ABUSE LATER IN LIFE (JUNE 2020)

“How beautifully leaves grow old. How full of light and color are their last days.”
(John Burroughs, American Naturalist and Author: 1837-1921, http://www.ncall.us/)

FACTS AND STATISTICS

- Statistics underscore the need to understand abuse encountered later in life:
- Women comprise more than half (55.8%) of the adult population 65 and older.¹
- It is estimated that roughly two-thirds of elder abuse victims are women.²
- The U.S. population is projected to increase from 319 million to 417 million between 2014 and 2060; the 400 million mark should be reached in 2051. By 2030, one in five Americans is projected to be 65 and over.³
- According to census projections, the proportion of Florida’s population 60 and older is growing more rapidly than other components of the population.
- It is estimated that one in ten of older adults have been victims of elder abuse in the past year. Of these, more than 65% elder abuse victims are women.⁴
- It is not uncommon for an elder to experience more than one type of mistreatment at the same time.
- It is estimated that, nationwide, almost 90% of all elder abuse occurs in a domestic setting.⁵ The abuser may be the elder’s caregiver, and in their eyes, the only person who helps them.
- Elders who experienced even modest abuse have a higher risk of death when compared to those who had not been abused.
- Older victims tend to sustain more serious physical and other injuries during an assault due to age-related physiological changes.⁶
- Historically, elders have not been perceived as victims of sexual assault, even by some judges;⁷ thus, it is often over-looked.
- Older victims of sexual abuse were violated most often by spouses or intimate partners.
- Domestic violence by an intimate partner may be “domestic violence grown old” or may be “late onset of domestic violence.”⁸
- Older women, seeking companionship, may enter into an abusive relationship for first time.⁹
Abuse against elders is hugely under-reported; it is estimated that for every case that is reported, 24 are not.\textsuperscript{7}

Some jurisdictions have court programs specifically designed for seniors.\textsuperscript{8}

Risk factors among caregivers include: inability to cope with stress; depression; lack of support from other possible caregivers; and substance abuse.\textsuperscript{7}

### SYMPTOMS OF ABUSE\textsuperscript{7}

#### Physical Signs of Abuse

- Unexplained signs of injury, such as bruises, welts, or scars, especially if they appear symmetrically on two sides of the body

- Broken bones, sprains, or dislocations

- A report of drug overdose or an apparent failure to take medication regularly (a prescription has more remaining than it should)

- Broken eyeglasses or frames

- Signs of being restrained, such as rope marks on wrists

- Caregiver’s refusal to allow you to see the elder alone.

#### Signs of Self-Neglect

- Unusual weight loss, malnutrition, dehydration

- Untreated physical problems, such as bed sores

- Unsanitary living conditions: dirt, bugs, soiled bedding and clothes

- Being left dirty or unbathed

- Unsuitable clothing or covering for the weather

- Unsafe living conditions (no heat or running water; faulty electrical wiring; other fire hazards)

- Desertion of the elder at a public place.

#### Emotional Signs of Abuse

- Threatening, belittling, or controlling caregiver behavior
• Behavior from the elder that mimics dementia, such as rocking, sucking, or mumbling to themselves.

Financial or Material Exploitation
• Significant withdrawals from the elder’s accounts
• Sudden changes in the elder’s financial condition
• Items or cash missing from the senior’s household
• Suspicious changes in wills, power of attorney, titles, and policies
• Addition of names to the senior’s signature card
• Financial activity the senior couldn’t have undertaken, such as an ATM withdrawal when the account holder is bedridden
• Use of an ATM without the elder’s consent
• Unnecessary services, goods, or subscriptions

Sexual Abuse
• Nonconsensual sexual contact of any kind, including assault or battery, rape, sodomy, coerced nudity or sexually explicit photographing
• Sexual abuse may be evidenced by:
  o Bruises around breasts or genitals
  o Unexplained vaginal or anal bleeding
  o Torn, stained, or bloody underclothing

**FLORIDA LAW: PLEASE ALSO REFER TO THE ELDER ABUSE BENCHCARD**

Elder abuse is a crime in Florida. Section 825.102(1) defines elder abuse as:
• Intentional infliction of physical or psychological injury upon an elderly person or disabled adult;
• An intentional act that could reasonably be expected to result in physical or psychological injury to an elderly person or disabled adult; or
• Active encouragement of any person to commit an act that results or could reasonably be expected to result in physical or psychological injury to an elderly person or disabled adult.
• If a domestic violence injunction petition is used in an elder abuse case, petitioner and respondent must be family or household members, defined in § 741.28(3) as:

• “Spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who have a child in common regardless of whether or not they have been married.”

• “With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.”

