



April 29, 2014

TO: Superior Court Judges' Association Guardianship and Probate Committee

FROM: Shirley Bondon, Manager Office of Guardianship and Elder Services

RE: HB 1816 and SB 5694 Discussion

HB 1816 and SB 5694 were introduced in the 2013 Regular Legislative Session and reintroduced in the first and third Special Legislative Sessions and the 2014 Regular Legislative Session.

The bill modifies provisions relating to the appointment, qualification, removal, and duties of guardians in order to improve protections for incapacitated adults. It requires the administrator for the courts and the long-term care ombudsman to publish information regarding professional and lay guardians, and it restricts a guardian's ability to limit contact between an incapacitated person and a family member without a court order.

At the request of Senator Conway, the bill sponsor, the Superior Court Judges' Association (SCJA) Guardianship and Probate Committee (GPC) formed a workgroup to research and propose solutions to address the concerns that precipitated the inclusion of a limitation on a guardian's ability to limit contact between an incapacitated person and a family member without a court order, except in the instance where the guardian believes that contact should be limited to protect the incapacitated person from abuse, neglect, abandonment, or exploitation.

To help GPC understand concerns and consider solutions, staff of the Administrative Office of the Courts (AOC) invited various stakeholders to provide written examples of circumstances under which an incapacitated person was improperly isolated or was perceived to have been improperly isolated from family, friends and other professionals by a guardian. Stakeholders were also invited to submit relevant research and proposed solutions. In addition, AOC performed an incomplete review of solutions implemented in other states.

Stakeholders submitted comments in a variety of formats. AOC staff summarized comments in an effort to narrow comments to the specific issue being addressed. Staff did not verify the accuracy of the comments received or engage in fact finding. The comments below are presented to show that the public believes there is a problem and to present examples of actual or perceived issues of isolation. The seven

recommendations listed below include suggestions received from stakeholders and tools implemented by other states.

Isolation Examples

1. Summarized from comments received from the son of an IP regarding isolation imposed by a professional guardian.

According to the son of a 90 year old man with dementia (IP), the IP suffered psychological and financial abuse at the hands of a woman he met while socializing at a club in June. The IP moved into a mobile home with his lady friend, who did not allow family to visit. A guardian was petitioned for and appointed in December. From June to December the IP lost 25 pounds.

The family assumed the guardian would move the IP out of the mobile home, but that did not occur. The guardian continued to let the IP reside in the mobile home with his lady friend for the next 14 months. Every time family members asked the guardian to arrange for them to visit the IP the guardian refused. The guardian stated that the visitation requests greatly agitated and stressed the IP. Family members explained to the guardian that the reported stress reactions were likely due to psychological manipulation by the lady friend and not the family. The guardian did not accept the family's explanation. The family believes that the guardian did not consider the positive interaction between the IP and family which occurred during several short unplanned visits. The son states that as he was saying goodbye to the IP during their last visit together the IP asked the son to come back. Three days later, an email came from the guardian's nurse care manager banning unapproved visits from the family.

In February, the IP fell. The family believes the fall occurred as a result of an altercation between the IP and his lady friend. Twenty-six hours later, the IP was admitted to the hospital with three broken ribs and a pneumothorax necessitating four units of blood. Family members were allowed to visit the IP at the hospital and the assisted living facility to which he was discharged. He did not display stress reactions when family visited.

Two months later, new visitation restrictions were imposed by the guardian. Family members were ordered not to visit at meal time; could not bring in outside food, or visit for more than one hour per visit. The guardian communicated that the IP had a history of aspiration pneumonia. Family members dispute this and believe that if the guardian had allowed the family to help in providing the IP's health history, the guardian would have known that the IP's dysphagia resulted from a stroke five years earlier with no history of aspiration pneumonia.

Sometime late the IP was ill again. After four days of pain and intermittent fever, the IP was admitted to the hospital for what turned out to be a kidney stone. Surgery was scheduled for the next evening. Family members were told to wait until after the surgery to see the IP. The IP's wife visited him pre-op, however, and remained at the hospital

until the surgery was completed late that evening. The following day, the wife was asked to leave the IP's hospital room because the family was accused of creating a disturbance the previous night. The guardian decreed on the following day that the family may visit one at a time for 30 minutes, followed by a 30 minute break before the next family member may visit. Caregivers from the agency employed by the guardian, who were unknown to the IP, were there 24 hours a day. Two days later, the doctor asked family to come to the hospital because the doctor thought the IP's death was near. The IP's wife spent that Sunday sitting by his bed and his condition rallied by evening. The next day the IP's wife was again asked to leave after 30 minutes. The IP's wife did not feel comfortable visiting under such constraints. By the end of the week, the IP's condition had deteriorated to the point where the guardian decided to discharge the IP to the care of hospice. This decision was made without consulting family contrary to the stated wishes of the IP defined in a Power of Attorney made when he was of sound mind. Once again, the IP's health improved. The family believes improvement occurred as a result of their being allowed to spend more time with him. The IP lived for another year.

2. Summarized from comments received from the granddaughter of an IP regarding isolation imposed by a professional guardian and family members of the IP.

The granddaughter reports that the family of the IP became involved with the guardianship system when her grandmother was taken to a hospital for a multitude of issues, including malnutrition. The hospital informed family that the independent living facility where the IP lived was medicating the IP with over twenty medications, the majority of which were believed to be medically unnecessary. The granddaughter further reports that the hospital said that the IP was being given an extremely high level of morphine that was causing medical issues and it too was unnecessary. The discharge papers said "No More Morphine."

Within two months of her discharge from the hospital, the independent living facility was once again medicating the IP with morphine. At this time, the granddaughter began researching issues surrounding the grandmother's care and financial well-being. With cooperation from several banks and the US Internal Revenue Service, the granddaughter determined that over \$200,000 was missing from the IP's estate. She also learned that the IP's two eldest daughters had approved the morphine and use of laxatives.

Approximately four months after the IP was discharged from the hospital, the family decided to obtain outside medical attention for the IP. The IP's youngest daughters took the IP to an outside physician for a physical that included blood tests. According to the granddaughter, when the IP learned that the independent living facility was medicating her, just as they had prior to her hospital stay, the IP did not want to return to the facility and instead opted to stay with her youngest daughter.

The facility called APS when the IP refused to return. APS contacted the Sheriff and

together they went to the IP's youngest daughter's home and attempted to physically remove the IP. The family felt that the IP was fine and under the supervision of an outside physician. She was scheduled to receive occupational therapy, physical therapy, nutritional guidance and counseling. The Sheriff refused to participate in the forced removal of the IP and found her to be in a healthy state.

APS contacted the AG's office and together they petitioned for a guardian. The granddaughter helped the IP hire an attorney.

There were numerous hearings. The IP was allowed to remain with her youngest daughter until the issue of guardianship was decided. The IP's two oldest daughters were allowed to visit the IP at her youngest daughter's home. The court ordered the IP to move to a facility. The IP was placed in a locked dementia ward against the IP's wishes.

The two eldest daughters petitioned for a restraining order against their sister. For a period of 24 hours the IP's attorney, daughter and granddaughter could not locate the IP. The IP's attorney and daughter argued that there was no legal basis for a restraining order except to isolate the IP. A guardian was appointed; the youngest daughter was allowed restricted visitation.

3. Summarized from comments received from the son of an IP and the son's attorney regarding isolation imposed by professional guardians.

An attorney forwarded communication from a former client. According to the attorney, his client was taken to task because he raised his voice to his elderly father. The client was concerned about a professional guardianship service acting as agent in fact whom he believed was mishandling his parents' funds. Even though his father was interviewed privately by an APS worker, and his father who had not been ruled incapacitated, emphatically stated he wished to see his son, the CPG filed a protection order action, leading to a guardianship action which isolated the client as he describes below. The attorney had no knowledge of his client being alleged to have exploited his father and his mother, and the son was never found to have done so. The client believed the systems unduly restricted his company with his parents during their final days.

The son of the IP reports that his parent's guardianship was a case where their rights and wishes to be with their family at the end of their lives, due to no fault of their own, were neither well respected nor effectively accommodated.

The son alleges that three different guardianship firms/guardians used overt isolation over the final three-and-one-half years of his parent's lives as they attempted to increase their influence and control. The son states that the guardians did so with little apparent awareness or real concern for the devastating consequences to the elderly and vulnerable couple, and without valid justification or balance for their intrusive decisions.

He further states that in turn, they apparently felt little accountability given the usually most-cursory and un-questioning approval given them by Washington State's Court system and laws.

The son alleges that, as professional guardians acting as fiduciaries, they took action against him when he raised issues of how his parents' assets were being managed. He objected most urgently to their persistently refusing to make financial projections and to their having over-drawn his father's bank account.

In taking action against the son, the guardians initiated a Vulnerable Adult Protection Action, and also precipitated a DSHS Adult Protection Services action. The son reports not having the opportunity to speak with the APS worker before findings were adopted, because the guardian claimed to be unable to provide contact information for the son. The son reports that the father voiced to the social worker that he did not want to be isolated from his son.

While the son believes there was never any evidence that he financially exploited his parents, neglected, or abused them, he admits raising his voice in trying to explain to his father that his assets were being mismanaged.

The son states that as it turned out, his concerns were fully justified, as his later-surviving mother was on the verge of being without cash near the end of her life, and plans for dropping her onto Medicaid seemed unavoidable.

According to the son, at one point, a second professional guardian for the mother suggested that his sister initiate a VAPO against him, without hearing his side of the story. A third guardian also leaned toward isolation. The son states that as his mother's death neared, even though the Hospice nurse had described to the professional guardian days earlier that the IP was "*entering the active phase of the end of life process*" the guardian allowed the IP to die alone. The son states that an hour before his mother's passing he was asked to leave her side. Many legal actions were endured by all, approximately six cases resulting in significant legal and court costs.

4. Summarized from court documents regarding isolation imposed by a professional guardian.

The incapacitated person is a 43 year old female with Down's Syndrome. For approximately 39 years the IP's mother and father served as co-guardians. A few years ago APS petitioned the court to appoint a GAL to review the IP's guardianship based on concerns about the IP's relationship with her mother. The GAL filed a report stating that the IP loves her mother, but wanted her removed as co-guardian. According to the GAL report, the IP believed she had lost caregivers with whom she was satisfied when they were fired, or driven to quit, by her mother. The GAL reported that the mother loved the IP and acted out of concern, but stated that the mother's approach was disruptive. Mother and IP admitted to having problems in their relationship. The mother attributed the problems to service providers badmouthing her when she refused to tolerate

unsatisfactory performance of service. The GAL recommended appointment of a professional guardian. A professional guardian was appointed and more motions and court proceedings followed. The guardian requested and was granted authority to limit the mother's contact with the IP, due to what the guardian described as an ongoing problematic relationship between mother and IP that affected the IP's ability to cope with the requirements of daily life, requiring limitation of the mother's time and contact with the IP.

5. Summarized from comments received from an attorney regarding isolation imposed by a professional guardian.

In this case, the AAG filed the petition for guardianship and requested a specific certified professional guardian. According to the reporting attorney, the court file shows that the guardian hired caregivers and instructed them not to leave the IP alone with the IP's relatives. The guardian also instructed the caregivers to take notes of all conversations between the IP and relatives and to provide copies of the notes to the professional guardian.

6. Summarized from a disciplinary action involving a professional guardian.

A professional guardian was appointed full guardian of the person and estate. Sometime later, the guardian received a letter from the assisted living facility where the incapacitated person lived in which the facility administrator communicated that the incapacitated person's mental and cognitive functions had deteriorated to such an extent that the facility could no longer provide the appropriate level of care. The guardian mailed a letter to the IP's family informing them that due to the incapacitated person's need for a higher level of care he would be moving her to a facility approximately 50 miles away.

Family members of the IP made multiple attempts to discuss the move with the guardian and convince him not to move the IP so far away. The family contacted two local facilities that had the ability to provide a higher level of care and were willing to accept the IP. Facility administrators contacted the guardian. The guardian refused to consider a different arrangement.

Family members hired an attorney who spoke with the guardian. Unable to get the guardian to reconsider, the attorney asked the guardian to allow the court to address the issue. The attorney faxed an incomplete and unsigned Motion to Show Cause to the guardian's office. After receiving the Motion, the guardian did not contact the attorney or in any way acknowledge receipt of the Motion. The guardian disputes this.

After several unanswered calls made to the incapacitated person a family member went to the facility where the incapacitated person lived and found the guardian's assistant readying the incapacitated person's personal items for the move. After a heated exchange with the administrator of the facility, the police were called and family

members were escorted off the property.

At the scheduled time of the Show Cause Hearing, the attorney for the family of the IP called the guardian and asked why he wasn't in court for the Show Cause Hearing. The guardian was in transit with the incapacitated person to the facility 50 miles away.

Later, the guardian filed a Petition for an Order of Protection in the county where the new facility was located against the incapacitated person's family to restrict contact with the incapacitated person. He also filed a Petition for an Order of Protection in the county where he lived against the incapacitated person's family to restrict their contact with him. The court dismissed both petitions.

7. Summarized from a disciplinary action involving a professional guardian.

The professional guardian of an IP with a large number of children moved the IP to a senior living community that provides Alzheimer's and dementia care. Family and friends were not informed of the IP's location. Prior to moving the IP, the guardian mailed a letter to the facility the IP was being moved from and the facility the IP was being moved to. The letter informed both administrators and employees at both facilities that no friends or family of the IP should have any knowledge of the IP's whereabouts, nor should they be given any information as to the IP's status for approximately two months.

8. Summarized from comments received from a case manager with an Area Agency on Aging and Disabilities regarding isolation imposed by a lay guardian.

According to a case worker, she had a client (the IP) whose guardian was the IP's sister. The sister/family guardian would not allow the caseworker to speak with the IP on the phone or in person without the guardian being present. The sister/family guardian attempted to have the case worker perform an assessment of the IP without the IP in the room. The case worker objected and was allowed to speak to the IP and perform the assessment in the sister/guardian's presence. Whenever the caseworker called the IP the sister/family guardian would tell the case worker that the IP could not talk to her. The sister/family guardian insisted that, as the guardian, she had the right to make decisions regarding the IP.

9. Summarized from court documents regarding isolation imposed by a DPOA.

The alleged incapacitated person is a 74 year old mother of six children. Two of her sons lived in her home. One of the sons living with her was developmentally delayed. The other son had been her primary caregiver for several years. The primary caregiver will be referred to as Son One. When the AIP's overall capacity began to decrease the family agreed that Son One should be the DPOA.

For approximately 14 months Son One financially exploited his mother when he collected social security and SSI checks for four months, which he used for his own benefit. He also discarded his mother's personal property without her knowledge or consent and he removed approximately \$28,500 from her safe deposit box without her consent. He moved his mother into the home of a lady friend for approximately one month and isolated her from his other siblings.

Son Two moved for a vulnerable adult protection order prohibiting Son One from handling their mother's finances, living in her home or visiting her. In a separate action, Son Two asked that mom be removed from the home of Son One's lady friend.

The VAPO was ordered, prohibiting Son One from handling his mother's finances, but did not bar him from seeing his mother. The court opined that to prohibit contact would punish the mother rather than protect her.

Comments Received

Summarized from comments received from an attorney.

As the attorney for a family where the family-guardian was denying access to my client, I petitioned the court (per RCW 11.88.120(2)) to review the guardianship. In that case the court ordered the guardian to appear to explain why they were isolating the IP. The court eventually removed the guardian. RCW 11.88.120(2) is a powerful, underutilized tool for disgruntled parties to have the court review guardianship matters. There is a specific provision in the statute to allow pro-se parties to simply write a letter to the court to initiate the review. Other than the cost of a stamp, there is little expense, and the matter is reviewed by a judicial officer. Judges and the Legislature should be reminded that they have already created a very simple mechanism (11.88.120) to have the court review the activities of guardians who "inappropriately deny access".

Summarized from comments received from an attorney regarding Vulnerable Adult Protection Actions.

A review of the court records would show that many more guardianships/vulnerable adult protection actions are filled together than a few years ago. A VAPA can result in an order preventing the "perpetrator" from any contact for up to 5 years with a fairly low burden of proof (unless the vulnerable adult objects to the proceeding). Anyone can bring a VAPA and it sets off a chain of events that can have unfortunate consequences. Legislators should reconsider vulnerable adult actions and see if they are meeting the needs of vulnerable adults.

Summarized from comments received from a family member of an IP.

There is an issue with isolation not only at the guardianship level but at the nursing home level as well. My grandmother was isolated by both her guardian and two different nursing/retirement homes.

In Washington State you can deny a senior citizen all the rights that are granted criminals just because they are elderly. You can isolate a senior in order to stop a relative and/or friends from determining how the senior is being medicated and how they are being treated financially, physically, mentally and emotionally by guardians and institutions.

I truly do not understand why guardians and nursing homes are treated as supreme powers and caring relatives are treated as criminals. The state does not have the money or personnel to oversee each and every senior that is under a guardianship or in a nursing/retirement facility. Without oversight there is corruption.

If you truly want to help seniors assign a law enforcement agency to be responsible for enforcing the law and create laws that make isolating seniors a crime.

Recommendations Received

Recommendation 1 – Adopt legislation similar to AB 937.

August 2013, the California Legislature adopted AB 937, which provides that the conservator's control of the conservatee shall not extend to the personal rights retained by the conservatee, including, but not limited to, the right to receive visitors, telephone calls, and mail, unless specifically limited by a court order or necessary to protect the conservatee from abuse.

See Attachment A

1. Announcement/Press Release;
2. Copy of AB 937; and
3. Outline prepared by Don Edward Green, Probate Comm'r & Judge Pro Tem (ret.)

Recommendation 2 – Adopt legislation similar to ORS 125.320.

Limitations on guardian

(3) Before a guardian may place an adult protected person in a mental health treatment facility, a nursing home or other residential facility, the guardian must file a statement with the court informing the court that the guardian intends to make the placement.

See Attachment B

Recommendation 3 – Adopt legislation specifying factors to consider when determining if contact should be prohibited.

See Attachment C

Recommendation 4 - Revise the definition for abuse to include isolation. Several states have done this.

See Attachment D

Recommendation 5 – Revise SB 5694 to include the following:

1. Prohibiting isolation should apply to family, friends, including romantic interests.
2. The guardian should be required to go to a court and make a showing that limiting contact is required, and there should be an opportunity for a response.
3. If a VAPA is used, it should be petitioned for in the guardianship court.
4. It should be clear that guardians can't deny access to agencies who are investigating or providing advocacy, such as Disability Rights Washington and the Long-Term Care Ombudsman.
5. This is also a problem with people holding power of attorney. This may require another bill or need to be part of the long-awaited revision of the POA statute (UPOAA).

Recommendation 6 – Codify a Bill of Rights for Incapacitated Persons.

Some states have developed a Bill of Rights for IPs and Protected Persons.

See Attachment E

Recommendation 7- Develop a dispute resolution option for high conflict families involving vulnerable adults.

See Attachment F

Attachment A

Wednesday, March 05, 2014

Text Size

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Monday, August 19 2013

Governor Signs Wieckowski Bill Protecting Conservatees

AB 937 prevents elderly from being isolated from loved ones unless a court order says it's needed to prevent abuse

Sacramento -- Assemblymember Bob Wieckowski's (D-Fremont) bill to stop conservatees from being isolated from family and friends by conservators who are overstepping their limits was signed into law today by California Governor Jerry Brown.

"Governor Brown's decision to sign AB 937 sends a clear message that people who are no longer able to manage their affairs should still be treated with the respect and dignity they deserve rather than isolated from their loved ones," Wieckowski said. "This is a victory for conservatees throughout California and for all those who care about them."

AB 937 clarifies the law to state that unless a court has ordered otherwise, a conservatee keeps the right to, among other things, receive personal mail, telephone calls, and visitors.

Conservatorships are established to protect individuals from abuse when they can no longer manage their finances, personal or medical decisions. When a court establishes a conservatorship, the conservatee and his or her family receive a Judicial Council notice saying the conservatee should be treated with understanding and respect.

Wieckowski introduced the legislation after hearing about overzealous conservators who were unilaterally deciding to isolate seniors from specific individuals without first getting court orders.

The bill is supported by the California Long-Term Care Ombudsman Association, the Congress of California Seniors, California Advocates for Nursing Home Reform, Consumer Advocates for RCFE Reform and the Long Term Care Ombudsman Services of San Luis Obispo County.

Assemblymember Wieckowski represents the 25th District, which includes Fremont, Newark, San Jose, Milpitas and Santa Clara.

Contact: Jeff Barbosa, 916-319-2025

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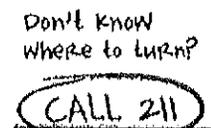
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Call Bob, on 4/22
4th Wednesday of each month
(excluding holidays and library
closures)
Hours: 3 - 5 pm

Please call the District Office at
(510) 440-9030 for more
information or to schedule an
appointment.



BILL NUMBER: AB 937 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY APRIL 18, 2013

AMENDED IN ASSEMBLY MARCH 21, 2013

INTRODUCED BY Assembly Member Wieckowski

FEBRUARY 22, 2013

An act to amend Section 2351 of the Probate Code, relating to conservators and guardians.

LEGISLATIVE COUNSEL'S DIGEST

AB 937, as amended, Wieckowski. Conservators and guardians: personal rights of conservatees.

Existing law requires that a guardian or conservator of a person be responsible for the care, custody, control, and education of a ward or conservatee, subject to a court's determination of the extent of those powers, as specified.

This bill would provide that the conservator's control of the conservatee shall not extend to personal rights retained by the conservatee, including, but not limited to, the right to receive visitors, telephone calls, and mail, unless specifically limited by a court order *or necessary to protect the conservatee from abuse*

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 2351 of the Probate Code is amended to read:

2351. (a) Subject to subdivision (b), the guardian or conservator, but not a limited conservator, has the care, custody, and control of, and has charge of the education of, the ward or conservatee. This control shall not extend to personal rights retained by the conservatee, including, but not limited to, the right to receive visitors, telephone calls, and mail, unless specifically limited by court order *or necessary to protect the conservatee from abuse*.

(b) Where the court determines that it is appropriate in the circumstances of the particular conservatee, the court, in its discretion, may limit the powers and duties that the conservator would otherwise have under subdivision (a) by an order stating either of the following:

(1) The specific powers that the conservator does not have with respect to the conservatee's person and reserving the powers so specified to the conservatee.

(2) The specific powers and duties the conservator has with respect to the conservatee's person and reserving to the conservatee all other rights with respect to the conservatee's person that the conservator otherwise would have under subdivision (a).

(c) An order under this section (1) may be included in the order appointing a conservator of the person or (2) may be made, modified, or revoked upon a petition subsequently filed, notice of the hearing on the petition having been given for the period and in the manner

provided in Chapter 3 (commencing with Section 1460) of Part 1.

(d) The guardian or conservator, in exercising his or her powers, may not hire or refer any business to an entity in which he or she has a financial interest except upon authorization of the court. Prior to authorization from the court, the guardian or conservator shall disclose to the court in writing his or her financial interest in the entity. For the purposes of this subdivision, "financial interest" shall mean (1) an ownership interest in a sole proprietorship, a partnership, or a closely held corporation, or (2) an ownership interest of greater than 1 percent of the outstanding shares in a publicly traded corporation, or (3) being an officer or a director of a corporation. This subdivision shall apply only to conservators and guardians required to register with the Statewide Registry under Chapter 13 (commencing with Section 2850).

Outline

Recent Developments in Estate Planning & Probate

Don Edward Green
Probate Comm'r & Judge Pro Tem (ret.)

- General Procedure
- Conservatorships
- Decedents' Estates & Trusts
- Guardianships

Assembly Bill No. 937
CHAPTER 127

An act to amend Section 2351 of the Probate Code, relating to conservators and guardians.

[Approved by Governor August 19, 2013. Filed with Secretary of State August 19, 2013.]

