

2017

Onondaga County Legal Resource Manual for Abuse in Later Life



This project is funded by Grant No. 2016-UD-AX-0005 awarded by the Office on Violence Against Women, US Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

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INTRODUCTION

The purpose of this handbook is to provide information and resources as a guide for law enforcement officers and other individuals assisting older (50+) victims/survivors of domestic violence, sexual assault, and/or financial exploitation.

Older victims/survivors of these crimes may be living independently, with a spouse, or with other family members. If they are vulnerable adults, they may be residing in short- or long-term health care facilities as well as institutional facilities.

Information and resources contained in this handbook were developed for law enforcement officers and legal professionals; however, advocates for domestic violence and/or sexual assault, adult protection service providers, and other individuals and/or agencies providing services to older victims (50+) may also find this handbook helpful.

The laws and resources listed are current as of July 2017.

DEFINITIONS

Denial of Access – Refusing to allow entry of law enforcement or adult protective services worker into a home where assistance is needed.

Power of Attorney (POA) – refers to a written document that grants authority to an agent to act on behalf of the principal, whether or not the term “power of attorney” is used. The agent is required to use due care to act in the best interests of the principal. (The elder retains ultimate control of any decision and may revoke the POA at any time.)

A general POA conveys general authority over decision-making. The specific authority conveyed will be outlined and initialed in the document. A Health Care Proxy (medical POA) conveys medical decisions to the agent. A financial POA conveys financial decision-making to the agent and is often limited to a particular financial institution. Since September 1, 2009, the principal must sign a major gifts rider document if the agent is authorized to make any gift in excess of \$500.00.

Vulnerable Elderly Person – is a person sixty years of age or older who is suffering from a disease or infirmity associated with advanced age and manifested by demonstrable physical, mental or emotional dysfunction to the extent that the person is incapable of adequately providing for his or her own health or personal care.

Incompetent or Physically Disabled Person- is an individual who is unable to care for himself/herself because of physical disability, mental disease or defect and is unable to protect himself/herself from maltreatment.

HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)

HIPAA- Law enforcement may obtain protected health information if:

- victim consents to release of medical records; or
- if a victim cannot agree due to an emergency or incapacity, and law enforcement represents the records are not intended to be used against the victim, and the records are needed to determine whether another person broke the law, and the investigation would be materially and adversely affected by waiting until the victim could agree, and the covered entity believes in its professional judgment that doing so is in the best interest of the victim (45 CFR 164.512(f)(3)); 42 USC 1320; or
- Court Order for Production of Records, subpoena, or search warrant is granted.

FAMILY/HOUSEHOLD MEMBER (defined in NYS CPL 530.11 (1))

1. Persons related by consanguinity (blood) or affinity (marriage or adoption);
2. Persons legally married to one another;
3. Persons formerly married to one another regardless of whether they still reside in the same household;
4. Persons who have a child in common, regardless of whether such persons have been married or have lived together at any time;
5. Persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time. Factors the court may consider in determining whether a relationship is an “intimate relationship” include but are not limited to: the nature or type of relationship, regardless of whether the relationship is sexual in nature; the frequency of interaction between the persons; and the duration of the relationship. Neither a casual acquaintance nor ordinary fraternization between two individuals in business or social contexts shall be deemed to constitute an “intimate relationship”.

ABUSE IN LATER LIFE INDICATORS

General Behavior Indicators

If an older individual is displaying some of the signs listed below, investigate further to determine if elder abuse, neglect, or exploitation is occurring. Pay particular attention to reported changes in the older person's behavior.

