Consumer Fraud and the Elderly: The Need for a Uniform System of Enforcement and Increased Civil and Criminal Penalties

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Increasingly, swindlers are targeting the elderly in perpetrating their fraudulent schemes. In his note, Richard Starnes approaches this disturbing problem by first examining the various methods used to defraud elderly consumers. Next, the author analyzes the current criminal and civil deterrents used to protect elderly consumers and finds them inadequate. Specifically, the lack of uniformity in laws and enforcement allows crafty swindlers to evade liability. To combat this growing problem, the author concludes by proposing a uniform system of enforcement and punishment to effectively protect the elderly.

I. Introduction

A widow loses over $800,000 because of fraudulent advice given by a telemarketing investment firm over the course of a year.[1] A woman in Kentucky pays $3,400 for improvements to her house that were never made; she then pays an additional $1,260 to a nonexistent

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1. *The Nature and Extent of Telemarketing Fraud and Federal and State Law Enforcement Efforts to Combat It: Hearings Before the Commerce, Consumer and Monetary Affairs Subcomm. of the House Comm. on Government Operations*, 101st Cong., 2d Sess. 16 (1990). The widow, Mrs. Teresa Angle, was financially secure after her third husband had invested in blue-chip stocks of a number of companies, including Eastman Kodak, Chase Manhattan, and General Motors, as well as in a number of mutual funds. A "Group America" representative convinced her to convert all of her assets to risky investments they suggested by repeatedly promising her financial security, giving authentic-sounding investment information, and providing this lonely widow nearly constant attention. *Id.*

company on a "lien" for the cost of materials for the improvements.[2] A man suffering from bladder cancer refuses to see a doctor because health store clerks told him that a combination of herbal remedies would prevent the cancer from living in his body.[3] The victims in all these cases have more in common than just being defrauded—they are all older Americans.[4]

The elderly population in the United States is the target of various types of consumer fraud in a much greater proportion than the rest of society.[5] Currently, Americans over the age of sixty-five make up about twelve and a half percent of the nation's population (about thirty-one million people),[6] and that figure is predicted to climb to eighteen percent by the year 2000.[7] Yet, this population constitutes at least thirty percent of the nation's victims of fraud.[8] Many operators of fraudulent schemes specifically target the elderly for a number of different reasons, ranging from the victims' availability[9] to the isolation of many members of the elderly population.[10] As the elderly population continues to grow, opportunities for those operators will dramatically increase.

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2. STAFF OF SENATE SPECIAL COMM. ON AGING, 98TH CONG., 1ST SESS., CONSUMER FRAUDS AND ELDERLY PERSONS: A GROWING PROBLEM 9 (Comm. Print 1983) [hereinafter A GROWING PROBLEM].

3. *Consumer Fraud and the Elderly: Hearing Before the Senate Comm. on Commerce, Science, and Transportation*, 98th Cong., 2d Sess. 10 (1984) [hereinafter *Consumer Fraud*].

4. Patrick E. Michela, Comment, "*You May Have Already Won . . .*": *Telemarketing Fraud and the Need for a Federal Legislative Solution*, 21 PEPP. L. REV. 553, 553 (1992); A GROWING PROBLEM, *supra* note 2, at 9; *Consumer Fraud*, *supra* note 3, at 10. The terms "older," "elderly," and "senior citizens," as used in this note, refer to those over the age of 55. Traditionally, these terms refer to those 65 and older. However, the Senior Citizens Against Marketing Scams Act, passed by Congress in 1994, protects those over the age of 55. 18 U.S.C. § 2325 (1994). *See* Lawrence A. Frolik & Alison P. Barnes, *An Aging Population: A Challenge to the Law*, 42 HASTINGS L.J. 683, 683-687 (1991).

5. *See* A GROWING PROBLEM, *supra* note 2, at 1 ("[T]he elderly are more frequently defrauded than the younger population"); Nina Keilin, Note, *Client Outreach 101: Solicitation of Elderly Clients by Seminar Under the Model Rules of Professional Conduct*, 62 FORDHAM L. REV. 1547, 1547 (1994) ("[A] disconcertingly large number fall victim each year to swindles and consumer fraud."). The elderly are also more likely to suffer disproportionate losses due to consumer frauds. A GROWING PROBLEM, *supra* note 2, at 1.

6. S. 1217, 103d Cong., 1st Sess. § 1(a)(3) (1993); Keilin, *supra* note 5, at 1550.

7. S. 205, 103d Cong., 1st Sess. § 2(2) (1993).

8. S. 1217, *supra* note 6, § 1(a)(3). This figure is on the conservative side—other sources have the figure at 60% and higher. *See, e.g.*, Keilin, *supra* note 5, at 1551.

9. S. 1217, *supra* note 6, § 1(a)(5).

10. A GROWING PROBLEM, *supra* note 2, at 2.

Even though there have been some initiatives to combat this problem,[11] many operators of fraudulent schemes slip through the cracks in state or federal statutes, or create new schemes to fall outside the scope of the statutes. Because there is no comprehensive program of enforcement, punishment, and restitution, law enforcement officials must resort to a plethora of different methods to apprehend and prosecute those who defraud the elderly.[12] This hodgepodge approach to combating fraud leads to prosecutorial mistakes and inconsistent results, allowing a significant number of those who defraud the elderly to escape punishment.[13] By adopting a comprehensive, uniform system of enforcement and liability, incorporating both federal and state policies and resources, law enforcement officials will be able to more easily discover fraudulent schemes, successfully prosecute those perpetrating the schemes, and obtain restitution for the victims.

This note will examine fraudulent practices that affect the elderly and the current methods that are used to fight these practices. The note will then propose a uniform system of enforcement and enhanced punishment for those who defraud the elderly. Part II of the note will give the background necessary to understand the problem. It will discuss the elderly as victims and why the elderly, as a group, need more protection from consumer fraud than the general population. It will also describe some of the more common schemes used to defraud the elderly. Part III will evaluate the current methods of enforcement and punishment, according to their effectiveness in fighting fraud on the elderly and their contributions to a comprehensive plan. It will also look at some recent and proposed changes in the law. Finally, part IV will give suggestions for a uniform plan for both the federal government and state governments to stop consumer frauds on the elderly, to punish those who perpetrate it, and to help elderly victims regain what they lost to these schemes.

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11. *See, e.g.*, 18 U.S.C. § 2325 (an example of federal legislation enacted to combat consumer fraud on the elderly); CAL. WELF. & INST. CODE § 15610 (an example of state legislation).

