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TITLE 11

Criminal Offenses

CHAPTER 11-68

Exploitation of Elders

SECTION 11-68-1

§ 11-68-1. Definitions.

As used in this chapter:

- (1) "Business relationship" means a relationship between two (2) or more individuals or entities where there exists an oral or written contract or agreement for goods or services.
- (2) "Caregiver" means a person who has been entrusted with or has assumed responsibility for the care or the property of an elder person. Caregiver includes, but is not limited to, relatives, court-appointed or voluntary guardians, adult household members, neighbors, health care providers, and employees and volunteers of elder care facilities.
- (3) "Deception" means misrepresenting or concealing a material fact relating to:
- (i) Services rendered, disposition of property, or use of property, when such services or property are intended to benefit an elder person; or
 - (ii) Terms of a contract or agreement entered into with an elder person; or
 - (iii) An existing or preexisting condition of any property involved in a contract or agreement entered into with an elder person; or
 - (iv) Using any misrepresentation, false pretense, or false promise in order to induce, encourage or solicit an elder person to enter into a contract or agreement.
- (4) "Elder person" means a person sixty-five (65) years of age or older.
- (5) "Intimidation" means the communication by word or act to an elder person that the elder person will be deprived of food, nutrition, clothing, shelter, supervision, medicine, medical services, money, or financial support or will suffer physical violence.
- (6) "Lacks capacity to consent" means an impairment by reason of mental illness, developmental disability, organic brain disorder, physical illness or disability, short-term memory loss, or other cause, that causes an elder person to lack sufficient understanding or capacity to make or communicate reasonable decisions concerning the elder person's person or property.
- (7) "Position of trust and confidence" with respect to an elder person means the position of a person who:
- (i) Is a spouse, adult child, or other relative by blood or marriage of the elder person;
 - (ii) Is a joint tenant or tenant in common with the elder person;

- (iii) Has a legal or fiduciary relationship with the elder person including, but not limited to, a court-appointed or voluntary guardian, trustee, attorney, or conservator;
- (iv) Is the caregiver of the elder person; or
- (v) Is any other person who has been entrusted with or has assumed responsibility for the use or management of the elder person's funds, assets, or property.

History of Section.

(P.L. 2008, ch. 161, § 2; P.L. 2008, ch. 204, § 2.)

TITLE 11

Criminal Offenses

CHAPTER 11-68

Exploitation of Elders

SECTION 11-68-2

§ 11-68-2. Exploitation of an elder.

(a) A person is guilty of exploitation of an elder person if that person:

(1) Knowingly, by deception or intimidation, obtains or uses, or endeavors to obtain or use, an elder person's funds, assets or property with the intent to temporarily or permanently deprive the elder person of the use, benefit, or possession of the funds, assets or property, or to benefit someone other than the elder person by a person who:

(i) Stands in a position of trust and confidence with the elder person; or

(ii) Has a business relationship with the elder person; or

(2) Knowingly, by deception or intimidation, obtains or uses, endeavors to obtain or use, or conspires with another to obtain or use an elder person's funds, assets, or property with the intent to temporarily or permanently deprive the elder person of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elder person, by a person who knows or reasonably should know that the elder person lacks the capacity to consent.

(b) Any person who shall exploit an elder person as defined in this chapter shall be guilty of a felony.

History of Section.

(P.L. 2008, ch. 161, § 2; P.L. 2008, ch. 204, § 2.)

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CHAPTER 11-68

Exploitation of Elders

SECTION 11-68-3

§ 11-68-3. Penalties for violations.

(a) Any person convicted of exploiting an elder person as provided under this chapter shall be punished as follows:

- (1) If the funds, assets, or property involved in the exploitation of the elder person are valued at less than five hundred dollars (\$500), the person shall be subject to imprisonment for not more than five (5) years or by a fine of not more than five thousand dollars (\$5,000) or both.
- (2) If the funds, assets, or property involved in the exploitation of the elder person are valued at five hundred dollars (\$500) or more, but less than one hundred thousand dollars (\$100,000), the person shall be subject to imprisonment for not more than fifteen (15) years or by a fine of not more than ten thousand dollars (\$10,000) or both.
- (3) If the funds, assets, or property involved in the exploitation of the elder person are valued at one hundred thousand dollars (\$100,000) or more, the person shall be subject to imprisonment for not more than thirty (30) years or by a fine of not more than fifteen thousand dollars (\$15,000) or both.

History of Section.

