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Carolyn L. Dessin

University of Akron School of Law, cld3@uakron.edu

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Financial Exploitation Statutes' Impact on Domestic Relations Practice

By

Carolyn L. Dessin[†]

I. Introduction

As baby boomers age, we seem to be thinking more and more about the concerns and needs of the older American. From retirement communities that sprout like weeds to ubiquitous Viagra ads, the national attention increasingly seems focussed on the aging population.

One outgrowth of this increased attention to elder issues is a growing awareness of elder abuse. This problem went virtually unnoticed before 1975, when various organizations began studying it.¹ Now, discussions about elder abuse take place with increasing frequency, and one hears frequent calls for action to prevent or remedy the problem.² Although there are few attempts to catalog incidences of abuse, those that have been done have had staggering results: estimates show that about one and one half million adults are abused each year.³

[†] Associate Professor of Law, University of Akron School of Law. The author would like to thank Richard Johnson for his research assistance.

¹ See, e.g., THE BATTERED ELDER SYNDROME: AN EXPLORATORY STUDY (M. Block & J. Sinnott ed. 1979); LEGAL RESEARCH AND SERVICES FOR THE ELDERLY, ELDER ABUSE IN MASSACHUSETTS: A SURVEY OF PROFESSIONALS AND PARAPROFESSIONALS (1979)(prepared by H. O'Malley, H. Segars, R. Perez, V. Mitchell & G. Kneupfel).

² See HSS: HSS Announces New National Center on Elder Abuse, M2 Presswire, Oct. 9, 1998, available in 1998 WL 16527054 (reporting Health and Human Services Secretary Donna E. Shalala's announcement of the creation of the National Center on Elder Abuse); Carolyn L. Dessin, *Financial Abuse of the Elderly*, 36 ID. L. REV. 203 (2000)(discussing the general problem of exploitation); Audrey S. Garfield, Note, *Elder Abuse and the States' Adult Protective Services Response: Time for a Change in California*, 42 HASTINGS L.J. 861 (1991).

³ See HOUSE SUBCOMM. ON HEALTH LONG TERM CARE, 101ST CONG., 2D SESS., ELDER ABUSE: A DECADE OF SHAME AND INACTION, (Comm. Print 1990). See also Heather Elayne Davis, *The California Elder Abuse and Dependent Adult Civil Protection Act and its Relationship to Rule 10B-5 of the Securi-*

As a result of this dialogue about elder abuse, states have moved to give increased protection to their older citizens. This protection has taken a number of forms. Many states have enhanced their adult protective services or created special law enforcement units to address problems of elder abuse.⁴ Some have appointed task forces to study the problem.⁵ Perhaps most important for the family lawyer, many states have enacted, or are considering enacting, statutes that deal directly with abuse of the elderly. This article will examine those statutes that address financial abuse of the elderly and the impact that such statutes have on the practice of matrimonial law.

II. The Statutory Framework

As more attention is focussed on financial abuse of the elderly, it is easy to imagine that the issue will begin to have an impact on the practice of family law. Depending on the interpretation of elder abuse statutes and policies, some patterns of financial deprivation directed against the elderly, like concealment of assets, could be viewed as elder abuse.

Two main groups of statutes are important to the family lawyer. First, states have enacted statutes that make financial abuse of the elderly or vulnerable an offense. Second, there are statutes that impose mandatory reporting requirements on various

ties and Exchange Act of 1934, 42 ORANGE COUNTY LAW. 40 (Jan. 2000) (reporting "21,427 substantiated cases of financial exploitation of the elderly in 1996").

⁴ See, e.g., Joel Dresang, *State Increases Efforts to Protect Older Consumers from Fraud*, MILWAUKEE J. & SENTINEL, Sept. 5, 1998, at 2, available in 1998 WL 14034050 (noting Wisconsin's efforts to prevent financial abuse); Tracy Wilson, *Seeking Eyes and Ears – Senior's Reluctance to Report Abuse Makes Community Awareness Essential*, L.A. TIMES, Aug. 10, 1998, at B1 (noting that California police officers must receive two hours training in the detection and investigation of elder abuse).

⁵ See, e.g., *Panel details ideas for safety reforms Report outlines ways to protect older residents*, HARRISBURG PATRIOT, July 27, 2000, at B06 (discussing Pennsylvania's task force). But see *Opinion, To Long-Term Care List, Add Issue Of Elder Abuse*, PALM BEACH POST, Sept. 14, 2000, at 12A (discussing Florida's task force on the elderly, and noting that abuse should be added to the list of issues to be considered by the task force).

individuals who have knowledge of abuse or who suspect abuse of an older person.⁶

In addition to these two large groups of statutes, states have created other legislative measures designed to protect the elderly that are also noted in this article. First, states sometimes enhance the penalty imposed on one who commits a crime like theft against an older person. Similarly, states may use the age of the victim in defining the crime itself. Theft committed against an older person may be defined as aggravated theft. This is simply another way of setting up the imposition of a harsher penalty for those who commit crimes on elderly victims.

A. Statutes Criminalizing Financial Abuse

Many states have chosen to expressly criminalize financial abuse. The definitions of exploitation vary widely from state to state, as discussed in the next section. Most of these statutes have been enacted fairly recently, and little judicial interpretation of them exists.

B. Statutes Imposing Reporting Requirements

Of particular importance to matrimonial attorneys is the number of states that have imposed reporting requirements on persons with actual knowledge of exploitation or with reasonable cause to believe that exploitation has occurred or will occur. Although in some of these states the attorney-client privilege is specifically recognized as a possible defense for failure to report,⁷ in other states the statute is silent about the privilege or the privilege is specifically abrogated.⁸ This creates a difficult ethical dilemma for the attorney faced with a duty to report that conflicts with his duty to keep client confidences.

C. A State-By-State Examination of Exploitation Statutes

The enormous variety of state provisions addressing exploitation makes it virtually impossible to generalize about the

⁶ See generally, Molly Dickinson Velick, *Mandatory Reporting Statutes: A Necessary Yet Underutilized Response to Elder Abuse*, 3 ELDER L.J. 165 (1995).

⁷ See, e.g., FLA. STAT. ANN. § 415.109 (West 2000).

⁸ See, e.g., ARIZ. REV. STAT. ANN. § 46-454(B) (West 2000) (silent as to privilege); TEX. HUM. RES. CODE ANN. § 48.051 (West 2000) (expressly abrogating privilege).

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statutes. Therefore, there follows a state-by-state examination of the various statutes.

1. *Alabama*

Alabama law makes it a crime to exploit⁹ any “protected person.”¹⁰ A “protected person” is an adult who is either under guardianship or seriously impaired.¹¹ A lawyer is not under a duty to report suspected abuse.¹²

2. *Alaska*

Although exploitation¹³ of a “vulnerable adult”¹⁴ can trigger the provision of protective services,¹⁵ it is not criminalized specifically,¹⁶ although it might be categorized as some form of theft.¹⁷ An attorney does not have a duty to report suspected exploitation.¹⁸

⁹ “Exploitation” is defined as “[t]he expenditure, diminution, or use of the property, assets, or resources of a protected person without the express voluntary consent of that person or his or her legally authorized representative.” ALA. CODE § 39-9-2(7) (2000).

¹⁰ ALA. CODE § 38-9-7 (2000). The seriousness of the offense depends on the value of the assets subject to the misconduct. ALA. CODE §§ 38-9-7(g), (h).

¹¹ A “protected person” is “[a]ny person over 18 years of age subject to protection under this chapter or any person, including, but not limited to, persons who are senile, mentally ill, developmentally disabled, or mentally retarded, or any person over 18 years of age that is mentally or physically incapable of adequately caring for himself or herself and his or her interests without serious consequences to himself or herself or others.” ALA. CODE § 39-9-2(14) (2000).

¹² See ALA. CODE § 38-9-8 (2000).

¹³ Under ALASKA STAT. § 47.24.900(7) (Michie 1999), “‘exploitation’ means unjust or improper use of another person or another person’s resources for one’s own profit or advantage.”

¹⁴ ALASKA STAT. § 47.24.900(16) (Michie 1999) defines “vulnerable adult” as “a person 18 years of age or older who, because of physical or mental impairment, is unable to meet the person’s own needs or to seek help without assistance.”

¹⁵ ALASKA STAT. § 47.24.017(Michie 1999)(addressing provision of services after report of, *inter alia*, exploitation).

¹⁶ See ALASKA STAT. §§ 11.51.200, 11.51.210 (Michie 1999)(defining offenses of endangering the welfare of a vulnerable adult).

¹⁷ See ALASKA STAT. §§ 11.46.100-11.46.210 (Michie 1999)(setting forth theft offenses).

¹⁸ See ALASKA STAT. § 47.24.010 (Michie 1999).

3. Arizona

In Arizona, adults are protected from exploitation¹⁹ if they are incapacitated²⁰ or vulnerable.²¹ The Arizona legislature places a duty on anyone who stands in a position of “trust and confidence”²² to such an impaired person to avoid exploitation or risk criminal sanctions, treble damages in a civil action and forfeiture of any share of the victim’s estate.²³

¹⁹ ARIZ. REV. STAT. ANN. § 46-451(A)(4) (West 2000)(defining “exploitation” as “the illegal or improper use of an incapacitated or vulnerable adult or his resources for another’s profit or advantage”).

²⁰ ARIZ. REV. STAT. ANN. § 46-451(5) (West 2000). Under the statute, “[i]ncapacity” means an impairment by reason of mental illness, mental deficiency, mental disorder, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication or other cause to the extent that the person lacks sufficient understanding or capacity to make or communicate informed decisions concerning his person.”

²¹ ARIZ. REV. STAT. ANN. § 46-451(10) (West 2000)(defining “vulnerable adult” as “an individual who is eighteen years of age or older who is unable to protect himself from abuse, neglect or exploitation by others because of a physical or mental impairment”).

²² According to ARIZ. REV. STAT. ANN. § 46-456(G)(3) (West 2000), “‘Position of trust and confidence’ means that a person is any of the following: (a) One who has assumed a duty to provide care to the incapacitated or vulnerable adult.

(b) A joint tenant or a tenant in common with an incapacitated or vulnerable adult.

(c) One who is in a fiduciary relationship with an incapacitated or vulnerable adult including a de facto guardian or de facto conservator.”

²³ ARIZ. REV. STAT. ANN. § 13-1802 (West 2000). This section provides: “[a] person commits theft if the person knowingly takes control, title, use or management of an incapacitated or vulnerable adult’s assets or property through intimidation or deception, as defined in § 46-456, while acting in a position of trust and confidence and with the intent to deprive the incapacitated or vulnerable adult of the asset or property.”

Further, ARIZ. REV. STAT. ANN. § 46-456 (West 2000) provides in pertinent part:

A. A person who is in a position of trust and confidence to an incapacitated or vulnerable adult shall act for the benefit of that person to the same extent as a trustee pursuant to title 14, chapter 7, article 3.

B. A person who is in a position of trust and confidence and who by intimidation or deception knowingly takes control, title, use or management of an incapacitated or vulnerable adult’s asset or property with the intent to permanently deprive that person of the asset or property is guilty of theft as provided in § 13-1802.

An attorney who prepares tax returns for an incapacitated or vulnerable person has a duty to report suspected abuse.²⁴ Additionally, an attorney who “has responsibility for any other action concerning the use or preservation of the incapacitated or vulnerable adult’s property” has a similar duty.²⁵ Violation of the requirement is a misdemeanor.²⁶

4. *Arkansas*

The Arkansas legislation addressing abuse seeks to remedy the “exploitation of adults who are unable to protect themselves.”²⁷ The statute imposes criminal penalties for exploita-

C. A person who violates subsection A or B of this section is subject to damages in a civil action brought by or on behalf of an incapacitated or vulnerable adult that equal up to three times the amount of the monetary damages.

D. A person who violates subsection A or B of this section forfeits all benefits with respect to the estate of the deceased, incapacitated or vulnerable adult, including an intestate share, an elective share, an omitted spouse’s share, an omitted child’s share, a homestead allowance, an exempt property allowance and a family allowance. If the incapacitated or vulnerable adult died intestate, the decedent’s intestate estate passes as if the person who committed the violation disclaimed that person’s intestate share.

²⁴ The statute states, in pertinent part:

An attorney, accountant, trustee, guardian, conservator or other person who has responsibility for preparing the tax records of an incapacitated or vulnerable adult or a person who has responsibility for any other action concerning the use or preservation of the incapacitated or vulnerable adult’s property and who, in the course of fulfilling that responsibility, discovers a reasonable basis to believe that exploitation of the adult’s property has occurred or that abuse or neglect of the adult has occurred shall immediately report or cause reports to be made of such reasonable basis to a peace officer, to a protective services worker or to the public fiduciary of the county in which the incapacitated or vulnerable adult resides.

ARIZ. REV. STAT. ANN. § 46-454(B) (West 2000).

²⁵ *Id.*

²⁶ ARIZ. REV. STAT. ANN. § 46-454(J) (West 2000).