12. *See, e.g.*, Pamela L. Bucy, *Fraud by Fright: White Collar Crime by Health Care Providers?*, 67 N.C. L. REV. 855, 883 (1989) (stating that 30 different federal and 20 different state statutes are used for prosecutions of fraud perpetrated by health care providers alone).

13. *Id.*

II. Background

A. The Elderly as Victims

As stated previously, consumer fraud schemes target the elderly more often than any other single group in the country.[14] Moreover, it is possible that the actual number of elderly victims affected by consumer fraud may be fifty to ninety percent higher than reported. The lack of reporting is due to the elderly victims' embarrassment about being "taken" by a fraudulent scheme,[15] the fear of appearing senile or unable to care for themselves,[16] or the lack of knowledge about where to complain.[17]

There are wide-ranging reasons why the elderly become consumer fraud targets so often. The elderly are an easily accessible group—typically, they are retired and at home more than younger citizens, making it easier for a telemarketer or door-to-door solicitor to contact the elderly.[18] Many elderly people live alone, which makes them easy targets for two reasons. First, they have no one to consult about a questionable transaction and, therefore, are likely to only use the information given by the salesperson (which is always positive) to decide whether or not to accept an offer.[19] Second, lacking other sources, they may have a greater desire for social contact than younger members of the population.[20] Limited access to transportation and lack of nearby family adds to this social isolation.[21] Elderly widows are especially vulnerable, because this elderly generation of women, whose husbands often took responsibility for their family's business matters, tend to lack experience in financial matters.[22]

Furthermore, chronic health problems and disproportionately high participation in the health care market make the elderly espe-

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14. *See supra* text accompanying notes 7-8.

15. Keilin, *supra* note 5, at 1551. One victim of a fraudulent scheme, 81-year-old Ceferino Cruz, was so upset by losing his $7,000 life savings that he committed suicide instead of reporting it to the police. John H. Cutter, *YOU Are the Target*, ST. PETERSBURG TIMES, Sept. 27, 1994, at 16G.

16. Cutter, *supra* note 15, at 16G.

17. *Id.*

18. S. 1217, *supra* note 6, § 1(a)(5).

19. Keilin, *supra* note 5, at 1555-56.

20. *Id.* See Michela, *supra* note 4, at 533-34 for an example.

21. S. 205, *supra* note 7, § 2(4).

22. Keilin, *supra* note 5, at 1555. It is easy for operators of fraudulent schemes to find many widows to target because women have a greater life expectancy than men which increases with age. *Id.; see also* Cutter, *supra* note 15, at 16G.

cially vulnerable to many types of health care fraud.[23] The promise of a quick or easy cure for a chronic illness such as arthritis or cancer appeals to the elderly population, who encounter these problems more frequently. Consequently, this makes elderly people seeking relief an easy target. Physical incapacity in general can affect how an older person responds to a salesperson.[24] An invalid, who is grateful for the attention from a member of the "outside world," will buy whatever the salesperson has to offer, as a result of either gratefulness or an obligation to reward that person for their time and attention.

Finally, the elderly are generally more trusting and willing to talk to strangers than younger individuals.[25] A representative of the American Association of Retired Persons characterizes this trust more as a generational difference than as a consequence of aging, explaining that this elderly generation is just "too friendly."[26] Many elderly victims do not believe that someone who takes the time to visit with them is trying to defraud them.

Many senior citizens are educated consumers who shop around, deal only with businesses with which they are familiar, and know how to handle scams.[27] However, the factors discussed above show just how vulnerable the elderly can be when confronted with a persuasive salesperson offering a once-in-a-lifetime deal. This heightened vulnerability is what leads to the greater victimization of the elderly by the perpetrators of consumer fraud.

B. The Scams

The types of consumer fraud are widespread, affecting every area of consumer life from health care to housing.[28] In addition, for at least the past ten years, incidents of consumer fraud have been increasing.[29] Although the large number of different types of scams

23. A GROWING PROBLEM, *supra* note 2, at 5-8, 10-11; 1 SENATE SPECIAL COMM. ON AGING, DEVELOPMENTS IN AGING: 1992, S. REP. NO. 40, 103d Cong., 1st Sess. 189 (1993) [hereinafter 1 DEVELOPMENTS].
24. S. 205, *supra* note 7, § 1(5); Keilin, *supra* note 5, at 1556.
25. Cutter, *supra* note 15, at 16G.
26. *Id.*
27. *Id.*
28. A GROWING PROBLEM, *supra* note 2, at 2.
29. In 1984, law enforcement officials reported an annual increase of 12% a year (which was before telemarketing fraud was a major source of consumer fraud). *Id.* New telemarketing frauds, the quickest growing area of consumer fraud, are created every day. Michela, *supra* note 4, at 555. Between 1979 and 1986, prosecutions of health care frauds grew at a rate of 234%, almost triple the rate of any other type of fraud. Bucy, *supra* note 12, at 870-71.

makes it difficult to categorize them, most can be placed in a few general areas which have the largest effect on the elderly. Those general areas include telemarketing fraud, health care fraud, and home repair fraud.

1. TELEMARKETING FRAUD

Telemarketing has become an enormous industry. After only a decade of rapid growth, the telemarketing industry is worth over $400 billion per year.[30] Most of the industry operates in a legitimate manner and provides the public with an easy and efficient way to receive products and services. However, now that the telemarketing industry is so large and well-known to the public, the opportunities for swindlers to carry out their deceptions in a nameless, faceless manner over the telephone under the auspices of a legitimate telemarketing business have allowed the operators of fraudulent schemes to invade the industry.[31]

The Senior Citizens Against Marketing Scams Act defines telemarketing as any plan which induces a purchase of goods or services or participation in any contest or sweepstakes by use of one or more interstate telephone calls, regardless of who initiates the calls.[32] This definition addresses two of the major types of telemarketing fraud—the investment scam and the sweepstakes scam.

Although any product can be used in a fraudulent telemarketing sales scheme, the most common is some type of fake investment, resulting in an investment scam. These fake investments include the sale of coins, precious metals, gems, real estate, or oil and gas leases.[33] The victim, assured of a safe and profitable investment, pays large amounts of money, often their entire savings, to purchase these investments before discovering, usually too late, that the investments were either nonexistent or worthless.[34] The sweepstakes scam begins

30. Nadji Tehrani, *Publisher's Outlook: We Agree With the U.S. Department of Commerce . . . H.R. 1304, as Proposed, Is Too Restrictive on Business and Unnecessary!*, TELEMARKETING, Sept. 1991, at 1.

