

**REPORT OF THE
DEPARTMENT OF SOCIAL SERVICES ON**

**Financial Exploitation of Older
Adults and Disabled Younger Adults
in the Commonwealth**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



SENATE DOCUMENT NO. 37

**COMMONWEALTH OF VIRGINIA
RICHMOND
1994**



COMMONWEALTH of VIRGINIA

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TO: The Honorable L. Douglas Wilder
Governor of Virginia

and

The General Assembly of Virginia

The 1992 General Assembly, by Senate Joint Resolution 308, requested the Secretary of Health and Human Resources to conduct a study of the prevalence and nature of financial exploitation of older adults and disabled younger adults in the Commonwealth.

The enclosed report is submitted in response to the Resolution.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "B. Norris Vassar", written over a horizontal line.

B. Norris Vassar
Secretary

PREFACE

Senate Joint Resolution 308 requests the Secretary of Health and Human Resources to conduct a study of the prevalence and nature of financial exploitation of older adults and disabled younger adults in the Commonwealth. The resolution specified that the study include, but not be limited to:

- a review of the types and numbers of financial exploitation complaints made on behalf of older adults and disabled younger adults and the resolution of those complaints,
- the need for additional statutory authority to protect the rights and welfare of older and disabled younger adults who are victims of financial exploitation, and
- the adoption of other methods of enhancing the protection of vulnerable adults.

This document was prepared in response to SJR 308. The full text of the legislation is provided in Appendix A.

Responsibility for conducting the study was delegated by the Secretary of Health and Human Resources to the Department of Social Services. To assist with the study, the department formed a task force composed of representatives of the Virginia League of Social Services Executives; the Alliance of Social Work Practitioners; the Virginia Association of Area Agencies on Aging, the Virginia Bar Association; the Virginia Sheriffs Association; the Commonwealth's Attorneys' Service Council; the American Association of Retired Persons; and the Departments of Aging, Mental Health, Mental Retardation, and Substance Abuse Services, Rehabilitative Services, Rights of Virginians with Disabilities, Social Services and the Attorney General's Office.

Staff assigned: Helen Leonard, Joy Duke, Terry A. Smith, Linda Booth

ACKNOWLEDGEMENTS

The Virginia Department of Social Services conducted this study at the request of the Secretary of Health and Human Resources. A local and state task force was instrumental in developing and conducting surveys, planning and conducting community forums, analyzing data and formulating recommendations. Key staff include Helen Leonard, Joy Duke, Terry Smith, and Linda Booth. The department also acknowledges the local staff who completed case reviews, the agencies and organizations who completed survey forms, and interested persons who testified in community forums.

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EXECUTIVE SUMMARY

"Under-reported, difficult to detect and to prove, and next to impossible to prosecute and recover, exploitation hurts adults in far reaching ways."

A Social Work Supervisor

Concerns about the financial victimization of vulnerable adults led the Virginia General Assembly to request the Secretary of Health and Human Resources to study the prevalence and nature of financial exploitation of older adults and disabled younger adults in the Commonwealth. The study was to review the types and numbers of financial exploitation complaints made on behalf of older adults and disabled younger adults and the resolution of those complaints. The study was also to examine both the need for additional statutory authority to protect the rights and welfare of older and disabled younger adults who are the victims of financial exploitation and to study the need to adopt other methods of enhancing their protection.

Key findings resulted from analyses of surveys completed by banks, sheriffs, area agencies on aging, legal aid offices, and long-term care facilities; a review of Adult Protective Services' (APS) financial exploitation cases; testimony from community forums; and interviews with selected states.

Risk Factors for Financial Exploitation

- Vulnerability to financial exploitation is intensified by advanced age and frailty, social isolation and by the inexperience of adults who, late in life, must assume responsibility for their financial affairs for the first time.
- Relationships exist between many victims and perpetrators. In almost half of the documented cases of exploitation, victims and perpetrators share housing. Victims with this living arrangement continue to be at high risk.
- The population most vulnerable to financial exploitation will continue to increase during the next 40 years with the increase in the population aged 65 and over.

Prevalence and Nature of Financial Exploitation

- During FY 1993, 541 cases of financial exploitation were substantiated through APS investigations.
- The largest number of financial exploitation victims were persons from 76 to 90 years of age. Most victims suffered a mental incapacity and more than half had physical disabilities. Ninety percent of those who had any impairment had both mental and physical impairments.

- Most perpetrators of financial exploitation are related to the victim by blood or marriage. Most perpetrators have an ongoing relationship to the victim such as in-home caregiver, both paid and unpaid. In every case studied, perpetrators who were unpaid caregivers were children of the victim. Other perpetrators included staff in long-term care facilities and individuals having victim's power of attorney.

Recommendation. The General Assembly should request a study of the need for oversight and monitoring of award and utilization of powers of attorney.

- The devastation of loss is not necessarily related to the value of lost assets. Small losses can be disastrous to individuals whose resources are few and whose ability to recoup what is lost is minimal.
- The value of resources lost range from more than \$300,000 for a few victims to less than \$1,000 for most. The loss of resources valued at less than \$1,000 is generally through exploitation of cash, checks, or bank accounts, with almost 20 percent of victims having their checks taken at the beginning of the month.

Prevention and Resolution of Financial Exploitation

- There is a lack of awareness of financial exploitation among individuals, agencies, institutions and the public. Increased awareness is needed to assist in identifying victims and focus on early intervention.

Recommendation. The Departments of Social Services and Aging should initiate strategies to increase public awareness of financial exploitation. Pertinent information should be provided to guardians, powers of attorney, representative payees and other substitute decision makers.

- There is widespread noncompliance with the mandated reporting provisions of Virginia Code § 63.1-55.3.

Recommendation. The Department of Social Services should conduct a public awareness campaign targeting mandated reporters.

Recommendation. The Department of Social Services should acquire and advertise a toll free number to receive APS complaints.

Recommendation. The VDSS should revise its Benefit Programs policy to clarify the intent of the instructions which pertains to victimization by attorneys-in-fact, guardians, and committees. The revised policy should encourage reporting of suspected exploitation.

- Resolution of cases is made more difficult by the incapacities of victims; the almost insurmountable burden of proving criminal malice in exploitation cases; the lack of access to relevant records and documents; the lack of qualified, available guardians; and the need for increased collaboration in training all professionals involved.

Recommendation. The General Assembly should consider amending Virginia Code § 63.1-55.3 to make essential documents, such as records from financial institutions more readily available when financial exploitation of vulnerable adults is suspected.

Recommendation. The General Assembly should consider funding a two year pilot project to test the feasibility of a public guardian program for persons who are found, through an APS investigation, to be in need of a guardian and have no other qualified person to serve.

Recommendation. The Department of Social Services, Commonwealth's Attorneys' Service Council, Virginia Association of Chiefs of Police, and the Virginia Sheriffs Association should collaborate to provide joint training for all staff who investigate complaints of financial exploitation.

- Several states have enacted legislation which provides criminal sanctions for financial exploitation of vulnerable adults. The effectiveness of these laws is unclear at this time. Education and strengthened civil remedies may provide enhanced protection to vulnerable adults. The 1992 California Elder Abuse and Dependent Adult Civil Protection Act appears to be the strongest.

Recommendation. The Virginia Bar Association, in collaboration with the Departments of Social Services and Aging, should study and recommend legislation to the 1995 session of the General Assembly modeled after the 1992 California Elder Abuse and Dependent Adult Civil Protection Act.

I. INTRODUCTION

Study Charge

Senate Joint Resolution 308 requests the Secretary of Health and Human Resources to conduct a study of the prevalence and nature of financial exploitation of older adults and disabled younger adults in the Commonwealth. The resolution specified that the study include, but not be limited to:

- a review of the types and numbers of financial exploitation complaints made on behalf of older adults and disabled younger adults and the resolution of those complaints,
- the need for additional statutory authority to protect the rights and welfare of older and disabled younger adults who are victims of financial exploitation, and
- the adoption of other methods of enhancing the protection of vulnerable adults.

This document was prepared in response to SJR 308, provided in Appendix A.

Background

The Code of Virginia, § 63.1-55.2 defines exploitation as the "illegal use of an incapacitated adult or his resources for another's profit or advantage." The illegal use is accomplished by force, misrepresentation, failure to inform, or other illegal means that prey upon an older or incapacitated adult's vulnerability.

A wide range of criminal acts are commonly associated with financial exploitation, including larceny, embezzlement, fraud, burglary, forgery, false impersonation, extortion, and receiving stolen property. Financial exploitation is most often perpetrated by a relative, a caregiver, or some other person in a position of trust. The acts are done for monetary or personal gain or profit.¹

Virginia Code § 63.1-55.4 designates local departments of social services (LDSS) as the agencies responsible for investigating reports of abuse, neglect, and financial exploitation. Virginia Code § 63.1-55.3 lists certain groups of persons who are required to report to LDSS when there are circumstances which cause these persons to suspect that an older or incapacitated younger adult is abused, neglected, or exploited. The persons listed as mandated reporters include:

- any person licensed to practice medicine or any of the healing arts, any hospital resident or intern;
- any person employed in the nursing profession;
- any person employed by a public or private agency or facility and working with adults;
- any person providing full-time or part-time care to adults for pay on a regularly scheduled basis;
- any person employed as a social worker;
- any mental health professional; and,
- any law enforcement officer, in his or her professional or official capacity.

The Commission on the Coordination of the Delivery of Services to Facilitate the Self-Sufficiency and Support for Persons with Physical and Sensory Disabilities in the Commonwealth, generally called the Beyer Commission, initiated abuse/neglect legislation which was passed by the 1992 session of the General Assembly. This legislation, codified under § 18.2-369, makes abuse or neglect of any incapacitated adult by any responsible person unlawful. The Commission's interest in abuse/neglect also encompassed the financial exploitation of incapacitated adults, thus the Commission proposed this study.

