

## Domestic Violence in Later Life

### Outline

#### Introduction to Elder Abuse

#### Definitions –

**Elder abuse** is generally defined as the “physical, sexual, or psychological abuse, neglect, abandonment and financial exploitation of an older person by another person or entity that occurs in any setting, either in a relationship where there is an expectation of trust and/or when an older person is targeted based on age or disability.”

**Abuse in later life** is at the intersection of domestic violence, sexual abuse and elder abuse. Abuse in later life is the willful abuse, neglect or financial exploitation of an older person perpetrated by someone in an ongoing relationship with the victim – that is a spouse, partner, family member (such as an adult child, grandchild, niece or nephew) or caregiver.

Victims of abuse in later life, of course, come from all racial, ethnic, economic and religious backgrounds. No one is exempt. Some victims are healthy, active and sharp; others need assistance with the daily activities of living and/or have dementia or difficulty processing information.

The acts of abuse and violence are more acute when a victim is older and his or her physical or mental health is compromised.

**Physical abuse** occurs when an abuser uses intentional force against a victim that may result in bodily injury, physical pain or impairment.

Physical abuse includes pushing, hitting, punching, beating, shoving, shaking, slapping, kicking, pinching, choking, throwing things, burning.

Also, a person may experience physical abuse when he or she is improperly medicated, physically restrained or force-fed.

**Sexual abuse** is non-consensual contact of any kind with an older person. Also included in the definition of sexual abuse of an older person is sexual contact with a person who does not have the capacity to consent. Sexual abuse includes “hands-on” behaviors like rape and molestation.

Significantly, sexual abuse also includes “hands-off” behaviors such as voyeurism, exhibitionism, sexual threats, unwanted comments, coerced nudity, being forced to view pornography and sexually explicit photographing.

See, Responding to Domestic Abuse in Later Life, Bonne Brandl, Julie Rozwadowski  
<http://scholarship.law.marquette.edu/cgi/viewcontent.cgi?article=1117&context=elders>

### **Penal Law Statutes that may be relevant in elder abuse prosecutions include:**

Penal Law §120.05(12) – assault in the second degree – when a defendant causes physical injury to a person 65 years or older and the defendant is more than ten years younger than the victim

#### **§ 260.31 Vulnerable elderly persons; definitions**

For the purpose of sections 260.32 and 260.34 of this article, the following definitions shall apply:

1. “Caregiver” means a person who (i) assumes responsibility for the care of a vulnerable elderly person, or an incompetent or physically disabled person pursuant to a court order; or (ii) receives monetary or other valuable consideration for providing care for a vulnerable elderly person, or an incompetent or physically disabled person.

2. "Sexual contact" means any touching of the sexual or other intimate parts of a person for the purpose of gratifying sexual desire of either party. It includes the touching of the actor by the victim, as well as the touching of the victim by the actor, whether directly or through clothing, as well as the emission of ejaculate by the actor upon any part of the victim, clothed or unclothed.
3. "Vulnerable elderly person" means 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.
4. "Incompetent or physically disabled person" means an individual who is unable to care for himself or herself because of physical disability, mental disease or defect.

N.Y. Penal Law § 260.31 (McKinney)

**§ 260.32. Endangering the welfare of a vulnerable elderly person, or an incompetent or physically disabled person in the second degree**

Currentness

A person is guilty of endangering the welfare of a vulnerable elderly person, or an incompetent or physically disabled person in the second degree when, being a caregiver for a vulnerable elderly person, or an incompetent or physically disabled person:

1. With intent to cause physical injury to such person, he or she causes such injury to such person; or
2. He or she recklessly causes physical injury to such person; or
3. With criminal negligence, he or she causes physical injury to such person by means of a deadly weapon or a dangerous instrument; or
4. He or she subjects such person to sexual contact without the latter's consent. Lack of consent under this subdivision results from forcible compulsion or incapacity to consent, as those terms are defined in article one hundred thirty of this chapter, or any other circumstances in which the vulnerable elderly person, or an incompetent or physically disabled person does not expressly or impliedly acquiesce in the caregiver's conduct. In any prosecution under this subdivision in which the victim's alleged lack of consent results solely from incapacity to consent because of the victim's mental disability or mental incapacity, the provisions of section 130.16 of this chapter shall apply. In addition, in any prosecution under this subdivision in which the victim's lack of consent is based solely upon his or her incapacity to consent because he or she was mentally disabled, mentally incapacitated or physically helpless, it is an affirmative defense that the defendant, at the time he or she engaged in the conduct constituting the offense, did not know of the facts or conditions responsible for such incapacity to consent.

