

# INVESTIGATION OF VULNERABLE ADULT FINANCIAL CRIMES



# Introduction

- When an older person is the target of financial abuse, they suffer greatly.
- The vulnerable adult is robbed of economic security and placed at risk
- Financial exploitation can cause severe emotional distress, depression, deterioration of physical health, loss of independence, homelessness, and a shortened lifespan.

- Losses are huge: one study estimated that older Americans lost at least \$2.9 billion to financial exploitation in 2010.
- Financial exploitation is the most common form of elder abuse.
- Physical and cognitive impairment forces older adults to depend and trust others to handle their financial affairs.
- Elder financial exploitation cases are complex.

- Financial abuse may be accompanied by other types of mistreatment, such as emotional abuse or neglect of care.
- The perpetrators are often involved in other crimes, such as identity theft, forgery, drug law violations, gambling, etc. The perpetrators may also be exploiting more than one person or family member.

- Cognitive impairment diminishes the ability of older adults to make financial decisions.
- Seniors (age 60 and older) account for nearly 15% of the population in the United States.
- According to some estimates, Seniors comprise over 30% of all fraud victims

# Why thieves choose Seniors

- People who grew up in the 1930's,40's, and 50's were generally raised to be polite and trusting. Con artists prey on these traits.
- Older Americans are less likely to report a fraud because of fear, shame or a fear that they will be “placed in a home”.

- Law Enforcement often finds financial exploitation cases to be time consuming and tedious. Volumes of complex financial documents are often an integrate part of the investigation
- It is imperative that a complete and concise investigation be conducted and the findings turned over to prosecutors for the issuance of criminal charges.

# Definitions

- **Caregiver:** An individual who directly cares for or has physical custody of a vulnerable adult (MCL 750.145m).
- **Conservatorship:** A conservator is a person or financial institution appointed by the probate court to handle an individual's property and financial affairs while that individual is still alive (fiduciary duty).
- **Power of Attorney (POA):** A power of attorney or letter of attorney is a written authorization to represent or act on another's behalf in private affairs, business, or some other legal matter. A power of Attorney gives the agent the ability to spend, dispose, sell, or give assets as though he or she was the principal. A power of attorney ends when time lapses, revocation, loss of decision-making ability or death. A power of attorney is NOT a license to steal!



- **Durable Power of Attorney:** A power of attorney that remains valid even if the principal can no longer monitor the actions of the agent.

## **New POA Law: MCL 700.5501**

- Effective May 22, 2012. The new POA law requires the agent to acknowledge the following limitations:
- -Act as fiduciary
- -Follow principals instructions
- -Provide an accounting upon request
- -Keep the principal informed
- -The agent may not make a gift from the principal's property, unless provided for in the durable power of attorney or by judicial order.
- If an existing POA is in place without the statutory language, the POA is still valid, BUT the agent has the fiduciary duty to act in the principal's best interest (implied fiduciary duty in every POA).

- **Executor:** An executor manages the estate of a person who has died. They pay bills, manage property, and distribute property to persons named in a will
- **Fiduciary:** A fiduciary is a person who holds a legal or ethical relationship of trust with one or more parties.
- **Fiduciary Duty:** A fiduciary duty is an obligation to act in the best interest of another party

- **Guardianship:** A guardian is a person appointed by a probate court and given power and responsibility to make certain decisions about the care of another individual. Guardians normally do not handle finances unless authorized by the court.
- **Undue Influence:** Pattern of manipulative behaviors similar to “grooming” to overcome victim’s will. Used to obtain victim’s consent to an act. Often involving victim’s who have mild to moderate dementia. Not a specific crime in most states. A prosecution theory of how defendant obtained victim’s consent.

- **Unjust Enrichment:** A legal concept referring to situations in which one person is enriched at the expense of another in circumstances which the law treats as unjust.
- Informed choice/ consent: An informed consent can be said to have been given based upon a clear appreciation and understanding of the facts, implications, and consequences of an action (if person knew what they were doing and the consequences, there is no crime).

- **Vulnerable Adult (MCL 750.145m):** An individual age 18 or older who, because of age, developmental disability, mental illness, or physical disability requires supervision or personal care or lacks the personal and social skills required to live independently; or a person who is placed in an adult foster care family home or an adult foster care small group home or is in a condition in which an adult is unable to protect himself or herself from abuse, neglect or exploitation because of a mental or physical impairment or because of advanced age.

- **Vulnerable Adult Fraud (MCL 750.174a)** A person shall not through fraud, deceit, misrepresentation, coercion, or unjust enrichment obtain or use or attempt to obtain or use a vulnerable adult's money or property to directly or indirectly benefit that person knowing or having reason to know the vulnerable adult is a vulnerable adult. Note: The value of property fraudulently obtained, used, or attempted to be used or obtained in separate incidents pursuant to a scheme or course of conduct within a 12-month period may be aggregated to determine the total value. If the scheme or course of conduct is directed at one person, there is no aggregation time limit.

