



K&L GATES

Legal Landscape of Elder Abuse Across International Jurisdictions

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1. Executive Summary

Disclaimer

This paper and the accompanying presentation are intended to provide a high-level overview of how elder abuse may be criminalised in the jurisdictions referred to in the paper (Relevant Jurisdictions) and is not intended to be an exhaustive summary of the law pertaining to elder abuse in the Relevant Jurisdictions.

This paper and the accompanying presentation do not constitute legal advice under the laws of the Relevant Jurisdictions and cannot be relied on.

What is the criminalisation of elder abuse?

Criminalisation is the rendering of an act criminal and hence punishable by the government in a proceeding in its name.¹ The World Health Organisation defines elders as people who are aged 60 years and older.² Elder Abuse can be described as the "single or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person".³ Elder abuse can be physical, financial, material, emotional, psychological, sexual or neglect of elders.

Use of "elder" to describe elder abuse

We would like to acknowledge the use of the word "elder" throughout this paper. Academics have acknowledged that there are problems with using the term 'elder abuse' in jurisdictions such as Canada, New Zealand and Australia, which have large Aboriginal populations. Charmian Spencer stated:

"More recently some jurisdictions have adopted terms such as "the abuse of older people" or "the abuse and neglect of older adults". This change has occurred because of concerns that the term "elder abuse" may attach a stigma to an older person who has already suffered abuse and that its use may force concentration on only the "oldest of the old". Another consideration is that the term "elder" has specific meaning in some ethnic and religious communities".⁴

Furthermore, the Australian Network for the Prevention of Elder Abuse has previously stated that the term 'elder' has a specific meaning for Indigenous people and that while abuse of older people can occur in all communities, the term 'elder abuse' does not refer particularly to older Aboriginal people or leaders, individuals or organisations. When defining elder abuse, many government policies acknowledge this point as well.⁵ The use of the phrase 'elder abuse' within this paper is intended to encompass abuse of older adults (60 to 65 years or older) across all communities, cultures and societies.

Which jurisdictions criminalise elder abuse?

Certain states within the United States of America (including Alabama, California, Florida, New York, North Carolina, Texas and Washington), within Australia (Australian Capital Territory) and the United Arab Emirates have criminal laws in place to protect against elder abuse.

Many of these laws are relatively new and remain largely untested in the judicial system, so it is difficult to comprehensively assess the effectiveness of such laws.

¹ Black's Law Dictionary Fifth Edition.

² <https://www.who.int/health-topics/elder-abuse>

³ https://www.who.int/ageing/projects/elder_abuse/en/

⁴ Charmian Spencer, 'New Directions for Research on Interventions with Abused Older Adults' 1995, in M.J. MacLean (ed.) Abuse and Neglect of Older Canadians, Vancouver; which was quoted in Elder Abuse Prevention Project, *Strengthening Victoria's Response to Elder Abuse* 2005, 12.

⁵ for example, Department of Communities, 'Respond to the Abuse of Older People (Elder Abuse) Policy', 18 November 2019.

Otherwise, most jurisdictions have general laws which criminalise actions that could fall within the ambit of elder abuse. Often, the burden of proof for these criminal actions have particularly high thresholds – for example, beyond reasonable doubt, which can be difficult to prove in elder abuse cases due to a range of factors, including the victim's unwillingness to report against a family member or friend, the potential unreliability as a witness due to possible cognitive decline or impairment or difficulty proving legal title to property if accounts are jointly held in the victim and perpetrators name.⁶

On the other hand, governments must tread carefully when enacting specific offences for elder abuse. They must carefully review the criminal offences in place to ensure there is not inconsistency or redundancy of laws. Furthermore, there is a need to consider current protection mechanisms, taking into account principles of discriminations as well as the threshold for vulnerability.

