

**USING THE CRIMINAL LAW TO  
RESPOND TO THE FINANCIAL  
EXPLOITATION OF OLDER ADULTS:  
THE STATUTORY EVOLUTION IN  
THE UNITED STATES FROM 2000 TO  
2020**

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It is estimated that up to twenty percent of older Americans experience some type of financial exploitation in any given year.<sup>1</sup> This Article provides an analysis of how criminal statutes targeting financial exploitation have evolved over time and what they consist of today. As observed in Hafemeister's (2003) seminal literature review on financial exploitation,<sup>2</sup> Dessin published the first statutory review of criminal financial exploitation statutes.<sup>3</sup> She reported that in the year 2000, twenty-five states had some type of financial exploitation criminal statute.<sup>4</sup> This number, however, has grown to thirty-nine states and the District of Columbia by 2020.<sup>5</sup> Across these forty jurisdictions there is tremendous variation in how financial exploitation, victims, and perpetrators are defined, as well as in the nature and severity of the penalties imposed.<sup>6</sup> In addition, three states, while not having a criminal statute that directly addresses the financial exploitation of an older adult, do have in place enhanced criminal penalties for theft/larceny from an elderly person.<sup>7</sup> At the same time, eight states have yet to adopt such legislation and thus, fail to provide prosecutors and judges with specific statutory guidance regarding the criminal prosecution of individuals charged with the financial exploitation of older adults.<sup>8</sup> The implications of these findings, related recommendations, and the need for future related research are discussed herein.

## I. Background and History of Elder Abuse

Elder abuse (increasingly referred to as the abuse of older adults) has occurred throughout history.<sup>9</sup> Public attention to it, however, is quite recent. Dr. G. R. Burston is generally identified as publishing the first account of elder abuse in a 1975 letter to *The British Medical Journal* entitled "Granny Battering."<sup>10</sup> Later that year, Robert Butler provided what is widely considered to be the first account of elder abuse in the United States with the publication of his book, *Why Survive?: Being Old in America*.<sup>11</sup>

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1. *Get the Facts on Elder Abuse*, NAT'L COUNCIL ON AGING (Feb. 23, 2021), <https://www.ncoa.org/article/get-the-facts-on-elder-abuse>.

2. THOMAS L. HAFEMEISTER, *Financial Abuse of the Elderly in Domestic Settings, ELDER MISTREATMENT: ABUSE, NEGLECT, AND EXPLOITATION IN AN AGING AMERICA* 382, 382 (Richard J. Bonnie & Robert B. Wallace eds., 2003).

3. See generally Carolyn L. Dessin, *Financial Exploitation Statutes' Impact on Domestic Relations Practice*, 16 J. AM. ACAD. MATRIM. L. 379, 379 (2000) [hereinafter Dessin, *Financial Exploitation*].

4. See generally *id.*

5. See also *Elder Abuse and Elder Financial Exploitation Statutes*, U.S. DEP'T OF JUST., <https://www.justice.gov/elderjustice/prosecutors/statutes> (last visited Nov. 29, 2021).

6. HAFEMEISTER, *supra* note 2.

7. See *Elder Abuse and Elder Financial Exploitation Statutes*, *supra* note 5.

8. *Id.*

9. Pamela B. Teaster et al., *A Glass Half Full: The Dubious History of Elder Abuse Policy*, 22 J. ELDER ABUSE & NEGLECT 6, 7 (2010).

10. G. R. Burston, *Letter: Granny-battering*, 3 BRIT. MED. J. 592 (1975).

11. ROBERT BUTLER, *WHY SURVIVE?: BEING OLD IN AMERICA* (Ann Harris ed., 1975).

Today, elder abuse is typically defined as “[a]n intentional act or failure to act by a caregiver or another person in a relationship involving an expectation of trust that causes or creates a risk of harm to an older adult.”<sup>12</sup> Elder abuse, however, is a rubric that encompasses five distinct subtypes: (1) physical abuse, (2) emotional/psychological abuse, (3) sexual abuse, (4) neglect, and (5) financial exploitation.<sup>13</sup> The definition of elder abuse has expanded over time and the constructs comprising its definition have received thoughtful analysis by scholars.<sup>14</sup>

There are currently over fifty million older Americans.<sup>15</sup> A nationally representative study estimated that just over ten percent of older Americans (ages sixty and over) experience some form of elder abuse in a given year, which indicates that over five million older Americans are annually subjected to elder abuse.<sup>16</sup> Prevalence rates, however, vary by the type of abuse involved: physical abuse (1.6 percent of older adults each year), emotional/psychological abuse (4.6 percent), sexual abuse (0.6 percent), neglect (5.1 percent), and financial exploitation by a family member (5.2 percent).<sup>17</sup> Although elder abuse also occurs in

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12. JEFFREY HALL ET AL., ELDER ABUSE SURVEILLANCE: UNIFORM DEFINITIONS AND RECOMMENDED CORE DATA ELEMENTS, 8, 28 (NAT’L CTR. FOR INJ. PREVENTION AND CONTROL, CTRS. FOR DISEASE CONTROL AND PREVENTION eds. 2016) (compiled and published by the Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, Division of Violence Prevention).

13. *See id.*

14. *See, e.g.*, Thomas Goergen & Marie Beaulieu, *Critical Concepts in Elder Abuse Research*, 25 INT’L PSYCHOGERIATRICS 1217, 1217 (2013); Yuliya Mysyuka et al., *Added Value of Elder Abuse Definitions: A Review*, 12 AGEING RSCH. REVS. 50, 50 (2013); ROBERT B. WALLACE & VICTORIA L. CRABB, TOWARD DEFINITIONS OF ELDER MISTREATMENT, ELDER ABUSE: RESEARCH, PRACTICE AND POLICY 3, 3 (XinQi Dong ed., 2017).

15. Andrew W. Roberts et al., *The Population 65 Years and Older in the United States: 2016*, U.S. CENSUS BUREAU (2018), <https://www.census.gov/content/dam/Census/library/publications/2018/acs/ACS-38.pdf> (“The 2016 ACS estimated the number of people in the United States aged 65 and over as 49.2 million.”). According to the U.S. Census Bureau, there were 38.6 million U.S. residents sixty-five years and older in the 2010 Census and more than 52.8 million in 2019; *Age and Sex Composition in the United States: 2019*, U.S. CENSUS BUREAU, <https://www.census.gov/data/tables/2019/demo/age-and-sex/2019-age-sex-composition.html> (last visited Nov. 29, 2021); *Age and Sex Composition in the United States: 2010*, U.S. CENSUS BUREAU, <https://www.census.gov/data/tables/2010/demo/age-and-sex/2010-age-sex-composition.html> (last visited Nov. 29, 2021) (Another 16.2 million in 2010 and 20.6 million in 2019 were age sixty to sixty-four.).

16. Ron Acierno et al., *Prevalence and Correlates of Emotional, Physical, Sexual, and Financial Abuse and Potential Neglect in the United States: The National Elder Mistreatment Study*, 100 AM. J. PUB. HEALTH 292, 294 (2010).

17. *Id.* at 293–94.

long-term care facilities,<sup>18</sup> most reported elder abuse involves older adults residing in the community (89.3 percent), typically in their place of residence.<sup>19</sup> As the population of older adults is expected to continue to increase,<sup>20</sup> so too will the number of older Americans experiencing elder abuse.

Research further shows that elder abuse is unlikely to be officially reported (only one of every twenty-four occurrences) to those authorized to receive such reports (e.g., adult protective services, law enforcement).<sup>21</sup> Underreporting, however, also varies by the type of abuse involved.<sup>22</sup> One study found that one in twenty cases of physical abuse/sexual abuse, one in twelve cases of psychological/emotional abuse, one in fifty-seven cases of neglect, and one in forty-four cases of financial exploitation were reported to the relevant state authority.<sup>23</sup> The clear implication of these results is that interventions to stop the abuse and to assist victim recovery are absent in most cases.<sup>24</sup>

Identifying these cases so that intervention can occur is critical because we now recognize the devastating consequences of elder abuse.<sup>25</sup> These consequences are typically categorized as psychological (e.g., fear, depression), social (e.g., isolation, loneliness), health (e.g., physical injuries, poor health, increased mortality), financial (e.g., loss of finances/assets, inability to pay bills), secondary victims (e.g., loss of inheritance, family members bearing responsibility for meeting the needs of the older adult), and costs to society (e.g., services for victims,

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18. Nicholas Castle et al., *Elder Abuse in Residential Long-term Care: An Update to the 2003 National Research Council Report*, 34 J. APPLIED GERONTOLOGY 407, 407 (2015).

19. PAMELA B. TEASTER ET AL., THE 2004 SURVEY OF STATE ADULT PROTECTIVE SERVICES: ABUSE OF ADULTS 60 YEARS OF AGE AND OLDER 6, NATIONAL CENTER ON ELDER ABUSE (2006).

20. 2018 PROFILE OF OLDER AMES., ADMIN. FOR CMTY. LIVING, ADMIN. ON AGING, at 1 (Apr. 2018), <https://acl.gov/sites/default/files/Aging%20and%20Disability%20in%20America/2018OlderAmericansProfile.pdf> (noting that the "population age 65 and over . . . is projected to reach 94.7 million in 2060").

21. Mark Lachs & Jacquelin Berman, *Under the Radar: New York State Elder Abuse Prevalence Study*, LIFESPAN OF GREATER ROCHESTER, INC., WEILL CORNELL MED. CTR. OF CORNELL UNIV., & N.Y.C. DEP'T FOR THE AGING (2011), <https://ocfs.ny.gov/reports/aps/Under-the-Radar-2011May12.pdf>.

22. *Id.*

23. *Id.*

24. See *id.*; see also Kathy Greenlee, *Our National Shame: Little to No Funding for Elder Abuse Prevention and Response*, GENERATIONS: J. AM. SOC'Y ON AGING (2020), <https://generations.asaging.org/elder-abuse-prevention-older-adults-funding>.

25. Philip Robert Baker et al., *Interventions for Preventing Elder Abuse: Applying Findings of a New Cochrane Review*, 46 AGE & AGEING 346, 346 (2017).

increased number of older adults who receive Medicaid benefits).<sup>26</sup> Unsurprisingly, it is now widely recognized that elder abuse leads to a diminished quality of life for older Americans.<sup>27</sup>

The serious consequences of elder abuse demand a robust societal response. Although initially local and state social services agencies were primarily employed to respond to elder abuse, by the 1990s the nation's response increasingly involved the criminal justice system.<sup>28</sup> The "get tough on crime" era" of the 1980s and 1990s (designed, for example, to address violence against women, substance abuse, juvenile and repeat offenders) was expanded to target elder abuse.<sup>29</sup> This focus was bolstered by research published during that time showing that elder abuse offenders tended to exhibit significant psychopathology, which in turn was often associated with a history of criminal offenses and substance abuse, suggesting to many that a criminal justice system response was needed.<sup>30</sup>

Thus, the field devoted to the study and remediation of elder abuse embraced the zeitgeist of this era.<sup>31</sup> Nowhere was this trend more

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26. Yvonne Jonk et al., *Pent-up Demand for Care Among Dual-Eligible Victims of Elder Financial Exploitation in Maine*, 32 J. ELDER ABUSE & NEGLECT 334, 334 (2020); see also Donald D. Vanarelli, *Financial Exploitation of the Elderly: Impact on Medicaid Eligibility*, 6 NAT'L ACAD. ELDER L. ATT'YS J. 39, 39 (2010).

27. Etienne G. Krug et al., *World report on violence and health*, WORLD HEALTH ORG. 123, 126 (2002) (observing that regardless of type, elder abuse leads to a decreased quality of life for older adults).

28. Candace J. Heisler, *Elder Abuse and the Criminal Justice System: New Awareness, New Responses*, 24 GENERATIONS: J. AM. SOC'Y AGING 52, 52 (2000) (observing that the last decade has seen a significant increase in the law enforcement and prosecution response to elder abuse); Shelly L. Jackson, *The Shifting Conceptualization of Elder Abuse in the United States: From Social Services, to Criminal Justice, and Beyond*, 28 INT'L PSYCHOGERIATRICS 1, 3 (2016) [hereinafter Jackson, *Shifting Conceptualization*] (describing significant changes in our response to elder abuse beginning in the 1990s).

29. See Jackson, *Shifting Conceptualization*, *supra* note 28, at 4.

30. Karl Pillemer, *Elder Abuse Is Caused by the Deviance and Dependence of Caregivers*, in CURRENT CONTROVERSIES ON FAM. VIOLENCE 207, 207 (2005). More recent research generally supports these earlier findings, and further indicates that perpetrator dependence upon the victim is common in conjunction with family-member perpetrated financial exploitation. See, e.g., Kendon J. Conrad et al., *Examining the Role of Substance Abuse in Elder Mistreatment: Results From Mistreatment Investigations*, 34 J. INTERPERSONAL VIOLENCE 366, 366 (2019). But see Jennifer Collins, *Financial Abuse of Older Persons: A Criminal Law Perspective*, in AGEING, GENDER AND FAMILY LAW 61, 61 (Beverly Clough & Jonathan Herring eds., 2018) (asserting that the criminal law is an inappropriate vehicle for addressing the financial abuse of older persons).

31. See generally Jackson, *Shifting Conceptualization*, *supra* note 28.

pronounced than in the context of financial exploitation.<sup>32</sup> Successful aging is now generally associated with independence and independence is typically a reflection of and dependent on financial well-being.<sup>33</sup> Concerns about older adults losing their life savings or at least incurring a significant financial loss and thereby, becoming financially dependent on others, with significant costs incurred by governmental entities forced to intervene to provide needed financial support for these

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32. *See id.*

33. The financial landscape for older adults has changed radically in the past few decades. We now have an older adult population that is increasing in size, *2019 Profile of Older Americans*, ADMIN. FOR CMTY. LIVING, (May 2020), that is living longer, *Living Longer: Historical and Projected Life Expectancy in the United States, 1960 to 2060*, U.S. CENSUS BUREAU (2020), and that possesses larger amounts of amassed wealth, Ye Li et al., *Sound credit scores and financial decisions despite cognitive aging*, 112 *PROCS. NAT'L ACAD. SCI.* 65, 65 (2015). The latter is due in part to changes in their retirement plans, which are less frequently a defined benefit plan (i.e., a pension) and more commonly a defined contribution plan, *The Shift from Defined Benefit to Defined Contribution Plans*, GREENBUSH FIN. GRP., <https://www.greenbushfinancial.com/all-blogs/the-shift-in-retirement-and-importance-of-education/> (last visited Nov. 29, 2021). With a pension, older adults received a set amount of money each month, and although it could be stolen, a payment would nonetheless be available the following month. However, because the majority of retirement plans are now defined contribution plans, *Id.*, most older adults presently have in hand all of the wealth they are going to receive (with the exception of a relatively small monthly Social Security check that they will continue to receive) and are responsible for the management of these assets. In addition to the risk that these assets may be exploited by someone else, managing them has become increasingly complex, Larry J. Polivka, *A Future Out of Reach? The Growing Risk in the U.S. Retirement Security System*, 36 *GENERATIONS: J. AM. SOC'Y ON AGING* 12, 12 (2012), with retirement assets often at risk in a volatile open market. Associated financial management demands tend to become more complex as one ages, at the same time that those managing their assets are experiencing normal cognitive decline, Douglas A. Hershey et al., *Financial Decision Making Across the Adult Life Span: Dynamic Cognitive Capacities and Real-World Competence*, in *AGING & DECISION MAKING* 329, 329 (Thomas M. Hess ed., 2015), with a neurodegenerative disorder affecting up to 33% of older adults, Brenda L. Plassman et al., *Prevalence of Cognitive Impairment without Dementia in the United States*, 148 *ANNALS INTERNAL MED.* 427, 427 (2008). Whether the result of decision-making errors or financial exploitation, un-recoupable wealth can be lost in an instant, especially when facilitated by existing technological tools such as the Internet, leaving older adults completely dependent on Social Security and/or the generosity of family members. Regardless of the cause, financial loss in later life has devastating consequences, including loss of independence, resulting trauma and emotional devastation, Shelly L. Jackson, *Recognizing the Trauma Experienced by Community-Dwelling Older Victims of Financial Abuse Perpetrated by Trusted Others*, *HANDBOOK OF INTERPERSONAL VIOLENCE ACROSS THE LIFESPAN* 1, 1 (2020), and a higher mortality rate, Jason Burnett et al., *Five-Year All-Cause Mortality Rates Across Five Categories of Substantiated Elder Abuse Occurring in the Community*, 28 *J. ELDER ABUSE & NEGLECT* 59, 59 (2016); Lindsay R. Pool et al., *Association of a Negative Wealth Shock with All-Cause Mortality in Middle-Aged and Older Adults in the United States*, 319 *J. AM. MED. ASSOC.* 1341, 1341 (2018).

older adults,<sup>34</sup> as well as the trauma, humiliation, and loss of trust they routinely experienced as a result,<sup>35</sup> catapulted concern about their financial exploitation into the public arena, transforming it into a “social problem” needing a systematic societal response, with elder abuse more generally riding its coattails.<sup>36</sup> At that time, there was no relevant federal legislation in place, although the Senate Special Committee on Aging had conducted hearings on financial scams targeting the elderly.<sup>37</sup> Financial exploitation was (and remains) an issue largely left to the states to remedy.<sup>38</sup> Although all states at that time had statutes in place that established adult protective services (“APS”) agencies, and through them provided needed assistance to abused older adults (with financial exploitation routinely included in the accompanying definition of elder abuse),<sup>39</sup> there often were no comparable statutes in the states’ criminal codes to specifically punish those who had abused older adults, including those who had financially exploited older

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34. Catherine Carey et al., *Changes in State Legislation and the Impacts on Elder Financial Fraud and Exploitation*, 30 J. ELDER ABUSE & NEGLECT 309, 310 (2018) (noting the significant social and economic consequences at both the personal and public level that are associated with elder financial fraud and exploitation). *See also* U.S. GOV’T ACCOUNTABILITY OFF., GAO-21-90, REP. TO THE SPECIAL COMM. ON AGING, U.S. SENATE, ELDER JUSTICE: HHS COULD DO MORE TO ENCOURAGE STATE REPORTING ON THE COSTS OF FIN. EXPLOITATION (2020).

35. Debbie Deem et al., *Victims of Financial Crime*, 8 VICTIMS CRIME 125, 125 (2007).

36. Even though, chronologically, federal attention to nursing home abuse predated the attention given to the abuse of older adults residing in the community, and a focus on physical abuse and neglect preceded that given to financial exploitation by adult protective services, financial exploitation is clearly what has captured the attention of state and federal governments and elevated elder abuse to a problem needing a governmental response. *See* Shelly L. Jackson, *Senate Special Committee on Aging Hearings and GAO Reports*, ELDER ABUSE: RSCH., PRAC. & POL’Y 595, 595 (2017) [hereinafter Jackson, *Senate Special Committee*]; Jackson, *Shifting Conceptualization*, *supra* note 28, at 1.

37. For example, in 1996 a U.S. Senate Committee held a hearing entitled “Telescams Exposed: How Telemarketers Target the Elderly.” *Telescams Exposed: How Telemarketers Target the Elderly: Hearing Before the Special Comm. on Aging*, S. HRNG. 104-490, 104th Cong., Serial No. 104-10 (Mar. 6, 1996), <https://www.aging.senate.gov/imo/media/doc/publications/361996.pdf>.

38. HAFEMEISTER, *supra* note 2, at 418, 420–23; *see also* U.S. GOV’T ACCOUNTABILITY OFF., GAO-13-110, ELDER JUST.: NAT’L STRATEGY NEEDED TO EFFECTIVELY COMBAT ELDER FIN. EXPLOITATION 5 (2012), <https://www.gao.gov/assets/gao-13-110.pdf> (observing that the response to financial exploitation is largely a state and local issue, but that the federal government could do more to support these efforts).

39. HAFEMEISTER, *supra* note 2, at 418; *see also* JENNIFER DROST, *Public Policy and Advocacy, in AGING AND MONEY: REDUCING RISK OF FINANCIAL EXPLOITATION AND PROTECTING FINANCIAL RESOURCES* 171, 171 (Ronan M. Factora ed., 2021).

adults, notwithstanding that such crimes cause significant harm to the victims of this abuse and, as discussed below, can pose distinct challenges when efforts are made to prosecute them.<sup>40</sup> In an attempt to stem the growing tide of financial abuse and the resulting harm, states have increasingly enacted statutes that specifically criminalize and punish the financial exploitation of older Americans.<sup>41</sup>

### A. Financial Exploitation

In 2003, the National Research Council of The National Academies released *ELDER MISTREATMENT: ABUSE, NEGLECT, AND EXPLOITATION IN AN AGING AMERICA*,<sup>42</sup> the first comprehensive examination of existing knowledge regarding the best practices for preventing and responding to elder abuse.<sup>43</sup> The National Research Council's report included a now-seminal chapter on the financial exploitation of older adults.<sup>44</sup> In addition to lamenting the limited knowledge in general regarding this behavior, Hafemeister determined that:

It has been estimated . . . that fewer than half of the states provide criminal penalties that directly address elder abuse. Advocates for the elderly assert that the federal government should encourage all states to make financial exploitation of older people a specific criminal offense to promote its prosecution.<sup>45</sup>

At the same time, he cautioned: "Empirical evidence, however, has not been generated to establish that the availability of such specifically targeted penal statutes results in either increased prosecution rates or deterrence of such crimes."<sup>46</sup>

Hafemeister based this assessment of financial exploitation statutes in part on an initial analysis of criminal financial exploitation

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40. HAFEMEISTER, *supra* note 2, at 422–23; *see also* ADAM M. FRIED ET AL., *FINANCIAL EXPLOITATION: THE LEGAL PERSPECTIVE*, *AGING AND MONEY: REDUCING RISK OF FINANCIAL EXPLOITATION AND PROTECTING FINANCIAL RESOURCES* 95, 96 (Ronan M. Factora ed., 2021) (noting that due to the complexities of these cases, proving financial exploitation in court is difficult); Page Ulrey, *Prosecuting Elder Abuse: A First-Hand Account*, 53 CT. REV. 70, 70 (2017) (describing starting an Elder Abuse Prosecution Unit in King County, Washington).

41. *See Elder Abuse and Elder Financial Exploitation Statutes*, *supra* note 5.

42. RICHARD J. BONNIE, *ELDER MISTREATMENT: ABUSE, NEGLECT, AND EXPLOITATION IN AN AGING AMERICA* (Richard J. Bonnie & Robert B. Wallace eds., 2003).

43. *See generally id.*

44. HAFEMEISTER, *supra* note 2, at 382.

45. *Id.* at 423 (citing AARP, *AARP ON THE ISSUES: ELDER ABUSE* (2001), <http://www.aarp.org/ontheissues/issueelderab.html>).

46. *Id.*



statutes published by Dessin in 2000,<sup>47</sup> who provided a complementary analysis two years later.<sup>48</sup> Dessin noted that most of the existing criminal financial exploitation statutes had been passed only recently,<sup>49</sup> coinciding to some extent, intentionally or inadvertently, with the U.S. Senate Special Committee on Aging hearings on financial fraud and exploitation in the late 1990s.<sup>50</sup> These enactments also coincided with a more vigorous approach observed in the field to hold accountable those responsible for elder abuse in general,<sup>51</sup> and, as noted, was consistent with the broader “get tough on crime” stance of the era.<sup>52</sup> On this the twentieth anniversary of Dessin’s inaugural article on financial exploitation statutes,<sup>53</sup> the purpose of this Article is: (1) to document the continuing expansion in the number of existing state criminal financial exploitation statutes that began primarily in the 1990s and (2) to conduct an analysis of the variations in these statutes across the states and whether these statutes are effectively punishing those who financially exploit older adults and, more generally, are deterring the financial exploitation of older adults in America as intended.

## B. Brief Update on Financial Exploitation Research

Before addressing the evolution of criminal financial exploitation statutes in this country over the past twenty years, it is worth noting that in the intervening years since 2003 when Hafemeister pointed out the limited empirical knowledge available regarding the financial

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47. Dessin, *Financial Exploitation*, *supra* note 3, at 379.