Financial victimization of elderly and incapacitated younger adults is a growing social problem and one of the least recognized forms of adult abuse. There are little reliable data on the number of older or incapacitated adults who are victims of financial exploitation as experts in adult protective services (APS), elder law, and aging believe that most occurrences are not reported to authorities. The impact of financial exploitation can be both immediate and severe. With most of their earning capacity behind them, older victims of financial exploitation find it impossible to regain lost resources and the results are often permanently devastating to those victims.²

There are more than 30 million people, 13 percent of the total population in the United States and 10.7 percent of the total Virginia population, over age 65. Within 40 years, adults age 65 and over will comprise more than 20 percent of the population. Nearly one million older adults are victims of some form of abuse, neglect, or financial exploitation and only 1 in 14 of those cases is ever reported.³ The National Aging Resource Center on Elder Abuse estimates that in 1988, based on a study of data from 24 states, 20 percent of all victims of elder abuse were financially exploited.⁴ In fiscal year 1993, in Virginia, 541 cases of financial exploitation were substantiated by LDSS through APS investigations.⁵

APS data of the Virginia Department of Social Services (VDSS) documents a steady increase in the number of substantiated exploitation reports from 347 in FY 1988 to 541 in FY 1993, a 56 percent increase over the five year period.⁶ Substantiated financial exploitation reports account for 13 percent of all APS substantiated reports for fiscal year 1993.

Study Objectives

An assessment of the study request led to the following objectives:

- To review and analyze circumstances, findings, and outcomes in documented cases of financial exploitation;
- To assess demographic trends likely to have an impact upon the number of vulnerable adults victimized by financial exploitation;

- To identify obstacles which are unique to protecting vulnerable adults from financial exploitation;
- To analyze the potential value of additional statutory authority in protecting vulnerable adults; and
- To evaluate non-judicial methods of enhancing protection of vulnerable adults.

Approach and Methodology

Responsibility for conducting the study was delegated by the Secretary of Health and Human Resources to the Department of Social Services. To assist with the study, the department formed a task force composed of representatives of the Virginia League of Social Services Executives, the Alliance of Social Work Practitioners, the Virginia Association of Area Agencies on Aging, the Virginia Bar Association, the Virginia Sheriffs Association, the Commonwealth's Attorneys' Service Council, the American Association of Retired Persons, and the State Departments of Aging; the Attorney General's Office, Mental Health, Mental Retardation, and Substance Abuse Services; Rehabilitative Services; Rights of Virginians with Disabilities; Virginia Board for Persons with Disabilities; and Social Services. Refer to the Acknowledgements for a complete listing of members.

Several approaches and activities were used to respond to study objectives. These included a review of APS cases, a survey of institutions and organizations, a survey of selected states, community forums, and a literature review.

- **APS Case Reviews**

LDSS staff reviewed each of the 541 substantiated cases of financial exploitation to obtain information about the victim, the perpetrator, the resources exploited, and how the case was resolved. Refer to Appendix B for a narrative report on the case reviews.

- **Survey of Institutions and Organizations**

VDSS surveyed certain institutions and organizations with a special vantage point for observing financial exploitation. Respondents included:

- the Offices of the Sheriff in localities;
- banks;
- legal aid offices;
- area agencies on aging; and,
- nursing homes and adult care residences.

Refer to Appendix C for a narrative report on the findings from the survey.

- **Survey of Selected States**

The task force surveyed 14 states, selected at random from a list prepared by the National Aging Resource Center on Elder Abuse, (NARCEA), to obtain information about the specifics of each state's law or laws relative to financial exploitation of older and/or disabled adults. The survey of states includes a review of pertinent statutes submitted by the states. Refer to Appendix D for a narrative report on the findings from the survey of other states.

VDSS also reviewed the Elder Abuse and Dependent Adult Civil Protection Act passed by the California legislature on January 1, 1992. The act is designed to encourage elderly people who are financially exploited to file civil suits and collect damages. The law makes it financially worthwhile for lawyers to represent these clients in court by requiring the court to award attorney's fees and costs if the case is proven.⁷

- **Community Forums**

Five community forums were held throughout the Commonwealth during July and August of 1993 to receive public input on this issue. Approximately 60

victims, relatives of victims, advocates, legislators and professionals from a variety of disciplines shared their experiences and provided insights on this topic.

Appendix E reports brief summaries of some of the testimony provided at the community forums.

- **Literature Review**

A literature review reveals a national perception that incidents of financial exploitation are on the increase. The review also documents concern regarding the ability of the judicial and human service systems to effectively respond to the problem.

- Organization of this Report**

This report is organized into four chapters. Chapter II examines factors which place older and incapacitated younger adults at high risk for financial exploitation. Chapter III describes victims of exploitation, perpetrators, and identifies types and value of assets lost through exploitation. Chapter IV examines prevention and resolution of financial exploitation including barriers to both the identification of victims and the successful resolution of cases and looks at methods of enhancing protection to vulnerable adults. Conclusions and recommendations are included throughout the report.

II. RISK FACTORS FOR FINANCIAL EXPLOITATION

Introduction

When a vulnerable adult becomes a victim of financial exploitation, one or more factors are usually present. Those key, or high risk, factors include: advanced age and impairment, social isolation, and financial inexperience. Vulnerability is increased when the victim and the person perpetrating the financial exploitation live together and is further exacerbated if the perpetrator is financially dependent on the victim.

Advanced Age and/or Impairment

A 1991 national study of self-neglecting adult protective services clients demonstrates a relationship between advanced age and an increased vulnerability to all forms of abuse, neglect, and exploitation.⁸ The elderly and disabled adults are easy targets, in part, because they are easily identifiable. They may be trusting and initially may welcome the attention which the perpetrator offers.

Adults who are experiencing deterioration in their physical and/or mental health may lose interest in, as well as ability to manage their financial affairs. Adults who find themselves in this situation frequently turn to someone they trust to handle their financial affairs. If the trusted person has real or perceived financial needs of his/her own, the stage is set for financial exploitation.

The older, the more frail, the more impaired the victim, the less likely the victim will survive a legal process. "The perpetrator has historically been better off the more frail the victim and the more severe the abuse because the victim would be more likely to die from it."⁹

- The day before a 92 year old woman's application for Medicaid was filed by her daughter-in-law, a daughter who had her mother's power of attorney cashed two certificates worth a total of \$36,000 and a transfer of property occurred. The 92 year old nursing home resident was held responsible for the transfer and was found ineligible for Medicaid.

Medicaid Worker

Social Isolation

An adult who becomes socially isolated is easy prey to financial exploitation. Paul Blunt, an attorney with offices in Scottsdale, Arizona, specializes in matters dealing with elder abuse and exploitation. He coined the term "financial prisoner" to describe one group of financially exploited adults. The financial prisoner is typified by adults who are physically or emotionally dependent on a caregiver and who are socially isolated by that caregiver. The combination of dependence and isolation increases the vulnerability to financial exploitation.

- "On Mother's Day 1989, [mother] had a stroke. The stroke left her with impaired short term memory. No other effects. Within weeks of her stroke, she became a virtual prisoner in her own home. She was stripped of personal identification, her personal records including her checking, savings and other investment accounts. Her credit cards along with the keys to her car were removed from her possession. During the next two years nearly \$100,000 was taken from her, an additional \$20,000 in jewelry and silver removed from her possession, her VISA card was forged and charged with over \$5,000 in purchases. The perpetrators were her daughter and a trusted son-in-law."

Daughter of the Victim
Lynchburg Community Forum

Financial Inexperience

An adult whose spouse handled family financial affairs and whose death leaves the survivor with few skills to deal with financial issues is especially vulnerable to financial exploitation. The surviving spouse may be inexperienced in financial matters and may not be aware of the value of her assets. A person who presents him/herself as ready to help is readily accepted as a blessing.¹⁰ Older adults who are unaccustomed to managing financial affairs tend to be slow to recognize what is happening to them or to react to signs that they are being exploited.¹¹

- "Miss Fannie, 80 years old, was left alone after the death of her husband and was unaccustomed to handling family financial affairs. She was frequently taken to the bank by neighbors, relatives, and others who knew her to be an easy mark. Those who took her to the bank also took the money she withdrew. By the time she got home, she had no recollection of having been to the bank let alone who took her there. She did not think she had been exploited. Bank withdrawals were made up to seven

times a day, in amounts from \$50 to \$200 each time. In seven months she had made almost \$37,000 in withdrawals. The Commonwealth Attorney said it would be useless to pursue this case as there were no witnesses. Miss Fannie's son stepped forth to handle his mother's finances. His first action was to buy himself a car using her money."

APS Worker
Wise County DSS

- "An insurance man tells an elderly woman she can lose her farm in one hospital stay and she writes him a check for \$800 for a policy. We got her money back but those tactics are used."

Highland Community Services Board

Living Arrangements of Victim and Perpetrator

The victim and perpetrator lived together in almost half of the cases. The perpetrator lived in the victim's home in 27 percent of those cases while in a smaller number of cases (14 percent) the victim lives in the perpetrator's home as shown in Table I.

A typical scenario is one in which an elderly parent is encouraged to sell or give up an independent living arrangement and move in with an adult child who will provide care for the rest of the elderly parent's life. After a few months, the adult child, the parent, or both are dissatisfied with the arrangement but there is no home to which the parent may return. The terms of the living arrangement may not have been discussed in advance or may not have been understood by the elderly parent. The result is that the elderly person may not be well cared for and his resources are lost to him through pressure, intimidation, or force.