²⁷ ARK. CODE ANN. § 5-28-102 (Michie 1999)(setting forth legislative intent of statute).

tion²⁸ of endangered²⁹ or impaired³⁰ adults.³¹ An attorney is not required to report suspected exploitation under the statute.³²

5. California

California protects both elders³³ and dependent adults³⁴

²⁸ ARK. CODE ANN. § 5-28-101(5) (Michie 1999) (“‘Exploitation’ means the illegal use or management of an endangered or impaired adult’s funds, assets, or property, or the use of an endangered or impaired adult’s person, power of attorney, or guardianship for the profit or advantage of himself or another”).

²⁹ ARK. CODE ANN. § 5-28-101(4) (Michie 1999) defines “endangered adult” as:

(A) An adult eighteen (18) years of age or older who is found to be in a situation or condition which poses an imminent risk of death or serious bodily harm to that person and who demonstrates a lack of capacity to comprehend the nature and consequences of remaining in that situation or condition; or

(B) A resident eighteen (18) years of age or older of a long-term care facility which is required to be licensed under § 20-10-224 who is found to be in a situation or condition which poses an imminent risk of death or serious bodily harm to such person and who demonstrates the lack of capacity to comprehend the nature and consequences of remaining in that situation or condition.

³⁰ ARK. CODE ANN. § 5-28-101(7) (Michie 1999) states that an “impaired adult” is

(A) . . . an adult eighteen (18) years or older who suffers from mental or physical disease or defect and as a consequence thereof is unable to protect himself or herself from abuse, sexual abuse, neglect, or exploitation.

(B) For purposes of this chapter, adult residents of a long-term care facility are presumed to be impaired adults.

³¹ ARK. CODE ANN. § 5-28-103. This section provides various penalties depending on the amount of assets involved in the exploitation. ARK. CODE ANN. § 5-28-103(e).

³² See ARK. CODE ANN. § 5-28-203 (Michie 1999).

³³ An elder is any California resident aged 65 or older. CAL. WELF. & INST. CODE § 15610.27 (2000).

³⁴ Under the statute,

(a) “Dependent adult” means any person residing in this state, between the ages of 18 and 64 years, who has physical or mental limitations that restrict his or her ability to carry out normal activities or to protect his or her rights including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age.

(b) “Dependent adult” includes any person between the ages of 18 and 64 who is admitted as an inpatient to a 24-hour health facility.

from financial abuse.³⁵ The legislature has defined “financial abuse” quite broadly.³⁶ The Elder Abuse and Dependent Adult Civil Protection Act (“EADACPA”) imposes criminal penalties on a caretaker of an elderly or dependent adult who commits

L. WELF. & INST. CODE § 15610.23 (2000).

³⁵ CAL. WELF. & INST. CODE § 15600 (2000).

³⁶ Under CAL. WELF. & INST. CODE § 15610.30 (2000),

(a) “Financial abuse” means a situation in which one or both of the following apply:

(1) A person, including, but not limited to, one who has the care or custody of, or who stands in a position of trust to, an elder or a dependent adult, takes, secretes, or appropriates their money or property, to any wrongful use, or with the intent to defraud.

(2) A situation in which all of the following conditions are satisfied:

(A) An elder (who would be a dependent adult if he or she were between the ages of 18 and 64) or dependent adult or his or her representative requests that a third party transfer to the elder or dependent adult or to his or her representative, or to a court appointed receiver, property that meets all of the following criteria:

(i) The third party holds or has control of the property.

(ii) The property belongs to, or is held in express trust, constructive trust or resulting trust for, the elder or dependent adult.

(iii) The ownership or control of the property was acquired in whole or in part by the third party or someone acting in concert with the third party from the elder or dependent adult at a time when the elder or dependent adult was a dependent adult or was a person who would have been a dependent adult if he or she had then been between the ages of 18 and 64.

(B) Despite the request for the transfer of property, the third party without good cause either continues to hold the property or fails to take reasonable steps to make the property readily available to the elder or dependent adult, to his or her representative or to a court appointed receiver.

(C) The third party committed acts described in this paragraph in bad faith. A third party shall be deemed to have acted in bad faith if the third party either knew or should have known that the elder or dependent adult had the right to have the property transferred or made readily available. For purposes of this subdivision, a third party should have known of this right if, on the basis of the information received by the elder or dependent adult, or the elder or dependent adult’s representative, it is obvious to a reasonable person that the elder or dependent adult had this right.

(b) For the purpose of this section, the term “third party” means a person who holds or has control of property that belongs to or is held in express trust, constructive trust or resulting trust for an elder or dependent adult.

theft or embezzlement on the elderly or dependent adult.³⁷ The criminal statutes of general application impose penalties on those committing theft or embezzlement on elderly or protected persons.³⁸ In addition, the EADACPA provides civil remedies, in-

(c) For the purposes of this section, the term “representative” means an elder or dependent adult’s conservator of the estate, or attorney-in-fact acting within the authority of the power of attorney.

³⁷ The statute provides in relevant part:

(c) Any caretaker of an elder or a dependent adult who violates any provision of law prescribing theft or embezzlement, with respect to the property of that elder or dependent adult, is punishable by imprisonment in the county jail not exceeding one year, or in the state prison for two, three, or four years when the money, labor, or real or personal property taken is of a value exceeding four hundred dollars (\$400), and by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in the county jail not exceeding one year, or by both that imprisonment and fine, when the money, labor, or real or personal property taken is of a value not exceeding four hundred dollars (\$400).

(d) As used in this section, “caretaker” means any person who has the care, custody, or control of or who stands in a position of trust with, an elder or a dependent adult.

CAL. WELF. & INST. CODE § 15656 (2000).

³⁸ CAL. PENAL CODE § 368 (2000) states in part:

(d) Any person who is not a caretaker who violates any provision of law proscribing theft or embezzlement, with respect to the property of an elder or dependent adult, and who knows or reasonably should know that the victim is an elder or dependent adult, is punishable by imprisonment in a county jail not exceeding one year, or in the state prison for two, three, or four years, when the money, labor, or real or personal property taken is of a value exceeding four hundred dollars (\$400); and by a fine not exceeding one thousand dollars (\$1,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the money, labor, or real or personal property taken is of a value not exceeding four hundred dollars (\$400).

(e) Any caretaker of an elder or a dependent adult who violates any provision of law proscribing theft or embezzlement, with respect to the property of that elder or dependent adult, is punishable by imprisonment in a county jail not exceeding one year, or in the state prison for two, three, or four years when the money, labor, or real or personal property taken is of a value exceeding four hundred dollars (\$400), and by a fine not exceeding one thousand dollars (\$1,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the money, labor, or real or personal property taken is of a value not exceeding four hundred dollars (\$400).

cluding a possible grant of attorney's fees, to any protected person who proves a case of fiduciary abuse.³⁹ An attorney is

...

(g) As used in this section, "elder" means any person who is 65 years of age or older.

(h) As used in this section, "dependent adult" means any person who is between the ages of 18 and 64, who has physical or mental limitations which restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age. "Dependent adult" includes any person between the ages of 18 and 64 who is admitted as an inpatient to a 24-hour health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

(i) As used in this section, "caretaker" means any person who has the care, custody, or control of, or who stands in a position of trust with, an elder or a dependent adult.

(j) Nothing in this section shall preclude prosecution under both this section and Section 187 or 12022.7 or any other provision of law. However, a person shall not receive an additional term of imprisonment under both paragraphs (2) and (3) of subdivision (b) for any single offense, nor shall a person receive an additional term of imprisonment under both Section 12022.7 and paragraph (2) or (3) of subdivision (b) for any single offense.

³⁹ CAL. WELF. & INST. CODE § 15657 (2000) provides:

Where it is proven by clear and convincing evidence that a defendant is liable for physical abuse as defined in Section 15610.63, neglect as defined in Section 15610.57, or fiduciary abuse as defined in Section 15610.30, and that the defendant has been guilty of recklessness, oppression, fraud, or malice in the commission of this abuse, in addition to all other remedies otherwise provided by law:

(a) The court shall award to the plaintiff reasonable attorney's fees and costs. The term "costs" includes, but is not limited to, reasonable fees for the services of a conservator, if any, devoted to the litigation of a claim brought under this article.

(b) The limitations imposed by Section 337.34 of the Code of Civil Procedure on the damages recoverable shall not apply. However, the damages recovered shall not exceed the damages permitted to be recovered pursuant to subdivision (b) of Section 3333.2 of the Civil Code.

(c) The standards set forth in subdivision (b) of Section 3294 of the Civil Code regarding the imposition of punitive damages on an employer based upon the acts of an employee shall be satisfied before any damages or attorney's fees permitted under this section may be imposed against an employer.

not required to report suspected financial abuse.⁴⁰

6. Colorado

The Colorado criminal code criminalizes theft from an at-risk adult.⁴¹ For purposes of the criminal code, an “at-risk” adult includes anyone over the age of sixty.⁴² Further, the Colorado protective services statute protects “at-risk adults”⁴³ against exploitation⁴⁴ by providing appropriate protective services. Under the protective services statute, an attorney does not have an obligation to report suspected exploitation.⁴⁵

Because section 15610.30 addresses “financial abuse,” it is unclear from the language of section 15657 whether the enhanced remedies are available only if the financial abuse was committed by one in a fiduciary position to the victim or whether the reference to section 15610.30 is meant to provide the enhanced civil remedies in all cases of financial abuse.

⁴⁰ See CAL. WELF. & INST. CODE § 15630 (2000).

⁴¹ COL. REV. STAT. ANN. § 18-6.5-103(5) (West 2000) reads in pertinent part:

Any person who commits theft, and commits any element or portion of the offense in the presence of the victim, as such crime is described in section 18-4-401(1), and the victim is an at-risk adult or an at-risk juvenile, commits a class 5 felony if the value of the thing involved is less than five hundred dollars or a class 3 felony if the value of the thing involved is five hundred dollars or more. Theft from the person of an at-risk adult or an at-risk juvenile by means other than the use of force, threat, or intimidation is a class 4 felony without regard to the value of the thing taken.

⁴² The statute defines “at-risk adult” as “any person who is sixty years of age or older or any person who is eighteen years of age or older and is a person with a disability.” CO. REV. STAT. ANN. § 18-6.5-102(1) (West 2000).

⁴³ An “at-risk adult” is “an individual eighteen years of age or older who is susceptible to mistreatment . . . or self-neglect . . . because the individual is unable to perform or obtain services necessary for the individual’s health, safety, or welfare or lacks sufficient understanding or capacity to make or communicate responsible decisions concerning the individual’s person or affairs.” CO. REV. STAT. ANN. § 26-3.1-101(1) (West 2000).

⁴⁴ COL. REV. STAT. ANN. § 26-3.1-101(4)(c) (West 2000)(providing that exploitation “is the illegal or improper use of an at-risk adult or the at-risk adult’s resources for another person’s profit or advantage”).

⁴⁵ See COL. REV. STAT. ANN. § 26-3.1-102 (West 2000).

7. Connecticut

The Connecticut protective services statute addresses the exploitation⁴⁶ of certain elderly persons⁴⁷ by making various services available. Only the elderly “in need of protection” are affected by the statute.⁴⁸ Under the protective services statute, if the department of social services determines that an elderly person has been exploited, the case must be referred to the state’s attorney.⁴⁹ Attorneys in Connecticut are not obligated to report suspected exploitation.⁵⁰

8. Delaware

Delaware has expressed a legislative intent to protect “impaired adults” from exploitation.⁵¹ In the title addressing adult protective services, the legislature seeks to protect “infirm” and “incapacitated” adults.⁵² Exploitation⁵³ is made an offense

⁴⁶ “Exploitation refers to the act or process of taking advantage of an elderly person by another person or caretaker whether for monetary, personal or other benefit, gain or profit.” CONN. GEN. STAT. ANN. § 17b-450(4) (West 2000).

⁴⁷ An elderly person is defined under the statute as “any resident of Connecticut who is sixty years of age or older.” CONN. GEN. STAT. ANN. § 17b-450(1) (West 2000).

⁴⁸ “An elderly person shall be deemed to be ‘in need of protective services’ if such person is unable to perform or obtain services which are necessary to maintain physical and mental health.” CONN. GEN. STAT. ANN. § 17b-450(2) (West 2000).

⁴⁹ CONN. GEN. STAT. ANN. § 17b-460 (West 2000).

⁵⁰ See CONN. GEN. STAT. ANN. § 17b-451 (West 2000).

⁵¹ DEL. CODE ANN. tit. 31, § 3901 (1999). See generally Timothy H. Barron, *Financial Exploitation of the Elderly: A Delaware Perspective*, Prosecutor, November-December 1998 at 34.

⁵² An “infirm adult” is any “person 18 years of age or over who, because of physical or mental disability, is substantially impaired in the ability to provide adequately for the person’s own care and custody.” DEL. CODE ANN. tit. 31, § 3902(1) (1999). An “incapacitated adult” is one who is under guardianship. DEL. CODE ANN. tit. 31, § 3902(6) (1999).

A “Physical or mental disability” encompasses “any physical or mental disability and shall include, but not be limited to, mental retardation, brain damage, physical degeneration, deterioration, senility, disease, habitual drunkenness or addiction to drugs, and mental or physical infirmity.” DEL. CODE ANN. tit. 31, § 3902(2) (1999). See also DEL. CODE ANN. tit. 31, § 3902(3)(defining substantial impairment as inability “to perform or obtain for himself or herself essential services”).

under the Delaware law, and the classification of the offense depends on the harm done.⁵⁴ Exploitation could also lead to an “emergency situation”⁵⁵ that would trigger reporting requirements and the provision of protective services. If an emergency situation exists, protective services will be rendered.⁵⁶ The statute imposes a duty to report to the Department of Health and Social Services on “[a]ny person having reasonable cause to believe that an adult person is infirm . . . and is in need of protective services.”⁵⁷ The statute grants immunity to anyone who makes a report of abuse in good faith⁵⁸ and apparently imposes no penalty for failure to report.

