



Reducing the Incidents and Impact of Elder Financial Abuse in San Mateo County

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SUMMARY

Elder financial abuse is regarded as one of the most commonly substantiated types of elder abuse.¹ As of 2009, the annual financial loss by victims nationwide was estimated to be at least \$2.6 billion dollars.² This number may be even higher, as financial abuse is often not reported due to embarrassment, intimidation, lack of awareness that it is a crime or other factors.³ Even when elder financial abuse is reported, it is often difficult to prosecute and difficult to recover lost funds. Elder financial abuse can take many forms, ranging from abuse perpetrated by family members and caregivers to new and sophisticated scams such as telemarketing offers and fake lottery winnings.

As the average age of San Mateo County (County) residents increases, so does the opportunity for elder financial abuse. The County Health System website indicates that “by the year 2030, nearly one out of four County residents will be over 65 years of age. The number of adults over 65 in the county will increase by 72%; and the number of people over the age of 85 will increase to two and a half times the current number.”⁴ The relative wealth of older residents in our County, who often own their own homes with significant equity, makes them especially attractive to financial predators.⁵

The 2013-2014 San Mateo County Civil Grand Jury (Grand Jury) investigated current programs and services in the County designed to protect the elderly from financial abuse. Based on its investigation the Grand Jury determined that, although the County has developed a foundation for protection of elderly and dependent adults, its programs and services need to be strengthened. In particular, the Grand Jury found that residents of this County would benefit from increased

¹ For purposes of this report, an “elder” is any person at least 65 years of age. Refer to California Penal Code Sections 368(d) and (e) as listed in Appendix A-Legal Authority of this report which address illegal or improper use of funds, property or resources (e.g., theft, fraud, false pretenses, embezzlement, conspiracy, forgery, falsifying records, coerced property, transfer or denial of access to assets). Welfare and Institutions Code 15000 et seq. listed in the same Appendix addresses civil standards for elder financial abuse.

² National Council on Aging, “Elder Abuse Fact Sheet”(October 15, 2009), Retrieved February 2014 from www.ncoa.org/public_policy_action/elder_faqs_on_elder_abuse.htm/

³ Elder Financial Protection Network (n.d.), What is Financial Abuse? Retrieved from <http://www.elderfinancialprotection.org/what-is-financial-abuse/>

⁴ San Mateo County Health System website. Silver Tsunami-Healthy Aging in San Mateo County. (n.d.) Retrieved from <http://www.smhealth.org/SilverTsunami>

⁵ Representatives from the Legal Aid Society indicated that over 70% of the Baby Boomer generation (persons born from 1946-1964) own a home, and over 20% of such persons own the home without a mortgage.

community awareness and education and better training of police and other mandated reporters.⁶ Both strong criminal enforcement and more robust record-keeping related to elder financial abuse crimes are needed.

METHODOLOGY

In preparing this report, the Grand Jury reviewed various materials including handouts, pamphlets, and circulars prepared by relevant County agencies, magazine and newspaper articles regarding elder financial abuse issues, internet websites (including an elder financial abuse webinar from the Institute on Aging), and publications by national organizations concerning elder financial abuse.

INTERVIEWS

In the course of this investigation, members of the Grand Jury interviewed individuals from the following County commissions, departments, or divisions:

- Aging and Adult Services (AAS), a division of San Mateo County Health System
- Adult Protective Services (APS)⁷
- Commission on Aging⁸
- Office of the County Counsel
- Office of the District Attorney (DA)
- Office of the Sheriff

The Grand Jury also interviewed officials from the Legal Aid Society of San Mateo County (Legal Aid Society) as well as professionals practicing in the field of elder financial abuse.

DISCUSSION

Based on its investigation, the Grand Jury believes the County's most significant challenges to adequately addressing the problem of elder financial abuse involve: (1) identifying instances of elder financial abuse; and (2) improving collaboration between established agencies and professionals in order to address elder financial abuse issues.

