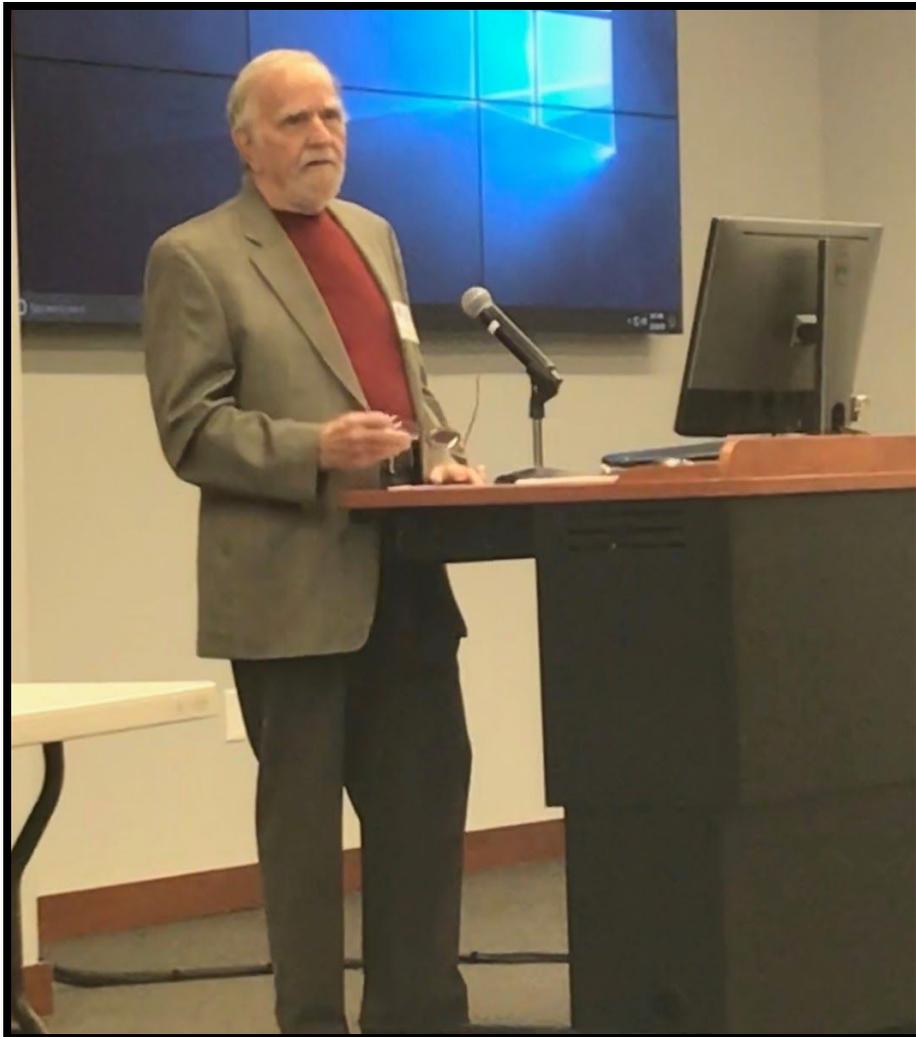


# **First Annual Texas Conference on Elder Financial Abuse and Exploitation**

January 26, 2018

Fort Worth, TX



**Sponsors:**

Fort Worth Safe Communities Coalition - Elder Abuse Task Force  
McDonald Sanders, P.C.  
Texas Silver Haired Legislature  
United Way of Tarrant County  
University of North Texas Health Science Center

**Moderators and Panelists:**

Kezeli Wold, Associate Commissioner for Adult Protective Services  
Lyn Scott, Financial Exploitation Prevention Center of Tarrant County/Guardianship Services  
Julie Krawczyk, Elder Financial Safety Center of Dallas County  
Dr. Jason Burnett, Texas Elder Abuse & Mistreatment (TEAM) Institute Houston  
John Briscoe, Bank of Texas  
Dr. Brad Cannell, University of Texas Health Science Center School of Public Health  
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Donald Kaczowski, McDonald Sanders Law Firm  
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**Table of Contents**

<b>Executive Summary</b>	<b>3</b>
Key Points	3
<b>Review of Presentations</b>	<b>5</b>
Keynote Speaker: Kezeli Wold	5
Presenter’s Background	5
Key Points	5
Summary	5
Text Box 1. Texas House Bill 3921	7
Panel on Prevention: Primary Prevention, Early Detection and Barriers to Reporting	8
Presenters’ Backgrounds	8
Key Points	8
Text Box 2. Forensic Assessment Center Network (FACN)	9
Summary	10
Text Box 3. The Senior Source	11
Text Box 4. Texas Elder Abuse and Mistreatment (TEAM) Institute	12
Panel on Protection: Services for Older Adults and Prevention of Re-Victimization	13
Presenters’ Backgrounds	13
Key Points	14
Summary	14
Text box 5. Elder abuse multidisciplinary teams (MDTs)	15
Text box 6. Elder Justice Initiative (EJI) at the US Department of Justice	16
Text Box 7. Department of Family and Protective Services - Adult Protective Services	17
Panel on Prosecution: Criminal and Civil Litigation of Perpetrators of Financial Exploitation	18
Presenters’ Backgrounds	18
Key Points	18
Summary	19
Text box 8. Fraudulent scams targeting older adults	20
Text Box 8. The Elder Financial Fraud Unit of Tarrant County	23
Text Box 9. The Elder Fraud and Crime Unit of Dallas County	23
<b>Appendix A. Texas House Bill 3921</b>	<b>28</b>

## Executive Summary

The inaugural Texas Conference on Elder Financial Abuse and Exploitation took place on January 26, 2018, in Fort Worth, Texas. Experts convened to discuss financial exploitation among older adults in the state of Texas, share knowledge about the extent of financial exploitation in Texas' older adult population, learn about programs and best practices that are currently being utilized to assist older adults, and create a formidable statewide network of professionals who seek to prevent and address elder financial exploitation. The conference featured three panels focused on the prevention, protection, and prosecution of elder financial exploitation respectively. Panelists and attendees discussed future initiatives to safeguard the physical and financial health of Texas' older adult residents.

### Key Points

1. **The financial abuse and exploitation of older adults is an important and pervasive problem in Texas;** however, its true breadth and depth remain poorly understood. Texas Adult Protective Services (APS) investigated 12,335 cases of alleged financial exploitation in 2016, but there was general agreement among all conference attendees — including APS — that this number likely represents only a fraction of all older Texans who are experiencing financial abuse and exploitation.
2. **Some specific populations of older adults remain particularly vulnerable to financial exploitation.** In particular, experts reported that older adults who experience cognitive impairments and/or social isolation, older adults living on lower incomes, rural older adults, and older Native American tribal members are at increased risk for financial exploitation. Programs and services that aim to address some, or all, of these risk factors may be an important part of a comprehensive elder financial abuse prevention strategy. Although older adults with living with the characteristics listed above may be more susceptible to abuse, it is important to remember that all older adults are at risk of becoming victims of targeted scams and exploitative family members.
3. **Experts reported that the aging process itself poses unique challenges to the identification and prosecution of elder abuse cases.** In particular, in some cases prosecutors must collect crucial victim testimony and present it to the grand jury for indictment before the onset of cognitive decline. Additionally, legal experts reported that there is a tendency by some to view older adults as less credible when they do come forward to report suspicious activities.

4. Although Adult Protective Services is the statewide authority on the investigation and resolution of the abuse, neglect and exploitation of older adults, Texas has a growing network of other organizations that aim to prevent financial abuse. Many of these organizations include multidisciplinary teams that work in conjunction with APS to provide capacity assessments and targeted interventions; research initiatives focused on the prevalence of elder financial exploitation in the state of Texas; and elder abuse-specific crime units in major district attorney's offices across the state. These organizations play a crucial role in protecting vulnerable older Texans; however, **many conference participants reported a desire for greater sharing and cooperation between their respective organizations.**
  
5. **In the State of Texas, APS generally cannot investigate alleged cases of elder financial abuse or exploitation committed by strangers and professional scammers.** According to conference experts, whether or not APS should be investigating these cases — and to what end — remains an open question.
  
