

# Elder Abuse: Legal Basics

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# Organization Description

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The mission of the American Bar Association Commission on Law and Aging (ABA Commission) is to serve as the collaborative, interdisciplinary leader of the Association's work to strengthen and secure the legal rights, dignity, autonomy, quality of life, and quality of care of aging persons, particularly low income and vulnerable elders. Since 1979, the ABA Commission has carried out this mission through research, policy development, technical assistance, advocacy, education, and training.

# Key Lessons

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1. Elder abuse takes many different forms and has many different legal definitions.
2. Elder abuse is prevalent, costly, devastating, and usually unreported.
3. Legal and aging network services can make a significant difference to clients who are vulnerable to or who experience elder abuse through prevention, detection, protection, and redress.
4. No one system is fully capable of preventing the problem or meeting the needs of victims. Each has a crucial role to play, and interaction and collaboration among systems is usually necessary.

# Section 1

## DEFINING ELDER ABUSE

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# Section 1

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Who is an elder?

- Age
- Condition
- Functional ability
- Living situation
- Receipt of designated services
- Lack of assistance from others
- Appointment of a guardian or conservator

# Section 1 (continued)

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What is abuse?

- Abuse
- Neglect
- Exploitation

Where does elder abuse occur?

- Domestic settings
- Institutional settings

Who are the abusers?

- Relationships of trust
- Others

# Section 2

ELDER ABUSE IS PERVASIVE,  
COSTLY, DEVASTATING, AND  
UNDERREPORTED

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# Section 2

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## Pervasive

- Approximately 10% of older adults experience some form of elder abuse
- Prevalence rate likely to be higher

## Costly

- Direct victim losses -- \$2.9 billion to \$36.5 billion annually
- Indirect societal costs undetermined

## Devastating

- Enhances risk of hospitalization, nursing home admission, death

## Underreported



# Section 3

## ELDER ABUSE REPORTING, PREVENTION, DETECTION, PROTECTION, AND REDRESS

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# Section 3

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## Reporting to APS or other agencies

- Research whether you are mandated to report suspected elder abuse by state law
  - What agency(ies)
  - What circumstances
- Assess your responsibilities under your profession's code of ethics
- Determine your obligation(s) to inform clients of any reporting mandate(s)

# Section 3 (continued)

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## Prevention

- Provide public and professional education
- Counsel clients
- Recommend and draft protective measures

## Detection

- Learn about risk factors and indicators
- Conduct universal screening
- Get to the root of the presenting problem

# Section 3 (continued)

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## Protection

- Revoke powers of attorney or other documents
- Obtain protection orders
- End victim's and abuser's relationship (e.g., spouses, landlord-tenant)
- Seek, oppose, limit, or terminate guardianship or conservatorship

## Redress

- Obtaining accountings
- Recover assets
- Rescind transfers or void documents
- Obtain damages

# Section 3 (continued)

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## Tell Stories – Your Clients’ and Your Program’s

- Why
  - Victims’ stories humanize and simplify a complex problem
    - Many victims can’t or won’t share their experiences
  - Establishes foundational knowledge to enable intervention research
  - Evidence-based policy and funding decisions
- How
  - Case categories
  - Narratives
  - Outcome data
  - National and state studies on financial costs

# Section 4

OTHER WAYS THAT LEGAL AND  
AGING NETWORK SERVICES  
CAN MAKE A DIFFERENCE

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# Section 4

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## Other Ways of Making a Difference

- Know what other systems interact with elder abuse victims
- Learn about the roles of those other systems
- Educate those other systems about your roles
- Participate in multidisciplinary collaborations
  - Resolve challenging cases
  - Strengthen laws and policies
  - Improve services to victims

# Conclusion

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Elder abuse takes many forms, is widespread, and has devastating consequences on victims. It is very costly to victims, their families, businesses, and taxpayers. As victims rarely report elder abuse, law and aging network programs need to screen clients and take other steps to detect elder abuse to competently and safely provide services. Civil lawyers have multiple tools to prevent elder abuse, protect clients who are experiencing it, and help clients recover from losses. Myriad systems address elder abuse and no one system can meet all of a victim's needs, so law and aging network providers need to learn more about other systems and collaborate with them to improve the response to victims. Finally, law and aging network programs need to document their work on behalf of victims, demonstrate its value, and create a foundation of knowledge for better public policy and research on interventions.



# Additional Resources

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## Key Statutes Governing Elder Abuse

- Elder Justice Act, 42 U.S.C. § 1397j *et seq.* and 42 U.S.C. § 1320b-25
- Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 *et seq.*
- State Adult Protective Services Laws

## Key Federal Regulations Related to Elder Abuse

- Long-Term Care Ombudsman Program Regulations 45 CFR Parts 1321 and 1327

# Additional Resources (continued)

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## Key Federal Agencies Addressing Elder Abuse

- U.S. Administration for Community Living, Department of Health and Human Services [www.aoa.acl.gov](http://www.aoa.acl.gov)
- Consumer Financial Protection Bureau [www.consumerfinance.gov/older-americans](http://www.consumerfinance.gov/older-americans)
- U.S. Department of Justice
  - Elder Justice Initiative [www.justice.gov/elderjustice](http://www.justice.gov/elderjustice)
  - National Institute of Justice [www.nij.gov/topics/crime/elder-abuse/pages/welcome.aspx](http://www.nij.gov/topics/crime/elder-abuse/pages/welcome.aspx)
  - Office for Victims of Crime [www.ojp.usdoj.gov/ovc](http://www.ojp.usdoj.gov/ovc)
  - Office on Violence Against Women [www.justice.gov/ovw](http://www.justice.gov/ovw)

## Select National Entities Providing Additional Resources

- American Bar Association Commission on Law and Aging [www.americanbar.org/aging](http://www.americanbar.org/aging)
- National Center on Elder Abuse [www.ncea.acl.gov](http://www.ncea.acl.gov)

# Case Consultation

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Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact the National Center on Law and Elder Rights (NCLER) at [NCLER@JusticeinAging.org](mailto:NCLER@JusticeinAging.org)