

# Agenda

## Court Visitor Steering Committee

July 12, 2011  
12:00 to 2:00 p.m.

Administrative Office of the Courts  
Scott M. Matheson Courthouse  
450 South State Street  
Judicial Council Room, Suite N31

Actions at last meeting	Tab 1	
Volunteer immunity and liability		Brent Johnson
Mission, goals and timeline	Tab 2	Tim Shea
Utah Cost of Financial Exploitation	Tab 3	

**Committee Web Page:** <http://www.utcourts.gov/committees/visitor/>

**Meeting Schedule:** 12:00 to 2:00 in the Judicial Council Room, Matheson Courthouse, unless otherwise noted.

August 23, 2011

September 27, 2011

October 25, 2011

November 22, 2011

Tab 1

**(1) Summary of Decisions**

The mission of the visitors will be to observe and report facts and not to advocate. Assisting the guardians will be limited, at least initially, to conducting classes for guardians and the public at large. Visitors must report abuse and neglect to the proper authorities just like any other person. Part of the visitors' training should be the concept that an investigation is successful when everything is OK.

The court visitor pilot districts will be Districts 3 and 7, assuming they are willing.

Cases to which a visitor will be assigned will be selected randomly, but a judge can assign a visitor in any case. Clerks and attorneys can request that the judge assign a visitor in any case, motivated by a perceived problem.

We will assume for the time being that visitor assignments will be made before a guardian is appointed to observe and report facts that will help the judge make a decision and after a guardian is appointed to observe and report facts that will tell the court whether the ward is being protected in accordance with the court's order. We may need to reconsider priorities as we develop more experience on how many hours visitors can be expected to volunteer. Interviewing the respondent or ward should include more than one visit, with an unannounced visit.

Since the judge appoints the visitors and the coordinator knows their skill sets, we need a process by which the judge communicates the need for a visitor and the nature of the visitor's investigation to the coordinator and the coordinator recommends a person to the judge. Develop an assignment order for the judge to sign. We need a process by which the visitor can identify and declare a conflict of interest. Develop checklist.

For visitor assignments made at the petitioning stage, we need a process to make sure that the visitor's report can be delivered to the parties and judge before the initial hearing, otherwise the hearing will not be as productive. There must be enough time between the visitor's assignment and the hearing to complete the investigation and write the report. The nature (and details) of the visitor's investigation must be communicated to the coordinator so the coordinator can recommend the right person.

Part of the visitors' training should be to observe another visitor.

**(2) Summary of Assignments**

Tim Shea will invite Jilene Guthrie and Alan Ormsby to a future meeting.

Mary Lucero and Mary Jane Ciccarello will join Tim Shea as a selection committee to hire the first coordinator.

# Tab 2

## Court Visitor Program

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The mission of the court visitor is to observe the circumstances of respondents and protected persons and to report to the court.

Task	Target Date
Define coordinators' duties	Done. Modify w/ experience.
Define volunteers' duties	Done. Modify w/ experience.
Hire coordinator	Closes 6/30 (227)
Select district(s) for operations	Third & Seventh Cases selected randomly. Judge can assign in any case. Lawyers and clerks can recommend in any case.
Provide work space, equipment and supplies For coordinators For volunteers	Not much needed for the volunteers
Identify current (active) cases Cases w/o report would be a red flag	
Identify partners as sources of volunteers	
Develop volunteer recruitment and appointment process Advertise Application form Reference check Background check Interview Conditions Volunteer files and database Name and identifying information Contact information Work email Required training completed Highest and best use Current assignment Previous assignments Evaluations	

Task	Target Date
Develop volunteer training (initial and continuing) <ul style="list-style-type: none"> <li>Basic               <ul style="list-style-type: none"> <li>Volunteer expectations and procedures</li> <li>Guardianship law and procedures</li> <li>Protected person's rights and responsibilities</li> <li>Guardian's rights and responsibilities</li> <li>Confidentiality/Ethics</li> <li>Limits on volunteer's discretion</li> <li>Role as observer and reporter, not advocate</li> </ul> </li> <li>Advanced—auditing financial reports               <ul style="list-style-type: none"> <li>Review court records</li> <li>Review guardian's records</li> <li>Common errors</li> <li>Response to serious problem</li> <li>Response to modest problem</li> <li>Outcome reports</li> </ul> </li> <li>Advanced—interviewing               <ul style="list-style-type: none"> <li>Volunteer's personal safety</li> <li>Review court records</li> <li>Interview sources</li> <li>Interview objectives</li> <li>Interview techniques</li> <li>Safe living standards</li> <li>Community services</li> <li>Response to emergency</li> <li>Response to serious problem</li> <li>Response to modest problem</li> <li>Outcome reports</li> </ul> </li> </ul>	
Develop volunteer supervision and evaluation model	
Develop volunteer recognition model	
Develop complaint process <ul style="list-style-type: none"> <li>Against volunteers</li> <li>By volunteers</li> </ul>	
Develop information and forms	

Task	Target Date
<p>For public  For guardians  For courts  Nature of need from court to coordinator.  Recommendation from coordinator to court  Assignment order for judge to sign  For volunteers  Conflict of interest checklist</p>	
<p>Develop operating procedures  Need for volunteer  Selecting a volunteer  Investigation by volunteer  Accessing court records  Scheduling interviews  Report by volunteer</p>	
<p>Develop measures of program and data collection procedures  Number of volunteers  Number of volunteer hours  Number of interviews  Number of annual reports reviewed</p>	
<p>Develop measures of success and data collection procedures  Change in number of reporting errors  Number of guardians trained  Number of guardians assisted  Number of problems solved  Number of service referrals  Calculate money spent and money saved  Number of estates not dissipated  Medical costs from persons not well-cared for</p>	
<p>Develop class for guardians; for protected person's family</p>	

