

**SB**

**86**

**(FILE 2)**

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Civil protection orders are intended to protect a victim from abuse. If granted a civil protection order, the courts can order that the abusive person (respondent) not contact the victim (petitioner) in person, by phone, e-mail, text message or through a third party. A civil protection order can order a respondent to not come within 100 yards of the petitioner, their home and workplace, as well as other locations.

There are many types of civil protection orders. The Family Abuse Prevention Act (FAPA) restraining orders can prohibit contact by an abusive intimate partner, ex-partner, parent, child or other family member. The Elderly Persons and Persons with Disability Abuse Prevention Act (EPPDAPA), also known as an Elder Abuse order, can prohibit contact by an abusive family member, partner, ex-partner, child or caretaker.

Stalking Civil Protection Orders, also known as stalking orders, prohibit a person from stalking another person. This order does not require the petitioner and respondent to be intimate partners, ex-partners or family members. Juveniles are also eligible to obtain a civil stalking order against another juvenile or an adult and a restraining order in certain circumstances.

**To apply for a Protection Order, please contact the Domestic Violence Resource Center's Protective Order Advocacy Program at (503) 846-3020.**

**Violations of Protective Orders**

Violations of protective orders should be reported to the police. Violations of both restraining orders and stalking orders are mandatory arrest situations for police. Violations usually result in probation and mandated treatment. An offender may be sentenced to jail for any violation. A civil stalking order violation can be a felony under certain circumstances which could result in a prison sentence.

**Civil Matters**

**§ 124.015<sup>1</sup>****Hearing upon request of respondent**

- relief
- settlement
- effect of proceedings

- (1) The court shall hold a hearing within 21 days following the request, and may cancel or change any order issued under ORS 124.020 (Ex parte hearing) if the respondent, elderly person or person with a disability requests a hearing pursuant to ORS 124.020 (Ex parte hearing) (9).
- (2) In addition to the relief granted under ORS 124.020 (Ex parte hearing), the court, in a hearing held pursuant to subsection (1) of this section, may:
  - (a) Require either party to move from any residence whose title or right to occupy such premises is held jointly by the parties; **and**
  - (b) Assess against any party reasonable attorney fees and such costs as may be incurred in the hearing.
- (3)
  - (a) If the respondent is represented by an attorney, time for the hearing may be extended for up to five days at the request of the petitioner or guardian petitioner so that the petitioner or guardian petitioner may seek representation.
  - (b) If the elderly person or person with a disability is represented by an attorney, time for the hearing may be extended for up to five days at the request of the respondent or guardian petitioner so that the respondent or guardian petitioner may seek representation.
- (4) The court may approve any consent agreement to bring about a cessation of abuse of the parties. However, the court may not approve a term in a consent agreement that provides for restraint of a party to the agreement unless the other party petitioned for and was granted an order under ORS 124.010 (Petition for relief). An order or consent agreement made under this section may be amended at any time and shall continue in effect for a period of one year from the date of the order issued under ORS 124.020 (Ex parte hearing).
- (5) An order or agreement made under ORS 124.005 (Definitions for ORS 124.005 to 124.040) to 124.040 (Short title) or ORS 133.310 (Authority of peace officer to arrest without warrant) and 133.381 (Procedure in arrests for violation of

certain restraining orders) may not in any manner affect title to any real property.

- (6) No undertaking shall be required in any proceeding under ORS 124.005 (Definitions for ORS 124.005 to 124.040) to 124.040 (Short title).
- (7) Any proceeding under ORS 124.005 (Definitions for ORS 124.005 to 124.040) to 124.040 (Short title) shall be in addition to and not in lieu of any other available civil or criminal remedies.
- (8) Notwithstanding any right or remedy established in ORS chapter 90 or ORS 105.105 (Entry to be lawful and peaceable only) to 105.168 (Minor as party in proceedings pertaining to residential dwellings), a petitioner or guardian petitioner may enforce an order issued under ORS 124.005 (Definitions for ORS 124.005 to 124.040) to 124.040 (Short title). [1995 c.666 §§5,5a; 2003 c.257 §3a; 2005 c.671 §9; 2007 c.70 §26]

**§ 124.012<sup>1</sup>****Filing of petitions****• where contempt proceedings must be conducted**

A petition under ORS 124.010 (Petition for relief) may be filed only in a county in which the petitioner or respondent resides. Any contempt proceedings for violation of a restraining order issued under ORS 124.005 (Definitions for ORS 124.005 to 124.040) to 124.040 (Short title) must be conducted by the court that issued the order, or by the circuit court for a county in which a violation of the restraining order occurs. If contempt proceedings are initiated in the circuit court for a county in which a violation of the restraining order occurs, the person initiating the contempt proceedings shall file with the court a copy of the restraining order, certified by the clerk of the court that issued the order. Upon filing of the certified copy of the restraining order, the court shall enforce the order as though that court had issued the order. [2003 c.289 §4]

**§ 33.045<sup>1</sup>****Types of sanctions**

- (1) A court may impose either remedial or punitive sanctions for contempt.
- (2) Confinement may be remedial or punitive. The sanction is:
  - (a) Remedial if it continues or accumulates until the defendant complies with the court's order or judgment.
  - (b) Punitive if it is for a definite period that will not be reduced even if the defendant complies with the court's order or judgment.
- (3) A fine may be remedial or punitive. A fine is:
  - (a) Punitive if it is for a past contempt.
  - (b) Remedial if it is for continuing contempt and the fine accumulates until the defendant complies with the court's judgment or order or if the fine may be partially or entirely forgiven when the defendant complies with the court's judgment or order.
- (4) Any sanction requiring payment of amounts to one of the parties to a proceeding is remedial.
- (5) Any sanction imposed by a court for contempt is in addition to any civil remedy or criminal sanction that may be available as a result of the conduct constituting contempt. In any civil or criminal proceedings arising out of the conduct constituting contempt, the court shall take into consideration any contempt sanctions previously imposed for the same act. [1991 c.724 §4]

A Benchguide for

# The Elderly Persons and Persons With Disabilities Abuse Prevention Act

## ORS 124.005 – 124.040

Revised and updated as of March, 2008 by a working group of the Elder Law Section of the Oregon State Bar, including Steven A. Heinrich and Eric M. Kearney, with the assistance of Lisa N. Bertalan, Ellyn R. Stier, and Stephen R. Owen.

Revised and updated 2000 by the Honorable Michael S. Loy, Multnomah County Courts.

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A Benchguide for  
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## INTRODUCTION

In response to concerns regarding the abuse of the elderly and persons with disabilities the 1995 Oregon Legislature enacted specific legislation to restrain such abuse. The legislation has been amended and expanded since its enactment. While similar to provisions regarding the Family Abuse Prevention Act (FAPA), the Elderly Persons and Persons With Disabilities Abuse Prevention Act (EPPWDAPA) has some key distinctions meant to deal with specific concerns and circumstances regarding the abuse of the elderly and persons with disabilities. These differences include the type of alleged abuse that is actionable, potential remedies to address such abuse, and the role of agents who can appear in these actions on behalf of an elderly person or a person with a disability.

Under EPPWDAPA actions that can fall under the definition of abuse are expanded and the court has greater remedial powers to address such abuse. Under FAPA, abuse is generally defined in terms of attempting, threatening, or using force to physically injure or coerce a victim. The definition of abuse under EPPWDAPA is expanded to include not only physical violence but can also include the wrongful taking of property, neglect or failure to provide care or services, abandonment, derogatory conduct that causes emotional harm, and even the mailing of sweepstakes promotions. To remedy such claims of abuse the court can not only restrain the respondent from further contact with the victim, but can also order the respondent to return money and property to the petitioner, divest control of property, and follow instructions given by a guardian or conservator for the elderly person or the person with a disability.

EPPWDAPA allows this protection to be requested and put in place without the victim appearing personally before the court. Many times the victim may be too physically or mentally incapacitated to be able to appear and advocate for themselves. Other times the alleged victim may not want the protection of the court for a variety of reasons, including their support for the alleged abuser. In these instances the law specifically allows a guardian or guardian ad litem to apply for the relief without the presence of the alleged victim. The alleged victim is only required to be informed of the proceeding by written notice. In the absence an objection from the alleged victim, it is possible that he or she may never directly address the court except through a guardian or guardian ad litem.

The Elderly Persons and Persons With Disabilities Abuse Prevention Act is a powerful legal tool to attempt to address abuse of the elderly and people with disabilities. With the increasing numbers of elderly persons and persons with disabilities in our society, applying this specialized legal protection may unfortunately become more commonplace. A full understanding of the law and the circumstances regarding these potential victims is essential in addressing these issues. This bench guide is an attempt to aid the courts in this understanding.

**I. THE PETITION**

**A. Venue**

ORS 124.012

An Elderly Persons and Persons with Disabilities Abuse Prevention Act (EPPWDAPA) petition may be filed only in a county where the petitioner or the respondent resides.

ORS 124.005(9) and (3),  
ORS 124.020(5)

1. Caveat: "Petitioner" and "guardian petitioner" are separately defined. When filling out forms, a "guardian petitioner shall provide information about the (elderly) person (or person with a disability)," "rather than information about the petitioner." The statute is not clear, therefore, whether the relevant residence is that of the guardian petitioner, or the residence of the elderly person or person with a disability.

**B. Definitions**

ORS 124.010

An elderly person or a person or with a disability (or a "guardian petitioner" on behalf of such a person) may seek relief under EPPWDAPA when:

1. Background.
  - a. The elderly person or person with a disability has been the victim of "abuse," as defined in ORS 124.005(1) within the preceding 180 days; and
  - b. The elderly person or person with a disability is "in immediate and present danger of further abuse by the abuser."
2. Specific Definitions.
  - a. Elderly Person.

ORS 124.005(2)

Under EPPWDAPA, an "elderly person" is "a person 65 years of age or older who is not subject to ORS 441.640 to ORS 441.665."

ORS 441.640 to ORS 441.685

These statutes deal with the requirement to report abuse of a resident of a long term care facility. The only persons who seem technically to "be subject to" ORS 441.640 to ORS 441.685 are persons who are required to

make reports. This plain reading of the statute results in what is apparently the correct result. i.e. despite the restrictions that initially appear to restrict the court from granting relief under EPPWDAPA simply because a victim is a resident of a nursing home or other long term care facility, a close reading of the statutes in question appears to render this restriction a nullity. Any other interpretation would have the inconsistent result of allowing a person with a disability who lives in a long term care facility to avail herself or himself of the protections of ORS 124.005 et seq, while restricting elderly residents of the same facility from receiving the same protections.

b. Person With A Disability.

A "person with a disability" is a person who

ORS 124.005(8)(a);  
ORS 410.040(7)(b)

I) Meets the criteria in ORS 410.040(7)(b) by being a person with a mental or physical disability who is:

- i) mentally retarded, developmentally disabled, or mentally or emotionally disturbed and resides in or needs placement in a residential program administered by the Department of Human Services; or
- ii) an alcohol or drug abuser and resides in or needs placement in a residential program administered by the Department of Human Services; or
- iii) Otherwise has a physical or mental disability; or

ORS 124.005(8)(b);  
ORS 410.715

II) Suffers brain injury caused by extrinsic forces which results in the person suffering a loss of cognitive, psychological, social, behavioral or physiological function for a sufficient time to affect that person's ability to perform activities of daily living.

c. Guardian Petitioner.

ORS 124.005(3)

A guardian petitioner is a guardian or a guardian ad litem for an elderly person or a

person with a disability who files a petition under ORS 124.005 to ORS 124.040 on behalf of the person.

ORS 124.010(7)

Note: The elderly person or person with a disability retains rights to be represented, have access to records, file objections, request a hearing, and present evidence and cross examine witnesses if a guardian petitioner files an EPPWDAPA petition.

ORS 124.005(1)

d. Abuse.

Unlike the Family Abuse Prevention Act (FAPA), the EPPWDAPA does not limit "abuse" to that between family or household members. "Abuse" under the EPPWDAPA means any of the following:

ORS 124.005(1)(a)

I) Any physical injury caused by other than accidental means or that appears inconsistent with the explanation given of the injury;

ORS 124.005(1)(b)

II) Neglect that leads to physical harm through withholding services necessary to maintain health and well-being;

ORS 124.005(1)(c)

III) Abandonment, including deserting or willfully forsaking an elderly person or a person with a disability, or withdrawing or neglecting duties and obligations that a care giver or other person owes an elderly person or a person with a disability;

ORS 124.005(1)(d)

IV) Willfully inflicting physical pain or injury;

ORS 124.005(1)(e)

V) Using derogatory or inappropriate names, phrases or profanity, ridicule, harassment, coercion, threats, cursing, intimidation, or inappropriate sexual comments or conduct of such a nature as to threaten significant physical or emotional harm to the elderly person or person with a disability;

(Note the potential for use of the EPPWDAPA process by participants in a domestic situation, particularly relating to dissolution of marriage or separation, involving persons over

65 years of age, or persons with a disability, who may seek to gain advantages where the situation does not rise to a level where relief could be granted under FAPA. See also ORS 124.010(4) requiring disclosure of any such pending proceedings.)

ORS 124.005(1)(f)

VI) Causing any sweepstakes promotion to be mailed to an elderly person or a person with a disability who spent more than \$500 in the preceding year on sweepstakes, provided that the elderly person or person with a disability represented to the court that the person felt the need for the court's assistance to prevent the person from incurring further expense;

ORS 124.005(1)(g)

VII) Wrongfully taking or appropriating money or property, or knowingly subjecting an elderly person or a person with a disability, to alarm by conveying a threat to wrongfully take or appropriate property of the person, which threat would reasonably be expected to cause the person to believe that the threat would be carried out; or

*Church v. Woods*, 190 Or. App. 112, 77 P3d 1150, 2003

This case discusses "wrongful" and "taking" in the context of a similar statute, ORS 124.100, which relates to civil actions for abuse of vulnerable persons. Of particular note is the court's discussion of "improper motive" and "improper means" as they relate the concept "wrongful," as well as the court's discussion of what constitutes a taking, especially as regards joint ownership, right of survivorship, etc. regarding both real and personal property, and regarding both tangible and intangible property.

ORS 124.005(1)(h)

VIII) Sexual contact with a nonconsenting elderly person or person with a disability considered incapable of consenting to a sexual act as described in ORS 163.315 (statutory rape), and as defined in ORS

163.305 (definitions).

e. Immediate and Present Danger.

ORS 124.020(4)

“Immediate and present danger of further abuse by the abuser” includes but is not limited to situations in which the respondent has recently threatened the elderly person or person with a disability with additional abuse.

ORS 124.005

f. Other Defined Terms.

Other terms specially defined for the purposes of EPPWDAPA include:

- I. “Interfere” (to hinder or impede);
- II. “Intimidate” (to compel or deter conduct by a threat);
- III. “Menace” (to act in a threatening manner);
- IV. “Molest” (to annoy, disturb or persecute with hostile intent or injurious effect);
- V. “Sweepstakes” (a procedure for awarding a prize based on chance; or in which a person is required to purchase, pay something of value, or make a donation as a condition of winning a prize or receiving or obtaining information about a prize; or which is advertized in a way to create a reasonable impression that such a payment, purchase or donation is a condition of winning or receiving information about a prize; and
- VII. “Sweepstakes promotion” (an offer to participate in a sweepstakes).

**C. Limitations - Persons Against Whom a Petition May NOT Be Filed**

ORS 124.010(8)

An elderly person or a person with a disability may not file a petition under ORS 124.005 to 124.040 against a guardian or a conservator of the person.

Note: Although an elderly person or a person with a

disability cannot file an EPPWDAPA against their guardian or conservator, the statute is silent as to whether a guardian petitioner may file an EPPWDAPA petition against a guardian or a conservator of an elderly person or a person with a disability.

**D. Time Frames**

ORS 124.010(1)

An EPPWDAPA petition must allege both of two different time frames:

ORS 124.010(1)

1. That the prior abuse occurred within the 180 days preceding the filing of the EPPWDAPA petition.

ORS 124.010(6)

a. Note: Time when the respondent is incarcerated, or has a principal residence more than 100 miles from the principal residence of the elderly person or person with a disability, is not counted as part of this 180-day period.

ORS 124.010(1)

2. That petitioner is in immediate and present danger of further abuse from respondent.

ORS 124.020(4)

a. Immediate and present danger includes situations in which the respondent has recently threatened further abuse.

**E. Requirement to Disclose Other Actions**

ORS 124.010(4)

An EPPWDAPA petition must disclose the existence of any of the following pending between the parties:

1. Any other EPPWDAPA proceedings; or
2. Any "Abuse Prevention Act" proceedings; or
3. Any marital annulment, dissolution or separation proceedings; or
4. Any protective proceedings under ORS Chapter 125 (including guardianships and conservatorships).

**F. Moving Does Not Affect Rights**

ORS 124.010(3)

The right to petition for relief under EPPWDAPA is not affected if the elderly person or a person with a disability

has left the residence or household to avoid abuse.

**G. Amendments to Petition**

1. Amendments of Petitioner Permitted.

Nothing in ORS ch. 124 prohibits petitioner from amending the EPPWDAPA petition after filing and before hearing.

ORS 124.020(9)(c)

2. Amendments of Objector Permitted.

The contested hearing that is set following service on the respondent and/or the elderly person or person with a disability is not limited to issues raised in the request for hearing form.

ORS 124.020(9)(c)

- a. However, if the respondent or the elderly person or person with a disability seeks to raise such an issue the Petitioner of Guardian Petitioner is entitled to a reasonable continuance.

**H. Burden and Standard of Proof**

ORS 124.010(2)

1. Burden of Proof.

The petitioner or guardian petitioner has the burden of proof for all claims made under ORS 124.005 to 124.040.

ORS 124.010(2)

2. Standard of Proof.

The standard of proof is a preponderance of the evidence for all claims made under ORS 124.005 to 124.040.

**I. Notice to Elderly Person or Person with a Disability**

ORS 124.024(1) and (2)

1. Copies of Documents and Statement of Rights.

If an EPPWDAPA petition is filed by a guardian petitioner, that person must give notice to the elderly person or the person with a disability or the petition, order, and related forms described in ORS 124.020(6), and must also serve on that person a notice that contains a statement of that person's rights to contact and retain counsel, have access to personal records, file objections, request a hearing, and present evidence and cross examine witnesses.

ORS 124.024(3)

2. Form of Notice.

Notice must be similar to that provided to a respondent.

ORS 124.024(3)

3. Objection Form To Be Included.

The notice must contain an objection form that the elderly person or person with a disability can mail to the court.

ORS 124.024(4)

4. Personal Services Required Within 72 Hours.

This notice must be personally served on the elderly person or person with a disability not later than 72 hours after the court issues a restraining order under ORS 124.020.

The statute is not clear what the result is if such service is not completed within 72 hours.

ORS 124.024(4)

5. Proof of Service Before Contested Hearing.

This notice must be personally served on the elderly person or person and proof of service thereof filed in the proceeding before a contested hearing can be held pursuant to ORS 124.015.

The statute is not clear as to the result when a petition filed by a guardian petitioner, if service on the elderly person or person with a disability is not obtained, but the respondent requests a hearing, and the 21 day period within which the hearing must be held runs.

**J. Clerk's Duties**

The court clerk has several duties under EPPWDAPA.

1. Information.

ORS 124.010(5)

The court clerk must give the elderly person information provided by the Department of Human Resources about local adult protective services, domestic violence shelters, and local legal services available.

2. Forms, Instructions.

ORS 124.020(9)(a)

The clerk must make available an instruction

brochure and forms for the petition, order, and related forms. The forms must be in substantially the form prescribed by statute.

(Note that OSCA Legal Counsel has developed standard forms and instructions, which OSCA updates as needed to reflect new legislation and case law, and comments from judges and court staff who review the updates.)

3. Copies.

ORS 124.020(7)(a)

If the court allows the petition, the clerk of the court must provide, without charge, the number of certified true copies of the petition and order necessary to effect service on the respondent. The court clerk must also deliver a true copy of the petition and order to the county sheriff for service, unless the court finds service is unnecessary because respondent appeared in person in court.

4. Notify Petitioner if Documents Returned by Sheriff.

ORS 124.020(8)(a)

If the sheriff returns the order and petition to the court, because they are incomplete, the Clerk shall notify the Petitioner or Guardian Petitioner.

5. If Service Not Achieved by Sheriff.

ORS 124.020(8)(b)

If the sheriff cannot achieve service, the sheriff shall notify the petitioner or guardian petitioner, and if that person does not respond within 10 days, the sheriff shall file a return to the clerk showing service was not completed.

6. Provide Hearing Request Form, and Give Notice of Hearing.

ORS 124.020(9)(a)

The respondent, or the elderly person or the person with a disability, may request a court hearing upon any relief granted within 30 days after being served with an EPPWDAPA restraining order or notice thereof. The clerk shall provide a hearing request form in substantially the form provided in statute. The clerk shall also notify the petitioner or guardian petitioner of the time and date of the hearing, and shall provide a copy of the request for hearing.

7. Deliver Proof of Service To Sheriff.

ORS 124.030(1)

The clerk, or any other person serving a restraining order including a security amount and an expiration date, shall deliver to the sheriff a true copy of the proof of service and a true copy of the Petition and a true copy of the Order.

8. Deliver Notice of Early Termination.

ORS 124.030(3)

When an EPPWDAPA restraining order is terminated before the expiration date, the clerk shall deliver a true copy of the termination order upon the sheriff.

**K. No Filing, Service, or Hearing Fees**

ORS 124.020(7)(d)

The court cannot charge filing, service, or hearing fees. The sheriff cannot charge service fees.

**II. UNCONTESTED, IMMEDIATE HEARING**

**A. Ex Parte Hearing Required**

ORS 124.020(1)

An EPPWDAPA petitioner is entitled to an ex parte hearing, in person or by telephone, on the same day that the petition is filed or the next judicial day.

**B. Testimony May Establish Required Showing**

ORS 124.020(3)

1. Who May Testify To Meet Requirement.

EPPWDAPA explicitly provides that the required showing may be made by testimony of the elderly person or person with a disability, a guardian or a guardian ad litem of the person, witnesses to the abuse, or adult protective services workers who have conducted an investigation.

ORS 124.020(1)

2. Under EPPWDAPA there must be a showing that:

- a. The elderly person or a person with a disability;
- b. Has been the victim of abuse;
- c. Committed by the respondent;
- d. Within 180 days preceding the filing of the petition; and that
- e. There is an immediate and present danger of

further abuse to the person.

- f. Note that many of these terms are defined and discussed above, and that their statutory definitions may be different from the more common meanings of some of these terms.

ORS 124.020(5)

3. Error in Order Form.

Forms printed in accordance with statute, including the pre-printed form for the Order, contain errors, in that they fail to clarify that "petitioner" should often be interpreted as "elderly person or person with a disability." Although there is a statutory correction (ORS 124.020(5) ) in this regard for forms to be filled out by the petitioner or guardian petitioner, there is no such statutory correction for the form of the Order. The court should, nonetheless, make this substitution where common sense dictates, as, for example, in the section requiring a finding that there has been abuse of "the petitioner."

ORS 124.010(4).

4 Intersection of FAPA and EPPWDAPA Processes.

Note also the discussion above regarding the potential use of the EPPWDAPA process by persons who may be seeking advantages in dissolution proceedings, as also discussed above, and the requirement that any such proceedings which are pending be reported to the court per ORS 124.010(4).

**C. Burden and Standard of Proof**

ORS 124.010(2)

As outlined above, the petitioner or guardian petitioner has the burden of proof in this and all hearings under EPPWDAPA, with the standard of a preponderance of the evidence.

**III. RELIEF**

**A. Mandatory (Not Discretionary) Relief**

ORS 124.020(1)

At the initial hearing the court must order the following relief if petitioner or guardian petitioner requests it, and the court finds that:

ORS 124.010(1);

- respondent abused the elderly person or

also see benchguide above at section (l)(B)(2)(d)

ORS 124.010;  
also see benchguide above at section (l)(B)(2)(d)

person with a disability within the preceding 180 days; and

- the elderly person or person with a disability is in immediate and present danger of further abuse by respondent.

Note: When a guardian petitioner files a petition, and appears at the ex parte hearing, the elderly person or person with a disability may or may not be present at this ex parte hearing. However, issues may not be raised at this ex parte hearing regarding an objection to the requested relief or regarding other wishes of the elderly person or person with a disability. Such issues are to be addressed through the objection hearing process under ORS 124.020 as set forth below in section IV. Relief requested by a guardian petitioner, if legally appropriate, is to be granted by the court at this ex parte hearing, as the court is without discretion in many of these matters if the specific relief is requested by the guardian petitioner, although the guardian petitioner may have discretion as to whether to request such relief.

1. Restraint from further abuse

ORS 124.020(1)(c)

Order that the respondent be restrained from doing the following to the elderly person or person with a disability:

ORS 124.020(1)(c); 124.005(1)

a. **Abusing**, defined in ORS 124.005(1);

ORS 124.020(1)(c); 124.005(5)

b. **Intimidating**, defined as compelling or deterring conduct by a threat;

ORS 124.020(1)(c); 124.005(7)

c. **Molesting**, defined as annoying, disturbing, or persecuting with hostile intent or injurious effect;

ORS 124.020(1)(c); 124.005(4)

d. **Interfering with**, defined as interposing in a way that hinders or impedes;

ORS 124.020(1)(c); 124.005(6)

e. **Menacing**, defined as acting in a threatening manner;

ORS 124.020(1)(c)

f. **Attempting** to abuse, intimidate, molest, interfere with or menace the elderly person or person with a disability;

ORS 124.020(1)(e)(A);  
ORS 124.005(1)(f)

- g. **Mailing** any sweepstakes promotion to the elderly person or person with a disability, effective not less than 150 days after entry of the order.

ORS 124.020(1)(d)

2. Restraint from Entry Onto Specified Premises

If requested by petitioner or guardian petitioner, order that respondent be restrained from entering, or attempting to enter, any premises if the court deems it necessary to prevent respondent from abusing, intimidating, molesting, interfering with or menacing the elderly person or person with a disability.

ORS 124.020(1)(a)

3. Ouster

If requested by petitioner or guardian petitioner, order respondent to move out of the residence of the elderly person or person with a disability if:

- a. the residence is solely in name of the elderly person or person with a disability; or
- b. the elderly person or person with a disability and the respondent jointly own or rent the residence; or
- c. the respondent is married to the elderly person or person with a disability.

ORS 124.020(1)(b);

4. Police "Standby" for Essential Personal Property

If requested by petitioner or guardian petitioner, order that a peace officer accompany the party moving from the residence of the elderly person or person with a disability to remove *essential* personal effects.

ORS 124.025(1)&(2)

- a. The "standby" time is not required to exceed 20 minutes
- b. The peace officer may temporarily interrupt the removal of property at any time.
- c. Police "standby" is available on only one occasion.

ORS 124.020

- d. Essential person effects include, but are not limited to: clothing, toiletries, medications, Social Security cards, birth certificates,

identification and tools of the trade.

ORS 107.718(d)

Note: The statute does not define *essential personal effects* but see ORS 107.718(d) which deals with FAPA restraining orders and lists the above items as essential personal property.

5. Security Amount

ORS 124.030(4)

Specify the amount of the bond for violation of the restraining order. Although the statutory form specifies a default bond amount at \$5,000, the court may impose a higher or lower security amount.

6. Notice to Respondent

ORS 124.020(6), See Form -  
Notice to Respondent

Notice of respondent's right to request a hearing must accompany order in order to comply with the statute.

7. Notice to Elderly Person or Person With a Disability

ORS 124.024(1)

Guardian petitioners must give notice of petition, order, and related forms described in ORS 124.020(6) to the elderly person or person with a disability named in the petition.

ORS 124.024(4)

Such notice must be provided within seventy-two hours after the court issues a restraining order under ORS 124.020.

8. Sweepstakes Promotions

In addition to restraining the respondent from mailing any sweepstakes promotion to the elderly person or person with a disability, the court can order the respondent to:

ORS 124.020(1)(e)

- a. Remove the elderly person or person with a disability from the sweepstakes mailing list (within 150 days of the date the order is entered); or place the elderly person or person with a disability on a list of persons to whom the promotions may not be mailed; *and*
- b. Immediately refund any payment received in any form from the elderly person or person with a disability after the court order is

entered.

## B. Discretionary Relief

### 1. Authority to Order the Return of Wrongfully Appropriated Money or Property

ORS 124.020(2)(a)

If the court finds that the elderly person or person with a disability has been the victim of abuse as defined in ORS 124.005(1)(g) the court may order only that relief which the court considers *necessary* to prevent or remedy the **wrongful** taking or appropriation of the money or property of the elderly person or person with a disability, including but not limited to the relief which is set forth below at III.B.1.a through d.

ORS 124.005 (1)(g)

Note: ORS 124.005(1)(g): includes the following as one definition of abuse.

“Wrongfully taking or appropriating money or property, or knowingly subjecting an elderly person or person with disabilities to alarm by conveying a threat to wrongfully take or appropriate money or property, which threat reasonably would be expected to cause the elderly person or person with a disabilities to believe that the threat will be carried out.”

*Church v. Woods*, 190 Or. App. 112, 118-9, 77 P.3d 1150 (2003)

Note: see *Church v. Woods*, 190 Or. App. 112, 118-9, 77 P.3d 1150 (2003) (internal citations omitted.) defining wrongfully: “[Wrongfully’s] ordinary meaning is full of wrong: INJURIOUS, UNJUST, UNFAIR.” More specifically, it has a well-understood meaning in the law of torts with regard to interference with legal interests. Conduct generally is “wrongful” if it is carried out in pursuit of an improper motive or by improper means. “Improper means” must be independently wrongful by reason of statutory or common law, beyond the mere fact of the injury complained of. Improper means, for example, include violence, threats, intimidation, deceit, misrepresentation, bribery, unfounded litigation, defamation and disparaging falsehood. The use of undue influence also constitutes an “improper means,” in that it involves the procurement of an unfair advantage. That dual meaning of the word “wrongful,” focusing alternatively on the defendant’s motives or the means by

which property was taken, is sensible in the context of ORS 124.110(1)(a). Accordingly, we adopt it.”

- ORS 124.020(2)(a)(A) a. Directing the respondent to **refrain from exercising control** over the money or property of the elderly person or person with a disability;
- ORS 124.020(2)(a)(B) b. Requiring the respondent to **return custody** or control of the money or property of the elderly person or person with a disability to him or her;
- ORS 124.020(2)(a)(C) c. Requiring the **respondent to follow the instructions** of the guardian or conservator of the elderly person or person with a disability; or
- ORS 124.020(2)(a)(D) d. **Prohibiting** the respondent from **transferring the money or property** of the elderly person or person with a disability to any person other than the elderly person or person with a disability.

Note: The statutory order form does not list the above options as possible relief and therefore a pro se petitioner may not know to write them in the “other relief” requested section of the form. The court should inquire if petitioner wants to include any of these options when executing an order where petitioner has alleged the money or property has been wrongfully appropriated.

- ORS 133.310(3) Note: As noted below there are other consequences to ordering the return of property. At the ex parte hearing the respondent has had no opportunity to contest ownership of the allegedly wrongfully obtained property. ORS 133.310(3) requires a peace officer to arrest and take into custody a person without a warrant when the officer has probable cause to believe that person has been served with a restraining order and has violated that order. A respondent in possession of allegedly wrongfully obtained property would therefore be subject to mandatory arrest.

### C. Additional Discretionary Relief

- ORS 124.020(1)(f) The court may order any additional relief it considers necessary to provide for the safety and welfare of the elderly person or person with a disability.

#### **D. Limits on Relief**

The court may not use a restraining order issued under ORS 124.005 to 124.040 to:

ORS 124.020(2)(b)(A)

1. Allow any person other than the elderly person or person with a disability to assume responsibility for managing any money or property of the elderly person or person with a disability;

ORS 124.020(2)(b)(B)

2. Provide relief that is more appropriately obtained in a protective proceeding filed under ORS chapter 125 (Protective Proceedings).
  - a. This includes, but is not limited to, giving control or management of the financial accounts or property of the elderly person or person with a disability for any purpose other than necessary to prevent or remedy the wrongful taking or appropriation of money described in 124.005(1)(g).

#### **E. Entry Into Law Enforcement Data System**

ORS 124.030 (1)

1. When a EPPWDAPA restraining order is issued and the person to be restrained has actual notice thereof, the clerk of the court shall deliver:
  - a. a true copy of the affidavit of proof of service,
  - b. a copy of the petition, and
  - c. a true copy of the order to a county sheriff.
2. Upon receipt of the order the county sheriff shall entered the order into the Law Enforcement Data System (LEDS), which gives notice to all law enforcement agencies of the order. The order will be fully enforceable in any county in the state.

#### **F. Duration of Relief**

ORS 124.020(1)

1. Order remains in effect for a period of one year; or
2. Until the order is withdrawn or amended, whichever is sooner.

## **G. Dismissal**

### **1. By Written Order**

ORS 124.030(2)

The court may dismiss a restraining order at any time, but only by written order.

EPPWDAPA provides no specific standard or guidance for dismissal of restraining orders, and court practices vary considerably. ORCP 54(A)(1) permits dismissal without court order upon filing of a notice by the plaintiff.

### **2. Notarized Signature Required**

ORS 124.030(2)

A restraining order entered under ORS 124.020 can be terminated upon a motion for dismissal by the petitioner or guardian petitioner, only if the motion is notarized.

## **H. Renewals**

### **1. For Good Cause Shown**

ORS 124.035

The court may renew an EPPWDAPA order for "good cause shown" regardless of whether there has been further abuse.

### **2. Due process may require notice to respondent and an opportunity for a hearing on the renewal.**

## **I. Early Termination**

ORS 124.030(3)

When the order is terminated before it expires, the clerk of the court must deliver a true copy of the termination order to the sheriff with whom the original order was filed. The sheriff must then remove the original order from the Law Enforcement Data System.

## **IV. THE CONTESTED HEARING PROCESS**

Either the respondent or the elderly person or person with a disability (in a case brought by a guardian petitioner) may request a hearing to object to the order or to its particular provisions.

### **A. Contested Hearing Requests**

#### **1. Timing**

ORS 124.020(9)(a)

The respondent or the elderly person or person with a disability must request the hearing within 30 days after the restraining order is served on the

person who requests the hearing

2. Forms

ORS 124.020(9)(a)

The clerk must make the hearing request form available substantially in the form provided in ORS 124.020(6).

**B. Scheduling the Contested Hearing**

ORS 124.015(1)

1. The court must hold the hearing within 21 days of the hearing request.

*Strother and Strother*, 130 Or App 624, 630, 883 P2d 249 (1994), *rev den* 320 Or 508 (1995)

However if respondent or the elderly person or person with a disability causes or contributes to the delay, the 21-day rule may not apply. *Per Strother and Strother*, 130 Or App 624, 630, 883 P2d 249 (1994), *rev den* 320 Or 508 (1995), if the delay is attributable to the person requesting the hearing, the hearing may be postponed beyond 21 days in an appropriate circumstance.

ORS 124.015(3)

2. If respondent or the elderly person or person with a disability is represented by counsel and another party so requests, the court may extend the time for hearing up to five (5) days, to allow other parties to seek representation.

**C. Contested Hearing Notice Requirements**

ORS 124.020(9)(b)

The clerk of the court shall notify all parties of a scheduled contested hearing, and the petitioner or guardian petitioner shall give the clerk sufficient information to allow such notification.

**D. Settlement**

ORS 124.015(4)

1. The court can approve any consent agreement to bring about a cessation of the abuse.

ORS 124.015(4)

2. However, the settlement cannot provide for restraint of a party unless the other party petitioned for and was granted an order under ORS 124.010.

ORS 124.015(4)

3. Thus, the settlement cannot provide for mutual restraint unless both parties petitioned for and received orders under ORS 124.010.

ORS 124.020(2)(b)(A)

4. In addition, the court cannot use a restraining order

under ORS 124.005 to 124.040 to allow a person other than the elderly person or the person with a disability to assume responsibility for managing the money or property of the person.

ORS 124.020(2)(b)(B)

5. Nor can the court use a restraining order under ORS 124.005 to 124.040 to grant relief that is more appropriately filed under ORS chapter 125 (protective proceedings, including guardianships and conservatorships).

