

Elder Abuse Basics: Civil Legal Responses

ISSUE BRIEF • December 2023

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ELDER
RIGHTS**

ABA Commission on Law and Aging

The ABA Commission on Law and Aging has led the ABA's work to protect the legal rights, dignity, and autonomy of adults for over 44 years. The mission of the Commission on Law and Aging is to educate and advocate to protect the rights and dignity of adults as they age. Commission staff authored this issue brief as part of a contract with the National Center on Law and Elder Rights. The views expressed are those of the author and may not reflect the policy of the American Bar Association.

Key Lessons

1. Prevention of elder abuse involves awareness, planning, and careful selection of supporters.
2. Civil interventions are aimed at securing the safety of the person who is experiencing abuse and should always be done in a person-centered and trauma-informed way.
3. A variety of civil actions can be used to remediate damages and restore stolen assets.

Introduction to Civil Responses: Prevention, Intervention, Remediation

Reducing the risk of or preventing abuse should be the first step for every advocate. This may include planning, such as implementing tools appointing trusted supporters to help when needed, careful selection of the supporters or agents, and drafting limits into documents. If abuse occurs even with safeguards, advocates play a role in intervention and remediation. Intervention is taking steps to stop ongoing abuse, and helping the survivor regain safety and security. Remediation includes taking civil action to recover damages and stolen assets. This text will provide a brief overview of each of these steps.

Defining Abuse

All states define elder abuse or adult abuse in statute. Many states have both civil and criminal definitions of abuse. Some states have specific statutes for abuse of older adults based on age, though increasingly the civil abuse statutes include every adult who meets criteria in the statute, generally based on factors that may interfere with the person's ability to defend themselves. These statutes are intended to provide enhanced protections for persons who may be targeted for abuse because of who they are.

The Centers for Disease Control list five common classifications of abuse. These definitions were developed to provide researchers with uniform definitions for data. You should check the statutory definitions in your state.

- Physical abuse includes any force that causes injury, pain, distress, or death.
- Sexual abuse includes any forced or unwanted sexual contact, imaging, or harassment.
- Emotional or psychological abuse includes words or actions that inflict emotional distress or degrade a person.
- Neglect includes a failure to provide for a person's basic needs for food, shelter, clothing, hygiene, and desired medical care.
- Financial abuse includes the unauthorized or improper use of the income or assets of an adult for the benefit of another person.

Prevention

Prevention starts with individuals and communities being aware of the risks of abuse. Many adults who experience abuse are not aware that the behaviors they are experiencing are abuse. Advocates can work with local service providers to provide awareness of abusive behavior in their communities through activities such as workshops or events at local community centers or distributing short fact sheets. Community service announcements and social media posts that share information on recognizing and reporting abuse can also be effective. [World Elder Abuse Awareness Day](#) provides an opportunity each year to raise awareness of elder abuse.

Agents, supporters, and service providers should be selected with great care and educated on how to support the person without overpowering the choices of the adult. Good agents and supporters are trustworthy and serve as helpful advisors without being controlling. Agents and supporters need to be available and committed to the mission of helping the person make their own choices about their life. Service providers should be trustworthy, have a process for reporting and investigating concerns, and as appropriate, be licensed, bonded, and insured.

When drafting planning documents, lawyers should recommend drafting in oversight and accountability measures and placing reasonable limits on the authority of agents and other fiduciaries.¹

Intervention

All responses to elder abuse should be person-centered and trauma-informed. This includes listening to the person, offering options, and asking the person what they want to do. Forcing services or even forcing the person to discuss what has happened can be harmful to the well-being of the person who has experienced abuse.

Adult Protective Services (APS) is the gateway to reporting and starting an investigation, and in some places, provides access to services to support the person. Every state has an APS program. The guidance for the program is based on state law and will include information about the scope of APS services, such as the types of abuse APS will respond to and when they will investigate.

If the **abuse occurs in an inpatient setting** such as a skilled nursing facility, the reporting, investigation, and intervention may be handled by other state regulatory agencies. The Long-Term Care Ombudsmen can serve as a resource for better understanding available options and services.

If the **abuse occurs in the home or in a community setting**, and a spouse or close family member is responsible for the harm, a local domestic or family violence response program may be able to provide survivor-centered interventions. This help will focus on avenues to personal safety, access to medical care, and emotional support.

All states offer restraining, no contact, or stay away orders for persons who have experienced abuse at the hands of a spouse, or partner, and many offer this option for other family or household members. These orders may be civil or criminal and are enforceable by law enforcement. Family courts and domestic violence programs have more information about the options for this intervention.²

It may be necessary to modify or revoke legal documents when they are being misused to abuse or exploit a person. It is important to be familiar with the statutory requirements in your state for revoking a Power of Attorney or Health Care Directive. Generally, the revocation should be in writing and signed by the grantor of the document. A good practice is to have two disinterested witnesses and a notary on the notice of revocation. Notice of the revocation should be provided to the agent or fiduciary, and to any business or entities where the document is being used. Some jurisdictions allow the revocation to be recorded in the public records like a deed to property, providing public notice that the document has been revoked.

