

Abuse and Neglect of Vulnerable Adults

Kristin Kerschensteiner, Attorney
Wisconsin Coalition for Advocacy

Introduction

Scope of the problem

Elder abuse is a very serious problem in this country. It has been estimated that at least one-half million older persons in domestic settings are abused, neglected, or experience self-neglect each year. It is difficult to determine the exact size of the problem because incidents of elder abuse often go unreported. Experts have estimated that for every reported incident of elder abuse, as many as five cases go unreported. The signs of abuse are sometimes difficult to recognize, and often victims of elder abuse are reluctant to seek help because they fear retaliation, embarrassment, loss of services, or institutionalization if they report abusive incidents. Moreover, many abused elders want the relationship with the abuser to continue, especially if the abuser is a family member.

Protecting vulnerable adults living in the community at large from abuse and neglect is a difficult task. Rights and protections established for individuals who receive services from certain Department of Health and Family Services programs, such as nursing homes, are covered in other chapters within this guide. The State of Wisconsin has also enacted laws creating an elder abuse reporting system and vulnerable adult protective orders to deal with abuse and neglect of vulnerable individuals living in their own homes. These two laws, which most specifically relate to people with disabilities, will be the focus of this chapter.

Elder Abuse

What is elder abuse?

Sec. 46.90(1) Wis. Stats.

Under Wisconsin law, elder abuse occurs when anyone age 60 or older or who is subject to the infirmities of aging has been subject to physical abuse, including sexual abuse, material abuse, neglect, or self neglect. An infirmity of aging is defined by Wisconsin law as organic brain damage caused by advanced age or other physical degeneration to the extent that the person is substantially impaired in his or her ability to adequately provide for his or her care or custody. Individuals over the age of 60 who are not substantially impaired are not covered by this reporting system. However, depending on particular circumstances, it may be difficult for the lay person or casual observer to determine if a particular elderly person fits this statutory definition.

Abuse

Types of abuse

Reportable abuse under Wisconsin law can be physical, sexual, material or emotional. **Physical abuse** is the deliberate infliction on an elder person of physical pain or injury, or unreasonable confinement of an

older person. **Sexual abuse** occurs when a person is forced, tricked, threatened or otherwise coerced into sexual contact against their will.

Warning signs of physical or sexual abuse:

- bruises on the upper arms, breasts, genitals or clustered on the trunk of the body
- a combination of old and new bruises
- sagging skin or skin deterioration
- untreated injuries in various stages of healing
- unkempt appearance or poor hygiene
- torn, stained or bloody underclothing
- broken eyeglasses or frames
- lab findings of an overdose or under-utilization of medication
- injuries incompatible with explanation of elder or caregiver
- sudden change in the elder's behavior
- caregiver's refusal to allow visitors to see an elder alone

Material abuse is the misuse of an elder person's property or money. This can include the actual taking of money or property without permission or simply the mismanagement of the elder's funds. Because they are more likely to observe an elder's financial transactions, material abuse is often discovered by bank tellers, registers of deeds, family members or neighbors. Indications of potential material abuse can include home repairs or services that are not necessary, large checks written to "cash" or a sudden change in banking practices such as unexplained withdrawals of large sums by the elder or person accompanying him/her.

Wisconsin authorities also respond to reports of the emotional abuse of an elder. Although not defined in the Wisconsin Statutes, **emotional abuse** is considered to be the intentional infliction of anguish, pain, or distress on an elder person through verbal or nonverbal acts. Examples of emotional abuse include insults, threats, intimidation, humiliation and harassment of the elder. Often the abuser will isolate the victim from his/her family, friends, or regular activities and be reluctant to leave the elder alone with anyone else. Particular attention should be paid when there are sudden unexplained changes in the elder's behavior, or expressions by the older person of unexplained fear, anger, or resignation. Other signs of potential emotional abuse can include the elder person being in an emotionally upset or agitated state or, on the other hand, extremely withdrawn and noncommunicative or nonresponsive.

