

## *State examines ways to curb financial exploitation of older Texans*

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With the number of older Texans expected to increase substantially over the next few decades, state lawmakers during the 85th legislative session may consider further ways to prevent the financial exploitation of seniors. Financial exploitation, broadly defined, is the illegal or improper use of a person's resources for monetary or personal benefit, profit, or gain, either by strangers or someone known to the victim.

The Office of the State Demographer [projects](#) that the number of Texans older than 65 will more than double from 2010 to 2030. The "baby boom" of the mid-20th century is generally considered to be a significant factor in the nationwide growth in the senior citizen population. Growth in this population could lead to an increase in elder financial exploitation and further strain the social service and criminal justice systems that protect the elderly, according to the U.S. Government Accountability Office (GAO). This report reviews current law and policy approaches aimed at preventing financial exploitation of the elderly in Texas and other states and describes approaches the Legislature may consider to help curb it.

Addressing the problem of exploitation of the elderly can present obstacles. Financial exploitation is generally believed to be underreported. Commonly cited reasons victims fail to report exploitation include embarrassment and, according to the State Securities Board, the fear of being judged incapable of handling one's own affairs. Some victims choose not to seek criminal penalties or civil remedies, particularly when the alleged exploiter is a family member. In addition, some of those perpetrating consumer scams may be difficult to identify or be outside the country. Some elderly victims or witnesses may lack capacity to testify or may not outlive the prosecution process.

*This report examines current Texas law and policies to help prevent financial exploitation of the elderly and a few issues the Legislature may consider.*

Elder financial exploitation is addressed primarily at the state level, although some federal laws play a role. For example, the Older

Americans Act of 1965 established services and programs to support aging adults, including efforts to prevent financial exploitation. It was reauthorized in April through [S. 192](#) by Alexander (R-TN). However, with primary responsibility for addressing the problem falling on the states, several have tried to curtail the financial exploitation of elderly residents with changes to protective services, consumer protections, guardian requirements, and criminal and civil remedies.

Committees in the Texas House and Texas Senate are charged this interim with examining financial exploitation of the elderly. Issues the Legislature may consider in 2017 include the authority of Texas' Adult Protective Services (APS) to investigate certain types of exploitation and the mechanisms available to financial institutions and securities broker-dealers to prevent exploitation of elderly clients.

## Protective services

One way states address potential exploitation is by investigating it and providing protective services to victims. According to Texas APS, agency investigations in fiscal 2015 found that 759 Texans who were 65 or older and residing at home were victims of financial exploitation by someone with whom the victim had an ongoing

relationship. Examples of the types of financial exploitation investigated by APS include a caregiver taking an older adult's Social Security checks or misusing a joint checking account. Financial exploitation sometimes is found to occur in conjunction with other forms of neglect or abuse.

In Texas, the state administers adult protective services, while in other states, such as California, counties administer them. Some states provide services to adults of a certain age and others only to adults with limited physical or mental capacity, regardless of age. Texas serves adults 18 or older who have disabilities and any individual 65 or older, regardless of physical or mental capacity.

**Current Texas law and practices.** APS, which is under the Department of Family and Protective Services (DFPS), is the Texas agency charged with protecting seniors and those with disabilities from abuse, neglect, and financial exploitation. Texas APS investigates only cases in which the victim has an ongoing relationship with the alleged perpetrator. The agency does not have the statutory authority to investigate and provide protective services to those who have lost money to consumer scams or other types of exploitation committed by people who are strangers to the victims. In those cases, law enforcement or other state agencies, such as the State Securities Board and the Office of the Attorney General, may become involved.

## Defining financial exploitation for protective services

Investigations by Texas APS of suspected financial exploitation are guided by a definition adopted in rule under 40 TAC, part 19, [sec. 705.1011](#), which is similar to the definition of exploitation in statute under Human Resources Code, ch. 48. The definition of exploitation, both in rule and in statute, has three key elements that determine whether APS investigates suspected cases of the illegal or improper use, or attempted use, of an alleged victim's resources:

- the perpetrator must have an ongoing relationship with the victim;
- the perpetrator must have benefited or profited from the exploitation; and
- the exploitation must have been done without the informed consent of the victim.

