

PUTTING YOUR HEART AND WALLET ON THE LINE: HOW TO COMBAT ROMANCE SCAMS TARGETING THE ELDERLY

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Romance scams are an often-overlooked problem that has plagued the elderly for decades. Most stories involve a recent widow who meets a dashing older man on an online dating platform. After a few months of conversing and professing their love for each other, the perpetrator claims to fall upon some sudden financial hardship and asks the unsuspecting victim to wire money into the perpetrator's bank account. Some victims eventually realize they are being deceived, but others may never find out. The romance scam leaves many older adults not only heartbroken but also in debt. With an increased use of older adults using online dating platforms, instances of romance scams are unfortunately rising.

This Note evaluates current federal, state and private institutional measures that exist to combat romance scams. It argues that federal institutions need to amend their evidentiary investigation method and states need to expand their elder financial exploitation statute definition to include the romance scam perpetrator. This Note also recommends ways that private institutions can catch and block wire transmissions before they are completed.

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I. Introduction

After losing her husband, Debby Johnson, at the urging of her friends wanted to get back out into the dating scene.¹ Having been married for twenty-six years, they urged her to try the “safe option” of online dating.² There, she met “Eric,” a fellow widower and international businessman working on a contract in Malaysia.³ Two years, some cashed out retirement accounts, and pawned jewelry later, Debby had wired Eric a total of one million dollars.⁴ It wasn’t until after he confessed that she realized he had been scamming her.⁵

Unfortunately, romance scams, otherwise known as “sweetheart scams,” are one of the most common methods of preying on a victim, targeting specifically seniors.⁶ In 2019, almost 20,000 sweetheart scam complaints were filed with the Federal Bureau of Investigation (“FBI”), totaling losses of over \$475 million.⁷ The complaints showed that the elderly had been hit especially hard, with the median dollar loss for victims over seventy being \$6,450, compared to \$770 for those in their twenties.⁸ This Note exposes the prevalence and severity of romance scams targeting the elderly. Each section of this Note is divided in three categories: federal, state, and private. Such stratification is necessary as the successful prosecution of a romance scam affects all three levels of institutions. The Note begins with highlighting the evolving problem and the ineffectiveness of the current measures.

Part II highlights the prevalence of romance scams among the elderly. It then discusses what federal, state, and private actors have done to remedy the situation, finishing with an overview of the ineffectiveness of placing the burden of prevention solely upon the victim.⁹ Part

1. Katie Heaney, *What It’s Like to Lose a Million Dollars to an Online Dating Scam*, THE CUT (Apr. 11, 2019), <https://www.thecut.com/2019/04/i-lost-a-million-dollars-in-an-online-dating-scam.html>.

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. Patricia Joyce, *The Sweetheart Scam: Beware the Wolf in Sheep’s Clothing*, AGINGCARE, <https://www.agingcare.com/articles/the-sweetheart-scam-169804.htm> (last visited Oct. 21, 2021).

7. *FBI Warns of Fraud Trend: Online Romance Scams*, ALLONGEORGIA (Aug. 31, 2020), <https://allongeorgia.com/georgia-public-safety/fbi-warns-of-fraud-trend-online-romance-scams/>.

8. Paula Span, *When Romance is a Scam*, N.Y. TIMES (Mar. 27, 2020), <https://www.nytimes.com/2020/03/27/well/elderly-romance-scam.html>.

9. See generally Andrew Jay McClurg, *Preying on the Graying: A Statutory Prescription to Prosecute Elder Financial Exploitation*, 65 HASTINGS L.J. 1099, 1116 (2014).

III analyzes how the federal, state, and private remedies already in place have been unsuccessful in preventing or recapturing the victim's assets. It highlights how the FBI overlooks many elders' cases as they typically have dollar losses below the FBI's minimum loss dollar amount.¹⁰ Additionally, at the state level, many law enforcement officers and prosecutors are often reluctant to parse out the evidence to prove a romance scam.¹¹ State courts also face the problem of not being able to convict the romance scammer as many states' financial exploitation statutes do not include them in the perpetrator definition.¹² Even financial institutions that are at the forefront of the issue fall short of reporting or blocking suspicious wire transfers.¹³ Finally, this Note emphasizes how placing the burden of prevention on the elderly is unfair in light of the usual cognitive and physical limitations they might face.¹⁴

Part IV argues for the changes federal, state, and private institutions should implement to account for the recapturing, reporting, and prevention problems. Specifically, this Note argues that federal institutions need to appropriately train federal and state law enforcement officers on how to conduct evidentiary investigations.¹⁵ Further, lowering the monetary threshold of cases the FBI investigates to include the amounts remitted to romance scammers would help recover most assets.¹⁶ Next, states should amend their elder financial exploitation statutes to expand their definitions to include the perpetrator and include a permissive presumption to any wire transfer between a victim over the age of sixty-five and a non-relative.¹⁷ Finally, private institutions should mandate their employees report to local law enforcement whenever they suspect elder financial exploitation.¹⁸

10. See Sean Hoar & Richard Goldberg, *United States: The Financial Fraud Kill Chain: Combatting Fraudulent Money Transfers*, MONDAQ (Apr. 3, 2019), <https://www.mondaq.com/unitedstates/data-protection/796012/the-financial-fraud-kill-chain-combatting-fraudulent-money-transfers>.

11. McClurg, *supra* note 9, at 1118.

12. See, e.g., 720 ILL. COMP. STAT. 5/17-56 (2020).

13. Jordan M. Rand, "From the Front Lines: Former FBI Field Agent's Perspective on BECs", DATA BREACH NINJA (Dec. 9, 2019), <https://www.databreachninja.com/from-the-front-lines-former-fbi-field-agents-perspective-on-becs/>.

14. Bryan D. James et al., *Correlates of Susceptibility to Scams in Older Adults Without Dementia*, 26 J ELDER ABUSE & NEGL. 107 (Jan. 2015).

15. See McClurg, *supra* note 9, at 1118.

16. See Hoar & Goldberg, *supra* note 10.

17. See McClurg, *supra* note 9, at 1131.

18. CONSUMER FIN. PROT. BUREAU, REPORTING OF SUSPECTED ELDER FINANCIAL EXPLOITATION BY FINANCIAL INSTITUTIONS 5 (July 2019) [hereinafter 2019 CONSUMER FIN. PROT. BUREAU], <https://files.consumerfinance.gov>

II. Background

Romance scams are not a new phenomenon. One of the earliest pop culture reference to them was a 1983 movie: “*Casanova of Sweden*,” based on a true story featuring a man, who seduced over a hundred women through personal newspaper ads to financially fund his whimsical projects.¹⁹ While the prevalence of personal newspaper ads has waned, the romance scam has not.²⁰ This Section first examines the scope of romance scams. Next, it outlines the three branches of institutions that deal with the romance scam and their respective roles. Finally, the Section concludes by arguing that the problem will only continue to worsen unless effective solutions are introduced.

A. Scope of the issue

Financial exploitation scams have been rising steadily over the past few years, with the Federal Trade Commission (“FTC”) reporting a forty percent uptick in cases in 2019.²¹ This trend is attributed to the rapidly growing cohort of people over the age of sixty-five and the basic technological literacy many have acquired.²² While some might be tech savvy, others may not have the necessary tools to surf the internet safely.²³ The FTC has identified “imposter scams” as the most prevalent form of fraud—with 647,472 reported cases in 2019.²⁴ Imposter scams are defined as a situation where “a scammer pretends to be someone

/f/documents/cfpb_suspected-elder-financial-exploitation-financial-institutions_report.pdf.

19. See generally, WIKIPEDIA, *Romance Scam: Scale of the Problem*, https://en.wikipedia.org/wiki/Romance_scam#Scale_of_the_problem (last visited Oct. 31, 2021).

20. *New FTC Data Show Consumers Reported Losing More Than \$200 Million to Romance Scams in 2019*, FED. TRADE COMM’N (Feb. 12, 2020), <https://www.ftc.gov/news-events/press-releases/2020/02/new-ftc-data-show-consumers-reported-losing-more-200-million>.

21. *Id.*

22. News Staff, *Scams of older Americans rising, costing vulnerable adults billions*, KMTR (Mar. 4, 2019), <https://nbc16.com/news/local/scams-of-older-americans-rising-costing-vulnerable-adults-billions>.

23. *Internet Safety for Seniors*, AGE SAFE AM. (Apr. 6, 2019), <https://agesafeamerica.com/internet-safety-for-seniors/>.

24. *Stats & Data 2019*, FED. TRADE COMM’N, https://www.ftc.gov/system/files/attachments/stats-data-2019/annual_highlights_2019_stats_and_data_info-graphic.pdf (last visited Oct. 31, 2021); see also *Imposter Scams Top Complaints Made to FTC in 2018*, FED. TRADE COMM’N (Feb. 28, 2019), <https://www.ftc.gov/news-events/press-releases/2019/02/imposter-scams-top-complaints-made-ftc-2018>.

you trust to convince you to send them money.”²⁵ Common imposter scams include impersonating the Social Security Administration (“SSA”), the Internal Revenue Service (“IRS”), or a love interest.²⁶

While impersonating a government agent was the most common imposter scam,²⁷ romance scams, namely someone impersonating a love interest, tended to affect the elderly the most.²⁸ This deception affects this vulnerable cohort the most because of its unique method of preying on the victim through an online platform, which exploits the elder’s inexperience with using the internet as compared to other age groups.²⁹ As of 2021, twenty-nine percent of Baby Boomers have been on a date with someone they met through an online dating website.³⁰ Baby Boomers are defined as those who were born between 1946 and 1964 and are currently between the ages of fifty-seven and seventy-four.³¹ The 2020 Census estimates that Baby Boomers now total seventy-three million Americans.³² Unfortunately, this large aging cohort has created a fruitful market for scammers.³³

25. *Consumer information: Imposter Scams*, FED. TRADE COMM’N, <https://www.consumer.ftc.gov/features/feature-0037-imposter-scams> (last visited Oct. 31, 2021).

