



**October, November, December 2012**

October's Training

**MANDATORY REPORTING OF ELDER ABUSE: CHALLENGES AND OPPORTUNITIES FOR COLORADO**

Presented by:

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Most states have mandatory reporting of elder abuse. Colorado does not.

legislators to consider during the 2013 General Assembly.

Colorado remains one of four states that do not require social workers, doctors, and other professionals to report suspected elder abuse to police or adult protective services. Earlier legislation pertaining to mandatory reporting of elder abuse has been debated but failed due to a lack of funding, particularly at the county level. However, Colorado's 2012 General Assembly passed Senate Bill 12-078, allowing for the formation of an Elder Abuse Task Force to study the issue and to prepare recommendations for

The purpose of the 17-member Task Force is "to study the problem of mistreatment and exploitation of at-risk elderly adults in Colorado and prepare recommendations for the consideration of the General Assembly, including but not limited to recommendations concerning how to require certain persons, on and after September 1, 2013, to report known or suspected mistreatment or exploitation of at-risk elderly adults." The Task Force is required to deliver a formal report no later than December 1, 2012.

Coordinator's Note: Many of the recommendations, policy concerns, and budgetary issues are still under consideration by the Elder Abuse Task Force and are in draft form. The information in this newsletter is

from a variety of sources, providing background and summarizing key issues from national professional organizations as well as from states that have mandatory reporting programs in place.

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**TRAINING DETAILS**

- **Wednesday, October 17, 2012**
- **Registration: 8:30 am**
- **Training: 9:00 am - 11:00 am**
- **Aurora City Hall, City Council Chambers**
- **15151 E. Alameda Pkwy, Aurora, CO**

**Training begins at 9:00 am**

(no refreshments are allowed in the City Council Chambers)

**Continuing education: 2 CLE's & POST units (applied for) 2 hours recertification for ombudsman training**

Directions to Training:

- I-225 to Alameda Ave.
- East on Alameda about 1/2 mile to Chambers Rd.
- Left on Chambers Road 1 block
- Left into City Hall parking lot
- Parking garage is available on west side or park in lot on east side

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**INSIDE**

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# Mandatory Reporting: Challenges Identified by the Elder Abuse Task Force

## Sustainable funding is imperative for the implementation of mandatory reporting

- Colorado's elder population is the fastest growing segment of the state's overall population.
- Colorado is not prepared for the impact of an increasingly elderly population, a portion of which will be victims of physical or sexual abuse, caretaker neglect, or mistreatment.
- An aging population presents complex issues that require skilled workers providing increased case management and monitoring for safety.
- Currently, Colorado is lacking the necessary services that can provide meaningful and lasting assistance to at-risk adults.
- Adequate training and staffing are necessary for all agencies concerned with elder abuse in order to properly investigate reports and present them to a district attorney for possible prosecution.
- Agencies, including judicial districts or law enforcement agencies that are underfunded, are not able to investigate and prosecute crimes against at-risk adults.
- Workload impacts, particularly at the county level, are a concern. More staff will be needed to answer phones, record calls, investigate reports within required time frames and identify and engage community resources.
- Although smaller counties may have fewer elder abuse cases to investigate, the unmet service needs may be greater in rural areas where there are fewer providers available.
- A report can identify a problem, but cannot prevent further mistreatment of self-neglect. Safety net services are often not available when immediately necessary.

## HELPFUL LINKS

- [SB 12-078 Elder Abuse Task Force](#)
- [Colorado Elder Abuse Task Force Documents](#)
- [Senate Bill 12-078 "Concerning Protections for At-Risk Adults"](#)
- Statutes Regarding Protective Services for At-Risk Adults [a. statute 2012](#) [b. task force](#)

*Both federal and state laws address elder abuse, neglect and exploitation, but state law is the primary source of sanctions, remedies and protections related to elder abuse. States address elder abuse in multiple statutory areas, including adult protective services laws, criminal codes, probate, trusts and estates codes, family law and civil remedies. In most states the laws related to elder abuse may be embedded in several code sections. Center for Elders and the Courts*

Coordinated care and intervention are key to protecting at risk adults. Services to support at-risk adults must be available in order to reduce risk to the client. Without the necessary service and support infrastructure the report and subsequent investigation of allegations of mistreatment or self-neglect are just that, a report and investigation that, on their own, does not protect the at-risk adult.