31. Michela, *supra* note 4, at 555.

32. 18 U.S.C. § 2325 (1994). The legislation creates an exception from the definition for legitimate catalog businesses. *Id.*

33. Michela, *supra* note 4, at 565. For an example of this type of scam, see *supra* note 1 and accompanying text.

34. Michela, *supra* note 4, at 566. The author gives an example of a scam where telemarketers sold land with "guaranteed" coal deposits, supplementing the call with brochures and referrals. After paying, customers would receive a letter stating they had received the land with mineral rights, when the company never

when a victim receives a letter stating that he or she has won a prize and gives a number to call to claim the prize. The catch is usually that the prize requires either a significant fee for "processing" or shipping,[35] or the purchase of a high-priced product which overshadows the value of the prize.[36] In some scams, the prize does not even exist, so the victim pays for nothing.[37]

Many other telemarketing scams exist, including credit card scams,[38] 900-number scams,[39] and false charitable organizations.[40] Despite the large number of schemes, most telemarketing scams are operated in the same manner. Many schemes operate out of what are called "boiler rooms"[41] that can be moved quickly in the event they are discovered by law enforcement officials. They usually feature a large number of salespeople and telephones.[42] The pitches are started by a "fronter," one of the least experienced salespeople, who obtains the customer's interest by using a prepared script drafted to help the salesperson overcome almost any objections. Then, the fronter turns the customer over to a "closer," one of the most experienced salespeople, to finish the sale.[43] Law enforcement officials have problems locating and shutting down these operations because they lack permanence—it is estimated that eighty-five percent of boiler rooms remain uninvestigated.[44]

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owned the mineral rights to sell in the first place. This was irrelevant, however, because the coal beneath the land had already been mined. *Id.*

35. *Scams Most Often Target Senior Citizens*, ORLANDO SENTINEL, Oct. 30, 1994, at A4 [hereinafter *Scams*].

36. Michela, *supra* note 4, at 567-68.

37. *Id.* at 566-67.

38. Telemarketers encourage consumers to purchase inferior or nonexistent merchandise with a credit card, giving the company time to get their money and run well before the consumer can do anything about it. *Id.* at 570.

39. The consumer receives notice of a product through the mail, in an advertisement, or through a toll-free phone call, but must call a costly 900-number to find out about it. *Id.* Often, the rates on the calls will be misrepresented, leading to further fraud. *Id.*

40. HOUSE COMM. ON GOVERNMENT OPERATIONS, THE SCOURGE OF TELEMARKETING FRAUD: WHAT CAN BE DONE AGAINST IT?, H. REP. NO. 421, 102d Cong., 1st Sess. 14 (1991) [hereinafter SCOURGE]. Telemarketers represent bogus charities and religious groups, misrepresent an association with a legitimate charity, and misrepresent the benefits or uses of a contribution. Most often, the designated charities never receive a dollar. A GROWING PROBLEM, *supra* note 2, at 8.

41. SCOURGE, *supra* note 40, at 3 n.3. The term comes from the trend for early telemarketing schemes to rent space in old buildings, usually in or near the boiler room. *Id.*

42. *Id.*

43. Michela, *supra* note 4, at 560.

44. SCOURGE, *supra* note 40, at 13.

2. HEALTH CARE FRAUD

Health care fraud, which comes in a number of different forms, is one of the fastest growing areas of fraud against the elderly. Health care fraud can involve either physicians[45] or salespeople representing health groups or companies selling medicine or medical equipment.[46] Quackery, one of the most prevalent forms of health care fraud, involves the marketing of miracle cures by some kind of medicine, device, or procedure.[47] Every disease from arthritis to cancer has been targeted by quacks.[48] The elderly buy into these schemes, hoping for quick relief from their chronic health problems. However, the victim loses his or her money, and the condition either remains or worsens from lack of proper treatment.[49]

Another major area of health care fraud is misrepresentation of the services rendered and the cost of services performed.[50] Often, this involves defrauding not only the patient, but also defrauding the provider of the patient's insurance coverage or other medical benefits.[51] In these schemes, physicians will either charge for services they did not perform, overcharge for procedures, or misrepresent the services that they performed in order to place the procedure within the scope of insurance coverage.[52] According to some insurance industry estimates, as much as ten percent of all health care spending may be fraudulent.[53] One reason for the high percentage of fraud, especially in the Medicare realm, is the failure of carriers, the agencies that administer the insurance programs, to effectively review the reports of costs made by physicians.[54] Other reasons for the pervasiveness of

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45. *See generally* Bucy, *supra* note 12.
46. A GROWING PROBLEM, *supra* note 2, at 5-6.
47. *See generally Consumer Fraud*, *supra* note 3.
48. *See* AMRAM DUCOVNY, THE BILLION DOLLAR SWINDLE 24-36 (1969). Physicians as well as nonmedical schemers have been prosecuted for quackery. *See* Busy, *supra* note 12, at 906 (giving an example of a doctor prosecuted for claiming his clinics could cure cancer through the use of unorthodox procedures).
49. A GROWING PROBLEM, *supra* note 2, at 5.
50. Busy, *supra* note 12, at 893-98.
51. *Id.*
52. *Id.* An example of this final scheme is a physician who represented to Medicare that he had performed complex podiatric services that were compensable when he actually only trimmed the patients' toenails, a noncompensable service. *Id.* at 896.
53. 1 DEVELOPMENTS, *supra* note 23, at 187.
54. *Id.* at 158. The Health Care Financing Administration (HFCA), responsible for the overall administration of Medicare and Medicaid, has also failed to review postpayment reports from the carriers, leaving many incidents of fraud completely undetected. *Id.*

Medicare and Medicaid fraud are carriers' failure to properly investigate claims of fraud[55] and the lack of federal funding for safeguard procedures to keep pace with the increase in claims.[56]

There are many other scams involving all aspects of the health care industry from nursing homes[57] to prescription drug frauds.[58] Because the elderly will always need health care of some type or, more likely, a combination of services, they are a readily available target of health care fraud.

3. HOME REPAIR FRAUD

Another area which attracts a number of consumer fraud schemers is home repair and improvements.[59] These schemes are carried out in many different ways, but they all start basically the same way. A contractor approaches a victim, saying that his or her work crew was doing some work in the neighborhood and noticed some type of problem with the victim's home.[60] The contractor will then offer a bargain for the repair service, often telling the victim not to mention it to anyone because the deal was not given to other customers.[61] At this point, the scheme may take many different paths. The contractor may take a large down payment and then leave, never doing the work.[62] If the crew actually does the work, it is often shoddy and will need to be

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55. *Id.* The Office of the Inspector General reported in 1988 that the HFCA had only investigated a total of 10 cases per carrier, often with insufficiently trained personnel. *Id.* In response to this criticism, the number of cases investigated rose to 20 per carrier, which is still a relatively low number. *Id.*

56. The General Accounting Office reported cuts of 50% in private contractors' claims review staffs. *Id.* Due to congressional pressure, the HFCA has refocused resources on the safeguard activities, but the problem is far from under control. *Id.* at 190.

