

Mandatory Reporting of Elder Abuse: Implications for Domestic Violence Advocates

**National Clearinghouse on Abuse in Later Life (NCALL),
A Project of the Wisconsin Coalition Against Domestic Violence**

By Bonnie Brandl, M.S.W.

For further information or to order additional copies, contact:

National Clearinghouse on Abuse in Later Life (NCALL)
Wisconsin Coalition Against Domestic Violence (WCADV)
307 South Paterson, Suite #1
Madison, WI 53703
Phone: 608 255-0539
TTY/Fax: 608 255-3560
E-mail: ncall@wcadv.org
Website: www.ncall.us

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This project was supported by grant number 2001-X1043-WI-MU awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions and recommendations expressed in this publication are those of the author and do not necessarily reflect the views of OVW or the Department of Justice.

The National Clearinghouse on Abuse in Later Life (NCALL)

is a project of WCADV. NCALL’s mission is: to eliminate abuse of older adults and people with disabilities by family members and caregivers by challenging beliefs, policies, practices and systems that allow abuse to occur; and to improve safety, services and support to victims through advocacy and education.

The Wisconsin Coalition Against Domestic Violence (WCADV)

is a statewide membership organization of domestic abuse programs, formerly battered women, and other individuals who have joined together to speak with one voice against domestic abuse. As a statewide resource center on domestic violence, we offer such services as:

- Training and technical assistance to domestic abuse programs;
- A quarterly education journal;
- Forums for the involvement of battered women;
- Networking and support for programs for battered women and professionals in related fields;
- Training for professionals in legal, medical, social service, child welfare, housing, education, aging, and mental health fields and for employers throughout Wisconsin;
- Technical assistance for attorneys, legal advocates, prosecutors and public defenders, health workers, elder abuse, disability and child welfare professionals, and limited funds for victims to acquire direct legal assistance.

About the Author

Bonnie Brandl is the Project Coordinator for the National Clearinghouse on Abuse in Later Life (NCALL), a project of the Wisconsin Coalition Against Domestic Violence (WCADV). Ms. Brandl has worked with battered women and their children for over 17 years and WCADV for 14 years. Her published articles, manuals and booklets on domestic abuse in later life have been distributed throughout the country. For the past nine years, she has presented at numerous national, regional, statewide and local conferences on domestic and elder abuse. Ms. Brandl has a Masters in Social Work from the University of Wisconsin – Madison. She currently lives near Boulder Colorado with her family.

Dedication

This issue paper is dedicated to Carol Seaver. Carol worked with hundreds of older abused women at the Milwaukee Women's Center. She was one of the most passionate advocates for older abused women I have had the privilege to work with and learn from. Carol designed the Milwaukee Women's Center older abused woman program to focus on meeting each woman where she was at – providing information and support to an older victim whether she chose to remain in contact with her abuser or was in the process of ending the relationship. Carol's creativity and cooperative spirit were key traits in building one of the most successful domestic abuse in later life programs in the country. When I was having difficulty finding a voice for this document, I thought about Carol. Her philosophy and practice inspired me to link this discussion about mandatory reporting to the power of women-focused and victim-centered advocacy.

Acknowledgements

This document would never have been completed without the assistance of numerous professionals throughout the country. I appreciate the guidance I've received from adult protective services workers, domestic violence advocates and others throughout the country. Special thanks to the participants of the 2002 National Association of Adult Protective Services Administrators conference and advocates at the 2004 National Coalition Against Domestic Violence conference who completed surveys and spoke with me about their experiences with mandatory reporting.

I am deeply grateful and appreciative to Candace Heisler, Tess Meuer, Joanne Otto, Jane Raymond, Deb Spangler, Carol Thompson, and Ann Turner, who not only reviewed this document and shared their expertise and wisdom but provided significant guidance and emotional support throughout the numerous revisions of this document.

The American Bar Association Commission on Law and Aging provided the legal research for this document and drafted the chart found in Appendix One and Tables 1 - 4. Special thanks to Lori Stiegel, Julia Bueno, and Sandra Hughes for their legal analysis and assistance.

Many thanks to all of the WCADV staff members for their continued support. I am indebted to Ann Brickson and Susan Ramspacher for their feedback about this issue paper. It is a privilege to work with the NCALL team of Deb Spangler, Ann Turner, and Michelle Zallar. I appreciate their assistance getting this document completed and their day-to-day work on behalf of older victims of abuse.

Finally, I want to give special acknowledgement to Janice Green, grant administrator from the Office on Violence Against Women for her patience, support and encouragement throughout this project.

Bonnie Brandl

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CAVEATS

1. The target audience for this issue paper is local and state domestic violence advocates. Some of the material in this document may be relevant and useful for sexual assault advocates, including the charts on mandatory reporting in each state, however, sexual abuse and assault in later life are not fully discussed in this document.
2. This issue paper promotes women-focused and victim-centered advocacy for victims of all ages. Women-focused advocacy “starts from the woman’s perspective, integrates the advocate’s knowledge and resources into the woman’s framework, and ultimately values her thoughts, feelings, opinions, dreams – that she is the decision-maker, the one who knows best, the one with the power” (Davies and Lyons, 1998). A multidisciplinary response may also be most effective for most older victims and is strongly encouraged.
3. **This document does not represent or provide legal advice.** Readers are encouraged to research the laws, case decisions and practices in their own state, because statutes may have changed since the legal research was completed in Spring 2004. When making decisions about confidentiality, information sharing and mandatory reporting, especially if the action differs from the wishes of the victim, agency policy, and/or state law, the author suggests talking with a lawyer(s) for more information.
4. The term Adult Protective Services (APS) includes both adult protective services and elder abuse programs. Some states, like Wisconsin, have separate elder abuse agencies programs as well as government adult protective service departments, but the term APS in this document includes any type of social service agency that receives reports of suspected elder abuse, conducts investigations and provides case management services.
5. While older men are victims of abuse in later life at higher rates than their younger counterparts, the majority of abuse in later life victims are female. The majority of older victims that receive assistance and advocacy from domestic violence programs are women. Therefore, this document will focus on older women, although mandatory reporting laws also apply to older male victims.

INTRODUCTION

The number of older persons living in America continues to rise. Unfortunately, some of these older individuals are being abused, exploited or neglected. Increasingly older persons, their family or friends, or professionals are contacting domestic violence programs asking for services for elder victims.

In many states, domestic violence staff members are mandated reporters of elder abuse. Many domestic violence advocates find mandatory reporting of elder abuse victims to social services complicated and/or controversial. Domestic violence programs have strong policies on confidentiality to enhance victim safety and support a trusting relationship between advocates and victims. Some feel that reporting requirements may impede the advocate's relationship with the victim. Others are concerned that reporting may not be beneficial to the victim and in some cases may increase the risk of danger.

This issue paper is designed to assist domestic violence advocates in finding the necessary information to engage in critical analysis of how to provide safety and women-defined or victim-centered advocacy in an environment of mandatory reporting of elder abuse. Several key issues must be examined and analyzed when considering best practice and development of policies, protocols and procedures. This issue paper contains five key sections:

- Defining the Issues: The Complexity of Mandatory Reporting of Elder Abuse for Domestic Violence Advocates
- Domestic Abuse in Later Life: The Nexus between Elder Abuse and Domestic Violence
- State Statutes and Requirements: What Domestic Violence Advocates Need to Know About Mandatory Reporting of Elder Abuse
- What Happens to Elder Abuse Reports: The Adult Protective Services Response
- Women-Focused and Victim-Centered Advocacy: Implications for Practice

Appendix One contains checklists and handouts for advocates to assist with understanding domestic abuse in later life and mandatory reporting. These materials summarize key concepts discussed in this issue paper and may be useful for training front line advocates and working through policy implications. Appendix Two is a state-by-state chart of statutory language regarding reporting requirements. Appendix Three lists resources on elder abuse and domestic violence in later life. The final appendix lists additional resources on mandatory reporting.

SECTION ONE

Defining the Issues:

The Complexity of Mandatory Reporting of Elder Abuse for Domestic Violence Advocates

Mandatory reporting statutes require individuals to report some cases of abuse and/or neglect to law enforcement, social services and/or a regulatory agency. Depending on the state, child abuse, domestic violence, elder abuse, gunshot wounds, or abuse against vulnerable adults may need to be reported. Who must report varies based on state statute. In some states everyone must report suspected abuse. In other states, certain professional groups are mandated reporters, while others are encouraged to voluntarily report suspected abuse or neglect. This report will focus exclusively on instances where staff of domestic violence programs are or may be required to report elder abuse to adult protective services (APS) or lead elder abuse agencies.

For many domestic violence advocates mandatory reporting of elder abuse to adult protective services (APS) is a controversial and/or complex issue. Supporters of mandatory reporting believe victims will be safer because many elders may not recognize that they are being abused, are unaware of services or may be too afraid or physically unable to seek help on their own. Mandatory reporting can enhance their safety by linking them with services that will provide information and referrals to improve their living situations. (Hyman, 1994; Chestney, 2001; Freed and Drake, 1999). In addition, mandatory reporting offers an opportunity to provide training on abuse issues to professionals and persons who are mandatory reporters. Reminding professionals of their obligation to report can enhance their understanding of the dynamics of abuse (Hyman, 1994). Proponents of reporting also suggest that holding the abuser accountable potentially enhances the safety of the victim (Hyman, 1994; Chestney, 2001). Mandatory reporting may also lead to a greater number of cases reaching authorities and being documented,

thereby increasing understanding of prevalence and incidence (Hyman, 1994; Chestney, 2001).

Those opposed to mandatory reporting of elder abuse believe adult victims should have the right to decide if they want help and from whom. Some professionals argue that it is an ageist response to treat some victims differently simply because they are age 60 or age 65 and older (Faulkner, 1982). Risks and consequences of mandatory reporting can include: 1) risk of retaliation by the perpetrator; 2) reduced victim decision-making power; and 3) broken trust and confidentiality. Some authors have argued that victims may be in greater danger because there is no guarantee that reporting will result in successful APS intervention (Capezuti, 1997). The perpetrator may retaliate because the “secret” is out or be more careful not to get caught. Victims may become more isolated and have freedoms curtailed as a result of an investigation (Hyman, 1994). Even a successful investigation does not mean that the perpetrator will be removed or that the victim will be safer in the short or long run. Mandatory reporting may also take the decision about whether or not to ask for help and from which agency away from the victim. Victims lose the right to say whether or not an investigation can take place and who learns about the abuse. Some professionals fear that victims will not return to get help if they know a report will be made. Others worry that breaking confidentiality will harm their relationship with the victim. Unsubstantiated cases can fuel the abuser emotionally abusive behavior. The abuser can tell the victim that the abuse is not really happening, “I’m not really hurting you – the social worker doesn’t even believe you or think what I am doing is wrong.”

Some professionals and authors argue that mandatory reporting assumes that supportive services are in place with qualified staff and necessary resources. Unfortunately, the current trend in this economy is increasing numbers of victims per caseload and dwindling or eliminated resources. Without adequate services and resources, ineffective interventions can lead to

revictimization or no resolution. “If supportive services are not available, then mandatory reporting will be a cruel hoax, creating an expectation that cannot be met.” (Ambrogio and London, 1985) “Most state laws are, in fact, symbolic, and exist primarily to express the states’ commitment to the goal of reducing elder mistreatment without requiring a significant disbursement of state or federal funds” (Daniels, 1999). In addition to limited funding for victim services, there are few quality treatment programs for perpetrators of abuse in later life – both young men and women who abuse their older parents, grandparents or other older family members and treatment programs for elders who abuse their spouse/partners.

Like any laws created to deal with a problem or issue, mandatory reporting has created unintended consequences. Below are some comments from domestic violence advocates about the unintended consequences of reporting laws and APS intervention in their state.

“In my state, when capacity is not an issue, APS will not keep a case open. Generally, they are mandated to send a caseworker to the house to check out an allegation and then close the case. This puts the victim in an impossible situation with an abuser who then feels bolstered because he/she has no impediments, further isolating the victim and deteriorating safety.”

“In our state, if a victim is age 60 or older, APS can become involved. She may run a corporation, perform brain surgery or work in the Senate. Because she is age 60 or older, she will be identified as in need of APS.”

“I work in a hospital-based domestic abuse program. Women of all ages are screened for domestic violence in a long list of other health questions. For younger women, if they say yes, an advocate will meet with them and use an empowerment model to see what, if anything, they want. Women over 60 will also get to meet with an advocate, but I have to make a report to APS. These women went from coming in for health care to having a state agency open an investigation into their private lives.”

“If I have to report every woman over age 60 to APS, there is no confidentiality. Every word of every conversation with a person over 60 is no longer between the victim and me.”

“If the elder is still clear thinking, they should still have the right to privacy (confidentiality) to make their own decisions on what to do – we can give options – but with mandatory reporting we are treating them like helpless children.”

