



Elder Abuse

name redacted

Legislative Attorney

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Summary

Under federal law, elder abuse is defined as the abuse, neglect, and exploitation of an older individual. All 50 states and the District of Columbia have enacted some form of elder abuse prevention law and have state agencies, such as Adult Protective Services (APS), to help achieve compliance with those laws. Specific provisions vary considerably from one jurisdiction to another, but all states have set up reporting systems. This report summarizes the various approaches used pertaining to elder abuse, including mandatory reporting laws and legal remedies available to victims of elder abuse.

The Older Americans Act of 1965, as amended (Public Law 89-73), provides assistance in the development of new or improved programs to help older persons through grants to the states for community planning and services and for training, through research, development or training project grants. Title VII (Allotments for Vulnerable Elder Rights Protection Activities) was created in the 1992 amendments to the Act to protect and enhance the basic rights and benefits of vulnerable older people.¹ To this end, the 1992 amendments brought together and strengthened three advocacy programs: (1) the Long Term Care Ombudsman Program; (2) Programs for the Prevention of Abuse and Exploitation; and (3) State Legal Assistance Development Programs. In addition, the amendments contained definitions for abuse, neglect and exploitation as they relate to the elderly² as well as making allotments to the states to pay for the cost of carrying out vulnerable elder rights protection activities.³

Currently, state laws vary from one jurisdiction to another, in terms of what constitutes abuse, neglect, or exploitation of the elderly, mandatory reporting laws and the remedies available for victims. General types of elder abuse include physical abuse; sexual abuse; emotional abuse; financial exploitation; neglect; abandonment; and self-neglect. States differ as to their definitions of the aforementioned. However, general definitions are as follows:

- Physical abuse is generally defined as the use of force that may result in bodily injury, physical pain or physical impairment.⁴
- Sexual abuse is generally defined as non-consensual sexual contact of any kind with an elderly person.⁵
- Emotional abuse is generally defined as the infliction of anguish, pain or distress through verbal or non-verbal acts.
- Financial/material exploitation is generally defined as the illegal or improper use of funds, property or assets of an elderly person.⁶
- Neglect is generally defined as refusal or failure to fulfill any part of a person's obligations or duties to care for an elderly person.⁷

¹ 42 U.S.C. § 3058 *et seq.* See generally, CRS Report RL31336, *The Older Americans Act: Programs, Funding, and 2006 Reauthorization (P.L. 109-365)*, by (name redacted) and (name redacted).

² 42 U.S.C. § 3002.

³ 42 U.S.C. § 3058.

⁴ See, e.g., ARK. STAT. ANN. § 5-28-101(2) (defining abuse as “intentional and unnecessary” actions “which inflict pain on or cause injury to an endangered or impaired adult.”) MISS. CODE ANN. § 43-47-5(a) (willful or nonaccidental infliction of physical pain or injury).

⁵ State statutes vary as to whether sexual abuse is incorporated within the general abuse definition or contained as a separate category of abusive behavior. See, e.g., ILL. COMP. STAT. ANN. ch. 23, para. 6602 § 2(a) (sexual abuse not specifically defined but included in general definition of abuse); see also ME. REV. STAT. ANN. tit. 22, § 3472.15(C)(15) (providing a separate definition of sexual abuse or exploitation as “contact or interaction of a sexual nature involving an incapacitated or dependent adult without that adult’s consent.”).

⁶ Under federal law, exploitation is defined as an “illegal or improper act or process of an individual including a caregiver, using the resources of an older individual for monetary or personal benefit, profit or gain.” 42 U.S.C. § 3002(24). See also, MISS. CODE ANN. § 43-47-5(i) (defining financial exploitation as the “illegal or improper use of a vulnerable adult or his resources for another’s profit or advantage with or without the consent of the vulnerable adult.”). Tennessee defines exploitation more restrictively as a caretaker’s improper use of funds that have been paid by the government to an adult or his caretaker. TENN. CODE ANN. § 71-6-102(8).