LEGISLATIVE COUNSEL'S DIGEST

AB 937, Wieckowski. Conservators and guardians: personal rights of conservatees.

Existing law requires that a guardian or conservator of a person be responsible for the care, custody, control, and education of a ward or conservatee, subject to a court's determination of the extent of those powers, as specified.

This bill would provide that the conservator's control of the conservatee shall not extend to personal rights retained by the conservatee, including, but not limited to, the right to receive visitors, telephone calls, and personal mail, unless specifically limited by a court order.

The people of the State of California do enact as follows:

SECTION 1. Section 2351 of the *Probate Code* is amended to read:

2351.

(a) Subject to subdivision (b), the guardian or conservator, but not a limited conservator, has the care, custody, and control of, and has charge of the education of, the ward or conservatee. This control shall not extend to personal rights retained by the conservatee, including, but not limited to, the right to receive visitors, telephone calls, and personal mail, unless specifically limited by court order.

(b) Where the court determines that it is appropriate in the circumstances of the particular conservatee, the court, in its discretion, may limit the powers and duties that the conservator would otherwise have under subdivision (a) by an order stating either of the following:

(1) The specific powers that the conservator does not have with respect to the conservatee's person and reserving the powers so specified to the conservatee.

(2) The specific powers and duties the conservator has with respect to the conservatee's person and reserving to the conservatee all other rights with respect to the conservatee's

person that the conservator otherwise would have under subdivision (a).

(c) An order under this section (1) may be included in the order appointing a conservator of the person or (2) may be made, modified, or revoked upon a petition subsequently filed, notice of the hearing on the petition having been given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(d) The guardian or conservator, in exercising his or her powers, may not hire or refer any business to an entity in which he or she has a financial interest except upon authorization of the court. Prior to authorization from the court, the guardian or conservator shall disclose to the court in writing his or her financial interest in the entity. For the purposes of this subdivision, "financial interest" shall mean (1) an ownership interest in a sole proprietorship, a partnership, or a closely held corporation, or

(2) an ownership interest of greater than 1 percent of the outstanding shares in a publicly traded corporation, or (3) being an officer or a director of a corporation. This subdivision shall apply only to conservators and guardians required to register with the Statewide Registry under Chapter 13 (commencing with Section 2850).

- 1 -

CONSERVATORSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE OF (Name): CONSERVATEE	CASE NUMBER:
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THE CONSERVATEE'S RIGHTS (continued)

Unless the court has limited or taken the right away, the conservatee also keeps the right to:

- Receive personal mail;
- Vote;
- Marry or enter into a registered domestic partnership;
- Receive visits from family and friends;
- Make his or her own medical decisions;
- Enter into transactions, to the extent reasonable to (1) provide the necessities of life to the conservatee and his or her minor children, and (2) provide the necessities of life to his or her spouse or basic living expenses to his or her registered domestic partner;
- Engage in other activities the court expressly allows him or her to do, at the time of the conservator's appointment, or a later time following a court hearing on a request for authority to engage in the activity; and
- If the conservatee is a limited conservatee, to engage in any activity that the court has not expressly reserved to his or her limited conservator.

(Proof of mailing on page 3)
 (Instructions for mailing on page 4)

CONSERVATORSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE OF (Name): _____ <div style="text-align: right; margin-top: 10px;">CONSERVATEE</div>	CASE NUMBER: _____
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PROOF OF MAILING

1. I am over the age of 18. I am the appointed conservator of the above-named conservatee, the conservator's attorney, or an employee of the conservator's attorney. I am a resident of or employed in the county where the mailing occurred.
2. My residence or business address is (*specify*): _____
3. I mailed the foregoing *Notice of Conservatee's Rights* to each person named below by enclosing a copy in an envelope addressed as shown below AND
 - a. **depositing** the sealed envelope on the date and at the place shown in item 4 with the United States Postal Service with the postage fully prepaid.
 - b. **placing** the envelope for collection and mailing on the date and at the place shown in item 4 following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.
4. a. Date mailed: _____ b. Place mailed (*city, state*): _____
5. Each copy of the *Notice of Conservatee's Rights* was mailed with an attached conformed copy, showing the date of its filing and the judicial officer's signature, of the *Order Appointing Probate Conservator* filed in this matter on (*date*): _____

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____

(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)	(SIGNATURE OF PERSON COMPLETING THIS FORM)
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NAME AND ADDRESS OF EACH PERSON TO WHOM NOTICE WAS MAILED

	<u>Name and relationship to conservatee</u>	<u>Address (number, street, city, state, and zip code)</u>
1.	Conservatee	
2.	Attorney for conservatee	
3.	Spouse or registered domestic partner	
4.	Relationship: <input style="width: 150px;" type="text"/>	
5.	Relationship: <input style="width: 150px;" type="text"/>	

Continued on an attachment. (*You may use form GC-341(MA) to show additional addressees.*)

CONSERVATORSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE OF (Name):	CASE NUMBER:
CONSERVATEE	

**INSTRUCTIONS FOR MAILING COPIES OF NOTICE OF CONSERVATEE'S
RIGHTS AND ORDER APPOINTING PROBATE CONSERVATOR**

1. **What to mail:** The conservator, the conservator's attorney, or the attorney's employee must mail a copy of this *Notice of Conservatee's Rights*, with an attached copy of the *Order Appointing Probate Conservator* showing the judicial officer's signature and the date of filing, to each person identified in item 2 below.
2. **Who must receive the mailing:** The persons to whom copies of this *Notice of Conservatee's Rights* and the *Order Appointing Probate Conservator* must be mailed are:
 - a. The conservatee;
 - b. The conservatee's attorney, if any;
 - c. The following relatives of the conservatee named in Probate Code section 1821(b) (spouse or registered domestic partner and second-degree relatives required to be named in the *Petition for Appointment of Probate Conservator*):
 - (1) Spouse or registered domestic partner;
 - (2) Parents;
 - (3) Children at least 12 years old (see item e below if there are children under the age of 12);
 - (4) Grandparents;
 - (5) Grandchildren at least 12 years old (see item e below if there are grandchildren under the age of 12); and
 - (6) Brothers and sisters, including half-brothers and half-sisters.
 - d. If the conservator knows of no spouse or registered domestic partner or second-degree relative of the conservatee, copies of this *Notice of Conservatee's Rights* and the *Order Appointing Probate Conservator* must be mailed to the following persons:
 - (1) Spouse or registered domestic partner of a predeceased parent of the conservatee;
 - (2) Children of a predeceased spouse or predeceased registered domestic partner of the conservatee at least 12 years old (see item e below if there are children under the age of 12);
 - (3) Brothers and sisters of the conservatee's parents (conservatee's aunts and uncles), if any, or, if none, to their natural and adoptive children at least 12 years old (see item e below if there are children under the age of 12); and
 - (4) The natural and adoptive children of the conservatee's brothers and sisters at least 12 years old (see item e below if there are children under the age of 12).
 - e. If a person named above is under the age of 12, a parent, guardian, or other person having legal custody of the person entitled to notice, with whom the person entitled to notice resides.
3. **When the mailing must be completed:** The mailing described in item 1 must be completed on or before the 30th day following the filing date of the *Order Appointing Probate Conservator*.
4. **Fill out Proof of Mailing:** The conservator or his or her attorney of record must fill out the Proof of Mailing on page 3 of this form, including the correct addresses of the persons to receive the mailing, identified in item 2 above, before making the copies to be mailed. If the Proof of Mailing does not have enough space for the names and addresses of all persons who will receive the mailing, the names and addresses not shown on the Proof of Mailing must be shown on one or more additional pages attached to this form. One or more copies of *Attachment to Notice of Conservatee's Rights* (form GC-341(MA)) may be used for this purpose. After the mailing described in item 5 below, the conservator or his or her attorney must date and sign the Proof of Mailing on page 3 of this form.
5. **How to mail:** The conservator, the conservator's attorney of record, or an employee of the attorney, must do the following:
 - a. Place copies of this *Notice of Conservatee's Rights*, with attached conformed copies of the *Order Appointing Probate Conservator* in sealed envelopes, addressed to each person at the address shown for that person on the Proof of Mailing on page 3 of this form, or on attached additional pages, with postage fully prepaid.
 - b. Deposit (mail) the sealed envelope(s) with the United States Postal Service on the date and from the place (city and state) shown in item 4 of the Proof of Mailing on page 3 of this form.
6. **Filing Notice of Conservatee's Rights:** The conservator, or his or her attorney of record, must file with the court the original *Notice of Conservatee's Rights*, with a signed and dated Proof of Mailing and all attached additional address pages. Do not attach a copy of the *Order Appointing Probate Conservator* to the original *Notice of Conservatee's Rights* filed with the court.

DON EDWARD GREEN

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September 23, 2013

Assembly Member Bob Wieckowski
State Capitol
P.O. Box 942849
Sacramento, CA 94249-0025

Re: AB 937
Request for information

Dear Assembly Member Wieckowski:

I am an "expert" in California probate law, in that I am one of the people often called upon to speak and write about recent developments in this area. I am writing to you because I want to be as sure as I can about AB 937. I believe it is in both of our best interests for me to be as accurate as possible about it. This is the first time I have requested information from the author of a bill, but it is also the first time I have ever seen a bill enacted with such profound and serious consequences. In this letter I will provide you with my current understanding and analysis of AB 937, including its history and likely impacts. I am requesting information or commentary that may be helpful to my reaching a better understanding.

As I understand AB 937, effective 1/1/2014, substantially all conservators of the person in California will have all, or substantially all, of their power and responsibility revoked. Conservatees will be restored all of their "personal rights... unless specifically limited by court order." This divests conservators of the powers, and without the powers they bear no responsibility. Conservators will generally have no warning and no way to prepare to address being deprived of their ability to provide the protection that courts have determined is needed by their conservatees. Many conservators of the person are acting *in pro. per.*, and even those represented by counsel may not be notified. Because of the confusion about the scope and impact of AB 937, others may believe that AB 937 changed nothing so there is no need to go to court to re-establish the powers they need.

All of the conservatees' rights addressed in a conservatorship of the person are "personal." The scope of power and responsibility given a conservator of the person is the same as that given to a parent or guardian of a minor: "care, custody and control." There is no statute, case, or any other legal authority that provides any basis for distinguishing any of the rights addressed in a conservatorship of the person as "personal" rather than non-personal. The language in AB 937, "including but not limited to" therefore includes the totality of rights and powers of

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conservatorship of the person except, perhaps, for powers specifically limited in the Probate Code regarding conservators of the person.

None of the four staff analyses (committee and floor) appear to have considered the import of "including but not limited to" in AB 937. I have found nothing in the legislative record showing any contemplation of what rights are included, or excluded, by "including but not limited to" in AB 937.

Under AB 937, it would be unclear whether conservators will retain powers that are expressly addressed by current statutes. These include:

1. The ability to determine where the conservatee will live, upon compliance with notification requirements under PrC §2352.
2. The ability to consent to emergency medical treatment under PrC § 2354.

Both of these sections seem to affect "personal rights" -- the rights to decide where to live and what medical treatment to accept. Since AB 937 was enacted subsequent to these existing statutes, perhaps they are *de facto* repealed by AB 937 because the court orders will contain no express statements as to these "personal rights." PrC §§ 2352 and 2354 were enacted as restrictions on conservators' powers, not as a grant of those powers, which may contribute to a determination that both of these sections were repealed by AB 937. Alternatively, since PrC §§ 2352 and 2354 deal with specific powers, and AB 937 is very general in its expression, PrC §§ 2352 and 2354 may be determined to remain in effect.

PrC §§ 2352 and 2354 deal with conservators' actions that profoundly affect conservatees. If the conservators' powers under these sections are unaffected by AB 937, then AB 937 reverses the current, statutory priorities in treating those especially critical actions as needing no special court scrutiny, but treating lesser problems, e.g., telephone calls, as requiring full judicial intervention. If AB 937 did not repeal PrC § 2352, conservators of the person with otherwise greatly reduced powers may feel forced to change the place of residence of the conservatee to get the conservatee away from persons who are generating dangerously excessive stress, since otherwise protecting the conservatee is so difficult and slow.

The retroactivity of AB 937 (e.g. to strip the powers of currently appointed conservators) is governed by PrC § 3. AB 937 has no transitional provisions. PrC § 3, provides:

"(a) ... (*definitions*)

(b) This section governs the application of a new law except to the extent otherwise expressly provided in the new law.

(c) ... a new law applies on the operative date to all matters governed by the new law, regardless of whether an event occurred or circumstance existed before, on, or after the operative date, including, but not limited to, creation of a fiduciary relationship, death of a person, commencement of a proceeding, making of an order, or taking of an action.
..." (*emphasis added*)

AB 937 lists, specifically, *receiving* phone calls as a personal right. It appears this was not intended to imply that *making* phone calls is not likewise a retained personal right. If so, a conservator of the person will have no control over calls made by a conservatee (absent specific

court order). For example, if a conservatee repeatedly dials 911 because of hallucinations that armed burglars are breaking into the home, a conservator (today) would stop that, perhaps by having a caregiver disconnect the phone by the conservatee's bed. Under AB 937 that would be a violation of the conservatee's personal rights. If the conservatee's anger at being under conservatorship causes the conservatee to make harassing phone calls throughout the night, the conservator might likewise have a caregiver unplug the conservatee's phone. Under AB 937 the conservatee will retain the unfettered right to make these calls for the months required to get a court order.

Advanced dementia often causes people to behave in a manner totally different than they did before. As the dementia progresses, these behavioral changes can happen suddenly. If a demented conservatee uncharacteristically starts sending slanderous, threatening, or obscene matter, under AB 937, limiting that would require a court order.

AB 937 and its history fail to recognize that much of what conservators are required to address is the protection of conservatees from themselves. For example, dangerous eating and drinking behaviors are not uncommon among conservatees. Conservatees may desire to drink excessive alcohol when they have lost the ability to rationally consider how that will affect their health. Conservatees with diabetes often will fail to control sugar intake. Conservators routinely protect conservatees by limiting harmful consumption. Under AB 937, any interference with conservatees' personal right to decide what to eat or drink will require a specific court order. A conundrum for conservators will arise because the conservators arrange for the food and drink to be available to the conservatees. Query, whether the conservatee's personal right to decide what to eat or drink will then require the conservator to provide the food or drink that may be fatal to the conservatee.

Conservators sometimes intervene to limit a conservatee's use of illegal drugs. Query, whether conservators will be less likely to do that if this requires placing into a court record facts that may result in the prosecution of the conservatee or conservator. Or, is illegal behavior not a "personal right" within the meaning of AB 937, so conservators could intervene as under current law?

The desire to continue driving a car is not uncommon among conservatees, and is commonly limited by conservators when the conservatee no longer has the ability to drive safely. Under AB 937, when the time comes to limit the conservatee's personal right to drive his/her car, the conservator will be powerless to protect the conservatee until a petition is filed, calendared, and adjudicated, leaving both the conservatee and the public at substantial risk in the interim.

Despite having given some thought to the matter, I am sure there are other personal rights of conservatees that I have not thought of yet. I.e., regardless of the unfortunate verbosity of this letter, I do not believe it comprehensively addresses all of the issues affected by the scope of the term "personal rights."

It is not uncommon for conservatees to be medically fragile. And, it is not uncommon that there are persons who desire to vent rage or lamentation at the conservatee, either regarding the conservatee or the conservator or others, without regard for or understanding of how harmful that can be to the conservatee. Sometimes the conservatee's will is so impaired by dementia that the conservatee cannot resist someone's demand that the conservatee listen for hours to their highly emotional venting, creating serious medical risk. Under current law, conservators of the person

have the authority and responsibility to limit these interactions as needed by the conservatee. Under AB 937, any protection in these situations will not occur until a conservator secures an express court order, unless the interactions constitute such blatant abuse that the police will arrest the other party with a call to 911. Where the behavior can be characterized as elder abuse, an elder abuse restraining order can be sought, a process you characterized as "quick and easy."

At one point you did consider allowing conservators to act as needed to prevent harm to the conservatee. Then you decided that would facilitate "heinous" behavior by conservators, so that language is not included in AB 937. Apparently there was no consideration of allowing conservators to intervene temporarily to allow them to protect conservatees until a court order could be secured. Neither was there consideration of allowing conservators to act, but to send out notices as are required when changing a conservatee's residence, so that there was awareness of what was occurring by the court and interested persons who could intervene if it appeared appropriate.

For conservators confronted with various problems like these, there is often great urgency. There is no provision in the statutes for giving a conservator any of these powers absent a noticed hearing, including a full trial (PrC § 1022) if there are disagreements. In many situations, by the time the matter can be addressed by the court, that systemic delay will render the matter moot.

Conservators of the person have had the power to inspect the conservatee's personal documents, such as health records, powers of attorney, health care directives and testamentary documents. With conservatees' personal right to have exclusive control of this information restored by AB 937, conservators will be "working blind," unable to tailor their decisions to the conservatees' [a] needs and [b] plans implemented while the conservatee was competent (until an express court order can be obtained).

In the relatively rare cases where conservators exercise their power unwisely, the courts have been available to instruct or remove the conservator. Courts have the power to summarily issue temporary orders to limit the conduct of conservators, so interim relief is quickly available if needed. AB 937 has no comparable provisions for granting temporary powers expeditiously to conservators as needed for the protection of conservatees.

AB 937 will cause some frustrated conservators to attempt obvious circumventions to try to protect the conservatee. Conservators may use estate powers (e.g., conservator of the estate, DPA re assets, or trusteeship of a living trust) to do what they can no longer do as conservator of the person, raising somewhat intricate legal issues. For example, a conservator of the estate could confiscate alcohol, and a car, and terminate telephone service, because of the economic aspect of these matters, effectively doing what a conservator of the person is precluded from doing without an express court order. This will generate confusion because, in the past, estate powers (e.g. conservatorship of the estate) have been considered a lesser infringement on the conservatee's rights than conservatorships of the person.

I am generally skeptical when someone claims that proposed legislation will inundate the courts. I have heard that prediction about much beneficial legislation that was enacted and turned out not to burden the courts. Nonetheless, I am concerned about the effect on probate departments when they are forced to micromanage conservatorships of the person because of the many new issues that will require a court order under AB 937. PrC § 2359 appears broad

enough to encompass instructions in anticipation of pending statutory changes, so knowledgeable conservators may be returning to court in large numbers before the end of 2013 so they can continue providing needed protection to conservatees on January 1, 2014.

The language of PrC § 2351(a) in AB 937 is unfortunately drafted and seems likely result in litigation to interpret. Effective 1/1/2014, PrC § 2351(a) will first state that the conservator of the person has plenary power over the person of the conservatee, the same power a parent or guardian has over a minor. Then, in the next sentence, PrC § 2351(a) will state that the conservator of the person has no power over the person of the conservatee. The newly added sentence is drafted to imply that there is a distinction between "personal rights" and other rights governed by PrC § 2351(a), but expresses no such distinction, nor does any such distinction seem discernible. This contradiction seems to have sped AB 937 to enactment, by providing a patina of reassurance that AB 937 is just a minor tweak to existing law, rather than a sudden, wholesale restructuring of conservatorships of the person. Or, as you said in your Facebook page, "AB 937 ... is a modest but crucial bill to ensure that conserved Californians are not shut away and isolated from the outside world." Similarly, in an article written by Linda Kincaid, extolling the virtues of AB 937, published August 28, 2013 on Examiner.com, it is reported that "AB 937 does not create new law. The bill simply clarifies rights that already exist under current law."

In support of the proponents' claim that AB 937 is, at most, a negligible change to existing law, the proponents relied on a Judicial Council advisement form (GC-341) which states that conservatees retain the right to their personal mail and to visits unless limited by court order. This form was issued pursuant to a provision in the flood of conservatorship statutes enacted in 2006 in response to a series of articles in the Los Angeles Times. Those enactments required an array of changes to rules and forms which considerably taxed the resources of the committee that was trying to respond to them. Apparently that lead to a lack of the usually excruciating care that goes into the issuance of the Judicial Council's rules and forms. There is no case or statute that supports the premise that controlling mail and personal visits as conservator powers requires a separate court order, any more than a guardian of a minor would need a separate court order to limit mail or personal visits. The Judicial Council cannot, by issuing an advisement form, strip conservators of the wide powers statutorily granted them by PrC § 2351. Nothing in the 2006 legislation empowered the Judicial Council to change existing rights and responsibilities in the issuance of the advisement form. It seems likely that the desire to encourage conservators to facilitate social interaction for conservatees lead to erroneously including those two provisions in the GC-341 form. Even if the GC-341 were correct, it includes no language about telephone calls or generally retaining "personal rights."

In the enactment of AB 937, it seems your office may have been reassured by at least tacit approval from the Judicial Council because you heard no expression of concern, formally or behind the scenes (as is often done) from the Judicial Council. You might reasonably have expected that, if AB 937 were going to cause serious problems, those concerns would have been expressed from the Judicial Council, and none were. It is rumored that people with the Judicial Council have decided to take the position (until some court of appeal rules otherwise) that "including but not limited to" is merely surplussage, having no legal force or effect. That is, of course, inconsistent with the general rule of statutory construction that, if reasonably possible, statutes must be construed so that every word of the statute has meaningful effect. Perhaps,

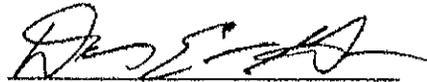
given the consequences of interpreting AB 937 as I do, that the only "reasonably" possible interpretation is to ignore part of AB 937. I do note that "including but not limited to" seems to have been included very intentionally, and was retained in AB 937 after you had been told that some view this language as highly problematical.

In summary, it appears that there are three possible interpretations of AB 937. One is that it changes nothing, only clarifying existing law that court orders are required to limit visits, personal mail and telephone calls. Another is that AB 937 completely restructures the operation of conservatorships of the person, since all rights affected by a conservatorship of the person are personal rights. The third possibility is that AB 937 affects only a limited set of rights, which I have failed to understand.

Conservatorships of the person have been granted only when a person's brain is so severely disabled that it would be inhumane to have them suffer the effects of their impaired judgment. In those cases, California then gave broad authority and responsibility to the conservator of the person, with the fiduciary duty to use that power solely in the conservatee's best interest. In the vast majority of cases, that has worked very well. AB 937 may have changed that, or maybe not. If AB 937 has negligible effect, then attorneys who petition for, essentially, a re-establishment of the conservatorship by seeking a broad range of powers would be wasting their clients' (and conservatees') money. If AB 937 has broad impact, attorney who do not advise their clients to file such a broad and expensive petition will be failing their professional responsibility.

Thank you, in advance, for your consideration and for any information you provide to improve my understanding of these issues so I can do the best job possible of helping others understand AB 937 and how to deal with it.

Sincerely,



DON EDWARD GREEN
Probate Commissioner &
Judge *pro tem.* (ret.)

Assembly Bill No. 1339

CHAPTER 248

An act to amend Sections 1510, 1821, 2250, and 2643 of, and to add Sections 2614.7, 2614.8, and 2643.1 to, the Probate Code, relating to professional fiduciaries.

[Approved by Governor September 6, 2013. Filed with
Secretary of State September 6, 2013.]

Legislative Counsel's Digest

AB 1339, Malenschein. Professional fiduciaries: guardians and conservators.

Existing law provides that a relative or other person on behalf of a minor, or a minor if he or she is 12 years of age or older, may file a petition for the appointment of a guardian of the person or estate of the minor. Existing law also provides that certain persons may file a petition for the appointment of a conservator. Existing law provides that on or after the filing of a petition for appointment of a guardian or conservator, a person entitled to petition for the appointment of a guardian or conservator may file a petition for the appointment of a temporary guardian or temporary conservator, as specified. Under existing law, when a petition to appoint a conservator or a temporary conservator is filed, and the petitioner is a professional fiduciary, as defined, the petition must include specified additional information, including the petitioner's license information and a statement explaining who engaged the petitioner or how the petitioner was engaged to file the petition for appointment of a conservator and what prior relationship the petitioner had with the proposed conservatee or the proposed conservatee's family or friends.

