

Analysis of 2003 State Legislation Amending Adult Protective Services Laws

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Introduction

The National Center on Elder Abuse (NCEA) is pleased to provide a new service: an annual analysis of state legislation pertaining to Adult Protective Services (APS) laws. This first analysis summarizes the legislation enacted during 2003. While there may have been other state legislative activity related to elder abuse during 2003, this analysis only addresses amendments to APS laws. For a list of citations to state APS laws, visit <http://www.abanet.org/aging/elderabuse.shtml>.

Trends

Over the last few years, state legislatures considering changes to the laws governing their APS programs have generally modified existing provisions, rather than making major changes to their systems. That trend continued in 2003, when nine states enacted ten laws. These laws:

- Clarified or expanded definitions of elder abuse (Hawaii, Indiana, Mississippi, Nevada, Oklahoma)
- Added new categories of mandatory reporters (Maine)
- Changed the agencies to which reports can or must be made and/or the timeframes for making those reports (Connecticut, Oklahoma, Washington)
- Added or strengthened civil or criminal penalties for abuse (Hawaii, Mississippi)
- Addressed other important issues including:
 - Refusal of treatment for religious reasons (Connecticut)
 - Collaboration with law enforcement (Florida)
 - Government oversight (Florida)
 - Definitions and membership of multidisciplinary teams (Florida)
 - Inapplicability of caps on damages in tort cases to elder abuse lawsuits (Hawaii)
 - Disclosure of otherwise confidential health information (Oklahoma)
 - APS access to a victim or the victim's home and records (Oklahoma)
 - Protection of the assets of an incapacitated person (Oklahoma)
 - Temporary guardianship by APS (Oklahoma)
 - Notification/referral of cases to other agencies (Oklahoma)
 - New remedies for victims (Oklahoma).

As these amendments to state APS laws are highly diverse and sometimes address multiple issues, the changes made are discussed on a state-by-state basis, rather than clustered by trends. A chart showing broad categories of amendments and the states that made them follows the summary.

Connecticut

[SSB 901](#), effective date October 1, 2003, made the following changes:

- Reduced the time frame within which mandated reporters must make a report from five calendar days to not later than seventy-two hours after “suspicion or belief” of abuse, neglect, or exploitation arose
- Added new penalties for intentional failure to report within this new time period: the first offense is a class C misdemeanor and subsequent offenses are class A misdemeanors
- Provided that persons making abuse reports are entitled to all available legal remedies if they are discharged or discriminated or retaliated against for making a good faith report
- Added a provision indicating that refusal of treatment by an elderly person for religious reasons will not, by itself, establish grounds for protective services intervention.

Florida

SB 1822, effective July 1, 2003, accomplished the following:

- Provided a deadline of March 1, 2004 for an existing requirement that the Department of Children and Family Services enter into working agreements with the local law enforcement agencies that would be responsible for conducting criminal investigations of abuse, neglect, or exploitation allegations.
- Required the Office of Program Policy Analysis and Government Accountability to review the “efficacy” of the agreements and report its findings to the Legislature by March 1, 2005.
- Elaborated on the Department’s authority to develop, maintain, and coordinate “multidisciplinary adult protection teams” by defining those teams and setting forth guidelines on what types of professions might be included on the team. Suggested professionals include: psychiatrists, psychologists, police officers, medical personnel, social workers, and guardians.
- Required the Department of Children and Family Services to report to the Legislature by December 1, 2003, on the status of its improvements to the Adult Services Program and mandated the Department to analyze and report on a plan for implementing at least one multidisciplinary adult protection team.

Hawaii

[SB 78](#), effective and enacted on June 24, 2003 (Act 196):

- Added a new civil remedies and penalties section to the APS law. The legislature authorized the attorney general to bring a civil action on the State’s behalf against persons committing abuse and established civil penalties of not less than \$500 and not more than \$1000 (in addition to other existing civil remedies) for each day that the abuse occurs.
- Provided that dependent adults who suffer abuse or their guardians, or the estate of dependent adults who died as a result of abuse might also bring an action for damages against the abuser. The amendment declared that the abuser is liable for three times the amount of damages sustained by the dependent adult, plus attorneys’ fees and costs, in addition to other remedies available under law. Moreover, SB 78 provided that the cap

on recovery of non-economic damages for pain and suffering under the section on tort lawsuits does not apply to this section.

- Created a new definition of “neglect,” defining it as the “failure to exercise that degree of care toward a dependent adult which a reasonable person with the responsibility of a caregiver would exercise” and providing that neglect includes (but is not limited to) the failure to provide: (a) assistance with personal hygiene, (b) necessary food, shelter, clothing, health care, access to health care, or prescribed medication, and (c) protection against abuse by third parties.

Indiana

[HB 1660](#), effective July 1, 2003, revised the definition of “endangered adult” provided in IN ST § 12-10-3-17, which protects residents of licensed facilities. As a result of this change, residents are no longer considered to be incapable of managing or directing their property or self-care (which is one of three criteria for being defined as an “endangered adult” in need of protective services) simply because of “habitual drunkenness” or “excessive use of drugs.”

Maine

[LD 0309](#), effective May 16, 2003, added two new categories to the list of mandatory reporters: (1) clergy members who learn information as a result of their clerical professional work (except for information gathered during confidential communications) that leads them to suspect abuse, neglect, or exploitation; and (2) other officials of a church or other religious institution or association.