In addition to the issues listed above, many domestic violence advocates are especially concerned about privacy, safety and confidentiality. Based on decades of experience with battered women and their children, confidentiality is a cornerstone of the domestic violence movement and must not be compromised lightly. Victims are often only willing to share the most intimate, painful experiences of their lives if they are assured that these details will be kept confidential. Many victims are at greatest risk for being stalked, seriously injured or killed while getting help or terminating a relationship with an abuser (Zorza, 1995). Batterers are notorious for using creative strategies to get information about victims and what they have disclosed from professionals. Often this information is used against victims, for example, in custody cases, divorces, or to obtain a power of attorney. In some cases, working with systems such as social services or law enforcement does not enhance a victim's safety but rather increases her risk. An older woman may be threatened and beaten by her abuser if she talks to a social worker or after the abuser is released from jail following a domestic violence related arrest. Many advocates who are mandated to report are concerned about violating the trust relationship with the victim and increasing her risk of harm. Confidentiality policies mandated by state statute or funding sources, may also conflict with mandatory reporting laws.

In addition to being controversial, mandatory reporting of elder abuse for domestic violence advocates can be complicated and confusing. Legal issues arise when statutes appear to be in conflict regarding an appropriate response (e.g., reporting versus maintaining confidentiality or privilege). Ethical issues also arise if the wishes of the victim are different than the agency policy or statutory mandates. Safety concerns may arise when other professionals and systems are notified about the abuse. To illustrate the complexity of this issue, consider the following examples:

Marion (age 59) has been abused by her husband for 39 years. Earlier this month, he pulled out a gun and threatened to kill her. She contacted the local domestic violence shelter and has been working with an advocate to find her own apartment. The advocate also helped her obtain a restraining order. Marion enjoys participating in the older abused women's support group. Her birthday is tomorrow.

Is the domestic violence program mandated to contact an adult protective services (APS) agency and report elder abuse because Marion turns age 60?

Svetlana (age 55) lives with her elderly mother. She temporarily moved to a domestic violence shelter because her boyfriend was stalking and threatening her. An advocate accompanied Svetlana to her home to get her belongings. While helping her pack, the advocate witnessed Svetlana slap her elderly mother, who is now living alone in the home. The mother is frail and seems to need assistance getting around.

Is the advocate mandated to report to APS?

Maria (age 67) attends an older abused women's support group and described how her new partner pushed her down the stairs last night and forced her to sign over her Social Security check.

Is the support group facilitator mandated to call APS?

A domestic violence advocate works in the justice system and is available to help with paperwork for restraining/protective orders.

Is the advocate mandated to call APS for an elderly victim who only wants to get a restraining order and states she is not interested in any other services? What if the victim says that a home visit by social services would put her at further risk of being abused?

State statutes on mandatory reporting of elder abuse vary so whether or not advocates are required to report any or all of the above situations will depend on where they live. Given the legal and ethical issues advocates face in states with mandatory reporting of elder abuse, there are several components to explore to determine how to best work with older victims of abuse. To best meet the needs of victims, advocates must understand the needs of older victims (Section 2), their statutes and legal responsibilities (Section 3), the response of APS in their community (Section 4) and the importance of women-centered, victim-centered advocacy (Section 5).

SECTION TWO

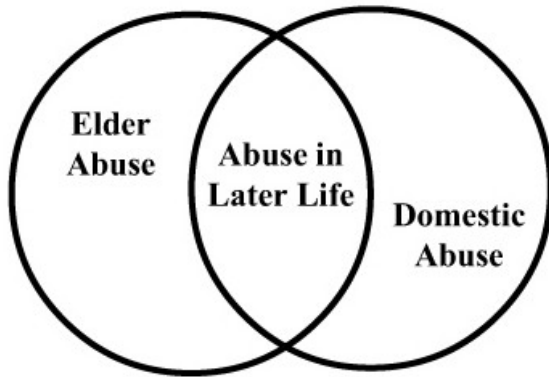
Domestic Abuse in Later Life: The Nexus between Elder Abuse and Domestic Violence

Older victims of abuse may experience both elder abuse and domestic violence. This section will briefly highlight the intersections between elder abuse and domestic violence. Recognizing the types of situations in which elder abuse and domestic violence may co-occur will assist domestic violence program staffs in determining if and when statutory reporting requirements may be in effect.

The term “elder abuse” does not have a universally accepted definition. Each state has created its own statutory definitions. Statutes generally define the age of victim and the forms of abuse that are considered elder abuse. Some state statutes define abuse against a vulnerable adult and include elder victims. The National Center on Elder Abuse states: “Domestic elder abuse generally refers to any of several forms of maltreatment of an older person by someone who has a special relationship with the elder (a spouse, a sibling, a child, a friend, or a caregiver), that occur in the elder’s home, or in the home of a caregiver.” (NCEA website, 2005)

Legal definitions of domestic violence can also be found in state statute. Generally these definitions describe potential relationships between the victim and perpetrator and forms of abusive behavior that may lead to an arrest or restraining/protective order. Schechter (1987) defines domestic violence as a “pattern of coercive tactics used to gain and maintain power and control over the victim.” These tactics can include physical, emotional and sexual abuse. Intimidation, threats, and coercion are common. Abusers may intentionally isolate victims and deny them access to information, resources including money, and other people who might help or support them.

Domestic Abuse in Later Life



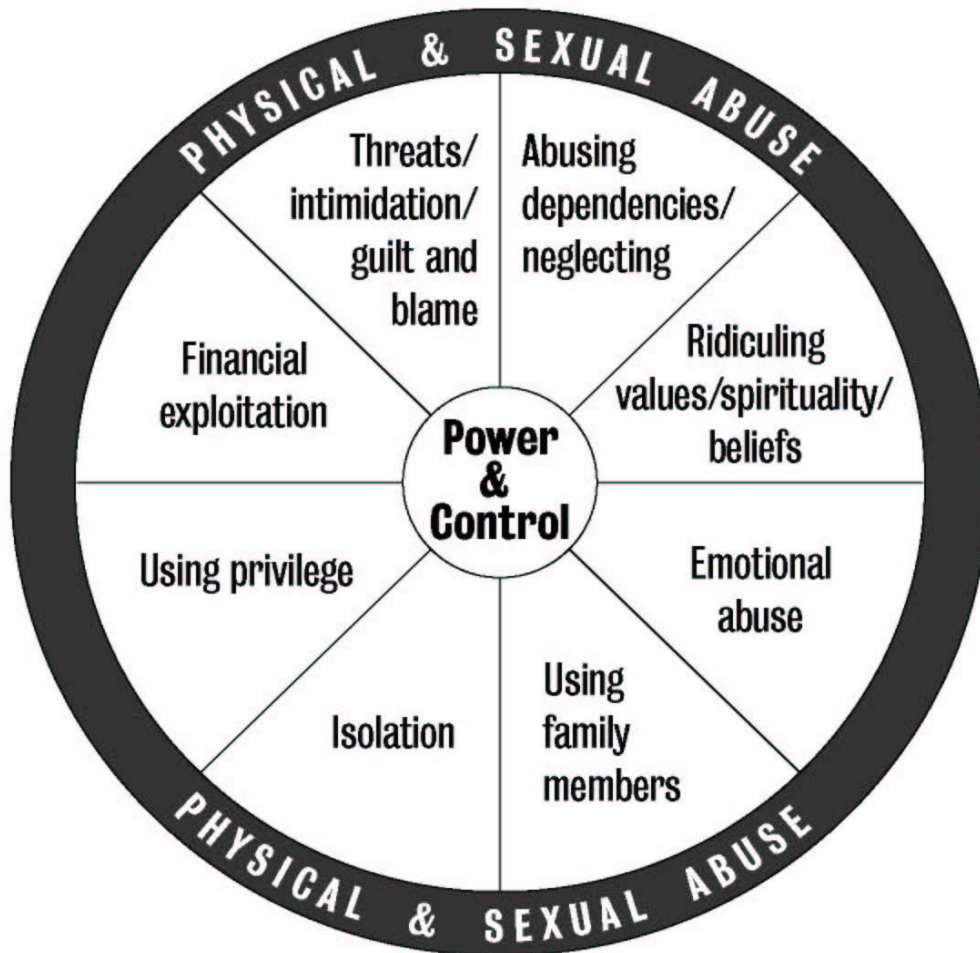
As illustrated in the diagram, a portion of elder abuse and domestic violence overlap. This nexus or intersection is called “domestic abuse in later life.” For the purposes of this discussion, domestic abuse in later life includes female victims ages 50 and older who are harmed by someone they care about or love (including but not limited to intimate partners). Victims come from all racial, ethnic, economic and religious

backgrounds. Some victims are healthy and active; others have illnesses, are frail or have disabilities. Many victims are competent and live independently. Some older victims may have dementia or other cognitive disabilities that result in difficulty processing information.

In cases of domestic abuse in later life, abusers have an ongoing relationship with the victim, such as being a spouse/partner, adult child or other family member, or in some cases a caregiver. The perpetrators most often use a pattern of coercive tactics to gain and maintain power and control to punish or dominate their victims. While caregiver stress and some medical conditions may be factors that contribute to the harm of elders, most often abusers believe they are entitled to do whatever is necessary to set the rules and get their way. As with younger battered women, victims of abuse in later life face a variety of tactics, such as physical, sexual and emotional abuse, financial exploitation, neglect, threats and intimidation, and isolation at the hands of their abusers. Older victims may also have their values and/or spirituality/religious

beliefs ridiculed. Some older victims experience neglect or have needed medications, medical equipment or assistive devices (such as walkers, glasses or dentures) misused or withheld. Examples of various forms of abuse can be found on the Family Violence in Later Life Power and Control wheel created by older abused women attending support groups in Wisconsin, Minnesota and Illinois.

Family Violence in Later Life



Wisconsin Coalition Against Domestic Violence
 307 S. Paterson St., Suite 1, Madison, WI 53703
 (608) 255-0539 / FAX: (608) 255-3560

This diagram is based on the Power and Control/Equality wheels developed by the Domestic Abuse Intervention Project, 202 East Superior Street, Duluth, MN 55802 (218) 722-2781 www.duluth-model.org

Elder abuse, domestic violence, sexual abuse and abuse against a person with a disability can co-occur. Sexual abuse is defined as non-consensual sexual contact of any kind with an elderly person. Sexual contact with any person incapable of giving consent is also considered sexual abuse. While sexual assaults perpetrated by strangers occur, it is more likely that the perpetrator of sexual abuse is a family member (e.g., spouse/partners, adult children, grandchildren) or caregiver. Elder sexual abuse includes, but is not limited to, unwanted touching, all types of sexual assault or battery, such as rape, sodomy, coerced nudity, and sexually explicit photographing (NCEA website, 2004).

Sexual abuse in later life can include inappropriate remarks and threats, forcing the elder to watch pornographic materials or listen to explicit sexual accounts, sexualized kissing and fondling, oral-genital contact, digital penetration, rape and rape by a foreign object. Coerced or forced sexual activity that the victim does not want such as, forced sexual activity when older individuals are exhausted, ill or asleep is considered sexual assault. Sexual abuse involving caregivers may include unwarranted, intrusive, and/or painful procedures that occur during bathing or cleansing of the victim's genitals or rectal area. The application or insertion of creams, ointments, thermometers, enemas, catheters, fingers, soap, washcloths, or other objects into bodily orifices, when not medically prescribed or not necessary for the health and well-being of the individual is also considered sexual abuse (Wisconsin Coalition Against Sexual Assault (WCASA), 1998).

Given the personal nature of sexual assault/abuse, protecting confidentiality may be even more important to elder victims of sexual abuse. As with domestic violence victims, they may be embarrassed and/or ashamed and not want anyone to know. Victims may be concerned about the media attention that can come with reporting and/or a criminal prosecution. The perpetrator

may be a relative, such as an adult son, and the victim may fear the consequences of reporting the crime (i.e., jail sentence for an adult son or retaliation by the perpetrator).

Many older people experience some health problems and/or physical or cognitive disabilities. Victims with disabilities may also have strong reasons for not wanting to report or have information about them or their disability shared. For example, some batterers will use information about a victim's disability against her in court to get a guardianship, attack her disability, or reduce her decision-making powers.

Victims from various racial, ethnic, cultural, and religious backgrounds may experience abuse in different ways. They may define elder abuse differently than advocates, law enforcement or APS. For example, extended families that live together may consider sharing financial resources to be commonsense practice. Professionals viewing the same situation may label the same practice as financial exploitation.

In some communities, it may be considered rude to discuss elder abuse. Strong family ties, images of the roles of women as a spouse or mother, and the value of not sharing private matters outside the community may make intervention strategies challenging or impossible. If older individuals or their families have had a negative experience with law enforcement, social services or government agencies, they may be unwilling to work with professionals from these disciplines.

For more information on domestic abuse in later life, see Appendix Two for a resource list or go to www.ncall.us.