57. Nursing homes may charge for services that should be covered by fees that have already been paid and thus defraud patients out of their personal maintenance funds. A GROWING PROBLEM, *supra* note 2, at 11.

58. Doctors can easily charge more money for medicines they disburse themselves because the charges can get lost in the large volume of services most elderly people need from a physician. Bucy, *supra* note 12, at 894. This fraud can be especially hard to prove because the drugs are fungible, leaving no tangible evidence of the fraud. *Id.* at 894-95.

59. A GROWING PROBLEM, *supra* note 2, at 6. This may be the most common way the elderly are defrauded. Cutter, *supra* note 15, at 16G.

60. Cutter, *supra* note 15, at 16G. Typically, the problem will involve roofing and siding, insulation, furnace repair, chimney replacements, basement waterproofing, or driveway topping. A GROWING PROBLEM, *supra* note 2, at 6.

61. *E.g.*, *Frauds and the Elderly: Hearing Before the Senate Special Comm. on Aging*, 97th Cong., 1st Sess. 47 (1981) [hereinafter *Frauds and the Elderly*].

62. A GROWING PROBLEM, *supra* note 2, at 6.

repaired, costing the elderly victim even more money.[63] Sometimes the workers will perform the work even if the victim turned down the offer and then demand payment for the services.[64] Even worse, the perpetrators of these schemes often scan the obituaries looking for recent widows as targets,[65] because they may not be knowledgeable about the types of repairs and the necessity of having them performed. Because the lack of knowledge of home repair or ability to perform the work on the part of an elderly victim makes home repair one of the hardest types of fraud to detect, it has flourished.

4. OTHER SCAMS

There are a number of other scams and groups of scams that often target the elderly. Two of these other types of consumer fraud include mail fraud and bank fraud. Mail fraud schemes frequently target the elderly because many older Americans shop at home by mail order, through catalogs and home shopping services, for many of the goods they require.[66] These schemes usually consist of the same types of offers found in sweepstakes frauds, quackery, and investment schemes.[67]

Bank fraud can occur in one of two ways. The "bank examiner" scheme features a swindler who, posing as a bank examiner, approaches an elderly bank patron and asks for the patron's help investigating the bank tellers' honesty. The swindler convinces the victim to withdraw a substantial amount of money for evidence, promising to redeposit the cash later.[68] The victim withdraws the cash and gives it to the examiner, who takes off with the cash, never redepositing the money or contacting the victim.

A more serious bank fraud occurs when bank employees defraud elderly patrons. For example, in *United States v. Lee*, Lee, a bank employee, defrauded six elderly bank customers by helping them fill out deposit slips and then taking the money herself.[69] In *United States v. Yount*, Yount, another bank employee, misappropriated approxi-

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63. *E.g.*, *Frauds and the Elderly*, *supra* note 61, at 47.
64. *E.g.*, A GROWING PROBLEM, *supra* note 2, at 6 (an elderly woman refused an offer to have her driveway sealed, only to look out her window to see work being done; the workers demanded a $40 payment for the work they had already done).
65. *Frauds and the Elderly*, *supra* note 61, at 47.
66. 2 SENATE SPECIAL COMM. ON AGING, DEVELOPMENTS IN AGING: 1992, S. REP. NO. 40, 103d Cong., 1st Sess. 414 (1993).
67. *Id.* at 414-15.
68. Cutter, *supra* note 15, at 16G.
69. United States v. Lee, 973 F.2d 832, 833 (10th Cir. 1988).

mately $445,000 from the trust accounts of five elderly persons who lived in retirement and nursing homes.[70] Although both of these defendants were prosecuted for offenses other than fraud in criminal proceedings,[71] other charges did not provide the elderly victims with any way to recover their losses due to fraud.

The number of ways that the elderly can be defrauded by those looking for an easy target is staggering. Although the federal government and state governments have enacted legislation to both heighten enforcement and to increase the penalties for those who perpetrate consumer fraud on the elderly, different jurisdictions have inconsistent responses to these crimes. Without a comprehensive plan to attack these schemes, consumer fraud swindlers will create new scams to avoid the reach of the law.

III. The Current Status of Enforcement and the Imposition of Liability

A. Methods of Enforcement

Enforcing laws to prevent fraud and to apprehend and punish perpetrators is difficult for a number of reasons. Because operators of fraudulent schemes can move and set up almost anywhere at a moment's notice, law enforcement officials have difficulty apprehending those operators.[72] In addition, the lack of adequate funding hampers government agencies' ability to detect frauds.[73] Moreover, many elderly victims are reluctant to report fraud.[74] Finally, a key problem in fighting many types of fraud is finding the correct statute that covers the fraudulent activity.

1. STATE STATUTES

Most states do not have consumer fraud statutes specifically targeting the elderly.[75] Currently, most fraud involving the elderly is prosecuted under a number of different state laws. Many states have

70. United States v. Yount, 960 F.2d 955, 956 (11th Cir. 1992).
71. Yount was charged with misapplication of funds, interstate transportation of stolen money, and money laundering. He plead guilty to five of 29 counts. *Id.*
72. *See supra* text accompanying note 41.
73. *See supra* note 56 and accompanying text.
74. *See supra* notes 15-17 and accompanying text.
75. There are exceptions to this, however. Oklahoma's Elderly and Incapacitated Victims Protection Program provides resources to help combat frauds (as well as other crimes) on the elderly. OKLA. STAT. tit. 22, § 991a-5 (1992); *see also* OR. REV. STAT. § 410.010 (1993).

anti-telemarketing fraud statutes.[76] Some states have statutory programs to combat health care fraud.[77] In those states, statutes that specifically protect the elderly from fraud, the protective provisions are included in the state's elder abuse statute[78] or in the state's consumer protection statutes.[79]

This hodgepodge of different approaches used to attack fraud on the elderly leaves room for crooks to maneuver. For example, state telemarketing statutes alone offer many different definitions of "telemarketing."[80] These differences make it easier for operators of telemarketing fraud to avoid prosecution by picking states in which their activities do not violate the letter of the law, as well as giving operators the opportunity to tailor their schemes in order to avoid violating the statutes of a specific state. Another example of the lack of adequate state fraud statutes is for health care fraud. Health care frauds have been prosecuted under twenty different types of state statutes.[81] Without comprehensive statutes that directly address certain frauds, operators of fraudulent scams can tailor their activities around laws and move to jurisdictions with less developed approaches for combating fraud directly targeted at the elderly.

