

---

# TASK FORCE ON FRAUD AGAINST OLDER ADULTS

---

## FINAL REPORT TO THE GENERAL ASSEMBLY

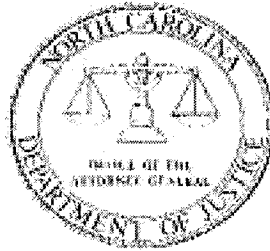
---

### TABLE OF CONTENTS

---

LETTER OF TRANSMITTAL.....	1
TASK FORCE MEMBERSHIP.....	2
AUTHORIZING LEGISLATION. ....	3
SUMMARY OF TASK FORCE PROCEEDINGS .....	4
TASK FORCE FINDINGS .....	15
TASK FORCE RECOMMENDATIONS.....	17
LEGISLATIVE PROPOSAL I : A BILL TO BE ENTITLED AN ACT TO CONTINUE THE LEGISLATIVE TASK FORCE ON FRAUD AGAINST OLDER ADULTS, AS RECOMMENDED BY THE LEGISLATIVE TASK FORCE ON FRAUD AGAINST OLDER ADULTS.....	22
LEGISLATIVE PROPOSAL II – A BILL TO BE ENTITLED AN ACT TO INCREASE THE RECOGNITION, REPORTING AND PROSECUTION OF THOSE WHO WOULD DEFRAUD OR FINANCIALLY EXPLOIT OLDER ADULTS AS RECOMMENDED BY THE LEGISLATIVE TASK FORCE ON FRAUD AGAINST OLDER ADULTS.....	23

STATE OF NORTH CAROLINA



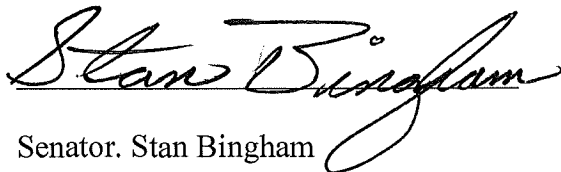
TASK FORCE ON FRAUD AGAINST OLDER ADULTS

December 13, 2012

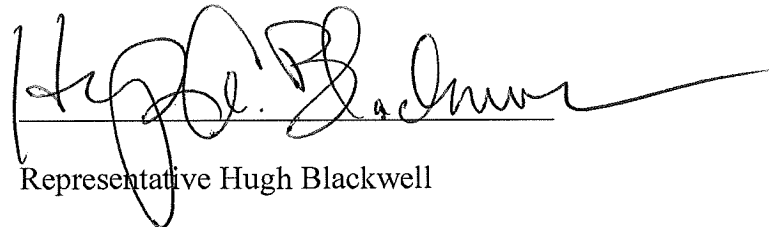
TO THE MEMBERS OF THE GENERAL ASSEMBLY:

Attached for your consideration is the report to the 2013 Regular Session of the 2013 General Assembly. This report was prepared by the Task Force on FRAUD AGAINST OLDER ADULTS pursuant to Session Law **2011-189 SENATE BILL 449** of the 2011 General Assembly.

Respectfully submitted,

  
Senator. Stan Bingham

Co-chair

  
Representative Hugh Blackwell

Co-chair

---

## TASK FORCE MEMBERSHIP

---

Sen. Stan Bingham	Co-Chair
Rep. Hugh Blackwell	Co-Chair
Nathan Batts	NC Bankers Association
Meghan Best	NC Bankers Association
Stephanie Bias	NC Senior Health Insurance Information Program
Debbie Brantley	NC Division of Aging & Adult Services
Ran Coble	NC Center for Public Policy Research
Jeff Cruden	Wake County Assistant District Attorney
Maryanne Dailey	Better Business Bureau Foundation
John Dervin	NC Governor's Office
Ben Douglas	NC Senior Tarheel Legislature
Chief Debra Duncan	NC Chiefs of Police
Felissa Ferrell	Rockingham County Department of Social Services
Joan Fleming	Federal Bureau of Investigation
Comm. Wayne Goodwin	NC Department of Insurance
Haley Haynes	NC Secretary of State
Tami Hinton	NC Commissioner of Banks
Larry Johnson	NC County Directors Association
David Kirkman	NC Department of Justice
Debbie LaBarbera	State Employee Credit Union
Bill Lamb	NC Coalition on Aging
Kathryn Lanier	NC Division of Aging & Adult Services
Bill Long	Friends and Residents of Long Term Care

Jane Long	Roxboro Savings
Sec. Elaine Marshall	NC Secretary of State
Suzanne Merrill	NC Division of Aging & Adult Services
Dan Mosca	Governors Advocacy Council on Aging
Tony Nicholson	NC Elder Law Bar
Kimberly Overton	NC Conference of District Attorneys
Mark Pegram	Rockingham County Clerk of Superior Court
Mebane Rash	NC Center for Public Policy Research
Chief Carl Robbins	NC Chiefs of Police
Helen Savage	AARP
Sara Trexler	State Employee Credit Union
Nancy Warren	NC Division of Aging & Adult Services
Lauren Whaley	NC Credit Union League
Brenda Williams	NC Treasurers Office
David Elliott	NCDOJ (Staffing Task Force)
Caroline Farmer	NCDOJ (Staffing Task Force)
Brian Tarr	NCDOJ (Staffing Task Force)

---

## AUTHORIZING LEGISLATION

---

### **S.L. 2011-189 SENATE BILL 449**

AN ACT TO DIRECT THE CONSUMER PROTECTION DIVISION, DEPARTMENT OF JUSTICE, TO COORDINATE A TASK FORCE ON FRAUD AGAINST OLDER ADULTS, AS RECOMMENDED BY THE NORTH CAROLINA STUDY COMMISSION ON AGING.

Whereas, the Federal Trade Commission reports that North Carolina ranks 24th among the 50 states in the number of fraud complaints per capita and 21st in the number of identity theft complaints per capita; and

Whereas, the Federal Trade Commission reports that, for 2008, consumers over age 50 account for 26% of identity theft complaints and 30% of fraud complaints; and

Whereas, the March 2010 North Carolina Center for Public Policy Research publication on issues involving older adults contained a segment that highlighted issues involving fraud against older adults in North Carolina; Now, therefore,

The General Assembly of North Carolina enacts:

**SECTION 1.(a)** The Consumer Protection Division, Department of Justice, shall coordinate a Task Force on Fraud Against Older Adults. The Task Force shall include representatives from the Consumer Protection Division, Department of Justice; Division of Aging and Adult Services, Department of Health and Human Services; North Carolina Senior Consumer Fraud Task Force; North Carolina Association of County Directors of Social Services; the Banking Commission; the Senior Tar Heel Legislature; and other associations as approved by the Consumer Protection Division.