SECTION THREE

What Domestic Violence Advocates Need To Know About Mandatory Reporting Of Elder Abuse

This section will provide domestic violence advocates with some questions to consider about elder abuse reporting requirements. Consider contacting an attorney to determine if other questions need to be explored in a given state. Some questions to consider are:

1. Are domestic violence advocates mandated to report elder abuse in this state? If yes, the following questions apply.
2. Are reports mandated for vulnerable, dependent or at-risk adults, anyone over age 60 or 65 or both?
3. What forms of abuse must be reported? (e.g., physical, sexual and emotional abuse, financial exploitation, neglect etc.)
4. How is a report made, to whom and within what time period?
5. What information is required to be reported and what information can remain confidential?
6. Will APS disclose the source of the report or any details in the report? If yes, to whom?
7. Will the report be shared with other agencies and/or organizations?
8. Are the individuals who report the abuse criminally or civilly liable if the report is not substantiated?
9. Are there criminal or civil penalties for not reporting suspected elder abuse?
10. Are there any other situations, such as danger to self or others, involving older victims that need to be reported to social services or law enforcement?
11. Are there state statutes or agency policies that require advocates not to disclose

information about victims who contact the program?

12. Are there state statutes that hold confidential communications between victims and advocates to be protected from disclosure as privileged communication?
13. How are APS investigations conducted and interventions provided?
14. Are the individuals who report able or entitled to receive information on the outcome of the case?

Keep in mind that this document does not represent or provide legal advice. Readers are encouraged to research the laws, case decisions and practices in their own state, because statutes may have changed since the legal research was completed in the Spring 2004. When making decisions about confidentiality, information sharing and mandatory reporting, especially if the action differs from the wishes of the victim, agency policy, and/or state law, the author recommends talking with an attorney.

1. Are domestic violence advocates mandated to report elder abuse in this state?

Check state law for the answer.

Anyone can make a voluntary report of elder abuse to APS. As of spring, 2004, six states **did not** have **mandatory reporting** of elder abuse: Colorado, New Jersey, New York, North Dakota, South Dakota and Wisconsin. Kansas specifically **exempts domestic violence advocates** from mandatory reporting elder abuse requirements. The Kansas statute states “an employee of a domestic violence center shall not be required to report information or cause a report of information to be made under this subsection.” Advocates in the remaining 43 states and the District of Columbia may need to report in some circumstances. Specific language from state APS statutes can be found in the table in Appendix Two. Additional information

about reporting requirements can be found at the National Center on Elder Abuse website at www.elderabusecenter.org. In elder abuse cases, some state statutes mandate only certain professionals to report. In some states, everyone is a mandatory reporter.

TABLE 1♦
**Who Must Make a Report for Elder Abuse Occurring
in the Community? (Not Facilities)**

| Who is a mandated reporter? | States* | # of states |
|---|--|--------------------|
| DV advocates are listed as mandatory reporters | AK, OK | 2 |
| Professionals must report if abuse is discovered in employment setting | TX | 1 |
| Certain professionals that do not specifically include domestic violence advocates are listed (See Table 3 for specific language) | AL, AZ, AR, CA, CT, DC, GA, HI, ID, IL, IA, MA, ME, MD, MI, MN, MT, NE, NV, OH, OR, PA, SC, VT, VA, WA, WV | 27 |
| Everyone is a reporter | DE, FL, IN, KY, LA, MS, MO, NH, NM, NC, RI, TN, UT, WY | 14 |
| DV advocates exempt from reporting | KS | 1 |
| No mandated reporting of elder abuse | CO, NJ, NY, ND, SD, WI | 6 |

♦ Tables 1 – 4 were created based on legal research completed in 2004 by the American Bar Association Commission on Law and Aging staff. Advocates are encouraged to research state statutes to determine if laws have changed or if other statutes exist that impact mandatory reporting.

* For this and all subsequent charts Washington DC (DC) is included as a State.

Listed in the table below are the states that name domestic violence advocates as mandatory reporters (Alaska and Oklahoma) and the state where information gathered through a person’s employment must be reported (Texas).

TABLE 2
**States Where Domestic Violence Advocates
Are Listed As Mandatory Reporters**

| DV Advocates named as reporters | Language |
|--|--|
| Alaska | “Staff of a project funded by the Council on Domestic Violence and Sexual Assault” as well as social workers, mental health professionals, marriage and family therapists.” |
| Texas | “Duty to report applies without exception to a person who has knowledge concerning possible abuse, neglect, or exploitation obtained during the scope of the person’s employment or whose professional communications are generally confidential.” |
| Oklahoma | “Any person including staff of domestic violence programs specifically listed.” |

In the states listed below, some of the professions described may include domestic abuse advocates. For instance, many domestic abuse programs hire social workers, counselors, or therapists. In these situations, some staff may be mandatory reporters while others are not. There may also be a need to consider whether these licensed professionals are hired as advocates or as a social worker, counselor or therapist.

TABLE 3

States Where Certain Professionals Are Listed As Reporters

| DV Advocates likely as reporters due to professions | Language |
|--|--|
| Arizona | Social worker, psychologist |
| Arkansas | Social worker, case manager, case worker, mental health professional |
| California | Licensed social worker, psychologist, psychiatrist, marriage and family counselor |
| Connecticut | Patients' advocate, social worker, psychologist |
| DC | Social worker |
| Georgia | Social work personnel, psychologist, licensed professional counselor |
| Hawaii | Employees or officers of any public or private agency or institution providing social, medical, hospital, or mental health services |
| Idaho | Social worker |
| Illinois | Social workers, professionals engaged in social services, clinical psychologists, marriage and family therapists, professional counselors, personnel of Department on Aging and Area Agency on Aging and provider agencies |
| Iowa | Social worker, certified psychologist |
| Maine | Social worker, psychologist, mental health professional, |
| Maryland | Human services workers "any professional employee of any public or private health or social services agency or provider including any social worker and any case worker |
| Massachusetts | Social worker, family counselor, licensed psychologist |
| Michigan | Employee of an agency licensed to provide health care, educational, social welfare, mental health or other human services; person who provides social welfare, mental health or other human services. |
| Minnesota | Professional who engages in social services |
| Montana | Mental health professionals, attorney |
| Nebraska | Mental health professionals, human services professional, psychologist |
| Nevada | Any person who maintains is employed by or serves as a volunteer for an agency or service which advises older persons regarding the abuse, neglect, exploitation or isolation of an older persons and refers them to persons and agencies where their requests and needs can be met, social worker, psychiatrist, psychologist, marriage and family therapist, attorney. |

| | |
|----------------|---|
| Ohio | Any person engaged in social work or counseling, employee of a community mental health facility, psychologist, attorney, any senior provider |
| Oregon | Licensed social worker, marriage and family therapist, information and referral or outreach worker |
| Pennsylvania | The mandatory reporting provision in the statute applies only to abuse of " an individual who receives care, services or treatment from a facility" and the only mandatory reporters are administrators and employees of a facility (i.e., a domiciliary care home; a home health agency; a long-term care nursing facility; an older adult daily living center; and a personal care home). |
| South Carolina | Social or public assistance worker, mental health specialist, psychologist, counselor, other mental health professional |
| Vermont | Social worker, mental health professional, psychologist |
| Virginia | Any person employed by a public or private agency or facility and working with adults, social workers, mental health professionals |
| Washington | Social worker, employee of social service, welfare, mental health agency |
| West Virginia | Social service worker, mental health professional |

2. Are reports mandated for vulnerable, dependent or at-risk adults, anyone over age 60 or 65 or both?

In the states where domestic violence advocates could be or are mandatory reporters, the next questions examine the circumstances that trigger the reporting requirements. Advocates need to learn whether reporting is required for abuse against vulnerable, dependent or at-risk adults, persons age 60 or 65 and older or both. State statutory definitions differ; see state statute for the specific legal definition. In general, vulnerable adults are persons who cannot take care of themselves and/or report abuse on their own. Often, vulnerable adults ages 18 and older who are being abused must be reported to APS. Advocates must learn the precise definition of a vulnerable adult to determine when reporting is mandated in their state. Keep in mind that many older adults

do not meet the criteria of a vulnerable adult because they have the capacity to take care of themselves and report abuse on their own.

Other states define which type of victim(s) to report in elder abuse cases by age – either 60 and older or 65 and older. In Kentucky, an adult 18 years and older who is being abused must be reported to APS, even if the person is staying in a domestic violence shelter. In Minnesota, anyone 18 and older who receives services from a facility, home health care or personal care and abuse is suspected must be reported. The chart below indicates which states fall into each category.

TABLE 4

Which Victims in Adult Abuse Cases Are Subject to Mandated Reporting When the Abuse Occurs in the Community?

| Scenario | States | # of states |
|---|--|--------------------|
| States where reports are required for any vulnerable adult age 18+ (Not all older people would be considered vulnerable adults) | AL, AR, AZ, AK, DE, DC, FL, HI, ID, IL, IN, IA, ME, MD, MI, MS, NE, NH, NM, NC, OK, SC, TN, WV, WY | 25 |
| States where a report is required if abuse is suspected against anyone age 60 and older | CT, LA, MA, MO, MT, NV, OH, RI, VT, VA, WA | 12 |
| States where a report is required if abuse is suspected against anyone age 65 and older | CA, GA, OR, TX, UT | 5 |
| States where victims of abuse of all ages must be reported | KY | 1 |
| States where anyone 18 and older who receives services from a facility, home health care or personal care and abuse is suspected must be reported | MN, PA | 2 |
| DV advocates exempt from reporting | KS | 1 |
| No mandated reporting of elder abuse | CO, NJ, NY, ND, SD, WI | 6 |

In some states, all citizens are mandated to report and abuse against anyone over age 60 or 65 must be reported. States where everyone is a reporter if abuse occurs to a victim age 60 and older are Louisiana, Missouri, and Rhode Island. In Texas (abuse

detected through professional capacity) and Utah (everyone must report), abuse to a victim age 65 and older must be reported to APS. Kentucky mandates reporting abuse of adult victims age 18 and older to APS. Advocates in states where everyone is a mandated reporter of every elder abuse victim should carefully research their state statutes and APS policies to determine if they are mandated to report abuse of any older victim who contacts their program.

3. What forms of abuse must be reported? (e.g., physical, sexual and emotional abuse, financial exploitation, neglect etc.)

In general, mandatory reporting laws require a report if physical and/or sexual abuse are suspected. Cases of financial exploitation and neglect are also generally included. State laws and definitions vary about the specific forms of abuse that need to be reported. To determine what categories of abuse must be reported in a given state, consult the National Center on Elder Abuse website at www.elderabusecenter.org or contact the state APS administrator.

4. How is a report made, to whom and within what time period?

The logistics of reporting vary from state to state. To find the statewide reporting telephone numbers, consult the National Center on Elder Abuse website at www.elderabusecenter.org for contact information. Advocates need to learn if a report is made to APS, a lead elder abuse agency or law enforcement.

Another issue to consider is the time period during which reports need to be made. According to Daly et al. (2004), “Nine state statutes have no specific time period listed when to report an abuse allegation. Twenty-nine states statutes listed report immediately; four listed 24 hours; one said to report by the end of the next business day;

one required reporting within 48 hours; and one required reporting within 5 days.” Most APS hours are Monday through Friday during business hours. In many states, reports can be made 24 hours a day, sometimes to the state elder abuse hotline or a local after-hours phone system.

5. What information is required to be reported and what information can remain confidential?

Generally callers will be asked to give the name and contact information of the alleged victim. Callers may be asked to describe the suspected abuse to help APS workers assess if the situation requires an emergency response. Reporters will be asked for their contact information so a worker can call back if additional information is needed. In many communities, calls to APS can be made anonymously. In most states, the law protects the confidentiality of the person making the report.

Mandatory reporting does not mean that all information received from a victim must be shared with APS or law enforcement. Learn precisely what information is required to be included in a report to APS. Information outside the scope of the reporting statutes should remain confidential, unless the victim has signed a release form authorizing domestic violence staff to discuss any information she has shared with an advocate. Most domestic violence programs have strict policies about maintaining confidentiality. If additional information is requested by APS for the investigation, advocates should review agency policy, state statutes regarding privileged communication, and contact an attorney to determine, what, if any, additional information can be shared without a signed release from the victim.

6. Will APS disclose the source of the report or any details in the report? If yes, to whom?

Generally, APS agencies have confidentiality guidelines and the identity of the person making the report can remain anonymous. However, domestic violence advocates are encouraged to research state law and local practice regarding confidentiality about the report to APS and/or information in the report.

7. Will the report be shared with other agencies and/or organizations?

In some states and communities, APS and law enforcement exchange reports and/or share information. Advocates should learn if information about a case reported to APS is shared with law enforcement for possible criminal investigation.

Advocates need to determine how APS cases are handled when minor children are living with the older person. Some older women have minor children or are parenting grandchildren. Does a report of elder abuse automatically trigger a report to child protective services (CPS)? Does an APS worker automatically call CPS if a minor child or children are found in the home of an elder abuse victim? What implications will this have on the victim and her working relationship with the domestic violence program?

