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FINAL REPORT OF
THE MAINE ATTORNEY GENERAL'S TASK FORCE ON
FINANCIAL EXPLOITATION OF THE ELDERLY

March 11, 2015



EXECUTIVE SUMMARY

Jane lived out of state, so when her elderly mother needed help around the house, Jane arranged for a trusted cousin to move in and care for her. This turned out to be a nightmare. Jane spoke with her mother every week, but did not see her for several months. It was not until it was too late that Jane learned that the cousin had obtained her mother's power of attorney, had depleted her mother's savings and had absconded with her jewelry.



This story is not unusual.

Elder abuse has emerged as a significant challenge for Maine's law enforcement agencies. The United States Department of Justice estimates that one in nine people over the age of 60 will be abused or exploited this year, or an estimated 33,000 victims of elder abuse in Maine alone. Older adults who are abused or mistreated are three times more likely to die within the next decade after the abuse than are adults in the same age group not subject to abuse.¹

One of the more common types of elder abuse is financial exploitation. Such exploitation occurs whenever older adults are deprived of their property by improper means and it commonly includes fraud, theft, or deceptive behavior. Often the perpetrator of this behavior is a family member, caregiver or someone who has a relationship of trust with the older adult. Financial exploitation causes economic losses for businesses, families, elders, and government programs. Robbing individuals of their property not only increases the victim's reliance on public assistance programs but also creates stress and a loss of dignity that has profound consequences on the victim's mental and physical health.

With Maine's growing aging population, financial crimes against the elderly are becoming increasingly prevalent. In January of 2014, recognizing this trend and the need to make combating such crimes a high priority, Attorney General Janet T. Mills formed a law enforcement based Task Force. The mission of the Task Force was to examine the barriers to prosecution of these crimes in Maine and to make recommendations to improve the criminal justice response.

From their meetings and from a widely distributed online survey, the Task Force found broad consensus in Maine's criminal justice community that elder financial exploitation crimes are not being investigated or prosecuted as they should be.

The Task Force identified a number of systemic barriers to prosecution of these crimes, including a perception among criminal justice professionals that these are family or civil issues, a lack of training in handling financial crimes against the elderly, and an inadequate legal framework for prosecuting elder financial exploitation.

The Task Force agreed on a number of recommendations to improve the prosecution of these crimes. Those recommendations include: statutory changes, changes in judicial case management, changes in staffing, and specialized training for law enforcement personnel, prosecutors and the judiciary.

¹ Lachs MS, Williams CS, O'Brien S, Pillemer KA, Charlson ME. *Journal of the American Medical Association*. 1998; 280(5): 428-432.

Task Force Members

Office of the Attorney General

Attorney General Janet T. Mills, Convener
Assistant Attorney General Leanne Robbin, Task Force Chair

Prosecutors

District Attorney Meaghan Maloney, District 4
District Attorney Geoffrey Rushlau, District 6
District Attorney Andrew Robinson, District 3

Law Enforcement

Detective Seth Blodgett, Attorney General's Office
Sergeant Patrick Hood, Maine State Police
Captain Mark Waltz, Brunswick Police Department
Sheriff Joel Merry, Sagadahoc County Sheriff's Office
Sheriff William King, York County Sheriff's Office
Deputy Sheriff Dan Robertson, Aroostook County Sheriff's Office

Executive Branch

Ricker Hamilton, Deputy Commissioner of Programs, Maine Department of Health and Human Services

Judicial Branch

Mary Ann Lynch, Esq., Government and Media Counsel, Maine Judicial Branch

Task Force Staff

Jaye L. Martin, Esq., Executive Director of Legal Services for the Elderly, provided research and staffing support for the Task Force.



TASK FORCE ACTIVITIES

What are the barriers to prosecution of financial exploitation crimes against the elderly?

The Task Force is comprised of experienced law enforcement officers, prosecutors, a representative of the Judicial Branch and a representative of the Executive Branch with nationally acknowledged expertise in adult protection matters. Legal Services for the Elderly, a nonprofit organization with long experience providing civil legal representation to older victims of financial exploitation, provided staff support for the Task Force.

