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ELDER JUSTICE  
BENCH GUIDE

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# ELDER ABUSE GUIDE FOR JUDGES AND COURT PERSONNEL

This guide offers tools for judges and court personnel to identify elder abuse and offers legal remedies and community resources for referrals.

**What is Elder Abuse?** While there is no global definition, elder abuse can be broadly defined as a single or repeated act, or lack of appropriate actions which cause harm, risk of harm or distress to a person who is 60 years or older and occurs:

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| <ul style="list-style-type: none"> <li>a. within any relationship where there is an expectation of trust; and/or</li> <li>b. within an intimate partner and/or familial relationship; and/or</li> <li>c. when the targeted act is directed towards an elder person by virtue of age or disabilities.</li> </ul> | <p>Elder abuse includes acts of commission or omission, and takes many forms including physical acts, psychological, emotional, or sexual abuse, neglect, and financial exploitation. Red flags of abuse can include when an older adult acts fearful, appears agitated, depressed or confused.</p> |
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With some limited exceptions, New York is the only state where there is no mandated reporting of elder abuse by professionals.

Adult Protective Services workers who have reason to believe that a criminal offense has been committed, as defined by penal law, must report it to law enforcement pursuant to Social Services Law § 473(5); certain individuals, including, among others, an operator or employee of a residential health care facility, must report abuse in such facility as set forth in Public Health Law § 2803-d(1) and (3); and under Chapter 501 of the Laws of 2012: Protection of People with Special Needs Act, created to safeguard vulnerable persons under the jurisdiction of six state agencies, “custodians” must report crimes perpetrated against “vulnerable persons” as those terms are defined in the Act.

## Types of Abuse and Potential Indicators

Types of Elder Abuse, Neglect, and Financial Exploitation	Potential Indicators/How to Recognize
<p><b>Physical Abuse</b> is the intentional 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>	<ul style="list-style-type: none"> <li>■ Slap marks, unexplained injury, bruises, welts, cuts, sores, burns, or sudden weight loss</li> <li>■ Inconsistent explanation of bruises, multiple bruises</li> <li>■ Under-or over-medicating an older adult</li> <li>■ Broken glasses or hearing aids</li> </ul>
<p><b>Emotional Abuse</b> is 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 older adult.</p>	<ul style="list-style-type: none"> <li>■ Controlling behavior by a caregiver, family member or other</li> <li>■ Isolation of the older adult from friends, family or faith community</li> <li>■ Threats to leave the older adult</li> <li>■ Threats to institutionalize the older adult</li> </ul>

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**Types of Elder Abuse, Neglect, and Financial Exploitation**

**Potential Indicators/How to Recognize**

**Sexual Abuse** is non-consensual sexual contact of any kind, including but not limited to, forcing sexual contact, forcing sex with a third party, voyeurism, exhibitionism, sexual threats, unwanted comments, coerced nudity, being forced to view pornography, and sexually explicit photographing.

- Infections, pain or bleeding in genital areas
- Unexplained sexually transmitted diseases or HIV
- Taking advantage of cognitive or physical disabilities for sexual purposes
- Rough handling or cleaning of the genital areas by caregiver
- Inappropriate sleeping arrangements
- Strangers coming in and out of home
- Injuries to breasts and genitals

**Financial Exploitation** is the improper use of an older 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.

- Sudden changes in banking patterns, missing or stolen money, property, bank statements, passbooks or checkbooks
- Sudden selling or loss of property
- Sudden changes to wills, financial documents or power of attorney
- Older adult has no access to finances
- Many unpaid bills
- Expensive gifts given to caretaker, family members or others
- Checks made out to cash in large sums
- Purchase of gift cards to pay for taxes, utility bills and other expenses
- Taking advantage of cognitive disabilities for financial gain

**Neglect**

- "Active neglect" involves the intentional withholding of caretaking functions and responsibilities.
- "Passive neglect" involves the unintentional failure of a caregiver to fulfill caretaking functions and responsibilities due to the caretaker's lack of ability, education or resources.