#### **E. Subject Matter of Contested Hearing**

ORS 124.020(9)(c)

1. The EPPWDAPA hearing is not limited to issues that respondent raised in the request for hearing.

ORS 124.020(9)(c)

2. The EPWPDAPA hearing may include testimony from witnesses to the abuse and from adult protective services workers.

Although not specified in ORS 124.020(9), other witnesses may, of course, also testify, as may be appropriate.

ORS 124.020(9)(c)

3. If the respondent, elderly person, or person with a disability seeks to raise an issue at the hearing not previously raised in the request form, the petitioner or guardian petitioner is entitled to a reasonable continuance to prepare a response.

#### **F. Contested Hearing Procedures**

ORS 124.020(9)(d)

1. EPPWDAPA does not specify what takes place at the hearing.

ORS 124.020(9)(c)

2. The court, during the hearing, must exercise its discretion to protect the elderly person or person with a disability from traumatic confrontation with respondent.

ORS 45.400

3. The EPPWDAPA contested hearing may be held in person or by phone.

4. Nothing in EPPWDAPA specifically overrides ORS 45.400 relating to telephone testimony, which requires 30 days prior written notice of telephone testimony, but which allows shorter notice if good cause is shown.

ORS 45.400(3)

5. ORS 45.400 contains significant restrictions setting forth situations when telephone testimony is not allowed.

#### **G. Evidentiary Issues**

ORS 40.015(2)

1. The Oregon Evidence Code applies to EPPWDAPA hearings.

ORS 124.010(2)

2. The burden of proof is on the petitioner or guardian petitioner to prove a claim by a preponderance of evidence.

#### **H. Available Relief**

ORS 124.015(1)

1. The court may cancel or change any order issued under ORS 124.020.

ORS 124.015(2)

2. ORS 124.015 provides relief that is "in addition to the relief granted under ORS 124.020." See Section III., above, for relief available under ORS 124.020. In addition to that relief, under ORS 124.015, the court may also order any of the following:

ORS 124.015(2)(a)

- a. Require either party to move from any residence whose title or right to occupy is held jointly by the parties.

As with many other situations, although the statute speaks of "either party" in this circumstance, this appears to be a function of the fact that the statute was not comprehensively revised when it was changed to allow for petitions by guardian petitioners. When this portion of the statute was written, the only "parties" were the respondent and the elderly person or person with a disability.

ORS 124.015(2)(b)

- b. The court may assess against any party reasonable attorney fees and costs incurred in the hearing.

ORS 124.015(4)

- c. The court may approve a consent agreement to bring about a cessation of abuse. There are significant restrictions on the content of settlement agreements and restraining orders that are available, however, despite the initial

impression given by the first sentence of ORS 124.015(4). See section IV.D., above.

ORS 124.030(4)

- d. The court can increase the security amount that was set at the ex-parte hearing for violation of the order.

## V. FOREIGN RESTRAINING ORDERS

ORS 24.190

See *FAPA Benchguide* for a discussion of the general statutory provisions regarding foreign restraining orders and their effect.

## VI. CONTEMPT—REMEDIAL AND PUNITIVE SANCTIONS

### A. Enforcement

ORS 124.015(8)

Notwithstanding ORS chapter 90 (Landlord and Tenant Law) and ORS sections 105.105 to 105.168 (FED statute), a petitioner may enforce an order issued under EPPWDAPA.

### B. Contempt Proceedings

As under FAPA, EPPWDAPA restraining orders are enforced through ORS chapter 33 contempt proceedings.

ORS 166.293(3)(a)

1. See *FAPA Benchguide* on contempt procedures and remedial and punitive sanctions.
2. Note that ORS 166.293(3)(a) (providing the court authority to revoke a concealed weapons permit) does not apply when an EPPWDAPA order is violated.

ORS 124.030(4)

3. Pending a contempt hearing for violation of an EPPWDAPA restraining order, a person arrested and taken into custody pursuant to ORS 133.310 may be released as provided in ORS 135.230 to 135.290.

*California*

*§ 15610.07*

(a) An elder or dependent adult who has suffered abuse as defined in Section 15610.07 may seek protective orders as provided in this section.

(b) For the purposes of this section, "protective order" means an order that includes any of the following restraining orders, whether issued ex parte, after notice and hearing, or in a judgment:

(1) An order enjoining a party from abusing, intimidating, molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, including, but not limited to, annoying telephone calls as described in Section 653m of the Penal Code, destroying personal property, contacting, either directly or indirectly, by mail or otherwise, or coming within a specified distance of, or disturbing the peace of the petitioner, and, in the discretion of the court, on a showing of good cause, of other named family or household members or a conservator, if any, of the petitioner.

(2) An order excluding a party from the petitioner's residence or dwelling, except that this order shall not be issued if legal or equitable title to, or lease of, the residence or dwelling is in the sole name of the party to be excluded, or is in the name of the party to be excluded and any other party besides the petitioner.

(3) An order enjoining a party from specified behavior that the court determines is necessary to effectuate orders described in paragraph (1) or (2).

(c) An order may be issued under this section, with or without notice, to restrain any person for the purpose of preventing a recurrence of abuse, if an affidavit shows, to the satisfaction of the court, reasonable proof of a past act or acts of abuse of the petitioning elder or dependent adult.

(d) (1) Upon filing a petition for protective orders under this section, the petitioner may obtain a temporary restraining order in accordance with Section 527 of the Code of Civil Procedure, except to the extent this section provides a rule that is inconsistent. The temporary restraining order may include any of the protective orders described in subdivision (b). However, the court may issue an ex parte order excluding a party from the petitioner's residence or dwelling only on a showing of all of the following:

(A) Facts sufficient for the court to ascertain that the party who will stay in the dwelling has a right under color of law to possession of the premises.

(B) That the party to be excluded has assaulted or threatens to assault the petitioner, other named family or household member of the petitioner, or conservator of the petitioner.

(C) That physical or emotional harm would otherwise result to the petitioner, other named family or household member of the petitioner, or conservator of the petitioner.

(2) If a temporary restraining order is granted without notice, the matter shall be made returnable on an order requiring cause to be shown why a permanent order should not be granted, on the earliest day that the business of the court will permit, but not later than 20 days or, if good cause appears to the court, 25 days from the date the temporary restraining order is granted, unless the order is otherwise modified or terminated by the court.

(e) The court may issue, upon notice and a hearing, any of the orders set forth in subdivision (b). The court may issue, after notice and hearing, an order excluding a person from a residence or dwelling if the court finds that physical or emotional harm would otherwise result to the petitioner, other named family or household member of the petitioner, or conservator of the petitioner.

(f) In the discretion of the court, an order issued after notice and a hearing under this section may have a duration of not more than three years, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party. These orders may be renewed upon the request of a party, either for three years or permanently, without a showing of any further abuse since the issuance of the original order, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party. The failure to state the expiration date on the face of the form creates an order with a duration of three years from the date of issuance.

(g) Upon the filing of a petition for protective orders under this section, the respondent shall be personally served with a copy of the petition, notice of the hearing or order to show cause, temporary restraining order, if any, and any affidavits in support of the petition. Service shall be made at least five days before the hearing. The court may, on motion of the petitioner or on its own motion, shorten the time for service on the respondent.

(h) The court may, upon the filing of an affidavit by the applicant that the respondent could not be served within the time required by statute, reissue an order previously issued and dissolved by the court for failure to serve the respondent. The reissued order shall be made returnable on the earliest day that the business of the court will permit, but not later than 20 days or, if good cause appears to the court, 25 days from the date of reissuance. The reissued order shall state on its face the date of expiration of the order.

(i) (1) If a person named in an order issued under this section, after a hearing, has not been served personally with the order but has received actual notice of the existence and substance of the order through personal appearance in court to hear the terms of the order from the court, no additional proof of service is required for enforcement of the order.

(2) If the person named in a temporary restraining order is personally served with the order and notice of hearing with respect to a restraining order or protective order based thereon, but the person does not appear at the hearing, either personally or by counsel, and the terms and conditions of the restraining order or protective order are identical to the temporary restraining order,

*California*

(a) An elder or dependent adult who has suffered abuse as defined in Section 15610.07 may seek protective orders as provided in this section.

(b) For the purposes of this section, "protective order" means an order that includes any of the following restraining orders, whether issued ex parte, after notice and hearing, or in a judgment:

(1) An order enjoining a party from abusing, intimidating, molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, including, but not limited to, annoying telephone calls as described in Section 653m of the Penal Code, destroying personal property, contacting, either directly or indirectly, by mail or otherwise, or coming within a specified distance of, or disturbing the peace of the petitioner, and, in the discretion of the court, on a showing of good cause, of other named family or household members or a conservator, if any, of the petitioner.

(2) An order excluding a party from the petitioner's residence or dwelling, except that this order shall not be issued if legal or equitable title to, or lease of, the residence or dwelling is in the sole name of the party to be excluded, or is in the name of the party to be excluded and any other party besides the petitioner.

(3) An order enjoining a party from specified behavior that the court determines is necessary to effectuate orders described in paragraph (1) or (2).

(c) An order may be issued under this section, with or without notice, to restrain any person for the purpose of preventing a recurrence of abuse, if an affidavit shows, to the satisfaction of the court, reasonable proof of a past act or acts of abuse of the petitioning elder or dependent adult.

(d) (1) Upon filing a petition for protective orders under this section, the petitioner may obtain a temporary restraining order in accordance with Section 527 of the Code of Civil Procedure, except to the extent this section provides a rule that is inconsistent. The temporary restraining order may include any of the protective orders described in subdivision (b). However, the court may issue an ex parte order excluding a party from the petitioner's residence or dwelling only on a showing of all of the following:

(A) Facts sufficient for the court to ascertain that the party who will stay in the dwelling has a right under color of law to possession of the premises.

(B) That the party to be excluded has assaulted or threatens to assault the petitioner, other named family or household member of the petitioner, or conservator of the petitioner.

(C) That physical or emotional harm would otherwise result to the petitioner, other named family or household member of the petitioner, or conservator of the petitioner.

(2) If a temporary restraining order is granted without notice, the matter shall be made returnable on an order requiring cause to be shown why a permanent order should not be granted, on the earliest day that the business of the court will permit, but not later than 20 days or, if good cause appears to the court, 25 days from the date the temporary restraining order is granted, unless the order is otherwise modified or terminated by the court.

(e) The court may issue, upon notice and a hearing, any of the orders set forth in subdivision (b). The court may issue, after notice and hearing, an order excluding a person from a residence or dwelling if the court finds that physical or emotional harm would otherwise result to the petitioner, other named family or household member of the petitioner, or conservator of the petitioner.

(f) In the discretion of the court, an order issued after notice and a hearing under this section may have a duration of not more than three years, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party. These orders may be renewed upon the request of a party, either for three years or permanently, without a showing of any further abuse since the issuance of the original order, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party. The failure to state the expiration date on the face of the form creates an order with a duration of three years from the date of issuance.

(g) Upon the filing of a petition for protective orders under this section, the respondent shall be personally served with a copy of the petition, notice of the hearing or order to show cause, temporary restraining order, if any, and any affidavits in support of the petition. Service shall be made at least five days before the hearing. The court may, on motion of the petitioner or on its own motion, shorten the time for service on the respondent.

(h) The court may, upon the filing of an affidavit by the applicant that the respondent could not be served within the time required by statute, reissue an order previously issued and dissolved by the court for failure to serve the respondent. The reissued order shall be made returnable on the earliest day that the business of the court will permit, but not later than 20 days or, if good cause appears to the court, 25 days from the date of reissuance. The reissued order shall state on its face the date of expiration of the order.

(i) (1) If a person named in an order issued under this section, after a hearing, has not been served personally with the order but has received actual notice of the existence and substance of the order through personal appearance in court to hear the terms of the order from the court, no additional proof of service is required for enforcement of the order.

(2) If the person named in a temporary restraining order is personally served with the order and notice of hearing with respect to a restraining order or protective order based thereon, but the person does not appear at the hearing, either personally or by counsel, and the terms and conditions of the restraining order or protective order are identical to the temporary restraining order,

*§ 15610.07*

except for the duration of the order, then the restraining order or protective order may be served on the person by first-class mail sent to that person at the most current address for the person available to the court.

(3) The judicial form for orders issued pursuant to this subdivision shall contain a statement in substantially the following form:

"NO ADDITIONAL PROOF OF SERVICE IS REQUIRED IF THE FACE OF THIS FORM INDICATES THAT BOTH PARTIES WERE PERSONALLY PRESENT AT THE HEARING WHERE THE ORDER WAS ISSUED. IF YOU HAVE BEEN PERSONALLY SERVED WITH A TEMPORARY RESTRAINING ORDER OR EMERGENCY PROTECTIVE ORDER AND NOTICE OF HEARING, BUT YOU DO NOT APPEAR AT THE HEARING EITHER IN PERSON OR BY COUNSEL, AND A RESTRAINING ORDER OR PROTECTIVE ORDER IS ISSUED AT THE HEARING THAT DOES NOT DIFFER FROM THE PRIOR TEMPORARY RESTRAINING ORDER OR EMERGENCY PROTECTIVE ORDER, A COPY OF THE ORDER WILL BE SERVED UPON YOU BY MAIL AT THE FOLLOWING ADDRESS \_\_\_\_\_. IF THAT ADDRESS IS NOT CORRECT OR YOU WISH TO VERIFY THAT THE TEMPORARY OR EMERGENCY ORDER WAS MADE PERMANENT WITHOUT SUBSTANTIVE CHANGE, CALL THE CLERK OF THE COURT AT \_\_\_\_\_."

(j) (1) The court shall order the petitioner or the attorney for the petitioner to deliver, or the clerk of the court to mail, a copy of an order issued under this section, or a reissuance, extension, modification, or termination of the order, and any subsequent proof of service, by the close of the business day on which the order, reissuance, extension, modification, or termination was made, to each local law enforcement agency designated by the petitioner or the attorney for the petitioner having jurisdiction over the residence of the petitioner, and to any additional law enforcement agencies within the court's discretion as are requested by the petitioner. Each appropriate law enforcement agency shall make available information as to the existence and current status of these orders to law enforcement officers responding to the scene of reported abuse.

(2) An order issued under this section shall, on request of the petitioner, be served on the respondent, whether or not the respondent has been taken into custody, by any law enforcement officer who is present at the scene of reported abuse involving the parties to the proceeding. The petitioner shall provide the officer with an endorsed copy of the order and a proof of service, which the officer shall complete and send to the issuing court.

(3) Upon receiving information at the scene of an incident of abuse that a protective order has been issued under this section, or that a person who has been taken into custody is the respondent to that order, if the protected person cannot produce an endorsed copy of the order, a law enforcement officer shall immediately attempt to verify the existence of the order.

(4) If the law enforcement officer determines that a protective order has been issued, but not served, the officer shall immediately notify the respondent of the terms of the order and where a written copy of the order can be obtained, and the officer shall at that time also enforce the order. The law enforcement officer's verbal notice of the terms of the order shall constitute service of the order and is sufficient notice for the purposes of this section and for the purposes of Section 273.6 of the Penal Code.

(k) Nothing in this section shall preclude either party from representation by private counsel or from appearing on the party's own behalf.

(l) There is no filing fee for a petition, response, or paper seeking the reissuance, modification, or enforcement of a protective order filed in a proceeding brought pursuant to this section.

(m) Pursuant to paragraph (4) of subdivision (b) of Section 6103.2 of the Government Code, a petitioner shall not be required to pay a fee for law enforcement to serve an order issued under this chapter.

(n) The prevailing party in any action brought under this section may be awarded court costs and attorney's fees, if any.

(o) (1) An order issued pursuant to this section shall prohibit the person subject to it from owning, possessing, purchasing, receiving, or attempting to purchase or receive, a firearm.

(2) Paragraph (1) shall not apply to a case consisting solely of financial abuse unaccompanied by force, threat, harassment, intimidation, or any other form of abuse.

(3) The court shall order a person subject to a protective order issued under this section to relinquish any firearms he or she owns or possesses pursuant to Section 527.9 of the Code of Civil Procedure.

(4) Every person who owns, possesses, purchases, or receives, or attempts to purchase or receive a firearm while the protective order is in effect is punishable pursuant to subdivision (g) of Section 12021 of the Penal Code.

(p) Any willful disobedience of any temporary restraining order or restraining order after hearing granted under this section is punishable pursuant to Section 273.6 of the Penal Code.

(q) This section does not apply to any action or proceeding covered by Title 1.6C (commencing with Section 1788) of Part 4 of Division 3 of the Civil Code, by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, or by Division 10 (commencing with Section 6200) of the Family Code. Nothing in this section shall preclude a petitioner's right to use other existing civil remedies.

(r) The Judicial Council shall promulgate forms and instructions therefor, rules for service of process, scheduling of hearings, and any other matters required by this section. The petition and response forms shall be simple and concise.

(s) This section shall become operative on January 1, 2010.

*§ 273.6  
Penal Code*

"Abuse of an elder or a dependent adult" means either of the following:

(a) Physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering.

(b) The deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering.

(a) Any intentional and knowing violation of a protective order, as defined in Section 6218 of the Family Code, or of an order issued pursuant to Section 527.6, 527.8, or 527.85 of the Code of Civil Procedure, or Section 15657.03 of the Welfare and Institutions Code, is a misdemeanor punishable by a fine of not more than one thousand dollars (\$1,000), or by imprisonment in a county jail for not more than one year, or by both that fine and imprisonment.

(b) In the event of a violation of subdivision (a) that results in physical injury, the person shall be punished by a fine of not more than two thousand dollars (\$2,000), or by imprisonment in a county jail for not less than 30 days nor more than one year, or by both that fine and imprisonment. However, if the person is imprisoned in a county jail for at least 48 hours, the court may, in the interest of justice and for reasons stated on the record, reduce or eliminate the 30-day minimum imprisonment required by this subdivision. In determining whether to reduce or eliminate the minimum imprisonment pursuant to this subdivision, the court shall consider the seriousness of the facts before the court, whether there are additional allegations of a violation of the order during the pendency of the case before the court, the probability of future violations, the safety of the victim, and whether the defendant has successfully completed or is making progress with counseling.

(c) Subdivisions (a) and (b) shall apply to the following court orders:

(1) Any order issued pursuant to Section 6320 or 6389 of the Family Code.

(2) An order excluding one party from the family dwelling or from the dwelling of the other.

(3) An order enjoining a party from specified behavior that the court determined was necessary to effectuate the order described in subdivision (a).

(4) Any order issued by another state that is recognized under Part 5 (commencing with Section 6400) of Division 10 of the Family Code.

(d) A subsequent conviction for a violation of an order described in subdivision (a), occurring within seven years of a prior conviction for a violation of an order described in subdivision (a) and involving an act of violence or "a credible threat" of violence, as defined in subdivision (c) of Section 139, is punishable by imprisonment in a county jail not to exceed one year, or in the state prison.

(e) In the event of a subsequent conviction for a violation of an order described in subdivision (a) for an act occurring within one year of a prior conviction for a violation of an order described in subdivision (a) that results in physical injury to a victim, the person shall be punished by a fine of not more than two thousand dollars (\$2,000), or by imprisonment in a county jail for not less than six months nor more than one year, by both that fine and imprisonment, or by imprisonment in the state prison. However, if the person is imprisoned in a county jail for at least 30 days, the court may, in the interest of justice and for reasons stated in the record, reduce or eliminate the six-month minimum imprisonment required by this subdivision. In determining whether to reduce or eliminate the minimum imprisonment pursuant to this subdivision, the court shall consider the seriousness of the facts before the court, whether there are additional allegations of a violation of the order during the pendency of the case before the court, the probability of future violations, the safety of the victim, and whether the defendant has successfully completed or is making progress with counseling.

(f) The prosecuting agency of each county shall have the primary responsibility for the enforcement of orders described in subdivisions (a), (b), (d), and (e).

(g) (1) Every person who owns, possesses, purchases, or receives a firearm knowing he or she is prohibited from doing so by the provisions of a protective order as defined in Section 136.2 of this code, Section 6218 of the Family Code, or Section 527.6 or 527.8 of the Code of Civil Procedure, or Section 15657.03 of the Welfare and Institutions Code, shall be punished under subdivision (g) of Section 12021.

(2) Every person subject to a protective order described in paragraph (1) shall not be prosecuted under this section for owning, possessing, purchasing, or receiving a firearm to the extent that firearm is granted an exemption pursuant to subdivision (f) of Section 527.9 of the Code of Civil Procedure, or subdivision (h) of Section 6389 of the Family Code.

(h) If probation is granted upon conviction of a violation of subdivision (a), (b), (c), (d), or (e), the court shall impose probation consistent with Section 1203.097, and the conditions of probation may include, in lieu of a fine, one or both of the following requirements:

(1) That the defendant make payments to a battered women's shelter or to a shelter for abused elder persons or dependent adults, up to a maximum of five thousand dollars (\$5,000), pursuant to Section 1203.097.

(2) That the defendant reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.

(i) For any order to pay a fine, make payments to a battered women's shelter, or pay restitution as a condition of probation under subdivision (e), the court shall make a determination of the defendant's ability to pay. In no event shall any order to make payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support. Where the injury to a married person is caused in whole or in part by the criminal acts of his or her spouse in violation of this section, the community property may not be used to discharge the liability of the offending spouse for restitution to the injured spouse, required by Section 1203.04, as operative on or

before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured spouse and dependents, required by this section, until all separate property of the offending spouse is exhausted.

The Elder Abuse Act does not specify the standard of review to apply when reviewing protective orders granted under section 15657.03. That statute, includes the following language: "An order may be issued under this section, with or without notice, to restrain any person for the purpose of preventing a recurrence of abuse, if an affidavit shows, to the satisfaction of the court, reasonable proof of a past act or acts of abuse of the petitioning elder or dependent adult." (§ 15657.03, subd. (c), italics added.) The "to the satisfaction of the court" language is identical to language in the DVPA.[ 2 ] In *Quintana v. Guijosa* (2003) 107 Cal.App.4th 1077, 1079, 132 Cal.Rptr.2d 538, the appellate court concluded issuance or failure to issue a protective order under the DVPA is reviewed for abuse of discretion. A protective order under the DVPA is also reviewed to determine whether the trial court's findings are supported by substantial evidence. (*Sabbah v. Sabbah* (2007) 151 Cal.App.4th 818, 822-823, 60 Cal.Rptr.3d 175.) Similarly, injunctions issued under Code of Civil Procedure sections 527.6 and 527.8, which prohibit civil harassment, are reviewed to determine whether the necessary factual findings are supported by substantial evidence. (*USS-Posco Industries v. Edwards* (2003) 111 Cal.App.4th 436, 444, 4 Cal.Rptr.3d 54; *Schild v. Rubin* (1991) 232 Cal.App.3d 755, 762, 283 Cal.Rptr. 533.)

In our interpretation of the Elder Abuse Act, and in consideration of analogous statutory language and cases interpreting that language, we hold the issuance of a protective order under the Elder Abuse Act is reviewed for abuse of direction, and the factual findings necessary to support such a protective order are reviewed under the substantial evidence test.

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# EA-100

## Request for Orders to Stop Elder or Dependent Adult Abuse

Clerk stamps date here when form is filed.

1 Name of the person to be protected:

Address of the person (Skip this if you have a lawyer. If you want your address to be private, give a mailing address instead):

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Person's telephone number (optional): (\_\_\_\_) \_\_\_\_\_

Person's lawyer (if you have one): (Name, address, telephone number, and State Bar number): \_\_\_\_\_

Fill in court name and street address:

Superior Court of California, County of \_\_\_\_\_

2 Name of the person you want protection from:

Describe the person: Sex:  M  F Weight: \_\_\_\_\_

Height: \_\_\_\_\_ Race: \_\_\_\_\_ Hair color: \_\_\_\_\_

Eye color: \_\_\_\_\_ Age: \_\_\_\_\_ Date of birth: \_\_\_\_\_

Home address (if you know): \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Work address (if you know): \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Court fills in case number when form is filed.

Case Number: \_\_\_\_\_

3 Are you asking for protection for any other family or household members or the conservator of the person in 1? If "yes," list those persons:

Name	Sex	Age	Lives with you?	How are they related to you?
_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____
_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____
_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____
_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____

Check here if there are more persons. Attach a sheet of paper and write "EA-100, item 3—Additional Protected Persons" for a title.

4 If you are asking for protection for any other family or household members or the conservator, why do they need protection?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Check here if you need more space for your answer. Attach a sheet of paper and write "EA-100, item 4—Why Others Need Protection" for a title.

**This is not a Court Order.**



Case Number: \_\_\_\_\_

Your name: \_\_\_\_\_

5 Who is asking the court for protection?

- You, to protect yourself.  
 A person acting on your behalf: Name: \_\_\_\_\_  
 A conservator  Another person with legal authority to represent you.

*If you are requesting protection for yourself, indicate that and go on to 6. If someone else is making this request, that person must attach a statement of who he or she is, his or her legal authority to make this request, and information about this representation, including any court appointments, the case numbers, and other relevant matters. Attach a sheet of paper and write "EA-100, item 5—Information About Person Requesting Orders" for a title.*

6 Describe the person to be protected:

- a. Age: \_\_\_\_\_  
b. If you are under age 65, do you have any physical or mental limitations that prevent you from carrying out normal activities or protecting your rights?  Yes  No (If yes, describe): \_\_\_\_\_

Check here if you need more space. Attach a sheet of paper and write "EA-100, item 6—Describe Protected Person" for a title.

7 How do you know the person in 2? (Describe):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8 Why are you filing in this court? (Check all that apply):

- I was abused physically or emotionally in this county by the person in 2.  
 The person in 2 lives in this county.  
 Other (explain): \_\_\_\_\_

9 a. Have you or any of the persons named in 3 and the person in 2 been involved in another court case?

- Yes  No

If yes, where? County: \_\_\_\_\_ State: \_\_\_\_\_

What is the case number? (If you know): \_\_\_\_\_

What kind of case? (Check all that apply):

- Elder abuse  Dependent adult abuse  Civil harassment  
 Domestic violence  Criminal  
 Other (specify): \_\_\_\_\_

b. Are there now any protective or restraining orders relating to you or any of the persons in 3 and the person in 2?

- Yes  No If yes, attach a copy if you have one.

Check here if you need more space. Attach a sheet of paper and write "EA-100, item 9—Describe Other Cases" for a title.

**This is not a Court Order.**

Case Number: \_\_\_\_\_

Your name: \_\_\_\_\_

- 10 Is this your first request for a protective order against the person in 2?  Yes  No  
 If no, are you asking for the renewal of an earlier protective order?  Yes  No  
 If you are asking for the renewal of an earlier order, provide the following information:  
 a. What was the case number of the earlier order? \_\_\_\_\_  
 b. How long do you want the renewed order to last?  \_\_\_\_\_ years  permanently

- 11 Describe in a. through i. how the person in 2 has abused you.  
 a. When was the most recent abuse (provide date or estimated date): \_\_\_\_\_  
 b. Who was there? \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

- c. In the most recent abuse, did the person in 2 do any of the following to you: physically abuse, financially abuse, intimidate, molest, attack, assault (sexually or otherwise), hit, follow, stalk, threaten, harass, destroy personal property, keep under surveillance, block movements, or contact you (directly or indirectly) by telephone, mail, e-mail, messenger, or by any other means?  
 Yes  No  
 If yes, describe: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

- d. Has the person in 2 previously abused you?  Yes  No  
 If yes, describe: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

- e. Describe any use or threatened use of guns or other weapons: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

- f. Did the police come?  Yes  No  
 If yes, did they give you an Emergency Protective Order?  Yes  No  I don't know  
 Attach a copy, if you have one.

**This is not a Court Order.**



Case Number:

Your name: \_\_\_\_\_

- 11 g. Is the person in 2 a caregiver who didn't allow you to have goods or services you needed to avoid physical harm or mental suffering?  Yes  No

If yes, describe how that affected you: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

- h. Did the case involve solely financial abuse unaccompanied by force, threat, harassment, intimidation, or any other form of abuse?

- Yes, only financial abuse.
- No, it included other abuse described above.

- i. Describe any injuries or harm you suffered as a result of the actions or deprivation described above:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Check here if you need more space to explain any of the subparts in item 11. Attach a sheet of paper and write "EA-100, item 11, subpart \_\_\_—Describe Abuse" for a title.

**Check the orders you want**

- 12  **Personal Conduct Orders**

I ask the court to order the person in 2 to not do the following things to me:

- a.  Physically abuse, financially abuse, intimidate, molest, attack, assault (sexually or otherwise), hit, follow, stalk, threaten, harass, destroy my personal property, keep me under surveillance, or block my movements.
- b.  Contact (either directly or indirectly), or telephone, or send messages or mail or e-mail.

The person in 2 will be ordered not to take any action to get the addresses or locations of any protected person, or of that person's family members or caretakers, unless the court finds good cause not to make the order.

- 13  **Stay-Away Orders**

I ask the court to order the person in 2 to stay at least (specify): \_\_\_\_\_ yards away from me and the places listed below (check all that apply):

- a.  My home
- b.  My job or workplace
- c.  My vehicle
- d.  Each person listed in 3
- e.  Other (specify): \_\_\_\_\_

If the court orders the person in 2 to stay away from all the places checked above, will that person be able to get to his or her home or job?  Yes  No

If no, explain: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**This is not a Court Order.**



Case Number:

Your name: \_\_\_\_\_

**Check the orders you want  (continued)**

**14**  **Move-Out Order**

I ask the court to order the person in (2) to move out from and not return to my residence at (address): \_\_\_\_\_

I will suffer physical or emotional harm if the person in (2) does not leave the residence.

The title or lease to the residence is not in the sole name of the person in (2) or the name of the person in (2) and another person.

I ask for this move-out order right away to last until the hearing, because:

a. I have the right to live at the above residence (explain): \_\_\_\_\_

b. The person in (2) assaulted or threatened me.

**15**  **Order About Guns or Other Firearms**

I ask the court to order the person in (2) to be prohibited from owning, possessing, purchasing, or receiving, or attempting to purchase or receive, firearms and to sell or turn in any guns or firearms that he or she controls. The abuse in this case is **not solely financial abuse** unaccompanied by force, threat, harassment, intimidation, or any other form of abuse.

**16**  **Other Orders**

What other orders are you asking for? (Describe): \_\_\_\_\_

Check here if you need more space. Attach a sheet of paper and write "EA-100, item 16—Other Orders" for a title.

**17**  **Temporary Orders**

Do you want the court to make orders right now on matters listed in (12) through (16)?  Yes  No

If yes, explain why: \_\_\_\_\_

Check here if you need more space. Attach a sheet of paper and write "EA-100, item 17—Temporary Orders" for a title.

**18** **Delivery of Orders to Law Enforcement Agencies**

I request that copies of the court's orders be given by (check one):

The court clerk  Myself  My lawyer to the following law enforcement agencies:

Name of Agency: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Check here if there are more law enforcement agencies. Attach a sheet of paper and write "EA-100, item 18—Law Enforcement Agencies" for a title.

**This is not a Court Order.**



Case Number: \_\_\_\_\_

Your name: \_\_\_\_\_

**19**  **Request to Shorten Time for Service**

You must have your papers personally served on the person in (2) at least 5 days before the hearing, unless the court orders a different time for service. (Form EA-142-INFO, What Is "Proof of Service"?, explains how to serve (notify) the person in (2). Form EA-140 may be used to show the court that the papers have been served.) If your papers cannot be served at least 5 days before the hearing and you need more time, explain why:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**20** **No Fee to Serve Orders**

If you want the sheriff or marshal to serve the orders on the person in (2) for free, ask the court clerk what you need to do.

**21**  **Lawyer's Fees and Court Costs**

I ask the court to order payment of my:

- a.  Lawyer's fees
- b.  Court costs

The amounts requested are:

<u>Item</u>	<u>Amount</u>	<u>Item</u>	<u>Amount</u>
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____

Check here if you need more space. Attach a sheet of paper and write "EA-100, item 21—Lawyer's Fees and Court Costs" for a title.

**22** **Additional Relief**

I ask the court for additional relief as may be proper.

**23** Number of pages attached to this form, if any: \_\_\_\_\_

**This Request for Orders to Stop Elder or Dependent Adult Abuse must be personally served on the person in (2). Persons requesting the orders may not serve these papers.**

Date: \_\_\_\_\_

\_\_\_\_\_  
Lawyer's name

▶ \_\_\_\_\_  
Lawyer's signature

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: \_\_\_\_\_

\_\_\_\_\_  
Name of person filing this request

▶ \_\_\_\_\_  
Signature of person filing this request

**This is not a Court Order.**

CONFIDENTIAL

DV-260/CH-102/EA-102

CLETS Information

California Law Enforcement Telecommunications System (CLETS) Information Form

Important Notice: This form MUST NOT become part of the public court file. It is confidential and private. If the court issues a restraining order, this form will provide law enforcement with information that will assist them in enforcing a restraining order.

Person to Be Protected: Fill out this form as much as you can, and give it to the court clerk. The clerk will provide the confidential information on this form to CLETS, a statewide system that lets police know about your order. In addition to providing the information on this form, you must provide a public mailing address on your request for a restraining order filed with the court. This will allow the court to contact you if needed and allow the other side to have their response to your petition served on you. If you want to keep your place of residence confidential, you can use a post office box or "in care of" address on the request that you file.

Case number for your restraining order (if you know it): \_\_\_\_\_

1 Person to Be Protected (name): \_\_\_\_\_
Sex: [ ] M [ ] F Height: \_\_\_\_\_ Weight: \_\_\_\_\_ Race: \_\_\_\_\_
Hair Color: \_\_\_\_\_ Eye Color: \_\_\_\_\_ Age: \_\_\_\_\_ Date of Birth: \_\_\_\_\_
(mailing address listed on restraining order) (city, state, zip) (telephone number [optional])
Vehicle (type, model, year): \_\_\_\_\_
Vehicle license number and state: \_\_\_\_\_

2 Person to Be Restrained (name): \_\_\_\_\_
Sex: [ ] M [ ] F Height: \_\_\_\_\_ Weight: \_\_\_\_\_ Race: \_\_\_\_\_
Hair Color: \_\_\_\_\_ Eye Color: \_\_\_\_\_ Age: \_\_\_\_\_ Date of Birth: \_\_\_\_\_
(residence address) (city, state, zip) (telephone number)
(work place) (occupation/title) (work hours)
(business address) (city, state, zip) (telephone number)
Driver's license number and state: \_\_\_\_\_ Vehicle license number and state: \_\_\_\_\_
Vehicle (type, model, year): \_\_\_\_\_
Social Security Number: \_\_\_\_\_
Describe any marks, scars, or tattoos: \_\_\_\_\_
Other names used by the restrained person: \_\_\_\_\_
Describe any guns or firearms you believe the restrained person owns or has access to (number, types, and locations): \_\_\_\_\_

3 Other People to Be Protected
Name Date of Birth Sex Race

This is not a Court Order—Do not file in court file.

Clerk stamps date here when form is filed.

1 Name of person who asked for the protective orders: \_\_\_\_\_

2 Your name: \_\_\_\_\_

Your address (skip this if you have a lawyer): (If you want your address to be private, give a mailing address instead): \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Your telephone (optional): (\_\_\_\_) \_\_\_\_\_

Your lawyer (if you have one): (Name, address, telephone number, and State Bar number): \_\_\_\_\_

Fill in court name and street address:

**Superior Court of California, County of**

Fill in case number:

**Case Number:**

**Use this form to give the court your responses to EA-100.**

- Read Form EA-151-INFO to protect your rights.
- Fill out this form and then take it to the court clerk.
- You must have the person in 1 served with a copy of this form and any attached pages.

3  **Personal Conduct Orders**

- a.  I agree to the orders requested.
- b.  I do not agree to the orders requested.
- c.  I agree to the following orders (specify): \_\_\_\_\_

The court will consider your Response at the hearing. Write your hearing date and time here:

**Hearing Date** → Date: \_\_\_\_\_ Time: \_\_\_\_\_  
Dept.: \_\_\_\_\_ Room: \_\_\_\_\_

**You must obey the court's orders until the hearing.** If you do not come to this hearing, the court may make the orders requested against you last for up to 3 years.

