

Financial Exploitation of the Elderly in Tennessee

OFFICE OF RESEARCH AND EDUCATION ACCOUNTABILITY

OCTOBER 2020

TENNESSEE COMPTROLLER OF THE TREASURY



Introductions



Research and Education Accountability

- The Office of Research and Education Accountability (OREA) provides the General Assembly with objective and accurate research, evaluation, and analysis.
- Our reports originate from:
 - requests by state legislators;
 - state law; or
 - internally generated research proposals.

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About out report

- We developed this report at the request of legislators.
- The full report:
 - summarizes research
 - considers Tennessee's approach
 - addresses stakeholders' views about potential gaps in the system
- We included five overarching conclusions and nine policy options for consideration



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Overview

- Elder financial exploitation is the wrongful or unauthorized use of the assets, funds, or property of elderly individuals
- The agency most closely associated with this issue is the Adult Protective Services (APS) program in the Department of Human Services

“If a new disease entity were discovered that afflicted nearly one in 20 adults over their older lifetimes and differentially struck our most vulnerable subpopulations, a public health crisis would likely be declared. Our data suggest that financial exploitation of older adults is such a phenomenon.”

Janey C. Peterson, et al., “Financial Exploitation of Older Adults: A Population-Based Prevalence Study,” *Journal of General Internal Medicine*, Vol. 29, No. 12, 2014.

The Tennessee General Assembly strengthened state laws

- Elderly and Vulnerable Adult Protection Act (2017)
 - creates financial exploitation of elderly or vulnerable adults offense
- Elderly and Vulnerable Adult Financial Exploitation Prevention Act (2017) and Senior Financial Protection and Securities Modernization Act (2017)
 - authorizes financial institutions, broker-dealers, and investment advisors to report suspected financial exploitation
 - gives the Department of Commerce and Insurance the authority to deny, revoke, or suspend licenses of those who commit acts of financial exploitation
- Public Chapter 1006 (2016)
 - requires district attorneys to create Vulnerable Adult Protective Investigative Teams
- Elderly and Vulnerable Adult Protection Act of 2018
 - requires APS to provide copies of investigative files to district attorneys general

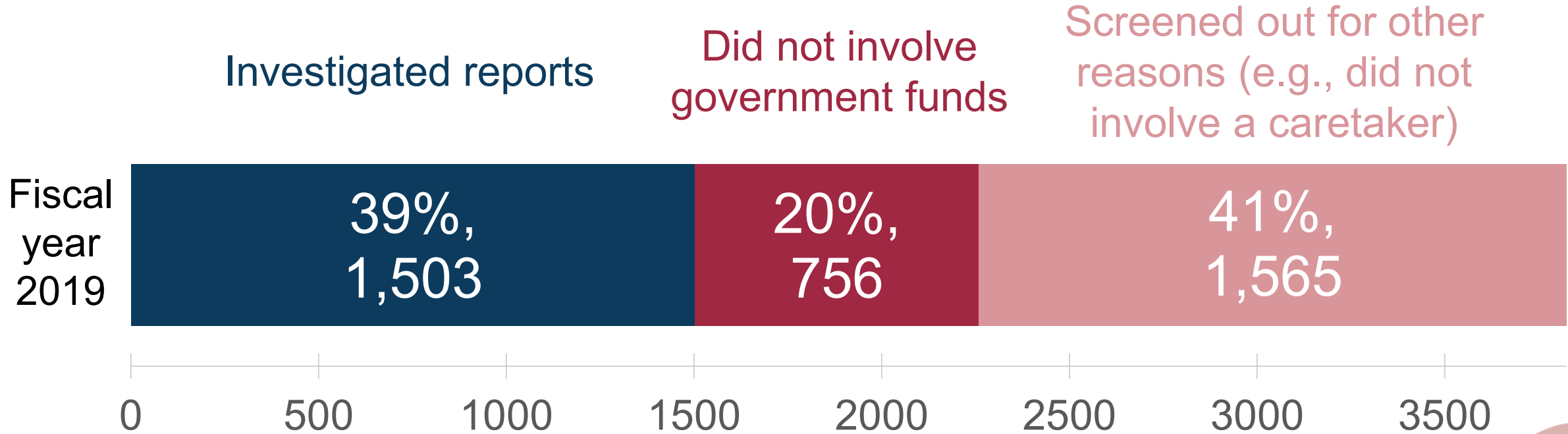
Conclusion 1:

Many said that APS criteria is too narrow

- APS criteria for investigating a report of financial exploitation:
 - alleged perpetrator must be a caretaker
 - must involve government funds
 - based on a 1978 state law

State law defines financial exploitation as “the improper use by a caretaker of funds that have been paid by a governmental agency to an adult or to the caretaker for the use or care of the adult.”

Conclusion 1: Many said that APS criteria is too narrow



Conclusion 1:

Many said that APS criteria is too narrow

- Those who expressed concerns:
 - State legislators
 - TCAD
 - Several District Attorneys in response to OREA questions
 - Those interviewed by OREA throughout our research
- In 2017, DHS analyzed the impact of expanding its criteria to include non-governmental funds
 - DHS estimated that 25 new positions would be needed
 - DHS estimated it would cost \$2.2 million.
 - Any other changes to APS criteria would require additional resources

Conclusion 2:

Current data limitations prevent accurate estimates

- No statewide system to track elder financial abuse cases
- This is problematic because
 - Cases are shared between agencies
 - Cases cannot be linked
 - It is not possible to get a unique count of cases

Conclusion 2:

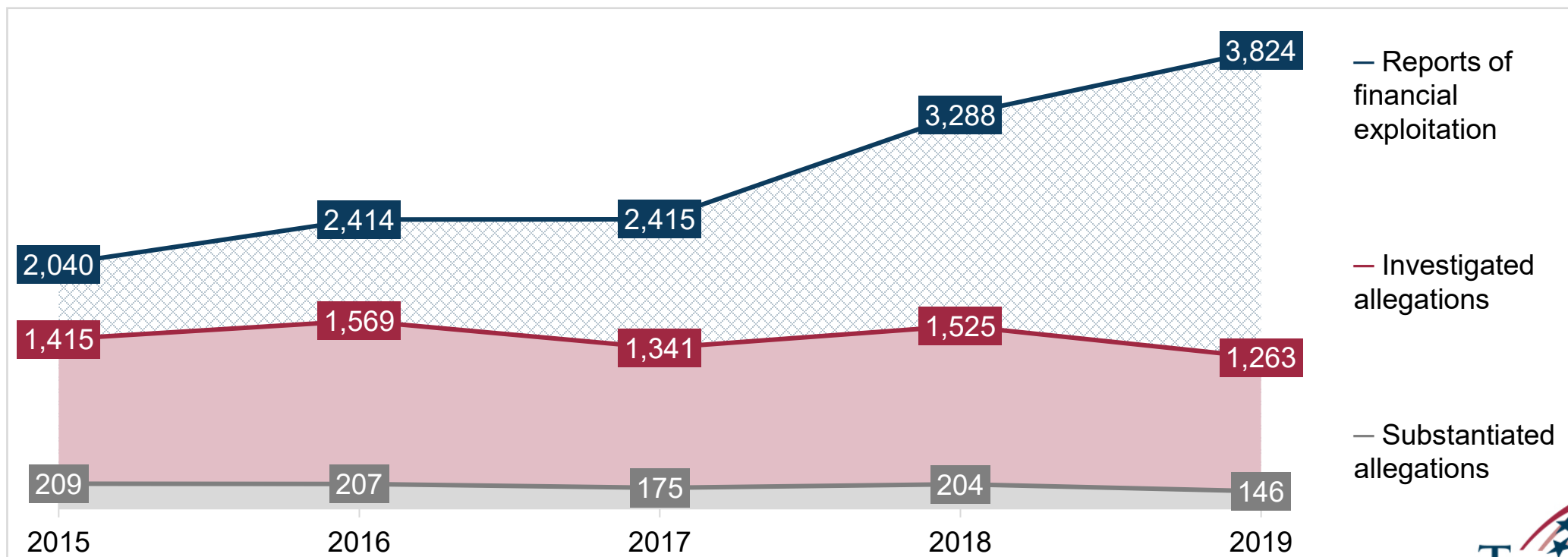
Current data limitations prevent accurate estimates