48. Carolyn L. Dessin, *Financial Abuse of the Elderly: Is the Solution a Problem?*, 34 MCGEORGE L. REV. 267, 267 (2003) [hereinafter Dessin, *Is the Solution a Problem*]; see also Carolyn L. Dessin, *Financial Abuse of the Elderly*, 36 IDAHO L. REV. 203 (2000) [hereinafter Dessin, *Financial Abuse*].

49. Dessin, *Financial Exploitation*, *supra* note 3, at 381; *but see* Collins, *supra* note 30, at 61 (noting that England and Wales have not adopted criminal law provisions that specifically address financial abuse of older persons).

50. Jackson *Senate Special Committee*, *supra* note 36, at 595.

51. See Heisler, *supra* note 28, at 52; Shelly L. Jackson, *All Elder Abuse Perpetrators Are Not Alike: The Heterogeneity of Elder Abuse Perpetrators and Implications for Intervention*, 60 INT’L J. OFFENDER THERAPY & COMPAR. CRIMINOLOGY 265 (2016) [hereinafter Jackson, *All Elder Abuse Perpetrators Are Not Alike*].

52. *How The Political Ground Shifted on Criminal Justice Reform*, NBC NEWS (Feb. 20, 2015, 4:29 PM), <https://www.nbcnews.com/politics/politics-news/how-politicians-came-support-criminal-justice-reform-n309966>.

53. Dessin, *Financial Exploitation*, *supra* note 3, at 379.

exploitation of older adults,<sup>54</sup> noteworthy progress has been made in the understanding of and how best to redress financial exploitation.<sup>55</sup> Although the field has long wrestled with how to define financial exploitation,<sup>56</sup> in 2016 the Centers for Disease Control and Prevention (“CDC”) released applicable uniform definitions for the surveillance of elder abuse, defining financial exploitation as:

The illegal, unauthorized, or improper use of an older individual’s resources by a caregiver or other person in a trusting relationship, for the benefit of someone other than the older individual. This includes, but is not limited to, depriving an older individual of rightful access to, information about, or use of personal benefits, resources, belongings, or assets.<sup>57</sup>

The field is coalescing around this definition. It also embodies a number of important elements that are reflected in existing criminal financial exploitation statutes as well.<sup>58</sup> The first nationally representative prevalence study published in 2010 concluded that 5.2 percent of older adults are financially exploited annually by a family member.<sup>59</sup> Although no national prevalence study has been undertaken to determine whether financial exploitation by a family member or a non-family member is more prevalent, it is generally believed that family members comprise the larger group of offenders.<sup>60</sup>

There also have been advances in constructing conceptual models to better explain and simulate the occurrence of financial exploitation,<sup>61</sup>

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54. HAFEMEISTER, *supra* note 2, at 382–83, 393, 399, 436–39; *see also* U.S. ADMIN. ON AGING, DEP’T OF HEALTH & HUM. SERVS., FINANCIAL EXPLOITATION OF OLDER PERSONS: REPORT TO CONGRESS (2010).

55. MARGUERITE DELIEMA & KENDON J. CONRAD, FINANCIAL EXPLOITATION OF OLDER ADULTS, ELDER ABUSE 141, 141 (XinQi Dong ed., 2017).

56. HAFEMEISTER, *supra* note 2, at 385–86; *see* Shelly L. Jackson, *The Vexing Problem of Defining Financial Exploitation*, 22 J. FIN. CRIME 63 (2015) [hereinafter Jackson, *The Vexing Problem*].

57. HALL ET AL., *supra* note 12, at 35.

58. Note that the CDC (2016) definition of financial exploitation explicitly restricts the definition to offenders who are in a personal relationship with the victim. As will be discussed, only fifteen states have this same restriction in their criminal financial exploitation statute. *See infra* notes 210–11 and accompanying text.

59. Acierno et al., *supra* note 16, at 292; *but see* Collins, *supra* note 30, at 61, 66–68 (arguing against the criminalization of financial abuse of older persons in large part because of the inability to define and establish with sufficient precision for purposes of the criminal law the elements of such a crime).

60. Jackson, *All Elder Abuse Perpetrators Are Not Alike*, *supra* note 51.

61. *See* Kendon J. Conrad et al., *Conceptual Model and Map of Financial Exploitation of Older Adults*, 23 J. ELDER ABUSE & NEGLECT 304 (2011).

with many incorporating relevant findings from neuroscience,<sup>62</sup> others addressing the significant trauma experienced by the victims of this exploitation,<sup>63</sup> and some targeting the impact of family dynamics on this behavior by applying family systems theory.<sup>64</sup> Indeed, the financial exploitation explanatory framework has become so influential that scholars and practitioners within the domestic violence field in general have begun to “borrow” related concepts for their own purposes.<sup>65</sup> In addition, advances in the measurement of financial exploitation have been achieved,<sup>66</sup> although Jackson has critiqued the measurement of financial exploitation in prevalence studies.<sup>67</sup>

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62. See, e.g., Mark S. Lachs & S. Duke Han, *Age-Associated Financial Vulnerability: An Emerging Public Health Issue*, 163 ANNALS INTERNAL MED. 877 (2015); R. Nathan Spreng et al., *Cognitive, Social, and Neural Determinants of Diminished Decision-Making and Financial Exploitation Risk in Aging and Dementia: A Review and New Model*, 28 J. ELDER ABUSE & NEGLECT 320 (2016); R. NATHAN SPRENG ET AL., AGING AND FINANCIAL EXPLOITATION RISK, AGING AND MONEY: REDUCING RISK OF FINANCIAL EXPLOITATION AND PROTECTING FINANCIAL RESOURCES 55 (Ronan M. Factora ed., 2021) (These models generally purport that changes in the aging brain contribute to vulnerabilities in financial decision making and increase risk for financial exploitation.).

63. See, e.g., Anne P. DePrince & Shelly L. Jackson, *Moving the Field Forward: Elucidating the Nexus Between Elder Abuse and Trauma*, 21 J. TRAUMA & DISSOCIATION 151 (2020); Jackson, *Shifting Conceptualization*, supra note 28.

64. E.g., Athena C. Y. Chan & Marlene S. Stum, *The State of Theory in Elder Family Financial Exploitation: A Systematic Review*, 12 J. FAM. THEORY & REV. 492 (2020) (providing an analysis of multiple financial exploitation theories and proposing a new model); Sheri Gibson & Sara Honn Qualls, *A Family Systems Perspective of Elder Financial Abuse*, 36 GENERATIONS: J. AM. SOC'Y ON AGING 26, 27 (2012) (describing how a family systems perspective helps explain the role family dynamics play in financial exploitation).

65. It is widely accepted that elder abuse is a form of family violence, but there has not tended to be a comparable financial exploitation category associated with other forms of family violence. The field of intimate partner violence, for example, conceives of economic abuse as more of a tactic used to gain or maintain control of another person, rather than for immediate financial gain. See, e.g., Mimi Kim, *DANCING THE CARCERAL CREEP: THE ANTI-DOMESTIC VIOLENCE MOVEMENT AND THE PARADOXICAL PURSUIT OF CRIMINALIZATION, 1973-1986*, U.C. BERKELEY: INST. FOR THE STUDY OF SOCIETAL ISSUES (2015), <https://escholarship.org/uc/item/804227k6>; Angela Littwin, *Coerced Debt: The Role of Consumer Credit in Domestic Violence*, 100 CAL. L. REV. 951 (2012); Judy L. Postmus et al., *Measuring Economic Abuse in the Lives of Survivors: Revising the Scale of Economic Abuse*, 22 VIOLENCE AGAINST WOMEN 692 (2016).

66. See Kendon J. Conrad et al., *Self-Report Measure of Financial Exploitation of Older Adults*, 50 GERONTOLOGIST 758 (2010); Janey C. Peterson et al., *Financial Exploitation of Older Adults: A Population-Based Prevalence Study*, 29 J. GEN. INTERNAL MED. 1615 (2014).

67. See Shelly L. Jackson, *A Systematic Review of Financial Exploitation Measures in Prevalence Studies*, 37 J. APPLIED GERONTOLOGY 1150 (2018).

Perhaps the most dominant area of research regarding the financial exploitation of older adults, however, has attempted to identify risk factors that presage its occurrence,<sup>68</sup> although few conclusions can be drawn thus far about whether these risk factors can be specifically applied to individual cases.<sup>69</sup> Nevertheless, the data at this point does indicate that an older adult's dementia or cognitive impairment is a relatively reliable predictive risk factor for financial exploitation.<sup>70</sup> Relatedly, scholars have empirically developed the critical concept of financial decision-making capacity.<sup>71</sup>

Although the consequences of financial exploitation remain largely anecdotal, it is widely believed to be devastating for many older adults because of the resulting financial loss, its adverse psychological and health impacts, and the associated family and societal costs.<sup>72</sup> Financial exploitation can leave older adults without the financial stability they once enjoyed, which in turn can lead to greater financial insecurity, anxiety, hopelessness, isolation, depression, dependence on others, and reliance on public welfare, which tends to culminate in a loss of independence,<sup>73</sup> increased physical and psychological

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68. See Jennifer E. Storey, *Risk Factors for Elder Abuse and Neglect: A Review of the Literature*, 50 *AGGRESSION & VIOLENT BEHAV.* 101339 (2020).

69. See SHELLY L. JACKSON, *UNDERSTANDING ELDER ABUSE: A CLINICIAN'S GUIDE* 22–42 (2018) (reviewing identified risk factors associated with the different types of elder abuse).

70. See XinQi Dong et al., *Association of Cognitive Function and Risk for Elder Abuse in a Community-Dwelling Population*, 32 *DEMENTIA & GERIATRIC COGNITIVE DISORDERS* 209 (2011); Peter A. Lichtenberg, *Financial Exploitation, Financial Capacity, and Alzheimer's Disease*, 71 *AM. PSYCH.* 312 (2016).

71. See Daniel C. Marson et al., *Assessing Financial Capacity in Patients with Alzheimer Disease: A Conceptual Model and Prototype Instrument*, 57 *ARCHIVES NEUROLOGY* 877 (2000); see also Stacey Wood & Peter A. Lichtenberg, *Financial Capacity and Financial Exploitation of Older Adults: Research Findings, Policy Recommendations and Clinical Implications*, 40 *CLINICAL GERONTOLOGIST* 3 (2017) (describing financial decision-making capacity as a concept that allows clinicians to assess a person's ability to make financial decisions, with implications for their own financial safety as well as for related criminal and civil court cases, and explain how cognition affects financial security).

72. HAFEMEISTER, *supra* note 2, at 391–92; see also Nora McGuire, *Whose Dime Is It Anyway? A Comprehensive Look at Federal and State Government Landscapes for Senior Financial Exploitation Laws Concerning Financial Institutions*, 26 *ELDER L.J.* 431 (2019); Jesse R. Morton & Scott Rosenbaum, *An Analysis of Elder Financial Exploitation: Financial Institutions Shirking Their Legal Obligations to Prevent, Detect, and Report This "Hidden" Crime*, 27 *ELDER L.J.* 261 (2019); Annie L. Nguyen et. al., *Perceived Types, Causes, and Consequences of Financial Exploitation: Narratives from Older Adults*, 76 *J. GERONTOLOGY: SOC. SCIS.* 996 (2021).

73. See Jonk et al., *supra* note 26.

problems,<sup>74</sup> and higher mortality rates.<sup>75</sup> Furthermore, successful interventions for this victim population have been limited.<sup>76</sup>

## II. Criminal Financial Exploitation Statutes

The devastating consequences stemming from the financial exploitation of older adults have triggered, at least in part, the criminalization of this financial exploitation.<sup>77</sup> The prosecution of financial exploitation, nevertheless, remains largely a state and local issue.<sup>78</sup> Traditionally, theft or larceny statutes were used to prosecute and impose penalties on those responsible for the financial exploitation of older adults.<sup>79</sup> Such financial exploitation, however, frequently fell outside the parameters of existing statutory schemes that govern financial crimes (e.g., the older adult consented to the transaction, but this consent was questionable given the context), imposed minimal penalties that did not reflect the harm incurred or deter future occurrences, or did not provide means for redress or compensation, thus, limiting the ability to secure justice for many older victims.<sup>80</sup> Criminal financial

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74. Charles P. Mouton et al., *Elder Abuse and Mistreatment: Results from Medicare Claims Data*, 31 J. ELDER ABUSE & NEGLECT 263 (2019).

75. See Burnett et al., *supra* note 33.

76. For an example of a successful intervention, see Peter A. Lichtenberg et al., *Providing Assistance for Older Adult Financial Exploitation Victims: Implications for Clinical Gerontologists*, 42 CLINICAL GERONTOLOGIST 435 (2019).

77. Carey et al., *supra* note 34, at 309.

78. HAFEMEISTER, *supra* note 2, at 420–23; see also U.S. GOV'T ACCOUNTABILITY OFF., GAO-13-110, *supra* note 38, at 6 (observing that “[c]ombating elder financial exploitation is primarily the responsibility of state and local agencies,” directed largely by social services, criminal justice, and consumer protection governmental entities).

79. Dessin, *Financial Exploitation*, *supra* note 3, at 382 (observing that Alaska has no criminal financial exploitation statute but “it might be categorized as some form of theft”); ROSE MARY BAILLY & ELIZABETH LOEWY, FINANCIAL EXPLOITATION OF THE ELDERLY: LEGAL ISSUES, PREVENTION, PROSECUTION, SOCIAL SERVICE ADVOCACY, 3–4 (2007) (noting that when a jurisdiction is without a financial exploitation statute, “the state’s larceny, forgery, or other penal code offenses may be used”); see also Collins, *supra* note 30, at 68–73 (contending that these traditional, more generic provisions continue to provide a more appropriate vehicle for prosecuting financial abuse of older persons under the criminal law than provisions that specifically target this abuse).

80. BAILLY & LOEWY, *supra* note 79, at 2–6 (describing situations that do not at first appear to meet the elements of a crime, e.g., an older adult who technically may have consented to permitting a caregiver to have access to a bank account, but only did so out of fear that he/she would otherwise lose the physical/emotional support of the caregiver, pointing out that there are several factors that vitiate consent, for example, coercion, fraud, misrepresentation, and diminished decisional capacity).

exploitation statutes were enacted in part because traditional financial crimes statutes failed to encompass some, if not many, of the acts constituting financial exploitation of older adults or were undercut by associated defenses that asserted, for example, that the financial abuse occurred with the knowledge and implicit permission of the victim, regardless of the victim's capacity at the time to consent to the related financial transactions.<sup>81</sup> In theory at least, criminal prosecutions addressing the financial exploitation of older adults are facilitated by having a more targeted statute.<sup>82</sup> At the same time, criminal financial exploitation statutes have tended to borrow language from counterparts found in adult protective services ("APS") statutes, even though the latter are designed to be more proactive and protective of older adults and authorize intervention in such a way that minimizes any potential resulting harm to the older adult rather than hold guilty offenders accountable.<sup>83</sup> Thus, this set of laws has a different purpose, namely, to determine at a relatively early stage whether an older adult has been financially exploited and is thus eligible for needed APS interventions, support, and social services.<sup>84</sup> Intended only to protect a vulnerable individual and halt ongoing financial exploitation, APS provisions are not designed to determine the guilt or innocence of the parties involved; determine what, if any, punishment or other penalties should be imposed; nor obtain recovery of lost funds and assets or otherwise

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81. FRIED ET AL., *supra* note 40, at 106 (asserting that in the vast majority of criminal financial exploitation cases the perpetrator claims that the older adult consented to the financial transaction, and that whether the older victim had the capacity to consent to the transaction is frequently not addressed).

82. Melissa C. Haberlen, *Financial Exploitation of the Elderly: A Policy Review and Recommendations for Georgia* (Dec. 20, 2012) (Public Health thesis, Georgia State University), [https://scholarworks.gsu.edu/cgi/viewcontent.cgi?article=1261&context=iph\\_theses](https://scholarworks.gsu.edu/cgi/viewcontent.cgi?article=1261&context=iph_theses); *but see* Collins, *supra* note 30, at 61.

83. *Compare, e.g.*, VT. STAT. ANN. tit. 33, § 6902(6) (2019) (APS statute) ("Exploitation' means: (A) willfully using, withholding, transferring, or disposing of funds or property of a vulnerable adult without or in excess of legal authority for the wrongful profit or advantage of another; (B) acquiring possession or control of or an interest in funds or property of a vulnerable adult through the use of undue influence, harassment, duress, or fraud."), *with* VT. STAT. ANN. tit. 13, § 1380(a) (2019) (criminal statute) ("No person shall willfully use, withhold, transfer, or dispose of funds or property of a vulnerable adult, without or in excess of legal authority, for wrongful profit or advantage. No person shall willfully acquire possession or control of or an interest in funds or property of a vulnerable adult through the use of undue influence, harassment, duress, or fraud.").

84. *See* Shelly L. Jackson, *Adult Protective Services and Victim Services: A Review of the Literature to Increase Understanding Between These Two Fields*, 34 J. AGGRESSION & VIOLENT BEHAV. 214 (2017).

require the guilty party to make restitution.<sup>85</sup> As a result, in contrast to a criminal prosecution, an APS determination that an older adult is being financially exploited is far less consequential for any offender involved; the response is typically limited to interventions designed primarily to stop and otherwise protect the older adult from future exploitation, and APS involvement is generally considered less of a deterrent to prospective offenders.<sup>86</sup> With the increasing occurrence and

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85. Because criminal sanctions are not involved in the APS context and the only question is whether governmental (i.e., APS) intervention is justified under the circumstances to protect a vulnerable individual, the information reported or otherwise provided to the APS need only meet a relatively low standard to justify intervention. In some jurisdictions, this standard is articulated as a “reasonable belief” or “reasonable cause to believe” that abuse has occurred and intervention is needed to protect the individual. See ADMIN. FOR CMTY. LIVING, U.S. DEP’T OF HEALTH & HUM. SERVS., NATIONAL VOLUNTARY CONSENSUS GUIDELINES FOR STATE ADULT PROTECTIVE SERVICES SYSTEMS (2020); see, e.g., ALASKA STAT. § 47.24.010(a) (2020) (listing a range of persons who must submit a report within twenty-four hours if they have, in the performance of their professional duties, “reasonable cause to believe that a vulnerable adult suffers from undue influence, abandonment, exploitation, abuse, neglect, or self-neglect”).

86. Another option, although also an intervention that has done little to deter or remedy the financial exploitation of older adults, is the filing of a civil suit by a plaintiff against a defendant. *How Does a Lawsuit Work? Basic Steps in the Civil Litigation Process*, STOEL RIVES LLP (Jan 24, 2012), <https://www.stoel.com/legal-insights/article/how-does-a-lawsuit-work-basic-steps-in-the-civil-litigation-process>. A plaintiff is the victim of the financial exploitation or, if the victim is deemed incompetent, the victim’s legally designated representative, such as a guardian or conservator). *Id.* A defendant is a person or an entity who is claimed to have financially exploited the plaintiff. *Id.* The goal of a civil suit is generally to recover lost funds or assets or otherwise financially compensate the plaintiff for his or her wrongful loss and, in some cases, to impose an injunction to prevent further exploitation. *Id.* Because the goal of a civil suit is to remedy the loss of a wronged plaintiff, rather than punish or otherwise curtail the liberty of or impose punitive sanctions upon a guilty defendant, the standard of proof (i.e., the level to which the plaintiff’s proof must rise) in a civil lawsuit is the lower standard of “by a preponderance of the evidence” rather than the “beyond a reasonable doubt” standard in a criminal proceeding. *Evidentiary Standards and Burdens of Proof in Legal Proceedings*, JUSTIA (May 2019), <https://www.justia.com/trials-litigation/lawsuits-and-the-court-process/evidentiary-standards-and-burdens-of-proof>. Notwithstanding the lower standard of proof, civil suits have done little to curtail the occurrence of financial exploitation of older adults as many of these victims lack the means (e.g., the financial ability to hire an attorney or find an attorney in general), the awareness (e.g., the knowledge that they can pursue a civil suit against a perpetrator of financial exploitation and recover their losses), the ability (e.g., because of a physical or mental impairment they may lack the strength or cognitive capacity to sustain such a lawsuit or serve as the key witness regarding the exploitation), or the willingness and resolve (e.g., if the perpetrator is a family member or otherwise well-known to the older adult, which is often the case, and the older adult is emotionally attached to or emotionally or physically dependent upon the perpetrator) to pursue this option. *Civil Recovery in Elder Financial Exploitation Cases*, AM. BAR ASS’N (Mar. 18, 2020),

awareness of the financial exploitation of older adults and the harm it often causes, an evolution has occurred in recent years with more states enacting distinct and specific criminal financial exploitation statutes.<sup>87</sup> Dessin in her publication in 2000 reported that most of the existing criminal financial abuse statutes had only recently been enacted, and only twenty-five states had such a statute.<sup>88</sup> In contrast, a 2016 article identified thirty-six states with a criminal financial exploitation statute.<sup>89</sup>

With the growing criminalization of elder abuse generally,<sup>90</sup> some scholars are specifically advocating that the prosecution of financial exploitation of older adults be pursued more vigorously.<sup>91</sup> Although it has been observed that “criminal cases involving financial exploitation are notoriously difficult to prosecute,”<sup>92</sup> there is nonetheless some evidence that during the past two decades this financial exploitation is increasingly being prosecuted.<sup>93</sup> Dessin contended twenty years ago that “as society’s interest in preventing all types of elder abuse grows, states are

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[https://www.americanbar.org/groups/law\\_aging/publications/bifocal/vol-41/bifocal-vol-41-issue-4/what-you-need-to-know-about-civil-recovery-in-elder-financial-ex/](https://www.americanbar.org/groups/law_aging/publications/bifocal/vol-41/bifocal-vol-41-issue-4/what-you-need-to-know-about-civil-recovery-in-elder-financial-ex/). In addition, the defendant in a civil suit may be relatively judgment-proof in that the defendant may lack the financial means to compensate the plaintiff for the defendant’s wrong-doing (e.g., the defendant may have a gambling or substance abuse problem that resulted in the defendant squandering or otherwise dissipating the funds or assets wrongfully obtained from the plaintiff). *Id.*

87. See Dessin, *Financial Exploitation*, *supra* note 3, at 381.

88. *Id.*

89. Kevin E. Hansen et al., *Criminal and Adult Protection Financial Exploitation Laws in the United States: How Do the Statutes Measure up to Existing Research?* 42 MITCHELL HAMLINE L. REV. 897, 912 (2016) (“Thirty-six states include specific language in their statutes criminalizing financial exploitation.”).

90. See Heisler, *supra* note 28; Nina A. Kohn, *Elder (In)Justice: A Critique of the Criminalization of Elder Abuse*, 49 AM. CRIM. L. REV. 1 (2012).

91. Andrew J. McClurg, *Preying on the Graying: A Statutory Presumption to Prosecute Elder Financial Exploitation*, 65 HASTINGS L.J. 1099, 1104 (2014) (making it easier to successfully prosecute offenders both assures justice to individual victims and provides a deterrent to future abuse); see also Paul R. Greenwood, *Our Graying Society: Issues of Elder Abuse and Age Bias*, 31/32 PROSECUTOR’S BRIEF 41 (2010) (SPECIAL ISSUE) (“This article is intended to shatter some of the myths associated with prosecuting crimes against the elderly.”).

92. BAILLY & LOEWY, *supra* note 79, at 1–3.

93. Jeanette M. Daly et al., *Iowa Dependent Adult Abuse Prosecutions from 2006 Through 2015: Health Care Providers’ Concern*, 8J. PRIMARY CARE & CMTY. HEALTH 153 (2017); Rebecca C. Morgan et al., *A View from the Bridge: A Brief Look at the Progression of Cases of Elder Financial Exploitation Prosecutions*, 25 ELDER L.J. 271 (2017).



likely to refine and enhance their protections.”<sup>94</sup> In this Article, the existing landscape of criminal financial exploitation statutes will be examined and a deep dive analysis provided of the evolution of these statutes over time and across states, with an accompanying exploration of whether and, if so, how these enactments afford needed protection to older adults subjected to financial exploitation.