According to the rule, there is no informed consent when it is not voluntary, it is induced by deception or coercion, or it is given by an alleged victim who the actor knows is unable to make informed and rational decisions because of diminished capacity or mental disease or defect.

One issue raised at recent Senate and House committee hearings is the narrow scope of APS authority over cases of suspected exploitation. Possible changes the 85th Legislature might consider in 2017 include expanding the current definition of financial exploitation used by APS. Proposals could include those that would allow APS to open cases where the alleged perpetrator and victim do not have an ongoing relationship or where a victim was deprived of assets, rather than where a perpetrator benefited.

APS investigations of the reported abuse, neglect, and exploitation of the elderly are governed primarily by Human Resources Code, [ch. 48](#). APS investigates cases involving adults living at home and those under the care of certain providers. Exploitation is defined under ch. 48, but APS uses a definition in [rule](#) to guide its investigations. Under the current definition, certain criteria must be met for APS to investigate (see *Defining exploitation*, [page 2](#)).

**Reporting.** Under Texas law, a person is required to report known cases of elder abuse and exploitation to DFPS. This is commonly referred to as the mandatory reporting law. Under Human Resources Code, [sec. 48.052](#), it is a class A misdemeanor offense (up to one year in jail and/or a maximum fine of \$4,000) for someone who has cause to believe that a person who is elderly or disabled has been or is being abused, neglected, or exploited to knowingly fail to report it. [Sec. 48.054](#) provides immunity from liability to a person filing a report unless the person acted in bad faith or with a malicious purpose.

Almost all states require certain groups to report suspected elder abuse. In Texas, while the mandatory reporting law applies to anyone who believes an older adult is being abused, neglected, or exploited, the duty applies without exception to certain people during the scope of their employment or whose professional communications are generally confidential, including attorneys, clergy members, medical practitioners, social workers, mental health professionals, and boards that license or certify a professional. One proposed change the Legislature may review would be listing financial institutions as mandatory reporters with immunity from liability.

**APS investigations.** When APS assesses allegations of financial exploitation, it interviews victims, alleged perpetrators, family members, and sometimes others, such as neighbors. It also may obtain financial records, consult with risk and exploitation subject-matter experts, and collaborate with entities such as law enforcement, financial institutions, and other government agencies. Specialists with APS may provide certain short-term interventions, including educating victims and their families, working with financial institutions to protect victims' funds, and arranging for money management services.

The agency also may refer certain victims for guardianship to protect their assets. Under Human Resources Code, [sec. 48.209](#), DFPS must refer elderly individuals to the Department of Aging and Disability

Services (DADS) for guardianship if they have been found to be in a state of abuse, neglect, or financial exploitation and if DFPS has reason to believe they are incapacitated.

The information on investigations that APS may share with other entities is limited. A person determined by the agency's investigation to have committed financial exploitation must receive a due process hearing before the agency shares information about the individual or the case with financial institutions, employers, or others. In its 2013 self-evaluation [report](#) to the Sunset Advisory Commission, DFPS identified the agency's difficulty in providing timely due process for child and adult protective services cases as an obstacle to its ability to achieve its objectives.

A bill enacted by the 82nd Legislature in 2011, [SB 221](#) by Nelson, revised laws governing APS investigations.

## Examples of financial exploitation

Financial exploitation of the elderly — the illegal or improper use of a senior's funds or resources — can take different forms. A perpetrator may be a stranger to the victim or someone in a position of trust, such as a victim's caretaker or family member. Types and examples of financial exploitation include the following:

- theft of an older person's resources, such as cash or checks;
- investment/securities schemes;
- lottery and sweepstakes scams;
- identity theft;
- improper use of conservatorship, guardianship, or power of attorney;
- coercing a senior to sign a document, such as a power of attorney or will;
- telemarketing fraud;
- internet phishing schemes;
- home repair scams; and
- the "grandparent scam," in which a caller pretending to be a grandchild might claim to have an urgent need for money and ask for it to be wired.

