

Protecting Against Elder Abuse

The United Nations declared tomorrow as [World Elder Abuse Awareness Day](#). In North Carolina, Governor Cooper declared the time period spanning from Mother's Day to Father's Day [Vulnerable Adult and Elder Abuse Awareness Month](#). The Governor's proclamation recognizes NC's "vulnerable and older adults of all social, economic, racial, and ethnic backgrounds may be targets of abuse, neglect, or exploitation which can occur in families, long-term care settings, and communities."

What is elder abuse?

The term "elder abuse" is not specifically defined in NC statute and there is no universally accepted definition throughout the United States. It is somewhat of a catchall term and may be generally described as an intentional or negligent action that causes harm, serious risk of harm, or distress to vulnerable older persons. See [Center for Elders and the Courts](#). This amorphous definition across jurisdictions and disciplines creates challenges in research and in establishing best practices to combat such abuse. See [National Center on Elder Abuse](#). However, it is an issue that will not go away any time soon. Between the years of 2012 and 2050 the population of adults over 65 in the United States is expected to more than double. *Id.* With that growing population comes a growing opportunity for elder abuse. And, the effects of elder abuse can be deadly. Elders in one study who experienced abuse, even modest abuse, had a 300% higher risk of death when compared to those who had not been abused. *Id.*

The Court and Elder Abuse: Prosecution and Protection

The NC court system interfaces with elder abuse issues in two key ways: **prosecution and protection**. *Prosecution* is about punishing the perpetrator of the abuse. There are specific crimes pertaining to older adults set forth in [G.S. 14-32.3](#) (domestic abuse, neglect, and exploitation of an adult 60 or older) and [G.S. 14-112.2](#) (exploitation of a person 65 or older). However, prosecution could also fall under more general crimes such as assault, battery, rape, fraud, forgery, false pretenses, or robbery. (Note, this is one reason that tracking the number of "elder abuse" criminal cases can be so difficult.)

Protection, on the other hand, is about protecting the older adult from harm to themselves or their property. This typically occurs through an adult protective services (APS) report, evaluation, and court proceeding, if any, under G.S. 108A and/or a guardianship proceeding under G.S. Chapter 35A. [G.S. 108A-100](#); [G.S. 35A-1201\(b\)](#). This post and my post next week focus on these protection-oriented proceedings and how they function to protect an adult from elder abuse.

The Court and Protection: APS and Guardianship

When thinking about protecting older adults from elder abuse, most people think about adult

protective services and related proceedings filed before the district court in NC. However, APS is only one statutory tool that is available to protect older adults against such abuse. Guardianship is another tool, which when appropriately used in the least restrictive means, can be used to thwart perpetrators of such abuse involving older adults who lack capacity. However, guardianship can also be the source of such abuse and could potentially result in an APS report and action against the guardian. Effective oversight and court responsiveness are important pieces to ensuring such abuse does not occur through a guardianship and if it does that it is quickly remedied.

Adult Protective Services

The court's role in an APS case is typically a limited one, both in time and scope. APS is a program administered by county departments of social services (DSS) and supervised by the North Carolina Department of Health and Human Services (DHHS). The director of each county DSS has the duty (i) to receive and evaluate reports of abuse, neglect, or exploitation of [disabled adults](#), and (ii) to take protective action to protect those adults. [G.S. 108A-14\(a\)\(14\) and \(15\)](#). This process is set forth in Article [6](#) and [6A](#) of G.S. Chapter 108A. Abuse, neglect, and exploitation are defined [for purposes of APS](#) as follows:

1. **Abuse** – the willful infliction of physical pain, injury or mental anguish, unreasonable confinement, or the willful deprivation *by a caretaker* of services necessary to maintain mental and physical health. [S. 108A-101\(a\)](#). Note, “abuse” under G.S. 108A is limited to abuse by a caretaker. A “caretaker” is defined in [G.S. 108A-101](#) and may include the disabled adult’s guardian or power of attorney. See [NC Department of Health and Human Services, APS Manual, pg. III-4](#). This could take the form of **physical, sexual, or emotional abuse**. Warning signs of such abuse include:
 - Wounds, bruises, broken bones, welts, dislocations, sprains, and burns
 - Signs of being restrained
 - Fear, emotional pain, or distress by the older adult
 - Willfully withholding medication or intentional failure to dispense medications in accordance with doctor’s instructions
 - Actions intended to threaten, humiliate, ridicule, or change the behavior of the older adult
 - A caregiver’s refusal to allow the adult to be seen alone

2. **Neglect** – refers to a disabled adult who is either living alone and not able to provide for himself or herself the services necessary to maintain his or her mental or physical health or is not receiving services from his or her caretaker. [G.S. 108A-101\(m\)](#). This could take the form of **self-neglect or neglect by a caretaker** such as a guardian. Warning signs of neglect include:
 - Unexplained weight loss, malnutrition, or dehydration