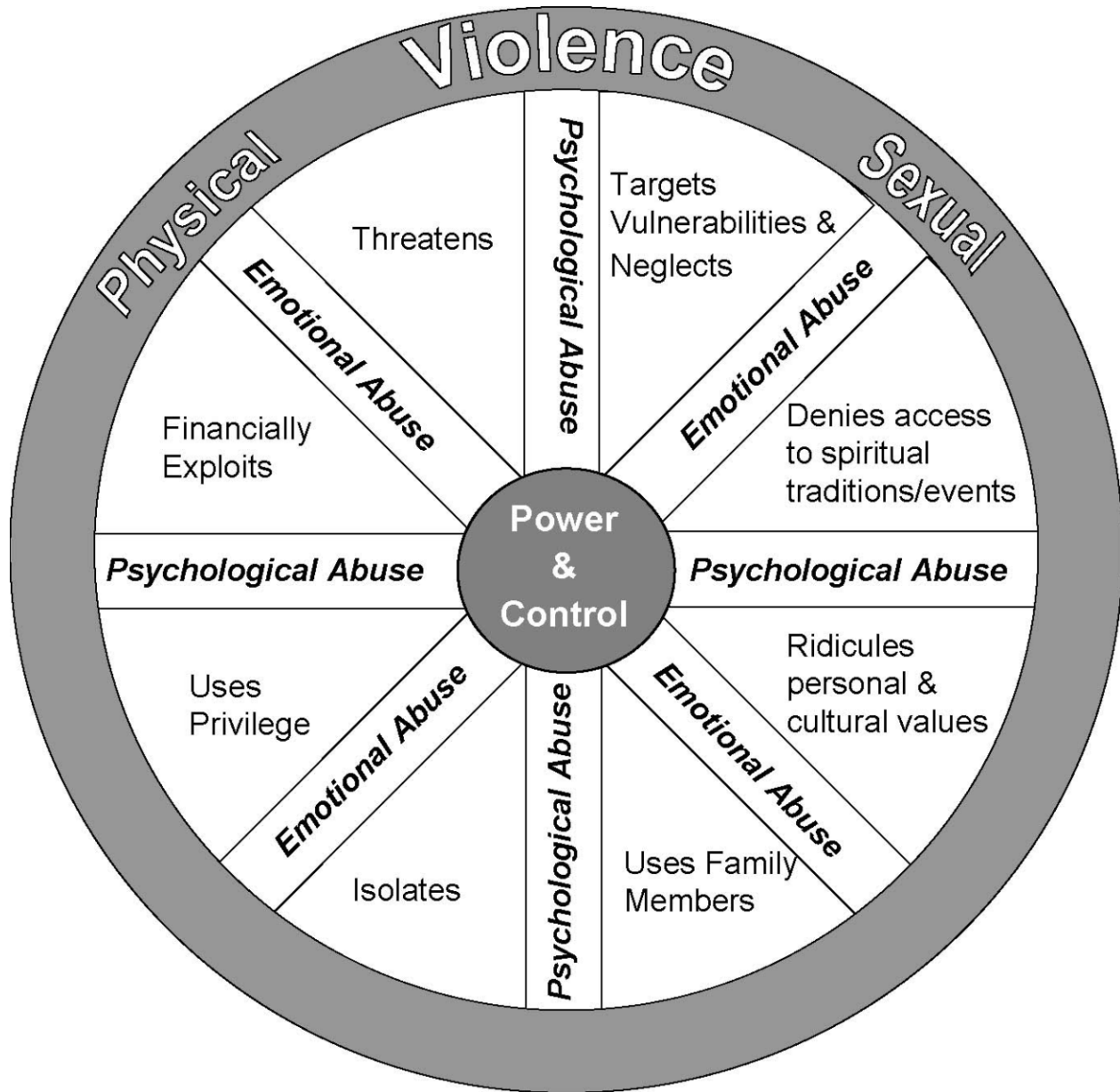
Victim signs of abuse, neglect & exploitation can include, but are not limited to:

- Suddenly withdraws from routine activities
- Is afraid to speak in the presence of the suspect or looks to the suspect to answer the questions
- Is confined (i.e. tied to furniture or locked in room)
- Is isolated
- Denies, minimizes or blames self for what has happened, is hesitant to discuss, or gives "coded" disclosures such as "my son has a temper"
- Changes in behavior without explanation
- Waits or fails to seek out help or medical treatment, misses appointments, or frequently changes doctors or hospitals
- Visits hospital or physician with vague complaints such as anxiety, headaches, or digestive problems
- Provides implausible or inconsistent explanations about what has occurred
- Appears afraid, embarrassed, ashamed, withdrawn, or depressed
- Reports being abused, neglected, or exploited

Suspect indicators can include, but are not limited to the following:

- Provides inconsistent and conflicting explanations about the older individual's injuries
- Belittles, threatens, or insults the older individual
- Handles the older individual roughly
- Ignores the older individual's need for assistance or is reluctant to help the older individual
- Has a past history of being abusive
- Does not speak to or provide companionship to the older individual and isolates her/him from the outside world, friends, or relatives
- Controls and dominates the older person, is always present when anyone talks with the older person, speaks for her/him, and is overly protective or defensive
- Portrays self as victim or the only caring person in the older individual's life
- May be charming and helpful toward professionals and the victim while others are present
- Abuses the older individual's pets
- Controls and dominates the older individual's life activities
- Justifies and minimizes own actions

