

Access to Records in Financial Exploitation Cases

It will now be much easier for county social services agencies and law enforcement officials to investigate reports of suspected financial exploitation of disabled adults and older adults. The Administrative Office of the Courts just approved a new form ([AOC-SP-630](#)) that officials can use to ask a district court judge to issue a subpoena directing a financial institution to provide copies of the adult's financial records. This new subpoena authority was authorized in legislation ([S.L. 2014-115, s. 44](#)) that went into effect October 1, 2014.

Government officials have several tools available to help them obtain access to financial records for exploitation investigations, but each tool is different, and one may be more appropriate than another depending on the circumstances. This post will review the options and highlight some of the key differences among them.

In a Nutshell

In North Carolina, it is a crime to financially exploit a disabled adult or an older adult ([G.S. 14-112.2](#)). In addition, social services officials have a duty to provide protective services to disabled adults that have been financially exploited and are in need of assistance (G.S. 108A, [Article 6](#) and [Article 6A](#)). State law has two basic reporting requirements:

- Any person, including any court officer or judicial official, who suspects that a disabled adult is being financially exploited must report it to the county social services agency;
- Any financial institution that suspects that a disabled adult or older adult is being financially exploited must report it (1) to law enforcement officials, and (2) to the county social services agency if the adult is disabled.

If someone suspects that a disabled adult or older adult is being exploited financially, it may be essential for the investigating entity (either law enforcement or social services officials) to obtain access to records maintained by financial institutions. These financial institutions are subject to complex federal and state confidentiality laws and must be cautious when cooperating with these types of investigations.

The investigating officials may try to obtain the consent of the adult or the adult's guardian, but consent may be impractical in some situations. For example, the official may have concerns about the adult's capacity to consent or about the possibility of the adult being coerced by a caretaker who is benefiting from the suspected exploitation.

The Tools

Other than consent, there are three basic tools that are available to help government officials obtain access to records in these financial exploitation cases: a search warrant, a freeze and

inspect order, and a subpoena. Below is a brief summary of each and some discussion of the differences between them. This [Social Services Law Bulletin](#) provides a more detailed exploration of the applicable laws and procedures in this area.

Search warrant (G.S. Chapter 15A, [Article 11](#))

- **Who:** Any applicant (see Jeff Welty's [discussion](#) of non-officers applying for search warrants).
- **What:** May request a search warrant directing a law enforcement officer to seize financial records necessary to investigate suspected exploitation of a disabled adult or an older adult.
- **When:** If the official issuing the warrant finds probable cause to believe that the financial records constitute evidence of the crime of financial exploitation under [G.S. 14-112.2](#) or the identity of a person participating in the crime.

Freeze and inspect order ([G.S. 108A-106\(f\)](#))

- **Who:** Social services officials.
- **What:** May ask a judge to issue an order (1) freezing the assets of a disabled adult who is a suspected victim of financial exploitation and (2) directing a financial institution to provide access to the adult's financial records
- **When:** If social services has received a report of suspected financial exploitation of a disabled adult and the judge finds that the adult (1) is in need of protective services, (2) lacks the capacity to consent to the release of financial records, and (3) the alleged exploitation was committed by the adult's caretaker.

Subpoena (G.S. Chapter 108A, [Article 6A](#))

- **Who:** Law enforcement and social services officials.
- **What:** May ask a judge to issue a subpoena directing a financial institution to provide access to the financial records of a disabled adult or older adult who may be the victim of financial exploitation.
- **When:** If the judge finds that (1) the official is investigating a credible report of financial exploitation, (2) financial records are needed for the investigation, and (3) time is of the essence in order to prevent further exploitation.

Key Differences

There are a few important differences between the tools:

- **The potential victim:** Law enforcement officials may investigate crimes involving both older adults and disabled adults. Social services officials may only investigate reports involving

disabled adults. An older adult is, by definition, any person over 65 years of age. A disabled adult is any person 18 years of age or over (or a lawfully emancipated minor) who is physically or mentally incapacitated due to one more reasons, such as illness, accident, advanced age, and substance abuse.

- **The potential exploiter:** The freeze and inspect order is available only if the suspected exploitation is being committed by the disabled adult's caretaker.
- **Notice:** The freeze and inspect order requires that notice of the order be provided to the adult and to the caretaker. With the subpoena, notice is required but the investigating entity (law enforcement or social services) may request a delay in the notice in some circumstances.
- **Consent:** The freeze and inspect order is available only if the disabled adult lacks the capacity to consent. The laws governing the other two tools are silent in that respect.
- **Freezing the adult's assets:** The freeze and inspect order is the only tool that authorizes a judge to freeze the adult's assets. In a criminal investigation, the district attorney may ask a judge to freeze the defendant's assets if the defendant is charged with a financial exploitation crime that involves assets valued at more than \$5,000.
- **Confidentiality of court records:** The law authorizing the subpoena provides that records of the proceedings are not public record, they must be maintained separately from other records, and may be examined only pursuant to a court order. Because of this heightened confidentiality requirement, the AOC established this as a Special Proceeding Confidential. The freeze and inspect order and search warrant are not subject to the same level of confidentiality protection.

This is just a high-level overview of the tools available to access financial records in exploitation cases involving disabled adults and older adults. If you are interested in more information about it, the AOC coordinated a free webinar last November and maintains an archived version [online](#). Speakers included representatives from AOC, SOG, the financial institutions, the NC Department of Justice, and the NC Division of Aging and Adult Services.