26. *Id.*

27. Emma Fletcher, *Government imposter scams top the list of reported frauds*, FTC: CONSUMER PROT. DATA SPOTLIGHT (July 1, 2019), <https://www.ftc.gov/news-events/blogs/data-spotlight/2019/07/government-imposter-scams-top-list-reported-frauds>.

28. *Top Internet Scams Affecting The Elderly*, AGINGINPLACE, <https://aginginplace.org/internet-scams-affecting-elderly/> (last updated Nov. 2021).

29. *See, e.g.*, Jessica Fields, *We are leaving older adults out of the digital world*, TECHCRUNCH (May 5, 2019, 8:30 AM), <https://techcrunch.com/2019/05/05/we-are-leaving-older-adults-out-of-the-digital-world/> (“Nationally, one-third of adults ages 65 and older say they’ve never used the internet, and half don’t have internet access at home. Of those who do use the internet, nearly half say they need someone else’s help to set up or use a new digital device.”).

30. Peter Suciu, *Seniors Are Using Dating Apps And Tinder Leads The Pack*, FORBES (May 14, 2021), <https://www.forbes.com/sites/petersuciu/2021/05/14/seniors-are-using-dating-apps-and-tinder-leads-the-pack/?sh=3dc42f4b2dd5>.

31. *Boomers, Gen X, Gen Y, Gen Z, and Gen A Explained*, KASASA (July 6, 2021), <https://www.kasasa.com/exchange/articles/generations/gen-x-gen-y-gen-z>.

32. America Counts Staff, *2020 Census Will Help Policymakers Prepare for the Incoming Wave of Aging Boomers*, U.S. CENSUS BUREAU (Dec. 10, 2019), <https://www.census.gov/library/stories/2019/12/by-2030-all-baby-boomers-will-be-age-65-or-older.html>.

33. Lucy Bayly, *Golden Oldies: One in 10 Americans Dating Online is a Baby Boomer*, NBC NEWS (Feb. 11, 2016, 9:02 AM), <https://www.nbcnews.com/business/business-news/golden-oldies-one-10-americans-dating-online-baby-boomer-n515861>.

The elderly are also particularly vulnerable to romance scams because they are more susceptible to suffer from loneliness.³⁴ Factors influencing their loneliness are living alone, loss of family or friends, and chronic illness.³⁵ These factors make older adults more likely to fall prey to scammers who purport to love them, and at the same time make them less likely to report the scam once discovered.³⁶ Physical and cognitive issues compound the issue of nonreporting, as well as fear of being shamed by family members.³⁷ Interestingly, romance scams disproportionately affect women,³⁸ as they are more likely to be widowed and experience loneliness.³⁹ With Baby Boomers holding the majority of wealth in the country,⁴⁰ scammers find this age group ripe for exploitation, as “almost half of seniors 65 or older manage their [own] finances,” and fifty-seven percent are not even aware of the existence of romance scams.⁴¹

Unfortunately, the COVID-19 pandemic has exacerbated the problem and provided the perfect cover for scammers.⁴² While before it was possible to meet romantic interests in person, meeting online has become one of the only options available now for older generations,

34. Claire Samuels, *Facts About Senior Isolation and the Effects of Loneliness That Will Stun You*, A PLACE FOR MOM (Jan. 7, 2021), <https://www.aplaceformom.com/caregiver-resources/articles/senior-isolation-facts>.

35. *Loneliness and Social Isolation Linked to Serious Health Conditions*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/aging/publications/features/lonely-older-adults.html> (last visited Apr. 29, 2021).

36. Samuels, *supra* note 34.

37. *Scams and Safety: Elder Fraud*, FED. BUREAU OF INVESTIGATION, <https://www.fbi.gov/scams-and-safety/common-scams-and-crimes/elder-fraud> (last visited Mar. 1, 2021).

37. *Id.*

38. S. REP. NO. 114-208, at 19 (2016).

39. Claudia Beal, *Loneliness in older women: A review of the literature*, 27 ISSUES IN MENTAL HEALTH NURSING 795 (2006).

40. Nicole Lyn Pesce, *This depressing chart shows the jaw-dropping wealth gap between millennials and boomers*, MARKETWATCH (Dec. 28, 2019, 3:52 PM), <https://www.marketwatch.com/story/this-depressing-chart-shows-the-jaw-dropping-wealth-gap-between-millennials-and-boomers-2019-12-04>.

41. *One in Two Seniors Manage Finances Alone, Leaving Them Vulnerable to Scams and Financial Exploitation, According to AIG Plan for 100 Elder Financial Abuse Study*, BUSINESSWIRE (Sept. 26, 2019, 8:00 AM), <https://www.businesswire.com/news/home/20190926005442/en/Seniors-Manage-Finances-Leaving-Vulnerable-Scams-Financial>.

42. Zoe Schiffer, *ROM CON: Just when you thought dating during quarantine couldn't get any worse*, THE VERGE (Aug. 14, 2020, 10:00 AM), <https://www.theverge.com/21366576/dating-app-scams-romance-women-quarantine-coronavirus-scheme>.

who are particularly susceptible to the virus.⁴³ Even Grace, a savvy, technically competent, retired widow, fell prey to such a scam and ended up wiring “Scott” \$100,000 because he was allegedly stuck in Havana due to COVID-19 travel restrictions.⁴⁴ As the world evolves, scammers evolve, and as such, our approach to the romance scam must also evolve.

B. Federal institutions

With elder financial exploitation on the rise,⁴⁵ federal institutions have attempted to remedy and monitor the situation. While the FBI strives to coordinate law enforcement efforts and recapture stolen assets,⁴⁶ the FTC collects consumer data to alert the public of the most recent scams reported.⁴⁷

1. THE FBI

The FBI is the United States’ federal intelligence security agency, tasked with preventing criminal threats both internationally and domestically.⁴⁸ The prevalence of internet-related crimes led to the establishment of the FBI’s Internet Crime Complaint Center (“IC3”) in May 2000.⁴⁹ This specialized unit handles internet crime complaints filed either by the victim or a third party.⁵⁰ Its mission is to provide the public with a reporting mechanism to submit suspected criminal internet activity to the FBI and to coordinate with industry partners, such as banks and local law enforcement to recover fraudulently stolen assets.⁵¹

43. *Id.*

44. *Id.*

45. Michelle Triggiani, *The Rising Menace of Elder Financial Abuse*, ACAMS TODAY (July 18, 2019), <https://www.acamstoday.org/the-rising-menace-of-elder-financial-abuse/>.

46. *Frequently Asked Questions*, FED. BUREAU OF INVESTIGATION INTERNET CRIME COMPLAINT CTR. IC3 [hereinafter IC3 FAQ], <https://www.ic3.gov/> (last visited Nov. 1, 2021).

47. *What We Do*, FED. TRADE COMM’N [hereinafter *What We Do*, FTC], <https://www.ftc.gov/about-ftc/what-we-do> (last visited Nov. 1, 2021).

48. *About*, FED. BUREAU OF INVESTIGATION, <https://www.fbi.gov/about> (last visited Nov. 1, 2021).

49. IC3 FAQ, *supra* note 46.

50. *Id.*

51. *See* FBI INTERNET CRIME COMPLAINT CTR, 2019 INTERNET CRIME REP. 10 (2019) [hereinafter 2019 INTERNET CRIME REP.], https://pdf.ic3.gov/2019_IC3Report.pdf.

The IC3's process begins with the report of a suspected romance scam.⁵² Once the fraudulent transaction is reported, the IC3 will alert the public through an online Public Service Announcement ("PSA"), and then will perform an analysis of the complaint.⁵³ Once the threat has been analyzed, the agency will partner with federal, state, and private institutions, to recover the fraudulently-obtained assets.⁵⁴ Referral of cases may be made to the Recovery Asset Team ("RAT"), which is tasked with financial recovery, or "the Money Mule Team," that performs analysis on previously known targets to develop new investigations.⁵⁵

In 2019, the IC3 received 68,013 complaints regarding victims over the age of sixty, with losses of over \$835 million—the most out of any age range.⁵⁶ Although romance scams accounted for only 19,473 victims, they accounted for the second largest amount of losses.⁵⁷ This is not surprising, as the majority of wealth is held in households of over seventy-five years of age with the average retiree having a net worth of \$264,750.⁵⁸ Most importantly, out of the total \$3.5 billion in victim losses reported to the IC3 in 2019, the FBI's RAT team was able to recover only \$300 million, a mere 8.5% of the total losses reported.⁵⁹ Due to the low recovery rate, the FBI has spent significant resources on promoting prevention methods by educating the public, especially the older generations, on the prevalence of romance scams.⁶⁰

2. THE FTC

Another federal agency that monitors financial exploitation is the FTC. Although the FTC focuses mostly on combatting crimes that create unfair competition, the agency also collects data and conducts investigations to protect consumers from fraudulent practices.⁶¹ Citizens

52. *Id.* at 7.

53. *Id.*

54. *Id.* at 6.

55. *Id.* at 4.

56. *Id.* at 16.

57. *Id.* at 19–20.

58. Neil Howe, *The Graying Of Wealth*, FORBES (Mar. 16, 2018, 9:19 AM), <https://www.forbes.com/sites/neilhowe/2018/03/16/the-graying-of-wealth/>.

59. 2019 INTERNET CRIME REP., *supra* note 51, at 3, 5 (author calculated 8.5 percentage based on \$3.5 billion in losses and the \$300 million alleged recovery).

