



# HEALTHCARE PROVIDER ELDER ABUSE PREVENTION, DETECTION, & REPORTING



Adult Protective  
Services



# Introduction

- Welcome!
- Webinar Format
- Questions
- Resources
- Claiming CMEs/CEUs
- Digital Content Access

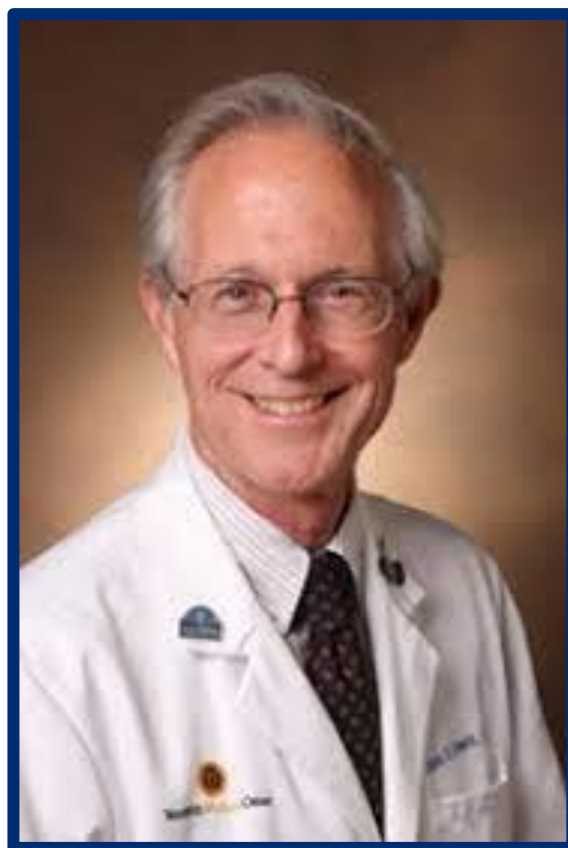


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# Objectives

## Participants will be able to:

1. Increase the recognition, reporting, and response to older and vulnerable adult neglect, abuse, and exploitation.
2. Improve provider assessments, documentation, and reporting techniques.
3. Advance understanding of processes for prosecuting elder abuse cases and the role of healthcare professionals.



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# Elder Abuse: Clinical Practice Challenges

## Lack of provider training

- *Training opportunities increase awareness and the likelihood of appropriate reporting*

## Nursing home residents are particularly vulnerable to abuse

- *Providers can help facilitate open staff communication, training, and collaboration*

## Cases can be difficult to prosecute and may present obstacles for the victim

- *Multi-disciplinary team involvement increases access to resources (neuropsychological testing, medical, and legal records) and increases the likelihood of successful prosecution.*

# Elder Abuse Risk Factors

*\*Patient, Caregiver or Both*

- Cognitive impairment
- Dependency
- Family conflict
- Family history of abusive behavior/s
- Intellectual disabilities
- Financial distress or lack of funds to meet caregiver health demands
- Isolation
- Inadequate living arrangements
- Stressful family events

From Fulmer T. Mistreatment of older adults. In: Durso SC, Sullivan GM, editors. Geriatrics review syllabus: a core curriculum in geriatric medicine. 8th edition. New York: American Geriatrics Society; 2013. p. 105; with permission.

# Classification of Elder Abuse

- Financial
- Physical
- Sexual
- Emotional
- Caregiver Neglect
- Self Neglect



# Elder Abuse Indicators

- General
- Abuse
- Neglect
- Exploitation
- Abandonment

*Data from* Fulmer T. Elder mistreatment assessment. Try this: best practices in nursing care to older adults. 2008;15. Available at: [www.consultgerirn.org/](http://www.consultgerirn.org/). Accessed March 17, 2014; and Fulmer T. Mistreatment of older adults. In: Durso SC, Sullivan GM, editors. Geriatrics review syllabus: a core curriculum in geriatric medicine. 8th edition. New York: American Geriatrics Society. 2013. p. 105.