<b>Task</b>	<b>Target Date</b>

# Tab 3

# The Utah Cost of Financial Exploitation

Jilene Gunther, MSW, JD  
Legal Services Developer  
Utah Division of Aging and Adult Services

# The Utah Cost of Financial Exploitation

Jilene Gunther, MSW, JD  
Legal Services Developer  
Utah Division of Aging and Adult Services

## 1.0 Introduction

“On my desk sits a photo of my grandfather standing next to Margaret Thatcher. It reminds me of the good works my grandfather did within Utah and throughout the world helping others. Despite the great world collections my grandfather acquired from his charity works and from living abroad, the photo is one of the few items I have to remember him. My grandfather was financially exploited within his own home by someone who was a close friend, almost like family, and whom he was trying to help. She stole cash from his wallet and carried item by item many, but not all of his treasures he and my grandmother had collected throughout their lives out of their house.”<sup>1</sup> She is not alone. Every day in this nation seniors are exploited. These seniors who are heralded as our greatest generation are now under attack across our nation in one of the grimmest battles – the fight against financial exploitation. But unlike other battles they’ve faced, the enemies are often those closest to them, and ones

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<sup>1</sup> The identity of author and victim of financial exploitation withheld to protect privacy.

Stealing seniors’ assets could cost Utah \$52 million annually.

they least expect – family members and close friends. The crime goes silent as many seniors who are financially exploited, like the gentleman in the story above, its too painful to report, it is embarrassing to admit, and often goes unidentified and thus unreported.<sup>2</sup> Exploitation is not prejudice of race, social position, or financial status. Yet, while this crime is silent, it does not go unnoticed. The effects of financial exploitation are recognized by all of us – families, businesses, taxpayers, government programs such as Medicaid, and seniors. Yet there is little national data on financial exploitation; the exact costs of financial exploitation are largely unknown.<sup>3</sup>

And Adult Protective Services (APS) workers, the frontline fighting this battle, have taken and continue to take significant deep budgets cuts to their programs around the nation while still maintaining the requirements to address elder abuse under the Older Americans Act. Compounding this issue is that little research has been done to show the extent of financial exploitation and exactly how exploiters are accessing these funds. Thus, workers are left to advocate for seniors using stories with little supporting data. While the costs of domestic violence have been calculated for decades, a cost analysis of financial exploitation using Adult Protective Services records has never been undertaken.

Seeing this issue, as a full-time Legal Services Developer charged with coordinating the legal service delivery system that includes Adult Protective Services, I began to examine the costs of financial exploitation, the methods exploiters are using to access seniors' assets, and many other variables using data from Adult Protective Services cases. This exploratory research attempts to paint a picture for policy makers of the importance of financial exploitation, the potential costs of exploitation, as well as to help understand how financial exploitation is occurring in order to better target prevention efforts. The exploratory research estimates that Utah seniors, businesses, and the government could have lost \$51,506,100 in 2009 due to financial exploitation.

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<sup>2</sup> See Gunther, J & Van Langeveld, A (2011, in press). Utah Legal Needs Study. Utah Division of Aging and Adult Services: Funded by the Administration on Aging Model Approaches Grant.

<sup>3</sup> MetLife Mature Market Institute et. al. (2009). Broken Trust: Elders, Family, and Finances. A Study on Elder Financial Abuse Prevention.

## 2.0 Study Design

This exploratory study from the Utah Division of Aging and Adult Services' Legal Services Developer provides an introductory examination of the cost of financial exploitation to Utah seniors. The purpose was to attempt to calculate the financial loss to Utah seniors, financial institutions, and government entities; and to also determine the variables and methods perpetrators employ to exploit. This report serves as a tool to help our local Adult Protective Services program to have more effective and targeted prevention.

The Utah Cost of Financial Exploitation Study was conducted by examining all the substantiated financial exploitation cases of Utah Adult Protective Services. Fifty-seven cases were reviewed in-depth to determine financial loss. Cases were reviewed for documentation regarding dollar amount taken and property stolen. In cases involving property we gathered as much information as provided in the case notes to determine the value of that lost property. In fewer than 10% of the cases, we did not have all the facts to make an exact valuation. In these circumstances we always aired on the fiscally conservative side as well as used the average cost of a like property. For example, if a 2003 Ford Taurus was listed as stolen with no additional details describing the vehicle, we estimated the value using the average value of a 2003 Ford Taurus listed in the Kelly Blue Book, assumed it was in fair condition, and estimated the number of miles on it by the average amount of miles a person drives in a given year. Cases that did not have enough evidence to be substantiated were not examined; other agencies more so than Adult Protective Services receive reports regarding scam artists, insurance fraud, telemarketing fraud and other like fraud; thus, it could be possible that the costs of financial exploitation to Utah seniors are higher than reflected in this study.