In addition, some communities have multidisciplinary elder abuse review teams that review elder/adult abuse cases. Teams can consist of representation from APS, law enforcement, prosecution, health care, aging, victim services, and faith-based organizations. Professionals participating on teams are required to sign confidentiality agreements and the victims' names are generally omitted. It is important to understand the protocol of bringing cases to a multidisciplinary team for discussion. Sometimes even with names omitted, team members recognize the details of the case and may

deduce the name of the victim. For some victims, this could put them at risk if a team member is related to or knows the abuser and passes information to the offender.

8. Are the individuals who report the abuse criminally or civilly liable if the report is not substantiated?

In most communities, individuals who report elder abuse are not penalized or fined if the report is made in good faith. They do not need to verify allegations or provide absolute proof needed for an arrest or prosecution. Rather, a report can be made based on suspicion that abuse is occurring. It is the role of APS, not the individual making the report, to investigate allegations of abuse and substantiate cases.

9. Are there criminal or civil penalties for not reporting suspected elder abuse?

According to Daly et al. (2004), thirty-eight states have criminal penalties (such as a fine or jail time) for failure to report allegations of abuse to APS. Some professionals may have licensure ramifications for failure to report. In addition, if a report is not made and a tragedy occurs (such as serious harm or death of the victim), the media may become involved and question the roles and actions of all agencies that had contact with the victim. A program may also be subject to criminal or civil liability if it fails to follow a statutory mandate regarding reporting. However, the author is not aware of any case law where an advocate has faced a penalty for not reporting.

10. Are there any other situations, (such as danger to self or others), involving older victims that need to be reported to social services or law enforcement?

In addition to mandatory reporting, advocates may also have a duty to take action to protect a battered woman or others from harm. This “duty to warn” has been incorporated into professional codes of conduct for social workers, physicians and others.

For example, there is no psychotherapist-patient legal privilege of confidentiality when the psychotherapist has reason to believe the patient is a danger to themselves, others, or the property of others, and disclosure is necessary to prevent the perceived danger (Tarasoff v. Regents of the University of California 17 Cal. 3d 425 (1976)). The duty under Tarasoff has been extended to other kinds of professionals. Even in states that do not have an elder abuse reporting law, some persons may be subject to a duty to warn policy. For example, in Wisconsin, which does not have a mandated reporting law, psychotherapists, and perhaps other professionals, have a legal duty to warn or take action to protect the client and the public from reasonably foreseeable dangerous behavior by the client. Failure to do so could result in tort liability. See *Schuster v. Altenberg*, (1988) 144 Wis. 2d 223. Domestic violence staff can consult professional associations to learn more about codes of conduct. State statutes or an attorney may also provide useful information. Some domestic violence programs may also have policies regarding action that must be taken in certain circumstances, such as when a victim threatens suicide or a perpetrator threatens to kill the victim or others.

In addition, state statutes may mandate reporting by anyone who witnesses a crime in progress. Such statutes impose a duty to aid or report a crime.

11. Are there state statutes or agency policies that require advocates not to disclose information about victims who contact the program?

Due to the crafty ability of many abusers to gather information about their victims, domestic violence programs have strict policies and procedures about sharing information about any person who uses their services. Often funding sources or state statutes mandate that domestic violence programs establish strict confidentiality policies.

For example, Wisconsin has a nondisclosure law that states that domestic violence programs cannot disclose information about victims who seek services except in rare circumstances, such as accepting subpoenas.

Agencies may also have policies in place about mandatory reporting for child abuse and elder abuse. These policies may include a description of when reports should be made, who makes the final decision about making a report, how victims are notified, and necessary documentation. Putting these types of laws and policies in context with mandatory reporting requirements may require advice from an attorney. State domestic violence coalition staff may also be a resource to examine the legal complexity of laws that possibly conflict with each other.

12. Are there state statutes that hold confidential communications between victims and advocates to be protected from disclosure as privileged communication?

Some states have statutes about confidential or privileged communication between those seeking services and battered women's advocates. Privileged communication generally means that any information (verbal or file notes) between an advocate and a victim seeking services will remain strictly confidential and cannot be shared with others without a signed release from the client. Privileged communication laws vary from state to state as to who is subject to privilege and in what circumstances.

Putting these types of laws and policies in context with mandatory reporting requirements may require advice from an attorney. State domestic violence coalition staff may also be a resource to examine the legal complexity of laws that possibly conflict with each other.

13. How are APS investigations conducted and interventions provided?

Section 4 will describe general investigative processes and services available through APS. Domestic violence advocates should make an effort to understand practices on the local level. Section 5 will discuss the potential safety risks for some older victims of some investigative practices and suggested remedies to address them. Specifically, advocates may want to meet with local APS staff to learn the following:

- a. What information needs to be included in a report?
- b. What is the process for investigation? How soon does a worker make a home visit, if at all? What follow-up occurs if the worker is unable to talk with the alleged victim? If APS uses a standardized assessment tool, ask to review the form and do so from the perspective of a domestic violence victim.
- c. What services can APS provide?
- d. How do APS workers handle situations where an alleged victim refuses an investigation and/or refuses to accept any services?
- e. How does an APS worker decide if the elder abuse victim is making informed choices about her safety?
- f. How do APS workers and DV advocates define safety? Are there differences in what this word means for each discipline?
- g. Do APS workers develop safety plans with older victims?

In the context of domestic violence, safety planning means more than ensuring there are grip bars in the bathroom and rugs that are secure so no one trips. Safety planning means creating a plan with the victim to get help in dangerous situations, including identifying which rooms are safer if the victim is being attacked;

knowing where weapons are located; having a cell phone or other method for getting help; and packing a small kit of necessary papers and items if the victim needs to leave quickly etc.

- h. Are cases handled differently if the victim has a cognitive disability or has a guardian? What if the guardian is the alleged abuser?
- i. What confidentiality policies do APS workers operate under? Can APS share client information with other professionals or family members without a signed release? Professionals can inadvertently inform the abuser; family members often inform the abuser.
- j. How much training do APS workers have on domestic violence and sexual abuse?
- k. Does APS notify perpetrators of their investigation or the outcome? Can the perpetrator appeal the findings (a strategy that may be used to continue to have contact with the victim)?
- l. Does APS leave phone messages or mail or leave information for the victim if they do not talk directly to her? Leaving information about abuse or services where an abuser can find it can put some victims at greater risk.
- m. Does APS perform collateral interviews including talking to friends, family or neighbors about the allegations; and if so, how do they provide for victim safety and confidentiality?
- n. Are reports shared with law enforcement or any other agencies?
- o. Discuss diverse populations within the community. How are the needs of older victims from various racial and ethnic groups and gay, lesbian, bisexual and transgendered persons addressed both by APS and domestic violence programs?

- p. Are APS workers familiar with the restrictions placed on domestic violence programs to protect confidentiality? In cases where a client consents to have her information shared with APS, are APS workers aware a domestic violence advocate must have consent forms from the client to speak with or to release information to the APS worker?

The best way to get this information is to build a relationship with local APS workers and learn about each other's systems together. If domestic abuse advocates bring this list of questions to a meeting and act as if APS workers are being interrogated or their professional integrity is being questioned, it will be difficult to work collaboratively in the best interest of victims. Rather, advocates may want to start with rapport building with APS. Questions should be framed as a way to share information back and forth from both systems. Each discipline has probably encountered challenges working with older victims of abuse and can learn from each other to improve the response. Many APS workers are unfamiliar with the operating philosophy and procedures of domestic violence programs. Ideally, sharing information between both systems will lead to a stronger working relationship and identification of service gaps.

14. Are the individuals who report able or entitled to receive information on the outcome of the case?

Due to confidentiality policies, APS is often not able to provide information about the outcome of a case. However, advocates are encouraged to research state law and local practice to determine if they will be able to learn the outcome of an APS investigation.

Where To Find Answers to the Questions Discussed in the Section

Gathering the information to the questions listed in this section may take time and discussions with various professionals. Most of the information can be gathered by contacting the state level APS administrators' office, often located within the state Department of Health and Family Services. In many states, APS is located within bureaus of aging or adult services responsible for individuals with disabilities. The National Center on Elder Abuse website (www.elderabusecenter.org) has information on mandatory reporting laws and contact information for state level APS administrators. Local APS workers may also be extremely helpful and can assist advocates with contact information for state APS administrators.

Answers to some of the other questions outlined in this section may be found by contacting the state domestic violence coalition and/or state elder abuse coordinating councils. An attorney may need to be retained to examine various state statutes and to provide legal advice if there are conflicting mandates.

SECTION FOUR

What Happens To Reports Of Elder Abuse: The APS Response

Each state has created its own APS system to respond to cases of elder abuse and/or abuse against vulnerable adults. Definitions and statutes vary from state to state. In most states, in addition to responding to elder abuse, APS programs also serve vulnerable adults age 18 to 59 who are reported to be victims of abuse, exploitation, neglect and self-neglect. In some states, APS workers investigate abuse that occurs in regulated facilities (such as nursing homes and assisted living centers), in addition to the investigations conducted by regulatory agencies.

APS Guiding Ethical Principles

Every action taken by APS must balance the duty to protect the safety of the vulnerable adult and/or older person with the adult's right to self-determination. Unless a court order has limited the victims' rights due to lack of capacity, older adults retain their full array of civil rights. This core value is the basis for all APS service delivery. APS often walks the fine line between trying to protect abused adults' safety and, at the same time, support their rights to make their own decisions, even if victims' choices seem like poor decisions to APS workers. Guiding principles that are the foundation of all APS work include:

- Adults have the right to be safe.
- Adults retain all their civil and constitutional rights unless some of these rights have been restricted by court action.
- Adults have the right to make decisions that do not conform with societal norms as long as these decisions do not harm others.

- Adults are presumed to have decision-making capacity unless a court adjudicates otherwise.
- Adults have the right to accept or refuse services.

APS workers share an ethical value that older people and people with disabilities who are victims of abuse, exploitation or neglect should be treated with honesty, care and respect (NAPSA Ethical Principles and Best Practice Guidelines, 2003).

APS Reports and Case Management

APS programs receive reports of alleged elder abuse from victims, neighbors, professionals and/or interested others. Most APS programs receive reports; conduct investigations; evaluate client risk and capacity to make informed decisions; develop and implement a case plan; and offer services. APS is designed to work primarily with crisis situations, providing case management by identifying needs and working with victims to get them linked with services.

In general, APS workers conduct investigations by visiting alleged victims in their homes or other places of residence (e.g., long term care facility). Investigations generally are opened within 24 hours in emergency situations and within 72 hours (approximately, depending on state statutes) for non-emergencies. The worker typically goes alone to the home, although in some situations APS may send two workers or be accompanied by law enforcement. The worker will meet with the victim to assess the situation and determine if the allegation of abuse can be substantiated and if there is an immediate risk of further harm to the victim. APS evaluates the older individual's living environment, ability to function and perform daily living tasks and process and understand information. Generally these interviews are done privately, away from the suspected perpetrator. The suspected offender may also be interviewed depending on the

case allegations. Collateral interviews, such as talking to friends, family, physicians and neighbors, may also occur. In some areas, the worker makes several visits and does not find the victim home, in some areas, a letter with information about abuse and services will be mailed to the victim.

Services Available from APS

Once a case has been investigated, APS may offer a number of services. Generally, competent victims have the right to accept or reject any services. In some communities, a report may also be filed with law enforcement if criminal activity is suspected. In a few states, the perpetrator is notified of the outcome of the investigation.

If an allegation of abuse is substantiated and the victim is capable of giving informed consent for the provision of services, APS can arrange for a wide variety of services including, but not limited to, medical, social, economic, legal, housing, home health, protective, other emergency or supportive services. In most communities, victims who have the capacity to give informed consent may refuse any or all of these services. Victims who lack the capacity to give informed consent and are in imminent danger may have emergency services ordered by the court. In some cases, APS may seek the appointment of a temporary guardian. Depending on state laws and regulations, APS may continue to monitor these services once they have been put in place, and to provide counseling or casework services until the victim's risk has been reduced or eliminated. If the court deems a victim is not competent, the court empowers a guardian or APS to make decisions on behalf of the victim, including removing the person from the home.

Primary Activities/Functions of APS/Elder Abuse Agencies

- Take reports of abuse, exploitation and neglect
- Information and referral
- Make a face to face contact with the victim within 24-72 hours
- Assess immediate risk to the victim
- Evaluate the victim's capacity to make informed decisions
- Investigate and substantiate abuse
- Develop a case plan
- Provide short term case management and counseling
- Arrange for the provision of supportive services including, but not limited to, :
 - Referrals for physical and mental health assessments
 - Cleaning services
 - Financial management
 - Transportation
 - Home modification to meet the needs of persons with disabilities
 - Temporary medications
 - Assistive Devices
 - Food services including meals on wheels, food stamps when applicable
 - Emergency housing
 - Home repairs including roofing, floor, and walls
 - Pest and animal control
 - Respite care or other provider services
 - Residential placement
 - Linkage to all other service groups
 - Assistance with applications for health care and/or financial benefits
- Apply for temporary emergency guardianship court actions
- Assist with restraining/protective orders
- Testify in civil and criminal court actions (Otto, 2004)

Training for APS Workers

APS line workers generally have a bachelor's degree in a social service related discipline. Some APS workers have received training on domestic violence, while others have not. According to the State Adult Protective Services Training Programs Report 2001, approximately half of new workers and experienced APS workers have received training on domestic violence (Otto, Castano and Marlatt, 2002). The amount of training time and content varies from state to

state. Cross training between domestic violence advocates and APS has occurred in some communities and several states.