(P.L. 2008, ch. 161, § 2; P.L. 2008, ch. 204, § 2.)

TITLE 11

Criminal Offenses

CHAPTER 11-41

Theft, Embezzlement, False Pretenses, and Misappropriation

SECTION 11-41-1

§ 11-41-1. Stealing as larceny.

Every person who shall steal any money, goods, or chattels, or any note of the general treasurer of this state for the payment of money, any bank bill, any certificate of any bank or of any public officer or corporation securing the payment of money to any person or certifying it to be due, any certificate of stock in any corporation, any order entitling a person to money or other article, or any bill of exchange, bill of lading, railroad ticket, bond, warrant, obligation, bill, or promissory note for the payment of money, or other valuable property, or any record or paper belonging to any public officer, or any writ, warrant, or other legal process, or any book or part of one containing an account, any receipt for money or other article paid or delivered, any adjustment or document of any kind relating to the payment of money or delivery of any article, any indenture of apprenticeship, or any deed, covenant, indenture, or assurance whatsoever respecting any property, real or personal, shall be deemed guilty of larceny.

History of Section.

(G.L. 1896, ch. 279, § 11; C.P.A. 1905, § 1172; G.L. 1909, ch. 345, § 11; P.L. 1915, ch. 1258, § 10; G.L. 1923, ch. 397, § 11; G.L. 1938, ch. 608, § 11; G.L. 1956, § 11-41-1.)

TITLE 11

Criminal Offenses

CHAPTER 11-41

Theft, Embezzlement, False Pretenses, and Misappropriation

SECTION 11-41-4

§ 11-41-4. Obtaining property by false pretenses or personation.

Every person who shall obtain from another designedly, by any false pretense or pretenses, any money, goods, wares, or other property, with intent to cheat or defraud, and every person who shall personate another or who shall falsely represent himself or herself to be the agent or servant of another and shall receive any money or other property intended to be delivered to the person so personated, or to the alleged principal or master of that agent or servant, shall be deemed guilty of larceny.

History of Section.

(G.L. 1896, ch. 279, §§ 14, 15; C.P.A. 1905, § 1174; G.L. 1909, ch. 345, §§ 14, 15; P.L. 1915, ch. 1258, § 10; G.L. 1923, ch. 397, § 15; G.L. 1938, ch. 608, § 15; G.L. 1956, § 11-41-4.)

TITLE 19

Financial Institutions

CHAPTER 19-9

Community Obligations and Banking Offenses

SECTION 19-9-24

§ 19-9-24. Fraudulent checks – Small amounts.

(a) Any person who purchases any goods, materials, or services, makes payment for that purchase by check, draft, or order for payment of money, and takes possession of the goods or materials, or has the benefit of the service, and who subsequently orders payment stopped on the check, draft, or order for payment, or who, with intent to defraud, makes, draws, utters, or delivers any check, draft, or order for the payment of money, in an amount not exceeding one thousand five hundred dollars (\$1,500), upon any regulated institution or other depository, knowing at the time of making, drawing, uttering, or delivering that the maker or drawer has not sufficient funds in, or credit with, that regulated institution or other depository for the payment of that check, draft, or order, in full, upon its presentation, shall, upon conviction, be fined not more than five hundred dollars (\$500), or be imprisoned not exceeding one year, or may be subjected to both fine and imprisonment.

(b) With regard to the purchase of any goods or materials, it shall not be in violation of this section if goods or materials are returned to the vendor within three (3) business days of the filing of the stop payment order.

(c) The word "credit" means an arrangement or understanding with the regulated institution or other depository for the payment of the check, draft, or order.

(d) Any person violating any of these provisions may be prosecuted and proceeded against in any judicial district or in any county in which the offense was committed, or in which the check, draft, or order was uttered or delivered.

History of Section.

(P.L. 1995, ch. 82, § 47; P.L. 2012, ch. 137, § 2; P.L. 2012, ch. 176, § 2.)

TITLE 19

Financial Institutions

CHAPTER 19-9

Community Obligations and Banking Offenses

SECTION 19-9-25

§ 19-9-25. Fraudulent checks – Large amounts.