2. FEDERAL STATUTES

The federal statutory scheme simplifies matters somewhat, but it also leaves leeway for many schemes. Perpetrators of fraud prosecuted at the federal level are charged under federal statutes which include mail fraud,[82] wire fraud,[83] and conspiracy.[84] *United States v. Caterino* is an ideal example of a federal prosecution using these three

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76. *E.g.* COLO. REV. STAT. § 6-1-301 (1993); KAN. STAT. ANN. § 50-670 (Vernon 1992).

77. *See, e.g.*, CAL. HEALTH & SAFETY CODE § 1569.616 (West 1987).

78. *See, e.g.*, CAL. WELF. & INST. CODE § 15657 (West 1987); 750 ILL. COMP. STAT. 60/103 (1994).

79. *See, e.g.*, FLA. STAT. ch. 501.2077 (1994); MINN. STAT. § 325F.71 (1994).

80. Michela, *supra* note 4, at 585-87. For example, Utah has a very simple and broad definition which covers most outbound telemarketing, but exempts some inbound telemarketing (when consumers make the call). Idaho's statute is more specific, but still leaves room for some forms of inbound telemarketing. California's statutes are very specific, covering most current schemes. However, the statutes do not take into account new schemes that telemarketers could dream up. *Id.*

81. Bucy, *supra* note 12, at 883. Those statutes include offenses such as Medicaid fraud, larceny, and conspiracy. *Id.*

82. 18 U.S.C. § 1341 (1988).

83. *Id.* § 1343.

84. *Id.* § 371.

statutes against swindlers who defrauded elderly victims.[85] In *Caterino*, two members of the Caterino family, as well as others, participated in a scheme to sell worthless coins at collectible prices.[86] In carrying out this scheme, the defendants used a telephone sales operation to sell the coins and then sent the coins via mail to the customers.[87] The defendants were each convicted on counts of mail fraud, wire fraud, and conspiracy.[88]

Caterino demonstrates how effective the federal statutory scheme can be when fraudulent conduct falls within its scope. The mail fraud statute covers any correspondence sent by U.S. mail or any other mail carrier that is part of a consumer fraud scheme.[89] Sweepstakes fraud and any fraud that requires a mailed payment falls under the mail fraud statute.[90] The wire fraud statute covers all commercial interstate transmissions by wire, radio, or television communication.[91] This statute appears to apply to all telemarketing scams. The conspiracy statute covers any scheme that involves more than one person.[92] Although these statutes can be combined to effectively stop consumer fraud, a large amount of fraud is still left untouched. The most notable types of fraud outside the scope of these federal laws are some types of health care fraud[93] and home repair frauds,[94] because these schemes are typically local crimes which do not involve interstate commerce. Also, federal statutes lack any provision to provide restitution to the elderly victims of fraud.

The federal crime bill,[95] which Congress passed in 1994, provides special protection for the elderly from fraud. The Senior Citizens Against Marketing Scams Act (hereinafter the Act),[96] parts of which were enacted in the crime bill, provides a system of enhanced penal-

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85. United States v. Caterino, 957 F.2d 681 (9th Cir. 1992).
86. *Id.* at 682.
87. *Id.*
88. *Id.* at 683.
89. 18 U.S.C. § 1341.
90. *See supra* text accompanying notes 35-37 (describing the sweepstakes fraud).
91. 18 U.S.C. § 1343.
92. *Id.* § 371.
93. Quackery scams are most likely to happen in a store, physician's office, or another health care facility. *See supra* notes 47-49 and accompanying text for a description of quackery scams.
94. *See supra* notes 59-65 and accompanying text. Even though most home repair fraud involves more than one person, all of the elements of conspiracy still must be proven to convict. *See* 18 U.S.C. § 371.
95. 18 U.S.C § 2325.
96. *Id.*

ties for federal fraud statute violations by telemarketers, especially those who target the elderly or whose schemes affect the elderly.[97] The Act also provides for mandatory restitution to victims,[98] rewards for information leading to prosecution,[99] and increased funding for federal, state, and local enforcement.[100] The original bill also contained provisions for educating the elderly about telemarketing fraud.[101] By specifically addressing fraud on the elderly, this statute should make an almost immediate impact on telemarketing fraud against the elderly.

3. LAW ENFORCEMENT

Increased funding for federal, state, county, and municipal enforcement efforts and for education of elderly consumers is probably the most useful tool in the Act to prevent consumer fraud on the elderly. Successful enforcement campaigns attacking fraud on the elderly have not been plentiful in the past for a number of reasons. First, there are gaps in the collection of information on frauds. For example, the Federal Trade Commission/National Association of Attorneys General telemarketing fraud data base, which contains information on targets of investigations of telemarketing fraud, lacks full participation by all organizations handling fraud cases, thus making it more difficult to accurately track violators.[102] Second, the Justice Department previously focused white collar crime efforts on other matters, such as securities fraud, leading to a lack of adequate resources for prosecuting these frauds.[103] These factors left state and local officials with most of the obligations of enforcing antifraud laws without the adequate resources to do so effectively.

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97. *Id.* Enhanced sentencing guidelines in the Act provide for a prison term of five extra years for any telemarketing fraud and 10 years for any telemarketing fraud schemes that victimize 10 or more elderly persons *or* that specifically target the elderly. The Act also mandates the U.S. Sentencing Commission to examine sentencing enhancement for all crimes involving frauds on older victims. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. H.R. 3355, 103d Cong., 2d Sess. § 250004 (1994). The bill provided funding for the establishment of a federal fraud hot line. *Id.* However, these provisions were not enacted by Congress. *Id.*

102. SCOURGE, *supra* note 40, at 39. Both the Securities Exchange Commission and the Federal Bureau of Investigation previously refused to put all relevant information into the database to preserve confidentiality in their own cases. *Id.*

103. *Id.* at 43 (noting that in 1989, Attorney General Thornburg decided that securities and commodities fraud cases needed higher priority than mail and wire fraud).