It is difficult to grasp the magnitude of elder abuse as many statistics for elder abuse are underestimated, due to the crimes going largely unreported.⁷ In order for elder abuse to be caught in the future, jurisdictions may consider the creation of an umbrella offence for elder abuse. This could encompass all offences detailed in this paper, as well as the general mistreatment, exploitation, and manipulation of elderly people. Additionally, if a standalone offence is created it may act as a deterrent since a wide-reaching general offence would comprise many forms of abuse of an elderly person.

There are many gaps in legislation across these jurisdictions, which open the possibility of elder abuse going unpunished. An umbrella offence would cover far more instances of abuse and reduce confusion surrounding the prosecution of elder abuse. However, failing the introduction of an umbrella offence, we must look to analyse the jurisdictions as they currently stand. The steps that the Australian Capital Territory has taken in recent times to criminalise elder abuse and neglect and to create a proactive requirement to protect vulnerable people in care through the introduction of bespoke offences is arguably a step in the right direction. The straightforward nature of the offences and the definition of vulnerable persons under the Australian Capital Territory's legislation strikes a balance between the considerations mentioned above. Ultimately, the effectiveness of enacting such offences will be truly tested by the cases which pursue prosecution under them.

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⁶ 'Elder Abuse and Criminal Law' Seniors Rights Victoria, May 2018 pages 7-9.

⁷ For example, just over half of older people sought support or advice after an abusive incident (Trish Hill and Ilan Katz, *Insights into abuse of older people - analysis of Australian Bureau of Statistics datasets*, 2019 page 28). see also World Health Organization, *Elder Abuse Key Facts*, 2021, <https://www.who.int/news-room/fact-sheets/detail/elder-abuse>; Australian Institute of Family Studies, *Elder Abuse*, 2018, <https://aifs.gov.au/publications/elder-abuse/export>; Briony Dow and Bianca Brijnath, *Elder abuse: context, concepts and challenges*, 2019.

2. Australia

2.1 Summary of Australia's jurisdiction

Australia has federal laws which govern the Commonwealth of Australia, and the Federal Government can pass laws under the power of the Constitution of Australia. Each state or territory also has local laws which cover people within that state or territory. If there is an inconsistency between federal and state or territory laws, then the federal law overrides them to the extent of that inconsistency.



At a federal level, Australia does not criminalise elder abuse, and only one territory has passed legislation which specifically criminalises elder abuse – being the Australian Capital Territory.

2.2 Criminalisation of elder abuse

Australia has not enacted federal legislation specifically targeting the criminalisation of elder abuse. Most Australian states and territories have not enacted specific criminal offences which target 'elder abuse' as an offence separate to the general offences contained in criminal law. The exception to this is the Australian Capital Territory which made an amendment to its *Crimes Act* in 2020 through the *Crimes (Offences Against Vulnerable People) Legislation Amendment Act 2020* (ACT).

Australian Capital Territory

The Australian Capital Territory passed legislation to criminalise abuse against 'vulnerable people'.⁸ Vulnerable people are defined as adults with a disability, or are at least 60 years old and have either:

- a disorder, illness or disease that affects the person's thought processes, perception of reality, emotions or judgement;
- have an intellectual, psychiatric, sensory or physical impairment that results in substantially reduced capacity of the person for communication, learning or mobility; or
- for any other reason the person is socially isolated or unable to participate in the life of the person's community.⁹

(a) Abuse

Under section 36A of the *Crimes Act 1900* (ACT), it is an offence if a person who is responsible for providing care towards a vulnerable person engages in abusive conduct which recklessly results in harm to the person, or a financial benefit for another. Abusive conduct is given a wide meaning, and can include '*an act or omission that is directed at the vulnerable person and is of a violent, threatening, intimidating or sexually inappropriate behaviour*' or that is reasonably likely to isolate the vulnerable person, make them dependant on the abusive person, limit their access to services, restrict or deprive their freedom of action, or frighten, humiliate, degrade or punish the vulnerable person.

This applies so long as the behaviour is 'not reasonably necessary for the safe and effective care of the vulnerable person, or for the safety of another person who is present nearby'.

