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. Having been married for twenty-six years, they urged her to try the “safe option” of online dating. There, she met “Eric,” a fellow widower and international businessman working on a contract in Malaysia. Two years, some cashed out retirement accounts, and pawned jewelry later, Debby had wired Eric a total of one million dollars. It wasn’t until after he confessed that she realized he had been scamming her.

Unfortunately, romance scams, otherwise known as “sweetheart scams,” are one of the most common methods of preying on a victim, targeting specifically seniors. In 2019, almost 20,000 sweetheart scam complaints were filed with the Federal Bureau of Investigation (“FBI”), totaling losses of over $475 million. 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. 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.

2. Id.
3. Id.
4. Id.
5. Id.
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. Additionally, at the state level, many law enforcement officers and prosecutors are often reluctant to parse out the evidence to prove a romance scam. 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. Even financial institutions that are at the forefront of the issue fall short of reporting or blocking suspicious wire transfers. 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.

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. Further, lowering the monetary threshold of cases the FBI investigates to include the amounts remitted to romance scammers would help recover most assets. 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. Finally, private institutions should mandate their employees report to local law enforcement whenever they suspect elder financial exploitation.

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


\(^{21}\) Id.


you trust to convince you to send them money.”

Common imposter scams include impersonating the Social Security Administration (“SSA”), the Internal Revenue Service (“IRS”), or a love interest.

While impersonating a government agent was the most common imposter scam, romance scams, namely someone impersonating a love interest, tended to affect the elderly the most. 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. As of 2021, twenty-nine percent of Baby Boomers have been on a date with someone they met through an online dating website. 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. The 2020 Census estimates that Baby Boomers now total seventy-three million Americans. Unfortunately, this large aging cohort has created a fruitful market for scammers.

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26. Id.
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.”).
The elderly are also particularly vulnerable to romance scams because they are more susceptible to suffer from loneliness.\(^3\) Factors influencing their loneliness are living alone, loss of family or friends, and chronic illness.\(^3\) 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.\(^3\) Physical and cognitive issues compound the issue of nonreporting, as well as fear of being shamed by family members.\(^3\) Interestingly, romance scams disproportionately affect women,\(^3\) as they are more likely to be widowed and experience loneliness.\(^3\) With Baby Boomers holding the majority of wealth in the country,\(^4\) 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.\(^4\)

Unfortunately, the COVID-19 pandemic has exacerbated the problem and provided the perfect cover for scammers.\(^4\) 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,

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36. Samuels, supra note 34.
37. Id.
who are particularly susceptible to the virus. 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. 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, federal institutions have attempted to remedy and monitor the situation. While the FBI strives to coordinate law enforcement efforts and recapture stolen assets, the FTC collects consumer data to alert the public of the most recent scams reported.

1. THE FBI

The FBI is the United States’ federal intelligence security agency, tasked with preventing criminal threats both internationally and domestically. The prevalence of internet-related crimes led to the establishment of the FBI’s Internet Crime Complaint Center (“IC3”) in May 2000. This specialized unit handles internet crime complaints filed either by the victim or a third party. 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.

43. Id.
44. Id.
49. IC3 FAQ, supra note 46.
50. Id.
The IC3’s process begins with the report of a suspected romance scam.\textsuperscript{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.\textsuperscript{53} Once the threat has been analyzed, the agency will partner with federal, state, and private institutions, to recover the fraudulently-obtained assets.\textsuperscript{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.\textsuperscript{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.\textsuperscript{56} Although romance scams accounted for only 19,473 victims, they accounted for the second largest amount of losses.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{61} Citizens

\begin{itemize}
\item 52. \textit{Id.} at 7.
\item 53. \textit{Id.}
\item 54. \textit{Id.} at 6.
\item 55. \textit{Id.} at 4.
\item 56. \textit{Id.} at 16.
\item 57. \textit{Id.} at 19–20.
\item 59. 2019 INTERNET CRIME REP., \textit{supra} note 51, at 3, 5 (author calculated 8.5 percentage based on $3.5 billion in losses and the $300 million alleged recovery).
\item 60. See \textit{id.}
\item 61. \textit{What We Do}, FTC, \textit{supra} note 47.
\end{itemize}
usually report to the FTC when they become aware of a scam, whereas when a citizen loses a significant amount of money, he or she reports to the IC3. 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.