Endangering the welfare of a vulnerable elderly person, or an incompetent or physically disabled person in the second degree is a class E felony.

N.Y. Penal Law § 260.32 (McKinney)

### **§ 260.34 Endangering the welfare of a vulnerable elderly person, or an incompetent or physically disabled person in the first degree**

A person is guilty of endangering the welfare of a vulnerable elderly person, or an incompetent or physically disabled person in the first degree when, being a caregiver for a vulnerable elderly person, or an incompetent or physically disabled person:

1. With intent to cause physical injury to such person, he or she causes serious physical injury to such person; or
2. He or she recklessly causes serious physical injury to such person.

Endangering the welfare of a vulnerable elderly person, or an incompetent or physically disabled person in the first degree is a class D felony.

N.Y. Penal Law § 260.34 (McKinney)

### **Intimate Partner Violence in Later Life**

Spousal relationships where abuse is present include long-term relationships of 20, 30, 40 or 50 years, maybe more, with the abuse present throughout the marriage. The abuse can be physical, sexual or emotional. It can also include neglect or financial exploitation. **Most cases involve a combination of forms of abuse.**

There are three main types of intimate partner domestic violence in later life:

The first involves a new relationship - a person marries for the second or third time and this spouse is an abuser.

The second category is known as “late-onset domestic violence.” This is when in a long term marriage, the abuse begins as the parties age. This can be triggered by retirement, the changing role of family members, sexual changes or a disability. For example a spouse’s failing health or brain impairments, common in old age, can cause a spouse to exhibit aggressive behavior.

The third category involves violence in a relationship that begins early and continues throughout the marriage. This is called “domestic violence grown old.” This is the most common type of domestic violence in later life. As one expert states, “Elder abuse is often domestic violence which has graduated into older age.”

### **Why don’t victims of domestic violence in later life leave?**

Why do older victims of intimate partner abuse not leave an abusive partner? Some of the reasons are the same as those expressed by younger victims but some are different.

§ The ability of an older person to act or respond to domestic violence may be impacted or compromised by infirmity, declining health and the fact that he or she is being isolated and controlled by the abuser and lacks the ability to reach out for assistive services.

§ A victim may also fear being seriously hurt or killed if he or she leaves the abuser; a victim may fear being alone, especially if he or she has never lived alone or relies on the abuser for health or economic reasons;

§ The victim may value the long, shared history with the abusive partner;

§ He or she may be in denial about the abuse or ashamed that someone they still love is hurting them;

§ He or she may not recognize the behavior as abusive;

§ The victim may feel responsible for the care of the abuser;

§ There may be a belief that he or she does not deserve better;

§ The victim may not want to leave behind a home, long-accumulated cherished possession or a pet;

§ The victim's children might object to the separation of their parents;

§ The victim may be isolated and not have access to support services;

§ There may be generational issues, that is, an older person might be reluctant to seek help from a service provider who is much younger and whom, the victim fears, may not believe or understand the situation;

§ The victim may hold spiritual or religious beliefs that make leaving difficult if not impossible;

§ There may be cultural issues that prevent a victim from leaving;

§ The victim may fear not being believed.

See, generally, *Survivors in the Margins: The Invisibility of Violence Against Older Women*, Cailin Crockett, MPhil, Bonne Brandl, MSW, Firoza Chic Dabby, BA  
<https://www.ncbi.nlm.nih.gov/pubmed/26371877>

### **Issues Surrounding Elderly Murder-Suicide Cases**

When murder-suicides involve younger intimate partners they are generally classified as domestic violence incidents. But when the partners are older and one or both are ill, it seems that these situations are less likely to be viewed as crimes and more likely to be considered murder-suicides. However, that may not be an accurate characterization in many cases.

University of South Florida psychiatry professor Donna Cohen, who researches homicide and suicide among the elderly, said that suicide pacts and mercy killings are a statistical anomaly. "Sometimes family report both parents talked about wanting to die — but that doesn't mean the wife agreed," she said.