**SB 12-078 Elder Abuse Task Force: Strategies and Recommendations (draft)**

*Most of the social movements of the last 50 years—civil rights, women’s rights, domestic violence and sexual assault victims’ rights, gay rights—have resulted from self-advocacy by the persons who were the victims of discrimination or crime. The question is often asked why elder abuse victims are not advocating for improved intervention programs. The answer to the question is that many older victims either cannot or will not advocate for themselves.*

*... Elder Abuse Detection and Intervention: A Collaborative Approach (2006)*

## Strategies to Strengthen A Mandatory Reporting Program

### Services and Supports

Underreporting of suspected elder abuse is a significant problem. Currently, in Colorado, professionals are “strongly urged” to report elder abuse. Experts believe that for mandatory reporting to be successful, **“A strong infrastructure of services and supports must be implemented simultaneously with mandatory reporting.”** Those supports and services include:

- General Safety Net Services, such as food, shelter, transportation, and medical care
- Emergency Interventions, such as shelter, medications, house cleaning, home repairs/modifications, utilities, or food
- Respite Care for care takers
- Capacity evaluations, necessary to determine the client’s ability to remain in his or her home
- Mental health services
- Services for the Developmentally Disabled
- Safety Planning
- Adequate and appropriate placements for clients with difficult and violent behaviors and/or criminal histories
- Adequate funding for Judicial Districts and law enforcement agencies for investigation and prosecution of crimes against at-risk adults.

### Infrastructure

In addition, the Task Force recommends the following basic infrastructure be simultaneously implemented with mandatory reporting in some form:

- **Cognitive capacity evaluations:** the ability to appropriately assess a client’s cognitive capacity.
- **Health care professionals:** physician or registered nurses be available to conduct a home visit with the APS caseworker to conduct a medical evaluation.
- **Law enforcement liaison:** working as consultants with APS with specialized knowledge and to assist with investigations and prosecution.
- **Forensic Accountants:** provide the ability to develop evidence of financial exploitation, leading to successful prosecution.
- **Emergency Services:** the ability to provide for emergency shelter, medical care, food, deep cleaning, home repairs or utility payments.
- **Background checks:** currently required for county employees engaged in protective services but not for caretakers. The Task Force recommends that a comprehensive state and federal criminal history check of caretakers, as defined by Colorado law, be mandated.

### Collaboration

The Task Force recommends working with other systems necessary for the successful intervention and protection of at-risk adults. Those systems include:

- Mental Health Services
- Services for the Developmentally Disabled
- Placements for Difficult Clients
- Public Guardianship

*Adapted from SB 12-078 Elder Abuse Task Force: Strategies and Recommendations (Draft September 2012)*

*Instances of elder abuse, neglect, and exploitation are, currently, significantly underreported. Underreporting can only serve to exacerbate the increasing elder abuse problem in this country. It is imperative that instances of abuse, neglect, and exploitation be brought to the attention of both adult protective services and law enforcement in a timely fashion.*

*The National District Attorneys Association (Policy position and commentary, March 2003)*



## FINANCIAL INSTITUTIONS AND MANDATORY REPORTING

Colorado law requires that financial institutions offer customers the option to voluntarily sign a prior consent form to release financial information. This allows the financial institution to notify the appropriate local law enforcement agency of known or suspected financial exploitation. However, banks report that customers rarely sign these consent forms. The Task Force recommends that the legislature evaluate state or constitutional privacy barriers to law enforcement obtaining customer account information. Although bank account information is critical for criminal investigations and prosecutions, banks are understandably concerned about procedures making it easier for state agencies to access private financial information. Financial institutions are also concerned about the time and cost incurred, especially for small community banks. Financial institutions are in opposition to mandatory reporting unless a good faith immunity clause is included which protects their employees.