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. It offers free access to consumer complaints that law enforcement can use to connect with other agencies across jurisdictions investigating the same targets. 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. 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.

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. Seniors aged sixty to sixty-nine not only accounted for the highest volume of reports, but also, experienced the largest number of losses. Interestingly, the most likely method of fund transmission was wire transfers. These observations are troubling, especially because romance scams have been on the rise.

63. IC3 FAQ, supra note 46.
65. Id.
68. Id.
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”). State statutes have also been enacted to convict individuals who financially exploit older adults.

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. This was the first time Congress had authorized specific federal funding for state APS agencies. 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. 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.

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. In most states, certain persons are designated as mandatory reporters. Such individuals are persons working in social services, law enforcement, education, and medical services. Some states even make financial institution employees mandatory reporters when they suspect fraudulent activity.

74. See e.g., 720 ILL. COMP. STAT. 5/17-56.
76. Id. at 2–3.
77. Id. at 3.
78. ILL. DEP’T ON AGING, supra note 73.
80. Id. at 14.
81. Id.
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 mislead 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 I.L.L., 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.”).
89. id. at *2.
90. id. at *3.
91. id.
Not all victims of romance scams are as lucky as Kalogiannis. This case is unique not only because of the court’s favorable verdict, but for being able to recover most of the remitted assets. 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. 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.

D. Private Institutions

Private financial institutions, 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. FinCEN attempts to safeguard the financial system from illicit transactions, which encompass imposter fraud. While the FTC’s reports are filed by consumers, FinCEN monitors reports filed by financial institutions.

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.” This led to the Department of Treasury requiring financial institutions to file Suspicious
Activity Reports (“SARs”). Financial institutions must file a SAR with FinCEN within 30 days of a suspicious transaction involving $5,000 or more. Any amount below that threshold may be reported voluntarily. If a financial institution suspects that a transaction has elements of criminal activity that are more than suspicious, they will call the FBI directly. A suspicious activity is defined as a transaction that is deemed to be unusual or inconsistent with that particular client. 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. These reports play an instrumental role in helping law enforcement monitor scammers and recapture funds.

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. 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. 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.

SARs data indicates that the most prevalent scam reported is the romance scam. 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).” With the median loss of a scam-related SAR

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101. Supervisory Insights, supra note 97.
103. Suspicious Activity Reports, supra note 82.
106. Suspicious Activity Reports, supra note 82.
108. Id. at 273.
109. Suspicious Activity Reports, supra note 82, at 11.
110. Id. at 12.
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. Financial institution reporting is pivotal as it allows FinCEN to continue to provide the SARs reports to law enforcement agencies to combat financial exploitation. 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.

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. Other websites warn elders to “be on guard” when interacting with people online, “do your homework” on them, and “limit use of social media.”

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.” 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. It also provided a list of common techniques used by romance scammers. The FTC has also issued warnings to the public. 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.
117. Joyce, supra note 6.
120. Id.
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

124. Id.
125. Id.
126. Rand supra note 13; McClurg supra note 9, at 1118.
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.\textsuperscript{129} Those cases are handled by FBI field agents.\textsuperscript{130} The sooner the scam is reported, the better the chance the victim has to recover the assets.\textsuperscript{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.\textsuperscript{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.\textsuperscript{133} One field agent, however, noted that while some banks were helpful, others were uncooperative, especially where the fraud involved an individual.”\textsuperscript{134} Overall, he described the chances of a victim recovering the assets as “probably minimal.”\textsuperscript{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.”\textsuperscript{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.\textsuperscript{137}