9. *District of Columbia*

In the District of Columbia, the law governing adult protective services seeks to protect adults in need of protective ser-

⁵³ DEL. CODE ANN. tit. 31, § 3902(5)(1999) (defining “Exploitation” as “the illegal or improper use or abuse of an infirm person, the infirm person’s resources or the infirm person’s rights, by another person, whether for profit or other advantage.”).

⁵⁴ DEL. CODE ANN. tit. 31, § 3913 (1999). Section 3913 reads in pertinent part:

- (a) Any person who knowingly or recklessly abuses, neglects, exploits or mistreats an infirm adult shall be guilty of a class A misdemeanor.
- (b) Any person who knowingly or recklessly exploits an infirm adult by using the infirm adult’s resources shall be guilty of a class A misdemeanor where the value of the resources is less than \$500 and a class G felony where the value of the resources is \$500 or more but less than \$5,000. If the value of the resources is \$5,000 or more but less than \$10,000, the person shall be guilty of a class E felony. If the value of the resources is \$10,000 or more but less than \$50,000, the person shall be guilty of a class D felony and if the value of the resources is \$50,000 or more the person shall be guilty of a class C felony. Any subsequent conviction under this subsection shall be treated as a class C felony regardless of the amount of resources exploited.

⁵⁵ DEL. CODE ANN. tit. 31, § 3902(10) (1999) (“Emergency” means that a person is living in conditions which present a substantial risk of serious harm and includes, but is not limited to, problems which cannot be managed by an impaired person, such as insufficient food supply, inadequate shelter, threatened or actual abuse or utility shut-off.)

⁵⁶ DEL. CODE ANN. tit. 31, § 3904 (1999).

⁵⁷ DEL. CODE ANN. tit. 31, § 3910 (1999).

⁵⁸ DEL. CODE ANN. tit. 31, § 3910(c)(1999).

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vices⁵⁹ from exploitation⁶⁰ by others⁶¹ by providing services. Although exploitation can give rise to the provision of services, it is not criminalized in the statute. Thus, it would have to be prosecuted under the general criminal statutes.⁶² An attorney does not have to report suspected exploitation in the District of Columbia.⁶³

10. *Florida*

Florida protects those who are in need of protection because of vulnerability⁶⁴ from a variety of abuses. In so doing, the statute protects against exploitation, which is expansively defined.⁶⁵

⁵⁹ The statute describes the protected class as follows:

(2) "Adult in need of protective services" means an individual aged 18 or older who is:

(A) Highly vulnerable to abuse, neglect, or exploitation because of a physical or mental impairment;

(B) Being or has recently been abused, neglected, or exploited by another; and

(C) Likely to continue being abused, neglected, or exploited by others because he or she has no one willing and able to provide adequate protection.

D.C. CODE ANN. § 6-2501(2) (1999).

⁶⁰ "Exploitation" means the unlawful appropriation or use of another's property," defined in § 22-3801, for one's own benefit or that of a 3rd person." D.C. CODE ANN. § 6-2501(8) (1999).

⁶¹ See D.C. CODE ANN. § 6-2502 (1999).

⁶² E.g., D.C. CODE ANN. § 22-3811 (1999)(setting forth offense of theft).

⁶³ See D.C. CODE ANN. § 6-2503 (1999).

⁶⁴ Under the statute, "vulnerable adults" are protected. FLA. STAT. ANN. § 415.102(26) (West 2000). According to section 415.102(12),

"Vulnerable adult" means a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, physical, or developmental disability or dysfunctioning, or brain damage, or the infirmities of aging.

⁶⁵ The statute defines "exploitation" as follows:

"Exploitation" means a person who:

1. Stands in a position of trust and confidence with a vulnerable adult and knowingly, by deception or intimidation, obtains or uses, or endeavors to obtain or use, a vulnerable adult's funds, assets, or property with the intent to temporarily or permanently deprive a vulnerable adult of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the vulnerable adult; or

The statute imposes civil penalties for exploitation.⁶⁶ Additionally, the protective statute allows the victim to recover actual and punitive damages from the abuser, as well as attorney's fees and costs if the suit is successful.⁶⁷

In addition to the penalties provided in the protective statute, Florida's criminal law criminalizes exploitation of an elderly or disabled person.⁶⁸ As in the protective statute, "exploitation" is broadly defined.⁶⁹ Also, the terms "elderly person" and "dis-

2. Knows or should know that the vulnerable adult lacks the capacity to consent, and obtains or uses, or endeavors to obtain or use, the vulnerable adult's funds, assets, or property with the intent to temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the vulnerable adult.

(b) "Exploitation" may include, but is not limited to:

1. Breaches of fiduciary relationships, such as the misuse of a power of attorney or the abuse of guardianship duties, resulting in the unauthorized appropriation, sale, or transfer of property;

2. Unauthorized taking of personal assets;

3. Misappropriation, misuse, or transfer of moneys belonging to a vulnerable adult from a personal or joint account; or

4. Intentional or negligent failure to effectively use a vulnerable adult's income and assets for the necessities required for that person's support and maintenance.

FLA. STAT. ANN. § 415.102(7)(a) (West 2000).

⁶⁶ FLA. STAT. ANN. § 415.1111(1) (West 2000).

⁶⁷ FLA. STAT. ANN. § 415.1111(3) (West 2000).

⁶⁸ FLA. STAT. ANN. § 825.103 (West 2000).

⁶⁹ FLA. STAT. ANN. § 825.103(1) (West 2000). The statutory definition is: "Exploitation of an elderly person or disabled adult" means:

(a) Knowingly, by deception or intimidation, obtaining or using, or endeavoring to obtain or use, an elderly person's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the elderly person or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult, by a person who:

1. Stands in a position of trust and confidence with the elderly person or disabled adult; or

2. Has a business relationship with the elderly person or disabled adult; or

(b) Obtaining or using, endeavoring to obtain or use, or conspiring with another to obtain or use an elderly person's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the elderly person or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone

abled adult” are defined as in the protective statute.⁷⁰ The penalty for exploitation varies with the amount of assets involved.⁷¹

An attorney who knows or has reasonable cause to suspect that an elderly person is being exploited must report the matter.⁷² Failure to report is a misdemeanor.⁷³ An attorney may, however, be able to successfully assert attorney-client privilege as a basis for not reporting suspected exploitation.⁷⁴

11. *Georgia*

Georgia has a protective statute designed to “assure the availability of protective services to all disabled adults and elder persons in need of them.”⁷⁵ The statute makes exploitation⁷⁶ of an elder person⁷⁷ a misdemeanor.⁷⁸ An attorney does not have a duty to report suspected exploitation.⁷⁹

12. *Hawaii*

The Hawaii protective statute seeks to protect elders who are mentally or physically impaired.⁸⁰ Thus, the statute protects⁸¹ “dependent adults” from abuse, which is defined as in-

other than the elderly person or disabled adult, by a person who knows or reasonably should know that the elderly person or disabled adult lacks the capacity to consent.

⁷⁰ Compare FLA. STAT. ANN. § 825.101(5) (West 2000) with FLA. STAT. ANN. § 415.102(12) (West 2000).

⁷¹ FLA. STAT. ANN. § 825.103(2) (West 2000).

⁷² FLA. STAT. ANN. § 415.1034(1) (West 2000). See also FLA. STAT. ANN. § 415.102(10) (West 2000) (defining “disabled adult”).

⁷³ FLA. STAT. ANN. § 415.111 (West 2000).

⁷⁴ FLA. STAT. ANN. § 415.109 (West 2000).

⁷⁵ GA. CODE ANN. § 30-5-2 (2000).

⁷⁶ “Exploitation” is defined as “the illegal or improper use of a disabled adult or elder person or that person’s resources for another’s profit or advantage.” GA. CODE ANN. § 30-5-3(9) (2000).

⁷⁷ “‘Elder person’ means a person 65 years of age or older who is not a resident of a long-term care facility as defined in Article 4 of Chapter 8 of Title 31.” GA. CODE ANN. § 30-5-3(7.1) (2000).

⁷⁸ GA. CODE ANN. § 30-5-8 (2000).

⁷⁹ GA. CODE ANN. § 30-5-4 (2000).

⁸⁰ HAW. REV. STAT. § 346-221 (1999).

⁸¹ Under the statute, “‘Dependent adult’ means any adult who, because of mental or physical impairment is dependent upon another person, a care organization, or a care facility for personal health, safety, or welfare.” HAW. REV. STAT. § 346-222 (1999).

cluding exploitation.⁸² In Hawaii, an attorney does not have a duty to report suspected abuse.⁸³

13. *Idaho*

Idaho protects vulnerable adults⁸⁴ from exploitation.⁸⁵ Under the criminal code, exploitation of a vulnerable adult is a misdemeanor⁸⁶ If exploitation is substantiated, the protective services agency must report the incident to law enforcement.⁸⁷

⁸² HAW. REV. STAT. § 346-222(7) (1999). The statute reads in pertinent part that abuse occurs when:

[t]here is financial and economic exploitation. For the purpose of this part, “financial and economic exploitation” means the wrongful or negligent taking, withholding, misappropriation, or use of a dependent adult’s money, real property, or personal property. “Financial and economic exploitation” can include but is not limited to:

- (A) Breaches of fiduciary relationships such as the misuse of a power of attorney or the abuse of guardianship privileges, resulting in the unauthorized appropriation, sale, or transfer of property;
- (B) The unauthorized taking of personal assets;
- (C) The misappropriation, misuse, or transfer of moneys belonging to the dependent adult from a personal or joint account; or
- (D) The intentional or negligent failure to effectively use a dependent adult’s income and assets for the necessities required for the person’s support and maintenance.

The exploitation may involve coercion, manipulation, threats, intimidation, misrepresentation, or exertion of undue influence.

⁸³ HAW. REV. STAT. § 346-224 (1999).

⁸⁴ IDAHO CODE § 39-5302(10) (2000). This section defines a “vulnerable adult” as:

a person eighteen (18) years of age or older who is unable to protect himself from abuse, neglect or exploitation due to physical or mental impairment which affects the person’s judgment or behavior to the extent that he lacks sufficient understanding or capacity to make or communicate or implement decisions regarding his person.

⁸⁵ IDAHO CODE § 39-5301A (2000). “Exploitation” is defined as “an action which may include, but is not limited to, the misuse of a vulnerable adult’s funds, property, or resources by another person for profit or advantage.” IDAHO CODE § 39-5302(7) (2000).

⁸⁶ IDAHO CODE § 18-1505 (2000).

⁸⁷ IDAHO CODE § 39-5310 (2000). This section states:

If, as the result of any investigation initiated under the provisions of this chapter, it appears that the abuse, neglect, or exploitation has caused injury or a serious imposition on the rights of the vulnerable adult, the commission shall immediately notify the appropriate law en-

An attorney does not have an obligation to report suspected exploitation.⁸⁸

14. *Illinois*

Under the Illinois Elder Abuse and Neglect Act, abuse is defined to include exploitation of an eligible adult's⁸⁹ financial resources.⁹⁰ Exploitation of an impaired elderly person⁹¹ is a crime under the criminal code.⁹² A lawyer is not required to report suspected exploitation.⁹³

forcement agency which shall initiate an investigation and shall determine whether criminal proceedings should be initiated against the caretaker or other persons in accordance with applicable state law. The abuse, neglect, or exploitation of a vulnerable adult is a misdemeanor under section 18-1505, Idaho Code, and is subject to punishments provided in section 18-113, Idaho Code, and other applicable state law.

⁸⁸ IDAHO CODE § 39-5303 (2000).

⁸⁹ An "eligible adult" is "a person 60 years of age or older who resides in a domestic living situation and is, or is alleged to be, abused, neglected, or financially exploited by another individual." 320 ILL. COMP. STAT. § 20/2(e) (West 2000). A "domestic living situation" is "a residence where the eligible adult lives alone or with his or her family or a caregiver, or others, or a board and care home or other community-based unlicensed facility, but is not [certain specified institutional residences.]" 320 ILL. COMP. STAT. § 20/2(d) (West 2000).

⁹⁰ 320 ILL. COMP. STAT. § 20/2(a) (West 2000).

⁹¹ An "elderly person" is "a person 60 years of age or older who is suffering from a disease or infirmity that impairs the individual's mental or physical ability to independently manage his or her property or financial resources, or both." 720 ILL. COMP. STAT. § 5/16-1.3 (West 2000).

⁹² 720 ILL. COMP. STAT. § 5/16-1.3 (West 2000)(setting forth crime of financial exploitation of an elderly person or a person with a disability). Under this section,

[a] person commits the offense of financial exploitation of an elderly person or a person with a disability when he or she stands in a position of trust or confidence with the elderly person or a person with a disability and he or she knowingly and by deception or intimidation obtains control over the property of an elderly person or a person with a disability with the intent to permanently deprive the elderly person or the person with a disability of the use, benefit, or possession of his or her property.