4  **Stay-Away Orders**

- a.  I agree to the orders requested.
- b.  I do not agree to the orders requested.
- c.  I agree to the following orders (specify): \_\_\_\_\_

5  **Move-Out Order**

- a.  I agree to the order requested.
- b.  I do not agree to the order requested.
- c.  I agree to the following order (specify): \_\_\_\_\_

6  **Turn In Guns or Other Firearms**

- a.  I do not own or have any guns or firearms.
- b.  I agree to the order requested.
- c.  I do not agree to the order requested.
- d.  I agree to the following order (specify): \_\_\_\_\_

Case Number: \_\_\_\_\_

Your name: \_\_\_\_\_

**7**  **Other Orders**

a.  I agree to the orders requested.

b.  I do not agree to the orders requested.

c.  I agree to the following orders (*specify*): \_\_\_\_\_

**8**  **The court should not make orders against me because** (*Give facts or reasons below*):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Check here if you need more space. Attach a sheet of paper and write "EA-110, Item 8— Facts and Reasons." Give specific facts and reasons.*

**9**  **Lawyer's Fees and Costs**

I ask the court to order payment of my:

a.  Lawyer's fees

b.  Court costs

because the temporary restraining order was issued without enough supporting facts.

The amounts requested are:

Item	Amount	Item	Amount
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____

*Check here if you need more space. Attach a sheet of paper and write "EA-110, Item 9— Lawyer's Fees and Costs" at the top. Give specific items and amounts.*

**10**  **Other Relief**

I ask for additional relief as may be proper.

**11** Number of pages attached to this form, if any: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
*Lawyer's name*

\_\_\_\_\_  
*Lawyer's signature*

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Type or print your name*

\_\_\_\_\_  
*Sign your name*

**EA-120****Notice of Hearing and  
Temporary Restraining Order**

Clerk stamps date here when form is filed.

**1** Name of person to be protected:

Address (Skip this if you have a lawyer. If you want your address to be private, give a mailing address instead):

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Your telephone number (optional): \_\_\_\_\_

Your lawyer (if you have one): (Name, address, telephone number, and State Bar number): \_\_\_\_\_

Fill in court name and street address:

**Superior Court of California, County of****2** Name of person to be restrained:

Description of that person:

Sex:  M  F Height: \_\_\_\_\_ Weight: \_\_\_\_\_ Race: \_\_\_\_\_

Hair Color: \_\_\_\_\_ Eye Color: \_\_\_\_\_ Age: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Home Address (if known): \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Work Address (if known): \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Court fills in case number when form is filed.

**Case Number:****To the person in ②:****3** **Notice of Hearing****A court hearing is scheduled on the request for orders against you to stop abuse:**

Name and address of court if different from above:

**Hearing  
Date** →

Date: \_\_\_\_\_ Time: \_\_\_\_\_

Dept.: \_\_\_\_\_ Rm.: \_\_\_\_\_

If you do not want the court to make orders against you, file Form EA-110. Then go to the hearing and tell the court why you disagree. You may bring witnesses and other evidence. If you do not go to this hearing, the court may make restraining orders against you that could last up to 3 years.

**4** **Court Orders**

The court (check a or b):

a  Has scheduled the hearing stated in ③. No orders are issued against you at this time.b  Has scheduled the hearing stated in ③ and has issued the temporary orders against you specified on pages 2, 3, and 4. If you do not obey these orders, you can be arrested and charged with a crime. You may have to go to jail, pay a fine of up to \$1,000, or both.**This is a Court Order.****Notice of Hearing and Temporary  
Restraining Order (CLETS-TEA or TEF)  
(Elder or Dependent Adult Abuse Protection)**

EA-120, Page 1 of 5



Case Number: \_\_\_\_\_

Your name: \_\_\_\_\_

**5**  **Additional Protected Persons**

In addition to the person named in (1), the following family or household members or conservator of the elder or dependent adult named in (1) are protected by the orders indicated below:

<u>Name</u>	<u>Sex</u>	<u>Age</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

Additional protected persons are listed at the end of this Order as EA-120 Attachment 5.

**Temporary Orders Against the Restrained Person**

(Write the name of the person in (2)): \_\_\_\_\_

The court has made the temporary orders indicated below against you. You must obey all these orders. These orders will expire on the date of the hearing listed in (3) unless they are extended by the court.

**6**  **Personal Conduct Orders**

You must **not** do the following things to the person listed in (1) and each person listed in (5):

- a. Physically abuse, financially abuse, intimidate, molest, attack, assault (sexually or otherwise), hit, follow, stalk, threaten, harass, destroy personal property, keep under surveillance, or block movements.
- b. Contact (directly or indirectly), telephone, send messages, mail, or e-mail.
- c. Take any action, directly or through others, to obtain the addresses or locations of the person in (1) or of that person's family or caretakers. (If item c. is not checked, the court has found good cause not to make this order.)

Peaceful written contact through a lawyer or a process server or any other person for service of legal papers related to a court case is allowed and does not violate this order.

**7**  **Stay-Away Orders**

You must stay at least (specify): \_\_\_\_\_ yards away from:

- a.  The person listed in (1)
- b.  The home of the person in (1)
- c.  The job or workplace of the person in (1)
- d.  The vehicle of person in (1)
- e.  The persons listed in (5)
- f.  Other (specify): \_\_\_\_\_

**8**  **Move-Out Order**

You must immediately move out from and not return to (address): \_\_\_\_\_

and must take only the personal clothing and belongings you need until the hearing.

**9**  **No Guns or Other Firearms**

You cannot own, possess, have, buy or try to buy, receive or try to receive, or in any other way get a gun or firearm.

**This is a Court Order.**



Case Number: \_\_\_\_\_

Your name: \_\_\_\_\_

**10**  **Turn In or Sell Guns or Firearms**

You must:

- Sell to a licensed gun dealer or turn in to police any guns or firearms that you possess or control. This must be done within 24 hours of being served with this order.
- File a receipt with the court within 48 hours of receiving this order that proves guns have been turned in or sold. *(You may use Form EA-145, Proof of Firearms Turned In or Sold, for this.)*

**11** **Financial Abuse**

This case  does not  does involve **solely financial abuse** unaccompanied by force, threat, harassment, intimidation or any other form of abuse.

**12**  **Other Orders** *(specify):* \_\_\_\_\_

*Additional orders are attached at the end of this Order as EA-120 Attachment 12.*

**Instructions for the Protected Person**

To the person in ①: *(Write the name of the person in ①):* \_\_\_\_\_

**13** **Service of Order on Law Enforcement**

If the court issues temporary restraining orders, by the close of business on the date the orders are made,

you  your lawyer  the court clerk

should deliver a copy of this Order and any proof of service forms to each law enforcement agency listed below.

Name of Law Enforcement Agency

Address (City, State, Zip)

_____	_____
_____	_____
_____	_____

**14** **Service of Documents**

You must have someone personally deliver to the person in ② a copy of all the documents below:

- Form EA-120, *Notice of Hearing and Temporary Restraining Order* (completed and filed-stamped)
- Form EA-100, *Request for Orders to Stop Elder or Dependent Adult Abuse* (completed and filed-stamped)
- Form EA-110, *Response to Request for Orders to Stop Elder or Dependent Adult Abuse* (blank form)
- Form EA-151-INFO, *How Can I Respond to a Request for Orders to Stop Elder or Dependent Adult Abuse?*

If the boxes below are checked, you must also have someone personally deliver to the person in ② a copy of all the documents checked below:

e.  Form EA-145, *Proof of Firearms Turned In or Sold* (blank form)

f.  Other *(specify):* \_\_\_\_\_

You must file with the court before the hearing a proof of service of these documents on the person in ②.

*(For help with service, read Forms EA-142-INFO and EA-150-INFO.)*

**This is a Court Order.**



Case Number: \_\_\_\_\_

Your name: \_\_\_\_\_

### Order to Both Parties on Service

⑮  Time for Service

**A To: Person Asking for Order**

Someone 18 or over—**not you or anyone protected by this order**—must personally “serve” a copy of this order on the person in ② at least \_\_\_\_\_ days before the hearing.

**B To: Person Served With Order**

If you want to respond in writing, someone 18 or over—**not you**—must “serve” Form EA-110 on the person in ①, then file it with the court at least \_\_\_\_\_ days before the hearing.

(For help with service or responding, read Forms EA-142-INFO and EA-151-INFO.)

⑯ **No Fee to Notify (Serve) Restrained Person**

If the sheriff or marshal serves this Order, he or she will do it for free.

Date: \_\_\_\_\_

\_\_\_\_\_  
Judicial Officer

### Warnings and Notices to the Restrained Person in ②

#### You Cannot Have Guns or Firearms

⑰ If the court orders, you cannot own, have, possess, buy or try to buy, receive or try to receive, or otherwise get a gun while this Order is in effect. If you do, you can go to jail and pay a \$1,000 fine. You must sell to a licensed gun dealer or turn in to police any guns or firearms that you have or control in accordance with item ⑩ above. The court will require proof that you did so. If you do not obey this order, you can be charged with a crime.

⑱ **After You Have Been Served With a Restraining Order**

- Obey all the orders.
- If you want to respond, fill out Form EA-110 and file it with the court clerk. You do not have to pay any fee to file your response.
- Serve Form EA-110 on the person in ① or that person’s attorney by the date listed in ⑮ of this form. You cannot serve the person in ①. The person who serves the person in ① should complete and sign a *Proof of Service*. Form EA-141 may be used for this purpose. You should take the completed form back to the court clerk before the hearing date or bring it with you to the hearing.
- In addition to the response, you may file and serve declarations signed by you and other persons who have personal knowledge of the facts. Form MC-030, *Declaration*, is available from the clerk’s office at the court shown on page 1 of this form. If you do not know how to prepare a declaration, you should see a lawyer. After you have filed the response with the clerk of the court, a copy must be delivered personally or by mail to the person in ② or to his or her lawyer.
- If you wish to oppose the request for orders, in addition to filing a response, you should be present at the hearing. If you have any witnesses, they must also go to the hearing.
- At the hearing, tell the judge if you agree or disagree with the orders requested.
- Even if you do not go to the hearing, the judge can make the restraining orders last for 3 years.

**This is a Court Order.**



Case Number: \_\_\_\_\_

Your name: \_\_\_\_\_

**19 Notice Regarding Nonappearance at Hearing and Service of Order**

If you have been personally served with a temporary restraining order and notice of hearing, but you do not appear at the hearing either in person or by a lawyer, and a restraining order that does not differ from the previous or temporary restraining order is issued at the hearing, a copy of the order will be served on you by mail at the following address (*insert the address of the person in 2*):

If that address is not correct or you wish to verify that the temporary order was made permanent without substantive change, contact the clerk of the court.

If both you and the person in 1 are personally present at the hearing where the order is issued, no additional proof of service will be required.

**Instructions for Law Enforcement Agencies**

**20** This order is effective when made. It is enforceable anywhere in all 50 states, the District of Columbia, all tribal lands, and all U.S. territories and shall be enforced as if it were an order of that jurisdiction by any law enforcement agency that has received the order, is shown a copy of the order, or has verified its existence on the California Law Enforcement Telecommunications System (CLETS). If the law enforcement agency has not received proof of service on the restrained person, and the restrained person was not present at the court hearing, the agency shall advise the restrained person of the terms of the order and then shall enforce it. Violations of this order are subject to criminal penalties.

**Information for All Parties**



**Requests for Accommodations**

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least 5 days before the hearing. Contact the clerk's office or go to [www.courtinfo.ca.gov/forms](http://www.courtinfo.ca.gov/forms) for *Request for Accommodations by Persons With Disabilities and Response* (Form MC-410). (Civil Code, § 54.8)

*(Clerk will fill out this part.)*

**—Clerk's Certificate—**

*Clerk's Certificate*  
[seal]

I certify that this *Notice of Hearing and Temporary Restraining Order* is a true and correct copy of the original on file in the court.

Date: \_\_\_\_\_ Clerk, by \_\_\_\_\_, Deputy

**This is a Court Order.**

**EA-125****Request and Order for Reissuance of Temporary Restraining Order**

Clerk stamps date here when form is filed.

**1** Your name (*person asking to reissue order*): \_\_\_\_\_Your address (*skip this if you have a lawyer*): (*If you want your address to be private, give a mailing address instead*): \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Your telephone (*optional*): ( \_\_\_\_\_ ) \_\_\_\_\_Your attorney (*if you have one*): (*Name, address, telephone number, and State Bar number*): \_\_\_\_\_

Fill in court name and street address:

**Superior Court of California, County of****2** Name of person you want protection from: \_\_\_\_\_

Description of that person:

Fill in case number:

**Case Number:**Sex:  M  F Height: \_\_\_\_\_ Weight: \_\_\_\_\_ Race: \_\_\_\_\_

Hair Color: \_\_\_\_\_ Eye Color: \_\_\_\_\_ Age: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Home Address (*if known*): \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Work Address (*if known*): \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**3**  I ask the Court to reissue the Temporary Restraining Order previously filed in this case on Form EA-120.  
a. The last Temporary Restraining Order was issued on (*date*): \_\_\_\_\_ b. The last hearing date was (*date*): \_\_\_\_\_  
c. The Order has been reissued \_\_\_\_\_ times.**4**  I ask the court to reissue the Order because (*check one*):  
a.  I could not get the Order served before the hearing date.  
b.  Other (*specify*): \_\_\_\_\_

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Type or print your name*\_\_\_\_\_  
*Sign your name***This is a Court Order.**

Case Number: \_\_\_\_\_

Your Name: \_\_\_\_\_

*Clerk will fill out section below.*

5 The request to reissue the Temporary Restraining Order is:  
 a.  Granted      b.  Denied

The Order listed in 3 is reissued and reset for hearing in this court on the date and time below.  
 Unless the court extends the time, the Order will end on the date and at the time below.

Name and address of court if different from above:

**Hearing Date** → Date: \_\_\_\_\_ Time: \_\_\_\_\_  
 Dept.: \_\_\_\_\_ Room: \_\_\_\_\_

All orders in the Temporary Restraining Order stay in effect unless this order changes them.

- 6 If this Order is granted, a copy of this Order must be served on the person in 2 before the hearing, along with the other documents requesting orders to stop elder or dependent adult abuse.
- 7 By the close of business on the date this Order is made, a copy of this Order and any proof of service forms must be delivered to the law enforcement agency listed on Form EA-120, Item 12:
- The person in 1.
  - The attorney of the person in 1.
  - The clerk of the court.

Date: \_\_\_\_\_



\_\_\_\_\_  
*Judicial Officer*



**Requests for Accommodations**

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least 5 days before the hearing. Contact the clerk's office or go to [www.courtinfo.ca.gov/forms](http://www.courtinfo.ca.gov/forms) for *Request for Accommodations by Persons with Disabilities and Response* (form MC-410). (Civil Code, § 54.8)

*(Clerk will fill out this part.)*

**—Clerk's Certificate—**

*Clerk's Certificate*  
[seal]

I certify that this *Request and Order for Reissuance of Temporary Restraining Order* is a true and correct copy of the original on file in the court.

Date: \_\_\_\_\_

Clerk, by \_\_\_\_\_, Deputy

**This is a Court Order.**

**EA-130****Order After Hearing Restraining Elder or Dependent Adult Abuse**

Clerk stamps date here when form is filed.

**1** Name of protected person: \_\_\_\_\_Address *(Skip this if you have a lawyer. If you want your address to be private, give a mailing address instead):*  
\_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Your telephone number *(optional)*: \_\_\_\_\_Your lawyer *(if you have one)*: *(Name, address, telephone number, and State Bar number)*: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Fill in court name and street address:

**Superior Court of California, County of**  
\_\_\_\_\_  
\_\_\_\_\_**2** Name of person to be restrained: \_\_\_\_\_

Description of that person:

Sex:  M  F Height: \_\_\_\_\_ Weight: \_\_\_\_\_ Race: \_\_\_\_\_

Hair Color: \_\_\_\_\_ Eye Color: \_\_\_\_\_ Age: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Home Address *(if known)*: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Work Address *(if known)*: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Fill in case number:

**Case Number:**  
\_\_\_\_\_  
\_\_\_\_\_**3** **Hearing**

There was a hearing:

on *(date)*: \_\_\_\_\_ at *(time)*: \_\_\_\_\_  a.m.  p.m. Dept.: \_\_\_\_\_ Rm: \_\_\_\_\_\_\_\_\_\_ made the orders at the hearing.  
*(Name of judicial officer)*

These people were at the hearing:

a.  The person in **1**. c.  Lawyer of the person in **1** *(name)*: \_\_\_\_\_b.  The person in **2**. d.  Lawyer of the person in **2** *(name)*: \_\_\_\_\_**4** **Expiration Date of Order** This Order, except for an award of lawyer's fees, expires at:  
*(time)*: \_\_\_\_\_  a.m.  p.m. or  midnight on *(date)*: \_\_\_\_\_

If no expiration date is written here, this Order expires 3 years from the date of issuance.

 This renewal Order remains in effect permanently.**This is a Court Order.**

Case Number: \_\_\_\_\_

Your name: \_\_\_\_\_

**5**  **Additional Protected Persons**

In addition to the person named in ①, the following family or household members or conservator of the person are protected by the orders indicated below:

<u>Name</u>	<u>Sex</u>	<u>Age</u>
_____	_____	_____
_____	_____	_____

Additional protected persons are listed at the end of this Order as EA-130 Attachment 5.

**Orders Against the Restrained Person**

(Write the name of the person in ②): \_\_\_\_\_

**6**  **This Is a Court Order**

To the person in ②: You must obey all the orders indicated below. If you do not obey these orders, you can be arrested and charged with a crime. You may have to go to jail, pay a fine of up to \$1,000, or both.

**7**  **Personal Conduct Orders**

You **must not** do the following things to the person listed in ① and each person listed in ⑤:

- a.  Physically abuse, financially abuse, intimidate, molest, attack, assault (sexually or otherwise), hit, follow, stalk, threaten, harass, destroy personal property, keep under surveillance, or block movements.
- b.  Contact (directly or indirectly), telephone, send messages, mail, or e-mail.
- c.  Take any action to obtain the address or location of the person in ① or of that person's family or caretakers.

Peaceful written contact through a lawyer or a process server or other person for service of legal papers related to a court case is allowed and does not violate this order.

**8**  **Stay-Away Orders**

You **must** stay at least (specify): \_\_\_\_\_ yards away from:

- a.  The person listed in ①
- b.  The home of the person in ①
- c.  The job or workplace of the person in ①
- d.  The vehicle of the person in ①
- e.  The persons in ⑤
- f.  Other (specify): \_\_\_\_\_

**9**  **Move-Out Order**

You must move out immediately from and not return to (address): \_\_\_\_\_

**10**  **No Guns or Other Firearms**

You cannot own, possess, have, buy or try to buy, receive or try to receive, or in any other way get a gun or firearm.

**11**  **Turn In or Sell Guns or Firearms**

You must:

- Sell to a licensed gun dealer or turn in to police any guns or firearms that you possess or control. This must be done within 24 hours of being served with this order.
- File a receipt with the court within 48 hours of receiving this order that proves guns have been turned in or sold. (You may use Form EA-145, Proof of Firearms Turned In or Sold, for this.)

**This is a Court Order.**



Case Number: \_\_\_\_\_

Your name: \_\_\_\_\_

**12 Financial Abuse**

This case  does **not**  does involve **solely financial abuse** unaccompanied by force, threat, harassment, intimidation, or any other form of abuse.

**13**  **Other Orders** (specify): \_\_\_\_\_

Additional orders are attached at the end of this Order as Attachment 13.

**Instructions for the Protected Person**

To the person in ① (Write the name of the person in ①): \_\_\_\_\_

**14**  **Delivery to Law Enforcement Agency**

If the court issues restraining orders, by the close of business on the date this Order is made, you or your attorney must deliver a copy of this Order and any proof of service forms to each law enforcement agency listed below:

Name of Law Enforcement Agency	Address (City, State, Zip)
_____	_____
_____	_____
_____	_____

Additional law enforcement agencies are listed at the end of this Order as EA-130 Attachment 14.

**15 Service**

a.  The people in ① and ② were at the hearing or agreed in writing to this order. No other proof of service is needed.

b.  The person in ① was at the hearing. The person in ② was not.

(1)  Proof of service of Form EA-120, *Notice of Hearing and Temporary Restraining Order*, was presented to the court. The judge's orders in this form are the same as in Form EA-120 except for the end date. The person in ② must be served with this Order. Service may be by mail.

(2)  Proof of service of Form EA-120, *Notice of Hearing and Temporary Restraining Order*, was presented to the court. The judge's orders in this form are different from the orders in Form EA-120. Someone—but not anyone in ① or ⑤—must personally serve a copy of this Order to the person in ②.

**16 No Fee to Notify (Serve) Restrained Person**

If the sheriff or marshal serves this Order, he or she will do so for free.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Judicial Officer*

**This is a Court Order.**



Case Number:

Your name: \_\_\_\_\_

**Warnings and Notices to the Restrained Person in ②**

**You Cannot Have Guns or Firearms**

If the court orders, you cannot own, have, possess, buy or try to buy, receive or try to receive, or otherwise get a gun while this Order is in effect. If you do, you can go to jail and pay a \$1,000 fine. You must sell to a licensed gun dealer or turn in to police any guns or firearms that you have or control in accordance with ⑩ above. The court will require proof that you did so. If you do not obey this Order, you can be charged with a crime.

**Instructions for Law Enforcement Agencies**

This Order is effective when made. It is enforceable anywhere in all 50 states, the District of Columbia, all tribal lands, and all U.S. territories and shall be enforced as if it were an Order of that jurisdiction by any law enforcement agency that has received the Order, is shown a copy of the Order, or has verified its existence on the California Law Enforcement Telecommunications System (CLETS). If the law enforcement agency has not received proof of service on the restrained person, and the restrained person was not present at the court hearing, the agency shall advise the restrained person of the terms of the Order and then shall enforce it. Violations of this restraining order are subject to criminal penalties.

*(Clerk will fill out this part.)*

**Clerk's Certificate**

*Clerk's Certificate*  
*[seal]*

I certify that this *Order After Hearing Restraining Elder or Dependent Adult Abuse* is a true and correct copy of the original on file in the court.

Date: \_\_\_\_\_ Clerk, by \_\_\_\_\_, Deputy

**This is a Court Order.**

**Proof of Firearms  
Turned In or Sold**

Clerk stamps date here when form is filed.

**1** Name of person asking for protection:

\_\_\_\_\_

**2** Your name:Your address (*skip this if you have a lawyer*): (*If you want your address to be private, give a mailing address instead*):

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Your telephone (*optional*): ( \_\_\_\_\_ )Your lawyer (*if you have one*): (*Name, address, telephone number, and State Bar number*): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Fill in court name and street address:

**Superior Court of California, County of**

Fill in case number:

**Case Number:****3 To the person selling or turning in firearms:**

If the court has ordered you to sell or turn in your firearms, you may use this form to prove to the court that you have obeyed its orders. You must deliver your weapons unloaded. When you deliver your weapons, ask law enforcement or the licensed gun dealer to complete item **4** or **5** and item **6**. After the form is signed, file it with the court clerk. Keep a copy for yourself. For help, read Form EA-151.

**4 To: Law Enforcement**

Fill out items **4** and **6** of this form. Keep a copy and give the original to the person who turned in the firearms.

The firearms listed in **6** were turned in on:Date: \_\_\_\_\_ at: \_\_\_\_\_  a.m.  p.m.To: \_\_\_\_\_  
*Name and title of law enforcement agent*\_\_\_\_\_  
*Name of law enforcement agency*\_\_\_\_\_  
*Address*

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

▶ \_\_\_\_\_  
*Signature of law enforcement agent***5 To: Licensed Gun Dealer**

Fill out items **5** and **6** of this form. Keep a copy and give the original to the person who sold the firearms to you.

The firearms listed in **6** were sold on:Date: \_\_\_\_\_ at: \_\_\_\_\_  a.m.  p.m.To: \_\_\_\_\_  
*Name of licensed gun dealer*\_\_\_\_\_  
*License number* ( ) \_\_\_\_\_  
*Telephone*\_\_\_\_\_  
*Address*

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

▶ \_\_\_\_\_  
*Signature of licensed gun dealer*

Case Number: \_\_\_\_\_

Your name: \_\_\_\_\_

6	Firearms Make	Model	Serial Number
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____
5.	_____	_____	_____

Check here if you turned in or sold more firearms. Attach a sheet of paper and write "Item 6—Firearms Turned In or Sold" at the top. Include make, model, and serial number for all firearms.

7 Do you have, own, possess, or control any other firearms besides the firearms listed in 6?  Yes  No

8 If you answered yes to 7, have you sold or transferred those other firearms?  Yes  No  
If yes, check one of the boxes below:

a. I filed the *Proof of Firearms Turned In or Sold* for those firearms with the court on (date): \_\_\_\_\_

b. I am filing the Proof for those firearms along with this Proof.

c. I have not yet filed the Proof for the other firearms. (Explain why not): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Type or print your name*

▶ \_\_\_\_\_  
*Sign your name*

**What is a Restraining Order?**

It is a court order that helps protect people from being abused.

**Can I get a Restraining Order?**

If you are a person 65 years or older or a dependent adult, you can ask for a restraining order if you have been:

- Physically abused
- Financially abused
- Mentally or emotionally abused
- Neglected
- Abandoned or abducted
- Isolated, *or*
- Deprived by a caregiver of goods or services you needed to avoid harm or suffering

**How will the order help me?**

The court can order a person to:

- Not abuse, harass, hit, or threaten you
- Not contact or go near you, *and*
- Not have a gun

**What if I am deaf?**

If you are deaf, contact the clerk at least 5 days before the hearing. Ask for an interpreter or other accommodation. (See information on Requests for Accommodations below.)

**What forms do I need to get the order?**

Fill out Forms EA-100 and EA-120. Then file them with the court clerk. If you need to add attachments, you may use form MC-020. Also, complete confidential Form-EA-102 and give it to the clerk.

**Where can I get these forms?**

You can get the forms at any court, self-help center, or county law library or on the Web at [www.courtinfo.ca.gov/forms](http://www.courtinfo.ca.gov/forms).

**How soon can I get the order?**

If you ask for a temporary restraining order, the court will decide within 24 hours whether or not to make the order. Sometimes the court decides sooner.

**How long does the order last?**

If the court makes a temporary order, it will last until your hearing date. At that time, the court will decide to continue or cancel the order. The order could last for up to 3 years.

**How will the person to be restrained know about the order?**

Someone over 18 years of age—**not you** or anyone else protected by the order— must “serve” (give) the person to be restrained a copy of the order. For help with service, see or ask the court clerk for Form EA-142-INFO.

**What if the restrained person does not obey the order?**

Call the police. The restrained person can be arrested and charged with a crime.

**How much does it cost?**

There is no fee for filing the request for a restraining order.

You do not need to pay a fee for service of the order. A sheriff or marshal will serve the order for free. Or you may arrange for service by a registered process server or a private party and pay any fee that is charged.

The court can make the person who loses the case pay all the court fees and the lawyer’s fees for the other party.

**Requests for Accommodations**

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least 5 days before the hearing. Contact the clerk’s office or go to [www.courtinfo.ca.gov/forms](http://www.courtinfo.ca.gov/forms) for *Request for Accommodations by Persons With Disabilities and Response* (Form MC-410). (Civil Code, § 54.8.)



# EA-150-INFO Can a Restraining Order to Prevent Elder or Dependent Adult Abuse Help Me?

## Do I have to go to court?

Yes. Go to court on the date the clerk gives you.

## Do I need a lawyer?

No. But it is a good idea. Ask the court clerk about free and low-cost legal services and self-help centers in your county.

## Do I need to bring a witness to the court hearing?

No. But it helps to have proof of the abuse. You can bring:

- A written statement from witnesses made under oath
- Witnesses
- Photos
- Medical or police reports
- Damaged property
- Threatening letters, e-mails, or telephone messages

The court may or may not let witnesses speak at the hearing. So, if possible, you should bring written statements from witnesses signed under penalty of perjury to the hearing. (You can use Form MC-030 for this.)

## Will I see the restrained person at the court hearing?

If the person comes to the hearing, yes. But that person does not have the right to speak to you. If you are afraid, tell the court officer.

## Can I bring someone with me to court?

Yes. You can bring someone to sit with you during the hearing. But that person cannot speak for you in court. Only you or your lawyer (if you have one) can speak for you.

## What if I don't speak English?

When you file your papers, ask the clerk if a court interpreter is available. You may have to pay a fee for the interpreter. If the interpreter is not available for your court date, bring someone to interpret for you. You cannot ask a child under 18 to interpret for you.

**EA-120 Notice of Hearing and Temporary Restraining Order**

1 Name of person asking for protection:  
Address (Skip this if you have a lawyer. If you want your address to be private, give a mailing address instead):  
City: State: Zip:  
Your telephone number (optional):  
Your lawyer (if you have one): (Name, address, telephone number, and State Bar number)

2 Name of person to be restrained:  
Description of that person:  
Sex:  M  F Height: Weight: Race:  
Hair Color: Eye Color: Age: Date of Birth:  
Home Address (if known):  
City: State: Zip:  
Work Address (if known):  
City: State: Zip:

To the person in (2):

3 Notice of Hearing  
A court hearing is scheduled on the request for orders against you to stop abuse:  
Name and address of court if different from above:  
Hearing Date: Time: Date of Birth:  
Dept.: Res.:

4 Court Orders  
The court (check a or b):  
a.  Has scheduled the hearing stated in (3) and has issued the temporary orders against you specified on pages 2, 3, and 4. If you do not obey these orders, you can be arrested and charged with a crime. And you may have to go to jail, pay a fine of up to \$1,000, or both.

EA-120, Page 1 of 4

## What if I move?

Your restraining order works anywhere in the United States. If you move out of California, contact your new local police so they will know about your orders.

## Need more information?

Ask the court clerk about free or low-cost legal help.

## For help in your area, contact:

[Local information may be inserted.]

**What is a Restraining Order?**

It is a court order.

**What does the order do?**

The court can order you to:

- Not contact the person who asked for the order
- Not take any action to obtain that person's address or location
- Stay away from that person and the person's home and workplace
- Not have any guns while the order is in effect

**Who can ask for a Restraining Order?**

A person who is being:

- Financially abused
- Neglected
- Abandoned or abducted
- Isolated
- Harmed, *or*
- Deprived by a caregiver of goods or services necessary to live on

**How long does the order last?**

If the court makes a temporary order, it will last until your hearing date. At that time, the court will decide to continue or cancel the order. The order could last for up to 3 years.

**What if I don't obey the order?**

The police can arrest you. You can go to jail and pay a fine.

**What if I don't agree with what the order says?**

You still must obey the order until the hearing.

If you disagree with the orders the person is asking for, fill out Form EA-110 before your hearing date, serve it, and file it with the court. If you need to add attachments, you may use form MC-020.

**Do I have to serve the other person with a copy of my answer?**

Yes. Someone—other than yourself—must mail a copy of your completed Form EA-110 to the person who asked for the order (or that person's lawyer). (This is called "service.")

The person who serves the form by mail should fill out Form EA-141, *Proof of Service by Mail*. Make a copy of the proof of service and file it with the court clerk.

**Should I go to the court hearing?**

Yes. Go to court on the date listed on Form EA-120. If you do not go to court, the judge can make orders without hearing from you.

**EA-120 Notice of Hearing and Temporary Restraining Order**

1 Name of person asking for protection:  
 Address (file this if you have a lawyer; if you want your address to be private, give a mailing address instead):  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Your telephone number (optional): \_\_\_\_\_  
 Your lawyer (if you have one): Name, address, telephone number, and State Bar number(s): \_\_\_\_\_

2 Name of person to be restrained:  
 Description of this person:  
 Sex:  M  F Height: \_\_\_\_\_ Race: \_\_\_\_\_  
 Hair Color: \_\_\_\_\_ Eye Color: \_\_\_\_\_ Age: \_\_\_\_\_ Date of Birth: \_\_\_\_\_  
 Home Address (if known): \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Work Address (if known): \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

To the person in (2):  
 3 Notice of Hearing  
 A court hearing is scheduled on the request for orders against you to stop abuse:  
 Hearing Date: \_\_\_\_\_ Time: \_\_\_\_\_  
 Place: \_\_\_\_\_  
 Name and address of court of jurisdiction from above: \_\_\_\_\_

4 Court Orders  
 The court should do as:  
 a.  I have scheduled the hearing stated in (3). No orders are issued against you at this time.  
 b.  I have scheduled the hearing stated in (3) and has issued the temporary orders against you specified on page 2, 3, and 4. If you do not obey these orders, you may be arrested and charged with a crime. And you may have to go to jail, pay a fine of up to \$5,000, or both.

Made in a Court Order  
 Notice of Hearing and Temporary Restraining Order (Elder or Dependent Adult Abuse Protection)  
 EA-120, Page 1 of 6

**Do I need a lawyer?**

No. But it is a good idea. Ask the court clerk about legal services and self-help centers in your county.

**Will I see the person who asked for the order at the court hearing?**

If the person goes to the hearing, yes. Do not talk to that person unless the judge says you can.

**Can I bring a witness to the court hearing?**

Yes. You can bring witnesses or documents that support your case. But, if possible, you should also bring to the hearing written statements from the witnesses of what they saw or heard. Their statements must be made under penalty of perjury. You can use Form MC-030 for this.

**Can I bring someone with me to court?**

Yes. You can bring someone to sit with you during the hearing. But that person cannot speak for you in court. Only you or your lawyer, if you have one, can speak for you.

**What if I don't speak English?**

When you file your papers, ask the clerk if a court interpreter is available. You may have to pay a fee for the interpreter. If an interpreter is not available for your court date, bring someone to interpret for you. You cannot ask a child under 18 to interpret for you.

**What if I am deaf?**

If you are deaf, contact the clerk at least 5 days before the hearing. (See information on Requests for Accommodations below.)

**Need more information?**

Ask the court clerk about free or low-cost legal help.

**For help in your area, contact:**

[Local information may be inserted]

**Requests for Accommodations**

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least 5 days before the hearing. Contact the clerk's office or go to [www.courtinfo.ca.gov/forms](http://www.courtinfo.ca.gov/forms) for *Request for Accommodations by Persons With Disabilities and Response* (Form MC-410). (Civil Code, § 54.8)



## **Civil, Criminal and Administration Remedies in Cases of Abuse, Neglect and Financial Exploitation of the Elderly**

by Martha L. Ridgway  
Ridgway, Romeo & Vincent, LLC  
Posted by permission

### **Introduction**

As with other professionals who work with senior citizens, lawyers have observed a shocking increase in the incidents of abuse, neglect and financial exploitation of the elderly.

Cases are brought to our attention from many different sources: the elder himself or herself, a concerned family member, friends and neighbors, social workers, adult protection workers, medical personnel, financial institutions, senior centers and programs, clergy and even other lawyers. When faced with a case of abuse, neglect or financial exploitation of an elder, the attorney can recommend and pursue a number of legal options. This paper will review the statistical realities of the aging population; define the terms abuse, neglect and financial exploitation; identify who the most common perpetrators are; analyze why our elders are mistreated; examine what characteristics make the elderly particularly vulnerable; and address the legal remedies available to the elder and how he or she can fight back.

### **Statistical Analysis of the Aging Population**

It is no secret that our population is rapidly aging. With more elders, there are more people to victimize and greater opportunities to abuse, neglect and financially exploit.

Consider how the following statistics affect the incidents of abuse, neglect and financial exploitation of the elderly.

By the year 2030, there will be 70 million older persons, which is more than twice the number in 1990, and which will represent 20% of the population. Shockingly, two-thirds of all people who have ever lived longer than 65 years are alive today.

Of great significance is the fact that the older population is getting older, with those age 85 and over representing the fastest growing segment of the elder population.

The fact that women typically outlive men represents another factor in the increase in abuse, neglect and financial exploitation. After age 60, women increasingly outnumber men. Significantly, older men are nearly twice as likely to be married (77%) than are older women (43%). Not surprisingly, there are nearly five times as many widows as there are widowers.

Why is this country experiencing such an "age boom?" First,

people are living longer.

The life expectancy in 1900 was only 47. People who reach age 65 now have an average life expectancy of an additional 17.3 years.

Second, the "baby boomers," those born between 1946 and 1964, are aging. The most rapid increases in age are expected to occur between 2010 and 2030, when this generation reaches age 65.