60. *See id.*

61. *What We Do*, FTC, *supra* note 47.

usually report to the FTC when they become aware of a scam,⁶² whereas when a citizen loses a significant amount of money, he or she reports to the IC3.⁶³ In effect, the FTC's function is to create a platform for different agencies to share information among each other to assist law enforcement in thwarting scammers' fraudulent practices.⁶⁴

To better effectuate that function, the FTC created the Consumer Sentinel Network ("CSN"), a unique investigative cyber tool that gives 2,500 enforcement agencies access to millions of reports.⁶⁵ It offers free access to consumer complaints that law enforcement can use to connect with other agencies across jurisdictions investigating the same targets.⁶⁶ A recent cross-agency success story includes a law enforcement action brought against Western Union where approximately 142,000 consumers received one hundred percent of their money back, totaling \$300 million.⁶⁷ The FTC's database was instrumental in refunding the fraudulently remitted assets the victims had sent via Western Union in response to romance and other internet related scams.⁶⁸

The FTC's reports paint a very similar picture to IC3's. Imposter scams, which encompass romance scams, accounted for the number one, most common fraud to be reported.⁶⁹ Seniors aged sixty to sixty-nine not only accounted for the highest volume of reports, but also, experienced the largest number of losses.⁷⁰ Interestingly, the most likely method of fund transmission was wire transfers.⁷¹ These observations are troubling, especially because romance scams have been on the rise.⁷²

62. *Report Fraud to the FTC*, FED. TRADE COMM'N, <https://www.ftc.gov/faq/consumer-protection/submit-consumer-complaint-ftc> (last visited Mar. 2, 2021).

63. IC3 FAQ, *supra* note 46.

64. *Consumer Sentinel Network*, FED. TRADE COMM'N, <https://www.ftc.gov/enforcement/consumer-sentinel-network> (last visited Nov. 1, 2021).

65. *Id.*

66. FTC CONSUMER SENTINEL NETWORK, FED. TRADE COMM'N, https://www.ftc.gov/system/files/attachments/consumer-sentinel-network/191001_sentinel_one_pager_v5.pdf (last visited Nov. 1, 2021).

67. *FTC Returns More Than \$482 Million to Consumers in 2020*, FED. TRADE COMM'N (Jan. 27, 2021), https://www.ftc.gov/news-events/press-releases/2021/01/ftc-returns-more-482-million-consumers-2020?utm_source=govdelivery.

68. *Id.*

69. FED. TRADE COMM'N, CONSUMER SENTINEL NETWORK: DATA BOOK 2019 (2020) [hereinafter, CSN DATA BOOK 2019], https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-2019/consumer_sentinel_network_data_book_2019.pdf.

70. *Id.* at 13.

71. *Id.* at 11.

72. *Id.* at 86.

C. State institutions

State institutions have also tried to combat the romance scam. Typically, the state institution tasked with conducting investigations to resolve financial elder exploitation is Adult Protective Services (“APS”).⁷³ State statutes have also been enacted to convict individuals who financially exploit older adults.⁷⁴

1. ADULT PROTECTIVE SERVICES (APS)

The Elder Justice Act of 2010 (“EJA”) was introduced to address weaknesses in the federal and state systems to combat elder abuse.⁷⁵ This was the first time Congress had authorized specific federal funding for state APS agencies.⁷⁶ Specifically, the EJA authorized \$100 million per year be allocated to each state based on the proportionate share of people age sixty and above who reside in that state.⁷⁷ States funded their respective APS agencies with the funds to conduct investigations involving older adults who are the victims of abuse, neglect, or financial exploitation.⁷⁸

A look at Illinois’s APS agency, for example, shows that of the 21,000 reports filed in 2019, financial abuse was reported more frequently than any other type of abuse.⁷⁹ In most states, certain persons are designated as mandatory reporters.⁸⁰ Such individuals are persons working in social services, law enforcement, education, and medical services.⁸¹ Some states even make financial institution employees mandatory reporters when they suspect fraudulent activity.⁸² Mandatory

73. *Preventing Abuse, Neglect, or Financial Exploitation of Persons Who Live in the Community*, ILL. DEP’T ON AGING [hereinafter ILL. DEP’T ON AGING], <https://www2.illinois.gov/aging/ProtectionAdvocacy/pages/abuse.aspx> (last visited Nov. 1, 2021).

74. *See e.g.*, 720 ILL. COMP. STAT. 5/17-56.

75. Carol V. O’Shaughnessy, *The Elder Justice Act: Addressing Elder Abuse, Neglect, and Exploitation*, NAT’L HEALTH POL’Y F. (Nov. 30, 2010), https://www.nhpf.org/library/the-basics/Basics_ElderJustice_11-30-10.pdf.

76. *Id.* at 2-3.

77. *Id.* at 3.

78. ILL. DEP’T ON AGING, *supra* note 73.

79. ADULT PROTECTIVE SERVS. OF ILL., ANNUAL REPORT 2019 13 (2020) [hereinafter APS OF ILL.], https://www2.illinois.gov/aging/Resources/NewsAndPublications/Publications/Documents/FY19_APS_Report.pdf.

80. *Id.* at 14.

81. *Id.*

82. CONSUMER FIN. PROT. BUREAU, SUSPICIOUS ACTIVITY REPORTS ON ELDER FINANCIAL EXPLOITATION: ISSUES AND TRENDS 9 (Feb. 2019) [hereinafter SUSPICIOUS ACTIVITY REPORTS], https://files.consumerfinance.gov/f/documents/cfpb_suspicious-activity-reports-elder-financial-exploitation_report.pdf.

reporting from unrelated third-parties is instrumental in protecting the elderly as only six percent of the reports were self-reported.⁸³

Once a report is filed, it is assessed to determine whether it is substantiated or unsubstantiated and its overall risk level to the victim.⁸⁴ A case worker will then provide counseling to the victim, and if financial exploitation is suspected, will refer the case to state law enforcement.⁸⁵ The sooner APS is notified of the suspected financial exploitation, the sooner the funds may be recovered, and the perpetrator stopped.⁸⁶

2. STATE JUDICIARY

Romance scams rarely make it to the courts. Either law enforcement cannot locate the scammer or the evidence is lacking.⁸⁷ Even if a case does make it to the state judiciary, there are still few remedies available to the victim, as recovery of funds depends heavily on locating a perpetrator's solvent bank account. One such rare success story follows Anastasios Kalogiannis, a seventy-six-year-old man, who was able to get a judgement against a woman who falsely misled him into a romantic relationship, through what the court deemed a romance scam.⁸⁸ Through their relationship, defendant, Natallia Mialik, siphoned \$45,000 in wire transfers from the plaintiff to allegedly refinance her home loan, buy an expensive Rolex watch, and complete home repairs.⁸⁹ The court entered a judgement against the defendant for constructive fraud and restitution and awarded the plaintiff \$159,000 in compensatory damages.⁹⁰ Luckily, when the North Carolina Department of Justice investigated the romance scam, it froze two bank accounts in the defendant's name and was able to recover a majority of the funds.⁹¹

83. *Id.* at 14.

84. APS OF ILL., *supra* note 79, at 21.

85. *Id.* at 21–22.

86. SUSPICIOUS ACTIVITY REPORTS, *supra* note 82, at 9.

87. Roger A. Grimes, *How to prove and fight online dating and romance scams*, CSO (Feb. 13, 2018, 3:00 AM), <https://www.csoonline.com/article/3254984/how-to-prove-and-fight-online-dating-and-romance-scams.html?page=2> (“In a few limited cases, they might be able to prove fraud and get some of the spent money back, although I’ve yet to see any successes.”).

88. *Kalogianis v. Mialik*, No. 14-CVS-20703, 2015 WL 13439894, at *1 (N.C. Super. Ct. June 29, 2015).

89. *Id.* at *2.

90. *Id.* at *3.

91. *Id.*

Not all victims of romance scams are as lucky as Kalogiannis.⁹² This case is unique not only because of the court's favorable verdict, but for being able to recover most of the remitted assets.⁹³ That is unusual as most wire transfers are made to overseas bank accounts, or the funds are transmitted through gift cards, rendering the money out of the court system's grasp.⁹⁴ Further, *Kalogiannis v. Mialik* appears to be the only case where a state court has found liability against a romance scammer on the basis of fraud. This is because a typical fraud statute does not cover this type of scam due to the voluntary nature of the wire transfer.⁹⁵

D. Private Institutions

Private financial institutions,⁹⁶ such as banks and credit unions, also play a part in combating the romance scam. The U.S. Treasury's Financial Crimes Enforcement Network ("FinCEN") task force imposes certain mandates on private institutions to report suspected fraud.⁹⁷ FinCEN attempts to safeguard the financial system from illicit transactions, which encompass imposter fraud.⁹⁸ While the FTC's reports are filed by consumers, FinCEN monitors reports filed by financial institutions.⁹⁹

In 1970, Congress enacted the Bank Secrecy Act authorizing the Secretary of the Treasury to: "require any domestic financial institution or domestic financial agency to maintain records, file reports, or both, concerning the aggregate amount of transactions."¹⁰⁰ This led to the Department of Treasury requiring financial institutions to file Suspicious

92. *Id.*

93. *Id.*

94. WATE 6 Staff, *Tennessee widow loses \$42K in 'sweetheart scam'*, ABC4 (Oct. 31, 2019, 7:02 PM), <https://www.abc4.com/news/digital-exclusives/tennessee-widow-loses-42k-in-sweetheart-scam/>.

95. *Kalogianis*, 2015 WL 13439894, at *3.

96. Melissa Horton, *What Are the 9 Major Types of Financial Institutions?*, INVESTOPEDIA (Apr. 29, 2021), <https://www.investopedia.com/ask/answers/061615/what-are-major-categories-financial-institutions-and-what-are-their-primary-roles.asp>.

97. *Supervisory Insights*, FED. DEPOSIT INS. CORP., https://www.fdic.gov/regulations/examinations/supervisory/insights/siwin07/article03_connecting.html (last updated Dec. 7, 2007).

98. *Mission*, FIN. CRIMES ENF'T NETWORK, U.S. DEP'T OF THE TREASURY, <https://www.fincen.gov/about/mission> (last visited Nov. 1, 2021).