- Unsanitary living conditions, such as mold, bed bugs, or soiled bedding and dishes
- Unsuitable clothing for weather
- Untreated physical problems such as bed sores
- Unsafe living environment such as lack of heat in the winter or air-conditioning in the summer, leaks or other plumbing problems, no running water
- Failure to provide for medical needs

3. **Exploitation** – the illegal or improper use of a disabled adult or his resources for another's profit or advantage. [G.S. 108A-101\(j\)](#). This includes but is not limited to **financial exploitation**. Warning signs of financial exploitation may include:

- Unexplained withdrawals from bank accounts or other financial activity
- Sudden and unexplained changes to estate plans, such as a will or power of attorney or health care power of attorney
- Unusual interest in the adult's assets
- Disappearance of personal items from the adult's residence
- Unusually large payments for services
- Addition of names to the adult's bank signature card
- Unpaid bills despite the fact the adult has the money to pay them

Reporting Requirement. One of the most important things for all North Carolinians to keep in mind regarding elder abuse awareness is the universal reporting obligation established by APS law. **Everyone, without exception, who has reasonable cause to believe that a disabled adult is in need of protective services has a duty to report such information to the [county department of social services](#).** My colleague, Aimee Wall, discussed this reporting obligation in detail in her blog post [here](#).

From July 2015 through June 2016 there were 25,980 reports of abuse, neglect, or exploitation of adults to NC county departments and 13,980 were screened in for further evaluation. Of those reports, in 5,952 cases DSS confirmed mistreatment and DSS found the need for protective services in 3,406 cases. Aimee discussed the limitations on the authority and role DSS in response to an adult protective services (APS) report in her blog post [here](#).

APS and the Court. The primary goal of APS through the county departments is to *mobilize services* to protect disabled adults from abuse, neglect, and exploitation in response to such reports. [G.S. 108A-100](#). The role of the court, specifically the district court, in these cases is limited in scope to enable: (a) the evaluation in response to a report that is screened in by the department and (b) the delivery of services, including:

- Enable an evaluation

1. **Access to financial and other records.** Aimee discussed the court proceedings that may be filed to gain access to an adult's financial records if there is financial exploitation investigation in connection with an APS case in this [blog post](#). DSS may also petition the court to obtain access to other records pertaining to the care and treatment of the adult when necessary, such as a caretaker refuses to allow DSS access to such records. See [DHHS APS Manual, pg. III-19](#).
2. **Access to the adult to conduct an evaluation.** I recently blogged [here](#) about the authority of DSS to petition the court for an administrative inspection warrant in response to a caretaker who refuses to allow DSS to conduct a private interview with the subject of the APS report.

- Enable the delivery of services

1. **Interference by a caretaker with services.** Where DSS determines it is appropriate to mobilize services in response to an APS report and evaluation, in many cases DSS does so through the consent of the disabled adult. G.S. 108A-104(a). If the caretaker of a disabled adult, such as a guardian, refuses to allow [DSS](#) to provide such services, DSS may petition district court to obtain an order enjoining the caretaker from such interference. [G.S. 108A-104\(b\)](#). If the caretaker is a guardian, DSS may also file a motion in the cause before the clerk of superior court in the guardianship proceeding to remove the guardian or for an order directing the guardian to stop interfering based on the best interests of the adult. [G.S. 35A-1207](#) (allowing any interested person to file a motion in the cause to consider any matter pertaining to the guardianship).
2. **Lack of capacity to consent.** If the disabled adult lacks the capacity to consent to services, DSS may file a petition in district court for the issuance of a protective order to enable DSS to provide services. [G.S. 108A-105\(a\)](#). DSS also has the authority to petition the court for the provision of **emergency services** if an emergency exists and no other authorized person is available and willing to arrange for emergency services. [G.S. 108A-106\(a\)](#).

The court's role is also limited in time. If the district court finds by clear, cogent and convincing evidence that the adult is need of protective services and lacks capacity, the court may enter a protective order, as described above, for not more than 60 days to authorize DSS to provide such services. [G.S. 108A-105\(c\)](#). The order may be extended for an additional 60 days but no longer. At that point, the court must consider whether a petition for guardianship under G.S Chapter 35A should be initiated. *Id.*

Parts two and three of this post will examine the distinction between APS and guardianship as well as the intersection of guardianship and elder abuse, including how guardianship may be used to stop such abuse and how the guardian may be the source of it. Finally, they will focus on how APS and guardianship proceedings may overlap – including that a district court's determination of incapacity through an APS proceeding "shall in no way affect" an incompetency proceeding under

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GS Chapter 35A, a precursor to adult guardianship. [G.S. 108A-105\(d\)](#).

So, stay tuned next week for more on this important topic. And, most of all, don't forget to wear purple tomorrow in support of elder abuse awareness and World Elder Abuse Awareness Day.