To conduct valuations we used the Kelly Blue Book and Utah sold real estate numbers, and consulted with local pharmacists, insurance life expectancy tables, and other valuation tools. We looked for as much information as possible to make these valuations including where the real property was located and the average price of homes selling in the area over the last six months; model, make, usage and condition of the car; and average out-of-pocket prices for medications. We also used the average yearly Utah Medicaid cost for a Utah senior in conjunction with consulting the life expectancy table to determine how many years the senior might be on Medicaid.

Examining financial exploitation without attempting to account for unreported cases would not be telling the entire story. It would be comparable to trying to calculate the number of drivers that speed by only examining the number of drivers who receive tickets without taking into account those that receive warnings and those who speed and do not get caught. It is well established that there are a substantial amount of unreported financial exploitation cases.<sup>4</sup> Studies differ on the number of cases unreported. In a recent study by Cornell University, the researchers calculate that for every one reported financial exploitation case, 44 go unreported.<sup>5</sup> Another study stated that only 1 in 25 are reported.<sup>6</sup> In estimating a range for the dollar amount lost, we used the above figures but made our conservative hypothesis of how many cases go unreported based on statistics from government officials and reports<sup>7</sup> which state that only 1 out of every 10 seniors report abuse. This exploratory study is only just that it explores the potential costs of financial exploitation, variables involved in exploitation, relationships to victims, and provides dollar amounts based on estimations, statistics and hypotheses. It is an exploratory study to highlight the importance of examining the costs of financial exploitation and need for further research in this area. It is the first step of many needed to capture the true cost of financial exploitation to our society. This study did not assess financial losses associated with physical, sexual, or emotional abuse.

## 2.1 Variables Examined

All 57 substantiated Adult Protective Services financial exploitation cases were included in the study. There were two phases to this study. The first was a valuation of financial loss. The second was a more in-depth examination on several variables including –

- Who made the referral
- The perpetrators' relationship to the victim
- Type of financial exploitation
- Method used by the perpetrator

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<sup>4</sup> Humphrey, T. (2003). Nichols Seeks Stiffer Laws Against Elder Abuse; Knox Attorney General Says State Needs to Get Tough on Scam Artists, KNOXVILLE NEWS-SENTINEL; Camron, V. Abuse of Elders Goes Unreported, Committee Says; Group's Goal Is Prevention, CHI. TRIB., Mar. 24, 2004, Morrison, J. Fraud and the Elderly, MONT. LAW., Mar. 2003,

<sup>5</sup> (2011). New York State Elder Abuse Prevalence Study. Preliminary report. Cornell University.

<sup>6</sup> Wasik, J.F. (2000). The fleecing of America's elderly. Consumer's Digest, March/April.

<sup>7</sup> Id.

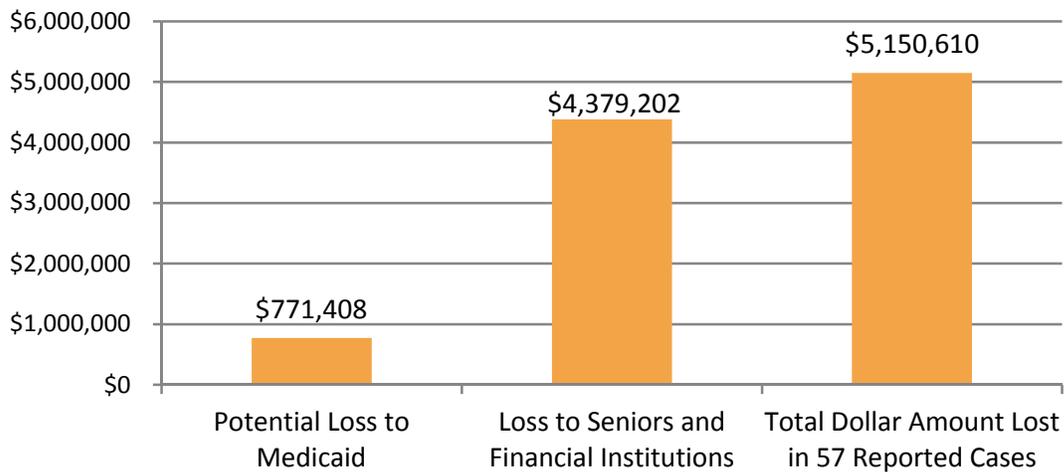
- Non-monetary deprivation
- Subsequent Medicaid eligibility
- Police and prosecution involvement

### 3.0 Findings

#### 3.1 Overall Financial Loss Due to Financial Exploitation

Out of the 57 cases reviewed \$5,150,610 was lost due to stealing seniors’ assets. The loss to Medicaid could potentially be \$771,408. The range stolen was from \$35 to \$745,640. The average loss is \$90,362 per senior.