The Task Force examined two basic questions: What are the barriers to prosecution of financial exploitation crimes against the elderly? What can be done to improve the investigation and prosecution of financial exploitation and other serious crimes against the elderly? The Attorney General believed that the perspective of each of these experienced professionals would help produce the best informed answers to these questions.

What can be done to improve the investigation and prosecution of financial exploitation and other serious crimes against the elderly?

To start the conversation, the Attorney General's Office and the Task Force staff composed and distributed an online survey to a large group of criminal justice professionals including the Task Force members. A total of 171 individuals answered all the questions. Another 71 individuals started the survey, but did not complete it. All responses, including incomplete ones, were reviewed by the Task Force.

Those completing the entire survey included:

- 4 District Attorneys,
- 24 Assistant District Attorneys,
- 44 Police Chiefs, five Sheriffs,
- 6 Deputy Sheriffs,
- 26 Detectives,
- 31 Patrol Officers,
- 9 Investigators,
- 1 Court staff,
- 8 Victim Witness Advocates, and
- 8 "Others."

Sixty-five percent (65%) of respondents who completed the entire survey had worked in their profession for at least 10 years.

The survey revealed broad agreement among these criminal justice professionals that cases of financial crimes against the elderly are not being investigated and prosecuted as they should be.

BARRIERS TO PROSECUTION

The Task Force identified the following major barriers to prosecution of financial crimes against seniors:

- Financial crimes against elders are uniformly viewed as more difficult and more resource intensive to investigate and prosecute than other types of crimes. The cases typically involve voluminous financial records and victims who may not be able to assist in the investigation due to infirmity or death.
- Financial crimes committed against seniors by family members are viewed as private family matters or civil matters and not criminal.
- There are many competing priorities for limited resources. Law enforcement agencies may not be equipped to devote an investigator to the collection and analysis of financial records, while at the same time responding to crimes of violence that may need immediate attention.
- Maine statutes could better protect elder victims from financial exploitation.
- Elderly victims may be unwilling or unable to provide evidence against a family member who is exploiting the victim because of the victim's dependence on or affection for that family member.
- There is a pervasive lack of training for all professionals in the system, including law enforcement, prosecutors, judges, and court personnel.

The Task Force members' discussions were based on the survey results and their own professional experiences. They were able to agree on the major barriers and key findings in short order and immediately proceeded to making recommendations for achieving systemic change.



Financial crimes are difficult to investigate and prosecute – financial crimes involving older victims present additional barriers.

TASK FORCE FINDINGS

The Task Force made the following findings:

- Financial exploitation of elder victims must be treated as a high priority in all parts of the criminal justice system. This requires a significant culture shift in the criminal justice system and a statewide approach that resembles the domestic violence model. It may also require additional resources.
- Criminal justice agencies must be proactive in overcoming barriers to accommodating the needs of elder victims.
- It is of critical importance that these crimes are not viewed by the criminal justice system as private family matters or as civil issues rather than crimes.
- Protocols need to be implemented for law enforcement agencies, prosecutors' offices and the Judiciary, as well as in social service and other agencies that have contact with elder victims.
- Training must be targeted to meet the unique needs of the different types of criminal justice professionals. The optimum staffing model would be to assign individual professionals to the area of elder abuse so that their skills and focus would be reinforced over time.
- It is important to support the efforts of other groups, like the Maine Council for Elder Abuse Prevention, to make sure more victims come forward and crimes are reported.



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TASK FORCE RECOMMENDATIONS

The Task Force made the following recommendations for actions that would significantly address the barriers to the prosecution of financial crimes against seniors.

Statutory Changes:

Advanced age as a sentencing factor. Financial crimes have a more significant impact on elder victims due to the victim's age. As victims of financial crimes, older adults are unlikely to earn back or recover significant sums of money taken from them. Often this money represents their life savings. The Maine Uniform Securities Act (32 M.R.S. §16604(4)) recognizes the particular impact on elder victims by enhancing the civil fine for securities violations involving an investor 65 years or older.

Financial crimes have a more significant impact on older victims who cannot expect to earn back their losses.

Similarly, the statutory purposes of criminal sentencing contained in the Maine Criminal Code, 17-A M.R.S.A. § 1151(8)(A), recognize a victim's age should not result in a sentence that diminishes the seriousness of the crime. Unfortunately, reference to age in these sentencing principles is often interpreted as applying only to younger victims of crime. Changing this perception would ensure that perpetrators of financial crimes against older victims receive sentences that accurately reflect the harm caused.