Data available to OREA from state and local agencies

	Reports	Investigations	Outcomes of investigations	Financial losses
APS	Yes	Yes	Yes	No
TBI Medicaid Fraud Control Division	Yes	No	No	No
Long-Term Care Ombudsman	Yes	Yes	No	No
Department of Commerce and Insurance	Yes	Yes	Yes	Yes
Financial Institutions (tracked by FinCEN*)	Yes	N/A	N/A [^]	No
	Investigations	Prosecutions	Outcomes of prosecutions	Financial losses
Local District Attorneys	No	13 of 31 judicial districts	10 of 31 judicial districts	2 of 31 judicial districts~
Administrative Office of the Courts	No	Only some offenses*	Only some offenses	No

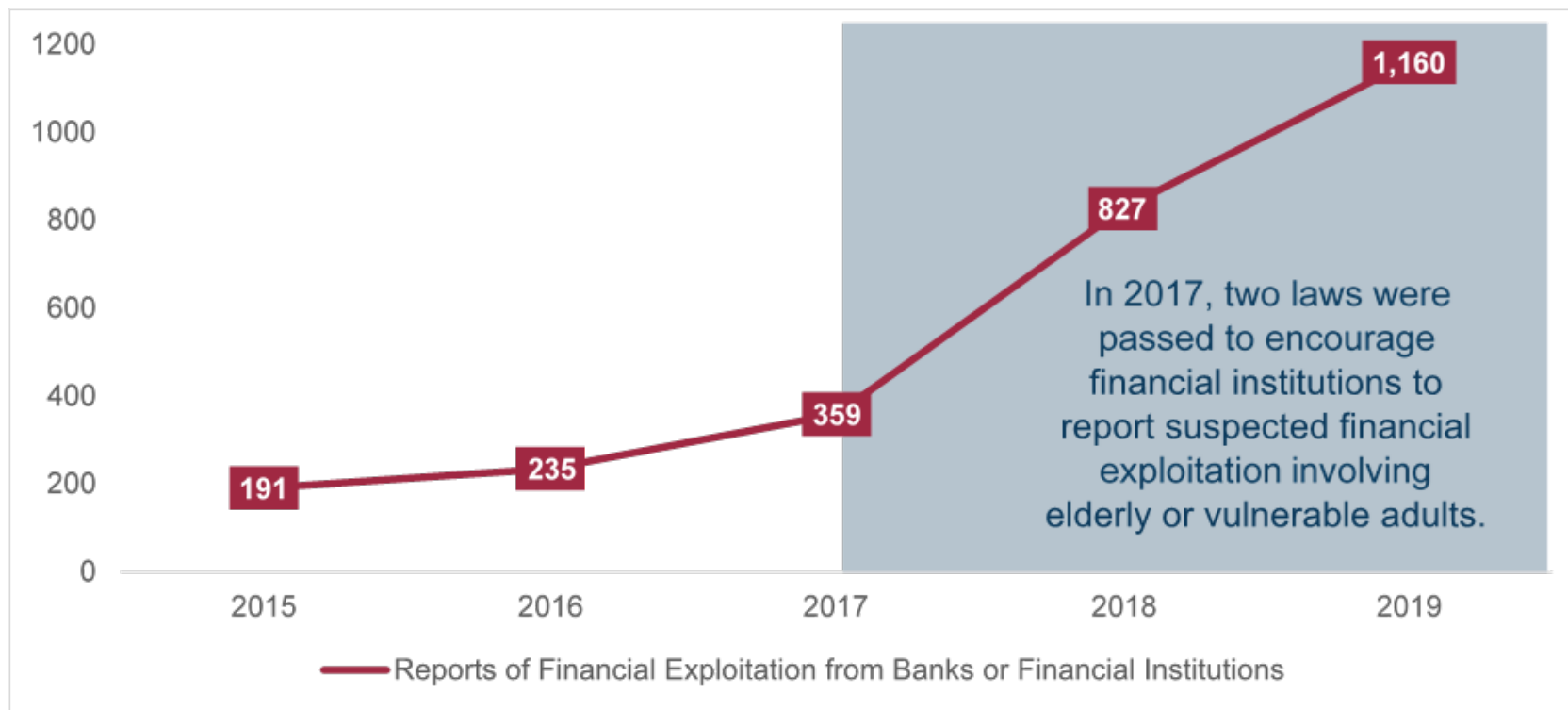
Conclusion 3: Assessing the state's patchwork approach proved difficult

