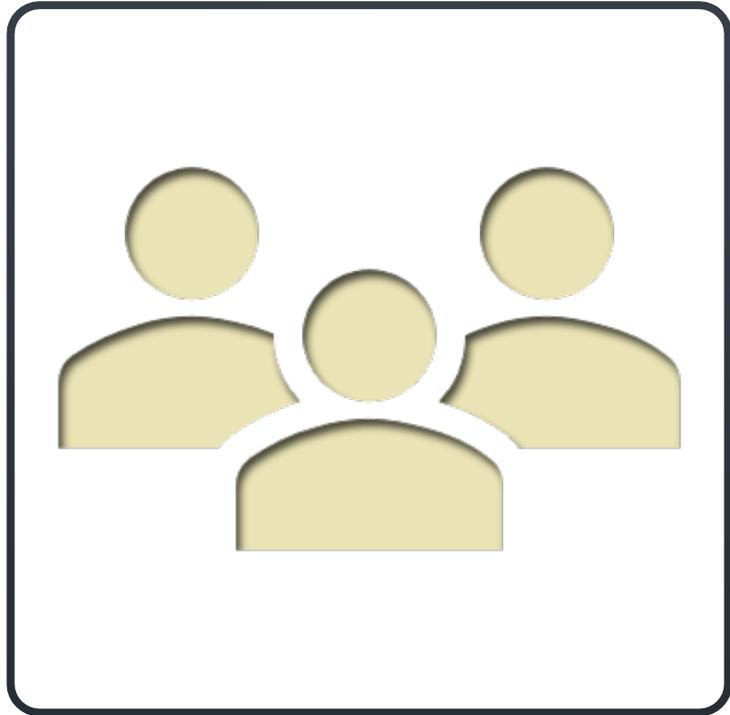
A person may have the capacity to make some decisions but not others!



COMPLEXITY

- Multiple bank and/or investment accounts, multiple institutions, and frequent fund transfers
- Period of abuse is unknown or suspected to have occurred over many years
- Client and caretaker/suspected perpetrator share resources
- Client spending patterns are unknown and not easily observable based on initial review of records
- Multiple perpetrators are suspected

COOPERATION



Multiple agencies working in silos—

- Law enforcement
- Adult Protective Services
- Medical practitioner
- Financial advisor
- Financial institution
- Concerned friend/relative
- Private attorney

CONSIDERATIONS FOR INVESTIGATION

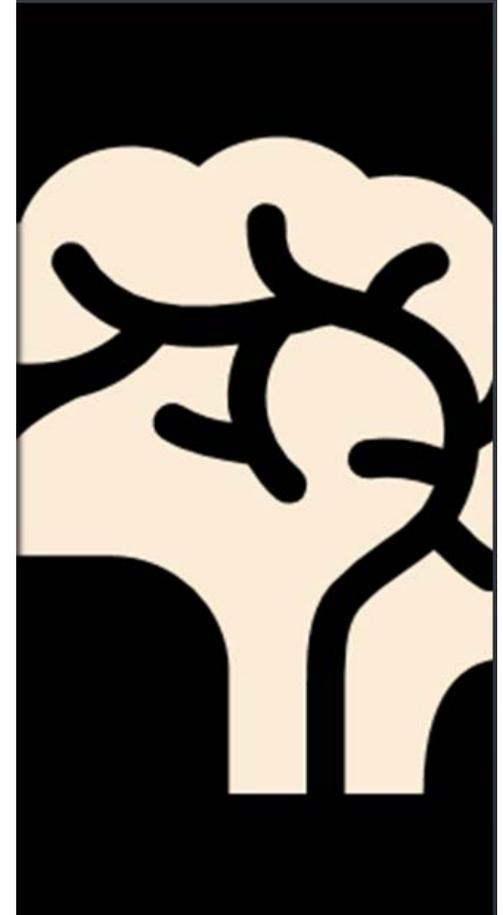
PSYCHIATRIC EVALUATION

Best case scenario

- Formal evaluation/diagnosis
- Geriatric psychiatrist
- Specific reference to financial decisionmaking
- Communicated to suspected perpetrator