**Chart A - Dollar Amount Lost  
(Substantiated Cases)**



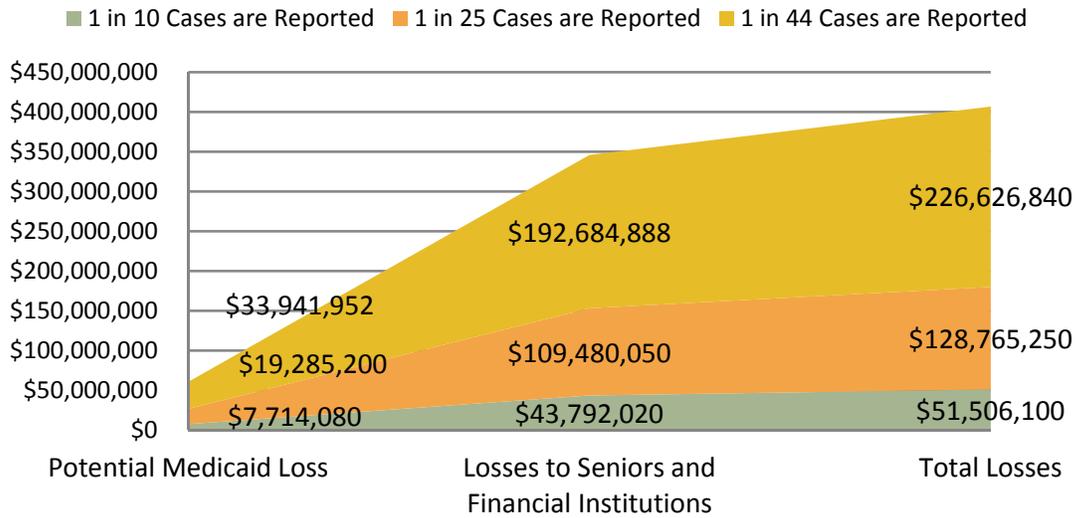
**Chart B - Range of Dollar Amount Lost and Average Loss Per Senior for Reported Cases**



It is well established that there are a substantial amount of unreported financial exploitation cases.<sup>8</sup> To accurately estimate the costs of financial exploitation, unreported cases must also be evaluated. (Estimating costs only for reported cases and ignoring unreported cases would be comparable to estimating the number of drivers that speed by only looking at those who receive speeding tickets.) Studies estimate that for every one financial exploitation case reported anywhere from 10 to 25 to 44 go unreported (see page 3).<sup>9</sup> Considering these estimates the cost of stealing seniors’ assets could range anywhere from \$52 million to \$227 million of losses a year.

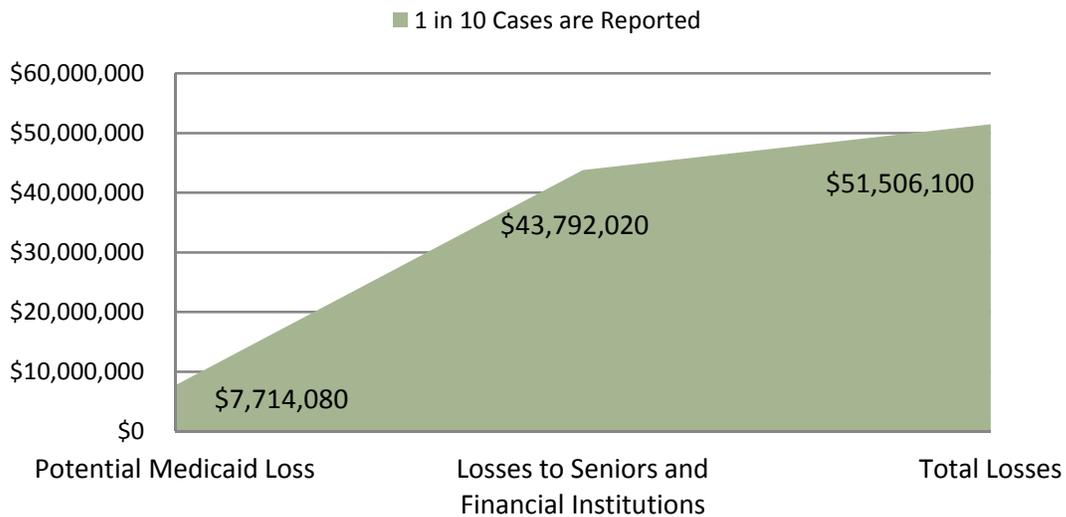
<sup>8</sup> Humphrey, T. (2003). Nichols Seeks Stiffer Laws Against Elder Abuse; Knox Attorney General Says State Needs to Get Tough on Scam Artists, KNOXVILLE NEWS-SENTINEL; Camron, V. Abuse of Elders Goes Unreported, Committee Says; Group’s Goal Is Prevention, CHI. TRIB., Mar. 24, 2004, Morrison, J. Fraud and the Elderly, MONT. LAW., Mar. 2003,  
<sup>9</sup> (2011). New York State Elder Abuse Prevalence Study. Preliminary report. Cornell University.

### Chart C - Range of Projected Losses



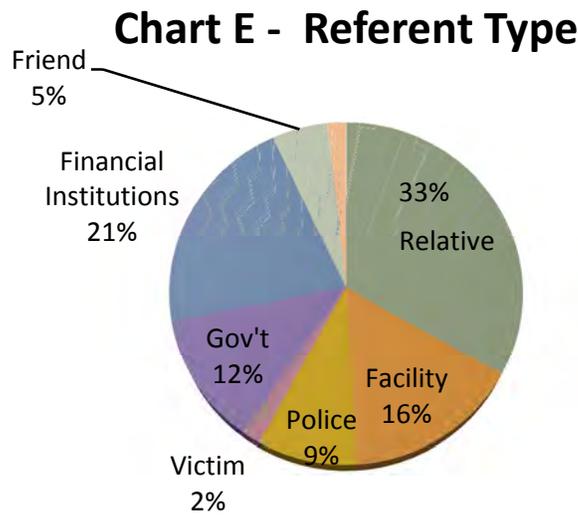
The study errs on the most conservative range and estimates that Utah seniors, businesses and the government lost up to \$52 million in 2009 due to financial exploitation; thus, exploitation from seniors costs Utah up to \$ 1 million dollars per week.