**SECTION 1.(b)** The Task Force shall include, but should not be limited to, examination of the following issues:

- (1) Identifying, clarifying, and strengthening laws to provide older adults a broader system of protection against abuse and fraud.
- (2) Establishing a statewide system to enable reporting on incidents of fraud and mistreatment of older adults.
- (3) Identifying opportunities for partnership among the Banking Commission, the financial management industry, and law enforcement agencies to prevent fraud against older adults.
- (4) Granting the Attorney General authority to initiate prosecutions for fraud against older adults.

**SECTION 1.(c)** The Task Force shall make an interim report to the North Carolina Study Commission on Aging on or before November 1, 2011, and a final report including findings, recommendations, and draft legislation on or before October 1, 2012.

---

## SUMMARY OF TASK FORCE PROCEEDINGS

---

The full Task Force met from January 19, 2012 until December 13, 2012.

### January 19, 2012

- Presentation by Mebane Rash: Overview of NC Center for Public Policy Report “Fraud Against the Elderly in North Carolina”
- Discussion of the mission of the task force and Accomplishing the Goals of Task Force
  - A decision was made to create four sub-committees to meet the following statutory mission.
    - (1) Identifying, clarifying, and strengthening laws to provide older adults a broader system of protection against abuse and fraud.
    - (2) Establishing a statewide system to enable reporting on incidents of fraud and mistreatment of older adults.
    - (3) Identifying opportunities for partnership among the Banking Commission, the financial management industry, and law enforcement agencies to prevent fraud against older adults.
    - (4) Granting the Attorney General authority to initiate prosecutions for fraud against older adults.

### April 24, 2012

- A Public Hearing was held at Davidson County Community College. Participating members included Sen. Stan Bingham, N.C. Assistant Attorney General Brian C. Tarr, Davidson County District Attorney Garry Frank, Davidson County Sheriff's Office Det. Robert Welch & officials with the Guilford and Davidson departments of social services.

### May 21, 2012

- Presentation by Dr. Blower: Enhancing Court Services for Older Adults
  - Older Victims: Challenges in Utilizing the Criminal Justice System
    - Embarrassment
    - Don't know where or how to report
    - Social or physical isolation
    - Fear of having to testify
    - Afraid of losing their independence
  - Older Victims: Challenges Cont.
    - May not think of themselves as being abused
    - Reluctant to press charges against family members or caretakers
    - Lack knowledge about their rights and judicial system
    - Physical impairments
    - Cognitive impairments
  - System Barriers

- Lack of knowledge about elder mistreatment and neglect
- Lack of knowledge about challenges older adults face.
- Lack of sensitivity in dealing with older adults
- Accessibility of courts
- Lack of coordination with outside agencies
- Older Adults as Witnesses
  - Conventional wisdom is that older adults do not make effective witnesses
  - Negative stereotypes relates to memory and age
  - There is support for age-associated memory impairment
  - Research findings on credibility and reliability of witnesses are mixed
  - Primary differences tend to be between the young and the very old
  - Some studies have shown older witnesses to be just as credible as younger witnesses
  - Older adults often regarded as more interesting, informative, and generally better storytellers than the young adults.
  - Studies have shown that using different techniques with older witnesses may help
  - Cognitive interview:
    - Introduction
    - Open-ended narration
    - Probing primary memory codes
    - Review
    - Closing the interview
- How Courts Can Best Accommodate Older Adults
  - Accessibility
  - Enhance understanding of elder abuse
  - Enhance understanding on aging process and working with older adults
  - Increase sensitivity on the physiological, psychological, social challenges
  - Victim Assistance/Advocate for Elders (Similar to GAL for youth)
  - Multidisciplinary teams
  - Case Management
    - Consolidating cases (Have same judge preside over criminal proceedings and civil proceedings)
    - Expediting proceedings (Reducing continuances)
    - Reducing delay and continuances
- Strategies for Reform
  - Improve reporting and data sharing
    - Identifying cases involving older victims
    - Linking databases between agencies
  - Training (Need multidisciplinary approach so APS isn't training APS, etc)



- Elder Justice Advocate Office
- Specialized Elder Courts (Some courts will combine civil and criminal dockets, some act solely as an advisory role)
- Fiduciary Abuse Specialist Team (FAST)

## REPORT FROM SUBGROUPS 1 & 2

Two meetings held following last Task Force meeting which centered on the following:

(1) Identifying, clarifying and strengthening laws to provide older adults a broader system of protection against abuse and fraud:

- **We suggest** requiring mandatory reporting to APS and law enforcement by banks and financial institutions on potential incidents of fraud and exploitation.
- **We also suggest** that banking and financial institution are allowed to share relevant financial information pertaining to reported incidents of potential financial fraud and exploitation without liability to those institutions in order for APS and law enforcement officials to obtain accurate information more quickly.
- **We suggest** mandatory annual education of law enforcement investigators, district attorneys, and APS personnel to achieve consistency of enforcement statewide. The training must include successful ways to investigate and prosecute charges involving testimony of confused and disoriented victims. Some conversations with law enforcement, APS supervisors and district attorneys have strongly indicated a need for such specialized training especially for investigative techniques, questioning disoriented victims, collecting and using appropriate evidence.
- **We suggest** that the 53 NC counties whose aging populations exceed the 0-17 age range consider developing a task force of specially trained APS and law enforcement officials to be able to quickly engage in pursuing and prosecuting reportable incidents. We are coordinating with Basil McVey of the Administrative Office of the Courts to evaluate trends in criminal charges and convictions.
- **We are evaluating** the possibility of applying statute 14-112.2 to apply to all elder adults 60 years and older. Currently the statute requires some type of inability to care for ones needs. There are many instances in which normally capable elderly are “hoodwinked” or convinced to do something contrary to their best interests.

(2) Establishing a statewide system to enable reporting on incidents of fraud and mistreatment of older adults:

- NC AWARE is creating a repository for a statewide reporting mechanism. However, it must include all the following organizations in order to receive and correlate data on reports of fraud, abuse and exploitation and identify instances by age of the victim.
  - Attorney General's office; Adult Protective Service; Administrative Office of Courts; Better Business Bureau; Banking Commission; Department of Insurance; District Attorney's Office; Law Enforcement; Medicare (theft of Medicare ID); Medicaid, Secretary of State; and Social Security Database
  - If NC AWARE is to be a centralized location and entity to receive, synthesize and disseminate the data from these organizations, it also needs sufficient funding to enhance the data collection and analysis more timely.
  - Project of the Comptroller's office called NC FACTS, which is using Medicaid information along with other data sources, may be an avenue for this effort.