99. *Supervisory Insights*, *supra* note 97.

100. 31 U.S.C. § 5318A (2006).

Activity Reports (“SARs”).¹⁰¹ Financial institutions must file a SAR with FinCEN within 30 days of a suspicious transaction involving \$5,000 or more.¹⁰² Any amount below that threshold may be reported voluntarily.¹⁰³ If a financial institution suspects that a transaction has elements of criminal activity that are more than suspicious, they will call the FBI directly.¹⁰⁴ A suspicious activity is defined as a transaction that is deemed to be unusual or inconsistent with that particular client.¹⁰⁵ In effect, when an older customer orders a wire transfer for an unusually large amount of funds to an unrelated third-party overseas, the transaction may be blocked and a report will be filed with FinCEN.¹⁰⁶ These reports play an instrumental role in helping law enforcement monitor scammers and recapture funds.¹⁰⁷

Data suggests that older adults are at a higher risk of financial exploitation, with one in five Americans over the age of sixty-five being financially exploited.¹⁰⁸ Between 2013 and 2017, SAR filings on elder exploitation quadrupled with no sign of slowing in the future due to the rapid growth of that age cohort.¹⁰⁹ Although 63,500 elder financial exploitation SARs were filed in 2017, studies predict that those reports only account for less than two percent of actual incidents.¹¹⁰

SARs data indicates that the most prevalent scam reported is the romance scam.¹¹¹ FinCEN defines a romance scam as a situation where: “[s]cammers establish a romantic relationship with their victims and then request money for ‘hardships’ they experience, or to ‘visit’ the victim (but never do).”¹¹² With the median loss of a scam-related SAR

101. *Supervisory Insights*, *supra* note 97.

102. *Suspicious Activity Reports (SAR)*, OFF. OF THE COMPTROLLER OF THE CURRENCY, U.S. DEP’T OF THE TREASURY, <https://www.occ.treas.gov/topics/supervision-and-examination/bank-operations/financial-crime/suspicious-activity-reports/index-suspicious-activity-reports.html> (last visited Nov. 1, 2021).

103. *SUSPICIOUS ACTIVITY REPORTS*, *supra* note 82.

104. BPI Staff, *The Truth About Suspicious Activity Reports*, BANK POL’Y INST. (Sept. 22, 2020), <https://bpi.com/the-truth-about-suspicious-activity-reports/>.

105. 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, 270 (2020).

106. *SUSPICIOUS ACTIVITY REPORTS*, *supra* note 82.

107. Morton & Rosenbaum, *supra* note 105.

108. *Id.* at 273.

109. *SUSPICIOUS ACTIVITY REPORTS*, *supra* note 82, at 11.

110. *Id.* at 12.

111. *FINANCIAL TREND ANALYSIS*, FIN. CRIMES ENF’T NETWORK, U.S. DEP’T OF THE TREASURY, 5 (Dec. 2019), https://www.fincen.gov/sites/default/files/shared/FinCEN%20Financial%20Trend%20Analysis%20Elders_FINAL%20508.pdf.

112. *Id.*

being \$6,105, the effect of not reversing the transfer in time could result in a substantial permanent loss of the elder's assets.¹¹³ Financial institution reporting is pivotal as it allows FinCEN to continue to provide the SARs reports to law enforcement agencies to combat financial exploitation.¹¹⁴ Financial institutions, albeit inadequate, are the frontline of defense for elders as they are better situated at reversing transactions and informing their customers of potential scams.¹¹⁵

E. Emphasis on prevention methods

Seeing the serious effects of romance scams and the inability of federal, state, and private institutions to recover the victim's assets, many agencies have encouraged prevention methods instead. A quick Google search unearths a plethora of articles penned by different financial institutions, discussing "ten ways to avoid a sweetheart scam" or "ten tips to protect yourself from a sweetheart scam," putting the main responsibility on the victim to detect and stop the scam.¹¹⁶ Other websites warn elders to "be on guard" when interacting with people online, "do your homework" on them, and "limit use of social media."¹¹⁷

Even the FBI's IC3 website touts "[the] FBI has held hundreds of outreach events and issued many public service announcements in order to educate the public about Elder Fraud."¹¹⁸ One such announcement had a demo on how to do a reverse image search in a search engine to identify whether the scammers profile picture has been used elsewhere on the internet.¹¹⁹ It also provided a list of common techniques used by romance scammers.¹²⁰ The FTC has also issued warnings to the public.¹²¹ One such warning urges a suspecting victim to stop communicating with the scammer immediately, talk to friends or

113. *Id.*

114. *Id.* at 1.

115. *Id.* at 9.

116. *10 Tips to Protect Yourself from The Sweetheart Scam*, PLAINS COM. BANK (July 13, 2020), <https://www.plainscommerce.com/news/10-tips-to-protect-yourself-from-the-sweetheart-scam>.

117. Joyce, *supra* note 6.

118. 2019 INTERNET CRIME REP., *supra* note 51, at 6.

119. *Cyber Actors Use Online Dating Sites To Conduct Confidence/Romance Fraud And Recruit Money Mules*, FED. BUREAU OF INVESTIGATION (Aug. 5, 2019), <https://www.ic3.gov/Media/Y2019/PSA190805>.

120. *Id.*

121. See, e.g., Emma Fletcher, *Romance scams take record dollars in 2020*, FED. TRADE COMM'N (Feb. 10, 2021), <https://www.ftc.gov/news-events/blogs/data-spotlight/2021/02/romance-scams-take-record-dollars-2020>.

family, and do an internet search to cross check if others have also fallen victim to the same alleged story.¹²²

Surprisingly, even a recent United States Senate Special Committee on Aging report on “[i]dentifying top 10 scams targeting our nation’s seniors” only urged prevention methods to tackling romance scams.¹²³ The report merely summarized the prevalence and seriousness of the romance scams’ effect on the elderly and then referred the victims to report through the IC3 website.¹²⁴ The report subsequently ends by warning victims to “[b]e cautious of individuals who claim the romance was destiny or fate, or that you are meant to be together.”¹²⁵

III. Analysis

Elderly victims of romance scams do not receive the relief they deserve due to the limited resources already available by federal, state, and private institutions.¹²⁶ Although federal agencies have mechanisms in place to combat romance scams, they are inadequate in recapturing assets because elders either are unable to report or their losses are not significant enough to warrant immediate attention.¹²⁷ Additionally, state law and local law enforcement fall short of filling that gap. This Section first analyzes the specific shortfalls of federal agencies. It will then discuss state law enforcement efforts, and the courts’ limited abilities due to current state laws. Further, it will discuss the practices private institutions already have in place, and their effects on curbing fraudulent transactions. This Section concludes by highlighting the stigma surrounding romance scams, its effect on adequate reporting and why solutions should be implemented urgently.

A. Federal Actors are not effectively recapturing assets.

While the FBI’s IC3 division is the federal law enforcement arm tasked with recovering assets remitted to online romance scammers,¹²⁸

122. *What You Need to Know About Romance Scams*, FED. TRADE COMM’N (June 2019), <https://www.consumer.ftc.gov/articles/what-you-need-know-about-romance-scams>.

123. S. Rep. No. 114-208, at 20 (2016).

124. *Id.*

125. *Id.*

126. Rand *supra* note 13; McClurg *supra* note 9, at 1118.

127. Grimes, *supra* note 87.

128. 2019 INTERNET CRIME REP., *supra* note 51; *see also Elder Fraud*, FBI INTERNET CRIME COMPLAINT CTR. (IC3), <https://www.ic3.gov/Home/EF>.

it does not adequately protect older Americans. The majority of cases filed with the IC3 are international claims.¹²⁹ Those cases are handled by FBI field agents.¹³⁰ The sooner the scam is reported, the better the chance the victim has to recover the assets.¹³¹ While reporting within seventy-two hours is helpful, the “FBI still does not recover funds in the majority of cases,” reporting sooner merely gives the victims a chance.¹³² If reported within seventy-two hours, the agent will visit the victim, conduct interviews with those involved, collect data, and subsequently, contact the banks to freeze the funds.¹³³ One field agent, however, noted that while some banks were helpful, others were uncooperative, especially where the fraud involved an individual.¹³⁴ Overall, he described the chances of a victim recovering the assets as “probably minimal.”¹³⁵ Some news outlets even go so far as to describe the process as “law enforcement will not do anything to get the victim’s money back unless the loss was hundreds of thousands to millions of dollars.”¹³⁶ This attitude is especially troubling as romance scams while not typically costing a single victim millions of dollars, still accounted for the second highest amount of losses in 2019.¹³⁷

The FBI’s task force with the highest recapture rate is the RAT.¹³⁸ Created in 2018 to recover domestic complaints, its goal is to contact financial institutions quick enough to halt the fraudulent wire transfer from being completed.¹³⁹ The RAT task force claims to have a seventy-nine percent recapture rate by recovering \$300 million in assets in 2019, yet, those statistics ignore the fact that this is based on only the 1,307 domestic incidents *actually* investigated.¹⁴⁰ That is a staggering small number, as the IC3 in 2019, received 460,000 complaints with losses totaling 3.5 billion, making the RAT’s actual recapture rate a mere 8.5%.¹⁴¹

129. 2019 INTERNET CRIME REP., *supra* note 51.

130. Rand, *supra* note 13.

131. *Id.*

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.*

136. Grimes, *supra* note 87, at 1.

137. 2019 INTERNET CRIME REP., *supra* note 51.

138. Jeremy Kirk, *The FBI’s RAT: Blocking Fraudulent Wire Transfers*, BANKING INFO SEC. (Apr. 23, 2019), <https://www.bankinfosecurity.com/blogs/fbis-rat-blocking-fraudulent-wire-transfers-p-2740>.

139. *Id.*

140. 2019 INTERNET CRIME REP., *supra* note 51.

