

## **Explanation of the “Penalties for Failing to Report Elder Abuse: Comparison Chart with Provisions from Adult Protective Services Laws, by State” and “Penalties for Making a False Report of Abuse: Comparison Chart with Provisions from Adult Protective Services Laws, By State” Charts**

(Laws current as of 12/31/08)

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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 generally 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:** 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**

State and federal legislative staff, other policy makers, program administrators, practitioners, educators, researchers, reporters, victims or their family members, and others often want to know how many state APS laws authorize penalties for failing to report and for knowingly making a false report and what those laws say. The charts offer that information.

The charts are enhanced by a paper, titled “Failing to Report and False Reporting of Elder Abuse: Penalties Under State Adult Protective Services Laws,” which was written by Laura Remick, a law student intern for the ABA Commission on Law & Aging during the summer of 2009. Ms. Remick’s paper will be available on the Commission’s Elder Abuse Web page, [www.abanet.org/aging/elderabuse.shtml](http://www.abanet.org/aging/elderabuse.shtml) after its early October 2009 publication in Volume 31(1) of the Commission’s journal, *Bifocal*.

## **II. Detailed Explanation of the “Penalties for Failing to Report Elder Abuse: Comparison Chart with Provisions from Adult Protective Services Laws, by State” and “Penalties for Making a False Report of Abuse: Comparison Chart with Provisions From Adult Protective Services Laws, By State” Charts**

There are two charts in this series:

1. “Penalties for Failing to Report Elder Abuse: Comparison Chart with Provisions from Adult Protective Services Laws, by State,” and
2. “Penalties for Making a False Report of Abuse: Comparison Chart with Provisions from Adult Protective Services Laws, By State.”

Each of the charts is explained below. A general description of each chart is followed by a detailed explanation of how to read the chart.

### **A. Detailed Explanation of the “Penalties for Failing to Report Elder Abuse: Comparison Chart with Provisions from Adult Protective Services Laws, by State” Chart**

#### **1. General Description of Chart**

The purpose of this chart is to identify the civil or criminal penalties a person may face if he or she fails to report suspected elder abuse. The different types of civil and criminal penalties are indicated. Some states also authorize penalties against a third party who has played some role in a person’s failure to report; those penalties are also included in the chart.

#### **2. How to Read the Chart**

All provisions that relate to the penalties for failing to report elder abuse are included in these charts. All states that have *voluntary reporting* are highlighted in pink. This distinction is made because only states that have *mandatory reporting* can authorize penalties for the failure to report abuse. If the chart did not indicate which states have voluntary reporting, readers would not be able to distinguish between mandatory reporting states that do not have penalties for failure to report and voluntary reporting states that could not have penalties for failure to report.

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 listed.

The column on the far right includes the statutory provisions governing failure to report abuse, which are the basis for the chart’s categories. Generally, provisions are provided in their entirety. If the entire provision was long due to extraneous information, only the portion regarding penalties for failure to report was included and an ellipsis (...) was used to indicate that a portion was deleted.

Between the first and last columns are three sections depicting the various penalties authorized for failure to report. There are three categories of penalties: (1) civil, (2) criminal, and (3) third party. Within those three categories are nine types of penalties. If a state authorizes a type of penalty in its APS law, the box underneath the category will be marked with an “X.”

The three types of civil penalties for failure to report include: (1) administrative or civil fine, (2) civil liability for damages, and (3) notification of a licensing entity or employer.

There are four types of criminal penalties including: (1) misdemeanor, (2) unspecified criminal offense or violation, (3) criminal fine, and (4) jail.

There are two types of third party penalties. These are (1) penalties against a facility and (2) penalties against someone who impedes another person from reporting. Some states authorize penalties against someone who fails to report and also against a third party who impedes an individual from reporting. States that have the same penalties for those two situations are indicated by this symbol: X<sub>1</sub>. If a state has different penalties for those situations, it is indicated with this symbol: X<sub>2</sub>.