- "Two elderly women were asked by their sons to sell their homes and donate the proceeds to the sons' purchase of a large home in which they would all live together. Both women agreed. Both were ill treated by their daughters-in-law and finally were asked by their sons to leave. Both sons having invested all the money in the new home were unable to return their mothers' money."

Survey Respondent

**Living Arrangement of
Victim and Perpetrator
Table I**

Living Arrangement	Number	%
Did not live together	183	49
Perpetrator lived in victim's home	102	27
Victim lived in perpetrators home	53	14
Victim and Perpetrator lived together	26	7
Don't know	10	3

Source: VDSS analysis of APS cases

Conclusions

Elder abuse research has consistently found a strong relationship between the frailties of advanced old age and increased risk of victimization by abuse, neglect, and financial exploitation. This chapter has demonstrated that advanced age or physical/mental impairment, social isolation, financial inexperience and living arrangement are factors contributing to a high level of risk.

III. PREVALENCE AND NATURE OF FINANCIAL EXPLOITATION

Introduction

Census data indicate that the number of older people in the United States will continue to increase until the year 2040. With the continued increase in the most vulnerable population, a corresponding increase in the incidence of financial exploitation is anticipated. This chapter explores the victims, perpetrators and assets that are exploited.

Adults Who Are Financially Exploited

▪ **Age**

Based on FY 1993 substantiated exploitation cases, 406 adults were 60 years of age or older and 135 adults were younger than 60 years. Fifty-eight victims were younger than 40 and an additional 77 were 40 to 59 years. The majority of victims were 60 years or older with 162 age 60 to 75 and 211 from 76 to 90 years. Thirty-three victims were older than 90.

▪ **Incapacity**

Case reviews found that victims of financial exploitation typically have physical or mental impairments or both. About 70 percent of all victims had a mental incapacity, with 24 percent of those suffering a severe mental disability. Sixty

**Physical/Mental Condition
of Financially Exploited Adults
Table II**

Physical/Mental Condition	%
Mental Incapacity	71
Physical Incapacity	60
No Incapacity	15

Source: VDSS analysis of APS cases

percent of financially exploited adults had a physical incapacity as shown in Table II. Ninety percent of those who had any impairment had both mental and physical. Only 15 percent of financially exploited adults have no physical or mental disability. For that 15 percent, APS investigations were conducted because the victim, while having no physical or mental disability, was 60 years of age or older and met statutory criteria.

□ **Persons Who Exploit**

▪ **Family Members**

Based on substantiated APS cases, approximately three-fourths of the perpetrators were related by blood or marriage to the victim. Only 26% were not related. Anecdotal information supports the finding that adults are at greatest risk of financial exploitation at the hands of someone they trust, usually a family member. In over one-third of the cases, the perpetrator was an adult child of the victim as shown in Table III. A sheriff commented:

"The ones I personally handle are those which the court appoints me guardian. In these cases, almost each person has had problems with the family handling their money, housing and assets."

In many cases, a family member serves as power of attorney for the vulnerable adult. Ten percent of family members who are identified as perpetrators of exploitation also hold the victim's power of attorney. Under these circumstances, the victim is typically reluctant to report the exploitation.

Relationship of Perpetrator to Victim
Table III

Relationship	%
Child	35
Non-related	26
Sibling	6
Parent	4
Spouse	4
In-law	3
Other	22

Source: VDSS analysis of APS cases

"The most frustrating exploitation cases involve elderly adults who are clear minded and not mentally incapacitated. They understand they are being taken advantage of but because the exploiter is a family member, is needy, or shows some kindness the client refuses the offers of protection."

APS worker
Grayson County DSS

Long-term care facilities encounter financial exploitation by family members who hold powers of attorney or guardianships of long-term care residents and do not make regular payments to the facility for the resident's care. This puts vulnerable adults at extreme risk of being discharged for non-payment and

being without critical care. One long-term care facility respondent observed:

"The most frequent cases are family members that have been using elderly relatives' social security income to help with household expenses and continue to do so after relative's admission to a nursing home."

- Powers of Attorney and Guardians/Committees

The five community forums elicited many case examples in which a power of attorney was the vehicle through which financial exploitation occurred.

"I have had cases that involved such blatant acts as powers of attorney moving entire financial estates into their names and leaving an elderly, dependent adult penniless."

APS Worker
Grayson County DSS

The case review found 11 percent of all cases involved a perpetrator who held the victim's power of attorney or guardianship. This small number may reflect a problem in under-reporting of suspected cases of exploitation by powers of attorney, guardians and committees.

The Department of Social Services has procedural guidelines used by LDSS staff in determining eligibility for Medicaid when there has been a transfer of property. The guidelines state that "the worker must determine whether the applicant/recipient was victimized by the transferee - whether the transferee obtained the property without the applicant's/recipient's full knowledge or understanding of the action. An individual cannot be victimized if his/her attorney-in-fact, guardian or committee transferred the property."¹²

For the purposes of Medicaid eligibility, this person was not victimized. Testimony at the community forums indicate that Medicaid workers interpret this to mean that the penalty for improper transfer must be imposed. Medicaid workers do not think of reporting the situation as "suspected exploitation" because, by definition, there has not been any victimization.

Recommendation 1

The VDSS should revise its Benefit Programs policy to clarify the intent of the instruction which pertains to victimization by powers of attorney, guardians and committees. The revision should specify that it is not the intent of policy to prohibit reporting of suspected financial exploitation by legally responsible persons.

Recommendation 2

The VDSS should target Medicaid workers in LDSS to receive training on reporting financial exploitation. The training should include information on the responsibilities of mandated reporters; and how, when, where, and what to report.

Recommendation 3

The General Assembly should consider requesting a study of powers of attorney to examine the need for:

- a restriction that an attorney not represent both an individual who is giving power of attorney and the recipient of the power of attorney when the person receiving is a potential beneficiary of the estate of the person giving the power; and
- a system of reporting by persons holding durable powers of attorney.

Recommendation 4

The Secretary requests that the Virginia Bar Association issue a legal ethics opinion regarding the responsibilities of any attorney who draws up a power of attorney to meet with the person who is granting the power and clearly explain the power being given, the possible ramifications, and procedures for revocation of the power of attorney.

- **Long Term Care Facility Staff**

Financial exploitation by residential facility staff was found in 10 percent of all cases in the case review. However, one LDSS investigated 67 reports of financial exploitation in one residential facility. This large number of cases in a single facility creates a misrepresentation of the incidence of substantiated cases of financial exploitation in facilities.

- **Caregivers**

Perpetrators included those who have responsibility for the care of a vulnerable adult for pay and those who are unpaid caregivers. Twenty-two percent of perpetrators were unpaid caregivers, all of whom were children of the victim. Eight percent of perpetrators provided care for pay and were monitored by a public agency. The number who were private agency employees or were privately employed by the victim was negligible.

- **Others**

One hundred of those identified perpetrators of financial exploitation have some role in the victims life other than a family relationship. These included friends, boarders, neighbors, landlords, hospital staff, attorneys, and laborers.

- **Assets That Are Exploited**

- **Cash assets**

Twelve agencies, other than LDSS, which maintain statistics on financially exploited adults, observed that exploitation of older and incapacitated younger adults resulted most frequently in the loss of cash (76 percent).

The experience of these 12 agencies is supported by the review of APS cases. The review found that 73 percent of all substantiated cases involved the exploitation of cash/checks/bank accounts as shown in Table IV. Well over half (58 percent) of those victimized sustained losses of less than \$1,000. Nineteen percent of those victimized had their check taken at the beginning of the month.

**Resources Exploited
Table IV**

Resources Exploited	No.	%
Cash/checks/ bank account	331	73
Other including "living off" victim	44	9
Household goods	35	8
Real Estate	25	5
Jewelry	12	3
Stocks/bonds	7	2

Source: VDSS analysis of APS cases

were lost is small in number when compared with the number of individuals who lost cash, checks, or bank accounts as shown in Table V. However, the overall value of the loss is greater for the five percent who lost real estate and the two percent who lost stocks and bonds. The value of the resources exploited in two cases was \$300,000 and \$340,000, respectively.

■ **How Assets were Exploited**

In addition to stealing of cash, checks, or bank accounts, methods of financial exploitation vary. It may include payment for work not performed, excessive charge for work that is performed, stolen property, credit card fraud, gifts and loans to the perpetrator that take advantage of the victim's incapacity, and others. The most frequent abuse reported (36 percent) involves the

- "Many individuals with disabilities never see their Social Security check. Other family members will forge the individuals name and cash the check and the person with a disability never has the opportunity to direct or choose how to spend their money."

Endependence Center Incorporated

■ **Real Estate, Stocks and Bonds**

The survey and the case review found similar frequencies in the loss of real estate and other property (14 percent in the survey of agencies, institutions, and 10 percent in the APS case review).

The number of situations in which assets other than cash/checks/ bank accounts

**Value of Resources Exploited
Table V**

Value of Resources Exploited	No.	%
Less than \$1,000	201	58
\$1,001 - \$5,000	82	23
\$5,001 - \$20,000	32	9
\$20,001 - \$50,000	22	6
\$50,001 - \$100,000	10	3
Over \$100,000	2	1

Source: VDSS analysis of APS cases

inappropriate use of funds. Examples of such inappropriate use of the victim's funds include unauthorized use of credit cards, the purchase of a home for the perpetrator, the purchase of an automobile for the perpetrator, use of funds to sustain a drug or alcohol addiction, and pilfering.

- "An elderly couple depended on a son to manage their finances. The son had power of attorney and obtained several credit cards in his parents' names which he used to charge \$10,000 without their knowledge. They did without food and medicine at times but were neither willing nor able to press charges against their son. The Commonwealth attorney did not think follow-up by his office would be appropriate."