Adult Protective Services



# Provider Identification & Response

- Indicators
- Assessment
  - Depending on setting
- Action
  - APS referral
  - Safe environment
  - Caregiver support
  - Referrals for wrap around services



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Tennessee Adult Protective Services

# Reporting to APS

- APS Centralized Statewide Intake System
  - 7 days a week/24 hours a day
- Reports may be received:
  - By Phone: APS Hotline 1-888-APS-TENN (1-888-277-8366)
  - Online: <https://reportadultabuse.dhs.tn.gov>
  - By Mail to: Davidson County DHS, 227 French Landing, First Floor, Nashville, TN 37228

# APS Criteria

- Age 18 or over
- Impaired functional status that prevents self-protection
  - Mental Health
  - Physical health
  - Frailty due to advanced age
  - No others willing to assist
- Allegation(s) of abuse, neglect, financial exploitation
- Alleged perpetrator is caregiver (except for sex abuse)

# APS & Self Neglect

- **May 1, 2023:** APS will no longer investigate allegations of Self Neglect;
- Once we receive a report of self neglect we provide the information to CREST (Collaborative Response to End Self Neglect in Tennessee);
- Make sure the reports of alleged Self Neglect are still called into the State APS Hotline;
- Clients are referred by Adult Protective Services (APS) and need emergency services due to self-neglect;
- CREST will respond to the emotional and physical needs of the client to help stabilize their lives and reduce the risk of harm. Services may include: Emergency housing assistance;
- The referral has to be made through APS, so it's important to continue to report through APS.



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# “Elderly Adult” Defined

- “Elderly adult” means a person seventy (70) years of age or older;
- T.C.A. § 39-15-501.



# “Vulnerable Adult” Defined

- “Vulnerable adult” means a person eighteen (18) years of age or older who, because of **intellectual disability** or **physical dysfunction**, is unable to fully manage the person's own resources, carry out all or a portion of the activities of daily living, or fully protect against neglect, exploitation, or hazardous or abusive situations without assistance from others.
- T.C.A. § 39-15-501.

# Intellectual Disability

- Onset can be prior to 18 or after 18
- (16)(A) “**Intellectual disability**” means... substantial limitations in functioning:
  - (i) As shown by **significantly sub-average intellectual functioning** that exists concurrently with related limitations in **two (2)** or more of the following adaptive skill areas: **communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure, and work**; and
- **Adult on-set causes** could include a traumatic brain injury or a disease process such as early onset Alzheimer’s, Frontotemporal Dementia, brain tumor, etc.

# Additional Punishments Provided for These Crimes

- Increases the class of offense by 1 or 2 levels because it involved an elderly or vulnerable adult.
- \$1000 Mandatory Minimum Fine on Felonies
- \$500 for Misdemeanor
- Placement on the TN Department of Health Abuse Registry
- An individual on the Abuse Registry cannot work or provide services (even as a volunteer) to vulnerable or elderly persons.
- With a social security number or name, an employer or volunteer agency can check the Abuse Registry at TN.Gov website.

# TCA Abuse of an Elderly or Vulnerable Adult

- § 39-15-510
- It is an offense for a person to knowingly abuse an elderly or vulnerable adult.
- The offense of abuse of an elderly adult is a **Class E felony**.
- The offense of abuse of a vulnerable adult is a **Class D felony**.
- **“Abuse”** means the infliction of physical harm.
- **“Physical harm”** means an action, regardless of gravity or duration, that:
  - A. Causes **pain or injury**; or
  - B. Would cause a reasonable person to suffer pain or injury;

# TCA Aggravated Abuse of an Elderly or Vulnerable Adult

- § 39-15-511
- A person commits the offense of aggravated abuse of an elderly or vulnerable adult who knowingly commits abuse pursuant to § 39-15-510, and:
  - 1) The act results in **serious psychological injury** or **serious physical harm**;
  - 2) A **deadly weapon** is used to accomplish the act or the abuse involves **strangulation** as defined in § 39-13-102; or
  - 3) The abuse results in **serious bodily injury**.
- A violation of subdivision (a)(1) is a Class C felony.
- A violation of subdivision (a)(2) or (a)(3) is a Class B felony.