### **REPORT FROM SUBGROUP 3**

- Subgroup 3 met on April 18 at the State Employees' Credit Union offices on Hillsborough Street. Nancy Warren of the NC Division of Aging and Adult Services provided the process through Adult Protective Services (APS) for a report of an vulnerable adult being exploited financially. The process allows for referral to local law enforcement / District Attorney for criminal investigation or also forms the basis for the institution of civil guardianship proceedings by APS in order to protect the vulnerable senior. The information rarely is shared beyond those process options. APS does not make a criminal referral when there is no indication that the person experiencing the loss is a "vulnerable adult," which is one of the prerequisites for a prosecution. On other occasions, the prosecutor might decide that that prerequisite or some other element of a crime is lacking. Similarly, a civil guardianship proceeding might not be attempted by APS because the fraud victim appears to be competent. The question which then arose was what happens to the information about the fraud incident?
- APS reports are not shared with counterparts and other officials outside the county. Except for statistical data compiled from all reports taken by the county APS, the information on specific victims or incidents is not reported to the State. Because most financial exploitation events involve a victimizer working or living in the home, or perhaps a family member, usually there is no need for others outside the county to have the information. The AG representative mentioned that it would be helpful for other agencies to have this information in situations where the exploiters might be scam artists targeting seniors in multiple locations.
- Representatives of the banking and credit union communities indicated that, while the current law compels them to report suspected financial abuse to APS; they might be

comfortable with an expansion of provisions in the bank privacy statute that would direct them to report incidents to agencies besides APS or to have APS share it. One concern raised was how this information would be treated once it was received by local law enforcement. Law enforcement representatives indicated the information would need an investigative file number assigned it in order to ensure that it was treated with a degree of confidentiality. The AG representative indicated that this is an issue for the AG's office, as well. The AG's Consumer Protection Division receives hundreds of reports of elder fraud a year, most of them concerning sweepstakes, phone fraud and home repair fraud. The degree to which that sensitive information can be treated as confidential has always been of concern.

- There was considerable discussion of whether county APS officials should be required to produce a subpoena or court order in order to obtain copies of an elderly fraud victim's financial records. The consensus among the banking representatives at the meeting was that one of those instruments would be required under current law but that the banking community would not be averse to producing such records upon being notified by APS that it was needed as part of an investigation involving an elderly account holder, provided that the statutes were amended to make it clear that disclosure under those circumstances was required and would not result in liability.
- The group considered statutes from other states that allow or require banks to report suspected elder fraud incidents to more than just APS. Illinois and Maryland had such laws. Representatives of the APS, financial and law enforcement communities will check with their constituencies and report back to the subgroup regarding their reactions to the proposal. Meanwhile, the subgroup chair will come up with some proposed statutory language that mirrors the scheme employed in Illinois and Maryland and present it at the next meeting for discussion. (Note: in recent days Maryland enacted legislation on this subject that is even more expansive in scope.)
- The subgroup also discussed mandatory versus voluntary elder fraud training for bank personnel in the state, training that would include other members of the Task Force. The idea was well received, especially since some financial institutions in the state are conducting such training programs on their own. The concern expressed by representatives of the Banking Commissioner's Office and the Bankers' Association was that such programs be voluntary rather than compulsory. The latter, they said, would garner significant opposition from parties within the banking community.
- Discussions concluded with parties agreeing that whatever central reporting system the Task Force comes up with, that will be key to the collaborative efforts being discussed by Subgroup 3. The information generated on the local level often will need to be available to other agencies located outside the victim's community,

especially if it involves perpetrators that target vulnerable seniors wherever they find them. A

## **REPORT FROM SUBGROUP 4**

### **Introduction**

- Discussed granting the Attorney General the authority to initiate prosecutions for fraud against older adults
- Discussed recommendation from the Center for Public Policy Research
- Joining our subgroup for the May 16<sup>th</sup> meeting were **Kim Overton** with the North Conference of District Attorneys and **David Kirkman** with Consumer Protection in the Attorney General's office.
- After a short overview of the March 7<sup>th</sup> meeting including concerns over statistical data and giving the Attorney General original jurisdiction, the subgroup began exploring data collection and alternative ways to collaborate.

### **Statistical Data**

- Mebane Rash discussed working with Administrative Office of the Courts (AOC) on capturing statistical data related to fraud and the senior population
- Discussed implementing a check box for the officer taking the report.
- Does the victim appear over 60 years of age?
- There is some ability on the part of AOC to capture needed data since there are criminal charges specific to elderly victims including **elder abuse** and **exploitation** statutes in place.
- Drawback to existing data include some information cannot be ascertained through AOC including percentage of convictions and it cannot evaluate plea deals.
- Capture data back to 1997 for all counties.
- Kim Overton with the Conference of DA's discussed working with Nancy Warren, Department of Health and Human Services (Adult protection) on grant opportunities that will address training.
- In discussing the collection of data, Kim stated that the number of Adult Protective Services (APS) reports turned over the DA's are tracked.

## **Discussion of Original Jurisdiction and Other Agencies**

- In response to a question concerning original jurisdiction and other agencies, Haley Hayes with the Secretary of State made us aware of state statute 78A-57B addressing securities fraud.
- (b) The Administrator may refer such evidence as is available concerning violations of this Chapter or of any rule or order hereunder to the proper district attorney, who may, with or without such a reference, institute the appropriate criminal proceedings under this Chapter. Upon receipt of a reference, **the district attorney may request that a duly employed attorney of the Administrator prosecute or assist in the prosecution of the violation or violations on behalf of the State.** Upon approval of the Administrator, the employee may be **appointed a special prosecutor for the district attorney to prosecute or assist in the prosecution** of the violations without receiving compensation from the district attorney. Such a special prosecutor shall have all the powers and duties prescribed by law for district attorneys and such other powers and duties as are lawfully delegated to the special prosecutor by the district attorney for violations of this Chapter.

## **Collaboration with District Attorneys through Training and Multi-Discipline Approach**

Cross-training would help address victimization of seniors. A multidisciplinary, team approach to addressing the problem with training as a key component. A team approach would foster interaction and collaboration between agencies. Special prosecutors could train district attorneys and stay active in prosecuting defendants. The approach makes more sense and is more efficient.

