

Understanding and Utilizing State Elder Abuse Statutes

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Introduction

Every advocate should know and understand the elder abuse statutes in their state. The statutes define elder abuse, establish who is eligible for services from Adult Protective Services (APS), define reporting responsibilities in the state, specify available civil legal remedies, and set the general framework for APS or law enforcement. This information empowers advocates to know what to report, when to report, who to report to, and what the process may be when a report is filed. Advocates who work with older adults and vulnerable populations should understand the elder abuse statutes and develop working relationships between legal services, aging services, and adult protective services before the connections are needed.

Elder Abuse or Vulnerable Adult Abuse

The modern trend is for abuse statutes to cover every adult who is “vulnerable” as defined in the statute. Vulnerability may be based solely on age, but more commonly, eligibility requires other elements that make it difficult for the person to protect themselves from harm. Extending eligibility to every person age 18 and older based on factors of vulnerability avoids a gap between child abuse protections and elder abuse protections. It is important to understand who is covered under the statute in your state.

Eligibility for APS Services

There are seven general criteria for eligibility for APS services: age, condition, function, lack of assistance, living situation, receiving of services, and having a guardian/conservator. Most states use a combination of criteria including age, condition, and function that make the person unable to fully care for themselves or defend themselves from harm.

There are two reasons to understand the eligibility criteria in your state. First, reporting requirements cover persons who are eligible for services; and second, APS is limited or prohibited from providing services unless the person is eligible for services, as defined by law.

- **Age**—all APS statutes define or reference “adult,” and the most common criterion in the definitions is “age.” Some states define adults as persons age 18 and over, others as persons age 60 and older, and yet others as persons age 65 and older. There are some categories of persons eligible for which there is no age criterion; usually those are situations in which an individual resides in some type of skilled nursing facility.
- **Condition**—in some states, simply meeting the age criterion (i.e. over the age of 65) may make an individual eligible for APS. Generally, however, an individual must also have some sort of condition, such as “mental or physical impairment,” “mental or physical illness,” “developmental disability,” “dementia,” or “substance abuse.”
- **Function**—in some states, to be eligible for APS, one must also have impaired ability to function in certain ways. The statutes usually refer to impaired ability to: provide self-care, manage finances, protect oneself, perform or obtain services, or to make, communicate, or implement decisions. Many statutes that contain a function criterion also contain a condition criterion and specify that the condition must cause or relate to the functional impairment.
- **Lack of Assistance**—a few states add the criterion that an individual have no able and willing person available to provide assistance.

- **Living Situation**—in some states, the setting (domestic/community vs. institutional) in which an individual resides is another criterion. This criterion generally is applied in one of the following ways: (a) individuals in certain living situations are eligible if other criteria are met; (b) individuals in certain living situations are deemed eligible solely by virtue of their living situation; or (c) individuals in certain living situations are not eligible because an agency other than APS is responsible for investigating allegations that those individuals have been abused, neglected, or exploited.
- **Receiving of Services**—a few states include the receipt of certain services as a criterion. Most statutes that contain this criterion also contain other criteria, such as age or function. In other words, receipt of these services alone is usually not sufficient to make a person eligible for APS.
- **Having a Guardian or Conservator**—in some states, an individual who has had a guardian or conservator appointed by a court or who has been judged by a court to be incapacitated is deemed to be eligible.

PRACTICE TIPS

- For APS to offer help, the person needs to be covered by the definition in the state statute as eligible for services. Sometimes, the factors that make a person vulnerable are hard to detect in a first interview. Providing details about how the person is vulnerable in the report can open the door to help.
- Not everyone who is abused fits the description of a person eligible for services in a particular state. The laws may not empower APS to help someone who does not fit the definition of eligible for services. It is important to help persons not eligible for services from APS to get other assistance to recover and restore safety, trust, and dignity.

Elder Abuse Definitions

Elder abuse statutes define the elements of abuse in each state, and vary by state. The most common general categories of abuse are physical, psychological/emotional/mental/verbal, sexual, exploitation, financial exploitation, neglect, abandonment, and self-neglect. All forms of abuse are not defined in the statutes of each state.¹ The definitions vary widely. In 2016 the Centers for Disease Control [published uniform definitions for elder abuse for data collection purposes](#). Here are the uniform definitions published by the CDC:

Physical Abuse

The intentional use of physical force that results in acute or chronic illness, bodily injury, physical pain, functional impairment, distress, or death.