(a) Any person who purchases any goods, materials, or services, pays for that purchase by check, draft, or order for payment of money, and takes possession of the item, and who subsequently orders payment stopped on the check, draft, or order for payment, or who, with intent to defraud, makes, draws, utters, or delivers any check, draft, or order for the payment of money, in an amount exceeding one thousand five hundred dollars (\$1,500), upon any regulated institution or other depository, knowing at the time of making, drawing, uttering, or delivering that the maker or drawer has not sufficient funds in, or credit with, that regulated institution or other depository for the payment of the check, draft, or order, in full, upon its presentation, shall, upon conviction, be fined not more than two thousand dollars (\$2,000), or be imprisoned not more than two (2) years, or may be subjected to both fine and imprisonment.

(b) With regard to the purchase of any goods or materials, it shall not be in violation of this section if goods or materials are returned to the vendor within three (3) business days of the filing of the stop payment order.

(c) The word "credit" means an arrangement or understanding with the regulated institution or other depository for the payment of the check, draft, or order.

(d) Any person violating any of these provisions may be prosecuted and proceeded against in any judicial district or in any county in which the offense was committed, or in which the check, draft, or order was uttered or delivered.

History of Section.

(P.L. 1995, ch. 82, § 47; P.L. 2012, ch. 137, § 2; P.L. 2012, ch. 176, § 2.)

TITLE 19

Financial Institutions

CHAPTER 19-9

Community Obligations and Banking Offenses

SECTION 19-9-26

§ 19-9-26. Prima facie evidence of intent to defraud – Prosecutions.

The following shall be prima facie evidence of intent to defraud within the meaning of §§ 19-9-24 and 19-9-25 as against the maker or drawer: the making, drawing, uttering, or delivering of a check, draft, or order for the payment of money upon any regulated institution or other depository, payment of which is refused by the drawee for the reason that the maker or drawer has not sufficient funds in, or credit with, the regulated institution or other depository for the payment of the check, draft, or order in full upon its presentation, or for the reason that the maker or drawer has stopped payment on a check, draft, or order for the payment of money for the purchase of any goods, materials or service; provided, however, that these shall not be prima facie evidence of intent to defraud if the maker or drawer shall pay the check, draft, or order, or deposit and leave with the drawee for its payment the amount due thereon within seven (7) days after the receipt of written notice from the payee by certified mail, return receipt requested, at the last address of the maker or drawer which is available in the records of the payee.

If the check, draft, or order has not been paid within seven (7) business days after the maker or drawer receives written notice by certified mail, return receipt requested, or if there is a return of the notice undelivered and the payee presents an affidavit containing facts within the payee's own knowledge that the maker or drawer was not residing at the last address available in the records of the payee, the payee shall forthwith notify the prosecuting officer of the city or town where the check, draft, or order was written of that fact and the prosecuting officer shall prosecute all violations of §§ 19-9-24, 19-9-25, and 19-9-26 within ten (10) business days of the notice.

History of Section.

(P.L. 1995, ch. 82, § 47.)

Top 10 Financial Scams Targeting Seniors

1. Medicare/health insurance scams
2. Counterfeit prescription drugs
3. Funeral & cemetery scams
4. Fraudulent anti-aging products
5. Telemarketing/phone scams
6. Internet fraud
7. Investment schemes
8. Homeowner/reverse mortgage scams
9. Sweepstakes & lottery scams
10. The grandparent scam

Source: www.ncoa.org

Additional Scams

1. IRS Imposter Collections
2. Romance Scams
3. Tax ID Theft
4. Government Grant Scams
5. Charity Scams

FAST Program in Kansas Office of the District Attorney in the 18th Judicial District

The FAST is a collaboration among concerned community members and the district attorney, law enforcement, and social agencies to address the growing problem of financial abuse of elders.

DEVELOPING THE FAST PROGRAM

Kansas, like other states, has a growing elder population. The U.S. Census Bureau projects that more than 62 million Americans will be 65 or older in 2025 – up 78 percent from 2001, according to the Sept. 21, 2004 USA Today article, "Special Report: Havens for Elderly May Expose Them to Deadly Risks," by Kevin McCoy and Barbara Hansen. The number of Americans 85 or older is expected to top 7.4 million in 2025 – an increase of nearly 68 percent from 2001.

A minimum of one in nine Americans older than age 60 have experienced some form of elder abuse. Some estimates range as high as 5 million elders being abused each year, according to "Facts About Elder Abuse in the United States," published by the group, Elder Justice Now (<http://http://elderjusticenow.org/>).

1. Recruit team members from known areas of specialty such as CFEs, CPAs, bankers, attorneys, and mental health experts.
2. Ensure that those added to the team to augment law enforcement efforts have special expertise in financial, legal, and health matters and a clear purpose.
3. Create a three-tiered approach: consultation, assistance, and public education.