However, three federal agencies in particular have made advances in fighting frauds. First, the U.S. Postal Inspection Service has been active in closing down "boiler room" operations. As of May 1991, 298 arrests had been made in 180 open "boiler room" cases.[104] However, the Postal Inspection Service does not have jurisdiction in all cases.[105] Second, the Secret Service is involved in investigating cases involving credit card fraud and telemarketing fraud, opening eighty-nine fraud cases in 1990 alone.[106] Finally, the Federal Bureau of Investigation (FBI) has the largest caseload of fraud cases on the national level.[107] In the first quarter of fiscal year 1990, the FBI had 4,000 open wire fraud cases. Among the FBI's biggest antifraud projects is "Operation Disconnect," a three-year investigation of telemarketing fraud.[108] In March 1993, massive raids of telemarketing firms led to arrests of 240 people and the seizure of $4.5 million dollars worth of assets in the culmination of "Operation Disconnect."[109]

These examples show that despite problems, enforcement measures are working to some extent. However, because all frauds do not involve interstate commerce or transportation, the involvement of state and local law enforcement in comprehensive enforcement plans is necessary to catch all fraud that affects the elderly.

4. EDUCATION

Education of elderly consumers is the key to a successful fight against consumer fraud on the elderly.[110] Groups like the American Association of Retired Persons (AARP) and the National Fraud Information Center produce and distribute publications informing senior citizens about how to identify fraud. These organizations also offer telephone hot lines for the elderly to receive more information or to report fraudulent activity.[111] Local chapters of the AARP also hold

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104. *Id.* at 50.

105. *Id.* For example, a telemarketing firm that makes all contacts by phone, receives payment by credit card, and makes all deliveries by private courier companies would avoid jurisdiction. *Id.* However, there could still be prosecution under the mail fraud statute if commercial carriers, covered under the statute, are used. 18 U.S.C. § 1341.

106. SCOURGE, *supra* note 40, at 51.

107. *Id.* at 50.

108. A.D. Burch, *State Joins Move to Curb Phone Scams*, FT. LAUDERDALE SUN-SENTINEL, Aug. 18, 1994, at 8B.

109. Michela, *supra* note 4, at 582; Burch, *supra* note 108.

110. Burch, *supra* note 108. "[T]he best defense against fraud is education: [b]y learning to recognize rip-offs, consumers can better protect themselves." *Id.*

111. *Scams*, *supra* note 35, at A4.

meetings and programs which provide education to the elderly about consumer fraud.[112] Government agencies such as the Federal Trade Commission (FTC) and FBI also have produced materials to help consumers avoid telemarketing scams.[113] The FTC has produced over 800,000 pamphlets and brochures, recorded two videos, and distributed telephone bill inserts to help educate all consumers.[114] The FBI offers a list of tips to help consumers avoid schemes.[115]

Recent examples of education initiatives show that effective education of the elderly may be achieved if organizations combine their efforts. In Kentucky, the attorney general created a task force made up of legislators, experts on aging, consumer experts, law enforcement officials, medical personnel, and social workers to reeducate the elderly and enforce existing laws to prevent fraud on the elderly.[116] In Fort Lauderdale, Florida, the sheriff, police chiefs, and the AARP sponsored a joint program called TRIAD which was solely for education of the elderly on such issues as telemarketing fraud and the exploitation of the elderly.[117] Joint programs like these could be especially helpful in coordinating efforts between the local and broader state and national levels.

Because the education-oriented provisions of the Senior Citizens Against Marketing Scams Act[118] were not enacted, funding for programs educating the elderly on consumer issues is still lacking. However, as shown above, the effective combination of private and public resources to educate the elderly means that the government's role—federal, state, and local—should continue to increase in the near future.

B. Penalties for Perpetrators of Consumer Fraud on the Elderly

Although enforcement efforts will curb some of the consumer fraud on the elderly, the real impact will come about by punishing the

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112. *See, e.g.*, Joan Ralston, *Don't Get Swindled—Learn the Modus Operandi of a Scam Artist*, ORLANDO SENTINEL, May 21, 1995, People, at 2.

113. Michela, *supra* note 4, at 608-09.

114. *Id.*

115. *Id.*

116. Sarah Lundy, *Gorman Sets Up Task Force to Aid State's Older Folks; Abuse of Elderly, Fraud on Agenda*, LOUISVILLE COURIER-J., June 21, 1995, at 07B.

117. Sallie James, *Police, Firemen, Seniors Observe Awareness Plan*, FT. LAUDERDALE SUN-SENTINEL, May 26, 1995, at 10.

118. *See supra* note 101 and accompanying text.

operators of fraud.[119] If hit with stiff penalties, swindlers face losing the two possessions they cherish most—their freedom and their money.

1. CRIMINAL PENALTIES

As discussed earlier, consumer fraud is prosecuted under a variety of federal and state statutes.[120] However, when the elderly are targets of the schemes, an additional issue is raised—should the punishment of one found to have committed fraud on the elderly be more severe simply because the victims were elderly?

The Federal Sentencing Guidelines[121] standardize sentencing for federal offenses, providing for certainty in sentencing by taking out most judicial discretion in making sentencing decisions.[122] At the same time, the Guidelines attempt to take into account any mitigating or aggravating circumstances that would normally be part of a judge's sentencing decision.[123] Generally, the sentencing judge will calculate the sentence by first finding the base offense level and then adding or subtracting from that level according to the circumstances of the crime and the following proceedings.[124]

Section 3A1.1 of the Guidelines enhances the sentence if the victim of the crime was a vulnerable victim.[125] The Guideline reads as follows: "[i]f the defendant knew or should have known that a victim of the offense was unusually vulnerable due to age, physical, or mental condition, or that a victim was otherwise particularly susceptible to the criminal conduct, increase [the sentence] by 2 levels."[126] Comments accompanying this guideline give further guidance. Commentary Note 1 states that the adjustment applies to those unusually vulnerable victims who are the *target* of the criminal activity.[127] Note

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119. SCOURGE, *supra* note 40, at 53. "Boiler room crooks, unlike street criminals, are deterred by the risk of jail." *Id.* at 54 (quoting Kent Neal, State Prosecutor, Broward County, Florida).
120. *See generally* text accompanying notes 75-101.
121. 18 U.S.C. app. 4 (1988 & 1994 Supp.).
122. John Garry, Note, *Why Me?: Application and Misapplication of 3A1.1, the Vulnerable Victim Enhancement of the Federal Sentencing Guidelines*, 79 CORNELL L. REV. 143, 148 (1993).
123. *Id.* at 148-49.
124. *Id.* at 151-52. Adjustments to the base level are made for a number of reasons, including, but not limited to, characteristics of the victim, the role the defendant played in the offense, and any obstructions the defendant posed to the proceedings. *Id.* at 152.
125. 18 U.S.C. app. 4 § 3A1.1
126. *Id.*
127. *Id.* cmt. 1.