# Defining Harm

- “Serious psychological injury” means any mental harm that would normally require extended medical treatment, including hospitalization or institutionalization, or mental harm involving any degree of prolonged incapacity;
- “Serious physical harm” means physical harm of such gravity that:
  - a) Would normally require medical treatment or hospitalization;
  - b) Involves acute pain of such duration that it results in substantial suffering;
  - c) Involves any degree of prolonged pain or suffering; or
  - d) Involves any degree of prolonged incapacity;

# Neglect of an Elderly or Vulnerable Adult

- T.C.A. § 39-15-507
- It is an offense for a **caregiver** to knowingly neglect an elderly or vulnerable adult, **so as to adversely affect the person's health or welfare**.
- The offense of neglect of an elderly adult is a Class E felony.
- The offense of neglect of a vulnerable adult is a Class D felony.
- If the neglect is a result of abandonment or confinement and no injury occurred, then the neglect by abandonment or confinement of an elderly or vulnerable adult is a Class A misdemeanor.

# Who is a Caregiver?

- “Caregiver”
  - i. Means a relative or person who has a legal duty to provide care for an elderly or vulnerable adult, whether such duty arises by the relative or person's claim or conduct, contract, or in any other fashion; or
  - ii. Means a person who is married to or in a dating, romantic, or sexual relationship with someone who qualifies as a caregiver under subdivision (4)(A)(i) and resides with or has regular contact with the elderly or vulnerable adult; and
- Does not include a financial institution as a caregiver of property, funds, or other assets unless the financial institution has entered into an agreement, or has been appointed by a court of competent jurisdiction, to act as a trustee with regard to the property of the adult;



# Who is a Relative?

- “Relative” means a current or former spouse; child, including stepchild, adopted child, or foster child; parent, including stepparent, adoptive parent, or foster parent; sibling of the whole or half-blood; step-sibling; grandparent, of any degree; grandchild, of any degree; and aunt, uncle, niece, and nephew, of any degree, who:
  - a) Resides with or has frequent or prolonged contact with the elderly or vulnerable adult; and
  - b) Knows or reasonably should know that the elderly or vulnerable adult is unable to adequately provide for the adult's own care or financial resources;

# Neglect

- “Neglect” means
  - i. The failure of a caregiver to provide the care, supervision, or services necessary to maintain the physical health of an elderly or vulnerable adult, including, but not limited to, the provision of food, water, clothing, medicine, shelter, medical services, a medical treatment plan prescribed by a healthcare professional, basic hygiene, or supervision that a reasonable person would consider essential for the well-being of an elderly or vulnerable adult;
  - ii. The failure of a caregiver to make a reasonable effort to protect an elderly or vulnerable adult from abuse, sexual exploitation, neglect, or financial exploitation by others;
  - iii. Abandonment; or
  - iv. Confinement

# Abandonment

- “Abandonment” means the knowing desertion or forsaking of an elderly or vulnerable adult by a caregiver under circumstances in which there is a reasonable likelihood that physical harm could occur

# Confinement

- Means the knowing and unreasonable restriction of movement of an elderly or vulnerable adult by a caregiver;
- Includes, but is not limited to:
  - i. Placing a person in a locked room;
  - ii. Involuntarily separating a person from the person's living area;
  - iii. The use of physical restraining devices on a person; or
  - iv. The provision of unnecessary or excessive medications to a person; and
- Does not include the use of the methods or devices described in subdivision (5)(B) if used in a licensed facility in a manner that conforms to state and federal standards governing confinement and restraint.