Alternatives

- Doctors' notes
- Attorney or APS assessment
- Statement by suspected perpetrator or other indication that suspected perpetrator was aware



CONSIDERATIONS FOR INVESTIGATION

POWER OF ATTORNEY



CONSIDERATIONS FOR INVESTIGATION

MEDICAL RECORDS

- Medication list
- Dates hospitalized
- Notes about capacity
- Notes about individuals accompanying elder to appointments and their relationship

CONSIDERATIONS FOR INVESTIGATION

BANK RECORDS

What to request

What to look for

Opening documents

- Signatures and other account owners

Deposit Items

- Checks from additional accounts/assets, and income from Investments

Withdrawal Items

- Signatures, cashier's checks, and notes about purpose

Canceled Checks

- Front: Signatures, payees, and memo details
- Back: Endorsements, bank of deposit, account number

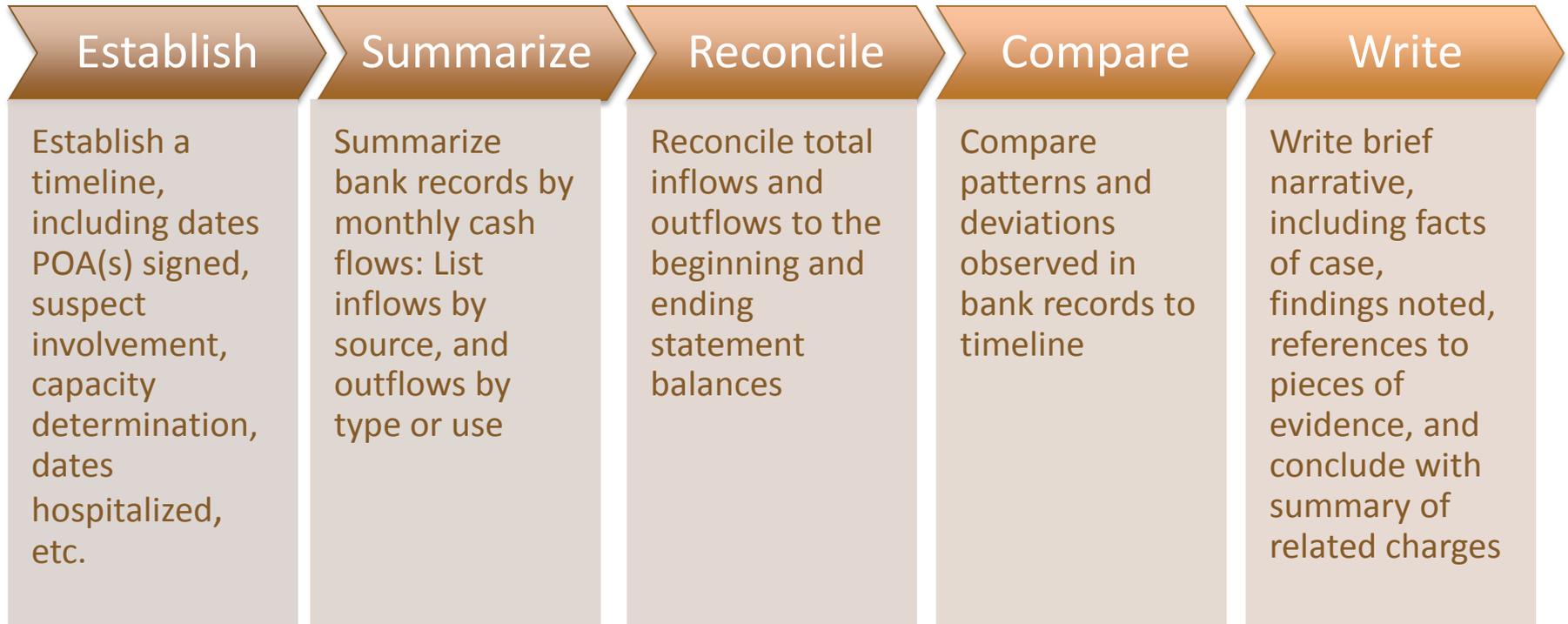
Transfer Details

- Origin and destination accounts and account numbers

LOCATING BANK ACCOUNTS

- Start with any bank statement the victim provides
 - Outside deposits/transfers
- Ask for tax return, and locate schedule B for list of accounts
- Check Social Security records (WMS) for direct deposit instructions
- Check with utility providers
- Subpoena or APS request letter
 - *Any and all accounts held individually and jointly in the name of the elderly person*