## **Assignment of Special Prosecutors and Funding of Positions and Programs**

- Fund the positions with appropriations from the general assembly.
- Fund the programs through grant money.
- There was discussion about special prosecutors and assigning them regionally through the Conference of DA's and the Attorney General's office. A special prosecutor may be through a grant but a more stable alternative would involve General Fund support and the program could be grant funded. The group examined what resources are available for the prosecution of these cases to include list serves to share information with all disciplines involved in prosecution including DA's, social services, law enforcement, etc.

## **Role of Special Prosecutors**

Special prosecutors could provide a very limited role up to and including conducting the prosecution.

### **Role of the Conference of District Attorneys**

Conference of DA's is the organization that DA's turn to for assistance including teaching/training and prosecution. The Conference also develops programs and resources.

### **Appropriations for Positions**

If seeking to add a special prosecutor, salaries in the median range should be considered because of the need for experience in those positions. After the special prosecutor is in place, the addition of a legal administrative person can address additional responsibilities including the distribution of publications including training manuals.

### **Resources through the Attorney General's Office**

- David Kirkman discussed the civil component housed in the Attorney General's office and what resources are provided via the programs
- AS a resource, Kirkman brought to the groups' attention the Governor's Crime Commission (GCC) grants include elder abuse grants for training and victim outreach which would be beneficial for working with special prosecutors and administrative support personnel.

### **Concerns and Tasks Moving Forward**

- Feasibility for appropriations in the 2013 General Assembly budget. The funding needs are identified as reoccurring and for specific positions. The Attorney General's office and DAs will be asked for input regarding appropriated positions through the Conference of DA's and the Attorney General's office.
- Study statistical data as it relates to regional assignments including population growth.
- Regional assignments may be a possibility.
- Collaboration and **multi-disciplinary approach** with **specialization** and **training** as a key.

## **GENERAL DISCUSSION**

- Kim Overton discussed the role of Special Prosecutors.
  - The conference of DAs has special prosecutors for different areas of the law, and elder fraud could allow for another special prosecutor (Domestic violence, DWI and Financial Crimes.)
  - Special prosecutors are devoted solely to that discipline and are responsible for multi-disciplinary training.

- Michigan is receiving a grant to fund an Elder Abuse Prosecutor and will be the first in the country.
- There is a training grant that will allow the Conference of DAs and APS to train law enforcement and DAs.
- Report is due on October 1, 2012.
- Representative Blackwell asked the subgroup to envision what success would look like and to improve the problem we are addressing. This visioning will assist lawmakers in considering the resource requests.
- 2025 is when 85 counties' elderly population will be larger than the 17 and younger population.
- Dan Mosca offered the idea to create a strategic plan over the next 10 years to get ready for that time period. (i.e. short term/ first 1-3 years; long term/ 4-7 years; and so on)
- Strategies to assist legislative leaders to follow issue and see how recommendations are working? Where would be a good place to assign that responsibility? What would we need to enable the division to be able to analyze the progress?

#### **July 23, 2012**

- Sen. Stan Bingham chaired the meeting. Report and discussion from the four sub-committees regarding their findings and recommendations. Decision was made to merge the reports into one report since many of the recommendations were overlapping. In the merged report, it was recommended that all legislative needs be grouped together as well as any financial needs.

#### **December 13, 2012**

- Ryan Blackledge from bill drafting lead a discussion of the remaining questions posed by the draft legislation of Legislative Proposal I in the report.
  - After discussion of each section, a decision was made on the changes wanted by the task force and a vote approving each section subject to the revisions in bill drafting.
- The Findings passed with the addition in the ninth paragraph of the addition of adult protection services and in paragraph ten the clarification of counties after foreign.
- The Recommendations all passed without change.
- The Legislative Proposal II about continuing the task force passed.

---

## FINDINGS

---

WHEREAS, N.C. General Statute § 143B-181.3 states that (a) The North Carolina General Assembly finds the following: (1) Older adults should be able to live as independently as possible, and to live free from abuse, neglect, and exploitation...and (b) It is the policy of the State to effectively utilize its resources to support and enhance the quality of life for older adults in North Carolina; and

WHEREAS, by the year 2025, 1 in 4 North Carolinians will be age 60 & older, and 85 of North Carolina's 100 counties will have more residents who will be age 60 & older than ages 17 & under; and

WHEREAS, crime information and statistics demonstrate that criminals target older adults by perpetrating financial and physical abuse, often resulting in substantial life changing harm; and

WHEREAS, criminals swindled \$6,000,000 from mostly elderly residents in 2011 alone, with one victim losing more than \$756,000 and another losing more than \$854,000, according to the 662 reported incidents to the North Carolina Attorney General's Office Telemarketing Fraud Unit; and

WHEREAS, the Federal Trade Commission reports that, for 2011, consumers over age 50 account for 30% of identity theft complaints and 45% of fraud complaints; and

WHEREAS, studies indicate that older victims of financial fraud are much less likely to report the crimes that have been committed against them; and

WHEREAS, the State of North Carolina were pioneers enacting the nation's first elder abuse law in 1973 but have fallen behind by not strengthening this law to provide older adults a broader system of protection against abuse and fraud; and

WHEREAS, national and international research show that abuse, neglect and exploitation of vulnerable and older adults are grossly underreported; and

WHEREAS adult protective services and criminal law enforcement agencies often require information on suspected fraud incidents right away in order to apprehend perpetrators and prevent further financial harm to older adults; and

WHEREAS, these cases are difficult to prosecute because often they involve civil and criminal wrongs, older adult witnesses, multi-jurisdictional issues, and the need to work with other states and foreign countries; and

WHEREAS, expertise is required to prosecute these crimes, and local district attorneys lack time, money and other resources to handle these cases; and

WHEREAS, the North Carolina Attorney General does not have original jurisdiction to prosecute these crimes,



WHEREAS, the employees of financial institutions are among the best situated to spot and report financial exploitation of older adults; and

WHEREAS, protecting North Carolina's vulnerable and older adults is a community responsibility and all citizens are charged under State law to report suspected abuse, neglect or exploitation to their local County Department of Social Services; and

WHEREAS, in fiscal year 2011 nearly 20,000 reports of abuse, neglect or exploitation of vulnerable and older adults were made to North Carolina's 100 county departments of social services;

WHEREAS, the March 2010 North Carolina Center for Public Policy Research publication on issues involving older adults contained research highlighting issues of fraud against older adults in North Carolina; Now, therefore,

---

## RECOMMENDATIONS

---

**NOW THEREFORE**, to deter this crime in North Carolina, the North Carolina Legislative Task Force on Fraud Against Older Adults recommends:

**Recommendation 1:** Establish a state-wide elder abuse data collection system including data from local law enforcement, Administrative Office of the Courts, Offices of State Attorney General and Secretary of State, and Adult Protective Services, to understand the scope of elder abuse reports and prosecutions at the county level. This data should be analyzed to assist those that work with older adults, district attorneys, law enforcement and crime prevention. It is our desire that NCAWARE participate in gathering this information. This analyzed data should be reported annually to the legislature and made available publicly online or in a manner to best assist those agencies involved.