The FBI’s task force with the highest recapture rate is the RAT.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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%.\textsuperscript{141}

\begin{itemize}
\item \textsuperscript{129} 2019 INTERNET CRIME REP., supra note 51.
\item \textsuperscript{130} Rand, supra note 13.
\item \textsuperscript{131} Id.
\item \textsuperscript{132} Id.
\item \textsuperscript{133} Id.
\item \textsuperscript{134} Id.
\item \textsuperscript{135} Id.
\item \textsuperscript{136} Grimes, supra note 87, at 1.
\item \textsuperscript{137} 2019 INTERNET CRIME REP., supra note 51.
\item \textsuperscript{139} Id.
\item \textsuperscript{140} 2019 INTERNET CRIME REP., supra note 51.
\item \textsuperscript{141} Alex Guirakhoo, FBI IC3 2019: Cybercrime Results In Over $3.5 Billion In Reported Losses, DIGIT. SHADOWS (Mar. 3, 2020), https://www.digitalshadows.
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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.\(^\text{142}\) 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.\(^\text{143}\)

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.\(^\text{144}\) 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.\(^\text{145}\) Granted, while BEC total losses were the highest among all categories, romance scams still came in second.\(^\text{146}\) This is problematic, as it leaves the elderly defenseless with the average romance scam transfer being below the RAT’s threshold.\(^\text{147}\) This ignores that the total losses over the span of the relationship could add up or even surpass the $50,000 limit.\(^\text{148}\) 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.\(^\text{149}\)

B. State law enforcement efforts are not adequate.

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

\(^\text{142}\) See Hoar & Goldberg, supra note 10.
\(^\text{143}\) Span, supra note 8.
\(^\text{145}\) Id.
\(^\text{146}\) 2019 INTERNET CRIME REP., supra note 51.
\(^\text{147}\) Hoar & Goldberg, supra note 10, at 2.
\(^\text{148}\) Id.
\(^\text{149}\) 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).
\(^\text{150}\) 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.
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.\textsuperscript{160} Seeing that many victims suffer from cognitive impairments, prosecutors may shy away from cases fearing that the victim is a bad witness.\textsuperscript{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.\textsuperscript{162} In some cases, the victim will refuse to cooperate with law enforcement to protect their “beloved” and might even try to get the charges dropped.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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,”\textsuperscript{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.\textsuperscript{167} While fraud was utilized successfully in Kalogianis,\textsuperscript{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

\begin{footnotesize}
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  \item McClurg, \textit{supra} note 9, at 1117.
  \item \textit{Id.} at 1118.
  \item \textit{Id.} at 1119.
  \item Hafemeister, \textit{supra} note 155.
  \item What is FRAUD?, BLACK’S LAW DICTIONARY, https://thelawdictionary.org/fraud/ (last visited Nov. 1, 2021).
  \item See \textit{What You Need to Know About Romance Scams}, \textit{supra} note 123.
\end{itemize}
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voluntary wiring of the funds. That leaves elder financial exploitation statutes as the best recourse.

Today, all states have laws addressing elder financial exploitation. 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.” 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. It includes only a parent, spouse, adult child, or other relative and paid professional, such as a financial planner or paid caregiver. 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, other state statutes are unable to do so, due to the elder’s consent. 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.” 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. This is especially troubling because many elders suffer from cognitive decline, as will be discussed in Section D. A romance scam victim in Florida is thus left with no alternative remedy in a state court.

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.
172. Id.
173. Id.
174. Id.
175. See, e.g., FLA. STAT. ANN. § 825.103 (West 2014).
176. Id.
177. Heaney, supra note 1.
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.\textsuperscript{180}

Even when a case is properly prosecuted and brought to court as in \textit{Kalogiannis}, the penalties imposed prove to be an inadequate deterrent to repeat offenders.\textsuperscript{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.\textsuperscript{182} Seeing that the average loss of a romance scam victim is $6,450,\textsuperscript{183} the fine would be an average of $2,000.\textsuperscript{184} Classified as a Class 3 felony conviction, that is not a significant enough deterrent, especially because most scammers have multiple small-dollar victims.\textsuperscript{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.\textsuperscript{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.\textsuperscript{187} Changes must be adopted within state law enforcement and to state statutes to fully protect the elderly from romance scams.