Information about these and other common types of elder financial exploitation can be found on the websites of DFPS, the State Securities Board, the Texas Office of the Attorney General, and the Federal Bureau of Investigation.

It amended the statutory definition of exploitation to add that the act may involve “attempting to use” as well as using the resources of a person who is elderly or disabled without consent. It allowed the health and human services commissioner to adopt alternative definitions of abuse, neglect, and exploitation in rule for the purpose of investigations. The bill also specified that DFPS or another state agency must have access to financial records necessary to perform its duties and that the department is exempt from paying a fee for a financial record from a person, agency, or institution.

**Outreach.** APS also carries out educational campaigns to increase awareness about exploitation of the elderly. It conducts a campaign each October on recognizing and preventing financial exploitation and runs an elder abuse awareness campaign each May.

**Other states.** State adult protective services agencies vary in the scope of their authority to investigate suspected financial exploitation, and states have established different ages at which a person is considered by law to be elderly.

Whereas Texas APS intervenes only when an alleged perpetrator has an ongoing relationship with a victim, agencies in some states may review cases in which the victim does not know the alleged perpetrator. For example, Missouri’s Department of Health and Senior Services investigates incidents regardless of the relationship between a victim and alleged perpetrator but refers certain consumer scams to the state attorney general’s office.

While Texas APS serves both those who are at least 65 years old and adults with disabilities, some states serve only adults who lack certain physical or mental capacity, regardless of age. Florida Adult Protective Services serves only vulnerable adults 18 and older, and age alone is not considered a vulnerability. About one-third of states require alleged victims older than 60 to meet the state’s definition of “vulnerable” for adult protective services to open a case, according to a study by the National Adult Protective Services Association and the National Association of States United for Aging and Disabilities.

The age at which a person is considered to be a senior citizen also varies. In Rhode Island, anyone 60 or older qualifies for protective services under the Division of Elderly Affairs, and in Colorado mandatory reporting of suspected abuse or exploitation applies to potential victims 70 or older.

## Consumer protection

States also act to provide protections for older adults in their role as consumers. Forms of exploitation that target elderly consumers may include deceptive practices such as lottery or sweepstakes scams or fraudulent investment schemes.

The Texas State Securities Board has cited several reasons the elderly often are targets of abusive practices by investment con artists and disreputable stockbrokers or financial planners. For example, seniors may have significant assets from a lifetime of working and saving. Some may worry whether their money will last through retirement and be vulnerable to scams promising high-return, low-risk investments. Some older adults also may face declining cognitive ability with age. The House Committee on Investments and Financial Services and the Senate Committee on Business and Commerce are charged this interim with studying the financial exploitation and abuse of aging Texans to determine what changes should be made to strengthen protections for this population.

**Current Texas law and practices.** State law protects elderly consumers by providing a means for reporting suspected exploitation and by enforcing consumer protection laws. In addition, financial institutions train employees to identify potential exploitation, and some agencies provide information and education to seniors and their families about common scams.

**Reporting.** In addition to reporting to APS, financial institutions may call law enforcement to intervene or file a suspicious activity report with the federal Financial Crimes Enforcement Network (FinCEN). FinCEN processes and analyzes the information and makes reports available to law enforcement and certain others. FinCEN or law enforcement may follow up, depending on the circumstances. A March [report](#) by the federal Consumer Financial Protection Bureau noted that reporting suspected financial exploitation of seniors generally does not violate the privacy provisions of the 1999 [Gramm-Leach-Bliley Act](#), which prohibits financial institutions from disclosing non-public personal information about consumers.

**Enforcement.** The Consumer Protection Division of the Texas Office of the Attorney General enforces the Deceptive Trade Practices-Consumer Protection Act, under Business and Commerce Code, ch. 17, subch. E. While the law’s protections apply generally to all consumers, under

[sec. 17.47\(c\)\(2\)](#) civil penalties are enhanced if an act or practice was calculated to deprive a consumer older than 65 of money or other property. The agency does not represent individual consumers. Instead, consumer complaints may lead the division to investigate a company's business practices and could result in legal action, which might produce restitution for individual consumers.