141. Alex Guirakhoo, *FBI IC3 2019: Cybercrime Results In Over \$3.5 Billion In Reported Losses*, DIGIT. SHADOWS (Mar. 3, 2020), <https://www.digitalshadows.com>.

This is attributed to the fact that RAT only takes cases with single transfers of over \$50,000 that fall within the 72-hour window in which financial institutions can reverse the wire.¹⁴² This essentially locks out the elderly from utilizing the most effective FBI task force to recover their funds remitted to the romance scammer since the average transfer of their age cohort is: \$6,450.¹⁴³

Due to this high standard, RAT primarily focuses on recovering funds from Business Email Compromise (“BEC”) scams as they typically have fewer transactions with higher losses.¹⁴⁴ BEC scams typically include: employee email hacking to intercept invoice payments or impersonating the CEO and requesting the finance department remit funds into a fraudulent bank account.¹⁴⁵ Granted, while BEC total losses were the highest among all categories, romance scams still came in second.¹⁴⁶ This is problematic, as it leaves the elderly defenseless with the average romance scam transfer being below the RAT’s threshold.¹⁴⁷ This ignores that the total losses over the span of the relationship could add up or even surpass the \$50,000 limit.¹⁴⁸ Further, it is unrealistic to expect the elder to report the fraud within the seventy-two-hour window as the scam is typically not discovered until months or years later.¹⁴⁹

B. State law enforcement efforts are not adequate.

Federal institutions often team up with state law enforcement to investigate scams.¹⁵⁰ How local law enforcement responds to this collaboration is key in an effective and efficient recapturing of the assets.

com/blog-and-research/fbi-ic3-2019-cybercrime-results-in-over-3-5-billion-in-reported-losses/; 2019 INTERNET CRIME REP., *supra* note 51 at 3, 5.

142. See Hoar & Goldberg, *supra* note 10.

143. Span, *supra* note 8.

144. See *Business Email Compromise (BEC)*, TREND MICRO, [https://www.trendmicro.com/vinfo/us/security/definition/business-email-compromise-\(bec\)](https://www.trendmicro.com/vinfo/us/security/definition/business-email-compromise-(bec)) (last visited Nov. 1, 2021).

145. *Id.*

146. 2019 INTERNET CRIME REP., *supra* note 51.

147. Hoar & Goldberg, *supra* note 10, at 2.

148. *Id.*

149. Doug Shadel & David Dudley, ‘Are You Real?’—*Inside an Online Dating Scam*, AARP, <https://www.aarp.org/money/scams-fraud/info-2015/online-dating-scam.html> (last visited Nov. 1, 2021) (mentioning how Amy didn’t find out she was being scammed until one year later).

150. 2019 INTERNET CRIME REP., *supra* note 51 (discussing how the RAT collaborated with local law enforcement to arrest a BEC scammer).

Further, once a case has been investigated, state prosecutors must be willing and able to build a case to convict the scammer. Finally, state laws must encompass the perpetrator's crime so that the prosecutor can easily fit the fraud into a statute's definitions.

1. STATE ACTORS FALL SHORT OF INVESTIGATING AND PROSECUTING THE ROMANCE SCAM.

Current state solutions are not effectively combating romance scams. Law enforcement officers may be reluctant to investigate romance scams, as one fraud examiner put it: "[m]ost cops would rather investigate a triple ax murder."¹⁵¹ Underlying the reluctance to prosecute, is also the difficulty in tracing and parsing which financial transfer was the result of exploitation and which a non-exploitative gift.¹⁵² Further, many criminal law enforcement officers still hold the belief that it is not "a crime for someone to 'give their money away.'"¹⁵³ As a consequence, law enforcement might turn away the victim and their families stating that it is a "family issue" they must handle on their own.¹⁵⁴ These beliefs can be detrimental to an effective romance scam investigation, as this reluctance can lead to delays and vital evidence could be lost.¹⁵⁵ If law enforcement does not investigate the case, the victim may never recover the assets, and the romance scammer will never face justice.

While many romance scams go unreported,¹⁵⁶ even when reported and law enforcement completes an investigation, cases are still under-prosecuted.¹⁵⁷ The successful prosecution of financial exploitation of the elderly is rare, with many cases being dismissed due to lack of evidence.¹⁵⁸ When prosecuting romance scams, prosecutors often face a lack of knowledge in many areas of the law, such as contract, guardianship and mental capacity law.¹⁵⁹ Other considerations include: whether the victim is physically able and willing to testify while also

151. McClurg, *supra* note 9, at 1118.

152. *Id.*

153. *Id.* at 1119.

154. *Id.* at 1119.

155. THOMAS L. HAFEMEISTER, FINANCIAL ABUSE OF THE ELDERLY IN DOMESTIC SETTING (Richard J. Bonnie & Robert B. Wallace eds., 2003), <https://www.ncbi.nlm.nih.gov/books/NBK98784/> (last visited Nov. 1, 2021).

156. *Inside the FBI: Romance Scams Protect Your Heart and Your Bank Account*, FED. BUREAU OF INVESTIGATION (Feb. 12, 2021) [hereinafter *Inside the FBI*], <https://www.fbi.gov/news/podcasts/inside-the-fbi-romance-scams-021221>.

157. McClurg, *supra* note 9, at 1142.

158. HAFEMEISTER, *supra* note 155, at 40.

159. McClurg, *supra* note 9, at 1118.

estimating their life expectancy.¹⁶⁰ Seeing that many victims suffer from cognitive impairments, prosecutors may shy away from cases fearing that the victim is a bad witness.¹⁶¹ This is exacerbated by the fact that there may be no other witnesses, as the perpetrator typically asks the victim to keep their relationship secretive.¹⁶² In some cases, the victim will refuse to cooperate with law enforcement to protect their “be-loved” and might even try to get the charges dropped.¹⁶³ This lack of action has left many frustrated with state law enforcement and prosecutors as they are seen as not taking romance scams seriously.¹⁶⁴

2. STATE LAW DEFINITIONS OFTEN DO NOT INCLUDE THE ROMANCE SCAMMER.

When the romance scam is reported, and the officers do investigate, allowing the prosecution to build a case, the courts still have a hard time convicting the perpetrator. There are two types of criminal laws that punish individuals who financially abuse the elderly: a state’s general fraud statutes and a state’s specific elder financial exploitation statute.¹⁶⁵

Fraud is typically defined as: “some deceitful practice or willful device, resorted to with intent to deprive another of his right, or in some manner to do him an injury.”¹⁶⁶ A romance scam typically falls within this definition of deceitful practice, as the victim is usually being wooed by an individual claiming to be someone who they are not with the intent of dissipating funds.¹⁶⁷ While fraud was utilized successfully in *Kalogiannis*,¹⁶⁸ there does not appear to be any other case where such a statute has been used against a romance scammer partly because of the

160. BRENDA K. UEKERT ET AL., PROSECUTING ELDER ABUSE CASES 3 (National Center for State Courts), <https://bja.ojp.gov/sites/g/files/xyckuh186/files/Publications/NCSC-Prosecuting-Elder-Abuse-Cases-Basic-Tools-and-Strategies.pdf> (last visited Nov. 1, 2021).

161. McClurg, *supra* note 9, at 1117.

162. *Id.* at 1118.

163. *Id.* at 1119.

164. Abigail Margulis, *Cases of elder abuse hard to prosecute*, BLUERIDGENOW.COM (Jan. 31, 2016, at 2:00 AM), <https://www.blueridgenow.com/article/NC/2016-01-31/News/606017043/HT>.

165. HAFEMEISTER, *supra* note 155.

166. What is FRAUD?, BLACK’S LAW DICTIONARY, <https://thelawdictionary.org/fraud/> (last visited Nov. 1, 2021).

167. See *What You Need to Know About Romance Scams*, *supra* note 123.

168. See *Kalogianis v. Mialik*, No. 14-CVS-20703, 2015 WL 13439894, at *1 (N.C. Super. Ct. June 29, 2015).

voluntary wiring of the funds.¹⁶⁹ That leaves elder financial exploitation statutes as the best recourse.

Today, all states have laws addressing elder financial exploitation.¹⁷⁰ For example, the Illinois elder financial exploitation statute provides: “[a] person commits financial exploitation of an elderly person ... when he or she stands in a *position of trust or confidence* with the elderly person ... and he or she knowingly and by deception or intimidation obtains control over the property of an elderly person.”¹⁷¹ While at first glance the statute seems to include someone who impersonates a love interest, the statute defines a person “standing in a position of trust or confidence” narrowly.¹⁷² It includes only a parent, spouse, adult child, or other relative and paid professional, such as a financial planner or paid caregiver.¹⁷³ Strikingly absent is a third party who exploits the elderly individual. Indeed, search results indicate that this statute has not been used in any situation where an elder has been scammed by a third party. This seems to be the general consensus for most states. While states like Illinois are unable to reach a romance scammer due to the narrow definition of a person in a position of trust or confidence,¹⁷⁴ other state statutes are unable to do so, due to the elder’s consent.¹⁷⁵ For example, Florida’s elderly exploitation statute applies to “a person who knows or reasonably should know that the elderly person... lacks the capacity to consent.”¹⁷⁶ The inherent problem is that most elders who fall victim to the scam do not lack the statutorily defined capacity to consent, as they willingly initiate the bank transfer.¹⁷⁷ This is especially troubling because many elders suffer from cognitive decline, as will be discussed in Section D.¹⁷⁸ A romance scam victim in Florida is thus left with no alternative remedy in a state court.¹⁷⁹

On the other hand, even if a state includes a third-party offender, and lacks a consent defense, there is little evidence that prosecutors are filing charges under them. Indeed, while Missouri’s elder financial

169. HAFEMEISTER, *supra* note 155.

170. McClurg, *supra* note 9, at 1106.

171. 720 ILL. COMP. STAT. ANN. 5/17-56 (West 2021) (emphasis added).