**Recommendation 2:** Establish a statewide phone and online crime reporting system. This new reporting system will gather real-time data on incidents of fraud and mistreatment of older adults like that of “PhoneBusters” (also known as The Canadian Anti Fraud Centre) in Canada and allow law enforcement to track trends and predict criminal movement leading to quicker arrests and less victimization. We suggest a public/private alliance to facilitate the development of this new reporting system.

**Recommendation 3:** Continue an on-going state-level task force to ensure implementation and reporting of the Task Force recommendations. Reporting will be made to a legislative committee such as a Fraud and Elder Abuse subcommittee of the Joint Legislative Oversight Committee on Health and Human Services.

**Recommendation 4:** Have the General Assembly encourage all financial institutions operating within North Carolina to develop and implement programs for training their officers and employees to recognize and effectively report instances where older customers may be suffering financial exploitation. Further encourage the Attorney General and The Division of Aging and Adult Services of the Department of Health and Human Services to make available to financial institutions on their agency websites materials that can be used by financial institutions to conduct such training programs.

**Recommendation 5:** An annual, recurring appropriation of \$2,375,649 to fund a three year pilot of the Vulnerable Adult Protective Services System as recommended by the NC APS Task Force. The system will expand the older adult population identified in G.S. 108A. Further, the system will provide a broader array of services and preventative role of Adult Protective Services. The system will be piloted by six counties of various sizes.

**Recommendation 6:** A recurring, annual appropriation of \$2,000,000 to re-establish the State APS Fund.

**Recommendation 7:** Establish an Elder Fraud and Abuse Prevention Unit within the Conference of District Attorneys.

This Unit will provide assistance to district attorneys across the state regarding criminal cases victimizing older adults when specialized assistance is needed. The Conference of District Attorneys will collect and report annually to the N.C. General Assembly the following data: number of trainings held, the number of District Attorneys and Assistant District Attorneys trained, number of law enforcement trained, number of other allied professionals trained, number of requests for technical assistance, number of cases where technical assistance was provided, number of cases handled as a special prosecutor, and number of newsletters distributed to criminal justice and other allied professionals.

A recurring appropriation of \$165,000 for SFY 2013-14 and a recurring appropriation of \$550,000 for SFY 2014-15 to the Conference of District Attorneys to establish an Elder Fraud and Abuse Prevention Unit. In 2013-14, this appropriation would fund one Lead Elder Fraud and Abuse Resource prosecutor and a part-time legal assistant/meeting planner. In 2014-15, this appropriation would fund one Lead Elder Fraud and Abuse Resource Prosecutor, two additional Elder Fraud and Abuse Resource Prosecutors to be stationed regionally throughout the state and a full-time legal assistant/meeting planner to support their work. The Conference of District Attorneys will manage an active caseload of these prosecutions; conduct trainings for district attorneys, law enforcement, and court personnel across the state; provide technical assistance; distribute a quarterly newsletter; and create a manual for local district attorneys to assist them in their own prosecutions.

#### Fiscal Year 2013-14

Lead Elder Fraud and Abuse Resource Prosecutor (Prosecutor/Supervisor) - To provide critical support to enhance the capability of the State's prosecutors to effectively prosecute elder fraud and abuse cases. This position will oversee the Elder Fraud and Abuse Resource Prevention Unit. The position will serve as a resource to prosecutors, law enforcement, and other allied professionals in the State on elder fraud and abuse. This position will assess training needs, develop and provide training programs for prosecutors, law enforcement officers and other allied professionals. This position will provide technical assistance and legal research to prosecutors on a wide variety of legal issues related to elder fraud, including charging determination; pre-trial practices; trial practice; and appellate practice. In addition, this position will assist District Attorney offices by serving as a special prosecutor for Elder Fraud and Abuse cases as requested by the Elected District Attorney. Lastly, this position will prepare briefs, legal memorandum and other pleadings for use at hearings, trials or on appeal of such cases. (Est. position cost: \$125,000 to \$135,000)

Part-time Legal Assistant/Meeting Planner - This position will provide legal research support to the Lead Elder Fraud and Abuse Resource Prosecutor of the Conference. This position will be responsible for the dissemination of registration brochures and registration for District Attorney Staff; law enforcement officers, and other allied criminal justice professionals. Other administrative activities and responsibilities may include: greeting guests and visitors, answering the phone, typing, filing, copying, preparing and distributing mailings, and tracking and processing travel reimbursement requests. Lastly, this position will be responsible for planning all Elder Fraud and Abuse

training to include: hotel site and contract, audio visual arrangements, speaker travel arrangements, food and beverage, preparing handouts, etc. and other administrative / secretarial duties as needed. (Est. position cost: \$25,000 to \$30,000)

Travel/Supply/Equipment Costs: The Lead Elder Fraud and Abuse Resource Prosecutor will develop training that will focus Elder Fraud and Abuse cases for North Carolina Prosecutors, law enforcement and other allied professionals. Funding will need to be provided for travel costs (mileage, subsistence, lodging, etc.). Paper, notebooks, pens, printing etc. for these trainings will be needed. Funding for the cost of quarterly newsletters that will contain up-to-date legislation, etc. for prosecutors. Lastly, this funding will surprise technical support and equipment needs for each position (Est. travel/supply/equipment cost \$50,000)