⁷ Under 42 U.S.C. § 3002(34) neglect is defined as “the failure to provide for oneself the goods or services that are necessary to avoid physical harm, mental anguish, or mental illness; or the failure of a caregiver to provide the goods or (continued...)”

- Self-neglect is generally defined as behaviors of elderly people which threaten their health or safety.⁸ This could include prescription drug abuse, failure to bathe and groom oneself, or unsanitary meal preparation.

Mandatory Reporting Laws

Mandatory reporting provisions were the first major laws enacted in response to the problem of elder abuse and continue today to be the mainstay of most state elder abuse laws. Most states mandate a wide variety of professionals to report known or suspected cases of elder abuse.⁹ The professionals most often statutorily bound to report incidents of elder abuse are: health care and social services professionals, law enforcement officers, social workers, physicians and nurses.¹⁰ Other states also include clergy,¹¹ attorneys,¹² dentists,¹³ chiropractors,¹⁴ and ambulance drivers,¹⁵ while others mandate anyone with knowledge or reasonable cause to believe that abuse has occurred to report the incident.¹⁶ In addition to mandatory reporting provisions, statutes often encourage voluntary reporting by other individuals.¹⁷

Mandatory reporters typically are granted immunity from any criminal or civil liability they might otherwise incur.¹⁸ Some states grant absolute immunity, but others require that the report be made without malicious intent and in good faith to qualify for complete immunity.¹⁹ In some

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services.”

⁸ Some states consider self-neglect as a variety of neglect which may warrant protection and either designate it as a separate category of neglect or include it within the general definition of neglect. Compare ALA. CODE § 38-9-2(8)(included under definition of neglect) and FLA. STAT. ANN. § 415.102(12) (same) and KY. REV. STAT. ANN. § 209.020(7) (same) with MD. FAM. LAW CODE ANN. § 14-101(p)(containing a separate definition for self-neglect as “the inability of a vulnerable adult to provide [himself]...with the services: (1) that are necessary for the vulnerable adult’s physical and mental health; and (2) the absence of which impairs or threatens the vulnerable adult’s well-being.”).

⁹ See, e.g., ME. REV. STAT. ANN. tit. 22, § 3477.

¹⁰ See, e.g., ALA. CODE § 38-9-8(a)(stating that “all physicians and other practitioners of the healing arts or any caregiver having reasonable cause to believe that any protected person has been subjected to physical abuse, neglect, exploitation, sexual abuse or emotional abuse shall report or cause a report to be made...”).

¹¹ Reports of suspected abuse must be made by “every clergyman, practitioner of Christian Science or religious healer, unless he has acquired the knowledge of abuse, neglect from the offender during a confession.” NEV. REV. STAT. ANN. § 200.5093(2)(d); See also, ALASKA STAT. § 47.24.010(a)(10); S.C. CODE ANN. § 43-35-25(A).

¹² See, e.g., NEV. REV. STAT. ANN. § 200.5093(f)(requiring reporting by “every attorney, unless he has acquired the knowledge of abuse, neglect, exploitation or isolation...from a client who has been or may be accused of such abuse, neglect, exploitation or isolation.”).

¹³ See, e.g., GA. CODE ANN. § 30-5-4(a)(1).

¹⁴ See, e.g., MONT. CODE ANN. § 52-3-811(3)(b).

¹⁵ See, e.g. MONT. CODE ANN. § 52-3-811(3)(c).

¹⁶ Notably, most states attach a reasonableness standard to reporting requirements and do not require actual knowledge of abuse. See, e.g., ARIZ. REV. STAT. ANN. § 46-454(A)(reasonable basis); FLA. STAT. ANN. § 415.103(1)(a) (has reasonable cause to suspect); MISS. CODE ANN. § 43-47-7(1)(actual knowledge or suspicion).

¹⁷ See, e.g., ARK. STAT. ANN. § 5-28-203(a)(3); Me. Rev. Stat. Ann. tit. 22 § 3479.

