



Connecticut Bar Association
Elder Law Section

TESTIMONY OF SCOTT D. ROSENBERG
IN CONDITIONAL SUPPORT OF S.B. 1088
AN ACT CONCERNING FINANCIAL EXPLOITATION OF SENIOR CITIZENS

March 2, 2023

Co-Chairs Doucette and Miller, Ranking Members
Delnicki and Berthel, and Committee Members:

Exploitation of seniors is a severe and underappreciated problem. The last comprehensive study on the matter is now approaching its 25th anniversary. Select studies¹ and state reporting² over the past decade indicate that incidents of elder exploitation cost between 20 and 40 billion dollars annually to victims. It is thus likely that Connecticut seniors are victimized to the tune of hundreds of millions of dollars each year.

My name is Scott Rosenberg. I am a practicing elder law attorney and the Treasurer of the Elder Law Section of the Connecticut Bar Association. The Elder Law Section is a network of attorneys who chose to focus on the financial and medical issues facing Connecticut seniors, with a particular emphasis on the needs of the infirm. Due to our scope of practice, my colleagues and I too often see firsthand probable and confirmed acts of exploitation against seniors and their after-effects. We are particularly cognizant of those cases where exploitation occurs at the hands of family members, caregivers, and others in close proximity to victimized seniors. Such instances make up roughly 65% of all cases of elder exploitation.

Elder exploitation has far-reaching and non-obvious consequences. Exploited seniors have high incidents of concurrent physical abuse and/or neglect, are in poorer health than the non-exploited even if not abused, are several times more likely to die prematurely than unexploited seniors,³ and can easily be revisited for further attempts at exploitation, unless the perpetrator is extricated from the senior's life, or a conservator placed in charge of finances. Meanwhile, the resulting financial deficits are made up by increased reliance on public benefits, and unanticipated time and financial sacrifices by honest family members.

Last session, I spoke on behalf of the CBA in opposition to similar language to that found in Sections 1–3 of the Raised Bill, most importantly because the short-hold structure was unlikely

¹ E.g., *The TrueLink Report on Elder Financial Abuse* (2015). Accessed 2/27/23 at <http://documents.truelinkfinancial.com/True-Link-Report-On-Elder-Financial-Abuse-012815.pdf>

² See GAO Report 21-90, Table 3. Available at <https://www.gao.gov/assets/gao-21-90.pdf>

³ Burnett, et al., *Five-year all-cause mortality rates across five categories of substantiated else abuse occurring in the community*, *Journal of Elder Abuse & Neglect*, Vol. 28, N233o. 2 (2016).

to meaningfully hinder or redress familial and close-party exploitation. However, we have since had the opportunity to work with Commissioner Perez's staff on enhancements to the existing language for your collective review as a joint favorable substitute. The language we encourage this Committee to adopt adds several critical layers of protection to the existing text, notably:

1. Comity with the Connecticut Uniform Power of Attorney Act;
2. Requiring banks to allow seniors to designate a non-signatory trusted contact on any account, rather than merely permitting this;
3. Requiring banks to inquire of known interested parties promptly upon a hold as to the justification of their concern;
4. Allowing an extended hold of 30+ days if initial investigation does not allay the reasonable suspicion; and
5. Adding a requirement of written notice and police reporting if the hold is extended.

With these modifications, we believe S.B. 1088 provides significant teeth and protections for all exploited signatures. Accordingly, I am pleased to speak in support of adopting the JF language and proposing this bill as law. In this, we echo the testimony of our colleague, Ed Lang, and the policy committee of the Connecticut Chapter of the National Academy of Elder Law Attorneys in support of the amended concept, as well as in appreciation of the efforts of the Commissioner's staff to adopt appropriate changes.