\textsuperscript{180} \textit{Mo. Ann. Stat.} \textsection{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”).

\textsuperscript{181} McClurg, \textit{supra} note 9, at 1109.


\textsuperscript{183} Span, \textit{supra} note 8.

\textsuperscript{184} Helfand, \textit{supra} note 182.

\textsuperscript{185} McClurg, \textit{supra} note 9, at 1106.

\textsuperscript{186} WATE 6 Staff, \textit{supra} note 94.

\textsuperscript{187} McClurg, \textit{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

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189. *Id.*


193. *Id.*


196. *Id.*

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

substantiated abuse reports.\textsuperscript{199} Indeed, family members, hospitals, and friends were more likely than banks to report financial abuse.\textsuperscript{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.\textsuperscript{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.\textsuperscript{202} Although a great start, the Act does not mandate reporting nor employee training.\textsuperscript{203}

Further, even when a SAR is filed, only twenty-eight percent reported the activity directly to APS, law enforcement, or other authorities.\textsuperscript{204} This delay in reporting leads to a missed opportunity of notifying the appropriate authority and initiating a recapturing of the funds.\textsuperscript{205} Reporting requirements vary among states.\textsuperscript{206} Since 2016, only four states require financial institutions to produce their records proactively to the appropriate investigatory agency when they file a SAR.\textsuperscript{207} This lack of uniformity leaves many elders vulnerable to financial exploitation depending on which state they live in.\textsuperscript{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.\textsuperscript{209} The FBI and the FTC have launched major efforts to educate the public on the prevalence of romance scams.\textsuperscript{210} No matter how many PSAs the public receives on the avoidance of romance scams, however, many cases still go unreported.\textsuperscript{211} Indeed, for

\begin{footnotesize}
\begin{itemize}
\item[199.] \textit{Id.}
\item[200.] \textit{Id.}
\item[201.] 2019 \textsc{Consumer Fin. Prot. Bureau}, \textit{supra} note 18, at 13.
\item[202.] \textit{Id.}
\item[203.] \textit{Id.}
\item[204.] \textit{Id.} at 9.
\item[205.] \textit{Id.}
\item[206.] \textit{Id.} at 24 (discussing statutory differences between California and D.C.).
\item[207.] \textit{Id.} at 10 (mentioning Kentucky, Tennessee, Texas, and Utah).
\item[208.] \textit{Id.}
\item[209.] \textit{Inside the FBI, supra} note 156.
\item[210.] 2019 \textsc{Internet Crime Rep.}, \textit{supra} note 51, at 6.
\item[211.] \textsc{Suspicious Activity Reports}, \textit{supra} note 82, at 11.
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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
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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.
231. Pesce, supra note 40.
some methods to combat romance scams, 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. The IC3, however, still falls short of recovering even half of the assets remitted abroad. Partly responsible for the low recovery rate is that victims do not file a report timely enough. Also to blame, however, is that most FBI agents either do not have the specialized expertise or they would rather investigate more “interesting” cases. 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. 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. 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.
235. Id. at 15.
236. See id. at 20.
237. McClurg, supra note 9, at 1118.
238. Id.
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email and in some cases a field visit.\textsuperscript{240} One such victim specialist is Debbie Deem, who uses her training as a social worker to listen and understand the elder’s situation.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{246} Replacing the void the scammer left is essential in avoiding a relapse.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{250}

\textsuperscript{240} \textit{id. at} 207.
\textsuperscript{241} Sullivan, supra note 232.
\textsuperscript{242} \textit{id.}
\textsuperscript{243} \textit{id.}
\textsuperscript{244} \textit{id.}
\textsuperscript{245} \textit{id.}
\textsuperscript{246} \textit{id.}
\textsuperscript{247} \textit{id.}
\textsuperscript{248} 2019 Internet Crime Rep., supra note 51, at 10.
\textsuperscript{249} Hoar & Goldberg, supra note 10.
\textsuperscript{250} \textit{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{256} If the prosecutor lacks the appropriate knowledge, critical evidence might be overlooked and cases may be dismissed.\textsuperscript{257} It is vital that prosecutors be given elder financial exploitation training so that they may pursue these cases accordingly.\textsuperscript{258} Training may also include an overview on what expert testimony may be needed in the elder’s case