⁶ Pursuant to Welfare & Institutions Code Section 15630, any person who has assumed full or intermittent responsibility for an elder is required to report instances of elder abuse. In addition, mandated reporters include all health care professionals and their staff, members of the clergy, Adult Protective Services staff, law enforcement officers, medical examiners, bank officials, as well as senior center and day care staff.

⁷ APS is a division of the San Mateo Health System and is the department designated to receive and investigate reports of elder abuse. It is the main entry point for services in the AAS, providing a 24 hour information and emergency response line.

⁸ The Commission on Aging was established by the Board of Supervisors to act in an advisory capacity to the Board in its role as the Area Agency on Aging and to assist in implementation of federal and state laws and regulations. The Commission on Aging advocates and supports senior services in the county. It is comprised of 21 volunteer commissioners.

Incidents of suspected elder abuse are typically reported either directly to local law enforcement, or through the County's "Teamwork Insuring Elder Support" or "TIES" line.⁹ Reports to the TIES line may involve allegations of self-neglect, and/or abuse or neglect by another person or persons. Those reports go to APS for investigation. State law does not provide APS with enforcement authority; it is an investigative and supportive agency that addresses the immediate needs of elders in crisis. Whenever criminal physical elder abuse or neglect is suspected, APS makes an immediate cross report to the local law enforcement agency that has jurisdiction, while providing immediate social services to protect the alleged victim.¹⁰ If appropriate, APS may refer clients to the San Mateo County Public Guardian for investigation of a possible conservatorship,¹¹ either after APS completes its investigation or while its investigation is still ongoing.

For situations in which financial elder abuse is suspected, the investigation may involve a number of professionals, depending upon the specific circumstances. As one AAS employee informed the Grand Jury, such professionals may include an APS financial abuse specialist, APS and TIES line social workers, clinical psychologists, Probate Conservatorship investigators, attorneys from the County Counsel's office, case workers from the Office of the Public Guardian and other professionals as needed. When the evidence substantiates criminal financial abuse, or if the APS investigation is thwarted by lack of cooperation, APS makes a referral to local law enforcement. APS also notifies the DA's office, which has designated an elder abuse prosecutor, in cases involving significant loss. The APS investigation team then supports and assists local law enforcement in its investigation.

Local law enforcement completes its investigation, and decides whether to make a referral to the District Attorney's office for criminal prosecution. APS social workers and the County Counsel's office assist the DA's office as needed with its criminal investigation and prosecution.¹² In some cases, an APS social worker may refer the case to the Legal Aid Society.¹³ If the referral involves an elderly victim who is not competent, County Counsel and the Public Guardian's Office may pursue civil remedies, and will monitor the criminal matter with the DA. A County Counsel employee noted that criminal proceedings typically proceed first, before a civil action would be pursued. This allows for financial recovery which may be obtained in the criminal matter in the form of criminal restitution, often avoiding the expense and uncertainty of pursuing a civil claim.

⁹ An AAS 24 hour information and emergency response line staffed with social workers and public health nurses who assist the elderly and /or dependent adults.

¹⁰ See Sections 15630, 15630.1 and 15640 of the California Welfare and Institutions Code.

¹¹ The Public Guardian is considered the 'conservator of last resort,' stepping in only when an individual lacks capacity and no family or friends are available, willing or qualified to serve as conservator.

¹² In addition, incidents of consumer fraud may be referred to the State Attorney General's Office.

¹³ Depending on the complexity of the victim's financial status, Legal Aid may either accept the case or refer it to a private attorney with more expertise in financial matters. The Legal Aid Society handles only civil actions for elder financial abuse, not physical abuse or neglect.

Despite suspected underreporting, employees from both AAS and APS indicated that their referrals for evaluation of elder financial abuse in the County have been steadily increasing for a number of years and believe that this trend will continue.¹⁴

All of the agencies interviewed by the Grand Jury acknowledged a need for improving outreach and education of the public. APS acknowledged the importance of providing the public with information regarding the County's protection of the elderly as well as the prosecution of the perpetrators. Representatives from the Legal Aid Society stated their agency hopes to develop more strategies to reach isolated seniors and their caretakers. Currently, however, there are no employees from APS and the DA's Office whose sole responsibility is to educate the public on issues related to elder financial abuse. Instead, outreach is only provided to the extent that existing staff can accommodate requests. Moreover, there is no coordinated effort between local agencies to develop outreach and education for financial or other types of abuse.