This bill would require that when a petition to appoint a conservator or a temporary conservator is filed, and the petitioner or proposed conservator is a professional fiduciary, as defined, the petition also include the petitioner's or proposed conservator's proposed hourly fee schedule or another statement of the petitioner's or proposed conservator's proposed compensation from the estate of the proposed conservatee for services performed. The bill would provide that provision of that schedule or statement shall not preclude a court from reducing the hourly fees or other compensation.

This bill would also require, when a petition to appoint a guardian or temporary guardian is filed, and the petitioner or proposed guardian is a professional fiduciary, as defined, the petition to include the same additional information as when a professional fiduciary files a petition to appoint a conservator or a temporary conservator. The bill would also provide that provision of a proposed hourly fee schedule or another statement of proposed

compensation shall not preclude a court from reducing the fees or other compensation.

Existing law requires, within 90 days of a guardian's or conservator's appointment, the guardian or conservator to file an inventory and appraisal.

This bill would require the guardian or conservator, if he or she is a professional fiduciary, as defined, to file concurrently with the inventory and appraisal a proposed hourly fee schedule or another statement of his or her proposed compensation from the estate of the ward or conservatee for services performed. The bill would also authorize the guardian or conservator to submit a new proposed hourly fee schedule or another statement of his or her proposed compensation at any time on or after one year from the original submission, as specified. The bill would provide that filing or submittal of those schedules or statements shall not preclude a court from reducing the guardian's or conservator's hourly fees or other compensation or his or her attorney's fees, as the case may be.

Existing law permits the court, on petition by the guardian or conservator, to authorize periodic payments on account to the guardian or conservator for the services rendered by those persons during the period covered by each payment.

This bill would permit the court, on petition by a guardian or conservator who is a professional fiduciary, as defined, to authorize periodic payments on account only if the guardian or conservator filed a proposed hourly fee schedule or another statement of his or her proposed compensation from the estate of the ward or conservatee for services performed with the inventory and appraisal and only after addressing all objections to the petition. The bill would also provide that the authorization for periodic payments to a guardian or conservator who is a professional fiduciary, as defined, shall terminate on a date determined by the court, but not later than the due date of the next succeeding accounting.

The people of the State of California do enact as follows:

SECTION 1. Section 1510 of the Probate Code is amended to read:

1510. (a) A relative or other person on behalf of the minor, or the minor if 12 years of age or older, may file a petition for the appointment of a guardian of the minor. A relative may file a petition for the appointment of a guardian under this section regardless of the relative's immigration status.

(b) The petition shall request that a guardian of the person or estate of the minor, or both, be appointed, shall specify the name and address of the proposed guardian and the name and date of birth of the proposed ward, and shall state that the appointment is necessary or convenient.

(c) The petition shall set forth, so far as is known to the petitioner, the names and addresses of all of the following:

(1) The parents of the proposed ward.

(2) The person having legal custody of the proposed ward and, if that person does not have the care of the proposed ward, the person having the care of the proposed ward.

(3) The relatives of the proposed ward within the second degree.

(4) In the case of a guardianship of the estate, the spouse of the proposed ward.

(5) Any person nominated as guardian for the proposed ward under Section 1500 or 1501.

(6) In the case of a guardianship of the person involving an Indian child, any Indian custodian and the Indian child's tribe.

(d) If the petitioner or proposed guardian is a professional fiduciary, as described in Section 2340, who is required to be licensed under the Professional Fiduciaries Act (Chapter 6 (commencing with Section 6500) of Division 3 of the Business and Professions Code), the petition shall include the following:

(1) The petitioner's or proposed guardian's proposed hourly fee schedule or another statement of his or her proposed compensation from the estate of the proposed ward for services performed as a guardian. The petitioner's or proposed guardian's provision of a proposed hourly fee schedule or another statement of his or her proposed compensation, as required by this paragraph, shall not preclude a court from later reducing the petitioner's or proposed guardian's fees or other compensation.

(2) Unless a petition for appointment of a temporary guardian that contains the statements required by this paragraph is filed together with a petition for appointment of a guardian, both of the following:

(A) A statement of the petitioner's or proposed guardian's license information.

(B) A statement explaining who engaged the petitioner or proposed guardian or how the petitioner or proposed guardian was engaged to file the petition for appointment of a guardian or to agree to accept the appointment as guardian and what prior relationship the petitioner or proposed guardian had with the proposed ward or the proposed ward's family or friends.

(e) If the proposed ward is a patient in or on leave of absence from a state institution under the jurisdiction of the State Department of State Hospitals or the State Department of Developmental Services and that fact is known to the petitioner or proposed guardian, the petition shall state that fact and name the institution.

(f) The petition shall state, so far as is known to the petitioner or proposed guardian, whether or not the proposed ward is receiving or is entitled to receive benefits from the Veterans Administration and the estimated amount of the monthly benefit payable by the Veterans Administration for the proposed ward.

(g) If the petitioner or proposed guardian has knowledge of any pending adoption, juvenile court, marriage dissolution, domestic relations, custody, or other similar proceeding affecting the proposed ward, the petition shall disclose the pending proceeding.

(h) If the petitioners or proposed guardians have accepted or intend to accept physical care or custody of the child with intent to adopt, whether formed at the time of placement or formed subsequent to placement, the petitioners or proposed guardians shall so state in the guardianship petition, whether or not an adoption petition has been filed.

(i) If the proposed ward is or becomes the subject of an adoption petition, the court shall order the guardianship petition consolidated with the adoption petition, and the consolidated case shall be heard and decided in the court in which the adoption is pending.

(j) If the proposed ward is or may be an Indian child, the petition shall state that fact.

SEC. 2. Section 1821 of the Probate Code is amended to read:

1821. (a) The petition shall request that a conservator be appointed for the person or estate, or both, shall specify the name, address, and telephone number of the proposed conservator and the name, address, and telephone number of the proposed conservatee, and state the reasons why a conservatorship is necessary. Unless the petitioner or proposed conservator is a bank or other entity authorized to conduct the business of a trust company, the petitioner or proposed conservator shall also file supplemental information as to why the appointment of a conservator is required. The supplemental information to be submitted shall include a brief statement of facts addressed to each of the following categories:

(1) The inability of the proposed conservatee to properly provide for his or her needs for physical health, food, clothing, and shelter.

(2) The location of the proposed conservatee's residence and the ability of the proposed conservatee to live in the residence while under conservatorship.

(3) Alternatives to conservatorship considered by the petitioner or proposed conservator and reasons why those alternatives are not available.

(4) Health or social services provided to the proposed conservatee during the year preceding the filing of the petition, when the petitioner or proposed conservator has information as to those services.

(5) The inability of the proposed conservatee to substantially manage his or her own financial resources, or to resist fraud or undue influence.

The facts required to address the categories set forth in paragraphs (1) to (5), inclusive, shall be set forth by the petitioner or proposed conservator if he or she has knowledge of the facts or by the declarations or affidavits of other persons having knowledge of those facts.

If any of the categories set forth in paragraphs (1) to (5), inclusive, are not applicable to the proposed conservatorship, the petitioner or proposed conservator shall so indicate and state on the supplemental information form the reasons therefor.

The Judicial Council shall develop a supplemental information form for the information required pursuant to paragraphs (1) to (5), inclusive, after consultation with individuals or organizations approved by the Judicial Council, who represent public conservators, court investigators, the State

Bar, specialists with experience in performing assessments and coordinating community-based services, and legal services for the elderly and disabled.

The supplemental information form shall be separate and distinct from the form for the petition. The supplemental information shall be confidential and shall be made available only to parties, persons given notice of the petition who have requested this supplemental information or who have appeared in the proceedings, their attorneys, and the court. The court shall have discretion at any other time to release the supplemental information to other persons if it would serve the interests of the conservatee. The clerk of the court shall make provision for limiting disclosure of the supplemental information exclusively to persons entitled thereto under this section.

(b) The petition shall set forth, so far as they are known to the petitioner or proposed conservator, the names and addresses of the spouse or domestic partner, and of the relatives of the proposed conservatee within the second degree. If no spouse or domestic partner of the proposed conservatee or relatives of the proposed conservatee within the second degree are known to the petitioner or proposed conservator, the petition shall set forth, so far as they are known to the petitioner or proposed conservator, the names and addresses of the following persons who, for the purposes of Section 1822, shall all be deemed to be relatives:

(1) A spouse or domestic partner of a predeceased parent of a proposed conservatee.

(2) The children of a predeceased spouse or domestic partner of a proposed conservatee.

(3) The siblings of the proposed conservatee's parents, if any, but if none, then the natural and adoptive children of the proposed conservatee's parents' siblings.

(4) The natural and adoptive children of the proposed conservatee's siblings.

(c) If the petitioner or proposed conservator is a professional fiduciary, as described in Section 2346, who is required to be licensed under the Professional Fiduciaries Act (Chapter 6 (commencing with Section 6500) of Division 3 of the Business and Professions Code), the petition shall include the following:

(1) The petitioner's or proposed conservator's proposed hourly fee schedule or another statement of his or her proposed compensation from the estate of the proposed conservatee for services performed as a conservator. The petitioner's or proposed conservator's provision of a proposed hourly fee schedule or another statement of his or her proposed compensation, as required by this paragraph, shall not preclude a court from later reducing the petitioner's or proposed conservator's fees or other compensation.

(2) Unless a petition for appointment of a temporary conservator that contains the statements required by this paragraph is filed together with a petition for appointment of a conservator, both of the following:

(A) A statement of the petitioner's or proposed conservator's license information.

(B) A statement explaining who engaged the petitioner or proposed conservator or how the petitioner or proposed conservator was engaged to file the petition for appointment of a conservator or to agree to accept the appointment as conservator and what prior relationship the petitioner or proposed conservator had with the proposed conservatee or the proposed conservatee's family or friends.

(d) If the petition is filed by a person other than the proposed conservatee, the petition shall include a declaration of due diligence showing both of the following:

(1) Either the efforts to find the proposed conservatee's relatives or why it was not feasible to contact any of them.

(2) Either the preferences of the proposed conservatee concerning the appointment of a conservator and the appointment of the proposed conservator or why it was not feasible to ascertain those preferences.

(e) If the petition is filed by a person other than the proposed conservatee, the petition shall state whether or not the petitioner is a creditor or debtor, or the agent of a creditor or debtor, of the proposed conservatee.

(f) If the proposed conservatee is a patient in or on leave of absence from a state institution under the jurisdiction of the State Department of State Hospitals or the State Department of Developmental Services and that fact is known to the petitioner or proposed conservator, the petition shall state that fact and name the institution.

(g) The petition shall state, so far as is known to the petitioner or proposed conservator, whether or not the proposed conservatee is receiving or is entitled to receive benefits from the Veterans Administration and the estimated amount of the monthly benefit payable by the Veterans Administration for the proposed conservatee.

(h) The petition may include an application for any order or orders authorized under this division, including, but not limited to, orders under Chapter 4 (commencing with Section 1870).

(i) The petition may include a further statement that the proposed conservatee is not willing to attend the hearing on the petition, does not wish to contest the establishment of the conservatorship, and does not object to the proposed conservator or prefer that another person act as conservator.

(j) In the case of an allegedly developmentally disabled adult, the petition shall set forth the following:

(1) The nature and degree of the alleged disability, the specific duties and powers requested by or for the limited conservator, and the limitations of civil and legal rights requested to be included in the court's order of appointment.

(2) Whether or not the proposed limited conservatee is or is alleged to be developmentally disabled.

Reports submitted pursuant to Section 416.8 of the Health and Safety Code meet the requirements of this section, and conservatorships filed pursuant to Article 7.5 (commencing with Section 416) of Part 1 of Division 1 of the Health and Safety Code are exempt from providing the supplemental information required by this section, so long as the guidelines adopted by

the State Department of Developmental Services for regional centers require the same information that is required pursuant to this section.

SEC. 3. Section 2250 of the Probate Code is amended to read:

2250. (a) On or after the filing of a petition for appointment of a guardian or conservator, any person entitled to petition for appointment of the guardian or conservator may file a petition for appointment of:

- (1) A temporary guardian of the person or estate, or both.
- (2) A temporary conservator of the person or estate, or both.

(b) The petition shall state facts which establish good cause for appointment of the temporary guardian or temporary conservator. The court, upon that petition or other showing as it may require, may appoint a temporary guardian of the person or estate, or both, or a temporary conservator of the person or estate, or both, to serve pending the final determination of the court upon the petition for the appointment of the guardian or conservator.

(c) If the petitioner, proposed guardian, or proposed conservator is a professional fiduciary, as described in Section 2340, who is required to be licensed under the Professional Fiduciaries Act (Chapter 6 (commencing with Section 6500) of Division 3 of the Business and Professions Code), the petition for appointment of a temporary guardian or temporary conservator shall include the following:

(1) The petitioner's, proposed guardian's, or proposed conservator's proposed hourly fee schedule or another statement of his or her proposed compensation from the estate of the proposed ward or proposed conservatee for services performed as a guardian or conservator. The petitioner's, proposed guardian's, or proposed conservator's provision of a proposed hourly fee schedule or another statement of his or her proposed compensation, as required by this paragraph, shall not preclude a court from later reducing the petitioner's, proposed guardian's, or proposed conservator's fees or other compensation.

(2) Unless a petition for appointment of a guardian or conservator that contains the statements required by this paragraph is filed together with a petition for appointment of a temporary guardian or temporary conservator, both of the following:

(A) A statement of the petitioner's, proposed guardian's, or proposed conservator's registration or license information.

(B) A statement explaining who engaged the petitioner, proposed guardian, or proposed conservator or how the petitioner, proposed guardian, or proposed conservator was engaged to file the petition for appointment of a temporary guardian or temporary conservator or to agree to accept the appointment as temporary guardian or temporary conservator and what prior relationship the petitioner, proposed guardian, or proposed conservator had with the proposed ward or proposed conservatee or the proposed ward's or proposed conservatee's family or friends.

(d) If the petition is filed by a party other than the proposed conservatee, the petition shall include a declaration of due diligence showing both of the following:

(1) Either the efforts to find the proposed conservatee's relatives named in the petition for appointment of a general conservator or why it was not feasible to contact any of them.

(2) Either the preferences of the proposed conservatee concerning the appointment of a temporary conservator and the appointment of the proposed temporary conservator or why it was not feasible to ascertain those preferences.

(e) Unless the court for good cause otherwise orders, at least five court days before the hearing on the petition, notice of the hearing shall be given as follows:

(1) Notice of the hearing shall be personally delivered to the proposed ward if he or she is 12 years of age or older, to the parent or parents of the proposed ward, and to any person having a valid visitation order with the proposed ward that was effective at the time of the filing of the petition. Notice of the hearing shall not be delivered to the proposed ward if he or she is under 12 years of age. In a proceeding for temporary guardianship of the person, evidence that a custodial parent has died or become incapacitated, and that the petitioner or proposed guardian is the nominee of the custodial parent, may constitute good cause for the court to order that this notice not be delivered.

(2) Notice of the hearing shall be personally delivered to the proposed conservatee, and notice of the hearing shall be served on the persons required to be named in the petition for appointment of conservator. If the petition states that the petitioner and the proposed conservator have no prior relationship with the proposed conservatee and has not been nominated by a family member, friend, or other person with a relationship to the proposed conservatee, notice of hearing shall be served on the public guardian of the county in which the petition is filed.

(3) A copy of the petition for temporary appointment shall be served with the notice of hearing.

(f) If a temporary guardianship is granted ex parte and the hearing on the general guardianship petition is not to be held within 30 days of the granting of the temporary guardianship, the court shall set a hearing within 30 days to reconsider the temporary guardianship. Notice of the hearing for reconsideration of the temporary guardianship shall be provided pursuant to Section 1511, except that the court may for good cause shorten the time for the notice of the hearing.

(g) Visitation orders with the proposed ward granted prior to the filing of a petition for temporary guardianship shall remain in effect, unless for good cause the court orders otherwise.

(h) (1) If a temporary conservatorship is granted ex parte, and a petition to terminate the temporary conservatorship is filed more than 15 days before the first hearing on the general petition for appointment of conservator, the court shall set a hearing within 15 days of the filing of the petition for termination of the temporary conservatorship to reconsider the temporary conservatorship. Unless the court otherwise orders, notice of the hearing

on the petition to terminate the temporary conservatorship shall be given at least 10 days prior to the hearing.

(2) If a petition to terminate the temporary conservatorship is filed within 15 days before the first hearing on the general petition for appointment of conservator, the court shall set the hearing at the same time that the hearing on the general petition is set. Unless the court otherwise orders, notice of the hearing on the petition to terminate the temporary conservatorship pursuant to this section shall be given at least five court days prior to the hearing.

(i) If the court suspends powers of the guardian or conservator under Section 2334 or 2654 or under any other provision of this division, the court may appoint a temporary guardian or conservator to exercise those powers until the powers are restored to the guardian or conservator or a new guardian or conservator is appointed.

(j) If for any reason a vacancy occurs in the office of guardian or conservator, the court, on a petition filed under subdivision (a) or on its own motion, may appoint a temporary guardian or conservator to exercise the powers of the guardian or conservator until a new guardian or conservator is appointed.

(k) On or before January 1, 2008, the Judicial Council shall adopt a rule of court that establishes uniform standards for good cause exceptions to the notice required by subdivision (e), limiting those exceptions to only cases when waiver of the notice is essential to protect the proposed conservatee or ward, or the estate of the proposed conservatee or ward, from substantial harm.

(l) A superior court shall not be required to perform any duties imposed pursuant to the amendments to this section enacted by Chapter 493 of the Statutes 2006 until the Legislature makes an appropriation identified for this purpose.

SEC. 4. Section 2614.7 is added to the Probate Code, to read:

2614.7. If a guardian or conservator of the person or estate, or both, is a professional fiduciary, as described in Section 2340, who is required to be licensed under the Professional Fiduciaries Act (Chapter 6 (commencing with Section 6500) of Division 3 of the Business and Professions Code), the guardian or conservator shall file, concurrently with the inventory and appraisal required by Section 2610, a proposed hourly fee schedule or another statement of his or her proposed compensation from the estate of the ward or conservatee for services performed as a guardian or conservator. The filing of a proposed hourly fee schedule or another statement of the guardian's or conservator's proposed compensation, as required by this section, shall not preclude a court from later reducing the guardian's, conservator's, or his or her attorney's fees or other compensation.

SEC. 5. Section 2614.8 is added to the Probate Code, to read:

2614.8. At any time on or after one year from the submission of an hourly fee schedule or another statement of proposed compensation under this section or under Section 1510, 1821, 2250, or 2614.7, a guardian or conservator who is a professional fiduciary may submit a new proposed

hourly fee schedule or another statement of his or her proposed compensation from the estate of the proposed ward or proposed conservatee. The submission of a new hourly fee schedule or another statement of the guardian's or conservator's proposed compensation, as authorized by this section, shall not preclude a court from later reducing the guardian's or conservator's hourly fees or other compensation; or his or her attorney's fees or other compensation.

SEC. 6. Section 2643 of the Probate Code is amended to read:

2643. (a) Except as provided in Section 2643.1, on petition by the guardian or conservator of the person or estate, or both, the court may by order authorize periodic payments on account to any one or more of the following persons for the services rendered by that person during the period covered by each payment:

- (1) The guardian of the person.
- (2) The guardian of the estate.
- (3) The conservator of the person.
- (4) The conservator of the estate.
- (5) The attorney for the guardian or conservator of the person or estate, or both.

(b) Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(c) The petition shall describe the services to be rendered on a periodic basis and the reason why authority to make periodic payments is requested. In fixing the amount of the periodic payment, the court shall take into account the services to be rendered on a periodic basis and the reasonable value of those services. The guardian or conservator of the estate may make the periodic payments authorized by the order only if the services described in the petition are actually rendered. The payments made pursuant to the order are subject to review by the court upon the next succeeding account of the guardian or conservator of the estate to determine that the services were actually rendered and that the amount paid on account was not unreasonable, and the court shall make an appropriate order if the court determines that the amount paid on account was either excessive or inadequate in view of the services actually rendered.

SEC. 7. Section 2643.1 is added to the Probate Code, to read:

2643.1. (a) On petition by a guardian or conservator of the person or estate, or both, who is a professional fiduciary, as described in Section 2340 and who is required to be licensed under the Professional Fiduciaries Act (Chapter 6 (commencing with Section 6500) of Division 3 of the Business and Professions Code), the court may by order authorize periodic payments on account to a person described in subdivision (a) of Section 2643 for the services rendered by that person during the period covered by each payment only if that person has filed a proposed hourly fee schedule or another statement of his or her proposed compensation from the estate of the ward or conservatee for services performed as a guardian or conservator, as

required by Section 2614.7, and only after the court has addressed any objections filed pursuant to subdivision (d).

(b) The petition shall describe the services to be rendered on a periodic basis, the reason why authority to make periodic payments is requested, and a good faith estimate of the fees to be charged by the professional fiduciary from the date the petition is filed up to, and including, the date of the next succeeding account required by Section 2620 or, if the next succeeding account required by Section 2620 is due in less than one year, a good faith estimate of the fees to be charged by the professional fiduciary from the date the petition is filed through the next succeeding 12 months, inclusive. Prior to ordering periodic payments or fixing the amount of the periodic payment, the court shall determine whether making periodic payments is in the best interest of the ward or conservatee, taking into consideration the needs of the ward or conservatee and the need to preserve and protect the estate. If the court determines that making periodic payments is not in the best interest of the ward or conservatee, the court shall deny the petition to authorize periodic payments. If the court determines that making periodic payments is in the best interest of the ward or conservatee, the court shall fix the amount of the periodic payment. In fixing the amount of the periodic payment, the court shall take into account the services to be rendered on a periodic basis and the reasonable value of those services.

(c) (1) Notice of the hearing on the petition and notice of how to file an objection to the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(2) The notices required by paragraph (1) shall be made to the court investigator for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(d) (1) Any person entitled to notice under paragraph (1) of subdivision (c) may file with the court a written objection to the authorization of periodic payments on account. The court clerk shall set any objections for a hearing no fewer than 15 days after the date the objections are filed.

(2) If an objection is filed pursuant to paragraph (1), the guardian or conservator shall have the burden of establishing the necessity for and amount, if any, of periodic payments.

(e) The guardian or conservator of the estate may make the periodic payments authorized by the order only if the services described in the petition are actually rendered. The payments made pursuant to the order shall be reviewed by the court upon the next succeeding account of the guardian or conservator of the estate to determine that the services were actually rendered and that the amount paid on account was reasonable and in the best interest of the ward or conservatee, taking into consideration the needs of the ward or conservatee and the need to preserve and protect the estate. The court shall make an appropriate order reducing the guardian or conservator's compensation if the court determines that the amount paid on account was either unreasonable or not in the best interest of the ward or conservatee in view of the services actually rendered.

(f) The authorization for periodic payments granted pursuant to this section shall terminate on a date determined by the court, but not later than the due date of the next succeeding account required by Section 2620. Nothing in this section shall preclude a guardian or conservator from filing a subsequent petition to receive periodic payments pursuant to this section.

CORRECTIONS:

Date—Page 1.

O

DON EDWARD GREEN

Legal Career:

Alternative Dispute Resolution (mediation, etc.) (2010 –)

Probate Commissioner & Judge Pro. Tem., Contra Costa Superior Court
(December 28, 1998 – January 31, 2010)

Probate Staff Attorney, Sacramento Superior Courts (1989 – 1998).

In 1981, changed practice area to estate planning and probate. Became a Certified Specialist in Estate Planning, Trust & Probate Law, as certified by the California State Bar.

In 1977, began practicing business litigation and family law in Sacramento.

Author & Lecturer:

Contributing author for California Powers of Attorney and Health Care Directives, California Conservatorship Practice, and California Guardianship Practice, published by CEB.