- The Task Force recommends: Clarifying that "age" as a sentencing consideration in 17-A M.R.S.A. § 1151(8)(A) is not limited to children or the very young, but also applies to persons of advanced age who may suffer a more significant harm or be more vulnerable.

Financial exploitation as grounds for a protective order.

The Task Force recognized that victims of financial exploitation sometimes need the same immediate judicial protection in the nature of a court order that is routinely available to victims of other types of abuse. In order to make such protective orders available and to publicly declare that all victims of abuse have a right to the same judicial remedies, the Task Force recommends legislation that would make the following changes to existing law:

Financial exploitation of an elder is a form of abuse and it should be treated as such in order to protect aging Mainers.

- Amend the definition section of the Adult Protective Services Act (22 M.R.S. §3472) by replacing the defined term "Exploitation" in subsection 9 with "Financial exploitation" and adding that term to the definition of "Abuse" in sub-section 1.
- The definition of "Abuse" in 22 M.R.S. §3472(1) is incorporated by reference in the definition of "Abuse" in 19-A M.R.S. § 4005(1) (Protection From Abuse). This would authorize an immediate protective order for a dependent or incapacitated adult on the basis of financial exploitation in addition to the other forms of abuse currently described in that statute.

Law enforcement and prosecutors would benefit from better definitions in order to hold offenders accountable.

Defining “dependent person” in the crime of Endangering the Welfare of a Dependent Person. The Task Force recognized that the definition of Endangering the Welfare of a Dependent Person needs improvement. The statute does not contain a definition of the term “dependent,” which creates unnecessary problems for law enforcement personnel and prosecutors alike. The Task Force recommends:

- Amending Endangering Welfare of a Dependent Person, 17-A M.R.S. § 555, by adding a modified version of the definition used in the Adult Protective Services Act, 22 M.R.S. § 3472 (6)(D), and the Improvident Transfer Title Act, 33 M.R.S. § 1021(10)(A):
- “Dependent person means a person, regardless of where that person resides, who is wholly or partially dependent upon one or more other persons for care or support, because the person suffers from a significant limitation in mobility, vision, hearing or mental functioning.”

Judicial Case Management and Criminal Rule Changes:

The Task Force noted that when an older victim does go to court, they find the unpredictable schedules and difficult conditions to be a barrier.

Recognizing that an elder person’s capacity and physical abilities will diminish over time, the Task Force recommends that the trial courts adopt case management procedures that afford priority scheduling to matters involving elder victims. In addition, the courts should specially schedule any proceeding requiring the presence of an elder victim so that that victim does not have to wait beyond the scheduled time to be heard. Finally, advanced age should be a consideration in the admission of videotaped depositions in lieu of live testimony under M.R.Crim.P.15(e).

These recommended changes are consistent with the Recommended Guidelines for State Courts for Handling Cases of Elder Abuse published by the ABA Commission on Legal Problems of the Elderly and the State Justice Institute.²

Dedicated Staffing:

A longstanding theme in studies and reports focusing on barriers to the prosecution of crimes against older adults is the need for dedicated resources to pursue elder abuse crimes. See, e.g., the recent report of the United States Department of Justice, “The Elder Justice Roadmap, A Stakeholder Initiative to Respond to an Emerging Health, Justice, Financial and Social Crisis,”³ which identifies the need to create law enforcement and prosecution units that specialize in elder abuse. This conclusion is reinforced in the responses to the online survey and the Task Force findings.

² http://www.americanbar.org/content/dam/aba/administrative/law_aging/2011/2011_aging_ea_rec.authcheckdam.pdf

³ <http://www.justice.gov/elderjustice/research/roadmap.html>

The Task Force recommends creating a statewide Financial Abuse Specialist Team (“FAST”), a concept that has worked well in other jurisdictions.⁴

The Maine Department of Health & Human Services (“DHHS”) recognizes the importance of dedicated staffing and is exploring the establishment of a FAST within the Office of Aging & Disability Services (“OADS”), Adult Protective Services (“APS”). In November 2014, OADS funded a one-year contract and hired a subject matter expert who will work with all Maine stakeholders through 2015 to develop a Maine FAST. This type of team would provide critical support to law enforcement by assembling and summarizing the financial records for criminal investigations and removing that barrier to criminal prosecution. DHHS has also budgeted two positions within OADS to work with law enforcement and prosecutors on cases involving older victims. The Task Force applauds and supports these efforts.