6. **House Bill 3921** (HB 3921) was discussed extensively during the conference. Prominent financial organizations and the AARP championed HB 3921 as a crucial step in the right direction for the statewide protection of vulnerable older adults — a sentiment that was generally shared by conference panelists. The full text of HB 3921 is given in Appendix A. Briefly, these are some key components of that legislation:
  - a. HB 3921 adds Chapter 280 to the Texas Finance Code, which defines financial exploitation of vulnerable adults. Of note, perpetrators need not be caregivers or trusted others.
  - b. If a financial institution has cause to believe that a vulnerable account holder is experiencing financial exploitation, it is mandated to report that suspicion to APS.
  - c. If a financial institution has cause to believe that a vulnerable account holder is experiencing financial exploitation, it may place a temporary hold on suspicious transactions to allow for further investigation without fear of future legal ramifications.
  - d. Financial institutions may make third-party individuals, including trustworthy family members and guardians, aware of suspected financial exploitation.
  - e. HB 3921 does not expand APS's ability to investigate cases of financial exploitation committed by ill-intentioned strangers or acquaintances.

## Review of Presentations

### Keynote Speaker: Kezeli Wold

#### *Presenter's Background*

Kezeli (Kez) Wold is the associate commissioner of Adult Protective Services (APS) in Texas. He has worked in protective services since 1996, spending time in both Child Protective Services and Adult Protective Services. In addition, Mr. Wold previously served as a front-line supervisor, subject-matter expert in risk and self-neglect, program administrator, and regional director.



#### *Key Points*

- Financial exploitation can lead to loss of resources, inability to pay expenses, increased mental stress, and loss of independence.
- Estimates of financial loss associated with elder financial abuse range from \$2.9 billion to \$36.5 billion.
- HB 3921, passed in June 2017, amends the current law relating to the financial exploitation of certain vulnerable adults and includes financial exploitation of elders by strangers (see text box 1).
- *In order for APS to get involved in exploitation cases, those committing the exploitation must be a caretaker, family member, or another individual who has an ongoing relationship with the allegedly exploited person.*

#### *Summary*

According to Mr. Wold, the mission of APS is to protect older adults and people with disabilities from abuse, neglect, and exploitation. For APS to be involved in exploitation cases, the case must meet their definition of an illegal or improper act of a caretaker, family member, or other individual who has an ongoing relationship with an older adult or a person with a disability that involves using, or attempting to use, the resources of that person (How is financial exploitation defined?, 2012). Texas Family Code Section 261.101 requires any person with cause to believe older adult is being abused or neglected to make a report of the situation (5 Texas Family Code,

1995). Reports can be made to local or state law enforcement, the Department of Protective and Family services, or the state agency that regulates the facility where abuse or neglect occurs (5 Texas Family Code, 1995). Once a case has been brought to APS, contact to initiate the case must be made within 24 hours.

Financial exploitation can lead to a loss of resources, inability to pay expenses, increased mental stress, and loss of independence (Burnett et al., 2016; Choi, Kulick, & Mayer, 1999; Dong & Simon, 2013; MetLife mature Market Institute, 2011; Nerenberg, 2000). Therefore, it is imperative that instances of financial exploitation be promptly identified and addressed. However, Mr. Wold pointed out that one of the challenges associated with the identification of financial exploitation is understanding that older adults have autonomy in regards to how they spend their money. One must recognize the difference between someone who has diminished capacity or someone being taken advantage of, and someone who may make the decision to spend their money in a way that affects them negatively.

In the past year, APS completed 83,534 case investigations, of which 12,335 were alleged cases of financial exploitation. However, only 865 cases of financial exploitation were validated. This discrepancy is due in part to the fact that it can be hard to prove a case in court. Also, as previously mentioned, if an older adult does not view their situation as exploitation the case can be dropped.

House Bill 3921, passed in June 2017, amends the current law relating to the financial exploitation of certain vulnerable adults (Protection of Vulnerable Adults from Financial Exploitation, 2017). In particular, the bill expands the definition of financial exploitation beyond the APS definition to include exploitation by anyone, including strangers. However, HB 3921 does not expand APS's ability to investigate these cases.

Wold concluded his opening address by inviting the group to consider the following questions:

1. Who *should* investigate elder financial exploitation?
2. To what end?
3. At what cost?
4. Are there incremental steps or is this an all or nothing situation?

*Text Box 1. Texas House Bill 3921*

*Effective September 1, 2017*

HB 3921 stipulates that if an employee of a Texas financial institution has reasonable cause to believe that a vulnerable account holder is experiencing financial exploitation, the employee should report the exploitation to financial institution supervisory personnel, who in turn will conduct an assessment of account activity. If the financial institution deems that financial exploitation has likely or definitely occurred, a report should be submitted to the Department of Family and Protective Services and other appropriate agencies, including but not limited to the attorney general, the Federal Trade Commission, and law enforcement agencies (Protection of



Vulnerable Adults from Financial Exploitation, 2017). Furthermore, HB 3291 allows the financial institution to notify a third party reasonably associated with the adult of the suspected exploitation, unless the third party is suspected of committing the exploitation (Protection of Vulnerable Adults from Financial Exploitation, 2017). Financial institutions are also endowed with the ability to place temporary holds on accounts of vulnerable adults that are suspected victims of financial exploitation and the institution will receive immunity from criminal and civil liability if they place holds on accounts that are not found to be exploited or fail to place a hold on an exploited account (Protection of Vulnerable Adults from Financial Exploitation, 2017).

The bill was authored by Rep. Tan Parker, R-Flower Mound (pictured left), who also serves as the chairman of the House Investment and Financial Services Committee. The bill was signed in the House on May 25th, 2017, in the Senate on May 26th, 2017 and signed by Governor Greg Abbott on June 1st, 2017. HB 3291 was officially implemented on September 1, 2017.

Source: <https://www.texastribune.org/directory/tan-parker/>

Furthermore, AARP Texas Director Bob Jackson regards the passage of HB 3921 by the Texas Senate as an “important step to protect vulnerable adults from becoming victims of financial fraud and abuse” (Hollis, 2017). The AARP affirms that older adults are common victims of financial fraud because they have “accumulated a lifetime of assets and are often trusting and more vulnerable to such heinous activity” (Hollis, 2017). The AARP also presented Sen. Parker with a Legislative Achievement Award to commemorate his contributions to the 2017 Regular Texas Legislative Session.

## **Panel on Prevention: Primary Prevention, Early Detection and Barriers to Reporting**

*Moderator:* Lyn Scott, Financial Exploitation Prevention Center of Tarrant County/Guardianship Services

*Panelists:* Julie Krawczyk, Elder Financial Safety Center of Dallas County; Jason Burnett, Texas Elder Abuse & Mistreatment (TEAM) Institute Houston; and John Briscoe, VP & Manager Security Services, Bank of Texas

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### *Presenters' Backgrounds*

Julie Krawczyk is the Director of Senior Source, the Elder Financial Safety Center for Dallas County. Senior Source services address financial safety and security of older adults by providing prevention, prosecution, and protection services.

Jason Burnett is an assistant professor at the University of Texas McGovern Medical School in Houston, Texas. He is also the co-director of the Texas Elder Abuse and Mistreatment (TEAM) Institute. Dr. Burnett's research interests include the development of valid and reliable assessments of elder self-neglect and ways to identify intervention programs in order to reduce elder self-neglect and associated adverse health outcomes.

John Briscoe is the security manager for Bank of Texas and frequently collaborates with law enforcement agencies and Adult Protective Services.

### *Key Points*

- HB 3921 enforces the responsibility of reporting for banks. Through this bill, banks are allowed to place holds on transactions as a safety measure for clients and are able to notify the client, listed family members, and APS when necessary. This allows tellers to confirm transactions with clients before their money is lost.
- Signs of financial exploitation are often related to isolation and loneliness and manifest as the inability to afford food, medication, transportation, and housing.
- Capacity assessments are critical to the prevention to financial exploitation. The Forensic Assessment Center Network works with APS to provide capacity assessments and uses evidence-based reporting to secure appropriations from the state legislature. All but one district in Texas have submitted one or more referrals for a capacity assessments as of the time that this conference took place.