Speaker by invitation at seminars and classes for various groups, which have included CEB (California Continuing Education of the Bar), PLI (Practicing Law Institute of New York), CJER (California Center for Judicial Education and Research), The Rutter Group, sections of the State Bar of California, county bar associations, estate planning councils, community groups and charities.

Former faculty, Golden Gate University, Master's Degree Program (Taxation)

Professional Affiliations:

American Bar Association

Real Property, Probate and Trust Section

California State Bar (admitted January, 1977)

Estate Planning, Trust and Probate Law Section Executive Committee

Judicial Liaison (2000 –); member 1990 – 2000 (Chair 1996 – 1997)

Judicial Council of California

Probate and Mental Health Advisory Committee from its inception until 2010
(Chair 2004 – 2006)

Probate Conservatorship Task Force (2006 – 2007)

California Judges Association

Probate and Mental Health Committee (Chair)

Association for Conflict Resolution

Academic Summary:

Steven Rosenberg's 40 hour Mediation Training, completed March 12, 2010

McGeorge School of Law, University of the Pacific -- J.D., 1976; LL.M. (Taxation), 1983

California State University at Long Beach -- B.A., Speech/Communications, 1973

Awards:

Pro Bono Judge of the Year 2003; Contra Costa County Bar Association

Honoree for work to benefit seniors, 2013; Contra Costa County Bar Association

Attachment B

2011 ORS § 125.320¹

Limitations on guardian

- (1) A guardian may not authorize the sterilization of the protected person.
- (2) A guardian may not use funds from the protected persons estate for room and board that the guardian or guardians spouse, parent or child have furnished the protected person unless the charge for the service is approved by order of the court before the payment is made.
- (3) (a) Before a guardian may place an adult protected person in a mental health treatment facility, a nursing home or other residential facility, the guardian must file a statement with the court informing the court that the guardian intends to make the placement.
 - (b) Notice of the statement of intent must be given in the manner provided by ORS 125.065 (Manner of giving notice) to the persons specified in ORS 125.060 (Who must be given notice) (3).
 - (c) In addition to the requirements of paragraph (b) of this subsection, notice of the statement of intent must be given in the manner provided by ORS 125.065 (Manner of giving notice) by the guardian to the following persons:
 - (A) Any attorney who represented the protected person at any time during the protective proceeding.
 - (B) If the protected person is a resident of a nursing home or residential facility, or if the notice states the intention to place the protected person in a nursing home or residential facility, the office of the Long Term Care Ombudsman.
 - (C) If the protected person is a resident of a mental health treatment facility or a residential facility for individuals with developmental disabilities, or if the notice states the intention to place the protected person in such a facility, the system described in ORS 192.517 (Access to records of individual with disability or individual with mental illness) (1).
 - (d) In addition to the requirements of ORS 125.070 (Contents of notice) (1), the notice given to the protected person must clearly indicate the manner in which the protected person may object to the proposed placement.
 - (e) The guardian may thereafter place the adult protected person in a mental

health treatment facility, a nursing home or other residential facility without further court order. If an objection is made in the manner provided by ORS 125.075 (Presentation of objections), the court shall schedule a hearing on the objection as soon as practicable.

- (f) The requirement that notice be served on an attorney for a protected person under paragraph (c)(A) of this subsection does not impose any responsibility on the attorney receiving the notice to represent the protected person in the protective proceeding. [1995 c.664 §31; 2001 c.473 §1; 2005 c.498 §3]

...

(No annotations for this section.)

Related Statutes³

- 125.225
Removal of fiduciary
- 125.315
General powers and duties of guardian

¹ Legislative Counsel Committee, *CHAPTER 125—Protective Proceedings*, <http://www.leg.state.or.us/ors/125.html> (2011) (last accessed Mar. 25, 2012).

² OregonLaws.org contains the contents of Volume 21 of the ORS, inserted alongside the pertinent statutes. See the preface to the ORS Annotations for more information.

³ OregonLaws.org assembles these lists by analyzing references between Sections. Each listed item refers back to the current Section in its own text. The result reveals relationships in the code that may not have otherwise been apparent.

Currency Information

by WebLaws.org
www.oregonlaws.org

Attachment C

Please consider these thoughts as a “**work in progress**” where I am hoping to **stimulate debate**. And where I believe **definition** of isolation / separation for any IP needs to be much clearer. Both as to degree, and as to kind.

I suggest we use the words isolation and separation interchangeably, except where we are able to rigorously define their differences. Also, I would like to see focus on what I consider to be a fact. Namely that separation, within any social context, is two-sided. With one or more persons, separated from one or more others.

I assume we all agree that separation of an IP from her established social structure, support, or surroundings can be one of the most extreme misfortunes a vulnerable person can experience. We know that prisoners and children (relative to families) and employees (relative to their jobs) find very clear and established protections and definitions if separation is considered. Yet I believe far too many IPs, often unable to adequately defend themselves, lack adequate protection.

Thus I suggest the following list of example text be a part of thinking while considering any legislation which might moderate IP separation / isolation problems. That is, that any legislation ought to mandate **consideration of these factors**, in cases where a Judicial officer, or the Certified Professional Guardianship Board (CPGB) is asked to make a ruling.

1. The IP’s wishes.
2. How long, if ever, it might take for the IP to accept or adjust to the separation.
3. Any disabilities that might be involved, for:
 - IP,
 - Person(s) targeted for separation,
 - Others.
4. Any “diversity” aspects to be considered. Including:
 - Race
 - Culture
 - Ideology / religion
 - Gender
 - Class
 - Education

Have key persons been sufficiently open to diversity issues?

Have these dimensions been skillfully, sensitively dealt with?

Have any special resources been engaged?

5. The sums of money/costs involved, both absolute, in context, and in proportion to need.
6. The motivation of any person proposed to be separated, and the possibility of that person (or persons) to adjust conduct alleged to be dysfunctional.

7. Whether partial separation of a person from an IP might be significantly less detrimental to the IP.
8. The possibility/probability of alleged friction subsiding with
 - Time
 - Outside help with the IP and family problems themselves, e.g., reaching medical decisions, setting financial plans, altering housing, finding funds
 - Mediation
 - Medical interventions
 - Getting through a difficult season
 - The approach of imminent death
9. Actual identified symptoms of IP which are clearly traceable to the person to be separated. With magnitude of alleged consequences assessed and deemed “mitigatable” (that is, with a probability that separation will help).
10. Possible motivation of reporter or other “beneficiary” who should be identified, as circumstances are assessed.
11. Level to which all parties are informed and aware of the real issues (which a mediation would hopefully have brought forward).
12. Consideration, if mediation has been tried, of how many times, and why it might have failed. And if on the same topic.
13. Is there sexual abuse or exploitation involved?
14. Can the real issues be about scapegoating? Demonizing? Some other dynamic or handicap?
15. Is criminal conduct involved?
16. Is a request for separation based on convenience or on experience? How well established is the pattern of conduct objected to?

Again, the above list cannot yet be complete or well-formulated. Not least because I am not a “legal scholar” or specialist equipped to deal with these questions. Also, perhaps a number of real-world examples should be cited / incorporated. My intention is only to give a sampling of the sort of thinking which I find missing in today’s laws, and to stimulate discussions about isolation of IPs from family, friends, and established sources of support.

At the same time, I know that a number of CPGB disciplinary cases demonstrate the absence of a “level playing field” when family members or others try to defend or support an IP’s or even their own rights. Especially at any stage where disputable issues have not been brought under the scrutiny of a Court hearing, and when a lay-person’s questioning of the guardian’s word or ancillary authority can have too little practical chance of success.

More simply put, I believe “something is wrong” with what we have now (in Washington State, and elsewhere). Where lack of useful/effective guardianship “case-law” could be compensated for, by clearer definitions of isolation, incorporated into legislation.

Attachment D

TYPES OF ABUSE:

PROVISIONS AND CITATIONS IN ADULT PROTECTIVE SERVICES LAWS, BY STATE

(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

CAUTION: Read the explanation of this chart before relying upon the chart. You can find the explanation online at <http://www.abanet.org/aging/about/elderabuse.shtml>.

<p>Alabama Ala. Code § 38-9-2</p>	<p>ABUSE: The infliction of physical pain, injury, or the willful deprivation by a caregiver or other person of services necessary to maintain mental and physical health.</p> <p>EMOTIONAL ABUSE: The willful or reckless infliction of emotional or mental anguish or the use of a physical or chemical restraint, medication or isolation as punishment or as a substitute for treatment or care of any protected person.</p> <p>EXPLOITATION: The expenditure, diminution, or use of the property, assets, or resources of a protected person without the express voluntary consent of that person or his or her legally authorized representative</p> <p>NEGLECT: The failure of a caregiver to provide food, shelter, clothing, medical services, or health care for the person unable to care for himself or herself; or the failure of the person to provide these basic needs for himself or herself when the failure is the result of the person's mental or physical inability.</p> <p>SEXUAL ABUSE: Any conduct that is a crime as defined in Sections 13A-6- 60 to 13A-6-70, inclusive.</p>
<p>Alaska Alaska Stat. § 47.24.900</p>	<p>ABANDONMENT: The desertion of a vulnerable adult by a caregiver.</p> <p>ABUSE: The willful, intentional, or reckless non-accidental, and non-therapeutic infliction of physical pain, injury, or mental distress; or sexual assault under AS 11.41.410 or 11.41.420.</p> <p>EXPLOITATION: The unjust or improper use of another person or another person's resources for one's own profit or advantage.</p> <p>NEGLECT: The intentional failure by a caregiver to provide essential care or services necessary to maintain the physical and mental health of the vulnerable adult.</p> <p>SELF-NEGLECT: The act or omission by a vulnerable adult that results, or could result in the deprivation of essential services necessary to maintain minimal mental, emotional, or physical health and safety.</p>
<p>Arizona Ariz. Rev. Stat. § 46-451</p>	<p>ABUSE: The intentional infliction of physical harm; injury caused by negligent acts or omissions; unreasonable confinement; and sexual abuse or sexual assault.</p> <p>EXPLOITATION: The illegal or improper use of an incapacitated or vulnerable adult or his resources for another's profit or advantage.</p> <p>NEGLECT: The pattern of conduct without the person's informed consent resulting in deprivation of food, water, medication, medical services, shelter, cooling, heating or other services necessary to maintain minimum physical or mental health.</p>

Arkansas (#1)
Ark. Code Ann.
§ 12-12-1703 (relating to reporting & investigation)

ABUSE:

- (A) "Abuse" means with regard to any long-term care facility resident or any patient at the Arkansas State Hospital, by a caregiver:
- (i) Any intentional and unnecessary physical act that inflicts pain on or causes injury to an endangered person or impaired person;
 - (ii) Any intentional act that a reasonable person would believe subjects an endangered person or an impaired person, regardless of age, ability to comprehend, or disability, to ridicule or psychological injury in a manner likely to provoke fear or alarm; or
 - (iii) Any intentional threat that a reasonable person would find credible and non-frivolous to inflict pain on or cause injury to an endangered person or impaired person except in the course of medical treatment or for justifiable cause; or
 - (iv) Any willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish; and
- (B) "Abuse" means with regard to any person who is not a long-term care facility resident or a patient at the Arkansas State Hospital:
- (i) Any intentional and unnecessary physical act that inflicts pain on or causes injury to an endangered person or an impaired person;
 - (ii) Any intentional act that a reasonable person would believe subjects an endangered person or an impaired person, regardless of age, ability to comprehend, or disability, to ridicule or psychological injury in a manner likely to provoke fear or alarm; or
 - (iii) Any intentional threat that a reasonable person would find credible and nonfrivolous to inflict pain on or cause injury to an endangered person or an impaired person except in the course of medical treatment or for justifiable cause;

ADULT MALTREATMENT: Abuse, exploitation, neglect, or sexual abuse of an adult.

EXPLOITATION: (A) Illegal or unauthorized use or management of an endangered person's or an impaired person's funds, assets, or property; (B) Use of an adult endangered person's or an adult impaired person's, power of attorney, or guardianship for the profit or advantage of one's own self or another; or, (C) Misappropriation of property of a long-term care facility resident, that is, the deliberate misplacement, exploitation, or wrongful, temporary, or permanent use of a long-term care facility resident's belongings or money without the long-term care facility resident's consent;

NEGLECT:

(A) An act or omission by an endangered person or an impaired person, for example, self-neglect; or (B) An act or omissions by a caregiver responsible for the care and supervision of an endangered person or an impaired adult constituting: (i) Negligently failing to provide necessary treatment, rehabilitation, care, food, clothing, shelter, supervision, or medical services to an endangered person or an impaired person; (ii) Negligently failing to report health problems or changes in health problems or changes in the health condition of an endangered person or an impaired person to the appropriate medical personnel; (iii) Negligently failing to carry out a prescribed treatment plan; or (iv) Negligently failing to provide goods or services to a long-term care facility resident necessary to avoid physical harm, mental anguish, or mental illness as defined in regulations promulgated by the Office of Long-Term Care of the Division of Medical Services of the Department of Health and Human Services;

SEXUAL ABUSE: Deviate sexual activity, sexual contact, or sexual intercourse, as those terms are defined in § 5-14-101, with another person who is not the actor's spouse and who is incapable of consent because he or she is mentally defective, mentally incapacitated, or physically helpless;

Arkansas (#2)
Ark. Code Ann.
§ 9-20-101 (authorizing APS to take victims into protective custody)

ABUSE:

(A) "Abuse" means with regard to any long-term care facility resident or any person who is at the Arkansas State Hospital an act by a caregiver that falls into any of the following categories: (i) Any intentional and unnecessary physical act that inflicts pain on or causes injury to an endangered adult or an impaired adult, excluding court ordered medical care or medical care requested by an endangered adult, an impaired adult, or a person who is legally authorized to make a medical decision on behalf of an endangered adult or an impaired adult; (ii) Any intentional act that a reasonable person would believe subjects an endangered adult or impaired adult, regardless of age, ability to comprehend, or disability, to ridicule or psychological injury in a manner likely to provoke fear or alarm, excluding necessary care and treatment provided in accordance with generally recognized professional standards of care; (iii) Any

	<p>intentional threat that a reasonable person would find credible and nonfrivolous to inflict pain on or cause injury to an endangered adult or an impaired adult except in the course of medical treatment or for justifiable cause; or (iv) Any willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish.</p> <p>(B) "Abuse" means with regard to any person who is not a long-term care facility resident or at the Arkansas State Hospital: (i) Any intentional and unnecessary physical act that inflicts pain on or causes injury to an endangered adult or an impaired adult; (ii) Any intentional act that a reasonable person would believe subjects an endangered adult or an impaired adult, regardless of age, ability to comprehend, or disability, to ridicule or psychological injury in a manner likely to provoke fear or alarm; or (iii) Any intentional threat that a reasonable person would find credible and nonfrivolous to inflict pain on or cause injury to an endangered adult or an impaired adult except in the course of medical treatment or for justifiable cause;</p> <p>ADULT MALTREATMENT: "Adult Maltreatment" means abuse, exploitation, neglect, physical abuse, or sexual abuse of an adult;</p> <p>EXPLOITATION: "Exploitation" means: (A) The illegal or unauthorized use or management of an endangered or impaired adult's funds, assets, or property or the use of an endangered or impaired adult's person, power of attorney, or guardianship for the profit or advantage of oneself or another; or (B) Misappropriation of property of an adult resident of a long-term care facility, that is, the deliberate misplacement, exploitation, or wrongful, temporary, or permanent use of a resident's belongings or money without the resident's consent;</p> <p>NEGLECT: "Neglect" means: (A) An act or omission by an endangered or impaired adult, for example, self-neglect; or (B) An act or omission by a caregiver responsible for the care and supervision of an endangered or impaired adult constituting negligent failure to: (i) Provide necessary treatment, rehabilitation, care, food, clothing, shelter, supervision, or medical services to an endangered or impaired adult; (ii) Report health problems or changes in health problems or changes in the health condition of an endangered or impaired adult to the appropriate medical personnel; (iii) Carry out a prescribed treatment plan; or (iv) Provide to an adult resident of a long-term care facility goods or services necessary to avoid physical harm, mental anguish, or mental illness as defined in regulations promulgated by the Office of Long-Term Care of the Division of Medical Services of the Department of Health and Human Services;</p> <p>SEXUAL ABUSE: "Sexual Abuse" means deviate sexual activity, sexual contact, or sexual intercourse, as those terms are defined in § 5-14-101, with another person who is not the actor's spouse and who is incapable of consent because he or she is mentally defective, mentally incapacitated, or physically helpless;</p>
<p>California Cal. Welf. & Inst. Code § 15610.05</p>	<p>ABANDONMENT: The desertion or willful forsaking of an elder or a dependent adult by anyone having care or custody of that person under circumstances in which a reasonable person would continue to provide care and custody.</p>
<p>Cal. Welf. & Inst. Code § 15610.07</p>	<p>ABUSE OF AN ELDER OR A DEPENDENT ADULT means either of the following: (a) Physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering. (b) The deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering.</p>
<p>Cal. Welf. & Inst. Code § 15610.30</p>	<p>FINANCIAL ABUSE OF AN ELDER OR DEPENDENT ADULT occurs when a person or entity does any of the following: (1) Takes, secretes, appropriates, or retains real or personal property of an elder or dependent adult to a wrongful use or with intent to defraud, or both. (2) Assists in taking, secreting, appropriating, or retaining real or personal property of an elder or dependent adult to a wrongful use or with intent to defraud, or both. A person or entity shall be deemed to have taken, secreted, appropriated, or retained property for a wrongful use if, among other things, the person or entity takes, secretes, appropriates, or retains possession of property in bad faith.</p>
<p>Cal. Welf. & Inst. Code § 15610.43</p>	<p>ISOLATION means any of the following: (1) Acts intentionally committed for the purpose of preventing, and that do serve to prevent, an elder or</p>

<p>Cal. Welf. & Inst. Code § 15610.57</p>	<p>dependent adult from receiving his or her mail or telephone calls. (2) Telling a caller or prospective visitor that an elder or dependent adult is not present, or does not wish to talk with the caller, or does not wish to meet with the visitor where the statement is false, is contrary to the express wishes of the elder or the dependent adult, whether he or she is competent or not, and is made for the purpose of preventing the elder or dependent adult from having contact with family, friends, or concerned persons. (3) False imprisonment, as defined in Section 236 of the Penal Code. (4) Physical restraint of an elder or dependent adult, for the purpose of preventing the elder or dependent adult from meeting with visitors.</p> <p>NEGLECT: Means either of the following:</p> <p>(1) The negligent failure of any person having the care or custody of an elder or a dependent adult to exercise that degree of care that a reasonable person in a like position would exercise. (2) The negligent failure of an elder or dependent adult to exercise that degree of self care that a reasonable person in a like position would exercise.</p> <p>Neglect includes, but is not limited to, all of the following:</p> <p>(1) Failure to assist in personal hygiene, or in the provision of food, clothing, or shelter. (2) Failure to provide medical care for physical and mental health needs. No person shall be deemed neglected or abused for the sole reason that he or she voluntarily relies on treatment by spiritual means through prayer alone in lieu of medical treatment. (3) Failure to protect from health and safety hazards. (4) Failure to prevent malnutrition or dehydration. (5) Failure of an elder or dependent adult to satisfy the needs specified in paragraphs (1) to (4), inclusive, for himself or herself as a result of poor cognitive functioning, mental limitation, substance abuse, or chronic poor health.</p>
<p>Cal. Welf. & Inst. Code § 15610.63</p>	<p>PHYSICAL ABUSE: Means any of the following:</p> <p>(a) Assault, as defined in Section 240 of the Penal Code. (b) Battery, as defined in Section 242 of the Penal Code. (c) Assault with a deadly weapon or force likely to produce great bodily injury, as defined in Section 245 of the Penal Code. (d) Unreasonable physical constraint, or prolonged or continual deprivation of food or water. (e) Sexual assault, that means any of the following: (1) Sexual battery, as defined in Section 243.4 of the Penal Code. (2) Rape, as defined in Section 261 of the Penal Code. (3) Rape in concert, as described in Section 264.1 of the Penal Code. (4) Spousal rape, as defined in Section 262 of the Penal Code. (5) Incest, as defined in Section 285 of the Penal Code. (6) Sodomy, as defined in Section 286 of the Penal Code. (7) Oral copulation, as defined in Section 288a of the Penal Code. (8) Sexual penetration, as defined in Section 289 of the Penal Code (9) Lewd or lascivious acts as defined in paragraph (2) of subdivision (b) of Section 288 of the Penal Code. (f) Use of a physical or chemical restraint or psychotropic medication under any of the following conditions: (1) For punishment. (2) For a period beyond that for which the medication was ordered pursuant to the instructions of a physician and surgeon licensed in the State of California, who is providing medical care to the elder or dependent adult at the time the instructions are given. (3) For any purpose not authorized by the physician and surgeon.</p>
<p>Colorado Colo. Rev. Stat. § 26-3.1-101</p>	<p>MISTREATMENT: The act or omission which threatens the health, safety, or welfare of an at-risk adult, as such term is defined in subsection (1) of this section, or which exposes the adult to a situation or condition that poses an imminent risk of death, serious bodily injury, or bodily injury to the adult.</p> <p>Mistreatment includes, but is not limited to:</p> <p>(a) Abuse which occurs: 1. Where there is infliction of physical pain or injury, as demonstrated by, but not limited to, substantial or multiple skin bruising, bleeding, malnutrition, dehydration, burns, bone fractures, poisoning, subdural</p>

	<p>hematoma, soft tissue swelling, or suffocation; 2. Where unreasonable confinement or restraint is imposed; or 3. Where there is subjection to nonconsensual sexual conduct or contact classified as a crime under the "Colorado Criminal Code", title 18, C.R.S.</p> <p>(b) Caretaker neglect which occurs when adequate food, clothing, shelter, psychological care, physical care, medical care, or supervision is not secured for the at-risk adult or is not provided by a caretaker in a timely manner and with the degree of care that a reasonable person in the same situation would exercise; except that the withholding of artificial nourishment in accordance with the "Colorado Medical Treatment Decision Act", article 18 of title 15, C.R.S., shall not be considered as abuse.</p> <p>(c) Exploitation which is the illegal or improper use of an at-risk adult for another person's advantage.</p> <p>SELF-NEGLECT: The act or failure to act whereby an at-risk adult substantially endangers the adult's health, safety, welfare, or life by not seeking or obtaining services necessary to meet the adult's essential human needs. Choice of lifestyle or living arrangements shall not, by itself, be evidence of self-neglect.</p>
<p>Connecticut Conn. Gen. Stat. § 17b-450</p>	<p>ABUSE: Includes, but is not limited to, the willful infliction of physical pain, injury or mental anguish, or the willful deprivation by a caretaker of services which are necessary to maintain physical and mental health.</p> <p>NEGLECT: Refers to an elderly person who is either living alone and not able to provide for oneself the services which are necessary to maintain physical and mental health or is not receiving the said necessary services from the responsible caretaker.</p> <p>EXPLOITATION: The act or process of taking advantage of an elderly person by another person or caretaker whether for monetary, personal or other benefit, gain or profit.</p> <p>ABANDONMENT: Refers to the desertion or willful forsaking of an elderly person by a caretaker or the foregoing of duties or the withdrawal or neglect of duties and obligations owed an elderly person by a caretaker or other person.</p>
<p>Delaware Del. Code Ann. tit. 31, § 3902</p>	<p>EXPLOITATION: The illegal or improper use or abuse of an infirm person, the infirm person's resources or the infirm person's rights, by another person, whether for profit or other advantage</p> <p>ABUSE: 1. Physical abuse by unnecessarily inflicting pain or injury on an infirm adult; or 2. A pattern of emotional abuse, which includes, but is not limited to, ridiculing or demeaning an infirm adult making derogatory remarks to an infirm adult or cursing or threatening to inflict physical or emotional harm on an infirm adult.</p> <p>MISTREATMENT: The failure to provide appropriate physical or emotional care to an infirm adult, including the inappropriate use of medications, isolation or physical or chemical restraints on or of an infirm adult.</p> <p>NEGLECT: 1. Lack of attention by a caregiver to physical needs of an infirm adult including but not limited to toileting, bathing, meals and safety; 2. Failure by a caregiver to carry out a treatment plan prescribed by a health care professional for an infirm adult; or, 3. Intentional and permanent abandonment or desertion in any place of an infirm adult by a caregiver who does not make reasonable efforts to ensure that essential services, as defined in this section, will be provided for said infirm adult.</p>
<p>District of Columbia D.C. Code Ann. § 7-1901</p>	<p>ABUSE: (A) "Abuse" means:</p> <ul style="list-style-type: none"> (i) The intentional or reckless infliction of serious physical pain or injury; (ii) The use or threatened use of violence to force participation in "sexual conduct," defined in § 22-3101(5); (iii) The repeated, intentional imposition of unreasonable confinement or threats to impose unreasonable confinement, resulting in severe mental distress; (iv) The repeated use of threats or violence, resulting in shock or an intense, expressed fear for one's life or of serious physical injury; or (v) The intentional or deliberately indifferent deprivation of essential food, shelter, or health care in violation of a caregiver's responsibilities, when that deprivation constitutes a serious threat to one's life

