

What Everyone Needs to Know About Elder Abuse^{©1}
Rebecca C. Morgan
Stetson University College of Law

I. WHAT IS ELDER ABUSE?

- A. Although abuse, neglect and exploitation are separate problems with separate components, many times elder abuse is used as a shorthand to refer to all three problems.
1. In response to this problem of elder abuse, all the states and the District of Columbia have statutes that address abuse, neglect and exploitation, including establishing adult protective services programs, which usually provide home-based social and health services and create special court proceedings for dealing with emergencies.
 2. Sometimes it may be appropriate to implement procedures to establish a guardianship in addition to APS intervention, but in such cases separate legal actions must be filed to provide necessary assistance when the elder refuses to cooperate.
- B. The National Center on Elder Abuse has defined elder abuse as follows:

“**Elder abuse** is a term referring to any knowing, intentional, or negligent act by a caregiver or any other person that causes harm or a serious risk of harm to a vulnerable adult. The specificity of laws varies from state to state, but broadly defined, abuse may be:

Physical Abuse - Inflicting, or threatening to inflict, physical pain or injury on a vulnerable elder, or depriving them of a basic need.

Emotional Abuse - Inflicting mental pain, anguish, or distress on an elder person through verbal or nonverbal acts.

Sexual Abuse - Non-consensual sexual contact of

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any kind.

Exploitation - Illegal taking, misuse, or concealment of funds, property, or assets of a vulnerable elder.

Neglect - Refusal or failure by those responsible to provide food, shelter, health care or protection for a vulnerable elder.

Abandonment - The desertion of a vulnerable elder by anyone who has assumed the responsibility for care or custody of that person.”

http://www.ncea.aoa.gov/NCEARoot/Main_Site/FAQ/Questions.aspx

- C. How widespread is elder abuse? There is not an extensive amount of data about the actual incidence of elder abuse, it is thought that cases of elder abuse are significantly under-reported, and statistics vary. For example, “[a]ccording to the best available estimates, between 1 and 2 million Americans age 65 or older have been injured, exploited, or otherwise mistreated by someone on whom they depended for care or protection.” National Center for Elder Abuse, *Fact Sheet: Elder Abuse Prevalence and Incidence* (2005); http://www.ncea.aoa.gov/NCEARoot/Main_Site/pdf/publication/FinalStatistics050331.pdf
1. Keep in mind as well that there are differing definitions of elder abuse used by the states and researchers. Contributing as well to the range in statistics is the serious under-reporting of abuse cases.
 2. There is no uniformity amongst the various state statutes that cover the range of acts that comprise elder abuse, neglect and exploitation. Some states have elder abuse statutes, others have adult protective services statutes, others have abuse statutes that cover vulnerable adults, some have statutes that cover abuse that occurs in long term care facilities, and others may have combinations.
 3. Florida’s APS statute uses vulnerable adult:
 - a. Fla. Stat. § 415.102 (27) defines “vulnerable adult” as:

“a person 18 years of age or older whose ability to perform the normal activities of daily living or to

provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging.”

and

- b. Fla. Stat. § 415.102(28) defines “vulnerable adult in need of services” as:

“a vulnerable adult who has been determined by a protective investigator to be suffering from the ill effects of neglect not caused by a second party perpetrator and is in need of protective services or other services to prevent further harm.”

- 4. The majority of the states, including Florida, require mandatory reporting of suspected abuse, neglect or exploitation. *See* Fla. Stat. § 415.1034

- a. Those that are required to report abuse, neglect and exploitations include health care professionals, facility staff, law enforcement and ombudsmen. In some states, such as Florida, even bank employees, officers and trustees have an obligation to report suspected exploitation.
Fla. Stat. § 415.1034(1)(a)(8).

- b. Reporters receive immunity; mandatory reporters who fail to report may be prosecuted or fined, though these laws are seldom enforced.

II. THE VICTIM AND THE PERPETRATOR

- A. Anyone can be a victim of elder abuse. Some individuals may be more vulnerable to abuse than others:

“Social isolation and mental impairment (such as dementia or Alzheimer's disease) are two factors that may make an older person more vulnerable to

abuse. But, in some situations, studies show that living with someone else (a caregiver or a friend) may increase the chances for abuse to occur. A history of domestic violence may also make a senior more susceptible to abuse.”

NCEA, *Frequently Asked Questions: What Makes An Older Adult Vulnerable to Abuse?*;
http://www.ncea.aoa.gov/NCEARoot/Main_Site/FAQ/Questions.aspx.

B. The perpetrator may be anyone, but is often the spouse or adult child. See NCEA, *Who Are the Abusers of Older People?*;
http://www.ncea.aoa.gov/NCEARoot/Main_Site/FAQ/Questions.aspx

III. WARNING SIGNS OF ELDER ABUSE

While one sign does not necessarily indicate abuse, there are some tell-tale signs that there could be a problem. Those signs may vary depending on the type of abuse taking place:

“Bruises, pressure marks, broken bones, abrasions, and burns may be an indication of physical abuse, neglect, or mistreatment.

Unexplained withdrawal from normal activities, a sudden change in alertness, and unusual depression may be indicators of emotional abuse.

Bruises around the breasts or genital area can occur from sexual abuse.

Sudden changes in financial situations may be the result of exploitation.

Bedsore, unattended medical needs, poor hygiene, and unusual weight loss are indicators of possible neglect.

Behavior such as belittling, threats, and other uses of power and control by spouses are indicators of verbal or emotional abuse.

Strained or tense relationships, frequent arguments between the caregiver and elderly person are also signs.”