- Researching risk factors and shared characteristics of elder abuse and financial exploitation is crucial to improving primary prevention programs.
- A cohesive statewide database, whether grassroots or legislatively-driven, was proposed as a mechanism to better understand and serve the needs of Texas’ older adult community.
- Panelists suggested the need for a targeted public health campaign to increase awareness of financial exploitation. One specific example given was to provide information to older adults while receiving their annual influenza vaccine.

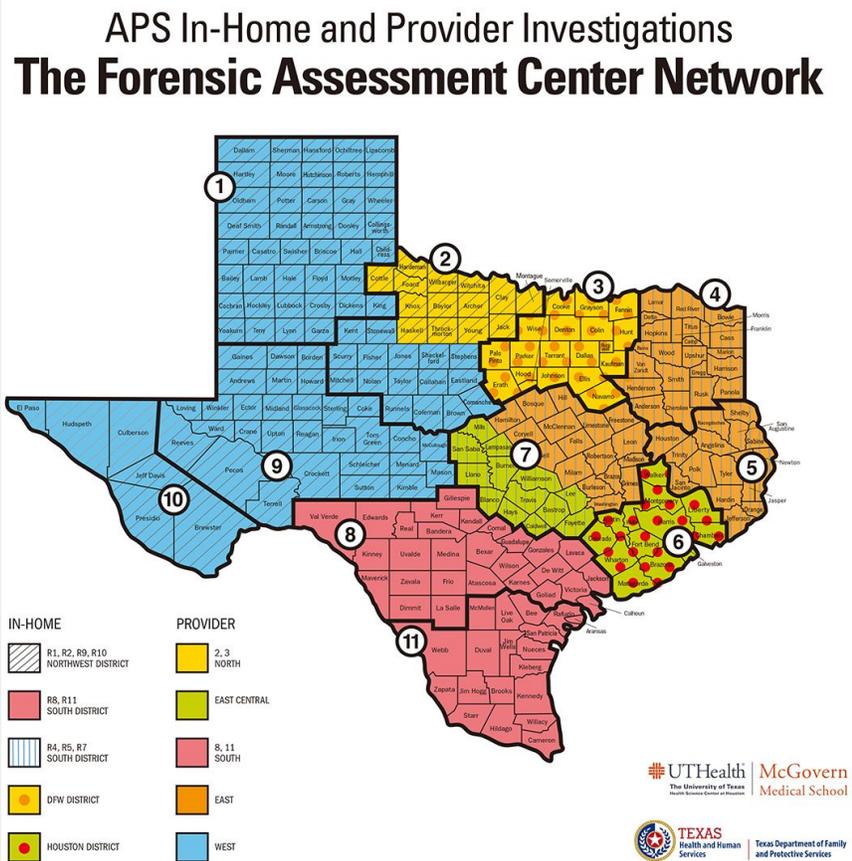
*Text Box 2. Forensic Assessment Center Network (FACN)*

Houston, Texas

Mission: To promote the health and safety of Texas’ most vulnerable children and adults by providing expert consultation for suspected victims of maltreatment and exploitation (Texas Department of Family and Protective Services, 2017).

The Texas Department of Family and Protective Services established the FACN in 2006 as a way to make pediatricians available for consultation to CPS and Child Care Licensing on suspected cases of neglect and abuse (Texas Department of Family and Protective Services, 2017). The service was expanded in 2015 to include consultations with physicians with experience in adult and geriatric medicine for suspected cases of adult maltreatment and exploitation (Texas Department of Family and Protective Services, 2017).

The FACN offers 24-hour telephone and web-based support to DFPS employees. In addition, the FACN is involved in child and adult maltreatment and exploitation education programs across the state. As of the end of fiscal year 2017, over 31,000 children and 200 adults were served by FACN providers (Texas Department of Family and Protective Services, 2017).



For further information, please contact: [FACN@uth.tmc.edu](mailto:FACN@uth.tmc.edu), 1-888-TX4-FACN, <https://www.facntx.org/Public/Default.aspx>

*Summary*

Addressing HB 3921, John Briscoe discussed the importance of the relationship that bank tellers are able to form with clients. Tellers are able to notice major account changes and whether these changes are elicited by the account holder or a caretaker. Briscoe noted that the main goal of this bill is to protect the client and their respective funds as quickly as possible. Before the bill, banks still had the duty to report concerns of elder financial abuse, but did not have the same protections and immunities that are now afforded to them. According to Briscoe, the partnership in reporting has worked well so far. Briscoe went on to report that transactions have already been held and APS was quick to respond.

Julie Krawczyk discussed the Elder Financial Safety Center, which launched in May 2014 as a constituent of The Senior Source. The Elder Financial Safety Center, in conjunction with The Senior Source and the Dallas County Probate Courts, utilizes an integrated service model and a holistic approach to help older adults live independently and alleviate poverty in the older adult population. The organization uses a three-pillar approach to prevention, including employment services, financial/income support services, and financial coaching/counseling services. This team works closely with APS and served on the work group responsible for writing HB 3921. As of December 2017, they served 19,000 clients and educated more than 26,000 community members with a goal of expanding to other counties. The Elder Financial Safety Center believes that every older adult in the nation deserves access to comparable services and would like to serve as a model that can be efficiently and economically implemented anywhere in the country. Their most successful community programs include Financial Protection and Empowerment Summits and a five-week intensive program called Money Smart for Older Adults.

*Text Box 3. The Senior Source*

Dallas, Texas



Mission: To enhance the overall quality of life and empower all older adults in greater Dallas to thrive (The Senior Source, 2018).

For over 50 years, The Senior Source has assisted greater Dallas' older adults with employment searches, long-term residential care advocacy, money management, volunteer opportunities, and aging-related counseling. As a participant agency of the United Way of Dallas, The Senior Source also features caregiver support programs, experienced geriatric care managers, guardianship services, senior companion programs, foster grandparent programs, and an active Advocacy Group for Elders (The Senior Source, 2018).

The Elder Financial Safety Center is one of The Senior Source's latest efforts to protect older adults from exploitation and maltreatment. In particular, the Elder Financial Safety Center provides education related to frauds and scams and helps older adults handle inadequate income and excessive debt. Furthermore, the center can assist with the appointment of a court-authorized guardian (The Senior Source, 2018).

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<https://theseniorsource.org/>, (214) 823-5700

Dr. Jason Burnett spoke about the TEAM Institute in Houston, TX. Established in 1995 in conjunction with Baylor College of Medicine, this organization served as a flagship for similar programs across the country. The institute began as a clinical partnership with APS and currently provides medical and capacity assessments for at-risk older adults across Texas. In addition, the institute helps APS determine the older adult's capacity to safely remain in their homes as well as coordinating needed services. The program has been able to expand throughout the state through the utilization of technology — particularly the advent of video assessments. The TEAM institute collaborated with the Texas Medical Board to change previous legislation that required a physician's referral in order to initiate a capacity assessment. The institute successfully asserted that a capacity assessment is a mental health assessment, which can be conducted independently and doesn't necessarily require a physical health background.

The institute is also involved in many research projects to help understand the risk factors and shared characteristics of elder abuse and financial exploitation, such as self-neglect, foreclosures, inability to get medications, and inability to socialize. Research carried out by the TEAM institute showed that financial exploitation had the second highest rate of mortality among all forms of elder abuse and neglect.

*Text Box 4. Texas Elder Abuse and Mistreatment (TEAM) Institute*

Houston, Texas

Mission: To improve and protect the lives of mistreated elders through clinical care and forensic assessment, education, research, and justice (Texas Department of Family and Protective Services, 2018b).