	<p>or physical health.</p> <p>(B) An adult shall not be considered abused under this chapter for the sole reason that he or she seeks, or his or her caregiver provides or permits to be provided, with the express consent or in accordance with the practice of the adult, treatment by spiritual means through prayer alone in accordance with a religious method of healing, in lieu of medical treatment.</p> <p>EXPLOITATION: The unlawful appropriation or use of another's "property," defined in section 22-3201, for one's own benefit or that of a 3rd person.</p> <p>NEGLECT: (A) "Neglect" means:</p> <ul style="list-style-type: none"> (i) The repeated, careless infliction of serious physical pain or injury; (ii) The repeated failure of a caregiver to take reasonable steps, within the purview of his or her responsibilities, to protect against acts of abuse described in paragraph (1)(B) of this section; (iii) The repeated, careless imposition of unreasonable confinement, resulting in severe mental distress; or (iv) The careless deprivation of essential food, shelter, or health care in violation of a caregiver's responsibilities, when that deprivation constitutes a serious threat to one's life or physical health. <p>(B) An adult shall not be considered neglected under this chapter for the sole reason that he or she seeks, or his or her caregiver provides or permits to be provided, with the express consent or in accordance with the practice of the adult, treatment by spiritual means through prayer alone in accordance with a religious method of healing, in lieu of medical treatment.</p> <p>SELF-NEGLECT: (A) "Self-neglect" means the failure of an adult, due to physical or mental impairments or incapacity, to perform essential self-care tasks, including:</p> <ul style="list-style-type: none"> (i) Providing essential food, clothing, shelter, or medical care; (ii) Obtaining goods or services necessary to maintain physical health, mental health, emotional well-being, and general safety; or (iii) Managing his or her financial affairs. <p>(B) An adult shall not be considered to be committing self-neglect under this chapter for the sole reason that he or she seeks treatment by spiritual means through prayer alone in accordance with a religious method of healing, in lieu of medical treatment.</p>
<p>Florida Fla. Stat. Ann. § 415.102</p>	<p>ABUSE: Any willful act or threatened act by a relative, caregiver, or household member which causes or is likely to cause significant impairment to a vulnerable adult's physical, mental, or emotional health. Abuse includes acts and omissions.</p> <p>EXPLOITATION: A person who:</p> <ol style="list-style-type: none"> 1. Stands in a position of trust and confidence with a vulnerable adult and knowingly, by deception or intimidation, obtains or uses, or endeavors to obtain or use, a vulnerable adult's funds, assets, or property with the intent to temporarily or permanently deprive a vulnerable adult of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the vulnerable adult; or 2. Knows or should know that the vulnerable adult lacks the capacity to consent, and obtains or uses, or endeavors to obtain or use, the vulnerable adult's funds, assets, or property with the intent to temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the vulnerable adult. <p>Exploitation may include, but is not limited to:</p> <ol style="list-style-type: none"> 1. Breaches of fiduciary relationships, such as the misuse of a power of attorney or the abuse of guardianship duties, resulting in the unauthorized appropriation, sale, or transfer of property; 2. Unauthorized taking of personal assets; 3. Misappropriation, misuse, or transfer of moneys belonging to a vulnerable adult from a personal or joint account; or 4. Intentional or negligent failure to effectively use a vulnerable adult's income and assets for the necessities required for that person's support and maintenance. <p>INTIMIDATION: The communication by word or act to a vulnerable adult that that person will be deprived of food, nutrition, clothing, shelter, supervision, medicine, medical services, money, or financial support or will suffer physical violence.</p>

	<p>NEGLECT: The failure or omission on the part of the caregiver or vulnerable adult to provide the care, supervision, and services necessary to maintain the physical and mental health of the vulnerable adult, including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services, that a prudent person would consider essential for the well-being of a vulnerable adult. The term "neglect" also means the failure of a caregiver or vulnerable adult to make a reasonable effort to protect a vulnerable adult from abuse, neglect, or exploitation by others. "Neglect" is repeated conduct or a single incident of carelessness which produces or could reasonably be expected to result in serious physical or psychological injury or a substantial risk of death.</p> <p>PSYCHOLOGICAL INJURY: An injury to the intellectual functioning or emotional state of a vulnerable adult as evidenced by an observable or measurable reduction in the vulnerable adult's ability to function within that person's customary range of performance and that person's behavior.</p> <p>SEXUAL ABUSE: Acts of a sexual nature committed in the presence of a vulnerable adult without that person's informed consent. "Sexual abuse" includes, but is not limited to, the acts defined in s. 794.011(1)(h), fondling, exposure of a vulnerable adult's sexual organs, or the use of a vulnerable adult to solicit for or engage in prostitution or sexual performance. "Sexual abuse" does not include any act intended for a valid medical purpose or any act that may reasonably be construed to be normal care giving action or appropriate display of affection</p>
<p>Georgia Ga. Code Ann. § 30-5-3</p>	<p>ABUSE: The willful infliction of physical pain, physical injury, mental anguish, unreasonable confinement, or the willful deprivation of essential services to a disabled adult or elder person.</p> <p>EXPLOITATION: The illegal or improper use of a disabled adult or elder person or that person's resources for another's profit or advantage.</p> <p>NEGLECT: The absence or omission of essential services to the degree that it harms or threatens with harm the physical or emotional health of a disabled adult or elder person.</p>
<p>Guam 10 Guam Code Ann. § 2951</p>	<p>ABANDONMENT: The desertion or willful forsaking of an elderly or disabled adult by his or her caregiver under circumstances in which a reasonable person would continue to provide care or custody.</p> <p>ELDERLY OR DISABLED ADULT ABUSE: Any one or more of the following acts inflicted on an elderly or disabled adult by other than accidental means by another person: physical abuse, neglect, abandonment or self neglect.</p> <p>MATERIAL ABUSE: The illegal or improper use of an elderly or disabled adult's money, property or other resources for monetary or personal benefit, profit or gain. It includes but is not limited to theft, misappropriation, concealment, misuse or fraudulent deprivation of money or property belonging to the elderly or disabled adult.</p> <p>MENTAL OR EMOTIONAL ABUSE: Includes but is not limited to verbal assaults, insults, threats, intimidation, humiliation, harassment, isolation which provokes fear, agitation, confusion or severe depression.</p> <p>NEGLECT: The failure of a caregiver to provide for the physical, mental or emotional health and well-being of the elderly or disabled adult and includes but is not limited to: (1) Failure to assist or provide personal hygiene for the elderly or disabled adult. (2) Failure to provide adequate food, water, clothing or shelter. (3) Failure to provide medical care for the physical and mental health of the elderly or disabled adult. No person shall be deemed neglected or abused for the sole reason that he or she voluntarily relies on treatment by spiritual means through prayer alone in lieu of medical treatment. (4) Failure to protect an elderly or disabled adult from health and safety hazards.</p> <p>PHYSICAL ABUSE: The willful infliction of injury which results in physical harm. It includes but is not limited to cruel punishment resulting in physical harm or pain or mental anguish, such as direct beatings, slapping, kicking, biting, choking, burning, sexual assault or molestation, or unreasonable physical restraint or confinement resulting in physical injury.</p>

Hawaii

Haw. Rev. Stat. § 346-222

ABUSE: The actual or imminent physical injury, psychological abuse or neglect, sexual abuse, financial exploitation, negligent treatment, or maltreatment as further defined in this chapter.

Abuse occurs where:

(1) Any dependent adult exhibits evidence of:

- (A) Substantial or multiple skin bruising or any other internal bleeding;
- (B) Any injury to skin causing substantial bleeding;
- (C) Malnutrition;
- (D) A burn or burns;
- (E) Poisoning;
- (F) The fracture of any bone;
- (G) A subdural hematoma;
- (H) Soft tissue swelling;
- (I) Extreme physical pain; or

(J) Extreme mental distress which includes a consistent pattern of actions or verbalizations including threats, insults, or harassment, that humiliates, provokes, intimidates, confuses, and frightens the dependent adult;

and the injury is not justifiably explained, or where the history given is at variance with the degree or type of injury, or circumstances indicate that the injury is not the product of an accidental occurrence;

(2) Any dependent adult has been the victim of non-consensual sexual contact or conduct, including, but not limited to:

- (A) Sexual assault, molestation, sexual fondling, incest, prostitution;
- (B) Obscene or pornographic photographing, filming, or depiction; or
- (C) Other similar forms of sexual exploitation;

(3) Any dependent adult is not provided in a timely manner with adequate food, clothing, shelter, psychological care, physical care, medical care, or supervision;

(4) Any dependent adult is provided with dangerous, harmful, or detrimental drugs as defined by section 712-1240; however, this paragraph shall not apply when such drugs are provided to the dependent adult pursuant to the direction or prescription of a practitioner, as defined in section 712-1240;

(5) There has been a failure to exercise that degree of care toward a dependent adult which a reasonable person with the responsibility of a caregiver would exercise, including, but not limited to, failure to:

- (A) Assist in personal hygiene;
- (B) Provide necessary food, shelter, and clothing;
- (C) Provide necessary health care, access to health care, or prescribed medication;
- (D) Protect a dependent adult from health and safety hazards; or
- (E) Protect against acts of abuse by third parties;

(6) Any dependent adult appears to lack sufficient understanding or capacity to make or communicate responsible decisions concerning the dependent adult's person, and appears to be exposed to a situation or condition which poses an imminent risk of death or risk of serious physical harm; or

(7) There is financial and economic exploitation. For the purpose of this part, "financial and economic exploitation" means the wrongful or negligent taking, withholding, misappropriation, or use of a dependent adult's money, real property, or personal property. "Financial and economic exploitation" can include but is not limited to:

- (A) Breaches of fiduciary relationships such as the misuse of a power of attorney or the abuse of guardianship privileges, resulting in the unauthorized appropriation, sale, or transfer of property;
- (B) The unauthorized taking of personal assets;
- (C) The misappropriation, misuse, or transfer of moneys belonging to the dependent adult from a personal or joint account; or
- (D) The intentional or negligent failure to effectively use a dependent adult's income and assets for the necessities required for the person's support and maintenance.

The exploitation may involve coercion, manipulation, threats, intimidation, misrepresentation, or exertion of undue influence.

<p>Idaho Idaho Code § 39-5302</p>	<p>ABUSE: The intentional or negligent infliction of physical pain, injury, or mental injury.</p> <p>EXPLOITATION: An action which may include, but is not limited to, the misuse of a vulnerable adult's funds, property, or resources by another person for profit or advantage.</p> <p>NEGLECT: The failure of a caretaker to provide food, clothing, shelter or medical care reasonably necessary to sustain the life and health of a vulnerable adult, or the failure of a vulnerable adult to provide those services for himself.</p>
<p>Illinois 320 Ill. Comp. Stat. 20/2</p>	<p>ABUSE: The causing of any physical, mental or sexual injury to an eligible adult, including exploitation of such adult's financial resources. Nothing in this Act shall be construed to mean that an eligible adult is a victim of abuse, or neglect for the sole reason that he or she is being furnished with or relies upon treatment by spiritual means through prayer alone, in accordance with the tenets and practices of a recognized church or religious denomination. Nothing in this Act shall be construed to mean that an eligible adult is a victim of abuse because of health care services provided or not provided by licensed health care professionals.</p> <p>NEGLECT: Another individual's failure to provide an eligible adult with or willful withholding from an eligible adult the necessities of life including, but not limited to, food, clothing, shelter or medical care. This subsection does not create any new affirmative duty to provide support to eligible adults. Nothing in this Act shall be construed to mean that an eligible adult is a victim of neglect because of health care services provided or not provided by licensed health care professionals.</p>
<p>Indiana Ind. Code Ann. § 12-10-3-2 <i>(Indiana's APS program is unique because it is administered by local prosecutor's offices. This may explain why its definitions seem very different from those of other states.)</i></p>	<p>ENDANGERED ADULT:</p> <p>(a) Except as provided in subsection (b), as used in this chapter, "endangered adult" means an individual who is:</p> <ol style="list-style-type: none"> (1) at least eighteen (18) years of age; (2) incapable by reason of mental illness, mental retardation, dementia, habitual drunkenness, excessive use of drugs, or other physical or mental incapacity of managing or directing the management of the individual's property or providing or directing the provision of self-care; and (3) harmed or threatened with harm as a result of: <ol style="list-style-type: none"> (A) neglect; (B) battery; or (C) exploitation of the individual's personal services or property. <p>(b) For purposes of Ind. Code Ann. § 12-10-3-17, Ind. Code Ann. § 35-42-2-1, and Ind. Code Ann. § 35-46-1-13, "endangered adult" means an individual who is:</p> <ol style="list-style-type: none"> (1) at least eighteen (18) years of age; (2) incapable by reason of mental illness, mental retardation, dementia, habitual drunkenness, excessive use of drugs, or other physical or mental incapacity of managing or directing the management of the individual's property or providing or directing the provision of self-care; and (3) harmed or threatened with harm as a result of: <ol style="list-style-type: none"> (A) neglect; (B) battery; or (C) exploitation of the individual's personal services or property. <p>(c) An individual is not an endangered adult solely:</p> <ol style="list-style-type: none"> (1) for the reason that the individual is being provided spiritual treatment in accordance with a recognized religious method of healing instead of specified medical treatment if the individual would not be considered to be an endangered adult if the individual were receiving the medical treatment; or (2) on the basis of being physically unable to provide self care when appropriate care is being provided.
<p>Iowa Iowa Code § 235B.2</p>	<p>DEPENDENT ADULT ABUSE means:</p> <ol style="list-style-type: none"> (1) Any of the following as a result of the willful or negligent acts or omissions of a caretaker: <ol style="list-style-type: none"> (a) Physical injury to, or injury which is at a variance with the history given of the injury, or unreasonable confinement, unreasonable punishment, or assault of a dependent adult. (b) The commission of a sexual offense under chapter 709 or section 726.2 with or against a dependent adult. (c) Exploitation of a dependent adult means the act or process of taking unfair advantage of a dependent

	<p>adult or the adult's physical or financial resources for one's own personal or pecuniary profit, without the informed consent of the dependent adult, including theft, by the use of undue influence, harassment, duress, deception, false representation, or false pretenses.</p> <p>(d) The deprivation of the minimum food, shelter, clothing, supervision, physical or mental health care, or other care necessary to maintain a dependent adult's life or health.</p> <p>(2) The deprivation of the minimum food, shelter, clothing, supervision, physical or mental health care, and other care necessary to maintain a dependent adult's life or health as a result of the acts or omissions of the dependent adult.</p> <p>(3) Sexual exploitation of a dependent adult who is a resident of a health care facility, as defined in section 135C.1, by a caretaker providing services to or employed by the health care facility, whether within the health care facility or at a location outside of the health care facility.</p> <p>Sexual exploitation means any consensual or nonconsensual sexual conduct with a dependent adult for the purpose of arousing or satisfying the sexual desires of the caretaker or dependent adult, which includes but is not limited to kissing; touching of the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes, or genitals; or a sex act, as defined in section 702.17. Sexual exploitation does not include touching which is part of a necessary examination, treatment, or care by a caretaker acting within the scope of the practice or employment of the caretaker; the exchange of a brief touch or hug between the dependent adult and a caretaker for the purpose of reassurance, comfort, or casual friendship; or touching between spouses.</p> <p>DEPENDENT ADULT ABUSE does not include any of the following:</p> <p>(1) Circumstances in which the dependent adult declines medical treatment if the dependent adult holds a belief or is an adherent of a religion whose tenets and practices call for reliance on spiritual means in place of reliance on medical treatment.</p> <p>(2) Circumstances in which the dependent adult's caretaker, acting in accordance with the dependent adult's stated or implied consent, declines medical treatment if the dependent adult holds a belief or is an adherent of a religion whose tenets and practices call for reliance on spiritual means in place of reliance on medical treatment.</p> <p>(3) The withholding or withdrawing of health care from a dependent adult who is terminally ill in the opinion of a licensed physician, when the withholding or withdrawing of health care is done at the request of the dependent adult or at the request of the dependent adult's next of kin, attorney in fact, or guardian pursuant to the applicable procedures under chapter 125, 144A, 144B, 222, 229, or 633.</p>
<p>Kansas Kan. Stat. Ann. § 39-1430</p>	<p>ABUSE: Any act or failure to act performed intentionally or recklessly that causes or is likely to cause harm to an adult, including:</p> <p>(1) Infliction of physical or mental injury;</p> <p>(2) any sexual act with an adult when the adult does not consent or when the other person knows or should know that the adult is incapable of resisting or declining consent to the sexual act due to mental deficiency or disease or due to fear of retribution or hardship;</p> <p>(3) unreasonable use of a physical restraint, isolation or medication that harms or is likely to harm an adult;</p> <p>(4) unreasonable use of a physical or chemical restraint, medication or isolation as punishment, for convenience, in conflict with a physician's orders or as a substitute for treatment, except where such conduct or physical restraint is in furtherance of the health and safety of the adult;</p> <p>(5) a threat or menacing conduct directed toward an adult that results or might reasonably be expected to result in fear or emotional or mental distress to an adult;</p> <p>(6) fiduciary abuse; or</p> <p>(7) omission or deprivation by a caretaker or another person of goods or services which are necessary to avoid physical or mental harm or illness.</p> <p>NEGLECT: The failure or omission by one's self, caretaker or another person with a duty to supply or provide goods or services which are reasonably necessary to ensure safety and well-being and to avoid physical or mental harm or illness.</p> <p>EXPLOITATION: The misappropriation of an adult's property or intentionally taking unfair advantage of an adult's physical or financial resources for another individual's personal or financial advantage by the use of undue influence, coercion, harassment, duress, deception, false representation or false pretense by a caretaker or another person.</p>

	<p>FIDUCIARY ABUSE: A situation in which any person who is the caretaker of, or who stands in a position of trust to, an adult, takes, secretes, or appropriates their money or property, to any use or purpose not in the due and lawful execution of such person's trust or benefit.</p>
<p>Kentucky Ky. Rev. Stat. Ann. § 209.020</p>	<p>ABUSE: The infliction of injury, sexual abuse, unreasonable confinement, intimidation, or punishment that results in physical pain or injury, including mental injury;</p> <p>EXPLOITATION: Obtaining or using another person's resources, including but not limited to funds, assets, or property, by deception, intimidation, or similar means, with the intent to deprive the person of those resources;</p> <p>NEGLECT: A situation in which an adult is unable to perform or obtain for himself the goods or services that are necessary to maintain his health or welfare, or the deprivation of services by a caretaker that are necessary to maintain the health and welfare of an adult,</p>
<p>Louisiana La. Rev. Stat. Ann. § 14:403.2</p>	<p>ABANDONMENT: The desertion or willful forsaking of an adult by anyone having care or custody of that person under circumstances in which a reasonable person would continue to provide care and custody.</p> <p>ABUSE: The infliction of physical or mental injury on an adult by other parties, including but not limited to such means as sexual abuse, abandonment, isolation, exploitation, or extortion of funds or other things of value, to such an extent that his health, self-determination, or emotional well-being is endangered.</p> <p>EXPLOITATION: The illegal or improper use or management of an aged person's or disabled adult's funds, assets, or property, or the use of an aged person's or disabled adult's power of attorney or guardianship for one's own profit or advantage.</p> <p>EXTORTION: The acquisition of a thing of value from an unwilling or reluctant adult by physical force, intimidation, or abuse of legal or official authority.</p> <p>ISOLATION: (a) Intentional acts committed for the purpose of preventing, and which do serve to prevent, an adult from having contact with family, friends, or concerned persons. This shall not be construed to affect a legal restraining order. (b) Intentional acts committed to prevent an adult from receiving his mail or telephone calls. (c) Intentional acts of physical or chemical restraint of an adult committed for the purpose of preventing contact with visitors, family, friends, or other concerned persons. (d) Intentional acts which restrict, place, or confine an adult in a restricted area for the purposes of social deprivation or preventing contact with family, friends, visitors, or other concerned persons. However, medical isolation prescribed by a licensed physician caring for the adult shall not be included in this definition.</p> <p>NEGLECT: The failure, by a caregiver responsible for an adult's care or by other parties, to provide the proper or necessary support or medical, surgical, or any other care necessary for his well-being. No adult who is being provided treatment in accordance with a recognized religious method of healing in lieu of medical treatment shall for that reason alone be considered to be neglected or abused.</p> <p>SELF-NEGLECT: The failure, either by the adult's action or inaction, to provide the proper or necessary support or medical, surgical, or any other care necessary for his own well-being. No adult who is being provided treatment in accordance with a recognized religious method of healing in lieu of medical treatment shall for that reason alone be considered to be self-neglected.</p>
<p>Maine Me. Rev. Stat. Ann. tit. 22 § 3472</p>	<p>ABUSE: The infliction of injury, unreasonable confinement, intimidation or cruel punishment with resulting physical harm or pain or mental anguish; sexual abuse or exploitation; or the willful deprivation of essential needs. 'Abuse' includes acts and omissions.</p> <p>EXPLOITATION: The illegal or improper use of an incapacitated or dependent adult or his resources for another's profit or advantage.</p> <p>NEGLECT: A threat to an adult's health or welfare by physical or mental injury or impairment,</p>

