

Explanation of the “Undue Influence: Context, Provisions, and Citations in Adult Protective Services Laws, by State” Chart

(Laws current as of 12/31/06)

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Research conducted on Westlaw compliments of West Group

The chart addresses the adult protective services (APS) laws for each state, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands. This explanation and the chart 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: This chart is 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 issue covered by this chart. For example, there may be criminal laws on financial or sexual exploitation or laws related to wills or other financial and property matters that include provisions on undue influence. Additionally, there may be court decisions that define undue influence in the context of elder abuse or other matters.

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 chart by following the state abbreviation with “EPS” or “APS”. Some states have more than one APS law, and those laws are designated in the chart by following the state abbreviation with #1 or #2. Unless otherwise indicated in this explanation or the chart, both APS and EPS laws will generally be referred to as APS laws.

I. Why We Developed This Chart

Awareness is growing of undue influence and the role that it may play in cases involving elder abuse. As a result, state and federal legislative staff, other policy makers, program administrators, practitioners, educators, researchers, reporters, victims and their family members, and others often want to know how many states have laws on undue influence and what those laws say. The “Undue Influence: Context, Provisions, and Citations in Adult Protective Services Laws, by State” chart offers that information.

II. Detailed Explanation of the “Undue Influence: Context, Provisions, and Citations in Adult Protective Services Laws, by State” Chart

Undue influence is usually not defined as a form of elder abuse, or even as a crime. It is, instead, recognized as a process or method used to commit financial or sexual exploitation. (YWCA of Omaha. (2006). *Undue Influence: The Criminal Justice Response*. Omaha, Neb.: Author.)³

This chart contains the following three columns:

1. State. This chart only includes states that have provisions on undue influence.
2. Context. The second column identifies the context(s) of the state's provision(s). The context reflects the fact that undue influence is recognized as a method for committing financial or sexual exploitation and not usually defined as a form of elder abuse, or even as a crime. Some state provisions, however, refer to physical abuse rather than sexual abuse, just as some state definitions of the types of elder abuse include sexual abuse within the definition of physical abuse. To gain a better understanding of the state definitions about types of abuse, see the Types of Abuse Defined in Adult Protective Services Statutes charts available online at <http://www.abanet.org/aging/about/elderabuse.shtml>. The context column follows the terminology used in the statutory provision. To provide this context, the APS provisions on undue influence are either:
 - a. Part of a broader definition of financial exploitation or of sexual or physical abuse/exploitation,
 - b. Included as a distinct definition that makes clear that the context relates to one or more types of abuse, or
 - c. Part of a general definition that does not clearly reference financial exploitation or physical or sexual abuse/exploitation.
3. Statutory Provision(s) and Citation(s). The pertinent statutory provision(s) and citation(s) are presented in this column. They are copied verbatim from the state laws. If undue influence is part of a broad provision, such as a definition of financial exploitation, then all relevant parts of the provision are provided for context. If a state's law contains multiple provisions, they are separated by a line and a citation is provided for each.

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 The Undue Influence curriculum is available from the National Clearinghouse on Abuse in Later Life (NCALL). See the resource page of the NCALL Web site: www.ncall.us/resources.html