The TEAM Institute has provided clinical care and invaluable services to over 2,500 abused, neglected, and exploited older adults (Texas Department of Family and Protective Services, 2018b). These services include assistance with APS investigations, targeted geriatric assessments, medical and capacity evaluations, care plans, and court-related services (Texas Department of Family and Protective Services, 2018b). In addition, the institute works closely with the Harris County Medical Examiner's Office to investigate suspicious elder deaths and actively participates in geriatric research focused on forensic risk factors and elder abuse deaths, health care costs associated with mistreated older adults, older adult mortality, risk factors for elder mistreatment, medication adherence in the geriatric population, identification and classification of elder financial exploitation, elder abuse and self-neglect assessment tools, and elder abuse program evaluations (Texas Department of Family and Protective Services, 2018b). The TEAM Institute has provided consultation to the U.S. Department of Justice, the National Research Council, the Federal Bureau of Investigation, and the Centers for Disease Control and Prevention (Texas Department of Family and Protective Services, 2018b). Furthermore, the institute was recognized as one of the two best practices in the United States by the 2004 Senate Special Committee on Aging (Texas Department of Family and Protective Services, 2018b).

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## Panel on Protection: Services for Older Adults and Prevention of Re-Victimization

*Moderator:* Dr. Brad Cannell, University of Texas Health Science Center School of Public Health

*Panelists:* Talitha Guinn-Shaver, US Department of Justice; Camille Payne, Adult Protective Services; Honorable Judge Brooke Allen, Tarrant County Probate Court No. 2

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### *Presenters' Backgrounds*

Talitha Guinn-Shaver serves as the Elder Abuse Multidisciplinary Team (MDT) Technical Assistant for the Elder Justice Initiative (EJI) at the US Department of Justice. Her experience with MDT's includes her prior role as Director of the Elder Abuse Prevention program at the Institute on Aging, where she served as the Director of the San Francisco Elder Abuse Forensic Center and chair of the San Francisco Elder Abuse MDT. She has also participated in other MDT models, such as serving on the San Francisco Elder Death Review Team and The Hoarding and Cluttering Taskforce. She has also proudly served the National Center on Elder Abuse (NCEA) as a contractor for elder abuse special projects and has previously managed the social media efforts of the NYC Elder Abuse Center.

Camille Payne has worked for Adult Protective Services for over 18 years. Currently, Camille serves as the Director of Field Operations at State Office. She began her career with APS as an in-home caseworker in the Waco office and continued in this role for five years. She was then promoted to supervisor of the Waco office, followed by Program Administrator in Austin and District Director in DFW/Region 3.

Brooke Allen serves as Judge of Probate Court No. 2 in Tarrant County. She has presided over hundreds of cases related to estates, guardianship, and mental health. Prior to being appointed as Judge, she was voted a "Top Attorney" by *Fort Worth Magazine*, a "Texas Rising Star" in *Texas Monthly*, and named "Attorney of the Year" by the Fort Worth Paralegal Association. In addition, Judge Allen is an active speaker on guardianships and preventing fraud in the older adult population.

### *Key Points*

- Panelists reported that it is important to be aware of, and remain in close contact with, older adult family members and listen for signs of potential financial exploitation. This is

especially true when they mention new/unknown people or organizations to which they are providing money over the phone or internet.

- Older adults who live in rural areas and native American tribal elders are considered an underserved community by the Elder Justice Initiative. These older adults experience considerably less access to resources and quality health care than their urban counterparts. It can be beneficial to create financial health questionnaires for primary care physicians to issue to these individuals during routine exams.
- If older family members live in any type of assisted living facility, post pictures of their family in their living quarters. This increases the likelihood that facility staff and others will see a strong family presence in that older adult's life.
- If possible, become a joint bank account holder to help monitor your older family member's financial spending.
- Court orders for guardianships can be temporary, partial, full-time, or restricted — depending on the need of the older adult.
- Forensic accountants would be ideal collaborators on complex court cases, particularly for prosecutors.
  - EJI is currently working to put together a forensic accountant toolkit for release within the next year.

### *Summary*

Talitha Guinn-Shaver stressed the importance of MDTs as an effective way to provide resources to older adults and personnel that may interact with victims of elder abuse. One of the primary objectives of MDTs are to create case review teams. These case review teams focus on creating a coordinated response unit to assist with elder financial exploitation cases, gathering research regarding elder abuse, and providing resources to older adults and key stakeholders. These resources include educational material communicated via webinars, as well as outreach programs intended for community professionals, such as law enforcement and attorneys. As a strong advocate for MDTs, Guinn-Shaver hopes every city can create teams that foster partnerships between community resource organizations that serve older adults, attorneys, and law enforcement agencies.

*Text box 5. Elder abuse multidisciplinary teams (MDTs)*

Elder abuse MDTs consist of individuals from an array of professional backgrounds who work together to review cases of elder abuse and address systemic issues that contribute to the neglect, exploitation, and mistreatment of older adults. MDTs perform a variety of functions and reinforce the notion that clinical and social issues surrounding elder abuse typically transcend the boundaries of any single profession, organization, or discipline. For example, the team review process has been effective at enhancing service coordination, identifying service gaps, and addressing communication and coordination barriers (Teaster, Nerenberg, & Stansbury, 2003).

According to research conducted by Teaster and Nerenberg (2003), approximately 93.5% of surveyed elder abuse MDTs cite “providing expert consultation to service providers” and “identifying service gaps and systems problems” as their primary functions (Teaster et al., 2003). In addition, 90.3% of MDTs “update new members about services, programs, and legislation.” Additional functions of elder abuse MDTs include: planning and leading training events, advocating for change, coordinating investigations, care planning, developing a community response plan to elder abuse and domestic violence amongst older adults, reviewing suspicious deaths in the older adult population, and participating in the prosecution process of alleged elder abuse perpetrators (Teaster et al., 2003).

The most frequently cited members of elder abuse MDTs include: police officers and sheriffs, APS personnel, geriatric mental health professionals, prosecutors, public guardians, domestic violence advocates, clinicians, and aging-related service providers (Teaster et al., 2003).

The University of Southern California Center on Elder Mistreatment identified 302 MDTs in the United States that actively participate in cases of elder abuse, financial exploitation, and neglect (Elder Abuse Multidisciplinary Team Project, 2017).

The EJI coordinates with other professionals to identify barriers to elder justice and enable national organizations to meet service deliverable goals. Several populations have been identified as chronically underserved, such as rural elders and tribal populations. Over the next year and a half, the EJI will focus on these populations by creating a survey for practitioners who serve these underrepresented populations, as well as active community engagement. The panelists agreed that rural elder populations face significant health disparities, both in quality of health and access to necessary resources. Ms. Payne confirmed that the majority of APS caseworkers are located in urban areas, with only a handful of caseworkers covering large swaths of rural Texas.

*Text box 6. Elder Justice Initiative (EJI) at the US Department of Justice*

Mission: To combat elder abuse and financial exploitation, encourage the reporting of abuse, and educate the public to make America safer for all (United States Department of Justice, 2018).



The EJI accomplishes its mission by providing targeted training programs and resources to elder justice professionals, including law enforcement, victim advocates, prosecutors, judges, first responders, and MDTs (see text box 5 for more information on MDTs). In addition, the EJI investigates and prosecutes financial scams that specifically target older adults and assists local, state, and federal agencies in the resolution of cases that involve sub-standard or negligent long-term care providers. Furthermore, the EJI promotes foundational research in the fields of elder abuse and financial exploitation and provides crucial resources to elderly Americans and their caregivers, such as education materials and contact with investigative agencies (United States Department of Justice, 2018).

For further information, please visit: <https://www.justice.gov/elderjustice>.

According to Camille Payne, 99.9% of APS cases are reported via the 1-800 hotline number by family members, financial institutions, and friends of the older adult, with limited instances of self-reporting. Payne asserts that financial exploitation can be difficult to detect and recommends that family members and physicians regularly discuss financial health with older adults.