# Common Statutes

- Embezzlement by agent, servant or employee, or trustee, bailee, or custodian (MCL 750.174)
- Vulnerable adult fraud (MCL 750.174a)
- Embezzlement of property belonging to person and part owner (MCL 750.181)
- Fraudulently obtaining signature (MCL 750.273)
- Larceny in a building
- Uttering and Publishing
- Racketeering
- Altering, forging, or falsifying documents (Michigan Motor Vehicle Code, 257.257)



- Use of a computer to commit crime (MCL 750.145d)
- Identity Theft (MCL 445.65)
- F.T.D. (Fraudulent Use) MCL 750.157n

# Why Investigate?

- Devastating to victims
- They are frightened, angry, and feel alone
- Some are forced to receive public assistance as a result of financial exploitation.
- Others have taken their own lives
- The victims of vulnerable adult fraud have no shared responsibility in the crime

# Financial exploitation crimes are “boring”

- Not as exciting to work as a homicide or bank robbery, but
- Fundamental role, if not moral responsibility, of law enforcement to protect and serve these vulnerable victims.
- Major theft cases. Often losses of \$50,000.+

# Initial Police Report

- Directs the course and outcome of the investigation
- A poorly written report with few details often leads to the report being “set aside” to be worked another day

# The initial report needs to be:

- Accurate
- Names, addresses, phone numbers, and dates of births need be accurate and precise.

# The initial officer should obtain the following information:

- Name, address, phone number, and date of birth for suspect (if known)
- Dependencies of suspect (alcohol, drugs, gambling, etc.)
- Names and locations of financial institutions involved
- Account numbers and type of accounts
- Credit card information (card holders, card company, and account numbers)
- Victims source of income(s)
- Names of persons who share accounts with victim
- Copy of any Power of attorney (both past and present P.O.A.)

- A detailed description of the victim's vulnerability (medical condition, mental condition, advanced age, etc.)
- Name and telephone number of APS worker (if assigned)
- A detailed list of the victim's health care providers (doctors, mental health professionals, etc.)
- A detailed description of the relationship between the victim and suspect and suspect's role (caregiver, executor, guardian, administrator, etc.).

- If applicable, the name and contact number for victim's attorney
- A description of any civil actions relating to the incident
- A list of family members who have knowledge of the incident (include contact information)



# Establishing vulnerability

- Medical records
- Interviews with family members and friends
- Adult Protective Services reports/ documents
- Lichtenberg Financial Decision Screening Scale

If any of the following questions can be answered in the affirmative, vulnerability can be established:

- Q: Does this person require supervision?
- Q: Does this person require personal care?
- Q: Does this person lack the personal and social skills to live independently?
- Q: Is this person unable to protect themselves from abuse, neglect, or exploitation because of mental or physical impairment or because of advanced age.

# Signs of financial abuse

- Unpaid bills, eviction notices, or notices to discontinue utilities
- New “best friends”
- Bank statements and canceled checks no longer come to the elder’s home
- Legal documents (they don’t understand)
- Unusual activity in the older person’s bank account

- A caregiver expresses excessive interest in the amount of money being spent on the older person.
- Belongings or property missing
- Suspicious signatures on checks or other documents
- Implausible explanations given about the elderly person's finances by the elder or the caregiver.

- The elderly person has recently become more isolated
- The elderly person now believes (falsely) that all other members of the family are stealing from them
- Grooming behavior by suspect

# Referral sources

- Victim contacts the police
- Adult Protectives Services referral
- Family members
- Bank tellers, insurance agents and others

# Investigative Problems

- Victim in a financial exploitation case may not wish to pursue criminal charges because the suspect is a loved one. The victim may blame themselves.
- Response: Explain to the victim that the suspect may have a problem (alcohol, drugs, gambling, etc.) and this is the only way the loved one will get help.
- Note: Michigan Law permits the investigating officer to be the complainant in a domestic abuse or vulnerable adult case (Criminal Code Procedure Act 175 Of 1927. 764.1a).

- **Caregivers:** The victim may also be dependent on the suspects care. “If the suspect is arrested, who is going to take care of me”?
- **Response:** Always contact APS and have a plan in place in the event of an arrest. APS is equipped to assist in providing placement or services.



- **Fear:** Victims may insist that they are capable of handling their own affairs and may be uncooperative. Some victims are fearful that they have lost control and frightened that family members may “put them in a home”.
- **Response:** Be patient with the victim. Explain to them that many people become victims of fraud, young and old alike. Tell them that you need their help to investigate the case. Try to empower. Listen to the victim and never speak to them like you were speaking to a child.

- **Victim unable to assist:** Some victims may be physical or emotionally unable to assist in the investigation. Some victims may be non-verbal, or developmentally disabled
- **Response:** Move forward! A victim in a homicide case is unable to testify, yet homicide cases are prosecuted. Child abuse cases are investigated and prosecuted even when the victim is an infant.