*Elder abuse is a complex civil and criminal issue. Definitions of elder abuse vary from state to state, compounded by varying legal classifications and types of mistreatment. Some of the risk factors, particularly social isolation and mental impairment, make it difficult for the justice system and professionals to initially identify the problem and to follow up with appropriate remedies. Solutions require innovative approaches, such as coordinated responses across agencies and jurisdictions.*

*“State Courts and Elder Abuse: Ensuring Justice for Older Americans”, National Center for State Courts, June 8, 2007*

## Colorado Coalition for Elder Rights and Abuse Prevention Steering Committee

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*Colorado Coalition for Elder Rights and Abuse Prevention programs  
are available to all without discrimination.*

Helen Davis, Coordinator and Newsletter Editor, [ccerap@comcast.net](mailto:ccerap@comcast.net)

# Elder Abuse and the Courts

Studies show that when mandatory reporting is required more cases are investigated, reaching possible prosecution in the courts. The following information from the Center for Elders and the Courts (National Center for State Courts) covers the dynamics and issues of elder abuse and the role of the courts in addressing elder abuse.

## MANDATORY REPORTING

Reporting requirements are complex and vary greatly from state to state. They typically are included in the state's adult protective services (APS) laws, but they also may be imbedded in other statutes and regulations. States that have some type of statutory requirement to report elder abuse, neglect or exploitation may include the following major types of variables in their state elder abuse reporting provisions:

- Categories of persons who must and who may report elder abuse
- Exceptions based on privileged communications for specified professionals
- Categories of suspected victims (e.g., all persons over a specified age; only older persons with disabilities; only persons determined to be incapacitated)
- Agency or department to which reports should be made (e.g., APS agency, long term care ombudsman, law enforcement, or district attorney)
- Cross-agency reporting requirements (e.g., law enforcement to APS, APS to district attorney)
- Time limits for reporting elder abuse
- Methods of reporting (oral, in writing or both)
- Content of the report
- Immunity for good faith reporting of elder abuse
- Sanctions for failure to report and for making a false report

## JURISDICTION AND CASE TYPES

Elder abuse may be the subject matter of or a legal issue in criminal, civil, family or probate cases. Jurisdiction for a case involving elder abuse therefore could lie in a variety of courts or divisions of courts. Elder abuse also may be an underlying issue in cases in which elder abuse is not the substantive issue before the court.

**Criminal cases.** In some states, elder abuse is a specific crime defined in the criminal code and therefore may be

before the court explicitly as an elder abuse case. In all states, an older person could be the victim of any offense set out in a state's criminal code, including assault, battery, sexual assault, theft, fraud, and financial exploitation.

**Civil cases.** In all states, elder persons may seek a civil order of protection against domestic abuse by a family member. Elder abuse also may be a factor in civil claims for damages or other relief from identity theft, financial exploitation, undue influence, fraud, and deceptive practices. Other civil actions that may involve elder abuse include petitions for access to an elderly person and petitions for removal of durable power of attorney.

**Probate and guardianship cases.** Elder abuse is potentially an issue in cases that fall under a court's probate jurisdiction. One of the purposes of probate courts is to protect the safety and financial interests of elderly, disabled or vulnerable adults. Elder abuse and financial exploitation may be issues across the range of cases heard in probate courts, including amendments of wills and trusts, exercise of power of attorney, guardianship of the person, guardianship of the estate or property, and conservatorship.

## IMPROVING PROSECUTION RATES

A common problem is "making the case" for a successful prosecution of elder abuse. Experts and professional associations have identified a variety of challenges involved in building criminal cases:

- A lack of training for police, prosecutors, and judges
- Victims who are unwilling or unable to participate in the criminal justice process
- A shortage of forensics experts and information
- A lack of clarity with respect to roles and responsibilities because elder abuse cases may fall under local, state, or federal jurisdiction or because, in some instances, jurisdiction maybe overlapping

Attempts by some states to respond to these problems and to enhance prosecution rates include: creating special offenses, enhancing sentences, relaxing evidentiary rules, and using other methods

Source: "Elder Abuse Prevention: Emerging Trends and Promising Strategies", Lisa Nerenberg, 2008.