**NOTE:** For some states, we had to exercise judgment about whether a fine/monetary penalty was civil/administrative or criminal in nature. For all but one state, it was easy to make that distinction based on the plain reading of the statute; if the fine wasn’t connected to words about a criminal violation, we classified it as civil/administrative. However, for Wisconsin it was impossible to determine the type of fine so we asked an expert. We were told that the state laws use “forfeiture” to mean a civil penalty and “fine” to mean a criminal penalty. If other states use “fine” in that manner regardless of the context of the statute, then we have made some errors in our classifications. Readers with questions about the law in a state should seek advice from a lawyer licensed to practice in that state. Questions about classifications or the APS laws in general may be addressed to the authors.

**NOTE:** The number and types of penalties may be more expansive and detailed than what is provided in the APS laws and represented on the chart. For example, the provisions in Montana and Oregon refer to criminal codes that the reader must reference in order to find out what penalties are authorized for failing to report abuse.

**NOTE:** This chart does not depict or discuss the enforcement of these penalties. It only lists the penalties that are authorized in the APS laws.

## **B. Detailed Explanation of the “Penalties for Making a False Report of Abuse: Comparison Chart with Provisions from Adult Protective Services Laws, By State” Chart**

### **1. General Description of Chart**

This chart is more limited than the other. As only a small number of state APS laws contain provisions on civil or criminal penalties a person may face for making a false report about abuse to APS, this chart only includes states that have such provisions.

This chart identifies the civil or criminal penalties a person may face for making a false report about abuse to APS. The different types of civil and criminal penalties are indicated. Some states also authorize penalties against a third party who has played some role in a person's filing of a false report. Some states provide that a person who makes a false report will lose the immunity for making a good faith report that was provided elsewhere in the state's APS law.

## 2. How to Read the Chart

All APS law provisions related to penalties for making a false report are included in this chart. For purposes of false reporting, it does not matter whether a state has mandatory or voluntary reporting. In other words, states that do not mandate reporting may still penalize someone for making a false report to APS. Nonetheless, all states that have voluntary reporting are highlighted in pink for consistency with the other charts related to reporting.

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

The column on the far right includes the statutory provisions for making a false report of elder abuse, which are the basis for the chart's categories. The provisions list the penalties for falsely reporting abuse. Generally, provisions are provided in their entirety. If the entire provision was long due to extraneous information, only the portion regarding penalties for failure to report was included and an ellipsis (...) was used to indicate that a portion was deleted.

Between the first and last columns are four sections depicting the various penalties authorized for making a false report. There are four categories: (1) civil penalties, (2) criminal penalties, (3) third party penalties, and (4) other. Within those four categories are nine types of penalties. If a state authorizes a type of penalty in its APS law, the box underneath the category will be marked with an "X."

The three types of civil penalties for false reporting include: (1) attorney's fees, (2) civil liability for damages, and (3) notification of a licensing entity or employer.

There are four types of criminal penalties including: (1) misdemeanor, (2) felony, (3) criminal fine, and (4) jail.

There is one type of third party penalty. Some states authorize penalties against an individual who advises or causes someone else to make a false report. Some states authorize penalties against someone who makes a false report and also against a third party who causes or advises an individual to make a false report. States that have the same penalties for those two situations are indicated by this symbol: X<sub>1</sub>.

There is one other type of penalty. Some states provide that someone who makes a false report will lose immunity for civil or criminal liability for having made a report (commonly referred to as "good faith immunity") or lose the protection against retaliation by an employer for having made a report. For more information about good faith reporting, please see the *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” Chart and the charts themselves on the ABA Commission on Law and Aging Web site at <http://www.abanet.org/aging/elderabuse.shtml>.*

**NOTE:** This chart does not depict or discuss the enforcement of these penalties. It only lists the penalties that are authorized in the APS laws.

### **III. If You Find an Error**

We strived to be consistent in our representation and categorization of these 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 or your law may have changed. If you think we erred or your state has a regulation or policy that leads to a different interpretation, or your law has changed, please contact Lori Stiegel of the American Bar Association Commission on Law and Aging at [lstiegel@staff.abanet.org](mailto:lstiegel@staff.abanet.org) or 202-662-8692.

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<sup>i</sup> 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.