Dr. Cohen states that the typical homicide-suicide case involves a depressed, controlling husband who shoots his ill wife. “These are acts of depression and desperations. The wife does not want to die and is often shot in her sleep. If she was awake at the time, there are usually signs that she tried to defend herself.”

These cases seem to fly under the radar.

See,

Homicide-Suicide in Older Persons, Donna Cohen, Ph.D., Maria Llorente, M.D., Carl Eisdorfer, Ph.D., M.D.

<http://ajp.psychiatryonline.org/doi/pdf/10.1176/ajp.155.3.390>

Homicide-Suicide in Older People, Donna Cohen, Ph.D.

<http://www.baylor.edu/content/services/document.php/28830.pdf>

Murder-Suicide: A review of the Recent Literature, Scott Eliason

<http://jaapl.org/content/37/3/371>

Intimate Partner Violence in Late Life: An Analysis of National News Reports

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3641680/>

Depression and Violent Deaths in Older Americans: An Emergent Public Mental Health Challenge, Before the Senate Special Committee on Aging, Donna Cohen, Ph.D.

<http://www.apa.org/about/gr/science/advocacy/2003/cohen.pdf>

Risk Factors for homicides and homicide-suicides in older persons include:

- The couple has been married a long time and the husband has a dominant, controlling personality.
- The husband is a caregiver and the wife has Alzheimer's disease or a similar disorder.
- One or both have multiple medical problems, and the health status of one is changing.

- A move to a nursing home or assisted living facility is pending or under discussion.
- The couple is becoming more socially isolated, withdrawing from family, friends, and social activities.
- The couple has been arguing or there is talk of divorce.
- History of domestic violence
- Anger, hopelessness or loss of control
- Availability of firearm
- Perpetrator is depressed, suicidal or substance abuser

## **Financial Exploitation of Older Individuals in Intimate Relationships**

Financial exploitation is defined generally as the use of an older adult's funds, property or resources by another individual, including but not limited to fraud, false pretense, embezzlement, conspiracy, forgery, falsifying records, coerced property transfers or denial of access to assets. There are also consumer fraud and scams that target older adults. Cognitive impairment reduces financial capacity, thereby increasing the risk of financial exploitation.

The vast majority of financial exploitation cases are never reported to authorities.

***Indeed, the highest rate of elder mistreatment in New York occurs for major financial exploitation.***

See, generally,

Brookdale Center for Healthy Aging Financial Exploitation How to Recognize and Respond to It  
<http://www.nyselderabuse.org/documents/financial-exploitation.pdf>

The NYS Office of Children and Family Services (OCFS) very recently announced the release of a groundbreaking study entitled *The New York State Cost of Financial Exploitation*.

The report, created by OCFS, in partnership with 31 local departments of social services and Lifespan of Greater Rochester, Inc., provides some of the most comprehensive research on

financial exploitation ever conducted in the United States.

Key findings of the study include:

- Financial exploitation totals an estimated \$1.5 billion each year in stolen cash and property, benefits paid to victims, and investigative costs statewide.
- About 60 percent of the time, the perpetrator is an adult child or relative of the victim.
- Cash, checks, and debit cards are the most commonly stolen items.
- Benefit checks, deeds, real estate, retirement accounts, and vehicles are also targets.
- Nearly half of all victims have a physical impairment.
- About one-third of victims have mental impairment or dementia.
- Caucasian women in their 70s and 80s are the most common victims, but the crimes affect all cultures and ethnicities.
- 58 percent of victims do not fully understand that their money or valuables were stolen.

The full report is available at: <http://ow.ly/98b1301ifDz>

### **Cases Involving Exploitation of Older Adults by an Intimate Partner**

Below are sample cases that involve the financial exploitation of an older individual by someone with whom they purportedly have an intimate relationship.