## RESOURCES ON THE LAW AND ELDER ABUSE

### REPORTS, ARTICLES

- [“Elder Abuse: Effectiveness of Reporting Laws and Other Factors”](#), GAO HRD-91-74, published in 1991, this GAO report makes the case that efforts to raise public and professional awareness, improve interagency coordination, and increase the availability of in-home and respite care are likely to have a more significant impact on the effectiveness of state elder abuse programs than mandatory or voluntary reporting laws.
- [“Elder Justice: Stronger Federal Leadership Could Enhance National Response to Elder Abuse”](#), March 2011, U.S. Government Accountability Office
- [Congressional Report on the Feasibility of Establishing a Uniform National Database on Elder Abuse](#). (March 2010). U.S. Department of Health and Human Services, Office of Disability, Aging and Long-Term Care Policy. This Report to Congress examines the feasibility of a national data collection effort involving administrative data on elder abuse.
- [“The Implications of an Aging Population for the State Courts”](#) Richard Van Duizend, National Center for State Courts, Future Trends in State Courts 2008.
- [“Mandatory Reporting of Elder Abuse: Implications for Domestic Violence Advocates”](#), Bonnie Brandl, MSW, National Clearinghouse on Abuse in Later Life (NCALL). A Project of the Wisconsin Coalition Against Domestic Violence, Copyright © 2005 National Clearinghouse on Abuse in Later Life; revised 2011.
- [Mandatory Reporting of Elder Abuse for Victim Service Providers: 6-Part Series of Information Sheets](#), co-authored by Jessica Mindlin, Esq., and Bonnie Brandl, MSW, National Clearinghouse on Abuse in Later Life, 2011.
  - [Part 1: What is Mandatory Reporting?](#)
  - [Part 2: Mandatory Reporting of Elder Abuse: Exploring the Benefits and Harms](#)
  - [Part 3: What Advocates Need to Know About Mandatory Reporting of Elder Abuse](#)
  - [Part 4: Tips for Working with Older Victims When You Are Mandated to Report Elder Abuse](#)
  - [Part 5: Developing Agency Policy on Mandatory Reporting of Elder Abuse](#)
  - [Part 6: Elder Abuse Mandatory Reporting Flow Chart for Victim Service Providers](#)
- [The MetLife Study of Elder Financial Abuse Crimes of Occasion, Desperation, and Predation Against America’s Elders](#). (2011). MetLife Mature Market Institute, the National Committee for the Prevention of Elder Abuse, and the Center for Gerontology at Virginia Polytechnic Institute and State University. This follow up study to the 2009 report on financial elder abuse estimates an annual financial loss by victims of elder financial abuse to be at least \$2.9 billion dollars, a 12% increase from the \$2.6 billion estimated in 2008.
- [“Protecting America’s Senior Citizens: What Local Prosecutors Are Doing to Fight Elder Abuse”](#), American Prosecutors Research Institute, September 2003.
- [“The Role of Attorneys, Courts, and Legal Mechanisms in the Prevention of and Intervention to Elder Abuse”](#), (2003-2007). A bibliography of articles addressing professional practices, creative legal remedies and barriers to legal access and prosecution.
- [“State Courts and Elder Abuse: Ensuring Justice for Older Americans”](#), Brenda Uekert and Denise Dancy. (June 2007). A call to action to improve the state courts’ capacity to identify, develop, and implement strategies that will enhance responses to elder abuse, neglect, and exploitation.

### WEBSITES, NATIONAL RESOURCES

The following organizations’ websites provide information and links to research, legal guidance, consumer issues, training, social policy and other topics promoting social autonomy and advancing well being for older adults.