### Chart D - Our Estimate of Projected Losses



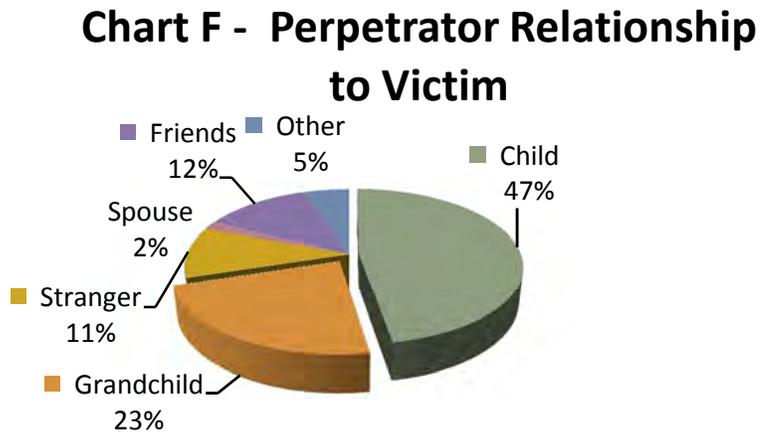
### 3.2 Referrals made to Adult Protective Services

Thirty-three percent of the case referrals come from relatives of the victim and 21% from financial institution employees. Only 2% of referrals were from the victim themselves. This perhaps indicates that victims are often embarrassed about reporting financial exploitation or are unaware of the exploitation that is occurring.



### 3.3 Perpetrators Relationship to the Victim

The majority of perpetrators (72%) were family members. Only a few (11%) were strangers. This reflects national data and also indicates that those who perpetrate are taking advantage of their close relationship with seniors.



### 3.4 Methods Used to Exploit

To learn more about prevention, we examined the methods perpetrators were using to exploit seniors. We found they were doing so in the following ways:

#### **Property**

- Personal Property
- House (stole either through deeding property or through deception)
- Car Theft or “Borrowing”
- Rent (living off senior despite agreement to move out or pay)

#### **Finances**

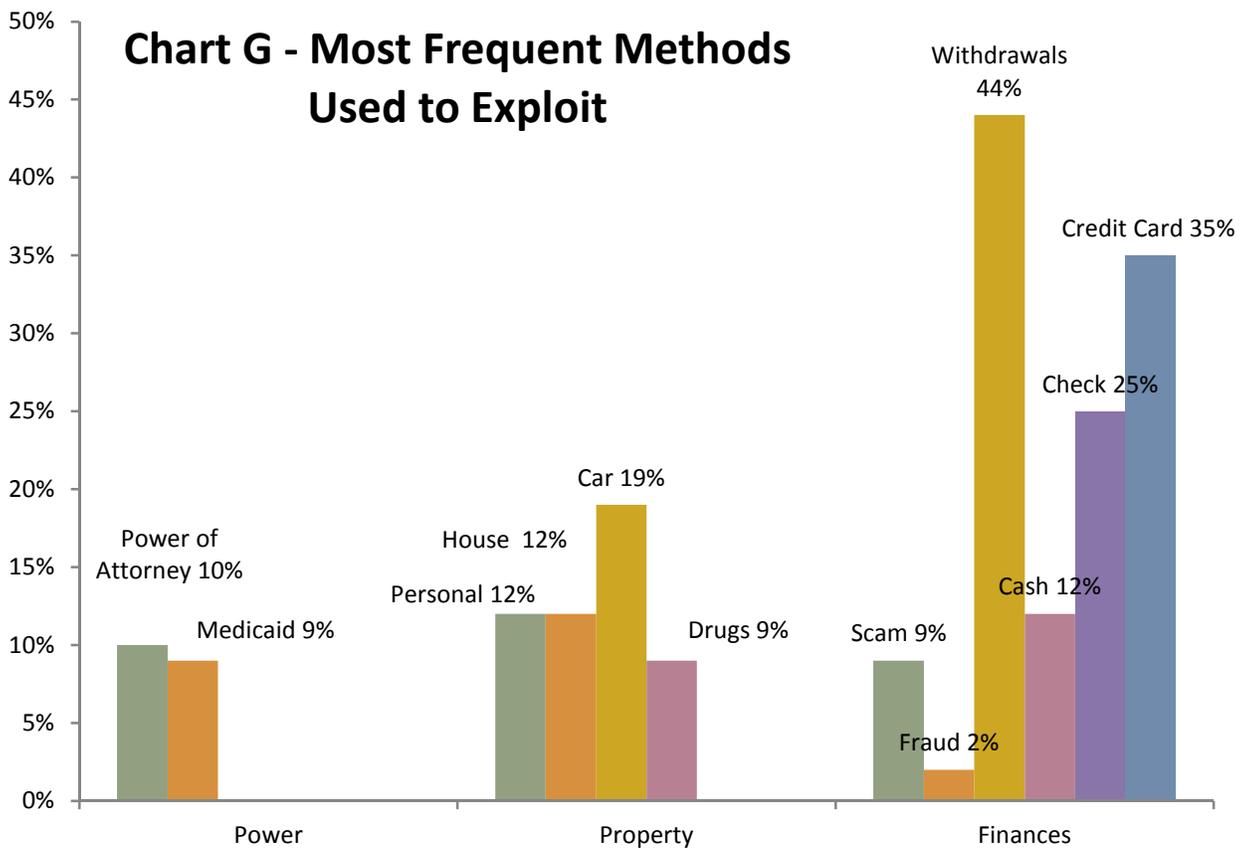
- Investment Fraud
- Withdrawals from Bank Account
- Cash
- Check (forgery)
- Credit Card (open debit card without knowledge, identity theft, or “borrow card”)

#### **Power**

- Misuse of Power of Attorney (person uses a power of attorney to steal money)
- Medicaid (exploited senior now forced to be dependent on Medicaid)

72% of  
perp-  
etrators  
are family  
members.