“FAST” experts can support the efficient prosecution of financial crimes against older Mainers.

The Task Force recommends adding a dedicated investigator and a special prosecutor in the Office of the Attorney General (“AG”) to handle financial crimes against older adults. These additional resources will ensure that all crimes are actively prosecuted regardless of where they occur in the state. These individuals will:

- 1) Support the District Attorneys in handling financial crimes against older adults by providing group and individual training and by consulting with them on current cases, and
- 2) Screen referrals and handle cases that are too complex to be prosecuted effectively at the local level. AG staff would also work closely with OADS as it explores creation of a FAST.

Finally, the Task Force recommends reinstating the Elder Service Officer (“ESO”) program, under the model of the AG’s Civil Rights Officer Program. Each law enforcement agency in the State would designate an ESO who would receive specialized training from the AG and act as each agency’s liaison to the AG and the FAST. The ESO would not be responsible for investigating all crimes against older adults in his or her agency but would coordinate resources to ensure that each investigator assigned to a case of elder financial exploitation has the necessary support. The ESO would also review cases for possible referral to the AG.

The Task Force recommends reinstating the Elder Service Officer (“ESO”) program, under the model of the AG’s Civil Rights Officer Program.

⁴ See for example: <http://www.preventelderabuse.org/communities/fast.html>

Training and Training Resources:

Education is needed:
A Power of Attorney
is not a license to
steal.



The Task Force recommends systematic and continuing training for all key criminal justice system professionals, including investigators, prosecutors, judges, and victim advocates. This training should address best practices for working with elderly victims and investigating and prosecuting financial exploitation. National training resources for investigators, prosecutors, and the judiciary could be readily adapted for use in Maine at little or no cost.

Specific training would include: prosecutor and APS collaboration on cases; judicial training for dealing with elderly victims and witnesses; APS training on when and how to report to law enforcement; and Board of Bar Overseers training of attorneys on the risks of Power of Attorney abuse.

In addition to the general observation that continuing training is needed across the system, the following specific areas of concern were identified as a high priority. These are areas where misunderstanding and misinformation about legal principles impede prosecution:

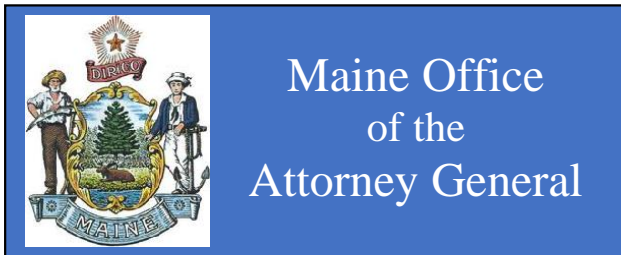
- Powers of Attorney;
- Joint Accounts;
- Concept that consent is not a defense when the victim is unable to give consent due to cognitive impairments; and
- Financial institution privacy laws, including what banks must (and are authorized to) disclose and how to authenticate financial records.

Conclusion

Maine's senior citizens are a vital part of our community. They have worked hard and they deserve respect and protection. Their financial and physical security should be our highest priority.

By implementing these recommendations, the Task Force believes that Maine will make significant progress in providing law enforcement and prosecutors with the necessary tools to prevent, deter and prosecute elder financial exploitation.

Resources



Maine Office of the Attorney General
General: (207) 626-8800
Consumer Mediation: 1-800-436-2131
Email: consumer.mediation@maine.gov
Web: www.maine.gov/ag



Legal Services for the Elderly
Helpline: 1-800-750-5353
Medicare Part D Unit: 1-877-774-7772
Web: www.mainelse.org



Maine Office of Securities
Tel: 1-877-624-8551
www.maine.gov/pfr/securities/



Maine Association of Area Agencies on Aging
Tel: 1-877-Elders-1
Web: www.maine4a.org/



Maine DHHS, OADS, Adult Protective Services
APS Hotline: 1-800-624-8404
Web: www.maine.gov/dhhs/oads/aging/aps/



Maine Council for Elder Abuse Prevention
Web: <http://elderabuseprevention.info/>

Appendix: Proposed Legislation

Title 17-A: MAINE CRIMINAL CODE

Chapter 47: GENERAL SENTENCING PROVISIONS

§1151. PURPOSES

The general purposes of the provisions of this part are: [1975, c. 499, §1 (NEW).]

