




Elder Abuse Issue Brief

This issue brief is intended to educate California public policy makers regarding the public health problem of elder abuse, an elder abuse policy blueprint and recommendations, and current legislation that may represent potential remedies.

The Problem of Elder Abuse

According to the 2010 Census, there are 4.2 million people age 65 or older in California. The best and most recent major studies on elder abuse incidence reported that 7.6% - 10% of study participants experienced abuse in the prior year.^{2,3} It is noteworthy that the study incidence finding of 1 in 10 adults experiencing abuse did not include financial abuse, one of the most prevalent types of elder abuse.⁴ This research would suggest that, **in California, hundreds of thousands of vulnerable elder adults are abused annually.** This is supported by the California Attorney General's Office estimate⁵ that 200,000 vulnerable adults⁶ (i.e. elder and dependent adults) are abused in our state every year.⁷ It is common that some research and estimation of the prevalence or incidence of abuse of vulnerable adults includes both elder and dependent adults. While the focus of this brief is on elder abuse specifically, it is clear that abuse of vulnerable adults, in general, is a major public health concern. Translating the above figures into an average rate of occurrence of abuse of elder or dependent adults is sobering:



 **Every 3 minutes** an elder or dependent adult in California is abused.

Elder abuse is a complex problem with myriad presentations: from **neglect by family caregivers**, to **serial financial abuse by professional predators**, to **late-life domestic violence**, to **sexual assault by long-term care facilities and more**. Between January 2006 and September 2011, new reports of elder abuse in California increased by 20%. In 2011, the California Welfare Director's Association reported a 32% increase in the number of cases alleging financial abuse of elders since 2001.



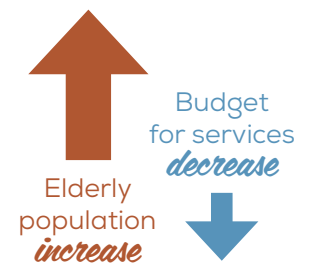
In addition to its impact on victims, studies have shown that elder abuse exacts a heavy toll on public resources:

- ✓ Victims are **four times more likely** than non-abused older adults to go into nursing homes.⁸
- ✓ Victims can be exploited to the extent that they turn to Medicaid as a result of their losses.⁹
- ✓ Victims have a mortality rate that is **three times** that of others in their age cohort.¹⁰

4x more likely to go into nursing homes

3x the mortality rate

At the same time, as the state is experiencing rapid growth in the elderly population (especially those over 85 years, arguably the most vulnerable to abuse and neglect), budget constraints have decimated the safety net for older Californians. Cuts to the Long-Term Care Ombudsman, Adult Protective Services, law enforcement and the courts have all resulted in reduced services to abuse victims. In addition to myriad fiscal challenges, not enough legislative resources have been applied to this issue and many challenges remain unaddressed.¹¹



The World Health Organization has defined elder abuse as a violation of human rights and a significant cause of illness, injury, loss of productivity, isolation and despair.¹² A public health problem affecting hundreds of thousands of Californians annually necessitates raising public awareness and applying system-wide fiscal and legislative solutions.

Elder justice advocates have been hard at work investigating the many problems associated with elder abuse and identifying related policy needs. Resultant comprehensive, long-term elder abuse policy recommendations have been captured by the California Elder Justice Coalition in *Improving California's Response to Elder Abuse, Neglect, and Exploitation: A Blueprint*. This document can be found at wiseandhealthyaging.org/cejc.

As can be seen in the blueprint, many policy actions are needed to make significant strides toward ending elder abuse and protecting vulnerable adults. It is not realistic that all of these policy recommendations be enacted at once, and therefore the focus of this brief is on policy recommendations that are timely for this legislative season and for which current legislation presents possible remedies.

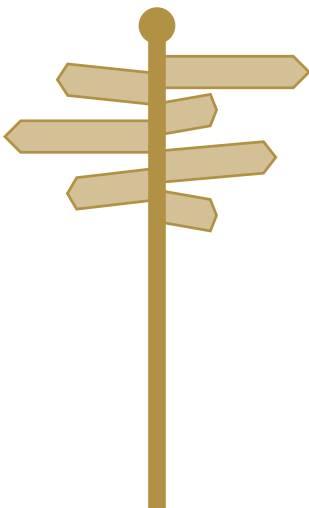
Current Policy Recommendations

1. Solutions That Address Outdated, Unclear Legal Definitions



One of the issues impacting the safety of California elders is outdated, unclear legal definitions. The CEJC Blueprint, referenced earlier, points out the confusion regarding legal terms in California's legal system. As one example, the legal definition of 'undue influence' was written into the state Civil Code in 1872 and has not been modified since. Since that time, the concept of undue influence has become particularly important in cases of financial elder abuse. The standing archaic, narrow and ambiguous definition of undue influence makes it more difficult for the modern legal system to intervene in related cases of elder abuse and neglect. As possible, via legislative remedy, it is important to clarify and modernize important legal terms such as 'undue influence.'