### A. Method

Two sets of analyses were undertaken for this Article. First, a table was created (see Table 1) to summarize the results from five compilations of the state criminal financial exploitation laws that existed in the United States at distinct times from 2000 to 2020. These compilations were generated by Dessin (compiling state statutes from the year 2000),<sup>95</sup> Bailly and Loewy (from the year 2005),<sup>96</sup> Jackson (year 2013),<sup>97</sup> Hansen et al. (year 2015),<sup>98</sup> and the 2020 review completed for this Article. This part of the analysis looks at how criminal financial exploitation statutes have evolved in the various states over the past twenty years.

Second, focusing exclusively on the aforementioned 2020 review, an in-depth examination of these criminal statutes was undertaken to extract the following: the definition of “financial exploitation” employed; who is delineated as a “victim” of this financial exploitation; who is considered to be an “offender;” and what penalties can be imposed for the financial exploitation of an older adult. The data for this analysis are presented in Table 2.

### B. Analysis of Criminal Financial Exploitation Statutes from 2000 to 2020

#### 1. JURISDICTIONS WITH A CRIMINAL FINANCIAL EXPLOITATION STATUTE.

In 2020, thirty-nine states and the District of Columbia had a criminal statute in place that specifically addressed financial exploitation of

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94. Dessin, *Financial Exploitation*, *supra* note 3, at 426 (predicting that interest in protecting the elderly will increase, and that statutes addressing elder abuse will become the basis for more criminal actions).

95. Dessin, *Is the Solution a Problem*, *supra* note 48; *see also* Dessin, *Financial Abuse*, *supra* note 48.

96. BAILLY & LOEWY, *supra* note 79, at 1.

97. Jackson, *The Vexing Problem*, *supra* note 56, at 63.

98. Hansen et al., *supra* note 89, at 897.

older adults.<sup>99</sup> In twenty-six of these states and the District of Columbia, the terms “exploitation” or “financial exploitation” are specifically included in the title of the statute, making its focus immediately apparent.<sup>100</sup> An additional thirteen states have a criminal financial exploitation statute effectively in place, although that terminology is not specifically set forth in the title (e.g., the phrase “criminal mistreatment” may be used in the title without an explicit reference to financial exploitation, but within the text of the statute financial exploitation is delineated as one of the offenses encompassed by “criminal mistreatment”).<sup>101</sup> Three other states do not presently have a criminal statute that directly addresses the financial exploitation of an older adult, but, as shown in Table 1, they do have in place enhanced criminal penalties for theft from an elderly person, thereby specifically providing structural support for and emphasizing the availability of criminal prosecution for the financial exploitation of an older adult.<sup>102</sup> There remain eight states that have not enacted a law that directly authorizes criminal prosecutions or enhanced penalties for the financial exploitation of older adults.<sup>103</sup>

### C. Analysis across time

The forty statutory schemes that specifically address criminal financial exploitation of older adults were assessed and then categorized as statutory approaches that either: 1) remained relatively unchanged

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99. See *infra* Table 1.

100. See *infra* Table 1 (as shown in Table 1, with the corresponding statutory citations, these jurisdictions are Alabama, the District of Columbia, Florida, Georgia, Idaho, Illinois, Indiana, Louisiana, Maryland, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Carolina, North Dakota, Oklahoma, Rhode Island, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, West Virginia, and Wyoming. In some instances, the reference in the title was solely to financial exploitation (i.e., the title did not also address any other form of elder abuse), while in others the reference to financial exploitation was combined with a reference to other forms of elder abuse (e.g., the phrase “abuse, neglect and exploitation” was used in the title)).

101. See *infra* Table 1 (as shown in Table 1, with the corresponding statutory citations, these jurisdictions are Arizona, Arkansas, California, Colorado, Delaware, Iowa, Kansas, Kentucky, Michigan, Nevada, Oregon, South Carolina, and Washington.)

102. See *infra* Table 1 (as shown in Table 1, with the corresponding statutory citations, these jurisdictions are Massachusetts (age sixty and older), Ohio (elderly person), and Wisconsin (elder adult at risk)).

103. See *infra* Table 1 (as shown in Table 1, with the corresponding statutory citations, these jurisdictions are Alaska, Connecticut, Hawaii, Maine, New Jersey, New Mexico, New York, and Pennsylvania).

from 2000 to 2020, 2) were present in 2000 but evolved during this era, or 3) were initiated for the first time after 2000. Each category is described below.

1. **STATUTORY APPROACHES REMAINING RELATIVELY UNCHANGED FROM 2000 TO 2020**

As shown in Table 1, nineteen states had a criminal statute explicitly addressing the financial exploitation of older adults in place in 2000 that remains in effect relatively unchanged today,<sup>104</sup> in addition to the three states that throughout this time period authorized via their criminal law provisions governing theft the imposition of enhanced criminal penalties for the financial exploitation of an older adult.<sup>105</sup>

2. **STATUTORY APPROACHES THAT EVOLVED FROM 2000 TO 2020**

The criminal law approach to the financial exploitation of older adults in ten other states significantly evolved in some manner during the past twenty years.<sup>106</sup> In eight states, the focus and language for their financial exploitation statutes containing criminal penalties were drawn from social welfare-type statutory provisions and inserted into the criminal code.<sup>107</sup> For example, **Alabama** already had a financial exploitation statute in its public welfare section providing penalties for financial exploitation,<sup>108</sup> but in 2013, signed into law an act to: “create

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104. See *infra* Table 1 (as shown in Table 1, with the corresponding statutory citations, these jurisdictions include Arizona, Arkansas, California, Colorado, Florida, Idaho, Illinois, Indiana, Kentucky, Louisiana, Minnesota, Mississippi, Nebraska, Nevada, North Dakota, South Carolina, South Dakota, and Utah. In addition, although Dessin listed Oregon as not having criminal financial exploitation legislation in place when she published her article in the year 2000, Oregon had in fact enacted such legislation in 1993; see 1993 Or. Laws 364; OR. REV. STAT. § 163.205(1)(b)(D)-E) (2020) (“Criminal mistreatment in the first degree.”)).

105. See *supra* note 104 (as shown in Table 1, with the corresponding statutory citations, these jurisdictions are Massachusetts (“Whoever steals or with intent to defraud obtains by a false pretense, or whoever unlawfully, and with intent to steal or embezzle, converts, or secretes with intent to convert, the property of another, sixty years of age or older...”), Ohio (“[I]f the victim of the offense is an elderly person . . . a violation of this section is theft from a person in a protected class”), and Wisconsin (“If any of the following circumstances exists, is guilty of a Class H felony: . . . The property is taken . . . from an individual at risk,” with an “individual at risk” defined to include “an elder adult at risk,” which in turn is defined at WIS. STAT. ANN. § 46.90(1)(br) (2020) as “any person age 60 or older who has experienced, is currently experiencing, or is at risk of experiencing abuse, neglect, self-neglect, or financial exploitation”)).

106. See *infra* Table 1; ALA. CODE § 38-9-7 (2000).

107. See ALA. CODE § 38-9-7 (2000).

108. *Id.*

the crimes of financial exploitation of an elderly person and elder abuse and neglect in the first, second, and third degree; and to provide penalties.<sup>109</sup> **Delaware**, likewise historically,<sup>110</sup> had relied on its welfare statute to impose penalties for financial exploitation.<sup>111</sup> Delaware, however, now also has in place two criminal statutes that directly address financial crimes targeting older adults.<sup>112</sup> **Georgia** has had a financial exploitation statute in place at each of the five examined points in time, although the associated criminal penalties were initially found in the “handicapped persons” section of the Georgia Code, until 2013 when Georgia embedded them instead in the “Crimes and Offenses” section of its code, thereby signaling the serious nature of this behavior, emphasizing that they can constitute a “crime,” and enhancing available sanctions for this behavior.<sup>113</sup> **Montana** similarly initially addressed the financial exploitation of older adults in its “Family Services” section of its statutory scheme.<sup>114</sup> In 2015, however, Montana pulled out section 3, which specifically addressed financial exploitation, from the “Family Services” section, reworked it somewhat, and inserted it instead into the “Crimes” section of the Montana Code.<sup>115</sup> In 2005, **North Carolina** amended its domestic abuse of older adults criminal statute, which had been enacted in 1995 and had included a provision targeting “exploitation,” removed the provision pertaining to exploitation, and established instead a new stand-alone section in its criminal code that substantially expanded the definition and scope of financial exploitation of older adults, considerably enhanced the available associated criminal penalties, and highlighted thereby the significance and weight of this crime.<sup>116</sup> **Tennessee** likewise historically relied upon a welfare statute

109. Protecting Alabama’s Elders Act, 2013 Al. Laws 29, creating ALA. CODE §§ 13A-6-195–197 (2020).

110. See Dessin, *Financial Exploitation*, *supra* note 3, at 390–91; BAILLY & LOEWY, *supra* note 79, app. 1 at 16–17.

111. DEL. CODE ANN. tit. 31, § 3913 (1999, 2005).

112. DEL. CODE ANN. tit. 11, § 1105 (2020) (“Crime Against a Vulnerable Adult.”); DEL. CODE ANN. tit. 11, § 841(c)(2) (2020) (“Theft.”) (“Where a victim is 62 years of age or older, . . . theft is a class G felony unless the value of the property received, retained or disposed of is \$1,500 or more, in which case it is a class F felony.”).

113. GA. CODE ANN. § 16-5-102 (2013).

114. MONT. CODE ANN. § 52-3-825 (2000, 2004).

115. See 2015 Mont. Laws 180; MONT. CODE ANN. § 45-6-333 (2015, 2020).

116. N.C. GEN. STAT. § 14-112.2 (2020) (in 1995, North Carolina enacted N.C. GEN. STAT. ANN. § 14-32.3, titled “Domestic abuse, neglect, and exploitation of disabled or elder adults,” of which subsection (c) specifically addressed “Exploitation.” In 2005, the state adopted 2005 N.C. Sess. Laws 272, which deleted subsection (c) of

to penalize the financial exploitation of older adults,<sup>117</sup> but in 2017 repealed that law and replaced it with a section addressing this exploitation within its criminal code.<sup>118</sup> In **Vermont**, although the Commissioner of Disabilities, Aging, and Independent Living had previously been permitted to impose an administrative penalty upon a finding of financial exploitation,<sup>119</sup> it was not until 2005 that the legislature made the financial exploitation of an older adult a crime and authorized the imposition of criminal penalties.<sup>120</sup> Finally, while **Wyoming** initially embedded penalties for financial exploitation in the Adult Protective Services section of its statutory code,<sup>121</sup> it was only in 2002 that the state enacted a provision that specifically made the financial exploitation of older adults a crime and penalized such actions accordingly.<sup>122</sup>

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N.C. GEN. STAT. ANN. § 14-32.3, and substantially and specifically reworked and expanded the previously existing provisions and enhanced the penalties pertaining to “Exploitation of an older adult or disabled adult.” N.C. GEN. STAT. ANN. § 14-112.2 (2020).

117. TENN. CODE ANN. § 71-6-117 (1999, 2004, 2013, 2015) (repealed by Acts 2019, ch. 474, § 16, effective January 1, 2020).

118. TENN. CODE ANN. § 39-15-502 (2020) (“Offense of financial exploitation of elderly or vulnerable person.”).

119. VT. STAT. ANN. tit. 33, § 6913(b) (2000, 2004) (the Commissioner is located within the Vermont Department of Disabilities, Aging, and Independent Living) (this provision is located within the Human Services part (Title 33) of the Vermont Code).

120. VT. STAT. ANN. tit. 13, § 1380 (2005) (“A person who . . . exploits money, funds, or property of no more than \$500.00 in value, shall be imprisoned not more than 18 months or fined not more than \$10,000.00, or both[, while a] person who . . . exploits money, funds, or property in excess of \$500.00 in value, shall be imprisoned not more than 10 years or fined not more than \$10,000.00, or both.”) (this provision is located within the Crimes and Criminal Procedure part (Title 13) of the Vermont Code).

121. WYO. STAT. ANN. § 35-20-109 (2000). Note that Dessin, *Financial Exploitation*, *supra* note 3, at 424–25, (included WYO. STAT. ANN. § 35-20-109 (2000) in her statutory review, but at that time “exploitation” of a disabled adult was a misdemeanor housed within the Adult Protective Services section of code and was repealed in 2002). (It is not included in Table 1 because it was not a criminal financial exploitation statute.)

122. WYO. STAT. ANN. § 6-2-507 (2002) (“(b) Reckless abuse, neglect, abandonment, intimidation or exploitation of a vulnerable adult is a misdemeanor, punishable by not more than one (1) year in jail, a fine of one thousand dollars (\$1,000.00), or both, and registration of the offender’s name on the central registry. (c) Intentional abuse, neglect or abandonment of a vulnerable adult is a felony punishable by not more than ten (10) years in prison, a fine of not more than ten thousand dollars (\$10,000.00), or both, and registration of the offender’s name on the central registry. (d) Exploitation of a vulnerable adult is a felony punishable by not more than ten (10) years in prison, a fine of not more than ten thousand dollars (\$10,000.00), or both, and registration of the offender’s name on the central registry.”) (this provision is located within Title 6: Crimes and Offenses of the Wyoming Code).

In 2000, two other states authorized an enhanced penalty for the financial exploitation of older adults in more generic criminal statutes (e.g., provisions governing the crime of theft), but eventually enacted specific criminal financial exploitation statutes.<sup>123</sup> For example, Dessin observed in 2000 that **Michigan** had an enhanced penalty for theft from a vulnerable victim.<sup>124</sup> By the time Bailly and Loewy conducted their review in 2007,<sup>125</sup> however, Michigan had adopted a law, located in the embezzlement chapter of the Michigan Penal Code, that directly and specifically addressed embezzlement from a “vulnerable adult” and contained explicit financial exploitation language, where it remains today.<sup>126</sup> Likewise, for **Missouri**, Dessin<sup>127</sup> wrote that the financial exploitation of older adults in 2000 could be charged under its criminal code as either elder abuse<sup>128</sup> or stealing.<sup>129</sup> In 2015, the Missouri legislature, however, enacted a law that became effective in 2017 that specifically recognized and separately authorized punishment for the “offense of financial exploitation of an elderly person.”<sup>130</sup>

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123. Dessin, *Financial Exploitation*, *supra* note 3, at 403 (citing MICH. COMP. LAWS § 744.40 (2000)).

124. *Id.*

125. BAILLY & LOEWY, *supra* note 79, app. 1 at 50.

126. MICH. COMP. LAWS § 750.174a (2005, 2020) (“(1) A person shall not through fraud, deceit, misrepresentation, coercion, or unjust enrichment obtain or use or attempt to obtain or use a vulnerable adult’s money or property to directly or indirectly benefit that person knowing or having reason to know the vulnerable adult is a vulnerable adult.”). (Depending on the amount involved, the defendant can be found guilty of either a misdemeanor or a felony); MICH. COMP. LAWS § 750.145m(u) (2020) (a “vulnerable adult” is separately defined as one or more of the following: “(i) An individual age 18 or over who, because of age, developmental disability, mental illness, or physical disability requires supervision or personal care or lacks the personal and social skills required to live independently. (ii) An adult as defined in section 3(1)(b) of the adult foster care facility licensing act, MCL 400.703. (iii) An adult as defined in section 11(b) of the social welfare act, MCL 400.11.”); MICH. COMP. LAWS § 750.145m(u) (2020).

127. Dessin, *Financial Exploitation*, *supra* note 3, at 403.

128. MO. ANN. STAT. § 565.184 (West 2000).

129. MO. ANN. STAT. § 570.030 (West 2000).

130. MO. ANN. STAT. § 570.145 (West 2017, 2020) (“Financial exploitation of the elderly person or person with a disability”).

### 3. STATUTORY APPROACHES INITIATED SINCE 2000

Since Dessin's article was published in 2000,<sup>131</sup> eleven additional jurisdictions enacted legislation for the first time that specifically addressed criminal financial exploitation of older adults.<sup>132</sup> **Maryland** enacted its provisions in 2002,<sup>133</sup> **Oklahoma** in 2006,<sup>134</sup> **Rhode Island** in 2008,<sup>135</sup> **Iowa** in 2009,<sup>136</sup> **West Virginia** in 2009,<sup>137</sup> **Kansas** in 2010,<sup>138</sup> **Texas** in 2011,<sup>139</sup> **Virginia** in 2013,<sup>140</sup> **New Hampshire** in 2014,<sup>141</sup> the

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131. Dessin, *Financial Exploitation*, *supra* note 3, at 379. As discussed previously in note 104, although Dessin listed Oregon as not having criminal financial exploitation legislation when she published her article in the year 2000, Oregon had in fact enacted such legislation in 1993; see 1993 Or. Laws 364; OR. REV. STAT. § 163.205(1)(b)(D,E) (2020) (“Criminal mistreatment in the first degree.”).

132. See 2002 Md. Code Ann. Adv. Legis. Serv. 479, 480 (LexisNexis); MD. CODE ANN., CRIM. LAW § 8-801 (West 2020); 2006 Okla. Sess. Laws 215; OKLA. STAT. tit. 21, § 843.4 (2020); 2008 R.I. Adv. Legis. Serv. 161, 204 (LexisNexis); 11 R.I. GEN. LAWS § 11-68-1 (2020) (“Definitions”); § 11-68-2 (“Exploitation of an elder”); § 11-68-3 (“Penalties for violations”); 2009 Iowa Acts 107; IOWA CODE § 235B.20 (2020); 2009 W. Va. Adv. Legis. Serv. 56 (LexisNexis); W. VA. CODE § 61-2-29b (2020); 2010 Kan. Sess. Laws 136; KAN. STAT. ANN. § 21-5417 (2020); 2011 Tex. Gen. Laws 620; TEX. PENAL CODE ANN. § 32.53 (West 2019); 2013 Va. Adv. Legis. Serv. 452 (LexisNexis); VA. CODE ANN. § 18.2-178.1 (2020); 2014 N.H. Rev. Stat. Ann. Adv. Legis. Serv. 151 (LexisNexis); N.H. REV. STAT. ANN. § 631:9 (2020); 63 D.C. Reg. 10733 (Aug. 26, 2016); D.C. CODE § 22-936.01 (2020); 2017 Wash. Sess. Laws 266; WASH. REV. CODE § 9A.56.400 (2020).

133. See 2002 Md. Code Ann. Adv. Legis. Serv. 479, 480 (LexisNexis); MD. CODE ANN., CRIM. LAW § 8-801 (LexisNexis 2020) (“Exploitation of Vulnerable Adults Prohibited”).

134. See 2006 Okla. Sess. Laws 215; OKLA. STAT. tit. 21, § 843.4 (2020) (“Exploitation of Elderly Persons or Disabled Adults—Definitions—Penalties”).

135. See 2008 R.I. Adv. Legis. Serv. 161, 204 (LexisNexis); 11 R.I. GEN. LAWS § 11-68-1 (2020) (“Definitions”), § 11-68-2 (“Exploitation of an elder”); § 11-68-3 (“Penalties for violations”).

136. See 2009 Iowa Acts 107; IOWA CODE § 235B.20 (2020) (“Dependent adult abuse—initiation of charges—penalty.”).

137. See 2009 W. Va. Adv. Legis. Serv. 56 (LexisNexis); W. VA. CODE § 61-2-29b (2020) (“Financial exploitation of an elderly person, protected person, or incapacitated adult; penalties; definitions.”).

138. See 2010 Kan. Sess. Laws 136; KAN. STAT. ANN. § 21-5417 (2020) (“Mistreatment of a dependent adult; mistreatment of an elder person.”).

139. See 2011 Tex. Gen. Laws 620; TEX. PENAL CODE ANN. § 32.53 (West 2019) (“Exploitation of Child, Elderly Individual, or Disabled Individual.”). Since writing this Article, Texas enacted Tex. Penal Code § 32.55, Financial Abuse of Elderly Individual, effective September 1, 2021.

140. See 2013 Va. Adv. Legis. Serv. 452 (LexisNexis); VA. CODE ANN. § 18.2-178.1 (2020) (“Financial exploitation of mentally incapacitated persons; penalty”).

141. See 2014 N.H. Rev. Stat. Ann. Adv. Legis. Serv. 151 (LexisNexis); N.H. REV. STAT. ANN. § 631:9 (2020) (“Financial Exploitation of an Elderly, Disabled, or Impaired Adult.”).

**District of Columbia** in 2016,<sup>142</sup> and, most recently, **Washington** in 2017.<sup>143</sup> These enactments, which had no precedent in these states,<sup>144</sup> likely reflected an increased recognition of the pervasiveness and harm resulting from the financial exploitation of older adults and a certain level of momentum generated by those states that had enacted similar legislation prior to 2000. Their basic approach, however, differed little from the statutes enacted during the twentieth century.<sup>145</sup> One arguable exception, albeit perhaps not resulting in a major change in the level of prosecutions, is found in Virginia's legislation, which is somewhat unique in that it explicitly requires that the victim be "mentally incapacitated" at the time the exploitation occurred,<sup>146</sup> as opposed to the more generic language used in other states that simply requires that the victim be a "vulnerable" adult at the time of the offense, language that can encompass more conditions than just diminished mental capacity.<sup>147</sup> This change may narrow the range of victims of financial exploitation protected under the law and thus the ultimate number of criminal prosecutions for financial exploitation of older adults, although because it may also provide more specificity as to who is afforded this protection, it could actually enhance the number of related prosecutions.<sup>148</sup>

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142. See 63 D.C. Reg. 10733 (Aug. 26, 2016); D.C. CODE § 22-936.01 (2020) ("Criminal penalties for financial exploitation of a vulnerable adult or elderly person.").

143. See 2017 Wash. Adv. Legis. Serv. 266 (West); WASH. REV. CODE ANN. § 9A.56.400 (LexisNexis, Lexis Advance through the 2021 Regular Session) ("Theft from a vulnerable adult in the first degree—Theft from a vulnerable adult in the second degree.").

144. See generally, Shelly L. Jackson, Table 1: Comparison and Evolution of Criminal Financial Exploitation Statutes Across Time, 1 (2020).

145. *Id.*

146. See 2013 Va. Adv. Legis. Serv. 452 (LexisNexis); VA. CODE ANN. § 18.2-178.1 (2020) ("Financial exploitation of mentally incapacitated persons; penalty").

147. See, e.g., 63 D.C. Reg. 10733 (Aug. 26, 2016); D.C. CODE § 22-936.01 (2020) ("Criminal penalties for financial exploitation of a vulnerable adult or elderly person."); 2002 Md. Code Ann. Adv. Legis. Serv. 479, 480 (LexisNexis); MD. CODE ANN., CRIM. LAW § 8-801 (West 2020) ("Exploitation of Vulnerable Adults Prohibited"); 2017 Wash. Legis. Serv. 266 (West); WASH. REV. CODE ANN. § 9A.56.400 (LexisNexis 2020) ("Theft from a vulnerable adult in the first degree—Theft from a vulnerable adult in the second degree.").

148. See generally *Financial Exploitation of Incapacitated Adults*, VA. STATE CRIME COMM'N (2012), <http://vscc.virginia.gov/documents/financial.pdf> (discussing the various options considered by the Virginia legislature).



#### D. Historical summary

It is clear from this brief review that a number of states (n = 19) have had in place for a relatively lengthy period of time (dating from the twentieth century) criminal statutes governing the financial exploitation of older adults that continue to exist today relatively unchanged, as well as three states that have authorized the imposition of enhanced criminal penalties for the financial exploitation of an older adult via their criminal law provisions governing theft.<sup>149</sup> Other states (n = 10), although they previously enacted provisions addressing the financial exploitation of older adults, have since the beginning of the twenty-first century specifically embraced a criminal law approach, with these states migrating their financial exploitation statutes from, for example, their “Public Welfare,” “Family Services,” or “Adult Protective Services” sections of their statutory provisions to their criminal or penal code, often but not always explicitly targeting “financial exploitation” in the title of the new section.<sup>150</sup> A third group of jurisdictions (n = 11) have enacted financial exploitation statutes to protect older adults for the first time since 2000 and placed them within their criminal codes.<sup>151</sup> Finally, as noted, eight states have taken no relevant action.<sup>152</sup>

### III. Content Analysis of Current Criminal Statutes Addressing Financial Exploitation

This section presents a summary of four elements that are germane to the statutes existing in 2020 that address the criminal financial exploitation of older adults. An analysis is provided of the concepts and terminology used to define “financial exploitation,” followed by a summary of how the states define a “victim” and an “offender,” respectively, and concludes with a description of the penalties imposed for this financial exploitation.