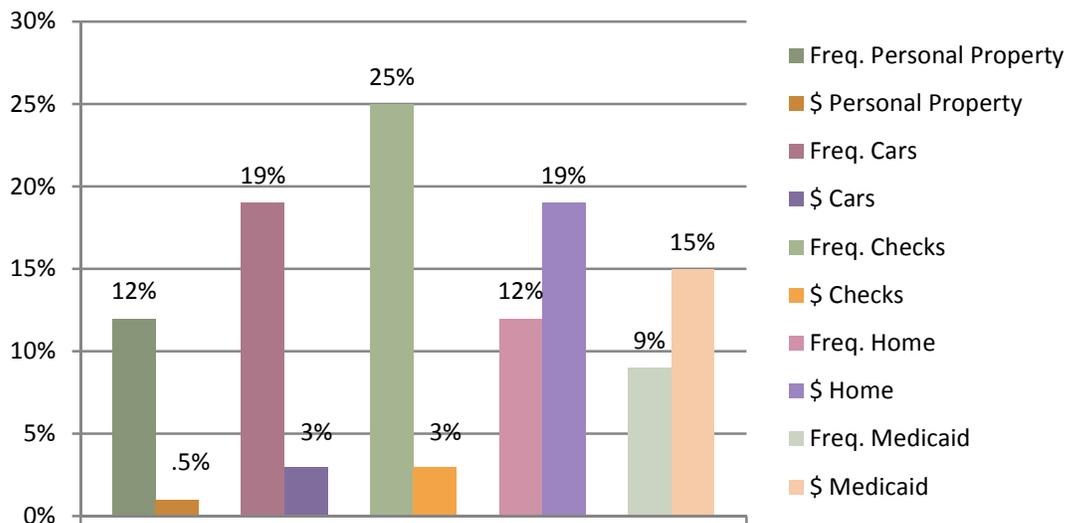
We found that the top methods used to exploit seniors were bank withdrawals (44%), credit cards (either misuse or identity theft) (35%), stealing and forging checks (25%), and car theft (19%). We also found that many perpetrators were using more than one method to exploit; thus increasing the frequency of the categories of methods used.



### 3.5 Comparing Frequency of Methods Used & Percentage of Total Dollar Amount Stolen

We also compared frequency of the method used and the percentage of the total amount stolen for that same category. This illuminated where seniors are taking the biggest monetary hit. While 12% of cases involved stealing personal property, that category only represents 0.5% of the total amount of money exploited. In 19% of the cases seniors are exploited for their cars, yet the cash amount only represents 3% of the total dollar amount. Stealing or forging checks occurred in 25% of the cases, yet that method only represents 3% of the total amount stolen. Only 12% of the cases involved stealing a home, yet this category represented 19% of the total amount stolen. This comparison, illustrated in Chart H, demonstrates that the methods involving Medicaid, stealing a home, and bank withdrawals are big ticket items.

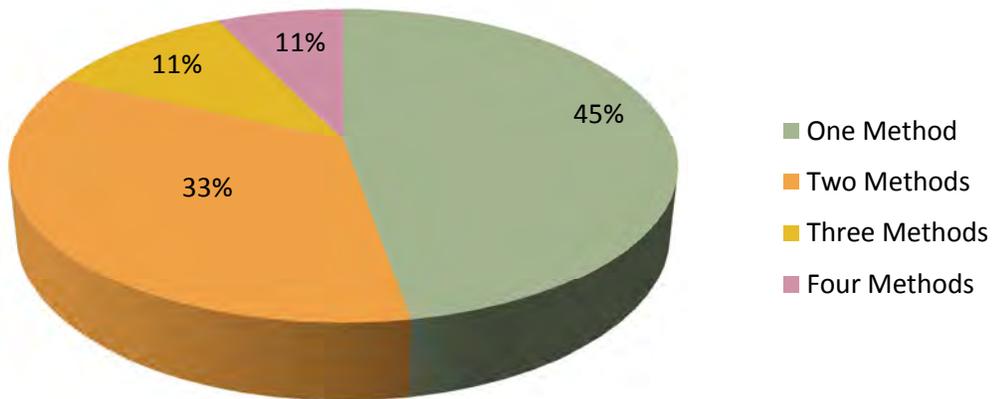
**Chart H - Comparing Frequency**



### 3.6 Number of Methods Used per Case

In most cases, perpetrators used multiple methods to exploit (55%). Forty-five percent used one method to exploit.