Sexual Abuse

Forced and/or unwanted sexual interaction (touching and non-touching acts) of any kind with an older adult.

Emotional / Psychological Abuse

Verbal/nonverbal behavior that results in the infliction of anguish, mental pain, fear, or distress, that is perpetrated by a caregiver or other person who stands in a trusted relationship to the elder.

Neglect

Failure by a caregiver or other person in a trusted relationship to protect an elder from harm, or the failure to meet needs for essential medical care, nutrition, hydration, hygiene, clothing, basic activities of daily living, or shelter, which results in a serious risk of compromised health and/or safety, relative to age, health status, and cultural norms.

¹ Types Of Abuse: Comparison Chart Of Provisions in Adult Protective Services Laws, By State aemqa.americanbar.org/content/dam/aba/administrative/law_aging/Abuse_Types_by_State_and_Category_Chart.pdf

Financial Abuse / Exploitation

The illegal, unauthorized, or improper use of an older individual's resources by a caregiver or other person in a trusting relationship, for the benefit of someone other than the older individual.

The CDC did not create uniform definitions for abandonment, abduction, criminal record identity theft, medical abuse, resident-to-resident abuse/aggression, self-neglect, or violation of rights. Definitions under state law will vary, and states may include forms of abuse not included in the CDC uniform definitions.

Abuse definitions help to define the criteria of what is acceptable or unacceptable behavior. APS uses the state-specific definitions to determine if abuse can be substantiated. Substantiating abuse triggers availability of programs and services. Law enforcement uses the definitions to determine if criminal charges are appropriate.

Abuse as defined in the elder abuse laws may directly be criminal violations, or law enforcement, and prosecutors may translate the actions defined in the elder abuse laws into criminal laws based on other criminal law statutes or other accepted definitions of crimes. Elder abuse and criminal laws may allow enhanced punishments for crimes committed against persons covered under the elder abuse statute.

Understanding how this works in your state leads to better understanding of what prosecution efforts are possible.

The US Department of Justice, Elder Justice Initiative publishes an excellent [chart of common Elder Abuse definitions, with corresponding criminal charges.](#)²

Elder Abuse	Possible Criminal Charges
Physical Abuse is defined as an act, rough treatment, or punishment that may result in injury, pain, or impairment.	Aggravated assault; assault; attempted murder; battery; domestic violence; elder abuse; false imprisonment; felony murder; homicide by abuse; kidnapping; manslaughter; murder; unlawful imprisonment; unlawful restraint.
Sexual Abuse is defined as sexual contact or non-contact (e.g., voyeurism) of any kind, with an older person, without agreement from that person.	Aggravated assault; assault; assault with sexual motivation; battery; domestic violence; elder abuse; indecent liberties; rape; sexual assault; sexual battery; trafficking; voyeurism.
Psychological Abuse is defined as verbal or emotional abuse causing suffering, emotional pain, or distress.	Elder abuse; harassment; hate crimes; malicious harassment; stalking; violation of no contact/protection order.
Neglect & Abandonment is defined as intentional or unintentional failure or refusal to provide care or help to an older adult to whom a duty of care is already owed. Abandonment can be an extreme form of neglect.	Neglect; abandonment; elder abuse; felony murder; manslaughter; murder; negligent/involuntary homicide.
Financial or Material Exploitation is defined as the illegal or improper use of an older person's money or property.	Elder abuse; embezzlement; exploitation; forgery; fraud (credit card, tax, or Medicaid); identity theft; larceny; money laundering; obtaining a signature by force; fraud or coercion; residential burglary; theft; theft of motor vehicle; trafficking; financial exploitation.

² Additional details can be found in "[Legal Issues Related to Elder Abuse, A Pocket Guide for Law Enforcement](#)," by Lori Stiegel, JD, of the American Bar Association Commission on Law and Aging (2014).

PRACTICE TIPS

- Not all harmful acts fit a state’s definition of elder abuse. It is important to offer assistance that helps the person restore trust, dignity, and improve safety, even if the act does not fall into elder abuse as defined in the state statute.
- The relationship between criminal laws and elder abuse laws can be very complex. A lot of crimes are not covered by the limited definitions of abuse in elder abuse statutes and should still be prosecuted.
- Due process protections require proving elements for a criminal prosecution that often go beyond the obvious bad act. Virtually all criminal laws require proving the intent of the person who committed the crime. On the civil side, APS can often provide services without needing to establish intent—APS merely needs to show that the defined act of abuse took place.
- The client of the prosecutor is the state. Victim centered prosecution has become the norm. Prosecution can proceed without consent of the victim, because the prosecutor represents the government.