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149. Jackson, Table 1, *supra* note 144, at 1.

150. See MD. CODE ANN., CRIM. LAW § 8-801 (LexisNexis 2020); OKLA. STAT. ANN. tit. 21, § 843.4 (2020); 11 R.I. GEN. LAWS § 11-68-1 (2020); IOWA CODE § 235B.20 (2020); W. VA. CODE § 61-2-29b (2020); KAN. STAT. ANN. § 21-5417 (2020); TEX. PENAL CODE ANN. § 32.53 (West 2019); VA. CODE ANN. § 18.2-178.1 (2020); N.H. REV. STAT. ANN. § 631:9 (2020); D.C. CODE § 22-936.01 (2020); WASH. REV. CODE ANN. § 9A.56.400 (LexisNexis, Lexis Advance through the 2021 Regular Session).

151. See *id.*

152. See *id.*

### A. Financial Exploitation Defined

States vary considerably in how they define the crime of financial exploitation of an older adult.<sup>153</sup> By far the most common approach is to employ some combination of the terms “use/misuse,” “control,” “deprive,” and “taking” in conjunction with the victim’s funds/assets, as well as to provide a list of related prohibited actions such as “deception,” “intimidation,” and “undue influence.”<sup>154</sup> Many also specifically address when, or require that, a “fiduciary” or some other special relationship existed between the victim and the offender.<sup>155</sup> It is worth noting that these terms are also widely employed and defined in conjunction with criminal statutes addressing theft, exploitation, and fraud in general.<sup>156</sup> Nebraska provides a classic example of this approach in its financial exploitation statute:

Exploitation means the wrongful or unauthorized taking, withholding, appropriation, conversion, control, or use of money, funds, securities, assets, or any other property of a . . . senior adult by any person by means of undue influence, breach of a fiduciary relationship, deception, extortion, intimidation, force or threat of force, isolation, or any unlawful means or by the breach of a fiduciary duty by the guardian, conservator, agent under a power of attorney, trustee, or any other fiduciary of a . . . senior adult.<sup>157</sup>

As noted earlier, criminal statutes that specifically target the financial exploitation of older adults are often intended to fill a statutory gap after a determination was made that existing, relatively generic financial crimes statutes failed to adequately encompass the financial misbehavior to which older adults are often subjected.<sup>158</sup> For example, it is widely agreed that a financial exploitation of an older adult statute

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153. *See id.*

154. *See* TEX. PENAL CODE ANN. § 32.53(a)(2) (West 2020) (“Exploitation of Child, Elderly Individual, or Disabled Individual.”) (emphasis added).

155. *See generally* ALA. CODE § 13A-6-191(5) (LexisNexis 2020); NEB. REV. STAT. § 28-358 (2020); WYO. STAT. ANN. § 35-20-102(a)(ix)(D) (2020).

156. VA. STATE CRIME COMM’N, *supra* note 148.

157. NEB. REV. STAT. § 28-358 (2020) (“Exploitation, defined.”) (emphasis added). Colorado provides another example where these types of terms are employed in its statutory enactment: “A person commits criminal exploitation of an at-risk person when he or she knowingly uses *deception*, harassment, *intimidation*, or *undue influence* to permanently or temporarily *deprive* an at-risk person of the *use*, benefit, or possession of any thing [sic] of value.”; COLO. REV. STAT. § 18-6.5-103(7.5)(a) (2020) (“Crimes against at-risk persons—classifications”) (emphasis added). In Colorado, an “at-risk person” is defined as “an at-risk adult, an at-risk adult with IDD, an at-risk elder, or an at-risk juvenile” (COLO. REV. STAT. § 18-6.5-102(4.5) (2020) (“Definitions”)), with an “at-risk elder” defined, in turn, as “any person who is seventy years of age or older” (COLO. REV. STAT. § 18-6.5-102(3) (2020)).

158. *See* VA. STATE CRIME COMM’N, *supra* note 148.

should address when someone establishes a relationship with an older adult for the purpose of interjecting themselves into the older adult's life to obtain access to and misappropriate the older adult's funds or other assets for personal gain.<sup>159</sup> Thus, to remedy this gap, many states inserted statutory language in their criminal codes directly targeting this type of activity. For example, a provision in New Hampshire's Criminal Code reads:

Whoever commits any of the following acts against an elderly . . . adult . . . shall be guilty of financial exploitation . . . if: . . . (b) In the absence of legal authority a person knowingly or recklessly through the use of undue influence, harassment, duress, force, compulsion, coercion, or under any circumstances where the person knew that the elderly . . . adult lacked capacity to consent, or consciously disregarded a substantial and unjustifiable risk that the elderly . . . adult lacked capacity to consent: . . . (3) Establishes a relationship with a fiduciary obligation to an elderly . . . adult that gives the person control of an interest in real or personal property or other financial resources of an elderly . . . adult.<sup>160</sup>

It should be noted that a relatively unique feature of these criminal statutes is that they not only target the illegal use of an older adult's money, assets, or property, but also, its *improper* use.<sup>161</sup> Colorado provides an example of this focus: "Exploitation means an act or omission committed by a person who: . . . (d) *Misuses* the property of an at-risk person in a manner that adversely affects the at-risk person's ability to receive health care or health care benefits or to pay bills for basic needs or obligations."<sup>162</sup> There are some state statutes, however, with even more explicit language. Oregon, for example, uses the terms "*hides*" the older adult's money or property, or "*[t]akes charge* of a . . . elderly

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159. See, e.g., Judith B. Sklar, *Elder and Dependent Adult Fraud: A Sampler of Actual Cases to Profile the Offenders and the Crimes They Perpetrate*, 12 J. ELDER ABUSE & NEGLECT 19, 27 (2000) (describing a handyman who befriended an older adult and ultimately financially exploited her).

160. N.H. REV. STAT. ANN. § 631:9(I) (LexisNexis 2020) ("Financial Exploitation of an Elderly, Disabled, or Impaired Adult.") (emphasis added). Three other statutory provisions using similar language include: D.C. CODE § 22-933.01(a) (2020) ("Financial exploitation of a vulnerable adult or elderly person."); MINN. STAT. ANN. § 609.2335(Subd. 1) (West 2020) ("FINANCIAL EXPLOITATION OF VULNERABLE ADULT"); and OR. REV. STAT. ANN. § 163.205(1) (West 2020) ("Criminal mistreatment in the first degree.").

161. Jackson, *The Vexing Problem*, *supra* note 56, at 63 (noting that traditional theft/embezzlement criminal statutes generally fail to encompass "improper" acts) (emphasis added); see also BAILLY & LOEWY, *supra* note 79, at 1.

162. COLO. REV. STAT. § 18-6.5-102(10) (2020) ("Definitions.") (emphasis added).

person for the purpose of fraud.”<sup>163</sup> Similarly, South Carolina has a provision that addresses:

causing a vulnerable adult to purchase goods or services for the profit or advantage of the seller or another person through: (i) undue influence, (ii) harassment, (iii) duress, (iv) force, (v) coercion, or (vi) swindling by overreaching, cheating, or defrauding the vulnerable adult through cunning arts or devices that delude the vulnerable adult and cause him to lose money or other property.<sup>164</sup>

Also consistent with the somewhat more expansive definition of financial exploitation often found in these statutes is language that targets a failure to use the older adult's money for the benefit of the older adult.<sup>165</sup> For example, Florida's statute reads: “Intentionally or negligently failing to effectively use an elderly person's . . . income and assets for the necessities required for that person's support and maintenance, by a caregiver or a person who stands in a position of trust and confidence with the elderly person or disabled adult.”<sup>166</sup> New Hampshire's statute similarly reads: “Fails to use the real or personal property or other financial resources of the elderly . . . adult to provide food, clothing, shelter, health care, therapeutic conduct, or supervision for the elderly . . . adult[.]”<sup>167</sup>

At the same time, one frequent form of financial fraud experienced by older adults that is typically not addressed by even these more expansive criminal financial exploitation statutes is the “failure to perform,” where someone who is not a fiduciary promises the older adult that they will perform an action that both parties know is pivotal to the older adult's financial well-being, the older adult relies on this promise (i.e., does not take steps that the older adult would have otherwise

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163. OR. REV. STAT. ANN. § 163.205(1)(b) (West 2020) (“Criminal mistreatment in the first degree.”). (“The person . . . having assumed the permanent or temporary care, custody or responsibility for the supervision of a dependent person or elderly person, intentionally or knowingly: . . . (D) Hides the dependent person's or elderly person's money or property or takes the money or property for, or appropriates the money or property to, any use or purpose not in the due and lawful execution of the person's responsibility; (E) Takes charge of a dependent or elderly person for the purpose of fraud[.]”) (emphasis added).

164. S.C. CODE ANN. § 43-35-10(3)(c) (2020) (“Definitions.”) (emphasis added).

165. FLA. STAT. ANN. § 825.103(1)(e) (LexisNexis 2020) (“Exploitation of an elderly person or disabled adult; penalties.”) (emphasis added).

166. *Id.* at § 825.103(1)(e).

167. N.H. REV. STAT. § 631:9(I)(a)(1) (LexisNexis 2020) (“Financial Exploitation of an Elderly, Disabled, or Impaired Adult.”) (emphasis added). Minnesota also employs such language: “fails to use the real or personal property or other financial resources of the vulnerable adult to provide food, clothing, shelter, health care, therapeutic conduct, or supervision for the vulnerable adult[.]” MINN. STAT. ANN. § 609.2335(Subd. 1)(1)(i) (2020) (“FINANCIAL EXPLOITATION OF VULNERABLE ADULT”) (emphasis added).

taken but for this promise), and the older adult is financially harmed as a result of this failure to act (e.g., a neighbor promises to deposit the older adult's social security check at the local bank, fails to do so, and as a result the older adult incurs over-draft charges when several checks they have written fail to clear the bank; a local "handyman" promises to repair a supporting beam on the older adult's deck, fails to do so in a timely manner, and the deck collapses as a result and has to be replaced in full).<sup>168</sup> Only one criminal financial exploitation statute directly addresses such a scenario.<sup>169</sup> In Missouri, the statute reads: "Promising performance which the offender does not intend to perform or knows will not be performed."<sup>170</sup> This may be an oversight by other jurisdictions, or it may be that their legislatures consider this type of fraud to be adequately addressed by statutory provisions that are not specific to the criminal financial exploitation of older adults,<sup>171</sup> although this may be a questionable assumption.

There are also some other relatively unique features embedded in these criminal financial exploitation statutes. Perhaps most noteworthy because it does not focus on the misuse of the older adult's money or other assets per se, which may explain why it is often overlooked, is a prohibition regarding the involuntary use of or compelling older adults to perform services for another, particularly if reasonable compensation is not provided.<sup>172</sup> In Wyoming, for example, exploitation includes a reckless or intentional act to: "Force, compel, coerce or entice a vulnerable adult to perform services for the profit or advantage of another against the will of the vulnerable adult."<sup>173</sup> South Carolina has a similar clause that prohibits: "causing or requiring a vulnerable adult to engage in activity or labor which is improper, unlawful, or against the reasonable

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168. Morgan et al., *supra* note 93, at 32.

169. *Id.*

170. MO. ANN. STAT. § 570.145(1)(7) (West 2020) ("Financial exploitation of the elderly and disabled, penalty—definitions"). However, Missouri qualifies this somewhat by adding, "Failure to perform standing alone is not sufficient evidence to prove that the offender did not intend to perform..." *Id.*

171. See, e.g., DEL. CODE ANN. tit. 11, § 916 (2020) ("Home improvement fraud; class B felony; class D felony; class F felony; class G felony, class A misdemeanor."). Alternatively, other legislatures may be concerned that such a provision will be applied too broadly to encompass family members or "good Samaritans" who made this promise in good faith but for various reasons inadvertently failed to act in a timely fashion (e.g., because of other demands on their time), and thereby may punish relatively innocent parties and/or deter such offers of help from others.

172. WYO. STAT. ANN. § 35-20-102(a)(ix)(B)(II) (2020) ("Definitions.") (emphasis added).

173. See WYO. STAT. ANN. § 35-20-102(a)(ix)(B)(II) (2020).

and rational wishes of the vulnerable adult.”<sup>174</sup> Texas also makes reference to such “use” of an older adult, establishing: “‘Exploitation’ means the illegal or improper use of a . . . elderly individual . . . for monetary or personal benefit, profit, or gain.”<sup>175</sup> Minnesota has a similar provision, declaring that the crime of financial exploitation occurs when someone, in the absence of legal authority, “forces, compels, coerces, or entices a vulnerable adult against the vulnerable adult’s will to *perform services for the profit or advantage of another*.”<sup>176</sup> Finally, Utah states: “A person commits the offense of financial exploitation of a vulnerable adult when the person: . . . (v) involves a vulnerable adult who lacks the capacity to consent *in the facilitation or furtherance of any criminal activity*.”<sup>177</sup>

There are several other noteworthy provisions found in these statutory enactments that deserve mention. Unsurprisingly, there is widespread recognition of and considerable attention given to the offender who empties the victim’s bank or joint bank account for self-enrichment, the type of offense that may readily come to mind when contemplating what financial exploitation encompasses.<sup>178</sup> Thus, in relatively typical fashion, Florida, within its definition of “exploitation of an elderly person,” includes: “Misappropriating, misusing, or transferring without authorization money belonging to an elderly person . . . from an account in which the elderly person . . . placed the funds, owned the funds, and was the sole contributor or payee of the funds before the misappropriation, misuse, or unauthorized transfer.”<sup>179</sup> In contrast, Wyoming is somewhat unique in that its provisions focus on two resulting harms that are particularly devastating for older adults but are arguably more the consequence of the financial exploitation than a

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174. S.C. CODE ANN. § 43-35-10(3)(a) (2020) (“Definitions.”) (emphasis added).

175. TEX. PENAL CODE ANN. § 32.53(a)(2) (West 2020) (“Exploitation of Child, Elderly Individual, or Disabled Individual.”) (emphasis added).

176. MINN. STAT. ANN. § 609.2335(Subd. 1)(2)(ii) (2020) (“FINANCIAL EXPLOITATION OF VULNERABLE ADULT”) (emphasis added).

177. UTAH CODE ANN. § 76-5-111(9)(a) (LexisNexis 2020) (“Abuse, neglect, or exploitation of a vulnerable adult—Penalties.”) (emphasis added).

178. Emptying out a bank account without permission, a form of theft, is particularly noteworthy when it involves a breach of trust between joint account holders with the withdrawal made without the consent of the older adult or made fraudulently.

179. FLA. STAT. ANN. § 825.103(1)(d) (LexisNexis 2020) (“Exploitation of an elderly person or disabled adult; penalties.”). Florida did narrow this prohibition a bit when it added: “This paragraph only applies to the following types of accounts: 1. Personal accounts; 2. Joint accounts created with the intent that only the elderly person or disabled adult enjoys all rights, interests, and claims to moneys deposited into such account; or 3. Convenience accounts.”

specific aspect of it: “Intentionally misuse the principal’s property and, in so doing, adversely affect the principal’s ability to receive health care or pay bills for basic needs or obligations”.<sup>180</sup> One state, Indiana, explicitly addresses a frequent motivation of the offender, rather than the offender’s actions per se, when it expressly prohibits self-dealing, establishing: “A person in a position of trust who recklessly engages in self-dealing with the property of: (1) an endangered adult; or (2) a dependent; commits exploitation of a dependent or an endangered adult.”<sup>181</sup> As another example of a somewhat distinct focus, Missouri punishes: “Selling or otherwise transferring or encumbering property, failing to disclose a lien, adverse claim or other legal impediment to the enjoyment of the property, whether such impediment is or is not valid, or is or is not a matter of official record[.]”<sup>182</sup> Relatedly, Mississippi is the only jurisdiction to address the frequency of the offender’s action(s), establishing: “‘Exploitation’ includes, but is not limited to, a single incident.”<sup>183</sup>

A few states include in their criminal statute a reference to the absence of *consent* by the older adult, an important, albeit sometimes difficult to apply, legal construct that is often widely employed outside the criminal law context (e.g., in conjunction with medical malpractice lawsuits).<sup>184</sup> Referring specifically to the caretakers of “dependent” adults, Iowa articulates: “Exploitation of a dependent adult . . . means the act or process of taking unfair advantage of a dependent adult or the adult’s physical or financial resources, without the informed consent of the dependent adult, including theft, by the use of undue influence, harassment, duress, deception, false representation, or false pretenses.”<sup>185</sup> In Tennessee, demonstrating a slightly different approach to

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180. WYO. STAT. ANN. § 35-20-102(a)(ix)(C) (2020) (“Definitions.”) (emphasis added).

181. IND. CODE ANN. § 35-46-1-12(c) (LexisNexis 2000) (“Exploitation of dependent or endangered adult.”) (emphasis added).

182. MO. REV. STAT. § 570.145(1)(6) (2020) (“Financial exploitation of the elderly and disabled, penalty—definitions”) (emphasis added). This provision is preceded by language that reads: “(1) A person commits the offense of financial exploitation of an elderly person . . . if such person knowingly obtains control over the property of the elderly person . . . with the intent to permanently deprive the person of the use, benefit or possession of his or her property thereby benefitting the offender or detrimentally affecting the elderly person by: . . .” MO. REV. STAT. § 570.145(1) (2020).

183. MISS. CODE ANN. § 43-47-5(i) (2020) (“Definitions.”).

184. See Michael Justin Myers, *Informed Consent in Medical Malpractice*, 55 CAL. L. REV. 1396, 1396 (1967).

185. IOWA CODE ANN. § 235B.2(5)(a)(1)(c) (West 2020) (“Definitions.”) (emphasis added). A “dependent adult” is defined as “a person eighteen years of age or

what constitutes a lack of consent in this context, the statute addresses: “The act of obtaining or exercising control over an elderly . . . adult’s property, without receiving the elderly . . . adult’s *effective consent*, by a caregiver committed with the intent to benefit the caregiver or other third party.”<sup>186</sup> In general, perhaps because of the difficulties associated with defining and establishing the presence or absence of an older adult’s consent in these cases, consent language is not commonly found in such statutes, but may be implicit.<sup>187</sup>

Many states, however, do include “*breach of fiduciary duty*” language in their criminal financial exploitation statutes, although this is another concept that tends to be found more widely outside the criminal law context.<sup>188</sup> The inclusion of this language in these criminal statutes is important in that it underscores the affirmative duty of the specified individuals to act in the best interest of the older adult and provides an additional enforcement mechanism to ensure compliance. In Tennessee, for example, the statute targets: “The *breach of a fiduciary duty* to an elderly . . . adult by the person’s guardian, conservator, or agent under a power of attorney which results in an appropriation, sale, or transfer of the elderly . . . adult’s property[.]”<sup>189</sup> These fiduciary duty

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older who is unable to protect the person’s own interests or unable to adequately perform or obtain services necessary to meet essential human needs, as a result of a physical or mental condition which requires assistance from another, or as defined by departmental rule.” *Id.* at § 235B.2(4).

186. TENN. CODE ANN. § 39-15-501(7)(C) (2020) (“Part definitions.”) (emphasis added); IOWA CODE ANN. § 235B.2(5)(a)(1)(c) (West 2020) (“Definitions.”) (emphasis added).

187. *Id.*

188. See generally *Fiduciary Issues in Federal Criminal Prosecutions*, FINDLAW (Aug. 7, 2017), <https://corporate.findlaw.com/corporate-governance/fiduciary-issues-in-federal-criminal-prosecutions.html>.

189. TENN. CODE ANN. § 39-15-501(7)(B) (2020) (emphasis added). Similarly, Florida directs attention to: “*Breach of a fiduciary duty* to an elderly person . . . by the person’s guardian, trustee who is an individual, or agent under a power of attorney which results in an unauthorized appropriation, sale, [or] transfer of property . . . .” FLA. STAT. ANN. § 825.103(1)(c) (LexisNexis 2020) (emphasis added). The relevant Florida statute continues: “An unauthorized appropriation under this paragraph occurs when the elderly person . . . does not receive the reasonably equivalent financial value in goods or services, or when the fiduciary violates any of these duties:

1. For agents appointed under chapter 709:
  - a. Committing fraud in obtaining their appointments;
  - b. Acting contrary to the principal’s sole benefit or best interest;
  - or
  - c. Abusing their powers;
  - d. Wasting, embezzling, or intentionally mismanaging the assets of the principal or beneficiary; or



clauses underscore the fact that although the establishment of such a legal relationship may give a party relatively unfettered access to the funds or other assets of the older adult, it does not convey to the party the right to use them in ways that do not benefit the older adult.<sup>190</sup>

In addition, some states specifically subsume *guardianships*, i.e., where a court appoints a substitute decisionmaker to act on behalf of an individual the court has deemed incapacitated, within their breach of fiduciary duty protections.<sup>191</sup> The appointment of a guardian is routinely a civil matter, however, thirteen states explicitly include “guardians” within their financial exploitation criminal statute.<sup>192</sup> This is an

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- e. Acting contrary to the principal’s sole benefit or best interest; or
  - 2. For guardians and trustees who are individuals and who are appointed under chapter 736 or chapter 744:
    - a. Committing fraud in obtaining their appointments;
    - b. Obtaining appointments with the purpose and design of benefiting someone other than the principal or beneficiary;
    - c. Abusing their powers; or
    - d. Wasting, embezzling, or intentionally mismanaging the assets of the ward or beneficiary of the trust[.]”

*Id.* Other statutory provisions specifically addressing fiduciaries in conjunction with the financial exploitation of older adults include: ALA. CODE § 13A-6-191(5) (LexisNexis 2020); NEB. REV. STAT. § 28-358 (2020); WYO. STAT. ANN. § 35-20-102(a)(ix)(D) (2020).

190. See Cornell L. Sch., *Fiduciary Duty*, LEGAL INFO. INST., [https://www.law.cornell.edu/wex/fiduciary\\_duty](https://www.law.cornell.edu/wex/fiduciary_duty) (last visited Dec. 3, 2021).

191. E.g., S.C. CODE ANN. § 43-35-10(3)(b) (2020).

192. For example, in South Carolina exploitation encompasses “(b) an improper, unlawful, or unauthorized use of the funds, assets, property, power of attorney, *guardianship*, or *conservatorship* of a vulnerable adult by a person for the profit or advantage of that person or another person.” *Id.* (emphasis added). Other state provisions in this statutory review that explicitly address older adult financial exploitation by a guardian include: ALA. CODE § 13A-6-191(5) (2020); ARK. CODE ANN. § 5-28-101(6)(A) (2020); FLA. STAT. § 825.103(1)(c) (2020); LA. STAT. ANN. § 14:93.4(A)(2) (2020); MO. ANN. STAT. § 570.145(1)(8) (2020); NEB. REV. STAT. § 28-358 (2020); NEV. REV. STAT. ANN. § 200.5092(3) (2019); N.H. REV. STAT. ANN. § 631:9(I)(a) (2020); S.C. CODE ANN. § 43-35-10(3)(b) (2020); TENN. CODE ANN. § 39-15-501(7)(B) (2020); UTAH CODE ANN. § 76-5-111(9)(a)(iv) (LexisNexis 2020); WYO. STAT. ANN. § 35-20-102(a)(ix)&(a)(ix)(D) (2020).