*Campbell v Thomas*, 73 AD3d 103 [2d Dept 2010] Court found that 58 year caregiver, Nidia, took unfair advantage of Howard, a 72 year old mentally incompetent man, by secretly marrying him and transferring his assets into her name. The court found that there was ample support for an inference that Nidia was aware of Howard's lack of capacity to consent to the marriage and took unfair advantage of his condition for her own monetary gain, at the expense of

his intended heirs. The court said that Nidia knew that Howard's dementia was advanced – he often had difficulty recognizing family members and had lost the ability to understand his legal and financial affairs or even to take care of his own basic hygiene. Nidia had also been informed that due to the progression of his prostate cancer, Howard was not expected to live much longer. Knowing all this, Nidia waited until Howard's daughter went away for a week and then married Howard without telling his children. She then quickly arranged to have her name added to Howard's bank account and made herself the sole beneficiary on Howard's retirement account. Thus, the court concluded, Nidia procured the marriage through overreaching and undue influence and should not be allowed to benefit from her conduct.

***Matter of Berk***, 71 AD3d 883 [2d Dept 2010]

47 year old petitioner secretly married decedent when he was 99 years old and never told decedent's sons, friends or associates about the marriage until after the decedent died. A few months following his death, the petitioner-wife filed a petition to determine the validity of her right to take a share of the decedent's \$5 million estate. The decedent's sons counterclaimed against the petitioner. While the Surrogate's Court found that no issues of fact existed regarding the petitioner's status as the decedent's surviving spouse and granted her petition, on appeal, the Second Dept, citing to *Campbell v Thomas*, said that there was a triable issue of fact as to whether the petitioner forfeited the statutory right of election, since evidence had been proffered from which a trier of fact could properly determine that the petitioner knew that the decedent was incapacitated and incapable of consenting to marriage and deliberately took unfair advantage of him by marrying him for monetary gain.

***Matter of Doar***, 39 Misc3d 1242(A) [Sup Ct, Kings County 2013] A young woman Vanessa, age 46, befriended 83 year old man, an alleged incapacitated person. She began

working for him and then initiated a romance with him. They were married and then Vanessa took over all of Eric's financial accounts. The court stated the following: "This case highlights the predation and exploitation that face the aged and incapacitated. . . . Through a steady course of seduction and isolation, and veiled in the cloak of marriage, Vanessa has managed to exploit with impunity.... Sadly this case is not an isolated incident of financial exploitation of the incapacitated. Often seniors afflicted with dementia, in the twilight phase between capacity and incapacity, are exploited in plain sight with devastating consequences to the victims."

In this case, the victim's estate which had amounted to between \$350,000 and \$400,000 was totally depleted.

Also see,

Influence: Due or Undue, American Law Institute – American Bar Association Continuing Legal Education, July 14 -15, 2011, Gregory W. MacKenzie, Bennett Blum, MD, Rex Swanda, Ph.D., The Parallels Between Undue Influence, Domestic Violence, Stalking and Sexual Assault, ST003 ALI-ABA 369

Bonnie Brandl, MSW, Candace J. Heisler, JD, Lori A. Stiegel, JD  
<https://www.ncbi.nlm.nih.gov/pubmed/16931468>

### **Factors predisposing someone to financial exploitation include:**

- Advanced age
- Unmarried/widowed/divorce
- Organic brain damage or cognitive impairment
- frail
- Depression
- Recent loss of spouse or divorce
- Living with abuser

- Dependent on abuser
- Living alone
- Estranged from children
- Financially independent with no designated financial caretakers
- Implied promise by perpetrator to care for the elderly person if funds or material goods are transferred
- Elderly person subject to intimidation (perpetrator induces dependency with fear of rejection if demands are not met or creates fear by threat of physical or emotional harm or abandonment)

**Signs that may suggest someone is being subjected to economic abuse**

**include:**

- § Sudden changes in bank account or banking practices;
- § The inclusion of additional names on an elder's bank signature card;
- § Unauthorized withdrawal of the older adult's funds using his or her ATM card;
- § Pre-signed checks;
- § Abrupt changes in a will or other financial documents;
- § Newly executed documents;
- § Unexplained disappearance of funds or valuable possessions;
- § Unpaid bills despite the availability of adequate financial resources;
- § The forging of the older adult's signature for financial transactions and for the titles of his or her possessions;

Also, pay attention to the older individual's behavior – watch for indications of fear, shame, humiliation, hesitancy to talk, timidity or confusion,

- § Is the older person changing his or her mind frequently?
- § Is his or her health declining rapidly?
- § Is there an unexplained emotional change, such as depression or cognitive deficits?
- § Is he or she being isolated?

And, of course, pay close attention to an older person's report of financial exploitation.