# Aggravated Neglect of an Elderly or Vulnerable Adult

- T.C.A. § **39-15-508**
- A **caregiver** commits the offense of aggravated neglect of an elderly or vulnerable adult who commits neglect pursuant to § 39-15-507, and the act:
  - Results in **serious physical harm**; or
  - Results in **serious bodily injury**.
- In order to convict a person for a violation of subdivision (a)(1), it is not necessary for the state to prove the elderly or vulnerable adult sustained serious bodily injury as required by 39-13-102 but only that the neglect resulted in serious physical harm.
- A violation of subdivision (a)(1) is a Class C felony.
- A violation of subdivision (a)(2) is a Class B felony.

# Sexual Exploitation of an Elderly or Vulnerable Adult

- T.C.A. § 39-15-512
- It is an offense for any person to knowingly sexually exploit an elderly adult or vulnerable adult.
- A violation of this section is a Class A misdemeanor.

# Sexual Exploitation of an Elderly or Vulnerable Adult

- **“Sexual exploitation”** means an act committed upon or in presence of an elderly or vulnerable adult, without that adult's effective consent, that is committed for the purpose of sexual arousal or gratification, or for the purpose of dissemination to others by a person who knew or should have known the act would offend or embarrass a reasonable person.
- **“Sexual exploitation”** includes, but is not limited to, sexual contact, as defined in § 39-13-501; exposure of genitals to an elderly or vulnerable adult; exposure of sexual acts to an elderly or vulnerable adult; exposure of an elderly or vulnerable adult's sexual organs; an intentional act or statement by a person intended to shame, degrade, humiliate, or otherwise harm the personal dignity of an elderly or vulnerable adult; or an act or statement by a person who knew or should have known the act or statement would cause shame, degradation, humiliation, or harm to the personal dignity of an elderly or vulnerable adult.

# Sexual Exploitation of an Elderly or Vulnerable Adult

- “Sexual exploitation” does not include any act intended for a valid medical purpose, or any act reasonably intended to be a normal caregiving act, such as bathing by appropriate persons at appropriate times;



# Rape

- T.C.A. § 39-13-503
- Rape is unlawful sexual penetration of a victim by the defendant or of the defendant by a victim accompanied by any of the following circumstances:
  - 1) Force or coercion is used to accomplish the act;
  - 2) The sexual penetration is accomplished without the consent of the victim and the defendant knows or has reason to know at the time of the penetration that the victim did not consent;
  - 3) The defendant knows or has reason to know that the victim is:
    - a) Mentally defective;
    - b) Mentally incapacitated;
    - c) Physically helpless; or
    - d) A vulnerable adult, as defined in § 39-15-501, with an intellectual disability; EFFECTIVE OCTOBER 1, 2021
  - 4) The sexual penetration is accomplished by fraud.
  - 5) Rape is a Class B felony.

# Financial Exploitation

- “Financial exploitation” means:
  - a) The use of deception, intimidation, undue influence, force, or threat of force to obtain or exert unauthorized control over an elderly or vulnerable adult's property with the intent to deprive the elderly or vulnerable adult of property;
  - b) The breach of a fiduciary duty to an elderly or vulnerable adult by the person's guardian, conservator, or agent under a power of attorney which results in an appropriation, sale, or transfer of the elderly or vulnerable adult's property; or
  - c) The act of obtaining or exercising control over an elderly or vulnerable adult's property, without receiving the elderly or vulnerable adult's effective consent, by a caregiver or accomplice committed with the intent to benefit the caregiver or other third party;

# First Degree Murder

- First Degree Murder TCA § 39-13-202 now includes a murder perpetrated in the commission of aggravated abuse or neglect of an elderly or vulnerable adult. Effective January 1, 2019

# Case Study 1

79-year-old woman is brought by neighbors to the ER because she has been left alone by her family for several days. She appears wasted, confused, and has several bruises on the arms. She states that she wants to return home with her family.

# Case Study 1: Key Concepts

1. Elder abuse encompasses physical, emotional, financial, and sexual abuse, as well as neglect;
2. Seniors with dementia, disabling illness, and heavy care needs are more likely to be victims of abuse;
3. Differentiate between competency and judgment.