	<p>deprivation of essential needs or lack of protection from these.</p> <p>SEXUAL ABUSE OR EXPLOITATION: A contact or interaction of a sexual nature involving an incapacitated or dependent adult without that adult's consent.</p>
<p>Maryland Md. Code Ann., Fam. Law § 14-101</p>	<p>ABUSE: The sustaining of any physical injury by a vulnerable adult as a result of cruel or inhumane treatment or as a result of a malicious act by any person.</p> <p>EXPLOITATION: Any action which involves the misuse of a vulnerable adult's funds, property, or person.</p> <p>NEGLECT: The willful deprivation of a vulnerable adult of adequate food, clothing, essential medical treatment or habilitative therapy, shelter, or supervision. Neglect does not include the providing of nonmedical remedial care and treatment for the healing of injury or disease, with the consent of the vulnerable adult, recognized by State law instead of medical treatment.</p> <p>SELF-NEGLECT: The inability of a vulnerable adult to provide the vulnerable adult with the services: (1) That are necessary for the vulnerable adult's physical and mental health; and (2) The absence of which impairs or threatens the vulnerable adult's well-being.</p>
<p>Massachusetts (EPS) Mass. Gen. Laws Ann. ch. 19A, § 14 (<i>applicable to persons who are 60 or older</i>)</p>	<p>ABUSE: An act or omission which results in serious physical or emotional injury to an elderly person or financial exploitation of an elderly person; or the failure, inability or resistance of an elderly person to provide for him one or more of the necessities essential for physical and emotional well-being without which the elderly person would be unable to safely remain in the community; provided, however, that no person shall be considered to be abused or neglected for the sole reason that such person is being furnished or relies upon treatment in accordance with the tenets and teachings of a church or religious denomination by a duly accredited practitioner thereof.</p> <p>FINANCIAL EXPLOITATION: An act or omission by another person, which causes a substantial monetary or property loss to an elderly person, or causes a substantial monetary or property gain to the other person, which gain would otherwise benefit the elderly person but for the act or omission of such other person; provided, however, that such an act or omission shall not be construed as financial exploitation if the elderly person has knowingly consented to such act or omission unless such consent is a consequence of misrepresentation, undue influence, coercion or threat of force by such other person; and, provided further, that financial exploitation shall not be construed to interfere with or prohibit a bona fide gift by an elderly person or to apply to any act or practice in the conduct of any trade or commerce declared unlawful by section two of chapter ninety-three A.</p>
<p>Massachusetts (APS) Mass. Gen. Laws ch. 19C, § 1 (<i>applicable to persons with disabilities</i>)</p>	<p>ABUSE: An act or omission which results in serious physical or emotional injury to a disabled person; provided, however, that no person shall be considered to be abused for the sole reason that such person is being furnished or relies upon treatment in accordance with the tenets and teachings of a church or religious denomination by a duly accredited practitioner thereof.</p>
<p>Michigan Mich. Comp. Laws § 400.11</p>	<p>ABUSE: The harm or threatened harm to an adult's health or welfare caused by another person. Abuse includes, but is not limited to, non-accidental physical or mental injury, sexual abuse, or maltreatment.</p> <p>EXPLOITATION: An action that involves the misuse of an adult's funds, property, or personal dignity by another person.</p> <p>NEGLECT: Harm to an adult's health or welfare caused by the inability of the adult to respond to a harmful situation or by the conduct of a person who assumes responsibility for a significant aspect of the adult's health or welfare. Neglect includes the failure to provide adequate food, clothing, shelter, or medical care. A person shall not be considered to be abused, neglected, or in need of emergency or protective services for the sole reason that the person is receiving or relying upon treatment by spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination, and this act shall not require any medical care or treatment in contravention of the stated or implied objection of that person.</p>
<p>Minnesota Minn. Stat. § 626.5572</p>	<p>ABUSE: (a) An act against a vulnerable adult that constitutes a violation of, an attempt to violate, or aiding and abetting a violation of:</p>

- (1) assault in the first through fifth degrees as defined in sections 609.221 to 609.224;
 - (2) the use of drugs to injure or facilitate crime as defined in section 609.235;
 - (3) the solicitation, inducement, and promotion of prostitution as defined in section 609.322; and
 - (4) criminal sexual conduct in the first through fifth degrees as defined in sections 609.342 to 609.3451.
- A violation includes any action that meets the elements of the crime, regardless of whether there is a criminal proceeding or conviction.
- (b) Conduct which is not an accident or therapeutic conduct as defined in this section, which produces or could reasonably be expected to produce physical pain or injury or emotional distress including, but not limited to, the following:
- (1) hitting, slapping, kicking, pinching, biting, or corporal punishment of a vulnerable adult;
 - (2) use of repeated or malicious oral, written, or gestured language toward a vulnerable adult or the treatment of a vulnerable adult which would be considered by a reasonable person to be disparaging, derogatory, humiliating, harassing, or threatening;
 - (3) use of any aversive or deprivation procedure, unreasonable confinement, or involuntary seclusion, including the forced separation of the vulnerable adult from other persons against the will of the vulnerable adult or the legal representative of the vulnerable adult; and
 - (4) use of any aversive or deprivation procedures for persons with developmental disabilities or related conditions not authorized under section 245.825.
- (c) Any sexual contact or penetration as defined in section 609.341, between a facility staff person or a person providing services in the facility and a resident, patient, or client of that facility.
- (d) The act of forcing, compelling, coercing, or enticing a vulnerable adult against the vulnerable adult's will to perform services for the advantage of another.
- (e) For purposes of this section, a vulnerable adult is not abused for the sole reason that the vulnerable adult or a person with authority to make health care decisions for the vulnerable adult under sections 144.651, 144A.44, chapter 145B, 145C or 252A, or sections 253B.03; or 524.5-101 to 524.5-502, , refuses consent or withdraws consent, consistent with that authority and within the boundary of reasonable medical practice, to any therapeutic conduct, including any care, service, or procedure to diagnose, maintain, or treat the physical or mental condition of the vulnerable adult or, where permitted under law, to provide nutrition and hydration parenterally or through intubation. This paragraph does not enlarge or diminish rights otherwise held under law by:
- (1) a vulnerable adult or a person acting on behalf of a vulnerable adult, including an involved family member, to consent to or refuse consent for therapeutic conduct; or
 - (2) a caregiver to offer or provide or refuse to offer or provide therapeutic conduct.
- (f) For purposes of this section, a vulnerable adult is not abused for the sole reason that the vulnerable adult, a person with authority to make health care decisions for the vulnerable adult, or a caregiver in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the vulnerable adult in lieu of medical care, provided that this is consistent with the prior practice or belief of the vulnerable adult or with the expressed intentions of the vulnerable adult.
- (g) For purposes of this section, a vulnerable adult is not abused for the sole reason that the vulnerable adult, who is not impaired in judgment or capacity by mental or emotional dysfunction or undue influence, engages in consensual sexual contact with:
- (1) a person, including a facility staff person, when a consensual sexual personal relationship existed prior to the caregiving relationship; or
 - (2) a personal care attendant, regardless of whether the consensual sexual personal relationship existed prior to the caregiving relationship.

FINANCIAL EXPLOITATION:

- (a) In breach of a fiduciary obligation recognized elsewhere in law, including pertinent regulations, contractual obligations, documented consent by a competent person, or the obligations of a responsible party under section 144.6501, a person:
- (1) engages in unauthorized expenditure of funds entrusted to the actor by the vulnerable adult which results or is likely to result in detriment to the vulnerable adult; or
 - (2) fails to use the financial resources of the vulnerable adult to provide food, clothing, shelter, health care, therapeutic conduct or supervision for the vulnerable adult, and the failure results or is likely to result in detriment to the vulnerable adult.
- (b) In the absence of legal authority a person:
- (1) willfully uses, withholds, or disposes of funds or property of a vulnerable adult;
 - (2) obtains for the actor or another the performance of services by a third person for the wrongful profit or advantage of the actor or another to the detriment of the vulnerable adult;
 - (3) acquires possession or control of, or an interest in, funds or property of a vulnerable adult through the use of undue influence, harassment, duress, deception, or fraud; or

- (4) forces, compels, coerces, or entices a vulnerable adult against the vulnerable adult's will to perform services for the profit or advantage of another.
- (c) Nothing in this definition requires a facility or caregiver to provide financial management or supervise financial management for a vulnerable adult except as otherwise required by law.

MALTREATMENT:

Abuse as defined in subdivision 2, neglect as defined in subdivision 17, or financial exploitation as defined in subdivision 9.

NEGLECT:

- (a) The failure or omission by a caregiver to supply a vulnerable adult with care or services, including but not limited to, food, clothing, shelter, health care, or supervision which is:
 - (1) reasonable and necessary to obtain or maintain the vulnerable adult's physical or mental health or safety, considering the physical and mental capacity or dysfunction of the vulnerable adult; and
 - (2) which is not the result of an accident or therapeutic conduct.
- (b) The absence or likelihood of absence of care or services, including but not limited to, food, clothing, shelter, health care, or supervision necessary to maintain the physical and mental health of the vulnerable adult which a reasonable person would deem essential to obtain or maintain the vulnerable adult's health, safety, or comfort considering the physical or mental capacity or dysfunction of the vulnerable adult.
- (c) For purposes of this section, a vulnerable adult is not neglected for the sole reason that:
 - (1) the vulnerable adult or a person with authority to make health care decisions for the vulnerable adult under sections 144.651, 144A.44, chapter 145B, 145C, or 252A, or section 253B.03, or 525.539 to 525.6199, refuses consent or withdraws consent, consistent with that authority and within the boundary of reasonable medical practice, to any therapeutic conduct, including any care, service, or procedure to diagnose, maintain, or treat the physical or mental condition of the vulnerable adult, or, where permitted under law, to provide nutrition and hydration parenterally or through intubation; this paragraph does not enlarge or diminish rights otherwise held under law by:
 - (i) a vulnerable adult or a person acting on behalf of a vulnerable adult, including an involved family member, to consent to or refuse consent for therapeutic conduct; or
 - (ii) a caregiver to offer or provide or refuse to offer or provide therapeutic conduct; or
 - (2) the vulnerable adult, a person with authority to make health care decisions for the vulnerable adult, or a caregiver in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the vulnerable adult in lieu of medical care, provided that this is consistent with the prior practice or belief of the vulnerable adult or with the expressed intentions of the vulnerable adult;
 - (3) the vulnerable adult, who is not impaired in judgment or capacity by mental or emotional dysfunction or undue influence, engages in sexual contact with:
 - (i) a person including a facility staff person when a consensual sexual personal relationship existed prior to the caregiving relationship; or
 - (ii) a personal care attendant, regardless of whether the consensual sexual personal relationship existed prior to the caregiving relationship; or
 - (4) an individual makes an error in the provision of therapeutic conduct to a vulnerable adult which does not result in injury or harm which reasonably requires medical or mental health care; or
 - (5) an individual makes an error in the provision of therapeutic conduct to a vulnerable adult that results in injury or harm, which reasonably requires the care of a physician, and:
 - (i) the necessary care is provided in a timely fashion as dictated by the condition of the vulnerable adult;
 - (ii) if after receiving care, the health status of the vulnerable adult can be reasonably expected, as determined by the attending physician, to be restored to the vulnerable adult's preexisting condition;
 - (iii) the error is not part of a pattern of errors by the individual;
 - (iv) if in a facility, the error is immediately reported as required under section 626.557, and recorded internally in the facility;
 - (v) if in a facility, the facility identifies and takes corrective action and implements measures designed to reduce the risk of further occurrence of this error and similar errors; and
 - (vi) if in a facility, the actions required under items (iv) and (v) are sufficiently documented for review and evaluation by the facility and any applicable licensing, certification, and ombudsman agency.
- (d) Nothing in this definition requires a caregiver, if regulated, to provide services in excess of those required by the caregiver's license, certification, registration, or other regulation.
- (e) If the findings of an investigation by a lead agency result in a determination of substantiated maltreatment for the sole reason that the actions required of a facility under paragraph (c), clause (5), item (iv), (v), or (vi), were not taken, then the facility is subject to a correction order. An individual will

	<p>not be found to have neglected or maltreated the vulnerable adult based solely on the facility's not having taken the actions required under paragraph (c), clause (5), item (iv), (v), or (vi). This must not alter the lead agency's determination of mitigating factors under section 626.557, subdivision 9c, paragraph (c).</p>
<p>Mississippi Miss. Code. Ann. § 43-47-5</p>	<p>ABUSE: The willful or non-accidental infliction of physical pain, injury or mental anguish on a vulnerable adult, the unreasonable confinement of a vulnerable adult, or the willful deprivation by a caretaker of services which are necessary to maintain the mental and physical health of a vulnerable adult. "Abuse" includes sexual abuse. "Abuse" shall not mean conduct which is a part of the treatment and care of, and in furtherance of the health and safety of a patient or resident of a care facility. "Abuse" includes, but is not limited to, a single incident.</p> <p>EXPLOITATION: The illegal or improper use of a vulnerable adult or his resources for another's profit or advantage, with or without the consent of the vulnerable adult, and includes acts committed pursuant to a power of attorney. "Exploitation" includes, but is not limited to, a single incident.</p> <p>NEGLECT: Either the inability of a vulnerable adult who is living alone to provide for himself the food, clothing, shelter, health care or other services which are necessary to maintain his mental and physical health, or failure of a caretaker to supply the vulnerable adult with the food, clothing, shelter, health care, supervision or other services which a reasonably prudent person would do to maintain the vulnerable adult's mental and physical health. "Neglect" includes, but is not limited to, a single incident.</p>
<p>Missouri (#1) Mo. Ann. Stat. § 660.250 <i>(applicable only to persons who are unable to protect their own interests or adequately perform or obtain services necessary to meet their essential human needs and are either: (1) 60 or older, or (2) between 18 and 59 and have a disability)</i></p>	<p>ABUSE: The infliction of physical, sexual, or emotional injury or harm including financial exploitation by any person, firm or corporation.</p> <p>NEGLECT: The failure to provide services to an eligible adult by any person, firm or corporation with a legal or contractual duty to do so, when such failure presents either an imminent danger to the health, safety, or welfare of the client or a substantial probability that death or serious physical harm would result.</p>
<p>Missouri (#2) Mo. Ann. Stat. §§ 660.300 – 660.321 <i>(these provisions are applicable only to individuals who are receiving "in home services" as defined by § 660.250(9) "through any in-home services provider agency" as defined by § 660.250(11). Missouri does not have two statutes. We established this construct to distinguish in the charts between the provisions applicable to individuals who are receiving in home services and those who are not. The statute indicated that the definitions contained in 660.250 apply to what we have labeled as Missouri #2; 660.300 – 660.321.)</i></p>	<p>ABUSE: The infliction of physical, sexual, or emotional injury or harm including financial exploitation by any person, firm or corporation.</p> <p>NEGLECT: The failure to provide services to an eligible adult by any person, firm or corporation with a legal or contractual duty to do so, when such failure presents either an imminent danger to the health, safety, or welfare of the client or a substantial probability that death or serious physical harm would result.</p>
<p>Montana Mont. Code Ann. §52-3-803</p>	<p>ABUSE: (a) the infliction of physical or mental injury; or (b) the deprivation of food, shelter, clothing, or services necessary to maintain the physical or mental health of an older person or a person with a developmental disability without lawful authority. A declaration made pursuant to 50-9-103 constitutes</p>

	<p>lawful authority.</p> <p>EXPLOITATION: (a) the unreasonable use of an older person or a person with a developmental disability or of a power of attorney, conservatorship, or guardianship with regard to an older person or a person with a developmental disability in order to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of or interest in the person's money, assets, or property by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result of permanently depriving the older person or person with a developmental disability of the ownership, use, benefit, or possession of or interest in the person's money, assets, or property; (b) an act taken by a person who has the trust and confidence of an older person or a person with a developmental disability to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of or interest in the person's money, assets, or property by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result of permanently depriving the older person or person with a developmental disability of the ownership, use, benefit, or possession of or interest in the person's money, assets, or property; (c) the unreasonable use of an older person with a developmental disability or of a power of attorney, conservatorship, or guardianship with regard to an older person or a person with a developmental disability done in the course of an offer or sale of insurance or securities in order to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of the person's money, assets, or property by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result of permanently depriving the older person or person with a developmental disability of the ownership, use, benefit, or possession of the person's money, assets, or property.</p> <p>NEGLECT: The failure of a person who has assumed legal responsibility or a contractual obligation for caring for an older person or a person with a developmental disability or who has voluntarily assumed responsibility for the person's care, including an employee of a public or private residential institution, facility, home, or agency, to provide food, shelter, clothing, or services necessary to maintain the physical or mental health of the older person or the person with a developmental disability.</p> <p>SEXUAL ABUSE: The commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5.</p>
<p>Nebraska Neb. Rev. Stat. § 28-351</p> <p>Neb. Rev. Stat. § 28-358</p> <p>Neb. Rev. Stat. § 28-363</p> <p>Neb. Rev. Stat. § 28-370</p> <p>Neb. Rev. Stat. § 28-367</p>	<p>ABUSE: Any knowing, intentional, or negligent act or omission on the part of the caregiver, a vulnerable adult, or any other person which results in physical injury, unreasonable confinement, cruel punishment, sexual abuse, exploitation, or denial of essential services to a vulnerable adult.</p> <p>EXPLOITATION: The taking of property of a vulnerable adult by means of undue influence</p> <p>PHYSICAL INJURY: The damage to bodily tissue caused by nontherapeutic conduct, including, but not limited to, fractures, bruises, lacerations, internal injuries, or dislocations, and shall include, but not be limited to, physical pain, illness, or impairment of physical function.</p> <p>UNREASONABLE CONFINEMENT: The confinement which intentionally causes physical injury to a vulnerable adult.</p> <p>SEXUAL ABUSE: Shall include sexual assault as described in section 28-319 or 28-320 and incest as described in section 28-703.</p>
<p>Nevada Nev. Rev. Stat. § 200.5092</p>	<p>ABUSE: The willful and unjustified: (a) Infliction of pain, injury or mental anguish on an older person or a vulnerable person; or (b) Deprivation of food, shelter, clothing or services which are necessary to maintain the physical or mental health of an older person or a vulnerable person..</p> <p>EXPLOITATION: Any act taken by a person who has the trust and confidence of an older person or a vulnerable person. or any use of the power of attorney or guardianship of an older person or a vulnerable person. to: (a) Obtain control, through deception, intimidation or undue influence, over the older person's or vulnerable person's. money, assets or property with the intention of permanently depriving the older person or vulnerable person of the ownership, use, benefit or possession of his money, assets or property; or (b) Convert money, assets or property of the older person or vulnerable person with the intention of</p>

	<p>permanently depriving the older person or vulnerable person of the ownership, use, benefit, or possession of his money, assets or property. As used in this subsection, "undue influence" does not include the normal influence that one member of a family has over another.</p> <p>ISOLATION: Willfully, maliciously and intentionally preventing an older person or a vulnerable person from having contact with another person by:</p> <p>(a) Intentionally preventing the older person or vulnerable person from receiving his visitors, mail or telephone calls, including, without limitation, communicating to a person who comes to visit the older person or vulnerable person or a person who telephones the older person or vulnerable person that the older person or vulnerable person is not present or does not want to meet with or talk to the visitor or caller knowing that the statement is false, contrary to the express wishes of the older person or vulnerable person and intended to prevent the older person or vulnerable person from having contact with the visitor; or</p> <p>(b) Physically restraining the older person or vulnerable person to prevent the older person or vulnerable person from meeting with a person who comes to visit the older person or vulnerable person.</p> <p>The term does not include an act intended to protect the property or physical or mental welfare of the older person or vulnerable person or an act performed pursuant to the instructions of a physician of the older person or vulnerable person.</p> <p>NEGLECT: The failure of:</p> <p>(a) A person who has assumed legal responsibility or a contractual obligation for caring for an older person or vulnerable person or who has voluntarily assumed responsibility for his care to provide food, shelter, clothing or services which are necessary to maintain the physical or mental health of the older person or vulnerable person; or</p> <p>(b) An older person or a vulnerable person to provide for his own needs because of inability to do so.</p>
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<p>New Hampshire N.H. Rev. Stat. Ann. § 161-F:43</p>	<p>ABUSE: Any one of the following:</p> <p>(a) "Emotional abuse" means the misuse of power, authority, or both, verbal harassment, or unreasonable confinement which results or could result in the mental anguish or emotional distress of an incapacitated adult.</p> <p>(b) "Physical abuse" means the use of physical force which results or could result in physical injury to an incapacitated adult.</p> <p>(c) "Sexual abuse" means contact or interaction of a sexual nature involving an incapacitated adult without his or her informed consent.</p> <p>NEGLECT: An act or omission which results or could result in the deprivation of essential services or supports necessary to maintain the minimum mental, emotional or physical health and safety of an incapacitated adult.</p> <p>EXPLOITATION: The illegal use of an incapacitated adult's person or property for another person's profit or advantage, or the breach of a fiduciary relationship through the use of a person or a person's property for any purpose not in the proper and lawful execution of a trust, including, but not limited to, situations where a person obtains money, property, or services from an incapacitated adult through the use of undue influence, harassment, duress, deception, or fraud.</p> <p>SELF-NEGLECT: An act or omission by an incapacitated adult which results or could result in the deprivation of essential services or supports necessary to maintain his or her minimum mental, emotional or physical health and safety.</p>
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<p>New Jersey N.J. Stat. Ann. 52:27D-407</p>	<p>ABUSE: The willful infliction of physical pain, injury or mental anguish, unreasonable confinement, or the willful deprivation of services which are necessary to maintain a person's physical and mental health.</p> <p>EXPLOITATION: The act or process of illegally or improperly using a person or his resources for another person's profit or advantage.</p> <p>NEGLECT: An act or failure to act by a vulnerable adult or his caretaker which results in the</p>
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	<p>inadequate provision of care or services necessary to maintain the physical and mental health of the vulnerable adult, and which places the vulnerable adult in a situation which can result in serious injury or which is life-threatening.</p>
<p>New Mexico N.M. Stat. Ann. § 27-7-16</p>	<p>ABUSE: (1) knowingly, intentionally or negligently and without justifiable cause inflicting physical pain, injury or mental anguish; or (2) the intentional deprivation by a caretaker or other person of services necessary to maintain the mental and physical health of an adult.</p> <p>EXPLOITATION: An unjust or improper use of an adult's money or property for another person's profit or advantage, pecuniary or otherwise.</p> <p>NEGLECT: The failure of the caretaker of an adult to provide basic needs such as clothing, food, shelter, supervision and care for the physical and mental health for that adult or failure by an adult to provide such basic needs for himself;</p>
<p>New York N.Y. Soc. Serv. Law § 473</p>	<p>PHYSICAL ABUSE: The non-accidental use of force that results in bodily injury, pain or impairment, including but not limited to, being slapped, burned, cut, bruised or improperly physically restrained.</p> <p>SEXUAL ABUSE: Non-consensual sexual contact of any kind, including but not limited to, forcing sexual contact or forcing sex with a third party.</p> <p>EMOTIONAL ABUSE: The willful infliction of mental or emotional anguish by threat, humiliation, intimidation or other abusive conduct, including but not limited to, frightening or isolating an adult.</p> <p>ACTIVE NEGLECT: The willful failure by the caregiver to fulfill the care-taking functions and responsibilities assumed by the caregiver, including but not limited to, abandonment, willful deprivation of food, water, heat, clean clothing and bedding, eyeglasses or dentures, or health related services.</p> <p>PASSIVE NEGLECT: The non-willful failure of a caregiver to fulfill care-taking functions and responsibilities assumed by the caregiver, including but not limited to, abandonment or denial of food or health related services because of inadequate caregiver knowledge, infirmity, or disputing the value of prescribed services.</p> <p>SELF NEGLECT: An adult's inability, due to physical and/or mental impairments to perform tasks essential to caring for oneself, including but not limited to, providing essential food, clothing, shelter and medical care; obtaining goods and services necessary to maintain physical health, mental health, emotional well-being and general safety; or managing financial affairs.</p> <p>FINANCIAL EXPLOITATION: The improper use of an adult's funds, property or resources by another individual, including but not limited to, fraud, false pretenses, embezzlement, conspiracy, forgery, falsifying records, coerced property transfers or denial of access to assets.</p>
<p>North Carolina N.C. Gen. Stat. § 108A-101</p>	<p>ABUSE: The willful infliction of physical pain, injury or mental anguish, unreasonable confinement, or the willful deprivation by a caretaker of services which are necessary to maintain mental and physical health.</p> <p>EXPLOITATION: The illegal or improper use of a disabled adult or his resources for another's profit or advantage.</p> <p>NEGLECT: A disabled adult who is either living alone and not able to provide for himself the services which are necessary to maintain his mental or physical health or is not receiving services from his caretaker. A person is not receiving services from his caretaker if, among other things and not by way of limitation, he is a resident of one of the State-owned hospitals for the mentally ill, centers for the mentally retarded or North Carolina Special Care Center he is, in the opinion of the professional staff of that hospital or center, mentally incompetent to give his consent to medical treatment, he has no legal guardian appointed pursuant to Chapter 35A, or guardian as defined in G.S. 122C-3(15), and he needs medical treatment.</p>
<p>North Dakota N.D. Cent. Code</p>	<p>ABUSE: Any willful act or omission of a caregiver or any other person which results in physical injury,</p>