- **Victim is deceased:** When the victim of a financial exploitation case passes away, the estate now becomes the victim. The case should still be investigated. Check with your local prosecutor.

# Family Members

- Family members can either be very helpful in exploitation investigations or hostile and uncooperative.
- In some cases family members have “stepped up” and removed the suspect from a position of control. Often a new power of attorney is granted. This new agent can often obtain all the necessary financial documents without the use of a search warrant or investigative subpoena.

# Adult Protective Services

- Adult Protective Service workers are a valuable asset to the investigator
- APS workers can obtain important records and documents with ease. APS records may establish vulnerability.
- Workers may have already build rapport with the victim and can assist when dealing with a frightened or shy victim.

- Prosecutors may deem some financial exploitation cases as “a civil matter”.
- By conducting a thorough and complete investigation, submitting the investigation in a concise and complete format, desirable results can be obtained.
- If a poorly written report/investigation and a stack of loose financial documents are submitted to the prosecuting attorney, chances are the complaint will be denied for prosecution.

- The prosecuting attorney has the sole authority to prosecute cases. Remember not all cases are prosecuted and not all prosecutions result in a conviction.

# Investigation

- Vulnerable adult financial crimes are no more difficult to investigate than any other crime
- Very rarely is a financial exploitation case a “who done it”. The perpetrator will usually be a family member, friend, or caregiver
- The suspect often will be the person who has power of attorney



# Financial Institutions/Records

- Imperative that financial records are obtained
- The records provide evidence that a crime has been committed
- May also show that no crime has been committed and an accused party is innocent.
- Always obtain six months to one year of records prior to the start of suspicious activity

# Types of records

- Bank/credit union records (savings, checking, credit/debit card, loan documents)
- Credit card records from card providers
- Cell phone records
- Computer (emails, social media, etc.)
- Western Union/wire services

# Obtaining financial records

- Contact the financial institution to find out where the court order is to be served (name, address, fax and telephone numbers)
- Some financial institutions will have you serve the court order at a local branch and they will then send it to the appropriate person
- Other institutions will have a “subpoena and court order compliance center” and will not accept the court order at the local branch. Obtain the compliance centers contact information and fax or mail the court order directly.

- Obtain a completed affidavit and search warrant from another investigator and save the document on your computer or a flash drive
- Change the information on the document each time you use it to fit the case situation. Generally you will be asking for the same type of information each time.

- Investigators should also obtain the financial records on the suspect's bank accounts
- Suspects banking information may be known to the victim or other family members or this information may be obtained when the suspect is interviewed

- Look for a pattern of spending and/or withdrawals
- Records will show a pattern of spending prior to the suspect becoming involved in the financial affairs of the victim and an increased pattern of spending after the suspect become involved.

- Also note the changes in spending (purchase) locations and the types of services/goods purchased
- Suspect if records recently showed purchases to a tanning salon or intimate apparel store when no such purchases previously existed

- Purchases that appear to be benign on their face may also be suspect
- If convenience store purchases, gas purchases, and fast food restaurant purchases appear on the credit card statements and no such purchases were made prior to the suspects involvement, the purchases are suspect.



- Some suspects will withdraw large sums of money from the victim's account
- Some will withdraw just small amounts over a period of time
- Others will do both
- You are looking and noting a pattern of spending that has changed since the suspect took control of the victim's finances

- A graph or chart in your investigative report is an effective method to illustrate the change in spending patterns.
- The investigator should also note what type of deposits, deposit amounts, and who made the deposits in accounts (Social Security, Pension, etc.)

- This is important when the victim and suspect have a joint account
- Needs to demonstrate that the suspect put in less funds in the account than he or she withdrew
- Often the suspect will put in very little or no funds into the account, while withdrawing regular amounts

- Some suspects will transfer funds from the victims account into their own account
- By obtaining the suspects financial records, the investigator will be able to document this unauthorized transaction.
- Some suspects transfer funds from one of the victim's accounts to another one of the victim's accounts and then withdraw the funds

- This is an attempt to complicate the paper trail
- Complicated cases involving estates, investments, business transactions, etc., the services of a forensic accountant may be necessary

# Credit card records

- The same procedure applies for credit card records. A court order is required
- Often the victim will have a credit card through their local bank. If this is the case, a request for credit card records can be included in the search warrant affidavit for bank records
- It would not be necessary to complete two separate search warrants going to the same financial institution.

# Cell phone text records/computer emails

- The text messages and/or emails can be obtained by the following methods:
- A search warrant is obtained for the suspect's cell phone
- A second search warrant is obtained for the contents of the phone
- The search warrant is served to the cell phone carrier for cell phone texts
- Carriers may only store text data for 0-5 days.

