

Elder Abuse and Exploitation
Health and Human Services Legislative Committee
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Testimony Outline for Witness Marsha Shasteen,
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I. How to Better Address Prevention and Recovery in Cases of Financial Exploitation and Abuse of Vulnerable Adults: Statutory Proposals to better track the prevalence of these incidents, to support successful civil recovery actions by easing the burden of proof for coercion, allowance for attorneys fees in civil actions and with enhanced criminal penalties for physical abuse.

A. Who is a Vulnerable Adult: Anyone over the age of eighteen, unable to protect him or herself, due to physical ,emotional, mental impairment, and is in a position of reliance on other adults for help meeting basic physical, medical, or nutritional needs.

B. Problems with the current state of the law:

1. Civil Plaintiff must prove coercion or undue influence as reason for having transferred the asset to the Defendant, the vulnerable or elderly adult-Plaintiff typically may not perform well as a witness up against a more physically able, mentally alert and articulate Defendant.
2. Especially following financial exploitation, Civil Plaintiffs can lack for financial resources to retain counsel to file a recovery action against the perpetrator.
3. Perpetrators often spend or lose control over wrongfully obtained assets before a filed legal case can produce a judgment.
4. Criminal Prosecutors do not currently utilize a consistent reporting system to track the prevalence of physical abuse or financial exploitation of vulnerable adults, as a class of crime unto itself, so we lack for accurate statistics on the prevalence of these reports of abuse and exploitation.

C. Proposed Remedy: Enact a statute or statutes to accomplish the following legislative objectives:

1. Create a presumption of coercion or undue influence for transfers that involve a significant portion of the vulnerable adult's total net worth, and when the recipient is a person upon whom the vulnerable adult has a relationship of reliance for meeting basic physical, medical or social needs. (*Improvident Transfer of Title Act, State of Maine*).
2. Create an allowance for award of attorneys fees to the Plaintiff, when a civil judgment for exploitation or abuse is entered. Treble damages to be allowed when intent to coerce or apply

undue influence, as opposed to recklessness or mere negligence is shown against the perpetrator.
(*Duty to a Vulnerable Adult Act, State of Arizona*).

3. Create a Court Registry for title to the assets in question to be escrowed while the litigation is in progress.
4. Require prosecutors to consistently document both the numbers and types of phone calls, and complaints from the public concerning specific allegations of exploitation and physical abuse allegedly committed against vulnerable adults, with a goal to create more awareness of common threads in these cases, and to motivate more prosecutions.