The State Securities Board administers and enforces the Texas Securities Act (Vernon's Civil Statutes, [Title 19](#)), including detection and prevention of fraud in investments and the sale of securities. Violations may result in administrative, civil, or criminal penalties. The agency proactively seeks to identify fraudulent investment schemes targeting seniors by monitoring the internet for them.

**Training.** Although it is not required by statute, Texas APS currently trains law enforcement and bank tellers to deal with financial exploitation of the elderly. Some financial institutions themselves also train employees to identify signs of possible exploitation and to work with clients to prevent suspect transactions from taking place.

**Outreach.** Similar to APS, some entities seek to prevent exploitation through public outreach and education. The Office of the Attorney General provides information

about financial exploitation on its [website](#) for both seniors and bank employees, who are uniquely positioned to identify such abuse, and the Consumer Protection Division conducts educational outreach for seniors on financial exploitation. The State Securities Board also conducts outreach to seniors on financial scams and has resources for senior investors and their families on its [website](#).

Recent Senate and House committee hearings on financial abuse of the elderly included discussion of proposals that would give financial institutions and securities broker-dealers tools to report and prevent exploitation of older consumers without fear of liability.

**Other states.** Several states recently have enacted laws authorizing employees of financial institutions and financial advisers to place a hold on a transaction or refrain from disbursing funds if they suspect an elderly customer is being exploited. Other states have provided exceptions to acknowledging valid powers of attorney when exploitation is suspected and reported.

**Holding transactions.** A Washington state [law](#) adopted in 2010 allows financial institutions — including broker-dealers and financial advisers — to refuse a transaction requiring disbursement of funds from certain accounts for

## Debate on holding financial transactions

Concerns have been raised in Texas that financial institutions and securities broker-dealers lack a clear mechanism or direction in statute to report suspicious activity without fear of liability and have limited tools to prevent exploitation of elderly consumers. Some have recommended that financial institutions and broker-dealers be granted discretion to hold certain transactions or to delay disbursing funds with immunity from liability if they have reason to believe an elderly client is being financially exploited.

Supporters of providing an explicit mechanism to delay transactions say it could help protect clients because financial agents are in a unique position to identify possible exploitation. They say too much time may elapse between when suspected exploitation is reported and when the state or family intervenes. Supporters say preventing further loss or misuse of the resources of elderly clients, many of whom are on fixed incomes, could keep them from becoming dependent on government assistance. They also say handling the issue in customer contracts, as suggested by some critics, would not be feasible and could delay services, as it would require banks to review every transaction.

Critics of allowing financial agents to hold transactions say that while it could protect some consumers, it also could infringe on the right of older adults to make their own decisions about their financial affairs. Delaying potentially legitimate withdrawals from someone's account could cause further difficulties for clients who might actually need the money for certain important expenses, such as rent or groceries. In addition, some critics say, financial institutions and broker-dealers may not need legislation to protect clients and instead could use customer contracts to obtain permission to hold transactions when exploitation was suspected.

a specified period if they believe financial exploitation of a vulnerable adult may have occurred. A vulnerable adult is someone 60 or older who is unable to care for himself or herself. A financial institution in Washington may refuse to disburse funds from the account of the vulnerable adult or an account on which the adult is a beneficiary. It also may refuse to disburse funds from the account of a person suspected of perpetrating financial exploitation of a vulnerable adult or if the Department of Social and Health Services, law enforcement, or the prosecuting attorney's office believes such exploitation has occurred. If the financial institution refuses to disburse funds under this law, it must report this to adult protective services and local law enforcement. Financial institutions in Washington have immunity from criminal, civil, and administrative liability for disbursing or refusing to disburse funds under these circumstances. They also are required to train employees on financial exploitation of vulnerable adults.

