

Information about Laws Related to Elder Abuse

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Prepared for the National Center on Elder Abuse

Research conducted on Westlaw compliments of West Group

Overview

This document provides background information about federal and state statutes related to elder abuse. It also provides for each state, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands (hereafter referred to generically as “state” or “states”) the citation to three categories of laws: adult protective services (APS), institutional abuse, and the long term care ombudsman program (LTCOP). These three categories are explained below. Criminal laws are also discussed briefly, although citations for them are not included on this Web page. Unless otherwise indicated, this explanation uses “state” or “states” generically to include states, the District of Columbia, and the three territories listed above.

Although they are not included in this document, other laws in a jurisdiction may provide remedies or authorize services for older abused persons. For example, a state’s domestic violence or family violence law may provide useful tools such as restraining orders, even if only in limited instances of elder abuse (i.e., physical abuse committed by a spouse or certain other persons included in the state’s law). State laws on guardianship/conservatorship and general or durable powers of attorney may be important in cases of elder abuse. Moreover, regulations and policies may supplement a state’s laws relating to elder abuse.

The document also contains links to the law or to the state government Web pages. It also includes a discussion of the resources that an individual can use to obtain copies of state statutes. Copies of other federal and state laws are NOT available from the National Center on Elder Abuse (NCEA).

This document is based on information current at the end of August 2005. Statutory citations do not change often, but there is always the possibility that a law will be revised and renumbered or even repealed. The American Bar Association, Commission on Law and Aging staff will update this information periodically. If you are aware of changes or errors, please feel free to notify Lori Stiegel by e-mail at LStiegel@staff.abanet.org and we will update or correct the information as quickly as possible.

Federal Law on Elder Abuse

Federal laws on child abuse and domestic violence fund services and shelters for victims, but there is no comparable federal law on elder abuse. The federal Older Americans Act (42 U.S.C. § 3001 et seq., as amended) does provide definitions of elder abuse and authorizes the use of federal funds for the NCEA and for certain elder abuse awareness and coordination activities in states and local communities, but it does not fund adult protective services or shelters for abused older persons.

Adult Protective Services Laws

All fifty states, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands have enacted legislation authorizing the provision of adult protective services (APS) in cases of elder abuse. Generally, these APS laws establish a system for the reporting and investigation of elder abuse and for the provision of social services to help the victim and ameliorate the abuse. In most jurisdictions, these laws pertain to abused adults who have a disability, vulnerability, or impairment as defined by state law, not just to older persons. Some states, however, have distinct elder protective services laws or programs and this chart indicates those jurisdictions.

These statutes vary widely in: the age at or circumstances under which a victim is eligible to receive protective services; the definition of abuse; types of abuse, neglect and exploitation that are covered; classification of the abuse as criminal or civil; reporting (mandatory or voluntary); investigation responsibility and procedures; and remedies for abuse.

Some state APS laws only relate to individuals who reside in the community (what is called “domestic abuse”), while other APS laws also include individuals who reside in long term care facilities (known as “institutional abuse”). States may define long term care facilities (LTCF) differently; moreover, some states include other types of institutions (such as mental health facilities) in their statutes also.

Institutional Abuse Laws

In some states, APS investigates allegations of abuse, neglect or exploitation against individuals who reside in the community and a separate law addresses institutional abuse. There are also a few states in which there is no separate institutional abuse law, but the APS law provides that a state agency other than APS is responsible for receiving reports about and investigating institutional abuse.

Long Term Care Ombudsman Program

Additionally, all states, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands have laws authorizing the Long Term Care Ombudsman Program (LTCOP), which is responsible for advocating on behalf of long term care facility residents who experience abuse, violations of their rights, or other problems. The LTCOP is mandated in each state as a condition of receiving federal funds under the Older Americans Act. LTCOPs are an integral part of the systemic response to elder abuse. LTCOPs may discover an abusive situation when responding to complaints within a facility and then, if appropriate, make a referral to an APS program or the agency responsible for investigating institutional abuse, a law enforcement agency, or the agency responsible for licensing and certifying such facilities. Moreover, in some states, the LTCOP actually fulfills the APS function and has the legal authority to investigate and respond to abuse occurring within long term care facilities.

Criminal Laws

Although they are not included in this document, an increasing number of states are passing laws that provide explicit criminal penalties for various forms of elder abuse. Legislatures are also signaling their intent that elder abuse be treated as a crime in other ways. For example, some APS laws include a provision stating that elder abuse may be prosecuted criminally, while others define certain acts (e.g., sexual abuse) in the same words or by reference to definitions that are used in the criminal laws.