- [American Bar Association Commission on Law and Aging](#). This website provides updates on legislation at the state level, abuse registries, information for caregivers, comparisons of mandatory reporting laws in addition to many other elder abuse/legal topics.
- [American Psychological Association, “Elder Abuse and Neglect: In Search of Solutions”](#), provides an excellent overall summary of all aspects of elder abuse including links to other resources.
- [Center for Elders and the Courts](#)

## RESOURCES ON THE LAW AND ELDER ABUSE CONTINUED

- [Center for Elder Rights Advocacy](#)
- [National Center on Elder Abuse](#)
- [National Center for State Courts](#)
- [National Legal Resource Center](#)

### BOOKS

- **“Beyond Elder Law: New Directions in Law and Aging”**, Israel Doran and Ann M. Soden, Editors, (2012). This book (available electronically) discusses new and cutting-edge frontiers in the field of elder law and attempts to set the agenda for the future development of elder law across the globe.
- **“Elder Abuse Detection and Intervention: A Collaborative Approach”**, Bonnie Brandl, Carmel Dyer, Candace Heisler, Joanne Otto, Lori Stiegel, Randolph Thomas, (2007) provides a framework to build on collaborative approaches at the local, state and national levels and advocates for system change.
- **“Elder Abuse: A Public Health Perspective”**, Randal W. Summers and Allan M. Hoffman, Editors, (2006) features a series of articles focusing on elder abuse as a public health problem as well a criminal justice issue, helping to identify some key barriers to understanding and addressing elder mistreatment.
- **“Elder Abuse Prevention: Emerging Trends and Promising Strategies”**, Lisa Nerenberg, (2008). This book describes what has been accomplished and what remains to be done to stop abuse, treat its effects, and ensure justice and also addresses the need to fortify long-term care, protective services and legal systems to meet the needs of a growing elderly population.
- **“The Law of Financial Abuse and Exploitation”**, Katherine C. Pearson and Trisha E. Cowart,

(2011). Although published for Pennsylvania, cross references to other states are provided. The book deals with mandatory versus voluntary reporting of financial abuse and presents legal consequences, both in criminal and civil terms.

### OTHER RESOURCES

**Toolkits: “Elder Abuse Toolkit for Prosecutors” and “Managing Elder Abuse for the Courts”** provide performance measures, benchcards, and collaboration guides for prosecutors and the courts. Available from the National Center for State Courts, Center for Elders and the Courts.

### ELDER ABUSE TRAINING INSTITUTE

Center of Excellence in Elder Abuse & Neglect, University of California, Irvine Program in Geriatrics

The Elder Abuse Training Institute is devoted to training professionals from the medical community, legal community, law enforcement, social services and government agencies about all aspects of elder abuse, including: detection, reporting, investigating, prosecuting, caring for victims and prevention. Additionally, the institute goes beyond existing educational programs on elder abuse by offering multidisciplinary team training that addresses how to work effectively with other agencies, how to conduct abuse assessments and how to investigate complex cases of abuse. The Institute also provides training on how to develop an Elder Abuse Forensic Center which unites medical, legal, law enforcement and social service agencies to provide team case review, in-home assessments, and case filing. A manual and 20-minute companion DVD are available for any agency wanting to develop an Elder Abuse Forensic Center (EAFC) in their own communities.

## Inaugural Aging & Disability Services Summit Together, Forging a Path to the Top

November 13 – 15, 2012 Crowne Plaza Hotel in Colorado Springs, Colorado

Hosted by: The departments of Health Care Policy and Financing, Human Services, and Public Health and Environment, and other state, local, and non-profit organizations. This event will offer high caliber training and professional development for both private and public sector health and human services professionals who provide services to older adults, vulnerable adults, and persons with

disabilities while promoting collaboration, innovation, education, skills, and leadership. Target audience: academicians, advocates, county and state agency staff, caregivers, consumers, family members, funders, health care professionals, advocates, service providers, law enforcement, legal community, professionals, researchers, and other interested parties in the field. [To register, please click here.](#)



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CCERAP has discontinued its 800 telephone number. Please visit our website for the most recent information.

*Promoting statewide understanding of elder/adult abuse and the rights and protections available to elder and at-risk adults.*