Financial exploitation or other forms of elder abuse by a guardian or conservator has received little empirical or policy attention in general and, as indicated in the text, has historically been addressed as a civil matter, but in light of the limited oversight of such appointees, the critical role such appointees often play in ensuring the well-being of older adults, and the dependency of older adults on guardians and conservators, it is perhaps not surprising that the criminal law and its agents are increasingly being used to uncover and punish their misbehavior. See Georgia J. Anetzberger & Morgan R. Thurston, *Addressing Abuse by Guardians: The Roles of Adult Protective Services, Law Enforcement, and the Courts* 1, 1 (May 2021), <http://law.syr.edu/uploads/docs/academics/Anetzberger-Thurston.pdf> (paper prepared

important inclusion as law enforcement officials may initially perceive the reported actions of a guardian as a civil matter and decline to address instances where an older adult may have been financially exploited by a guardian.<sup>193</sup> Although civil courts do possess mechanisms to monitor and redress misbehavior by guardians, because the older adult in these cases is by definition incapacitated, a voice to raise concerns about such misbehavior may not be readily available.<sup>194</sup> Furthermore, this relationship, like any fiduciary relationship, explicitly imposes a duty to the older adult and by specifically encompassing guardians within these financial exploitation of older adults criminal statutes, such legislation conveys both the gravity of this exploitation and provides another mechanism to redress it.<sup>195</sup>

Another definitional phrase now included in many statutes is *undue influence*, albeit once again a concept not widely employed within the criminal law and historically more likely to be applied in conjunction with wills, contracts, trusts, and deeds.<sup>196</sup> Missouri provides a typical example, while also alluding to the relevance of fiduciary duties:

Undue influence . . . means the use of influence by someone who exercises authority over an elderly person . . . in order to take unfair advantage of that person's vulnerable state of mind, neediness, pain, or agony. Undue influence includes, but is not limited to, the improper or fraudulent use of a power of attorney, guardianship, conservatorship, or other fiduciary authority.<sup>197</sup>

Nevada similarly targets undue influence, although it includes what can be an important qualifier in these cases: "undue influence" means the improper use of power or trust in a way that deprives a person of his or her free will and substitutes the objectives of another

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for The Fourth National Guardianship Summit: Maximizing Autonomy and Ensuring Accountability).

193. See Brenda K. Uekert et al., *Prosecuting Elder Abuse Cases: Basic Tools and Strategies*, NAT'L CTR. FOR STATE CTS. 2, <https://bja.ojp.gov/sites/g/files/xyckuh186/files/Publications/NCSC-Prosecuting-Elder-Abuse-Cases-Basic-Tools-and-Strategies.pdf> (last visited Dec. 3, 2021).

194. *Id.*

195. See *Mistreatment and Abuse by Guardians and Other Fiduciaries*, U.S. DEP'T OF JUST., <https://www.justice.gov/elderjustice/mistreatment-and-abuse-guardians-and-other-fiduciaries> (last visited Dec. 3, 2021).

196. See Mary Joy Quinn, *Defining Undue Influence*, 35 BIFOCAL 72, 72 (2014), <https://www.americanbar.org/content/dam/aba/publications/bifocal/BIFOCALJanuary-February2014.pdf>.

197. MO. REV. STAT. § 570.145(1)(8) (2020) (emphasis added).

person. The term *does not include the normal influence that one member of a family has over another.*<sup>198</sup>

Perhaps the least instructive approach when establishing the key terms germane to the criminal prosecution of financial exploitation of older adults is the practice of some states to simply incorporate, relatively verbatim, language drawn from their existing financial crimes statutes, an approach that fails to address any unique aspects of cases involving older adults that should or need to be considered. For example, Montana has a provision embedded in its financial exploitation statute that uses the same language found in the state's generic approach to identity theft<sup>199</sup> where it establishes that: "A person commits the offense of exploitation of an older person . . . if the person: (a) purposely or knowingly obtains personal identifying information of another person and uses that information for any unlawful purpose, including to obtain or attempt to obtain credit, goods, services, financial information, or medical information in the name of the other person without the consent of the other person."<sup>200</sup> Similarly, some jurisdictions simply list the financial crimes found elsewhere in their criminal codes as a focus of their financial exploitation statute. For example, the District of Columbia has adopted the following provision:

A person is guilty of financial exploitation of [an] . . . elderly person if the person intentionally and knowingly: . . . (3) Violates any provision of law proscribing theft, extortion, forgery, fraud, or identity theft against the . . . elderly person, so long as the offense was undertaken to obtain the property, including money, of [an] . . . elderly person, or to cause the . . . elderly person to assume a legal obligation on behalf of, or for the benefit of, anyone other than the . . . elderly person.<sup>201</sup>

Most states use a mix of concepts to define the crime of financial exploitation. What is evident from this brief review is that while some legislatures may incorporate and delineate important and relatively distinct terms within the construct "financial exploitation," such as misuse of assets, breach of a fiduciary duty, and taking advantage of an older adult's vulnerability, other legislatures simply adopt generic

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198. NEV. REV. STAT. ANN. § 200.5092(3)(b) (LexisNexis 2020) (emphasis added). This qualifier is another example of states' reluctance to scrutinize too closely the interactions among family members in conjunction with possible financial exploitation of older adults.

199. See Montana's generic approach to and definition of identity theft can be found at MONT. CODE ANN. § 45-6-332(1) (2020).

200. MONT. CODE ANN. § 45-6-333(2) (2020).

201. D.C. CODE § 22-933.01(a) (2020).

language addressing financial crimes found elsewhere in their criminal codes.<sup>202</sup> While the latter approach may provide useful guidance, these financial crime statutes can fail to capture the relatively unique ways in which financial exploitation of an older adult occurs, the special relationship that may exist between the offender and the victim, and the distinct harms experienced by victims of these crimes.<sup>203</sup> For example, often family members are involved in purported financial exploitation, and these statutes may need to attend to the long-term relationship that may exist between the offender and the older adult, its impact on the parties and any ostensible permission or consent given by the older adult, the unique harm incurred by the older adult under this scenario, and the potential dependency of the older adult on the offender, which may have both current and long-term implications for the older adult.<sup>204</sup> The delicacy and challenge of finding an appropriate fit between the criminal law and what is often the relatively unique harmful behavior occurring within the context of a deeply-entrenched and important relationship to the victim explains why some legislatures have reached outside the criminal law to such disparate fields as contract law, torts, estates and trusts, family law, and professional responsibility for the terminology and related definitions to employ in these statutes.

## B. Victim Defined

Of the forty jurisdictions with criminal financial exploitation statutes, twenty-four of them specifically establish that an adult of a given age or older is encompassed within the protections afforded by these provisions, ranging from a minimum age of sixty to a minimum age of seventy (i.e., they can be determined to have been an “elder,” “elderly,” “or “older” adult victim based on their age).<sup>205</sup> In contrast, fifteen of the

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202. See, e.g., S.C. CODE ANN. § 43-35-10(3)(b) (2020); D.C. CODE ANN. § 22-933.01(a) (2020).

203. See, e.g., D.C. CODE ANN. § 22-933.01(a) (2020).

204. See Jack Brook et al., *Elder-abuse victims are often reluctant to press charges*, PROVIDENCE J. (Aug. 28, 2018, 5:53 PM), <https://www.providencejournal.com/news/20180824/elder-abuse-victims-are-often-reluctant-to-press-charges>.

205. See ALA. CODE § 13A-6-191(3) (LexisNexis 2020); CAL. PENAL CODE § 368(g) (Deering 2020); COLO. REV. STAT. § 18-6.5-102(3) (2020); D.C. CODE § 22-932(3) (2020); GA. CODE ANN. § 16-5-100(4) (2020); 720 ILL. COMP. STAT. ANN. 5/17-56(c)(1) (2020); KAN. STAT. ANN. § 21-5417(e)(3) (2020); LA. STAT. ANN. § 14:93.3(C) (2020); MD. CODE ANN., CRIM. LAW § 8-801(b)(2) (2020); MO. REV. STAT. § 570.145 (2020); MONT. CODE ANN. § 45-6-333(4)(c) (2020) NEB. REV. STAT. ANN. § 28-366.01 (LexisNexis 2020); NEV. REV. STAT. ANN. § 200.5092(6) (LexisNexis 2020); N.H. REV. STAT. ANN. § 631:8(I)(d) (LexisNexis 2020); N.C. GEN. STAT. § 14-112.2(a)(2) (2020);

forty jurisdictions do not specify what age a person must be to be found to be a victim of financial exploitation; instead, they rely exclusively and more broadly on terminology that focuses on the alleged victim's vulnerability or impairment at the time of the alleged offense to establish when these criminal financial exploitation statutes become applicable.<sup>206</sup> It is noteworthy that eleven of these jurisdictions that focus exclusively on the vulnerability or impairment of the adult victim include language that permits the diminished financial capacity of the victim to be taken into account.<sup>207</sup> One state, Florida, requires that a victim must be both a requisite age (sixty years old) and be deemed vulnerable or

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N.D. CENT. CODE § 12.1-31-07(1)(b) (2020); OKLA. STAT. ANN. tit. 21, § 843.4(C) (2020); OR. REV. STAT. ANN. § 163.205(2)(c) (2020); 11 R.I. GEN. LAWS § 11-68-1(4) (2020); S.D. CODIFIED LAWS § 22-46-1(3) (2020); TENN. CODE ANN. § 39-15-501(6) (2020); TEX. PENAL CODE ANN. § 22.04(c)(2) (2020); UTAH CODE ANN. § 76-5-111(1)(g) (LexisNexis 2020); W. VA. CODE ANN. § 61-2-29b(h)(2) (LexisNexis 2020). The three states that do not have a specific financial exploitation statute applicable to older adults but do authorize enhanced penalties under their generic provisions governing theft from older adults, also establish a given age for victims at which these enhanced penalties become applicable. See MASS. GEN. LAWS ANN. ch. 266, § 30(5) (2020) OHIO REV. CODE ANN. § 2913.01(CC) (LexisNexis 2020); WIS. STAT. ANN. § 46.90(br) (2020).

206. ARIZ. REV. STAT. § 13-1802(K)(6) (LexisNexis 2020); ARIZ. REV. STAT. § 46-451(A)(11) (LexisNexis 2020); ARK. CODE ANN. § 5-28-101(7)(A) (2020); DEL. CODE ANN. tit. 11, § 1105(c) (2020); IDAHO CODE § 18-1505(4)(e) (2020); IND. CODE ANN. § 12-10-3-2(a) (LexisNexis 2020); IOWA CODE ANN. § 235B.2(4) (2020); KY. REV. STAT. ANN. § 209.020(4) (LexisNexis 2020); MICH. COMP. LAWS SERV. § 750.145m(u) (LexisNexis 2020); MINN. STAT. ANN. § 609.232(11) (2020); MISS. CODE ANN. § 43-47-5(g) (2020); S.C. CODE ANN. § 43-35-10(11) (2020); VT. STAT. ANN. tit. 13, § 1375(8) (2020); VA. CODE ANN. § 18.2-178.1(D) (2020); WASH. REV. CODE ANN. § 9A.56.010(22) (LexisNexis 2020); WYO. STAT. ANN. § 35-20-102(a)(xviii) (2020).

207. Perhaps most clearly aligned with the work of Professor Daniel Marson, diminished financial capacity is now widely accepted as a risk factor for financial exploitation. See Daniel C. Marson et al., *Financial Capacity, in CIVIL CAPACITIES IN CLINICAL NEUROPSYCHOLOGY: RESEARCH FINDINGS AND PRACTICAL APPLICATIONS* 39, 39 (George J. Demakis ed., 2012). The statutory provisions from the eleven jurisdictions that embed the concept of "financial capacity" within their definition of a vulnerable adult include: D.C. CODE § 22-932(5) (2020) (emphasis added); IDAHO CODE § 18-1505(4)(e) (2020) (emphasis added); 720 ILL. COMP. STAT. 5/17-56(c)(2) (LexisNexis 2020) (emphasis added); IND. CODE ANN. § 35-46-1-1 (LexisNexis 2020); IND. CODE ANN. § 12-10-3-2(a)(2) (LexisNexis 2020) (emphasis added); KY. REV. STAT. ANN. § 209.020(4) (LexisNexis 2020); N.H. REV. STAT. ANN. § 631:8(e) (LexisNexis 2020) (emphasis added); TENN. CODE ANN. § 39-15-50(14) (2020) (emphasis added); UTAH CODE ANN. § 76-5-111(1)(t) (LexisNexis 2020) (emphasis added); VT. STAT. ANN. tit. 13, § 1375(8) (2020) (emphasis added); VA. CODE ANN. § 18.2-178.1(D) (2020) (emphasis added); WYO. STAT. ANN. § 6-2-507 (2020) refers to the definition provided in WYO. STAT. ANN. § 35-20-102(a)(xviii) (2020) (emphasis added).

Note that there are also states with language that addresses the person's decision-making capacity in general, but the above review focused on the individual's financial decision-making capacity.

impaired to be found to be a victim under its criminal financial exploitation statute.<sup>208</sup>

### C. Offender Defined

Eleven of the forty jurisdictions with a criminal financial exploitation statute specifically target instances when the purported offender has assumed a specified role vis-à-vis the offender, namely, when the person holds a position of trust and confidence.<sup>209</sup> In addition, four states have provisions that address the nature of the offender's role in the relationship with the victim, specifically, if the person was a caretaker.<sup>210</sup> Indiana utilizes both approaches in defining who can be considered a financial exploitation offender; in one provision it targets "[a] person who recklessly uses or exerts control,"<sup>211</sup> while in another it focuses on "[a] person in a position of trust who recklessly engages in self-dealing."<sup>212</sup> In general, however, most states with a criminal financial exploitation statute do not make such distinctions or otherwise establish that the offender must have held a specified role vis-à-vis the victim, with the inclusion of "any person" who commits one of various specified acts or actions being the most common approach.<sup>213</sup>

208. FLA. STAT. ANN. § 825.101(4) (LexisNexis 2020).

209. See Statutory provisions where "position of trust and confidence" language has been adopted include: ARIZ. REV. STAT. § 13-1802(B) (LexisNexis 2020); FLA. STAT. ANN. § 825.103(1)(a)(1),(e) (LexisNexis 2020); 720 ILL. COMP. STAT. 5/17-56(a) (LexisNexis 2020); IND. CODE ANN. § 35-46-1-12(c) (LexisNexis 2020); MONT. CODE ANN. § 45-6-333(1)(b)(i) (2020); NEV. REV. STAT. ANN. § 200.5092(3) (LexisNexis 2020); N.C. GEN. STAT. § 14-112.2(b)(i) (2020); N.D. CENT. CODE § 12.1-31-07.1(1)(a) (2020); OKLA. STAT. ANN. tit. 21, § 843.4(A)(1)(a) (2020); 11 R.I. GEN. LAWS § 11-68-2(a)(1)(i) (2020); UTAH CODE ANN. § 76-5-111(9)(a)(i) (LexisNexis 2020).

210. See FLA. STAT. ANN. § 825.103(1)(e) (LexisNexis 2020) (emphasis added); IOWA CODE § 235B.20 (2020) (note, however, that the Iowa Supreme Court in 2017 (*In re Chapman*, 890 N.W.2d 853, 854 (Iowa 2017)) ruled that "a person does not need to be a caretaker to commit elder abuse because a person standing 'in a position of trust or confidence with the vulnerable elder' can perpetrate elder abuse"); OR. REV. STAT. § 163.205(1)(b) (2020); S.D. CODIFIED LAWS § 22-46-3 (2020). Note also that ARK. CODE ANN. § 5-28-103(a) (2020) mentions a caregiver, but in reality does not place any restriction on who may be found to be a perpetrator, encompassing "any person or caregiver"; CAL. PENAL CODE § 368(e) (Deering 2020) does not stipulate caretaker, although another section of the California Penal Code does.

211. IND. CODE ANN. § 35-46-1-12(b) (LexisNexis 2020).

212. IND. CODE ANN. § 35-46-1-12(c) (LexisNexis 2020).

213. See KAN. STAT. ANN. § 21-5417(a) (2020); MINN. STAT. § 609.2335(Subd. 1) (2020); IDAHO CODE § 18-1505(3) (2020).

#### D. Available Penalties

Across the country, criminal penalties for the financial exploitation of an older adult fall within one of four categories: 1) seventeen jurisdictions have some type of graduated penalty (i.e., the penalty increases as the severity of the crime increases), with three to seven levels recognized and the applicable level generally based on the total value of what was exploited from the victim;<sup>214</sup> 2) twelve jurisdictions use a dichotomous approach, with the assigned penalty differing depending on whether the total value of the losses fall above or below a designated amount;<sup>215</sup> 3) ten states have established an approach where the range of available penalties is not based upon the amount of the loss but upon some other factor;<sup>216</sup> and 4) one state employs a “one class higher” approach in which the penalty imposed is more severe (i.e., one step higher) than would be assigned if someone other than an older adult was the victim.<sup>217</sup>

Whether the offense is considered to be a misdemeanor or a felony also varies considerably across jurisdictions, although, as suggested above, states are more likely to classify the offense as a felony when the

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214. See, e.g., ARK. CODE ANN. § 5-28-103(d) (2020); KAN. STAT. ANN. § 21-5417(b)(2)(A)-(G) (2020); The fifteen other states with a similar approach include: ALA. CODE §§ 13A-6-195(a),(b), -196(a),(b), -197(a),(b) (2020); ARIZ. REV. STAT. § 13-1802(G), (H) (LexisNexis 2020); FLA. STAT. ANN. § 825.103(3)(a)-(c) (LexisNexis 2020); 720 ILL. COMP. STAT. 5/17-56(b) (LexisNexis 2020); MD. CODE ANN., CRIM. LAW § 8-801(c),(d) (LexisNexis 2020); MICH. COMP. LAWS SERV. § 750.174a(2)-(7) (LexisNexis 2020); MINN. STAT. § 609.2335(Subd. 3) (2020); MO. REV. STAT. § 570.145(2) (2020); NEV. REV. STAT. ANN. § 200.5099(3),(4) (LexisNexis 2019); N.H. REV. STAT. ANN. § 631:10(I) (LexisNexis 2020); N.C. GEN. STAT. § 14-112.2(d),(e) (2020); N.D. CENT. CODE § 12.1-31-07.1(2) (2020); 11 R.I. GEN. LAWS § 11-68-3 (2020); S.C. CODE ANN. § 43-35-85(D) (2020); TENN. CODE ANN. § 39-15-502(b) (2020).

215. See, e.g., COLO. REV. STAT. § 18-6.5-103(7.5)(b) (2020); OKLA. STAT. ANN. tit. 21, § 843.4(B) (2020).

See CAL. PENAL CODE § 368(d)(1), (2), (e)(1), (2) (Deering 2020); D.C. CODE § 22-936.01 (2020); IDAHO CODE § 18-1505(3) (2020); IOWA CODE § 235B.20(5),(8) (2020); KY. REV. STAT. ANN. § 209.990(5)-(7) (LexisNexis 2020); MISS. CODE ANN. § 43-47-19(2)(b) (2020); UTAH CODE ANN. § 76-5-111 (9)(b)(i)-(iv) (LexisNexis 2020); VT. STAT. ANN. tit. 13, § 1380(b),(c) (2019); WASH. REV. CODE § 9A.56.400(1)(b), (2)(b) (LexisNexis 2020); W. VA. CODE ANN. § 61-2-29b(a)-(b) (LexisNexis 2020).

216. See GA. CODE ANN. § 16-5-102(a) (2020); MONT. CODE ANN. § 45-6-333(3) (2020). IND. CODE ANN. § 35-46-1-12(b),(c) (LexisNexis 2020); LA. STAT. ANN. § 14:93.4(B) (2020); NEB. REV. STAT. ANN. § 28-386 (LexisNexis 2020); OR. REV. STAT. § 163.205(3) (2020); S.C. CODE ANN. § 43-35-85(D) (2020); TEX. PENAL CODE ANN. § 32.53(c) (2020); VA. CODE ANN. § 18.2-178.1(A) (2020); WYO. STAT. ANN. § 6-2-507(d) (2020).

217. DEL. CODE ANN. tit. 11, § 1105(b) (2020).

value of the exploited asset reaches a specified threshold.<sup>218</sup> For example, in some states, if the exploitation involved something that is \$200 or less in value, it is classified as a misdemeanor, with the lesser penalties typically imposed for misdemeanors in general assigned, but above that amount the exploitation constitutes a felony;<sup>219</sup> while in other states it is a felony only if the value of the exploited asset was more than \$1,000.<sup>220</sup> In a third set of states, however, exploitation of an older adult is considered a felony regardless of the value of what was exploited,<sup>221</sup> likely reflecting a perception that someone who targets this population deserves a relatively harsh penalty, and a hope that such a relatively severe penalty will deter prospective offenders.

In addition, generally the level of the felony assigned, and thus the severity of the associated penalty imposed, is graduated, increasing as the determined level of financial exploitation increases.<sup>222</sup> For example, in one state, if the exploited property or services are valued at \$1,000 or more but less than \$2,000, the crime is treated as a class six felony; \$2,000 or more but less than \$3,000 is a class five felony; \$3,000 or more but less than \$4,000 is a class four felony; \$4,000 or more but less than \$25,000 is a class three felony; and \$25,000 or more is classified as a class two felony.<sup>223</sup> Another state starts with exploitation that involved \$10,000 or less of value designated as a third degree felony, and ranges up to \$50,000 or more in value, which is to be considered a first degree felony.<sup>224</sup> A third state imposes a severity level seven felony when the aggregate value of the victim's personal property or financial resources was \$1,500, but less than \$25,000; a severity level five felony when \$25,000, but less than \$100,000; a severity level four felony when \$100,000, but less than 250,000; a severity level three felony when \$250,000, but less than \$1,000,000; and a severity level two felony when \$1,000,000 or more.<sup>225</sup>

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218. See *supra* note 214.

219. See, e.g., ARK. CODE ANN. § 5-28-103(d) (2020).

220. See, e.g., ARIZ. REV. STAT. § 13-1802 (LexisNexis 2020).

221. See, e.g., GA. CODE ANN. § 16-5-102(a) (2020); see also FLA. STAT. ANN. § 825.103(3) (LexisNexis 2020); NEB. REV. STAT. ANN. § 28-386 (LexisNexis 2020); OR. REV. STAT. § 163.205(3) (2020); S.C. CODE ANN. § 43-35-85(D) (2020); TEX. PENAL CODE ANN. § 32.53(c) (2020).

222. See, e.g., Ariz. Rev. Stat. Ann. § 13-1802(G) (2020)

223. *Id.* at § 13-1802(B), (G).

224. FLA. STAT. ANN. § 825.103(3) (LexisNexis 2020).

225. KAN. STAT. ANN. § 21-5417(b)(2)(A)–(E) (2020).



States similarly tend to use a graduated system when imposing fines on convicted offenders, with the size of the available fine enhanced as the monetary value of what was exploited increases, although again the exact sequence tends to vary from state-to-state.<sup>226</sup> Thus, for example, the sequence in one state ranges from a fine of not more than \$500—if the money or property exploited has a value of less than \$200, but increases to a fine of not more than \$50,000 if the money or property exploited has a value of \$100,000 or more.<sup>227</sup>

As noted, a few states only employ two sentencing categories when imposing punishment for the financial exploitation of an older adult. Exemplifying these dichotomous splits, \$500 of value is the dividing point in one state between a class three felony and a class five felony;<sup>228</sup> while in another state, the dividing point is \$100,000, differentiating a felony punishable by imprisonment for a term not to exceed ten years and a felony punishable by imprisonment for not more than fifteen years.<sup>229</sup>

Among those states that do not employ a multi-tiered penalty approach imposing distinct sentencing ranges depending on the monetary value of what has been exploited, a range of sentences is nevertheless still available to the presiding judge.<sup>230</sup> Indeed, depending on the amount of variance in the range, one can argue that judges in these states are thereby afforded more discretion in deciding what sentence to impose as the legislature has provided only the most general sentencing framework, thereby enabling sentencing judges to vary considerably in the penalty they impose depending on how they view the facts before them and the egregiousness of the crime.<sup>231</sup> For example, in one state the penalty imposed can range from one to twenty years in prison, up to a \$50,000 fine, or both.<sup>232</sup> In other states, the range is much narrower, such as up to five years imprisonment and/or a fine of up to \$5,000.<sup>233</sup> The penalties associated with this type of sentencing scheme share the common feature that an incarceration and/or a fine can be

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226. See, e.g., MICH. COMP. LAWS SERV. § 750.174(a) (LexisNexis 2020).

227. *Id.* at § 750.174a(2)–(7) (LexisNexis 2020).

