

Appendix F

State and Federal Criminal Laws

State and federal criminal laws may be pertinent in cases involving elder abuse.

Criminal laws that may be used to prosecute physical injury include those pertaining to:

- Assault.
- Battery.
- Domestic violence.
- False imprisonment.
- Manslaughter.
- Murder.
- Rape/sexual assault.

Criminal laws relating to financial exploitation may include:

- Burglary.
- Credit card fraud.
- Embezzlement.
- Forgery.
- Identity theft.
- Impersonation.
- Investment fraud.
- Issuing a check without sufficient funds.
- Larceny.
- Making a false financial statement.
- Receiving or possessing stolen property.
- Telemarketing fraud.
- Theft by false pretenses.
- Theft by trick or device.

APPENDICES
Identifying and Responding to Elder Abuse

Some states have enacted criminal neglect laws. Prosecutors indicate that it is challenging to prosecute neglect cases without such a statute, although if the victim has died as a result of the neglect, it may be possible to bring charges for murder or manslaughter.

Some states have also amended their traditional criminal laws to include enhanced penalties for acts committed against older persons.

Domestic Violence Laws and Programs

State domestic violence laws may provide definitions, authorize services, govern complaint filing and reporting, establish investigation and complaint handling procedures, and set forth civil remedies and criminal penalties for violence committed by designated categories of family or household members against other family or household members. All states and the District of Columbia have enacted domestic violence laws.

While all states protect spouses and former spouses, some have expanded the protection of the law to persons in other relationships, increasing the coverage of the law in some common situations of elder abuse. To illustrate, physical or sexual abuse of an older woman by the adult son who lives with her would not be considered domestic violence under a statute that only covers spousal violence, but the situation would be different if the statute covered violence committed by children against their parents or by cohabitants.

Increasingly, domestic violence programs are recognizing that domestic violence occurs in later life, and program staff members are learning how to better meet the needs of those victims. For various reasons, however, many domestic violence shelters are not capable of serving older victims. Some shelter buildings may be inaccessible to victims who have physical impairments. Program staff may not know how to work with victims who have cognitive impairments. Programs may have policies – such as serving only women with children – that effectively bar older women from services. Male victims – whether old or young – are generally not eligible for domestic violence program services.

Victims of elder abuse may contact a domestic violence program or be referred to a domestic violence program by another person. They may serve as witnesses if a domestic violence perpetrator is prosecuted.

Victim service professionals may refer older victims to a domestic violence program or receive referrals from domestic violence program. They also may collaborate with the domestic violence program to more fully meet a victim's needs. If a local domestic violence shelter is unable to meet the needs of an elder abuse victim, victim service professionals may need to find other resources.

Guardianship or Conservatorship Laws and Programs

“Guardianship” and “conservatorship” are generic terms used to refer to situations in which a court determines that a person lacks decision-making capacity and appoints a surrogate decision-maker (known as the “guardian” or “conservator”) to make personal or property decisions on the person’s behalf. Generally, a “guardian” makes personal decisions and a “conservator” makes property decisions, but state terminology varies and some states use different terms altogether. The rest of this discussion will use “guardian” or “guardianship” to encompass the concepts of guardianship and conservatorship.

Elder abuse and guardianship intersect in several ways:

- Elder abuse may result in the need for a guardianship. For example, appointment of a guardian may be required to wrest legal control over an abused individual’s person or property away from a perpetrator. A head injury resulting from physical abuse may cause incapacity and necessitate the appointment of a guardian.
- An APS program may initiate a guardianship petition to gain legal authority to provide protective services to an abused individual whom APS believes is not capable of knowingly refusing services. Some APS programs are allowed by law to serve as the guardian of an APS client, but most APS laws either say nothing about that role or prohibit APS from fulfilling it because of the resulting conflict of interest.
- An APS program or concerned individual may seek guardianship to have the legal authority to place a self-neglecting, incapable older person into a long-term care facility.
- A guardian may abuse, neglect, or exploit the incapacitated person on whose behalf he or she is empowered to act. In those situations, the guardian’s authority to act should be terminated by the court and, if necessary, another guardian should be appointed. Prosecution should be considered to prevent the guardian from abusing other older persons and to seek restitution if the victim was exploited.

Guardians are generally classified as private or public. Private guardians are family members or friends or they are professionals who are paid to act as guardians. Some communities have “public guardianship” programs. “Public guardianship is the appointment and responsibility of a public official or publicly- funded organization to serve as legal guardian in the absence of willing and responsible family members or friends to serve as, or in the absence of resources to employ, a private guardian” (Teaster et al., 2007).

Victim service professionals may need to communicate with and involve a victim’s guardian to best serve the victim’s needs. Additionally, professionals may need to become involved with seeking a guardian for a victim who lacks decision-making capacity or with seeking termination of a guardianship (and possibly the appointment of a new guardian) for a victim who has been abused by his or her guardian. A guardian may

provide critical information about crimes and victim impact, and also may serve as a witness in a criminal prosecution.

Aging Services and Other State or Community Services

Through the federal Older Americans Act, local “area agencies on aging” are funded to provide or coordinate a range of supportive services for persons over the age of 60. The aging services available in each community will depend on available funding, the older population’s needs, the local service providers’ priorities, and the range of services available from other government agencies and nonprofit organizations. While the area agency on aging may not be able to meet all of the needs of an abused elder, it is the focal point within a community for information about services and programs available to older persons.

- Free civil legal services may be available and of particular use to older victims of financial exploitation or to older persons who were physically abused by a family member.
- Other supportive social services such as housing, homemaking, meals, money management, transportation, respite services, and friendly visitors may be available. While all of these are important services, housing, money management, transportation, and respite services may be particularly useful to victim service professionals who are working with elder abuse victims.
- Counseling and mental health services (including arranging psychiatric examinations in order to evaluate an abused person’s decision-making capacity or competency to participate in a trial) may be available.
- Health care services may be available.
- Services may have waiting lists, but some programs may have policies that allow an elder abuse victim to move to the top of the waiting list.

Like APS professionals, victim service professionals usually cannot meet all the needs of elder abuse victims and have to link victims to services provided by other agencies. Housing, money management, transportation, respite, and mental health services may be particularly useful to victim service professionals who are working with elder abuse victims. Aging services and other social services professionals may provide critical information about crimes and victim impact, and also may serve as witnesses in criminal prosecutions.