2 states that the standard does not apply when the offense guideline specifically incorporates the factor that would make one unusually vulnerable.[128] Therefore, if the guideline was already adjusted on the basis of the victim's age, a § 3A1.1 enhancement would not be applied.[129]

Cases deciding the issue of whether to apply the enhancement because the victim is elderly have been split. In *United States v. Seligsohn*, the defendants were prosecuted for a number of offenses involving real estate schemes that targeted elderly victims.[130] The Third Circuit Court of Appeals, holding that § 3A1.1 was properly applied to enhance the Seligsohns' sentence, explained that the scheme depended on the elderly homeowners' inability to verify the need for roof repairs.[131] However, the court said that the question of vulnerability remains a question of fact.[132] In *United States v. Caterino*, the Ninth Circuit Court of Appeals found that the defendants had used the telephone to "[g]et behind the defenses of people who are frequently old people . . ." and upheld the application of § 3A1.1 because the defendants should have known the victims were unusually vulnerable.[133]

However, in *United States v. Boula*, the district court held, on remand from the Seventh Circuit Court of Appeals, that, despite the evidence that the defendant targeted elderly people, the elderly as a class in this case were not unusually vulnerable.[134] Furthermore, the court held that even if the elderly were unusually vulnerable, the enhancement would not apply because the victims were not targeted because of their vulnerability.[135] This added dimension of "vulnerability motivation" is not required by § 3A1.1.[136] Three reasons support the view that vulnerability motivation is not required: (1) it is not mentioned in the plain language of the guideline or commentary; (2) the "should

128. *Id.* cmt. 2.
129. *Id.*
130. United States v. Seligsohn, 981 F.2d 1418, 1420 (3d Cir. 1992). The Seligsohns (parents and son) ran a number of roofing businesses engaged in such fraudulent practices as installing cheap ceiling vents which served no purpose for hundreds of dollars apiece, and having workers pour water off of the roof as proof that water had been trapped below the existing roof, requiring replacement of the roof. *Id.*
131. *Id.* at 1426.
132. *Id.*
133. United States v. Caterino, 957 F.2d 681, 683 (9th Cir. 1992).
134. United States v. Boula, 787 F. Supp. 819 (N.D. Ill. 1992).
135. *Id.* at 824-25.
136. Garry, *supra* note 122, at 171.

have known" language becomes irrelevant if the guideline only includes those who are knowingly targeted because of the vulnerability; and (3) the limitation this places on victims undermines proportionality in sentencing, a policy goal of the Guidelines.[137] Requiring an additional showing of vulnerability severely limits the application of the Guidelines, giving a large amount of deference to the sentencing judge, which is directly at odds with the goals of the Guidelines.[138]

Although many jurisdictions require prosecutors to show more than just age to prove vulnerability, this is not a proper application of § 3A1.1. This is especially true in fraud cases where the elderly as a group are unusually vulnerable. The better application of § 3A1.1 in cases of consumer fraud against the elderly is to find that the elderly as a whole are unusually vulnerable. Therefore, application of the enhancement when the elderly are the targets of fraud is required. Three arguments support this view. First, this view is consistent with the plain language of the Guideline. Section 3A1.1 requires sentencing enhancement for offenses when the defendant knew or should have known of the elderly victim's vulnerability due to age or physical or mental condition, or other reasons that would make him or her particularly susceptible.[139] The language clearly delineates that each group of vulnerable victims is separate from each other. Thus, a victim need not show anything but membership in the Guideline's defined group. The commentary also does not preclude the use of age alone to justify enhancement.[140] Previous sections of this note have discussed why the elderly as a whole are unusually vulnerable to consumer fraud.[141] Therefore, justification exists for allowing the elderly to be considered a vulnerable group without any additional showing of vulnerability.

Second, treating the elderly as a group under § 3A1.1 is consistent with the Guideline's purpose to reduce judicial deference.[142] Allowing judges to decide which members of groups should be protected allows for inconsistent sentencing for those who target the elderly with fraudulent schemes, which directly conflicts with this purpose.

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137. *Id.*
138. *See supra* text accompanying note 121.
139. *See supra* text accompanying note 123.
140. *See supra* note 119 and accompanying text.
141. *See supra* text accompanying notes 14-27.
142. *See supra* text accompanying notes 95-101.

Finally, this construction of the Guideline is consistent with national public policy as codified in the Senior Citizens Against Marketing Scams Act.[143] One provision of the Act adds an extra ten-year sentence for those convicted of telemarketing fraud against the elderly, as opposed to only five years for any other telemarketing fraud.[144] Another provision requires the evaluation of this Guideline, as it applies to the elderly in particular, to make sure protection is adequate.[145] Due to these reasons, § 3A1.1 should apply to enhance the sentences of all perpetrators of consumer fraud against the elderly.

2. CIVIL REMEDIES

Besides punishing those who carry out consumer frauds on the elderly with criminal punishment, having a system of restitution for elderly victims to recover what they lose in the fraudulent schemes is vital. At the same time, procedures currently in use to impose extra civil liabilities on swindlers may help to further deter fraud as a whole.

The Senior Citizens Against Marketing Scams Act contains a provision requiring judges to issue a mandatory restitution order for anyone convicted of federal fraud offenses.[146] The federal court has almost no discretion in issuing this order; the only duty the court has is to determine how the order will be administered.[147] This is an excellent system for allowing victims of fraud to recover their losses because the victims will not have to incur costly litigation fees.