Payne spoke about APS' focus to prevent re-victimization through prevention techniques. As previously mentioned, family members should play an active role in preventing financial exploitation by having frank conversations with their older loved ones regarding fraud and financial decision-making. Though some may view this type of conversation as intrusive, it is imperative that older adults understand the trademarks of financial scams and ask questions when necessary. Ms. Payne further admits that this is a potentially problematic suggestion because family members are often the perpetrators of financial abuse and exploitation. Ill-intentioned family members could receive access to an older adult's financial assets under the guise of good intentions; therefore, only trustworthy family members should be responsible for financial monitoring. Ms. Payne also discussed the misuse of the power of attorney. If a family member abuses their power of attorney, APS can take steps to prevent re-victimization by providing services to protect the victim, which may include filing for an emergency order for protective services with the court. If the emergency order is awarded, APS can be referred for guardianship, which trumps a power of attorney.

*Text Box 7. Department of Family and Protective Services - Adult Protective Services*

Statewide, Texas



Mission: To protect older adults and persons with disabilities from abuse, neglect, and exploitation by investigating and providing or arranging for services, if needed, to stop or prevent further harm (Texas Department of Family and Protective Services, 2018a).

For fiscal year 2017, APS reported 8,971 cases of vulnerable adult abuse (Texas Department of Family and Protective Services, 2018a). If you suspect an adult aged 65 years and older is being abused, neglected, or exploited, please call the Texas Abuse Hotline at 1(800)-252-5400 (toll-free, 24 hours/7 days a week). Reports can also be submitted at [www.txabusehotline.org](http://www.txabusehotline.org).

Judge Brooke Allen discussed her role in a multitude of elder abuse cases. In particular, Judge Allen outlined the importance of temporary guardianships, temporary restraining orders, and court orders to safeguard victims against further exploitation. Judge Allen stressed the point that a majority of the older adults that are being exploited are not mentally incapacitated, but rather are lonely and believe that the perpetrator is acting in their best interests. Judge Allen regards guardianships as a particularly effective tool to prevent re-victimization. She asserts that there is little the probate court can do once money has been lost to fraudulent scams; therefore, she recommends that family members consider obtaining guardianship or temporary guardianship prior to the initiation of fraudulent financial transactions.

Judge Allen explained the several ways guardianships can be issued. For example, when APS issues an emergency protective order they present the victim's case to the probate court for a formal determination on guardianship. Per Texas law, if there is probable cause to believe an older adult requires guardianship, a court-appointed investigator is assigned to the case. There is also a 'suggestion of need' document that an individual can complete with information about the situation they believe an elder is experiencing and present it to the court. If a guardianship is determined necessary by a court-appointed attorney, the case can be brought forward to Judge Allen. Family members may hire a private attorney that can bring a formal case for guardianship in front of Judge Allen in the instance that the court-appointed attorney does not believe the older adult is a suitable candidate for guardianship. Guardianship is awarded if the older adult fulfills three characteristics: demonstration of mental incapacitation, available supports and services are not sufficient, and alternatives to guardianship are not feasible. Once guardianship has been awarded, the older adult becomes a ward of the state and Judge Allen can delegate guardianship responsibility to a trusted family member or organization.

## **Panel on Prosecution: Criminal and Civil Litigation of Perpetrators of Financial Exploitation**

*Moderators:* Donald Kaczkowski, McDonald Sanders Law Firm and Lorie Varnell, Tarrant County Elder Fraud Unit

*Panelists:* Jessica Lessor, Texas Attorney General's Office; Stephanie Martin, Dallas District Attorney's Office; and Jim Hobbs, Hurst Police Department

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### *Presenters' Backgrounds*

Donald Kaczkowski's law practice focuses on representing individual and business clients in areas of civil litigation and alternative dispute resolution, including general business disputes, personal injury, creditors' rights and bankruptcy, as an attorney, shareholder, and director with McDonald Sanders law firm in Fort Worth, Texas. Mr. Kaczkowski has experience representing older adult and business victims in prosecuting civil cases against perpetrators for civil theft, fraud, and embezzlement.

Lorie Varnell is the Chief of the Elder Financial Fraud Unit at the Tarrant County Criminal District Attorney's Office. After 18 years of prosecuting white collar crimes, District Attorney Sharen Wilson appointed Ms. Varnell as the first chief of the Elder Financial Fraud Unit.

Jessica Lessor is a civil lawyer for the Consumer Protection Division (CPD) under the Texas Attorney General's Office. Ms. Lessor is the managing attorney of the Dallas regional office of the CPD, which serves counties in West Texas, North Texas, and parts of East Texas. Ms. Lessor reports that the CPD actively utilizes approximately 80 state-level statutes, in addition with numerous federal statutes, to prosecute cases of financial exploitation and fraud.

Stephanie Martin is the Assistant District Attorney and Deputy Chief for the Elder Fraud and Crime Unit of Dallas County. Stephanie began working for the Dallas District Attorney's office in 2002 and returned in 2017 from private practice. As of 2016, Ms. Martin's main focus has been on elder crime; in particular, she works closely with an additional prosecutor, investigator, and financial analyst to investigate cases related to elder financial abuse and exploitation.

Detective Jim Hobbs has worked for the City of Hurst Texas Police Department for over 30 years. Since 2000, he has focused on financial crimes in the community of Hurst and actively investigates situations of alleged elder fraud.

### *Key Points*

- Older adults with diminished capacity are at the highest risk for financial exploitation.
- Although common, financial exploitation is not limited to family members or caretakers; strangers, organizations, and corporations can also target older adults.
- Older adults are specifically vulnerable to financial exploitation because they have accrued a lifetime of financial assets and possibly developed close personal relationships with their exploiters. Stephanie Martin asserts that victims of elder financial fraud are, “people who pay their taxes, who have fought in wars, grandmothers who give to their communities, and who are groundbreakers in their fields.”
- Lorie Varnell asserts that the mission of elder financial crime prosecution is to seek “justice in [the victim’s] lifetime.” Therefore, prosecutors may present cases of alleged elder financial exploitation and abuse to the grand jury before the case has been fully investigated. This technique is employed to preserve the victim’s testimony before age-related cognitive decline may deem the testimony inadmissible.
- The structure of the Texas penal code makes financial restitution to the older adult victims of financial exploitation unlikely.

### *Summary*

The primary goal of prosecutors and investigators in elder abuse-specific crime units is to hold perpetrators responsible for the intentional mistreatment and exploitation of vulnerable older adults. These professionals work diligently to bring crimes against older adults to light and ensure that perpetrators receive proper punitive measures. In addition, these professionals play a crucial role in educating the public on current fraudulent scams and connecting vulnerable older adults with appropriate resources.

Detective Jim Hobbs investigates financial crimes in the City of Hurst, TX. He receives referrals through various means, including walk-ins, financial institutions, and via APS. Detective Hobbs mentioned that perpetrators are typically family members or targeted telephone and internet scams, and that older adults with diminished mental capacity or significant social isolation are most at-risk for financial exploitation. Detective Hobbs believes that a significant number of elder abuse crimes go unreported because victims fear APS involvement, forced removal from their homes, mandated relocation to assisted living centers or nursing homes, and repercussions from family members. In addition, older adults may be unable to locate family members that have exploited them. Furthermore, Detective Hobbs reports that “sweetheart” and “travel” scams are becoming more prevalent. These types of scams occur when suspects pursue a

relationship with an older adult, exploit the older adult and then abandon the older adult with diminished financial resources. “travel” scams occur when the suspect claims to be a contractor and sells specialized products to an older adult. A recent example of a “travel” scam occurred on March of 2017 in which an 84-year-old woman was scammed by two men who claimed to be cleaning and sealing vinyl siding for her home (CBS 11 News, 2017).