A Call for Further Action: Completeness, Data Assessment, and Inclusion of Protective Services for the Elderly

However, importantly, we also wish to make clear that we view the passage of an enhanced S.B. 1088 as the beginning of this process, not the end. In the Elder Law Section's draft proposal on this matter – appended for your reference – we strove to explicitly set out the obligations of financial institutions at each stage of inquiry, to provide a uniform definition of exploitation under state law, and to encompass as many financial institutions as legally permissible under a common framework. We believe further work is important to incorporate these changes, as well as to ensure conformity with new federal regulation of broker-dealer holds, and ask the Committee to remember these needs when raising concepts in the next session³.

Additionally, we ask the committee's leadership, to do the right thing for the public on two items where the recommendations of the executive are understandably constrained, but not in the best interests of the State.

First, we strongly believe that institutions should be required to maintain, and the Banking Department to collate, a minimum data set on the use of financial holds. With something as simple as a spreadsheet template with 10-15 fields of data and a single page of instructions, we can amass detailed and incredibly valuable information on the nature, scope, and methods of elder exploitation, in a format that lends itself to study and statistical analysis, which otherwise will not exist in this state. Specific to this Act, we believe such data is incredibly important to inform future enhancements to the Act, and in time, for regulatory compliance. Most basically,

we need to know whether various classes of financial institutions adopting and employing the exploitation hold measures we hope you authorize. We understand the natural tension within institutions between the desire to help clients on the front end and the need to be conservative and bureaucratic on the back, and tweaks of the carrot or stick variety may be needed to foster adoption. It's beneficial to know how often bank employees are correct in their initial suspicions, if that improves over time, and if select institutions are doing particularly worse than the rest. The former may be helpful in this Committee's future work, the latter to the DOB in identifying red flags to ensure compliance. The benefit exceeds costs on all fronts.

Second, but perhaps more important, steps must be taken to involve Protective Services for the Elderly (PSE) as a follow-through agency in those cases where an institutions initial review warrants an extended hold. We view state referral as an essential condition of our endorsement because, as discussed above, it is usually the case that perpetrators will have continued access to their victim after any hold expires, unless outside intervention stops it. While we accept the filing of a police report as an initial measure, we believe that PSE is a far better long-term choice for such follow-up investigations. The objective of law enforcement is to build a case for prosecution. This is both a tall order in most cases, but in all cases is not directed toward promptly protecting the victim. Conversely, the goal of PSE is exactly that: to extricate the perpetrator and to help the senior establish sound financial management. Their training, tools, and mandate is to resolve the underlying issue.

A recent report of our state's Auditor of Public Accounts⁴ found that the caseload of PSE workers has nearly tripled between 2011 and 2019, and that above-average caseloads have significant adverse effect on social worker performance by (1) causing them delay investigation of cases deemed not urgent, (2) forcing them to skip required, periodic follow-up visits, or substitute less effective phone calls, and (3) leaving insufficient time to coordinate with other agencies and community partners, which is what ensures outcomes tailored to seniors' needs. It is therefore understandable that DSS cannot volunteer its already underwater social workers for this task. At the same time, this legislature's answer to seniors in an ongoing state of probably victimhood cannot be to say, "don't call us; we're too busy." We ask this Committee for its leadership in working with your colleagues to adequately staff Protective Services for the Elderly for this task.

Not only is this budgetary measure the right thing to do; it could prove economically beneficial to the State. As I highlighted at the outset, exploited seniors are actually sicker than non-exploited seniors, and are obviously get progressively poorer as long as their victimization goes unchecked. Every state-level study that considered the matter determined that there was a substantial taxpayer burden associated with elder exploitation. Exploited seniors rely on public benefits sooner, and in greater annual amounts. Where a single case worker can investigate over a hundred bank-vetted cases of suspected exploitation each year, it does not take great imagination to see how quickly these investigators might pay for themselves. As such, failure to integrate PSE at proper staffing levels would not merely be a stain on our treatment of our eldest citizens; it could easily prove to be penny wise and pound foolish.

⁴ *Protective Services for the Elderly*, Auditor of Public Accounts (2021). Available at: https://wp.eqa.ct.gov/apa/wp-content/cgacustom/reports/performance/PERFORMANCE_Protective%20Services%20for%20the%20Elderly_20210811.pdf.