Because mandatory restitution is not yet available at the state level, most elderly people will be able to recover only in a private civil action for fraud. Because victims who have just lost their entire life savings may not be able to afford the cost of litigation, in many states, victims are left with no recourse.[148]

In some states, the older population benefits from increased civil penalties for those who are found guilty of consumer fraud commit-

143. 18 U.S.C. § 2325.
144. *Id.*
145. *Id.*
146. *Id.*
147. *Id.* The only situation in which no full restitution order will be handed down is when the court finds the defendant will not be able to pay any portion of a restitution order in the foreseeable future; in these cases, an order will still be issued for a nominal award.
148. Nevada is one state in which elderly victims can recover punitive damages and attorney's fees in addition to actual damages, making litigation much more accessible to the victims. NEV. REV. STAT. § 598.0977 (1995).

ted against the elderly.[149] For example, Iowa allows judges to impose an extra civil penalty of up to $5,000 on those defendants who are convicted of fraud involving an elderly victim.[150] The award is placed into an elderly victims' fund. The Attorney General of Iowa uses the fund exclusively for the investigation and prosecution of frauds against the elderly.[151] Although this remedy does not compensate individual victims for their loss, it helps combat fraud and is thus an excellent innovation.[152]

Another method for pursuing increased civil penalties is under the Racketeer Influenced and Corrupt Organizations Act (RICO).[153] An action under RICO for those injured by consumer fraud is possible for many elderly victims of scams. To assert a RICO violation, several elements must be met. A pattern of racketeering activity[154] must exist, in which the violator conducts business[155] through an enterprise[156] which injures the victim's business or property.[157] When conduct violates RICO, treble damages can be obtained,[158] making it a severe punitive measure imposed on the violator. The major drawback is that the injured party must seek their own remedies,[159] which means that the high litigation costs which plague other civil remedies apply here as well.

149. ARK. STAT. ANN. § 4-88-201 (Michie 1994); CAL. CIV. CODE § 1780 (1995); DEL. CODE ANN. tit. 6, § 2581 (1994); FLA. STAT. § 501.2077 (1994); IOWA CODE § 714.16A(1) (1994); MINN. STAT. § 325F.71 (1994); NEV. REV. STAT. § 598.0973 (1995).

150. IOWA CODE § 714.16A(1) (1994). The Iowa civil penalty scheme is similar to the plans of the other states listed in *supra* note 149.

151. *Id.*

152. Even an excellent innovation can have flaws, however. Two problems with the Iowa statute are that the victim must have an increased vulnerability besides being elderly and that "older persons" only include those 65 years old or older. *Id.* § 714.16A(2)(b) & (3).

153. 18 U.S.C. § 1961.

154. *Id.* § 1961(5). The pattern must consist of predicate acts that are related and demonstrate continuous illegal conduct. H.J. Inc. v. Northwestern Bell Tel. Co., 109 S. Ct. 2893, 2899 (1989).

155. 18 U.S.C. § 1962(c).

156. *Id.* § 1961(4). For a discussion of the requirement that the scheme must be part of an "enterprise" for RICO to apply, see Glenn E. Heilizer et al., *Current Issues in Civil RICO Litigation*, C491 ALI-ABA 333, 342-46 (1990).

157. 18 U.S.C. § 1964(c).

158. *Id.*

159. Illinois v. Life of Mid-America Ins. Co., 805 F.2d 763, 766 (7th Cir. 1986). State cannot pursue RICO claim for individuals injured in frauds. *Id.*

IV. Recommendations

Today, there is more potential to stop consumer fraud on the elderly than ever before. Previous parts of this note have discussed a number of initiatives on the national and state levels in both the enforcement of fraud laws and the punishment of those who commit fraud. These initiatives have done a fair job of attacking frauds on the elderly. However, as long as only a patchwork of different solutions are applied to a scattered assortment of issues, swindlers will be able to slip through the cracks, either by using current schemes that avoid enforcement or by creating new schemes around the laws as they are passed by legislatures. Only by creating a comprehensive uniform system of enforcement and punishment that coordinates agencies on the federal, state, and local level, can there ever be a chance of effectively combating consumer fraud on the elderly on a large scale. The system must be comprehensive to prevent schemers from adapting their operations to circumvent the law or from switching to other schemes that limited laws fail to address. The system must be uniform to preclude perpetrators from moving to states where the law allows their particular scheme.

The first area that should be addressed is statutory reform. On the federal level, the Senior Citizens Against Marketing Scams Act should be a guiding legislation for state jurisdictions to follow. The Act itself could be improved by addressing all frauds instead of emphasizing telemarketing fraud only. The real need for reform is at the state level. States should pass uniform legislation that fights any fraudulent practice targeted at or unduly affecting the elderly. By adopting broad legislation, all schemes that defraud the elderly could be criminalized, leaving no room for new schemes to be created. By passing uniform legislation, states could prevent swindlers from jumping from state to state in hopes of finding a place where their scam can give the appearance of legality.

Law enforcement efforts also need improvement. Coordination among the federal, state, and local governments can provide the most effective way to fight all frauds against the elderly. Separating the types of fraud for which each level of government is responsible will prevent the wasted efforts of more than one organization pursuing the same schemes. For this separation of enforcement responsibilities to work effectively, each level of government should handle what it is best suited for. For example, the federal enforcement agencies, such as the Postal Inspection Service, Secret Service, and FBI could handle scams involving communications (i.e., mail and telemarketing fraud) which have a greater potential to be perpetrated on a national level. State and local officials could fight local schemes, most notably home repair fraud. Health care fraud, because of the wide range of forms it can take, could be handled on a joint basis. Due to differences in the types of fraud that affect each jurisdiction, local and state enforcement measures need not be uniform. Therefore, the federal government should encourage local law enforcement agencies to try different procedures through special grants and increased funding.

Proper enforcement also must include education for the elderly to increase their awareness of the schemes that exist and what to do if confronted with such a scheme. Education is also best accomplished on a local level, with federal support in funding. Local education campaigns should be coordinated with the efforts of private groups such as AARP and the National Consumers League to create new materials and ideas.

As for sanctions on perpetrators, all states should adopt legislation that allows for enhancement of sentences for fraud on the elderly as a vulnerable group. By removing the arbitrariness of judges deciding who should be protected, it will be easier to get some schemers out of the system and deter others from continued fraud. States also should adopt mandatory restitution laws similar to the provisions in the Senior Citizens Against Marketing Scams Act to help seniors recover their losses from all fraudulent schemes. Adoption of procedures like Iowa's elderly victims' fund should also be encouraged. Finally, states' attorneys general should be given the ability to pursue both criminal and civil claims on behalf of the states' elderly citizens. This would allow many more claims to be pursued, which in turn should deter even more consumer fraud schemes.

V. Conclusion

Older Americans are by far the biggest targets of all sorts of consumer frauds. Lack of business sophistication, a need for social contact due to greater isolation, lack of mobility, and greater trust in others make the elderly especially vulnerable to consumer fraud. Current provisions in state and federal law are a starting point for enforcing antifraud laws to protect the elderly, but they allow enough loopholes for operators of fraudulent schemes to continue their activities. However, by adopting a comprehensive uniform plan of stricter enforcement and increased criminal and civil penalties, the country can effectively fight consumer fraud schemes against the elderly by stopping all fraudulent schemes and apprehending and punishing perpetrators wherever they commit their crimes.