<p>§ 50-25.2-01</p>	<p>mental anguish, unreasonable confinement, sexual abuse or exploitation, or financial exploitation to or of a vulnerable adult.</p> <p>FINANCIAL EXPLOITATION: The taking or misuse of property or resources of a vulnerable adult by means of undue influence, breach of a fiduciary relationship, deception, harassment, criminal coercion, theft, or other unlawful or improper means.</p> <p>NEGLECT: The failure of a caregiver to provide essential services necessary to maintain the physical and mental health of a vulnerable adult, or the inability or lack of desire of the vulnerable adult to provide essential services necessary to maintain and safeguard the vulnerable adult's own physical and mental health.</p> <p>SEXUAL ABUSE OR EXPLOITATION: Includes those sex offenses defined in sections 12.1-20-02, 12.1-20-03, 12.1-20-04, 12.1-20-05, 12.1-20-06, 12.1-20-07, and 12.1-20-11.</p>
<p>Ohio Ohio Rev. Code Ann. § 5101.60</p>	<p>ABUSE: The infliction upon an adult by self or others of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical harm, pain, or mental anguish.</p> <p>EXPLOITATION: The unlawful or improper act of a caretaker using an adult or an adult's resources for monetary or personal benefit, profit, or gain.</p> <p>NEGLECT: The failure of an adult to provide for self the goods or services necessary to avoid physical harm, mental anguish, or mental illness or the failure of a caretaker to provide such goods or services.</p>
<p>Oklahoma Okla. Stat. tit. 43A § 10-103</p>	<p>ABUSE: Causing or permitting: a. the infliction of physical pain, injury, sexual abuse, sexual exploitation, unreasonable restraint or confinement, or mental anguish, or b. the deprivation of nutrition, clothing, shelter, health care, or other care or services without which serious physical or mental injury is likely to occur to a vulnerable adult by a caretaker or other person providing services to a vulnerable adult.</p> <p>EXPLOITATION or EXPLOIT: An unjust or improper use of the resources of a vulnerable adult for the profit or advantage, pecuniary or otherwise, of a person other than the vulnerable adult through the use of undue influence, coercion, harassment, duress, deception, false representation or false pretense;</p> <p>NEGLECT: a. the failure to provide protection for a vulnerable adult who is unable to protect his or her own interest, b. the failure to provide a vulnerable adult with adequate shelter, nutrition, health care, or clothing, or c. negligent acts or omissions that result in harm or the unreasonable risk of harm to a vulnerable adult through the action, inaction, or lack of supervision by a caretaker providing direct services;</p> <p>SEXUAL ABUSE: a. oral, anal, or vaginal penetration of a vulnerable adult by or through the union with the sexual organ of a caretaker or other person providing services to the vulnerable adult, or the anal or vaginal penetration of a vulnerable adult by a caretaker or other person providing services to the vulnerable adult with any other object, or b. for the purpose of sexual gratification, the touching, feeling or observation of the body or private parts of a vulnerable adult by a caretaker or other person providing services to the vulnerable adult, or c. indecent exposure by a caretaker or other person providing services to the vulnerable adult.</p> <p>SELF-NEGLECT: The action or inaction of a vulnerable adult which causes that person to fail to meet the essential requirements for physical or mental health and safety due to the vulnerable adult's lack of awareness, incompetence or incapacity.</p> <p>SEXUAL EXPLOITATION: Includes, but is not limited to, a caretaker's causing, allowing, permitting or encouraging a vulnerable adult to engage in prostitution or in the lewd, obscene, or pornographic photographing, filming or depiction of the vulnerable adult as those acts are defined by state law; and</p> <p>VERBAL ABUSE: The use of words, sounds, or other communication including, but not limited to, gestures, actions or behaviors, by a caretaker or other person providing services to a vulnerable adult that are likely to cause a reasonable person to experience humiliation, intimidation, fear, shame or degradation.</p>

<p>Oregon (EPS) Or. Rev. Stat. § 124.050 <i>(applicable to persons 65 or older who are not residents of long-term care facilities)</i></p>	<p>ABUSE: One or more of the following: (a) Any physical injury caused by other than accidental means, or that appears to be at variance with the explanation given of the injury. (b) Neglect that leads to physical harm through withholding of services necessary to maintain health and well-being. (c) Abandonment, including desertion or willful forsaking of an elderly person or the withdrawal or neglect of duties and obligations owed an elderly person by a caregiver or other person. (d) Willful infliction of physical pain or injury. (e) An act that constitutes a crime under ORS 163.375, 163.405, 163.411, 163.415, 163.425, 163.427, 163.465 or 163.467. (f) Wrongfully taking or appropriating money or property, or knowingly subjecting an elderly person or person with disabilities to alarm by conveying a threat to wrongfully take or appropriate money or property, which threat reasonably would be expected to cause the elderly person or person with disabilities to believe that the threat will be carried out.</p>
<p>Oregon (APS) Or. Rev. Stat. § 430.735 <i>(applicable only to persons 18 or older who are mentally ill or developmentally disabled and receive services from a community program or facility)</i></p>	<p>ABUSE: Means one or more of the following: (a) Any death caused by other than accidental or natural means. (b) Any physical injury caused by other than accidental means, or that appears to be at variance with the explanation given of the injury. (c) Willful infliction of physical pain or injury. (d) Sexual harassment or exploitation, including but not limited to any sexual contact between an employee of a facility or community program and an adult. (e) Neglect that leads to physical harm through withholding of services necessary to maintain health and well-being. For purposes of this paragraph, "neglect" does not include a failure of the state or a community program to provide services due to a lack of funding available to provide the services.</p>
<p>Pennsylvania Pa. Stat. Ann. tit. 35 § 10225.103</p>	<p>ABANDONMENT: The desertion of an older adult by a caretaker.</p> <p>ABUSE: The occurrence of one or more of the following acts: (1) The infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish. (2) The willful deprivation by a caretaker of goods or services which are necessary to maintain physical or mental health. (3) Sexual harassment, rape or abuse, as defined in the act of October 7, 1976 (P.L. 1090, No. 218), known as the Protection From Abuse Act.</p> <p>No older adult shall be found to be abused solely on the grounds of environmental factors which are beyond the control of the older adult or the caretaker, such as inadequate housing, furnishings, income, clothing or medical care.</p> <p>EXPLOITATION: An act or course of conduct by a caretaker or other person against an older adult or an older adult's resources, without the informed consent of the older adult or with consent obtained through misrepresentation, coercion or threats of force, that results in monetary, personal or other benefit, gain or profit for the perpetrator or monetary or personal loss to the older adult.</p> <p>NEGLECT: The failure to provide for oneself or the failure of a caretaker to provide goods or services essential to avoid a clear and serious threat to physical or mental health. No older adult who does not consent to the provision of protective services shall be found to be neglected solely on the grounds of environmental factors which are beyond the control of the older adult or the caretaker, such as inadequate housing, furnishings, income, clothing or medical care.</p> <p>SEXUAL ABUSE: Intentionally, knowingly or recklessly causing or attempting to cause rape, involuntary deviate sexual intercourse, sexual assault, statutory sexual assault, aggravated indecent assault, indecent assault or incest.</p>
<p>Puerto Rico 8 P.R. Laws Ann. § 342</p>	<p>COERCION: Physical or psychological force or violence exerted on a person to compel said person to say or do something.</p> <p>HARASSMENT: Words, gestures or actions addressed to molest, persecute or disturb an elderly person.</p>

	<p>INTIMIDATION: Any action or word whose purpose is to exert moral pressure on the will of an elderly person, who, for fear of suffering physical or emotional harm on his/her person, or property or another person, is compelled to perform an act against his/her will.</p> <p>PHYSICAL ABUSE: Any injury or condition which provokes or creates a substantial risk which may cause the disfigurement or temporary or permanent disability of any bodily part or function, or other forms of bodily harm or injury.</p> <p>MENTAL OR PHYSICAL ABUSE: Any act or conduct which may bring dishonor, discredit or create contempt for personal values, unreasonable limitation of access and management of goods or chattels, isolation, lack of access to proper sustenance or rest, threats, or destruction of objects dear to the person.</p>
<p>Rhode Island R.I. Gen. Laws § 42-66-4.1</p>	<p>ABANDONMENT: The desertion of an elderly person by a caretaker or other person with a duty of care, or the withdrawal of necessary assistance owed an elderly person by a caretaker or other person with an obligation to provide services.</p> <p>ABUSE: The subjection of an elderly person to the willful infliction of physical pain, or willful deprivation of services by a caretaker or other person with a duty of care for the elderly person. Abuse also includes neglect, abandonment, and exploitation.</p> <p>EXPLOITATION: An act or process of taking pecuniary advantage of an elderly person by use of undue influence, harassment, duress, deception, false representation or false pretenses.</p> <p>NEGLECT: The willful refusal to provide services necessary to maintain physical and mental health on the part of a caretaker or other person with a duty of care.</p>
<p>South Carolina S.C. Code Ann. § 43-35-10</p>	<p>ABUSE: Physical abuse or psychological abuse.</p> <p>EXPLOITATION:</p> <ul style="list-style-type: none"> (a) Causing or requiring a vulnerable adult to engage in activity or labor which is improper, illegal, or against the reasonable and rational wishes of the vulnerable adult. Exploitation does not include requiring a vulnerable adult to participate in an activity or labor which is a part of a written plan of care or which is prescribed or authorized by a licensed physician attending the patient; (b) An improper, illegal, or unauthorized use of the funds, assets, property, power of attorney, guardianship, or conservatorship of a vulnerable adult by a person for the profit or advantage of that person or another person; or (c) causing a vulnerable adult to purchase goods or services for the profit or advantage of the seller or another person through: (i) undue influence, (ii) harassment, (iii) duress, (iv) force, (v) coercion, or (vi) swindling by overreaching, cheating, or defrauding the vulnerable adult through cunning arts or devices that delude the vulnerable adult and cause him to lose money or other property. <p>NEGLECT: The failure or omission of a caregiver to provide the care, goods, or services necessary to maintain the health or safety of a vulnerable adult including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services. Neglect may be repeated conduct or a single incident which has produced or can be proven to result in serious physical or psychological harm or substantial risk of death. Noncompliance with regulatory standards alone does not constitute neglect. Neglect includes the inability of a vulnerable adult, in the absence of a caretaker, to provide for his or her own health or safety which produces or could reasonably be expected to produce serious physical or psychological harm or substantial risk of death.</p> <p>PHYSICAL ABUSE: Intentionally inflicting or allowing to be inflicted physical injury on a vulnerable adult by an act or failure to act. Physical abuse includes, but is not limited to, slapping, hitting, kicking, biting, choking, pinching, burning, actual or attempted sexual battery as defined in Section 16-3-651, use of medication outside the standards of reasonable medical practice for the purpose of controlling behavior, and unreasonable confinement. Physical abuse also includes the use of a restrictive or physically intrusive procedure to control behavior for the purpose of punishment except that a therapeutic procedure prescribed by a licensed physician or other qualified professional or that is part of a written plan of care by a licensed physician or other qualified professional is not considered physical abuse. Physical abuse does not include altercations or acts of assault between vulnerable adults.</p>

	<p>PSYCHOLOGICAL ABUSE: Deliberately subjecting a vulnerable adult to threats or harassment or other forms of intimidating behavior causing fear, humiliation, degradation, agitation, confusion, or other forms of serious emotional distress.</p>
<p>South Dakota <i>There is no APS statute but the state's APS program is authorized by S.D.</i> Codified Laws Ann. § 28-1-44</p>	
<p>Tennessee Tenn. Code Ann. § 71-6-102</p>	<p>ABUSE OR NEGLECT: The infliction of physical pain, injury, or mental anguish, or the deprivation of services by a caretaker which are necessary to maintain the health and welfare of an adult or a situation in which an adult is unable to provide or obtain the services which are necessary to maintain that person's health or welfare. Nothing in this part shall be construed to mean a person is abused or neglected or in need of protective services for the sole reason that the person relies on or is being furnished treatment by spiritual means through prayer alone in accordance with a recognized religious method of healing in lieu of medical treatment; further, nothing in this part shall be construed to require or authorize the provision of medical care to any terminally ill person if such person has executed an unrevoked living will in accordance with the provisions of the Tennessee Right to Natural Death Law, compiled in title 32, chapter 11, and if the provisions of such medical care would conflict with the terms of such living will.</p> <p>EXPLOITATION: The improper use by a caretaker of funds which have been paid by a governmental agency to an adult or to the caretaker for the use or care of the adult.</p> <p>SEXUAL ABUSE: Occurs when an adult, as defined in this chapter, is forced, tricked, threatened or otherwise coerced by a person into sexual activity, involuntary exposure to sexually explicit material or language, or sexual contact against such adult's will. Sexual abuse also occurs when an "adult," as defined in this chapter, is unable to give consent to such sexual activities or contact and is engaged in such activities or contact with another person.</p>
<p>Texas Texas Hum. Res. Code Ann. § 48.002</p>	<p>ABUSE: (A) the negligent or willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical or emotional harm or pain to an elderly or disabled person by the person's caretaker, family member, or other individual who has an ongoing relationship with the person; or (B) sexual abuse of an elderly or disabled person, including any involuntary or nonconsensual sexual conduct that would constitute an offense under Section 21.08, Penal Code (indecent exposure) or Chapter 22, Penal Code (assaultive offenses), committed by the person's caretaker, family member, or other individual who has an ongoing relationship with the person.</p> <p>EXPLOITATION: The illegal or improper act or process of a caretaker, family member, or other individual who has an ongoing relationship with the elderly or disabled person using the resources of an elderly or disabled person for monetary or personal benefit, profit, or gain without the informed consent of the elderly or disabled person.</p> <p>NEGLECT: The failure to provide for one's self the goods or services, including medical services, which are necessary to avoid physical or emotional harm or pain or the failure of a caretaker to provide such goods or services.</p>
<p>Utah Utah Code Ann. § 62A-3-301</p>	<p>ABANDONMENT: Any knowing or intentional action or inaction, including desertion, by a person or entity acting as a caretaker for a vulnerable adult that leaves the vulnerable adult without the means or ability to obtain necessary food, clothing, shelter, or medical or other health care.</p> <p>ABUSE: (a) attempting to cause harm, intentionally or knowingly causing harm, or intentionally or knowingly placing another in fear of imminent harm; (b) unreasonable or inappropriate use of physical restraint, medication, or isolation that causes or is likely to cause harm to a vulnerable adult that is in conflict with a physician's orders or used as an unauthorized substitute for treatment, unless that conduct furthers the health and safety of the adult; (c) emotional or psychological abuse;</p>

- (d) sexual offense as described in Title 76, Chapter 5, Offenses Against the Person; or
- (e) deprivation of life sustaining treatment, except:
- (i) as provided in Title 75, Chapter 2, Part 11, Personal Choice and Living Will Act; or
- (ii) when informed consent, as defined in Section 76-5-111, has been obtained.

ELDER ABUSE: Abuse, neglect, or exploitation of an elder adult.

EMOTIONAL OR PSYCHOLOGICAL ABUSE: Intentional or knowing verbal or nonverbal conduct directed at a vulnerable adult including ridiculing, intimidating, yelling, swearing, threatening, isolating, coercing, harassing, or other forms of intimidating behavior that results or could result in the vulnerable adult suffering mental anguish or emotional distress, including fear, humiliation, degradation, agitation, confusion, or isolation.

EXPLOITATION: The offense described in Subsection 76-5-111(4).

INTIMIDATION: Communication through verbal or nonverbal conduct which threatens deprivation of money, food, clothing, medicine, shelter, social interaction, supervision, health care, or companionship, or which threatens isolation or abuse.

ISOLATION:

- (a) ...knowingly or intentionally preventing a vulnerable adult from having contact with another person by:
 - (i) preventing the vulnerable adult from receiving visitors, mail, or telephone calls, contrary to the express wishes of the vulnerable adult, including communicating to a visitor that the vulnerable adult is not present or does not want to meet with or talk to the visitor, knowing that communication to be false;
 - (ii) physically restraining the vulnerable adult in order to prevent the vulnerable adult from meeting with a visitor; or
 - (iii) making false or misleading statements to the vulnerable adult in order to induce the vulnerable adult to refuse to receive communication from visitors or other family members.
- (b) The term "isolation" does not include an act intended to protect the physical or mental welfare of the vulnerable adult or an act performed pursuant to the treatment plan or instructions of a physician or other professional advisor of the vulnerable adult.

NEGLECT:

- (a) (i) failure of a caretaker to provide nutrition, clothing, shelter, supervision, personal care, or dental, medical, or other health care; or
- (ii) failure to provide protection from health and safety hazards or maltreatment;
- (b) failure of a caretaker to provide care to a vulnerable adult in a timely manner and with the degree of care that a reasonable person in a like position would exercise;
- (c) a pattern of conduct by a caretaker, without the vulnerable adult's informed consent, resulting in deprivation of food, water, medication, health care, shelter, cooling, heating, or other services necessary to maintain the vulnerable adult's well being;
- (d) knowing or intentional failure by a caretaker to carry out a prescribed treatment plan that causes or is likely to cause harm to the vulnerable adult;
- (e) self-neglect by the vulnerable adult; or
- (f) abandonment by a caretaker.

SELF-NEGLECT: The failure of a vulnerable adult to provide food, water, medication, health care, shelter, cooling, heating, safety, or other services necessary to maintain the vulnerable adult's well being when that failure is the result of the adult's mental or physical impairment. Choice of lifestyle or living arrangements may not, by themselves, be evidence of self-neglect.

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ABUSE:

- (A) Any treatment of a vulnerable adult which places life, health or welfare in jeopardy or which is likely to result in impairment of health;
- (B) Any conduct committed with an intent or reckless disregard that such conduct is likely to cause unnecessary harm, unnecessary pain or unnecessary suffering to a vulnerable adult;
- (C) Unnecessary or unlawful confinement or unnecessary or unlawful restraint of a vulnerable adult;
- (D) Any sexual activity with a vulnerable adult by a caregiver who volunteers for or is paid by a caregiving facility or program. This definition shall not apply to a consensual relationship between a vulnerable adult and a spouse, nor to a consensual relationship between a vulnerable adult and a

	<p>caregiver hired, supervised, and directed by the vulnerable adult;</p> <p>(E) Intentionally subjecting a vulnerable adult to behavior which should reasonably be expected to result in intimidation, fear, humiliation, degradation, agitation, disorientation, or other forms of serious emotional distress; or</p> <p>(F) Administration, or threatened administration, of a drug, substance, or preparation to a vulnerable adult for a purpose other than legitimate and lawful medical or therapeutic treatment.</p> <p>EXPLOITATION:</p> <p>(A) Willfully using, withholding, transferring or disposing of funds or property of a vulnerable adult without or in excess of legal authority for the wrongful profit or advantage of another;</p> <p>(B) Acquiring possession or control of or an interest in funds or property of a vulnerable adult through the use of undue influence, harassment, duress, or fraud;</p> <p>(C) The act of forcing or compelling a vulnerable adult against his or her will to perform services for the profit or advantage of another;</p> <p>(D) Any sexual activity with a vulnerable adult when the vulnerable adult does not consent or when the actor knows or should know that the vulnerable adult is incapable of resisting or declining consent to the sexual activity due to age or disability or due to fear of retribution or hardship, whether or not the actor has actual knowledge of vulnerable status.</p> <p>NEGLECT: The purposeful or reckless failure or omission by a caregiver to:</p> <p>(A)(i) provide care or arrange for goods or services necessary to maintain the health or safety of a vulnerable adult, including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services, unless the caregiver is acting pursuant to the wishes of the vulnerable adult or his or her representative, or a terminal care document, as defined in chapter 111 of Title 18;</p> <p>(ii) make a reasonable effort, in accordance with the authority granted the caregiver, to protect a vulnerable adult from abuse, neglect or exploitation by others;</p> <p>(iii) carry out a plan of care for a vulnerable adult when such failure results in or could reasonably be expected to result in physical or psychological harm or a substantial risk of death to the vulnerable adult, unless the caregiver is acting pursuant to the wishes of the vulnerable adult or his or her representative, or a terminal care document, as defined in chapter 111 of Title 18; or</p> <p>(iv) report significant changes in the health status of a vulnerable adult to a physician, nurse, or immediate supervisor, when the caregiver is employed by an organization that offers, provides or arranges for personal care.</p> <p>(B) Neglect may be repeated conduct or a single incident which has resulted in or could be expected to result in physical or psychological harm, as a result of subdivisions (A)(i), (ii), or (iii) of this subdivision (7).</p>
<p>Virgin Islands 34 V.I. Code Ann. § 452</p>	<p>ABANDONMENT: Desertion by a caretaker or other person who has an obligation to provide services.</p> <p>ABUSE: The infliction of verbal, psychological or physical pain, injury or harm, mental anguish or harm, or unreasonable confinement.</p> <p>EXPLOITATION: An act or course of conduct to influence or interfere by misrepresentation, coercion or threats of force whether for monetary, personal, or other benefit, gain or profit.</p> <p>NEGLECT: Failure or refusal to provide treatment or services necessary to maintain physical or mental health.</p>
<p>Virginia Va. Code Ann. § 63.2-100</p>	<p>ADULT ABUSE: The willful infliction of physical pain, injury or mental anguish or unreasonable confinement of an adult.</p> <p>ADULT EXPLOITATION: The illegal use of an incapacitated adult or his resources for another's profit or advantage.</p> <p>ADULT NEGLECT: An adult is living under such circumstances that he is not able to provide for himself or is not being provided services necessary to maintain his physical and mental health and that the failure to receive such necessary services impairs or threatens to impair his well-being.</p>
<p>Washington Wash. Rev. Code § 74.34.020</p>	<p>ABANDONMENT: An action or inaction by a person or entity with a duty of care for a vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.</p>

	<p>ABUSE: The willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult. In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a vulnerable adult, which have the following meanings:</p> <p>(a) Sexual abuse means any form of nonconsensual sexual contact, including but not limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual abuse includes any sexual contact between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under chapter 71A.12 RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter 71A.12 RCW, whether or not it is consensual.</p> <p>(b) Physical abuse means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or the use of chemical restraints or physical restraints unless the restraints are consistent with licensing requirements, and includes restraints that are otherwise being used inappropriately.</p> <p>(c) Mental abuse means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a vulnerable adult from family, friends, or regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing.</p> <p>(d) Exploitation means an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another.</p> <p>FINANCIAL EXPLOITATION: The illegal or improper use of the property, income, resources, or trust funds of the vulnerable adult by any person for any person's profit or advantage.</p> <p>NEGLECT: (a) a pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; or (b) an act or omission that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100.</p> <p>SELF-NEGLECT: The failure of a vulnerable adult, not living in a facility, to provide for himself or herself the goods and services necessary for the vulnerable adult's physical or mental health, and the absence of which impairs or threatens the vulnerable adult's well-being. This definition may include a vulnerable adult who is receiving services through home health, hospice, or a home care agency, or an individual provider when the neglect is not a result of inaction by that agency or individual provider.</p>
<p>West Virginia W. Va. Code § 9-6-1</p>	<p>ABUSE: The infliction or threat to inflict physical pain or injury on or the imprisonment of any incapacitated adult or facility resident.</p> <p>NEGLECT: The failure to provide the necessities of life to an incapacitated adult or facility resident with intent to coerce or physically harm the incapacitated adult or resident; and the unlawful expenditure or willful dissipation of the funds or other assets owned or paid to or for the benefit of an incapacitated adult or resident.</p>
<p>Wisconsin (EPS) Wis. Stat. Ann. § 46.90(1) <i>(applicable to persons who are 60 or older)</i></p>	<p>ABUSE: Means any of the following:</p> <ol style="list-style-type: none"> 1. Physical abuse. 2. Emotional abuse. 3. Sexual abuse. 4. Treatment without consent. 5. Unreasonable confinement or restraint. <p>EMOTIONAL ABUSE: Means language or behavior that serves no legitimate purpose and is intended to be intimidating, humiliating, threatening, frightening, or otherwise harassing, and that does or reasonably could intimidate, humiliate, threaten, frighten, or otherwise harass the individual to whom the conduct or language is directed.</p> <p>FINANCIAL EXPLOITATION: Means any of the following:</p>