APS Worker
Grayson County

- "Sometimes individuals are taken advantage of by people in the community who promise services, receive payment and are never heard from again. Many elderly individuals are either embarrassed to file charges or are afraid to file charges against the person who has taken their money."

Area Agency on Aging
Roanoke

Recommendation 5

The Secretary recommends that the State Corporation Commission study the need for more stringent guidelines for credit or credit card application in order to verify that the applicant or user is authorized to make the application or transaction.

□ Conclusions

Persons most often victimized by financial exploitation have either a mental or a physical incapacity. Exploitation is usually at the hands of a person who the elderly or incapacitated victim trusts, most often a family member. The exploitation is sometimes achieved through the use of power of attorney or guardianship status.

The value of resources lost range from more than \$300,000 for a few victims to less than \$1,000 for most. The loss of resources valued at less than \$1,000 is generally through the exploitation of cash, checks, or bank accounts. The loss to the individual whose resources are very limited may be great even when the dollar value of the lost resources is small.

IV. PREVENTION AND RESOLUTION OF FINANCIAL EXPLOITATION

Introduction

"Under-reported, difficult to detect and to prove and next to impossible to prosecute and recover, exploitation hurts adults in far reaching ways."

**Social Work Supervisor
Campbell County DSS**

A public with a low level of awareness of the problem and under-reporting by professionals and others who are aware of the problem impede prevention efforts. This chapter looks at barriers to identifying victims as well as barriers to successful resolution of cases and methods of enhancing protection.

Barriers to Identification of Victims

Public and Professional Awareness

Awareness of this social problem tends to be very high in LDSS presumably because of their statutory responsibility for investigating reports. Fewer than half of other agencies, and institutions surveyed, including sheriffs, banks, legal aid offices, area agencies on aging, nursing homes and homes for adults, indicated that they are in a position to observe the financial exploitation of older or disabled adults. It is especially significant that 70 percent of banks and more than 60 percent of sheriff's departments report that they are not aware of, or in a position to observe financial exploitation of older or disabled adults. There is a general lack of public awareness of this problem and those in a position to help are most likely to become aware of the problem after exploitation has occurred and it is too late for preventive measures.

■ **Recommendation 6**

The Departments of Social Services and Aging should collaborate with the Virginia Coalition for the Prevention of Elder Abuse to develop a method for informing the general public and selected professional groups about factors increasing risk of financial exploitation and methods for protecting against increased risk. The informational program should target:

- the general public;
- elderly and incapacitated younger adults and their families and caregivers;
- professionals, including bank employees, sheriffs, staff in long-term care facilities, professionals in the field of aging, and, staff of health and mental health facilities.
- guardians, powers of attorney, representatives payees and other substitute decision makers.

■ **Reporting**

The failure of mandated reporters to report suspected financial exploitation impedes investigation, intervention and prevention efforts. Virginia Code § 63.1-55.3, which requires reporting of suspected exploitation, also provides immunity from civil and criminal liability related to the report and a penalty for mandated reporters who are found guilty of failure to report.

This study supports the hypothesis that persons required to report suspected exploitation fail to do so for one or more reasons:

- Businesses or service providers are reluctant to risk a business or professional relationship with an adult who does not want the incident reported;

- Some mandated reporters as well as the general public do not know where to report. There is no toll free, publicized number to receive APS reports. The reporter is expected to know that reports are made to the LDSS.
 - *Recommendation 7*
The Secretary recommends that VDSS develop a toll free number to receive adult protective services complaints and that the number be so advertised.
- Concerns over potential liability and questions of confidentiality persist in spite of the statutory immunity from civil and criminal liability arising out of the report.
- Some mandated reporters continue to be uninformed regarding their responsibility under Virginia Code § 63.1-55.3.
 - *Recommendation 8*
The Secretary recommends that the VDSS conduct an aggressive public education campaign to assure that mandated reporters are informed about their responsibilities and liability protections under Code § 63.1-55.3.
- Some are reluctant to become involved in what may be a very sensitive area.

Reporting by persons who are voluntary reporters accounts for almost 45 percent of all APS reports received in fiscal year 1993. The Virginia Code is clear about the protection from liability of mandated reporters when their records are made available to LDSS investigating suspected exploitation. The Virginia Code does not speak to the protection of voluntary reporters. Clarification of this protection may encourage further reporting and cooperation by voluntary reporters.

When APS investigations are conducted on behalf of individuals who are incapacitated and unable to give consent, access to documentation may not be granted. Virginia Code § 63.1-55.3 requires mandated reporters to disclose all information related to their suspicion of abuse, neglect or exploitation and make

available to the investigating APS worker any records or reports which document the basis of the report. This section of the Virginia Code also requires law enforcement and other state and local departments, agencies, authorities and institutions to cooperate with APS workers in the detection and prevention of abuse, neglect, and exploitation. However, no statutory authority exists to provide access to information, records, and documentation from individuals, private agencies, financial and other institutions.

"Efforts to research and secure documentation are often impeded by those who possess the information. These sources include but are not limited to family members, powers of attorney, guardians, and financial institutions."

APS Social Worker
Warrenton Forum

■ *Recommendation 9*

The General Assembly should consider amending Virginia Code § 63.1-55.3 to specify that persons required to report suspected abuse, neglect, or exploitation are also required to make available to local departments of social services investigating a report all records or reports which document the basis for a report. This amendment would require mandated reporters to provide documentation without regard to who reported.

Bank employees are not covered under the mandated reporting provision of the adult protective services statute and, therefore, are not required to report suspected financial exploitation. Twenty-six banks responding to a survey stated that they are aware of and in a position to observe financial exploitation. The assistance and cooperation of banks as well as sheriffs, and agencies that serve the elderly are essential to any plan to address this problem.

■ *Recommendation 10*

The VDSS should study the feasibility of including persons employed by banks and other financial institutions and persons employed in consumer affairs, among those who are required to report suspected exploitation to local departments of social services.

□ **Barriers to Successful Resolution of Cases**

▪ **Victims Inability or Unwillingness to Take Action**

When victims of financial exploitation realize that they have been victimized, the victim is not always able or willing to take action to recover lost property or hold the perpetrator accountable. The problem may be exacerbated for the victim when the perpetrator is also providing care and emotional support to the victim. It is especially difficult for victims to acknowledge that a family member has betrayed their trust. Legal action is not frequently a route taken by the victim.

A victim's reluctance to pursue legal action against the perpetrator may be related to other fears and misgivings. Many are intimidated by the criminal justice system and the possibility of going to court, giving testimony and being questioned by attorneys. Some fear that a legal review of the exploitation may result in a declaration of their incompetency and, perhaps, placement in a nursing home. A lack of cooperation or participation by the victim is a significant barrier to the successful prosecution of cases of financial exploitation.

"Victims express strong fears that if they take action, there will be repercussions against them."

Social Worker
Warrenton Forum

▪ **Difficulties with Witness Credibility**

Many older adults and incapacitated younger adults are not perceived as credible witnesses. Individuals may be confused about facts or events. These adults may not be reliable witnesses because they are victims of dementia or other mental impairments. Some are not mentally competent to testify, and those who are competent may be easily confused by the questions of attorneys. The complexities and formality of the legal system may intimidate some victims.

Financial transactions which involve an older or incapacitated younger adult may be accomplished through fear and intimidation. Sometimes transactions take advantage of the adult's incompetency, impairment, dependence, or inexperience. In these transactions it is difficult to prove that the older or incapacitated adult did not enter into the financial transaction freely and informed or that the perpetrator was aware of the adult's limitations. The criminal justice system does not typically intervene in these cases. The burden of proving criminal malice and individual responsibility beyond a reasonable doubt is usually an insurmountable burden. For this reason, prosecutors are often reluctant to file in such cases.¹³

APS investigations are thwarted due to a lack of access to information, records and documentation which might be used to support testimony of victims and others. Virginia Code § 63.1-55.3 makes documentary information available to APS only when the person reporting is a mandated reporter.

■ *Recommendation 11*

The General Assembly should consider amending Code § 63.1-55.3 to give authority to the local department of social services to obtain information, records, and documentation from individuals, private agencies, institutions, including financial institutions when the reported exploited individual is too incapacitated to give consent.

□ **Difficulties of Reducing Risk**

Relocation of the victim or discontinuation of the perpetrator's involvement in the victim's life are the methods most often used to reduce the risk of continuing financial exploitation. This can be difficult when most perpetrators are related to the victim.

In the 1993 exploitation cases, an alarming 11% continue to be at risk of financial exploitation. Six percent of those found to be victimized by financial exploitation exercised their right to refuse services.

In 5 percent of the substantiated APS cases, a guardian was appointed for the victim. Most (68 percent) of the guardians appointed were named for the explicit purpose of protecting the victim against future loss of assets. Other expected roles of guardians appointed for financially exploited adults included

arranging for placement of the adult (18 percent) and recovering lost assets (14 percent). Case reviews document that exploited resources are rarely recovered.

The availability of guardians has been problematic in Virginia for many years. Numerous statewide initiatives to study issues pertaining to guardians were documented in the 1990 Senate Document 23.¹⁴ When the victim of financial exploitation needs a guardian to protect against further exploitation there may be no family member available and appropriate to serve. Sometimes the only available family member is the perpetrator of the financial exploitation. When there is no appropriate family member to serve, it is frequently difficult to find a person to be appointed guardian.