(b) Failure to protect

It is a criminal offence for a person in authority within an institution to fail to protect the vulnerable people in their care. This offence includes a requirement of substantial risk that a serious offence will be committed against the vulnerable person by a person associated with the institution or by

⁸ *Crimes Act 1900* (ACT) ss 36A, 36B, 36C and 442C; *Crimes (Sentencing) Act 2005* (ACT) ss 33(1)(gb) and 33(5).

⁹ *Crimes Act 1900* (ACT) s 36A(5).

another person in authority in the institution and the person in authority must be aware that the risk exists.¹⁰

An institution is defined as an entity that operates facilities for, engages in activities with or provides services to vulnerable people under the entity's care, supervision or control.¹¹ An example of such an institution is a nursing home. This provision is particularly relevant in light of the recent Royal Commission into Aged Care Quality and Safety.

(c) Neglect

It is also a criminal offence for a person responsible for a vulnerable person's care to recklessly or negligently fail to provide that vulnerable person the necessities of life and the failure causes serious harm to the vulnerable person.¹²

The ACT can also take into account the circumstances of the victim and whether the offender knew the person was vulnerable when sentencing offenders.¹³

New South Wales

New South Wales has a range of offences which could encompass elder abuse, including assault, grievously bodily harm, death, neglect or deprivation in failure to provide the necessities of life.¹⁴ These offences would need to be proved beyond a reasonable doubt.

NSW can take into account the circumstances of the victim when sentencing offenders.¹⁵ Such circumstances could include the victims vulnerability due to age, disability or geographical isolation, whether a person was in a position of trust or authority in relation to the victim, or circumstances where the perpetrator is believed to have prejudice or hatred against a particular group of people (such as age).¹⁶

Western Australia

Offences under the *Criminal Code Compilation Act 1913 (WA)* (**WA Criminal Code**) which could constitute elder abuse include assault, death from bodily injury that might have been avoided or prevented, death from (or from treatment of) grievous bodily harm, grievous bodily harm, common assault, indecent assault, sexual penetration without consent, deprivation of liberty, unlawful detention or custody of person who is impaired, stealing and forgery.¹⁷

The WA Criminal Code also contains a provision that creates a duty of care to provide the necessities of life where someone is in charge of another person who is unable by reason of age, sickness, mental impairment, detention, or any other cause, to withdraw himself/herself from such charge and unable to provide himself/herself with the necessities of life.¹⁸

In Western Australia, the age of the victim is an aggravating circumstance for certain offences.¹⁹ Furthermore, in sentencing the judge can take into account the vulnerability of any victim of the offence.²⁰

Other states and territories

Other states and territories have criminal codes or criminal statutes which address similar offences to the general physical and sexual abuse provisions which are described above for New South Wales and Western Australia.

¹⁰ *Crimes Act 1900 (ACT)* s 36B(1)(b)-(c).

¹¹ *Crimes Act 1900 (ACT)* s 36A(5).

¹² *Crimes Act 1900 (ACT)* s 36C(1)(b)-(c).

¹³ *Crimes (Sentencing) Act 2005 (ACT)* s 33(1)(d).

¹⁴ *Crimes Act 1900 (NSW)* ss 61, 33, 18, 24 and 44.

¹⁵ *Crimes (Sentencing Procedure) Act 1999 (NSW)* s 21A(2)(l).

¹⁶ *Crimes (Sentencing Procedure) Act 1999 (NSW)* s 21A(2)(h), (k) and (l).

¹⁷ *Criminal Code Compilation Act 1913 (WA)* ss 223, 274, 275, 297, 313, 323, 325, 333, 337, 370-378, 473.

¹⁸ *Criminal Code Compilation Act 1913 (WA)* s 262.

¹⁹ *Criminal Code Compilation Act 1913 (WA)* s 221. Assault offences are considered aggravated where the person who caused the victim is 60 years or older.

²⁰ *Sentencing Act 1995 (WA)* s 6(2)(b).