- Smells of urine and/or feces
- Lack of basic hygiene—not bathed or dirty clothes
- Lack of medical aids (walker, wheel chair, hearing aid, glasses, etc.)
- Malnutrition or poor physical condition
- Lack of appropriate clothing for comfort or weather conditions
- Older adult left unattended in public or home
- Under- or over-medicated
- Not attending to the care/needs created by cognitive or physical disabilities

## What Laws May Apply to Elder Abuse?

Below is a chart referencing criminal and civil statutes which may be relevant to elder abuse cases. This list is not exhaustive, but is intended to assist judges and court staff in identifying statutes that may apply to elder abuse cases.

Criminal Statutes <sup>1</sup>	Definition
Penal Law § 260.31	<ul style="list-style-type: none"> <li>a. Defines a “vulnerable elderly person” as 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.</li> <li>b. Defines an “incompetent or physically disabled person” as an individual (regardless of age) who is unable to care for himself or herself because of physical disability, mental disease or defect.</li> </ul>
Penal Law § 260.32	Endangering the welfare of a vulnerable elderly person, or an incompetent or physically disabled person in the second degree.
Penal Law § 260.34	Endangering the welfare of a vulnerable elderly person, or an incompetent or physically disabled person in the first degree.
Penal Law § 260.24	Endangering the welfare of an incompetent or physically disabled person in the second degree.
Penal Law § 260.25	Endangering the welfare of an incompetent or physically disabled person in the first degree.
Penal Law § 120.05(12)	Assault in the second degree is a felony when a defendant causes physical injury to a person sixty-five years or older and the defendant is more than 10 years younger than the victim.
Penal Law § 190.65	Scheme to defraud statute specifically includes elderly or vulnerable adult provision.
Penal Law § 485.05	Hate crime statute includes crime against a person due to age when a person is 60 years or older.

N.Y. Fam. Ct. Act § 812, 828, 842, 842-a, Criminal Procedure Law 530(12)(13)(14)

An order of protection may be issued for an elder abuse case in Family Court where a family offense is committed against a person of the same family or household, or within an intimate relationship. A Criminal Court order of protection may be issued in an elder abuse case on behalf of any victim or witness regardless of relationship.

N.Y. Mental Hyg. Law § 81.02, § 81.23; CPLR Article 12

Article 81 regulates court appointment of guardians. Under § 81.02, the court may appoint a guardian if necessary to provide for the personal needs of an incapacitated individual; Under § 81.23(a), court may order temporary relief including the appointment of a guardian with limited powers and issue an injunction. Pursuant to CPLR § 1201, the court may appoint a guardian ad litem for an adult incapable of adequately prosecuting or defending his or her rights.

N.Y. Gen. Oblig. Law § 5-1510

This section creates a special proceeding for a speedy resolution of power of attorney claims which may attack the validity of the power of attorney, how it was obtained or how it is being exercised if the agent has failed to make available a copy of the power of attorney and/or a record of all receipts, disbursements, and transactions pursuant to Power of Attorney Statute § 5-1505.

General Business Law § 349-C

Deceptive Practices and False Advertising (§ 349) allows for additional civil penalty for consumer frauds against persons 65 and older.

Civil Practice Law and Rules § 3403(a)(4)

**Trial preferences:** While civil cases generally shall be tried in the order in which notes of issue have been filed, a preference may be given in an action based on, among other reasons, a party having reached the age of seventy years.

1. This reference guide includes criminal statutes specifically related to an individual's age, incompetency, and physical disability. Other criminal statutes, such as assault, criminal contempt, harassment, menacing, reckless endangerment, sexual assault, unlawful imprisonment, coercion, criminal mischief, larceny, fraud, identity theft, tampering with a witness, intimidating a victim, animal abuse and strangulation, may also apply to elder abuse cases.

# HOW CAN COURTS ENHANCE ELDER JUSTICE?

While not all adults experience significant cognitive or physical decline with age, many will show at least small declines. Others may have more substantial impairments. Courts should make efforts to ensure that all older adults are able to participate in court proceedings to the fullest extent possible.

