Understanding and Utilizing State Elder Abuse Statutes

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Housekeeping

• All on mute. Use Questions function for substantive questions and for technical concerns.

• Problems getting on the webinar? Send an e-mail to NCLER@acl.hhs.gov.

• Written materials and a recording will be available at NCLER.acl.gov. See also the chat box for this web address.
About NCLER

The National Center on Law and Elder Rights (NCLER) provides the legal services and aging and disability communities with the tools and resources they need to serve older adults with the greatest economic and social needs. A centralized, one-stop shop for legal assistance, NCLER provides Legal Training, Case Consultations, and Technical Assistance on Legal Systems Development. Justice in Aging administers the NCLER through a contract with the Administration for Community Living’s Administration on Aging.
About ABA COLA

The ABA Commission on Law and Aging is a collaborative and interdisciplinary leader of the American Bar Association’s work to strengthen and secure the legal rights, dignity, autonomy, quality of life, and quality of care of aging persons. The Commission accomplishes its work through research, policy development, advocacy, education, training, and through assistance to lawyers, bar associations, and other groups working on issues of aging.
About APS TARC

The mission of the APS TARC is to support federal, state, and local partners’ use of data and analytics, research and evaluation, and innovative practice and innovative strategies to enhance the effectiveness of APS programs.

The APS TARC serves as a focal point for ACL’s overall approach to leading the development of comprehensive APS systems. In coordination with ACL’s Office of Elder Justice and Adult Protective Services, the APS TARC works with state and local APS programs to improve reporting of data through the National Adult Maltreatment Reporting System (NAMRS), conduct evaluation and identify promising practices, support communities of practice among ACL grantees, and provide technical assistance to state APS programs. The purpose of this website is to facilitate the efforts of the APS TARC to support APS programs.
Key Lessons

• Acts of abuse are defined in state law.

• It is essential to understand who is eligible for services from Adult Protective Services (APS) based on state law. Eligibility triggers reporting, services, and criminal sanctions.

• Criminal definitions of acts of abuse may differ – but most acts of abuse can be charged as a crime.

• Help should be offered as possible to persons not eligible for APS services, and crimes against persons not eligible for APS services should be prosecuted.
50 States – 50 Laws

• Each state creates elder abuse laws:
  • Defining elder abuse
  • Defining who is eligible for services from Adult Protective Services
  • Establishing guidelines for mandatory and permissive reporting
  • Describing a framework for Adult Protective Services and Law Enforcement
Why We Need To Know

- Prevention, intervention, or remediation take a village.
- Your obligations will vary based on your role.
- All of us play a role.
- Understanding is key to collaboration.
What to Call This?

• Elder Abuse
• Adult Abuse
• Vulnerable Adult Abuse
Intro: State APS Eligibility and Reporting
• Vision: Support APS programs in improving the safety and well-being of adult victims of maltreatment

• Mission: The APS TARC will enhance the effectiveness of APS Programs

• Goal: The APS TARC will build the capacity of APS programs by increasing the use of best/promising/informed practices
APS Eligibility is a Combination of Age and Disability
APS Investigations in Residential Facilities

• In 38 states, APS investigates allegations of ANE when they occur in at least some types of residential facilities. Some state policies specify which types of facilities (e.g., licensed or unlicensed), while others are more general.

• In 14 states, APS never investigates allegations of ANE in facilities.

• In 4 states, extant materials reviewed did not provide information about investigations within facilities.
Types of Reporting Requirements by State (1 of 2)

- Universal reporting
  - Everyone is required to report suspicion of abuse, neglect, or exploitation.
  - 16 states

- Mandated reporters
  - Certain categories of individuals are required to report
  - 30 states
  - Medical and law enforcement communities are by far the most frequent mandated reporters.
  - Some states provide great detail about who is a mandatory reporter, including one state that describes 13 different types of mandatory reporters.
Types of Reporting Requirements by State (2 of 2)

• A combination of universal and mandatory
  • Everyone is required to report and certain categories are also specifically cited.
  • 6 states

• A few states have few or no mandatory reporting requirements
State Eligibility and Reporting and the Lawyer’s Role
Why Does it Matter?

• A condition for mandatory reporting
• Threshold for Adult Protective Services assistance
• APS may not be able to help, if the person is not eligible
  • Practice Tip: When reporting, describe why you think the person is eligible for services, as it is not always obvious.
• If using elder abuse laws in criminal charges or civil litigation, elements need to be met to make a case.
What if?

• What if the person has been abused, but does not fit the eligibility criteria?
  • The person may need legal assistance
  • The person may need help with personal or financial consequences
  • The person may benefit from social supports
  • The abuse may still be a crime
State Definitions of Abuse
Definitions:

A. “Physical abuse”
   • the non-accidental use of force that results in bodily injury, pain, or impairment, including, but not limited to, being slapped, burned, cut, bruised or improperly physically restrained.

B. “Sexual abuse”
   • non-consensual sexual contact of any kind, including, but not limited to, forcing sexual contact or forcing sex with a third party.
C. “Emotional abuse”
  • willful infliction of mental or emotional anguish by threat, humiliation, intimidation, or other abusive conduct, including, but not limited to, frightening or isolating an adult.

D. “Active neglect”
  • willful failure by the caregiver to fulfill the care-taking functions and responsibilities assumed by the caregiver, including, but not limited to, abandonment, willful deprivation of food, water, heat, clean clothing and bedding, eyeglasses or dentures, or health related services.
New York (Continued 3)

E. “Passive neglect”
• non-willful failure of a caregiver to fulfill care-taking functions and responsibilities assumed by the caregiver, including, but not limited to, abandonment or denial of food or health related services because of inadequate caregiver knowledge, infirmity, or disputing the value of prescribed services.