Many states can also take into account the circumstances of the victim when sentencing offenders.²¹ Otherwise, the common law position can be applied with which views the elderly nature of a victim as an aggravating factor for the purposes of sentencing.

2.3 Other legal consequences for committing elder abuse

Aged Care Act

Aged Care Act 1997 (Cth) (**Aged Care Act**) sets out the quality of care required in government funded aged care and outlines the rights of people receiving care. The Aged Care Act has provisions which include:

- highlighting the responsibilities of approved providers, including the right to provide care to a certain standard and maintaining adequate staff with appropriate skill;
- sets up the Aged Care Quality Standards, which are set out in the Quality of Care Principles and the User Rights Principles; and
- indicates that a "reportable incident" is when an incident occurs or is alleged or suspected to have occurred, in connection with the provision of residential care and includes situations where unreasonable use of force was used or unlawful sexual contact was inflicted on the residential care recipient, then the residential aged care provider must report this to the police and the Department of Health.²²

Separately, the *Aged Care Quality and Safety Commission Act 2018* (Cth) establishes an Aged Care Quality and Safety Commission.

On 19 March 2019, the Attorney-General launched the 'National Plan to Respond to the Abuse of Older Australians (Elder Abuse) 2019-2023'.²³ This plan highlights the issues faced in abuse against older Australians, including Australia's ageing society, the impacts of ageism, priority areas for action and implementation and governance of this national plan. However, this plan does not involve any commitment to create legislation which specifically criminalises abuse towards elderly people.

Guardianship or adult protection legislation

Each state and territory has legislation which deals with and regulates guardianship. While this legislation does not specifically address elder abuse, guardianship and the misuse of guardianship is a prevalent issue that occurs frequently in elder abuse case studies.

In the Northern Territory, Tasmania and Victoria, legislation identifies that a guardian must act in such a way as to protect the represented person from neglect, abuse or exploitation.²⁴ In Western Australia, the legislation stipulates that the guardian must act in such a way as to protect the represented person from **financial** neglect, abuse or exploitation.²⁵ Tasmania also grants the police additional powers to remove a person with a disability from a premises if they suspect that the person has been, or is being, ill-treated, neglected or unlawfully detained against his or her will.²⁶

In New South Wales, everyone exercising functions under the legislation with respect to persons who have disabilities must follow the principle of "such persons should be protected from neglect, abuse and exploitation".²⁷

²¹ *Penalties and Sentences Act 1992* (Qld) s 9(3)(c); *Criminal Law Consolidation Act 1935* (SA) s 5AA(1)(f)(j); *Sentencing Act 1991* (Vic) s 5(2)(da).

²² *Aged Care Act 1997* (Cth) s 54-3 and *Quality of Care Principles 2014* (Cth) ss 15NA - 15ND.

²³ <https://www.ag.gov.au/sites/default/files/2020-03/National-plan-to-respond-to-the-abuse-of-older-australians-elder.pdf>.

²⁴ *Adult Guardianship Act 1988* (NT) s 20(2)(d); *Guardianship and Administration Act 1995* (Tas) s 27(2)(e); *Guardianship and Administration Act 1986* (Vic) s 28(2)(d).

²⁵ *Guardianship and Administration Act 1990* (WA) s 51(2)(d).

²⁶ *Guardianship and Administration Act 1995* (Tas) s 30(1)(a).

²⁷ *Guardianship Act 1987* (NSW) s 4(g).

Queensland's tribunal can make interim orders or issue a warrant if they are satisfied there is an immediate risk of harm to the health, welfare or property of the adult, including a risk of abuse, exploitation or neglect of, or self-neglect by, the adult.²⁸ The Queensland legislation also contains whistleblower protection for disclosing information which tends to show if an adult is, or has been, the subject of neglect (including self-neglect), exploitation or abuse.²⁹

In South Australia, guardianship legislation goes the furthest in creating an offence for a person who has oversight, care or control of a person with a mental incapacity to ill-treat or wilfully neglect that person.³⁰ Comparatively, the Australian Capital Territory legislation is silent on abuse, neglect or ill-treatment.³¹

Western Australia

Similar to the federal approach, the current elder abuse response system in Western Australia consists of a 'wide range of agencies, services and organisations across multiple sectors that perform different functions, including justice and law enforcement, education and counselling, health and financial services, emotional and physical support, family and respite care, and advocacy and guardianship'.