2014-15

Lead Elder Fraud and Abuse Resource Prosecutor (Prosecutor/Supervisor) - To provide critical support to enhance the capability of the State's prosecutors to effectively prosecute elder fraud cases. This position will oversee the Elder Fraud and Abuse Resource Prevention Unit. The position will serve as a resource to prosecutors, law enforcement, and other allied professionals in the State on elder fraud prosecution. This position will assess training needs, develop and provide training programs for prosecutors, law enforcement officers and other allied professionals. This position will provide technical assistance and legal research to prosecutors on a wide variety of legal issues related to elder fraud, including charging determination; pre-trial practices; trial practice; and appellate practice. In addition, this position will assist District Attorney offices by serving as a special prosecutor for Elder Fraud and Abuse cases as requested by the Elected District Attorney. Lastly, this position will prepare briefs, legal memorandum and other pleadings for use at hearings, trials or on appeal of such cases. (Est. position cost: \$125,000 to \$135,000)

Elder Fraud and Abuse Resource Prosecutor - To provide critical support to enhance the capability of the State's prosecutors to effectively prosecute elder fraud cases. This position will provide local support of Elder Fraud and Abuse cases to District Attorney offices in the Eastern part of North Carolina. The position will serve as a resource to prosecutors, law enforcement, and other allied professionals in the State on elder fraud prosecution. This position will assess training needs of the Eastern part of the state and report these needs to the Lead Elder Fraud and Abuse Resource Prosecutor. This position will assist District Attorney offices by serving as a special prosecutor for Elder Fraud and Abuse cases as requested by the Elected District Attorney in each Eastern District. This position will provide technical assistance and legal research to prosecutors on a wide variety of legal issues related to elder fraud, including charging determination; pre-trial practices; trial practice; and appellate practice. Lastly, this position will prepare briefs, legal memorandum and other pleadings for use at hearings, trials or on appeal of such cases. (Est. position cost: \$105,000 to \$115,000)

Elder Fraud and Abuse Resource Prosecutor - To provide critical support to enhance the capability of the State's prosecutors to effectively prosecute elder fraud cases. This position will provide local support of Elder Fraud and Abuse cases to District Attorney offices in the Western part of North Carolina. The position will serve as a resource to prosecutors, law enforcement, and other allied professionals in the State on elder fraud prosecution. This position will assess training needs of the Eastern part of the state and report these needs to the Lead Elder Fraud and Abuse Resource Prosecutor. This position will assist District Attorney offices by serving as a special prosecutor for Elder Fraud and Abuse cases as requested by the Elected District Attorney in each Western District. This position will provide technical assistance and legal research to prosecutors on a wide variety of legal issues related to elder fraud, including charging determination; pre-trial practices; trial practice; and appellate practice. Lastly, this position will prepare briefs, legal memorandum and other pleadings for use at hearings, trials or on appeal of such cases. (Est. position cost: \$105,000 to \$115,000)

Full-time Legal Assistant/Meeting Planner - This position will provide legal research support to the Lead Elder Fraud and Abuse Resource Prosecutor of the Conference. This position will be responsible for the dissemination of registration brochures and registration for District Attorney Staff; law enforcement officers, and other allied criminal justice professionals. Other administrative activities and responsibilities may include: greeting guests and visitors, answering the phone, typing, filing, copying, preparing and distributing mailings, and tracking and processing travel reimbursement requests. Lastly, this position will be responsible for planning all Elder Fraud and Abuse training to include: hotel site and contract, audio visual arrangements, speaker travel arrangements, food and beverage, preparing handouts, etc. and other administrative / secretarial duties as needed. (Est. position cost: \$50,000 to \$60,000)

Travel/Supply/Equipment Costs: The Lead Elder Fraud and Abuse Resource Prosecutor will develop training that will focus Elder Fraud and Abuse cases for North Carolina Prosecutors, law enforcement and other allied professionals. Funding will need to be provided for travel costs (mileage, subsistence, lodging, etc.). Paper, notebooks, pens, printing etc. for these trainings will be needed. Funding for the cost of quarterly newsletters that will contain up-to-date legislation, etc. for prosecutors. Lastly, this funding will surprise technical support and equipment needs for each position. (Est. travel/supply/equipment cost \$75,000)

**Recommendation 8:** Create an Elder Fraud and Abuse Prevention Unit in the Office of the Attorney General. The Elder Fraud and Abuse Prevention Unit in the Office of the Attorney General will collect and report annually to the N.C. General Assembly the following data: number of calls from victims, losses reported, losses recovered, number of criminal prosecutions, number of criminal convictions, number of civil enforcement actions, restraining orders and injunctions, and number of civil judgments.

The Task Force believes that this multidisciplinary, team approach to addressing the problem of fraud and abuse committed against older adults in North Carolina with training as a key component is the best way to put an end to these crimes. The team approach will foster

interaction and collaboration between agencies, and deter criminals from targeting North Carolina's older adults.

A recurring appropriation of \$455,000 to staff the Unit as follows:

Attorney IV (Attorney/Supervisor) – To manage the Elder Fraud and Abuse Prevention Unit, work with state and federal criminal prosecutors to develop and prosecute criminal cases, and bring cases against fraud groups pursuant to the Attorney General's civil enforcement authority under Chapter 75 of the General Statutes and, where authorized, federal law. (Est. position cost: \$125,000 to \$135,000/yr.)

Attorney III (Enforcement Attorney) – To work with state and federal criminal prosecutors to develop and prosecute criminal cases, bring criminal cases in the local courts when there is a conflict of interest for the Conference of District Attorneys' prosecutors, and bring cases against fraud groups pursuant to the Attorney General's civil enforcement authority under Chapter 75 of the General Statutes and, where authorized, federal law. (Est. position cost \$ 85,000 to \$100,000/yr.)

Two Criminal Justice Investigator/Specialist positions – To provide victim-witness support services, counsel victims to prevent their subsequent victimization, investigate fraud incidents and provide litigation support to Conference of District Attorneys criminal prosecutors and Attorney General Elder Fraud and Abuse Prevention Unit enforcement attorneys. (Est. position cost \$60,000 to \$80,000/yr. each position) *[Note: These positions were grant funded from 1999-2005 through a US DOJ grant, and then since 2006 through the Governor's Crime Commission. These positions need to be funded with appropriations going forward so that staff can provide support to the attorneys to build the cases (not allowed through the grant), and to create stability for the team.]*

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

S

D

BILL DRAFT 2013-ME-22\* [v.2] (12/19)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)  
12/20/2012 12:31:01 PM

Short Title: Continue Older Adult Fraud Task Force.