- A search warrant for the cell phone and/or computer is served to the suspect, or consent is granted and the phone and/or computer is sent to the local crime lab. Obtain unlock code.
- The lab will require either a search warrant or written consent to retrieve the text messages and/or emails. Phone should be placed in “airport mode” to prevent it from being remotely wiped.



- Photographs can also be taken of text messages on a cell phone with good results
- The suspect would need to consent to accessing the texts and photographing the texts. Emails can be photographed and printed.

- Text messages and/or emails can also be obtained from a cooperative third party (receiver of text messages or emails from suspect)
- The suspect may have texted or emailed another family member or involved party to defend their actions or to apologize
- Written consent recommended
- The prosecutor may still request that you obtain the contents of the suspect's cell phone/computer

# Video footage

- If transactions are conducted at a financial institution, video footage or still photographs may be available showing the suspect present or making the transaction
- A search warrant will be required to obtain this footage from financial institutions
- Purchases at a convenience store or “big box store”, may yield video footage showing the suspect making the purchase
- Convenience stores and some big box stores may not require a search warrant

# Court Orders, Search Warrants

- There are two types of court orders used to obtain records, a search warrant and an investigative subpoena.

# Search warrants

- An affidavit and search warrant is completed and sworn to before a judge or magistrate.
- The search warrant must:
- State the person or property to be seized or searched
- The area to be searched
- The objects sought
- Supporting information establishing the grounds for the warrant

- If probable cause exists, the judge or magistrate will sign the search warrant
- . In some jurisdictions the local prosecutor wants to review and sign the affidavit before it is sworn out (check with your local prosecutor)
- The search warrant is then either delivered or faxed to the financial institution
- A certification of records form should also accompany the search warrant

# Investigative subpoena

- The investigative subpoena (application and order) is completed and the application is signed by a local prosecutor
- The subpoena must be in writing and contain:
  - A brief description of each felony investigated
  - The name of each person to be questioned or who will produce documents
  - A general description of records, documents, or physical evidence to be examined
  - Facts establishing the prosecutor's belief that the documents are relevant to the investigation

- The subpoena is then sworn to in front of a judge (magistrates cannot authorize a subpoena)
- If reasonable cause exists, the judge will sign the order of subpoena
- The application is then filed with the court
- The prosecutor then obtains the order and draws the subpoena



- The subpoena is the delivered or faxed to the financial institution
- In order to obtain an investigative subpoena, the offense must be a felony crime

# Victim Interview

- The reporting officer has already conducted the initial victim interview and obtained the necessary preliminary information
- May be necessary to conduct a secondary interview
- The victim may be able to clarify questions about the account activity and purchase activity

# The following is some tips on interviewing elderly victims:

- Speak clearly to the victim and avoid using slang, or street terms. Look directly at the victim, as they may be hearing impaired and may rely on reading lips
- It may be helpful to have an adult protective services worker present. They may have already built a rapport with the victim
- Be polite and respectful

- It is helpful to have a family member present to help in the communication process. Never interview the victim with the suspect present
- The investigator may need to conduct the interview at the victim's home
- Record (audio) the interview
- Remember, you are conducting an interview, not an interrogation. Don't become frustrated

# Witness interviews

- Family members, friends, the power of attorney holder (if not the suspect) and neighbors should be interviewed.
- Family members and family friends may be able to provide you with statements made by the suspect (can be used later in the suspect interrogation)
- They may have emails or text messages from the suspect or other evidence.

- Family members may be able to provide details about both the victim and suspects spending habits, as well as the suspect's dependencies.
- Family, friends and neighbors may be witness to the suspect isolating the victim
- Family, friends, and neighbors may have witnessed the suspect removing properties from the victim's home.

- Family members may have information about recent vehicle ownership changes (title transfers) and property transfers (Quit claim deeds, etc .).
- Remember, again you are conducting an interview, not an interrogation

# Suspect Motivation

- Alcohol/ drug addiction.
- Gambling addiction.
- Self-entitlement
- Greed
- Lazy (40 year old living in mom's basement)
- If determined, document in report.



# Suspect Interview/Interrogation

- The following information is obtained during the interview:
- Relationship and relationship dynamics between the suspect and the victim
- The suspects relationship with other family members
- The suspects role with the finances
- The suspects own financial status (medical bills, credit card debt, etc.)
- Other misc. background information

# Suspect Interrogation

- Using a themed based interrogation method, the investigator will attempt to obtain an admission and confession from the suspect
- The following are some possible themes:
  - You're going to get that money anyway
  - You deserve that money
  - Your brothers and sisters don't need the money. You can really use it

- You have medical bills to pay
- If the suspect admits to taking the money, you have obtained an admission. Now go for the confession.
- Remember a well documented lie is almost as good as the truth. If the suspect won't confess, document the lie. The financial documents will tell the truth.