172. *Id.*

173. *Id.*

174. *Id.*

175. *See, e.g.*, FLA. STAT. ANN. § 825.103 (West 2014).

176. *Id.*

177. Heaney, *supra* note 1.

178. James et al., *supra* note 14, at 2.

179. *See* FLA. STAT. ANN. § 825.103 (West 2014); Heaney, *supra* note 1.

exploitation statute does presumably include a third-party offender, there appears to be no case where it has been used against a romance scammer.¹⁸⁰

Even when a case is properly prosecuted and brought to court as in *Kalogiannis*, the penalties imposed prove to be an inadequate deterrent to repeat offenders.¹⁸¹ The penalty for elder financial exploitation in Illinois ranges from a Class 4 felony to a Class 1 felony conviction, with a fine limit of up to \$25,000, and a six-year minimum prison term.¹⁸² Seeing that the average loss of a romance scam victim is \$6,450,¹⁸³ the fine would be an average of \$2,000.¹⁸⁴ Classified as a Class 3 felony conviction, that is not a significant enough deterrent, especially because most scammers have multiple small-dollar victims.¹⁸⁵ Compounding the issue is the fact that most perpetrators are located and have the funds routed outside the U.S., leaving state courts unable to reach them.¹⁸⁶

These state level shortcomings create a vicious cycle of elders being the ideal target due to their physical or cognitive limitations that disallow them from reporting, while at the same time even when they do report, they are not taken seriously.¹⁸⁷ Changes must be adopted within state law enforcement and to state statutes to fully protect the elderly from romance scams.

180. MO. ANN. STAT. § 570.145 (West) (A romance scammer presumably would be liable under the verbiage of the statute “[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: ... (3) Creating or confirming another person’s impression which is false and which the offender does not believe to be true”).

181. McClurg, *supra* note 9, at 1109.

182. Michael J. Helfand, *Illinois Felony Classes Explained*, AVVO (June 16, 2009), <https://www.avvo.com/legal-guides/ugc/illinois-felony-classes>.

183. Span, *supra* note 8.

184. Helfand, *supra* note 182.

185. McClurg, *supra* note 9, at 1106.

186. WATE 6 Staff, *supra* note 94.

187. McClurg, *supra* note 9, at 1117–18.

C. Financial institutions are not effectively recapturing assets.

Most funds remitted to a romance scammer are from a voluntary bank wire transfer.¹⁸⁸ Typically, the scammer will tell the victim that they need money for a business venture or a personal issue and request a wire transfer into an overseas account.¹⁸⁹ The victim then schedules a transfer into the account requested and within seventy-two hours the funds are out of reach indefinitely.¹⁹⁰

Interestingly, some banks do not even require account names and numbers to match.¹⁹¹ In Debby's case, she would initiate wire transfers to Eric's account in Malaysia, and the bank would wire the money without verifying if the account actually belonged to an individual named "Eric."¹⁹² Wire transfers went on for two years, before Debby or the bank ever suspected any issue.¹⁹³ Such an oversight could have easily been detected had the bank verified that the account name and number matched the one provided by the victim.¹⁹⁴ Up until June 2020, banks only checked the account number and sort code.¹⁹⁵ Today, most banks have introduced a "confirmation of payee" system for customers to verify that the name on the account matches the one it intends to be sent to.¹⁹⁶ This system is not sufficient, however, as such a discrepancy could be easily explained away by the scammer.¹⁹⁷

Reporting by financial institutions is also sparse. Even though required by the FTC to file a SAR, issues occur as to identifying what constitutes elder financial exploitation ("EFE").¹⁹⁸ Although financial institutions are well situated to report and observe financial exploitation, two studies report that banks made less than half of one percent of

188. *Heartbreaking: Romance Scams on the Rise*, VERAFIN (Feb. 14, 2020), <https://verafin.com/2020/02/heartbreaking-romance-scams-on-the-rise/>.

189. *Id.*

190. Hoar & Goldberg, *supra* note 10.

191. Rand, *supra* note 13.

192. Heaney, *supra* note 1.

193. *Id.*

194. Rand, *supra* note 13.

195. Anna Tims, *Who am I? A bank security check that leaves you guessing your own name*, THE GUARDIAN (Sept. 6, 2020, 3:03), <https://www.theguardian.com/money/2020/sep/06/who-am-i-a-bank-security-check-that-leaves-you-guessing-your-own-name>.

196. *Id.*

197. See, e.g., Shadel & Dudley, *supra* note 149.

198. Charles Pratt, *Banks' Effectiveness at Reporting Financial Abuse of Elders: An Assessment and Recommendations for Improvements in California*, 40 CAL. W.L. REV. 195, 208 (2003).

substantiated abuse reports.¹⁹⁹ Indeed, family members, hospitals, and friends were more likely than banks to report financial abuse.²⁰⁰ The reason for the low reportability can be attributed to the bank employees not having sufficient training on identifying what financial exploitation looks like.²⁰¹

To aid reporting by financial institutions, Congress passed the Senior Safe Act in 2018, that provides a safe harbor for financial institutions that fail to report suspected EFE to covered agencies if the institution has trained its employees on identifying EFE.²⁰² Although a great start, the Act does not mandate reporting nor employee training.²⁰³

Further, even when a SAR is filed, only twenty-eight percent reported the activity directly to APS, law enforcement, or other authorities.²⁰⁴ This delay in reporting leads to a missed opportunity of notifying the appropriate authority and initiating a recapturing of the funds.²⁰⁵ Reporting requirements vary among states.²⁰⁶ Since 2016, only four states require financial institutions to produce their records proactively to the appropriate investigatory agency when they file a SAR.²⁰⁷ This lack of uniformity leaves many elders vulnerable to financial exploitation depending on which state they live in.²⁰⁸

D. Relying on prevention is not an effective remedy.

Given how many romance scam victims slip through the cracks, prevention has been urged in an attempt to curb the transmission of funds in the first place.²⁰⁹ The FBI and the FTC have launched major efforts to educate the public on the prevalence of romance scams.²¹⁰ No matter how many PSAs the public receives on the avoidance of romance scams, however, many cases still go unreported.²¹¹ Indeed, for

199. *Id.*

200. *Id.*

201. 2019 CONSUMER FIN. PROT. BUREAU, *supra* note 18, at 13.

202. *Id.*

203. *Id.*

204. *Id.* at 9.

205. *Id.*

206. *Id.* at 24 (discussing statutory differences between California and D.C.).

207. *Id.* at 10 (mentioning Kentucky, Tennessee, Texas, and Utah).

208. *Id.*

209. *Inside the FBI*, *supra* note 156.

210. 2019 INTERNET CRIME REP., *supra* note 51, at 6.

211. SUSPICIOUS ACTIVITY REPORTS, *supra* note 82, at 11.

every one elder financial exploitation case reported, forty-four are not.²¹²

First, the elder may be in denial that their “loved one” is scamming them.²¹³ The more time and money the victim invests into the relationship, the harder it is for them to realize that the person they are speaking to is not who they think it is.²¹⁴ Victims become so emotionally invested in their love interest that they overlook omissions and inconsistencies in the scammer’s story.²¹⁵ Expecting the elder to extricate themselves from this “love spell” on their own is unrealistic.

Second, shame and fear of humiliation is also a contributor to the low reporting.²¹⁶ While these scams are crimes, the victim may still get blamed.²¹⁷ Many seniors may not report the suspected financial exploitation because they do not know how or are too ashamed to admit they were deceived to their family members.²¹⁸ Telling family members carries the risk of losing management of their finances, a move some elders perceive as demoralizing.²¹⁹ Family members may also express anger at the elder for spending “their inheritance.”²²⁰

Lastly, while preventative measures are important, currently, they place an unfair burden on the elderly to identify a scam when they might be suffering from physical and cognitive limitations that prohibits them from doing so.²²¹ Research shows that “persons with lower levels of cognitive function, lower psychological wellbeing, and poorer health and financial literacy” are more susceptible to financial scams, regardless of their education and income level.²²² Indeed, studies show that the rate of cognitive decline is directly correlated with the increased susceptibility to financial scams.²²³ Specifically, among adults over sixty, there is a consistent decline in financial literacy of about one

212. McClurg, *supra* note 9, at 1116.

213. See generally Shadel & Dudley, *supra* note 149.

214. *Id.*

215. *Id.* (“And she was just as fascinated by Duane. Or was it Dwayne? In his early emails, the spelling seemed to switch.”).

216. *Elder Fraud*, *supra* note 37.

217. *Id.*

218. *Id.*

219. *Id.*

220. HAFEMEISTER, *supra* note 155.

221. *Id.*

222. James et al., *supra* note 14, at 7.

223. *Id.* at 2.

percent point each year.²²⁴ Even older adults with preclinical dementia or those without observable cognitive impairment may still be at risk.²²⁵

Improving elder's physical and cognitive health may lead to more effective prevention and early detection of a scam. Psychological well-being was the most predominant determinant of susceptibility to scams, as those with a positive outlook on their lives were at a lower risk of being taken advantage of by a scammer.²²⁶ As individuals age and social networks decrease, relationships with family can be a key factor in enhancing well-being.²²⁷ When nearly one-fourth of adults sixty-five and older are deemed to be socially isolated,²²⁸ family relationships can be paramount to enhancing psychological wellbeing, which curtails elders from falling victims to romance scams.²²⁹

Although a strong family relationship has a deterrent effect on a scammer's ability to financially exploit the elder, many who lack those relationships are still left vulnerable to their attacks.²³⁰ Federal, state, and private institutions are in a better position to make changes and combat elder financial exploitation as they have more resources at their disposal. It is more imperative than ever that these institutions make changes to protect this aging population.