**Exploitation of an elder is a crime**

• Section 825.103(1) defines exploitation as:

  o “Knowingly obtaining or using, or endeavoring to obtain or use, an elderly person’s or disabled adult’s funds, assets, or property with the intent to temporarily or permanently deprive the elderly person or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult…”

• The definition also includes breach of a fiduciary duty to an elderly person.

• Pursuant to § 825.103(2), an injunction for protection against exploitation of a vulnerable adult may be filed by:

  o Vulnerable adult in imminent danger of being exploited;

  o The guardian of a vulnerable adult in imminent danger of being exploited;

  o A person or organization acting on behalf of the vulnerable adult with the consent of the vulnerable adult or his or her guardian; or

  o A person who simultaneously files a petition for determination of incapacity and appointment of an emergency temporary guardian.

• A sworn petition for an injunction for protection of a vulnerable adult must follow the format of § 825.1035(3)(a).

• The court must schedule a hearing on a filed petition at the earliest possible date. § 825.1035(3)(a).

• An order denying a petition for an ex parte injunction shall note the legal grounds for denial. If the only ground for denial is the failure to demonstrate an appearance of an immediate and present danger of exploitation, the court must set a full hearing at the earliest possible date. § 825.1035(5)(c).
• The court may issue an ex parte injunction for a fixed period, not to exceed 15 days, pending a hearing, if the conditions in § 825.1035(5)(a)1 are met. A full hearing must be set before the injunction ceases to be effective. The court may continue the hearing for good cause shown by any party, which may include a continuance to obtain service; however, the injunction is not extended beyond the initial 15 days due to a continuance. § 825.1035(5)(d).

• An ex parte injunction may grant relief pursuant to § 825.1035(5)(a)2.

• Upon notice and hearing, the court may issue a permanent injunction with relief it deems appropriate pursuant to § 825.1035(8).

• Petitioner, respondent, or a vulnerable adult may move to modify or dissolve the injunction at any time. No specific allegations are required. The terms of the injunction remain in effect until modified or dissolved. § 825.1035(8)(c) and (13).

• The court may enforce a violation by respondent of the injunction through a civil or criminal contempt proceeding and the state attorney may prosecute it as a criminal violation under § 825.1036.

**ISSUES AND SOLUTIONS**

• Apart from the age difference of the petitioners, many elder abuse cases are similar to other domestic violence cases; however, additional issues arise when either or both petitioner and respondent are elderly.

• Options for shelter and the provision of ongoing care may be difficult for the petitioner if the respondent is the primary care giver. As for the respondent, there may be fewer possible alternative living arrangements outside the shared home and the respondent might also be in need of care.

• Although most batterers’ intervention programs (BIPs) are focused on intimate partner or spousal violence, a batterers’ intervention program is preferable to an anger management program in an elder abuse case for the same reason as in spousal/intimate partner domestic violence situations.

• Domestic violence has little or nothing to do with not being able to control one’s temper; it is almost always a purposeful pattern of behavior designed to exercise power and control over another person. This holds true in elder abuse cases as well as other domestic violence cases.

• Although the majority of perpetrators of domestic violence are men, women can be perpetrators as well. There are very few BIPs designed for women. The lack of BIPs designed for women should be addressed.
• Access to the courts for the elderly is an important concern. As noted above, some states have court programs specifically designed for seniors.

CONCLUSION

• As the number of aging citizens in Florida increases, the need for Florida courts to assist in proceedings with violence perpetrated against those citizens in domestic settings and institutional settings will increase as well.

• The severity of personal losses associated with elder abuse coupled with data suggesting that victims of elder abuse have a shorter life expectancy underscore the importance of providing assistance to this fragile segment of the population.

• Injunctions for protection against domestic violence and judicial centers designed to specifically address elder abuse are important; however, much more remains to be done.

REFERENCES WITHIN THIS ARTICLE

1 United States Census Bureau (2012).

2 Lifespan of Greater Rochester, Inc. Weill Cornell Medical Center of Cornell University, & New York City Department for the Aging. (2011).


5 Charles T. Corley, Secretary, Florida Department of Elder Affairs, Focusing on Education and Outreach to Prevent Elder Abuse, Elder Update, Volume 25, number 4, July/August 2014.


8 http://www.alameda.courts.ca.gov/Pages.aspx/Elder-Dependant-Adult-Access-Program
ADDITIONAL RESOURCES

- Florida Department of Elder Affairs
- Elder Update
- Florida Courts’ Information for Elders
- National Adult Protective Services Association
- National Clearinghouse of Abuse in Later Life
- National Committee for the Prevention of Elder Abuse
- Webinar: “Will you still need me, will you still feed me when I’m 64?” Presented by the Honorable Michelle Morley of the Fifth Circuit, February 29, 2019.