Neglect

Definitions Neglect occurs whenever the physical or mental health of an older person in the care of another is placed in significant danger by the caregiver's failure to provide adequate food, shelter, clothing, or

medical or dental care to the elder. Self-neglect is the failure of an older person to take adequate care of him/herself or their home, resulting in significant danger to his or her physical or mental health.

Acts of neglect and self-neglect are difficult to describe because they usually involve inaction, and not action on the part of the abuser or older person. The symptoms of both types of abuse are similar, however. They include dehydration and malnutrition; untreated or improperly attended medical conditions; poor personal hygiene; hazardous, unsafe or unsanitary living conditions; inappropriate or inadequate clothing; lack of the necessary medical aids (e.g. eyeglasses, hearing aids, dentures) or inadequate level of supervision, as required by the elder's physical and mental condition.

Elder Abuse Reporting System

Sec. 46.90, Wis. Stats.

Wisconsin law requires that each county have a lead agency to provide a helpline for voluntary reporting of elder abuse cases and to increase public awareness about the problem of elder abuse. Each county must have a publicized phone number where the county receives reports of suspected elder abuse. Usually this function is undertaken by the county's Department of Human Services, Social Services, or aging unit. The entire system is administered statewide by the Department of Health and Family Services.

No mandated reporting

This reporting system is completely voluntary, both on the part of the person reporting the suspected abuse and the elder about whom the report is received. In other words, although the law requires counties to establish an elder abuse reporting system, unlike the state's child abuse reporting system, no one (including doctors or other professionals) is required to report incidents of elder abuse.

Each county must also have a lead agency for the purposes of investigating reported incidents of elder abuse. Once a report of abuse is received, the county agency must investigate to determine if abuse has happened and, if so, what services are needed. Reports of physical abuse (including sexual abuse), neglect or self-neglect must be investigated within 24 hours of receiving a report (excluding weekends and holidays). Reports of material abuse must be investigated within 5 days of receiving a report.

System won't force help on elder who doesn't want it

Even if an incident is reported, the victim has the right to refuse any help or services offered so long as the victim is legally competent to do so, even if the elder is clearly a victim of abuse and/or the services offered might end the abuse. This is because the law recognizes the right of competent older persons to self-determination. Unlike children, most older adults are legally competent and therefore have the right to decide where and how they live and whether or not they want intervention in their lives. Additionally, the voluntary nature of the system takes into account the complexity of family relationships and

the critical role caregivers can play in assisting elderly people to remain in their own homes.

How to make a report

If you know or suspect elder abuse is occurring or has occurred, you should call the phone number of the lead elder abuse agency in your county to report it. This number should be listed in the government section of your phone book. If you cannot find it, you can call the Wisconsin Bureau of Aging and Long Term Care Resources at 608-266-2536. If possible, be ready to report what happened, when, where, and who the suspected abuser(s) might be. **Keep in mind that you will be given complete confidentiality and immunity.**

Before it begins an investigation, the investigating agency will notify the elder of his/her right to refuse the investigation and give him/her the opportunity to do so. If the investigation is not refused, the agency will proceed in gathering information. The investigator's first concern during the inquiry is the victim's safety. The investigator will focus on whether abuse or neglect occurred and may offer the elder person services to prevent or relieve the abuse. Resources from a variety of different programs may be considered including health care, criminal justice (for example, victim witness program), aging services (transportation, nutrition and benefit counseling), domestic violence, sexual assault, and religious organizations. The agency will notify the elder of his/her right to refuse the services offered, and the elder may refuse them if s/he so desires, unless a guardian authorizes the services.

Is elder abuse a crime?

Elder abuse by itself is not a crime in Wisconsin. However, many of the acts which constitute elder abuse may be considered criminal. If you also believe a crime is in progress, you may choose to call your local police or sheriff's department directly to report it. Additionally, county agencies must have agreements with local law enforcement agencies so that a report may be made when allegations include potential criminal charges. If it becomes necessary, the investigator will notify the appropriate law enforcement agency if s/he believes a crime has been committed.