The availability of guardians is affected by: whether the victim's income and assets are sufficient to attract a person willing to provide the service for a fee; whether the victim has a friend or acquaintance willing to serve; whether there is a volunteer guardianship program which can serve this victim; and whether the sheriff in the victim's locality is willing to serve. In fiscal year 1993 local departments of social services identified 429 persons who needed a guardian. For 50 percent of those persons, no guardian was available to serve.¹⁵

Help is often too little and too late. Clients we see who have the mental capacity to make an informed decision are the lucky ones. It seems most we see do not have this capacity and a responsible guardian or payee is not available for them.

Social Worker
Wise County DSS

■ *Recommendation 12*

The General Assembly should consider funding a two year pilot project to test the feasibility of a public guardianship program which will provide readily available, qualified persons to assist those who have been found, through an APS investigation, to have been victimized or are at risk of victimization. The 1990 Senate Document 23, *"Public Guardianship: Program Design Options for Virginia"* should be reviewed and used to the extent appropriate in implementing this recommendation.

Difficulties with Successful Prosecution

Families of elderly and disabled victims of financial exploitation and professionals who work with those populations are familiar with the difficulties in prosecuting cases. The recovery of lost assets is rarely achieved and the perpetrator is not usually held accountable.

"We have concerns that many of the perpetrators (and this includes anyone from relative to non-related caregiver, from landlords to ministers,) usually go scot-free, leaving the victims penniless, physically abused and, many times, just generally devastated."

Supervisor of Adult Services
Norfolk DSS

A referral for prosecution was made for 21 percent of cases in which financial exploitation was substantiated through an APS investigation. Twelve percent had been referred before a report was made to adult protective services and 9 percent were referred by APS workers following the APS investigation.

When substantiated cases were not referred for prosecution, the most frequent reason was the preference of the victim that it not be referred (28 percent). This reflects the reluctance of the victim to take legal action against a family member or other caregiver. The second most frequent reason for not referring was insufficient evidence (27 percent). Referrals for prosecution were not made in 11 percent of the cases because the victim was not competent to testify in proceedings.

Five percent of those cases referred for prosecution were pursued. Of the cases referred for prosecution, resources were recovered in two cases, Perpetrators were fined in two cases and perpetrators were imprisoned in three cases. A two year suspended jail sentence for a perpetrator was documented in one case record.

When a case referred for possible prosecution was not prosecuted, the most common reasons given were: the victim did not want the case prosecuted (28 percent); there was insufficient evidence to prosecute (26 percent); the victim

would not be a credible witness (13 percent). Other less frequent reasons for no prosecution included, but were not limited to: the value of the lost resources was small, prosecution would have been harmful to the victim, and no law existed under which the case could be prosecuted.

**How Prosecuted Cases Were Resolved
Table VI**

Resolution of Prosecuted Cases	Number	%
Not pursued for prosecution	287	87
Still in process	25	8
Assets not recovered	8	2
Perpetrator not punished	4	1
Perpetrator sentenced to jail	3	.8
Perpetrator fined	2	.6
Assets recovered	2	.6

Source: VDSS analysis of APS cases

Legal Aid Attorney
Warrenton Forum

The study resolution asked specifically for consideration of the need for additional statutory authority to protect the rights and welfare of older and disabled younger adults who are victims of financial exploitation. The question regarding the need for specific criminal sanction was addressed during this study. No clear consensus emerged from the community forums regarding the usefulness of criminal sanctions for financial exploitation. Supporters of criminal penalties tended to be victim advocates and APS workers. Those opposing tended to represent legal and law enforcement interests. The surveys of long-term care facilities, banks, sheriffs and area agencies on aging also drew a mixed response to this question.

Eleven other states which have criminal penalties for financial exploitation have not provided substantial documentation of the effectiveness of such laws. Delaware, Georgia and South Carolina reported that persons have been

prosecuted under the financial exploitation law in their states. Delaware is unique because as the state has employed a former police office to conduct APS investigations where financial exploitation is alleged. To date two people have been convicted of financial exploitation in Delaware. Both perpetrators received suspended sentences. The state of Georgia has had the Disabled Adults Protection Act since 1981. This act treats exploitation as a misdemeanor. The Georgia respondent is unaware of anyone having been prosecuted for financial exploitation alone but rather in conjunction with other crimes. It has been used fewer than 25 times during the 12 years it has been in effect.

"To be prosecuted under the financial exploitation law, the situation has to be heinous and blatant and those perpetrators are usually convicted. However, a lot more are just as bad and are not prosecuted because of lack of interest, lack of police time, the D.A. office is overworked and it is hard to get credible evidence. Our clients are not the best witnesses. Many times they are somewhat disoriented."

Georgia APS Administrator

South Carolina reported that approximately 12 prosecutions have taken place since 1974 but did not have information about the outcomes. Most of the 11 states with criminal sanctions for financial exploitation expressed ambivalence about the effectiveness of the law. Some respondents felt the law would be more effective as a deterrent if there were more publicity about prosecutions under the law. Some referenced a significant increase in financial exploitation which is related to drugs. Most expressed frustration that something needs to be done to protect elderly and disabled younger adults who are easy prey.

Many of the obstacles to lessening the difficulty of prosecution flow from the constitutional safeguards afforded those accused of crimes, e.g., the requirement of proof beyond a reasonable doubt and the right to confront one's accusers.

The types of financial abuse being perpetrated are already crimes under the Code of Virginia. These crimes include larceny, larceny by trick, larceny by false pretenses, embezzlement, and forgery. These crimes, and subsequent penalties, serve to protect all Virginians regardless of disability or age. The action of the perpetrator is the focus of the prosecution.

A law enacting criminal sanctions for financial exploitation would focus on the victim's vulnerability. In addition to having to prove that a crime, such as larceny, was committed, the prosecution would also have to show that the victim meets the additional criteria of the financial exploitation statutes, e.g. incapacity. If incapacity cannot be demonstrated in court, the person tried under this statute may be less protected, not more protected, than persons tried under existing criminal laws.

No criminal sanction will decrease the susceptibility of the elderly or disabled to these crimes. A combination of education and civil remedies such as those described in recommendations 15 and 16 should be implemented instead of enacting criminal sanctions at this time. Adding age or disability as an element of the crime will not reduce the difficulty of prosecution and may complicate prosecution. Some of the financial exploitation statutes enacted in other states make financial exploitation a misdemeanor for the first offense. Under current Virginia law, the crime may be treated as a felony if the situation warrants.

- **Educational Remedies**

"There is little training for APS workers in how to conduct serious financial exploitation cases."

Adult Protective Services Worker
Warrenton Forum

Enhancement of criminal remedies might best be addressed by educational initiatives. Preventive measures could include education directed toward potential victims, e.g. awareness and informational efforts recommended in this study. Remedial measures might also include bringing together APS workers, Commonwealth Attorneys and law enforcement personnel for training and collaboration on this issue.

- ***Recommendation 13***

The Department of Social Services should collaborate with the Commonwealth's Attorneys' Service Council, Virginia Association of Chiefs of Police, Virginia Sheriffs' Association, develop joint training for the four groups to include, but not be limited to:

- roles, responsibilities, and methods of conducting financial exploitation investigations;
- contents and methods of developing a case; and
- collaboration in complex investigations.

■ **Civil Remedies**

Civil remedies are subject to fewer constitutional constraints and should be explored. Possibilities might include provisions for the recovery of attorney's fees by a successful plaintiff as in the 1992 California Elder Abuse and Dependent Adult Civil Protection Act.

In 1992 California became the first state to pass a law that encourages elderly people who are financially exploited to file civil suits against the perpetrators and collect damages. The law also makes it financially worthwhile for lawyers to represent these elderly victims in court. In the California law the victim's lawyer must prove by clear and convincing evidence that the perpetrator was guilty of recklessness, fraud or malice in the commission of certain forms of abuse: physical abuse, neglect and financial exploitation. "Clear and convincing evidence" is a lower burden of proof than the stricter "proof beyond a reasonable doubt." The "clear and convincing" standard leaves the ultimate decision in the hands of a judge rather than a jury.¹⁶

■ ***Recommendation 14***

The Departments of Social Services and Aging, should collaborate with the Virginia Bar to study and recommend legislation modeled after the California Elder Abuse and Dependent Adult Civil Protection Act, to be introduced at the 1995 session of the General Assembly.

□ **Conclusions**

The greatest challenge in addressing problems associated with financial exploitation is creating heightened awareness of the problem and the risk inherent for vulnerable adults and greater compliance with the mandated reporting provision of Code § 63.1-55.3. Reporting by those in positions to

observe suspected exploitation and access to relevant records for APS staff investigating suspected exploitation should be addressed.

Resolution of cases is made more difficult by the incapacities of victims, the probability that the level of incapacity will increase, the impact of this on future vulnerability, and the lack of qualified and available persons to serve as guardian when needed to protect from further victimization.

Criminal sanctions are not indicated at this time. Educational initiatives and enhanced civil remedies should be implemented in order to strengthen protection to vulnerable adults.