¹⁸ See, e.g., MINN. STAT. ANN. § 626.557(5).

¹⁹ See, e.g., MINN. STAT. ANN. § 626.557(6)(stating that “a person who intentionally makes a false report under the provisions of this section shall be liable in a civil suit for any actual damages suffered by the reported facility, person, or persons and for any punitive damages up to \$10,000 and attorney fees.”); OKLA. STAT. ANN. tit. 43A, § 10-104(E)(stating that willful or reckless false reporting leads to liability in civil suit for actual and punitive damages).

states, mandated reporters actually may be prosecuted or fined for failure to report when required.²⁰

Confidentiality or anonymity protects reporters and encourages reporting by those who otherwise might be hesitant for fear of retaliation or discovery by the alleged abuser or abused. As such, most states restrict the access to elder abuse records in some manner. Some states stipulate that the report and all information gathered during the subsequent investigation are not public records.²¹ Some specifically list individuals who have a right of access; among these are the victim, certain agencies involved in the investigation such as local law enforcement and administrative agencies, the court,²² and (in some states) bona fide and approved researchers.²³ Additionally, some states penalize individuals for unauthorized disclosure of abuse records.²⁴

Legal Actions Against Perpetrators

Conceptually, almost every form of elder mistreatment corresponds to a common law or statutory crime. Physical abuse, for example, could be assault, battery, or perhaps even attempted murder; financial exploitation may be theft, larceny, or extortion. Abuse, neglect, and financial exploitation of older persons have been made specific crimes in many states and have varying degrees of punishment, including fine and/or imprisonment depending sometimes on the type of abuse perpetrated and on the identity of the perpetrator.²⁵ For example some state statutes make serious physical abuse or neglect a separate offense.²⁶

In addition to criminal provisions, states also provide victims of elder abuse civil remedies. For example, in 1992, California enacted a statute covering abused elders or dependent adults. The Elder Abuse and Dependent Adult Civil Protection Act²⁷ begins with legislative findings: the infirm elderly and dependent adults are a “disadvantaged class,” and few civil cases are brought in connection with their abuse because of problems of proof, court delays, and the lack of

²⁰ See, e.g., ARK. STAT. ANN. § 5-28-202(establishing penalties for failure to report abuse).

²¹ See, e.g. ALASKA STAT. § 47.24.050(a); N.M. STAT. ANN. §27-7-29(A).

²² See, e.g., FLA. STAT. ANN. § 415.107(2)-(4)(limiting release of reporter’s name only to employees of the responsible APS department, central registry, or state attorney upon written consent of reporter and if necessary to protect elder; to criminal justice agency investigating the alleged abuse; to the alleged perpetrator or victim; or pursuant to either a court subpoena or grand jury subpoena, among others).

²³ See, e.g., ARK. STAT. ANN. § 5-28-213(d)(authorizing disclosure of non-identifying information contained in statewide central registry to bona fide and approved research groups solely for scientific research); ME. REV. STAT. ANN. tit. 22, § 3474(2)(F)(same).

²⁴ See, e.g., Miss. Code Ann. § 43-47-7(e)(classifying willfully release of any information to persons or agencies not permitted access as a misdemeanor).

²⁵ See, e.g., TENN. CODE. ANN. § 71-6-117 (stating that “it is unlawful for any person to willfully abuse, neglect or exploit any adult within the meaning of the provisions of this part. Any person who willfully abuses, neglects, or exploits a person in violation of the provisions of this part commits a Class A misdemeanor”).

²⁶ See, e.g., MASS. GEN. LAWS ANN. ch. 265 § 13K(e)(stating that “whoever, being a caretaker...permits serious bodily injury to such elder or person with a disability or wantonly or recklessly permits another to commit an assault and battery upon such elder...shall be punished by imprisonment in the state prison for not more than ten years or...in the house of correction for not more than two and one-half years...”). See also, DEL. CODE ANN. Tit. 31, § 3913(c) (stating that intentional abuse causing bodily harm, permanent disfigurement is a Class D felony); KY. REV. STAT. ANN. § 209.990 (stating that knowing and willful abuse causing serious physical or mental injury is Class C felony).