1. To prevent crime through the deterrent effect of sentences, the rehabilitation of convicted persons, and the restraint of convicted persons when required in the interest of public safety; [1975, c. 499, §1 (NEW).]
2. To encourage restitution in all cases in which the victim can be compensated and other purposes of sentencing can be appropriately served. [1975, c. 499, §1 (NEW).]
3. To minimize correctional experiences which serve to promote further criminality; [1975, c. 499, §1 (NEW).]
4. To give fair warning of the nature of the sentences that may be imposed on the conviction of a crime; [1975, c. 499, §1 (NEW).]
5. To eliminate inequalities in sentences that are unrelated to legitimate criminological goals; [1975, c. 499, §1 (NEW).]
6. To encourage differentiation among offenders with a view to a just individualization of sentences; [1975, c. 499, §1 (NEW).]
7. To promote the development of correctional programs which elicit the cooperation of convicted persons; and [1975, c. 499, §1 (NEW).]
8. To permit sentences that do not diminish the gravity of offenses, with reference to the factors, among others, of:
 - A. The age of the victim, particularly those victims of an advanced or tender age who have a reduced ability to protect themselves or who suffer more significant harm due to their age; and [1995, c. 149, §1 (NEW).]
 - B. The selection by the defendant of the person against whom the crime was committed or of the property that was damaged or otherwise affected by the crime because of the race, color, religion, sex, ancestry, national origin, physical or mental disability, sexual orientation or homelessness of that person or of the owner or occupant of that property. [2005, c. 551, §1 (AMD).]

Title 17-A: MAINE CRIMINAL CODE
Chapter 23: OFFENSES AGAINST THE FAMILY

§555. ENDANGERING WELFARE OF DEPENDENT PERSON

1. A person is guilty of endangering the welfare of a dependent person if:

A. The person recklessly endangers the health, safety or mental welfare of a dependent person ~~who is unable to perform self-care because of advanced age or physical or mental disease, disorder or defect~~. Violation of this paragraph is a Class D crime; or [2005, c. 431, §1 (NEW).]

B. The person intentionally or knowingly endangers the health, safety or mental welfare of a dependent person ~~who is unable to perform self-care because of advanced age or physical or mental disease, disorder or defect~~. Violation of this paragraph is a Class C crime. [2005, c. 431, §1 (NEW).]

[2005, c. 431, §1 (RPR) .]

2. As used in this section,

A. "Endangers" includes a failure to act only when the defendant has a legal duty to protect the health, safety or mental welfare of the dependent person. For purposes of this section, a legal duty may be inferred if the defendant has assumed responsibility for the care of the dependent person.

B. "Dependent person" means a person, regardless of where that person resides, who is wholly or partially dependent upon one or more other persons for care or support, because the person suffers from a significant limitation in mobility, vision, hearing or mental functioning or is unable to perform self-care because of advanced age or physical or mental disease, disorder or defect.

Title 22: HEALTH AND WELFARE

Chapter 958-A: ADULT PROTECTIVE SERVICES ACT HEADING: PL 1981, c. 527, §1 (new)

§3472. DEFINITIONS

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings.
[1981, c. 527, §2 (NEW).]

1. Abuse. "Abuse" means the infliction of injury, unreasonable confinement, intimidation or cruel punishment that causes or is likely to cause physical harm or pain or mental anguish; sexual abuse or sexual exploitation; financial exploitation; or the intentional, knowing or reckless deprivation of essential needs. "Abuse" includes acts and omissions.

[2003, c. 653, §2 (AMD) .]

2. Adult. "Adult" means any person who has attained 18 years of age or who is a legally emancipated minor.

[2003, c. 653, §2 (AMD) .]

2-A. Bureau. [2011, c. 657, Pt. BB, §3 (RP) .]