Financial factors also contribute to abuse, neglect and financial exploitation of the elderly.

Medical considerations constitute another factor in abuse, neglect and financial exploitation of the elderly. Most older persons have at least one chronic condition. The most frequently occurring conditions per 100 elderly in 1993 were arthritis (49), hypertension (35), heart disease and hearing impairments (31 each), orthopedic impairments (18), cataracts and sinusitis (15 each), and diabetes, tinnitus and visual impairments (10 each).

Approximately 85% of people age 65 and older are farsighted. As people age, they lose night and peripheral vision. Approximately 70% of men and 30% of women age 65 and older have some degree of hearing loss. Nationally, approximately 10 to 15% of individuals age 65 and over will develop a major depression, which represents the most common form of mental illness experienced by older adults. In 1990, 1.6 million Americans age 65 or older (5%) lived in nursing homes. This percentage increased dramatically with age, ranging from 1% for persons 65-74 years, to 6% for persons 75-84, to 24% for persons 85 and older.

Statistics concerning the incidents of elder abuse, neglect and financial exploitation are scant at best. It has been estimated that as many as 10% of older adults are victimized by elder abuse. However, only one in eight abuse incidents is actually reported. Many of us who work with the elderly suspect that abuse, neglect and financial exploitation are far more prevalent, to the point of representing a national crisis and scandal.

### **Defining the Terms Abuse, Neglect and Financial Exploitation of the Elderly**

Definitions of abuse, neglect and financial exploitation are found in Colorado law in the Protective Services for Adults at Risk of Mistreatment or Self-Neglect Act, C.R.S. §§ 26-3.1-

102-106, and in other sources such as the American Association of Retired Person's publication Domestic Mistreatment of the Elderly -- Towards Prevention, written by Richard L. Douglass, M.P.H., Ph.D., in 1987.

## A. Abuse

Abuse generally falls into two categories: physical abuse and psychological abuse.

The definition of abuse under Colorado law is:

...infliction of physical pain or injury, as demonstrated by, but not limited to, substantial or multiple skin bruising, bleeding, malnutrition, dehydration, burns, bone fractures, poisoning, subdural hematoma, soft tissue swelling, or suffocation; ... unreasonable confinement or restraint; or ... nonconsensual sexual conduct or contact classified as a crime under the 'Colorado Criminal Code' of an at-risk adult. (C.R.S. §§ 18-6.5-101-106.)

The definition of an at-risk adult under Colorado law is: an individual eighteen years of age or older who is susceptible to mistreatment ... or self-neglect ... because the individual is unable to perform or obtain services necessary for the individual's health, safety, or welfare or lacks sufficient understanding or capacity to make or communicate responsible decisions concerning the individual's person or affairs.

Dr. Douglass defines physical abuse as "the infliction of physical pain or injury, or physical coercion (confinement against one's will)." Examples include "slapping, bruising, sexually molesting, cutting, lacerating, burning, physically restraining, pushing, shoving."

According to Dr. Douglass, psychological abuse is "the infliction of mental anguish." Examples include "demeaning, name calling, treating as a child, insulting, ignoring, frightening, humiliating, intimidating, threatening, isolation."

## B. Neglect

Pursuant to Colorado law, neglect occurs when ...adequate food, clothing, shelter, psychological care, physical care, medical care, or supervision is not secured for the at-risk adult or is not provided by a caretaker in a timely manner and with the degree of care that a reasonable person in the same situation would exercise...."

C.R.S. § 26-3.1-101(4)(b).

In Domestic Mistreatment of the Elderly -- Towards Prevention, neglect is divided into two categories: (1) passive neglect, which is defined as "the unintentional failure to fulfill a caretaking obligation; there is no conscious or willful attempt to inflict physical or emotional distress on the older person." Examples include "non-provision of food or health-related services because of the caregiver's infirmity, laziness, or inadequate

skills, knowledge, or understanding of the necessity of prescribed or other essential services."

(2) Active neglect, which is defined as "the intentional failure to fulfill a caretaking obligation, including a conscious and willful attempt to inflict physical or emotional stress or injury on the older person." Examples include "deliberate abandonment, deliberate denial of food or health-related services, depriving of dentures or eyeglasses."

Another category of neglect is self-neglect, in which the elder fails to properly care for himself or herself.

### C. Financial Exploitation

Colorado law defines exploitation as ...the illegal or improper use of an at-risk adult or the at-risk adult's resources for another person's profit or advantage.

Dr. Douglass includes in his definition of "material (financial) abuse" the "illegal, or unethical exploitation and/or use of funds, property, or other assets belonging to the older person."

Another interesting and somewhat unusual definition of financial exploitation is found in the Journal of Legal Medicine in an article entitled, "The Physician's Role in Detecting and Reporting Elder Abuse," written in 1982 by Palinesar and Cobb. The authors state:

Financial abuse typically occurs in one of two forms. It may be the misuse of the elderly person's funds by another person, usually a caretaker or close relative; or, a caretaker may withhold medical attention or refrain from making necessary expenditures for the elderly person's benefit in order to conserve funds for inheritance.

Examples of financial exploitation include stealing property and money, using the elder's money and/or credit cards, transferring title to assets, for example, the home or financial accounts, cashing in CDs, money markets, life insurance policies, etc.

### **Identifying the Most Common Perpetrators of Abuse, Neglect and Financial Exploitation**

Unfortunately, nearly anyone can be a perpetrator of abuse, neglect or financial exploitation of the elderly, either through ignorance, inexperience, failure to act or intentional acts. Well meaning caregivers, weary from the demands of catering to an elder, may forget to administer medication. Or, in a moment of extreme stress, a daughter may handle her elderly father too roughly and curse at him for soiling himself. Or, while running errands for an elder, a friend may buy a few items for himself and pay for it with the elder's funds, justifying it because, after

all, he, the friend, has done so much for the elder.

Those who are perpetrators of abuse, neglect and financial exploitation of the elderly tend to fall into specific categories. These include the following:

1. Spouse caregivers;
2. Adult child or other family member caregivers;
3. Caregivers who are unrelated to the elder;
4. Those serving as a fiduciary for the elder, e.g., guardians, conservators, trustees, agents under a power of attorney and personal representatives;
5. Medical facilities and personnel, including hospitals, nursing homes, assisted living facilities and board and care homes;
6. Financial facilities and personnel, including stock brokers, insurance agents and accountants;
7. Others in a position of trust, e.g., lawyers and those who offer to "help" the elder with paying bills, depositing money, filing health insurance claims, etc.; and
8. Strangers perpetrating various "scams," notably telephone fraud.

### **Why Are Our Elders Mistreated?**

In analyzing the problem of elder abuse, neglect and financial exploitation, it is important to identify why senior citizens are particularly vulnerable to mistreatment. In April 1990, the Subcommittee on Health and Long-Term Care of the Select Committee on Aging of the House of Representatives issued a report entitled *Elder Abuse: A Decade of Shame and Inaction*. The report addressed the primary reasons for mistreatment of the elderly as follows.

1. **Retaliation.** If the adult child was abused by the elder during childhood, mistreatment may be used to seek revenge. Additionally, unresolved conflicts between the adult child and the elder can lead to retaliation.
2. **Violence as a Way of Life.** A family history of violence or the mere fact that there is widespread acceptance of violence in this country may lead to mistreatment.
3. **Unresolved Conflict.** This can occur between elders and their adult children and between elderly spouses.

4. Lack of Close Family Ties. If an elder and the adult child have had an emotionally distant relationship, resentment may occur when the adult child suddenly has to care for the elderly parent. Additionally, lack of close family ties often leads elders to seek non-relative caregivers, who may not feel the same sense of responsibility as a family member.

5. Lack of Financial Resources. This can be a factor for both the elder and the adult child caregiver. The elder may have limited financial resources and, therefore, must rely on the caregiver to supplement some of the expenses. The caregiver may resent having to pay for the elder's care, particularly if it negatively affects the family's resources. Additionally, women are working in much greater numbers and having to sacrifice a job or career to care for an elder can lead to tremendous resentment and stress. Finally, elders who have limited resources are often forced to seek inappropriate caregivers who, themselves, may have financial problems.

6. Resentment of Dependency. A caregiver can become overwhelmed at the amount of time and effort caring for an elder requires. The caregiver's loss of independence can lead to frustration, anger and resentment.

7. Increased Life Expectancy. Because elders are living longer, they are becoming more frail, they require more care and the number of years spent providing care are increased.

8. History of Mental Problems. This is particularly a problem when the caregiver, often an adult child, has mental problems. The elder becomes a target when the caregiver strikes out.

9. Unemployment. When the primary income-producing member of the family is unemployed, intra-family violence increases not only toward the spouse and children, but also toward the dependent elder.

10. History of Alcohol and Drug Abuse. As with mental problems, caregivers who abuse alcohol and drugs tend to be more violent or prone to exploit others.

11. Environmental Conditions. All kinds of environmental conditions, such as living in a crowded home, can lead to violence.

In addition to the above factors, it is this author's observation that greed is a tremendous influence, primarily in circumstances constituting financial exploitation of the elderly. Greed is an emotion that affects relatives and non-related individuals alike. The opportunity to benefit financially is often too great a temptation to resist. In many family circumstances, rationalizations for financially exploiting a relative abound. Examples include, "Mama always loved me best" and "I've sacrificed for Mama by providing care for her, therefore I am

entitled." Additionally, hostility between family members, primarily siblings, results in a race to see who can get his or her hands on the elder's resources first.

### **Characteristics That Make Elders Particularly Vulnerable**

The report *Elder Abuse: A Decade of Shame and Inaction* identifies the factors that make elders particularly vulnerable to abuse, neglect and financial exploitation.

1. **Female.** There are more older women than men, which makes being female a risk factor. Additionally, women are more likely to be targets of sexual abuse.

2. **Advanced Age.** The older the person is, the higher risk he or she has of being abused. Physical and mental impairments may affect the elder's ability to resist abuse.

3. **Dependent.** The more dependent an elder is, whether physically, emotionally, or financially, the more likely he or she is to be a victim.

4. **Problem Drinker.** Elders who abuse alcohol are at higher risk of being victims, especially if they have difficulty caring for themselves.

5. **Intergenerational Conflict.** When long-standing conflicts between parents and adult children are unresolved, the elder is at greater risk of being victimized.

6. **Internalizing the Blame.** An elderly person who blames himself or herself for a particular situation is more vulnerable and less likely to acknowledge that abuse is the fault of the abuser, not of the elder.

7. **Isolation.** Loneliness can lead elders to trust an apparently "friendly" individual bent on exploitation. Because the elder is isolated from others, it is less likely that victimization will be detected by third parties.

8. **Provocative Behavior.** Elders who are demanding, ungrateful, uncooperative or abusive themselves are often more likely to be victims themselves.

### **Fighting Back: Legal Remedies Available to the Elderly Victims of Abuse, Neglect and Financial Exploitation**

There are three categories of legal remedies for the victim of elder abuse, neglect and financial exploitation: (1) criminal, (2) civil and (3) administrative. Although the focus of this paper is on civil and administrative remedies, criminal remedies will be discussed briefly.

## A. Criminal Remedies

A criminal case is brought on behalf of the public at large ("the people") by the District Attorney or the Attorney General for violations of state criminal law, and by the U.S. Attorney for violations of federal law. The State of Colorado or the United States are the plaintiff in criminal cases and the perpetrator of abuse, neglect or financial exploitation is the defendant. The victim is not a party to the case, but rather is a witness. It is generally in the discretion of the District or U.S. Attorney to file a criminal case.

Prosecuting cases involving elder abuse, neglect and financial exploitation can be difficult: the victim is often a poor witness, whether from fear, confusion, diminished capacity, memory failure or frailty. Conversely, the defendant is often a better witness and can raise defenses such as the impairment of the elder's memory, claims that the elder made a gift, the elder entered into a contract, etc.

Colorado's Criminal Code contains a section entitled Wrongs to At-risk Adults, C.R.

S.   18-6.5-101-106, which specifically targets abuse, neglect and exploitation cases.

Additionally, provisions in the Criminal Code provide stiffer sentences for defendants who commit crimes against an elderly person or a person with a disability. It is also a crime to violate a civil restraining order.

## B. Civil Remedies

In a civil case, a victim of abuse, neglect or financial exploitation, or someone on his or her behalf such as a guardian or conservator, can sue the perpetrator directly for monetary damages. The victim is the plaintiff and the perpetrator is the defendant. As a part of a civil case, a victim can also sue for injunctive relief. An injunction is a court order which directs someone to perform a specific act or to refrain from performing a specific act.

Thus, for example, an elder could sue a perpetrator for money damages for injuries sustained from an assault and battery and, at the same time, ask the court to issue an injunction prohibiting the perpetrator from having any contact with the victim.

As with criminal cases, bringing a civil case can be difficult. For example, the elderly victim may be a poor witness, statutes of limitations may have expired before the elder seeks help, pursuing a lawsuit can be costly and there may be a long delay before a court date.

However, Colorado law provides for an earlier trial date when a party suffers from an illness or condition which raises a medical doubt of survival beyond one year or if the person is age 70 or older and can prove to the court that he has a meritorious claim and a substantial interest in the case.

Another civil remedy is a restraining order, which can be issued separately from and independent of a civil suit. A restraining order is a court order that restrains a person from taking certain actions.

A third civil remedy is to seek the appointment of a guardian and/or a conservator or other protective arrangement on behalf of an elder under the Colorado Probate Code.

### 1. Civil Suits

There are a number of legal theories under which a victim of elder abuse, neglect or financial exploitation can sue the perpetrator. The following is representative only and is not intended to be an exclusive list of legal theories.

1. Assault is the willful attempt or threat to inflict injury on a person, and any display of force that would cause the victim to fear or expect immediate bodily harm. An assault can be committed without actually touching, striking or harming the victim. An example is shaking a fist in the elder's face in a threatening manner.
2. Battery is the willful physical contact of a person which causes bodily injury or is offensive. This can include punching, hitting or rough handling.
3. Intentional infliction of emotional distress is engaging in conduct for the purpose of causing severe emotional distress on another person or knowing that certain conduct will have that result. An example is threatening to put an elder in the nursing home if he does not "behave."
4. False imprisonment is the intentional restriction of a victim's freedom of movement. This can include the use of physical restraints, removal of the elder's means of transportation (e.g., cane or wheelchair) or locking the elder in a room.
5. Duress is coercing a person to do something against his or her free will, such as forcing an elder to sign a check payable to the perpetrator.
6. Negligence is the failure to use the care that a reasonably prudent person would use under similar circumstances, which results in harm to the victim. An example is failure to administer medication in a timely manner.

7. Conversion is the civil equivalent to theft. Conversion means that a person takes control over the property of another with the intent to deprive the victim of the property, such as stealing money or personal property.

8. Fraud and deception is the making of a false representation of a material fact to another, when the person making the representation knows that the representation is false and knows that the victim will act on it, thereby causing damage to the victim.

Examples include telephone scams, sweepstakes, requests to send money to "win."

9. Breach of fiduciary duty. A fiduciary is a person or entity who, as the result of a particular undertaking, has a duty to act primarily for the benefit of another in matters connected with the undertaking. This duty is often referred to as a fiduciary duty. An example of a fiduciary is a conservator or a stockbroker. When a person breaches a fiduciary duty, the victim incurs damages, such as loss of property or money. An example is self-dealing or using the elder's funds or property.

10. Unjust enrichment occurs when a person benefits unjustly, at the expense of another, and it is unfair for the defendant to retain the benefit. An example is an informal promise to provide care to an elder, being paid in advance, and the caregiver not providing the care.

11. Breach of contract. When a person enters into a contract with another, and fails to perform under the terms of the contract, the defendant has breached the contract.

An example is a written agreement to provide care to an elder, being paid in advance, and the caregiver not providing the care.

12. Constructive trust. When a person acquires the property of another by abusing a confidential relationship that exists between the two people, the court can remedy this abuse by imposing a constructive trust on the property. This means that the defendant no longer owns the property, but that it is held for the benefit of the plaintiff. For example, an adult daughter convinces her elderly mother to deed the home to the daughter without paying the mother. If the mother sues the daughter, the court could hold the property in trust for the benefit of the mother.

13. Other legal remedies. Malpractice (medical, accountant, legal and other professionals), violations of securities laws, etc., are also available to the elderly plaintiff.

## 2. Restraining Orders

Under Colorado law, C.R.S. § 14-4-102, in cases of domestic

abuse, a temporary and permanent restraining order can be entered by a municipal, county or district court in order to prevent such abuse. The restraining order can prohibit a person from threatening, molesting, injuring or contacting the party seeking the restraining order. Unfortunately, this statute does not address psychological abuse.

Another provision of Colorado law, C.R.S. § 13-6-107, addresses restraining orders to prevent emotional abuse of the elderly. Elderly is defined as age sixty years or more. A temporary or permanent restraining order to prevent emotional abuse of the elderly may include restraining a party from repeated acts which constitute verbal threats or assaults; from repeated acts which constitute verbal harassment; from repeated acts which result in the inappropriate use or the threat of inappropriate use of medications upon a person; from repeated acts which result in the inappropriate use of physical or chemical restraints; and from repeated acts which result in the misuse of power or authority granted to a person through a power of attorney or by a court in a guardianship or conservatorship proceeding which results in unreasonable confinement or restriction of the liberty of an elderly person.

As discussed above, violation of a restraining order constitutes a criminal offense. Additionally, a person who violates a restraining order can be held in contempt of court.

### 3. Guardianship, Conservatorship and Other Protective Arrangements

The Colorado Probate Code, C.R.S. §§ 15-14-101 et. seq., provides that an elder or someone on his or her behalf can petition the court to appoint a guardian and/or a conservator or to enter a protective order for the benefit of the elder. A guardian is a person or institution appointed by the court to make decisions concerning the person of someone who is incapacitated. For example, a guardian decides where the person will reside, what kind of medical treatment will be administered, etc. A conservator is a person or institution appointed by the court to manage the estate and affairs of a person who is unable to manage his or her property and affairs effectively. Instead of appointing a conservator, the court can issue a protective order, authorizing, directing or ratifying any transaction necessary or desirable to achieve any security, service or care arrangement meeting the foreseeable needs of the person in need of protection. An example of a protective arrangement is a court order permitting the sale of the elder's home. A probate court also has broad powers to order an accounting of all funds expended on behalf of the protected person.

#### C. Administrative Remedies

One of the most important administrative remedies available to

a victim of elder abuse, neglect or financial exploitation is a law entitled Protective Services for Adults at Risk of Mistreatment or Self-Neglect Act. C.R.S. §§ 26-3.1-201 et. seq. This law "urges" (but does not require) professionals and others who are in a position to detect abuse, neglect and financial exploitation of an elder to report to the county Department of Social Services or, during non-business hours, to law enforcement agencies, when they have "observed the mistreatment or self-neglect of an at-risk adult." The statute designates those who are "urged" to report in the following general categories: medical personnel (including hospital and nursing home personnel engaged in the admission of patients); mental health professionals; social workers; dentists; law enforcement officials; court appointed guardians and conservators; fire protection personnel; pharmacists; community centered board staff; financial institution personnel; state and local long-term care ombudsmen; and personnel, volunteers or consultants for any licensed care facility, agency, home or governing board.

Additionally, "any other person may report such known or suspected mistreatment or self-neglect of an at-risk adult." Once the Department has received a report, it is immediately required to "make a thorough investigation." A written report must be made within 48 hours. If it is determined that an at-risk adult is being mistreated or self-neglected, or is at risk thereof, the Department can immediately provide protective services if the adult consents. If the adult does not consent, the Department can file for the appointment of a guardian and/or a conservator for the adult. However, any protective services sought must constitute "the least restrictive intervention."

A victim of abuse, neglect or financial exploitation can also file a complaint against an entity or a person who is regulated by an administrative agency. For example, nursing homes must comply with the regulations of the Colorado Department of Health. Insurance companies are governed by the regulations of the Colorado Commissioner of Insurance. Stock brokerages must comply with the regulations of the Colorado Commissioner of Securities and the U.S. Securities and Exchange Commission. If the administrative agency determines that a potential violation of its regulations has occurred, it can conduct an investigation and take action against the wrongdoer.

## **Conclusion**

As professionals working with the elderly, it is incumbent upon all of us to recognize the signs of elder abuse, neglect and financial exploitation, to identify the victims and to assist them in pursuing their legal rights under the law.

Nevada

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## 2005 Washington Revised Code RCW 26.50.110: Violation of order — Penalties.

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(1) Whenever an order is granted under this chapter, chapter [7.90](#), [10.99](#), [26.09](#), [26.10](#), [26.26](#), or [74.34](#) RCW, or there is a valid foreign protection order as defined in RCW [26.52.020](#), and the respondent or person to be restrained knows of the order, a violation of the restraint provisions, or of a provision excluding the person from a residence, workplace, school, or day care, or of a provision prohibiting a person from knowingly coming within, or knowingly remaining within, a specified distance of a location, or of a provision of a foreign protection order specifically indicating that a violation will be a crime, for which an arrest is required under RCW [10.31.100](#)(2) (a) or (b), is a gross misdemeanor except as provided in subsections (4) and (5) of this section. Upon conviction, and in addition to any other penalties provided by law, the court may require that the respondent submit to electronic monitoring. The court shall specify who shall provide the electronic monitoring services, and the terms under which the monitoring shall be performed. The order also may include a requirement that the respondent pay the costs of the monitoring. The court shall consider the ability of the convicted person to pay for electronic monitoring.

(2) A peace officer shall arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated an order issued under this chapter, chapter [7.90](#), [10.99](#), [26.09](#), [26.10](#), [26.26](#), or [74.34](#) RCW, or a valid foreign protection order as defined in RCW [26.52.020](#), that restrains the person or excludes the person from a residence, workplace, school, or day care, or prohibits the person from knowingly coming within, or knowingly

remaining within, a specified distance of a location, if the person restrained knows of the order. Presence of the order in the law enforcement computer-based criminal intelligence information system is not the only means of establishing knowledge of the order.

(3) A violation of an order issued under this chapter, chapter 7.90, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or of a valid foreign protection order as defined in RCW 26.52.020, shall also constitute contempt of court, and is subject to the penalties prescribed by law.

(4) Any assault that is a violation of an order issued under this chapter, chapter 7.90, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or of a valid foreign protection order as defined in RCW 26.52.020, and that does not amount to assault in the first or second degree under RCW 9A.36.011 or 9A.36.021 is a class C felony, and any conduct in violation of such an order that is reckless and creates a substantial risk of death or serious physical injury to another person is a class C felony.

(5) A violation of a court order issued under this chapter, chapter 7.90, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or of a valid foreign protection order as defined in RCW 26.52.020, is a class C felony if the offender has at least two previous convictions for violating the provisions of an order issued under this chapter, chapter 7.90, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or a valid foreign protection order as defined in RCW 26.52.020. The previous convictions may involve the same victim or other victims specifically protected by the orders the offender violated.

(6) Upon the filing of an affidavit by the petitioner or any peace officer alleging that the respondent has violated an order granted under this chapter, chapter 7.90, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or a valid foreign protection order as defined in RCW 26.52.020, the court may issue an order to the respondent, requiring the respondent to appear and show cause within fourteen days why the respondent should not be found in contempt of court and punished accordingly. The hearing may be held in the court of any county or municipality in which the petitioner or respondent temporarily or permanently resides at the time of the alleged violation.

[2006 c 138 § 25; 2000 c 119 § 24; 1996 c 248 § 16; 1995 c 246 § 14; 1992 c 86 § 5; 1991 c 301 § 6; 1984 c 263 § 12.]

#### Notes:

**Short title -- 2006 c 138:** See RCW 7.90.900.

**Application -- 2000 c 119:** See note following RCW 26.50.021.

**Severability -- 1995 c 246:** See note following RCW 26.50.010.

**Finding -- 1991 c 301:** See note following RCW 10.99.020.

Violation of order protecting vulnerable adult: RCW 74.34.145.

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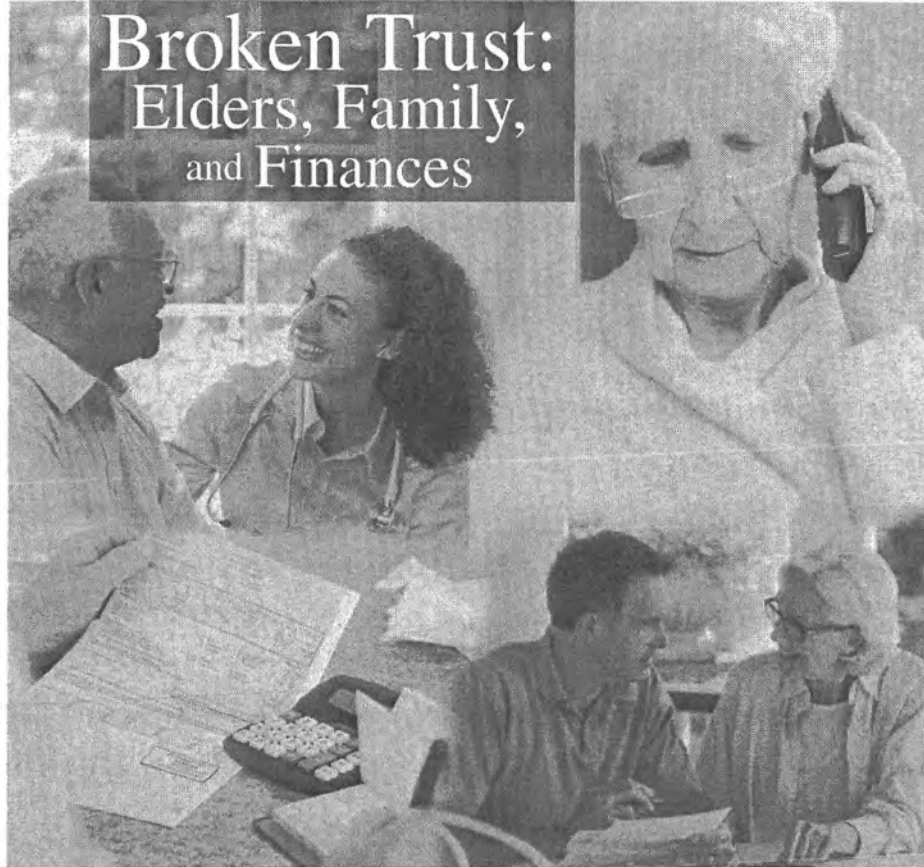
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**STUDY**

# Broken Trust: Elders, Family, and Finances



## **A Study on Elder Financial Abuse Prevention**

by the MetLife Mature Market Institute, the National Committee for the Prevention of Elder Abuse, and the Center for Gerontology at Virginia Polytechnic Institute and State University

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### **The National Committee for the Prevention of Elder Abuse (NCPEA)**

The NCPEA is an association of researchers, practitioners, educators, and advocates dedicated to protecting the safety, security, and dignity of America's most vulnerable citizens. Established in 1988 to achieve a clearer understanding of abuse and provide direction and leadership to prevent it, the Committee is one of six partners that make up the National Center on Elder Abuse, which is funded by Congress to serve as the nation's clearinghouse on information and materials on abuse and neglect. The mission of NCPEA is to prevent abuse, neglect, and exploitation of older persons and adults with disabilities through research, advocacy, public and professional awareness, interdisciplinary exchange, and coalition building. [www.preventelderabuse.org](http://www.preventelderabuse.org)

### **Center for Gerontology at Virginia Polytechnic Institute and State University**

Established in 1977-78, the Center for Gerontology serves as the organizational unit and focal point for aging-related research and education activities at Virginia Tech. The Center focuses primarily on three streams of coordinated research that enhance the quality of life of older adults: Family Gerontology, Health and Aging, and Elder Rights. [www.gerontology.vt.edu](http://www.gerontology.vt.edu)

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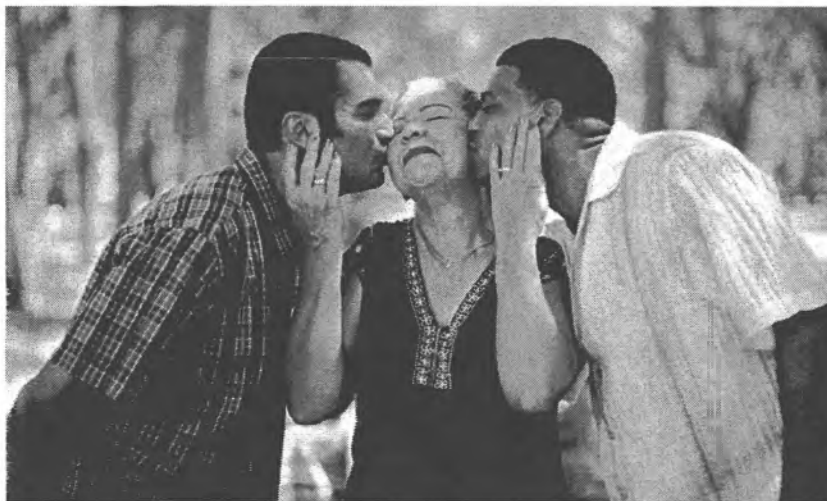
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# Executive Summary

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This study from the MetLife Mature Market Institute (MMI), the National Committee for the Prevention of Elder Abuse, and the Center for Gerontology at Virginia Polytechnic Institute and State University provides a comprehensive understanding about the extent and implications of elder financial abuse in all its various manifestations—personal, institutional, and societal. Through an extensive review of available information on elder abuse, this research enhances the understanding of the complexities surrounding elder financial abuse, the current magnitude of the issue, reasons why this issue is likely to grow, and some recommendations of ways to potentially mitigate this complex and devastating crime.

While difficult to present any comprehensive or consensus definition of elder financial abuse, this study considers elder financial abuse as “the unauthorized use or illegal taking of funds or property of people aged 60 and older.” It is perpetrated by those who gain, and then violate, the trust of an older person. They can be as close as a family member, neighbor, or friend, or as distant as an invisible voice on the telephone or an e-mail from the other side of the globe.



## Key Findings:

- While underreported, the annual financial loss by victims of elder financial abuse is estimated to be at least \$2.6 billion dollars
- Elders' vulnerabilities and larger net worth make them a prime target for financial abuse
- The increased aging of the population, social changes, and technology advances will lead to a dramatic increase in the opportunity for a growing level of elder financial abuse
- The perpetrators of elder financial abuse are typically not strangers and most are people who have gained the trust of the older individual, including business and service professionals and family members
- The victims of elder financial abuse come from all walks of life, and this type of abuse affects elders regardless of gender, race, or ethnicity

*2009  
Met-Life  
Study*

*vvun gooa reason,  
financial elder abuse has  
been characterized by  
some experts as “the crime  
of the 21<sup>st</sup> Century.”<sup>1</sup>*

*–J.F. Wasik, Journalist*

# Background

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It is as old a tale as Shakespeare's *King Lear* and as current as the Internet. It involves older people losing a few precious dollars for everyday living to their entire life savings. It involves millions in increased costs to Medicare and Medicaid because of fraud and the costs of caring for impoverished victims. Based on the research in this study, it robs America's seniors of more than \$2.6 billion a year. The 2004 national *Survey of State Adult Protective Services* revealed that victims range in estimated numbers from a low of 100,000 to a high of one million a year. These numbers will undoubtedly grow as the number and economic value of seniors continue to grow.<sup>2</sup>

Elder financial abuse is commonly linked with other forms of abuse and neglect and threatens the health, dignity, and economic security of millions of older Americans.<sup>3-5</sup>



It is estimated to cost Americans tens of billions of dollars annually in health care, social services, investigative and legal costs, and lost income and assets.<sup>6</sup> Elder financial abuse is a problem in every community and among all social strata. It is underrecognized, underreported, and underprosecuted.

## The Quad-City Times

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Thursday, April 3, 2008

A three-time convicted 70-year-old man told an elderly couple who befriended him that he needed money to receive an inheritance from a deceased family member in England. He showed the couple a document indicating the money was there, and even had someone call them to verify.

The perpetrator visited the couple three days in a row. Each time,

the wife signed a check to him. The first was for \$11,000. The second was for \$5,050. The third was for \$3,350. During the fourth visit, about a week later, the swindler accompanied them to a bank, where the couple took out savings and borrowed against a line of credit to give him \$17,200. The couple's son learned of the transactions and called the authorities.

The swindler had been previously arrested for securities fraud for taking \$300 payments from undercover officers while promising them multi-million-dollar returns on their investments. At that time, he was sentenced to five years in state prison. For his latest crime perpetrated against the elderly couple, he will spend up to ten years in prison.

# Methodology

From April through June 2008, leading researchers from the National Committee for the Prevention of Elder Abuse (NCPEA), Dr. Pamela Teaster, Virginia Polytechnic Institute and State University (Virginia Tech), and Dr. Karen Roberto, reviewed all Newsfeed articles from the Administration on Aging's National Center on Elder Abuse (NCEA), collected by the National Association of Adult Protective Services (NAPSA), which tracks media reports daily of elder abuse through Google and Yahoo Alerts (a process that scans billions of Web pages).

This was the first large-scale analysis using this untapped data resource on elder financial abuse on a national basis. The scans identified 357 articles on elder financial abuse of any type from a total of 1,007 articles cited. Of these articles, 266 (75%) reported specific instances of elder financial abuse, victims, and/or perpetrators and formed the basis for additional analysis.

The NCEA's Newsfeed proved to be a valuable resource. Not only did it put a face on the information reported in the primary literature, but most importantly, it provided real-time information on elder financial abuse. Unlike information taken solely from crime statistics or social services reports, which provide only one piece of the puzzle, the Newsfeed captured information from numerous reporting sources. For each of the 266 articles specifically on elder financial abuse, the researchers also collected information on:

- ▶ Victim's age, gender
- ▶ Perpetrator's age, gender, relationship to victim
- ▶ Type of financial abuse
- ▶ Frequency of abuse
- ▶ Location of abuse

- ▶ Amount stolen
- ▶ Outcome of each incident

The researchers also searched 12 electronic databases that index academic journals containing primary literature on elder abuse from 1998 through June 2008 (see *Appendix A* on



page 35). The search compiled 168 unduplicated articles from journals in the social science, medical, and legal disciplines. At the same time, the researchers conducted a database search of organizational and trade magazines to determine attention given to elder financial abuse by business and private-sector professionals (e.g., bankers, financial planners, insurance agents) who frequently interact with older adults. The search of trade publications published from 2005 to 2008 resulted in 110 unduplicated articles that addressed the issue of elder financial abuse.

As a final source of information, the researchers gathered information about community programs designed to address elder financial abuse. Data on nine specific programs came from the primary literature and the Promising Practice database maintained by the NCEA. Collectively, information from these three sources provided the most up-to-date information available on elder financial abuse and informed our recommendations for continued research and practice on this topic of national importance.

# Major Findings

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In just the three-month period surveyed, the Newsfeed media reports revealed approximately \$396,654,700 in losses from all forms of elder financial abuse. Annualized, this estimates that more than \$1.5 billion in losses is reported. However, the actual amount involved is really much higher, as no dollar figure was provided in nearly 40% of the articles. Estimating that the unreported losses are equivalent, the annual loss by victims of elder financial abuse is estimated to be at least \$2.6 billion.

Of the 266 articles concerning specific elder financial abuse, business- and industry-related elder financial abuse resulted in the highest losses to victims, followed by Medicare and Medicaid fraud (and that was perpetrated by family, friends, or strangers). The overall dollar amount reported as being taken by families, friends, and strangers was \$13,927,600; losses from Medicare and Medicaid fraud totaled \$121,388,500, and business and industry fraud totaled \$250,152,700.

However, families, friends, neighbors, and caregivers were most frequently involved as perpetrators of elder financial abuse, followed by businesses of varying kinds, and then strangers. Families, friends, neighbors, and caregivers were involved in 55% of the articles; persons not known to the elder and others in 21%; financial professionals of varying types in 18%; and Medicare/Medicaid fraud in 7%.

Furthermore, medical care and other service costs for elder abuse victims are estimated at more than \$13 million annually.