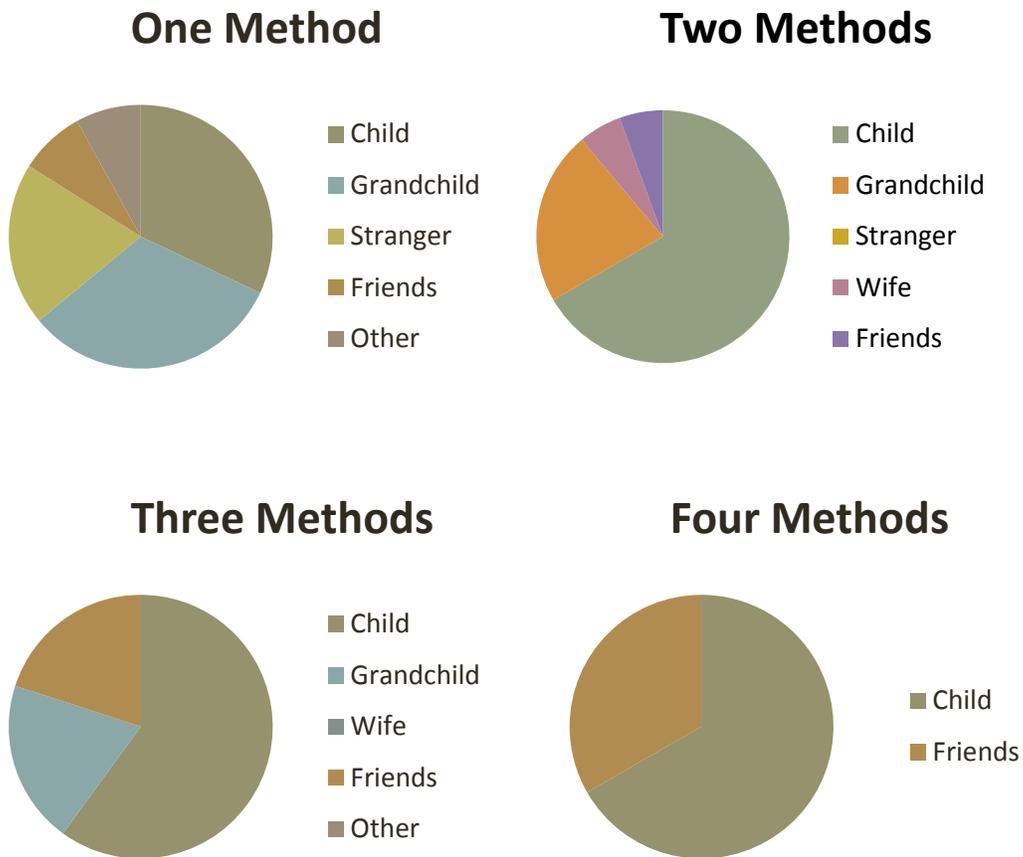
**Chart I - Number of Methods Used**



### 3.7 Comparing Frequency of Methods Used & Relationship with Perpetrator-Victim

Analysis of the perpetrators' relationship with the victim and the number of methods used by the perpetrator showed a definitive trend. Strangers and grandchildren were more likely to use one method to exploit. Those closer to victims—children and friends—were more likely to employ two, three, and four types of exploitation methods.

**Chart J - Number of Methods Used**

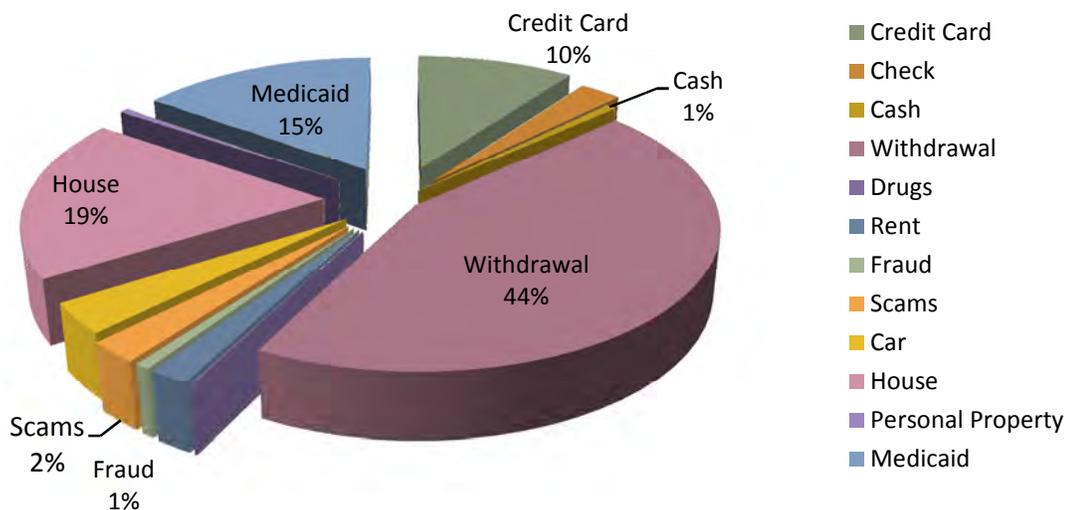


### 3.8 Financial Institution Related Transactions and Withdrawals

Examination of the data indicated that 57% of the total amount stolen involved financial institution related transactions including withdrawals, credit cards, and checks. Yet only 21% of Adult Protective Services referrals (from the 57 substantiated cases examined) came from financial institutions. This discrepancy demonstrates that Adult Protective Services needs to work more closely with financial institutions in identifying and reporting suspected financial exploitation.