CONDUCTING THE INVESTIGATION



LOCATING FORENSIC ACCOUNTANTS

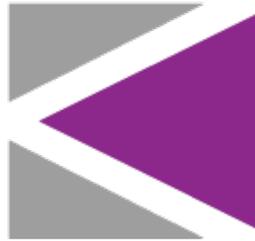
- National Association of State Boards of Accountancy
 - <https://cpaverify.org/>
- State Society of CPAs
- American Institute of CPAs (AICPA)
 - <http://www.aicpa.org/forthepublic/findacpa/pages/findacpa.aspx>
- Association of Certified Fraud Examiners (ACFE)
 - <http://www.acfe.com/findacfe.aspx>

CONTACT INFORMATION

Karen Webber, CPA, CFE

kwebber@webbercpa.com

(585) 880-5107



Webber CPA, PLLC

Forensic Accounting
Consulting • Staffing

INVESTIGATING FINANCIAL EXPLOITATION OF VULNERABLE ADULTS

Detective Nicole Freutel
Seattle Police Department
Nicole.freutel@seattle.gov
206-615-0046

INVESTIGATING CASES INVOLVING THE FINANCIAL EXPLOITATION OF VULNERABLE ADULTS

What is Financial Exploitation?

What is a Vulnerable Adult?

What makes victims vulnerable to exploitation?

Where do these cases come from?

Typical case work up.

Sending the case to the prosecutor for charges.

This presentation borrowed heavily from the Washington Elder Abuse Legal Guide 2016 edition

WHAT IS FINANCIAL EXPLOITATION?

Washington State definition: *the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of a vulnerable adult by any person or entity for any person/entity's profit or advantage other than that of the vulnerable adult's.*

This may include:

- The use of deception, intimidation, undue influence by person in a position of trust and confidence
- A breach of fiduciary duty (POA, trust, guardianship)
- By a subject who knows/*should know* the vulnerable adult lacks capacity to consent

WHAT IS A VULNERABLE ADULT?

A person 60 years of age or older who has the functional, mental, or physical inability to care for him/herself;

A person found to be incapacitated;

A person over the age of 18 who has a developmental disability;

A person admitted to a licensed LTC facility (or is required to be licensed under state law); or

A person receiving services from a licensed home health, hospice, or home care agency, or one that is required to be licensed under state law.

WHAT MAKES PEOPLE VULNERABLE?

Dementia is #1

It's an acquired (usually progressive) condition characterized by—

↓ short term memory

↓ judgement, language, math, reading, or writing

↓ employment skills, social skills, ability to take care of yourself

Dementia is NOT a natural part of aging:

– a syndrome caused by other diseases, such as Alzheimer's disease.

OTHER CAUSES OF VULNERABILITY



Depression, Grief, Disability, Drugs, Personality Characteristics

THEFT

With intent to deprive the victim of property, the suspect did:

- ▶ Wrongfully obtain,
- ▶ Exert unauthorized or improper control over,
- ▶ By color and aid of deception,
- ▶ The property of another.

Grandma Mary had a stroke and went into a skilled nursing facility.

Granddaughter Alison stepped up to take care of grandma's bills while she was incapacitated. She had herself designated as Mary's Durable Power of Attorney (DPOA). Alison transferred over \$570,000.00 from grandma's bank and investment accounts to her own.

Alison used that money to fund her gambling addiction.