Civil Provisions to Address Elder Abuse & Financial Exploitation

There are three primary roles for civil legal action when elder abuse has taken place. First, actions to stop further abuse; second, actions to recover money or property that has been stolen; and third, actions to seek damages for pain, suffering, and other injuries. A starting place is to read your state’s abuse statutes and corresponding civil litigation statutes. Some states provide specific causes of action for defined elder abuse or exploitation and may include special provisions on recovery of costs or other enhancements. Most civil litigation is based on tort law, contract law, or probate and trust law. [The National Center for Victims of Crimes has a draft Model Civil Provisions on Elder Financial Exploitation](#), offering guidance on legal reform. The chart below suggests possible civil actions based on common definitions of elder abuse in elder abuse statutes. There are things to consider before pursuing litigation: if there is a recognized and viable cause of action, if you can prove damages, and if you can recover damages if awarded. Not all options below are available in each state, and your state may have options that are not listed.

Elder Abuse	Possible Civil Strategies
Physical Abuse is defined as an act, rough treatment or punishment that may result in injury, pain, or impairment.	Tort actions for pain and suffering such as assault, battery, or wrongful death; if the physical abuse occurs in a supervised setting, negligent failure to supervise staff; adult family or domestic violence orders; restraining orders; eviction or ejection.
Sexual Abuse is defined as sexual contact or non-contact (e.g., voyeurism) of any kind, with an older person, without agreement from that person.	Assault; battery; invasion of privacy; intentional infliction of emotional distress; negligent failure to supervise; trespass; family or domestic violence orders; restraining orders; eviction.
Psychological Abuse is defined as verbal or emotional abuse causing suffering, emotional pain, or distress.	Intentional infliction of emotional distress; libel; slander; eviction; restraining orders.
Neglect & Abandonment is defined as intentional or unintentional failure or refusal to provide care or help to an older adult to whom a duty of care is already owed. Abandonment can be an extreme form of neglect.	Breach of contract; negligence; failure to provide necessary support or maintenance; actions for spousal support; filial responsibility.

<p>Financial or Material Exploitation is defined as the illegal or improper use of an older person's money or property.</p>	<p>Conversion; undue enrichment; action for accounting; freezing accounts; breach of fiduciary duty; breach of contract; removal or replacement of a guardian or conservator; unfair or deceptive trade practices; consumer fraud; fraud; divorce or legal separation; revocation of powers of attorney; undue influence; constructive trust; reformation of a deed; crime victim's compensation funds; eviction or ejection; undue influence; contract recession; closing financial accounts; security freezes on consumer credit; securities law violations; civil theft; civil injunction; reporting fraud by a social security representative payee; reporting of tax fraud; mail and wire fraud.</p>
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Mandatory and Permissive Elder Abuse Reporting

It is critical to understand elder abuse reporting in your state. Reporting is required by some, if not all, persons who have reason to believe that a person eligible for services under the statute has experienced abuse as defined in the statute. Reporting is mandatory by many persons who provide care or services. Even if reporting is not mandated, permissive reporting is an important tool in reducing the impact of elder abuse and often opens the door to programs and services that will improve the quality of life for the survivor of abuse. The National Center on Law & Elder Rights has a full training on [mandatory and permissive reporting](#), and what an advocate should consider in determining whether to report abuse.

Resources

- [ABA Commission on Law and Aging: APS Threshold Eligibility Criteria Definitions](#)
- [ABA Commission on Law and Aging: APS Threshold Eligibility Criteria 50 State Chart](#)
- [Department of Justice: Elder Justice Initiative](#)
- [National Center on Elder Abuse](#)
- [Types Of Abuse: Comparison Chart Of Provisions In Adult Protective Services Laws By State](#)
- [National Center for Victims of Crime: Model Civil Provisions on Elder Financial Exploitation](#)
- [National Center on Law & Elder Rights: Elder Abuse: Mandatory and Permissive Reporting For Lawyers](#)
- [National Center on Law & Elder Rights: Litigating Financial Exploitation Cases in State Courts](#)

Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at ConsultNCLER@acl.hhs.gov.

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