

Explanation of the “Immunity for Good Faith Reporting: Provisions and Citations in Adult Protective Services Laws, by State” and “Immunity for Good Faith Reporting: Criteria in Adult Protective Services Laws, by State” Charts

(Laws current as of 12/31/06)

Prepared by Lori Stiegel and Ellen Klem of the American Bar Association Commission on Law and Aging¹ for the National Center on Elder Abuse²

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Research conducted on Westlaw compliments of West Group

The charts address the adult protective services (APS) laws for each state, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands. This explanation and the charts refer to these jurisdictions generically as “state” or “states.”

Unless otherwise indicated, this explanation (1) uses the term “abuse” generally to include abuse, neglect, and exploitation, and (2) uses “elder abuse” to include elder abuse and adult abuse.

CAUTION: It is unclear whether state mandatory reporting laws apply to federal employees. Guidance should be sought from appropriate federal personnel.

CAUTION: These charts are based only on the state APS laws; APS regulations were not reviewed. It is important to recognize that there may be other state laws or regulations or federal laws or regulations that address the issues covered by these charts.

NOTE: A few states have multiple laws. Some of those states have separate elder protective services (EPS) laws and APS laws, and those laws are designated in the charts by following the state abbreviation with “EPS” or “APS.” Some states have more than one APS law, and those laws are designated in the charts by following the state abbreviation with #1 or #2. Unless otherwise indicated in this explanation or the charts, both APS and EPS laws will generally be referred to as APS laws.

I. Why We Developed These Charts

Professionals who are concerned about their responsibility, whether mandatory or voluntary, to report suspected elder abuse often want to know if they may face civil or criminal liability for making such a report. This is not a question of whether they face civil or criminal liability for failing to make a report required by law,³ but rather whether they may be sued in civil court or prosecuted in criminal court for having reported their suspicions to APS or another investigative agency, especially if their report is not substantiated. State and federal legislative staff, other policy makers, educators, researchers, and reporters also often want to know how the states have answered this question.

Every state, except Puerto Rico and South Dakota, has provisions in their APS law(s) that address this question. These provisions are commonly referred to as “good faith reporting” provisions. Good faith reporting provisions generally provide immunity from civil, criminal, or administrative liability for reporting suspected elder abuse and other activities that may stem

from those reports, such as testifying in a court or administrative proceeding, as long as the reports were made in good faith or in accord with some other standard set forth in the statute. These criteria are explained below in the description of the second chart.

II. Detailed Explanation of the “Immunity for Good Faith Reporting in State Adult Protective Services Laws” Charts

There are two charts in this series:

1. “Immunity for Good Faith Reporting: Provisions and Citations in Adult Protective Services Laws, by State,” in Microsoft Word and
2. “Immunity for Good Faith Reporting: Criteria in Adult Protective Services Laws, by State,” in Microsoft Excel.⁴

The charts are explained below. A general description of each chart is followed by an explanation of how to read the chart.

A. Immunity for Good Faith Reporting: Provisions and Citations in Adult Protective Services Laws, by State

1. General Description of Chart

This chart provides the good faith immunity provisions in each state’s APS law that formed the basis for the criteria chart. These provisions relate to reports made to APS, but they also may address situations regarding reports made to other agencies such as law enforcement. Additionally, some of the statutory provisions include immunity provisions for APS employees or others who conduct assessments, evaluations, or investigations related to reports of suspected abuse. Those provisions are included in this chart because they were often too entwined with the words relevant to immunity for reporters to be deleted, but the criteria chart only reflects those provisions related to immunity for persons reporting suspected elder abuse.

Some APS laws contain multiple provisions related to good faith immunity for reporters. This chart provides all the relevant provisions, separating them by a line and providing the citation for each provision.

2. How to Read the Chart

As noted above, the provisions chart includes all provisions related to good faith immunity for reporting in the state APS laws.

If a state has more than one APS law or separate EPS and APS laws, then those situations are clearly identified in the left column where the state is indicated.

The statutory citations are provided in the right column at the end of each provision. The good faith immunity provisions in the APS laws are not always contiguous. In those situations, the different sections are set off by a line (only in the right column).

B. Immunity for Good Faith Reporting: Criteria in Adult Protective Services Laws, by State

1. General Description of Chart

The chart has six sections reflecting the criteria contained in the good faith immunity provisions in the chart discussed above. The first three criteria contain sub-criteria. The criteria and sub-criteria are explained in detail below.

As noted above, some statutes contain multiple provisions on good faith immunity and each of those provisions is provided in the other chart. For most states, the criteria contained in the multiple provisions are the same and thus were combined in one column for the state. There are a few states, however, in which the multiple provisions contain different criteria. To illustrate, one provision of Pennsylvania's law covers both civil and criminal liability and another provision addresses only civil liability. For those states with multiple provisions containing different criteria, multiple columns are provided in the chart and the provision's citation is provided in the column header.