Western Australia also has a "Responding to the Abuse of Older People (Elder Abuse) Policy",³² and has produced a "Guideline: Responding to the Abuse of Older People (Elder Abuse)".³³

Other states and territories

There are many novel ways that elder abuse can fall under broader, more general protection categories. One example is the domestic violence reporting offence established in the Northern Territory. Under this offence, an adult must believe on reasonable grounds that either:

- another person has caused, or is likely to cause, harm to the victim and both the perpetrator and the victim is in a domestic relationship; **and/or**
- the life or safety of the victim is under serious or imminent threat because domestic violence has been, is being or is about to be commitment.

If the adult believes this and as soon as practicable after forming this belief does not report it to a police officer, then he or she commits an offence.³⁴ While this does not directly stipulate that elder abuse must be reported, it does stipulate that certain actions which constitute elder abuse could be captured by this provision.³⁵

²⁸ *Guardianship and Administration Act 2000* (Qld) ss 129(1)(b) and 149(1). In the case of a warrant, this only applies to an adult with impaired capacity for a matter.

²⁹ *Guardianship and Administration Act 2000* (Qld) s 247(1)(b)(ii).

³⁰ *Guardianship and Administration Act 1993* (SA) s 76.

³¹ *Guardianship and Management of Property Act 1991* (ACT).

³² https://ww2.health.wa.gov.au/~media/Files/Corporate/Policy%20Frameworks/Clinical%20Services%20Planning%20and%20Programs/Policy/Responding%20to%20the%20Abuse%20of%20Older%20People%20Policy/Responding-to-the-Abuse-of-Older-People-Policy.pdf?sm_au=iVVZPN8KQFKtb8V5FLWCHKsCRBFN2

³³ https://ww2.health.wa.gov.au/~media/Files/Corporate/Policy%20Frameworks/Clinical%20Services%20Planning%20and%20Programs/Policy/Responding%20to%20the%20Abuse%20of%20Older%20People%20Policy/Supporting%20Information/Guideline-Responding-to-the-Abuse-of-Older-People.pdf?sm_au=iVVZPN8KQFKtb8V5FLWCHKsCRBFN2

³⁴ *Domestic and Family Violence Act 2007* (NT) s 124A.

³⁵ *Domestic and Family Violence Act 2007* (NT) ss 9 - 10 and 124A. A domestic relationship is defined under the act to be a relationship with another person if the person is or has been in a family relationship with the other person. A family relationship includes being a relative of the other person, such as a parent, stepchild, grandparent, aunt etc. Furthermore, physical abuse of an elder would fall within the scope of this offence.

2.4 Conclusion

Recent developments in Australia, including the Royal Commission into Aged Care Quality and Safety, has highlighted the need to consider treatment of older Australian's in a more detailed manner. In Australian residential care facilities, it is estimated that approximately 39.2% of residents are subject to some form of elder abuse.³⁶ It is arguable that the criminalisation of offences within the states and territories includes instances of elder abuse, and therefore there is sufficient protection for elders. However, it is also arguable that given the high burden of proof involved in these offences and the difficulties that have been expressed in proving previous offences (or getting an elder abuse victim to come forward), it is likely that additional protections would assist in minimising and deterring elder abuse in Australia. As the legislation criminalising elder abuse in the Australian Capital Territory is so new, it is difficult to assess whether these offences have had an impact on elder abuse.

³⁶ Royal Commission into Aged Care Quality and Safety, 'Experimental Estimates of the Prevalence of Elder Abuse in Australian Aged Care Facilities' 21 December 2020.