Even more than the economic loss, the human costs suffered by victims when taken advantage of by families, friends, and trusted strangers are immeasurable. Simply put, a victim of any kind

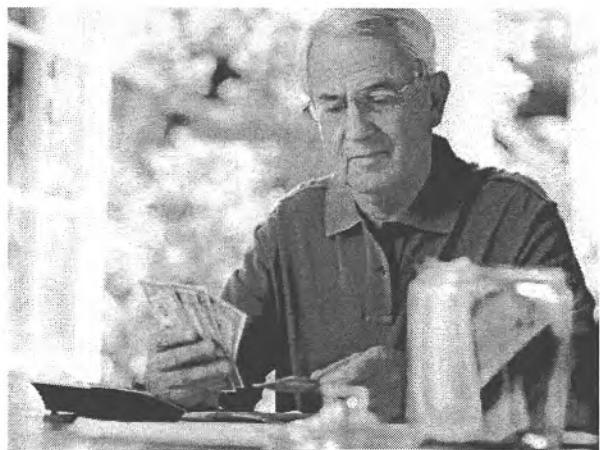
of elder financial abuse is never the same after it occurs.

## What Is Elder Financial Abuse?

According to the National Center on Elder Abuse, elder financial abuse is the illegal taking, misuse, or concealment of funds, property, or assets of a vulnerable elder at risk for harm by another due to changes in physical functioning, mental functioning, or both.

The terminology used in the 2006 Older Americans Act is *exploitation*, defined as "...the fraudulent or otherwise illegal, unauthorized, or improper act or process of an individual, including a caregiver or fiduciary, that uses the resources of an older individual for monetary or personal benefit, profit, or gain, or that results in depriving an older individual of rightful access to, or use of, benefits, resources, belongings, or assets."

For every known case of elder financial abuse, it is estimated that four to five cases may go unreported.<sup>7</sup> Elder financial abuse is also called financial exploitation, misappropriation of funds, and fiduciary, economic, or material abuse. It encompasses a broad range of misconduct,



# Herald-Tribune

May 16, 2008

An individual physician is responsible for more than \$11 million in medical (Medicare/Medicaid) fraud. He performed unnecessary surgeries on 865 older adults aged 65 and older after reportedly diagnosing them with cancer.

In one case, the doctor diagnosed a piece of chewing gum as a cancerous growth when the patient's biopsy tissue was lost.

Despite a finding that tissue slides in his office were not indicative of cancer, he diagnosed

virtually every patient who came into his office with cancer, and would perform surgery, removing four or more layers of skin. This allowed him to charge Medicare and Medicaid higher amounts.

including, but not limited to, fraud, scams, undue influence by family members and trusted others, and illegal viatical settlements; abuse of powers of attorney and guardianship; identity theft; Internet "phishing;" failure to fulfill contracted health care services; and Medicare and Medicaid fraud (See *Appendix B* on page 36 for a Glossary of Terms).

Elder financial abuse is regarded as the third most commonly substantiated type of elder abuse, following neglect and emotional/psychological abuse.<sup>8</sup> It occurs in community or institutional settings, accounting for 30%–50% of all forms of elder abuse,<sup>9</sup> and the problem appears to be growing.

Experts and advocates have decried that inadequacies in its definition frustrate attempts to discover, remedy, or prevent the problem as well as to define its causes and its scope. In addition, the justice and social services systems are often inadequately staffed and funded to address elder financial abuse. Even seasoned professionals have difficulty determining whether elder financial abuse actually occurred or if an elder willingly and knowingly made a poor financial decision.

Generally regarded as an issue under state jurisdiction, most states mention financial exploitation in their statutes. However, what constitutes exploitation, who is covered, and who is accountable vary as widely as the solutions for the problem.

### Who Experiences Elder Financial Abuse?

Reports from Adult Protective Services (APS) nationally suggest that the "typical" victim of elder financial abuse is between the ages of 70 and 89, white, female, frail, and cognitively impaired.<sup>10</sup> She is trusting of others and may be lonely or isolated. However, professional and trade journals, as well as newspaper articles describing the financial abuse victimization used in this study often yielded descriptions of victims with very diverse profiles (see *Table 1* below). Age breakdown does not necessarily coincide with the number of perpetrators because information was not always provided for both elements.

Specific age was not provided in many cases. General age descriptions included Elderly (94); Senior (14); Older (1); NH/ALF Resident (3); Retirees (1); Estate (1). In some cases gender

**Table 1: Victim Profile from Newsfeeds**

GENDER		< 60		60–69		70–79		80–89		90–99		>100	
		TOTAL	%	TOTAL	%	TOTAL	%	TOTAL	%	TOTAL	%	TOTAL	%
Male	69	3	4	3	4	8	25	31	39	7	13	0	0
Female	130	0	0	4	3	25	19	39	30	13	10	3	2

was not provided, including Couple (11) and Multiple/Both (53). In the three cases where the male victims were under the age of 60, they were also developmentally disabled.

### **Aging Women: Prime Targets for Elder Financial Abuse**

Some sources indicated that women experience elder financial abuse more than men. Since women tend to live longer than men, there are a greater number of older women than older men in the population. In 2006, there were 21.6 million women age 65+ and 15.7 million men age 65+, or a sex ratio of 138 women for every 100 men. The number of females to males increases with age, ranging from 114 for the 65 to 69 age group to a high of 213 for persons 85 and over.<sup>11</sup>

Though certainly not for all, as age advances, some older women experience cognitive decline and increases in instances of chronic disease. Decreased cognitive functioning, in turn, affects their decision-making capacity, leaving them potentially susceptible to people looking to defraud or deceive them.

For example, women in need of some caregiving may experience theft of their valuables or cash by their paid caregiver. The caregiver may intercept the woman's mail, obtain credit card numbers and bank information, and use this information to commit identity theft.

Some women who experience financial abuse may be lonely due to the death of a spouse or partner. When the partner dies, an older woman



may become responsible for household finances for the first time in years or the first time ever. Women unaccustomed to home maintenance may trust a "professional" for home repairs that were never intended to be done or were intended to be done shoddily.

They also may have predictable patterns in their finances and daily routine, such as when and where they go shopping and when monthly checks arrive. Thus, observant perpetrators of financial abuse can predict when an older woman

## **STLToday.com (St. Charles, LA)**

May 30, 2008

An 85-year-old woman was being cared for by a home health aide (age 40). Between August 2005 and March 2008, the aide "borrowed" \$80,000, giving different reasons for the loan each time. It was discovered that she had used the money to gamble. She is charged with financial exploitation of the elderly.

## Palm Beach Post

May 28, 2008

Imagine being the man whose primary goal in his last year of life was to face in court the woman who had stolen more than \$200,000 from him. Sadly, this elderly man died a month after the perpetrator was arrested, and because his wife suffers from dementia, she was unable to testify.

Between October 2006 and her arrest in late 2007, the female caregiver for this man and his wife

convinced them that the poor care she was providing was all that was keeping them out of a nursing home. She effectively isolated them from friends and family, and in February 2007, prior to his being admitted to the hospital, the caregiver arranged for the elderly man and his wife, who had dementia, to sign over one-third interest in their home.

Within two months, she had also

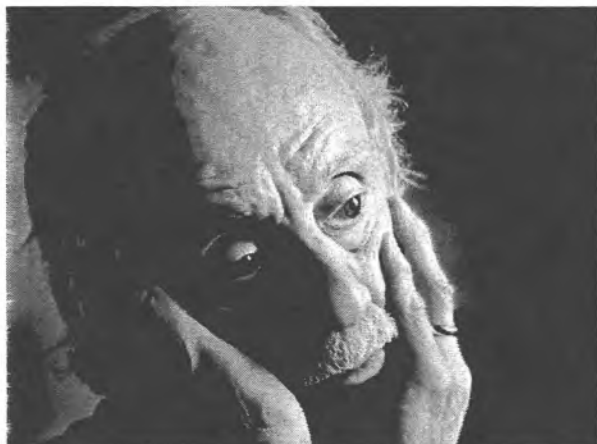
gotten them to sign a power of attorney and was posing as their stepdaughter. By the time she was arrested, she had taken out a \$150,000 mortgage against the home and run up more than \$75,000 in additional credit card debt in the name of the couple (ID theft).

The female caregiver, whose age was not provided, was sentenced to 15 years in prison for elderly exploitation.

will have money on hand or be going to the bank and become the target for a variety of con games and scams.

Women who have not been in a position to make financial decisions may be more trusting in the advice of others, particularly if they are new at seeking financial advice. Women with cognitive problems may be easily influenced by others, especially if that influence increases in intensity and becomes a "hard sell."

Vulnerability to undue influence could lead to a woman changing the beneficiary of a trust or will. It could also induce an agent into changing a power of attorney document. In these



situations, she would forfeit her legal rights to another person. Even if this were discovered and reversed, it may prove difficult to impossible to ever recover any assets transferred to the unscrupulous individual.

Embedded in roles as mother and caregiver, women may unwittingly contribute to the dependency of a troubled child who may be posturing to care for them. They may give funds to an errant child who is dependent on the woman for funds for general living, for drugs, or for alcohol. They may enable an adult child who believes that he or she is entitled to the woman's funds. "She would want me to have it" is a common excuse. Women often don't report the financial abuse to protect their children from prosecution.

### Aging Men: From "Sweetheart" to Victim

Like older women, older men also experience losses of spouses and friends as they age. Such losses may leave them alone and lonely to the point that they may become unwitting victims of people who seek to befriend them—with the intention of creating a coercive relationship through which he or she gains financially

at the expense and lasting emotional anguish of the elderly man.

One type of elder financial abuse that older men seem to be more susceptible to than women is a “Sweetheart Scam” (although women can fall prey to this form of abuse as well). In these cases, an older man experiences the loneliness accompanying the loss of a spouse or partner, and may also be depressed and possibly experiencing some cognitive and physical decline.

The deceased partner may have fulfilled a caregiving role for the man, and so he feels this loss intensely. His adult children want to help him, but they may have other family responsibilities, living some distance away, or also coping with the loss.

A woman, often younger, “befriends” the older man. Filling the void of loneliness, she may insert herself more and more into the man’s life and decision-making. In such a scam, the esteem of the man becomes measured in the ways he lavishes attention on her, the attention manifesting itself in multiple and escalating expenditures for expensive gifts, automobiles, clothes, paying off debt, and signing over wills, trusts, or other legal authority to this new “friend.”

Men may tend to be more risk-taking in making financial investments than women, and so they may be prone to being vulnerable to “professionals” or family members who seek to invest their money by promising unrealistically high returns.<sup>12</sup>

Such financial fraud may take the form of faulty insurance policies, refinancing a home loan, investments in stocks and bonds, and unrealistically rapid investment returns. Telemarketers may involve a man in paying for goods and services never rendered or rendered inadequately. Men are often enticed to provide personal information, thus making it possible for thieves to commit identity theft via the telephone, the front door, or the Internet.



### Elder Financial Abuse—An Equal Opportunity Crime Against Elders

Marilyn Moon,<sup>13-14</sup> a researcher with extensive work on elder abuse among persons of different races and ethnicities, indicated that there are differences in how financial abuse is viewed among different ethnic groups.

For example, while African-Americans and Caucasians might regard that taking money from an elder “because she would want me to” or “because I am going to get it all anyway” as unacceptable, while in other cultures, such as that of Korean-Americans, it may be regarded as culturally acceptable. Findings from research to date are mixed and require further study in order to establish definitive trends regarding the extent of elder financial abuse among different cultures.

# Prevalence of Elder Financial Abuse

Both researchers and practitioners acknowledge that estimates of elder financial abuse represent only the most overt cases, thus significantly underestimating the incidence of financial abuse of elders living in the community. Even less definitive information is available about the prevalence of financial abuse in residential long-term care settings.

Estimates of the occurrence of elder financial abuse vary considerably. The source of information about this abuse is one reason for the variation, as some estimates are predicated on anecdotal information of what people are seeing and reporting at best, while others are founded on a “sentinel approach” (i.e., purposefully selected reporters) to estimating the size of the problem. For example, the 1996 National Incidence Study conducted by the National Center on Elder Abuse found that elder financial abuse constituted 30.2% of 70,942 substantiated cases of elder abuse.<sup>15</sup> According to reports

from the Santa Clara County Financial Abuse Specialist Team (FAST) in California, there may be as many as five million elders financially abused yearly.<sup>16</sup> Reports to authorities of its occurrence range from one report for every four or five cases to one report in 100 instances.

## The Perpetrators of Elder Financial Abuse

In the review of NAPSA/NCEA Newsfeeds from April 2008 through June 2008, the media reported a total dollar value of elder financial abuse of approximately \$396,654,700, with the largest percentage of cases involving close associates of the victim—families, friends, caregivers, and neighbors—as the perpetrator of the abuse, accounting collectively for almost 40% of reported cases. The largest single category included a variety of financial professionals, attorneys, and fiduciary agents.

**Table 2: Perpetrators by Type**

PERPETRATOR	TOTAL	PERCENTAGE
Trusted Professionals	48	18.0
Family	45	16.9
Caregiver (non-agency)	29	10.9
Caregiver (agency)	25	9.3
Skilled Nursing Facility/Assisted Living	20	7.5
Medicaid/Medical Fraud	18	6.7
Befriending (“Sweetheart Scam”)	15	5.6
Home Repair Scam (includes travelers/handyman)	15	5.6
Stranger	14	5.3
Contractors	12	4.5
Criminal (robbery, burglary, rape, drugs, etc.)	8	3.0
Neighbor—Friend	8	3.0
Con Man	5	1.9
Phone Scam	4	1.5
<b>Total</b>	<b>266*</b>	<b>99.8%**</b>

\*\*Does not equal 100 due to rounding.

Number and percentage distribution of perpetrators of financial abuse—from Newsfeeds April 1, 2008—June 30, 2008 (n=266)

\*Note, 266 is the number of cases that provided perpetrator information. Total number of cases was 269; total number of articles addressing elder financial abuse in any form was 357 of total of 1,007 articles.

## Elder Financial Abuse by Family Members

Family members, even more so than strangers, financially exploit their elderly relatives.

Although there is no definitive estimate of the number of older adults who experience financial abuse by family members, community service providers and other professionals agree that cases actually reported to authorities represent only the very “tip of the iceberg.” Like King Lear, when people in their later years encounter health problems that diminish their physical or cognitive capacities, they usually first turn to family members for assistance and support.

In most situations, family members nobly assume their caregiving role; but in others, family members—sons, daughters, grandchildren, nieces, and nephews—take advantage of the elders’ dependencies and become perpetrators of financial abuse. Approximately 60% of substantiated Adult Protective Services (APS) cases of financial abuse involve an adult child, compared to 47% for all other forms of abuse.<sup>17</sup>

The elder’s grandchildren and other relatives are almost equally as likely to be perpetrators of financial abuse (9.2% and 9.7%, respectively). In the primary literature, male and female relatives are equally likely to be financial abusers of older adults. However, the media-reported instances revealed that elder financial abuse was 2.5 times more likely to be committed by sons than

daughters. Overall, 45 incidents (16.9%) of elder financial abuse described in the media involved immediate relatives. Family perpetrators often misuse their powers of attorney to steal money from bank accounts, obtain credit cards to make unauthorized purchases, and embezzle large sums of money by refinancing the elder’s home, among other examples of financial abuse.<sup>18</sup>

It is unknown what factors contribute to the likelihood of family members financially exploiting their elderly relatives, as no rigorous research has been done. Scholars and practitioners speculate that, like perpetrators of other types of elder abuse, family members who exploit their elders are dependent upon them for their own survival (e.g., shelter and finances) and their actions may be influenced by problems with alcohol, drug abuse, and gambling, and many may suffer from antisocial behavior disorders.

Tensions and inequalities between the elder and family member, perhaps stemming from the relative’s dependency and mental health issues, enhance the likelihood of financial abuse. For example, an unemployed adult child living in the home of a parent might be more likely to exploit the elder than an adult child with a steady income and their own place of residence, or one generation abused another and then the “abuser role” is reversed.<sup>19</sup>

## American Bar Association

### ABANet

An American Bar Association report noted an ongoing case where a mother gave her son her power of attorney. The mother then sold her home, moved in with the son, and gave the proceeds to her son to build an addition to the son’s house where she could live. The son subsequently claimed

that the contractors he paid did not do the work on the house. The son then dropped the mother off at a local hospital and refused to bring her home.

After staying in the hospital for about two and a half months, a nursing home was finally located for placement for her.

However, because the mother is now impoverished after giving her assets to her son, Medicaid is taking the position that the transfers to the son were disqualifying for Medicaid coverage eligibility purposes, and the placement may very well become disrupted.

# Kansas City Star

June 4, 2008

A case was reported of a 72-year-old woman who was found dead, and whose daughter is charged in her murder. She had moved in with her 55-year-old daughter in 2006, at which time she had more than \$40,000 in the bank. At the

time her daughter was arrested, there were no funds in the bank, and the conditions under which the older woman had been living made it clear that the money had not been spent on her care. For example, the older woman broke

her leg. Her daughter, who is a nurse, treated it by dosing her mother with antibiotics and corn starch, and wrapped the leg in a diaper and taped it, rather than get proper care for the injury.

Some family members also feel a sense of entitlement and believe that they have a right to the money and material goods their parents or older relatives have accumulated. They often start with small crimes, such as stealing jewelry and blank checks, before moving on to larger items or coercing elders to sign over the deeds to their homes, change their wills, or liquidate their assets. They feel justified in taking “advance” control over assets that they perceive to be “almost” or “rightfully” theirs.<sup>20</sup> Relatives may believe they are entitled to “reimbursement” for

*“... Family members also feel a sense of entitlement ...”*

providing care for the elder, or/and may even take preemptive steps to secure assets to prevent their presumed inheritance from being exhausted to pay for the elder’s care and medical bills.

### Businesses as Perpetrators of Elder Financial Abuse

Another type of elder financial abuse is often referred to as “commercial” elder abuse. Elderly people can be an easy mark because of their often trusting nature and because swindlers operate under the guise of the trustworthiness of a business as well as a personal trust relationship.<sup>21</sup> Commercial organizations as perpetrators run the gamut of blue-collar crimes, but several types are noteworthy. The research literature has barely quantified this problem, thus much that we know is case-by-case or highly anecdotal in nature.

While elder financial abuse runs the gamut of types and varieties, some common kinds of commercial theft, fraud, and embezzlement include:

- ▶ Life and health insurance misrepresentation or theft (single perpetrators or a sophisticated group or ring)
- ▶ Predatory lending:
  - False investment claims
  - “Get rich quick” schemes
  - Credit card bailouts
  - Home loan bailouts

**Table 3: Perpetrator Profile by Age and Gender**

AGE	GENDER			
	MALE		FEMALE	
	TOTAL	%	TOTAL	%
<20	6	5.9	1	1.0
20-29	15	13.9	14	14.4
30-39	15	13.9	25	25.7
40-49	33	31.0	30	30.9
50-59	28	25.9	16	16.0
60-69	7	6.0	9	9.0
70-79	3	2.0	2	0.0
80-89	1	0.9	0	0.0
<b>TOTAL</b>	<b>108</b>		<b>97</b>	

- ▶ False sales and promises related to annuities, stocks, and bonds
- ▶ False banking practices, including account draining or siphoning
- ▶ Property purchasing scams
- ▶ High-pressure telephone solicitations, especially for charities
- ▶ Magazine and book publishers' solicitations
- ▶ Internet scams:
  - Social networks
  - E-mail
  - Medications
  - Assistive devices/medical equipment
  - Clothing
  - Make-up and age-reduction remedies
  - Property and information solicitation
- ▶ Identity theft, misrepresentation by various industries, claiming must-have information for verification purposes

While the largest number of cases reported involved family, friends, and caregivers, the aggregate dollar amounts lost through commercial elder abuse was the highest. This is typically the case since investment scams and similar forms of financial abuse involve larger sums of money and often hundreds of victims. We have only to look at the headlines of high profile "Ponzi" schemes where many elderly and non-elderly wealthy victims as well as institutions collectively lose millions of dollars to fraud.

The illegal attempts by various industries involving individual perpetrators or sometimes



teams and involving aspects of fraud and abuse listed on pages 14 and 15 are growing in their intricacy to defraud older adults. These forms of commercial elder abuse are increasing in number, perhaps due to greater vigilance in recognition and reporting. More importantly, they are growing in their complexity, potentially resulting in forms of elder financial abuse that will become more difficult to detect and prevent. Combating these varied types of elder financial abuse will take trained investigators and advocates greater time, savvy, and cunning than the ever-proliferating perpetrators. For this reason, specialized legal units, such as those profiled later in this study and those in NCEA's Promising Practices Database,<sup>22</sup> have been established in some larger metropolitan areas.

### Elder Financial Abuse by Acquaintances and Strangers<sup>23</sup>

A large proportion of perpetrators are unrelated to their elderly victims. As noted in the primary literature<sup>24</sup> and as is further evident in the Newsfeeds reviewed, perpetrators of elder

## Brooklyn Daily Eagle

April 23, 2008

A 92-year-old woman was victimized by her 63-year-old nephew, who was a judge in New York State. The nephew forged a

power of attorney and took \$163,000 over a period of some months. The perpetrator has pled guilty to the misdemeanor crime of a forged

instrument. He must pay the estate back plus interest, waive rights to any inheritance, and resign from the New York State Bar.

## The Brooklyn Tab

June 25, 2008

A 68-year-old man with experience in owning a business and making investments was allegedly scammed out of \$26,500 by a man who promised him a \$500 a week return on his money. Mr. J had hoped to supplement

his and his wife's Social Security income with that money. When Mr. J requested a formal written proposal, the alleged perpetrator was unable to provide one.

Mr. J then requested that his money be returned. This resulted in getting

"every excuse in the book" from the alleged perpetrator, but no check. Finally an attorney was retained, a check was provided, but it bounced. Mr. J still has not received his \$26,500, nor has he received a \$500 a week return on it.

financial abuse include neighbors, apartment managers, home health aides, ministers, those with power of attorney, and guardians.

They initially extended helping hands to the elders and gradually are overcome by greed; contractors and handymen who ripped off the elders with bogus charges; phony financial planners and professional con artists who provided "free" services for elders to gain their trust and then defrauded them later; and others who befriended the elders to take advantage of them.

One trait perpetrators of elder financial abuse have in common is that they exhibit excellent persuasion skills. They are very good at cultivating relationships and convincing older adults that they are worthy of their trust and money. In general, perpetrators are not bound by conventional norms or business ethics, and rationalize their criminal and abusive behavior.

The *Sarasota Herald Tribune* (June 12, 2008) estimated that since 2000, southwest Florida elders alone have lost at least \$350 million to swindlers. Individuals involved in exploiting older adults may use "undue influence"—the substitution of one person's will for the true desires of another.<sup>25</sup> In these cases, the perpetrator uses his or her role and power to exploit the trust, dependency, or fear to gain psychological control over the older adult's decision-making, usually for financial gain.

Some are career professionals in the business of defrauding others, while others are initially in a position of trust who apparently are overcome by greed. They encourage their elderly victims to make an immediate decision or commitment to purchase products or services, which effectively limits the opportunity for consultation with others.

As the elderly population grows, so too does their presence on the Internet. The Federal Trade Commission reported that in 2004, elders who filed complaints about Internet fraud each lost an average of \$1,280 to individuals and businesses operating Internet scams.<sup>26</sup> Common Internet scams used with older adults are "phishing" and identity theft. Using carefully crafted e-mail messages that appear to be from legitimate and reputable banks, companies, and government agencies, the perpetrators often use scare tactics such as threats of account closures to lure in their elderly victims.

As the newest demographic to venture in cyberspace, older adults are generally least educated about the dangers and intricacies of phishing and other fraudulent practices.<sup>27-28</sup>

*"Elder financial abuse is a crime growing in intensity and, especially now, with the plummeting economy, elders will be unable to recover from such losses."*

—Pamela Teaster, President, National Committee for the Prevention of Elder Abuse



*“Approximately 60% of substantiated Adult Protective Services (APS) cases of financial abuse involve an adult child, compared to 47% for all other forms of abuse.”*

**Table 4: Relationship of Perpetrator to Victim**

**NON-INSTITUTIONAL PERPETRATORS**

Family: including “fictive kin” (i.e., non-relatives considered to be “like” family), son/daughter, grandson/granddaughter, niece/nephew, and other relatives

<b>Family, Caregivers, and Friends</b>	<b>82</b>
Family	45
Son	18
Daughter	7
Nephew/Niece	7
Granddaughter/Grandson	6
Other Relatives	6
Fictive Kin	1
Caregiver (non-agency)	29
Neighbor/Friend	8
<b>Others</b>	<b>65</b>
Befriended (“Sweetheart Scam”)	15
Stranger	14
Contractors	12
Handyman/Chores/Caretaker	9
Con Man	5
Home Repair Scam	4
Phone Scams	4
“Travelers”	2
<b>Criminal</b>	<b>8</b>
Robber/Burglar	4
Transient	2
Serial Rapist	1
Drugs	1

**INSTITUTIONAL PERPETRATORS**

<b>Trusted Professionals</b>	<b>48</b>
Financial	33
Attorneys/Paralegal	11
Pastor/Minister	2
Executors/Trustees	1
CPA	1
<b>Other</b>	<b>63</b>
Caregiver (agency/facility)	25
SNF/ALF/Personal Care Home Owner/Operator/Business Manager	20
Medicare/Medicaid Fraud	15
Health Care Fraud	1
Hearing Aid Business	1
Therapist	1

# Growing Problem of Elder Financial Abuse

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Although elder financial abuse has been poorly understood, there are some compelling reasons to believe its occurrence has increased over the past ten years<sup>29</sup> due to the following:

## ► **More Elders in the Population Means More Potential for Elder Financial Abuse**

The population of elders generally is increasing, as ours is an aging society. In 1900, adults aged 60 and older constituted about 6% of the population.<sup>30</sup> In 2006, elders aged 60 and older comprised almost 17% of the population.<sup>31</sup> By 2030, elders 60 years of age and older will comprise nearly 25% of the U.S. population.<sup>32</sup>

## ► **Older Americans Have the Lion's Share of the Money, and Therefore Are the Obvious Target for Predators Looking for Financial Gains**

The older population owns the largest proportion of wealth in the U.S. People over 50 years of

age control at least 70% of the net worth of the nation's households.<sup>33</sup> Many elders do not realize the value of their assets, such as their homes that may have appreciated markedly since purchased decades ago.

## ► **Diminished Cognitive Abilities Create Greater Vulnerability to Elder Financial Abuse**

While the aging population overall is growing, the oldest-old (those aged 85+) are the fastest growing segment of the older population. For many, with advanced age come changes in physical and mental functioning. For those with decreased abilities, decision-making capacity may be compromised, and they thus may fall prey to elder financial abuse without fully understanding the situation. To illustrate, the prevalence of dementia in those 75 and older is 16%,<sup>34</sup> and for those 80 and older, it is 30%. Changes in cognitive abilities make elders dependent on others for help. These "helpers" may have access to homes and assets, and may exercise significant influence over the elder.

## ► **Changes in Families Alter Responsibility and Oversight for Providing Care, Which Increases the Potential for Elder Financial Abuse**

Families still provide the bulk of care for elders, although they look far different than they did in previous generations. More than half of women (59% in 2007<sup>35</sup>) are in the workforce and are thus unable to be the sole providers of care for elders in their homes. The family structure, and thus perceptions of who is responsible to provide care, are altered due to divorce, alternate living arrangements, and step-families. There are approximately 3.3 million long-distance caregivers and their number is expected to



double over the next 15 years.<sup>36</sup> Non-family members, paid and unpaid, are providing more care as well.

► **Recognizing Diversity Within and Across Cultures Is Necessary for Implementing Effective Prevention, Investigation, and Intervention Efforts**

Due to a rapidly increasing population of different races and ethnicities, perceptions of the problem are as different as its remedies.

For example, what one culture considers elder financial abuse may not be the belief of another, which also affects when it is acceptable and who is acceptable to involve in intervention strategies.

► **Artful and Designing Ways to Financially Abuse Elders Are Increasingly Varied**

Technologies such as the Internet are opening up new and “creative” ways to financially abuse elders. Increasingly, an elder’s identity is universally available to others through online purchases, Internet dating, and virtual social networks. Systems to address the problem have not caught up with its growing variety and complexity, such as the growing instances of Internet-based fraud of older consumers.<sup>37</sup>

## Houston Chronicle

June 9, 2008

More than 80 older adults of various ages were the victims of securities fraud perpetrated by an attorney over an extended period of time. The amount of money involved was over \$10 million, and the attorney asked for probation at his sentencing hearing. He was sentenced to 20 years in prison.

Restitution for a portion of the amount taken was realized by selling his assets, and victims were reimbursed on a pro-rata basis. When he has completed his sentence, he must pay nearly \$4 million additional in restitution.

*“The older population owns the largest proportion of wealth in the U.S. People over 50 years of age control at least 70% of the net worth of the nation’s households.”*

# Aging and Susceptibility to Elder Financial Abuse

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There are several reasons why members of the aging population are tempting targets to perpetrators of elder financial abuse. First, the majority of older adults, from the fittest to the frailest, are homeowners. They are often “home alone” within the fast-paced, multi-generational communities in which they live, exposing them to unscrupulous vendors, scam artists, and telemarketers who prey upon innocent individuals who are eager to live out their lives in familiar and comfortable surroundings.

For example, the tendency of fraudulent telephone salespersons to prey on older adults is high, with more than 50% of victims of telemarketing scams being age 50 or older. Elders, who often end up on the “mooch list” of crooked telemarketers, frequently are victimized over and over again. By one FBI estimate,<sup>38</sup> scam artists are bilking older adults out of more than \$500 million per year.

The accumulated wealth of the current generation of elders also places them at risk for abuse. They usually have income from Social Security and employer pensions, IRA, or 401(k) savings investments, and, if they are widows/widowers, the proceeds of their late spouse’s life insurance. They worry that they will outlive their money and be forced to rely on their children for financial support.

These exploitative phony investment schemes are aware of these fears and often troll for elders with financial means by visiting churches, country clubs, or senior centers. They develop a relationship with them to win their confidence by performing legitimate services, such as tax preparation or financial planning, before pitching a fraudulent investment. Common sense dictates that individuals with great financial resources are highly attractive to family members and others seeking to take large sums of money.

Nevertheless, people with limited means are also at risk of elder financial abuse. The National Elder Abuse Incidence study<sup>39</sup> found that nearly one-half (46%) of elder victims of financial abuse had incomes between \$5,000 and \$9,999, while just under a third (30%) were those whose incomes fell between \$10,000 and \$14,999.

Anyone can be a victim of elder financial abuse, but older adults who are socially isolated are also especially vulnerable because they are less likely and able to seek advice before making an important financial decision. In addition, because the sales solicitation itself addresses a need for social interaction on the part of the elderly victim, they may feel obligated to be friendly or compliant in return.

If the older adult appears hesitant to engage in the transaction, the perpetrators have an endless supply of rebuttals for any excuse the victim offers, and can have an aggressive style that intimidates them into complying. These tactics are effective primarily because of their appeal to natural human desires to feel special, to find a bargain, and to please someone else.

## **Balancing Autonomy and Protection: Understanding the Complexities of Elder Financial Abuse**

All adults have the inherent autonomy and freedom to make decisions regarding their personal affairs, resources, care, and services that others might not choose for them. By the same token, elders have the right to be free from abuse, neglect, and financial exploitation. This often delicate balance challenges both identification of potential abuse and successful prevention and prosecution when it does occur.

Scholars, practitioners, and policymakers are all grappling with often complex legal, financial, medical, and familial issues surrounding elder financial abuse. As a result, information about, and documentation of, the problem and practices to prevent and alleviate such abuse are scattered across multiple disciplines and sources. The resulting absence of a comprehensive knowledge base impedes the development of preventive practices, interventions, and policies that strive to eliminate elder financial abuse and maximize individual autonomy and quality of life of older adults.



### **The Tip of the Iceberg: Why Victims Do Not Report**

A significant reason for the underestimation of the occurrence of elder financial abuse is the victims themselves do not report elder financial abuse for a variety of reasons. Among the multitude of reasons uncovered, the victims:

- ▶ Do not want government interference in their personal lives
  - ▶ Do not want their adult child or other family member going to jail or facing public embarrassment
  - ▶ Feel responsible for what has happened
  - ▶ Do not realize that they have been financially abused
  - ▶ Believe financial abuse is a consequence of “doing business” or taking risks
  - ▶ Fear that they will be placed in a nursing home or other facility
  - ▶ Do not think anyone will really help them, even if they expose the abuse
  - ▶ Worry that the perpetrator might harm them even more
  - ▶ Think resolution will come too late to be of any good
  - ▶ Believe they will lose even more money to costs of pursuing the financial abuse
- Financial and other professionals who deal with elders generally feel a responsibility to help protect their elderly clients from harm or abuse of any kind. However, they often fail to get involved when they suspect elder financial abuse because they:
- ▶ Do not know if they are mandated reporters in some states
  - ▶ Do not want to compromise professional relationships (confidentiality vs. mandatory reporting)
  - ▶ Are not clear who their client is (older adult or their family members)
  - ▶ Are not able to determine the actual mental capacity of their older clients, a determination that affects decisions made by them and on their behalf
  - ▶ Want to avoid adverse publicity to themselves and their organizations
  - ▶ Do not understand business ethics and practices in relation to elder financial abuse
  - ▶ Do not want to incriminate a fellow professional
  - ▶ Want to avoid involvement in a criminal investigation and potential lawsuit

# Identifying the Problem: Leading Signs of Elder Financial Abuse

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Certain warning signs indicate if older adults are experiencing financial abuse.

▶ **Unusual degree of fear or submissiveness to caregiver**

Example: An elder cowers in front of a caregiver or begins trembling or crying when the caregiver discusses finances.

▶ **Isolation from family, friends, community, and other stable relationships**

Example: The older person is never alone or permitted to discuss finances without the caregiver also present.

▶ **Signs of intimidation and threat by another**

Example: The older person never looks at people directly or averts their gaze.

▶ **Withdrawn behavior or disheveled appearance**

Example: The older person tries to avoid talking with others, especially when asked to respond to something specific.

▶ **Missed appointments, uncharacteristic nonpayment for services**

Example: The older person, previously prompt and reliable, does not show up for medical appointments or “forgets” to pay bills.

▶ **Anxiety about personal finances**

Example: The older person worries a lot about how she will ever pay a bill or have enough to eat.

▶ **Lack of knowledge about financial status**

Example: The older person seems unaware of his money.

▶ **New “best friends”**

Example: The older person seems surprisingly or unseemly close and attentive to someone he has just met.

▶ **Missing belongings or property**

Example: Glasses, clothes, dentures, money, or all of these are gone. The elder is dismissed as “forgetful.”



▶ **Significant changes in spending patterns**

Example: The older adult purchases an expensive car even though she has not driven in the past year.

▶ **Makes sudden changes regarding financial management**

Example: Power of attorney for financial matters is suddenly changed from a long-time friend to a new person—family member or stranger.

In addition to the behaviors of the elders, there are also notable signs exhibited by family members or others who befriend older adults and engage in elder financial abuse. For example, they frequently:

- ▶ Develop a close bond and exert influence over the older person's decisions
- ▶ Make false promises or withhold information from the older person
- ▶ Show excessive interest in the older person's assets
- ▶ Demonstrate excessive control of the older person
- ▶ Suddenly acquire expensive possessions
- ▶ Control phone use and prevent others from accessing the older person
- ▶ Exhibit defensiveness or hostility during appointments or on the phone
- ▶ Are reluctant to leave the side of the older person during appointments

Recognizing these warning signs can be a very effective tool in early intervention and prevention of further financial abuse.



*“One trait perpetrators of elder financial abuse have in common is that they exhibit excellent persuasion skills. They are very good at cultivating relationships and convincing older adults that they are worthy of their trust and money. In general, perpetrators are not bound by conventional norms or business ethics, and rationalize their criminal and abusive behavior.”*

# Lasting Impact of Elder Financial Abuse

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Perhaps elder financial abuse has received limited attention, both in the popular press and in the research literature, because it is not regarded as visible, life-threatening, or newsworthy as is the physical or sexual abuse of elders. Still, elder financial abuse affects elders and their families in significant and long-lasting ways by putting enormous emotional duress on the elder, increasing their risk of depression, decreasing their quality of life, and increasing unnecessary institutionalization.<sup>40</sup>

A National Institute of Justice study revealed that 20% of victims suffered financial or credit problems, with 14% subsequently suffering health effects.<sup>41</sup> Some scholars contend that the impact of elder financial abuse has the same effect as being a victim of a violent crime, reporting that at least one victim likened this kind of abuse to being raped. If restitution is offered for elder financial abuse, it may come too late to be of any help to an elder, who may well have passed away before any ever reaches him or her.