3. Caretaker. "Caretaker" means any individual or institution who has or assumes the responsibility for the care of an adult.

[1981, c. 527, §2 (NEW) .]

4. Commissioner. "Commissioner" means the Commissioner of Health and Human Services or a designated representative in the geographical area in which the person resides or is present. [2005, c. 397, Pt. A, §21 (AMD) .]

5. Department. [2005, c. 397, Pt. A, §22 (RP) .]

6. Dependent adult. "Dependent adult" means an adult who has a physical or mental condition that substantially impairs the adult's ability to adequately provide for that adult's daily needs. "Dependent adult" includes, but is not limited to, any of the following:

A. A resident of a nursing home licensed or required to be licensed under section 1817; [2003, c. 653, §2 (NEW) .]

B. A resident of a facility providing assisted living services licensed or required to be licensed pursuant to section 7801; [2011, c. 291, §1 (AMD) .]

C. A person considered a dependent person under Title 17-A, section 555; or [2011, c. 291, §1 (AMD) .]

D. A person, regardless of where that person resides, who is wholly or partially dependent upon one or more other persons for care or support, either emotional or physical, because the person suffers from a significant limitation in mobility, vision, hearing or emotional or mental functioning. [2011, c. 291, §1 (NEW) .]

7. Emergency. "Emergency" refers to a situation in which:

A. The incapacitated or dependent adult is in immediate risk of serious harm; [1981, c. 527, §2 (NEW) .]

B. The incapacitated or dependent adult is unable to consent to services that will diminish or eliminate the risk; and [2003, c. 653, §2 (AMD) .]

C. There is no person legally authorized to consent to emergency services. [2003, c. 653, §2 (AMD) .]

[2003, c. 653, §2 (AMD) .]

8. Emergency services. "Emergency services" refers to those services necessary to avoid serious harm.

[2003, c. 653, §2 (AMD) .]

9. Financial Exploitation. "Financial Exploitation" means ~~the illegal or improper use of an incapacitated or dependent adult or that adult's resources for another's profit or advantage. using deception, intimidation, undue influence, force or other unlawful means to obtain control over the property of a dependent adult for another's profit or advantage.~~

[2003, c. 653, §2 (AMD) .]

10. Incapacitated adult. "Incapacitated adult" means any adult who is impaired by reason of mental illness, mental deficiency, physical illness or disability to the extent that that individual lacks sufficient understanding or capacity to make or communicate responsible decisions concerning that individual's person, or to the extent the adult cannot effectively manage or apply that individual's estate to necessary ends. [2003, c. 653, §2 (AMD) .]

11. Neglect. "Neglect" means a threat to an adult's health or welfare by physical or mental injury or impairment, deprivation of essential needs or lack of protection from these. [1983, c. 313, §2 (AMD) .]

12. Protective services. "Protective services" means services that separate incapacitated or dependent adults from danger. Protective services include, but are not limited to, social, medical and psychiatric services necessary to preserve the incapacitated or dependent adult's rights and resources and to maintain the incapacitated or dependent adult's physical and mental well-being.

Protective services may include seeking guardianship or a protective order under Title 18-A, Article 5.

[2003, c. 653, §2 (AMD) .]

13. Serious harm. "Serious harm" means:

A. Serious physical injury or impairment; [1989, c. 259, §3 (AMD) .]

B. Serious mental injury or impairment that now or in the future is likely to be evidenced by serious mental, behavioral or personality disorder, including, but not limited to, severe anxiety, depression or withdrawal, untoward aggressive behavior or similar serious dysfunctional behavior; [2003, c. 653, §2 (AMD) .]

C. Sexual abuse or sexual exploitation; or [2003, c. 653, §2 (AMD) .]

D. Serious waste or dissipation of resources. [2003, c. 653, §2 (NEW) .]

[2003, c. 653, §2 (AMD) .]

14. Serious injury.

[1989, c. 259, §4 (RP) .]

15. Sexual abuse or sexual exploitation. "Sexual abuse or sexual exploitation" means contact or interaction of a sexual nature involving an incapacitated or dependent adult without that adult's informed consent.

16. Undue influence means the misuse of real or apparent authority or the use of manipulation by a person in a trusting, confidential or fiduciary relationship with a person who is a dependent adult or an incapacitated adult.



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