The amount of training on cultural diversity may also vary for APS workers. In some communities, workers may be well-versed in diversity issues, have translators available and provide materials printed in a variety of formats and languages. In other areas, diversity training may not have occurred. Workers may or may not have received information regarding working with victims from the gay, lesbian, bisexual and transgendered communities.

SECTION 5

Women-Defined And Victim-Centered Advocacy

Woman-defined advocacy “provides a pragmatic approach to working with battered women that acknowledges and builds on women’s perceptions and responses to their partners (abusers) power and control. Woman-defined advocacy does not ensure that a battered woman or her children will be safe – rather, it seeks to craft the alternatives that will enhance someone’s safety, given the realities facing each battered woman. It is not the goal of woman-defined advocacy that women should stay in violent relationships, but when staying provides the best possible alternative, woman-defined advocacy supports a woman’s decision and works with her to keep her and her children as safe as possible. Until all systems respond sympathetically and effectively for all battered women, and until batterers stop battering, the response to battered women must acknowledge these limitations and the realities of women’s lives. Woman-defined advocacy is advocacy for the real – not the ideal – world and for women with real, not stereotypic, lives. Woman-defined advocates who work with individual battered women to enhance their safety will not passively accept the real but limited choices for women. Systemic advocacy to improve local agency and policy response to domestic violence is an integral part of woman-defined advocacy.” (Davis and Lyons, 1998)

Being a battered women’s advocate can be difficult and challenging. An advocate’s role is to listen without judgment as women of all ages describe some of the most painful moments of their lives. Advocates try to understand the challenges victims face while trying to live free from abuse and recognize that battered women often have few and/or poor options available.

Advocates respond to victims by providing information on the dynamics of abuse and trauma reactions. They support women as they work through the myriad of emotions that often come to the surface during intervention. In addition, they provide information and referrals on resources throughout the community that may help victims live free from abuse. Advocates stand with victims as they make difficult personal choices and support whatever decisions they make.

Effective advocates have learned how to meet each individual victim “where she is at.” They see her as a capable adult who can make her own decisions if she has accurate information

about her options. Skilled advocates recognize they should not use their professional power and control to guide a victim to make choices the advocate deems best, rather the victim must weigh her options and determine her own next steps.

Sometimes advocacy requires challenging systems and/or other professionals to ensure that victim safety is paramount and to remove obstacles for victims. In some situations, professionals may not recognize how their actions or lack of response puts the victim at risk. At these times, advocates are called on to work on behalf of the victim to confront the other professionals or systems to improve their responses. Women-defined or victim-centered advocacy focuses on victim safety and challenges practices that increase danger or create barriers for victims. This section will describe potential issues for some older victims and domestic violence programs. The highlighted areas include: 1) Internal protocol issues for domestic violence programs; 2) Ethical reporting guidelines for reporting elder abuse to APS; 3) APS investigative practices that may put some older victims at risk; and 4) Policy and legislative implications. Possible remedies for each of these issues are also described.

Internal Protocol Issues For Domestic Violence Programs

Safety and confidentiality are strong guiding principles for domestic violence programs. Battered women who come to domestic violence programs are often in life threatening situations. They may have been recently beaten or sexually abused. The shelter can be a place for a woman and her to children to heal. Abusers often tell battered women that if they ever leave, they will be stalked, seriously harmed or killed. Battered women are at greatest risk for being seriously injured or killed when they are separating from an abuser and/or getting help (Zorza, 1995). In recognition of these serious risks, domestic violence programs have rigorous confidentiality policies.

When a victim is trying to escape from an abuser, the batterer may try many methods to find her. Abusers have been known to pretend to be a law enforcement officer, social worker or doctor. Perpetrators have pretended to be gas or phone repairmen to get inside the shelter. Female friends of the abuser have contacted domestic violence programs and asked for the victim saying they were her sister or friend. Some of these women even have pretended to be victims to get into the shelter where they believe the victim is staying. Batterers have pressured or threatened other family members and/or friends if they do not reveal her location. One woman was found because her sister-in-law worked at the state Department of Health and Family Services. This sister-in-law looked at confidential billing records from a local domestic violence program and then told her brother where his wife was staying. Another woman's therapist called the shelter asking where the nearest pharmacy was so he could change her medications and then let the abuser know the location of the shelter. Because of the lengths abusers will go to get access to the victim, domestic violence programs have extensive policies and procedures in place to protect the confidentiality of battered women and their children.

Mandatory reporting laws often conflict with domestic violence programs' confidentiality policies, which are guiding principles and often mandated by state statute or funding sources. After reviewing and answering the questions listed in Section 3, domestic violence programs may need to create new protocols or modify existing policies on reporting suspected abuse. Questions to consider may include:

- Who is responsible for reporting elder abuse? Is everyone in the domestic abuse program responsible or does the reporting requirement apply only to certain staff (e.g., staff with professional licenses may be mandated reporters, while others are not)?

- Who decides if and when a report is made? Direct line staff, the executive director or a team?
- Who contacts APS? Can any staff member call APS or does agency policy require that only the executive director or a supervisor report abuse? If line staff can report to APS, must they inform the director or a supervisor that the report has been made?
- When must a report be made? If the victim needs or is asking for time to get some affairs in order before a report is made, is it possible to give her the time she needs before making a report? Are there times that are better to make reports – for example, during regular business hours rather than on a weekend?
- What is the process for letting the older abused woman know if a report to APS must be made? Is the victim given the option to self-report? Can she be present when the report is made?
- Are “release of information” forms offered if the woman wants a report made and wants the domestic abuse program to be able to share information with APS and vice versa? Is there one consent form to release information and a second consent form to obtain information?
- Is there a specific protocol in place with local APS regarding reporting elder abuse that comes to the attention of domestic violence advocates? If not, would creating a protocol be helpful?
- What documentation that a report was made to APS is required?
- What follow-up and advocacy is preferred with the victim following a report?
- Will APS be allowed to meet with the victim at the domestic violence program?

- Are there any circumstances where a report will not be made (for example, the victim is strongly opposed to APS involvement)?
- Will a report to APS trigger a CPS report if the older woman has minor children or grandchildren that she parents? What policies and procedures need to be in place for that possibility?

Domestic violence programs housed in health care or justice system settings may have additional policies or legal mandates to follow. After internal protocols and procedures are in place, domestic violence staff and volunteers may benefit from ongoing training on mandatory reporting, information sharing and confidentiality, as well as policies, protocols and procedures for reporting elder abuse.

Ethical Reporting Guidelines For Reporting Elder Abuse To APS

Advocates are called on to work with victims from a variety of life circumstances. Victims come from all ages, races, ethnic and religious backgrounds, sexual preference, and economic classes. Some advocates label older domestic violence victims as “elder abuse cases” and link them with other services rather than providing advocacy and support. In some cases, domestic violence advocates contacted by older women immediately make a report or a referral to APS and do not continue to offer services to the older woman. These advocates may fail to determine if any interventions such as safety planning, legal advocacy or a support group may be beneficial. Often older abused women benefit significantly from advocacy and services provided by domestic violence programs that are not generally available from APS. Domestic violence programs and their advocates have an ethical responsibility to work with any older woman who wants services from the domestic abuse program by offering support and options before, during and after a report to APS has been made. As mentioned earlier, domestic violence agencies

should provide appropriate ongoing training for advocates to assure provision of needed services.

In states where reporting is mandated, advocates need to have a clear process for letting older victims know what can happen if they disclose abuse. Many programs have policies about how to let victims know about mandated child abuse reporting laws and that program staff are responsible to report if a victim is a danger to herself or others. These policies ensure that women understand what actions will be taken by an advocate that may go against the victim's wishes but are legal mandates that the program must follow.

A policy should also be in place for working with victims who may fall under mandatory elder abuse reporting. The policy may state that prior to conducting the intake and before asking any questions about her situation, advocates should let an older woman know if state law mandates that any information about abuse that is shared with the advocate or agency staff must be reported to APS. Welfel's article (2000) for counselors on mandatory reporting recommends stating upfront what can be kept confidential and what must be reported so the victim can decide what information about the abuse to disclose. Welfel also suggests five major activities for advocates who must report elder abuse to maintain a relationship.

1. Work to include the victim in the reporting process. Let the victim know that a report is being made (if possible) and have victim make contact herself with APS (if possible).
2. Discuss the practical and emotional consequences of the report and help the victim understand the process.
3. Recognize that the victim may feel anger or betrayal. The advocate should immediately focus on the expression and discussion of those negative feelings to minimize the damage to the working relationship. The advocate should validate the victim's feelings even as the advocate explains the mandated action.

4. Report only relevant data – do not give more data than is needed/required. Demonstrate to the victim a commitment to maintain as much of her privacy as legally possible.
5. Follow-up with both the victim and other professionals to ensure that needed services are offered. In addition to offering services from the domestic violence program, advocates should work with APS on behalf of victims whose risk may increase due to some investigative practices.

APS Investigative Practices That May Put Some Older Victims At Risk

APS workers encounter numerous forms of elder and vulnerable adult abuse. They work with self-neglect, financial exploitation, neglect, caregiver abuse, and family violence. The intent of the investigation and service delivery is to identify a need and if appropriate, provide protective services. Practices, such as home visits, collateral interviews with family, friends, health care workers, and neighbors, and perpetrator notification, may be extremely effective in cases of self-neglect and other forms of abuse. However, **these same practices, when implemented without an understanding of the dynamics of domestic violence, may inadvertently heighten the risk of some older victims of abuse in later life.**

Therefore, after a report is made to APS, the advocate should maintain contact with the victim. The primary focus should be on enhancing victim safety through ongoing conversations with the victim about the investigation problems/concerns with APS. Victim safety can be compromised in a number of ways. Practices that might increase the risk for some older victims living in high-risk situations can include the following:

Practices Related To The Investigation

Risk to the victim often increases if she is in the process of leaving or getting help from others. When an abuser learns that an investigation has started or is in progress, he may escalate

the violence to ensure that the victim does not give any information that might get him in trouble or help her to get free. Abusers can learn about investigations when workers conduct home visits. Some workers leave agency literature following a home visit or mail information to the victim, which can be intercepted and alert the abuser of the investigation. Phone calls and/or e-mails to and from the victim may be screened. Abusers may also learn about the investigation and what was discussed if friends, family or neighbors are interviewed. Perpetrator interviews and policies to notify perpetrators ensure that the offender knows that an investigation is ongoing or has been completed, often increasing the risk to victims.

Capacity Assessments to Determine Eligibility for APS

An issue of concern in some states that serve only vulnerable, dependent or at-risk adults is criteria for services. Some APS workers first determine if a vulnerable adult is present in the household to decide whether or not begin an investigation. If no one is a vulnerable adult, the case is closed. This can present a problem in some cases of domestic violence in later life. If an abuser becomes frail or has health needs, the older abused woman may be the care provider. Some elderly victims of life long abuse who are now asked to provide care are neglectful or abusive. In some situations, APS may identify the longtime victim as the perpetrator, failing to ask about or recognize the long history of domestic violence. In a case described by Bergeron (2001), an older woman attending a support group described longtime domestic violence. She was afraid her husband's behavior was escalating since he had been diagnosed with early stages of Alzheimer's disease. The support group facilitator made a mandatory report to APS. When the APS worker arrived at the home, she learned that the woman had locked her husband in a bedroom for an hour when he was yelling and cussing at her and their young grandson. This worker started the investigation by determining if there was a vulnerable adult present in the

home. The husband was identified as the vulnerable adult because of his health problems. This worker focused on the eligibility criteria for APS rather than the dynamics and history of the family. Because the worker identified the older husband as the vulnerable adult, she neglected to get a family history and learn about the long-term domestic violence. Her interventions focused on keeping the husband safe rather than identifying the needs of the older abused woman.

Unfortunately, the older abused woman was labeled as the perpetrator rather than appropriately determining that the older abused woman was the one who was afraid and in need of support and services (Bergeron, 2001).

Notifying Law Enforcement or Other Agencies

As noted earlier, abusers will use a variety of methods to learn about where a victim is staying if she leaves or what she has told professionals who are assisting her. In some communities, APS reports are shared with law enforcement. Notification of law enforcement can create problems for some victims, especially in rural areas and small towns because persons working in the justice system may know or be related to the victim and/or perpetrator and may notify the perpetrator of the investigation. This may also occur if the case is brought to an elder abuse review team and confidentiality is breached.