228. COLO. REV. STAT. § 18-6.5-103(7.5)(b) (2020); see also VT. STAT. ANN. tit. 13, § 1380(b)–(c) (2019).

229. OKLA. STAT. ANN. tit. 21, § 843.4(B) (2020).

230. See, e.g., GA. CODE § 16-5-102(a) (2020).

231. *Cf. id.*

232. See, e.g., *id.*

233. See, e.g., S.C. CODE ANN. § 43-34-85(D) (2020) (the crime, however, is classified as a felony rather than a misdemeanor).

imposed, although the maximum sentence and fine vary considerably across these states, thereby affording the sentencing judge considerable discretion and latitude to take the facts of the case into account when assigning a sentence.<sup>234</sup>

#### IV. Discussion

The financial exploitation of older adults is now widely considered to be a serious crime.<sup>235</sup> The statutory review provided above demonstrates the gradual adoption by states of criminal statutes specifically addressing the financial exploitation of older adults.<sup>236</sup> In 2000, Dessin identified twenty-five states with a criminal financial exploitation statute,<sup>237</sup> a number that rose by 2020 to forty jurisdictions with a stand-alone statute, plus three states with enhanced penalties in their generic financial crime statutes when an older adult is the victim.<sup>238</sup> This trend is likely to continue given the increased public attention and concern afforded the financial exploitation of older adults, with these statutory changes reflecting society's growing recognition of the harms resulting from this financial exploitation.<sup>239</sup> As discussed, among the forty jurisdictions in 2020 with a stand-alone criminal statute specifically targeting the financial exploitation of older adults, nineteen had such a statute by 2000 that remained relatively unchanged through 2020, while ten had statutes that evolved in some meaningful way during this time, and eleven jurisdictions, since 2000, enacted such a statute for the first time.<sup>240</sup>

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234. See, e.g., *id.*; GA. CODE ANN. § 16-5-102(a).

235. Rebecca C. Morgan & Randolph Thomas, *Financial Exploitation by Agents Under Powers of Attorney: It Is a Crime!*, 34(4) CRIM. JUST. 31, 32 (2020). *But see* Collins, *supra* note 30, at 61–73 (arguing that more generic pre-existing provisions of the criminal law provide a better vehicle for prosecuting the financial abuse of older adults than provisions that specifically target this abuse as the criminal law is too blunt of an instrument to appropriately define and address the highly nuanced occurrence of this behavior).

236. See also Carey et al., *supra* note 34, at 309.

237. Dessin, *Financial Exploitation*, *supra* note 3, at 379.

238. As shown in Table 1, these jurisdictions are Massachusetts, Ohio, and Wisconsin.

239. See, e.g., Morgan & Thomas, *supra* note 235, at 37 (“[s]tates have enacted statutes, the federal system has provided some statutory support and funding, and the criminal justice system has made an effort to increase training to law enforcement and prosecutors.”).

240. Compare Mich. Comp. Laws Ann. § 750.174a (2005, 2020), with MD. CODE ANN., CRIM. LAW § 8-801 (2020) (“Exploitation of Vulnerable Adults Prohibited”).

Recall that these criminal statutes were adopted in part to address aspects of the financial exploitation of older adults considered to be inadequately addressed by traditional financial crimes statutes and/or to punish offenders more severely, hopefully to thereby deter its occurrence.<sup>241</sup> Indeed, as described above, it can be argued that the statutes existing in 2020 incorporate definitions that more accurately and precisely capture the acts commonly associated with the financial exploitation of older adults.<sup>242</sup> For example, these definitions, rather than focusing exclusively on the taking of an asset from someone, as might be found in a traditional financial crimes statute, tend instead to employ terms such as “use” (e.g., using someone’s assets without their knowledge), “control” (e.g., controlling someone else’s assets for personal gain), and “deprive” (e.g., depriving someone of access to their assets so the offender may ultimately have access to them via inheritance or other means), and may contain a list of the relatively distinct methods often employed in these cases, such as deception, intimidation, and undue influence.<sup>243</sup> Other examples of the somewhat unique approach displayed in these statutes include specifically punishing the wrongful use of funds intended for the benefit of the older adult, breach of a fiduciary duty, and taking advantage of an older adult’s vulnerability for personal gain.<sup>244</sup> Language targeting a failure to obtain the

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241. See Morgan & Thomas, *supra* note 235, at 37.

242. See *id.*

243. See, e.g., FLA. STAT. ANN. § 825.101(10) (LexisNexis 2020) (“Definitions.”); MO. REV. STAT. § 570.145(1) (2020); NEV. REV. STAT. ANN. § 200.5092(3)(b) (LexisNexis 2020) (“Definitions.”).

244. See, e.g., FLA. STAT. ANN. §§ 825.101–06 (LexisNexis 2020) (“Chapter 825. Abuse, Neglect, and Exploitation of Elderly Persons and Disabled Adults.”). It specifically addresses many of the means typically used to financially exploit older adults, providing prosecutors, defense attorneys, and judges needed guidance and a useful and helpful foundation for trying and resolving in a fair and just manner these oftentimes unique and challenging cases.

For example, it specifically defines a lack of capacity to consent in this context as: “an impairment by reason of mental illness, developmental disability, organic brain disorder, physical illness or disability, chronic use of drugs, chronic intoxication, short-term memory loss, or other cause, that causes an elderly person . . . to lack sufficient understanding or capacity to make or communicate reasonable decisions concerning the elderly person’s . . . person or property.” FLA. STAT. ANN. § 825.101(8) (LexisNexis 2020) (“Definitions.”).

Likewise, “caregiver” is defined as: “a person who has been entrusted with or has assumed responsibility for the care or the property of an elderly person . . . . “Caregiver” includes, but is not limited to, relatives, court-appointed or voluntary guardians, adult household members, neighbors, health care providers, and employees and volunteers of [any facility providing day or residential care or treatment for elderly persons].” FLA. STAT. ANN. § 825.101(2) (LexisNexis 2020) (“Definitions.”).

older adult's explicit consent for a financial transaction involving the older adult's assets is contained in very few state statutes, however, although it is arguably a critical component in this context.<sup>245</sup> At the same time, the legislative reluctance to provide such detail may also reflect the distinctive and highly personal context in which many of these events unfold: where the alleged offender is a family member or has otherwise interacted for a lengthy period with, and is trusted by, the older adult and on whom the older adult may be physically or emotionally dependent, and claims to have the older adult's explicit or implicit permission to conduct the financial transactions in question.<sup>246</sup> Notwithstanding the older adult's diminished financial capacity and that the alleged offender has been using these assets for their personal benefit, it is a sensitive context that makes legislatures reluctant to delve too deeply, notwithstanding a need to do so.<sup>247</sup>

Indeed, it is worth emphasizing that these statutes were enacted in part to facilitate, if not encourage, the prosecution of cases involving the financial exploitation of older adults, behavior that is increasingly

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In addition, a "position of trust and confidence" is established to include a person who: "(a) Is a parent, spouse, adult child, or other relative by blood or marriage of the elderly person . . . ; (b) Is a joint tenant or tenant in common with the elderly person . . . ; (c) Has a legal or fiduciary relationship with the elderly person . . . , including, but not limited to, a court-appointed or voluntary guardian, trustee, attorney, or conservator; (d) Is a caregiver of the elderly person . . . ; or (e) Is any other person who has been entrusted with or has assumed responsibility for the use or management of the elderly person's . . . funds, assets, or property." FLA. STAT. ANN. § 825.101(10) (LexisNexis 2020) ("Definitions.").

Finally, the Florida statute also goes into considerable detail regarding what constitutes the "financial exploitation" of an older adult, and, in particular, addresses bank accounts and a failure to use the older adult's assets for the benefit of the older adult, two features that other states often fail to adequately address, by establishing that "exploitation of an elderly person" means: "(d) Misappropriating, misusing, or transferring without authorization money belonging to an elderly person . . . from an account in which the elderly person . . . placed the funds, owned the funds, and was the sole contributor or payee of the funds before the misappropriation, misuse, or unauthorized transfer. . . ; or (e) Intentionally or negligently failing to effectively use an elderly person's . . . income and assets for the necessities required for that person's support and maintenance, by a caregiver or a person who stands in a position of trust and confidence with the elderly person." FLA. STAT. ANN. § 825.103(1) (LexisNexis 2020) ("Exploitation of an elderly person or disabled adult; penalties.").

245. FRIED ET AL., *supra* note 40, at 95. It should be noted that in financial exploitation cases where consent is an issue, it is increasingly being argued that the older victim's decisional capacity be assessed to ensure accurate charging decisions are made.

246. *Id.*

247. *Id.*; *but see* Collins, *supra* note 30, at 61–73 (contending in general that legislatures should refrain from enacting such provisions).

seen as particularly egregious, widespread, and under-addressed within the criminal justice system.<sup>248</sup> Historically, prosecutors in these cases have been hampered by the narrow statutory definitions of financial crimes typically provided by state legislatures, definitions that can fail to encompass the financial exploitation that older adults may experience.<sup>249</sup> Reflecting the value of these more targeted criminal statutes specifically addressing the financial exploitation of older adults, there is some evidence that the prosecution of this behavior has increased over the past two decades.<sup>250</sup> The extent to which cases are being brought under these criminal financial exploitation statutes, however, remains largely unexplored.<sup>251</sup>

Similarly, consistent with the conclusion of Hansen et al. that existing state statutes do not accurately reflect recent research on the occurrence of financial exploitation of older adults,<sup>252</sup> these statutes rarely addressed the frequently unique and distinct victim-offender relationships found in these cases.<sup>253</sup> The emerging research definition used by the CDC that focuses on the presence of a “trust” relationship,<sup>254</sup> as well as conceptual models differentiating financial abuse (which typically involves a “trusted” other) from financial fraud (which typically involves a relative “stranger”),<sup>255</sup> indicate the frequent involvement in these financial exploitation cases of an offender who is a “trusted” acquaintance and often a family member of the victim.<sup>256</sup> This typically poses a complicating factor in related prosecutions, in part because difficult questions regarding consent and express or implied permission may arise, in part because the victim may resist cooperating in and even oppose the prosecution, and in part because the older adult may want and even need to continue to interact with and rely upon this person for assistance and support.<sup>257</sup> Indeed, the older adult’s dependence on

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248. See *supra* notes 21, 25–28 and accompanying text.

249. *Id.*

250. Daly et al., *supra* note 93, at 153; Morgan et al., *supra* note 93, at 271.

251. Daly et al., *supra* note 93, at 153.

252. Hansen et al., *supra* note 89, at 897.

253. *Id.*

254. See HALL ET AL., *supra* note 12, at 35.

255. See, e.g., David Burnes et al., *Prevalence of Financial Fraud and Scams Among Older Adults in the United States: A Systematic Review and Meta-Analysis*, 107 AM. J. PUB. HEALTH e13, e21 (2017).

256. *Id.*

257. Shelly L. Jackson & Thomas L. Hafemeister, *Enhancing the Safety of Elderly Victims After the Close of an APS Investigation*, 28 J. INTERPERSONAL VIOLENCE 1223, 1223 (2013).

this individual for assistance and support, and the violation of this trust, make the breach of this trust particularly egregious.<sup>258</sup> Yet in practice, relatively few states in their financial exploitation statutes directly address the offender's status vis-à-vis the victim.<sup>259</sup> Nevertheless, Professor Drost aptly describes the slow, insidious, and traumatic nature of financial exploitation by family members with whom there is an emotional tie,<sup>260</sup> a finding consistent with the determinations of other scholars,<sup>261</sup> and what financial exploitation statutes were perhaps most intended to address, as the arguably more dramatic and widely reported financial fraud (scams) of older adults could be adequately addressed by previously existing generic theft, larceny, and fraud statutes.<sup>262</sup> Furthermore, of the four reported types of financial exploitation offenders in Sklar's analysis, a family member was the most frequent perpetrator,<sup>263</sup> while other research shows that older adults are significantly more likely to report instances of financial exploitation committed by strangers than by family members.<sup>264</sup> As a result, older adult financial exploitation criminal statutes particularly need to explicitly target and address cases involving family members and other trusted individuals.

As for the victims of these crimes, as discussed earlier, currently twenty-four jurisdictions require only that the victim had reached a threshold age (e.g., the age of sixty) at the time of the offense to trigger the applicability of the statute,<sup>265</sup> while fifteen states require that the exploitation targeted a "vulnerable" or "incapacitated" victim,<sup>266</sup> and one state requires both a threshold age for the victim, and that the victim was vulnerable/incapacitated at the time the exploitation occurred.<sup>267</sup> In

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258. Robert F. Bornstein, *Synergistic Dependencies in Partner and Elder Abuse*, 74 AM. PSYCH. 713, 713 (2019); DePrince & Jackson, *supra* note 63, at 151; Jackson, *Shifting Conceptualizations*, *supra* note 28, at 1.

259. See *supra* notes 162–164, 167 and accompanying text.

260. Drost, *supra* note 39, at 171.

261. Burnes et al., *supra* note 255, at e13; Marguerite DeLiema, *Elder Fraud and Financial Exploitation: Application of Routine Activity Theory*, 58 GERONTOLOGIST 706, 706 (2018).

262. *Id.*

263. Sklar, *supra* note 159, at 20.

264. Ron Acierno et al., *Relevance of Perpetrator Identity to Reporting Elder Financial and Emotional Mistreatment*, 39 J. APPLIED GERONTOLOGY 221, 223 (2020) (finding that 87.5% of older adult financial abuse by family, friends, or acquaintances was not reported versus 33% of incidents perpetrated by strangers).

265. See *supra* note 205 and accompanying text.

266. See *supra* note 206 and accompanying text.

267. See *supra* note 208 and accompanying text.

practice, prosecutors will undoubtedly find that establishing the age of the purported victim is considerably easier than proving that the victim was a “vulnerable” or “incapacitated” adult.<sup>268</sup> Such a statutory approach, however, could be perceived as ageist<sup>269</sup> in that it effectively treats all people over a certain age (ranging from sixty to seventy depending on the statute) as a vulnerable class in need of special attention and protection.<sup>270</sup> In Virginia, for example, it was argued that it would be ageist to simply use the age of the purported victim as a statutory trigger for these prosecutions, and as a result, its criminal financial exploitation statute as enacted focused instead on whether the victim was “mentally incapacitated” at the time of the alleged offense.<sup>271</sup> As noted, however, such a requirement can make it harder to prosecute these cases because the mental incapacity (or “vulnerability” in other states) of the victim must first be established.<sup>272</sup>

Criminal statutes are designed both to punish and deter, an axiom that is especially applicable to elder abuse in general and the financial exploitation of older adults in particular.<sup>273</sup> In terms of the level of punishment, criminal financial exploitation statutes differ significantly, with at least one state establishing that an exploitation valued at a loss of \$100 is sufficient to classify the action as a felony and thus impose the more severe penalties generally associated with felonies,<sup>274</sup> while other states require that the exploitation must be of something valued at least at \$1,000 for the exploitation to be categorized as a felony rather than a misdemeanor.<sup>275</sup> In addition, the states vary enormously in the

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268. See, e.g., Uekert et al., *supra* note 193, at 11 (recommending that “[i]n most cases where a victim’s capacity is or may be legitimately raised, prosecutors should consider having him or her evaluated as soon as possible by an expert psychologist or psychiatrist . . .”).

269. See Lynn McDonald, *Ageism and Elder Mistreatment: Talking the Talk but Not Walking the Walk*, in *AGEISM: STEREOTYPING AND PREJUDICE AGAINST OLDER PERSONS* 135, 135 (Todd D. Nelson ed., 2017); Nina A. Kohn, *Vulnerability Theory and the Role of Government*, 26 *YALE J.L. & FEMINISM* 1, 1 (2014); Benjamin F. Shepherd & Paula M. Brochu, *How Do Stereotypes Harm Older Adults? A Theoretical Explanation for the Perpetration of Elder Abuse and Its Rise*, 57 *AGGRESSION & VIOLENT BEHAV.* 101435, 101435 (2020).

270. See McDonald, *supra* note 269.

271. VA. CODE ANN. § 18.2-178.1 (2020); see generally VA. STATE CRIME COMM’N, *supra* note 148.

272. See Uekert et al., *supra* note 193, at 11.

273. PAMELA TEASTER ET AL., *ETHICS AND VULNERABLE ELDERS: THE QUEST FOR INDIVIDUAL RIGHTS AND A JUST SOCIETY* (2020).

274. See, e.g., IOWA CODE § 235B.20(5), (8) (2020).

275. See, e.g., ARIZ. REV. STAT. § 13-1802 (LexisNexis 2020); see *supra* notes 171, 173–74 and accompanying text.

level of the felony that is to be assigned, typically based on the value of what was exploited and thus, the potential sentences and/or fines that can be imposed.<sup>276</sup>

It is difficult to reach firm conclusions regarding what to make of the variations in the penalties embedded in these statutes. Some of the variations may simply reflect differences in state philosophies regarding punishing crime in general. In some states, however, the financial exploitation of older adults may be viewed as a more egregious crime than in other states because of greater public concern about these crimes in general or because of widely reported incidents in that given state were especially egregious; the advocates of such legislation may have been more vigorous or effective in lobbying for it; or these differences may be reflective of the demography or economy of a given state, with the state having a higher proportion of older adults or its adults seen as more financially vulnerable in general or subject to more financial exploitation. Alternatively, the field is fond of the adage “loss is relative,”<sup>277</sup> and it may be that some states view even a relatively small monetary loss by a victim to financial exploitation as having a substantial adverse impact on the victim and that the person responsible for that loss should be punished correspondingly. Additionally, it may be that the states with low triggers for harsher penalties simply are hoping or believe that the ready availability of such penalties will serve as a deterrent to those who contemplate financially exploiting an older adult. Indeed, it is worth noting again that some states classify all financial exploitation crimes as felonies, regardless of the value of what was exploited.<sup>278</sup>

Perhaps in recognition of the devastation that is often incurred by the victim of financial exploitation, states should perhaps also consider explicitly authorizing imposing restitution on these criminal offenders.<sup>279</sup> As another option, and perhaps a reflection of the fact that the

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276. See *supra* notes 167, 170–71 and accompanying text.

277. For example, the loss of \$100 to someone with considerable means may not have much, if any, personal impact; while a loss of \$100 will typically have a significant impact on someone whose sole income is a monthly social security check and who has very limited financial assets in general. See Gaurav R. Sinha et al., *Effects of Free and Targeted Legal Assistance on Financially Exploited Older Adults*, 33 J. ELDER ABUSE & NEGLECT 168, 173 (2021).

278. See, e.g., FLA. STAT. ANN. § 825.103(3) (LexisNexis 2020).

279. See *People v. Balestra*, 90 Cal. Rptr. 2d 77, 80, 84 (Cal. Ct. App. 1999) (ruling that the trial court did not abuse its discretion when it set a restitution amount of \$7,198 following a conviction for willfully inflicting cruelty on an elder in violation



victim and the offender may be family members or otherwise involved in a long-term relationship, and the victim may be dependent on the offender for future support and/or be emotionally attached to the offender and thus, desire to continue to interact with the offender, one state stipulates that counseling for the offender may be ordered in conjunction with sentencing.<sup>280</sup> Finally, to the extent a legislature is concerned that individuals who financially exploit older adults are often or likely to be repeat offenders, it may establish a central registry where the names and other relevant information of convicted offenders is placed and made readily available to law enforcement officials, adult protective and social service workers, or the general public to assist investigations of and perhaps deter future financial exploitation crimes.<sup>281</sup> By and large, however, the statutory penalties and associated provisions of the various states are limited to imposing imprisonment and/or a fine on the offender.<sup>282</sup>

With regards to deterrence, it remains unknown whether these statutes do indeed have such an effect. Unfortunately, no national surveillance of the occurrence of financial exploitation of older adults exists that could provide information about changes in prevalence rates over time, notwithstanding the valuable insights this might provide on the impact of the various enacted legislative initiatives discussed in this Article. As noted, the states have primarily focused on imposing relatively stiff penalties on offenders in the form of incarceration and/or fines.<sup>283</sup> There is little variation in the legislative response,<sup>284</sup> even though elder abuse offender typology research<sup>285</sup> shows considerable differences among offenders.<sup>286</sup> Although the current empirical typology research does not distinguish between the different types of elder

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of Penal Code § 368(a); there is no statutory requirement that a restitution order be limited to exactly provable losses).

280. CAL. PENAL CODE § 368(k) (Deering 2020).

281. See, e.g., WYO. STAT. ANN. § 6-2-507 (b) (2020); WYO. STAT. ANN. § 35-20-115 (2020). For more information on central registries, see NATIONAL ADULT PROTECTIVE SERVICES ASSOCIATION (NAPSA), NAPSA ADULT PROTECTIVE SERVICES ABUSE REGISTRY NATIONAL REPORT (Mar. 2018), <http://www.napsa-now.org/wp-content/uploads/2018/05/APS-Abuse-Registry-Report.pdf>.

282. See *supra* notes 167–81, 205–08 and accompanying text.

283. *Id.*

284. Jackson, *Shifting Conceptualization*, *supra* note 28, at 265.

285. Marguerite DeLiema et al., *Using Latent Class Analysis to Identify Profiles of Elder Abuse Perpetrators*, 73 J. GERONTOLOGY: SERIES B e49, e49 (2018).

286. See *id.* at e50; Ana João Santos et al., *Elder Abuse Victimization Patterns: Latent Class Analysis Using Perpetrators and Abusive Behaviours*, 19 BMC GERIATRICS 117, 117 (2019).

abuse offenders (e.g., offenders that engage in physical abuse vs. neglect vs. financial exploitation), it can be anticipated that an examination of the typology of offenders found guilty of financial exploitation of older adults, a relatively distinct type of elder abuse, will show substantial differences in their motivations, their relationship to the victims, the consequences of their actions, and the likelihood of their reoffending, some or all of which could be specifically addressed in as-signing penalties pursuant to financial exploitation legislation.<sup>287</sup>

It is noteworthy that eight states have not yet adopted a criminal statute specifically addressing the financial exploitation of older adults.<sup>288</sup> Presumably, these states rely upon existing financial crimes legislation. For example, according to Byhovsky,<sup>289</sup> New York characterizes financial exploitation against the elderly as a hate crime.<sup>290</sup> It would be interesting to learn what, if any, justification these eight states give for their inaction, other than inertia, or whether there is any consideration being given to changing their approach.<sup>291</sup>

## V. Recommendations

It is often said that “hindsight has 20-20 vision.”<sup>292</sup> The “get tough on crime” era is long past, but, in retrospect, many unintended consequences resulting from it have been identified;<sup>293</sup> compelling, in turn,

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287. See DeLiema et al., *supra* note 285.

288. See generally Heather Morton, *Financial Crimes Against the Elderly 2018 Legislation*, NAT'L CONF. OF STATE LEGISLATURES, <https://www.ncsl.org/research/financial-services-and-commerce/financial-crimes-against-the-elderly-2018-legislation.aspx>; VA. STATE CRIME COMM'N, *supra* note 148.

289. Irene Byhovsky, *Financial Crimes Against the Elderly as a Hate Crime in New York State*, 81 ALB. L. REV. 1139, 1139 (2017/2018); see also Morgan et al., *supra* note 93, at 280 (observing that New York lacks a statute that makes financial exploitation a crime).

290. N.Y. PENAL LAW § 485.05(1) (LexisNexis 2020); N.Y. PENAL LAW § 485.05(4) (LexisNexis 2020).

291. See *Financial Exploitation*, NAT'L CONF. STATE LEGISLATURES, <https://www.ncsl.org/googleresults.aspx?q=financial%20exploitation#gsc.tab=0&gsc.q=financial%20exploitation&gsc.page=1> (last visited Dec. 3, 2021); but see Collins, *supra* note 30, at 61–73 (asserting that such an approach is superior to enacting provisions that specifically and distinctly target the financial abuse of older adults).

292. But see Robert P. Agans & Leigh S. Shaffer, *The Hindsight Bias: The Role of the Availability Heuristic and Perceived Risk*, 15 BASIC & APPLIED SOC. PSYCH. 439, 439 (1994).