I immediately recruited four CFEs: two had worked in law enforcement and two were also CPAs. Their expertise would be essential to the success of the program.

To ensure a productive unit, our goal was to involve law enforcement agencies responsible for investigating the cases, which included local police, sheriff offices, the Kansas Bureau of Investigations, the FBI, and others. Ultimately, all agencies were eager to participate because they knew this was an opportunity to build new resources.

We critically needed the support and assistance of SRS/APS because its social workers are on the front lines of investigations and can notify law enforcement when they uncover allegations of fraud or abuse.

In the past, social service workers weren't always able to recognize crimes and often made basic criminal investigation mistakes such as interviewing victims with suspects present, interviewing multiple witnesses together, and not understanding bank statements. But case investigations improved greatly when the social service workers were teamed side by side with CFEs, detectives, and prosecutors.

ACFE Fraud Magazine Article

Dana Gouge ([mailto:dgouce@sedgwick.gov](mailto:dgouge@sedgwick.gov)), CFE, is deputy chief of investigations for the Office of the District Attorney Nola Foulston in the 18th Judicial District of Kansas.

What makes someone a target for financial exploitation? Here are some situations that may make someone vulnerable:

- Lives alone
- Diminished eyesight
- Memory loss/dementia
- Restricted mobility
- Must rely on friends, relatives, or private help
- Needs assistance with medications
- Can't drive or carry groceries from the car

Once you've identified a vulnerable target, look for the red flags that might indicate that the elder has been exploited:

- The address has changed one or more times after a long period of stability.
- The telephone number changes or becomes unlisted.
- The bank accounts change in any way.
- Bills are delinquent.
- Financial information isn't readily available.
- Alertness is diminishing from visit to visit, indicating medications probably have been changed.
- Visitation patterns to church or old friends are changing.
- Caregivers or those giving medications are now handling finances.
- Caregivers, neighbors, or relatives are becoming overly attentive.
- The vulnerable person has just one (possibly dominating) caregiver/companion
- The caregiver/companion is overly accommodating.

Methods to Query About Financial Affairs

A financial exploiter works to isolate the vulnerable elder to make the elder totally dependent on the exploiter. When family, friends, social workers, or fraud examiners suspect someone is exploiting an individual, queries must be both tactful and persistent. However, superficial examinations often show nothing because the vulnerable person has been intimidated, "befriended," and often threatened by the perpetrator. Here are actions you should take:

- Interview the vulnerable elder apart from caregivers or companions to obtain any valuable information.
- Visit the elder numerous times to gain the elder's trust and give him or her emotional support.
- Respect the elder's privacy, but engage in more than superficial chitchat and polite answers to go beyond the typical conversation content of older people.
- Find out if the elder is receiving banking or bill-paying assistance and who helps, how often and how long the system has been in place, and if the elder reviews what the helper does.
- Discover where the elder's mail is delivered, if someone else collects his or her mail, and if the mailing address has changed recently. (Ask for copies of old tax returns or bank statements to check for changes in address or banks.)
- Determine if the elder ever signs blank checks, if anyone else has signing authority on any bank accounts, and if original checks accompany the bank statements. (Fan the checks to see if signatures are consistent with the persons authorized to sign.)

