

# Financial Abuse and Exploitation Prosecutorial Options Overview

- Abuse of a Vulnerable Adult
- Theft
- Case Example

# Abuse of Vulnerable Adult (28-386)

- Knowing and intentional act causing or permitting a vulnerable adult to be:
  - Physically injured
  - Unreasonably confined
  - Sexually abused
  - Exploited
  - Cruelly punished
  - Denied essential services

# **Which avenue to follow?**

When evaluating whether a case may be Abuse of a Vulnerable Adult or one of our Theft choices, we have to look at all of the circumstances and history.

# What is a Vulnerable Adult? (28-371)

- 18 or older
- Substantial mental or functional impairment, or
- *If a guardian has been appointed under the Nebraska Probate Code*
- A IIIA Felony

Can be a tricky statute unless a guardian has been appointed. How do we determine impairment?

# What is Financial Exploitation?

- Illegal or improper use of an older adult's funds, property or assets.
- Since not all older adults use the banking system, consider cash, gold, jewelry, antiques, and homes as assets.

# Who Commits Financial Exploitation?

- Family members, partners, and trusted individuals
- Caregivers
- Faith leaders and representatives
- Interpreters/translators who have a unique trust relationship
- Strangers may become “friends”  
(Sweetheart scams)

# Methods of Financial Exploitation

- Scams and identity theft (stranger)
- Theft, coercion, and fraud
- Undue influence
- Abuse of legal authority (i.e., Power of Attorney)

# What is Undue Influence?

- Method used by perpetrator to obtain “consent” from victim in order to commit crime of theft.
- Substitution of perpetrator’s will for the true desires of victim – similar to brainwashing.
- Victim consents to transactions based on what perpetrator wants – not in victim’s best interest.

# Consent

- Possessed sufficient mental capacity
- Had knowledge of true nature of transaction
- Acted freely and voluntarily

# Powers of Attorney and Guardianships

- **Power of Attorney**

- An instrument which delegates authority to make decisions or financial management to another

- **Guardianships**

- A court order granting certain powers to a family member, other individual, governmental agency, or institution to control the affairs of another person

# Theft Statute Choices

- Theft by Unlawful Taking (28-511)
  - Take property of another with intent to deprive
- Theft by Deception (28-512)
  - Obtain property of another using some sort of fraud
- Theft by Extortion (28-513)
  - Obtain property of another via threat

# Theft--Grading of Offenses

- Class III Felony-- value over \$1,500
- Class IV Felony-- value over \$500
- Class I Misdemeanor-- value over \$200
- Class II Misdemeanor-- value under \$200
- Increased penalties for subsequent offenses

# *State v. David Jackson (2010)*

## Background

- Victim-83 yrs old
- Jackson was her investment/insurance broker
- Initially, Jackson would require \$100-500 from her (and her husband when he was alive) per visit.
- Victim did not know he was also receiving a commission on the annuities
- After her husband died, Jackson continued to visit.

## *State v. David Jackson (cont.)*

- After her husband died, the fees went up dramatically. Jackson would say “It takes money to make money, and I’m sure your going to make enough so you never have to worry.”
- Jackson would write “gift” in the memo section of the check, saying it helped him on taxes.
- Checks started to range from \$2,000 to \$15,000, two or three times a year.
- Jackson would write out the checks and have Victim sign.
- Jackson would tell her to throw all the records away.

## *State v. David Jackson (cont.)*

- In 2006, Jackson had victim sign a document including the following:

“Due to his (Jackson) desire to retire and because of their unique relationship for the past fourteen years, Victim has requested that Jackson continue to manage her assets in a private manner. . . .he will continue to provide his services with the emphasis on the safety of said assets. . . .for the above lifetime services, a final and one-time fee of \$12,000 has been agreed upon. . .

## *State v. David Jackson (cont.)*

- Jackson took at least \$38,000 in “gifts” from Victim after the document
- Victim’s family realized that her money was gone, and contacted law enforcement
- Sheriff’s Office, County Attorneys Office and Medicaid Fraud Unit worked together to investigate the activity.
- Jackson was convicted of 3 counts of Theft by Deception, ordered to pay \$32,500.00 restitution, and return Victim’s diamond ring.

# Jackson Case Issues?

- Investigative
- Prosecutorial
- Familial
- Other?

# Summary

- The exploiter is often family, a caregiver, or other loved one.
- Exploiter may use undue influence to unlawfully obtain a victim's "consent" to give him/her victim's assets.
- Guardianships and Powers of Attorney are not licenses to steal.