IV. Recommendation

A comprehensive system is needed to address the prevalence of romance scams among the elderly. Older Americans are the most vulnerable to romance scams as they are more likely to experience loneliness and hold the majority of the country's wealth.²³¹ Some elders may lose all their retirement funds or even take out a second mortgage on their homes, leaving many facing destitution as a result of the scam.²³² Although federal, state, and private institutions have implemented

224. *Id.* at 17.

225. *Id.* at 7.

226. *Id.*

227. *Id.*

228. *Loneliness and Social Isolation Linked to Serious Health Conditions*, *supra* note 35.

229. *10 Tips to Protect Yourself from The Sweetheart Scam*, *supra* note 116.

230. James et al., *supra* note 14, at 2.

231. Pesce, *supra* note 40.

232. Bob Sullivan, *The FBI's secret weapon against lottery and romance scammers*, CNBC (Oct. 6, 2017, 10:11 AM), <https://www.cnbc.com/2017/10/06/the-fbis-secret-weapon-against-lottery-and-romance-scammers.html>.

some methods to combat romance scams,²³³ they are not fully protecting the elderly.

This Section proposes solutions among those three categories: the federal, state, and private sector. First, federal institutions should provide training to their law enforcement agents and include a victim specialist in the investigation. Second, a statutory change should be made to ease up prosecution of the romance scammer. Finally, instead of only filing a SAR, private institutions should mandate their employees report suspected EFE directly to law enforcement to allow for a faster response that could effectuate a higher recapturing of lost assets.

A. Federal Institutional Changes

Federal institutions are at the forefront of recapturing assets because the IC3 is the victim's first point of contact.²³⁴ The IC3, however, still falls short of recovering even half of the assets remitted abroad.²³⁵ Partly responsible for the low recovery rate is that victims do not file a report timely enough.²³⁶ Also to blame, however, is that most FBI agents either do not have the specialized expertise or they would rather investigate more "interesting" cases.²³⁷ This treatment of romance scam reports must be remedied, as many elders go through the appropriate reporting processes only to not be taken seriously.

One such solution is providing field agents with financial literacy training and forensic accounting to be better situated when sorting out and proving that the financial transfer was a result of financial exploitation instead of a gift.²³⁸ As for improving treatment of the victim, the FBI has started hiring victim specialists to help older adults who have filed complaints with the IC3.²³⁹ When an online complaint is received, and it is assessed that the victim needs assistance or crisis prevention, a victim specialist begins conversations with the victim by phone or

233. IC3 FAQ, *supra* note 46.

234. 2019 INTERNET CRIME REP., *supra* note 51, at 7.

235. *Id.* at 15.

236. *See id.* at 20.

237. McClurg, *supra* note 9, at 1118.

238. *Id.*

239. Debbie Deem & Erik S. Lande, *Transnational Scam Predators and Older Adult Victims: Contributing Characteristics of Chronic Victims and Developing an Effective Response*, DOJ J. FED. L. & PRAC., 177 (Dec. 2018), <https://static1.squarespace.com/static/59ab97acf43b556d9260a671/t/5f177c094b6e444d6046a779/1595374602083/lande+us+attorney+bulletin+article.pdf>.

email and in some cases a field visit.²⁴⁰ One such victim specialist is Debbie Deem, who uses her training as a social worker to listen and understand the elder's situation.²⁴¹ Her tasks involve: "ensur[ing] that victims are treated with respect, provid[ing] information on victim rights, do[ing] crisis prevention", and giving referrals to services and updates to the victims on the status of their case.²⁴² Having a victim specialist not only ensures the FBI agent treats the victim with respect, but also, stops the victim from remitting any other funds to the scammer.²⁴³ Oftentimes, the elder, even when aware of the scam, will still attempt to remit funds to their "beloved" because they cannot break the spell.²⁴⁴ That is where a specialist like Debbie can also help. She will often add her phone number to the elder's speed dial, so when they have an urge to remit funds, she can talk them out of it.²⁴⁵ While a victim specialist would be helpful in many situations, there is no current data that shows how often such a specialist gets paired with an FBI field agent. Regardless, ensuring that a field specialist is included on every investigation of a romance scam would be extremely beneficial to victim management. Cutting out a romance scammer from someone's life is only the first step in a long process of recovery.²⁴⁶ Replacing the void the scammer left is essential in avoiding a relapse.²⁴⁷

While changes on the ground may be helpful, high-level changes may be more effective. The FBI's RAT task force boasts the highest recapture rate for fraudulently wired funds.²⁴⁸ But the \$50,000-minimum one-time threshold for cases that are investigated is too high for an individual who may have lost thousands of dollars over multiple months or years.²⁴⁹ One solution is that the FBI could lower the wire transfer amount to a more manageable threshold to account for that situation. Alternatively, it could allow for a cumulative threshold, instead of one-time monetary loss, that could reach the \$50,000 minimum, as many romance scams can add up to well over that amount over time.²⁵⁰

240. *Id.* at 207.

241. Sullivan, *supra* note 232.

242. *Id.*

243. *Id.*

244. *Id.*

245. *Id.*

246. *Id.*

247. *Id.*

248. 2019 INTERNET CRIME REP., *supra* note 51, at 10.

249. Hoar & Goldberg, *supra* note 10.

250. *Id.*

Arguably, the FBI's resources may be spread thin by having to investigate too many romance cases, if the threshold for case investigation becomes cumulative. However, this change won't effectuate in opening the floodgates as the average romance scam loss is \$6,450.²⁵¹ By making the threshold cumulative, the FBI would still have enough resources, while still protecting the elders that get hit the hardest.

By either lowering the threshold or allowing an elder to meet a cumulative amount, this will allow for a romance scam case to be investigated by the RAT. Having an elder's case looked at by the RAT could ensure a higher success rate of recovering the assets, as that task force boasts the highest success rate in the federal government.²⁵²

B. State Institutional Changes

When the federal institutions have a foolproof reporting process and expansive task force capabilities, state institutional changes can further help recover the assets from a romance scammer. Prosecutors face the problem of not having enough knowledge of the complicated underpinnings of building a case against such a perpetrator.²⁵³ Courts also have a hard time convicting the romance scammer due to the inability of fitting them into the usual definition of "a perpetrator" within an elder financial exploitation statute.²⁵⁴ An adjustment of the elder financial exploitation statutes is necessary, as nine out of ten attorneys believe that elder financial exploitation is a serious problem.²⁵⁵

Once the case has been fully investigated and evidence has been gathered, the successful prosecution of the case is left up to the prosecutor.²⁵⁶ If the prosecutor lacks the appropriate knowledge, critical evidence might be overlooked and cases may be dismissed.²⁵⁷ It is vital that prosecutors be given elder financial exploitation training so that they may pursue these cases accordingly.²⁵⁸ Training may also include an overview on what expert testimony may be needed in the elder's case

251. Span, *supra* note 8.

252. 2019 INTERNET CRIME REP., *supra* note 51, at 10.

253. McClurg, *supra* note 9, at 1118.

254. See, e.g., 720 ILL. COMP. STAT. 5/17-56 (2020).

255. S. REP. NO. 114-208 (2016).

256. *What are some common steps of a criminal investigation and prosecution?*, NAT'L CRIME VICTIM L. INST. (Apr. 15, 2010), <https://law.lclark.edu/live/news/5498-what-are-some-common-steps-of-a-criminal>.

257. HAFEMEISTER, *supra* note 155.

258. *Id.*

to help carry the burden of proof in the court room.²⁵⁹ Thankfully, the Department of Justice (“DOJ”) already has a multitude of free webinars and training videos specifically for prosecutors on how to investigate and charge elder financial exploitation, how to navigate consent defenses and even how to know when to call in an expert.²⁶⁰ Among the webinars was also a 2016 video explaining what a romance scam is and its implications.²⁶¹ States should ensure their prosecutors involved in elder financial exploitation cases view the pertinent DOJ webinar trainings to ensure the proper prosecution of the romance scammer. Further, it is urged that prosecutors build a rapport with the victim before exploring case facts as the victim will feel more comfortable after trust is built, making for a more reliable witness.²⁶²

Even when the prosecutor builds a case, the task of defining and proving financial exploitation “requires complex and subjective determinations to distinguish between acceptable transactions and exploitative conduct.”²⁶³ Fitting the alleged misconduct into the statute may be problematic. Currently, criminally prosecuting the romance scammer does not fall under the regular elder financial exploitation statutes.²⁶⁴ The statutes are either too narrow or require a lack of capacity.²⁶⁵ States should amend their financial exploitation statutes to account for romance scams, so that courts do not need to resort to unrelated legal theories of constructive fraud and restitution to find liability.²⁶⁶ Encouraging states to amend their statutes like Missouri’s to expand the definition of someone “in a position of trust or confidence” will render the prosecutor’s case easier to prove.²⁶⁷ Instead of just including family members and caregivers, the definition could be expanded to include a stranger who has “created a position of trust or confidence” with the elder.²⁶⁸ This should not be hard to prove, as the romance scammer

259. UEKERT ET AL., *supra* note 160, at 26.

260. *Prosecutor training & resources*, U.S. DEP’T OF JUST., <https://www.justice.gov/elderjustice/prosecutor-training-resources> (last visited Feb. 3, 2022).

261. *Senior victims of financial fraud*, U.S. DEP’T OF JUST. (Sept. 16, 2016), <https://www.justice.gov/elderjustice/video/senior-victims-financial-fraud>.

262. UEKERT ET AL., *supra* note 160, at 5.

263. HAFEMEISTER, *supra* note 155.

264. 720 ILL. COMP. STAT. ANN. 5/17-56 (West 2020).

265. *See generally id.*

266. *Kalogianis v. Mialik*, No. 14-CVS-20703, 2015 WL 13439894, at *1 (N.C. Super. Ct. June 29, 2015).

267. 720 ILL. COMP. STAT. ANN. 5/17-56 (West 2020); MO. ANN. STAT. § 570.145 (West).