*Text box 8. Fraudulent scams targeting older adults*

The National Council on Aging warns older adults to be aware of the following financial scams that intentionally target senior citizens (National Council on Aging, 2015):

1. Medicare/health insurance scams: Perpetrators may pose as Medicare representatives to solicit personal information from older adults. In addition, perpetrators may provide bogus medical services and use the older adult’s personal information to fraudulently bill Medicare.
2. Counterfeit prescription drugs: As the price of medications rises, so does the number of perpetrators attempting to sell counterfeit medications at reduced prices on the internet.
3. Funeral and cemetery scams: Perpetrators scour obituaries of recently deceased older adults and contact grieving spouses. The perpetrators convince the spouse that the deceased person owed large sums of money and that the debt must be repaid. Unfortunately, some funeral homes also take advantage of vulnerable grieving families by selling unnecessary services or goods, such as up-charged burial caskets.
4. Fraudulent anti-aging products: Counterfeit botox scams are becoming more prevalent in the United States; these scams can also pose disastrous health risks, in addition to financial loss.
5. Telemarketing/phone scams: Older adults purchase goods and services over the phone at roughly twice the rate of the general American public. Therefore, older adults need to be particularly aware of scammers that use fake telemarketing campaigns to solicit credit card information. The National Council on Aging identifies three specific telemarketing scams that target older adults:
  - a. Pigeon drop: The perpetrator tells the victim that he has found a large stash of money and is willing to split it if the victim supplies a personal “good faith” payment.
  - b. Fake accident ploy: The perpetrator calls the victim and reports that the victim’s loved one is seriously injured. The perpetrator extorts money from the victim under the guise of outstanding ambulance and hospitalization charges.
  - c. Charity scams: The perpetrator solicits money for fake charities. This type of scam spikes after natural disasters.
6. Internet fraud: Older adults should be cautious of clicking on pop-up advertisements and bogus virus-scanning applications. In addition, email/phishing attacks are frequently used by perpetrators to gain access to an older adult’s personal information.
7. Investment schemes: Fake investment schemes can run the gamut from pyramid schemes, “Nigerian princes looking for a partner to claim inheritance money,” or elaborate investment products that swindle money from the savings accounts of older adults.
8. Homeowner/reverse mortgage scams: Perpetrators utilize personal letters to offer homeowners the chance to reduce their property taxes, as long as the homeowner pays an upfront fee.
9. Sweepstakes and lottery scams: Perpetrators notify a victim that he or she has won a prize, such as a vacation, a new car, or a large sum of money. The perpetrator sends the victim a false check the will subsequently bounce within the next few days; however, the perpetrator requests multiple payments from the victim to cover taxes and fees associated with the bogus prize.
10. Grandparent scam: Perpetrators pose as the older adult’s grandchild and request money to pay for unexpected expenses, such as a car accident or overdue rent. The perpetrator instructs the older adult to wire money and keep the transaction a secret.

For more information on current financial scams, please visit:

<https://www.ncoa.org/economic-security/money-management/scams-security/top-10-scams-targeting-seniors/>

Detective Hobbs reports significant barriers to the investigation of elder financial exploitation crimes. For example, issues pertaining to jurisdiction frequently arise when perpetrators target multiple victims across county and state lines. Furthermore, Detective Hobbs contends that obtaining necessary documentation from financial institutions, such as account activity and fraud reports, can delay investigations and also credits the rapid emergence of new targeted scams as a challenge. Additionally, victims that exhibit diminished capacity can present unique challenges for the police department, including issues of trust. In order to overcome these barriers, a partnership with My Health My Resources of Tarrant County (MHMR) was formed. MHMR professionals are experts in the field of mental health and can provide crucial assistance to fraud investigations. Furthermore, law enforcement personnel in Hurst PD are required to attend three-days of mental health training so that they can effectively assess mental capacity and cognitive function in elderly victims.

Detective Hobbs credits the formation of specialized financial crime units and elder abuse units at local district attorney's offices as a significant milestone in the identification and prosecution of elder financial crimes. In 2014, the Dallas District Attorney's office received a grant that allowed the Department of Elder Financial Abuse and Exploitation to expand from one prosecutor and one investigator to a team of prosecutors. Prior to the grant, current prosecutor Stephanie Martin and her team spent considerable time and resources advocating for funds to continue their department's work. The unit receives cases directly from APS, Dallas County probate courts, organizations such as The Senior Source, and walk-ins from older adult victims. Ms. Martin reports that the unit is currently investigating approximately 150 cases of elder financial exploitation in Dallas County.

Ms. Martin provided considerable information on her team's decision-making process as they prepare for prosecution. The first step is to determine the victim's age and mental status. This information provides the team with a prosecution time frame, as based on two categories: capacity at the time of the offense and a decrease in capacity over time. For example, if the court receives a case from a person aged 90 years or older, the team works quickly to compile testimony in an effort to avoid a decline in the victim's cognitive function. Cases that involve victims with full mental capacity at the time of the offense also proceed quickly in order to avoid age-related cognitive decline. In contrast, Ms. Martin reports that cases where the victim exhibited full mental capacity at the time of the offense, yet incurred cognitive decline between the offense and the time of reporting, are quite difficult to prosecute. For this reason, the team attempts to obtain a deposition as quickly as possible in all instances of elder fraud in order to preserve the testimony.

Ms. Martin discussed the importance of creatively utilizing available statutes to support indictments. All panelists agreed that Texas has a high number of exploitation and fraud statutes,

especially compared to other states, that can be used in cases of elder financial abuse. Ms. Martin also suggested that this increased number of statutes is an advantage for prosecutors — as they can be used and applied against perpetrators, such as the misapplication of fiduciary property, which has been in effect for the past 40 years (Tex. Penal Code, Sec. 32.45). An offense under Sec. 32.45 ranges from a Class C misdemeanor to a felony of the first degree depending on the value of the property; however, the offense is escalated to the next highest category if the offense was committed against an older adult. Another example of a criminal statute is financial exploitation of older adults, which has been in effect since 2011 (Tex. Penal Code, Sec. 32.53). Lastly, Ms. Martin drafted legislation in 2011 that would extend the statute of limitations for exploitation cases from three years to seven years — the same amount of time that is given for fraud cases.

Ms. Varnell agreed with Ms. Martin that it is crucial for the victim's case to quickly reach a grand jury in order to preserve the victim's testimony. One of the barriers that Ms. Martin and Ms. Varnell face is entering a deposition without all of the evidence. Ms. Lessor also agreed that time is of the essence when older adults are the victims of fraud. As an attorney for the Consumer Protection Division (CPD) of the Texas Attorney General's office, Ms. Lessor files lawsuits on behalf of the state of Texas, rather than for individual victims. The CPD does not specifically investigate cases of elder financial abuse, but Ms. Lessor reports that the majority of frauds and scams are perpetrated against low-income, immigrant, or financially-distressed individuals. Unfortunately, many older adults tend to fall into at least one of these categories; thus, older Texans constitute a significant share of the CPD's active caseload.

To establish patterns of victimization and bring an elder victim's testimony to the grand jury in a timely manner, Ms. Lessor creates a format of questions to ask the victim, such as, "Is this how you did it everytime?", "Was this your response every time?". On the other hand, Ms. Lessor, who files lawsuits for violations under the Texas Deceptive Trade Practices-Consumer Protection Act (DTPA), does not have a statute of limitations and the barriers that she encounters include cases running stale. The main purpose of DTPA is to protect consumers against false, misleading, and deceptive business practices, unconscionable actions, and breaches of warranty (Business and Commerce Code, Sec. 17.44). Additionally, Ms. Lessor also mentioned that older adults who have been exploited are ashamed to discuss how they have been victimized. She recommended that organizations who work with older adults should clearly communicate that victims have no reason to feel ashamed for their exploitation.

Despite the diligent efforts of investigative units and specialized prosecutors across the state of Texas, many victims of elder financial exploitation do not receive the justice they deserve. Ms. Martin mentioned that prosecution is not always easy because the Penal Code favors the perpetrator and not the victim. For example, if a perpetrator is sentenced to serve time, the victim

is unlikely to receive financial restitution. In contrast, the prosecutors featured on the panel agreed that they are more likely to forgo time served if the perpetrator insists that he or she is able to provide financial restitution to the victim. However, this tactic is not without problems: the panelists mentioned a case in which a defendant exploited an older adult for \$100,000, but only paid \$120 in restitution over the course of a ten-year period. Ideally, Ms. Varnell would like to see the perpetrators serve time; however, she is also concerned about getting money back to the victim as quickly as possible.