Elder financial abuse can impact an elder by eradicating nearly all of his or her financial resources. Unlike younger people, an older adult will have little to no ability to recoup these losses over time. Also, even if the courts order restitution, it may take years to receive it, and the victim may well pass away before it ever reaches him or her. Victims may even be murdered by perpetrators who just want their funds and see them as an easy mark.

Loss of finances limits choices in health care and other services. They may be unable to afford needed medications. Restricted choices can reduce or completely destroy an elder's independence. Moreover, such losses can result in shame, guilt, or general mistrust escalating into paranoia or depression. Untreated or undetected depression can cause death by passive or active suicide.<sup>42-43</sup>



# Addressing Elder Financial Abuse

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## Industry and Professional Efforts

Analysis of articles in the trade journals reviewed in this research indicated that the financial industry is also regulating and sanctioning itself, as well as educating its own members and older adults about recognizing and preventing elder financial abuse. Industry professionals and organizations who are taking a lead role include:

- ▶ **Attorneys**, especially attorneys specializing in elder law (24 articles)
- ▶ **Government entities**, including the Securities Exchange Commission, Federal Trade Commission, the U.S. Postal Service, and other federal state regulators (25 articles)
- ▶ **Financial institutions**, including banks, insurance companies, credit unions, and investment firms (21 articles)
- ▶ **Financial professionals**, such as CPAs, financial advisors, and brokers (11 articles)
- ▶ **Health care facilities**, including nursing homes (10 articles)

Financial services companies have been working closely with the Securities and Exchange Commission (SEC), Financial Industry Regulatory Authority (FINRA), and the North American Securities Administration Association (NASAA). In 2008, financial services companies and agencies participated in the third annual “Seniors Summit” to further examine and refine how financial services companies and regulators can coordinate efforts to protect older consumers from investment fraud and financial abuse.

These include collaborative efforts to expand consumer and professional education, improved corporate policies and procedures, and more focused compliance policies and monitoring.<sup>44</sup>

Because the investment, banking, and insurance industries are highly regulated, considerable attention and resources are focused on compliance with regulatory and ethical considerations in dealing with consumers. In 2005, the securities industry alone was estimated to have spent \$25.5 billion on staffing, training, and policies and procedures for compliance with fiduciary and regulatory mandates.<sup>45</sup>

Within the insurance industry, a 2006 survey found that 62% of companies were anticipating changes and improvements to their compliance programs. Their efforts included strengthening and/or adding to their monitoring and surveillance efforts (39%); enhancing their training and communication programs (28%); and adding staff (11%). Other activities include strengthening the company-wide compliance culture, product suitability guidelines, and better defining compliance issues throughout the organization.<sup>46</sup>

## Governmental Efforts

The U.S. Senate Special Aging Committee addressed elder financial abuse through a series of Committee hearings held between June 2001 and May 2006. Testimony was provided by federal and state agency officials, criminal justice representatives, state attorneys general, representatives from the financial sector, consumer organizations, academic institutions, and victims and perpetrators of elder financial abuse.

According to U.S. Senate sources<sup>47</sup> and the National Elder Abuse Incidence Study,<sup>48</sup> only 16% of all elder abuse cases are reported and 30% of all reported cases involve financial abuse, a number close to the incidence of news reports involving elder financial abuse found in this study.

## Addressing Elder Financial Abuse

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The U.S. Senate Committee on Aging<sup>49</sup> reported that nearly 40% of America's seniors rank fear of fraud ahead of their concern for health care and the crisis attendant to it and even higher than terrorism. In all, Americans in general are estimated to lose \$40 billion per year to telemarketing fraud and over \$50 billion to identity theft.

Additionally, a 2002 press release from the U.S. Special Committee on Aging cited Privacy Rights Clearinghouse estimates that over 700,000 Americans are victims of identity theft each year, with several thousand being elders. Reported incidents among those aged 60 years and older skyrocketed by 218% from 1,821 victims to 5,802 victims between 2000 and 2001.

As recently as February 2008, the Senate Committee on Finance held hearings regarding marketing by Medicare Advantage private plans, with observations that the sale of Medicare benefits by private plans "has been aggressive at best" and at other times "abusive or downright fraudulent."

A National Association of Insurance Commissioners survey of states revealed 39 states with complaints about misrepresentations by insurance agents or companies marketing Medicare products and 22 states reporting fraudulent activity. Other testimony included reports of "hard sell" techniques, inaccurate statements, and misrepresentation on the part of salespeople regarding private Medicare Advantage plans.

One of the most important actions related to elder financial abuse is the Elder Justice Act (EJA), the first federal effort to address this issue. First introduced in the 108th Congress in 2002, its purpose is to increase awareness and knowledge of elder abuse, neglect, and exploitation at the national level, train individuals from various

disciplines on these issues, combat elder abuse, and prosecute cases of elder abuse where appropriate. The Act was reintroduced in 2005 and again in 2007. If passed, the EJA will be the first bill to specifically state that it is the right of older adults to be free of abuse, neglect, and exploitation. It will provide federal resources that would work against elder abuse and prevent other older individuals from such abuses in the future.

The 2007 EJA (S. 1070) makes provisions for an Elder Justice Coordinating Council to coordinate various activities related to elder justice at federal, state, and community levels and for both private and not-for-profit entities; secures federal funding for Adult Protective Services and long-term funding for research; provides grants to establish and operate stationary and mobile forensic centers; and creates safer long-term care settings.

Other efforts at the federal level include White House Conferences on Aging (WHCoA) and the Older Americans Act (OAA). At the most recent WHCoA, held in 2005, elder abuse gained considerable visibility, with a recommendation that stressed the creation of a national strategy for the promotion of elder justice through the prevention and prosecution of elder abuse.

Title VII of the Act provides statutory authority and funds distributed by formulas allocated to states to prevent elder abuse, neglect, and exploitation.

Finally, at the federal level, the National Center on Elder Abuse is the premier national resource on elder abuse, neglect, and exploitation. The National Committee for the Prevention of Elder Abuse is one of its partner organizations and focuses on research, advocacy, and education related to preventing and intervening in elder abuse.

## States Respond to Elder Financial Abuse

A tool to fight elder financial abuse is State Medicaid Fraud Control Units (MFCUs), whose mission is to investigate and prosecute Medicaid provider fraud and patient abuse and neglect. Most Units are located in Offices of State Attorneys General. In fiscal year 2007, MFCUs recovered more than \$1.1 billion in court-ordered restitution, fines, civil settlements and penalties, and obtained 1,205 convictions.<sup>50</sup>

## Examples of Promising Local Practices

- ▶ One of the first efforts to specifically address elder financial abuse was through the establishment of a Financial Abuse Specialist Team (FAST). Begun in 1993 in Los Angeles, FAST provides expert consultation and training to protective services and other practitioners in cases of elder financial abuse. The team includes members from social services, law enforcement, elder law attorneys, health care professionals and banks. Since 1993, other FASTs have proliferated, both in California and in other states.
- ▶ Part of the NCEA's mission is to disseminate information on promising practices related to elder abuse. At this time, the latest iteration of this database includes at least nine programs on elder financial abuse.
- ▶ Representing combinations of industry and social services is AARP ElderWatch in Colorado. Founded in 2002, it is a training program for recognizing financial exploitation of elders. The program includes a Web site; a complaint call center that alerts law enforcement, seniors, and banks of financial scams; and a pocket guide for law enforcement on elder abuse. Members include AARP, Attorneys General, Better Business Bureaus, Sheriffs, and TeleSynthesis, Inc.
- ▶ In Delaware, at least two programs specifically address elder financial abuse. The Delaware Money Management Program offers money management services to help low-income

seniors and adults with physical disabilities who have difficulty budgeting, paying routine bills, and keeping track of financial matters. Its membership includes AARP and the Delaware Division of Services for the Aging and Adults with Physical Disabilities. Another program in Delaware is the Delaware Elder Abuse and Exploitation Project, a law enforcement project utilizing multi-dimensional inter-agency cooperation to prevent and prosecute crimes against elders.

- ▶ Missourians Stopping Adult Financial Exploitation (MOSAFAE) has developed training packages for frontline financial institution personnel, building on a training package from the Oregon Bankers Association. Materials educate staff to recognize and report possible financial exploitation of vulnerable adults. Its membership includes AARP, the Attorney General, Banker's Association, Alliance of AAAs, Association of Public Administrators, Credit Union Association, Independent Bankers Association, Lt. Governor, Police Chiefs Association, and the Sheriff's Association.
- ▶ Harry and Jeanette Weinberg Center for Elder Abuse Prevention at the Hebrew Home for the Aged at Riverdale (in New York State) is the first comprehensive elder abuse shelter in the United States. Using the Home's full continuum of care and staff expertise, community network, and collaborative affiliations, the Center uses a coordinated system of crisis intervention, residential and community based services, training, and community awareness programs to provide a wide range of services for victims of elder abuse and neglect. The Center has successfully developed a methodology for identifying and intervening in financial abuse of older adults.

The Hebrew Home has found that financial abuse occurs in over 60% of the legitimate elder abuse cases it has investigated. Even in cases where there is no physical abuse, financial abuse is the single most common form of abuse to occur.

# Preventing Elder Financial Abuse

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Any person—elders, family members, or professionals—who suspects that financial abuse of an elder has occurred should report it. One of the challenges in describing and documenting financial abuse stems from the variability in terminology between disciplines and the laws in different states. But, when in doubt, it is always better to err on the side of caution and report suspected financial abuse to the appropriate agencies such as Adult Protective Services, a law enforcement agency, or compliance department of the financial institution. Reports can be made confidentially and the reporting person is protected from civil and criminal liability.

Successful prevention of elder financial abuse involves multiple strategies. There are a variety of actions individuals, family members, financial service professionals, businesses, and organizations can do to help protect elders from getting tangled in the web of elder financial abuse.

Older adults themselves can take several precautions to avoid falling prey to financial abuse. Such actions include:

## ► Stay Organized

Keep belongings neat; keep track of possessions; open and send your own mail; direct deposit Social Security and other checks; complete and sign your own checks whenever possible; use an answering machine to screen calls and do not provide personal information over the telephone.

## ► Stay Informed

Consult with an attorney about future plans, including a power of attorney; consult with an attorney about caregiving arrangements; review your will; know where to go if you suspect abuse; ask for help from police, from employees at a bank, from Adult Protective Services, if needed.

## ► Stay Alert

Do not leave items of value out in the open; do not sign any document unless someone you trust reviews it; do not be left out of decisions about your finances.

Families, particularly those who find themselves in a caregiving role, also need to be aware of situations that place their older loved ones at risk for financial abuse. Family members should periodically inquire about their older family members' financial resources and perceived limitations that may stem from their financial situation. They also need to keep an eye out for such things as:

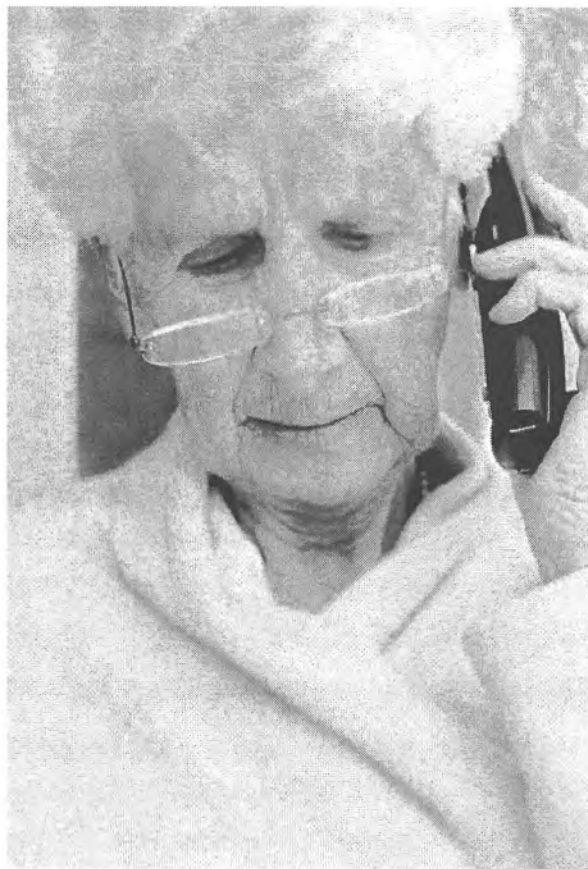
- Unusual worry about finances or fear of an individual
- Unexplained trembling or crying
- Changes in communication patterns
- Any abrupt change in behavior
- Overpayment for goods and services
- Unnecessary services or household repairs
- A set of “out-of-sync” check numbers
- Increased ATM activity
- Unusual cash withdrawals from a financial account in a short period of time
- Missing belongings from the home or room in a facility
- Excessive time spent on the Internet
- A signature that seems forged, unusual, or suspicious
- An unexplained reduction in bank accounts
- An increase in the number and amount of credit card accounts

- ▶ An abrupt or unexplained change in the power of attorney, will, or other legal or financial documents
- ▶ Sudden transfer of assets to a family member or someone outside the family

Financial service and other professionals, such as bankers and lawyers, are well positioned to contribute to the prevention of elder financial abuse by:

- ▶ Educating clients about their rights and about types of consumer fraud and scams
- ▶ Describing how family members, with the help of legal counsel, can explore options such as financial conservatorship for clients who are frail, mentally ill, or cognitively impaired
- ▶ Encouraging clients or family members to discuss with legal counsel the option to assign financial guardian or power of attorney, as needed
- ▶ If children are of concern, educating clients about the option to assign responsibility to an outside person
- ▶ Generating media attention on the issue of elder financial abuse and its prevention
- ▶ Staying apprised of current trends in elder financial abuse and techniques for stopping it
- ▶ Training appropriate personnel in techniques for interviewing older customers
- ▶ Seeking assistance from other disciplines (social services, medical/nursing personnel, government agencies)
- ▶ Reporting suspected cases of elder financial abuse to local authorities or to their institution's compliance department

Note that some of these steps may not be appropriate for all professionals, and that elder financial abuse situations vary and must be evaluated on a case-by-case basis.



*“Some [perpetrators of elderly financial abuse] are career professionals in the business of defrauding others, while others are initially in a position of trust who apparently are overcome by greed. They encourage their elderly victims to make an immediate decision or commitment to purchase products or services, which effectively limits the opportunity for consultation with others.”*

# Summary

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## **The Scope of the Problem Is Larger Than We Realize**

Elder financial abuse is involved in at least 20%–30% of all reported elder abuse.<sup>51</sup> Based on this research study, as well as the work and experience of experts, advocates, and law enforcement agencies, we believe that this number is a significant underestimate, since cases involving only elder financial abuse were likely to go unreported.

## **Elder Financial Abuse Has Short- and Long-Term Impact**

Anecdotal information suggests that the impact of elder financial abuse is hugely demoralizing. It not only affects the elder who is financially abused, but it reaches far beyond its immediate victim, affecting health care and health care costs, living situations, filings for bankruptcy, and costs for its recuperation passed along in service industries.

It may even exacerbate or cause mental and physical illness, including an untimely death for the victim. Media coverage of high profile financial fraud in 2008–2009 reinforces the fact that elder financial abuse can affect those who are or were financially well off, and we can surmise that such abuse has an even more severe impact on the lives of those without financial means.

## **Elder Financial Abuse Is a Companion to Other Forms of Abuse**

This form of abuse is often tied to other forms and may be the precursor to those forms. If that is so, stopping elder financial abuse would prevent or reduce other and equally insidious forms from occurring.

## **Elder Financial Abuse Exists in Many Races and Ethnicities**

Elder financial abuse is submerged in various races and ethnicities. A rising population of

elders, with the fastest growing being Hispanic elders, necessitates additional attention, so that a better understanding emerges of how elders in other cultures view the problem.

## **Generational Differences in Elder Financial Abuse Patterns Are Evolving**

The “World War II Generation” is quickly passing away and giving rise to new generations of elders, especially the Baby Boomer generation. With this demographic surge of “new elders” comes new ways of approaching elder finances—widespread use of credit cards, investments, travel, and, above all, information available at unprecedented speeds through the Internet. New methods of dissemination also provide a fertile ground for increasing opportunities for individuals and industries to defraud.

Organizations and families have their own views about their entitlement to the money of past generations. For example, when adult children live in a parent’s home, they may think they are due money from a parent, just because they help them in some way, not because the older adult has given them permission to have money. Often, children make the “assumption” that Mom or Dad would “want me to enjoy it now.”

## **The Number of Potential Older Adult Victims Is Growing Rapidly**

Advances in health care have allowed populations with particularly vulnerable adults to live longer, a circumstance often accompanied by those who seek to capitalize upon their vulnerability. If someone is having trouble making decisions, he or she could easily become confused when information is presented by a con artist very quickly and with pressure to make a quick decision. An older person, often trusting, might then agree to participate in a sales arrangement that later turns out to be bogus.

# Implications

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## **A Multidisciplinary Strategy for Addressing Elder Financial Abuse Holds Great Promise**

While law enforcement teams and anti-fraud advocates hold promise and are increasing, it is critical to know both how they work and what they are able to accomplish. Critical information gaps exist beyond a team's own self-reporting. For instance, are they really effective in addressing the problem, and is this approach the best solution to problem resolution?

Bringing multiple disciplines together to bear on the problem of elder financial abuse can be an expensive strategy to resolve the issue. It remains to be seen what are the best ways to maximize a group of assembled experts to deal with elder financial abuse. Cost/benefit analysis on the effectiveness of multidisciplinary teams is also needed.

## **The Right Kind of Training Is Needed for Both Businesses and the Public Sector**

Both the public and private sectors stand to benefit from understanding the problem: banks, insurance, investments, loans, legal, just to name a few. The banking industry has made particularly progressive efforts in this arena (e.g., Massachusetts Bank Reporting Project; Oregon Bankers Association—Elder Financial Abuse Prevention Project). Banks often deal with older customers on a regular basis and get to know them well. They are able to track “unusual” activity in accounts and are in a prime position to work to prevent or intervene in such instances.

A winning approach to addressing the problem is to finally and fully understand the nature and scope of the problem and test intervention strategies to determine what works in the widest context as well as to replicate those approaches that are most effective in preventing and responding to financial abuse. Professionals

from all service sectors can be made more aware of the impending signs of elder financial abuse. The challenge is to balance their responsibility to protect the safety of the elders they serve with the elders' right to self-determination.

## **Better Understand the “Environment” of Elder Financial Abuse**

Elder financial abuse is a problem in every community and among all social strata. It is underrecognized, underreported, and underprosecuted. In the financial services sector, a better understanding of the “environment” of elder financial abuse would be productive in better prevention and reporting. A deeper understanding and industry experiences with both compliance efforts and training programs will enhance efforts to better address the problem.

## **Reinforce Ethical Practices Through Education**

Community groups, faith communities, and schools are excellent forums for inculcating these ethical values and making them known. Strategies for discussions about financial decisions are often difficult, but are just as important as discussions about health care decisions. These institutions are valuable community resources which can be engaged as prevention and reporting sources at the local level.

## **Capture Scope, Effects, and the Cost of the Problem to Adequately Address and Prevent It**

It is worth additional effort to understand the breadth and depth of the elder financial abuse problem. Without a unified approach to the problem, we will at best simply chip away at this costly waste of funds and lives. Elder financial abuse, made even more important in our present uncertain economic environment, amplifies the need to understand its scope and effects.

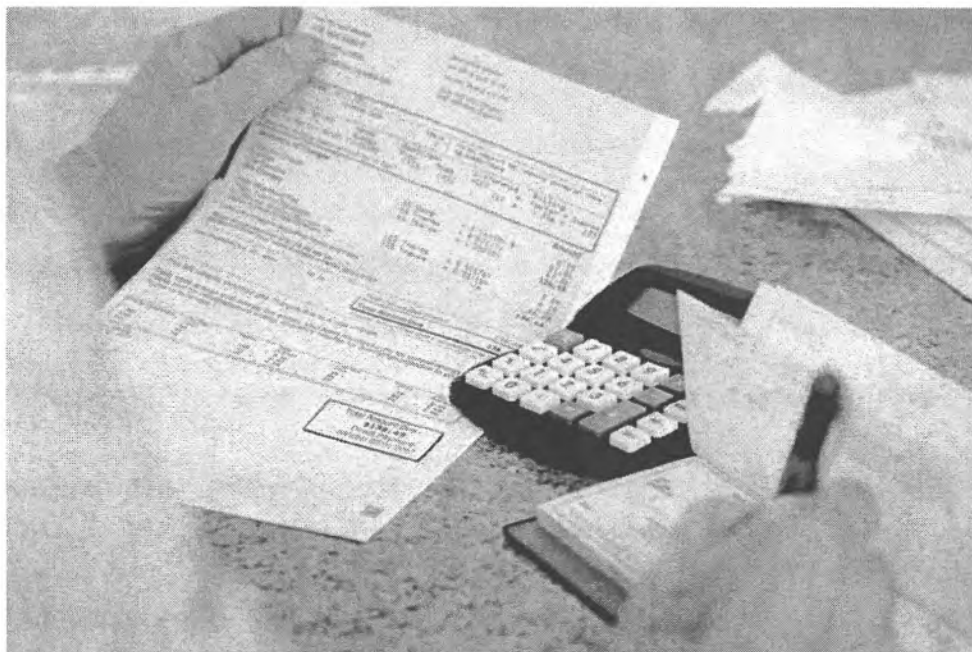
# References

- <sup>1</sup> Wasik, J. F. (2000, March/April). The fleecing of America's elderly. *Consumer Digest*, 78-79.
- <sup>2</sup> Teaster, P.B., Dugar, T.D., Otto, J.M., Mendiondo, M.S., Abner, E.L., & Cecil, K.A. (2006). *The 2004 Survey of State Adult Protective Services: Abuse of Adults 60 Years of Age and Older*. Report to the National Center on Elder Abuse, Administration on Aging, Washington, D.C.
- <sup>3</sup> Bonnie, R. J., & Wallace, R. B. (2003). *EM: Abuse, Neglect, and Exploitation in an Aging America*. Washington, D. C.: The National Academies Press.
- <sup>4</sup> Lachs, M.S., Williams, C.S., O'Brien, S., Pillemer, K.A., and Charlson, M.E. (1998). The mortality of elder mistreatment. *Journal of the American Medical Association*, 280(5), 428-432.
- <sup>5</sup> Quinn, M. J. & Tomita, S.K. (1997). *Elder Abuse and Neglect: Causes, Diagnosis, and Intervention Strategies*. New York: Springer Publishing Company.
- <sup>6</sup> Payne, B. K., & Gainey, R. R. (2005). Differentiating Self-Neglect as a Type of Elder Mistreatment: How Do These Cases Compare to Traditional Types of Elder Mistreatment? *Journal of Elder Abuse & Neglect*, 17(1), 21-36.
- <sup>7</sup> Kemp, B. J., & Mosqueda, L. A. (2005). Elder financial abuse: an evaluation framework and supporting evidence. *Journal of the American Geriatrics Society*, 53(7), 1123-1127.
- <sup>8</sup> Choi, N. G., & Mayer, J. (2000). Elder abuse, neglect, and exploitation: Risk factors and prevention strategies. *Journal of Gerontological Social Work*, 33(2), 5-25.
- <sup>9</sup> Choi, N. G., Kulick, D. B., & Mayer, J. (1999). Financial exploitation of elders: Analysis of risk factors based on county adult protective services data. *Journal of Elder Abuse & Neglect*, 10(3-4), 39-62.
- <sup>10</sup> National Center on Elder Abuse [NCEA]. (1998). National Elder Abuse Incidence Study. Retrieved on August 4, 2008, from [http://www.aoa.gov/eldfam/Elder\\_Rights/Elder\\_Abuse/AbuseReport\\_Full.pdf](http://www.aoa.gov/eldfam/Elder_Rights/Elder_Abuse/AbuseReport_Full.pdf)
- <sup>11</sup> Administration on Aging (2007). *A Profile of Older Americans: 2007*. Retrieved October 15, 2008, from <http://www.aoa.gov/prof/Statistics/profile/2007/3.aspx>
- <sup>12</sup> Sechrest, D. K., Shichor, D., Doocy, J. H., & Geis, G. (1998). Research note: women's response to a telemarketing scam. *Women & Criminal Justice*, 10(1), 75-89.
- <sup>13</sup> Moon, A., & Benton, D. (2000). Tolerance of elder abuse and attitudes toward third-party intervention among African-American, Korean-American, and White Elderly. *Journal of Multicultural Social Work*, 8(3-4), 283-303.
- <sup>14</sup> Moon, A., Tomita, S. K., & Jung-Kamei, S. (2001). Elder mistreatment among four Asian-American groups: An exploratory study on tolerance, victim blaming, and attitudes toward third-party intervention. *Journal of Gerontological Social Work*, 36(1-2), 153-169.
- <sup>15</sup> National Center on Elder Abuse [NCEA]. (1998). National Elder Abuse Incidence Study. Retrieved on August 4, 2008, from [http://www.aoa.gov/eldfam/Elder\\_Rights/Elder\\_Abuse/AbuseReport\\_Full.pdf](http://www.aoa.gov/eldfam/Elder_Rights/Elder_Abuse/AbuseReport_Full.pdf)
- <sup>16</sup> Malks, B., Buckmaster, J., & Cunningham, L. (2003). Combating elder financial abuse—A multi-disciplinary approach to a growing problem. *Journal of Elder Abuse & Neglect*, 15 (3/4), 55-70.
- <sup>17</sup> National Center on Elder Abuse [NCEA]. (1998). National Elder Abuse Incidence Study. Retrieved on August 4, 2008, from [http://www.aoa.gov/eldfam/Elder\\_Rights/Elder\\_Abuse/AbuseReport\\_Full.pdf](http://www.aoa.gov/eldfam/Elder_Rights/Elder_Abuse/AbuseReport_Full.pdf)
- <sup>18</sup> Sklar, J. B. (2000). Elder and dependent adult fraud: A sampler of actual cases to profile the offenders and the crimes they perpetrate. *Journal of Elder Abuse & Neglect*, 12(2), 19-32.
- <sup>19</sup> Rabiner, D. J., O'Keeffe, J., & Brown, D. (2004). A Conceptual Framework of Financial Exploitation of Older Persons. *Journal of Elder Abuse & Neglect*, 16(2), 53-73.
- <sup>20</sup> Dessin, C. L. (2000). Financial abuse of the elderly. *Idaho Law Review*, 36(2), 203-226.
- <sup>21</sup> Parker, J. (2007). Company liability for a life insurance agent's financial abuse of an elderly client. *Michigan State Law Review*, 2007(3), 683-722.
- <sup>22</sup> National Center on Elder Abuse (2008). State resources. Retrieved on March 13, 2009, from [http://www.ncea.aoa.gov/ncearoot/Main\\_Site/index.aspx](http://www.ncea.aoa.gov/ncearoot/Main_Site/index.aspx)

- <sup>23</sup> National Center on Elder Abuse [NCEA]. (1998). National Elder Abuse Incidence Study. Retrieved on August 4, 2008, from [http://www.aoa.gov/eldfam/Elder\\_Rights/Elder\\_Abuse/AbuseReport\\_Full.pdf](http://www.aoa.gov/eldfam/Elder_Rights/Elder_Abuse/AbuseReport_Full.pdf)
- <sup>24</sup> Choi, N. G., & Mayer, J. (2000). Elder abuse, neglect, and exploitation: Risk factors and prevention strategies. *Journal of Gerontological Social Work*, 33(2), 5-25.
- <sup>25</sup> Quinn, M. J. (2000). Undoing undue influence. *Journal of Elder Abuse & Neglect*, 12(2), 9-17.
- <sup>26</sup> Carlson, E. L. (2006). Phishing for elderly victims: As the elderly migrate to the Internet, fraudulent schemes targeting them follow. *The Elder Law Journal*, 14(2), 423-452.
- <sup>27</sup> Ibid.
- <sup>28</sup> Mouallem, L. (2002). Oh no, grandma has a computer: How Internet fraud will take the place of telemarketing fraud targeting the elderly. *Santa Clara Law Review*, 42(2), 659-687.
- <sup>29</sup> Tatara, T., & Kuzmeskas, L. (1997). *Elder Abuse in Domestic Settings*. Elder Abuse Information Series, Washington, D. C., National Center on Elder Abuse.
- <sup>30</sup> U.S. Census Bureau. (2004). Population Division. Retrieved August 20, 2008, from <http://www.census.gov/popest/archives/pre-1980/>
- <sup>31</sup> U.S. Census Bureau. (2007). Current Population Survey, Annual Social and Economic Supplement, 2006. Retrieved March 13, 2009, from <http://www.icpsr.umich.edu/cocoon/ICPSR/STUDY/04559.xml>
- <sup>32</sup> U.S. Census Bureau. (2008). Projections of the Population by Age and Sex for the United States: 2010 to 2050 (NP2008-T12). Retrieved August 20, 2008 from <http://www.census.gov/population/www/projections/summarytables.html>
- <sup>33</sup> Morrison, E.J. (2003). Fraud and the elderly: What Montana lawyers can do to protect seniors from increase in financial scams. *The Montana Lawyer*, 28, 5.
- <sup>34</sup> Kemp, B. J., & Mosqueda, L. A. (2005). Elder financial abuse: an evaluation framework and supporting evidence. *Journal of the American Geriatrics Society*, 53(7), 1123-1127.
- <sup>35</sup> U.S. Bureau of Labor Statistics. (2007). Quick Stats 2007. Retrieved on October 15, 2008, from <http://www.dol.gov/wb/stats/main.htm>
- <sup>36</sup> Delaney, J. (2002). Long Distance Caregiving Project. Retrieved on October 15, 2008, from <http://web.grcc.edu/ekunnen/crn/materials/LONGDISTANCECAREGIVING.html>
- <sup>37</sup> Internet Crime Complaint Center. (2007) 2007 Internet Crime Complaint Report retrieved 10/22/08 from [www.ic3.gov/media/annualreports.aspx](http://www.ic3.gov/media/annualreports.aspx)
- <sup>38</sup> U.S. Department of Justice (2005). Financial crimes report to the public. Retrieved on March 13, 2009 from [http://www.fbi.gov.gov/publications/financial/fcs\\_report052005/fcs\\_report052005.htm](http://www.fbi.gov.gov/publications/financial/fcs_report052005/fcs_report052005.htm)
- <sup>39</sup> National Center on Elder Abuse [NCEA]. (1998). National Elder Abuse Incidence Study. Retrieved on August 4, 2008, from [http://www.aoa.gov/eldfam/Elder\\_Rights/Elder\\_Abuse/AbuseReport\\_Full.pdf](http://www.aoa.gov/eldfam/Elder_Rights/Elder_Abuse/AbuseReport_Full.pdf)
- <sup>40</sup> Kemp, B. J., & Mosqueda, L. A. (2005). Elder financial abuse: an evaluation framework and supporting evidence. *Journal of the American Geriatrics Society*, 53(7), 1123-1127.
- <sup>41</sup> Deem, D. L. (2000). Notes from the field: Observations in working with the forgotten victims of personal financial crimes. *Journal of Elder Abuse & Neglect*, 12(2), 33-48.
- <sup>42</sup> Ibid.
- <sup>43</sup> Pennsylvania Suicide Prevention Initiative (2006). Suicide among older adults in Pennsylvania. Retrieved on March 13, 2009 from [http://lifeguard.tripod.com/PA\\_Elder\\_Suicide\\_FAO.doc](http://lifeguard.tripod.com/PA_Elder_Suicide_FAO.doc)
- <sup>44</sup> Financial Industry Regulatory Authority; North American Securities Administrators Association, Inc.; Office of Compliance Inspections and Examinations, U.S. Securities and Exchange Commission. (2008) *Joint Report: Protecting Investors: Compliance, Supervisory and Other Practices used by Financial Services Firms in Serving Senior Investors*. <http://www.sec.gov>
- <sup>45</sup> Securities Industry Association. (2006) The Cost of Compliance in the U.S. Securities Industry: Survey Report. New York, NY.
- <sup>46</sup> LIMRA International. (2006) Market Conduct/ Compliance Departments—Compliance Update. Life Insurance Marketing and Research Association, Windsor, CT.

## References

- <sup>47</sup> Senate Special Committee on Aging. (2000). Developments in aging 1997 and 1998: Volume 1. Retrieved on August 7, 2008 from [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=106\\_cong\\_reports&docid=f:sr229v1.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=106_cong_reports&docid=f:sr229v1.pdf)
- <sup>48</sup> National Center on Elder Abuse [NCEA]. (1998). National Elder Abuse Incidence Study. Retrieved on August 4, 2008, from [http://www.aoa.gov/eldfam/Elder\\_Rights/Elder\\_Abuse/AbuseReport\\_Full.pdf](http://www.aoa.gov/eldfam/Elder_Rights/Elder_Abuse/AbuseReport_Full.pdf)
- <sup>49</sup> Senate Special Committee on Aging. (2000). Developments in aging 1997 and 1998: Volume 1. Retrieved on August 7, 2008 from [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=106\\_cong\\_reports&docid=f:sr229v1.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=106_cong_reports&docid=f:sr229v1.pdf)
- <sup>50</sup> Ibid.
- <sup>51</sup> Teaster, P.B., Dugar, T.D., Otto, J.M., Mendiondo, M.S., Abner, E.L., & Cecil, K.A. (2006). *The 2004 Survey of State Adult Protective Services: Abuse of Adults 60 Years of Age and Older*. Report to the National Center on Elder Abuse, Administration on Aging, Washington, D.C.



# Appendix A: Databases Used to Identify Primary Literature

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Ageline

ArticleFirst

ASSIA: Applied Social Sciences Index and Abstracts

Business Reference Suite

CINAHL: Cumulative Index to Nursing and Allied Health

Health Reference Center Academic

Medline (PubMed version)

PsycARTICLES

PsychoINFO

Social Sciences Citation Index

Social Services Abstracts

Sociological Abstracts

# Appendix B: Elder Financial Abuse—A Glossary of Terms<sup>1</sup>

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- ▶ **ELDER ABUSE**—An act or omission which results in harm or threatened harm to the health or welfare of an elderly person. Abuse includes intentional infliction of physical or mental injury, sexual abuse, or withholding of necessary food, clothing, and medical care to treat the physical and mental health needs of an elderly person by one having the care, custody, or responsibility of an elder person.
- ▶ **EXPLOITATION**—Exploitation of elderly persons can be referred to as financial abuse, material abuse, fiduciary abuse, financial exploitation, financial mistreatment or maltreatment, and economic victimization.
- ▶ **FIDUCIARY MISAPPROPRIATIONS**—Intentional, illegal use of the property or funds of another person for one's own use or other unauthorized purpose, particularly by a public official, a trustee of a trust, an executor or administrator of a dead person's estate, or by any person with a responsibility to care for and protect another's assets (a fiduciary duty).
- ▶ **FINANCIAL ABUSE**—A form of financial exploitation that involves wrongful acquisitions of money and valuable objects belonging to an elderly person by friends, relatives, or caretakers; a situation in which a person, including but not limited to, who has care or custody of or who stands in a position of trust, of an elder or dependent adult, takes, secretes, or appropriates their money or property, to any wrongful use, or with the intent to defraud; the illegal or improper use of an older person's funds, property, or resources.
- ▶ **FRAUD**—Deception made for personal or economic gain. Fraud can be committed through many methods, including mail, phone, infomercials, and the Internet.
  - **Advance Fee Scheme:** Occurs when a person pays money to someone in anticipation of receiving something of greater value, such as a loan, contract, investment, or gift, and then receives little or nothing in return.
  - **Check Fraud:** A criminal act that involves making the unlawful use of one or more checks or checking accounts in order to illegally acquire or borrow funds that do not exist within the account balance or account-holder's legal ownership.
  - **Identity Fraud or Identity Theft:** Stealing money or getting other benefits by pretending to be someone else.
  - **Insurance Fraud:** Any act committed with the intent to falsely obtain payment from an insurer.
  - **Investment Fraud:** Purchasing or making sales decisions on the basis of false information, frequently resulting in losses (e.g., Ponzi scheme).
  - **Medicare Fraud:** Manufacturers bill Medicare for merchandise or service that was not needed or was not ordered. Includes:
    - **Medical Equipment Fraud:** Equipment manufacturers offer “free” products to individuals. Insurers are then charged for products that were not needed and/or may not have been delivered.