⁹³ 320 ILL. COMP. STAT. § 20/2(f-5) (West 2000).

15. *Indiana*

Under the Indiana protective services statute, “endangered adults” are protected.⁹⁴ The criminal code makes exploitation of an endangered adult a misdemeanor.⁹⁵ All individuals, including attorneys, have a duty to report suspected “endangered adult” status.⁹⁶

16. *Iowa*

The Iowa protective services statute is designed to protect “dependent adults.”⁹⁷ Abuse of a dependent adult includes ex-

⁹⁴ An endangered adult is

- (1) at least eighteen (18) years of age;
- (2) incapable by reason of mental illness, mental retardation, dementia, habitual drunkenness, excessive use of drugs, or other physical or mental incapacity of managing or directing the management of the individual's property or providing or directing the provision of self-care; and
- (3) harmed or threatened with harm as a result of:
 - (A) neglect;
 - (B) battery; or
 - (C) exploitation of the individual's personal services or property.

Ind.Code Ann. § 12-10-3-2 (West 2000).

⁹⁵ IND. CODE ANN. § 35-46-1-12 (West 2000). This section states:

- (a) A person who recklessly, knowingly, or intentionally exerts unauthorized use of the personal services or the property of:
 - (1) an endangered adult; or
 - (2) a dependent eighteen (18) years of age or older;for one's own profit or advantage or for the profit or advantage of another commits exploitation of a dependent or an endangered adult, a Class A misdemeanor.
- (b) A person who recklessly, knowingly, or intentionally deprives an endangered adult or a dependent of the proceeds of the endangered adult's or the dependent's benefits under the Social Security Act or other retirement program that the division of family and children or county office of family and children has budgeted for the endangered adult's or dependent's health care commits financial exploitation of an endangered adult or a dependent, a Class A misdemeanor.

⁹⁶ IND. CODE ANN. § 12-10-3-9 (2000).

⁹⁷ IOWA CODE ANN. § 235B.1 (West 2000)(setting forth goals of protective services program). The statute defines a “dependent adult” as “a person eighteen years of age or older who is unable to protect the person's own interests or unable to adequately perform or obtain services necessary to meet essential human needs, as a result of a physical or mental condition which

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ploitation,⁹⁸ although exploitation is not criminalized as such.⁹⁹ It does not appear that an attorney must report suspected exploitation under the Iowa statute, although the statute makes one who “counsels” dependent adults a mandatory reporter, but goes on to give examples from the health care and law enforcement areas.¹⁰⁰

17. *Kansas*

In Kansas, the exploitation¹⁰¹ or fiduciary abuse of certain adults¹⁰² can lead to protective services if the resident is “in need of protective services.”¹⁰³ Because of the way the statute defines the term, “fiduciary abuse” can occur even when the abuser does not occupy a traditional fiduciary role with respect to the victim.¹⁰⁴ Abuse is not specifically criminalized, so prosecution

requires assistance from another, or as defined by departmental rule.” Iowa Code Ann. § 235B.2(4) (West 2000).

⁹⁸ The statute provides:

Exploitation of a dependent adult which means the act or process of taking unfair advantage of a dependent adult or the adult’s physical or financial resources for one’s own personal or pecuniary profit, without the informed consent of the dependent adult, including theft, by the use of undue influence, harassment, duress, deception, false representation, or false pretenses.

Iowa Code Ann. § 235B.2 5.a.(1)(c) (West 2000).

⁹⁹ See IOWA CODE ANN. § 726.8 (West 2000)(criminalizing “wanton neglect or nonsupport of a dependent adult”).

¹⁰⁰ IOWA CODE ANN. § 235B.3 (West 2000).

¹⁰¹ “Exploitation” is defined as “misappropriation of resident property or intentionally taking unfair advantage of an adult’s physical or financial resources for another individual’s personal or financial advantage by the use of undue influence, coercion, harassment, duress, deception, false representation or false pretense by a caretaker or another person.” KAN. STAT. ANN. § 39-1430(d) (1999).

¹⁰² The statute defines “adult” as “an individual 18 years of age or older alleged to be unable to protect their own interest and who is harmed or threatened with harm through action or inaction by either another individual or through their own action or inaction when [the person is living in specified non-institutional settings].” KAN. STAT. ANN. § 39-1430(a) (1999).

¹⁰³ The statute defines this need as the situation in which a resident is “unable to perform or obtain services which are necessary to maintain physical or mental health, or both.” KAN. STAT. ANN. § 39-1430(f) (1999).

¹⁰⁴ “Fiduciary abuse” is “a situation in which any person who is the caretaker of, or who stands in a position of trust to, a resident, takes, secretes, or

would occur under the criminal statutes of general application. A lawyer does not have an obligation to report suspected abuse under Kansas law, though an agent under a power of attorney is on the list of mandated reporters.¹⁰⁵

18. *Kentucky*

In Kentucky, certain adults¹⁰⁶ are protected from exploitation.¹⁰⁷ The penalty for exploitation depends on the identity of the abuser and the amount of assets involved.¹⁰⁸ All persons have a duty to report suspected exploitation, so an attorney would have to report abuse.¹⁰⁹

appropriates the resident's money or property, to any use or purpose not in the due and lawful execution of such person's trust." KAN. STAT. ANN. § 39-1430(e) (1999).

¹⁰⁵ See KAN. STAT. ANN. § 39-1431 (1999).

¹⁰⁶ "Adult" means:

- (a) A person eighteen (18) years of age or older, who because of mental or physical dysfunctioning, is unable to manage his own resources or carry out the activity of daily living or protect himself from neglect, or a hazardous or abusive situation without assistance from others, and who may be in need of protective services.

KY. REV. STAT. ANN. § 209.020(4)(a) (Michie 2000).

¹⁰⁷ The statute defines "exploitation" as "improper use of an adult or an adult's resources by a caretaker or other person for the profit or advantage of the caretaker or other person." KY. REV. STAT. ANN. § 209.020(8) (Michie 2000).

¹⁰⁸ The penalty section of the statute provides in pertinent part:

- (5) Any caretaker who knowingly exploits an adult, resulting in a total loss to the adult of more than three hundred dollars (\$300) in financial or other resources, or both, is guilty of a Class C felony.
- (6) Any caretaker who wantonly or recklessly exploits an adult, resulting in a total loss to the adult of more than three hundred dollars (\$300) in financial or other resources, or both, is guilty of a Class D felony.
- (7) Any caretaker who knowingly, wantonly, or recklessly exploits an adult, resulting in a total loss to the adult of three hundred dollars (\$300) or less in financial or other resources, or both, is guilty of a Class A misdemeanor.
- (8) Any person who knowingly and willfully financially exploits an adult within the meaning of this chapter is guilty of a Class C felony.

KY. REV. STAT. ANN. § 209.990 (Michie 2000).

¹⁰⁹ KY. REV. STAT. ANN. § 209.030. (Michie 2000) *But see* Ky. At. Gen. Op. OAG 83-367 (2000)(stating attorney does not have to and cannot report

19. *Louisiana*

Louisiana attempts to protect adults who cannot protect themselves.¹¹⁰ The statutory definition of “adult” includes anyone over age sixty, regardless of ability.¹¹¹ The statute protects from “abuse,”¹¹² which includes “exploitation.”¹¹³ Louisiana criminalizes exploitation of the aged or “infirm.”¹¹⁴ The criminal statute regarding exploitation does not define “aged person,” but that term is defined in several other criminal offense statutes

domestic abuse if client directs otherwise). Failure to report if mandated is a misdemeanor. KY. REV. STAT. ANN. § 209.990 (Michie 2000).

¹¹⁰ LA. REV. STAT. ANN. § 14:403.2(A)(1) (West 2000).

¹¹¹ LA. REV. STAT. ANN. § 14:403.2 (B)(2) (West 2000).

¹¹² LA. REV. STAT. ANN. § 14:403.2(B)(1.1) (West 2000).

¹¹³ The statute defines “exploitation” as “the illegal or improper use or management of an aged person’s or disabled adult’s funds, assets, or property, or the use of an aged person’s or disabled adult’s power of attorney or guardianship for one’s own profit or advantage.” LA. REV. STAT. ANN. § 14:403.2(B)(6) (West 2000).

¹¹⁴ LA. REV. STAT. ANN. § 14:93.4 (West 2000). The statute defines the offense as follows:

A. Exploitation of the infirmed is:

(1) The intentional expenditure, diminution, or use by any person, including a caregiver, of the property or assets of the infirmed, a disabled adult, or an aged person, including but not limited to a resident of a nursing home, mental retardation facility, mental health facility, hospital, or other residential facility without the express voluntary consent of the resident or the consent of a legally authorized representative of an incompetent resident, or by means of fraudulent conduct, practices, or representations.

(2) The use of an infirmed person’s, or aged person’s, or disabled adult’s power of attorney or guardianship for one’s own profit or advantage by means of fraudulent conduct, practices, or representations.

B. Whoever commits the crime of exploitation of the infirmed shall be fined not more than ten thousand dollars or imprisoned, with or without hard labor, for not more than ten years, or both.

C. Whoever is convicted, or who enters a plea agreement for exploitation of the infirmed shall be prohibited from having access to the victim’s or any other disabled or aged person’s assets or property. The offender shall be prohibited from being appointed as a power of attorney or guardian for the victim or any other disabled or aged person. The provisions of this Subsection shall not be construed to prohibit the offender from inheriting from the infirmed victim.

as any person over age sixty.¹¹⁵ Any person, including an attorney, must report suspected abuse.¹¹⁶

20. Maine

The Maine Adult Protective Services Act is designed to protect incapacitated¹¹⁷ and dependent¹¹⁸ adults from, *inter alia*, exploitation.¹¹⁹ No penalty is set forth specifically for such exploitation, so the offense would be prosecuted under the generally applicable criminal statutes.¹²⁰ Attorneys in Maine are not required to report suspected exploitation.¹²¹

21. Maryland

The Maryland protective act protects vulnerable adults¹²² from exploitation.¹²³ Although a statute criminalizes physical

¹¹⁵ See LA. REV. STAT. ANN. § 14:35.2 (West 2000)(setting forth offense of simple battery of the infirm); *Id.* at § 14:93.3 (setting forth offense of cruelty to the infirmed).

¹¹⁶ LA. REV. STAT. ANN. § 14:403.2(C) (West 2000). One who fails to report when mandated can be fined up to \$500.00 or imprisoned for up to six months, or both. LA. REV. STAT. ANN. § 14:403.2(J)(1) (West 2000).

¹¹⁷ ME. REV. STAT. ANN. tit. 22, § 3472(10) (West 1999)(“ ‘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.”).

¹¹⁸ ME. REV. STAT. ANN. tit. 22, § 3472(6) (West 1999)(“ ‘Dependent adult’ means any adult who is wholly or partially dependent upon one or more other persons for care or support, either emotional or physical, and who would be in danger if that care or support were withdrawn.”).

¹¹⁹ ME. REV. STAT. ANN. tit. 22, § 3471 (West 1999)(setting forth legislative intent); ME. REV. STAT. ANN. tit. 22, § 3472(9) (West 1999)(“ ‘Exploitation’ means the illegal or improper use of an incapacitated or dependent adult or his resources for another’s profit or advantage.”).

¹²⁰ ME. REV. STAT. ANN. tit.17, §§ 351-362 (West 1999)(setting forth various theft offenses).

¹²¹ See ME. REV. STAT. ANN. tit. 22, § 3477 (West 1999).

¹²² The statute defines “vulnerable adult” as an adult who lacks the physical or mental capacity to provide for the adult’s daily needs. MD. CODE ANN., FAM. LAW § 14-101(q) (2000).

¹²³ “Exploitation” is “any action which involves the misuse of a vulnerable adult’s funds, property, or person.” MD. CODE ANN., FAM. LAW § 14-101(f) (2000).

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abuse of a vulnerable adult,¹²⁴ no similar statute addresses financial abuse. Accordingly, financial exploitation presumably would be prosecuted under the statutes of general application. In Maryland, a lawyer is not obligated to report suspected exploitation.¹²⁵

22. *Massachusetts*

In Massachusetts, a statute protects elderly¹²⁶ persons from abuse, which is defined to include financial exploitation.¹²⁷ A criminal statute addresses theft from victims who are age sixty or older.¹²⁸ An attorney does not have to report suspected exploitation in Massachusetts.¹²⁹

23. *Michigan*

In Michigan, the protective statute protects adults in need of protective services¹³⁰ from exploitation.¹³¹ Although the protective statute does not prescribe a penalty for exploitation, ex-

¹²⁴ MD. CODE 1957, Art. 27, § 35D (2000).

¹²⁵ See MD. CODE ANN. FAM. LAW § 14-302 (2000).

¹²⁶ The statute defines “elderly” as “an individual who is sixty years of age or over.” MASS. GEN. LAWS ANN. ch. 19A § 14 (West 2000).

¹²⁷ *Id.* Financial exploitation is defined as

an act or omission by another person, which causes a substantial monetary or property loss to an elderly person, or causes a substantial monetary or property gain to the other person, which gain would otherwise benefit the elderly person but for the act or omission of such other person; provided, however, that such an act or omission shall not be construed as financial exploitation if the elderly person has knowingly consented to such act or omission unless such consent is a consequence of misrepresentation, undue influence, coercion or threat of force by such other person; and, provided further, that financial exploitation shall not be construed to interfere with or prohibit a bona fide gift by an elderly person or to apply to any act or practice in the conduct of any trade or commerce declared unlawful by section two of chapter ninety-three A.