(Public)

Sponsors:

Referred to:

- 1 A BILL TO BE ENTITLED  
2 AN ACT TO CONTINUE THE TASK FORCE ON FRAUD AGAINST OLDER ADULTS,  
3 AS RECOMMENDED BY THE TASK FORCE ON FRAUD AGAINST OLDER  
4 ADULTS.  
5 The General Assembly of North Carolina enacts:  
6 **SECTION 1.** Section 1(c) of S.L. 2011-189 reads as rewritten:  
7 "SECTION 1.(c) The Task Force shall make ~~an interim~~ a report to the North Carolina  
8 Study Commission on Aging on or before November 1, 2011, and a ~~final~~ report including  
9 findings, recommendations, and draft legislation to the Joint Legislative Oversight Committee  
10 on Health and Human Services on or before ~~October 1, 2012.~~ February 1, 2013. The Task  
11 Force shall report to the Joint Legislative Oversight Committee on Health and Human Services  
12 prior to the 2014 Regular Session on the efficacy of any of the Task Force's recommendations  
13 that are adopted. The Task Force shall terminate on May 1, 2015, or upon the filing of its final  
14 report, whichever occurs first."  
15 **SECTION 2.** The Consumer Protection Division, Department of Justice, shall add  
16 the following to its list of approved associations represented on the Task Force:  
17 (1) The North Carolina Credit Union League.  
18 (2) An association representing non-depository financial institutions.  
19 **SECTION 3.** This act is effective when it becomes law.



\* 2 0 1 3 - M E - 2 2 - V - 2 \*

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

S

D

BILL DRAFT 2013-ME-9\* [v.9] (10/18)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)  
12/20/2012 1:23:15 PM

Short Title: Financial Exploitation of Older Adults.

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO INCREASE THE RECOGNITION, REPORTING, AND PROSECUTION OF  
3 THOSE WHO WOULD DEFRAUD OR FINANCIALLY EXPLOIT OLDER ADULTS,  
4 AS RECOMMENDED BY THE TASK FORCE ON FRAUD AGAINST OLDER  
5 ADULTS.

6 The General Assembly of North Carolina enacts:

7 SECTION 1. G.S. 14-112.2 reads as rewritten:

8 "**§ 14-112.2. Exploitation of an elder adult or disabled adult.**

9 (a) The following definitions apply in this section:

10 (1) Disabled adult. – A person 18 years of age or older or a lawfully  
11 emancipated minor who is present in the State of North Carolina and who is  
12 physically or mentally incapacitated as defined in G.S. 108A-101(d).

13 (2) Elder adult. – A person 60 years of age or older who is not able to provide  
14 for the social, medical, psychiatric, psychological, financial, or legal services  
15 necessary to safeguard the person's rights and resources and to maintain the  
16 person's physical and mental well-being. older.

17 (b) It is unlawful for a person: (i) who stands in a position of trust and confidence with  
18 an elder adult or disabled adult, or (ii) who has a business relationship with an elder adult or  
19 disabled adult to knowingly, by deception or intimidation, obtain or use, or endeavor to obtain  
20 or use, an elder adult's or disabled adult's funds, assets, or property with the intent to  
21 temporarily or permanently deprive the elder adult or disabled adult of the use, benefit, or  
22 possession of the funds, assets, or property, or to benefit someone other than the elder adult or  
23 disabled adult.

24 (c) It is unlawful for a ~~person, who knows or reasonably should know that an elder~~  
25 ~~adult or disabled adult lacks the capacity to consent,~~ person to knowingly, by deception or  
26 intimidation, obtain or use, endeavor to obtain or use, or conspire with another to obtain or use  
27 an elder adult's or disabled adult's funds, assets, or property with the intent to temporarily or  
28 permanently deprive the elder adult or disabled adult of the use, benefit, or possession of the  
29 funds, assets, or property, or benefit someone other than the elder adult or disabled adult. This  
30 subsection shall not apply to a person acting within the scope of that person's lawful authority  
31 as the agent for the elder adult or disabled adult.

32 (d) A violation of subsection (b) of this section is punishable as follows:



\* 2 0 1 3 - M E - 9 - V - 9 \*



- (1) If the funds, assets, or property involved in the exploitation of the elderly person or disabled adult is valued at one hundred thousand dollars (\$100,000) or more, then the offense is a Class F felony.
- (2) If the funds, assets, or property involved in the exploitation of the elderly person or disabled adult is valued at twenty thousand dollars (\$20,000) or more but less than one hundred thousand dollars (\$100,000), then the offense is a Class G felony.
- (3) If the funds, assets, or property involved in the exploitation of the elderly person or disabled adult is valued at less than twenty thousand dollars (\$20,000), then the offense is a Class H felony.
- (e) A violation of subsection (c) of this section is punishable as follows:
- (1) If the funds, assets, or property involved in the exploitation of the elderly person or disabled adult is valued at one hundred thousand dollars (\$100,000) or more, then the offense is a Class G felony.
- (2) If the funds, assets, or property involved in the exploitation of the elderly person or disabled adult is valued at twenty thousand dollars (\$20,000) or more but less than one hundred thousand dollars (\$100,000), then the offense is a Class H felony.
- (3) If the funds, assets, or property involved in the exploitation of the elderly person or disabled adult is valued at less than twenty thousand dollars (\$20,000), then the offense is a Class I felony."

**SECTION 2.(a)** G.S. 53B-4 is amended by adding a new subdivision to read as follows:

**"§ 53B-4. Access to financial records.**

Notwithstanding any other provision of law, no government authority may have access to a customer's financial record held by a financial institution unless the financial record is described with reasonable specificity and access is sought pursuant to any of the following:

...

- (13) A written notice of investigation of suspected financial exploitation of an adult delivered to the financial institution by a county Department of Social Services Director investigating a credible report of financial exploitation of a disabled adult, pursuant to G.S. 108A-106.1, or by a law enforcement agency investigating possible financial exploitation of an older adult, pursuant to G.S. 108A-116. Delivery the written notice shall be effected by hand, via Certified Mail-Return Receipt Requested, or through a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2). The recipient of the written notice shall be the financial institution's local branch vice-president, its local branch manager or assistant branch manager, or the agent for service of process listed by the financial institution with the North Carolina Secretary of State.

**SECTION 2.(b)** G.S. 53B-9(a) reads as rewritten:

**"§ 53B-9. Duty of financial institutions; fee; limitation of liability.**

(a) Upon receipt of a notice pursuant to G.S. 53B-4(13) or upon service of a subpoena or court order pursuant to G.S. 53B-4(1), (3), (9), or (11) and receipt of certification pursuant to G.S. 53B-5(5), a financial institution shall locate the financial records requested and prepare to make them available to the government authority seeking access to them. Upon receipt of notice that a customer has challenged the notice of investigation, ~~court order~~ order, or subpoena, the financial institution may suspend its efforts to make the records available until after final disposition of the challenge.