2. Providing Elder Victims Access to Resources



Victims of elder abuse can benefit from mental health services, legal assistance, shelter, access to existing programs and other support resources. Sadly these victims do not receive all of the resources that they deserve. There are existing laws that provide for certain services and programs, such as address confidentiality, to "victims of violence" (e.g. domestic violence, stalking) that do not necessarily include victims of elder abuse. Further, a variety of funding streams have been created to support victims of crime, but they are not always accessible to elder victims. In California, the Victims Compensation Fund, for example, often allocates resources only toward victims of violent crime. This California policy leaves the many seniors who are victims of non-violent elder abuse, such as financial exploitation, without access to resources that could benefit them. California policy should be modified, whenever possible, to ensure that existing resources, rights and funding streams are made available to victims of elder abuse. Specifically, victims of elder abuse should be supported in their efforts to leave situations of violence (e.g. readily vacating a tenancy where abuse occurred) and supported in their efforts to remain safe (e.g. by ensuring confidentiality).

3. Stronger Regulatory Oversight of Residential Care Facilities for the Elderly



Many elders reside in Residential Care Facilities for the Elderly (RCFE), which include assisted living facilities and board and care homes. Unfortunately, these facilities, as a whole, are largely unregulated, lacking sufficient oversight and resident protections to ensure that resident rights and wellbeing are properly protected. The State Long Term Care Ombudsman program was created to assist and help protect elderly persons in long term care facilities including RCFE's. The Ombudsman is supposed to have unencumbered access to residents and facilities to ensure that residents are protected and their rights maintained. Unfortunately, some facilities inhibit or restrict Ombudsman access, which can put elderly residents at risk. The current penalty for such behavior does not appear to be a deterrent, calling for stronger consequences.

The CEJC blueprint points out that there are myriad problems in RCFE's including:

- ✓ Barriers to investigation and prosecution for abuse in facilities
- ✓ Failure of facilities to become licensed
- ✓ Lack of basic safety features such as fire sprinklers leading to elder and dependent adult deaths
- ✓ Lack of adequate rights and protections for residents and their families. For example, facilities can require advanced notice to terminate admission agreements upon the death of a resident or may assess fees after the death of residents.

Increased oversight and regulation of RCFE's, as possible via legislative remedy, is needed to help ensure the safety and wellbeing of elderly residents.

4. Increase the Number of Professionals Required to Report Suspected Elder Abuse



Research has shown that elder abuse is widely under-reported: in one study as few as 1 out of every 23 cases is ever brought to the attention of Adult Protective Services or the police.¹⁵ There are many professionals that interface with elders regularly, and who therefore may witness abuse, but who are not legally mandated to report suspected abuse. The CEJC blueprint lists federal employees (e.g. postal workers), notaries, and others in this category. To increase identification of elder abuse and subsequent intervention to stop it, it is important to further widen the mandate to include more reporters. In recent years, religious leaders and financial institutions were made mandated reporters.

5. Stop the Use of Deceptive Business Practices Targeting Elders



Because elders, generally speaking, have more available wealth via pensions, retirement, Social Security, property, etc. than younger people, they are targeted by unscrupulous businesses and individuals. Many types of financial exploitation, like investment scams, impact elders. Businesses will use deceptive marketing and sales tactics to appeal to elders and secure their business at the expense of the elder. These tactics include pressuring quick decisions, glossing over important information, or appealing to an elder's sense of trust. Businesses have used patriotic logos and/or military insignia to inappropriately appeal to elders sense of patriotism or trust in government to sell a product or service. Reverse mortgages, for example, have been improperly "sold" to seniors as tools to improve their financial position; however, the vendor did not take the time and effort to ensure that the senior truly understood the terms and suitability of the mortgage for their needs. Deceptive practices and tactics used by businesses to target and take advantage of seniors need to be outlawed.

Current Legislation

In the current session of the California Legislature, there are some bills that have been introduced that should be investigated and considered by legislators as possible remedies to the problems and policy recommendations described above.¹⁴ These bills include:

- ✓ **AB 140** (Dickenson): this bill proposes to update the outdated, unclear legal definition of the term ‘undue influence.’
- ✓ **AB 381** (Chau): this bill would authorize the recovery of attorney’s fees where property of an elder’s estate is wrongfully taken through financial abuse or by a power of attorney.
- ✓ **SB 60** (Wright): this bill specifies that elders and dependent adults who are victims of financial exploitation should have access to and be eligible for compensation from the Victim Compensation Fund.
- ✓ **AB 849** (Garcia): this bill adds victims of elder abuse to existing law protecting confidentiality of victims of violence.
- ✓ **SB 612** (Leno): this bill modifies existing law to allow a victim of elder abuse to avail of more professional support resources to assist in terminating a tenancy.
- ✓ **AB 462** (Stone): this bill mandates that RCFE’s install and maintain operable fire sprinklers in their facilities for resident safety.
- ✓ **AB 261** (Chesbro): this bill prohibits an RCFE from requiring advanced notice for termination of an admission agreement upon a resident’s death, prohibits the facility from assessing any fees once the deceased personal property is removed, and may also include language around refunding fees paid after resident death.
- ✓ **SB 609** (Wolk): this bill increases penalties for long term care providers that inhibit the Ombudsman program’s access to residents or interfere with State efforts to investigate facilities.
- ✓ **AB 477** (Chau): this bill would make notaries public mandated reporters of suspected financial abuse of elders and dependent adults.
- ✓ **SB 272** (Corbett): this bill would prohibit businesses (and other non-governmental entities) from using the deceptive practice of displaying military designations to appeal to elder veterans and their families when marketing their non-military products and services.
- ✓ **AB 553** (Medina): this bill would require that a senior applying for a reverse mortgage fill out a reverse mortgage suitability checklist and pre-counseling self-evaluation worksheet to ensure that they understand the suitability and terms of the reverse mortgage. This is to help ensure that seniors are not sold mortgages that they do not understand and/or that are not a good fit for their needs.

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For additional information on elder abuse visit:

www.ncea.aoa.gov | www.centeronelderabuse.org

www.americanbar.org/groups/law_aging/resources/elder_abuse.html

REFERENCES

1 UC Irvine’s Center of Excellence on Elder Abuse and Neglect is committed to eliminating abuse of the elderly. Established in 2005 in the UC Irvine School of Medicine’s Program in Geriatrics, it was a first-of-its-kind program in the United States. In Orange County, CA, the center provides medical, forensic, and victim services to abused and neglected seniors while serving as a “living laboratory” of innovative approaches. Statewide and nationally, the center serves as a source of technical assistance expertise, multidisciplinary training, useful research, and relevant policy. The award winning center was designated the National Center on Elder Abuse in 2011 by the U.S. Administration on Aging.

2 Lifespan of Greater Rochester, Inc., Weill Cornell Medical Center of Cornell University, & New York City Department for the Aging. (2011) *Under the Radar: New York State Elder Abuse Prevalence Study*. New York: Author.

3 Acierno R, Hernandez MA, Amstadter AB, Resnick HS, Steve K, Muzzy W, et al. (2010). Prevalence and correlates of emotional, physical, sexual, and financial abuse and potential neglect in the United States: The national elder mistreatment study. *American Journal of Public Health, 100*(2), 292-297.

4 Teaster PB, Dugar T, Mendiondo M, Abner EL, Cecil KA, & Otto JM. (2004). The 2004 survey of adult protective services: Abuse of adults 60 years of age and older. Washington DC: National Center on Elder Abuse.

5 There is no comprehensive system in California to collect data on the incidence and prevalence of elder abuse. Current estimates are based on monthly reports from local Adult Protective Services programs to the California Department of Social Services. Currently, there is less than one FTE at CDSS assigned to the APS program.

6 “Vulnerable adults” in California are categorized by state law into two groups: 1) anyone 65 years of age or older; or 2) anyone 18-64 years of age who has physical or mental limitations that restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities, or whose physical or mental abilities have diminished because of age. CAL. WIC. CODE § 15610.23.

7 California Department of Justice’s Bureau of Medi-Cal Fraud & Elder Abuse and Crime & Violence Prevention Center, 2002, accessed at <http://oag.ca.gov/sites/all/files/pdfs/bmfea/guide.pdf>?

8 Rovi, S., et al. 2009. “Mapping the Elder Mistreatment Iceberg: U.S. Hospitalizations with Elder Abuse and Neglect Diagnosis.” *Journal of Elder Abuse & Neglect* 21(4): 346–59.

9 Gunther, J. (2011). The Utah cost of financial exploitation. Retrieved September 6, 2012 from <http://hs.utah.gov/pdf/utah-financial-exploitation-study.pdf>.

10 Lachs MS, Williams CS, O’Brien S, Pillemer KA, Charlson ME. The Mortality of Elder Mistreatment. *JAMA. 1998;280*(5):428-432. doi:10.1001/jama.280.5.428.

11 Currently, there is only one standing committee in the California State Legislature – the Assembly Committee on Aging & Long-term Care – that provides oversight, analysis and engagement on issues related to older Californians. Despite the fact that nearly 13% (or 5 million) of the state’s total population are 65 or older.

12 http://www.who.int/violence_injury_prevention/violence/global_campaign/en/chap5.pdf Accessed 2/20/13.

13 Op cit., Lifespan of Greater Rochester.

14 These bills are subject to change as the legislative session progresses.