POWER & CONTROL WHEEL FOR FAMILY VIOLENCE IN LATER LIFE



Created by the National Clearinghouse on Abuse in Later Life (NCALL), a project of the Wisconsin Coalition Against Domestic Violence (WCADV)
 307 S. Paterson St., Suite 1, Madison, WI 53703 608-255-0539
www.ncall.us/www.wcadv.org

This diagram adapted from the Power and Control/Equality wheel developed by the Domestic Abuse Intervention Project, Duluth, MN

DOMESTIC VIOLENCE IN LATER LIFE

Physical Abuse – Occurs when the abuser intentionally, knowingly, or recklessly causes physical pain or injury.

- Uses physical force to inflict bruising, welts, lacerations, punctures, fractures, burns, swelling, scratches, or physical pain and/or other injury
- Uses weapons to hit or threaten
- Does not allow medical treatment for physical injuries
- Breaks glasses/frames
- Overdoses or under-utilizes prescribed medications
- Withholds food and/or drink

Indicators of Physical Abuse

- Bruises, black eyes, welts, lacerations, and rope marks
- Bone fractures, broken bones, and skull fractures
- Open wounds, cuts, punctures, and untreated injuries
- Sprains, dislocations, and internal injuries/bleeding
- Broken eyeglasses/frames, physical signs of being subjected to punishment, and signs of being restrained
- Injuries in various degrees of healing
- Patterned injuries caused by an object
- Injuries NOT in locations normally associated with accidental injuries such as: on the outside of arms, inside of legs, scalp, around throat, face, soles of feet, inside mouth, on or behind the ears, on the trunk, genitalia, and buttocks
- Repeated, unexplained, or untreated injuries

Emotional Abuse – Occurs when the abuser engages in behavior that causes fear, intimidation, humiliation, isolation, and other forms of psychological and emotional harm. Emotional abuse may also be accompanied by other forms of abuse.

- Humiliates, demeans, ridicules
- Yells, insults, calls names
- Degrades, blames
- Withholds affection or uses silence
- Engages in crazy-making behavior (i.e. hides the victim's money, jewelry, clothing or other important possessions).
- Uses profanity

Ridiculing Values/Spirituality

- Denies access to faith community
- Makes fun of personal values
- Ignores or ridicules religious/cultural traditions

Threats/Intimidation

- Threatens to leave, divorce, commit suicide, or institutionalize
- Abuses or kills pets or livestock
- Destroys property
- Displays or threatens with weapons

Using Family Members

- Magnifies disagreements – embellishes the disagreements or makes it to be more than it is.
- Misleads members about extent and nature of illnesses /conditions
- Excludes or denies access to family
- Forces family to keep secrets

Isolation

- Controls what victim does, who victim sees, and where victim goes
- Limits time with friends and family
- Denies access to phone or mail
- Confines victim (i.e. tied to furniture or locked in a room)

Using Privilege

- Treats victim like a servant
- Makes all major decisions

Offense

Statute

Assault	PL 120.00, 120.05, 120.10
Menacing	PL 120.13, 120.14, 120.15
Reckless Endangerment	PL 120.20, 120.25
Criminal Obstruction of Breathing Or Blood Circulation	PL 121.11
Strangulation	PL 121.12, 121.13
Criminal Mischief	PL 145.00
Criminal Contempt	PL 215.50, 215.51
Aggravated Criminal Contempt	PL 215.52
NYS Hate Crime Statute	PL 485.05

STALKING, HARASSMENT & FIREARM POSSESSION

Stalking – occurs when the perpetrator tracks their victim's movements and activities and is either accompanied by credible threats or causes serious emotional distress.

Harassment- intent to harass, annoy or alarm

Offense

Statute

Stalking

PL 120.45, 120.50, PL 120.55, 120.60

Harassment

PL 240.25, 240.26

Aggravated Harassment

PL 240.30, 240.31

Firearm Possession

PL 265.02, 265.03

SEXUAL ABUSE IN LATER LIFE

Sexual Abuse – Occurs when the perpetrator engages in unwanted sexual acts, contact or touching of an elder.