To maximize space in the column headers, state postal abbreviations are used instead of full state names. For a list of those abbreviations, visit http://www.usps.com/nsc/lookups/abbr_state.txt

2. Description of the Criteria and Sub-Criteria Used in the Chart

The Types of Immunity criterion includes three sub-criteria: civil, criminal, and professional discipline. Most states specify which type of liability immunity is provided. In a few states, however, the statute only uses the word "liability." We chose to interpret that word as referring to both civil and criminal liability, due to the lack of specificity.

The Activity to which Immunity Applies criterion includes eight sub-criteria: (1) reporting, (2) participating in judicial proceeding, (3) participating in administrative proceeding, (4) participating in grand jury proceeding, (5) providing information or records, (6) taking photographs/X-rays, (7) discussing report, and (8) cooperating in or assisting with an evaluation or investigation. All states that have a good faith immunity provision include reporting as an activity for which immunity will be granted, but many states also include one or more of the other activities. Many provisions that include the participating in judicial or administrative proceedings criteria use phrasing such as "participating in a judicial or administrative proceeding," while other provisions only refer to "testifying." Instead of making separate categories for provisions about testifying in judicial or administrative proceedings, we included those provisions among the broader categories of participating in judicial or administrative proceedings.

The Standard for Immunity criterion includes seven sub-criteria: (1) good faith, (2) good faith not required for mandatory reporters, (3) bad faith, (4) false report knowingly made, (5) maliciously, (6) negligently, and (7) recklessly. As the list of sub-criteria indicates, some states phrase their standard in the positive (i.e., immunity if a report was made in good faith), while others phrase their standard in the negative (i.e., immunity unless a report was made in bad faith/maliciously). Some states have multiple standards, and all are reflected in the chart.

Several states apply a different standard to individuals who are mandatory reporters than they do to voluntary reporters. Those states provide immunity to mandatory reporters regardless of whether a report is made in good faith, but voluntary reporters are immune from liability only if they report in good faith or meet another standard. The columns for those states will have an “X” in the box for the second sub-criteria (good faith not required for mandatory reporters) and in the other appropriate sub-criteria box(es).

The Presumption of Good Faith criterion indicates which state laws contain a presumption that a report was made in good faith.

The Exception to Immunity if the Reporter is the Perpetrator criterion indicates which state laws provide that a person who reported suspected elder abuse is **NOT** entitled to immunity related to the report if the reporter also was the perpetrator of the elder abuse. A few statutes expand the category to include conspirators or others.

The Attorneys Fees May Be Reimbursed by State if Reporter is Sued criterion is self-explanatory.

3. How to Read the Chart

This chart is provided as a Microsoft Excel document—the title and disclaimer page are located in the first worksheet⁵ titled “Title and Disclaimer,” while the chart is located in the second worksheet titled “Chart.” The title of each worksheet appears on its sheet tab on the tab bar at the bottom left corner of the screen.

To navigate from one worksheet chart to the next, click on the worksheet tab for each chart. If you do not see the worksheet tab that you want, click the tab scrolling buttons to display the tab, and then click the tab.

4. How to Print the Chart

Because both worksheets already have a defined print area⁶, there are only two steps to take to print the chart and its accompanying title and disclaimer. First, on the File menu, click Print. Second, under Print what, select Entire workbook.

If you have any questions about printing in Microsoft Excel or want to know more, visit <http://office.microsoft.com/en-us/excel/CH062527841033.aspx>.

III. If You Find an Error

We strived to be consistent in our interpretation and categorization of the statutes. Despite our best efforts, we may have made errors. It is also possible that APS or other professionals interpret a statute differently than we did or there are state regulations or policies that lead to a different interpretation. Additionally, state laws may have changed since December 31, 2006. If you think we erred or your state has a regulation or policy that leads to a different interpretation, please contact Lori Stiegel of the American Bar Association Commission on Law and Aging at lstiegel@staff.abanet.org or 202-662-8692.

¹ The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the American Bar Association.

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³ To gain a better understanding of what must be reported to APS and by whom, see the Mandatory Reporting to Adult Protective Services charts, the Types of Abuse Defined in Adult Protective Services Statutes charts, and Threshold Eligibility Criteria for Adult Protective Services charts available online at <http://www.abanet.org/aging/about/elderabuse.shtml>.

⁴ If you do not have Microsoft Excel, visit <http://www.microsoft.com/downloads/details.aspx?FamilyId=C8378BF4-996C-4569-B547-75EDBD03AAF0&displaylang=en> to download Excel Viewer 2003. With Excel Viewer 2003, you can open, view, and print Excel workbooks, even if you don't have Excel installed. You can also copy data from Excel Viewer 2003 to another program. However, you cannot edit data, save a workbook, or create a new workbook. This download is a replacement for Excel Viewer 97 and all previous Excel Viewer versions.

⁵ A worksheet is the primary document that used in Excel to store and work with data.

⁶ A defined print area is the only area Microsoft Excel will print.