\textsuperscript{251} Span, \textit{supra} note 8.
\textsuperscript{252} 2019 \textsc{internet crime rep.}, \textit{supra} note 51, at 10.
\textsuperscript{253} McClurk, \textit{supra} note 9, at 1118.
\textsuperscript{254} \textsc{see}, e.g., 720 \textsc{ill. comp. stat.} 5/17-56 (2020).
\textsuperscript{255} S. \textsc{rep. no.} 114-208 (2016).
\textsuperscript{256} \textit{What are some common steps of a criminal investigation and prosecution?}, \textsc{nat’l crime victim l. inst.} (april 15, 2010), https://law.lclark.edu/live/news/5498-what-are-some-common-steps-of-a-criminal.
\textsuperscript{257} Hafemester, \textit{supra} note 155.
\textsuperscript{258} \textit{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

262. Uekert et al., supra note 160, at 5.
263. Hafemeister, supra note 155.
265. See generally id.
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.  

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

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

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. The only way the presumption may be overcome is with evidence that it was a charitable gift or loan evidenced in writing. 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.

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. 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. Next, the proposed statute acknowledges

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269. See, e.g., Shadel & Dudley, supra note 149.
270. McClurg, supra note 9, at 1099.
271. Id. at 1119.
272. Id. at 1119.
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.\textsuperscript{280} This aggregation is key in prosecuting a scammer who sporadically requests small amounts of funds or gift cards.\textsuperscript{281} Lastly, the statute accounts for the elder who actively works against the prosecution by claiming the wiring of funds was a gift.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{287}

Much of the FBI’s success in recovering assets remitted to a romance scammer has been due to timely reporting.\textsuperscript{288} While some

\begin{footnotesize}
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\item 280. Shadel & Dudley, supra note 149.
\item 282. McClurg, supra note 9, at 1120–21.
\item 283. \textit{Id.} at 1119.
\item 284. Helfand, supra note 182.
\item 285. HAFEMEISTER, supra note 155.
\item 286. McClurg, supra note 9.
\item 288. 2019 \textsc{Internet Crime Rep.}, supra note 51, at 10.
\end{footnotes}
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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

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.
297. Id. at 8.
same perpetrator scamming someone else, as it is common for one scammer to do this to multiple victims,\textsuperscript{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.\textsuperscript{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.\textsuperscript{301} The elderly are disproportionately targeted by romance scammers both in volume and average dollar loss as compared to any other age group.\textsuperscript{302} The perpetrators take advantage of the age group’s vulnerabilities and knowledge that they have the most wealth per age group.\textsuperscript{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 combating the romance scam, yet their focus on high value losses disregards most of the reports filed by elders.\textsuperscript{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.\textsuperscript{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.\textsuperscript{306}

Effective remedies for elders must be adopted across all three institutions. First, the FBI should include a victim specialist in each investigation\textsuperscript{307} and lower or make cumulative the amount of losses needed for a RAT investigation.\textsuperscript{308} Second, legislation should be amended to

\textsuperscript{301} Jackson & Hafemeister, supra note 298.
\textsuperscript{302} 2019 Internet Crime Rep., supra note 51, at 16.
\textsuperscript{303} Pesce, supra note 40.
\textsuperscript{304} 2019 Internet Crime Rep., supra note 51.
\textsuperscript{306} 2019 Consumer Fin. Prot. Bureau, supra note 18, at 9.
\textsuperscript{307} Sullivan, supra note 232.
\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{311} Adopting these solutions will provide elders with the proactive relief they need to be protected from the romance scam.

\textsuperscript{309} McClurg, supra note 9, at 1119.
\textsuperscript{310} 2019 CONSUMER FIN. PROT. BUREAU, supra note 18, at 5.
\textsuperscript{311} News Staff, supra note 22.