

## The RIGHT Response to Elder Abuse

People seeking to age in place with dignity may need assistance; as attorneys, we should take steps to protect the elderly and disabled from abuse, neglect and exploitation.

By **Daniel Pollack & Elisa Reiter** | March 26, 2021 at 08:22 PM

The real extent of adult abuse, neglect, and exploitation is grossly unreported. The victims themselves are often hesitant to report mistreatment either because they are afraid of retaliation -- physical or mental -- or because they are simply unable to do so. Protecting older adults and incapacitated adults from abuse, neglect or exploitation means helping them to live in their own homes as long as possible, find appropriate living arrangements if necessary, and generally to remain as safe and self-sufficient as possible.

Even spotting a person who is a victim of abuse and in need of Adult Protective Services as they sit in a law office is not easy. Will you quickly notice telltale signs indicating that the person is not getting the care they need? Can you tell if the bruises or sores you see were inflicted intentionally? Is the person dressed appropriately or displaying signs of poor hygiene? Is the person experiencing untreated pain? Is the caregiver refusing to let you talk to the adult alone? Is the caregiver giving

contradictory statements about the adult's behavior or health? Are there other yellow or red flags that may be hints of abuse or neglect? Abuse, neglect, or exploitation may be happening, but, from a legal perspective, you may hesitate taking the case because it does not seem 'winnable.' And you could be right.

In Dallas, the [RIGHT Care Program](#) is being implemented as a pilot project culling representatives from the Dallas Police Department, Dallas Fire Rescue and the Parkland Health and Hospital System. It's purpose is to forge a collaborative effort to address mental health issues as such calls are received by 911 dispatch. Instead of one leg of the foregoing triumvirate being deployed, three members of the Rapid Integrated Group Healthcare Team (RIGHT) are sent to address the situation. The team includes a police officer, a licensed clinical social worker, a paramedic. Off-site clinicians are available in real time. T.C. Broadnax, Dallas City Manager, described his goal in requesting more funds targeted to the RIGHT Program in the latest [Dallas City Budget](#):

Expand the RIGHT Care program and increase access to appropriate health services to mitigate behavioral health crises and avoid unnecessary hospitalization, arrests, and interactions between residents and law enforcement

In the 2020-2021 Dallas City Budget, Broadnax summarizes the RIGHT Program, implemented as a test program in 2018, in South Dallas:

The pilot program was highly successful, with more than 4,600 crisis interventions, proactive follow-up visits, and referrals, resulting in a 29.5 percent reduction in mental health calls requiring an ambulance from 2017 (prior to RIGHT Care) to 2019. Involuntary hospitalizations have also

declined, and Parkland Health and Hospital System has seen fewer returns to the emergency department. Based on this success of the pilot, we are expanding the RIGHT Care program citywide, adding four new teams and new clinical resources for assessment and follow-up case management, allowing us to respond to up to 6,500 calls in FY 2020-21. In FY 2021-22, we plan to add five more teams to adequately respond to the 13,000 calls DPD receives each year. Along with the expansion of RIGHT Care, we are removing barriers to behavioral health care in communities with limited or no access to those services. By March 2021, we plan to present specific recommendations for counseling and other programs, and we intend to leverage additional investments from other government, community, and health care agencies.

**Mobile Crisis Response Team** In addition to mental health calls, police officers often encounter residents in vulnerable situations with immediate social service needs that officers are unable to meet. To care for those residents, the City will equip a mobile crisis response team that supports police officers when residents require direct services such as food, housing, transportation, or shelter in cases of domestic violence. The Office of Integrated Public Safety Solutions will oversee the team, which will consist of knowledgeable and dedicated social service professionals trained in de-escalation and connected to community organizations to provide immediate resources and access to long term assistance.