1 National Center on Law & Elder Rights, [Drafting Advance Planning Documents to Reduce the Risk of Abuse or Exploitation](#), (2023).

2 National Center on Law & Elder Rights, [Family Violence & Abuse in Later Life](#), (2023).

Some health care decision statutes describe the level of decisional capability needed to revoke health care directives. Generally, this standard includes the capability to state what the individual wants or does not want, and the health care provider is comfortable that the statement reflects an informed choice. When revoking a general or financial power of attorney that is being used to commit abuse or exploitation, the person revoking the document must understand that the document allows another to make decisions for them, and that they no longer want that person to have that power. If the agent disagrees with the revocation, an attorney should be prepared to provide evidence that the client understood and made the choice to revoke. Some will argue that it is better to revoke and litigate the capacity to revoke while presenting evidence to the court that the document was being used to facilitate abuse or exploitation. Increasingly, Courts are willing to enter orders terminating authority under a power of attorney or health care directive as a protective arrangement when presented with evidence that the document is being misused and that there are concerns about the ability of the person to understand the revocation process.³

Using guardianship as a response to abuse or exploitation, restricts the rights of the person who has experienced maltreatment. While there may be times when guardianship is the only legal option, it should always be the option of last resort and done in a limited manner to support the person who has experienced abuse.

Remediation

The goal of remediation is to place the adult back in the position they were in before the abuse or exploitation took place.

Civil actions for damages or for return of money or property stolen through exploitation is an active area of litigation. Actions for damages are generally based on tort law, or contract law. These cases need to be screened for viability and collectability. Damages for pain and suffering need to be estimated. Damages for wrongful death in many states are measured based on loss of earnings, and this can be very limited for an adult who is older or lives with a disability. An advocate may determine whether the damages are collectable. Often, the person who committed the harm has limited assets or insurance to collect against. Attorneys who specialize in these cases will carefully weigh these factors and consider whether the costs are likely to exceed the potential recovery.

Recovery of assets, money, or property stolen through financial exploitation is a growing area of civil litigation. These cases may be based on breach of fiduciary duty, breach of contract, undue influence, or the tort of conversion.

Breach of fiduciary duty

Abuse by fiduciaries, such as agents authorized in a power of attorney, trustees, and conservators. By serving in these capacities, the person has special duties, and may not take advantage of their position. When a fiduciary fails to uphold this duty, they can be held responsible for the loss.

Breach of contract

Failure by a party to deliver what was promised in the agreement. The most common examples would be service providers who agree to provide care or home repairs, collect payment, and fail to provide what they agreed to do.

³ For an explanation of other protective arrangements see Article 5 of the [Guardianship, Conservatorship, and Other Protective Arrangements Act](#).

Undue influence

Influence that overrides the free will of the person, for the benefit of another. The elements of undue influence include the involvement of a person in a position of real or apparent authority, who bends the will or changes the choice of another person who would otherwise make a different choice, and the outcome benefits someone other than the person. Often the influence is in the form of threats. Some states require that there be some vulnerability of the impacted person, but not a total lack of ability to give informed consent.

Conversion

The civil action for recovery of assets stolen by the criminal act of theft. The person who steals the asset converts it to the benefit of the thief or a third party. Conversion is the unauthorized taking of money or property for the benefit of another person, and the civil action of conversion seeks return of the asset, or damages for the loss of the asset.

Conclusion

While most forms of elder abuse are crimes, civil legal actions play a major role in planning to reduce risk, provide intervention when abuse happens, and seek remediation to recover damages to restore the person to their previous position.

Spreading awareness of elder abuse is essential to alerting adults to behaviors that they should find unacceptable and educating adults how to ask for help when they see or experience those behaviors. Planning should be done carefully to select supporters and provide transparency and accountability to reduce the risk of abuse. If abuse does happen, the response should be trauma-informed and person-directed. While APS is often a gateway for intervention, a variety of civil responses are available to stabilize the safety of the person. Civil actions for remediation can restore stolen property and may include damages. An interdisciplinary effort is needed to prevent and respond to abuse of adults.

Additional Resources

- [CDC Definition of Elder Abuse](#)
- [National Center on Elder Abuse](#)
- [ACL APS Resource Center](#)
- [ACL Late Life Domestic Violence](#)
- [National Domestic Violence Hotline](#)
- [NCLER Family Violence and Abuse in Later Life](#)
- [Article 5 of the Guardianship, Conservatorship, and Other Protective Arrangements Act](#)
- [Elder Justice Coalition](#)
- [Elder Justice Coordinating Council](#)
- [ABA Commission on Law and Aging, State Elder or Adult Abuse Definitions](#)

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

This Issue Brief was supported by contract with the National Center on Law and Elder Rights, contract number HHS75P00121C00033, from the U.S. Administration on Community Living, Department of Health and Human Services, Washington, D.C. 20201.