Lack of Policies, Resources, Staff or Training for APS

Some communities will need to start by creating policies that enhance safety and ensure confidentiality in cases of domestic abuse in later life that are investigated by APS. In other communities, these policies are already in place. However, due to lack of resources, training or new staff in the field, these policies may not always be followed in practice. Advocates may need to continue to have a dialog with older victims to ensure that APS practice is supporting the victim and enhancing her safety. Ongoing dialog with APS workers through case review

meetings, multidisciplinary teams and in-service trainings can be great ways to enhance APS's understanding about domestic violence, while at the same time learning about elder abuse and aging services.

Cultural Issues

Victims from various cultural communities may have different experiences with APS. Definitions of what constitutes elder abuse vary in different cultural communities. APS workers' training and experience in working with persons from different racial and ethnic groups varies. Some programs have policies for working with immigrants and have translators readily available. In other areas, APS workers may lack experience and training with certain specific populations. Some APS workers may lack training and information about working with persons who are gay, lesbian, bisexual and transgendered.

Elders in some communities may be extremely resistant to intervention from social services or government agencies. Immigrant victims may fear deportation. Non-English speaking victims may have difficulty accessing services and information. Gay, lesbian, bisexual and transgendered persons may fear having professionals investigate their personal lives and being "outed" to family members or others who are not aware of their sexual preference.

Suggestions for Collaboration

1. Focus on the common goal of safety and empowerment/self-determination. Advocates and APS workers share common ground when considering self-determination and safety, even if there is disagreement about philosophy and/or approach.
2. Training and cross training may be a first step in improving or enhancing the APS response to older victims of domestic abuse. While APS workers may have received significant training on elder abuse, disability issues, self-neglect and financial

exploitation, training related to domestic violence in later life may also be helpful.

Training topics could include domestic violence, sexual abuse/assault, homicide, homicide/ suicide, and worker and victim safety. The National Clearinghouse on Abuse in Later Life website at www.ncall.us has some resources for training. Training must be ongoing.

3. Cultural competency training may enhance the ability of APS workers and domestic violence advocates to provide services to various populations.
4. Victim safety planning is a critical skill for APS workers to acquire. Domestic violence advocates may consider working with APS to develop strategies for providing safety planning as part of their investigation and intervention. One method for having this discussion is to acquire “Anticipate,” which is a two-hour training module for use by small groups on safety planning with older persons and persons with disabilities. For more information, go to www.ncall.us.
5. Work with APS supervisors to review investigation policies and consider their impact on older victims of domestic violence who are at high risk for serious harm or in life threatening situations.
6. Discuss information sharing and confidentiality so advocates and APS workers understand each other’s policies and practices.
7. Offer to accompany APS and conduct joint interviews in cases of suspected domestic violence. In cases where a home visit is safe, the APS worker can often talk with the perpetrator while the advocate works with the woman on exploring options and safety planning.
8. Create and continue participation on multidisciplinary or interdisciplinary teams. These

teams can review cases anonymously and discuss service gaps and promising interventions and responses. Ensure that team communication is confidential.

Policy and Legislative Implications

In some states and communities, critical analysis of the benefits and limitations of mandatory reporting for domestic violence workers may lead to recommendations for statute changes. Discussion about potential statute changes may involve participation from state domestic violence coalition staff, state level APS program administrators, and lawyers familiar with elder law and domestic violence. However, the most crucial input should come directly from older victims, caring family members (those who supported the victim and not the abuser) and line advocates and workers in the field who have daily contact with older victims. Issues to consider may include:

1. What are the benefits and concerns regarding including domestic violence advocates as mandatory reporters? Is there a way to provide an escape clause for situations where an advocate does not want to report due to increased risk of harm to the victim?
2. Should the statute focus on vulnerable, dependent or at-risk adults or any older person? What age defines older?
3. Does APS have adequate resources to respond effectively to cases of domestic violence in later life?
4. Consider cultural issues and how policy initiative might effect various populations. How will any policy or statute changes affect persons of color and gay, lesbian, bisexual and transgendered persons? Will persons from various economic groups be impacted differently?
- 5.

CONCLUSION

Americans are aging. Domestic abuse advocates can expect to see increased numbers of older victims. Programs should critically analyze existing state statutes, agency policy and local APS practice regarding mandatory reporting. Domestic violence program staff members are encouraged to learn more about reporting by contacting their state APS administrator, the state domestic violence coalition and legal counsel to determine their responsibilities and obligations. In addition, when working with older victims, whether a report to APS is made or not, advocates are encouraged to offer services such as emergency housing, 24-hour crisis line, safety planning, support groups and legal advocacy. In some cases, continued contact (with the victim's permission) with APS while working to enhance victim safety will be required. Older abused women are a hidden population who deserve quality advocacy. Domestic violence advocates can play a crucial role in supporting an older woman who is making difficult choices and determining whether to have ongoing contact and a relationship with her abuser. In many cases, collaboration with APS and programs provided by the aging network can provide an array of services that will benefit older abused women.

This document sets a framework for discussion between domestic violence programs and APS with the hope of creating better understanding of mandatory reporting and enhancing victim safety. Appendix One contains user-friendly handouts summarizing the material in formats that can be used as checklists or training tools. Appendix Two is a state-by-state chart of statutory language. Additional resources can be found in the other two appendixes.

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APPENDIX ONE

Checklists and Handouts For Domestic Abuse Staff

Mandatory reporting of elder abuse for domestic violence advocates is complicated. The following handouts have been created to assist domestic violence program staff, administration and boards to work through the key issues related to mandatory reporting. The handouts include:

Determining If Advocates Are Mandatory Reporters Of Elder Abuse: Key Questions To Consider

APS Responses To Older Victims Of Domestic Violence

Suggestions/Considerations When Writing Agency Policy

Tips For Advocates Working With Older Victims In A State Where Reporting Of Elder Abuse Is Mandated

Internal Training Issues

Internal Policy Issues For Boards & Executive Director

Recommendations For State Coalitions: Policy Issues

**DETERMINING IF ADVOCATES ARE MANDATORY REPORTERS
OF ELDER ABUSE: KEY QUESTIONS TO CONSIDER**

1. Are domestic violence advocates mandated to report elder abuse in this state?

(See state statute, contact an attorney or the statewide DV coalition for information)

YES NO Some professionals that may include some advocates

List possible professionals required to report:

If yes, the following questions apply.

2. Are reports mandated for vulnerable, dependent or at-risk adults, anyone over age 60 or 65 or both?

(See state statute, contact an attorney or the statewide DV coalition for information)

60+

65+

Any vulnerable adult ages 18+

Any vulnerable adult age 18+ and anyone age 60+

Other: _____

A vulnerable adult is defined as: _____

3. What forms of abuse must be reported? Check all that apply

(See state statute)

_____ Physical abuse

_____ Sexual abuse

_____ Financial exploitation

_____ Neglect

_____ Self-neglect

_____ Emotional abuse

_____ Abandonment

_____ Other: List _____

4. How is a report made, to whom and within what time period?

(See state statute and/or contact local APS)

Number to call to make a report: _____

Report must be made within _____ hours.

6. What information is required to be reported and what information can remain confidential?

(See state statute and/or contact local APS)

List required information to report:

6. Will APS disclose the source of the report or any details in the report? If yes, to whom? (Contact local APS for information)

_____ No _____ Yes

Information will be shared with:

_____ Law enforcement

_____ Child protective services

_____ Regulatory agency

_____ Aging network or services

_____ Family or friends of the victim

_____ The alleged perpetrator

_____ Other: _____

7. Will the report be shared with other agencies, organizations or persons?

(Contact local APS for information)

_____ No _____ Yes

Report will be shared with:

_____ Law enforcement

_____ Child protective services

_____ Regulatory agency

_____ Aging network or services

_____ Family or friends of the victim

_____ Alleged perpetrator

_____ Other: _____

8. Are the individuals who report the abuse criminally or civilly liable if the report is not substantiated? (See state statute or contact attorney or state DV coalition)

_____ Yes _____ No

9. Are there criminal or civil penalties for not reporting suspected elder abuse? (See state statute or contact attorney or state DV coalition)

_____ Yes _____ No

10. Are there any other situations, such as danger to self or others, involving older victims that need to be reported to social services or law enforcement? (See state statute or contact attorney or state DV coalition)

_____ Yes _____ No

If yes, describe:

11. Are there state statutes or agency policies that require advocates not to disclose information about victims who contact the program? (See state statute or contact attorney or state DV coalition)

_____ Yes _____ No

If yes, describe:

12. Are there state statutes that hold confidential communications between victims and advocates to be protected from disclosure as privileged communication? (See state statute or contact attorney or state DV coalition)

_____ Yes _____ No

If yes, describe:

13. How are APS investigations conducted and interventions provided?

14. Are the individuals who report able or entitled to receive information on the outcome of the case?

APS RESPONSES TO OLDER VICTIMS OF DOMESTIC VIOLENCE

To address safety and confidentiality needs of older victims of domestic violence, advocates may want to meet with local APS workers to learn more about their services and understand their response. These meetings are an opportunity for cross-training, improving understanding among professionals of available services and an opportunity to dialog about safety concerns (if any exist) with the current APS response. Some questions advocates may want to consider exploring are listed below.

1. What is the process for investigation? How soon does a worker make a home visit, if at all? What follow-up occurs if the worker is unable to talk with the alleged victim? If APS uses a standardized assessment tool, ask to review the form and do so from the perspective of a domestic violence victim.
2. What services can APS provide?
3. How do APS workers handle situations where an alleged victim refuses an investigation and/or refuses to accept any services?
4. How does an APS worker decide if the elder abuse victim is making informed choices about her safety?
5. How do APS workers and DV advocates define safety? Are there differences in what this word means for each discipline?

6. Do APS workers develop safety plans with older victims?

In the context of domestic violence, safety planning means more than ensuring there are grip bars in the bathroom and rugs that are secure so no one trips. Safety planning means creating a plan with the victim to get help in dangerous situations, including identifying which rooms are safer if the victim is being attacked; knowing where weapons are located; having a cell phone or other method for getting help; and packing a small kit of necessary papers and items if the victim needs to leave quickly etc.

7. Are cases handled differently if the victim has a cognitive disability or has a guardian? What if the guardian is the alleged abuser?

8. What confidentiality policies do APS workers operate under? Can APS share client information with other professionals or family members without a signed release? Professionals can inadvertently inform the abuser; family members often inform the abuser.

9. How much training do APS workers have on domestic violence and sexual abuse?

10. Does APS notify perpetrators of their investigation or the outcome? Can the perpetrator appeal the findings (a strategy that may be used to continue to have contact with the victim)?

11. Does APS leave phone messages or mail or leave information for the victim if they do not talk directly to her? Leaving information about abuse or services where an abuser can find it can put some victims in greater risk.
12. Does APS perform collateral interviews including talking to friends, family or neighbors about the allegations; and if so, how do they assure victim safety and confidentiality?
13. Are reports shared with law enforcement or any other agencies?
14. Discuss diverse populations within the community. How are the needs of older victims from various racial and ethnic groups and gay, lesbian, bisexual and transgendered persons addressed both by APS and domestic violence programs?
15. Are APS workers familiar with the restrictions placed on domestic violence programs to protect confidentiality? In cases where a client consents to have her information shared with APS, are APS workers aware a domestic violence advocate must have consent forms from the client to speak with or to release information to the APS worker?

CONSIDERATIONS WHEN WRITING AGENCY POLICY

1. Who is responsible within your agency for making reports? (e.g., the executive director, supervisors, staff, staff/volunteers):
_____.
2. Do supervisors need to be informed when a report is made? Yes No
If yes, who that person(s) would be within your agency?:
_____.
3. Is there a particular staff person within your county APS agency that will take the report? Yes No If yes, who is that person(s) and what is his/her phone number?
_____.
4. Is it possible to have one or two contact people within APS for your staff to work with when reporting abuse? Yes No If yes, what are the names of the main contact?
_____.
5. When does a report need to be made? _____
6. What internal agency documentation (if any) is needed? _____
7. Is the victim told or involved in the reporting process? _____
8. Does your agency policy include suggestions on how to work with victims?
 Yes No

**TIPS FOR ADVOCATES WORKING WITH OLDER VICTIMS
IN A STATE WHERE REPORTING ELDER ABUSE IS MANDATED**

Persons who make reports to APS: _____

Phone number to call: _____

Timeframe report must be made in: _____

Information that must be provided: _____

Internal documentation that report has been made: _____

When working with the victim:

- ✓ Inform the victim prior to interview that you are a required reporter.
- ✓ Inform victim when a report must be made. Provide victim an opportunity to self- refer or refer with the support of advocates from your program.
- ✓ Protect your relationship with the victim. A victim may feel betrayed or angry that the report must be made. Discuss this emotional response immediately; assuring the victim that you will continue to do what you can as their advocate.
- ✓ A victim's relationship with an advocate may become even more important once abuse is reported to the system. Define how you will maintain a relationship with the victim.
- ✓ Define victim's risk factor. Find out where is the abuser now, when and where will abuser be interviewed, what threats has abuser made in past.