Vulnerable Adult Protections

Sec. 940.285, Wis. Stats.

Definition

While elder abuse, by itself, is not a crime in Wisconsin, it is a crime to intentionally, recklessly, or negligently abuse a vulnerable adult. Under Wisconsin law, "vulnerable adult" is defined as any person age 18 or older who is (1) either developmentally disabled or who has the infirmities of aging, mental illness or other like incapacities and (2) who is either mentally incapable of providing for his/her own needs for food, shelter, clothing or personal or health care, or unable to report cruel maltreatment without assistance. Those convicted of abusing a vulnerable adult face felony or misdemeanor penalties depending on the circumstances relating to the abuse.

Criminal action

Many elders or adults with disabilities do not lack the mental capacity to provide for their own needs or report cruel maltreatment without assistance and therefore cannot be considered victims under the definition of a “vulnerable adult.” Consequently, many abusers cannot be prosecuted on that basis. Still, most acts that constitute physical, sexual, and financial abuse can be considered crimes in their own right under Wisconsin law. For example, some of the crimes for which an abuser could face criminal prosecution, regardless of whether the victim meets the definition of vulnerable adult are: theft, embezzlement, forgery, fraud, unfair trade practices, battery, assault, rape, harassment, sexual assault, reckless injury, consumer fraud, or stalking.

Vulnerable Adult Restraining Orders and Injunctions

Aside from criminal prosecution, Wisconsin law provides that a number of parties may go to court to seek a Vulnerable Adult Restraining Order and Injunction against anyone who interferes or might interfere with an investigation of the vulnerable adult, the delivery of protective services to the vulnerable adult, or a protective placement of a vulnerable adult.

What restraining order or injunction does

The vulnerable adult, a parent, an adult sibling, an adult child, the legal guardian of the vulnerable adult, or a county protective services agency may file a petition seeking a Vulnerable Adult Temporary Restraining Order or Injunction. The court may issue a temporary restraining order to protect the vulnerable adult pending the hearing on the permanent injunction. A temporary order can, under certain circumstances, be entered without notice to the alleged abuser. Within a week (unless the parties agree to the injunction) there must be a hearing held on whether the court should enter a permanent injunction. An injunction issued after this hearing can last for up to two years.

After hearing evidence the court may find that there is sufficient reason to stop the person or persons named as respondents from having further contact with the vulnerable adult. The court must specify exactly what acts of the respondent are prohibited by the restraining order or injunction. The court may order the respondent to avoid interference with the vulnerable adult’s protective placement, the provision of services or an investigation of abuse or neglect of the vulnerable adult. If the person against whom the order is issued violates the order, the person may be arrested and can be subject to both fines and imprisonment.

In addition, or as an alternative to a Vulnerable Adult Restraining Order, a number of parties may also go to court to seek either a Domestic Abuse Restraining Order or a Harassment Restraining Order to address the abuser’s behavior, depending on the circumstances of the case. These orders offer the same basic protections that a Vulnerable Adult Restraining Order does; they simply do so based on different reasons.

Where do I go for help? If you know or suspect a vulnerable adult is or has been abused you should call your county's protective services program to report it. This number should be listed in the government section of your phone book. In addition, you may want to report the abuse to the local law enforcement agencies such as the police or Sheriff's Department. A Vulnerable Adult Restraining Order can be obtained from the court in which the vulnerable adult lives without the involvement of the county protective services agency. Consult a private attorney or legal services agency for help obtaining one. *(See the Additional Resources Appendix of this guide for the phone numbers of the legal services offices.)*

Resources that may be helpful:

Wisconsin Coalition Against Sexual Assault

600 Williamson Street

Madison, WI 53703

608-257-1516 Voice/TTY

800-409-5070

wcasa@wcasa.org - e-mail

www.wcasa.org - web site

Wisconsin Coalition Against Domestic Violence

1400 East Washington Avenue

Madison, WI 53703

608-255-0539

wcadva@inxpress.net - e-mail