In 2014, the Delaware General Assembly also enacted a [law](#) allowing financial institutions to hold transactions in certain cases. It requires employees of financial institutions to report to the Delaware Department of Health and Social Services when they believe an elderly person may be subject to financial exploitation. The institution may place a hold on a proposed transaction for 10 business days after the report or for longer at the request of certain agencies or under other specified circumstances. Financial institutions are required, without liability, to hold a transaction when the Department of Health and Social Services or the Delaware Department of Justice requests that they do so.

A [bill](#) similar to the Washington and Delaware laws was introduced this year to the Minnesota Legislature and referred to a committee but did not receive a public hearing. It differed from the Washington and Delaware laws in that it also would have created a senior trust fund with money from supplemental civil penalties imposed under state law when a person engaged in certain deceptive trade practices or consumer fraud of a senior or person with disabilities. Appropriations would have been made for the purposes of the bill.

A [law](#) enacted by Missouri in 2015 provides mechanisms for broker-dealers to report and try to prevent suspected exploitation of senior investors. Broker-dealers may refuse a request for disbursement from the account of an older adult or individual with disabilities, or an account on which the adult is a beneficiary, if they believe the disbursement will result in financial exploitation and if they

notify certain entities. Broker-dealers also may notify an immediate family member, a legal guardian, or others after notifying the Department of Health and Senior Services and the commissioner of security. Those who comply with the law in good faith are immune from civil liability.

***Rejecting valid powers of attorney.*** A number of states have provided exceptions to acknowledging valid powers of attorney in cases of possible abuse (see *Power of attorney abuse*, [page 7](#)). Some have adopted a portion of the [Uniform Power of Attorney Act](#) (UPOAA) that allows a person to reject an acknowledged power of attorney under certain circumstances. Sec. 120 of the UPOAA, which has not been adopted in Texas, establishes liability for refusing to accept a statutory power-of-attorney form within a specified time frame, but also establishes several exceptions. Under one of them, a person does not have to accept an acknowledged power of attorney if that person makes a report, or knows one has been made, to adult protective services that the principal may be subject to abuse, neglect, or exploitation. Twenty-one states, including Arkansas and New Mexico, have enacted some form of the UPOAA, according to the Uniform Law Commission.

### Debate on rejecting valid powers of attorney

Proposals could emerge in the 85th legislative session to provide for an exception to liability for refusing to accept a valid power of attorney when a person knows of reported abuse, neglect, or exploitation. In 2015, such an exception was included in the introduced version of [HB 3095](#) by S. Thompson. That exception was not included in a version of the bill that was approved by the House but died in Senate committee.

Supporters of allowing such an exception say it could be a helpful tool for banks when they suspect someone with valid power of attorney is exploiting a client. They say that handling the matter in court could result in a delay that the exploited could not afford. Critics of allowing such an exception say limits on the use of valid powers of attorney should be handled carefully because such agreements provide a less restrictive and less expensive alternative to guardianship. They say balance is needed between protecting elderly consumers and recognizing that many older clients are capable of managing their own financial affairs.

## Guardianship

Concerns about exploitation of the elderly extend to fiduciary relationships established through guardian appointments. The number of incapacitated older adults is likely to increase as the population ages and could lead to greater demand for such arrangements, according to the U.S. GAO, making it important to better monitor guardians' performance to detect financial exploitation.

In the State of the Judiciary [address](#) presented to the 84th Legislature in 2015, the chief justice of the Texas Supreme Court said that while guardianships are often necessary, one way to ensure the safety and financial security of elders is to monitor those guardianships. According to the American Bar Association, Texas in 2015 adopted 10 bills related to adult guardianship, including [HB 39](#) by Smithee, which revised certain requirements for appointing guardians for those who are incapacitated or have disabilities. The Texas Supreme Court also recently adopted a [code of ethics](#) and minimum standards for guardianship services provided by certified guardians, guardianship programs, and DADS.