# Case Study 1: APS Key Concepts

APS: The clients capacity is what drives the train.

There are 4 key concepts in assessing:

1. The ability to understand information about the decision (the 'relevant' information);
2. The ability to retain the information long enough to make the decision;
3. The ability to use, or 'weigh up' the information as part of the decision making process (Risks Versus Benefits);
4. The ability to communicate their decision through any means.

# Case Study 1: Legal Prosecution

- In a nutshell, we're looking for:
  - a) Who is a caregiver?
  - b) How much of a caregiver role have they taken on?
  - c) Did they fail in the role they took on and how?
  - d) How much more of a caregiver role should they have taken on and didn't?
  - e) What will you say as the medical professional about how their failure as caregiver adversely affected the victim's health and welfare?

# Case Study 1: Legal Prosecution

- Several exceptions to the hearsay rule allow what you record in your medical records to be used in court to prosecute a perpetrator of abuse or neglect.
- Please record in the **patient's own words and the family's own words** as much as possible (and using quotation marks when appropriate) what she/they tell you about the following:
  - What is her normal living situation with details?
    - Lives with family full time versus someone stopping in to check on her periodically. If periodically, what are the details about who is supposed to check on her and when?
  - What is her normal level of functioning?
    - Completely independent versus needs help with ADL.



# Case Study 1: Legal Prosecution

- What care level does the family involved provide?
  - Grocery shopping, preparing meals, changing her, bathing her, driving her to doctor's appointments, etc.
- Is them leaving her alone for several days how things normally work? If not, what caused the change in pattern?
  - Illness/emergency with caregiver versus went to Vegas and didn't secure a replacement caregiver.
- Did she ever tell them she needed more help or ask them to provide her additional care and what was their response?

# Case Study 2

85 y/o woman, lives alone with advanced dementia. Concerned daughters live nearby. Neighbor reports to DHS for wandering in the street.

# Case Study 2: Key Concepts

1. What are usual care needs for early, mid, and late-stage dementia?
2. Describe home and community resources for dementia victims and caregivers
3. How would you counsel the patient's daughters?

# Case Study 2: APS Key Concepts

- Assess mental capacity
- Assess in home environment
- Is the daughter responsible for the mother?
- Medical evaluation (Rule out Urinary Track Infection/ Infection/Stroke....)
- 24/7 supervision/ In home/Assisted Living/Skilled Facility
- Community resources: CCR team

# Case Study 2: Legal Prosecution

- If her health or welfare was not adversely affected by the wandering, there may not be a criminal charge.
  - If there was an adverse affect, we would want to ask the same questions as we discussed in case 1.
  - However, she may not be a good historian because of her dementia. If she isn't, then asking those questions of the “concerned daughters” is doubly important.

# Case Study 2: Legal Prosecution

In addition to those questions, we would be looking for you to record any statements they made about their awareness of how bad their mother's dementia was and/or her tendency to wander because of the dementia.

- For example: "I knew she was getting out of the house, and I should have changed the door locks" or "The neighbor warned me she was wandering." or "I knew her dementia was getting a lot worse."

# Resources

- **APS**
  - APS Hotline 1-888-APS-TENN (1-888-277-8366)
  - Online: <https://reportadultabuse.dhs.tn.gov>
- **Healthcare Facilities Commission**
  - To File a Facility Complaint dial 877-287-0010
- **Health Licensure and Regulation**
  - To File a Licensed Provider Complaint 800-852-2187
- **Tennessee Department of Health**
  - Office of Patient Care Advocacy 615-741-5879
- **Elder Abuse Taskforce**

# Resources

- Attorney General
- Tennessee Commission on Aging and Disabilities
- Tennessee Department of Commerce and Insurance



# References

- Imer, T. (2013). Mistreatment of older adults. In: S. C. Durso & G. M. Sullivan (Eds.), *Geriatrics review syllabus: A core curriculum in geriatric medicine, 8th ed*, (105). American Geriatrics Society.
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