Notes

1. Heisler, Candace and Tewksbury, Jane, "Fiduciary Abuse of the Elderly: A Prosecutor's Perspective," *Journal of Elder Abuse & Neglect*, Volume 3, Number 4, 1991, page 24.
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3. Harshbarger, Scott, Attorney General of Massachusetts, "From Protection to Prevention: A Proactive Approach," *Journal of Elder Abuse & Neglect*, Volume 5, Number 1, 1993, page 42-43.
4. *Elder Abuse: Questions and Answers*. NARCEA. 1990 Wash. D.C., p.6; Testimony of Toshio Tataru, Ph.D. on behalf of NARCEA before Subcommittee on Health and Long-Term Care, Select Committee on Aging, U.S. House of Representatives. May 1, 1990.
5. Virginia Department of Social Services, *Adult Protective Services Annual Statistical Report*, State Fiscal Year 1993.
6. Virginia Department of Social Services, *Ibid*.
7. Hankin, Marc B. "The Elder Abuse and Dependent Adult Civil Protection Act." April 22, 1992. An unpublished manuscript.
8. Virginia Department of Social Services, "A National Study of Self-Neglecting Adult Protective Services Clients," 1991, page 8.
9. Hankin, *Op. Cit.*, p.2
10. Blunt, *Op. Cit.*, p. 22.
11. Heisler and Tewksbury, *Op. Cit.*, p. 27.
12. Virginia Department of Social Services, Medicaid Policy Manual, Volume XIII, Part II, Chapter C, Page 18a.
13. Hankin, *Op. Cit.*, p. 1.
14. Commonwealth of Virginia, Senate Document 23, 1990, *Public Guardianship: Program Design Options for Virginia*.
15. Virginia Department of Social Services, *Adult Services Survey Results, FY 92/93*.
16. Hankins, *Op.Cit.*, p. 1.

APPENDIX A

SENATE JOINT RESOLUTION NO. 308

Requesting the Secretary of Health and Human Resources to study the financial exploitation of incapacitated adults in the Commonwealth.

Agreed to by the Senate, February 9, 1993

Agreed to by the House of Delegates, February 17, 1993

WHEREAS, some older adults and disabled younger adults are victimized by persons who take financial advantage of them for personal gain; and

WHEREAS, some persons in positions of trust have been found to use that position to extort valuables which rightfully belong to the older or disabled younger adult; and

WHEREAS, some older adults and disabled younger adults experience the loss of personal and/or real property at the hands of family members, caregivers or others who take advantage of their vulnerability; and

WHEREAS, frail elderly adults and disabled younger adults, by reason of their greater dependence, are particularly vulnerable to loss of assets through deceitful means or through fear that essential caregiving will be withheld; and

WHEREAS, during the fiscal year 1992, 469 cases of exploitation were substantiated by adult protective service workers in the Commonwealth; and

WHEREAS, the Commission on the Coordination of the Delivery of Services to Facilitate the Self-Sufficiency and Support of Persons with Physical and Sensory Disabilities has expressed concerns about the financial exploitation of incapacitated adults and an interest in exploring methods of addressing the problem; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Secretary of Health and Human Resources be requested to conduct a study of the prevalence and nature of financial exploitation of older adults and disabled younger adults in the Commonwealth. The study shall include, but not be limited to: (i) a review of the types and numbers of financial exploitation complaints made on behalf of older adults and disabled younger adults and the resolution of those complaints, (ii) the need for additional statutory authority to protect the rights and welfare of older and disabled younger adults who are the victims of financial exploitation and (iii) the adoption of other methods of enhancing the protection of vulnerable adults.

In conducting the study the Secretary of Health and Human Resources shall seek input from the appropriate agencies and organizations representing elderly and/or disabled individuals.

All state agencies are requested to cooperate by providing any information or assistance that the Secretary of Health and Human Resources may require for the purpose of conducting this study.

The Secretary of Health and Human Resources shall complete this study in time to report its findings and recommendations to the Governor and the 1994 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

REVIEW OF APS CASES

Five hundred and forty-one adult protective services reports to 81 local departments of social services alleging financial exploitation were substantiated through investigations conducted by local departments of social services in state fiscal year 1993. Case review forms on each of the 541 substantiated cases were sent to the local department of social services which conducted the investigations. A total of 492 case review forms were completed and returned for a response rate of 91%. Data collected from case records focused on information about: the victim, the perpetrator, the exploitation, the outcome of the case, and prosecution.

Victim

Four hundred six of the 541 adults exploited were 60 years old or older. One hundred thirty-five adults were younger than 60 years. Fifty-eight victims were younger than 40 years and an additional 77 were 40 to 59 years. The majority of victims were 60 years or older with 162 age 60 to 75; and 211 from 76 to 90 years. Thirty-three victims were older than 90.

Case reviews found that 60 percent of those who were financially exploited were adults with a physical incapacity. More than 70 percent were adults with a mental incapacity with 24 percent suffering a severe mental disability. Ninety percent of those who had any impairment were both mentally and physically impaired. Only 15 percent of those financially exploited have no physical or mental disability.

Perpetrator

This study found 74 percent of all persons financially exploited were victimized by a relative. In almost a third of all cases, the perpetrator of the exploitation was a child of the victim. The adult child who was the perpetrator was also an unpaid caregiver to his/her parent in 22 percent of the cases. Only 26 percent of those victimized were exploited by someone who was not related to them. Eleven percent of all cases involved a perpetrator who held the victim's power of attorney.

Financial exploitation by residential facility staff was found in 10% of all cases. One local department of social services investigated 67 reports of financial exploitation in one residential facility. In this review, there were no substantiated cases of financial exploitation by physicians, attorneys or repairmen.

When the victim and the perpetrator live together, the risk of on-going abuse, neglect, or exploitation is believed to be high. This study finds that the victim and perpetrator live together in almost 50% of the cases. The perpetrator lived in the victim's home in 27 percent of the cases while in a smaller number of cases (14 percent) the victim lives in the perpetrator's home.

Exploitation

The most common exploitation substantiated by adult protective services investigations (73 percent) involved cash/checks/bank accounts. Well over half (58%) of those victimized sustained losses of less than \$1,000. The number of situations in which other assets were lost are small in comparison to the number of individuals who lost cash/checks/ bank accounts. However, the overall value of the loss is greater for the five percent who lost real estate or the two percent who lost stocks and bonds. The value of the resources exploited in two cases was \$300,000 and \$340,000 respectively.

Methods of financial exploitation vary and include, but are not limited to, payment for work not performed, excessive charge for work that is performed, stolen property, check fraud, gifts and loans to the perpetrator that take advantage of the victim's incapacity, and others. The most frequent method reported (36 percent) involves the inappropriate use of the victim's funds frequently by a person in a position of trust and/or authority. Examples of such inappropriate use of the victim's funds include, but are not limited to, the purchase of a home for the perpetrator, the purchase of an automobile for the perpetrator, use of funds to sustain a drug or alcohol addiction and pilfering. Nineteen percent of those victimized had their check taken at the beginning of the month.

Outcome

The recovery of exploited resources is not usually achieved. This survey finds that in only two cases were the exploited resources recovered. Action taken to reduce the risk of continued or repeated financial exploitation included, but was not limited to, the appointment of a guardian (5 percent), the relocation of the victim (18 percent), and in 16% of cases the perpetrator was no longer involved with the victim. Eleven percent continue to be at risk of financial exploitation. Six percent of those found to be victimized by financial exploitation exercised their right to refuse services.

Adult protective services social workers generally consider the appointment of a guardian as a successful resolution of a case in which financial exploitation has been substantiated. Sixty-eight percent of guardians appointed were named for the explicit purpose of protecting the victim against future loss of assets. Other expected roles of guardians appointed for financially exploited adults included arranging for placement of the adult (18 percent) and recovering lost assets (14 percent).

Prosecution

When an adult protective services investigation substantiates financial exploitation there may be a referral to the legal system for further assessment as to whether prosecution is indicated. Almost half of the cases which are referred for possible prosecution are referred directly to the commonwealth attorney. Most of the other half are referred to local law enforcement with a few referred to city/ county/private attorneys. Referrals for prosecution, however, are rare. Ninety-one percent of substantiated cases were not referred by adult protective services. The most frequent reason given for not referring for prosecution was the preference of the victim that it not be referred (28 percent) which reflects the reluctance of the victim to take legal action against a family member. The second most frequent reason for not referring was insufficient evidence (27 percent). Twelve percent had been referred before a report was made to adult protective services. Referrals for prosecution were not made in 11 percent of the cases because the victim was not competent to testify in proceedings.

Five percent of those referred were pursued for prosecution. When cases were prosecuted only resources were recovered for only two victims. In two cases perpetrators were fined and three perpetrators were imprisoned. A two year suspended jail sentence for a perpetrator was documented in one case record.

When a case referred for possible prosecution was not prosecuted the most common reasons given were: the victim did not want the case prosecuted (28 percent); there was insufficient evidence to prosecute (26 percent); the victim would not be a credible witness (13 percent). Other less frequent reason for not prosecuted included, but were not limited to: the value of the lost resources was small, prosecution would have been harmful to the victim, there was no law under which the case could be prosecuted.

APPENDIX C

FINDINGS FROM A SURVEY OF FIVE TYPES OF AGENCIES/ORGANIZATIONS

Long-term Care facilities, banks, sheriffs, legal aid offices, and area agencies on aging were surveyed to learn about their experiences with financially exploited adults. These agencies/ organizations were selected for survey because of their potential for serving and observing older and incapacitated younger adult victims of exploitation. Table I illustrates responses to the survey by these agencies/organizations.

TABLE I

THE RESPONDENT	NUMBER RECEIVING SURVEYS	NUMBER SURVEYS RETURNED	PERCENTAGE OF SURVEYS RETURNED
Long-Term Care Facilities	350	58	17%
Banks	170	89	52%
Office of the Sheriff	125	60	48%
Legal Aid Offices	41	9	22%
Area Agencies on Aging	25	19	76%
TOTAL	711	234	33%

Forty-seven percent of all survey respondents indicated that they are in a position to observe the financial exploitation of older or disabled adults. Fifty-four percent responded that they are not in a position to make this observation. Of the 89 banks responding to the survey, only 27, or 30 percent indicated that they are in a position to observe financial exploitation. Of the 19 area agencies on aging that responded to the survey, 37 percent reported that they were in a position to observe financial exploitation, making them the most likely group of all those surveyed to observe financial exploitation.