¹²⁸ MASS. GEN. LAWS ANN. ch. 266, § 30(5) (West 2000).

¹²⁹ See MASS. GEN. LAWS ANN. ch. 19A, § 15 (West 2000).

¹³⁰ MICH. COMP. LAWS ANN. § 400.11(b) (West 2000). The statute protects “vulnerable person[s] not less than 18 years of age who [are] suspected of being or believed to be abused, neglected, or exploited.” The statute defines “vulnerable” as “a condition in which an adult is unable to protect himself or herself from abuse, neglect, or exploitation because of a mental or physical impairment or because of advanced age.” MICH. COMP. LAWS ANN. § 400.11(f) (West 2000).

ploitation could be a form of theft, and the vulnerability of the victim, including vulnerability as a result of age, permits a sentence enhancement under Michigan law.¹³² A lawyer is not required to report suspected abuse in Michigan.¹³³

24. Minnesota

The Minnesota protective services statute provides services to vulnerable adults.¹³⁴ Exploitation of a vulnerable adult¹³⁵ is a

¹³¹ MICH. COMP. LAWS ANN. § 400.11(c) (West 2000). Exploitation is defined as “an action that involves the misuse of an adult’s funds, property, or personal dignity by another person.”

¹³² MICH. COMP. LAWS ANN. § 744.40 (West 2000). This section provides:

- (1) Offense variable 10 is exploitation of a vulnerable victim. Score offense variable 10 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:
 - (a) Predatory conduct was involved 15 points
 - (b) The offender exploited a victim’s physical disability, mental disability, youth or agedness, or a domestic relationship, or the offender abused his or her authority status 10 points
 - (c) The offender exploited a victim by his or her difference in size or strength, or both, or exploited a victim who was intoxicated, under the influence of drugs, asleep, or unconscious 5 points
 - (d) The offender did not exploit a victim’s vulnerability 0 points
- (2) The mere existence of 1 or more factors described in subsection (1) does not automatically equate with victim vulnerability.
- (3) As used in this section:
 - (a) “Predatory conduct” means preoffense conduct directed at a victim for the primary purpose of victimization.
 - (b) “Exploit” means to manipulate a victim for selfish or unethical purposes.
 - (c) “Vulnerability” means the readily apparent susceptibility of a victim to injury, physical restraint, persuasion, or temptation.
 - (d) “Abuse of authority status” means a victim was exploited out of fear or deference to an authority figure, including, but not limited to, a parent, physician, or teacher.

¹³³ MICH. COMP. LAWS ANN. § 400.11a (West 2000).

¹³⁴ MINN. STAT. ANN. § 626.557 (West 2000).

¹³⁵ “Vulnerable adult” is defined in MINN. STAT. ANN. § 609.232 (West 2000). This section states in pertinent part:

crime.¹³⁶ An attorney is probably not a mandated reporter under Minnesota law.¹³⁷

(4) regardless of residence or whether any type of service is received, possesses a physical or mental infirmity or other physical, mental, or emotional dysfunction:

(i) that impairs the individual's ability to provide adequately for the individual's own care without assistance, including the provision of food, shelter, clothing, health care, or supervision; and

(ii) because of the dysfunction or infirmity and the need for assistance, the individual has an impaired ability to protect the individual from maltreatment.

¹³⁶ MINN. STAT. ANN. § 609.2335 (West 2000). This section states:

Subdivision 1. Crime. Whoever does any of the following acts commits the crime of financial exploitation:

(1) in breach of a fiduciary obligation recognized elsewhere in law, including pertinent regulations, contractual obligations, documented consent by a competent person, or the obligations of a responsible party under section 144.6501 intentionally fails to use the financial resources of the vulnerable adult to provide food, clothing, shelter, health care, therapeutic conduct, or supervision for the vulnerable adult; or

(2) in the absence of legal authority:

(i) acquires possession or control of an interest in funds or property of a vulnerable adult through the use of undue influence, harassment, or duress; or

(ii) forces, compels, coerces, or entices a vulnerable adult against the vulnerable adult's will to perform services for the profit or advantage of another.

Subd. 2. Defenses. Nothing in this section requires a facility or caregiver to provide financial management or supervise financial management for a vulnerable adult except as otherwise required by law.

Subd. 3. Criminal penalties. A person who violates subdivision 1, clause (1) or (2), item (i), may be sentenced as provided in section 609.52, subdivision 3. A person who violates subdivision 1, clause (2), item (ii), may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both.

¹³⁷ MINN. STAT. ANN. § 626.5572(16) (West 2000). A mandated reporter under the statute is "a professional or professional's delegate while engaged in: (1) social services; (2) law enforcement; (3) education; (4) the care of vulnerable adults; (5) any of the occupations referred to in section 214.01, subdivision 2; (6) an employee of a rehabilitation facility certified by the commissioner of jobs and training for vocational rehabilitation; (7) an employee or person providing services in a facility as defined in subdivision 6; or (8) a person that performs the duties of the medical examiner or coroner." Section 214.01 includes a wide variety of health and non-health occupations, and includes accountants, but not attorneys.

25. *Mississippi*

The Mississippi Vulnerable Adults Act both protects against and criminalizes¹³⁸ exploitation¹³⁹ of a vulnerable adult.¹⁴⁰ The statute provides that one who exploits a vulnerable adult could also be charged with another crime, presumably some form of theft.¹⁴¹ Any person has a duty to report suspected exploitation under Mississippi law.¹⁴²

26. *Missouri*

The Missouri protective services statute protects adults age sixty and older¹⁴³ from abuse, which is defined to include exploitation.¹⁴⁴ Exploitation could be punishable as a form of stealing or as elder abuse in the third degree, depending on the

¹³⁸ MISS. CODE ANN. § 43-47-19 (West 2000). With respect to the penalty for exploitation, the statute states:

Any person who willfully commits an act or omits the performance of any duty, which act or omission contributes to, tends to contribute to or results in the abuse, neglect or exploitation of any vulnerable adult shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed One Thousand Dollars (\$1,000.00) or by imprisonment not to exceed one (1) year in the county jail, or by both such fine and imprisonment.

MISS. CODE ANN. § 43-47-19(2) (West 2000).

¹³⁹ The statute defines “exploitation” as the illegal or improper use of a vulnerable adult or his resources for another’s profit or advantage. MISS. CODE ANN. § 3-47-5(i) (West 2000).

¹⁴⁰ Regarding the definition of “vulnerable adult,” the statute states in part: “a person eighteen (18) years of age or older or any minor not covered by the Youth Court Act who is present in the state and who, regardless of residence, is unable to protect his or her own rights, interests, and/or vital concerns and who cannot seek help without assistance because of physical, mental or emotional impairment.” MISS. CODE ANN. § 3-47-5(m) (West 2000).

¹⁴¹ MISS. CODE ANN. § 3-47-19(4) (West 2000).

¹⁴² MISS. CODE ANN. § 43-47-7 (West 2000).

¹⁴³ MO. ANN. STAT. § 660.250(5) (West 2000).

¹⁴⁴ MO. ANN. STAT. § 660.250(1) (West 2000).

facts of the case.¹⁴⁵ An attorney has no duty to report suspected exploitation in Missouri.¹⁴⁶

27. *Montana*

The Montana Elder and Persons With Developmental Disabilities Abuse Prevention Act protects those age sixty and older¹⁴⁷ from exploitation.¹⁴⁸ The statute makes exploitation of a

¹⁴⁵ MO. ANN. STAT. § 570.030 (West 2000)(setting forth offenses of stealing); MO. ANN. STAT. § 565.184 (West 2000). The latter section describes the criminal conduct in part as:

(2) Purposely engages in conduct involving more than one incident that causes grave emotional distress to a person sixty years of age or older or an eligible adult, as defined in section 660.250, RSMo. The course of conduct shall be such as would cause a reasonable person age sixty years of age or older or an eligible adult . . . to suffer substantial emotional distress; or

. . .

(4) Intentionally fails to provide care, goods or services to a person sixty years of age or older or an eligible adult. The cause of the conduct shall be such as would cause a reasonable person age sixty or older or an eligible adult . . . to suffer physical or emotional distress.

¹⁴⁶ See MO. ANN. STAT. § 660.255(1) (West 2000)(requiring reporting in cases of potential physical harm); MO. ANN. STAT. § 565.188 (West 2000)(requiring certain persons to report).

¹⁴⁷ MONT. CODE ANN. § 52-3-803(5) (2000). The statute provides: “‘Older person’ means a person who is at least 60 years of age. For purposes of prosecution under 52-3-825(2), the person 60 years of age or older must be unable to provide personal protection from abuse, sexual abuse, neglect, or exploitation because of a mental or physical impairment or because of frailties or dependencies brought about by advanced age.”

¹⁴⁸ The statute defines “exploitation” as

(a) the unreasonable use of an older person or a person with a developmental disability or of a power of attorney, conservatorship, or guardianship with regard to an older person or a person with a developmental disability to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of the person’s money, assets, or property by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result of permanently depriving the older person or person with a developmental disability of the ownership, use, benefit, or possession of the person’s money, assets, or property;

(b) an act taken by a person who has the trust and confidence of an older person or a person with a developmental disability to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of the person’s money, assets, or property by

vulnerable elder a misdemeanor.¹⁴⁹ An attorney has an obligation to report suspected exploitation unless the attorney acquired the facts causing the suspicion from a client and the information is protected by the attorney-client privilege.¹⁵⁰

28. Nebraska

In Nebraska, the protective services act protects vulnerable adults¹⁵¹ and includes exploitation¹⁵² in its definition of abuse.¹⁵³ Knowing and intentional abuse of a vulnerable adult is a class IIIA felony.¹⁵⁴ An attorney does not have an obligation to report suspected abuse.¹⁵⁵

29. Nevada

In Nevada, a statute addresses the exploitation¹⁵⁶ of persons

means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result of permanently depriving the older person or person with a developmental disability of the ownership, use, or benefit of the person's money, assets, or property.

MONT. CODE ANN. § 52-3-803(3) (2000).

¹⁴⁹ MONT. CODE ANN. § 52-3-825(2) (2000).

¹⁵⁰ MONT. CODE ANN. § 52-3-811(3)(f) (2000).

¹⁵¹ NEB. REV. STAT. § 28-371 (1999). The section states: "Vulnerable adult shall mean any person eighteen years of age or older who has a substantial mental or functional impairment or for whom a guardian has been appointed under the Nebraska Probate Code."

¹⁵² NEB. REV. STAT. § 28-358 (1999). The statute defines exploitation as "the taking of property of a vulnerable adult by means of undue influence, breach of a fiduciary relationship, deception, or extortion or by any unlawful means."

¹⁵³ NEB. REV. STAT. § 28-351 (1999).

¹⁵⁴ NEB. REV. STAT. § 28-386 (1999).

¹⁵⁵ See NEB. REV. STAT. § 28-372 (1999).

¹⁵⁶ The statute defines "exploitation" as

any act taken by a person who has the trust and confidence of an older person or any use of the power of attorney or guardianship of an older person to obtain control, through deception, intimidation or undue influence, over the older person's money, assets or property with the intention of permanently depriving the older person of the ownership, use, benefit or possession of his money, assets or property. As used in this subsection, "undue influence" does not include the normal influence that one member of a family has over another.

NEV. REV. STAT. § 200.5092(2) (1999).

age sixty or over.¹⁵⁷ The statute criminalizes exploitation, and the penalty depends on the amount of assets in question.¹⁵⁸ An attorney has an obligation to report suspected exploitation unless the attorney acquired the information underlying the suspicion from a client who has been or may be accused of the exploitation.¹⁵⁹ Failure to report is a misdemeanor.¹⁶⁰

30. *New Hampshire*

In New Hampshire, the protective services statute protects incapacitated adults¹⁶¹ from exploitation.¹⁶² Because the statute

¹⁵⁷ NEV. REV. STAT. § 200.5092(5) (1999).

¹⁵⁸ NEV. REV. STAT. § 200.5099 (1999). This section states in pertinent part:

3. Except as otherwise provided in subsection 4, any person who exploits an older person shall be punished, if the value of any money, assets and property obtained or used:

(a) Is less than \$250, for a misdemeanor by imprisonment in the county jail for not more than 1 year, or by a fine of not more than \$2,000, or by both fine and imprisonment;

(b) Is at least \$250, but less than \$5,000, for a category B felony by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 10 years, or by a fine of not more than \$10,000, or by both fine and imprisonment; or

(c) Is \$5,000 or more, for a category B felony by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 20 years, or by a fine of not more than \$25,000, or by both fine and imprisonment, unless a more severe penalty is prescribed by law for the act which brought about the exploitation. The monetary value of all of the money, assets and property of the older person which have been obtained or used, or both, may be combined for the purpose of imposing punishment for an offense charged pursuant to this subsection.

4. If a person exploits an older person and the monetary value of any money, assets and property obtained cannot be determined, the person shall be punished for a gross misdemeanor by imprisonment in the county jail for not more than 1 year, or by a fine of not more than \$2,000, or by both fine and imprisonment.