IDENTITY THEFT

Knowingly obtained or possessed:

- ▶ A means of identification or financial information of another person,
- ▶ With the intent to commit a crime or obtain credit, money, goods, services, or anything else of value

Grandma Beatrice lived at home with assistance from family members. After suffering a stroke that resulted in obvious cognitive impairment, her granddaughter Michelle was named as her DPOA. Michelle figured out that someone in the family had stolen Bea's identity when they started receiving credit cards in the mail. Cousin Dana was accused of applying for lines of credit in grandma's name and intercepting the credit cards from the mail so that she could use them for her own purposes.

WHERE OUR CASES COME FROM

From Patrol

- ▶ Officers respond to a report of an elderly man at 7-Eleven trying to purchase \$2,500 in gift cards for a ‘friend.’
- ▶ Officers conduct a welfare check on woman who had called her broker desperate to withdraw money from her IRA account. The brokerage agent became concerned for her after hearing what sounded like verbal/emotional abuse coming from another party in the background.

From APS

- ▶ Low bar for reporting concerns.
- ▶ Family, friends, social workers, banks, etc.

TYPICAL CASE WORK UP

Determine the nature of the allegation.

- Are there any health or safety threats?
- Is there any need to stabilize/protect AV from further abuse/exploitation?

Contact the RP.

- What brought the situation to their attention?
- What evidence of wrongdoing can they provide?

Query the players.

- Criminal histories?
- Are there previously reported incidents of financial exploitation or DV?

TYPICAL CASE WORK UP, CONTINUED

Initial Face to Face interview with Victim (IFF)

- Videotape the interview

Competency Assessment

- Orientation to person, place, time, event
- Assessment tools

Key Information

- Income/savings/investments
- Expenses
- How does AV pay bills? Who assists AV with managing finances?
- Has anyone asked AV to sign documents that he doesn't understand?
- Is there a DPOA? Guardian? Trust?
- Who is the PCP?

TYPICAL CASE WORK UP, CONTINUED

Obtain complete medical records from the AV's primary care provider for the previous 3 years.

Consider the need for additional cognitive testing to demonstrate victim's vulnerability.

- GRAT team
- Kaiser Permanente Contour Team
- Local subject matter expert (FASD, etc.)

TYPICAL CASE WORK UP, CONTINUED

Obtain bank records dating back to at least 6 months prior to takings.

RCW 74.34.220 Financial Exploitation of Vulnerable Adults & 15 U.S.C. §6802 Gramm-Leach-Bliley Act language allows financial institutions to voluntarily share vulnerable victim information without legal process.

Forensic review of bank records for evidence of criminal activity.

Search warrant for specific records.



TYPICAL CASE WORK UP, CONTINUED

Suspect Interviews

- Reasonable explanation?
- Did he/she seek legal advice?
- Research best practices?
- Encourage narrative!



CONSULTING YOUR PROSECUTOR

Check in early and often.

Avoid rabbit holes.

Know what you are looking for and why.



WORKING WITH YOUR PROSECUTOR

Make sure your investigation not only supports charges but a successful prosecution as well.

Cops live in a Probable Cause world (<51%).

Prosecutors live in the world of Beyond a Reasonable Doubt.

WORKING WITH YOUR PROSECUTOR, CONTINUED

If you feel strongly about a case that your prosecutor seems iffy on, be very clear on why you think it should be charged. Be prepared to defend your position.

Example: TBI in an elderly victim

A 77-year-old father was knocked to the ground when his 50-year-old son pushed his wife into him. Two days later, dad collapsed and was rushed to the hospital and found to have a subdural hematoma.

My prosecutor wasn't sure she could prove causation. I was able to find a scholarly article by the National Institutes of Health that showed falls were the leading cause of TBI in adults over 75.

THE BENEFITS OF PLAYING WELL WITH OTHERS

Each agency and stakeholder has possession of a different piece of the puzzle. What resources are available in your area and how can they help?

- Hospital social workers
- APS investigators
- Aging & Disability Services supervisors
- Bank fraud investigators
- Social Security OIG investigators
- AG investigators
- Prosecutor's Office
- Others

THANK YOU

QUESTIONS & SUGGESTIONS

can be emailed to

elder.justice@usdoj.gov