268. *Id.*

stands in enough of a position of trust that the elder feels comfortable with wiring them funds.²⁶⁹

Another statutory approach is to include a permissive presumption in the elder financial exploitation statutes.²⁷⁰ This could be achieved by adding a permissive presumption of a fraudulent transfer when a victim over the age of sixty-five is exploited.²⁷¹ The presumption would allow for an automatic assumption of exploitation when money is being sent between an elder and a non-family member.²⁷² A big proponent of the presumption approach is: Professor of Law, Andrew J. McClurg.²⁷³ His proposed statute provides:

[a]ny inter vivos transfer of money or property valued in excess of \$1,000, whether in a single transaction or multiple transactions, by a person age 65 or older to a non-relative whom the transferor knew for fewer than two years before the first transfer and for which the transferor did not receive reciprocal value in goods or services shall create a permissive presumption that the transfer was the result of exploitation.²⁷⁴

The subsequent sections of the proposed statute also include a provision specifically providing that the presumption applies regardless of whether the elder denotes the transfer of funds as a gift or not.²⁷⁵ The only way the presumption may be overcome is with evidence that it was a charitable gift or loan evidenced in writing.²⁷⁶ Another limiter is that the presumption will only be used in a criminal prosecution in which the prosecutor and judge have made a determination that probable cause exists.²⁷⁷

Professor McClurg's proposed statute cures many issues prosecutors face. First, it solves prosecutor's issue of proving that wiring the funds was not voluntary, but a result of exploitation.²⁷⁸ Second, the \$1,000 threshold accounts for the average amount of funds an elder transfers to the scammer and will serve to capture the cases the FBI threshold dollar loss won't.²⁷⁹ Next, the proposed statute acknowledges

269. See, e.g., Shadel & Dudley, *supra* note 149.

270. McClurg, *supra* note 9, at 1099.

271. *Id.* at 1119.

272. *Id.* at 1131.

273. *Id.*

274. *Id.*

275. *Id.*

276. *Id.*

277. *Id.*

278. *Id.* at 1118.

279. Span, *supra* note 8 ("losses reached \$3,000 for victims in their 60s and \$6,450 for those in their 70s.").

that the funds may be transmitted in a single or multiple transactions, as many times the fund transmission is more than a one-time event.²⁸⁰ This aggregation is key in prosecuting a scammer who sporadically requests small amounts of funds or gift cards.²⁸¹ Lastly, the statute accounts for the elder who actively works against the prosecution by claiming the wiring of funds was a gift.²⁸² Applying the presumption regardless of the elder's wishes is instrumental in romance scams, as the victim will often try to protect the scammer and thwart the prosecution.²⁸³ In addition to the permissive presumption, the elder financial exploitation statutes should raise the fines on perpetrators who are convicted under the statute to effectively deter repeat offenders.²⁸⁴

States should implement Professor McClurg's proposed statute to better allow the prosecutor to prove a case of elder financial exploitation. Prosecutors already face a myriad of evidentiary problems when prosecuting romance scams.²⁸⁵ Having a permissive presumption makes it easier to prove that the events that transpired and the remission of funds to a third-party individual were the result of exploitation.²⁸⁶

C. Private Institutional Changes

While changes at the federal and state level will alleviate much of the problem, private institutional changes can be implemented to stop the funds from being transferred in the first place. Financial institutions are the main method of fund transmission, and as such are in a better position than many to stop the money from being sent in the first place.²⁸⁷

Much of the FBI's success in recovering assets remitted to a romance scammer has been due to timely reporting.²⁸⁸ While some

280. Shadel & Dudley, *supra* note 149.

281. Laura Taylor, *Police warn of romance scammers looking for money and gift cards*, ABC NEWS (Sept. 4, 2019), <https://wset.com/news/local/police-warn-of-romance-scammers-looking-for-money-and-gift-cards>.

282. McClurg, *supra* note 9, at 1120–21.

283. *Id.* at 1119.

284. Helfand, *supra* note 182.

285. HAFEMEISTER, *supra* note 155.

286. McClurg, *supra* note 9.

287. *Recent Developments: Bank Responsibility for Elder Financial Exploitation*, VEDDERPRICE (Apr. 2016), <https://www.vedderprice.com/bank-responsibility-for-elder-financial-exploitation>.

288. 2019 INTERNET CRIME REP., *supra* note 51, at 10.

victims and their families may be able to report within the seventy-two-hour window, a faster response may be effectuated if a bank employee were to report instead.²⁸⁹

While the Senior Safety Act was a great start, states can and should go further than Congress by making bank employees mandatory reporters.²⁹⁰ The Consumer Financial Protection Bureau, as early as 2016, has recommended more states require employees of financial services report suspected elder financial exploitation directly to the local state APS.²⁹¹ While many states have followed suit, the state of Illinois has not.²⁹² Compounding the issue is that less than one-third of the SARs filed indicate that the financial institution also notified law enforcement or APS.²⁹³ A mandatory reporting statute does not place a high burden on the employee, and allegations are precluded from making the institution liable.²⁹⁴ A typical statute does not even require there be direct proof of elder financial exploitation, rather a reasonable suspicion is enough.²⁹⁵ Reporting to the APS every time a SAR is filed enables law enforcement to initiate a faster response and allows for more time to utilize databases, such as the FTC's CSN, to cross collaborate across jurisdictions and locate the perpetrator.²⁹⁶

Better equipping financial institution employees to identify financial exploitation will also help prosecute the romance scammer.²⁹⁷ Timely identification and reporting remain critically important to an effective response and recovery of assets.²⁹⁸ Until states mandate that every financial institution that files a SAR must also notify the appropriate law enforcement entity, the institution should do so on its own. Further, creating a list of perpetrators that have been caught exploiting older adults should be maintained, for the quick identification of the

289. Phillip De Wet, *Hit in the WhatsApp scam? Here's how to get your money back—at a price—if you are fast enough*, BUS. INSIDER (Jan. 9, 2020, 4:45 PM), <https://www.businessinsider.co.za/how-to-reverse-an-fnb-ewallet-payment-2020-1>.

290. 2019 CONSUMER FIN. PROT. BUREAU, *supra* note 18, at 3.

291. *Id.* at 5.

292. *Id.* at 14–18.

293. *Id.* at 9.

294. *Id.* at 8.

295. *Id.* at 5.

296. FED. TRADE COMM'N CONSUMER SENTINEL NETWORK, https://www.ftc.gov/system/files/attachments/consumer-sentinel-network/191001_sentinel_one_pager_v5.pdf (last visited Nov. 1, 2021).

297. *Id.* at 8.

298. 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* (Feb. 2011), <https://www.ojp.gov/pdffiles1/nij/grants/233613.pdf>.

same perpetrator scamming someone else, as it is common for one scammer to do this to multiple victims,²⁹⁹ consecutively or simultaneously. This list could easily be added to the FTC's CSN investigative cyber tool that can be accessed by federal, state and local law enforcement.³⁰⁰ This will also prevent money transfers into the accounts that have been deemed as exploitative.

V. Conclusion

The romance scam is one of the most sinister scams, as the perpetrator takes advantage of the victim's loneliness to extrapolate funds.³⁰¹ The elderly are disproportionately targeted by romance scammers both in volume and average dollar loss as compared to any other age group.³⁰² The perpetrators take advantage of the age group's vulnerabilities and knowledge that they have the most wealth per age group.³⁰³

Current federal, state, and private solutions are inadequate. Federal institutions, such as the FBI, have led the high-level coordination and enforcement efforts of combatting the romance scam, yet their focus on high value losses disregards most of the reports filed by elders.³⁰⁴ While states have fraud and elder financial exploitation statutes, they do not include a romance scammer in the definition, leaving many courts unable to convict.³⁰⁵ Additionally, even when a private institution, such as a bank, suspects that fraud is involved in a transaction, it only files a SAR instead of also referring the matter to the appropriate law enforcement agency.³⁰⁶

Effective remedies for elders must be adopted across all three institutions. First, the FBI should include a victim specialist in each investigation³⁰⁷ and lower or make cumulative the amount of losses needed for a RAT investigation.³⁰⁸ Second, legislation should be amended to

299. OFFICE OF THE COMPTROLLER OF THE CURRENCY, *Suspicious Activity Reports (SAR)*, <https://www.occ.treas.gov/topics/supervision-and-examination/bank-operations/financial-crime/suspicious-activity-reports/index-suspicious-activity-reports.html> (last visited Nov. 1, 2021).

300. *Consumer Sentinel Network*, FED. TRADE COMM'N, <https://www.ftc.gov/enforcement/consumer-sentinel-network> (last visited Nov. 1, 2021).

301. Jackson & Hafemeister, *supra* note 298.

302. 2019 INTERNET CRIME REP., *supra* note 51, at 16.

303. Pesce, *supra* note 40.

304. 2019 INTERNET CRIME REP., *supra* note 51.

305. *See, e.g.*, 720 ILL. COMP. STAT. ANN. 5/17-56 (West 2020).

306. 2019 CONSUMER FIN. PROT. BUREAU, *supra* note 18, at 9.

307. Sullivan, *supra* note 232.

308. Hoar & Goldberg, *supra* note 10.

include a permissive inference of financial exploitation in transactions where elders initiate a wire transfer into a stranger's account.³⁰⁹ Lastly, private institutions should mandate their employees not only file a SAR report when they suspect elder financial exploitation, but also, report it directly to the appropriate APS authority, to allow for a faster response to recapture the assets.³¹⁰

The romance scam is not a new phenomenon, but that doesn't mean we should let it become a crime as old as time. With the elderly population forecasted to continue growing as an age group and the increasing amount of them going online, swift action is needed.³¹¹ Adopting these solutions will provide elders with the proactive relief they need to be protected from the romance scam.

309. McClurg, *supra* note 9, at 1119.

310. 2019 CONSUMER FIN. PROT. BUREAU, *supra* note 18, at 5.

311. News Staff, *supra* note 22.