293. See MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (New Press 2020); REUBAN JONATHAN MILLER, *HALFWAY HOME: RACE, PUNISHMENT, AND THE AFTERLIFE OF MASS INCARCERATION* (Little, Brown & Company 2020) (discussing mass incarceration).

many subsequent policy changes across various fields to address these unintended consequences (e.g., juvenile justice system reforms).<sup>294</sup> A similar reckoning with the past has not occurred in conjunction with the criminal statutes that have been enacted to address the financial exploitation of older adults, perhaps because many of these enactments are still relatively new (although arguably the basic paradigm that they employ is not) and perhaps, in part, because the backlash to the lack of criminal justice attention paid to elder abuse prior to the 1990s is still driving their enactment.<sup>295</sup> Nonetheless, this review has indicated that the dominant and persistent societal response to financial exploitation has been to criminalize it (i.e., impose criminal sanctions on perpetrators). Burnes and his colleagues recently documented that sixty-five percent of the societal responses found in research regarding the perpetration of elder abuse fall within the domain of the criminal justice system.<sup>296</sup> Accordingly, it is not unexpected that, as documented by this Article, there has been a slow and steady increase in the number of states adopting criminal financial exploitation legislation.<sup>297</sup> Furthermore, in all but a very few states, fewer than ten, adult protective services are required to refer instances of likely financial exploitation to either local law enforcement officials or the local prosecutor's office for possible criminal prosecution.<sup>298</sup> As a result of these actions, it is not

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294. BARRY C. FELD, *THE EVOLUTION OF THE JUVENILE COURT: RACE, POLITICS, AND THE CRIMINALIZING OF JUVENILE JUSTICE* (2017) (tracing the history of the juvenile justice system from its beginnings to its current condition, describing in the process the consequences of the get-tough era for juveniles); M. Randell Scism, *Children Are Different: The Need for Reform of Virginia's Juvenile Transfer Laws*, 22 RICH. PUB. INT. L. REV. 445, 445 (2019) (noting that the Virginia legislature in 2020 raised the age of juvenile transfer from fourteen to sixteen years of age, thereby changing the minimum age at which a youth can be automatically transferred or considered for transfer from the juvenile court to the adult criminal court to be tried as an adult.); VA. CODE ANN. § 16.1-269.1(B), (C) (2020).

295. Jessie L. Krienert et al., *Elderly in America: A Descriptive Study of Elder Abuse Examining National Incident-Based Reporting System (NIBRS) Data, 2000-2005*, 21 J. ELDER ABUSE & NEGLECT 325, 325 (2009) (observing that elder abuse has not been treated historically as a crime); *But see* Collins, *supra* note 30, at 61–73 (arguing that such an approach is mistaken).

296. David Burnes et al., *A Scoping Review of Outcomes in Elder Abuse Intervention Research: The Current Landscape and Where to Go Next*, 57 AGGRESSION & VIOLENT BEHAV. 101476, 101476 (2021) [hereinafter Burnes et al., *Outcomes in Elder Abuse*].

297. HAFEMEISTER, *supra* note 2.

298. N.C. GEN. STAT. § 108A-109 (2020) (requiring APS to report to the district attorney that states upon finding evidence indicating that a person has abused, neglected, or exploited a disabled adult, the director shall notify the district attorney); UTAH CODE ANN. § 62A-3-305(2) (LexisNexis 2020) (requiring APS to report to law enforcement that states “[w]hen the initial report or subsequent investigation by

surprising that there is evidence that financial exploitation prosecution has increased over the past decade as prosecutors are both being encouraged to pursue these kinds of cases and are developing greater expertise in trying them.<sup>299</sup>

But what if there are also unintended adverse consequences associated with the criminalization of financial exploitation? For example, what are the costs of ignoring the wishes of an older victim who does not want her son, daughter, or other family member prosecuted for financial exploitation that is so typical in many of these cases?<sup>300</sup> One older victim described the anxiety that resulted from her son being removed from her home and incarcerated for a physical altercation and theft of \$20, stating: "I have to stay here alone at night, and I'm scared."<sup>301</sup> Another consequence of an associated criminal conviction is that the resulting felony record hampers the ability of ex-offenders to attain gainful employment, which can result in, if not exacerbate, economic dependence on their aging parent, which may (again) lead them to return to their parent's home and be the motivation for, if not the cause of, subsequent conflict and financial exploitation.<sup>302</sup>

Identifying such unintended consequences is not intended to engender sympathy for these offenders, but rather to ask whether there might be alternatives to imposing criminal penalties such as incarceration and fines on them that could better avoid such unintended consequences and result in more beneficial long-term solutions. Unfortunately, the current answer is generally a resounding no. There have been fifteen intervention reviews published since 2009 that explore a range of alternatives for responding to elder abuse,<sup>303</sup> but very few of

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Adult Protective Services indicates that a criminal offense may have occurred against a vulnerable adult: (a) Adult Protective Services shall notify the nearest local law enforcement agency regarding the potential offense").

299. See Ulrey, *supra* note 40, at 95.

300. See, e.g., Shelly L. Jackson & Thomas L. Hafemeister, *How Do Abused Elderly Persons and Their Adult Protective Services Caseworkers View Law Enforcement Involvement and Criminal Prosecution, and What Impact Do These Views Have on Case Processing?*, 25(3) J. ELDER ABUSE & NEGLECT 254, 254 (2013); Kohn, *supra* note 90, at 1.

301. SHELLY L. JACKSON & THOMAS L. HAFEMEISTER, FINANCIAL ABUSE OF ELDERLY PEOPLE VS. OTHER FORMS OF ELDER ABUSE: ASSESSING THEIR DYNAMICS, RISK FACTORS, AND SOCIETY'S RESPONSE 461 (2011).

302. Robert F. Bornstein, *Synergistic Dependencies in Partner and Elder Abuse*, 74 AM. PSYCH. 713, 713 (2019).

303. Khiya Marshall, et al., *Do Interventions to Prevent or Stop Abuse and Neglect Among Older Adults Work? A Systematic Review of Reviews*, 32(5) J. ELDER ABUSE & NEGLECT 409 (2020) (Contact the first author for a copy of the citations to the fifteen elder abuse intervention reviews, this is the most recently published review.)

them even mention alternative interventions in conjunction with financial exploitation, and none address possible non-criminal law responses that could be applied to the offenders involved. Criminalization remains our go-to response.<sup>304</sup>

In the current zeitgeist of social justice, however, it seems appropriate to expand our repertoire to consider some alternatives, especially to incarceration.<sup>305</sup> Scholars in the field of restorative justice are attempting to identify under what circumstances restorative justice, one possible alternative response, is appropriate in this context.<sup>306</sup> Additionally, elder abuse courts were being established in a few jurisdictions a decade ago as a potential alternative,<sup>307</sup> but now have all but disappeared.<sup>308</sup> Resurrecting these ideas and embedding them within a diversion or judicial oversight program, however, may be a viable option that deserves greater exploration. Indeed, judicial oversight programs in general, where there is considerable oversight of the offender by the judge, could be developed in which offenders remain in the community, but are monitored by court officials, keeping offenders out of prison, and ensuring that they receive the services they need while keeping older adults safe.<sup>309</sup> A jurisprudential geriatrics, restorative

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304. *See id.*

305. *See, e.g.,* Mark Lachs et al., *Bringing Advances in Elder Abuse Research Methodology and Theory to Evaluation of Interventions*, J. APPLIED GERONTOLOGY 1, 3 (Feb. 13, 2021), <https://doi.org/10.1177/0733464821992182> (arguing that the retributive justice model causes undue harm to victims, perpetrators, and society).

306. Mary Helen McNeal & Maria Brown, *Elder Restorative Justice*, 21 CARDOZO J. CONFLICT RESOL. 91, 91 (2019/2020); *see also* Sharon G. Garner & Thomas L. Hafemeister, *Restorative Justice, Therapeutic Jurisprudence, and Mental Health Courts: Finding a Better Means to Respond to Offenders with a Mental Disorder*, 22(2) DEVS. MENTAL HEALTH L. 1 (2003); Thomas L. Hafemeister et al., *Forging Links and Renewing Ties: Applying the Principles of Restorative and Procedural Justice to Better Respond to Criminal Offenders with a Mental Disorder*, 60 BUFF. L. REV. 147 (2012) [hereinafter *Forging Links*].

307. LORI A. STIEGEL & PAMELA B. TEASTER, A MULTI-SITE ASSESSMENT OF FIVE COURT-FOCUSED ELDER ABUSE INITIATIVES, FINAL TECHNICAL REPORT (Document No.: 238287) (Nat'l Inst. Just., U.S. Dep't of Just., 2010), <https://www.ncjrs.gov/pdffiles1/nij/grants/238287.pdf>.

308. *Id.*

309. Shelly L. Jackson & Thomas L. Hafemeister, *Pure Financial Exploitation vs. Hybrid Financial Exploitation Co-Occurring with Physical Abuse and/or Neglect of Elderly Persons*, 2 PSYCH. VIOLENCE 285 (2012) (noting that this option also has the advantage of permitting continued interactions between the older adult and the offender when such interactions are desired by the older adult and shown to be beneficial and advantageous to the older adult).

justice, or therapeutic justice framework could be a useful lens through which to assess these programs.<sup>310</sup>

It is a laudable and vital goal to protect and maintain the financial security and safety of older Americans as this will contribute to their well-being, independence, and successful aging. It seems a daunting, if not impossible task, to successfully address, limit, and ideally, eradicate financial exploitation with a single tool. There is no doubt that criminal financial exploitation statutes should remain an arrow in the prosecutor's quiver as these statutes capture bad acts not treated by other existing statutes. Providing prosecutors and the courts with a range of empirically validated alternatives designed to meet the specific needs of a given case, however, may produce better outcomes for older adults, offenders, and society in general.

#### A. Future Directions

For those who endorse employing a criminal justice approach to the financial exploitation of older adults, considerable progress has been achieved. Several issues remain unaddressed, however. For example, what is not reflected in these statutes is a recognition that these crimes against older adults are not always immediately detected. Therefore, Haberlen recommends extending the statute of limitations applicable to this offense to provide for this contingency.<sup>311</sup> Because these statutes are generally intended to also help older adults, a greater emphasis on restitution is similarly worthy of consideration.<sup>312</sup> Although some offenders will be financially unable to provide restitution,<sup>313</sup> such a provision when it can be implemented can be vital to the financial well-being of the older adult, promote equity and restorative justice, and send a strong signal to prospective offenders that they will not be able to retain their ill-gotten gains. An explicit commitment to restitution might also spur legislatures to identify other means of

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310. Israel (Issi) Doron, *25 Years of Elder Law: An Integrative and Historical Account of the Field of Law and Aging*, 21 *THEORETICAL INQUIRIES L.* 1 (2020); Garner & Hafe-meister, *supra* note 306, at 1; *Forging Links*, *supra* note 306, at 147; Bruce J. Winick, *The Jurisprudence of Therapeutic Jurisprudence*, 3 *PSYCH., PUB. POL'Y, & L.* 184, 184 (1997).

311. Haberlen, *supra* note 82, at 1.

312. *See id.* (discussing that although civil remedies may be available to these victims, this may be an option for which they lack the necessary financial resources, knowledge, including how to access an attorney, or physical and mental capabilities and stamina to pursue).

313. Morgan & Thomas, *supra* note 235, at 36.

restoring older victims financially, including establishing a state-supported relief fund that can be used to help compensate victims for their losses and provide them with the financial support that they may desperately need. There also remains the frequent issue of victims' reluctance to become embroiled in the criminal justice system generally, particularly when it targets a family member or someone else with whom a long and/or close relationship has been established.<sup>314</sup> The criminal justice system determines guilt or innocence and imposes appropriate punishment for a violation of the law. Financial exploitation of an older adult, however, is often more complex and emotionally fraught than simply a violation of the law.<sup>315</sup> When the case involves a loved one, for example, when an offspring violates a parent's trust by stealing from them, the criminal justice system may not be the most appropriate mechanism for providing a response, with some scholars opining that the court is no place for "relationship" resolution.<sup>316</sup> In these instances, it may be more important to repair relationships than punish the offenders.<sup>317</sup>

Finally, there is the need for related research. Hafemeister previously concluded that empirical evidence had not been generated to establish that these penal statutes result in either increased prosecution rates or deterrence of such crimes,<sup>318</sup> unfortunately something that is still true today.<sup>319</sup> Research should be undertaken to evaluate the impact of the criminal justice system in these cases and on prospective offender behavior,<sup>320</sup> especially in light of the Center for Problem-Oriented Policing asserting that expanding existing criminal financial exploitation statutes is of "limited effectiveness."<sup>321</sup> Additionally, research

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314. Jackson & Hafemeister, *supra* note 257, at 254.

315. Thomas Goergen & Marie Beaulieu, *Criminological Theory and Elder Abuse Research—Fruitful Relationship or Worlds Apart?*, 35 *AGEING INT'L* 185, 185 (2010).

316. Marshall B. Kapp, *Medical Decision-Making for Incapacitated Elders: A "Therapeutic Interests" Standard*, 33 *INT'L J.L. & PSYCHIATRY* 369, 369 (2010).

317. Arlene Groh, *Restorative Justice: A Healing Approach to Elder Abuse*, in *NEW DIRECTIONS IN RESTORATIVE JUST.* 175, 175 (Elizabeth Elliott & Robert Gordon eds., 2005).

318. HAFEMEISTER, *supra* note 2, at 382.

319. Carey et al., *supra* note 34.

320. Sarah Dion et al., *Developing a Rigorous, Systematic Methodology to Identify and Categorize Elder Mistreatment in Criminal Justice Data*, 32 *J. ELDER ABUSE & NEGLECT* 27, 27 (2020); McGuire, *supra* note 72, at 431.

321. *Summary of Responses to Financial Crimes Against the Elderly*, ASU CENTER FOR PROBLEM-ORIENTED POLICING (last visited Dec. 3, 2021), <https://popcenter.asu.edu/content/financial-crimes-against-elderly-summary> (regarding "Expanding existing statutes" as a possible response to financial crimes against the elderly, the

should be conducted to assess the effectiveness of the various offender and victim-offender interventions identified above after a criminal offense has occurred.<sup>322</sup>

## VI. Conclusion

This Article examined the evolution in the United States over the past twenty years of criminal statutes designed to specifically address the financial exploitation of older adults and established that forty jurisdictions now have such provisions in their criminal codes.<sup>323</sup> These enactments have been driven by society's concern about the impact of financial exploitation on older adults, including the significant effect it can have on their financial and psychological well-being, such as an increased possibility of becoming financially destitute and dependent on the state,<sup>324</sup> as well as being traumatized by the experience and losing the expected and oftentimes needed support from long-time trusted family members and others, which in turn can have severe adverse health consequences and shorten the victim's life span.<sup>325</sup> Criminal financial exploitation statutes, however, are but one piece of the puzzle and the response to financial exploitation should be comprehensive,<sup>326</sup> with future efforts also emphasizing prevention and remediation.<sup>327</sup> Nevertheless, there will undoubtedly always be older adults who are the victims of financial exploitation. As noted by Hafemeister nearly twenty years ago, analysis of the effectiveness and impact of these statutes remains a critical unmet need.<sup>328</sup> Prosecution is clearly warranted in some instances, but by no means under all scenarios. Therefore, we should look beyond simply criminalizing the financial exploitation of older adults and punishing convicted offenders, but also take steps to

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associated commentary is: "No general deterrence effect; does not help prevention efforts").

322. Burnes et al., *supra* note 296, at 101476.

323. See generally Shelly L. Jackson, Table 1, Comparison and Evolution of Criminal Financial Exploitation Statutes Across Time (2021).

324. U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 34; Jonk et al., *supra* note 26, at 334.

325. Burnett et al., *supra* note 33, at 59.

326. McGuire, *supra* note 72, at 431.

327. Karen Stein, *Elder Abuse Prevention Interventions*, in *ELDER ABUSE* 433, 433 (XinQi Dong ed., 2017); Kohn, *Vulnerability Theory*, *supra* note 262, at 1 (advocating for building supports for older adults in general rather than developing policy targeting an age group).

328. HAFEMEISTER, *supra* note 2, at 382.



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ensure that these victims are restored to safety and promote their well-being.

TABLE 1: COMPARISON AND EVOLUTION OF CRIMINAL FINANCIAL EXPLOITATION STATUTES ACROSS TIME

State	Dessin, 2000	Bailey & Loewy, 2007	Jackson, 2015	Hansen et al., 2016	Jackson & Hafemeister, 2020
Alabama	ALA. CODE § 38-9-7 (2000)	ALA. CODE § 38-9-7 (2005)	ALA. CODE § 38-9-7 (2013) ALA. CODE § 38-9-2 (2013)	ALA. CODE § 38-9-7 (West 2015)	ALA. CODE § 13A-6-195 (2020) First degree financial exploitation of the elderly. ALA. CODE § 13A-6-196 (2020) Second degree financial exploitation of the elderly. ALA. CODE § 13A-6-197 (2020) Third degree financial exploitation of the elderly. ALA. CODE § 13A-6-191 (2020) Definitions.
Alaska	—	—	—	—	—
Arizona	Ariz. Rev. Stat. Ann. § 13-1802 (2000)	ARIZ. REV. STAT. § 13-1802 (LexisNexis 2004)	ARIZ. REV. STAT. § 13-1802 (LexisNexis 2013) ARIZ. REV. STAT. § 46-451 (LexisNexis 2013) ARIZ. REV. STAT. § 14-5101 (LexisNexis 2013)	ARIZ. REV. STAT. ANN. § 13-1802(B) (2015)	ARIZ. REV. STAT. § 13-1802 (LexisNexis 2020) Theft; classification; definitions. ARIZ. REV. STAT. § 46-451 (LexisNexis 2020) Definitions. ARIZ. REV. STAT. § 14-5101 (LexisNexis 2020) Definitions.

Arkansas	ARK. CODE ANN. § 5-28-103 (2000)	ARK. CODE ANN. § 5-28-103 (2005) ARK. CODE ANN. § 5-28-101 (2005)	ARK. CODE ANN. § 5-28-103 (2013) ARK. CODE ANN. § 5-28-101 (2013)	ARK. CODE ANN. § 5-28-103 (West 2015)	ARK. CODE ANN. § 5-28-103 (2020) Criminal penalties for abuse of an endangered or impaired person. ARK. CODE ANN. § 5-28-101 (2020) Definitions.
California	CAL. PENAL CODE § 368 (West 2000)	CAL. PENAL CODE § 368 (West 2005)	CAL. PENAL CODE § 368 (West 2013)	CAL. PENAL CODE § 368 (West 2015)	CAL. PENAL CODE § 368 (West 2020) Crimes against elders and dependent adults; Legislative findings; Infliction of pain, injury, or endangerment; Theft, embezzlement, forgery, fraud, or identity theft; False imprisonment; Restraining order.
Colorado	COLO. REV. STAT. ANN. § 18-6.5-103(5) (West 2000) COLO. REV. STAT. ANN. § 18-6.5-102 (West 2000)	COLO. REV. STAT. § 18-6.5-103 (2004) COLO. REV. STAT. § 18-6.5-102 (2004)	COLO. REV. STAT. § 18-6.5-103 (2013) COLO. REV. STAT. § 18-6.5-102 (2013) COLO. REV. STAT. § 18-4-401 (2013)	COLO. REV. STAT. ANN. § 18-6.5-103 (West 2015)	COLO. REV. STAT. § 18-6.5-103 (2020) Crimes against at-risk persons – classifications. COLO. REV. STAT. § 18-6.5-102 (2020) Definitions.
Connecticut	—	—	—	—	—

Delaware	DEL. CODE ANN. tit. 31, § 3913 (1999) DEL. CODE ANN. tit. 31, § 3901 (1999)	DEL. CODE ANN. tit. 31, § 3913 (2005)	DEL. CODE ANN. tit. 31, § 3913 (2013) DEL. CODE ANN. tit. 31, § 3902 (2013) DEL. CODE ANN. tit. 11, § 841 (2013)	DEL. CODE ANN. tit. 31, § 3913 (West 2015)	DEL. CODE ANN. tit. 11, § 1105 (2020) Crime Against a Vulnerable Adult. DEL. CODE ANN. tit. 11, § 841 (2020) Theft. DEL. CODE ANN. tit. 31, § 3913 (2020) Violations.
District of Columbia	—	D.C. CODE ANN. § 22-3601 (West 2005)	—	Not Available <sup>329</sup>	D.C. CODE § 22-933.01 (2020) Financial exploitation of a vulnerable adult or elderly person. D.C. CODE § 22-932 (2020) Definitions. D.C. CODE § 22-936.01 (2020) Criminal penalties for financial exploitation of a vulnerable adult or elderly person.
Florida	FLA. STAT. ANN. § 825.103 (West 2000)	FLA. STAT. ANN. § 825.103 (2005) [penalties] FLA. STAT. ANN. § 825.101 (2005) [definition]	FLA. STAT. § 825.103 (2013) FLA. STAT. § 825.101 (2013)	FLA. STAT. ANN. § 825.103 (West 2015)	FLA. STAT. § 825.103 (2020) Exploitation of an elderly person or disabled adult; penalties. FLA. STAT. § 825.101 (2020) Definitions.

329. Hansen et al., *supra* note 89, at 897 (did not include the District of Columbia in their survey).

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Georgia	GA. CODE ANN. § 30-5-8 (2000)	GA. CODE ANN. § 30-5-8 (2004) Criminal Offenses and Penalties GA. CODE ANN. § 16-8-12 (2004)	GA. CODE ANN. § 16-5-102 (2013) GA. CODE ANN. § 16-5-100 (2013)	Right conclusion (criminal statute), statute cited incorrect	GA. CODE ANN. § 16-5-102 (2020). Exploitation and intimidation of disabled adults, elder persons, and residents; obstruction of investigation. GA. CODE ANN. § 16-5-100 (2020). Definitions.
Hawaii	—	—	—	—	—
Idaho	IDAHO CODE § 18-1505 (2000)	IDAHO CODE ANN. § 18-1505 (West 2005)	IDAHO CODE ANN. § 18-1505 (West 2013)	IDAHO CODE ANN. § 18-1505 (West 2015)	IDAHO CODE § 18-1505 (2020) Abuse, exploitation or neglect of a vulnerable adult.
Illinois	720 ILL. COMP. STAT. ANN. 5/16-1.3 (West 2000)	720 ILL. COMP. STAT. 5/16-1.3 (2005)	720 ILL. COMP. STAT. 5/17-56 (2013)	720 ILL. COMP. STAT. ANN. 5/17-56 (West 2015)	720 ILL. COMP. STAT. 5/17-56 (2020) Financial exploitation of an elderly person or a person with a disability.
Indiana	IND. CODE ANN. § 35-46-1-12 (West 2000)	IND. CODE ANN. § 35-46-1-12 (2004)	IND. CODE ANN. § 35-46-1-12 (2013) IND. CODE ANN. § 12-10-3-2 (2013)	IND. CODE ANN. § 35-46-1-12 (West 2015)	IND. CODE ANN. § 35-46-1-12 (2020) Exploitation of dependent or endangered adult; financial exploitation of endangered adult; violation classification. IND. CODE ANN. § 12-10-3-2 (2020) Definition.
Iowa	—	IOWA CODE § 235B.20 (2003) IOWA CODE § 235B.2 (2004) Definition.	IOWA CODE § 235B.20 (2013) IOWA CODE § 235B.2 (2013)	IOWA CODE ANN. § 235B.20 (West 2015)	IOWA CODE § 235B.20 (2020) Dependent adult abuse — initiation of charges — penalty. IOWA CODE § 235B.2 (2020) Definitions.

Kansas	—	—	KAN. STAT. ANN. § 21-5417 (2013) (criminal code)	Right conclusion (criminal statute), wrong statute (KAN. STAT. ANN. § 39-1430 (2015))	KAN. STAT. ANN. § 21-5417 (2020). Mistreatment of a dependent adult; mistreatment of an elder person.
Kentucky	KY. REV. STAT. ANN. § 209.990 (LexisNexis 2000)	KY. REV. STAT. ANN. § 209.990 (2004)	KY. REV. STAT. ANN. § 209.990 (2013) KY. REV. STAT. ANN. § 209.020 (2013)	KY. REV. STAT. ANN. § 209.990 (West 2015)	KY. REV. STAT. ANN. § 209.990 (2020). Penalties. KY. REV. STAT. ANN. § 209.020 (2020). Definitions for chapter.
Louisiana	LA. STAT. ANN. § 14:93.4 (2000).	LA. STAT. ANN. § 14:93.4 (2005) LA. STAT. ANN. § 14:67.21 (2005)	LA. STAT. ANN. § 14:93.4 (2013) LA. STAT. ANN. § 14:67.21 (2013)	LA. STAT. ANN. § 14:93.4 (2015)	LA. STAT. ANN. § 14:93.4 (2020). Exploitation of persons with infirmities.
Maine	—	—	—	—	—
Maryland	—	MD. CODE ANN., CRIM. LAW § 8-801 (2004)	MD. CODE ANN., CRIM. LAW § 8-801 (2013) MD. CODE ANN., CRIM. LAW § 3-604 (2013)	MD. CODE ANN., CRIM. LAW § 8-801 (West 2015)	MD. CODE ANN., CRIM. LAW § 8-801 (2020). Exploitation of vulnerable adults prohibited.