²⁷ CAL. WELF. & INST. CODE § 15600-15657.3.

incentives to prosecute these suits.²⁸ When it is proven by “clear and convincing” evidence that the defendant has been guilty of recklessness, oppression, fraud or malice in the commission of abuse of the elderly, new remedies are created. These include postmortem recovery for pain and suffering, and mandatory attorney fees and costs.²⁹ The Act allows fees for the services of a conservator litigating an elder’s claim and continuation of a pending action by the elder’s personal representative or successor.³⁰

Also, Illinois’ Financial Exploitation of the Elderly and Disabled Act³¹ creates, in addition to criminal penalties, treble damages and attorney fees for a civil judgment deciding property has been converted or stolen from a senior citizen by threat or deception.³² These enhanced remedies are available regardless of the outcome of the criminal case.³³

Moreover, in Maine, a statute allows an elderly, dependent individual who has transferred property as a result of undue influence to secure a court order forcing return of the property.³⁴ If real estate, or 10% or more of such an individual’s money or personal property, was taken for less than fair market value, and a confidential or fiduciary relationship existed, a presumption is created that the elderly person has been unduly influenced in making the transfer.³⁵

In addition, all states now have domestic violence laws designed to protect abuse victims. Although restricted in some jurisdictions to spouse or partner abuse cases, in other states these statutes provide for a judicial “protection order” for all family or household members threatened with physical harm.³⁶ Under these laws, the court may order the abuser to (1) refrain from abusing the elder; (2) move away from, and stay out of, the residence shared with the victim; (3) refrain from contacting the victim; and (4) provide alternative housing for the victim.³⁷ In addition, some domestic violence statutes protect “high-risk adults” (e.g., “vulnerable adults”) from neglect and financial exploitation as well.³⁸

Congressional Activity

There has been congressional interest regarding elder abuse and fraud, including telemarketing, mortgage, and pension fraud and identity theft. Bills have been introduced in past Congresses to establish a grant program to improve the financial and retirement literacy and reduce financial

²⁸ See *id.* § 15600(g)(h)(i).

²⁹ See *id.* § 15657.

³⁰ See *id.* § 15657.3(d).

³¹ 720 ILL. COMP. STAT. ANN. 5/16-1.3.

³² *Id.*

³³ *Id.*

³⁴ See ME. REV. STAT. ANN., tit. 33, §§ 1021-1024 (including as examples of “confidential or fiduciary” relationships family, accountants, brokers, individuals providing care and services to the elderly person).

³⁵ See Me. Rev. Stat. Ann, tit. 33, §§ 1021-1024.

³⁶ See, e.g., MASS. GEN. LAWS ANN. ch. 209A, § 6 (stating that “whenever any law officer has reason to believe that a family or household member has been abused or is in danger of being abused, the officer shall use all reasonable means to prevent further abuse...”); Mo. Rev. Stat. §§ 455.035, 455.045, 455.085 (providing judicial remedies for adults abused by present or former adult household members).

³⁷ See, e.g., ME. REV. STAT. ANN. tit. 19A § 4007 (making temporary emergency protection orders available against family or household member; defendant may be ordered to pay plaintiff’s attorney fees).

³⁸ See, e.g., WASH. REV. CODE § 74.34.110(2).

abuse and fraud of mid-life and older Americans.³⁹ These grants would be awarded to eligible entities (state agency or area agency on aging, or 501(c)(3) organizations with a proven record of providing services to low-income families and/or mid-life and older individuals) to enhance and promote knowledge of financial issues, long-term care, and retirement issues.

Author Contact Information

(name redacted)
Legislative Attorney
[redacted]@crs.loc.gov, 7-....

³⁹ H.R. 392, S. 924 and S. 3866, 109th Cong.; S. 386, 108th Cong.; and S. 2982, 107th Cong.

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