SECTION 3. Article 6 of Chapter 108A of the General Statutes is amended by adding a new section to read as follows:

**"§ 108A-106.1. Production of customers' financial records upon request in cases of suspected financial exploitation; immunity; records may not be used against account owner.**

(a) A financial institution shall promptly provide to the director the financial records of a disabled adult customer or depositor if the director or the director's designee has delivered to the financial institution a signed, written notice on department letterhead identifying the disabled adult and specifying all of the following:

- (1) The director's department is investigating a credible report that the adult is being or has been financially exploited due to his or her disability.
- (2) The disabled adult's financial records are needed in order to substantiate or evaluate the report.
- (3) Time is of the essence in order to prevent further exploitation of that adult.
- (4) All produced copies of the adult's financial records shall be kept confidential by the county department of social services unless required by court rules to be disclosed to a party to a court proceeding, or introduced and admitted into evidence in an open court proceeding.

(b) No financial institution or law enforcement agency, or officer or employee thereof, who provides, seeks, or obtains financial records or any other information in accordance with this section, or provides testimony in any judicial proceeding based upon the contents thereof, shall be held liable in any action if they acted in good faith.

(c) No customer shall be subject to indictment, criminal prosecution, criminal punishment, or criminal penalty by reason of or on account of anything disclosed by a financial institution pursuant to this section, nor may any information obtained through such disclosure be used as evidence against the customer in any criminal or civil proceeding. Notwithstanding the foregoing, information obtained may be used against a person who is a joint account owner accused of financial exploitation of an older adult joint account holder, but solely for criminal or civil proceedings directly related to the alleged financial exploitation of the older adult joint account holder.

(d) As used in this section, the terms "customer," "financial exploitation," "financial institution," "financial record," and "promptly" have the same meanings as defined in G.S. 108A-113."

SECTION 4. Chapter 108A of the General Statutes is amended by adding a new article to read as follows:

**"Article 6A.**

**"Protection of Older Adults from Financial Exploitation.**

**"§ 108A-112. Legislative intent and purpose.**

Determined to fight the growing problem of fraud and financial exploitation targeting older adults in North Carolina, the General Assembly enacts this Article to facilitate the collection of records needed to investigate and prosecute such incidents.

**"§ 108A-113. Definitions.**

As used in this Article, the following definitions apply:

- (1) Customer. – A person who has transacted business with a financial institution or has used the services offered by a financial institution.
- (2) Financial exploitation. – The illegal or improper use of an older adult's financial resources for another's profit or pecuniary advantage.
- (3) Financial institution. – A banking corporation, trust company, savings and loan association, credit union, or other entity principally engaged in lending money or receiving or soliciting money on deposit.

- (4) Financial record. – An original of, a copy of, or information derived from, a record held by a financial institution pertaining to a customer's relationship with the financial institution and identified with or identifiable with the customer.
- (6) Law enforcement agency. – A duly accredited state or local government agency possessing authority to enforce the criminal statutes of North Carolina.
- (7) Older adult. – An individual 60 years of age or older.
- (8) Promptly. – As soon as practicable, with reasonable allowance to be made for the time required to retrieve older data or records that are not readily or immediately retrievable due to their current storage media.

**"§ 108A-114. Financial institutions encouraged to maintain list of contacts in case of financial exploitation.**

All financial institutions are encouraged, but not required, to offer to its older adult customers the opportunity to submit, and periodically update, a list of persons that the older adult would like the bank to contact in case of suspected financial exploitation of the older adult.

**"§ 108A-115. Duty to report suspected fraud; content of report; immunity for reporting.**

(a) Any financial institution, or officer or employee thereof, having reasonable cause to believe that an older adult is the victim or target of financial exploitation shall report such information to both of the following:

- (1) Persons on the list provided by the customer under G.S. 108A-114, if such a list has been provided by the customer. The financial institution may choose not to contact persons on the provided list if the bank suspects that those persons are financially exploiting the older adult.
- (2) The appropriate local law enforcement agency.

(b) The report may be made orally or in writing. The report shall include the name and address of the older adult, the nature of the suspected financial exploitation, and any other pertinent information.

(c) No financial institution, or officer or employee thereof, who makes a report under this section shall be held liable in any action if they acted in good faith.

**"§ 108A-116. Production of customers' financial records upon request in cases of suspected financial exploitation; immunity; records may not be used against account owner.**

(a) A financial institution promptly shall provide to the head of a law enforcement agency, or his or her designated agent, the financial records of an older adult customer or depositor, provided that the head of a law enforcement agency or his or her designated agent provides to the financial institution a signed, written notice of investigation on agency letterhead identifying the older adult customer, providing the agency's investigative file number on the matter, and specifying all of the following:

- (1) The law enforcement agency is investigating, pursuant to the law enforcement agency's statutory authority, a credible report that the older adult is being or has been financially exploited.
- (2) The older adult's financial records are needed in order to substantiate or evaluate the report.
- (3) Time is of the essence in order to prevent further exploitation of that older adult.
- (4) All produced copies of the older adult's financial records, as well as any information obtained pursuant to the duty to report found in § 108A-114, shall be kept confidential by the law enforcement agency unless required by

1                    court rules to be disclosed to a party to a court proceeding, or introduced and  
2                    admitted into evidence in an open court proceeding.

3            (b)    No financial institution or law enforcement agency, or officer or employee thereof,  
4            who provides, seeks, or obtains financial records or any other information in accordance with  
5            this section, or provides testimony in any judicial proceeding based upon the contents thereof,  
6            shall be held liable in any action if they acted in good faith.

7            (c)    No customer shall be subject to indictment, criminal prosecution, criminal  
8            punishment, or criminal penalty by reason of or on account of anything disclosed by a financial  
9            institution pursuant to this section, nor may any information obtained through such disclosure  
10           be used as evidence against the customer in any criminal or civil proceeding. Notwithstanding  
11           the foregoing, information obtained may be used against a person who is a joint account owner  
12           accused of financial exploitation of an older adult joint account holder, but solely for criminal  
13           or civil proceedings directly related to the alleged financial exploitation of the older adult joint  
14           account holder."

15            **SECTION 5.** This act becomes effective on the first day of a month that is six  
16            months after this act becomes law.