- Forces victim to participate in unwanted sex
- Engages in public sexual gratification with another person
- Directs another person to prostitute him/herself or directs/transport victim to a prostitute or prostitute to a victim
- Engages in exhibitionism, voyeuristic activity, and sexual harassment
- Causes unwarranted, intrusive, and/or painful procedures in caring for the victim’s genitals or rectal area

Indicators of Sexual Assault

- Infections, pain, or bleeding in genital areas
- Difficulty walking or sitting
- Torn, stained, and/or bloody clothing; including underwear, bedding, or furnishings
- Inappropriate (enmeshed) relationship between older individual and suspect
- Bruises to outer arms, chest, mouth, genitals, abdomen, pelvis, or inside thighs
- Bite marks
- Unexplained STDs or HIV
- Coded disclosures such as “I might be pregnant” or “He makes me do bad things”

Offense

Statute

Sexual Misconduct	PL 130.20
Rape	PL 130.25, 130.30, 130.35
Criminal Sexual Act	PL 130.40, 130.45, 130.50
Forcible Touching	PL 130.52
Persistent Sexual Abuse	PL 130.53
Sexual Abuse	PL 130.55, 130.60, 130.65
Aggravated Sexual Abuse	PL 130.65.a, 130.66, 130.67, 130.70

NEGLECT

Neglect – through action or inaction, unreasonably causes an elder to be placed in a situation that results in harm or threat of harm to the elder.

Abusing Dependencies/Neglecting

- Takes walker, wheelchair, glasses, dentures
- Takes advantage of confusion
- Denies or creates long waits for food, heat, care, or medication
- Does not report medical problems
- Understands but fails to follow medical, therapy, or safety recommendations
- Makes victim miss medical appointments

Indicators of Neglect

- Dehydration or malnutrition
- Presence of untreated bedsores (pressure ulcers)
- Under-, over-, or mis-medication of the older individual (Look for victim's behavior or if the amount of medication available does not match the prescription)
- Leaving the older individual in feces, urine
- Failure to follow recommended turning procedures for older individuals who are bedridden
- Poor hygiene
- Failure to take older individual to medical appointments, hospital
- Unexplained changes in older individual's weight or cognition
- Inappropriate clothing for conditions
- Filthy bedding, clothing
- Dirty or unused bathroom, kitchen
- Broken, or absence of, needed medical equipment, aids such as eyeglasses, hearing aids, walker, wheelchairs

Offense

Statute

Endangering the welfare of a vulnerable Elderly person	PL 260.32, 260.34
Endangering the welfare of an incompetent or physically disabled person	PL 260.24, 260.25

CONFINEMENT

Confinement – Holding another person against his or her will and/or preventing his or her freedom of movement or ability to seek assistance.

Offense

Statute

Unlawful Imprisonment	PL 135.05, 135.10
Coercion	PL 135.60, 135.65

FINANCIAL EXPLOITATION

Financial Exploitation – The illegal or improper use of an at-risk adult’s financial resources for another person’s profit or advantage.

- Steals money, titles, or possessions
- Takes over accounts, bills, and spending
- Abuses power of attorney

Indicators of Financial Exploitation

- The older individual is unaware of her/his monthly income and bills
- Important possessions, documents, or credit cards are missing
- Many bills are unpaid
- The caregiver refuses to spend the older individual’s money on the older individual
- The older individual has given many expensive gifts to the caregiver
- Checks are made out to cash
- The caregiver asks or coerces an older individual to sign a blank check and then the caregiver misuses the check or steals the money
- Caregiver has a Power of Attorney signed by the older adult, and shows it as proof of control over the older adult

Offense

Statute

Larceny	PL 155.25, 155.30, 155.35, 155.40, 155.42
Fraudulently obtaining a signature	PL 165.20
Forgery	PL 170.05, 170.10, 170.15
Scheme to Defraud	PL 190.60, 190.65
Identity Theft	PL 190.78, 190.79, 190.80
Tampering with a Witness	PL 215.10, 215.11, 215.12, 215.13
Intimidating a Victim or Witness	PL 215.15, 215.16, 215.17

***Family Offenses to help in Financial Exploitation Cases:**

Effective December 18, 2013

Chapter 526 adds identity theft, larceny and coercion to the list of family offenses, allowing victims to seek relief and an order of protection in Family Court, as well as criminal court. As family offenses, they will now be subject to mandatory arrest and the order of protection will be added to the statewide order of protection registry.

The law also adds a new condition that can be included in orders of protection, requiring the abuser to return specified “identification documents,” such as a passport, immigration documents, birth certificate, benefits/ insurance cards, bank or credit cards etc., to the protected party.