**Current Texas law.** Guardians in Texas may be appointed by a court to make certain decisions on behalf of a person with diminished capacity. Those under guardianship are called wards and may be either minors or adults. Guardians often are family members of wards or may be lawyers. Other entities, such as the state or professional guardians, also may play a role. [Title 3](#) of the Estates Code includes requirements for guardianships and the process for creating, modifying, and terminating them.

In Texas, guardianships include full or limited guardians of the estate, full or limited guardians of the person, full or limited guardians of both the person and estate, and temporary guardianship. Guardians of the person make certain personal decisions for the ward, while guardians of the estate handle the ward's money and financial affairs. Temporary guardianships may be used to address certain immediate circumstances to protect a person or that person's estate.

**Screening.** Texas and many other states require background checks on certain individuals who plan to provide guardianship services. Texas Estates Code, [sec. 1104.353](#) prohibits a person whose conduct is "notoriously bad" from being appointed as a guardian, and the law states that it is presumed to be not in the best interests of a ward

to appoint a guardian who has been convicted of certain offenses, including injury to a child, elderly individual, or individual with a disability. [HB 1438](#) by S. Thompson, enacted in 2015, extended to a ward's family members the requirement that guardians receive criminal background checks and made other changes to the Estates Code.

**Training.** In Texas, professional guardians and DADS employees providing guardianship services must be certified and are subject to education and testing requirements, but certification and training are not mandated for others serving as guardians, such as family members or caregivers.

**Monitoring.** State law also establishes programs to help courts oversee guardians, including court visitor and investigator programs. Visitors and investigators may be involved in reviewing guardianship applications or reminding guardians of reporting deadlines. Estates Code, [sec. 1054.102](#) requires that statutory probate courts have visitor programs and allows other courts with jurisdiction over guardianship proceedings to operate such programs, depending on population needs and financial resources. Some courts have auditors to monitor guardian activities.

### Power of attorney abuse

*Powers of attorney* are legal documents that allow a person, known as the principal, to authorize someone else, known as the agent or attorney-in-fact, to act or make certain decisions on the principal's behalf. Whereas an agent's authority under a general power of attorney ends if the principal loses the decision-making capacity to revoke it, a *durable power of attorney* is effective even if a principal loses capacity. A *conditional* or *springing durable power of attorney* takes effect later or when a certain event occurs, while general or durable powers of attorney are effective upon signing. Financial exploitation of the elderly can include power-of-attorney abuse, as principals may authorize agents to make financial decisions on their behalf. Power-of-attorney abuse involves an agent acting in a way that is not in the best interest of the principal, such as using the principal's money for the agent's own benefit or coercing someone into signing a power of attorney.

Source: American Bar Association [fact sheet](#) prepared for the National Center on Elder Abuse

The Elders Committee of the Texas Judicial Council, which studies the state judiciary and suggests policy improvements, [recommended](#) to the 84th Legislature that the state fund efforts by the Texas Office of Court Administration (OCA) to enhance judicial services to the elderly and incapacitated. With the approved funding, the OCA, a state agency that provides resources and information for the judicial branch, recently initiated the Guardianship Compliance [Project](#), which places guardianship compliance specialists in certain areas of Texas. The project is based on a similar program in Minnesota that involves electronic reporting and monitoring. The OCA received a technical grant from the National Center for State Courts to help Texas in adopting the software used in Minnesota. Among the responsibilities of specialists in the Texas project is ensuring that wards are not being exploited or neglected.

The compliance project currently operates in seven counties that do not have statutory probate courts (Anderson, Comal, Guadalupe, Hays, Montgomery, Orange, and Webb), and the OCA is working to initiate it in Bexar County, which does have statutory probate courts. The two-year project is expected to expand to more counties by its end in fiscal 2017. The specialists review adult guardianship cases to identify reporting deficiencies and audit annual accounting information. They also work with courts to determine the best way to manage guardianships. Examples of red flags the specialists have encountered include unauthorized or unexplained ATM withdrawals, transfers, and purchases made by guardians.