¹⁵⁹ NEV. REV. STAT. § 200.5093 (1999).

¹⁶⁰ *Id.*

¹⁶¹ N.H. REV. STAT. ANN. § 161-F: 42 (1999); N.H. REV. STAT. ANN. § 161-F:43 (1999)(defining adult as “any person who is 18 years of age or older who is thought to manifest a degree of incapacity by reason of limited mental or physical function which may result in harm or hazard to himself or others or who is a person unable to manage his estate”).

does not specifically criminalize exploitation, it would probably be prosecuted as some form of theft.¹⁶³ An attorney has an obligation to report suspected exploitation,¹⁶⁴ and failing to report is a misdemeanor,¹⁶⁵ but the attorney-client privilege can provide a reason for failing to report.¹⁶⁶

31. *New Jersey*

The New Jersey Adult Protective Services Act protects vulnerable adults¹⁶⁷ from exploitation.¹⁶⁸ Because the statute does not criminalize exploitation, it would probably be prosecuted as a form of theft.¹⁶⁹ An attorney does not have an obligation to report suspected exploitation.¹⁷⁰

32. *New Mexico*

In New Mexico, the Adult Protective Services Act protects incapacitated adults¹⁷¹ from exploitation.¹⁷² The statute does not

¹⁶² The statute defines exploitation as “illegal use of an incapacitated adult’s person or property for another person’s profit or advantage, or the breach of a fiduciary relationship through the use of a person or a person’s property for any purpose not in the proper and lawful execution of a trust, including, but not limited to, situations where a person obtains money, property, or services from an incapacitated adult through the use of undue influence, harassment, duress, deception, or fraud.” N.H. REV. STAT. ANN. § 161-F:43(V) (1999).

¹⁶³ N.H. REV. STAT. ANN. § 637:1-637:11 (1999).

¹⁶⁴ N.H. REV. STAT. ANN. § 161-F:46 (1999).

¹⁶⁵ N.H. REV. STAT. ANN. § 161-F:50 (1999).

¹⁶⁶ N.H. REV. STAT. ANN. § 161-F:48 (1999).

¹⁶⁷ A vulnerable adult is “a person 18 years of age or older who resides in a community setting and who, because of a physical or mental illness, disability or deficiency, lacks sufficient understanding or capacity to make, communicate, or carry out decisions concerning his well-being and is the subject of abuse, neglect or exploitation.” N.J. STAT. ANN. § 52:27D-407 (1999).

¹⁶⁸ The statute defines “exploitation” as “the act or process of illegally or improperly using a person or his resources for another person’s profit or advantage.” N.J. STAT. ANN. § 52:27D-407 (1999).

¹⁶⁹ N.J. STAT. ANN. §§ 2C:20-1 to 2C:20-11 (1999).

¹⁷⁰ N.J. STAT. ANN. § 52:27D-409 (1999).

¹⁷¹ An incapacitated adult is “any adult who demonstrates over time partial or complete functional impairment by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication or other causes to the extent that he is unable to manage his personal affairs or he is unable to manage his estate or financial affairs, but does not include a person

criminalize exploitation, which could be prosecuted as a form of theft.¹⁷³ An attorney has an obligation to report, and failure to report is a misdemeanor.¹⁷⁴

33. *New York*

The New York Social Services Law is designed to offer protection from exploitation¹⁷⁵ to those who are unable to protect themselves.¹⁷⁶ The statute does not criminalize exploitation, so the offense would be prosecuted under the theft statute.¹⁷⁷ There is no mandatory reporting requirement for suspected exploitation.

34. *North Carolina*

In North Carolina, the protective services act protects disabled adults¹⁷⁸ from exploitation.¹⁷⁹ A criminal statute creates

who refuses services without other evidence of incapacity.” N.M. STAT. ANN. § 27-7-16 (2000).

¹⁷² The statute defines “exploitation” as “an unjust or improper use of an adult’s money or property for another person’s profit or advantage, pecuniary or otherwise.” N.M. STAT. ANN. § 27-7-16(i) (2000).

¹⁷³ See, e.g., N.M. STAT. ANN. § 30-16-1 (2000); N.M. STAT. ANN. § 30-16-8 (2000).

¹⁷⁴ N.M. STAT. ANN. § 27-7-30 (2000).

¹⁷⁵ N.Y. SOC. SERV. LAW § 473 (2000)(defining exploitation as “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”).

¹⁷⁶ *Id.*

¹⁷⁷ N.Y. PENAL LAW §§ 155.00 to 155.45 (2000).

¹⁷⁸ The statute defines “disabled adults” as

any person 18 years of age or over or any lawfully emancipated minor who is present in the State of North Carolina and who is physically or mentally incapacitated due to mental retardation, cerebral palsy, epilepsy or autism; organic brain damage caused by advanced age or other physical degeneration in connection therewith; or due to conditions incurred at any age which are the result of accident, organic brain damage, mental or physical illness, or continued consumption or absorption of substances.

N.C. GEN. STAT. § 108A-101 (2000).

¹⁷⁹ N.C. GEN. STAT. § 108A-100 (2000); N.C. GEN. STAT. § 108A-101(j) (2000)(defining “exploitation” as “the illegal or improper use of a disabled adult or his resources for another’s profit or advantage”).

the offense of exploitation of a disabled or elder individual.¹⁸⁰ Anyone who believes that a disabled adult is in need of protective services has a duty to report.¹⁸¹

35. *North Dakota*

The North Dakota statute that protects vulnerable adults¹⁸²

¹⁸⁰ N.C. GEN. STAT. § 14-32.3 (2000). The statute states in pertinent part:

- (b) Exploitation. — A person is guilty of exploitation if that person is a caretaker of a disabled or elder adult who is residing in a domestic setting, and knowingly, willfully and with the intent to permanently deprive the owner of property or money: (i) makes a false representation, (ii) abuses a position of trust or fiduciary duty, or (iii) coerces, commands, or threatens, and, as a result of the act, the disabled or elder adult gives or loses possession and control of property or money.

If the loss of property or money is of a value of more than one thousand dollars (\$1,000) the caretaker is guilty of a Class H felony. If the loss of property or money is of a value of one thousand dollars (\$1,000) or less, the caretaker is guilty of a Class 1 misdemeanor.

- (d) Definitions. — The following definitions apply in this section:

(1) Caretaker. — A person who has the responsibility for the care of a disabled or elder adult as a result of family relationship or who has assumed the responsibility for the care of a disabled or elder adult voluntarily or by contract.

(2) Disabled adult. — A person 18 years of age or older or a lawfully emancipated minor who is present in the State of North Carolina and who is physically or mentally incapacitated as defined in G.S. 108A-101(d).

(3) Domestic setting. — Residence in any residential setting except for a health care facility or residential care facility as these terms are defined in G.S. 14-32.2.

(4) Elder adult. — A person 60 years of age or older who is not able to provide for the social, medical, psychiatric, psychological, financial, or legal services necessary to safeguard the person's rights and resources and to maintain the person's physical and mental well-being.

¹⁸¹ N.C. GEN. STAT. § 108A-102(a) (2000).

¹⁸² A "vulnerable adult" is an "adult who has a substantial mental or functional impairment." N.D. CENT. CODE § 50-25.2-01(17) (1999).

includes financial exploitation¹⁸³ in its definition of abuse.¹⁸⁴ Exploitation of a vulnerable adult is a crime.¹⁸⁵ There is no

¹⁸³ Under the statute, “exploitation” means “the taking or misuse of property or resources of a vulnerable adult by means of undue influence, breach of a fiduciary relationship, deception, harassment, criminal coercion, theft, or other unlawful or improper means.” N.D. CENT. CODE § 50-25.2-01(7) (1999).

¹⁸⁴ N.D. CENT. CODE § 50-25.2-01(1) (1999).

¹⁸⁵ N.D. CENT. CODE § 12.1-31-07.1 (1999). This section provides:

1. A person is guilty of exploitation of a disabled adult or vulnerable elderly adult if:
 - a. The person stands in a position of trust and confidence or has a business relationship with the disabled adult or vulnerable elderly adult and knowingly, by deception or intimidation, obtains or uses, or attempts to obtain or use, the disabled adult’s or vulnerable elderly adult’s funds, assets, or property with the intent to temporarily or permanently deprive the disabled adult or vulnerable elderly adult of the use, benefit, or possession of the property, for the benefit of someone other than the disabled adult or vulnerable elderly adult; or
 - b. The person knows that the disabled adult or vulnerable elderly adult lacks the capacity to consent, and obtains or uses, or attempts to obtain or use, or assists another in obtaining or using or attempting to obtain or use, the disabled adult’s or vulnerable elderly adult’s funds, assets, or property with the intent to temporarily or permanently deprive the disabled adult or vulnerable elderly adult of the use, benefit, or possession of the property for the benefit of someone other than the disabled adult or vulnerable elderly adult.
2. Exploitation of a disabled adult or vulnerable elderly adult is:
 - a. A class A felony if the value of the exploited funds, assets, or property exceeds one hundred thousand dollars.
 - b. A class B felony if the value of the exploited funds, assets, or property exceeds twenty thousand dollars but does not exceed one hundred thousand dollars.
 - c. A class C felony if the value of the exploited funds, assets, or property is in excess of one thousand dollars but does not exceed twenty thousand dollars.
3. It is not a defense to a prosecution of a violation of this section that the accused did not know the age of the victim.
4. This section does not impose criminal liability on a person who has:
 - a. Managed the disabled adult’s or vulnerable elderly adult’s funds, assets, or property in a manner that clearly gives primacy to the needs and welfare of that person or is consistent with any explicit written authorization; or
 - b. Made a good faith effort to assist in the management of the disabled adult’s or vulnerable elderly adult’s funds, assets, or property.

mandatory reporting of exploitation in North Dakota.¹⁸⁶

36. *Ohio*

The Ohio protective statute protects “adults,” which it defines to include the vulnerable elderly,¹⁸⁷ from exploitation.¹⁸⁸ The criminal statutes make theft or securing writings by deception from an elderly or disabled person a more serious crime than similar offenses with other victims.¹⁸⁹ In Ohio, an attorney has a duty to report suspected exploitation when the attorney has reasonable cause to believe an adult as defined in the statute is being exploited or is in a condition that is the result of exploitation.¹⁹⁰ Failure to report could result in a five hundred dollar fine.¹⁹¹ Ohio also has a provision that allows probate judges to report suspected financial exploitation of an elderly person and requires certain follow-ups to such reports.¹⁹²

Under N.D. CENT. CODE § 12.1-31-07 (1999), a “vulnerable elderly adult” is “a person sixty years of age or older who is suffering from a disease or infirmity associated with advanced age and manifested by physical, mental, or emotional dysfunctioning to the extent that the person is incapable of adequately providing for the person’s own health or personal care.”

¹⁸⁶ See N.D. CENT. CODE § 50-25.2-03 (1999).

¹⁸⁷ OHIO REV. CODE ANN. § 5101.60(B) (2000). This section defines “adult” as “any person sixty years of age or older within this state who is handicapped by the infirmities of aging or who has a physical or mental impairment which prevents the person from providing for the person’s own care or protection, and who resides in an independent living arrangement.”

¹⁸⁸ The statute defines “exploitation” as “the unlawful or improper act of a caretaker using an adult or an adult’s resources for monetary or personal benefit, profit, or gain.” OHIO REV. CODE ANN. § 5101.60(G) (2000).

¹⁸⁹ OHIO REV. CODE ANN. § 2913.02(B)(3) (2000)(defining theft); OHIO REV. CODE ANN. § 2913.43 (2000) (prohibiting securing writings by deception); OHIO REV. CODE ANN. § 2913.01(CC) (2000)(defining “elderly” as a person sixty-five or older).

¹⁹⁰ OHIO REV. CODE ANN. § 5101.61A (2000).

¹⁹¹ OHIO REV. CODE ANN. § 5101.99(A) (2000).

¹⁹² OHIO REV. CODE ANN. § 2101.26 (2000). This section provides:

If the probate judge receives information of the alleged abuse or financial exploitation of a person of advanced age or of an incompetent or minor under guardianship, or receives information of an alleged theft from the estate of a decedent, the judge may refer the information to the appropriate law enforcement agency of the political subdivision in which the abuse, exploitation, or theft allegedly occurred, which agency shall conduct an investigation to determine whether there is probable cause to believe that a violation of any section of the

37. *Oklahoma*

The Oklahoma protective services for Vulnerable Adults Act is designed to protect, among others, the infirm older person.¹⁹³ The Act protects “vulnerable adults”¹⁹⁴ from exploitation.¹⁹⁵ Exploitation by a caretaker is a felony.¹⁹⁶ Other exploitation presumably would be prosecuted under the criminal statutes addressing theft. An attorney has an obligation to report suspected exploitation of a vulnerable adult, and failure to report is a misdemeanor.¹⁹⁷

38. *Oregon*

In Oregon, the legislature has sought to protect elderly persons¹⁹⁸ from abuse, which does not include exploitation.¹⁹⁹ Ore-

Revised Code that sets forth a criminal offense, or of any ordinance, resolution, or regulation of a municipal corporation or other political subdivision of the state that sets forth a criminal offense, has occurred. Upon completion of the investigation, the law enforcement agency involved shall file with the judge a report that summarizes its findings and indicates whether an indictment will be sought or charges will be filed as a result of the investigation.