	<p>1. Obtaining an individual's money or property by deceiving or enticing the individual, or by forcing, compelling, or coercing the individual to give, sell at less than fair market value, or in other ways convey money or property against his or her will without his or her informed consent.</p> <p>2. Theft, as prohibited in s. 943.20.</p> <p>3. The substantial failure or neglect of a fiscal agent to fulfill his or her responsibilities.</p> <p>4. Unauthorized use of an individual's personal identifying information or documents, as prohibited in s. 943.201.</p> <p>5. Unauthorized use of an entity's identifying information or documents, as prohibited in s. 943.203.</p> <p>6. Forgery, as prohibited in s. 943.38.</p> <p>7. Financial transaction card crimes, as prohibited in s. 943.41.</p> <p>NEGLECT: Means the failure of a caregiver, as evidenced by an act, omission or course of conduct, to endeavor to secure or maintain adequate care, services, or supervision for an individual, including food, clothing, shelter, or physical or mental health care, and creating significant risk or danger to the individual's physical or mental health. "Neglect" does not include a decision that is made to not seek medical care for an individual, if that decision is consistent with the individual's previously executed declaration or do-not-resuscitate order under ch. 154, a power of attorney for health care under ch. 155, or as otherwise authorized by law.</p> <p>PHYSICAL ABUSE: Means the intentional or reckless infliction of bodily harm</p> <p>SELF-NEGLECT: Means a significant danger to an individual's physical or mental health because the individual is responsible for his or her own care but fails to obtain adequate care, including food, shelter, clothing, or medical or dental care.</p> <p>SEXUAL ABUSE: Means a violation of s. 940.225(1), (2), (3), or (3m).</p>
<p>Wisconsin (APS) Wis. Stat. Ann. § 55.01 <i>(applicable to adults with disabilities)</i></p>	<p>ABUSE: Has the meaning given in s. 46.90(1)(a)</p> <p>FINANCIAL EXPLOITATION: as the meaning given in s. 46.90(1)(ed).</p> <p>NEGLECT: Has the meaning given in s. 46.90(1)(f).</p> <p>SELF-NEGLECT: Has the meaning given in s. 46.90(1)(g).</p>
<p>Wyoming Wyo. Stat. Ann. § 35-20-102</p>	<p>ABANDONMENT: Leaving a vulnerable adult without financial support or the means or ability to obtain food, clothing, shelter or health care;</p> <p>ABUSE: The intentional or reckless infliction, by the vulnerable adult's caregiver, family member or other individual of:</p> <p>(A) Injury;</p> <p>(B) Unreasonable confinement which threatens the welfare and well being of a vulnerable adult; or</p> <p>(C) Intimidation or cruel punishment with resulting physical or emotional harm or pain to a vulnerable adult.</p> <p>EXPLOITATION: The reckless or intentional act taken by any person, or any use of the power of attorney, conservatorship or guardianship of a vulnerable adult, to obtain control through deception, harassment, intimidation or undue influence over the vulnerable adult's money, assets or property with the intention of permanently or temporarily depriving the vulnerable adult of the ownership, use, benefit or possession of his money, assets or property;</p> <p>NEGLECT: The deprivation of, or failure to provide, the minimum food, shelter, clothing, supervision, physical and mental health care, and other care necessary to maintain a vulnerable adult's life or health, or which may result in a life-threatening situation. The withholding of health care from a vulnerable adult is not neglect if:</p> <p>(A) Treatment is given in good faith by spiritual means alone, through prayer, by a duly accredited practitioner in accordance with the tenets and practices of a recognized church or religious denomination; or</p> <p>(B) The withholding of health care is in accordance with a declaration executed pursuant to W.S. 35-22-401 through 35-22-416.</p>

	SELF NEGLECT: When a vulnerable adult is unable, due to physical or mental disability, or refuses to perform essential self-care tasks, including providing essential food, clothing, shelter or medical care, obtaining goods and services necessary to maintain physical health, mental health, emotional well-being and general safety, or managing financial affairs.
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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.

² This document was completed for the National Center on Elder Abuse and supported in part by a grant, No. 90AM2792, from the Administration on Aging, U.S. Department of Health and Human Services. Grantees undertaking projects under government sponsorship are encouraged to express freely their findings and conclusions. Therefore, points of view or opinions do not necessarily represent official Administration on Aging policy.

Attachment E

524.5-120 BILL OF RIGHTS FOR WARDS AND PROTECTED PERSONS.

The ward or protected person retains all rights not restricted by court order and these rights must be enforced by the court. These rights include the right to:

- (1) treatment with dignity and respect;
- (2) due consideration of current and previously stated personal desires, medical treatment preferences, religious beliefs, and other preferences and opinions in decisions made by the guardian or conservator;
- (3) receive timely and appropriate health care and medical treatment that does not violate known conscientious, religious, or moral beliefs of the ward or protected person;
- (4) exercise control of all aspects of life not delegated specifically by court order to the guardian or conservator;
- (5) guardianship or conservatorship services individually suited to the ward's or protected person's conditions and needs;
- (6) petition the court to prevent or initiate a change in abode;
- (7) care, comfort, social and recreational needs, training, education, habilitation, and rehabilitation care and services, within available resources;
- (8) be consulted concerning, and to decide to the extent possible, the reasonable care and disposition of the ward's or protected person's clothing, furniture, vehicles, and other personal effects, to object to the disposition of personal property and effects, and to petition the court for a review of the guardian's or conservator's proposed disposition;
- (9) personal privacy;
- (10) communication and visitation with persons of the ward's or protected person's choice, provided that if the guardian has found that certain communication or visitation may result in harm to the ward's or protected person's health, safety, or well-being, that communication or visitation may be restricted but only to the extent necessary to prevent the harm;
- (11) marry and procreate, unless court approval is required, and to consent or object to sterilization as provided in section 524.5-313, paragraph (c), clause (4), item (iv);
- (12) petition the court for termination or modification of the guardianship or conservatorship or for other appropriate relief;
- (13) be represented by an attorney in any proceeding or for the purpose of petitioning the court;

(14) vote, unless restricted by the court; and

(15) execute a health care directive, including both health care instructions and the appointment of a health care agent, if the court has not granted a guardian any of the powers or duties under section 524.5-313, paragraph (c), clause (1), (2), or (4).

Attachment F

The Concept of “Eldercaring Coordination”: Applying Parenting Coordination to High Conflict Cases Regarding Elders and Vulnerable Adults

For more information contact the Association of Conflict Resolution Task Force on Eldercaring Coordination Co-Chairs:

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The court recognizes that both children and elders are vulnerable populations with unique situations by creating divisions within the legal system that focus on each of them; however, in matters of high conflict family situations, there are no alternative dispute resolution options dedicated to high conflict eldercare situations, including potential abuse issues. Parenting coordination is offered as a viable alternative dispute resolution process for high conflict parents, but is not offered to families experiencing high conflict regarding an incapacitated elder or vulnerable adult. It is crucial that this discrepancy be rectified.

When the court believes that children or elders need their own voices heard, a Guardian ad Litem may be appointed to safeguard their interests in legal proceedings. Additionally, when there are specific issues with children and issues with elders that need to be addressed within the legal framework, the court offers mediation as a resolution process; however, studies have shown that families in high conflict are not amenable to mediation¹ (Neff & Cooper, 2004). In addition to exhausting court resources, adverse legal processes often exacerbate conflict due to the time involved in focusing on the case with a win-lose outcome² (Mason, 1999; Kitzman & Emery,

¹ Neff, R. & Cooper, K. (2004). Progress and parent education: Parental conflict resolution, *Family Court Review*, 42(1), 99-114.

² Mason, M.A. (1999) The custody wars: why children are losing the legal battle and what we can do about it. New York: Basic Books; Kitzman, K. & Emery, R.E. (1994). Child and family coping one year after mediated and litigated child custody disputes, *Journal of Family Psychology*, 8, 150-159; Hetherington, E. M. & Kelly, J. (2002). For better or for worse. New York: Norton; Wingspread Report and Action Plan (2001). High-conflict custody cases: Reforming the system for children. *Family Court Review*, 35(2) 145-157; Kelly, J. B. (2002). Psychological and legal interventions for parents and children in custody and access disputes: current research and practice. *Virginia Journal of Social Policy & the Family Law*, 10(1), 129-163; Firestone, G. & Weinstein, J. (2004). Models of collaboration in family law: In the best interests of children: A proposal to transform the adversarial system, *Family Court Review*, 42(2), 203-215; McHale, J. & Sullivan, M. (2008). Family systems. In Hersen, M. & Gross, A. (Eds.), Handbook of Clinical Psychology, Volume II: Children and Adolescents (pp. 192-226). Hoboken, NJ: John Wiley & Sons.

1994; Hetherington, 1989; Wingspread, 2001; Kelly, 2002; Firestone & Weinstein, 2004; McHale & Sullivan, 2008).

In an effort to differentiate the needs and characteristics of high conflict cases and obtain better results for children, an alternative dispute resolution option has been developed that has shown great promise in reducing parental conflict³ (Henry et al, 2009). This process is called “parenting coordination”:

... a child-focused alternative dispute resolution process in which a mental health or legal professional with mediation training and experience assists high conflict parents to implement their parenting plan by facilitating the resolution of their disputes in a timely manner, educating parents about children’s needs, and with prior approval of the parties and/or the court, making decisions within the scope of the court order or appointment contract (AFCC Task Force on Parenting Coordination, 2005).⁴

Parenting coordination has become a viable practice in which a parenting coordinator (PC) is appointed by the court to help parents focus more productively on their children, resolve and avoid conflict and assist them in implementing court orders. Parenting coordination is now practiced throughout the United States, Canada, Australia, Israel and some countries in Europe⁵ (Deutsch et al., 2008; Fieldstone et al, 2011). In addition to the benefits for children and parents, parenting coordination has great benefits for the court system, having shown reductions motions to the court by these parents by 75% (Henry et all, 2009).⁶

However, while the Family Court has incorporated a dispute resolution alternative for high conflict parents with child related issues, there is no practice offering the same service to families experiencing high conflict at the time of incapacitation or terminal illness of a parent or significant other. Like high conflict parents of children involved in a legal proceeding, these stakeholders involved in the elder court process may be unable to collaborate when they are too focused on themselves to concentrate effectively on their loved one. Each stakeholder (i.e. spouse, child, sibling, extended family member, friend and even guardian and attorney, etc.) with a personal interest may sabotage the well-being and best interest of the elder, as well as the

³ Henry, W., Fieldstone, L., & Bohac, K. (2009), Re-litigation in Family Court Cases: A Case Study, *Family Court Review*, 47(4), 682-697.

⁴ AFCC Task Force on Parenting Coordination (2005). Guidelines for parenting coordination. *Family Court Review*, 44(1), 162-181.

⁵ Deutsch, R.M., Coates, C.A., & Fieldstone, L.B. (2008) Parenting coordination: An emerging role to assist high conflict families; In Fieldstone, L. & Coates, C.A., (Eds.). (2008) Innovations in Interventions with High Conflict Families, Association of Family & Conciliation Courts, Madison, Wisconsin; Fieldstone, L., Lee, M., Baker, J., & McHale, J. (2011). Perspectives on Parenting Coordination: Views of Parenting Coordinators, Attorneys, and Judicial Members. *Family Court Review*, Vol. 50, No. 2, 441-454.

⁶ Henry, W., Fieldstone, L., & Bohac, K. (2009), Re-litigation in Family Court Cases: A Case Study, *Family Court Review*, 47(4), 682-697.

necessary intervention for the family, without someone to help manage the conflict. However, when assisted to reduce and manage their conflict, these stakeholders can become effective resources for the elder as well as the court, helping to make crucial decisions that could lead to an emotionally healing process at such time of duress.

“Eldercaring Coordination”

This project seeks to create and develop the option of “eldercaring coordination” as a dispute resolution option for high conflict families suffering with their incapacitated or terminally ill elder or vulnerable adult. Eldercaring coordination would complement, not replace, other services such as provision of legal information, legal representation, individual/family therapy, medical, psychological or psychiatric evaluation or mediation.

The work of the Eldercaring Coordinator (EC) concentrates on reducing and managing the conflict experienced by the family and stakeholders so that better decisions can be made more efficiently and without delay, and on creating a support system amongst them that helps ease their transitions throughout the eldercaring process. The EC may work on his or her own with the family-at-large in dealing with conflict pertaining to differing needs and views of the elder, or as part of the team of experts that are assisting the family with financial planning and medical care. The EC would not serve in any other capacity with the parties, avoiding all dual roles and conflicts of interest. However, the EC may prepare the family to work with an Elder Mediator, Geriatric Care Manager, Guardian, therapists, physicians and attorneys. When the interpersonal dynamics are addressed, the family and stakeholders will be better able to work with the necessary collaterals to ensure that their time left with their loved one is fulfilling and that they have cemented relationships that will help them join in a healing process when the time arrives.

“Eldercaring coordination” can benefit the elder patient, families and stakeholders, and the court. In addition to expediting important decisions for the elder and developing a greater support system for the patient and stakeholders, a goal of the process is to minimize adversarial court processes, reducing the time and expenses required from excessive motions to the court and focusing the family and stakeholders on less adversarial means of dispute resolution.

Why does “eldercaring coordination” matter?

This project proposes that process of “eldercaring coordination” will help manage high conflict family dynamics so that the elder, family and stakeholders can address their non-legal issues independently from the court, fostering self-determination of the elder and family for as long as possible and easing the burden of elders on the legal system. Families and stakeholders that are able to work jointly toward the benefit of their incapacitated or terminally ill elder are better equipped to make appropriate and healthy decisions, as necessary, taking the advice of medical and financial experts and utilizing mediation and elder case management as necessary. “Eldercaring coordination” focuses on improving family dynamics so that the elder and family can better work with the professionals able to help them make the onslaught tough decisions ahead.

The costs to families and the courts are at stake as the number of elders rise and the effects of their aging need to be addressed. With the surge of baby boomers turning 65 in 2011, it is anticipated that the elder population will double from the year 2008 to 2030.⁷ Moreover, since life expectancy continues to rise, the number of incapacitated elders will also increase as they succumb to the risks of diseases, disorders and cognitive disabilities such as Alzheimer's disease and dementia.⁸ This trend will produce an increasing demand to invoke guardianship on behalf of incapacitated seniors. The burden on caregivers and on the court to address elder issues will, therefore, also rise exponentially in the years to come (United States Senate Special Committee on Aging).⁹

At this time, elders and their families can address issues through elder case management, mediation, and when all else fails, guardianship to help make the various important decisions as they arise. Elder Case Managers assess the elder issues and help the family develop long and short term planning to address the elder needs both medically and financially. High conflict family dynamics can derail the Elder Case Management, impeding the planning for and even jeopardizing the care of the elder. When this occurs, elder mediation has become a practical option to help families resolve issues within a neutral and safe forum. By resolving issues out of courts, mediation reduces court guardianship caseloads and decreases the chance that those cases will need to resort to litigation. Mediation may also reduce the need for public guardians, by resolving issues less adversarially, fostering participation from family members who could later consider serving as guardians, if necessary.¹⁰ When families are in high conflict, they are less apt to utilize those various options effectively.

Guardianship, in cases where the court finds that decisions must be made by a neutral party, is currently utilized as last resort to address decision-making for the elder. However, using a court appointed guardian essentially strips the elder of fundamental rights, and relies on the financial capacity of the elder or is depending upon public funding. The inherent conflict of interest posed by this dilemma is concerning. According to U.S. Senate Special Committee on Aging hearing on guardianship for the elderly in 2003, "Ironically, the imposition of guardianship without adequate protections and oversight may actually result in the loss of liberty and property for the very persons these arrangements are intended to protect."¹¹ It is critical that competent and trustworthy surrogate decision-makers are provided to protect the welfare of incapacitated elders.

Moreover, guardianship can be expensive for the elder and the courts. Public guardianship programs are already straining to meet the needs of all those requiring assistance. In 2007, ten percent of people age 65 and older had low incomes, and twenty one percent lived in poverty. If these rates continue, the number of poor or low-income elderly will double to over 27 million by

⁷ Older Americans 2010 Key Indicators of Well-Being (2010). Federal Interagency Forum on Aging-Related Statistics. Washington, DC: U.S. Government Printing Office.

⁸ Older Americans 2010 Indicator of Well-being, <http://www.cdc.gov/nchs/HUS.htm> (revised 1/14/11).

⁹ Senator Gordon H. Smith, Chairman, United States Senate Special Committee on Aging: *Guardianship for the Elderly: Protecting the Rights and Welfare of Seniors with Reduced Capacity* (2007). http://www.guardianship.org/reports/Guardianship_Report.pdf

¹⁰ Bntterwick, S.J., Hommel, P.A., & Keilitz, I. (2001) *Evaluating Mediation as a Means of Resolving Adult Guardianship Cases*, Center for Social Gerontology, Inc., Ann Arbor, Michigan, 1; Wilber, K.H., & Reynolds, S.L. (1995) *Rethinking Alternatives to Guardianship*, *The Gerontologist*, 35.2. Apr. 248-57.

¹¹ Smith, G., Kohl, H., United States Senate Special Committee on Aging: *Guardianship for the Elderly: Protecting the Rights and Welfare of Seniors with Reduced Capacity* (2007). http://www.guardianship.org/reports/Guardianship_Report.pdf

2030 (predicted by the U.S. Census Bureau), further taxing the burden of providing publicly funded Guardianships.¹² Additionally, elder abuse and continued reports of the court's failure in preventing the mistreatment and exploitation of those designated as incapacitated continues to be of serious concern.

In preparation for the elder population explosion and in light of the concerns regarding the abuse of those incapacitated, one proposal is to give more decision-making authority to family members, striving to avoid the necessity for guardianship when possible. This is when the process of "eldercaring coordination", rather than guardianship, becomes the most constructive alternative for high conflict families, helping the family and stakeholders to manage their conflict productively in order to make better decisions for the elder, when necessary, before a Guardianship is appointed by the court; however, the process would be available to assist the relationships between a Guardian, family and stakeholders as well. The "eldercaring coordinator" would serve as a link between the conflicted parties and their ability to make key, safe and expedient decisions with, if possible, and for the elder, by 1) addressing high conflict dynamics within the family and stakeholders; 1) identifying issues of accord as well as conflict; 2) helping to coordinate and ready the elder and family to use appropriate resources to lead to better informed decision-making; 3) facilitating a resolution to issues on a timely basis; and, 5) teaching conflict resolution and building a support mechanism.

Project Goals and Objectives:

This project proposes that process of "eldercaring coordination" will:

- help manage high conflict family dynamics so that the elder, family and stakeholders can address their non-legal issues independently from the court;
- ready the elder and family to work with collaterals to address the care and needs of the elder ~~medical, legal and financial issues~~, avoiding delays and resulting in better decisions for the elder;
- foster self-determination of the elder and family ~~for as long as possible~~;
- promote safety by monitoring situations at high risk for abuse or neglect
- provide a support system for the elder and family during times of transition, and
- ease the burden of elders on the legal system.

Families and stakeholders that are able to work jointly toward the benefit of their incapacitated or terminally ill elder are better equipped to make appropriate and healthy decisions, as necessary, taking the advice of medical and financial experts and utilizing mediation and elder case management as necessary. "Eldercaring coordination" focuses on improving family dynamics so that the elder and family can better work with the professionals able to help them make the onslaught tough decisions ahead and support each other during times of transition.

Since parenting coordination has been established as a viable alternative dispute resolution option for high conflict cases, it is time to apply the similar process of "eldercaring coordination"

¹² US Census Bureau, Current Population Survey, Annual Social and Economic Supplement, 1995-2008.

in high conflict families dealing with elder and incapacitated party issues and the court. The objectives of this project include:

1. facilitating a discussion amongst stakeholders (professional, court, collaterals) regarding risks/concerns, safeguards and the benefits in the application of parenting coordination as a prototype dispute resolution process to address high conflict family dynamics when elders and vulnerable adults are an issue;
2. using existing and facilitating new research to inform the creation of “eldercaring coordination”;
3. exploring the challenges and ethical considerations when translating parenting coordination to the elder population dynamics and existing legal framework;
4. creating an “eldercaring coordination” process that would best address high conflict family dynamics;
5. identifying how “eldercaring coordination” could promote safety of elders and vulnerable adults, as well as their families, address elder abuse and decrease instances of neglect of elders and vulnerable adults;
6. developing initial guidelines, including training and qualifications, for professionals practicing this alternative dispute resolution process for elders (i.e. “eldercaring coordination”); and creating a pilot project proposal to guide, assist and assess the development and implementation of “eldercaring coordination.”

Task Force on Eldercaring Coordination

A Task Force of experts and stakeholders is needed to address the objectives above in order to modify the process of parenting coordination so that it is a meaningful and responsible dispute resolution process for high conflict families dealing with elder and incapacitated party issues and the court.

There are many similarities in the two populations that can substantiate the use of an “eldercaring coordinator (EC)” who would also help to implement plans, monitor compliance with the details of the plan, resolve conflicts in a timely manner, protect parent/elder autonomy, and guard against manipulation. However, there are inherent differences between the two processes as one pertains to the child, and the other to the elder, as the vulnerable population. Children become more capable of advocating for themselves as they age; at the other end of the spectrum, the elderly may become more frail or lose additional capacities and become less able to voice their concerns as disputes continue over time. Also, many decisions about elders need to be made in crisis situations without adequate information. For example, medical treatment decisions may need to be made within a brief window of time. Challenges in “eldercaring coordination” may include the presence of multiple parties or stakeholders (even if not present in the room), potential concerns about capacity of participants (and how to address them), disrupting or resurfacing of difficult long-term relationships (families and professionals) or alliances, generational power shifting, and the presence and roles of a range of advocates, medical personal, and care managers.¹³

The formation of a Task Force on Eldercaring Coordination, including experts in elder mediation and parenting coordination, as well as stakeholders specifically dealing with elder issues, is needed to optimize the development of “eldercaring coordination”. This collaborative group would explore the similarities and differences between the two populations and processes, and the challenges and ethical issues, in order to create the process most responsive and responsible to the elder and infirmed. Through meaningful dialogue and attunement to research and the law, the Task Force would address questions such as:

- Is there law that supports ADR for probate and guardianship matters?
- Who should be the parties to the elder coordination process? Who would have standing in a court of law?
- Is it possible to order those parties to the process, or would it be initiated through consent only?
- Would the EC have a similar term limit? What happens after the elder dies? Can the process continue to support the family and address continued conflict regarding the deceased?
- What standards/guidelines should guide the work of the EC? Should the Association of Family and Conciliation Courts (AFCC) Task Force on Parenting Coordination Guidelines for Parenting Coordinators be adopted for ECs or should they be used as a guide when exploring this issue?
- What training (training objectives) should be expected for the EC? Should the Standards of Training developed by the Association of Conflict Resolution be adopted or should they be used as a guide regarding the requisite elder mediation training? Should the AFCC PC training objectives be used as a guide to establish training objectives specific to the “eldercaring coordination” process?

What limits should exist on the types of decisions made by the EC? What protections for the elder and family should be built into the “eldercaring coordination” process?

The end of life is a uniquely difficult time for elders and their families¹⁴, and deserves a unique approach to address the multitude of issues arising and ongoing decision-making. It is not difficult to understand that the various interests of family members and other stakeholders might clash at a time of such great emotion and stress, and why the need to develop an alternative dispute resolution for high conflict cases in this situation is imperative. The court currently differentiates the needs of high conflict families dealing with children; it is also important to differentiate the needs of high conflict families and provide them with an approach best suited to helping them resolve their issues and develop a support system. When high conflict family dynamics impinge upon the welfare and safety of the elder and the family itself, “eldercaring coordination” should be offered. It is vital to elders and the court that we explore the application of eldercaring coordination in high conflict family situations now, in order to provide benefits to families and the court in the future.