*Text Box 8. The Elder Financial Fraud Unit of Tarrant County*

Fort Worth, Texas

Mission: To serve as a community resource by addressing the special needs of elderly victims through a mission of prosecution, education, and deterrence (Tarrant County, TX, 2018).

The Elder Financial Fraud Unit of Tarrant County was created in May 2017 by Tarrant County District Attorney Sharon Wilson. The unit is composed of two prosecuting attorneys and two criminal investigators, with Lori Varnell serving as Chief Attorney of the unit. From May to December 2017, the unit investigated 120 cases, secured 50 indictments and recovered \$260,000 in lost funds for elderly victims (Tarrant County, TX, 2018).

In addition to prosecution, the unit also practices active community outreach by educating financial institutions on how to protect the financial assets of elderly customers, training police and public safety personnel on issues involving older adults, and working with community services to care for the county's seniors. Lori Varnell was also instrumental in establishing the Financial Exploitation Prevention Center of Tarrant County (Tarrant County, TX, 2018).

For further information, please contact:

Elder Fraud Financial Unit

<http://cda.tarrantcounty.com>, (817) 884-1400

*Text Box 9. The Elder Fraud and Crime Unit of Dallas County*

Dallas, Texas

Mission: To see justice is done by protecting the innocent in our county without respect to race, gender, religion, sexual orientation, or socio-economic status (Dallas County District Attorney, 2018).

The Elder Fraud and Crime Unit falls under the Specialized Crime Unit of Dallas County. In 2007, a high profile case triggered the need for a designated Elder Abuse Prosecutor; Donna Strittmatter was appointed to the role. Between 2008-2010, Ms. Strittmatter, along with Ms. Martin, advocated for the creation of a specialized Elder Abuse Unit. In 2014, the Elder Abuse Unit was expanded to include two prosecutors, one investigator, and one financial analyst, all of whom are certified fraud examiners (Dallas County District Attorney, 2018).

The Elder Abuse Unit handles cases related to abuse for older adults who are 65 and older and adults living with disabilities.

For further information, please contact:

Specialized Crime Unit

[https://www.dallascounty.org/department/da/specialized\\_crime.php](https://www.dallascounty.org/department/da/specialized_crime.php), (214) 653-5774

### **Future Directions in the Field of Elder Financial Abuse and Exploitation**

The inaugural Elder Financial Exploitation Abuse Conference highlighted several areas for future focus, including:

1. The consolidation of elder financial abuse data across organizations and government agencies is of paramount importance. This initiative will help to elicit the prevalence and economic burden of financial exploitation.
2. The Elder Financial Fraud Unit of Tarrant County and Elder Fraud and Crime Unit of Dallas County illustrate the potential impact of specialized prosecutors on the identification and prosecution of elder financial abuse crimes. How can we encourage the adoption of similar units within district attorney's offices across the state?
3. Research indicates that rural elders and Native American tribal elders are significantly underserved. Financial exploitation outreach programs should be designed and implemented in these communities across the state.
4. People and organizations who work with elder neglect and financial abuse hope to meet regularly to share best practices in a similar conference forum, create a work group for updating legislation, and expand outreach and interactions beyond a few large cities/counties.

5. HB 3921 was instrumental in updating the definition of elder financial exploitation to include unrelated entities and targeting scams. However, APS cannot investigate cases of exploitation committed by strangers or outside organizations. How can we ensure that these victims do not fall through the cracks and that they receive necessary resources to prevent re-victimization?

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## Appendix A. Texas House Bill 3921

H.B. No. 3921

### AN ACT

relating to the financial exploitation of certain vulnerable adults.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

**SECTION 1. Subtitle Z, Title 3, Finance Code, is amended by adding Chapter 280 to read as follows:**

### **CHAPTER 280. PROTECTION OF VULNERABLE ADULTS FROM FINANCIAL EXPLOITATION**

#### **Sec. 280.001. DEFINITIONS.**

In this chapter:

- (1) "Department" means the Department of Family and Protective Services.
- (2) "Exploitation" means the act of forcing, compelling, or exerting undue influence over a person causing the person to act in a way that is inconsistent with the person's relevant past behavior or causing the person to perform services for the benefit of another person.
- (3) "Financial exploitation" means:
  - (A) the wrongful or unauthorized taking, withholding, appropriation, or use of the money, assets, or other property or the identifying information of a person; or
  - (B) an act or omission by a person, including through the use of a power of attorney on behalf of, or as the conservator or guardian of, another person, to:
    - (i) obtain control, through deception, intimidation, fraud, or undue influence, over the other person's money, assets, or other property to deprive the other person of the ownership, use, benefit, or possession of the property; or
    - (ii) convert the money, assets, or other property of the other person to deprive the other person of the ownership, use, benefit, or possession of the property.
- (4) "Financial institution" has the meaning assigned by Section 277.001.
- (5) "Vulnerable adult" means:
  - (A) an elderly person as that term is defined by Section 48.002, Human Resources Code;
  - (B) a person with a disability as that term is defined by Section 48.002, Human Resources Code;or

(C) an individual receiving services as that term is defined by rule by the executive commissioner of the Health and Human Services Commission as authorized by Section 48.251(b), Human Resources Code.

**Sec. 280.002. REPORTING SUSPECTED FINANCIAL EXPLOITATION OF VULNERABLE ADULTS.**

(a) If an employee of a financial institution has cause to believe that financial exploitation of a vulnerable adult who is an account holder with the financial institution has occurred, is occurring, or has been attempted, the employee shall notify the financial institution of the suspected financial exploitation.

(b) If a financial institution is notified of suspected financial exploitation under Subsection (a) or otherwise has cause to believe that financial exploitation of a vulnerable adult who is an account holder with the financial institution has occurred, is occurring, or has been attempted, the financial institution shall assess the suspected financial exploitation and submit a report to the department in the same manner as and containing the same information required to be included in a report under Section 48.051, Human Resources Code. The financial institution shall submit the report required by this subsection not later than the earlier of:

- (1) the date the financial institution completes the financial institution's assessment of the suspected financial exploitation; or
- (2) the fifth business day after the date the financial institution is notified of the suspected financial exploitation under Subsection (a) or otherwise has cause to believe that the suspected financial exploitation has occurred, is occurring, or has been attempted.

(c) A financial institution that submits a report to the department of suspected financial exploitation of a vulnerable adult under Subsection (b) is not required to make an additional report of suspected abuse, neglect, or exploitation under Section 48.051, Human Resources Code, for the same conduct constituting the reported suspected financial exploitation.

(d) Each financial institution shall adopt internal policies, programs, plans, or procedures for:

- (1) the employees of the financial institution to make the notification required under Subsection (a); and
- (2) the financial institution to conduct the assessment and submit the report required under Subsection (b).

(e) The policies, programs, plans, or procedures adopted under Subsection (d) may authorize the financial institution to report the suspected financial exploitation to other appropriate agencies and entities in addition to the department, including the attorney general, the Federal Trade Commission, and the appropriate law enforcement agency.

**Sec. 280.003. NOTIFYING THIRD PARTIES OF SUSPECTED FINANCIAL EXPLOITATION OF VULNERABLE ADULTS.**

If a financial institution submits a report of suspected financial exploitation of a vulnerable adult to the department under Section 280.002(b), the financial institution may at the time the financial institution submits the report also notify a third party reasonably associated with the vulnerable adult of the suspected financial exploitation, unless the financial institution suspects the third party of financial exploitation of the vulnerable adult.

**Sec. 280.004. TEMPORARY HOLD ON TRANSACTIONS IN CERTAIN CASES OF SUSPECTED FINANCIAL EXPLOITATION OF VULNERABLE ADULTS.**

(a) Notwithstanding any other law, if a financial institution submits a report of suspected financial exploitation of a vulnerable adult to the department under Section 280.002(b), the financial institution:

(1) may place a hold on any transaction that:

(A) involves an account of the vulnerable adult; and

(B) the financial institution has cause to believe is related to the suspected financial exploitation; and

(2) must place a hold on any transaction involving an account of the vulnerable adult if the hold is requested by the department or a law enforcement agency.