Even if there is not a specific statute or provision authorizing criminal prosecution for elder abuse, a jurisdiction's basic criminal laws (e.g., battery, assault, theft, fraud, rape, manslaughter, or murder) can be used to prosecute someone who has committed an act of abuse against an older person. Some legislatures have enacted enhanced penalties for certain crimes against older persons.

Other Relevant Laws

Other state laws may be pertinent in cases involving elder abuse, even though they are not cited in this document. Such laws include those addressing guardianship/conservatorship, general or durable powers of attorney, and domestic violence or family violence prevention.

Links to the Three Categories of State Laws

This Web page provides links to all of the laws listed. Many of the links will link you directly to the law itself. Others may link you to the state government Web page. From there you will have to search to find the law. Many state government Web pages will allow you to search by statutory citation. Others however, may require you to browse through laws by title or chapter. For more information on searching for laws on the Internet see "Internet Search Tips" below.

Resources for Finding State Laws

A variety of resources exist that will enable you to research and obtain copies of state laws. Libraries and the Internet will be the most likely resources.

Libraries

If you are looking for the law of your own state the public library in your community may have a set of statutes. If a law library near you is open to the public (check at the courthouse that serves your community or at a local law school), you will definitely be able to access statutes there.

Internet

If you are looking for the law of another state or if you have no access to statutes at any public or law libraries, then your best option is to search the Internet. Here are some Web sites that will link you to state laws on-line:

- Thomas (U.S. Senate): <http://www.prairienet.org/~scruffy/f.htm>

- American Law Sources On-line (ALSO): <http://www.lawsource.com/also/>
- FindLaw: <http://www.findlaw.com/casecode/state.html>
- Law Library of Congress: <http://www.loc.gov/law/guide/usstates.html>

Internet Search Tips

It is impossible to provide specific instructions on what you should do to find a specific law using Internet-based databases because each state's system for citing (identifying) and formatting its laws is different. Some general tips are offered below. We have tried to make these tips as simple as possible, but recognize that the process may seem very difficult. Don't be intimidated; you will probably find that the process seems much more complicated when you are reading about it than when you are actually using the Internet-based databases and statutory citations.

The first problem you may encounter when using Internet-based databases such as the ones listed above is actually getting to a state's laws. A state may refer to its laws as statutes, code(s), or laws. You may have to look carefully to find the appropriate term; it may be listed on its own or it may be combined with other things such as a state's constitution or administrative regulations.

The second problem--finding the actual law for which you are looking--is even more complicated. You may be able to search by using citation numbers, a word search, or both. However, a word search can be difficult unless you know the exact title of the law you are seeking because states use different terms in the titles of their laws. For example, California's APS law is entitled "Adult Protective Services" while North Carolina's APS law is entitled "Protection of the Abused, Neglected or Exploited Disabled Adult Act." Also, names of laws are more likely to be revised than citation numbers. For that reason, this Web page provides citation numbers rather than the names of the laws.

Using citation numbers presents a third problem because states have different ways of formatting their citations. The citations listed previously are written in "blue book" format. This is the format that is used most often by lawyers when they are writing articles or documents for presentation to a court and it is the appropriate way to indicate citations in a document such as this one. These citations give you the information you need to use the databases in the websites listed above.

Understanding the meaning of the numbers and the importance of their order can make your search much easier because it is very important to know in what code, chapter, or title a provision of the law is located. Sometimes a citation format will clearly indicate as in California (Cal. Welf. & Inst. Code § 15600 et seq.). Most other states are like Alabama (Ala. Code § 38-9-1 et seq.), which simply uses numerical and symbolic (hyphens, colons, periods) formats as a guide to indicate the location of a statutory provision. The first number of the guide is the broadest category and the latter numbers indicate more specific categories. Thus, if the database you are searching prompts you to first indicate what section/title/chapter you are looking for and the citation does not explicitly use those (or any) terms, use the first number provided. The subsequent numbers indicate sub-parts and also should be used in the order indicated.

This symbol -- § -- represents “section.” As explained above the citation list uses “blue book” format. Sometimes the words and symbols for a state citation in blue book format are not the same as the symbols and words actually used in the state statute. States may use terms like “title” or “chapter” or “code” instead of “section.” For example, Florida’s APS law (cited as Fla. Stat. Ann. § 415.101 et seq.) is actually found at “chapter 415, section 101”, not at “section 415, subsection 101.” Again, if you understand the meaning of the numbers and the importance of their order, you will be able to use them regardless of the words that are used to label them.

The term “et seq.” is an abbreviation that means “and the following.” It indicates that there is more than one sub-part to the statute.