Mississippi

[SB 2427](#), effective July 1, 2003, made the following changes:

- Revised the definition of "exploitation" to include acts committed pursuant to a power of attorney.
- Expanded the criminal penalties for exploitation by (1) adding a jail penalty of up to one year to the existing penalties (misdemeanor and fine not exceeding \$5,000) for willfully exploiting a vulnerable adult for less than \$250; and (2) making willful exploitation of a vulnerable adult for \$250 or more a felony punishable by imprisonment for not more than ten years.

Nevada

[AB 126](#), effective October 1, 2003, expanded the description of conversion of money, assets, or property within the definition of “exploitation” by adding the following provision: “permanently depriving the older person of the ownership, use, benefit, or possession of his money, assets or property.”

Oklahoma

[HB 1323](#), effective May 30, 2003, made the following changes:

- Deleted the county district attorney's office from the list of agencies to which mandatory reporters of suspected abuse, neglect, or exploitation can make reports. That section was replaced by a new provision requiring the Department of Human Services or the law enforcement agency to forward its investigation findings to the district attorney's office "in which the suspected abuse, neglect, or exploitation occurred." The bill added a requirement that if the report is made to a law enforcement agency, that agency shall notify the Department of Human Services as soon as possible of its investigation.
- Added the category of "other health care professionals" to the list of mandatory reporters (which already included physicians and long-term care facility personnel).
- Required that telephone or other verbal reports be reduced to writing as soon as possible by the receiving agency, expanded the range of information that should be provided in the written report by requiring the name and address of the vulnerable adult's guardian or agent under a power of attorney, and stated that information may be excluded from the report if its disclosure is prohibited by federal law.
- Added a provision requiring every physician or other health care professional, and every hospital examining or treating a vulnerable adult for suspected abuse, neglect, or exploitation, to disclose all necessary health information and provide records related to the case to the Department of Human Services or local law enforcement agency. However, the vulnerable adult must agree to the disclosure or if he or she is incapacitated, then the information must be used only (1) for the purpose of providing the vulnerable adult with protective services; (2) for the purpose of conducting an investigation into the alleged abuse, neglect, or exploitation of the vulnerable adult; or (3) for immediate enforcement activity that is dependent upon the disclosure of the health information and is "necessary to protect the health, safety, and welfare of the vulnerable adult because of incapacity" or "would be materially and adversely affected by waiting until the vulnerable adult is able to agree to the disclosure."

[HB 1681](#), effective May 30, 2003, generally made grammatical and technical changes, but it included the following substantive provisions:

- Added "verbal abuse" to the forms of abuse from which vulnerable adults, by definition, cannot protect themselves.
- Changed part of the definition of "neglect" to include "negligent acts or omissions that result in harm or the unreasonable risk of harm..."
- Required the Department of Human Services to send its findings in vulnerable adult cases to "any state agencies with concurrent jurisdiction over persons or issues identified in the abuse investigation."
- Clarified that the Department of Human Services may petition the court for an order of entry or access if it is denied access to the person, home, or records of an individual who is believed to be a vulnerable adult in need of protective services. It also specified that the court must make a finding of probable cause that the adult is vulnerable before issuing such an order.

- Added a provision stating that the Department of Human Services must follow the wishes of a vulnerable adult who has capacity and who elects not to have his or her caretaker or next of kin notified about a protective services investigation.
- Added protections for a vulnerable person's assets in the event that his or her caretaker refuses to allow protective services to intervene by providing that the court may enter a decree to freeze the vulnerable person's assets if there is exploitation and a need to protect the assets.
- Added new remedies for vulnerable adults who lack mental capacity by clarifying that the Department of Human Services may ask the court for orders (1) establishing new accounts to pay the vulnerable adult's daily living expenses when existing accounts are frozen because of exploitation; (2) revoking an irrevocable trust; or (3) terminating a guardianship or conservatorship.
- Amended the existing law governing procedures related to temporary guardianship of vulnerable adults. It limited the vulnerable adult's opportunity to have a hearing and to receive notice of it to circumstances where temporary guardianship of thirty days or longer is sought. The bill also clarified the circumstances under which a temporary guardian may sell the real property of a vulnerable adult and the procedures for extending a thirty-day temporary guardianship if the vulnerable adult continues to need involuntary protective services.

Washington

HB 1904, effective May 12, 2003, added new provisions to the mandatory reporting section of the APS law. The bill provided that when a mandated reporter suspects that a physical assault or an act that caused fear of imminent harm has occurred, the reporter shall immediately make a report to the Department of Social and Health Services and to the appropriate law enforcement agency. Exceptions exist, however. A mandated reporter is not required to report to a law enforcement agency an incident of physical assault between vulnerable adults that causes minor bodily injury and does not require more than first aid, unless (1) the injured vulnerable adult or his or her legal representative or family member asks that a report be made or (2) the injury is on the face, back, head, neck, chest, breast, groin, inner thigh, genital, or anal area or there is a fracture, a pattern of physical assault between or involving the vulnerable adults in question, or an attempt at choking.

2003 CHART OF APS AMENDMENT CATEGORIES

Categories	State
APS Access to Victims	OK
Collaboration with Other Agencies	FL
Damages	HI
Definitions	HI, IN, MS, NV, OK
Guardianship by APS	OK
Government Oversight of APS	FL
Information/Record Disclosure	OK
Multidisciplinary Teams	FL
Notification/Referral to Other Agencies	OK
Penalties for Abuse	HI, MS
Protection of Victim Assets	OK
Refusal of Treatment for Religious Reasons	CT
Remedies for Victims	OK
Reporting	CT, ME, OK, WA

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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