F. “Self neglect”
• an adult's inability, due to physical and/or mental impairments, to perform tasks essential to caring for oneself, including, but not limited to, providing essential food, clothing, shelter and medical care; obtaining goods and services necessary to maintain physical health, mental health, emotional well-being, and general safety; or managing financial affairs.
G. “Financial exploitation”

- improper use of an adult's funds, property, or resources by another individual, including, but not limited to, fraud, false pretenses, embezzlement, conspiracy, forgery, falsifying records, coerced property transfers or denial of access to assets.
Case Study: Laura

Laura is 83 year old. She is legally blind and needs assistance with preparing meals, managing medications, and managing money. She keeps a wallet with $200 in cash and a credit card on her desk. Her neighbor offered to pick up Laura’s prescriptions and Laura handed her the wallet. The neighbor paid for the prescriptions and also charged $50 shampoo on Laura’s credit card and took $100 of the cash. The neighbor refused to return the wallet, saying she would hold onto it for safekeeping.
Poll: Laura

• Under the New York definition, what is financial exploitation?
  
  A. Charging $50 in shampoo on Laura’s card
  B. Taking the $100 in cash
  C. Not returning the wallet
  D. All of the above

“Financial exploitation” means improper use of an adult's funds, property or resources by another individual, including but not limited to, fraud, false pretenses, embezzlement, conspiracy, forgery, falsifying records, coerced property transfers or denial of access to assets.
How Do You Find the Statutes in Your State?

• Citations are in the charts on the ABA Commission on Law and Aging website, resources page, and elder abuse subpage
• Search the citation (Google or other search tool)
• Some states publish laws on state websites
• FindLaw and other public sites have most state statutes available
• Administrative regulations
Elder Abuse is Generally a Crime

• Self-neglect is not a crime, and emotional abuse can sometimes be hard to charge as a crime.
• State statutes may make violation of elder abuse statute a crime
• State statutes may include an enhanced penalty for crimes against a person eligible for services under abuse laws
New York Criminal Compared with Elder Abuse Code

• A person is guilty of assault in the third degree when:
  
  1. With intent to cause physical injury to another person, they cause such injury to such person or to a third person; or
  2. They recklessly cause physical injury to another person; or
  3. With criminal negligence, they cause physical injury to another person by means of a deadly weapon or a dangerous instrument.

• Assault in the third degree is a class A misdemeanor.

• New York Consolidated Laws, Penal Law - PEN § 120.00 Assault in the third degree

• “Physical abuse” means the non-accidental use of force that results in bodily injury, pain or impairment,

• New York Consolidated Laws, Social Services Law - SOS § 473.6 (a)
The US Department of Justice, Elder Justice Initiative
Civil Elder Abuse = Possible Criminal Charges

- **Physical Abuse**
  - 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

• Sexual Abuse
  • 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

- Psychological Abuse
  - 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

- **Neglect & Abandonment**
  - 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

- Financial or Material Exploitation
  - 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
Civil and Criminal Collaboration
Civil and Criminal Collaboration Intro

• The definitions may vary, but most abuse is a violation of criminal law

• By Social and Human Services, Civil Legal Services, and Law Enforcement working together, we can provide the greatest array of remedies to adults who have been mistreated
Civil Interventions and Litigation

• Three Goals
  1. Stop further abuse
  2. Recover assets that have been stolen
  3. Seek damages for pain, suffering, or wrongful death
Look To The State Statutes

• Some states have specific statutes on recovering assets taken by financial exploitation
  • Allow specific elements
  • May allow recovery of costs or special damages
  • Special provision on recovering title to property
Most Civil Actions Are Based on Common Causes of Action

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<tr>
<th>Elder Abuse</th>
<th>Possible Civil Strategies</th>
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| 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 ejectment |
| 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 |
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<td>Psychological Abuse is defined as verbal or emotional abuse causing suffering, emotional pain, or distress.</td>
<td>• Intentional infliction of emotional distress</td>
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<td>• Libel</td>
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<td>• Breach of contract</td>
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<td>• Negligence</td>
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<td>• Failure to provide necessary support or maintenance</td>
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<td>• Actions for spousal support</td>
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<td>• Filial Responsibility</td>
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Civil Actions Slide 3

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| Financial or Material Exploitation is defined as the illegal or improper use of an older person’s money or property. | • 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 ejectment  
• Contract recession  
• Closing financial accounts  
• Security freezes on consumer credit  
• Securities law violations  
• Civil theft  
• Civil injunction  
• Reporting Social Security Representative Payee Fraud  
• Reporting of tax fraud  
• Mail and wire fraud |
Reporting Requirement

- Reporting is triggered by:
  - A person being eligible for services; and
  - An act described as abuse in the statute.

- Reporting outside of the eligibility requirements may limit APS response – but others can still help.

- See NCLER webinar and issue brief on Mandatory and Permissive Reporting
Questions?

Type your questions in the question box on the webinar interface.
Elder Justice Toolkit

Practice-oriented, national online resource with information on pursuing civil legal remedies in elder abuse cases, practice tips, and sample documents for attorneys.

Contribute to the Toolkit! Customize a state-specific financial exploitation guide, or share your documents, letters, and pleadings at ConsultNCLER@acl.hhs.gov.

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