All of the agencies interviewed by the Grand Jury also cited the importance of ongoing training of mandated reporters to recognize and report signs of elder financial abuse. Such training is almost completely absent. In prior years, APS provided training to local retirement groups, religious communities, health care providers and other institutions. This training has since been discontinued due to the loss of a full-time outreach/education position.¹⁵

In July 2004, AAS issued an informational booklet, *San Mateo County Aging and Adult Services*, outlining the various services available to the elderly and dependent adults, and advising the public of the procedures available to access such services. The booklet was revised in June 2012, but neither the 2004 nor the 2012 booklet addresses elder financial abuse issues.

In February 2006, the County issued *Elder and Dependent Adult Abuse Protocol*, a manual for County law enforcement agencies, APS, and the DA's Office. With this multi-agency protocol, the San Mateo law enforcement agencies, the DA's office, and APS and AAS are committed to working together to protect and care for our elderly and dependent adults.¹⁶ It is the responsibility of the DA's office "to effectuate prosecution of the offender; the responsibility of Aging and Adult Services to conduct social assessment and provide social work intervention; the responsibility of local law enforcement to conduct criminal investigation and pursue criminal prosecution."¹⁷ Although the *Elder and Dependent Adult Abuse Protocol* has extensive information on elder abuse, and specific information on financial abuse, it has not been updated

¹⁴ AAS and APS employees indicated that referrals have been steadily increasing during the past seven years. In the period from July 2012 to July 2013 alone, the APS received 326 reports for alleged elder financial abuse. From July 2013 to February 2014, APS representatives report that another 197 referrals were received for elder financial abuse. APS representatives indicate that the amount of money lost in these cases ran well into the millions of dollars. Representatives from the Legal Aid Society echo this trend, stating that referrals involving elder financial abuse have increased in the past year and will likely continue to increase. In 2012 Legal Aid received 15 elder financial abuse cases. In 2013, they received 37 referrals for elder financial abuse.

¹⁵ Interview with APS employee

¹⁶ *Elder and Dependent Adult Abuse Protocol* for San Mateo County Law Enforcement, District Attorney's Office and Adult Protective Services (February, 2006)

¹⁷ *Elder and Dependent Adult Abuse Protocol* for San Mateo County Law Enforcement, District Attorney's Office and Adult Protective Services (February, 2006)

to address the increasingly sophisticated technological scams that have appeared in the last eight years.

At least two counties in California have created “Financial Abuse Specialist Teams” (FAST teams) to focus on elder financial abuse issues.¹⁸ The Grand Jury’s investigation revealed that such FAST teams include members from county departments such as APS, AAS, the DA’s office, Public Guardian, County Counsel, and the Sheriff’s office. In addition, some FAST teams include community members having financial expertise from the fields of law, real estate, banking, and other related fields. In either instance, the FAST team collaborates in the identification, investigation, prevention and remediation of financial abuse of the elderly and/or dependent adults.¹⁹ All members, including private sector members, sign a confidentiality statement thereby insuring the privacy of the victims. These FAST teams generally meet at least once per month and more often if necessary.

San Mateo County has no equivalent to these FAST teams. In this County, APS procedures utilize various experts in the investigation of a financial abuse report, but its resources are limited. For example, APS does not have access to a forensic accountant. The DA’s office does not have a dedicated investigator to aid in the prosecution of elder financial abuse cases.