Courthouse	Courtroom staff
<ul style="list-style-type: none"> <li>■ Ensure signs in courthouse are in large font and in plain language.</li> <li>■ Provide forms and instructions in larger, easier to read font.*</li> <li>■ Have information from Adult Protective Services, NY Connects, local offices for the aging and other services for the aging available.</li> <li>■ If in court's control, consider providing accessible parking for older adults.</li> </ul>	<ul style="list-style-type: none"> <li>■ If available, allow older litigants to wait in an area removed from other parties.</li> <li>■ Background noise should be decreased and lighting increased to the extent possible.</li> <li>■ Let older adults know that assistive listening devices, sign language interpreters, real time computer-aided transcription services (CART) for those who are deaf or hard of hearing, and magnifiers for persons who are visually impaired, may be provided.*</li> <li>■ Make drinking water available.</li> </ul>
Judge	Judge, court staff and attorneys
<ul style="list-style-type: none"> <li>■ Familiarize older litigants with seating arrangements in the courtroom and the roles of court staff.</li> <li>■ Explain to older litigants how their case will proceed and how long it is expected to take.</li> <li>■ Seek to accommodate medical needs or fluctuations in capacity and mental alertness when calendaring cases.**</li> <li>■ Schedule a sufficient number of breaks so that an older litigant can address personal needs.*</li> <li>■ Consider giving trial preference in civil cases where a litigant is 70 or older or terminally ill (CPLR §3403).</li> <li>■ Consider using technology, including remote appearances where authorized by law.*</li> </ul>	<ul style="list-style-type: none"> <li>■ Allow time for older person to process information and respond to questions.</li> <li>■ Speak slowly and clearly. When requested, repeat information.</li> <li>■ Face older persons when speaking to them.</li> <li>■ Understand that transportation issues may affect timeliness for those who travel by Access-a-Ride.</li> </ul> <p>*Please also see the New York State Unified Court System's Americans with Disabilities Act and the Courts guide at: <a href="http://inside-ucs.org/oca/professional-ct-services/ADA/2017_ADA_Guide.pdf">http://inside-ucs.org/oca/professional-ct-services/ADA/2017_ADA_Guide.pdf</a></p> <p>** See attached What About Cognitive Challenges for Older Litigants?</p>

# WHAT ABOUT COGNITIVE CHALLENGES FOR OLDER LITIGANTS?

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Judges are often required to evaluate the past, present and/or future capacity of an individual in a variety of contexts including, but not limited to, determining whether: a legal transaction was valid, the appointment of a guardian or guardian ad litem is appropriate, the individual is able testify on his or her own behalf and the individual is a “vulnerable elderly person” under the penal code. Judges should, therefore, know what constitutes normal cognitive aging, as well as understand dementia and how it presents.

**Normal brain aging** As a result of a normally aging brain, some adults may process information slower, experience declines in verbal fluency or the ability to find words, have to work harder at activities requiring executive function, such as time management, paying attention or changing focus, planning, organizing, remembering details and multitasking. Mild forgetfulness can also be a sign of normal aging.

**Mild Cognitive Impairment** is the stage between the normal cognitive decline of aging and the more serious decline of dementia. MCI may present with memory, language, thinking and judgment problems that are greater than normal age-related changes but not severe enough to interfere with daily life and usual activities.

**Dementia** is the term used to describe a group of brain disorders that cause memory loss and a decline in mental function over time.

**Alzheimer’s Disease** is the most prevalent non-reversible form of dementia. Dementia symptoms can vary and include short-term memory loss, difficulty with communication and language, difficulty focusing, problems with reasoning and judgment, disorientation and confusion and visual perception issues.

## **Some conditions that may mimic dementia:**

What may appear to be dementia may be caused by something else that is temporary and/or treatable. Conditions include, but are not limited to, the following:

- Medications which produce side effects such as drowsiness and mental dullness or mixing of medications
- Chronic diseases such as diabetes, arthritis and pain
- Changes in mood, such as depression and anxiety
- Certain infections (urinary tract or upper respiratory)
- Inadequate nutrition and/or hydration
- Vitamin deficiencies, such as B12
- Alcoholism/other substance abuse
- Thyroid problems
- Traumatic brain injury
- Delirium
- Sensory losses, such as hearing or seeing
- Certain mental illnesses