- ✓ DO A SAFETY PLAN WITH THE VICTIM. Advocate with the APS System, if necessary, to alert them of possible risk factors. (Examples of Safety Plans for abuse in later life victims and for victims with physical disabilities and cognitive disabilities are available from the NCALL web site at <http://www.ncall.us>)

INTERNAL TRAINING ISSUES

- Confidentiality: How do your State's mandatory reporting laws affect your agency policies and practice?
- Mandatory Reporting Laws: What is the specific law in your State? Fill in the blanks on the attached flow chart narrative and checklist.
- Describe APS eligibility criteria, investigative practices and service in your area.
- What issues should your agency consider regarding mandatory reporting of elder abuse?
- Women-focused and victim-centered practice for survivors of all ages.
Reinforce that many older victims will benefit from domestic abuse program services. These services can be very different from the services that victims receive from APS, the aging or health care network, or the justice system. Ideally, domestic abuse program staff will continue to advocate for the victims safety and self-determination throughout the entire process of other agencies & systems involvement.

INTERNAL POLICY ISSUES FOR BOARDS & EXECUTIVE DIRECTORS

If your State is NOT a mandatory reporting state

As of May 2005, there is no mandatory reporting for elder abuse in Colorado, Wisconsin, North Dakota, South Dakota, New Jersey or New York. In Kansas the law exempt advocates.

Agency policy should consider:

- Define how a victim will get information about APS & self refer or refer with the support of the advocate if interested in APS services.
- If a victim does not appear to have the capacity to make own decision, she may not be a good match for domestic violence program services. Can staff make a voluntary report to APS? Who within your agency will make that decision? How will agency confidentiality policy be impacted?

If your State is a mandatory reporting state

Appendix Two contains a chart showing state-by-state mandatory reporting statute requirements. All advocate or just some staff may be mandatory reporters. If existing statute language presents challenges consider contacting your state domestic violence coalition to discuss and document. This may be an issue for coalition membership to take up.

Questions to consider may include:

- Who is responsible for reporting elder abuse? Is everyone in the domestic abuse program responsible or does the reporting requirement apply only to certain staff (e.g., staff with professional licenses may be mandated reporters and while others are not)?
- Who decides if and when a report is made? Direct line staff, the executive director or a team?
- Who contacts APS? Can any staff member call APS or does agency policy require that only the executive director or a supervisor report abuse? If line staff can report to APS, must they inform the director or a supervisor that the report has been made?
- When must a report be made? If the victim needs or is asking for time to get

some affairs in order before a report is made, is it possible to give her the time she needs before making a report? Are there times that are better to make reports – for example, during regular business hours rather than on a weekend?

- What is the process for letting the older abused women know if a report to APS must be made? Is the victim given the option to self-report? Can she be present when the report is made?
- Are “release of information” forms offered if the woman wants a report made and wants the domestic abuse program to be able to share information with APS and vice versa? Is there one consent form to release information and a second consent form to obtain information?
- Is there a specific protocol in place with local APS regarding reporting elder abuse that comes to the attention of domestic violence advocates? If not, would creating a protocol be helpful?
- What documentation that a report was made to APS is required?
- What follow-up and advocacy is preferred with the victim following a report?
- Will APS be allowed to meet with the victim at the domestic violence program?
- Are there any circumstances where a report will not be made (for example, the victim is strongly opposed to APS involvement)?
- Will a report to APS trigger a CPS report if the older woman has minor children or grandchildren that she parents? What policies and procedures need to be in place for that possibility?

CONSIDERATIONS FOR STATE COALITIONS: POLICY ISSUES

- Recognize the aging of population and the need for resources on elder abuse, domestic and sexual violence in later life.
- Document challenges & success from domestic violence programs (look for cultural and regional differences)
- Work with state level APS professionals. Gather information about how state statute and policy are working in the field for APS. Ideally, establish a working relationship so that if local programs have issues they can be problem-solved with recommendations coming from a state level.
- Review statute implications for victims and for program advocates. Consider statute changes if language increases risk to victims and/or creates challenges for domestic/sexual violence service programs
- Review existing APS practices that may be useful in some cases but dangerous in domestic violence cases, for example, a "notification of family" policy in a self-neglect case.

Issues to consider may include:

1. What are the benefits and concerns regarding including domestic violence advocates as mandatory reporters? Is there a way to provide an escape clause for situations where an advocate does not want to report due to increased risk of harm to the victim?
2. Should the statute focus on vulnerable, dependent or at-risk adults or any older person? What age defines older?
3. Does APS have adequate resources to respond effectively to cases of domestic violence in later life?
4. Consider cultural issues and how policy initiative might effect various populations. How will any policy or statute changes effect persons of color and gay, lesbian, bisexual and transgendered persons? Will persons from various economic groups be impacted differently?

APPENDIX TWO

State-By-State Chart On Mandatory Reporting

This chart was compiled by staff of the ABA Commission on Law and Aging in Spring 2004

| Applicability of the Mandatory Reporting Requirements in State APS Statutes to Domestic Violence Advocates | |
|---|---|
| Alabama | DV advocates are unlikely to be required to report - the only relevant categories in the mandatory reporting statute are: physicians; and " other practitioners of the healing arts." AL ST § 38-9-8(a) |
| Alaska | DV advocates are very likely to be required to report - relevant categories in the mandatory reporting statute are: staff employees of a project funded by the Department of Health and Social Services, or the Council on Domestic Violence and Sexual Assault; social workers; mental health professionals; licensed marital and family therapists; police officers; village safety officers; village health aides; members of the clergy; physicians; pharmacists; emergency medical technicians; mobile intensive care paramedics; certified nurse aides; and " other licensed health care providers." AK ST § 47.24.010(a) |
| Arizona | DV advocates are likely to be required to report - relevant categories in the mandatory reporting statute are: social workers; psychologists; peace officers; physicians; hospital interns and residents; surgeons; and dentists. AZ ST § 46-454(A) and (B) |
| Arkansas | DV advocates are likely to be required to report - the relevant categories in the mandatory reporting statute are: social workers; case managers; case workers; mental health professionals; employees of the Department of Human Services; peace officers; law enforcement officers; nurses; physicians; surgeons; dentists; osteopaths; resident interns; emergency medical technicians; and " hospital personnel who are engaged in the administration, examination, care, or treatment of persons." AR ST § 5-28-203(a)(1) |

| | |
|----------------------|---|
| California | <p>DV advocates are likely to be required to report - the relevant categories in the mandatory reporting statute are:</p> <p>“administrators, supervisors, and any licensed staff of a public or private facility that provides care or services for elder or dependent adults” (the APS statute does not define “facility”); licensed clinical social workers; psychologists; psychiatrists; marriage, family, and child counselors; registered psychological assistants; marriage, family, and child counselor trainees; registered unlicensed marriage, family, and child counselor interns; State or County public health or social service employees who treat an elder or dependent adult for any conditions; employees of a local law enforcement agency; licensed nurses; physicians; health practitioners; employees of a county adult protective services agency. CA WEL & INST § 15630(a). § 15632(b) and 15637 state that “ [n]othing in this chapter shall be interpreted as requiring an attorney to violate his or her oath and duties.”</p> |
| Colorado | <p>DV advocates are not required to report because there is no mandatory reporting provision in this state’s APS law.</p> |
| Connecticut | <p>DV advocates are likely to be required to report - the relevant categories in the mandatory reporting statute are: patients’ advocates; social workers; psychologists; police officers; clergymen; registered nurses; licensed practical nurses; physicians; surgeon; resident physicians or interns; dentists; optometrists; chiropractors; podiatrists; pharmacists; and physical therapists. CT ST § 17b-451(a)</p> |
| Delaware | <p>DV advocates are required to report -- the mandatory reporting provision requires “ any person” to report suspected abuse. DE ST TI 31 § 3910(a)</p> |
| District of Columbia | <p>DV advocates are likely to be required to report - the relevant categories in the mandatory reporting statute are: social workers; police officers; licensed health professionals; health care administrators; and court-appointed mental retardation advocates. DC CODE § 7-1903(a) and (b). § 7-1903(b) provides that “[t]he duty to report... shall not apply to a social worker or licensed health professional who has as a client or patient, or is employed by a lawyer representing, the third person who is allegedly responsible for the abuse.”</p> |

| | |
|----------|--|
| Florida | DV advocates are required to report -- the mandatory reporting provision requires " any person" to report suspected abuse. FL ST 415.1034(1)(a). The statute also specifically abrogates all privileges, except the attorney-client and clergy-person privileges, with regard to the duty to report. |
| Georgia | DV advocates are likely to be required to report - the relevant categories in the mandatory reporting statute are: social work personnel; psychologists; licensed professional counselors; law enforcement personnel; hospital or medical personnel; employees of a public or private agency engaged in professional health related services to elder persons or disabled adults; nursing personnel; physicians; osteopaths; interns; residents; dentist; chiropractors; podiatrists; pharmacists; physical therapists; and occupational therapists. GA ST 30-5-4(a)(1)(A) and (B) |
| Hawaii | DV advocates are very likely to be required to report - the relevant categories in the mandatory reporting statute are: employees or officers of any public or private agency or institution providing social, medical, hospital, or mental health services, including financial assistance; employees or officers of law enforcement; and licensed or registered professionals of the healing arts or any health-related occupation who examine, treat, or provide other professional or specialized services to dependent adults. HI ST § 346-224(a) |
| Idaho | DV advocates are likely to be required to report - the relevant categories in the mandatory reporting statute are: social workers; employees of a public or private health facility; police officers; nurses; physicians; dentists; osteopaths; optometrists; chiropractors; podiatrists; pharmacists; physical therapists; and ombudsmen for the elderly. ID ST § 39-5303(1) |
| Illinois | DV advocates are not likely to be required to report as it is not likely that they will serve an APS-eligible adult who because of dysfunction is unable to seek assistance for himself or herself and who has, within the previous 12 months, been subjected to abuse, neglect or financial exploitation. If, however, DV advocates did have occasion to serve a woman who met those criteria, then they would be very likely to report - the relevant |

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| | <p>categories in the mandatory reporting statute are: a professional or professional's delegate while engaged in social services; field personnel of the Department of Public Aid, Department of Public Health, and Department of Human Services, and any county or municipal health department; personnel of the Department of Human Services, the Guardianship and Advocacy Commission, the Department of Aging and its subsidiary Area Agencies on Aging and provider agencies; any employee of the State of Illinois not otherwise specified herein who is involved in providing services to eligible adults, including professionals providing medical or rehabilitation services and all other persons having direct contact with eligible adults; and a professional or professional's delegate while engaged in any of the occupations required to be licensed under Clinical Social Work and Social Work Practices Act, the Clinical Psychologist Licensing Act, the Marriage and Family Therapy Licensing Act, the Professional Counselor and Clinical Professional Counselor Licensing Act. The Nursing and Advanced Practice Nursing Act, the Dental Practice Act, the Dietetic and Nutrition Services Practices Act, the Medical Practice Act, the Naprapathic Practice Act, the Occupational Therapy Practice Act, the Optometric Practice Act, the Pharmacy Practice Act, the Physical Therapy Act, the Physician Assistant Practice Act, the Podiatric Medical Practice Act, the Respiratory Care Practice Act, and the Speech-Language Pathology and Audiology Practice Act. IL ST CH 320 ' 20/2 '2(f-5). Chapter 320, Section 20/4(a-5), provides that "[t]he privileged quality of communication between any professional person required to report and his or her patient or client shall not apply to situations involving abused, neglected, or financially exploited eligible adults and shall not constitute grounds for failure to report as required by this Act.</p> |
| Indiana | <p>DV advocates are required to report -- the mandatory reporting provision requires all " individuals" to report suspected abuse IN ST 12-10-3-9(a)</p> |
| Iowa | <p>DV advocates are very likely to be required to report - the relevant categories in the mandatory reporting statute are: social workers; certified psychologists; and persons who, in the course of employment, examine, attend, counsel, or treat a dependent adult and reasonably believe the dependent adult has suffered abuse, including: members of the staff of a community mental health center, members of the staff of a hospital, members of the staff or an employee of a public or private health care facility, peace officers, individuals employed as an outreach person, and health practitioners. IA ST §</p> |