The County relies on a Multi-Disciplinary Team (MDT) to discuss general strategies for addressing all types of elder abuse, as well as sharing information and strategies from time to time in individual cases. The MDT does not focus exclusively on elder financial abuse issues and only has four scheduled meetings a year. MDT membership does not routinely involve professionals from the community as part of the team.²⁰

The Los Angeles County FAST team guidelines indicate the following differences between a MDT and their FAST team:

- The FAST focuses primarily on financial abuse (other forms of elder abuse are addressed as necessary);

¹⁸ An employee for the County DA’s office indicated that Santa Clara County, for example, developed a specialized multidisciplinary Financial Abuse Specialist Team (FAST) in 1999, with the use of public agencies only, in response to the trends of an aging population and the increase in elder and dependent abuse reports, including reports of financial abuse. See also: Financial Abuse Specialist Team Practice Guide, Santa Clara County, December, 2010. Los Angeles County’s FAST includes members from both the public and private sectors, specializes in financial abuse, and meets monthly. San Bernardino has developed a PowerPoint presentation for staff training on issues of elder financial abuse that is available online. In San Francisco, the Institute On Aging, a not-for-profit agency in California, conducts an annual daylong seminar on elder abuse for professionals in the field. The Institute’s publications include a webinar titled “Stopping Elder financial abuse: Promising Practices and How to bring them to Your Community.”

¹⁹ *Guidelines for Establishing and Coordinating a Fiduciary Abuse Specialist Team*, (n.d.) Source: www.preventelderabuse.org/communities/fast.htm. Retrieved May 19, 2014

²⁰ AAS indicated that it relies upon the “Adult Abuse Prevention Collaborative” (a subcommittee of the Commission on Aging) to focus on education to the community regarding signs of elder abuse. According to an AAS official, this collaborative is considered to be the proper “venue for the private sector/public to participate.”

- FAST consultants include members from the private sector, including financial experts such as elder law attorneys, bankers, securities brokers, real estate brokers, financial planners and insurance experts.
- FAST provides both training and case consultations.
- The FAST membership includes professionals who provide case consultations, which are reviewed by fiduciary abuse specialists. As a result of their regular participation on the team, the designated APS, Ombudsman and Public Guardian fiduciary abuse specialists serve victims of financial abuse.²¹
- All team members make a commitment to attend all FAST meetings.

According to employees of the DA's Office, currently there is one Deputy District Attorney (DDA) in the County assigned half-time to the prosecution of elder abuse cases.²² From October 2013 to April 2014, the DDA received 48 elder abuse cases with 23 of those cases involving financial abuse. The DA's Office's current computer program does not have the capability to track all elder abuse cases, as the current system is not capable of recognizing the age of a victim. Therefore, information determining which case involved an elderly victim has not been available. A new computer system scheduled to begin in October 2014, will track ages of victims and allow the DA's office to track all reports of elder abuse and ages. Further, a DDA indicated that incidents of elder financial abuse are probably underreported and that the DA would dedicate more positions if the number of cases increased.

The DA's office does not have a designated full-time inspector to focus on elder abuse investigations, leaving such investigations to the various local police agencies which coordinate with APS social workers. A designated DA inspector would have the experience and time to more fully investigate cases of alleged elder financial abuse.²³ Another employee stated that previously a volunteer auditor worked with the department on financial abuse cases. The DA has lost access to these services and must either rely upon hiring an independent contractor on an individual case basis or rely upon other agencies to furnish an auditor.

According to a San Mateo Sheriff's Office detective, due to limited reporting of elder financial abuse cases, officers do not currently receive training in financial elder abuse issues and it is not likely that the staff will participate in any elder abuse training in the near future. According to an official from the DA's office, their office has completed a printed pamphlet on elder abuse, including identifying elder financial abuse, which serves as a "checklist" for law enforcement. Additionally, that office has been attending shift briefings at local police agencies to distribute the pamphlets and to give the officers in-service training on elder abuse investigation.

²¹ Dept of Health and Human Services, National Center on Elder Abuse, Administration on Aging, *Guidelines for Establishing and Coordinating a Fiduciary Abuse Specialist Team*(n.d.), Retrieved May 19, 2014 from www.ncea.aoa.gov/stop_Abuse/Teams/FAST/index.aspx

²² The DA's Office employee added that their office may "utilize the services" of a DDA who had previously handled elder abuse cases.

²³ Interview with DA's Office employee

FINDINGS

F1. The County does not have any full-time staff members with responsibility for facilitating training of mandated reporters or developing outreach or education for the public in elder financial abuse.