- **“Rolling Lab” Schemes:** Unnecessary and sometimes fake tests are given to individuals at health clubs, retirement homes, or shopping malls and billed to insurance companies or Medicare.
- **Services Not Performed:** Customers or providers bill insurers for services never rendered by changing bills or submitting fake ones.
- **Mortgage Fraud:** A broad variety of actions where the intent is to materially misrepresent information on a mortgage loan application, in order to obtain the loan and defraud a financial institution.
- **Telemarketing Fraud:** Offenders call elders at home, using high-pressure tactics to solicit money for fraudulent investments, insurance policies, travel packages, charities, and sweepstakes.
- ▮ **Internet PHISHING**—Attempting to acquire sensitive information such as usernames, passwords, Social Security numbers, and credit card details by masquerading as a trustworthy entity in an electronic communication.
- ▮ **MATERIAL ABUSE**—Material victimization of elders by both relatives and non-relatives. The misuse of an elder’s money or property, including deception, diverting income, mismanagement of funds, and taking money or possessions against a person’s will.
- ▮ **PREDATORY LENDING**—Dishonest financial institution willfully misleads or deceives the consumer.
- ▮ **SCAM**—A fraudulent or deceptive act or operation; an attempt to swindle a person by gaining his or her confidence. Common scams involving elders include:
  - **Lottery Scams or Sweepstakes:** Scammers contact elderly victims online or through the mail and may even send checks or money orders to them. They then ask that some portion of the money be wired back.
  - **Repair and Contracting Scams:** Use high pressure tactics to sell unneeded and overpriced contracts for “home improvements.”
  - **Sweetheart Scams:** Typically involves a stranger ingratiating himself or herself to an elderly person, winning the affections of that person, and then taking over the older person’s estate or financial affairs.
- ▮ **UNDUE INFLUENCE**—Takes place when one person uses his or her role and power to exploit the trust, dependency, or fear of another to gain psychological control over the weaker person’s decision-making, usually for financial gain.
- ▮ **VIATICAL SETTLEMENTS**—Sale or transfer of a life insurance death benefit by a terminally ill insured person to another person or company prior to the policyholder’s death. Viatical scam operators urge people to liquidate their life insurance without explaining the implications or with the promise of high returns.

<sup>1</sup> Note: There is an inconsistent use of terms in both the primary and trade literature. When used in a legal context, the meaning of terms may differ from state to state.

# Appendix C: Resources

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## AARP: Scam Alert

<http://www.aarp.org/community/search.bt?query=Scam+Alert&x=0&y=0>

## AARP ElderWatch in Colorado

<http://www.aarpelderwatch.org/public>

## AARP Policy and Research for Professionals in Aging: Elder Abuse

<http://www.aarp.org/research/legal/elderabuse/>

## Delaware Money Management Program

<http://dhss.delaware.gov/dhss/dsaapd/money.html>

## Delaware Elder Abuse and Exploitation Project

<http://attorneygeneral.delaware.gov/family/elderlyviolence/elderlyabuseandexpl.shtml>

## Delaware Department of Justice Safe Investing Guide

<http://attorneygeneral.delaware.gov/consumers/investmented/2008/pages/investinginfo.shtml>

## Elder Justice Act (EJA)

<http://www.opencongress.org/bill/110-s1070/show>

## Financial Abuse Specialist Team (FAST)

<http://www.preventelderabuse.org/communities/fast.html>

## Harry and Jeanette Weinberg Center for Elder Abuse Prevention at the Hebrew Home

<http://aging.senate.gov/events/hr178dr.pdf>

## Journal of Elder Abuse & Neglect

<http://www.haworthpress.com/store/product.asp?sku=J084>

## MetLife Mature Market Institute

### Preventing Elder Abuse *Since You Care* Guide

<http://www.metlife.com/assets/cao/mmi/publications/since-you-care-guides/MMI-SYC-Preventing-Elder-Abuse-2007.pdf>

## Missourians Stopping Adult Financial Exploitation (MOSAFE)

<http://www.dhss.mo.gov/MOSAFE/>

## National Adult Protective Services Association

<http://www.apsnetwork.org/>

## National Center on Elder Abuse

<http://www.ncea.aoa.gov>

## National Center on Elder Abuse Promising Practices Database

[http://www.ncea.aoa.gov/NCEARoot/Main\\_Site/Resources/Promising\\_Practices/PP\\_Home.aspx](http://www.ncea.aoa.gov/NCEARoot/Main_Site/Resources/Promising_Practices/PP_Home.aspx)

## National Committee for the Prevention of Elder Abuse

<http://www.preventelderabuse.org/>

## National Consumers League's Fraud Center

[www.fraud.org](http://www.fraud.org)

## Older Americans Act (OAA)

[http://www.aoa.gov/oa2006/Main\\_Site/](http://www.aoa.gov/oa2006/Main_Site/)

## Resource Brochure to Combating Senior Financial Abuse in Mississippi

<http://www.ago.state.ms.us/images/uploads/forms/seniorfinancialabuseguide.pdf>

## State Medicaid Fraud Control Units (MFCU)

<http://www.oig.hhs.gov/publications/mfcu.asp>

## White House Conferences on Aging (WHCoA): 2005

<http://www.whcoa.gov/>

Variable and Long-Term Care Products are: • Not A Deposit Or Other  
Obligation Of Bank • Not FDIC-Insured • Not Insured By Any Federal  
Government Agency

Only Variable Annuity Products: • Not Guaranteed By Any Bank Or Credit Union  
• May Go Down In Value

Only Long-Term Care Products: • Not Issued, Guaranteed Or Underwritten By  
Bank Or FDIC • Not A Condition To The Provision Or Term Of Any Banking  
Service Or Activity • Policy Is An Obligation Of The Issuing Insurance Company

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L0309022521[exp0212]

Article 04. PROTECTION OF PROPERTY OF PERSONS UNDER DISABILITY AND MINORS

Sec. 13.26.165. Protective proceedings.

Upon petition and after notice and hearing in accordance with the provisions of AS 13.26.165 - 13.26.315, the court may appoint a conservator or make other protective order for cause as follows:

(1) appointment of a conservator or other protective order may be made in relation to the estate and affairs of a minor if the court determines that a minor owns money or property that requires management or protection which cannot otherwise be provided, has or may have business affairs which may be jeopardized or prevented by the status of being a minor, or that funds are needed for the minor's support and education and that protection is necessary or desirable to obtain or provide funds;

(2) appointment of a conservator or other protective order may be made in relation to the estate and affairs of a person if the court determines that

(A) the person is unable to manage the person's property and affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, or disappearance; and

(B) the person has property which will be wasted or dissipated unless proper management is provided, or that funds are needed for the support, care and welfare of the person or those entitled to be supported by the person and that protection is necessary or desirable to obtain or provide funds.

History -

(Sec. 1 ch 78 SLA 1972)

Decisions -

Assessment of need for conservatorship. - Since a special conservatorship cannot be reconciled with a requirement that a conservatorship candidate be found wholly incapable of making any rational decision, the need for a conservator must be assessed in the context of the person's incapacity and the specific matters for which management or protection may be required. In the Matter of S.H., 987 P.2d 735 (Alaska 1999).

Where doctors provided considerable evidence of a conservatorship candidate's inability to make litigation decisions, even assuming mental illness did not describe his condition, the incapacity documented to the superior court satisfied the statute, and the court did not commit

clear error in accepting the evidence as clear and convincing proof of the candidate's inability to manage his property and affairs effectively. In the Matter of S.H., 987 P.2d 735 (Alaska 1999).

Evidence supported a protective appointment for the father under AS 13.26.165(2)(A) and (B), where substantial evidence demonstrated the father's inability to prioritize his finances, and other evidence, including the father's own testimony, reinforced the daughter's evidence that the father was in need of a conservator; the evidence presented supported the finding that the father abused alcohol and his capacity to perform routine activities could be relevant in evaluating whether appointment of a conservator was appropriate. *Farmer v. Farmer*, 230 P.3d 689 (Alaska 2010).

Appointment in workers' compensation proceeding. - Appointment of a guardian for an employee in a complex workers' compensation proceeding was appropriate where the employee suffered a serious brain injury that rendered him unable to understand a compromise and release agreement settling his claims with his employer. *Gunter v. Kathy-O-Estates*, 87 P.3d 65 (Alaska 2004).

Adequacy of findings. - Court did not fail to make the finding required where the evidence showed that the superior court adopted the findings of the probate master. This section does not require the court to find that the father's assets would be wasted unless he was ordered to vacate his home or that obtaining funds for his care mandated his removal. *Farmer v. Farmer*, 230 P.3d 689 (Alaska 2010).

Length of inability. - This statute does not express or imply a requirement of long term inability, but only specifies that property be in danger of waste or dissipation. In the Matter of S.H., 987 P.2d 735 (Alaska 1999).

Sec. 13.26.170. Protective proceedings; jurisdiction of affairs of protected persons.

Except as otherwise provided under AS 13.27.110, after the service of notice in a proceeding seeking the appointment of a conservator or other protective order and until termination of the proceeding, the court in which the petition is filed has exclusive jurisdiction to determine

(1) the need for a conservator or other protective order until the proceedings are terminated; and

(2) how the estate of the protected person that is subject to the laws of this state shall be managed, expended, or distributed to or for the use of the protected person or any of the person's dependents.

History -

(Sec. 1 ch 78 SLA 1972; am Sec. 21 ch 53 SLA 2008)

## Amendment Notes -

The 2008 amendment, effective September 2, 2008, added "Except as otherwise provided under AS 13.27.110" at the beginning of the section, deleted the former paragraph (1) designation preceding "exclusive jurisdiction" and added the current paragraph (1) designation, deleted "Exclusive jurisdiction to determine" at the beginning of paragraph (2), deleted former paragraph (3), which related to concurrent jurisdiction, and made related and stylistic changes.

## Sec. 13.26.175. Venue.

Venue for proceedings under AS 13.26.165 - 13.26.315 is

(1) in the place in this state where the person to be protected resides whether or not a guardian has been appointed in another place; or

(2) if the person to be protected does not reside in this state, in any place where the person has property.

## History -

(Sec. 1 ch 78 SLA 1972)

## Sec. 13.26.180. Original petition for appointment or protective order.

(a) The person to be protected, any person who is interested in the estate, affairs or welfare of the person to be protected, including a parent, guardian, or custodian, or any person who would be adversely affected by lack of effective management of the property and affairs of the person to be protected, may petition for the appointment of a conservator or for other appropriate protective order.

(b) The petition must set out to the extent known, the interest of the petitioner; the name, age, residence and address of the person to be protected; the name and address of the person's guardian, if any; the name and address of the person's nearest relative known to the petitioner; a general statement of the person's property with an estimate of its value, including any compensation, insurance, pension or allowance to which the person is entitled; and the reason why appointment of a conservator or other protective order is necessary. If the appointment of a conservator is requested, the petition also must set out the name and address of the person whose appointment is sought and the basis of priority for appointment.

## History -

(Sec. 1 ch 78 SLA 1972)

Sec. 13.26.185. Notice.

(a) On a petition for appointment of a conservator or other protective order, the person to be protected and the person's spouse or, if none, the person's parents, must be served personally, by certified mail, or by any other method authorized by court rule with notice of the proceedings at least 14 days before the date of hearing if they can be found within the state, or, if they cannot be found within the state, they must be given notice in accordance with AS 13.06.110. Waiver by the person to be protected is not effective unless the person to be protected attends the hearing or, unless minority is the reason for the proceeding, waiver is confirmed in an interview with the visitor.

(b) Notice of a petition for appointment of a conservator or other initial protective order, and of any subsequent hearing, must be given to any person who has filed a request for notice under AS 13.26.190 and to interested persons and other persons as the court may direct. Except as otherwise provided in (a) of this section, notice shall be given in accordance with AS 13.06.110.

History -

(Sec. 1 ch 78 SLA 1972; am Sec. 22 ch 53 SLA 2008)

Amendment Notes -

The 2008 amendment, effective September 2, 2008, inserted "by certified mail, or by any other method authorized by court rule" in the first sentence of subsection (a).

Sec. 13.26.190. Protective proceedings; request for notice; interested person.

Any interested person who desires to be notified before any order is made in a protective proceeding may file with the registrar a request for notice subsequent to payment of any fee required by statute or court rule. The clerk shall mail a copy of the demand to the conservator if one has been appointed. A request is not effective unless it contains a statement showing the interest of the person making it and the person's address, or that of the person's attorney, and is effective only as to matters occurring after the filing. Any governmental agency paying or planning to pay benefits to the person to be protected is an interested person in protective proceedings.

History -

(Sec. 1 ch 78 SLA 1972)

Sec. 13.26.195. Procedure concerning hearing and order on original petition.

(a) Upon receipt of a petition for appointment of a conservator or other protective order because of minority, the court shall set a date for hearing on the matters alleged in the petition. If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the choice of the minor if 14 years of age or older. A lawyer appointed by the court to represent a minor has the powers and duties of a guardian ad litem.

(b) Upon receipt of a petition for appointment of a conservator or other protective order for reasons other than minority, the court shall set a date for hearing. Unless the person to be protected has counsel of the person's own choice, the court must appoint a lawyer to represent the person. If the alleged disability is mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, or chronic intoxication, the court may direct that the person to be protected be examined by a physician designated by the court, preferably a physician who is not connected with any institution in which the person is a patient or is detained. The court may send a visitor to interview the person to be protected. The visitor may be a guardian ad litem or an officer or employee of the court.

(c) After hearing, upon finding that a basis for the appointment of a conservator or other protective order has been established, the court shall make an appointment or other appropriate protective order.

(d) The court shall investigate alternatives to a conservator and the use of a special conservator as provided in AS 13.26.205(c). A conservator may be appointed only if a less restrictive protective order or the services of a special conservator are not adequate to protect the estate of the protected person. The court shall, to the extent possible, consult with the protected person in determining what action should be taken.

History -

(Sec. 1 ch 78 SLA 1972; am Sec. 15 ch 83 SLA 1981; am Sec. 20 ch 84 SLA 2004)

Revisors Notes -

Reorganized in 1972.

Decisions -

Discretion of court. - Trial court did not abuse its discretion by mandating that the father vacate his home in light of the evidence that the father interfered with the daughter's efforts to sell the home. Evidence of the father's inability to attend to his financial obligations supported both the grant of authority to assist the father with his housing, and the post-sale management of the father's money. *Farmer v. Farmer*, 230 P.3d 689 (Alaska 2010).

Sec. 13.26.200. Permissible court orders.

The court has the following powers which may be exercised directly or through a conservator in respect to the estate and affairs of protected persons:

(1) while a petition for appointment of a conservator or other protective order is pending and after preliminary hearing and without notice to others, the court has power to preserve and apply the property of the person to be protected as may be required for the person's benefit or the benefit of the person's dependents;

(2) after hearing and upon determining that a basis for an appointment or other protective order exists with respect to a minor without other disability, the court has all those powers over the estate and affairs of the minor which are or might be necessary for the best interests of the minor, the minor's family and members of the minor's household;

(3) after hearing and upon determining that a basis for an appointment or other protective order exists with respect to a person for reasons other than minority, the court has, for the benefit of the person and members of the person's household, all the powers over the person's estate and affairs which the person could exercise if present and not under disability, except the power to make a will; these powers include, but are not limited to, power to make gifts, to convey or release contingent and expectant interests in property including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety, to exercise or release powers as trustee, personal representative, custodian for minors, conservator, or donee of a power of appointment, to enter into contracts, to create revocable or irrevocable trusts of property of the estate which may extend beyond the person's disability or life, to exercise options of the disabled person to purchase securities or other property, to exercise rights to elect options and change beneficiaries under insurance and annuity policies and to surrender the policies for their cash value, to exercise the right to an elective share in the estate of a deceased spouse, and to renounce any interest by testate or intestate succession or by inter vivos transfer;

(4) the court may exercise, or direct the exercise of its authority to exercise or release powers of appointment of which the protected person is donee, to renounce interests, to make gifts in trust or otherwise exceeding 20 percent of any year's income of the estate, or to change beneficiaries under insurance and annuity policies, only if satisfied, after notice and hearing, that it is in the best interests of the protected person, and that the protected person either is incapable of consenting or has consented to the proposed exercise of power;

(5) an order made pursuant to this section determining that a basis for appointment of a conservator or other protective order exists, has no effect on the capacity of the protected person.

History -

(Sec. 1 ch 78 SLA 1972)

Sec. 13.26.205. Protective arrangements and single transactions authorized.

(a) If it is established in a proper proceeding that a basis exists as described in AS 13.26.165 for affecting the property and affairs of a person the court, without appointing a conservator, may authorize, direct, or ratify any transaction necessary or desirable to achieve any security, service, or care arrangement meeting the foreseeable needs of the protected person. Protective arrangements include, but are not limited to, payment, delivery, deposit, or retention of funds or property, sale, mortgage, lease, or other transfer of property, entry into an annuity contract, a contract for life care, a deposit contract, a contract for training and education, or addition to or establishment of a suitable trust.

(b) When it has been established in a proper proceeding that a basis exists as described in AS 13.26.165 for affecting the property and affairs of a person the court, without appointing a conservator, may authorize, direct, or ratify any contract, trust, or other transaction relating to the protected person's financial affairs or involving the person's estate if the court determines that the transaction is in the best interests of the protected person.

(c) Before approving a protective arrangement or other transaction under this section, the court shall consider the interests of creditors and dependents of the protected person and, in view of the protected person's disability, whether the protected person needs the continuing protection of a conservator. If only certain powers need be given to the conservator or the services of a conservator are needed only for a limited number of transactions, a special conservator may be appointed. The court may appoint a special conservator to assist in the accomplishment of any protective arrangement or other transaction authorized under this section who shall have the authority conferred by the order and serve until discharged by order after report to the court of all matters carried out under the order of appointment.

History -

(Sec. 1 ch 78 SLA 1972; am Sec. 16 ch 83 SLA 1981)

Decisions -

Assessment of need for conservatorship. - Since a special conservatorship cannot be reconciled with a requirement that a conservatorship candidate be found wholly incapable of making any rational decision, the need for a conservator must be assessed in the context of the person's incapacity and the specific matters for which management or protection may be required. In the Matter of S.H., 987 P.2d 735 (Alaska 1999).

Sec. 13.26.210. Who may be appointed conservator; priorities.

(a) The court may appoint a competent person, including a private professional conservator, private professional full guardian under AS 08.26.020, or the public guardian, as the conservator of the estate of a protected person.

(b) The court may not appoint a person to be a conservator of a protected person if the person

(1) provides, or is likely to provide during the conservatorship, substantial services to the protected person in a professional or business capacity, other than in the capacity of conservator;

(2) is or is likely to become, during the conservatorship, a creditor of the protected person, other than in the capacity of conservator;

(3) is likely to have, during the conservatorship, interests that may conflict with those of the protected person; or

(4) is employed by a person who would be disqualified under (1) - (3) of this subsection.

(c) A person may be appointed as the conservator of a protected person even if (b) of this section applies if the person is the spouse, adult child, parent, or sibling of the protected person and if the court determines that the potential conflict of interest is not substantial and that the appointment would clearly be in the best interests of the protected person.

(d) Subject to (e) and (f) of this section, qualified persons have priority for appointment in the following order:

(1) an individual or qualified conservator nominated by the protected person if the protected person is 14 or more years of age and had, in the opinion of the court, sufficient mental capacity to make an informed choice;

(2) the spouse of the protected person;

(3) an adult child or a parent of the protected person;

(4) a relative of the protected person with whom the protected person has resided for more than six months during the year before the filing of the petition;

(5) a relative or friend of the protected person who has demonstrated a sincere and longstanding interest in the welfare of the protected person;

(6) a private professional conservator;

(7) the public guardian.

(e) When more than one person has equal priority under (d) of this section, the court shall select the person it considers to be the best qualified.

(f) When in the best interest of the protected person, a court may decline to appoint a person who has priority under (d) of this section as conservator of the protected person and may appoint as conservator a person who has a lower priority than another person or who does not have a priority. If the court appoints a person with a lower priority under (d) of this section than another person, the court shall make appropriate written findings related to why the best interests of the respondent require appointment of the person with a lower priority.

(g) In addition to any other requirement of this section, when appointing a relative or friend of the protected person as the conservator of the protected person, the court shall require that the proposed conservator complete one hour of mandatory education on the basics of conservatorship before the appointment or within 30 days after the appointment. If the person is appointed based on the person's agreement to complete the mandatory education and the person fails to complete the mandatory education within the 30 days, the court shall remove the conservator and appoint a successor.

#### History -

(Sec. 1 ch 78 SLA 1972; am Sec. 21 ch 84 SLA 2004; am Sec. 20 ch 56 SLA 2005; am Sec. 23, 24 ch 53 SLA 2008)

#### Amendment Notes -

The 2005 amendment, effective June 25, 2005, near the beginning of subsection (g) substituted "protected person" for "incapacitated person" and made a stylistic change.

The 2008 amendment, effective September 2, 2008, inserted "conservator, private professional full" and "under AS 08.26.020" in subsection (a), and added the last sentence of subsection (f).

#### Decisions -

Cited in *H.C.S. v. Cmty. Advocacy Project of Alaska, Inc.*, 42 P.3d 1093 (Alaska 2002).

#### Sec. 13.26.215. Bond.

(a) The court may require a conservator to furnish a bond conditioned upon faithful discharge of all duties of the trust according to law, with sureties as it shall specify. Unless otherwise directed, the bond shall be in the amount of the aggregate capital value of the property of the estate in the conservator's control plus one year's estimated income minus the value of securities deposited under arrangements requiring an order of the court for their removal and the value of any land which the fiduciary, by express limitation of power, lacks power to sell or convey without court authorization. The court in place of sureties on a bond, may accept other security for the performance of the bond, including a pledge of securities or a mortgage of land.

(b) If the public guardian is appointed as a conservator, the court may not require a bond under this section.

(c) If the court requires a conservator to provide a bond under this section and the conservator is financially unable to provide the bond, the court may order the cost of the bond to be paid from court funds.

History -

(Sec. 1 ch 78 SLA 1972; am Sec. 17 ch 83 SLA 1981)

Revisors Notes -

Subsections (b) and (c) enacted as AS 13.26.218. Renumbered in 1981.

Decisions -

Written bond contemplated. - A written bond with explicit provisions is contemplated by this section, a bond that would even be enforced in the absence of a provided penalty. *White v. White Co.*, 4 Alaska 317 (1911).

Conservator liability. - Public conservator was not shielded by absolute quasi-judicial immunity in ward's suit claiming that conservator's employees had intentionally or negligently withheld funds. *Trapp v. State*, 53 P.3d 1128 (Alaska 2002).

Collateral Refs -

39 Am. Jur. 2d, Guardian and Ward, Sec. 48.

39 C.J.S., Guardian and Ward, Sec. 212 - 220.

Sec. 13.26.220. Terms and requirements of bonds.

(a) The following requirements and provisions apply to any bond required under AS 13.26.215:

(1) unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the conservator and with each other;

(2) by executing an approved bond of a conservator, the surety consents to the jurisdiction of the court which issued letters to the primary obligor in any proceeding pertaining to the fiduciary duties of the conservator and naming the surety as a party defendant; notice of any proceeding shall be delivered to the surety or mailed by registered or certified mail to the surety at the address as listed with the court where the bond is filed and to the surety's address as then known to the petitioner;

(3) on petition of a successor conservator or any interested person, a proceeding may be initiated against a surety for breach of the obligation of the bond of the conservator;

(4) the bond of the conservator is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.

(b) A proceeding may not be commenced against the surety on any matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation.

History -

(Sec. 1 ch 78 SLA 1972)

Decisions -

Conservator liability. - Public conservator was not shielded by absolute quasi-judicial immunity in ward's suit claiming that conservator's employees had intentionally or negligently withheld funds. *Trapp v. State*, 53 P.3d 1128 (Alaska 2002).

Sec. 13.26.225. Acceptance of appointment; consent to jurisdiction; notice.

By accepting appointment, a conservator submits personally to the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any interested person. Notice of any proceeding shall be delivered to the conservator, or mailed by registered or certified mail to the conservator at the address as listed in the petition for appointment or as thereafter reported to the court and to the conservator's address as then known to the petitioner.

History -

(Sec. 1 ch 78 SLA 1972)

Sec. 13.26.230. Compensation and expenses.

If not otherwise compensated for services rendered, any visitor, lawyer, physician, conservator, or special conservator appointed in a protective proceeding is entitled to reasonable compensation from the estate.

History -

(Sec. 1 ch 78 SLA 1972)

Decisions -

Costs charged to estate. - Since, where the purpose of the conservatorship is to protect the client's property, it is logical that normally the cost of that conservatorship be charged against the estate thus preserved, the court erred in imposing the costs on the client's law firm. In the Matter of S.H., 987 P.2d 735 (Alaska 1999).

Sec. 13.26.235. Death, resignation, or removal of conservator.

The court may remove a conservator for good cause, upon notice and hearing, or accept the resignation of a conservator. After death, resignation, or removal, the court may appoint another conservator. A conservator so appointed succeeds to the title and powers of the conservator's predecessor.

History -

(Sec. 1 ch 78 SLA 1972)

Decisions -

Grounds for removal. - This section provides simply that conservators may be removed "for good cause." It does not elaborate further and does not list specific grounds for removal. H.C.S. v. Cmty. Advocacy Project of Alaska, Inc., 42 P.3d 1093 (Alaska 2002).

Sec. 13.26.240. Petitions for orders subsequent to appointment.

(a) Any person interested in the welfare of a person for whom a conservator has been appointed may file a petition in the appointing court for an order

- (1) requiring bond or security or additional bond or security, or reducing bond;
- (2) requiring an accounting for the administration of the trust;
- (3) directing distribution;
- (4) removing the conservator and appointing a temporary or successor conservator; or
- (5) granting other appropriate relief.

(b) A conservator may petition the appointing court for instructions concerning the fiduciary responsibility of the conservator.

(c) Upon notice and hearing, the court may give appropriate instructions or make any appropriate order.

History -

(Sec. 1 ch 78 SLA 1972)

Sec. 13.26.245. General duty of conservator.

In the exercise of powers, a conservator shall act as fiduciary and shall observe the standards of care applicable to trustees under AS 13.36.225 - 13.36.290.

History -

(Sec. 1 ch 78 SLA 1972; am Sec. 2 ch 43 SLA 1998)

Revisors Notes -

The reference to "AS 13.36.225 - 13.36.290" was substituted for "AS 13.36.200 - 13.36.275" in 1998 to reflect the 1998 renumbering of those sections.

Decisions -

Cited in *Trapp v. State*, 53 P.3d 1128 (Alaska 2002).

Sec. 13.26.250. Inventory, implementation report, and records.

Within 90 days after distribution of the order of appointment, every conservator shall prepare and file with the appointing court a conservator implementation report and a complete inventory of the estate of the protected person together with an oath or affirmation that it is complete and accurate so far as the conservator is informed. The conservator shall provide a copy of it to the protected person if the protected person can be located, has attained the age of 14 years, and has sufficient mental capacity to understand these matters, and to any parent or guardian with whom the protected person resides. The conservator shall keep suitable records of the administration and exhibit them on request of any interested person.

History -

(Sec. 1 ch 78 SLA 1972; am Sec. 22 ch 84 SLA 2004)

Editors Notes -

Section 32(c), ch. 84, SLA 2004, provides that this section "as amended by sec. 22 of this Act, has the effect of changing Rule 17(e), Alaska Rules of Probate Procedure, by changing when a report is due and by adding additional material to be included in the report."

Sec. 13.26.255. Accounts.

A conservator shall submit a report to the court at least every year. In addition, a conservator shall account to the court for administration of the trust upon resignation or removal and at other times as the court may direct. On termination of the protected person's minority or disability, a conservator may account to the court or to the former protected person or the protected person's personal representative. Subject to appeal or vacation within the time permitted, an order, made upon notice and hearing, allowing an intermediate account of a conservator, adjudicates as to the conservator's liabilities concerning the matters considered in connection with it; and an order, made upon notice and hearing, allowing a final account, adjudicates as to all previously unsettled liabilities of the conservator to the protected person or the protected person's successors relating to the conservatorship. In connection with any account, the court may require a conservator to submit to a physical check of the estate in the conservator's control, to be made in any manner the court may specify.

History -

(Sec. 1 ch 78 SLA 1972; am Sec. 23 ch 84 SLA 2004)

Sec. 13.26.257. Visitor reports.

(a) The initial visitor report of a visitor appointed under AS 13.26.195(b) must include

(1) the results and analyses of medical and other tests and examinations performed that describe the proposed protected person's mental, emotional, physical, and educational condition, adaptive behavior, and social skills, and that specify the data on which the description is based;

(2) recommendations regarding the types and extent of assistance, if any, necessary to meet the essential requirements for managing the property and affairs of the proposed protected person;

(3) an evaluation of the proposed protected person's need for mental health treatment and whether there is a substantial probability that available treatment will significantly improve the proposed protected person's mental condition;

(4) an evaluation of the proposed protected person's need for educational or vocational assistance and whether the assistance can be made available to the protected person;

(5) an evaluation of the probability that the incapacity may significantly lessen, and the type of services or treatment that will facilitate improvement in the condition or skills of the proposed protected person;

(6) a list of the names and addresses of all individuals who examined, interviewed, or investigated the proposed protected person, and the names and addresses of all persons contacted in preparation of the visitor report;

(7) a summary of the information that

(A) was supplied by the person described in (6) of this subsection; and

(B) supports the conclusions of the visitor report;

(8) a description of the alternatives to conservatorship that were considered and not recommended and an explanation of why they are not feasible to meet the needs of the proposed protected person;

(9) a specification of the financial resources of the proposed protected person, the proposed protected person's entitlements to insurance benefits, and publicly operated or sponsored health, mental health, and welfare assistance that might be employed in the provision of services to the proposed protected person; and

(10) if conservatorship is recommended, a conservatorship outline that identifies

(A) potential conservators;

(B) the specific services necessary and available to protect the proposed protected person from serious damage to the proposed protected person's property and affairs;

(C) the means by which the services described in (B) of this paragraph may be financed;

(D) the specific, least restrictive authority needed by the conservator to provide the services described in (B) of this paragraph.

(b) In addition to any initial visitor report provided under (a) of this section, every third year, the court may appoint a visitor to file a report reviewing the conservatorship during the period since the last visitor report, if any.

(c) In addition to the reports under (a) and (b) of this section, at any time during a conservatorship, a court may appoint a visitor to file a report reviewing the conservatorship during the period since the last visitor report, if any.

(d) A visitor report provided under (b) or (c) of this section must include

(1) the name and address of the protected person and the conservator;

(2) the services being provided to the protected person by or through the conservator;

(3) the significant actions taken by the conservator during the reporting period in regard to the protected person;

(4) a financial accounting of the estate that has been subject to the possession or control of the conservator;

(5) a list of the number and nature of the contacts between the conservator and the protected person if the protected person does not reside with the conservator;

(6) any other information requested by the court or necessary or desirable in the opinion of the visitor.

History -

(Sec. 24 ch 84 SLA 2004)

Sec. 13.26.260. Conservators; title by appointment.

The appointment of a conservator vests in the conservator title as trustee to all property of the protected person, presently held or thereafter acquired, including title to any property theretofore held for the protected person by custodians or attorneys-in-fact. The appointment of a conservator is not a transfer or alienation within the meaning of general provisions of any federal or state statute or regulation, insurance policy, pension plan, contract, will or trust instrument, imposing restrictions upon or penalties for transfer or alienation by the protected person of any rights or interest, but this section does not restrict the ability of persons to make specific provision by contract or dispositive instrument relating to a conservator.

History -

(Sec. 1 ch 78 SLA 1972)

Sec. 13.26.265. Recording of conservator's letters.

Letters of conservatorship are evidence of transfer of all assets of a protected person to the conservator. An order terminating a conservatorship is evidence of transfer of all assets of the estate from the conservator to the protected person, or the protected person's successors. Subject to the requirements of general statutes governing the recordation of documents of title to land or other property, letters of conservatorship, and orders terminating conservatorships, may be recorded to give record notice of title as between the conservator and the protected person.

History -

(Sec. 1 ch 78 SLA 1972)

Revisors Notes -

Minor word changes related to the recording of documents were made in this section in 1988 under sec. 42, ch. 161, SLA 1988.

Cross References -

For recording laws, see AS 40.17.

Sec. 13.26.270. Sale, encumbrance, or transaction involving conflict of interest voidable.

Any sale or encumbrance to a conservator, the conservator's spouse, agent, or attorney, or any corporation or trust in which the conservator has a substantial beneficial interest, or any transaction which is affected by a substantial conflict of interest is voidable unless the transaction is approved by the court after notice to interested persons and others as directed by the court.

History -

(Sec. 1 ch 78 SLA 1972)

Sec. 13.26.275. Persons dealing with conservators; protection.

A person who in good faith either assists a conservator or deals with the conservator for value in any transaction other than those requiring a court order as provided in AS 13.26.200, is protected as if the conservator properly exercised the power. The fact that a person knowingly deals with a conservator does not alone require the person to inquire into the existence of a power or the propriety of its exercise, except that restrictions on powers of conservators which are endorsed on letters as provided in AS 13.26.290 are effective as to third persons. A person is not bound to see to the proper application of estate assets paid or delivered to a conservator. The protection here expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters. The protection here expressed is not by substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.

History -

(Sec. 1 ch 78 SLA 1972)

Sec. 13.26.280. Powers of conservator in administration.

(a) A conservator has all of the powers conferred herein and any additional powers conferred by law on trustees in this state. In addition, a conservator of the estate of an unmarried

minor, as to whom no one has parental rights, has the duties and powers of a guardian of a minor described in AS 13.26.070 until the minor attains the age of 18 or marries, but the parental rights so conferred on a conservator do not preclude appointment of a guardian as provided by AS 13.26.030 - 13.26.085.

(b) A conservator has power without court authorization or confirmation, to invest and reinvest funds of the estate as would a trustee.

(c) A conservator, acting reasonably in efforts to accomplish the purpose for which the conservator was appointed, may act, without court authorization or confirmation, to

(1) collect, hold and retain assets of the estate including land in another state, until, in the conservator's judgment, disposition of the assets should be made, and the assets may be retained even though they include an asset in which the conservator is personally interested;

(2) receive additions to the estate;

(3) continue or participate in the operation of any business or other enterprise;

(4) acquire an undivided interest in an estate asset in which the conservator, in any fiduciary capacity, holds an undivided interest;

(5) invest and reinvest estate assets in accordance with (b) of this section;

(6) deposit estate funds in a bank including a bank operated by the conservator;

(7) acquire or dispose of an estate asset including land in another state for cash or on credit, at public or private sale; and to manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;

(8) make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings;

(9) subdivide, develop, or dedicate land to public use; to make or obtain the vacation of plats and adjust boundaries; to adjust differences in valuation on exchange or to partition by giving or receiving considerations; and to dedicate easements to public use without consideration;

(10) enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the conservatorship;

(11) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(12) grant an option involving disposition of an estate asset, to take an option for the acquisition of any asset;

- (13) vote a security, in person or by general or limited proxy;
- (14) pay calls, assessments, and any other sums chargeable or accruing against or on account of securities;
- (15) sell or exercise stock subscription or conversion rights; to consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;
- (16) hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery, but the conservator is liable for any act of the nominee in connection with the stock so held;
- (17) insure the assets of the estate against damage or loss, and the conservator against liability with respect to third persons;
- (18) borrow money to be repaid from estate assets or otherwise; to advance money for the protection of the estate or the protected person, and for all expenses, losses, and liability sustained in the administration of the estate or because of the holding or ownership of any estate assets, and the conservator has a lien on the estate as against the protected person from advances so made;
- (19) pay or contest any claim; to settle a claim by or against the estate or the protected person by compromise, arbitration, or otherwise; and to release, in whole or in part, any claim belonging to the estate to the extent that the claim is uncollectible;
- (20) pay taxes, assessments, compensation of the conservator, and other expenses incurred in the collection, care, administration, and protection of the estate;
- (21) allocate items of income or expense to either estate income or principal, as provided by law, including creation of reserves out of income for depreciation, obsolescence, or amortization, or for depletion in mineral or timber properties;
- (22) pay any sum distributable to a protected person or the protected person's dependent, without liability to the conservator, by paying the sum to the distributee or by paying the sum for the use of the distributee either to the distributee's guardian or if none, to a relative or other person with custody of the distributee's person;
- (23) employ persons, including attorneys, auditors, investment advisors, or agents, even though they are associated with the conservator to advise or assist the conservator in the performance of administrative duties; to act upon their recommendation without independent investigation; and instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary;
- (24) prosecute or defend actions, claims or proceedings in any jurisdiction for the protection of estate assets and of the conservator in the performance of duties; and

(25) execute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the conservator.