# Final report

- It is very important to present a well written, organized investigative report to the prosecutor for the issuance of charges

# Binders

- A three ring binder with dividers is an efficient method to organize the investigative report
- The investigative report can then be divided (report, other related police reports, separate financial documents, CD's, etc.)
- An index of the contents of the binder should be included
- Pages numbered

- Clear binder pockets can be purchased to hold bank records, receipts and CD's

# Charts

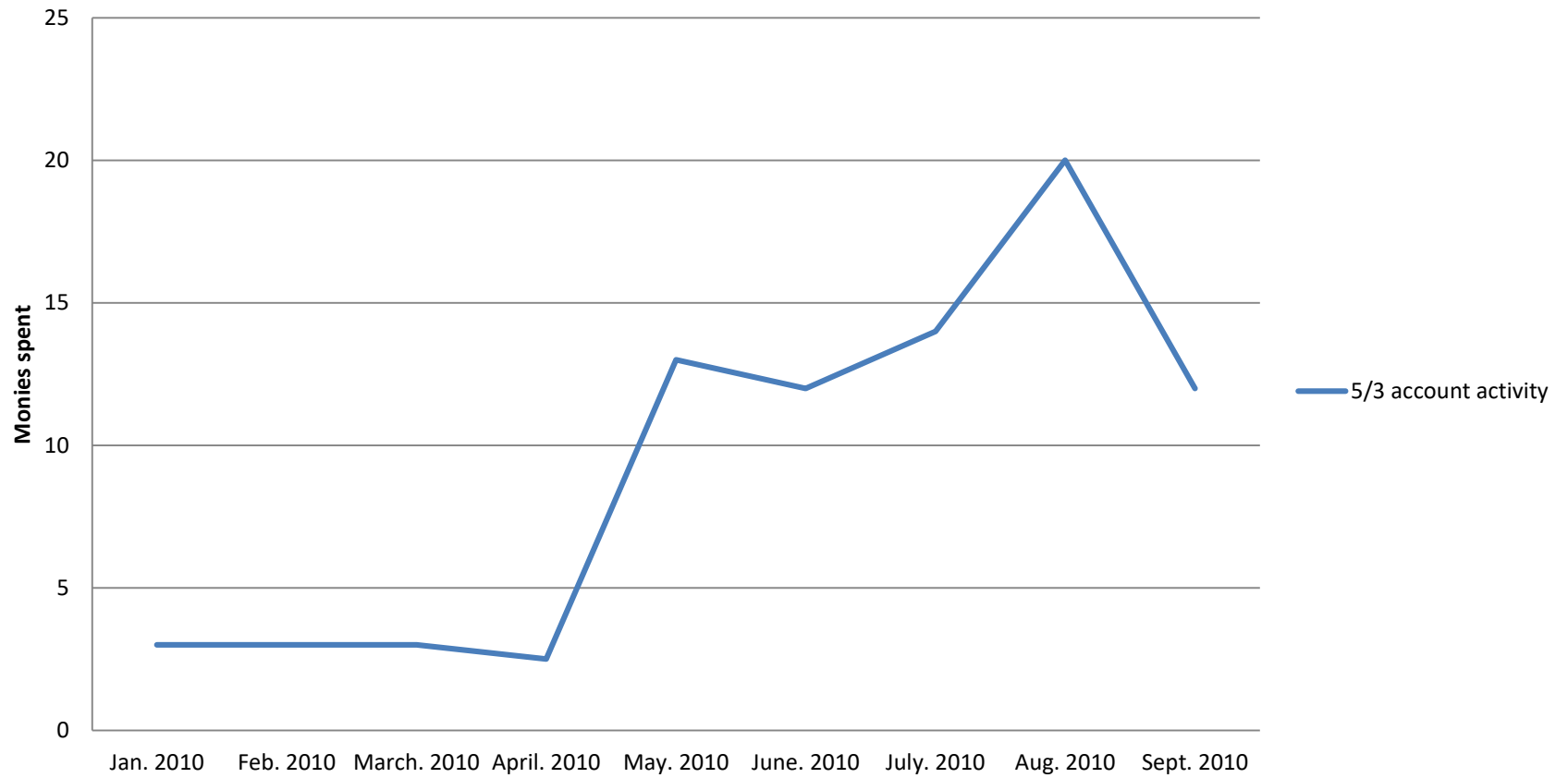
- A chart submitted with the investigative report can be made to outline offenses (see workbook, page 56-58)
- If there is more than one suspect in the case, a chart will clarify who did what.
- It is also helpful to make a “rough chart” during the investigation process
- Flow charts show timelines.
- By breaking the case down (individual crimes/persons) and investigating each crime separately, the investigator is less likely to become overwhelmed

