Elder Abuse & Civil Orders for Protection: A Florida Courts Benchcard

Definitions

- ☐ "Elderly person" means a person 60 years of age or older who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunctioning, to the extent that the ability of the person to provide adequately for the person's own care or protection is impaired. §825.101(5), Florida Statutes.

- ☐ "Caregiver" means a person who has been entrusted with or has assumed responsibility for the care or the property of an elderly person. §825.101(2), Florida Statutes.

- ☐ "Abuse of an elderly person" means:
  - Intentional infliction of physical or psychological injury upon an elderly person;
  - An intentional act that could reasonably be expected to result in physical or psychological injury to an elderly person; or
  - Active encouragement of any person to commit an act that results or could reasonably be expected to result in physical or psychological injury to an elderly person.

  §825.102(1), Florida Statutes.

- ☐ "Aggravated abuse of an elderly person" occurs when a person:
  - Commits aggravated battery on an elderly person;
  - Willfully tortures, maliciously punishes, or willfully and unlawfully cages, an elderly person; or
  - Knowingly or willfully abuses an elderly person and in so doing causes great bodily harm, permanent disability, or permanent disfigurement.

  §825.102(2), Florida Statutes.

- ☐ "Neglect of an elderly person" means:
  - A caregiver's failure or omission to provide an elderly person with the care, supervision, and services necessary to maintain the elderly person's physical and mental health; or
  - A caregiver's failure to make a reasonable effort to protect an elderly person from abuse, neglect, or exploitation by another person.

  §825.102(3), Florida Statutes.

- ☐ "Lewd or lascivious offenses committed upon or in the presence of an elderly person" include:
  - Lewd or lascivious battery upon an elderly person or disabled person;
  - Lewd or lascivious molestation of an elderly person or disabled person; and
  - Lewd or lascivious exhibition in the presence of an elderly person or disabled person.

  §825.1025(2)-(4), Florida Statutes.

- ☐ "Exploitation of an elderly person" means:
  - Knowingly, by deception or intimidation, obtaining or using, or endeavoring to obtain or use, an elderly person's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the elderly person or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person.

  §825.103(1)(a), Florida Statutes.

- ☐ All forms of elder abuse as defined in Chapter 825 are felonies. §825.102, Florida Statutes.

Some Possible Indications of Elder Abuse and Neglect

- ☐ Physical/Sexual Abuse - Slap marks, unexplained fractures, bruises, welts, cuts, sores, burns, nonconsensual sexual contact.
- ☐ Emotional Abuse - Withdrawal from normal activities, unexplained changes in alertness, or other unusual behavioral changes; aggressive or controlling caregiver.
- ☐ Financial Abuse/Exploitation - Sudden change in finances and accounts, altered wills and trusts, unusual bank withdrawals, checks written as "loans" or "gifts," loss of property, improper use of power of attorney.
- ☐ Neglect – Lack of basic hygiene, lack of medical aids (glasses, walker, hearing aid, medications, etc.), hoarding, incapacitated person left without care, pressure ulcers, malnutrition, or dehydration.

Center for Elders and the Courts, The National Center for State Courts, *Identifying and Responding to Elder Abuse: A Benchcard for Judges* 1 (2012).

Mandatory Reporting

- ☐ Any person, including, but not limited to, any: State, county, or municipal criminal justice employee or law enforcement officer who knows, or has reasonable cause to suspect, that a vulnerable adult has been or is being abused, neglected, or exploited shall immediately report such knowledge or suspicion to the central abuse hotline. §415.1034(1)(a)5, Florida Statutes.

Possible Injunctive Relief

Abuse by Family Members

- ☐ Order for Protection Against Domestic Violence.
  - Petitioner and respondent must be family or household members. §741.30(1)(e), Florida Statutes.
  - "Family or household member" means spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family. The family or household members must be currently residing or have in the past resided together in the same single dwelling unit. §741.28(3), Florida Statutes.
  - For further information please see the Domestic Violence Checklist.

Abuse by Non-relative Caregivers

- ☐ Order for Protection Against Repeat Violence.
  - Two incidents of violence or stalking committed by the respondent, which are directed against the petitioner or the petitioner's immediate family member. §784.046(1)(b), Florida Statutes.
  - One of the two incidents of violence or stalking must have been within 6 months of the filing of the petition. §784.046(1)(b), Florida Statutes.
  - For further information please see the Repeat Violence Checklist.

Abuse by Individuals in a Dating Relationship

- ☐ Order for Protection Against Dating Violence.

- Violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature. The existence of such a relationship shall be determined based on the consideration of the following factors:
    1. A dating relationship must have existed in the past 6 months;
    2. The nature of the relationship must have been characterized by the expectation of affection or sexual involvement between the parties; and
    3. The frequency and type of interaction between the persons involved in the relationship must have included that the persons have been involved over time and on a continuous basis during the course of the relationship. §784.046(1)(d), Florida Statutes.
- For further information please see the Dating Violence Checklist.

Sexual Abuse

☐ Order for Protection Against Sexual Violence.

- While the statutory definition of sexual violence does not specifically include elders, the statute does include "any forcible felony wherein a sexual act is committed or attempted." §784.046(1)(c), Florida Statutes. Acts described in §825.1025, Florida Statutes, are construed to meet this definition.
- Any victim of sexual violence has standing in the circuit court to file a sworn petition for an injunction for protection against sexual violence <u>if</u>:
    1. The petitioner reported the sexual violence to law enforcement and is cooperating in any criminal proceeding against the respondent, regardless of whether criminal charges based on the sexual violence have been filed, reduced, or dismissed by the state attorney; <u>or</u>
    2. The respondent who committed the sexual violence was sentenced to a term of imprisonment in state prison for the sexual violence and the respondent's term of imprisonment has expired or is due to expire within 90 days following the date the petition is filed. §784.046(2)(c), Florida Statutes.
- For further information please see the Sexual Violence Checklist.

Stalking

☐ Order for Protection Against Stalking.

- "Cyberstalk" means to engage in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or communication, directed at a specific person, causing substantial emotional distress to that person and serving no legitimate purpose. §784.048(1)(d), Florida Statutes.
- For further information please see the Stalking Violence Checklist.

Guardianship & Elder Abuse

☐ Breach of a fiduciary duty to an elderly person by the person's guardian or agent is exploitation. §825.103(1)(c), Florida Statutes.

☐ In cases where there does not appear to be a risk of serious irreparable harm, the action steps by the court, based upon the problem identified, should include:

- The judge enters an order appointing a monitor. The ward, guardian, attorney, and any other parties are notified of the appointment upon entry of the order, as prescribed by Florida law. §744.107, Florida Statutes.
- The monitor works with the appropriate entities to obtain additional information, and submits a written report to the court.
- The court takes appropriate action based upon the report, up to and including setting a hearing if necessary.

- In extreme or egregious situations, the court should impose appropriate sanctions against the guardian and/or attorney.

☐ In cases where it appears there is the substantial likelihood for serious irreparable harm (similar to the injunctive relief standard), immediate action steps by the court should include but not be limited to:

- The judge enters an order appointing a monitor. At the judge's discretion, the order of appointment may not be made public until the judge determines whether there is probable cause. §744.1075, Florida Statutes.
- The monitor works with the appropriate entities to obtain additional information, and submits a written report to the court.
- Simultaneously, the court should immediately take any other appropriate actions the court deems necessary in accordance with Florida law, including:
  - Filing an abuse, neglect, or exploitation complaint with DCF.
  - Referring to local law enforcement agencies or the state attorney.
  - Conducting immediate hearings.
  - Issuing subpoenas and summonses.
  - Entering appropriate injunctions involving assets.

Committee on Guardianship Monitoring, Supreme Court Commission on Fairness, *Guardianship Monitoring In Florida* 22 (2003).

Remediation & Case Management Tools

☐ Tailor injunctions to individual circumstances.
☐ Schedule review hearings to ensure compliance with court orders.
☐ Encourage the use of victim/witness advocates throughout the judicial process.
☐ Ensure the courtroom is accessible and accommodates impairments.
☐ Expedite cases in which elder abuse is an underlying factor.
☐ If possible, consolidate ancillary cases involving the same family or victim.
☐ Calendar cases to accommodate medical needs and fluctuations in capacity and alertness.
☐ While preserving the defendant's right of confrontation, consider procedures that assure the elder victim's testimony is memorialized.

Center for Elders and the Courts, The National Center for State Courts, *Identifying and Responding to Elder Abuse: A Benchcard for Judges* 1 (2012).

Additional Resources

FLORIDA ABUSE HOTLINE	800-96ABUSE
CENTER FOR ELDERS AND THE COURTS	http://eldersandcourts.org
NATIONAL CENTER FOR STATE COURTS	http://www.ncsc.org/Topics/Children-Families-and-Elders/Elder-Abuse/Resource-Guide.aspx
NATIONAL CENTER ON ELDER ABUSE	http://www.ncea.aoa.gov
FLORIDA DEPT. OF ELDER AFFAIRS	http://elderaffairs.state.fl.us/
OFFICE OF COURT IMPROVEMENT	http://www.flcourts.org/gen_public/family/publications_new.shtml

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