¹⁹³ OKLA. STAT. ANN. tit. 43A, § 10-102 (2000).

¹⁹⁴ OKLA. STAT. ANN. tit. 43A, § 10-103(A)(5) (2000). This section defines a vulnerable adult as:

an individual who is an incapacitated person or who, because of physical or mental disability, incapacity, or other disability, is substantially impaired in the ability to provide adequately for the care or custody of self, or is unable to manage his or her property and financial affairs effectively, or to meet essential requirements for mental or physical health or safety, or to protect self from abuse, neglect, or exploitation without assistance from others.

¹⁹⁵ The statute defines “exploitation” as “an unjust or improper use of the resources of a vulnerable adult for the profit or advantage, pecuniary or otherwise, of a person other than the vulnerable adult through the use of undue influence, coercion, harassment, duress, deception, false representation or false pretense.” OKLA. STAT. ANN. tit. 43A, § 10-103(A)(9) (2000).

¹⁹⁶ OKLA. STAT. ANN. tit. 21, § 843.1 (2000). Although this section appears under the heading “child abuse,” it appears to apply to any caretaker-client relationship.

¹⁹⁷ OKLA. STAT. ANN. tit. 43A, § 10-104 (2000).

¹⁹⁸ OR. REV. STAT. § 124.050(3) (1999)(defining “elderly person” as “any person 65 years of age or older who is not subject to the provisions of ORS 441.640 to 441.665”).

¹⁹⁹ OR. REV. STAT. § 124.005 (1999); OR. REV. STAT. § 124.055 (1999).

gon does provide a civil action for financial abuse,²⁰⁰ and the

²⁰⁰ OR. REV. STAT. § 124.100 (1999); OR. REV. STAT. § 124.110 (1999).
Section 124.100 states:

- (1) An elderly or incapacitated person who suffers injury, damage or death by reason of physical abuse or financial abuse may bring an action against any person who has caused the physical or financial abuse or who has permitted another person to engage in physical or financial abuse. The court shall award the following to a plaintiff who prevails in an action under this section:
 - (a) All economic damages, as defined in ORS 18.560, resulting from the physical or financial abuse, or \$500, whichever amount is greater.
 - (b) All noneconomic damages, as defined by ORS 18.560, resulting from the physical or financial abuse.
 - (c) Reasonable attorney fees incurred by the plaintiff.
 - (d) Reasonable fees for the services of a conservator or guardian ad litem incurred by reason of the litigation of a claim brought under this section.
- (2) An action may be brought under the provisions of this section only by a person who is 65 or more years of age, by an incapacitated person or by a guardian, conservator or attorney-in-fact for a person who is incapacitated or 65 or more years of age. A person shall be considered incapacitated for the purposes of ORS 124.100 to 124.140 if the person is either incapacitated as defined in ORS 125.005 or financially incapable as defined in ORS 125.005.
- (3) An action may only be brought under the provisions of this section for physical abuse described in ORS 124.105 or for financial abuse described in ORS 124.110.
- (4) An action may be brought under this section against a person for permitting another person to engage in physical or financial abuse if the person knowingly acts or fails to act under circumstances in which a reasonable person should have known of the physical or financial abuse.
- (5) A person commencing an action under this section must serve a copy of the complaint on the Attorney General within 30 days after the action is commenced.

Section 124.110 provides:

- (1) An action may be brought under ORS 124.100 for financial abuse in the following circumstances:
 - (a) When a person wrongfully takes or appropriates money or property of an elderly or incapacitated person, without regard to whether the person taking or appropriating the money or property has a fiduciary relationship with the elderly or incapacitated person.
 - (b) When an elderly or incapacitated person requests that another person transfer to the elderly or incapacitated person any money or property that the other person holds or controls and that belongs to or

underlying conduct could also be prosecuted as theft.²⁰¹ The mandatory reporting requirement does not apply to attorneys.²⁰²

39. *Pennsylvania*

The Pennsylvania Older Adults Protective Services Act protects vulnerable older adults²⁰³ from exploitation.²⁰⁴ Because the

is held in express trust, constructive trust or resulting trust for the elderly or incapacitated person, and the other person, without good cause, either continues to hold the money or property or fails to take reasonable steps to make the money or property readily available to the elderly or incapacitated person when:

(A) The ownership or control of the money or property was acquired in whole or in part by the other person or someone acting in concert with the other person from the elderly or incapacitated person; and
(B) The other person acts in bad faith, or knew or should have known of the right of the elderly or incapacitated person to have the money or property transferred as requested or otherwise made available to the elderly or incapacitated person.

(c) When a person has at any time engaged in conduct constituting a violation of a restraining order regarding sweepstakes that was issued under ORS 124.020.

(2) A transfer of money or property that is made for the purpose of qualifying an elderly or incapacitated person for Medicaid benefits or for any other state or federal assistance program, or the holding and exercise of control over money or property after such a transfer, does not constitute a wrongful taking or appropriation under subsection (1)(a) of this section or the holding of money or property without good cause for the purposes of subsection (1)(b) of this section.

²⁰¹ See OR. REV. STAT. § 124.140 (1999)(providing that one convicted of crime for conduct cannot deny that conduct for purposes of a civil action for financial abuse).

²⁰² OR. REV. STAT. § 121.060 (1999).

²⁰³ 35 PA. CONS. STAT. ANN. § 10225.103 (2000)(defining “older adult” as a person sixty years of age or older). Under the same section, an “older adult in need of protective services is “An incapacitated older adult who is unable to perform or obtain services that are necessary to maintain physical or mental health, for whom there is no responsible caretaker and who is at imminent risk of danger to his person or property.”

²⁰⁴ 35 PA. CONS. STAT. ANN. § 10225.102 (2000). Section 10225.103 of title 35 defines “exploitation” as “[a]n act or course of conduct by a caretaker or other person against an older adult or an older adult’s resources, without the informed consent of the older adult or with consent obtained through misrepresentation, coercion or threats of force, that results in monetary, personal or other benefit, gain or profit for the perpetrator or monetary or personal loss to the older adult.”

statute does not criminalize exploitation, the conduct would be prosecuted as theft.²⁰⁵ Pennsylvania does not have mandatory reporting for exploitation.²⁰⁶

40. *Rhode Island*

Rhode Island has a statute²⁰⁷ to protect elderly citizens from abuse, which includes exploitation.²⁰⁸ Exploitation is not specifically criminalized. Under the statute, any person has an obligation to report suspected abuse of a person who is sixty years old or older.²⁰⁹ The penalty for non-reporting is a fine of not more than one thousand dollars or imprisonment of not more than one year, or both.²¹⁰

41. *South Carolina*

The protective statute protects vulnerable adults²¹¹ from exploitation.²¹² Exploitation of a vulnerable adult is a felony.²¹³ In South Carolina, anyone with “actual knowledge” of exploitation

²⁰⁵ 18 PA. CONS. STAT. ANN. §§ 3921 to 3934 (2000).

²⁰⁶ 35 PA. CONS. STAT. ANN. § 10225.302 (2000).

²⁰⁷ R.I. GEN. LAWS § 42-66-1 (1999).

²⁰⁸ R.I. GEN. LAWS § 42-66-4.1(2) (1999) The statute defines “exploitation” as “an act or process of taking pecuniary advantage of an elderly person by use of undue influence, harassment, duress, deception, false representation or false pretenses.” R.I. GEN. LAWS § 42-66-4.1(3) (1999).

²⁰⁹ R.I. GEN. LAWS § 42-66-8 (1999).

²¹⁰ *Id.*

²¹¹ S.C. CODE ANN. § 43-35-10(11) (1999). This section defines “vulnerable adult” as

a person eighteen years of age or older who has a physical or mental condition which substantially impairs the person from adequately providing for his or her own care or protection. This includes a person who is impaired in the ability to adequately provide for the person’s own care or protection because of the infirmities of aging including, but not limited to, organic brain damage, advanced age, and physical, mental, or emotional dysfunction. A resident of a facility is a vulnerable adult.

²¹² Exploitation is defined to include “an improper, illegal, or unauthorized use of the funds, assets, property, power of attorney, guardianship, or conservatorship of a vulnerable adult by a person for the profit or advantage of that person or another person.” S.C. CODE ANN. § 43-35-10(3)(b) (1999).

²¹³ S.C. CODE ANN. § 43-35-85(D) (1999).

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must report it,²¹⁴ although the attorney-client privilege may give rise to a defense to non-reporting.²¹⁵

42. *South Dakota*

The protective statute protects disabled adults²¹⁶ from exploitation.²¹⁷ Certain caregivers may be liable for theft by exploitation from a disabled adult;²¹⁸ others could presumably be prosecuted under the theft statutes of general application. South Dakota has no mandatory reporting requirement.

43. *Tennessee*

The Tennessee Adult Protection Act seeks to protect certain adults²¹⁹ from exploitation by requiring reporting.²²⁰ Exploita-

²¹⁴ S.C. CODE ANN. § 43-35-25 (1999) *See also* S.C. CODE ANN. § 43-35-85(A) (1999)(setting forth penalty for failure to report).

²¹⁵ S.C. CODE ANN. § 43-25-50 (1999).

²¹⁶ S.D. CODIFIED LAWS ANN. § 22-46-1(2) (2000). This section defines “disabled adult” as “a person eighteen years of age or older who suffers from a condition of mental retardation, infirmities of aging as manifested by organic brain damage, advanced age or other physical dysfunctioning to the extent that the person is unable to protect himself or provide for his own care.”

²¹⁷ S.D. CODIFIED LAWS ANN. § 22-46-1(3) (2000)(defining “exploitation” as “the wrongful taking or exercising of control over property of a disabled adult with intent to defraud him of it”).

²¹⁸ S.D. CODIFIED LAWS ANN. § 22-46-3 (2000). This section provides:

Any person who, having assumed the duty by written contract, by receipt of payment for care, or by order of a court to provide for the support of a disabled adult and having been entrusted with the property of that disabled adult, with intent to defraud, appropriates such property to a use or purpose not in the due and lawful execution of his trust, is guilty of theft by exploitation. Theft by exploitation is punishable pursuant to the provisions of § 22-30A-17.

²¹⁹ TENN. CODE ANN. § 71-6-102(2) (1999). The statute describes a protected adult as

a person eighteen (18) years of age or older who because of mental or physical dysfunctioning or advanced age is unable to manage such person’s own resources, carry out the activities of daily living, or protect such person from neglect, hazardous or abusive situations without assistance from others and who has no available, willing, and responsibly able person for assistance and who may be in need of protective services.

²²⁰ TENN. CODE ANN. § 71-6-101 (1999).

tion is defined quite narrowly.²²¹ Willful exploitation is a misdemeanor.²²² Additionally, the statute gives an elderly²²³ or disabled person the right to recover for exploitation or theft, and this remedy is in addition to any other available remedies.²²⁴ Any person has a duty to report suspected exploitation.²²⁵ Failure to report is a misdemeanor.²²⁶

44. *Texas*

The Texas statute protects the elderly and disabled from exploitation.²²⁷ An elderly person is anyone age sixty-five or older.²²⁸ The statute does not criminalize exploitation, so the offense would be prosecuted under the penal code.²²⁹ An attorney has a duty to report suspected exploitation, and the statute spe-

²²¹ TENN. CODE ANN. § 71-6-102(8) (1999). This section defines “exploitation” as “the improper use by a caretaker of funds which have been paid by a governmental agency to an adult or to the caretaker for the use or care of the adult.”

²²² TENN. CODE ANN. § 71-6-117 (1999).

²²³ TENN. CODE ANN. § 71-6-120(a)(3) (1999). The statute defines “elderly person” as “a person who is sixty (60) years of age or older who has some mental or physical dysfunctioning, including any resulting from age.”

²²⁴ TENN. CODE ANN. § 71-6-120(b) (1999). The statute states:

In addition to other remedies provided by law, an elderly person or disabled adult in that person’s own right, or by conservator or next friend, shall have a right of recovery in a civil action for compensatory damages for abuse or neglect, sexual abuse or exploitation as defined in this part or for theft of such person’s or adult’s money or property whether by fraud, deceit, coercion or otherwise. Such right of action against a wrongdoer shall not abate or be extinguished by the death of the elderly person or disabled adult, but shall pass as provided in § 20-5-106, unless the alleged wrongdoer is a family member, in which case the cause of action shall pass to the victim’s personal representative.

²²⁵ TENN. CODE ANN. § 71-6-103(b) (1999).

²²⁶ TENN. CODE ANN. § 71-6-110 (1999).

²²⁷ The statute defines “exploitation” as “the illegal or improper act or process of a caretaker, family member, or other individual who has an ongoing relationship with the elderly or disabled person using the resources of an elderly or disabled person for monetary or personal benefit, profit, or gain without the informed consent of the elderly or disabled person.” TEX. HUM. RES. CODE ANN. § 48.002(a)(3) (2000).

²²⁸ TEX. HUM. RES. CODE ANN. § 48.002(a)(1) (2000).

²²⁹ TEX. PEN. CODE ANN. § 31.01 to 31.14 (2000).

cifically abrogates the attorney-client privilege.²³⁰ Failure to report is a misdemeanor.²³¹

45. *Utah*

The Utah protective services act protects elder²³² and disabled²³³ adults against exploitation. Exploitation of an elder or disabled adult is a crime.²³⁴ Any person who suspects exploita-

²³⁰ TEX. HUM. RES. CODE ANN. § 48.051 (2000).