# Graphs

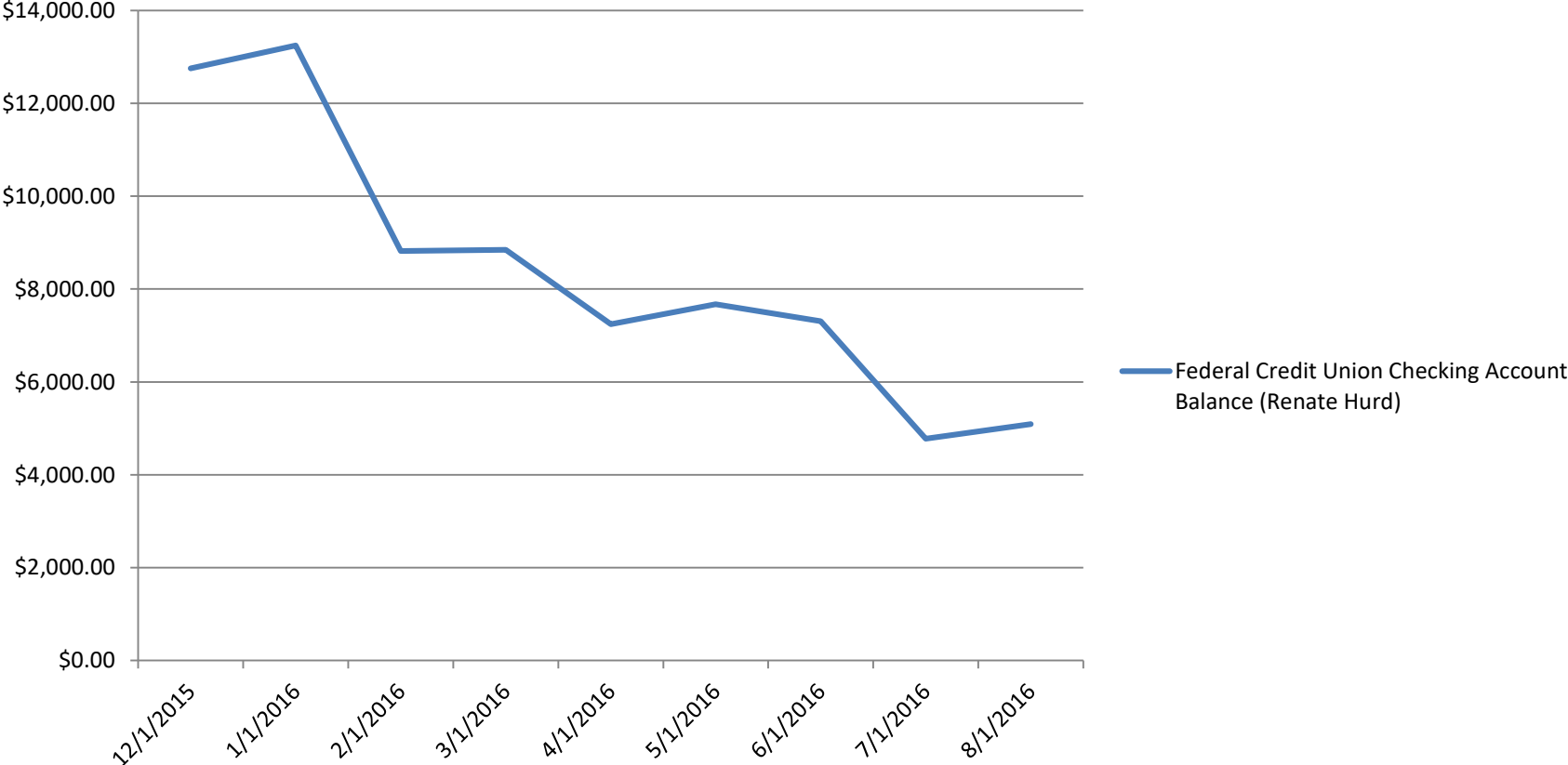
- Graphs are very helpful in showing a visual of how monies were spent or transferred
- A graph can show the spending history of the victim before the suspect took control of the finances and a spending history after the suspect took control of finances
- The following is an example of a simple graph showing the change in spending when the suspect took control over the victim's finances:



## 5/3 account activity

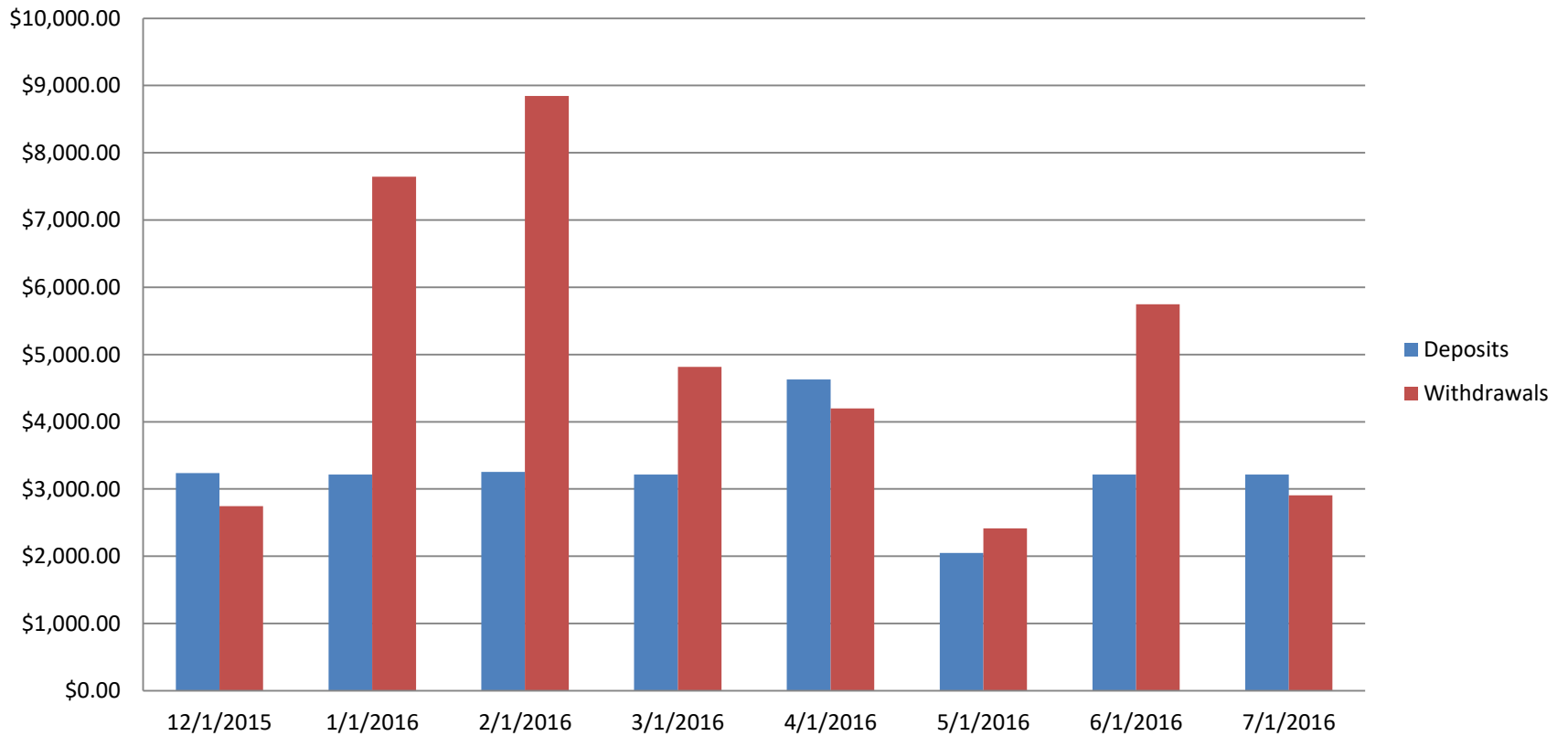


# Federal Credit Union Checking Account Balance (Renate H.)



# Federal Credit Union Checking Account Summary (Renate H.)

Deposit and withdrawal figures obtained from monthly credit union statement



# Sequence of Events



July 3, 2017  
Application for vehicle title, Ann F

July 17, 2017  
Mr. W "dropped off" at home in  
Ewart, Mi.

Approx. one week later, alleged  
assault

June 19, 2009  
Trust & P.O.A.

- William & Eva W trustees
- Ann F successor trustee

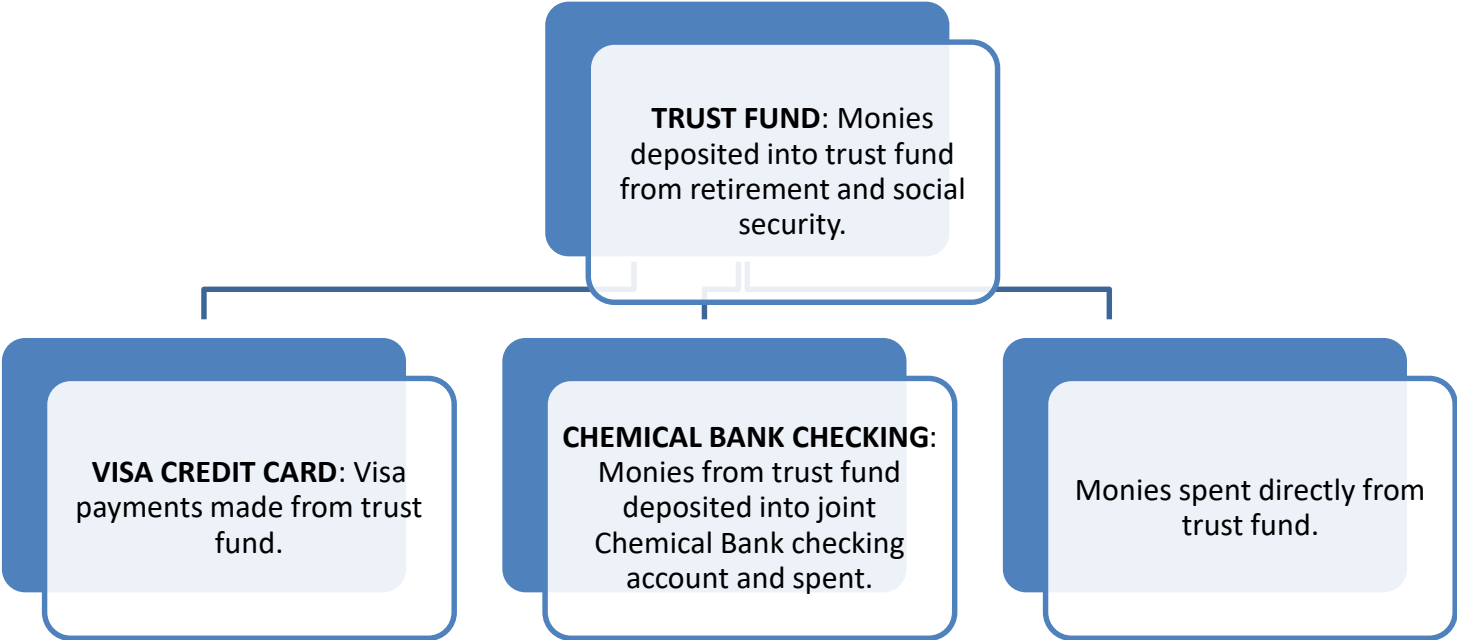
December 3, 2012  
Trust & P.O.A.