A rider in the fiscal 2016-17 state [budget](#) directs the OCA to report on the Guardianship Compliance Project to the Legislature by January 1, 2017. The report will include the number of courts involved, the number of cases reviewed, the number of cases found to be out of compliance, the number of cases reported to the court for ward well-being or financial exploitation concerns, and the status of technology developed to monitor guardianship filings. [HB 3424](#) by Smithee, enacted by the 84th Legislature in 2015, also requires the OCA to study the feasibility of maintaining a computerized central database with certain information about people under guardianship.

**Other states.** Several states have laws that provide for screening, training, and monitoring guardians with a goal of protecting the assets of wards.

**Screening.** Most states require some form of background check for guardians, but they differ in the way criminal history may restrict the ability to serve as a guardian. For example, in Florida, no one who has been convicted of a felony may be appointed as a guardian, and Florida is among several states that require a credit check on proposed guardians.

**Training.** States also differ in the amount, content, and frequency of training required for guardians. Florida [law](#) requires an appointed guardian, other than a parent who is guardian of a minor's property, to receive at least eight hours of training on legal responsibilities, ward rights, local resources, planning, and reporting, including financial accounting for the ward's property. Requirements for professional guardians are more robust under Florida law. The Supreme Court of Ohio recently adopted [rules](#) requiring guardians of adults to take an initial six-hour fundamentals course, including record keeping and reporting, and another three hours of continuing education each year thereafter. The Ohio Supreme Court offers the training at no charge.

**Monitoring.** Minnesota's Conservator Account Auditing Program (CAAP) is the model for the Guardianship Compliance Project in Texas. Conservators in Minnesota are similar to guardians of the estate in Texas and make financial decisions for those they are appointed to protect. Under Minnesota's CAAP, a statewide online system allows conservators to submit accounting reports electronically, and reports can then be audited. In New Jersey, volunteers for the state's Guardianship Monitoring Program use a statewide database to ensure guardians comply with reporting requirements and effectively manage the affairs of wards.

**Jurisdictional issues.** Most states have adopted some form of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction [Act](#), which specifies which state has jurisdiction over guardianship proceedings in disputes involving multiple states. Some have said the model law could help prevent a practice in which the child of an older adult with diminished capacity moves the parent to a child's home in another state and becomes the legal guardian with the intention of financially exploiting the parent. According to the Uniform Law Commission, 45 states, Puerto Rico, and the District of Columbia have adopted the model law.



A bill considered but not enacted by the 84th Legislature in 2015, [HB 2998](#) by J. Rodriguez, would have added the model law to Texas statutes. Supporters said it would increase protections for wards and conserve their estates by reducing litigation, while opponents said state law already allowed for guardianship transfers and that parts of the bill conflicted with current statutes.

## Criminal penalties and civil remedies

Criminal penalties and civil remedies are available to penalize perpetrators of elder financial abuse and recover damages for victims, with laws that vary among the states. For example, many states establish a separate criminal offense for financial exploitation of the elderly, while others cover those activities under more general laws.

**Current Texas law.** Texas has established crimes that target financial exploitation of vulnerable groups and provide more severe criminal penalties for perpetrators of certain financial crimes when committed against elderly individuals. Civil litigation options also are available.

Exploitation of a child, elderly person, or person with a disability in Texas is a third-degree felony (two to 10 years

in prison and an optional fine of up to \$10,000). Under Penal Code, [sec. 32.53](#), “exploitation” means the illegal or improper use of a child, elderly person, or person with a disability or of that person’s resources for monetary or personal benefit, profit, or gain.

In addition, certain criminal penalties are increased to the next higher level if an offense is committed against an elderly person. A theft offense, under Penal Code, [ch. 31](#), is increased if the property belongs to an elderly person. Various offenses under [ch. 32](#), governing fraud, also are increased if committed against an elderly person. For example, credit or debit card abuse against an elderly person is increased to a third-degree felony from a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000).

Misapplication of fiduciary property or property of a financial institution also is a [crime](#) in Texas. The punishment depends on the value of the property misapplied, and the offense is increased to the next higher category if committed against an elderly individual.