²³¹ TEX. HUM. RES. CODE ANN. § 48.052 (2000).

²³² UTAH CODE ANN. § 62A-3-301(8) (2000)(defining “elder adult” as “a person 65 years of age or older”).

²³³ UTAH CODE ANN. § 62A-3-301(6) (2000). Under this section, a “disabled adult” is

a person 18 years of age or older who is impaired because of mental illness, mental deficiency, physical illness or disability, or other cause, to the extent that he lacks sufficient understanding or capacity to make or communicate informed decisions concerning his person, or is unable to care for his own personal safety or provide necessities such as food, shelter, clothing, or medical care, without which physical injury or illness may occur.

²³⁴ UTAH CODE ANN. § 76-5-111 (2000). This section states in pertinent part:

- (a) A person commits the offense of exploitation of a disabled or elder adult when the person:
 - (i) is in a position of trust and confidence, or has a business relationship, with the disabled or elder adult and knowingly, by deception or intimidation, obtains or uses, or endeavors to obtain or use, the disabled or elder adult’s funds, credit, assets, or other property with the intent to temporarily or permanently deprive the disabled or elder adult of the use, benefit, or possession of his property, for the benefit of someone other than the disabled or elder adult;
 - (ii) knows or should know that the disabled or elder adult lacks the capacity to consent, and obtains or uses, or endeavors to obtain or use, or assists another in obtaining or using or endeavoring to obtain or use, the disabled or elder adult’s funds, assets, or property with the intent to temporarily or permanently deprive the disabled or elder adult of the use, benefit, or possession of his property for the benefit of someone other than the disabled or elder adult;
 - (iii) unjustly or improperly uses or manages the resources of a disabled or elder adult for the profit or advantage of someone other than the disabled or elder adult;

tion of an elder or disabled adult has a duty to report it.²³⁵ Failure to report is a misdemeanor.²³⁶

46. Vermont

Vermont has a protective statute to protect elderly²³⁷ and disabled adults from exploitation.²³⁸ The statute criminalizes ex-

(iv) unjustly or improperly uses a disabled or elder adult's power of attorney or guardianship for the profit or advantage of someone other than the disabled or elder adult;

(v) involves a disabled or elder adult who lacks the capacity to consent in the facilitation or furtherance of any criminal activity; or

(vi) commits sexual exploitation of a disabled or elder adult.

(b) A person is guilty of the offense of exploitation of a disabled or elder adult as follows:

(i) if done intentionally or knowingly and the aggregate value of the resources used or the profit made is or exceeds \$5,000, the offense is a second degree felony;

(ii) if done intentionally or knowingly and the aggregate value of the resources used or the profit made is less than \$5,000 or cannot be determined, the offense is a third degree felony;

(iii) if done recklessly, the offense is a class A misdemeanor; or

(iv) if done with criminal negligence, the offense is a class B misdemeanor.

²³⁵ UTAH CODE ANN. § 62A-3-302 (2000).

²³⁶ *Id.*

²³⁷ VT. STAT. ANN. tit. 33, § 6902(6) (2000)(defining "elderly" as sixty years old or older).

²³⁸ VT. STAT. ANN. tit. 33, § 6902(7) (2000). This section states:

"Exploitation" means:

(A) Wilfully using, withholding, or disposing of funds or property of an elderly or disabled adult without legal authority for the wrongful profit or advantage of another;

(B) Acquiring possession or control of or an interest in funds or property of an elderly or disabled adult through the use of undue influence, harassment, duress, or fraud;

(C) The act of forcing or compelling an elderly or disabled adult against his or her will to perform services for the profit or advantage of another;

(D) Any sexual activity with an elderly or disabled adult when the elderly or disabled adult does not consent or when the actor knows or should know that the elderly or disabled adult is incapable of resisting or declining consent to the sexual activity due to age or disability or due to fear of retribution or hardship.

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ploitation.²³⁹ An attorney does not have an obligation to report suspected exploitation.²⁴⁰

47. *Virginia*

Virginia protects certain adults, including those sixty years of age or older,²⁴¹ from exploitation.²⁴² Because exploitation is not specifically criminalized, it would be prosecuted under the criminal statutes of general application.²⁴³ An attorney does not have a duty to report suspected abuse.²⁴⁴

48. *Washington*

The Washington Abuse of Vulnerable Adults Act seeks to protect vulnerable adults²⁴⁵ from exploitation.²⁴⁶ Because the statute does not specifically criminalized exploitation, the offense

²³⁹ VT. STAT. ANN. tit. 33, § 6913(b) (2000). This section provides: “Any person who wilfully engages in exploitation as defined in section 6902(7)(A), (B) or (C) of this title, shall be fined not more than \$10,000.00 or be imprisoned for not more than 18 months, or both.”

²⁴⁰ See VT. STAT. ANN. tit. 33, § 6903 (2000)(listing mandatory reporters).

²⁴¹ VA. CODE ANN. § 63.1-55.2 (Michie 2000). This section defines “adult” as

any person eighteen years of age and older who is incapacitated and any qualifying person sixty years of age and older, who, in either case, both of whom reside in the Commonwealth; provided, however, “adult” may include incapacitated or qualifying nonresidents who are temporarily in the Commonwealth and who are in need of temporary or emergency protective services.

²⁴² VA. CODE ANN. § 63.1-55.2 (Michie 2000)(defining “exploitation” as “the illegal use of an incapacitated adult or his resources for another’s profit or advantage”).

²⁴³ VA. CODE ANN. § 18.2-95 to 18.2-98 (Michie 2000).

²⁴⁴ See VA. CODE ANN. § 63.1-55.3 (Michie 2000).

²⁴⁵ WASH. REV. CODE ANN. § 74.34.020(13) (West 2000). This section provides:

“Vulnerable adult” includes a person:

- (a) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or
- (b) Found incapacitated under chapter 11.88 RCW; or
- (c) Who has a developmental disability as defined under RCW 71A.10.020; or
- (d) Admitted to any facility; or
- (e) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or
- (f) Receiving services from an individual provider.

would probably be prosecuted under the penal code.²⁴⁷ An attorney does not have an obligation to report suspected exploitation.²⁴⁸

49. West Virginia

The social services act protects incapacitated adults²⁴⁹ from neglect, which is defined to include financial abuse.²⁵⁰ Neglect of an incapacitated adult by a caregiver is specifically criminalized.²⁵¹ Exploitation could also be prosecuted as some other form of theft.²⁵² An attorney does not have an obligation to report suspected neglect.²⁵³

²⁴⁶ Exploitation is broadly defined as “an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another.” WASH. REV. CODE ANN. § 74.34.020(2)(d) (West 2000).

²⁴⁷ WASH. REV. CODE ANN. §§ 9A-56-010 to 9A-56-060. *See also* WASH. REV. CODE ANN. § 74.34.200 (West 2000)(providing for action to recover for financial exploitation by caregiver).

²⁴⁸ *See* WASH. REV. CODE ANN. § 74.34.035 (West 2000); Wash. Rev. Code Ann. § 26.44.030 (West 2000)(listing mandated reporters for child abuse).

²⁴⁹ W. VA. CODE § 9-6-1(4) (2000). This section defines “incapacitated adult” as “any person who by reason of physical, mental or other infirmity is unable to independently carry on the daily activities of life necessary to sustaining life and reasonable health.”

²⁵⁰ W. VA. CODE § 9-6-1(3) (2000)(defining “neglect” as including “the unlawful expenditure or willful dissipation of the funds or other assets owned or paid to or for the benefit of an incapacitated adult”).

²⁵¹ W. VA. CODE § 61-2-29(a)(2) (2000). This section defines “caregiver” as:

an adult who has or shares actual physical possession or care of an incapacitated adult on a full-time or temporary basis, regardless of whether such person has been designated as a guardian of such adult by any contract, agreement or legal proceeding. Care giver includes health care providers, family members, and any person who otherwise voluntarily accepts a supervisory role towards an incapacitated adult.

²⁵² *E.g.*, W. VA. CODE § 6-3-23 (2000)(setting forth offense of embezzlement by a fiduciary).

²⁵³ *See* W. VA. CODE § 9-6-9 (2000)(listing mandated reporters). In addition, Section 9-6-13 recognizes the existence of attorney-client privilege. W. VA. CODE § 9-6-13 (2000).

50. *Wisconsin*

The Wisconsin social services statute²⁵⁴ protects “vulnerable adults”²⁵⁵ from “misappropriation of property.”²⁵⁶ Theft from a vulnerable adult is specifically criminalized.²⁵⁷ An attorney does not have a duty to report suspected financial abuse.²⁵⁸

51. *Wyoming*

The Wyoming Adult Protective Services Act protects disabled adults²⁵⁹ from exploitation.²⁶⁰ Exploitation of a disabled

²⁵⁴ WIS. STAT. ANN. § 55.001-55.007 (West 2000).

²⁵⁵ WIS. STAT. ANN. § 940.285 (West 2000). This section states that a “vulnerable adult” is “any person 18 years of age or older who either is a developmentally disabled person or has infirmities of aging, mental illness or other like incapacities,” and who is “1. Substantially mentally incapable of providing for his or her needs for food, shelter, clothing or personal or health care; or 2. Unable to report cruel maltreatment without assistance.” *See also* § 46.90(1)(c) (West 2000)(defining “elder person” as “a person who is age 60 or older or who is subject to the infirmities of aging” for purposes of abuse reporting); § 55.01(3) (West 2000)(defining “infirmities of aging” as “organic brain damage caused by advanced age or other physical degeneration in connection therewith to the extent that the person so afflicted is substantially impaired in his or her ability to adequately provide for his or her care or custody”).

²⁵⁶ WIS. STAT. ANN. § 55.01(4p) (West 2000). This section defines “misappropriation of property” as any of the following:

- (a) The intentional taking, carrying away, use, transfer, concealment or retention of possession of the property of a vulnerable adult without the vulnerable adult’s informed consent and with intent to deprive the vulnerable adult of possession of the property.
- (b) Obtaining the property of a vulnerable adult by intentionally deceiving the vulnerable adult with a representation that is known to be a false representation, is made with intent to defraud and does defraud the vulnerable adult.

See also WIS. STAT. ANN. § 46.90(1)(e) (West 2000)(defining “material abuse” as “misuse of an elder person’s property or financial resources” for purposes of reporting abuse).

²⁵⁷ WIS. STAT. ANN. § 943.20(3)(d)(6) (West 2000).

²⁵⁸ *See* WIS. STAT. ANN. § 46.90 (West 2000).

²⁵⁹ WYO. STAT. ANN. § 35-20-102(a)(vi) (Michie 2000). The statute defines “disabled adult” as “any person eighteen (18) years of age or older who is unable unassisted to properly manage and take care of himself or his property as a result of the infirmities of advanced age, physical or mental disability, or the use of alcohol or controlled substances.”

²⁶⁰ WYO. STAT. ANN. § 35-20-102(a)(ix) (Michie 2000). This section defines “exploitation” as “taking advantage of a disabled adult or of his physical

adult is a misdemeanor.²⁶¹ Anyone suspecting exploitation has a duty to report it.²⁶²

III. Conclusion

As one can see from the wide variety of abuse statutes that have been enacted, attempts to address the problem of exploitation are far from uniform. Further, as society's interest in preventing all types of elder abuse grows, states are likely to refine and enhance their protections.

One of the most vexing issues in the study of financial abuse is attempting to define precisely what financial abuse is. The most basic definition of abuse is the misuse of another's property. Identifying "misuse," however, is no easy task. Frequently, the perpetrators of alleged exploitation offer consent to the asset use as a defense for their conduct. Indeed, it is easy to imagine that most transfers between family and friends are in fact voluntary. Further, it is common for family and friends to want to use their assets to benefit each other. Thus, one cannot use the simplistic definitional idea that any use of one's assets to benefit another is "misuse."

This difficulty of definition raises serious concerns for the matrimonial lawyer. As legislatures and courts struggle to define the concept of exploitation, it is difficult to precisely identify conduct that will be labeled "abusive." This difficulty presents a potential trap for both lawyers and their clients.

For example, any concealment or misappropriation of assets could be labeled "exploitation" under most of the statutory definitions. Thus, under the right set of circumstances, one spouse who hides assets from the other in a divorce procedure could be committing a crime of exploitation.

Additionally, the requirements in many states that mandate reporting of suspected abuse present a difficult issue for attorneys. There is a potential conflict with the attorney's duty to keep client confidences. This difficulty could present itself whether the attorney represents the abuser or the victim. Again,

or financial resources for personal or pecuniary profit by the use of undue influence, harassment, duress, deception, false representation or false pretenses."

²⁶¹ WYO. STAT. ANN. § 35-20-109 (Michie 2000).

²⁶² WYO. STAT. ANN. § 35-20-103(a) (Michie 2000).

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the newness of such statutes results in a lack of caselaw addressing this issue.

In sum then, family lawyers should proceed with caution when involved with cases that could give rise to charges of exploitation of the elderly. All indications are that society's interest in protecting the elderly will increase, and statutes addressing elder abuse will become the basis for more actions.