NCEA, *What Are the Warning Signs of Elder Abuse?*;
http://www.ncea.aoa.gov/NCEARoot/Main_Site/FAQ/Questions.aspx

IV. THE LAW

A. Federal Statutes

1. The Administration on Aging is required to fund the National Ombudsman Resource Center and the National Center on Elder Abuse. The Center on Elder Abuse annually distributes summaries on elder abuse research, maintains a clearinghouse of all elder abuse programs, facilitates the creation and distribution of training material and researches and runs pilot projects on the reasons for, prevention, identification and treatment of elder abuse. 42 U.S.C. § 3012.
 - a. Money is available for states' elder abuse programs. 42 U.S.C. § 3058(b). To participate, states have to make certain assurances, including provision of programs for public education, reporting, and referral of elder abuse. 42 U.S.C. § 3058(d). States receiving money develop a program designed for prevention of elder abuse.
 - b. Activities target public education, services coordination, information systems creation, training and promoting a system that provides immunity for good faith reporting and a system for dealing with complaints. 42 U.S.C. § 3058i.
2. Elder Justice Act—although enacted as part of the Patient Protection and Affordable Care Act, Pub. L. 111-148, funding for the provisions of the Act is still an issue.

B. Florida Statutes, Chapter 415-Adult Protective Services

1. Definitions:
 - a. Florida Statute § 415.102(1) defines “Abuse” as
“any willful act or threatened act by a relative, caregiver, or household member which causes or is likely to cause significant impairment to a vulnerable adult’s physical, mental, or emotional health. Abuse includes acts and omissions.”
 - b. Florida Statute § 415.102(16) defines “Neglect” as:

“the failure or omission on the part of the caregiver or vulnerable adult to provide the care, supervision, and services necessary to maintain the physical and mental health of the vulnerable adult, including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services, which a prudent person would consider essential for the well-being of a vulnerable adult. The term “neglect” also means the failure of a caregiver or vulnerable adult to make a reasonable effort to protect a vulnerable adult from abuse, neglect, or exploitation by others. “Neglect” is repeated conduct or a single incident of carelessness which produces or could reasonably be expected to result in serious physical or psychological injury or a substantial risk of death.”

c. Florida Statute § 415. 102(8) defines “Exploitation” as:

“a person who:

1. Stands in a position of trust and confidence with a vulnerable adult and knowingly, by deception or intimidation, obtains or uses, or endeavors to obtain or use, a vulnerable adult’s funds, assets, or property with the intent to temporarily or permanently deprive a vulnerable adult of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the vulnerable adult; or
2. Knows or should know that the vulnerable adult lacks the capacity to consent, and obtains or uses, or endeavors to obtain or use, the vulnerable adult’s funds, assets, or property with the intent to temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the vulnerable adult...

“Exploitation” may include, but is not limited to:

1. Breaches of fiduciary relationships, such as the misuse of a power of attorney or the abuse of guardianship duties, resulting in the unauthorized appropriation, sale, or transfer of property;
 2. Unauthorized taking of personal assets;
 3. Misappropriation, misuse, or transfer of moneys belonging to a vulnerable adult from a personal or joint account; or
 4. Intentional or negligent failure to effectively use a vulnerable adult's income and assets for the necessities required for that person's support and maintenance.”
3. The Department of Children and Families maintains a “central abuse hotline,” a toll-free number for reporting “known or suspected abuse, neglect, or exploitation of a vulnerable adult at any hour of the day or night, any day of the week.” Fla. Stat. § 415.103.
- a. Once received, the hotline determines whether immediate “onsite protective investigation” is required, and if so, then the hotline immediately notifies the department's responsible staff to implement.
 - b. If immediate action is not required, then the hotline notifies the designated staff in time for beginning an investigation within 24 hours.
 - c. Reporters, who do so in good faith receive statutory immunity “from any liability, civil or criminal, that otherwise might be incurred or imposed.”
 1. However, no immunity is granted to a person who is under suspicion of “having abused, neglected, or exploited, or committed any illegal act upon or against, a vulnerable adult.” Facility employees or residents are protected from retribution or discharge because of a report made by the employee or a facility resident. Fla. Stat. 415.1036(1).

2. Further, reporters have a civil cause of action for actual damages as well as punitive damages against a person who causes a harmful change in employment status. Fla. Stat. § 1036(2).
- d. A civil cause of action is available for victims, in addition to other remedies available under the law. Fla. Stat. § 415.1111 Recovery includes actual as well as punitive damages.
1. The action can be brought by the victim, or by the victim's guardian, someone (person or organization) who is acting on behalf of the victim, with the victim (or the victim's guardian's) consent, or by the personal representative of the estate of a deceased victim regardless of whether the victim's death was caused by the abuse, neglect, or exploitation.
 2. Prevailing parties may recover reasonable attorney's fees, as well as costs and damages.
- d. Keep in mind the legislative intent of the statute:

“The Legislature recognizes that there are many persons in this state who, because of age or disability, are in need of protective services. Such services should allow such an individual the same rights as other citizens and, at the same time, protect the individual from abuse, neglect, and exploitation. It is the intent of the Legislature to provide for the detection and correction of abuse, neglect, and exploitation through social services and criminal investigations and to establish a program of protective services for all vulnerable adults in need of them. It is intended that the mandatory reporting of such cases will cause the protective services of the state to be brought to bear in an effort to prevent further abuse, neglect, and exploitation of vulnerable adults. In taking this action, the Legislature intends to place the fewest possible restrictions on personal liberty and the exercise of constitutional

rights, consistent with due process and protection from abuse, neglect, and exploitation. Further, the Legislature intends to encourage the constructive involvement of families in the care and protection of vulnerable adults.”

Fla. Stat. § 415.101.