Texas law does not include a specific private cause of action for elderly victims of financial exploitation. Those wishing to initiate a civil lawsuit may sue using traditional

## Local approaches to combating elder financial exploitation

At the local level in Texas, county probate courts, district attorney offices, social service providers, law enforcement, and other entities are collaborating to develop models for combating elder financial abuse.

A local model found across the country is known as Triad — a collaboration among police departments, sheriff’s offices, and senior citizen groups. Triads often are governed by a Seniors and Law Enforcement Together (SALT) council. The Travis County SALT council meets monthly to discuss law enforcement issues related to seniors. Members present information at nursing homes, adult activity centers, and elsewhere on scams targeting the elderly. Several Texas counties apply the Triad model.

In Dallas, the Elder Financial Safety Center, funded primarily through a private grant, connects the Senior Source, a non-profit organization providing services for the aging, with the district attorney’s office and probate courts. The center provides financial and protective services, including money management and guardianship services, and helps fund a unit in the district attorney’s office focused on financial crimes against the elderly.

The Senior Justice Assessment Center is being developed in Houston with the goal of reducing parallel investigations and improving coordination among local entities for senior protection and care. Participants include the city’s police department, the sheriff’s office, the district attorney’s office, health care providers, Adult Protective Services, and the Department of Aging and Disability Services. The Mental Health Division of the Houston Police Department is coordinating the center’s development. It is expected to be funded by the county and through a federal grant.

tort remedies, such as fraud or conversion. Some victims may sue for breach of fiduciary duty.

**Other states.** Some states have tried to deter financial exploitation of the elderly by adjusting criminal penalties, and a handful have established separate civil remedies.

Like Texas, many states have established a separate criminal offense for exploitation of elderly or vulnerable individuals. In Missouri, financial [exploitation](#) of a person who is elderly or disabled differs from the criminal offense in Texas in that the penalty depends on the value of the property of which the victim was deprived. Missouri specifies that a person commits an offense if he or she uses “undue influence,” as defined in statute, or certain other methods to intentionally deprive the victim of property. Oklahoma has a criminal offense for exploitation of an adult who is elderly or disabled that is similar to the one in Texas, but with a statute of limitations that is five years, rather than three.

Several states have considered or enacted legislation to create a specific civil cause of action for elderly or vulnerable victims of financial exploitation. For example, Utah [law](#) includes a specific civil cause of action for vulnerable adults who are victims of financial exploitation. “Vulnerable adults” include those 65 or older and adults with certain physical or mental impairments. Under Utah’s law, courts may order defendants to pay the costs and attorney fees for a prevailing plaintiff or may order plaintiffs to pay if the action was frivolous, unreasonable, or taken in bad faith.

## Task forces

In response to increased concerns about financial exploitation of the elderly with the growing number of seniors in the country, several states have formed task forces to examine the broad range of issues related to elder abuse, neglect, and exploitation and to provide recommendations for state legislative action. Some have suggested that the Texas Legislature consider forming a task force to study the issue of elder financial exploitation.

An elder abuse task force created by Tennessee lawmakers released its [recommendations](#) in January, and a [bill](#) creating a task force in New Jersey was approved in May. The South Dakota Legislature in 2015 created such a task force and this year adopted into [law](#) some of its [recommendations](#) on targeting elder abuse.

Based on the recommendations of the South Dakota task force, a new state law provides immunity from liability for financial institutions that report suspected exploitation to law enforcement, adds requirements related to durable powers of attorney, requires the state bar to develop training curricula for guardians and conservators, and creates a civil right of action for the exploitation of vulnerable adults.

— *by Mary Beth Schaefer*

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## HOUSE RESEARCH ORGANIZATION

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John Frullo  
Donna Howard  
Bryan Hughes  
Ken King  
Susan King  
J. M. Lozano  
Eddie Lucio III  
Doug Miller  
Joe Pickett

John H. Reagan Building  
Room 420  
P.O. Box 2910  
Austin, Texas 78768-2910  
(512) 463-0752

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