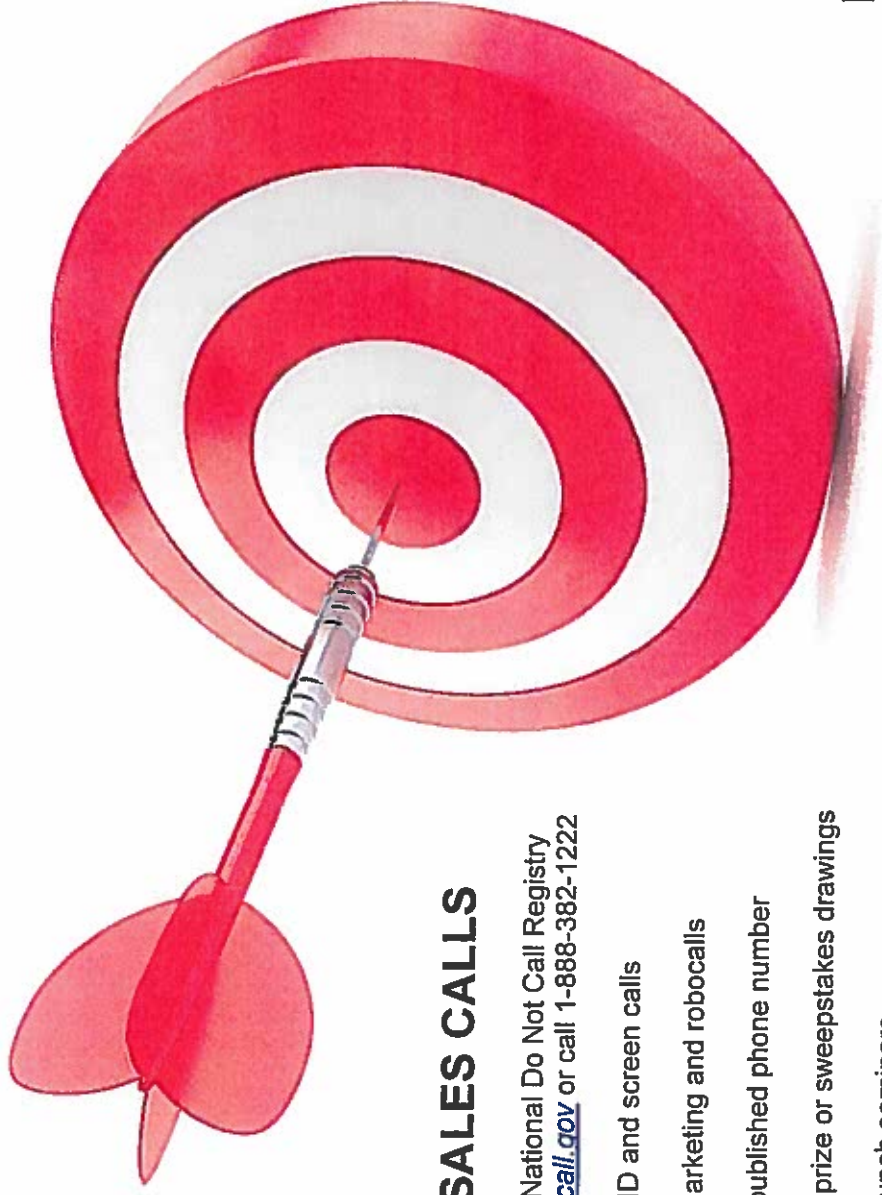
- Find out where the elder keeps financial information, who has access to this information if he or she is being cared for, and if caregivers have access to this information when the elder is napping or away.
- Find out if the elder's activity, church friends, and patterns of attendance have changed, or if the elder's personality has changed, and, if so, when it changed.
- Discern where the elder met his or her "trusted friend," how long he or she has known the person, and if the acquaintance was through a "chance" meeting.

(Source: "Financial Exploitation of Elders (<http://www.acfe.com/resources/view.asp?ArticleID=164>)" by Linda L. Saunders, CFE, CPA, in the July/August 2001 issue of *Fraud Magazine*.)

Online Resources

- www.aarp.org/money/scams-fraud/
 - They have a free Fraud Watch Network
- www.IdentityTheft.gov
- www.AnnualCreditReport.com
- www.OnGuardOnline.gov
- www.StopFraud.gov
- www.NCOA.org National Council on Aging
- www.preventelderabuse.org National Committee for the Prevention of Elder Abuse
- www.ftc.gov Federal Trade Commission
- www.elderjusticenow.org
- www.napsa-now.org National Adult Protective Services Assn.
- www.fdic.gov/consumers/consumer/moneysmrt/olderadult

YOU MAY BE A TARGET, BUT YOU DON'T HAVE TO BE THE VICTIM OF A SCAM



LIMIT SALES CALLS

Get on the National Do Not Call Registry
www.donotcall.gov or call 1-888-382-1222

Use Caller ID and screen calls

Block telemarketing and robocalls

Get a non-published phone number

Don't enter prize or sweepstakes drawings

Avoid free lunch seminars

Never respond to internet offers

EVERYONE OVER 65 SHOULD DESIGNATE

Power of Attorney

Representative Payee

Health Care Proxy

Advance Directive

Direct Deposit

Peer Support

HELP & INFORMATION

Federal Deposit Insurance Corporation
www.fdic.gov
Money Smart for Older Adults

Federal Trade Commission
www.ftc.gov

U.S. Postal Inspection Service
www.postalinspectors.uspis.gov
1-877-876-2455



If it involves the mail, it involves the U.S. Postal Inspection Service.
For more information on mail fraud and how to avoid it,
visit DeliveringTrust.com