History -

(Sec. 1 ch 78 SLA 1972; am Sec. 29, 30 ch 56 SLA 1973; am Sec. 7 ch 99 SLA 2004)

Decisions -

Authority to settle lawsuits. - This section gives a conservator authority to settle a lawsuit. In the Matter of S.H., 987 P.2d 735 (Alaska 1999).

Guardian appointed for an employee in a workers' compensation claim had the authority to dismiss the employee's action to overturn a compromise and release agreement settling the employee's workers' compensation claim with his employer. Gunter v. Kathy-O-Estates, 87 P.3d 65 (Alaska 2004).

Sec. 13.26.285. Distributive duties and powers of conservator.

(a) A conservator may expend or distribute income or principal of the estate without court authorization or confirmation for the support, education, care, or benefit of the protected person and the protected person's dependents in accordance with the following principles:

(1) the conservator is to consider recommendations relating to the appropriate standard of support, education, and benefit for the protected person made by a parent or guardian, if any; the conservator may not be surcharged for sums paid to persons or organizations actually furnishing support, education, or care to the protected person pursuant to the recommendations of a parent or guardian of the protected person unless the conservator knows that the parent or guardian is deriving personal financial benefit therefrom, including relief from any personal duty of support, or unless the recommendations are clearly not in the best interests of the protected person;

(2) the conservator is to expend or distribute sums reasonably necessary for the support, education, care, or benefit of the protected person with due regard to

(A) the size of the estate, the probable duration of the conservatorship, and the likelihood that the protected person, at some future time, may be fully able to manage the protected person's affairs and the estate which has been conserved;

(B) the accustomed standard of living of the protected person and members of the protected person's household;

(C) other funds or sources used for the support of the protected person;

(3) the conservator may expend funds of the estate for the support of persons legally dependent on the protected person and others who are members of the protected person's household who are unable to support themselves and who are in need of support;

(4) funds expended under this subsection may be paid by the conservator to any person, including the protected person to reimburse for expenditures which the conservator might have made, or in advance for services to be rendered to the protected person when it is reasonable to expect that they will be performed and where advance payments are customary or reasonably necessary under the circumstances.

(b) If the estate is ample to provide for the purposes implicit in the distributions authorized by (a) of this section, a conservator for a protected person other than a minor has power to make gifts to charity and other objects as the protected person might have been expected to make, in amounts which do not exceed in total for any year 20 percent of the income from the estate.

(c) When a minor who has not been adjudged disabled under AS 13.26.165(2) attains majority, the conservator, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former protected person as soon as possible.

(d) When the conservator is satisfied that a protected person's disability (other than minority) has ceased, the conservator, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the formerly protected person as soon as possible.

(e) If a protected person dies, the conservator shall deliver to the court for safekeeping any will of the deceased protected person that may have come into the conservator's possession and inform the executor or a beneficiary named in the will that the will has been so delivered. Once a conservator knows that the protected person has died, the conservator may not exercise authority over the protected person's affairs and estate except to pay reasonable burial expenses and to preserve, account for, and transfer control of assets to a personal representative, a temporary property custodian appointed by the court, or a person authorized to take custody of personal property by affidavit under AS 13.16.680. If, after 40 days from the death of the protected person, no other person has been appointed personal representative and no application or petition for appointment is before the court, the conservator may apply to exercise the powers and duties of a personal representative in order to proceed with administering and distributing the decedent's estate without additional or further appointment. Upon application for an order granting the powers of a personal representative to a conservator, after notice to any person demanding notice under AS 13.16.070 and to any person nominated executor in any will of which the applicant is aware, the court may order the conferral of the power upon determining that there is no objection, and endorse the letters of the conservator to note that the formerly protected person is deceased and that the conservator has acquired all of the powers and duties of a personal representative. The making and entry of an order under this section has the effect of an order of appointment of a personal representative as provided in AS 13.16.115 and 13.16.245 - 13.16.655 except that estate

in the name of the conservator, after administration, may be distributed to the decedent's successors without prior retransfer to the conservator as personal representative.

History -

(Sec. 1 ch 78 SLA 1972; am Sec. 25 ch 84 SLA 2004)

Sec. 13.26.290. Enlargement or limitation of powers of conservator.

Subject to the restrictions in AS 13.26.200(4), the court may confer on a conservator at the time of appointment or later, in addition to the powers conferred by AS 13.26.280 and 13.26.285, any power which the court itself could exercise under AS 13.26.200(2) and (3). The court may, at the time of appointment or later, limit the powers of a conservator otherwise conferred by AS 13.26.280 and 13.26.285 or previously conferred by the court, and may at any time relieve the conservator of any limitation. If the court limits any power conferred on the conservator by AS 13.26.280 and 13.26.285, the limitation shall be endorsed upon the letters of appointment.

History -

(Sec. 1 ch 78 SLA 1972)

Sec. 13.26.295. Preservation of estate plan.

In investing the estate, and in selecting assets of the estate for distribution under AS 13.26.285(a) and (b), in utilizing powers of revocation or withdrawal available for the support of the protected person, and exercisable by the conservator or the court, the conservator and the court should take into account any known estate plan of the protected person, including a will, any revocable trust of which the protected person is settlor, and any contract, transfer, or joint ownership arrangement with provisions for payment or transfer of benefits or interests at death to another or others which the protected person may have originated. The conservator may examine the will of the protected person.

History -

(Sec. 1 ch 78 SLA 1972)

Sec. 13.26.300. Claims against estate and protected person; enforcement.

(a) Subject to AS 13.26.285(e), a conservator shall pay from the estate all just claims against the estate and against the protected person arising before or after the conservatorship was

established upon their presentation and allowance. A claim is considered presented on the first to occur of receipt of the written statement of claim by the conservator or the filing of the claim with the court. A presented claim is allowed if it is not disallowed by written statement mailed by the conservator to the claimant within 60 days after its presentation. The presentation of a claim tolls any statute of limitations relating to the claim until 30 days after its disallowance. A claim may be presented by either of the following methods:

(1) the claimant may deliver or mail to the conservator a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed;

(2) the claimant may file a written statement of the claim, in the form prescribed by rule, with the clerk of the court and deliver or mail a copy of the statement to the conservator.

(b) A claimant whose claim has not been paid may petition the court for determination of the claim at any time before it is barred by the applicable statute of limitation, and, upon due proof, procure an order for its allowance and payment from the estate. If a proceeding is pending against a protected person at the time of appointment of a conservator or is initiated against the protected person thereafter, the moving party must give notice of the proceeding to the conservator if the outcome is to constitute a claim against the estate.

(c) If it appears that the estate in a conservatorship is likely to be exhausted before all existing claims are paid, preference is to be given to prior claims for the care, maintenance, and education of the protected person or the protected person's dependents and existing claims for expenses of administration.

History -

(Sec. 1 ch 78 SLA 1972; am Sec. 31 ch 56 SLA 1973; am Sec. 26 ch 84 SLA 2004; am Sec. 25 ch 53 SLA 2008)

Amendment Notes -

The 2008 amendment, effective September 2, 2008, added "Subject to AS 13.26.285(e)" at the beginning of subsection (a), and deleted "but before the protected person dies" following "was established" in the first sentence of that subsection.

Sec. 13.26.305. Individual liability of conservator.

(a) Unless otherwise provided in the contract, a conservator is not individually liable on a contract properly entered into in a fiduciary capacity in the course of administration of the estate unless the conservator fails to reveal the representative capacity and identify the estate in the contract.

(b) The conservator is individually liable for obligations arising from ownership or control of property of the estate or for torts committed in the course of administration of the estate only if personally at fault.

(c) Claims based on contracts entered into by a conservator in a fiduciary capacity, on obligations arising from ownership or control of the estate, or on torts committed in the course of administration of the estate may be asserted against the estate by proceeding against the conservator in the fiduciary capacity, whether or not the conservator is individually liable for them.

(d) Any question of liability between the estate and the conservator individually may be determined in a proceeding for accounting, surcharge, or indemnification, or other appropriate proceeding or action.

History -

(Sec. 1 ch 78 SLA 1972)

Decisions -

Claims against conservator. - In the context of whether liability claims may be brought against a conservator, AS 13.26.305(d) plainly allows such claims. *Trapp v. State*, 53 P.3d 1128 (Alaska 2002).

Sec. 13.26.310. Termination of proceeding.

The protected person, the protected person's personal representative, the conservator, or any other interested person may petition the court to terminate the conservatorship. A protected person seeking termination is entitled to the same rights and procedures as in an original proceeding for a protective order. The court, upon determining after notice and hearing that the minority or disability of the protected person has ceased, may terminate the conservatorship. Upon termination, title to assets of the estate passes to the former protected person or to the person's successors subject to provision in the order for expenses of administration or to conveyances from the conservator to the former protected person or the person's successors, to evidence the transfer.

History -

(Sec. 1 ch 78 SLA 1972)

Sec. 13.26.315. Payment of debt and delivery of property to foreign conservator without local proceedings.

(a) Any person indebted to a protected person, or having possession of property or of an instrument evidencing a debt, stock, or chose in action belonging to a protected person may pay or deliver to a conservator, guardian of the estate, or other like fiduciary appointed by a court of the state of residence of the protected person, upon being presented with proof of the fiduciary's appointment and an affidavit made by the fiduciary or on the fiduciary's behalf stating:

(1) that no protective proceeding relating to the protected person is pending in this state; and

(2) that the foreign conservator is entitled to payment or to receive delivery.

(b) If the person to whom the affidavit is presented is not aware of any protective proceeding pending in this state, payment or delivery in response to the demand and affidavit discharges the debtor or possessor.

History -

(Sec. 1 ch 78 SLA 1972)

Sec. 13.26.320. Foreign conservators.

If no local conservator has been appointed and no petition in a protective proceeding is pending in this state, a domiciliary foreign conservator may file with a court in this state in a judicial district in which property belonging to the protected person is located, authenticated copies of appointment and of any official bond given. Thereafter, the domiciliary foreign conservator may exercise as to assets in this state all powers of a local conservator and may maintain actions and proceedings in this state subject to any conditions imposed upon nonresident parties generally.

History -

(Sec. 32 ch 56 SLA 1973)

Article 05. POWERS OF ATTORNEY

Sec. 47.24.010. Reports of harm.

(a) Except as provided in (e) and (f) of this section, the following persons who, in the performance of their professional duties, have reasonable cause to believe that a vulnerable adult suffers from abandonment, exploitation, abuse, neglect, or self-neglect shall, not later than 24 hours after first having cause for the belief, report the belief to the department's central information and referral service for vulnerable adults:

- (1) a physician or other licensed health care provider;
- (2) a mental health professional as defined in AS 47.30.915(11) and including a marital and family therapist licensed under AS 08.63;
- (3) a pharmacist;
- (4) an administrator of a nursing home, residential care or health care facility;
- (5) a guardian or conservator;
- (6) a police officer;
- (7) a village public safety officer;
- (8) a village health aide;
- (9) a social worker;
- (10) a member of the clergy;
- (11) a staff employee of a project funded by the Department of Administration for the provision of services to older Alaskans, the Department of Health and Social Services, or the Council on Domestic Violence and Sexual Assault;
- (12) an employee of a personal care or home health aide program;
- (13) an emergency medical technician or a mobile intensive care paramedic;
- (14) a caregiver of the vulnerable adult;
- (15) a certified nurse aide.

(b) A report made under this section may include the name and address of the reporting person and must include

- (1) the name and address of the vulnerable adult;
- (2) information relating to the nature and extent of the abandonment, exploitation, abuse, neglect, or self-neglect;

(3) other information that the reporting person believes might be helpful in an investigation of the case or in providing protection for the vulnerable adult.

(c) The department or its designees shall report to the Department of Law any person required by (a) of this section to report who fails to comply with this section. A person listed in (a) of this section who, because of the circumstances, should have had reasonable cause to believe that a vulnerable adult suffers from abandonment, exploitation, abuse, neglect, or self-neglect but who knowingly fails to comply with this section is guilty of a class B misdemeanor. If a person convicted under this section is a member of a profession or occupation that is licensed, certified, or regulated by the state, the court shall notify the appropriate licensing, certifying, or regulating entity of the conviction.

(d) This section does not prohibit a person listed in (a) of this section, or any other person, from reporting cases of abandonment, exploitation, abuse, neglect, or self-neglect of a vulnerable adult that have come to the person's attention.

(e) If a person making a report under this section believes that immediate action is necessary to protect the vulnerable adult from imminent risk of serious physical harm due to abandonment, exploitation, abuse, neglect, or self-neglect and the reporting person cannot immediately contact the department's central information and referral service for vulnerable adults, the reporting person may make the report to a police officer or a village public safety officer. The police officer or village public safety officer shall take immediate action to protect the vulnerable adult and shall, at the earliest opportunity, notify the department. A person may not bring an action for damages against a police officer, village public safety officer, the state, or a political subdivision of the state based on a decision under this subsection to take or not to take immediate action to protect a vulnerable adult. If a decision is made under this subsection to take immediate action to protect a vulnerable adult, a person may not bring an action for damages based on the protective actions taken unless the protective actions were performed with gross negligence or intentional misconduct; damages awarded in the action may include only direct economic compensatory damages for personal injury.

(f) A person listed in (a) of this section who reports to the long term care ombudsman under AS 47.62.015, or to the Department of Health and Social Services, that a vulnerable adult has been exploited, abused, or neglected in an out-of-home care facility is considered to have met the duty to report under (a) of this section.

(g) [Repealed, Sec. 14 ch 129 SLA 1994].

(h) [Repealed, Sec. 14 ch 129 SLA 1994].

History -

(Sec. 2 ch 36 SLA 1983; am Sec. 4 ch 108 SLA 1988; am Sec. 10 ch 129 SLA 1992; am Sec. 24 ch 36 SLA 1993; am Sec. 2 ch 103 SLA 1994; am Sec. 2 - 7, 14 ch 129 SLA 1994; am Sec. 11 ch 131 SLA 1994; am Sec. 13 ch 2 SLA 1998; am E.O. No. 102 Sec. 3 (2001))

Revisors Notes -

The amendment made to (a) of this section by Sec. 11, ch. 131, SLA 1994 is not set out above because it was made obsolete by the amendment made by Sec. 2, ch. 129, SLA 1994.

Decisions -

Whistleblower provisions do not extend to volunteers. - Protected relationships under the "whistleblower" provisions of this section does not protect the intangible benefits of volunteering. *McAdoo v. Diaz*, 884 P.2d 1385 (Alaska 1994).

Cited in *Hymes v. DeRamus*, 222 P.3d 874 (Alaska 2010).

Collateral Refs -

Validity, construction, and application of state civil and criminal elder abuse laws. 113 ALR5th 431.

Sec. 47.24.011. Duties of the department regarding services and protection for vulnerable adults.

In order to facilitate the provision of supportive and protective services for vulnerable adults, the department shall

(1) compile information on available supportive and protective services for vulnerable adults in the state;

(2) establish, publicize, and maintain a central information and referral service for vulnerable adults;

(3) develop and coordinate a statewide system to serve vulnerable adults who are in need of protective services;

(4) establish criteria and procedures for the authorization and supervision of other state agencies or community-based service providers to serve as designees of the department under this chapter;

(5) in accordance with this chapter, designate other state agencies or community-based service providers to deliver supportive and protective services to vulnerable adults who are in need of protective services;

(6) develop within the central information and referral service for vulnerable adults a central registry for reports of vulnerable adults in need of protective services;

(7) maintain confidentiality of records as provided for in AS 47.24.050; and

(8) adopt regulations to carry out the purposes of this chapter.

History -

(Sec. 8 ch 129 SLA 1994)

Sec. 47.24.013. Reports of abandonment, exploitation, abuse, neglect, or self-neglect of vulnerable adults in out-of-home care facilities.

(a) If a report received under AS 47.24.010 regards the abandonment, exploitation, abuse, neglect, or self-neglect of a vulnerable adult who is 60 years of age or older that is alleged to have been committed by or to have resulted from the negligence of the staff or a volunteer of an out-of-home care facility, including a facility licensed under AS 47.32, in which the vulnerable adult resides, the department shall transfer the report for investigation to the long term care ombudsman under AS 47.62.015.

(b) The department shall investigate a report received under AS 47.24.010 regarding the abandonment, exploitation, abuse, neglect, or self-neglect of a vulnerable adult who is less than 60 years of age that is alleged to have been committed by or to have resulted from the negligence of the staff or a volunteer of an out-of-home care facility in which the vulnerable adult resides.

(c) Upon receipt of a report under (a) or (b) of this section, the long term care ombudsman and the department shall

(1) conduct an investigation as appropriate under AS 47.62.015 or this title, respectively;

(2) coordinate and cooperate in their responses to and investigations of the report if their jurisdictions overlap;

(3) provide the results of their actions or investigations to the central information and referral service of the department within 60 days after the receipt of the report.

(d) If the long term care ombudsman receives directly a report regarding the abandonment, exploitation, abuse, neglect, or self-neglect of a vulnerable adult in an out-of-home care facility, the ombudsman shall provide the report, and the results of the ombudsman's actions or investigations regarding the report, to the central information and referral service of the department. The department may investigate the report as described in AS 47.24.015 if the department determines that action is appropriate.

(e) After the results of an investigation by the long term care ombudsman are provided to the department under (c) or (d) of this section, the department may make a final determination as described in AS 47.24.015(b), based on the investigation results provided, regarding services to be offered to the vulnerable adult.

(f) If an investigation conducted by an agency under this section shows reasonable cause to believe that a certified nurse aide has committed abuse, neglect, or misappropriation of property, the agency shall report the matter to the Board of Nursing.

#### History -

(Sec. 8 ch 129 SLA 1994; am Sec. 14 ch 2 SLA 1998; am E.O. No. 102 Sec. 4, 5 (2001); am E.O. No. 108 Sec. 10 - 14 (2003); am Sec. 26 ch 57 SLA 2005)

#### Amendment Notes -

The 2003 amendment, effective July 1, 2003, rewrote subsections (a)-(e) to reflect the transfer of functions to the Department of Health and Social Services.

The 2005 amendment, effective July 2, 2005, updated a section reference in subsection (a).

#### Decisions -

No private right of action. - Nothing in this section or in AS 47.24.015(a) creates a private right of action for elder abuse. Superior court did not err in granting summary judgment with respect to the prisoner's claim for failure to report elder abuse. *Hymes v. DeRamus*, 222 P.3d 874 (Alaska 2010).

#### Sec. 47.24.015. Action on reports.

(a) Upon the department's receipt of a report under AS 47.24.010 that is not transferred under AS 47.24.013, the department, or its designee, shall promptly initiate an investigation to determine whether the vulnerable adult who is the subject of the report suffers from abandonment, exploitation, abuse, neglect, or self-neglect. The department, or its designee, shall conduct a face-to-face interview with the subject of the report unless that person is unconscious or the department, or its designee, has determined that a face-to-face interview could further endanger the vulnerable adult.

(b) After the department conducts an investigation under (a) of this section, the department shall prepare a written report of the investigation, including findings, recommendations, and a determination of whether and what kind of supportive or protective services are needed by and are to be offered to the vulnerable adult. After the department's designee conducts an investigation under (a) of this section, the designee shall prepare a written report of the investigation, including

findings, recommendations, and a proposed determination of whether and what kind of supportive or protective services are to be offered to the vulnerable adult. The department shall prepare, and attach to the designee's report, a final determination regarding services to be offered to the vulnerable adult.

(c) The department, or its designee, shall immediately terminate an investigation under this section upon the request of the vulnerable adult who is the subject of the report made under AS 47.24.010. However, the department or its designee may not terminate the investigation if the investigation to that point has resulted in probable cause to believe that the vulnerable adult is in need of protective services and the request is made personally by the vulnerable adult and the vulnerable adult is not competent to make the request on the adult's own behalf, or the request is made by the vulnerable adult's guardian, attorney-in-fact, or surrogate decision maker and that person is the alleged perpetrator of the abandonment, exploitation, abuse, or neglect of the vulnerable adult and is being investigated under this chapter. If the department has probable cause to believe that the vulnerable adult is in need of protective services,

(1) the department may petition the court as set out in AS 47.24.019;

(2) the department or its designee may refer the report made to the department under AS 47.24.010 to a police officer for criminal investigation; or

(3) in cases involving fraud, the department or its designee may refer the report made to the department under AS 47.24.010 to the office of public advocacy for investigation; in this paragraph, "fraud" has the meaning given in AS 44.21.415.

(d) Upon request, a person who made a report to the department under AS 47.24.010 regarding a vulnerable adult shall be notified of the status of the investigation conducted under (a) of this section regarding that vulnerable adult.

(e) A person may not bring an action for damages based on a decision under this section to offer or not to offer protective services to a vulnerable adult.

(f) A person may not bring an action for damages based on the provision of protective services under this section unless the action is based on gross negligence or intentional misconduct. The damages awarded in an action under this section may include only direct economic compensatory damages for personal injury.

(g) If an investigation under this section shows reasonable cause to believe that a certified nurse aide has committed abuse, neglect, or misappropriation of property, the department shall report the matter to the Board of Nursing.

History -

(Sec. 8 ch 129 SLA 1994; am Sec. 15 ch 2 SLA 1998; am Sec. 1 ch 21 SLA 1999; am Sec. 3 ch 64 SLA 2006)

Amendment Notes -

The 2006 amendment, effective September 13, 2006, added paragraph (c)(3), and made related changes.

Decisions -

No private right of action. - Nothing in AS 47.24.013(a) or this section creates a private right of action for elder abuse. Superior court did not err in granting summary judgment with respect to the prisoner's claim for failure to report elder abuse. *Hymes v. DeRamus*, 222 P.3d 874 (Alaska 2010).

Sec. 47.24.016. Surrogate decision makers for vulnerable adults.

(a) If the department determines under AS 47.24.015 that a vulnerable adult is in need of protective services, but the department cannot obtain the vulnerable adult's consent to receive the services because the vulnerable adult is unable to consent or lacks decision making capacity, and has no guardian or attorney-in-fact to serve as the vulnerable adult's surrogate decision maker, the department may select from the following list, in the order of priority listed, an individual who is willing to be the vulnerable adult's surrogate decision maker for the purpose of deciding whether to consent to the vulnerable adult's receipt of protective services:

- (1) the vulnerable adult's spouse, unless
  - (A) the vulnerable adult and the spouse have separate domiciles; or
  - (B) the vulnerable adult or the spouse have initiated divorce or dissolution proceedings;
- (2) an individual who lives with the vulnerable adult in a spousal relationship or as a domestic partner and who is 18 years of age or older;
- (3) a son or daughter of the vulnerable adult who is 18 years of age or older;
- (4) a parent of the vulnerable adult;
- (5) a brother or sister of the vulnerable adult who is 18 years of age or older; or
- (6) a close friend or relative of the vulnerable adult who is 18 years of age or older.

(b) An individual from the list in (a) of this section may not be selected as a surrogate decision maker if

(1) the department determines that individual does not possess decision making capacity;  
or

(2) there are allegations that individual is a perpetrator of the abandonment, exploitation, abuse, or neglect of the vulnerable adult.

(c) If the department intends to select a surrogate decision maker from a priority level in the list in (a) of this section and there is more than one individual at that priority level who is willing to be the surrogate decision maker, those individuals

(1) may select from amongst themselves, by majority vote, an individual to serve as the surrogate decision maker; or

(2) as a group may serve as the surrogate decision maker and reach decisions by consensus.

(d) The department may not continue to provide protective services to a vulnerable adult based on the consent of a surrogate decision maker serving under this section if the department determines that the vulnerable adult has become able to consent or has regained decision making capacity since the surrogate's consent was given. The department may continue protective services to a vulnerable adult who has become able to consent or has regained decision making capacity only if the vulnerable adult consents.

History -

(Sec. 8 ch 129 SLA 1994)

Decisions -

Husband not entitled to automatically assume the role of his wife's surrogate decision maker. - Dismissal of the husband's action alleging that he suffered emotional distress caused by the medical center's release of his wife to her daughter was appropriate, in part because a spouse was not entitled to automatically assume the role of a surrogate decision maker when the health department had not sought the spouse's consent for services. Even if the husband had been acting as his wife's agent, he would have formed a contract between the wife and the medical center that the wife could have enforced, not the husband. *Clemensen v. Providence Alaska Med. Ctr.*, 203 P.3d 1148 (Alaska 2009).

Sec. 47.24.017. Delivery of protective services for vulnerable adults.

(a) If the department determines under AS 47.24.015 that a vulnerable adult is in need of protective services and either the vulnerable adult, the vulnerable adult's guardian or attorney-in-fact, or a surrogate decision maker selected under AS 47.24.016 consents to receipt of the protective services, and to the extent that resources are available, the department shall ensure that

the protective services for the vulnerable adult are provided by the department or its designee within 10 working days after the department received the report under AS 47.24.010 regarding the abandonment, exploitation, abuse, neglect, or self-neglect of the vulnerable adult. However, if circumstances beyond the control of the department or the department's designee make it impossible to provide the protective services within the 10 working days, the department shall ensure that the services are provided as soon as possible after that time.

(b) Notwithstanding (a) of this section, if the department determines that an emergency situation exists that necessitates provision of protective services to a vulnerable adult, the department may provide the necessary protective services in a manner determined by the department to be the most appropriate in light of the emergency situation, regardless of whether the vulnerable adult or any other person has consented to receipt of the services.

(c) To the extent practicable, protective services provided under this section shall be delivered in a culturally relevant manner that protects the vulnerable adult's right to the least restrictive environment and maximizes that person's own decision making capabilities.

(d) If the protective services under this section include the placement of a vulnerable adult in an assisted living home at the state's expense, the minimum daily reimbursement rate to the assisted living home for the vulnerable adult is \$70. The department may, under its regulations, provide for a daily rate higher than \$70 if the additional care provided to the vulnerable adult in the assisted living home justifies the additional reimbursement. In this subsection, "assisted living home" means an assisted living home licensed under AS 47.32.

#### History -

(Sec. 8 ch 129 SLA 1994; am Sec. 2 - 4 ch 83 SLA 2000; am Sec. 27 ch 57 SLA 2005)

#### Cross References -

For applicability provisions relating to the 2000 addition of subsection (d) by sec. 2, ch. 83, SLA 2000, and the 2001 and 2002 amendments of that subsection by secs. 3 and 4, ch. 83, SLA 2000, see sec. 14, ch. 83, SLA 2000 in the 2000 Temporary & Special Acts.

#### Amendment Notes -

The 2005 amendment, effective July 2, 2005, updated a section reference in subsection (d).

Sec. 47.24.019. Petitioning court for certain protective services.

(a) If, after investigation under AS 47.24.015, the department has reasonable cause to believe that a vulnerable adult is in need of protective services and is an incapacitated person, the department may petition the court under AS 13.26 for appointment of a guardian or temporary

guardian, or for a change of guardian, for the vulnerable adult for the purpose of deciding whether to consent to the receipt of protective services for the vulnerable adult.

(b) If, after an investigation under AS 47.24.015, the department has reasonable cause to believe that a vulnerable adult is mentally ill and as a result either is likely to cause serious harm to self or others or is gravely disabled, the department may petition the court under AS 47.30.700 to initiate an involuntary commitment proceeding.

(c) If a vulnerable adult who has consented to receive protective services, or on whose behalf consent to receive protective services has been given, is prevented by a caregiver, guardian, attorney-in-fact, or surrogate decision maker from receiving those services, the department may petition the superior court for an injunction restraining the caregiver, guardian, attorney-in-fact, or surrogate decision maker from interfering with the provision of protective services to the vulnerable adult.

History -

(Sec. 8 ch 129 SLA 1994; am Sec. 2, 3 ch 21 SLA 1999)

Sec. 47.24.020. , 47.24.030] Action; protective services. [Repealed, Sec. 14 ch 129 SLA 1994].

Repealed or Renumbered

Sec. 47.24.040. Monitoring.

If ongoing protective services are provided to a vulnerable adult under AS 47.24.017, the department shall monitor the adult's situation, as the department considers appropriate, until the department determines that the protective services are no longer needed.

History -

(Sec. 2 ch 36 SLA 1983; am Sec. 9 ch 129 SLA 1994)

Sec. 47.24.050. Confidentiality of reports.

(a) Investigation reports and reports of the abandonment, exploitation, abuse, neglect, or self-neglect of a vulnerable adult filed under this chapter are confidential and are not subject to public inspection and copying under AS 40.25.110 - 40.25.125. However, in accordance with this chapter and regulations adopted under this chapter, investigation reports may be used by appropriate agencies or individuals inside and outside the state, in connection with investigations or

judicial proceedings involving the abandonment, exploitation, abuse, neglect, or self-neglect of a vulnerable adult.

(b) The department shall disclose a report of the abandonment, exploitation, abuse, neglect, or self-neglect of a vulnerable adult if the vulnerable adult who is the subject of the report or the vulnerable adult's guardian, attorney-in-fact, or surrogate decision maker consents in writing. The department may not disclose a report of the abandonment, exploitation, abuse, neglect, or self-neglect of a vulnerable adult to the vulnerable adult's guardian, attorney-in-fact, or surrogate decision maker if that person is an alleged perpetrator of the abandonment, exploitation, abuse, or neglect of the vulnerable adult and is being investigated under this chapter. The department shall, upon request, disclose the number of verified reports of abandonment, exploitation, abuse, neglect, or self-neglect of a vulnerable adult that occurred at an institution that provides care for vulnerable adults or that were the result of actions or inactions of a public home care provider.

History -

(Sec. 2 ch 36 SLA 1983; am Sec. 4 ch 45 SLA 1994; am Sec. 10 ch 129 SLA 1994; am Sec. 4 ch 21 SLA 1999)

Revisors Notes -

In 2000, "AS 40.25.110 - 40.25.125" was substituted for "AS 09.25.110 - 09.25.125" to reflect the 2000 renumbering of AS 09.25.110 - 09.25.125.

Sec. 47.24.060. Authority of the department. [Repealed, Sec. 14 ch 129 SLA 1994].

Repealed or Renumbered

Sec. 47.24.070. Required review of proposed regulations.

Before adoption by the department, regulations to implement this chapter shall be provided to the Alaska Commission on Aging established under AS 47.45.200 for review.

History -

(Sec. 2 ch 36 SLA 1983; am Sec. 11 ch 129 SLA 1994; am Sec. 12 ch 131 SLA 1994; am Sec. 2 ch 24 SLA 2004; am Sec. 32 ch 99 SLA 2004)

Amendment Notes -

The first 2004 amendment, effective July 24, 2004, substituted "AS 47.45.200" for "AS 44.21.200."

The second 2004 amendment, effective June 26, 2004, substituted "AS 47.44.200" for "AS 44.21.200."

Sec. 47.24.075. - 47.24.110| Reports; definitions. [Repealed, Sec. 14 ch 129 SLA 1994].

Repealed or Renumbered

Sec. 47.24.120. Immunity from liability; retaliation prohibited.

(a) A person who in good faith makes a report under AS 47.24.010, regardless of whether the person is required to do so, is immune from civil or criminal liability that might otherwise be incurred or imposed for making the report.

(b) An employer or supervisor of a person who in good faith makes a report under AS 47.24.010 may not discharge, demote, transfer, reduce pay or benefits or work privileges of, prepare a negative work performance evaluation of, or take other detrimental action against the person because the person made the report. The person making the report may bring a civil action for compensatory and punitive damages against an employer or supervisor who violates this subsection. In the civil action there is a rebuttable presumption that the detrimental action by the employer or supervisor was retaliatory if it was taken within 90 days after the report was made.

History -

(Sec. 3 ch 42 SLA 1988; am Sec. 12 ch 129 SLA 1994)

Sec. 47.24.130. Treatment through spiritual means.

This chapter may not be construed to mean that a person is abused, neglected, self-neglected, vulnerable, unable to consent, abandoned, exploited, or in need of emergency or protective services for the sole reason that the person relies on or is being furnished treatment by spiritual means through prayer alone in accordance with the tenets and practices of a church or religious denomination of which the person is a member or adherent, provided that the person consents to the treatment through spiritual means only and the treatment is administered by an accredited practitioner of the church or religious denomination. In this section, "church or religious denomination" has the meaning given to "religious organization" in AS 05.15.690.

History -

(Sec. 13 ch 129 SLA 1994)

Revisors Notes -

In 1999, "AS 05.15.690" was substituted for "AS 05.15.210" to reflect the 1994 renumbering of AS 05.15.210.

Sec. 47.24.900. Definitions.

In this chapter,

- (1) "abandonment" means desertion of a vulnerable adult by a caregiver;
- (2) "abuse" means
  - (A) the wilful, intentional, or reckless nonaccidental, and nontherapeutic infliction of physical pain, injury, or mental distress; or
  - (B) sexual assault under AS 11.41.410 or 11.41.420;
- (3) "caregiver" means
  - (A) a person who is providing care to a vulnerable adult as a result of a family relationship, or who has assumed responsibility for the care of a vulnerable adult voluntarily, by contract, or by court order; or
  - (B) an employee of an out-of-home care facility who provides care to one or more vulnerable adults;
- (4) "decision making capacity" means the ability to understand and appreciate the nature and consequences of a decision and the ability to reach and communicate an informed decision;
- (5) "department" means the Department of Health and Social Services;
- (6) "designee" means another state agency or a community-based program, individual, or provider of supportive services that has been licensed, or authorized by agreement with the department, to provide one or more services to vulnerable adults;
- (7) "exploitation" means unjust or improper use of another person or another person's resources for one's own profit or advantage;
- (8) "incapacitated person" means a person whose ability to receive and evaluate information or to communicate decisions is impaired to the extent that the person lacks the ability to provide or arrange for the essential requirements for the person's physical health or safety without court-ordered assistance;

(9) "neglect" means the intentional failure by a caregiver to provide essential care or services necessary to maintain the physical and mental health of the vulnerable adult;

(10) "police officer" has the meaning given in AS 18.65.290;

(11) "protective services" means services that are intended to prevent or alleviate harm resulting from abandonment, exploitation, abuse, neglect, or self-neglect and that are provided to a vulnerable adult in need of protection; "protective services" includes protective placement;

(12) "public home care provider" has the meaning given in AS 47.05.017(c);

(13) "self-neglect" means an act or omission by a vulnerable adult that results, or could result in the deprivation of essential services necessary to maintain minimal mental, emotional, or physical health and safety;

(14) "supportive services" means the range of services delivered by public and private organizations and individuals that assist the elderly and vulnerable adults with their social, health, educational, recreational, transportation, housing, nutritional, financial, legal, or other needs;

(15) "unable to consent" means refusal to, or inability to, accept services because

(A) the person is an incapacitated person or apparently is an incapacitated person;

(B) of coercion by or fear of reprisal from the perpetrator of abandonment, exploitation, abuse, or neglect;

(C) of dependency on the perpetrator of abandonment, exploitation, abuse, or neglect for services, care, or support; or

(D) of an inability to perceive that refusal to consent results in an imminent and substantial danger of death or irreparable harm to self or others;

(16) "vulnerable adult" means a person 18 years of age or older who, because of physical or mental impairment, is unable to meet the person's own needs or to seek help without assistance.

History -

(Sec. 13 ch 129 SLA 1994; am E.O. No. 108 Sec. 15 (2003))

Revisors Notes -

Paragraph (12) was enacted as AS 47.24.100(13). Renumbered in 1994.

Amendment Notes -

The 2003 amendment, effective July 1, 2003, substituted "Department of Health and Social Services" for "Department of Administration" in the definition of "department."

Decisions -

Cited in R.J.M. v. State, 946 P.2d 855 (Alaska 1997).