Massachusetts	MASS. GEN. LAWS ANN. ch. 266, § 30(5) (West 2000)	MASS. GEN. LAWS ANN. ch. 266, § 30(5) (2005)	—	—	MASS. GEN. LAWS ANN. ch. 266, § 30(5) (2020) Larceny; Property Defined; Punishment; Increased Punishment Where Victim is Elderly or Disabled Person. (Enhanced penalty)
Michigan	—	MICH. COMP. LAWS ANN. § 750.174a (West 2005)	MICH. COMP. LAWS ANN. § 750.174a (West 2013)	— <sup>330</sup>	MICH. COMP. LAWS SERV. § 750.174a (LexisNexis 2020) Vulnerable adult; prohibited conduct; violation; penalty; enhanced sentence; exceptions; consecutive sentence; definitions; report by office of services to the aging to department of human services.
Minnesota	MINN. STAT. ANN. § 609.2335 (West 2000)	MINN. STAT. § 609.2335 (2004)	MINN. STAT. § 609.2335 (2013)	MINN. STAT. § 609.2335 (2014 & Supp. 2015)	MINN. STAT. § 609.2335 (2020) Financial exploitation of a vulnerable adult. MINN. STAT. § 609.232 (2020) Crimes Against Vulnerable Adults; Definitions.
Mississippi	MISS. CODE ANN. § 43-47-19 (West 2000)	MISS. CODE ANN. § 43-47-19 (2005) MISS. CODE ANN. § 43-47-5 (2005) Definition.	MISS. CODE ANN. § 43-47-19 (2013) MISS. CODE ANN. § 43-47-5 (2013)	MISS. CODE ANN. § 43-47-19 (West 2015)	MISS. CODE ANN. § 43-47-19 (2020) Prohibition against abuse, neglect, or exploitation; penalties; relation to other laws. MISS. CODE ANN. § 43-47-5 (2020) Definitions.

330. *Id.* at 918, (stating that Michigan is without a specific criminal financial exploitation statute).

Missouri	—	MO. REV. STAT. § 570.145 (2005)	MO. ANN. STAT. § 570.145 (West 2013)	MO. ANN. STAT. § 570.145 (West 2015)	MO. REV. STAT. § 570.145 (2020) Financial exploitation of the elderly and disabled, penalty — definitions.
Montana	MONT. CODE ANN. § 52-3-825(2) (2000)	MONT. CODE ANN. § 52-3-825 (2004) Penalties. MONT. CODE ANN. § 52-3-803 (2004) Definition.	— <sup>331</sup>	MONT. CODE ANN. § 52-3-803 (West 2015)	MONT. CODE ANN. § 45-6-333 (2020) Exploitation of older person, incapacitated person, or person with developmental disability. MONT. CODE ANN. § 28-358 (2020). Exploitation, defined.
Nebraska	NEB. REV. STAT. § 28-386 (1999)	NEB. REV. STAT. § 28-386 (2005) NEB. REV. STAT. § 28-358 (2005) Definitions.	NEB. REV. STAT. § 28-386 (2013) NEB. REV. STAT. § 28-358 (2013) NEB. REV. STAT. § 28-371 (2013)	NEB. REV. STAT. ANN. § 28-386 (West 2015)	NEB. REV. STAT. § 28-358 (2020). Exploitation, defined. NEB. REV. STAT. § 28-386 (2020). Knowing and intentional abuse, neglect, or exploitation of a vulnerable adult or senior adult; penalty. NEB. REV. STAT. § 28-366.01 (2020). Senior adult, defined.
Nevada	NEV. REV. STAT. § 200.5099 (1999)	NEV. REV. STAT. ANN. § 200.5099 (2004) Penalties. NEV. REV. STAT. ANN. § 200.5092 (2004) Definition.	NEV. REV. STAT. ANN. § 200.5099 (2013) NEV. REV. STAT. ANN. § 200.5092 (2013)	NEV. REV. STAT. ANN. § 200.5099 (West 2015)	NEV. REV. STAT. ANN. § 200.5099 (2019) Penalties. NEV. REV. STAT. ANN. § 200.5092 (2019) Definitions.

331. Jackson, *All Elder Abuse Perpetrators Are Not Alike*, *supra* note 51, at 63 (concluding that there was no criminal financial exploitation that was, at the time, embedded in the civil financial exploitation statute).



New Hampshire	—	—	—	—	N.H. REV. STAT. ANN. § 631:8 (2020) Criminal Neglect of Elderly, Disabled, or Impaired Adults; definition of elderly adult. N.H. REV. STAT. ANN. § 631:9 (2020) Financial Exploitation of an Elderly, Disabled, or Impaired Adult. N.H. REV. STAT. ANN. § 631:10 (2020) Penalties.
New Jersey	—	—	—	—	—
New Mexico	—	—	—	—	—
New York	—	— <sup>332</sup>	—	—	—
North Carolina	N.C. GEN. STAT. § 14-32.3 (2000)	N.C. GEN. STAT. ANN. § 14-32.3 (West 2004)	N.C. GEN. STAT. ANN. § 14-112.2 (West 2013)	N.C. GEN. STAT. ANN. § 14-112.2 (West 2015)	N.C. GEN. STAT. § 14-112.2 (2020) Exploitation of an older adult or disabled adult.

332. BAILLY & LOEWY, *supra* note 79, at App. 1-70 (included in their statutory review N.Y. PENAL LAW § 485.05 (Consol. 2001) (“Hate Crimes”)).

North Dakota	N.D. CENT. CODE § 12.1-31-07.1 (1999)	N.D. CENT. CODE ANN. § 12.1-31-07.1 (West 2005)	N.D. CENT. CODE ANN. § 12.1-31-07.1 (West 2013) N.D. CENT. CODE ANN. § 50-25.2-01(17) (West 2013) Definitions.	N.D. Cent. Code Ann. § 12.1-31-07.1 (West 2015)	N.D. CENT. CODE § 12.1-31-07.1 (2020) Exploitation of an eligible adult – Penalty. N.D. CENT. CODE § 12.1-31-07 (2020) Endangering an eligible adult – Penalty; definitions.
Ohio	OHIO REV. CODE ANN. § 2913.02(B) (3) (2000)	OHIO REV. CODE ANN. § 2913.02(B) (3) (2005) Theft. OHIO REV. CODE ANN. § 2913.21 Misuse of credit cards. OHIO REV. CODE ANN. § 2913.31 Forgery. OHIO REV. CODE ANN. § 2913.43 Securing writings by deception.	OHIO REV. CODE ANN. § 2913.02 (2013) Theft.	OHIO REV. CODE ANN. § 2913.02	OHIO REV. CODE ANN. § 2913.02 (2020) Theft. (Enhanced penalty) OHIO REV. CODE ANN. § 2913.01 (2020) Definitions.
Oklahoma	—	—	OKLA. STAT. ANN. tit. 21, § 843.4 (West 2013)	OKLA. STAT. ANN. tit. 21, § 843.4 (West 2015)	OKLA. ST. tit. 21, § 843.4 (2020) Exploitation of Elderly Persons or Disabled Adults; definitions; penalties.
Oregon	— <sup>333</sup>	OR. REV. STAT.	OR. REV. STAT.	OR. REV. STAT. ANN.	OR. REV. STAT. § 163.205 (2020)

333. As discussed earlier in note 82, although Dessin listed Oregon as not having criminal financial exploitation legislation when she published her article in the year

		§ 163.205 (1)(b)(D) (2003)	§ 163.205 (2013)	§ 163.205 (West 2015)	Criminal mistreatment in the first degree.
Pennsylvania	—	—	—	—	—
Rhode Island	—	—	11 R.I. GEN. LAWS § 11-68-1 (2013) 11 R.I. GEN. LAWS § 11-68-2 (2013) 11 R.I. GEN. LAWS § 11-68-3 (2013)	—	11 R.I. GEN. LAWS § 11-68-1 (2020) Definitions. 11 R.I. GEN. LAWS § 11-68-2 (2020) Exploitation of an elder. 11 R.I. GEN. LAWS § 11-68-3 (2020) Penalties for violations.
South Carolina	S.C. CODE ANN. § 43-35-85(D) (1999)	—	S.C. CODE ANN. § 43-35-85 (2013) S.C. CODE ANN. § 43-35-10 (2013)	S.C. CODE ANN. § 43-35-85 (2015)	S.C. CODE ANN. § 43-35-85 (2020) Penalties. S.C. CODE ANN. § 43-35-10 (2020) Definitions.

2000, Oregon had in fact enacted such legislation in 1993. *See* 1993 Or. Adv. Legis. Serv. 364 (LexisNexis); OR. REV. STAT. ANN. § 163.205(1)(b)(D,E) (2020) (“Criminal mistreatment in the first degree.”).

South Dakota	S.D. CODIFIED LAWS § 22-46-3 (2000)	S.D. CODIFIED LAWS § 22-46-3 (2004)	S.D. CODIFIED LAWS § 22-46-3 (2013) S.D. CODIFIED LAWS § 22-46-1 (2013) S.D. CODIFIED LAWS § 22-30A-1 (2013)	S.D. CODIFIED LAWS § 22-46-3 (2015)	S.D. CODIFIED LAWS § 22-46-3 (2020) Theft by exploitation – Penalty. S.D. CODIFIED LAWS § 22-46-1 (2020) Definitions of terms. S.D. CODIFIED LAWS § 22-30A-17 (2020) Grand theft—Felony. [penalties for theft]
Tennessee	TENN. CODE ANN. § 71-6-117 (1999)	TENN. CODE ANN. § 71-6-117 (2004)	TENN. CODE ANN. § 71-6-117 (2013) TENN. CODE ANN. § 71-6-102 (2013)	TENN. CODE ANN. § 71-6-117 (West 2015)	TENN. CODE ANN. § 39-15-502 (2020) Offense of financial exploitation of elderly or vulnerable person. TENN. CODE ANN. § 39-14-105 (2020) Grading of theft. [penalties]
Texas	—	—	TEX. PENAL CODE ANN. § 32.53 (West 2013)	—	TEX. PENAL CODE § 32.53 (2020) Exploitation of Child, Elderly Individual, or Disabled Individual. TEX. PENAL CODE § 22.04 (2020) Injury to a child, elderly individual, or disabled individual. [definitions]
Utah	UTAH CODE ANN. § 76-5-111 (2000)	UTAH CODE ANN. § 76-5-111 (2005)	UTAH CODE ANN. § 76-5-111 (2013)	UTAH CODE ANN. § 76-5-111 (West 2015)	UTAH CODE ANN. § 76-5-111 (2020) Abuse, neglect, or exploitation of a vulnerable adult – penalties.

## NUMBER 2

## FINANCIAL EXPLOITATION STATUTES

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Vermont	Vt. STAT. ANN. tit. 33, § 6913(b) (2000)	Vt. STAT. ANN. tit. 33, § 6913 (2004)	Vt. STAT. ANN. tit. 13, § 1380 (2013) Vt. STAT. ANN. tit. 13, § 1375 (2013) Definitions.	—	Vt. STAT. ANN. tit. 13, § 1380 (2019) Financial exploitation. Vt. STAT. ANN. tit. 13, § 1375 (2020) Definitions.
Virginia	—	—	VA. CODE ANN. § 18.2-178.1 (2013)	—	VA. CODE ANN. § 18.2-178.1 (2020) Financial exploitation of mentally incapacitated persons; penalty.
Washington	—	—	—	—	WASH. REV. CODE § 9A.56.400 (2020) Theft from a vulnerable adult in the first degree — Theft from a vulnerable adult in the second degree. WASH. REV. CODE § 9A.56.010 (2020) Definitions.
West Virginia	—	W. VA. CODE ANN. § 61-2-29 (d, e) (2005)	W. VA. CODE § 61-2-29b (2013)	W. VA. CODE ANN. § 61-2-29 (West 2015)	W. VA. CODE § 61-2-29b (2020) Financial exploitation of an elderly person, protected person, or incapacitated adult; penalties; definitions.

Wisconsin	Wis. STAT. ANN. § 943.20(3)(d) (6) (West 2000)	Wis. STAT. ANN. § 943.20 (West 2004) Theft.	— <sup>334</sup>	Wis. STAT. ANN. § 943.20 (West 2015)	Wis. STAT. § 943.20 (2020) Theft. (Enhanced penalty) Wis. STAT. § 46.90 (2020) Elder abuse reporting system. [definitions] Wis. STAT. § 940.285 (2020) Abuse of individuals at risk. [Definitions]
Wyoming	—	WYO. STAT. ANN. § 6-2-507 (2005)	WYO. STAT. ANN. § 6-2-507 (2013) WYO. STAT. ANN. § 35-20-102 (2013)	WYO. STAT. ANN. § 6-2-507 (West 2015)	WYO. STAT. ANN. § 6-2-507 (2020) Abuse, neglect, abandonment, intimidation, or exploitation of a vulnerable adult; penalties.

334. Jackson, *All Elder Abuse Perpetrators Are Not Alike*, *supra* note 51, at 63, did not consider the enhanced penalty contained in the theft statute a criminal financial exploitation statute.

TABLE 2

State	Statute & Title (2020)
Alabama	Criminal Code ALA. CODE § 13A-6-191 (2020) (“Definitions.”). ALA. CODE § 13A-6-195 (2020) (“First degree financial exploitation of the elderly.”). ALA. CODE § 13A-6-196 (2020) (“Second degree financial exploitation of the elderly.”). ALA. CODE § 13A-6-197 (2020) (“Third degree financial exploitation of the elderly.”).
Alaska	No Criminal Financial Exploitation of Older Adults Statute Enacted.
Arizona	Criminal Code ARIZ. REV. STAT. § 13-1802 (2020) (“Theft; classification; definitions.”). ARIZ. REV. STAT. § 14-5101 (2020) (“Definitions.”). ARIZ. REV. STAT. § 46-451 (2020) (“Definitions; program goals.”).
Arkansas	Criminal Offenses ARK. CODE ANN. § 5-28-101 (2020) (“Definitions.”). ARK. CODE ANN. § 5-28-103 (2020) (“Criminal penalties for abuse of an endangered or impaired person.”).
California	Penal Code CAL. PENAL CODE § 368 (2020) (“Crimes against elders and dependent adults; Legislative findings; Infliction of pain, injury, or endangerment; Theft, embezzlement, forgery, fraud, or identity theft; False imprisonment; Restraining order.”).
Colorado	Criminal Code COLO. REV. STAT. § 18-6.5-102 (2020) (“Definitions.”). COLO. REV. STAT. § 18-6.5-103 (2020) (“Crimes against at-risk persons – classifications.”).
Connecticut	No Criminal Financial Exploitation of Older Adults Statute Enacted.

Delaware	Criminal Code DEL. CODE ANN. tit. 11, § 222 (2020) (“General Definitions.”). DEL. CODE ANN. tit. 11, § 1105 (2020) (“Crime Against a Vulnerable Adult.”).
District of Columbia	Criminal Law and Procedure; Prisoners D.C. CODE § 22-932 (2020) (“Definitions.”). D.C. CODE § 22-933.01 (2020) (“Financial exploitation of a vulnerable adult or elderly person.”). D.C. CODE § 22-936.01 (2020) (“Criminal penalties for financial exploitation of a vulnerable adult or elderly person.”).
Florida	Crimes FLA. STAT. § 825.101 (2020) (“Definitions.”). FLA. STAT. § 825.103 (2020) (“Exploitation of an elderly person or disabled adult; penalties.”).
Georgia	Crimes and Offenses GA. CODE ANN. § 16-5-100 (2020) (“Definitions.”). GA. CODE ANN. § 16-5-102 (2020) (“Exploitation and intimidation of disabled adults, elder persons, and residents; obstruction of investigation.”).
Hawaii	No Criminal Financial Exploitation of Older Adults Statute Enacted.
Idaho	Crimes and Punishments IDAHO CODE § 18-1505 (2020) (“Abuse, exploitation or neglect of a vulnerable adult.”).
Illinois	Criminal Offenses 720 ILL. COMP. STAT. 5/17-56 (2020) (“Financial exploitation of an elderly person or a person with a disability.”).
Indiana	Criminal Law and Procedure IND. CODE ANN. § 12-10-3-2 (2020) (“Endangered adult.”). IND. CODE ANN. § 35-46-1-12 (2020) (“Exploitation of dependent or endangered adult; financial exploitation of endangered adult; violation classification.”).



Iowa	Human Services IOWA CODE § 235B.2 (2020) (“Definitions.”). IOWA CODE § 235B.20 (2020) (“Dependent adult abuse – initiation of charges – penalty.”).
Kansas	Crimes and Punishments KAN. STAT. ANN. § 21-5417 (2020) (“Mistreatment of a dependent adult; mistreatment of an elder person.”).
Kentucky	Economic Security and Public Welfare KY. REV. STAT. ANN. § 209.020 (2020) (“Definitions for chapter.”). KY. REV. STAT. ANN. § 209.990 (2020) (“Penalties.”).
Louisiana	Criminal Law LA. STAT. ANN. § 14:93.4 (2020) (“Exploitation of persons with infirmities.”).
Maine	No Criminal Financial Exploitation of Older Adults Statute Enacted.
Maryland	Criminal Law Code MD. CODE ANN., CRIM. LAW § 3-604 (2020) (“Definitions.”). MD. CODE ANN., CRIM. LAW § 8-801 (2020) (“Exploitation of vulnerable adults prohibited.”).
Massachusetts	Crimes and Punishments MASS. GEN. LAWS ANN. ch. 266, § 30(5) (2020) (“Larceny; Property Defined; Punishment; Increased Punishment Where Victim is Elderly or Disabled Person. (Enhanced penalty.”).
Michigan	Penal Code MICH. COMP. LAWS SERV. § 400.11 (2020) (“Definitions.”). MICH. COMP. LAWS SERV. § 750.174a (2020) (“Vulnerable adult; prohibited conduct; violation; penalty; enhanced sentence; exceptions; consecutive sentence; definitions; report by office of services to the aging to department of human services.”).

Minnesota	Crimes, Criminals MINN. STAT. § 609.232 (2020) (“Definitions.”). MINN. STAT. § 609.2335 (2020) (“Financial Exploitation of Vulnerable Adult.”).
Mississippi	Public Welfare MISS. CODE ANN. § 43-47-5 (2020) (“Definitions.”). MISS. CODE ANN. § 43-47-19 (2020) (“Prohibition against abuse, neglect, or exploitation; penalties; relation to other laws.”).
Missouri	Crimes and Punishment MO. REV. STAT. § 570.145 (2020) (“Financial exploitation of the elderly and disabled, penalty — definitions.”).
Montana	Crimes MONT. CODE ANN. § 45-6-333 (2020) (“Exploitation of older person, incapacitated person, or person with developmental disability.”).
Nebraska	Crimes and Punishments NEB. REV. STAT. ANN. § 28-358 (2020) (“Exploitation, defined.”). NEB. REV. STAT. ANN. § 28-366.01 (2020) (“Senior adult, defined.”). NEB. REV. STAT. ANN. § 28-386 (2020) (“Knowing and intentional abuse, neglect, or exploitation of a vulnerable adult or senior adult; penalty.”).
Nevada	Crimes and Punishments NEV. REV. STAT. ANN. § 200.5092 (2019) (“Definitions.”). NEV. REV. STAT. ANN. § 200.5099 (2019) (“Penalties.”).
New Hampshire	Criminal Code N.H. REV. STAT. ANN. § 631:8 (2020) (“Criminal Neglect of Elderly, Disabled, or Impaired Adults.”). [definitions] N.H. REV. STAT. ANN. § 631:9 (2020) (“Financial Exploitation of an Elderly, Disabled, or Impaired Adult.”). N.H. REV. STAT. ANN. § 631:10 (2020) (“Penalties.”).

New Jersey	No Criminal Financial Exploitation of Older Adults Statute Enacted.
New Mexico	No Criminal Financial Exploitation of Older Adults Statute Enacted.
New York	No Criminal Financial Exploitation of Older Adults Statute Enacted.
North Carolina	Criminal Law N.C. GEN. STAT. § 14-112.2 (2020) (“Exploitation of an older adult or disabled adult.”).
North Dakota	Criminal Code N.D. CENT. CODE § 12.1-31-07 (2019) (“Definition.”). N.D. CENT. CODE § 12.1-31-07.1 (2019) (“Exploitation of an eligible adult – Penalty.”).
Ohio	Crimes OHIO REV. CODE ANN. § 2913.01 (2020) (Definitions.”). OHIO REV. CODE ANN. § 2913.02 (2020) (“Theft.”).
Oklahoma	Crimes and Punishments OKLA. STAT. tit. 21, § 843.4 (2020) (“Exploitation of Elderly Persons or Disabled Adults – Definitions – Penalties.”).
Oregon	Crimes and Punishments OR. REV. STAT. § 163.205 (2020) (“Criminal mistreatment in the first degree.”).
Pennsylvania	No Criminal Financial Exploitation of Older Adults Statute Enacted.
Rhode Island	Criminal Offenses 11 R.I. GEN. LAWS § 11-68-1 (2020) (“Definitions.”). 11 R.I. GEN. LAWS § 11-68-2 (2020) (“Exploitation of an elder.”). 11 R.I. GEN. LAWS § 11-68-3 (2020) (“Penalties for violations.”).

South Carolina	Social Services S.C. CODE ANN. § 43-35-10 (“Definitions.”). S.C. CODE ANN. § 43-35-85 (2020) (“Penalties.”).
South Dakota	Crimes S.D. CODIFIED LAWS § 22-30A-17 (2020) (“Grand theft – Felony.”). S.D. CODIFIED LAWS § 22-46-1 (2020) (“Definitions.”). S.D. CODIFIED LAWS § 22-46-3 (2020) (“Theft by exploitation – Penalty.”).
Tennessee	Criminal Offenses TENN. CODE ANN. § 39-14-105 (2020) (“Grading of theft.”). TENN. CODE ANN. § 39-15-502 (2020) (“Offense of financial exploitation of elderly or vulnerable person.”).
Texas	Penal Code TEX. PENAL CODE ANN. § 22.04 (2020) (“Injury to a Child, Elderly Individual, or Disabled Individual.”) (definitions) TEX. PENAL CODE ANN. § 32.53 (2020) (“Exploitation of Child, Elderly Individual, or Disabled Individual.”).
Utah	Criminal Code UTAH CODE ANN. § 76-5-111 (2020) (“Abuse, neglect, or exploitation of a vulnerable adult – Penalties.”).
Vermont	Crimes and Criminal Procedure VT. STAT. ANN. tit. 13, § 1375 (2020) (“Definitions.”). VT. STAT. ANN. tit. 13, § 1380 (2020) (“Financial exploitation.”).
Virginia	Crimes and Offenses Generally VA. CODE ANN. § 18.2-178.1 (2020) (“Financial exploitation of mentally incapacitated persons; penalty.”).
Washington	Criminal Code WASH. REV. CODE ANN. § 9A.56.010 (2020) (“Definitions.”). WASH. REV. CODE ANN. § 9A.56.400 (2020) (“Theft from a vulnerable adult in the first degree – Theft from a vulnerable adult in the second degree.”).

West Virginia	Crimes and Their Punishment W. VA. CODE § 61-2-29b (2020) (“Financial exploitation of an elderly person, protected person, or incapacitated adult; penalties; definitions.”).
Wisconsin	Criminal Code WIS. STAT. § 46.90 (2020) (“Elder Abuse Reporting System.”) (definitions) WIS. STAT. § 943.20 (2020) (“Theft.”).
Wyoming	Crimes and Offenses WYO. STAT. ANN. § 6-2-507 (2020) (“Abuse, neglect, abandonment, intimidation, or exploitation of a vulnerable adult; penalties.”). WYO. STAT. ANN. § 35-20-102 (2020) (“Definitions.”).