(b) Subject to Subsection (c), a hold placed on any transaction under Subsection (a) expires on the 10<sup>th</sup> business day after the date the financial institution submits the report under Section 280.002(b).

(c) The financial institution may extend a hold placed on any transaction under Subsection (a) for a period not to exceed 30 business days after the expiration of the period prescribed by Subsection (b) if requested by a state or federal agency or a law enforcement agency investigating the suspected financial exploitation. The financial institution may also petition a court to extend a hold placed on any transaction under Subsection (a) beyond the period prescribed by Subsection (b). A court may enter an order extending or shortening a hold or providing other relief.

(d) Each financial institution shall adopt internal policies, programs, plans, or procedures for placing a hold on a transaction involving an account of a vulnerable adult under this section.

**Sec. 280.005. IMMUNITY.**

(a) An employee of a financial institution who makes a notification under Section 280.002(a), a financial institution that submits a report under Section 280.002(b) or makes a notification to a third party under Section 280.003, or an employee who or financial institution that testifies or otherwise participates in a judicial proceeding arising from a notification or report is immune from any civil or criminal liability arising from the notification, report, testimony, or participation in the judicial proceeding, unless the employee or financial institution acted in bad faith or with a malicious purpose.

(b) A financial institution that in good faith and with the exercise of reasonable care places or does not place a hold on any transaction under Section 280.004(a)(1) is immune from any civil or criminal liability or disciplinary action resulting from that action or failure to act.

**Sec. 280.006. RECORDS.**

To the extent permitted by state or federal law, a financial institution shall provide, on request, access to or copies of records relevant to the suspected financial exploitation of a vulnerable adult to the department, a law enforcement agency, or a prosecuting attorney's office, either as part of a report to the department, law enforcement agency, or prosecuting attorney's office or at the request of the department, law enforcement agency, or prosecuting attorney's office in accordance with an investigation.

**SECTION 2. The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes) is amended by adding Section 45 to read as follows:**

**Sec. 45. PROTECTION OF VULNERABLE ADULTS FROM FINANCIAL EXPLOITATION.**

A. In this section:

- (1) "Department" means the Department of Family and Protective Services.
- (2) "Exploitation," "financial exploitation," and "vulnerable adult" have the meanings assigned by Section 280.001, Finance Code.
- (3) "Securities professional" means an agent, an investment adviser representative, or a person who serves in a supervisory or compliance capacity for a dealer or investment adviser.

B. If a securities professional or a person serving in a legal capacity for a dealer or investment adviser has cause to believe that financial exploitation of a vulnerable adult who is an account holder with the dealer or investment adviser has occurred, is occurring, or has been attempted, the securities professional or person serving in a legal capacity for the dealer or investment adviser shall notify the dealer or investment adviser of the suspected financial exploitation.

C. If a dealer or investment adviser is notified of suspected financial exploitation under Subsection B of this section or otherwise has cause to believe that financial exploitation of a vulnerable adult who is an account holder with the dealer or investment adviser has occurred, is occurring, or has been attempted, the dealer or investment adviser shall assess the suspected financial exploitation and submit a report to the Securities Commissioner, in accordance with rules adopted under Subsection N of this section, and the department in the same manner as and containing the same information required to be included in a report under Section 48.051, Human Resources Code. The dealer or investment adviser shall submit the reports required by this subsection not later than the earlier of:

- (1) the date the dealer or investment adviser completes the dealer's or investment adviser's assessment of the suspected financial exploitation; or
- (2) the fifth business day after the date the dealer or investment adviser is notified of the suspected financial exploitation under Subsection B of this section or otherwise has cause to believe that the suspected financial exploitation has occurred, is occurring, or has been attempted.

D. A dealer or investment adviser who submits a report to the department of suspected financial exploitation of a vulnerable adult under Subsection C of this section is not required to make an additional

report of suspected abuse, neglect, or exploitation under Section 48.051, Human Resources Code, for the same conduct constituting the reported suspected financial exploitation.

E. Each dealer and investment adviser shall adopt internal policies, programs, plans, or procedures for the securities professionals or persons serving in a legal capacity for the dealer or investment adviser to make the notification required under Subsection B of this section and for the dealer or investment adviser to conduct the assessment and submit the reports required under Subsection C of this section. The policies, programs, plans, or procedures adopted under this subsection may authorize the dealer or investment adviser to report the suspected financial exploitation to other appropriate agencies and entities in addition to the Securities Commissioner and the department, including the attorney general, the Federal Trade Commission, and the appropriate law enforcement agency.

F. If a dealer or investment adviser submits reports of suspected financial exploitation of a vulnerable adult to the Securities Commissioner and the department under Subsection C of this section, the dealer or investment adviser may at the time the dealer or investment adviser submits the reports also notify a third party reasonably associated with the vulnerable adult of the suspected financial exploitation, unless the dealer or investment adviser suspects the third party of financial exploitation of the vulnerable adult.

G. Notwithstanding any other law, if a dealer or investment adviser submits reports of suspected financial exploitation of a vulnerable adult to the Securities Commissioner and the department under Subsection C of this section, the dealer or investment adviser:

(1) may place a hold on any transaction that:

(A) involves an account of the vulnerable adult; and

(B) the dealer or investment adviser has cause to believe is related to the suspected financial exploitation; and

(2) must place a hold on any transaction involving an account of the vulnerable adult if the hold is requested by the Securities Commissioner, the department, or a law enforcement agency.

H. Subject to Subsection I of this section, a hold placed on any transaction under Subsection G of this section expires on the 10th business day after the date the dealer or investment adviser submits the reports under Subsection C of this section.

I. A dealer or investment adviser may extend a hold placed on any transaction under Subsection G of this section for a period not to exceed 30 business days after the expiration of the period prescribed by Subsection H of this section if requested by a state or federal agency or a law enforcement agency investigating the suspected financial exploitation. The dealer or investment adviser may also petition a court to extend a hold placed on any transaction under Subsection G of this section beyond the period prescribed by Subsection H of this section. A court may enter an order extending or shortening a hold or providing other relief.

J. Each dealer and investment adviser shall adopt internal policies, programs, plans, or procedures for placing a hold on a transaction involving an account of a vulnerable adult under Subsection G of this section.

K. A securities professional or person serving in a legal capacity for a dealer or investment adviser who makes a notification under Subsection B of this section, a dealer or investment adviser that submits a report under Subsection C of this section or makes a notification to a third party under Subsection F of this section, or a securities professional or person serving in a legal capacity who or dealer or investment adviser that testifies or otherwise participates in a judicial proceeding arising from a notification or report is immune from any civil or criminal liability arising from the notification, report, testimony, or participation in the judicial proceeding, unless the securities professional, person serving in a legal capacity for the dealer or investment adviser, or dealer or investment adviser acted in bad faith or with a malicious purpose.

L. A dealer or investment adviser that in good faith and with the exercise of reasonable care places or does not place a hold on any transaction under Subsection G(1) of this section is immune from civil or criminal liability or disciplinary action resulting from the action or failure to act.

M. To the extent permitted by state or federal law, a dealer or investment adviser, on request, shall provide access to or copies of records relevant to the suspected financial exploitation of a vulnerable adult to the Securities Commissioner, the department, a law enforcement agency, or a prosecuting attorney's office, either as part of a report to the Securities Commissioner, department, law enforcement agency, or prosecuting attorney's office or at the request of the Securities Commissioner, department, law enforcement agency, or prosecuting attorney's office in accordance with an investigation.

N. The Board by rule shall prescribe the form and content of the report required to be submitted by a dealer or investment adviser to the Securities Commissioner under Subsection C of this section.

**SECTION 3. This Act takes effect September 1, 2017.**

I certify that H.B. No. 3921 was passed by the House on May 4, 2017, by the following vote: Yeas 128, Nays 10, 2 present, not voting.

I certify that H.B. No. 3921 was passed by the Senate on May 22, 2017, by the following vote: Yeas 28, Nays 2.