Bank withdrawals represent 44% of the total amount lost. Half of the cases involving bank withdrawals specified how the money was withdrawn. Out of those specified cases many had several types of withdrawals, a third of the cases either involved a withdrawal within the financial institution, a joint bank account; or a transfer online. Half of the specified bank withdrawal cases involved a debit card affiliated with the bank account. This illustrates the need for seniors to be educated on the dangers of joint accounts and lending out credit cards as well as the concept of online banking and debit cards.

**Chart K - Percentage of Total Dollar Amount Lost Per Method**



### 3.9 Potential Utah Medicaid Cost

We found that some of these cases involved a senior being exploited to such an extent that the senior was either now on Medicaid or was in the application process.<sup>10</sup> All of the seniors in this situation had a significant amount of their life savings stolen. Attempting to estimate a loss to Medicaid is challenging and assumes that the significant amounts stolen propelled the seniors to qualify for Medicaid, but for the exploitation would not have occurred, and that the senior would not gain assets and thus would be on Medicaid for the duration of their life. Using the senior's current age and national life expectancy demographic tables, we estimated the number of years a senior would be on Medicaid. These costs based on the above assumptions are estimated to amount to \$771,408 for reported substantiated cases. Considering that only one in ten cases are ever reported, this cost could potentially reach \$7.8 million dollars. Again calculating these costs are challenging and forced us to rely partially on assumptions and thus act only as potential costs that need to be further examined. These estimations however paint a picture of the potential Medicaid costs and demonstrate the need for further specific research beyond this exploratory study.

### 4.0 Non-Monetary Losses

We also made note of losses that we could not put a value on. Examples included eviction from public housing, drug users or dealers in the home, changes to a will or to a deed, threat of loss of home, credit damage, loss of power when senior had an oxygen tank, financial institution defrauded by an exploiter using an invalid power of attorney, loss of trust with family, embarrassment and anxiety.

### 5.0 Police and Prosecution Involvement

Not including cases referred to law enforcement following substantiation, 11 cases specifically mentioned the police. One police agency turned down the case stating it was a civil matter. Another case was rejected because it was "too big." One case was turned down due to a lack of victim cooperation and another because it

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<sup>10</sup> It is not uncommon for an exploited senior to have difficulty qualifying for Medicaid because the exploitation is often considered a transfer under the Medicaid rules.

But unlike other battles they've faced, the enemies are often those closest to them, and ones they least expect – family members.

involved a power of attorney. One case did involve an arrest. In six cases Adult Protective Services and the police worked together to investigate the case further.

## 6.0 Conclusion

Stealing senior's assets are estimated to cost Utah up to \$52 million dollars in 2009. This amount, any amount is too much. Everyone in Utah is losing – seniors, government, banking institutions, and taxpayers. Perpetrators are those that are closest to seniors – relatives and friends. The majority of perpetrators are using bank related transactions to steal from seniors. Those with the closest relationships with seniors – children – are using multiple ways to access and exploit seniors. The estimations in this study paint a picture of the potential costs of exploitation and demonstrate the need for further specific research beyond this exploratory study. This exploratory study demonstrates that multidisciplinary collaborations among Adult Protective Services, banks, and law enforcement agencies could help prevent financial exploitation of seniors and thus be highly cost-effective. Specific recommendations include:

### 6.1 Bank Training

Adult Protective Services should train and work more closely with banks to enhance the identification and referral of suspected financial exploitation cases to Adult Protective Services. Training should include how seniors are being exploited as shown in this study; thus financial institutions can help prevent exploitation before it occurs. The state should encourage banks to develop seminars for their customers on how to prevent financial exploitation, alternatives to joint accounts, debit cards, online banking, and other banking basics.

## 6.2 Encourage Police and Prosecutor Involvement

Adult Protective Services should train and work more closely with law enforcement agencies so police can better understand the criminal nature and importance of investigating abuse of seniors. Adult Protective Services should become knowledgeable on what law enforcement and attorneys need for a successful prosecution.

## 6.4 Create an Interdisciplinary Legal and Banking Team

The Legal Services Developer should create a team with Adult Protective Services and the Banking Industry to determine how to tighten up Power of Attorney laws, and help develop ideas for banking products that will give seniors more control over their accounts.

## 6.5 Create Guardian Bank Account

Perpetrators under the guise of assisting a senior with their finances allows the perpetrator unnecessary access that results in exploitation. The elder abuse field in conjunction to the banking industry needs to develop a special guardian account that allows for more control, greater security options, and monitoring by a third party.

## 6.6 Develop Training to Target Prevention

APS should use these finding to help target prevention. Training to seniors should focus on the methods perpetrators are using to exploit, the dangers of deeding over property and co-signing loans, how to legally evict unwanted “guests,” how to appropriately handle finances when one is unable to, the basics of banking in the twenty-first century, and limiting others access to their finances.

## 7.0 Acknowledgments

The researcher wishes to thank the seniors of Utah who have had the courage to report their exploitation, Adult Protective Services workers – our first responders who tirelessly work to help prevent and stop exploitation – without their grisham reports this project would not have been possible; Lori Stiegel, Angela Linford, Paul

Gunther, Kathryn Draper, Rick Warne, and Sharon Bertelsen for editing this report on short notice. Thanks also to Nan Mendenhall, Utah Director of Adult Protective Services and Diane Stewart, former Utah Director of Adult Protective Services, for their cooperation, support and seeing the potential for the role that Legal Services Developers should have within the elder rights field. For additional information please contact Jilene Gunther, [jgunther@utah.gov](mailto:jgunther@utah.gov).