- William W Trustee (wife deceased)
- Ann F successor trustee & Agent (P.O.A.)

August 16, 2017  
Trust & P.O.A.

- William W Trustee
- Barbara Z successor trustee & Agent (P.O.A.)

# Account Flow



I did analyze the submitted Bank of America Savings account (Account# xxxx xxxx xxxx, Account holder: \_\_ (victim) \_\_ , \_ (suspect) \_\_. The account is a joint bank account. The account records showed the following suspicious transactions:



Date	Description	Amount
03/01/2018	Customer withdrawal, single check	\$7,595.00
03/16/2018	Cash withdrawal from Savings (Debit)	\$900.00
03/16/2018	Customer withdrawal, single check	\$10,538.70
04/04/2018	Transfer to checking account #9878	\$6,025.18 (0 balance in savings account)

Transaction in red is a legitimate payment to nursing home.  
Transaction in green indicates payment for pre-paid funeral.  
Unjust enrichment: Ms. \_\_\_(suspect)\_ benefited from having access to Ms. \_(victim)\_'s monies. Purchases made for car care, restaurants, groceries, and cash withdrawals did not benefit Ms. \_(victim)\_\_\_ (MCL 750.174a).

All monies used from the above accounts were a result of Ms. \_(victim)\_'s Social Security and pension benefits. There is no evidence that Ms. \_(suspect)\_\_\_ deposited any of her own funds into the accounts (MCL 750.181).

# Prevention

- Some tips that can help avoid financial exploitation:
- Screen incoming phone calls
- Don't allow strangers into your home
- Don't let one person control the money
- Limit paid helpers
- Refresh powers of attorney with the new "best interest" clause

# “Thinking outside the box”

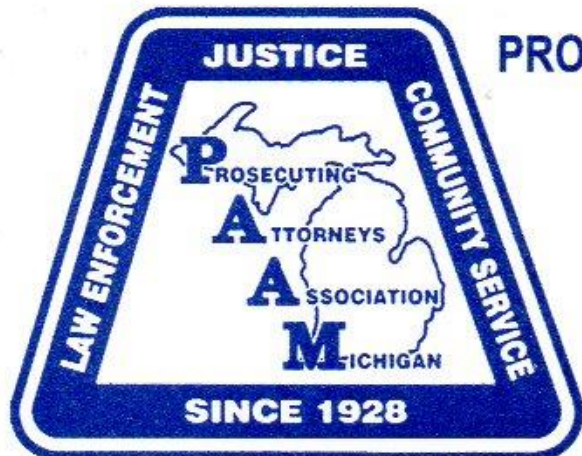
- An investigation may not prove the elements for a crime of embezzlement, but may substantiate the elements for another offense such as Altering, forging, or falsifying documents (felony crime under Michigan Motor Vehicle code).
- The investigator should also keep an open mind. Not all persons accused are actually guilty of a crime. Financial records will show if there is misappropriation of funds

# Quick investigative outline

- Initial Police Report taken
- Vulnerability established
- Financial documents obtained
- Victim interview (secondary)
- Signs of financial abuse documented, spending/transaction patterns documented
- Witnesses interviewed
- Suspect interviewed
- Investigative report completed
- Case submitted for prosecution

# Key to successful Investigation

- Document vulnerability
- Document changes/patterns in bank records
- Clear, concise report (graphs, charts, etc.)



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