Number of reports concerning elder financial exploitation made to APS, and numbers of allegations investigated and substantiated by APS | 2015-2019



Conclusion 3: Assessing the state's patchwork approach proved difficult

Reports to Adult Protective Services of suspected financial exploitation from banks, credit unions, and other financial institutions



Conclusion 3:

Assessing the state's patchwork approach proved difficult

- Reports from financial institutions are more often screened out because:
 - financial institutions are less likely to know the relationship between the potential victim and perpetrator
 - financial institutions are also more likely report online or via fax
 - Less detailed than phone conversations
 - APS cannot reach the original reporter
 - APS is not always able to follow up on online or faxed reports

Conclusion 3:

Assessing the state's patchwork approach proved difficult

- Between 2015 and 2019:
 - number of reports forwarded to other entities increased
 - district attorneys received 50 times more reports from APS
 - the number of reports sent to local police nearly doubled
- It is not possible to track cases shared between agencies
 - Making it difficult to assess the current system to protect elderly adults

Conclusion 4:

Prosecutions are increasing, but a data system is needed

- OREA requested the data from each judicial district:
 - ability to track case data was inconsistent
 - prosecutions are increasing
 - not everyone is familiar with new laws
- A lack of data system impedes tracking of new laws
- A previous attempt fell through

“There is simply no system in place that enables us to consistently and reliably gather important [court] data on almost any subject, including elder abuse.”

Jerry Estes, Former Executive Director of the Tennessee District Attorney General's Conference

Conclusion 5:

District attorneys indicate a need for staff

- Financial exploitation cases are:
 - complex,
 - challenging, and
 - resource intensive
- Some districts lack
 - expertise in tracking assets and forensic accounting
 - criminal investigators
 - training

“Manpower is the biggest lacking resource, particularly with financial exploitation cases, which can be tedious and time consuming. Some also require specialized skill and training, and most law enforcement officers are not trained accountants.”

-Response from one of the judicial districts who responded to questions from OREA

Policy options for consideration

- The General Assembly may wish to
 - expand APS criteria
 - create additional intake staff positions at APS
 - urge the federal government to allow state Medicaid Fraud Control Units to investigate Medicaid fraud outside of institutional settings
 - revise state law concerning the confidentiality of reporters to APS
 - fund additional staff positions for district attorneys general
 - fund and mandate improvements to data collection of elder abuse cases
 - create a statewide system
 - report the age of victims to the Administrative Office of the Courts
 - more detailed information in the annual reports about VAPITs

Policy options for consideration

- Adult Protective Services may wish to
 - publish an annual report
 - create a guidebook for financial institutions
- Organizations represented on the Elder Abuse Task Force could
 - use geographical analysis presented in OREA's report to focus training and awareness raising efforts

Thank you!

For our full report and executive summary, please see tncot.cc/orea



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