One-hundred four agencies/organizations responding identified 987 older or incapacitated younger adults observed by them to be financially exploited during the 1992 calendar year. Only 12 agencies reported that they keep statistics on the financial exploitation of older or disabled adults. Seven of these 12 agencies are area agencies on aging, three are long-term care facilities, and two are sheriffs' offices. Together they report 37 adults exploited in 1991 and 55 adults exploited in 1992, a total of 92 for the two year period. The experience of these 12 agencies with the 92 incidents is that exploitation of vulnerable adults results in the loss of cash (76 percent), property (14 percent), household goods (7 percent) and other goods (3 percent).

Findings from the survey related to the identity of the perpetrator indicate that while vulnerable adults are especially vulnerable to organized scams, rip-off artists, and unfair/unethical business practices, they are at a much higher risk from people closer to home. Vulnerable adults are at greatest risk of financial exploitation from family members, friends, caretakers and people who have been entrusted with their financial affairs; i.e. guardians, powers-of-attorney, payees. Table II categorizes the alleged perpetrator in terms of his/her relationship to the victim in 65 cases, identified by survey respondents, in which the alleged perpetrator is identified.

Table II*

ALLEGED PERPETRATOR	TOTAL NUMBER	PERCENT OF TOTAL
Family Member	39	60%
Friend	13	22%
Substitute Decision-Maker (guardians, powers-of-attorney, payees)	7	9%
Caregiver (other than family member)	5	8%
Other	1	1%

* This table is based on 65 alleged perpetrators identified in this survey.

Over half (58 percent) of those responding to this survey expressed an opinion that additional statutory protection is needed to address financial exploitation. Other recommended methods of addressing the issue include:

- ▶ a source of readily available guardians for adults whose needs cannot be met in any less restrictive way and for whom traditional sources of guardians are not available; and
- ▶ public education.

**FINANCIAL EXPLOITATION SURVEY RESULTS
(A Survey of 14 States)**

INTRODUCTION

A telephone survey was conducted by subcommittee members of the task force studying financial exploitation pursuant to Senate Joint Resolution 308. The American Public Welfare Association provided a list of twenty-six states reported to have adopted some law concerning financial exploitation of older and/or disabled adults. There were twelve states reported to have enacted criminal financial exploitation laws. The other fourteen states were identified as having legal requirements for reporting financial exploitation of older and/or disabled adults. Attempts were made to contact all twenty-six states. There were fourteen respondents to the survey. The objective of the survey was to gain information about the specifics of each state's law or laws relative to financial exploitation of older and/or disabled adults.

SUMMARY OF RESULTS

1. **Does your state have a law which identifies financial exploitation of older and/or disabled adults as a criminal offense?**

Responses

Alabama	yes
Arkansas	yes
Colorado	yes
Delaware	yes
Georgia	Disabled Adults Protection Act treats exploitation as a misdemeanor. Financial exploitation may also be charged under other laws which carry a felony; e.g. theft by conversion or fraud.
Maine	Law to protect elderly, infirm persons from improvident transfer of title to property
Missouri	yes
New York	no
Ohio	no
Oregon	yes
South Carolina	yes
Tennessee	no
Texas	yes
West Virginia	yes

Eleven states responded "yes." Three responded "no." Telephone responses seem not to have been accurate in every case. Materials received from some of the respondents indicates that some states responding "yes" to this question do not have specific criminal codes related to financial exploitation, rather financial exploitation is addressed in their Adult Protective Services code. In some instances, perpetrators can be charged under the Adult Protective Services Act. In most instances financial exploitation may also be charged under other laws as a felony; such as theft by deception of fraud.

2. How is financial exploitation defined for the purposes of determining a criminal offense?

Responses

Alabama: expenditure or diminution of property or use of assets or resources of a person subject to protection under this provision of this Chapter without the expressed voluntary consent of that person or his legally authorized representative

Arkansas: illegal use or management of an endangered adult's funds, assets, or property or the use of an endangered adult's power of attorney or guardianship or person for the profit or advantage of himself or another

Colorado: illegal or improper use of an at-risk adult or the at-risk adult's resources for another person's profit or advantage

Delaware: illegal or improper use or abuse of an infirm person, his resources or his rights, by another person, whether for profit or for other advantage

Georgia: illegal or improper use of a disabled adult or that adult's resources for another's profit or advantage

Kentucky: 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 persons

Maine: illegal or improper use of an incapacitated or dependent adult or his resources for another's profit or advantage

Missouri:	included in definition of abuse; abuse which is defined as infliction of physical, sexual, or emotional injury or harm including financial exploitation by any person, firm or corporation
Oregon:	financial exploitation is included in criminal mistreatment code; taking charge of dependent or elderly person for purpose of fraud, abandonment or financial exploitation of elderly person to include: criminal negligence, violation of a legal duty to provide care; hides dependent person's or elderly person's money or property, any use or purpose not in the due and lawful execution of the person's responsibilities
So. Carolina	causing or requiring a vulnerable adult to engage in activity or labor which is improper, illegal, or against the reasonable and rational wishes of the vulnerable adult; improper, illegal, or unauthorized use of the funds, assets, property, power of attorney, guardianship, or conservatorship of a vulnerable adult by a person for profit or advantage
Texas	illegal or improper act or process of caretaker using resources of elderly or disabled person for personal profit, benefit or gain
West Virginia	depletes funds to level which places individual at risk, excessive task performed without appropriate reimbursement

3. When was the law in your state first enacted?

A range of dates was provided with the earliest reported as 1974 and the most recent 1993 (Texas and Oregon). However, it was determined on closer review that many of the dates related to mandatory reporting, not a criminal code for financial exploitation.

4. What is the penalty for persons found guilty of financial exploitation?

The penalty varied from state to state ranging in classification from a misdemeanor to a felony based on value of property or loss involved.

5. Has anyone been prosecuted under the financial exploitation criminal law?

Most respondents did not know. Prosecution data was not available to the Adult Protective Services staff interviewed for this report. Many of those interviewed responded that the difficulties of prosecuting such cases are enhanced because of the age and/or physical and mental condition of the victims.

Delaware, Georgia and South Carolina reported that prosecutions had taken place within their states.

5a. Number of prosecutions (actual or estimate)

Delaware reported that 2 prosecutions have taken place during the past 5 months. Georgia estimated that 25 have taken place since 1981 with the law was enacted. South Carolina estimated that 12 have been prosecuted since 1974.

6. What was the outcome of the cases prosecuted?

Delaware reported that two perpetrators were convicted. Georgia reported that the cases were usually won. South Carolina did not know the outcome of the prosecutions.

7. Has the number of cases of financial exploitation changed since the criminal law was enacted?

Most states did not have this information. Respondents stated that they do not have access to data concerning this question. Georgia stated that more cases are identified since the law was enacted.

8. Have there been civil suits in your state against persons who were alleged to have financially exploited an older or disabled adult?

Georgia reported that a client did file suit and recovered money from a son-in-law. Colorado reported that \$40,000 was recovered in a civil suit. Other respondents did not know.

9. In your opinion is the criminal law for financial exploitation effective?

Several respondents felt that with more publicity about prosecutions the law would be more of a deterrent. Others did not know if the law makes a

difference but felt that something is needed to protect older and disabled younger adults.

10. What percent of the population in your state is elderly?

Arkansas	14.5%
Georgia	10 to 12%
Missouri	13%
Ohio	8 to 10%
South Carolina	10%

Other states did not respond to this question.

11. What percent of the population in your state is disabled?

Arkansas 2.3%. Other states did not have this information.

12. Does your state law mandate certain persons to report suspected financial exploitation to APS? If so, who is mandated to report?

Alabama:	yes, physicians and other practitioners of the healing arts
Arkansas:	no
Colorado:	no
Delaware:	yes (list not provided)
Georgia:	yes, physicians, hospital/medical personnel, social workers, law enforcement, etc.
Kentucky:	anyone who suspects
Maine:	yes (list not provided)
New York:	yes (list not provided)
Ohio:	yes (list not provided)
Oregon:	yes (list not provided)
Texas:	yes (list not provided)
South Carolina:	yes (list not provided)
West Virginia:	yes (list not provided)

13. Respondents were asked if there were other persons that we should speak with. States identified individuals within law enforcement, Medicaid fraud, Aging Ombudsman, Legal Services, etc. as well as some advocates for enacting a criminal code within their states.

Conclusion

The information provided indicates that many of the Adult Protective Services administrators interpreted the protective services code to be a criminal code. This effects the validity of some of the responses.

APPENDIX E

COMMUNITY FORUMS

A Study Group which was created to respond to Senate Joint Resolution 308 held five regional Community Forums throughout the Commonwealth in July and August, 1993. Forums were held in Richmond, Abingdon, Lynchburg, Virginia Beach, and Warrenton. Forums in Richmond, Abingdon, and Virginia Beach were moderated by Demis Stewart, Director of the Division of Service Programs, Department of Social Services. Forums in Lynchburg and Warrenton were moderated by Helen Leonard, Adult Services Program Manager, Department of Social Services. A representative from the Department for the Aging co-moderated each of the five forums. At the community forums moderators and members of the Study Group listened to a wide variety of commentary by victims of financial exploitation, their family members, private and public human service agency representatives, attorneys, and others. Attendance at the forums ranged from 15 individuals to 50. Many testimonies demonstrated the dedication of professional staff working with older and incapacitated younger adults and many demonstrated the tenacity of families committed to the best interest of their older or incapacitated family member. The most frequent themes that permeated testimony at the five community forums included:

- ▶ Financial exploitation of older and incapacitated younger adults is a growing problem.
- ▶ Prevention through public awareness and reporting is an important step. A public with a low level of awareness of the problem and under reporting by professionals and others who are aware of the problem impede prevention efforts.
- ▶ Victims are typically powerless to pursue remedies for themselves.
- ▶ Family members and other trusted persons who financially exploit are frequent, blatant and a major part of the problem.
- ▶ The misuse of a power of attorney by a family member or other person to financially exploit is widespread.
- ▶ Perpetrators are not usually held accountable for their crime.
- ▶ There is an urgent need for a public guardianship program in the Commonwealth.