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| Kansas | DV advocates are unlikely to be required to report because although there is a mandatory reporting provision in this state's APS law, the statute also provides that "An employee of a domestic violence center shall not be required to report information or cause a report of information to be made under this subsection." The categories in the mandatory reporting statute which may apply to DV advocates who are not employees of a domestic violence center are: licensed social workers; case managers; licensed psychologists; licensed master level psychologists; licensed clinical psychotherapists; licensed marriage and family therapists; licensed clinical marriage and family therapists; licensed professional counselors; licensed clinical professional counselors; registered drug and alcohol abuse counselors; independent living counselors; rehabilitation counselors; law enforcement officers; licensed professional nurses; licensed practical nurses; and licensed dentists. KS ST § 39-1431(a) |
| Kentucky | DV advocates, unless they are attorneys, are required to report abuse. The mandatory reporting provision requires "any person" to report. KY ST §209.030(2). However, there is an opinion by the state's attorney general that the Kentucky Adult Protection Act neither requires nor permits an attorney to report, contrary to a client's wishes, spouse abuse inflicted on his client. OAG 83-367. |
| Louisiana | DV advocates are required to report - the mandatory reporting provision requires "any person" to report suspected abuse. LA R.S. 14:403.2(C) |
| Maine | DV advocates are likely to be required to report - the relevant categories in the mandatory reporting statute are: social workers; psychologists; mental health professionals; law enforcement officials; registered or licensed practical nurses; allopathic or osteopathic physicians; medical interns; physician's assistants; dentist; chiropractors; podiatrists; certified nursing assistants; pharmacists; physical therapists; speech therapists; occupational therapists; emergency room personnel; ambulance attendants; and emergency medical technicians. ME ST T. 22 § 3477(1) |

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| Maryland | DV advocates are very likely to be required to report - the relevant categories in the mandatory reporting statute are: " human service workers," meaning "any professional employee of any public or private health or social services agency or provider," including any social worker and any case worker; health practitioners, "including any person who is authorized to practice under the Health Occupations Article;" and police officers. MD FAMILY § 14-302(a) and (b). Section 14-302(a) also provides that mandatory reporters are required to report "[n]otwithstanding any law on privileged communications." |
| Massachusetts | DV advocates are likely to be required to report - the relevant categories in the mandatory reporting statute are: social workers; family counselors; licensed psychologists; policemen; nurses; physicians; physician assistants; medical interns; dentists; emergency medical technicians; registered physical therapists; registered occupational therapists; osteopaths; and podiatrists. MA ST 19A § 15(a) |
| Michigan | DV advocates are very likely to be required to report - the relevant categories in the mandatory reporting statute are: employees of an agency licensed to provide health care, social welfare, mental health, or other human services; persons who are employed, licensed, registered or certified to provide social welfare services, mental health services, health care services, or other human services; and law enforcement officers. MI ST 400.11a(1). Section 400.11c(2) provides that "[a]ny legally recognized privileged communication, except that between attorney and client and except as specified in section 11a(2), is abrogated and shall not constitute grounds for excusing a report otherwise required to be made pursuant to this act." Section 400.11a(2) provides that a "report made by a physician or other licensed health professional pursuant to subsection (1) shall not be considered a violation of any legally recognized privileged communication or a violation of article 15 of the public health code...." |

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| Minnesota | DV advocates are very likely to be required to report - the relevant categories in the mandatory reporting statute are a professional or professional's delegate while engaged in social services or law enforcement; nursing home administrators; unlicensed complementary and alternative health care practitioners; medical practitioners; nurses; chiropractors; optometrists; physical therapists; psychologists; social workers; marriage and family therapists; mental health practitioners; alcohol and drug counselors; dieticians and nutritionists; dental professionals; pharmacists; podiatrists; and veterinarians. MN ST § 626.5572 Subd. 16 |
| Mississippi | DV advocates are required to report -- the mandatory reporting provision requires "any person" to report suspected abuse. MS ST §43-47-7(1) |
| Missouri | DV advocates are required to report -- the mandatory reporting provision requires "any person" to report suspected abuse. MO ST 660.255(1) |
| Montana | DV advocates may be required to report - the relevant categories in the mandatory reporting statute are: mental health professionals; "an attorney, unless the attorney acquired knowledge of the facts required to be reported from a client and the attorney-client privilege applies;" peace officers or other law enforcement officials; social workers or other employees of the state, a county, or a municipality assisting the older person or a person with a developmental disability in the application for or receipt of public assistance payments or services; physicians, residents, interns, professional or practical nurses, physician's assistants or members of a hospital staff engaged in the admission, examination, care, or treatment of persons; osteopaths; dentists; denturists; chiropractors; optometrists; podiatrists; ambulance attendants; and "other health professionals." MT ST 52-3-811(3) |

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| Nebraska | <p>DV advocates are very likely to be required to report - the relevant categories in the mandatory reporting statute are: human services professionals or paraprofessionals; mental health professionals; psychologists; other medical professionals; developmental disability professionals; nurses; nursing assistants; physicians; physician assistants; and employees of any facility licensed by the Department of Health and Human Services Regulation and Licensure (health care facilities, Section 71-413, and health care services, Section 71-415). NE ST § 28-372(1). Section 28-382(1) provides that " [n]o rule of evidence or other provisions of law concerning confidential communications shall apply to prevent reports made pursuant to the Adult Protective Services Act unless otherwise specifically mentioned in the act."</p> |
| Nevada | <p>DV advocates are very likely to be required to report - the relevant categories in the mandatory reporting statute are: "any person who maintains, is employed by or serves as a volunteer for an agency or service which advises older persons regarding the abuse, neglect, exploitation or isolation of an older person and refers them to persons and agencies where their requests and needs can be met;" social workers; psychiatrists; psychologists; marriage and family therapists; alcohol or drug abuse counselor; "every attorney, unless he has acquired the knowledge of abuse, neglect, exploitation or isolation of the older person from a client who has been or may be accused of such abuse, neglect, exploitation or isolation;" employees of a law enforcement agency; clergymen; professional or practical nurses; physicians; dentists; dental hygienists; chiropractors; optometrists; podiatric physicians; residents; interns; physician assistants; drivers of ambulances; advanced emergency medical technicians; "other persons providing medical services licensed or certified to practice in the state, who examine, attend or treat an older person who appears to have been abused, neglected, exploited or isolated;" and "any personnel of a hospital or similar institution engaged in the admission, examination, care or treatment of persons or an administrator, manager or other person in charge of a hospital or similar institution upon notification of the suspected abuse, neglect, exploitation or isolation of an older person by a member of the staff of the hospital." NV ST 200.5093(4)</p> |

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| New Hampshire | DV advocates are required to report -- the mandatory reporting provision requires " any person" to report suspected abuse. NH ST § 161-F:46. Section 161-F:48 provides that "[t]he privileged quality of communications between husband and wife and any professional person and his patient or client, except that between attorney and client, shall not apply to any proceedings, instituted pursuant to this subdivision and shall not constitute grounds for failure to report as required by this subdivision." |
| New Jersey | DV advocates are not required to report because there is no mandatory reporting provision in this state's APS law. |
| New Mexico | DV advocates are required to report -- the mandatory reporting provision requires " any person" to report suspected abuse. NM ST § 27-7-30(A) |
| New York | DV advocates are not required to report because there is no mandatory reporting provision in this state's APS law. |
| North Carolina | DV advocates are required to report -- the mandatory reporting provision requires " any person" to report suspected abuse. NC ST § 108A-102(a) |
| North Dakota | DV advocates are not required to report because there is no mandatory reporting provision in this state's APS law. |
| Ohio | DV advocates are very likely to be required to report - the relevant categories in the mandatory reporting statute are: " any person engaged in social work or counseling;" employees of a community mental health facility; psychologists; attorneys; peace officers; clergymen; licensed nurses; employees of ambulatory care facilities; "employees of a hospital as defined in Section 3793.01 of the Revised Code;" physicians; osteopaths; podiatrists; chiropractors; dentists; and " any senior service provider." OH ST § 5101.61(A) |
| Oklahoma | DV advocates are required to report -- the mandatory reporting provision requires " any person" to report suspected abuse and also specifically lists " staff of domestic violence programs." OK ST T. 43A § 10-104(A) |
| Oregon | DV advocates are likely to be required to report - the relevant categories in the mandatory reporting statute are: |

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| | <p>" information and referral or outreach workers;" licensed clinical social workers; licensed professional counselors or licensed marriage and family therapists; "employees of the Department of Human Services, county health department or community mental health and developmental disabilities program;" "any public official who comes in contact with elderly persons in the performance of the official's official duties;" senior center employees; peace officers; members of the clergy; licensed practical nurses; registered nurses; nurse's aides; physicians; naturopathic physicians; osteopathic physicians; chiropractors; podiatric physicians and surgeons; interns; residents; and physical, speech and occupational therapists. OR ST §§ 124.060, 124.050(5) (defs.)</p> |
| Pennsylvania | <p>DV advocates are unlikely to be required to report - the mandatory reporting provision in the statute applies only to abuse of " an individual who receives care, services or treatment from a facility" and the only mandatory reporters are administrators and employees of a facility (i.e., a domiciliary care home; a home health agency; a long-term care nursing facility; an older adult daily living center; and a personal care home). PA ST T. 35 P.S. §§ 10025.701(a) and (b), 10025.103 (defs.)</p> |
| Rhode Island | <p>DV advocates are required to report -- the mandatory reporting provision requires " any person" to report suspected abuse. RI ST § 42-66-8</p> |
| South Carolina | <p>DV advocates are very likely to be required to report. The mandatory reporting statute provides that "any...person who has actual knowledge that a vulnerable adult has been abused, neglected, or exploited" is required to report. The mandatory reporting statute also requires reporting of suspected abuse by: counselors; social or public assistance workers; mental health or mental retardation specialists; psychologists; other mental health professionals; law enforcement officers; nurses; physicians; dentists; optometrists; and "other medical or allied health professionals." SC ST § 43-35-25(A). Section 43-35-50 provides that "[t]he privileged quality of communication between husband and wife or between a professional person and the person's patient or client, except that between attorney and client or priest and penitent, are abrogated and do not constitute grounds for failing to report or for the exclusion of evidence in any civil or criminal proceeding resulting from a report made pursuant to this</p> |

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| | chapter.” |
| South Dakota | DV advocates are not required to report because there is no mandatory reporting provision in this state’s APS law. |
| Tennessee | DV advocates are required to report -- the mandatory reporting provision requires “ any person” to report suspected abuse. TN ST § 71-6-103(b)(1) |

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| Texas | DV advocates are required to report -- the mandatory reporting provision requires anyone to report suspected abuse TX HUM RES § 48.051(a). Section 48.051(c) provides that the duty to report “applies without exception to a person whose knowledge concerning possible abuse, neglect, or exploitation is obtained during the scope of the person’s employment or whose professional communications are generally confidential, including an attorney, clergy member, medical practitioner, social worker, and mental health practitioner.” |
| Utah | DV advocates are required to report -- the mandatory reporting provision requires “any person” to report suspected abuse. UT ST § 62A-3-302(1) |
| Vermont | DV advocates are likely to be required to report - the relevant categories in the mandatory reporting statute are: “social workers other than one acting pursuant to the confidentiality provisions of the Older American Act;” mental health professionals; psychologists; employees of or contractors involved in caregiving for a community mental health center; “all employees, contractors and grantees of the agency of human services who are involved in caregiving;” law enforcement officers; nurses; physicians; physician’s assistants; osteopaths; chiropractors; dentists; emergency medical services personnel; and certified nursing assistants. VT ST T. 33 § 6903(a) |
| Virginia | DV advocates are very likely to be required to report - the relevant categories in the mandatory reporting statute are: persons employed by a public or private agency or facility and working with adults; persons employed as a social worker; mental health professionals; law enforcement officers; persons licensed to practice medicine or any of the healing arts; persons employed in the nursing profession; and hospital interns or residents. VA ST § 63.1-55.3(A) |

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| Washington | DV advocates are very likely to be required to report - the relevant categories in the mandatory reporting statute are: employees of a social service, welfare or mental health agency; social workers; employees of the social and health services department; law enforcement officers; "health care providers subject to chapter 18.130 RCW" (this chapter covers virtually all health professionals, including: psychologists, mental health counselors, marriage and family therapists, and social workers). WA ST 74.34.020(8). Section 74.34.050(2) provides that "conduct conforming with the reporting and testifying provisions of this chapter shall not be deemed a violation of any confidential communication privilege." |
| West Virginia | DV advocates are very likely to be required to report - the relevant categories in the mandatory reporting statute are: social service workers; mental health professionals; law-enforcement officers; and medical or dental professionals. WV ST § 9-6-9(a) All privileges, except the attorney-client privilege, are abrogated for purposes of making a report. Section 9-6-13. |
| Wisconsin | DV advocates are not required to report because there is no mandatory reporting provision in this state's APS law. |
| Wyoming | DV advocates are required to report -- the mandatory reporting provision requires "any person" to report suspected abuse. WY ST § 35-20-103(a) |

APPENDIX THREE

Resources On Abuse In Later Life (Selected General Information)

Websites

National Clearinghouse on Abuse in Later Life (NCALL) at www.ncall.us.

For more information on elder abuse and links to additional websites, go to the National Center on Elder Abuse at www.elderabusecenter.org

For more information about adult protective services and the National Adult Protective Services Association, go to www.apsnetwork.org.

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APPENDIX FOUR

Resources On Mandatory Reporting Of Elder Abuse And Domestic Violence

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