[Texas Attorney General Ken Paxton](#) addresses concerns related to elder abuse, including neglect, exploitation and neglect:

Abuse includes involuntary seclusion, intimidation, humiliation, harassment, threats of punishment, deprivation, hitting, slapping, pinching, kicking, any type of corporal punishment, sexual assault, sexual coercion, sexual

harassment, verbal abuse, or any oral, written, or gestured language that includes disparaging or derogatory terms, regardless of the person's ability to hear or comprehend.

Neglect means the failure of a caretaker to provide the goods or services, including medical services, which are necessary to avoid physical or emotional harm or pain.

Exploitation includes a caretaker's illegal use of a senior's resources for monetary or personal benefit, profit, or gain. Seniors may need help with their finances, but unless they hand control over to another person, they have the same right as anyone else to receive, spend, invest, save or give away their money. A family member, "friend" or nursing home may not take control of a senior's money without that person's permission.

One wonders if the phrase “involuntary seclusion” in the context of abuse might need a bit of tweaking in the Covid-19 era.

[Chapter 48 of the Texas Human Resources Code](#) creates the mechanism for investigating allegations of abuse, neglect or exploitation of an elderly and/or of a disabled person. Elderly equates to being 65 or older. “Person with a disability” can include someone with a mental, physical or intellectual disability of such a nature that the disability substantially impairs the person’s means of providing for their care and protection, applying to a person who is over 18, or a person under 18 who has had the disability of minority removed.

Attorneys must question whether a person presenting with elder abuse issues has or had concerns regarding:

- Capacity: Has there been a guardianship proceeding declaring the individual an incapacitated ward?
- Ability to consent: Does the individual appear to be lucid and aware of their surroundings and the impact of their allegations/requests?
- Life expectancy: Will the individual who has suffered abuse live long enough to provide testimony?
- Records: Will HIPAA laws impair an attorney or prosecutor's ability to access key records?
- Multiple forms of abuse: Is there more than one perpetrator, or more than one form of abuse occurring?

What might prevent reports of elder abuse? The victim may be so enmeshed with their caretaker - who may also be an abuser - that they choose to stay silent as a means of assuring continued care and housing. This may happen because of a fear of reprisal by the perpetrator, the loss of the love or companionship of a family member, or a fear of losing independence.

Often, first responders and other representatives of the criminal justice system simply lack training and proficiency in handling such cases. Such cases may also mandate the use of expert witnesses, such as physicians, psychiatrists or social workers with geriatric experience, or forensic accountants employed to trace claims of financial exploitation.

How can attorneys help an elderly person or person suffering from a physical or mental disability regarding claims of abuse, neglect or financial exploitation?

1. Listen. Give them time to tell their story. This may mean addressing more immediate concerns to build trust.
2. Patience. Treat them as an equal, not as a child. Do not patronize. Do not raise your voice.
3. Interview landscape. Turn off distractions. Keep the focus on the interviewee.
4. One-on-one conversation. The individual should be interviewed alone, away from caretakers, family members and others.
5. Accommodation. Address the person's special needs.

[Adult Protective Services in Texas](#) provides the following resources to investigate allegations of abuse, neglect or exploitation of the elderly or disabled:

*If the victim is in a nursing home or assisted living facility, or is in his or her home and relies on a home health provider, call the Texas Department of State Health Services at (800) 458-9858.*

*If the victim is a resident of a long-term care facility that receives Medicaid funding, report the criminal abuse, neglect or exploitation to the Attorney General's Medicaid Fraud Control Unit at (512) 463-2011 (Austin), toll-free at (800) 252-8011 or by e-mail at [mfcu@texasattorneygeneral.gov](mailto:mfcu@texasattorneygeneral.gov).*

*Abuse of a senior who is not in a healthcare facility can be reported to Adult Protective Services at (800) 252-5400.*

As individuals, we must recognize that William Wordsworth was correct: "...the child becomes the father of the man." People seeking to age in place with dignity may need assistance. As attorneys, we should take steps to protect the elderly and disabled from abuse, neglect and exploitation. Let's get this RIGHT.

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