F2. Referrals for investigation of elder financial abuse in the County have been increasing over the past seven years, while programs and staff have decreased, leaving Adult Protective Services with fewer resources to pursue case management services.

F3. Adult Protective Services has formed a Multi-Disciplinary Team to discuss general strategies for addressing all types of elder abuse, of which financial abuse issues are just one aspect. Multi-Disciplinary Team membership does not include consulting professionals from the private sector.

F4. In the District Attorney's Office, individual staff members maintain statistics reporting the type of elder financial abuse but the department's present computer system does not keep statistics reporting either the types of elder abuse or ages of the victims.

F5. There is no full-time Deputy District Attorney assigned to prosecute elder financial abuse cases.

F6. There is no District Attorney inspector specializing in investigation of elder financial abuse.

RECOMMENDATIONS

R1. By December 31, 2014, Adult Protective Services will develop a coordinated outreach effort involving all relevant County departments to further educate the public to identify and report elder financial abuse.

R2. By December 31, 2014, Adult Protective Services will develop and implement training programs for mandated reporters addressing elder financial abuse.

R3. By December 31, 2014, the District Attorney's office, in collaboration with Adult Protective Services, will implement the Financial Abuse Specialist Team model, to improve its current Multidisciplinary Team model, to include consulting community private sector financial specialists and to contribute to the investigation and resolution of elder financial abuse cases.

R4. By December 31, 2014, the District Attorney's Office will develop and implement a computer system to record the details of elder abuse cases.

R5. By March 31, 2015, the District Attorney's Office will evaluate the need for designating a full-time Deputy District Attorney and Inspector with responsibility for the prosecution and investigation of elder abuse cases.

REQUEST FOR RESPONSES

Pursuant to Penal Code Section 933.05, the Grand Jury requests responses as follows:

From the following elected official:

- San Mateo County District Attorney

From the following governing body:

- San Mateo County Board of Supervisors

The governing body indicated above should be aware that the comment or response of the governing body must be conducted subject to the notice, agenda and open meeting requirements of the Brown Act.

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APPENDIX A LEGAL AUTHORITY

Protections against financial abuse of the elderly are set forth in both the California Penal and Civil Codes.

California Penal Code Section 368(a) states, “the Legislature finds and declares that crimes against elders and dependent adults are deserving of special protection, not unlike the special protections provided for minor children, because elders and dependent adults may be confused, on various medications mentally or physically impaired, or incompetent, and therefore less able to protect themselves, to understand or report criminal conduct, or testify in court proceedings on their own behalf.”

Penal Code Sections 368(d) and (e) state that any person violating any provision of the law proscribing theft, embezzlement, forgery, fraud or commits identity theft of an elder is punishable by fine and/or imprisonment.

Civil Elder Financial abuse statutes are contained in the California Welfare and Institutions Code Section 15600 et seq.

Section 15600(a) states, "The legislature recognizes that elders and dependent adults may be subjected to abuse, neglect, or abandonment and that the state has the responsibility to protect them."

Section 15600 (f) states, "The legislature declares this state shall foster and promote community services for the economic, social and personal well-being of its citizens in order to protect those persons described in this section."

Section 15600 (g) states, "The Legislature further declares that uniform state guidelines, which specify when county adult protective service agencies are to investigate allegations of abuse of elders and dependent adults and the appropriate role of local law enforcement is necessary in order to ensure that a minimum level of protection is provided to elders and dependent adults in each county."

The California Welfare and Institutions Code Section 15610.30 (a) states, "Financial abuse of an elder or dependent adult occurs when a person or entity does any of the following:

- (1) Takes, secretes, appropriates, obtains or retains real or personal property of an elder or dependent adult for a wrongful use, or with intent to defraud, or both.
- (2) Assists in taking, secreting, appropriating, or retaining real or personal property of an elder or dependent adult for wrongful use, or with intent to defraud, or both.
- (3) Takes, secretes, appropriates, obtains or retains real or personal property of an elder or dependent adult for a wrongful use, or with intent to defraud, by undue influence, as defined in Codes 15610.70.

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