USES AND ABUSES OF POWER OF ATTORNEY (POA)

A POA conveys decision-making authority to the agent to act on behalf of an elder, **but a POA does not convey the assets (credit cards, real estate, bank accounts) to the agent.** A power of attorney creates a fiduciary relationship and no matter how broad the authority under the document, that authority must be exercised in the interests of the principal, *not* in the self-interest of the agent. Despite the broad grant of authority in such documents, exercise of that authority in the agent's self-interest rather than in the interests of the principal is beyond the authority granted and is thus unauthorized.

If an agent acts outside of the scope of his fiduciary duty and uses funds to benefit himself he can be charged with theft from an at-risk adult as well as other crimes.

<http://www.nysba.org/AM/Template.cfm?Section=Home&ContentID=41935&Template=/CM/HTMLDisplay.cfm>

SUMMARY OF NEW YORK STATUTES

<u>Offense</u>	<u>Statute</u>
Assault	PL 120.00, 120.05, 120.10
Menacing	PL 120.13, 120.14, 120.15
Reckless Endangerment	PL 120.20, 120.25
Stalking	PL 120.45, 120.50, PL 120.55, 120.60
Criminal Obstruction of Breathing Or Blood Circulation	PL 121.11
Strangulation	PL 121.12, 121.13
Sexual Misconduct	PL 130.20
Rape	PL 130.25, 130.30, 130.35
Criminal Sexual Act	PL 130.40, 130.45, 130.50
Forcible Touching	PL 130.52
Persistent Sexual Abuse	PL 130.53
Sexual Abuse	PL 130.55, 130.60, 130.65
Aggravated Sexual Abuse	PL 130.65.a, 130.66, 130.67, 130.70
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Tampering with a Witness	PL 215.10, 215.11, 215.12, 215.13
Intimidating a Victim or Witness	PL 215.15, 215.16, 215.17
Criminal Contempt	PL 215.50, 215.51
Aggravated Criminal Contempt	PL 215.52
Harassment	PL 240.25, 240.26
Aggravated Harassment	PL 240.30, 240.31
Endangering the welfare of a vulnerable Elderly person	PL 260.32, 260.34
Endangering the welfare of an incompetent or physically disabled person	PL 260.24, 260.25
Firearm Possession	PL 265.02, 265.03
NYS Hate Crime Statute	PL 485.05

LOCAL RESOURCES

Onondaga County Department of Adult and Long Term Care Services- Adult Protective Services (315) 435-2815

Civic Center, 421 Montgomery St. Syracuse, NY 13202

8:00-4:30 Monday –Friday

<http://www.ongov.net/adult/protective.html>

- Linkage with entitlement programs
- Community services
- Legal intervention
- Medical intervention
- Establish guardianship
- Act as guardian
- File Orders of Protection

Vera House 24-Hour Crisis & Support Line

(315) 468-3260

TTY Crisis Line (business hours)

(315) 484-7263 (TTY)

6181 Thompson Rd., Suite 100, Syracuse NY 13206

www.verahouse.org

- Shelter
- Advocacy
 - Safety planning,
 - Legal assistance,
 - Linkages to community resources including financial assistance, culturally specific programs, housing options, home care options, mental health providers, disability service providers, etc.
 - Family Court/Orders of Protection
 - Support Groups
- Counseling for Sexual Assault

NYS Attorney General Consumer Helpline

1 (800) 771-7755

615 Erie Blvd. West, Suite 102, Syracuse NY 13204

local # (315) 448-4800

www.oag.state.ny.us

- To report scams and fraudulent transactions

Onondaga County Ombudsman

(315) 671-5108

<http://www.ariseinc.org/advocacy-accessibility/ombudsman-program/>

Protects the health, safety, welfare, human and civil rights of the people living in nursing homes and adult care facilities. They should NOT be contacted for seniors living in the community.

Onondaga County Department of Adult and Long Term Care Services
Office for Aging (315) 435-2362

Civic Center, 421 Montgomery St. Syracuse, NY 13202

8:30-4:30 Monday –Friday

<http://www.ongov.net/aging/>

Referral source for the following programs:

- **Caregiving/Respite Services**
- **Expanded In-Home Services for the Elderly Program (EISEP)**
 - Program that provides case management services and non-medical supportive services for frail, homebound elders with chronic physical and/or mental impairments who are not Medicaid eligible.
- **Neighborhood Advisors**
 - Outreach workers provide information and assistance to older adults and their families.
- **Senior Meal and Nutrition Services (including Meals on Wheels)**
- **Social Day programs**
 - Day program that provides group social activities and congregate dining. Open 5 days per week.
- **Transportation**
 - Funding for transportation services to residents of Onondaga County.