The following excerpts are from the testimonies given at the forums:

A Growing Problem

- ▶ **Financial exploitation is a rapidly growing monster that needs to be destroyed and I hope that as a result of information shared during these forums, all of us from legislators to lay individuals will be motivated to do whatever we can, whatever it takes, to protect these very vulnerable citizens.**

**Supervisor of Adult Services
Norfolk DSS**

- ▶ **In the last few years we have noted that reports of financial exploitation have shifted from reports of misuse of monthly benefits to allegations of exploitation of large amounts of income resources including bank accounts, CDs and real estate.**

**APS Worker
Loudoun Co. DSS**

- ▶ **More and more we are receiving reports of citizens who have been financially victimized by family members, "so called friends" or total strangers. We have seen unscrupulous organizations and advertisements, even religious institutions take advantage of some elderly and disabled who can be such easy targets. We have seen exploitation of the poor and the wealthy; it can happen to an SSI recipient or a financially secure retiree. The problem cuts across class, ethnic and economic lines.**

**Assistant Director
Portsmouth DSS**

Prevention through Public Awareness and Reporting

- ▶ **People need to become more aware of what is happening. We need to get the word out about this type of exploitation. As long as greed is a part of our society and human nature we cannot eliminate it. People need to be aware of what is happening and have a sense that they can give some direction to elderly people and agencies who can help.**

**State Senator
Tazewell**

- ▶ **We must educate the public so that cases can be brought to light. We need to strengthen APS policies and provide sufficient funds for staff and resources.**

**Assistant Director
Portsmouth DSS**

- ▶ **Under reported, difficult to detect and to prove and next to impossible to prosecute and recover, exploitation hurts adults in far reaching ways.**

**Social Work Supervisor
Campbell County DSS**

Victims are Powerless

- ▶ **Whether it's \$40,000 in savings or a \$400 disability check, exploitation touches, often in secrecy, many of our most vulnerable members of society. Victims seldom pursue civil action because the abuser may be a family member, their caretaker or their only other human contact. Little other recourse exists and losses are usually final.**

**Social Worker
Campbell County DSS**

- ▶ **A law on paper is spelling out the rights under the law. The words really do not mean anything unless you are able to enforce them. If you are mentally ill what you have to say is brushed off. Your competency is questioned and agencies tend not to look at you as a credible person.**

**Representative
Lynchburg Depressive Disorders Association**

Family Members and Other Trusted Persons who Exploit

- ▶ **The most frustrating exploitation cases involve elderly adults who are clear minded and not mentally incapacitated. They understand they are being taken advantage of but because the exploiter is a family member, is needy, or shows some kindness the client refuses the offers of protection.**

**APS worker
Grayson County DSS**

- ▶ **My mother has been exploited for the past several years in many ways--first by doctors, mostly by lawyers, and worse of all by a greedy family member.**

**Daughter of Victim
Lynchburg Community Forum**

- ▶ **An 83 year old incompetent lady hired a friend of a friend to do some roofing repairs. He befriended the woman and agreed to move into her large home in exchange for doing odd jobs around the house. We heard about the situation when a mortgage company was foreclosing on her home because of non-payment of a second mortgage. The adult protective services worker was able to delay the foreclosure and did learn the location of the helper who had moved out of the home. It was found that this man had taken about \$100,000 from**

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the lady and used the second mortgage to buy a sports car for the 83 year old who had never driven in her life.

**APS Supervisor
Richmond City DSS**

- ▶ **Relatives often keep an incapacitated person at home, without being willing or able to give them proper care, just to keep and use the money of the incapacitated person.**

**Social Worker
Wise County DSS**

- ▶ **Sometimes it's really hard to make a mentally retarded person understand that one of their family members or a friend is paying attention to them only so they can get money, sex, or something else from them.**

**Clinician
Portsmouth Community Services Board**

- ▶ **Many individuals with disabilities never see their Social Security check. Other family members will forge the individuals name and cash the check and the person with a disability never has the opportunity to direct or choose how to spend their money.**

**Endependence Center Incorporated
Norfolk**

- ▶ **Two daughters and a grandson arranged psychiatric hospitalization for an elderly woman. The hospitalization was later determined inappropriate as she had no psychiatric problem. During her hospitalization the three moved into the elderly woman's house. When they learned that she would be returning home, the attic was prepared for her with locks on the door. She would not have access to her house. Her antique furniture had been sold. As a result of agency intervention a guardian was appointed, the children and grandson were told to vacate the house. The elderly lady had a hard time adjusting to what her family did to her.**

**Area Agency on Aging
Roanoke**

- ▶ **Frequently the perpetrator is known to the individual and has been a trusted confidant or caretaker. These relationships are often characterized by strong emotional bonds and/or the client being dependent on the individual for many of their most basic needs. Often these individuals feel they have no one else in their lives to provide emotional or physical assistance.**

**APS Worker
Loudoun Co. DSS**

Misuse of power of attorney

- ▶ The day before a 92 year old woman's application for Medicaid was filed by her daughter-in-law, a daughter who had her mother's power of attorney cashed two certificates worth a total of \$36,000 and a transfer of property occurred. Medicaid policy says you cannot be victimized by your power of Appendix D attorney, committee, or guardian. Therefore, the 92 year old nursing home resident was held responsible for the transfer and was found ineligible for Medicaid.

**Medicaid Worker
Wythe County DSS**

- ▶ Exploitation can range in severity from taking small sums of money from an individual's home, selling their belongings for cash, stealing their checks, to forging checks and even threatening and coercing a client to sign over payee status to the exploiter. I have had cases that involved such blatant acts as Powers of Attorney moving entire financial estates into their names and leaving an elderly, dependent adult penniless.

**APS Worker
Grayson County DSS**

- ▶ An elderly couple depended on a son to manage the finances. The son had power of attorney and obtained several credit cards in his parents' names which he used to charge \$10,000 without their knowledge. They did without food and medicine at times. They were not willing or able to press charges and the Commonwealth Attorney did not think follow-up by his office would be appropriate.

**APS Worker
Grayson County DSS**

Perpetrators are Not Held Accountable

- ▶ We also have concerns that many of the perpetrators (and this includes anyone from relative to non-related caregiver, from landlords to ministers,) usually go scot-free leaving the victims penniless, physically abused and, many times, just generally devastated.

**Supervisor of Adult Services
Norfolk DSS**

- ▶ In increasing numbers of situations money is used to support someone's drug habit and there is no money that can be pursued. In such cases it is often decided by the criminal system that our clients because of borderline mental abilities would not make good witnesses and prosecution is not worth the effort.

APS Supervisor
Richmond City DSS

- ▶ Miss Fannie, 80 years old, was frequently taken to the bank by neighbors, relatives, and others who knew her to be an easy mark. Those who took her to the bank also took the money she withdrew. By the time she got home, she had no recollection of having been to the bank let alone who took her there. She did not think she had been exploited. Bank withdrawals were made up to seven times a day, in amounts from \$50 to \$200 each time. In seven months she had made almost \$37,000 in withdrawals. The Commonwealth Attorney said it would be useless to pursue this case as there were no witnesses. Miss Fannie's son stepped forth to handle his mother's finances. His first action was to buy himself a car using her money.

APS Worker
Wise County DSS

- ▶ There is much publicity surrounding child abuse but almost none surrounding abuse of the elderly. Abuse, especially financial abuse among the elderly or incapacitated remains cloaked in secrecy. The reaction we've gotten from local law enforcement personnel, even attorneys, is similar to the treatment of spouse abuse--it's a little domestic quarrel and there are certain unwritten rules about it. Many women have lost their lives from benign neglect by kindly law enforcement authorities who see abusive situations as a "little domestic dispute." Thousands of elderly and incapacitated adults are being victimized by a system that is looking the other way.

Daughter of Victim
Salem

- ▶ An insurance man tells an elderly woman she can lose her farm in one hospital stay and she writes him a check for \$800 for a policy. We got her money back but those tactics are used. In some cases the issue is dropped because local authorities will not cooperate. APS finds the person needs protective services, hands it over to the local authorities and that is where it stops in many instances. If we are going to stop this we must do something with the situations that can be remedied. There are delays and road blocks when you have a clear situation that needs to be prosecuted.

Highland Community Services Board

- ▶ Sometimes individuals are taken advantage of by people in the community who promise services, receive payment and are never heard from again. Many elderly individuals are either embarrassed to file charges or are afraid to file charges against the person who has taken their money. A change in the current law is needed to allow adult protective service staff as well as law enforcement to initiate legal action against those individuals who have exploited the elderly.

**Area Agency on Aging
Roanoke**

Public Guardian and Other Protection Needed

- ▶ Services are often too little and too late. Clients we see who have the mental capacity to make an informed decision are the lucky ones. It seems most we see do not have this capacity and a responsible guardian or payee is not available for them. It is not unusual to see physical abuse along with the exploitation.

**Social Worker
Wise County DSS**

- ▶ A quick and easily accessible public guardianship program to manage clients' funds is only part of the solution. Due to lack of money management skills, poor insight and judgement, our clients need aggressive case management to assist in supervision of obtaining basic needs vs squandering funds.

Portsmouth Community Services Board

- ▶ I urge you for the sake of [mother] and for last year's other 8,000 or so victims to have the courage to enact protection with some teeth.

**Daughter of Victim
Salem**