3. Asia (Singapore)

3.1 Summary of Singapore's jurisdiction

Singapore's legal system is based on English common law, being a former British colony. Singapore's Constitution sets out the three organs of the state being, the Executive, the Legislature and the Judiciary. Legislation is created by written laws enacted by the Singapore Parliament (i.e. at a federal level) and subsidiary legislation is created by ministers, government agencies or statutory boards under the parent legislation.



Singapore does not have legislation specifically enacted to target elder abuse. However, Singapore criminalises elder abuse when the act of abuse satisfies the elements of any offence within the Penal Code.³⁷

Beyond the Penal Code, there are other pieces of legislation which protect the elderly from abuse. These include:

- Vulnerable Adults Act 2018 (No. 27 of 2018) (the **VAA**);
- Women's Charter (Cap. 353);
- Mental Health (Care and Treatment) Act (Cap. 178A) (the **MHCTA**);
- Protection from Harassment Act (Cap. 256A) (the **POHA**); and
- Maintenance of Parents Act (Cap. 167B) (the **MPA**).

This section of the paper will delve into Singapore's approach to protecting elders from abuse and will conclude that specific criminalisation of elder abuse is not required, as there is sufficient means by which elders in the community are already protected.

Definitions

In Singapore, there are various age thresholds used to categorise "elder" adults, depending on the situation and context. This includes:

- A "Senior citizen" is 60 years old and above;³⁸
- An "Elder" is 65 years old and above;³⁹ and
- An "Applicant" under the MPA is 60 years old and above.

Based on the data collected in Singapore by the Ministry of Social and Family Development ("**MSF**"), elder abuse involves the abuse of persons aged 65 years old and above.⁴⁰

Elder abuse has been defined as "any action or inaction, perpetrated by a person in a position of trust, which jeopardizes the health or wellbeing of an elderly person".⁴¹ The abuse is often carried out by persons whom the victim trusts, such as family members and non-family members such as domestic helpers or maids.⁴²

³⁷ Cap. 224 of the *Penal Code*.

³⁸ A senior citizen will receive the Passion Silver Concession Card upon attaining the age of 60. This is the hallmark of a senior citizen in a Singapore. The Passion Silver Concession Card programme is one of many initiatives under the Action Plan for Successful Ageing and is spearheaded by the Ministry of Health, Ministry of Transport and People's Association with support from the Land Transport Authority. It entitles senior citizens to enjoy concessionary fares on public transport, in addition to various merchant benefits.

<https://www.passioncard.gov.sg/passion-card/about-passion-silver-concession-card>

³⁹ Parliamentary Debates Singapore: Reported Cases of Child and Elder Abuse in Last Five Years, vol 94 (11 February 2019) (Senior Parliamentary Secretary to the Minister of Social and Family Development, Assoc Prof Dr Muhammad Faishal Ibrahim).

⁴⁰ Ibid.

⁴¹ <https://www.msf.gov.sg/publications/Documents/Elder%20Abuse%20Brochure%2027%20Nov.pdf>

⁴² <https://www.msf.gov.sg/publications/Documents/Elder%20Abuse%20Brochure%2027%20Nov.pdf>

There are four main types of elder abuse or mistreatment, which may be broadly classified as follows:⁴³

- **Physical** – Infliction of physical pain and injury. This includes direct, aggressive behaviours such as bodily assault, torture, physical confinement and sexual abuse.
- **Psychological** – Verbal aggression such as intimidation, humiliation, making unreasonable demands and deliberate ignoring. This includes actions that cause fear of violence, isolation or deprivation, feelings of shame, harassment, threats and insults. Also includes non-verbal acts which cause pain and distress to the elderly family member.
- **Financial** – Exploitation and/or misuse of funds or resources. This includes misappropriation of money, valuables or property.
- **Neglect** – Deliberate refusal to meet basic needs, i.e. failure to provide food, shelter, clothing, medical care and financial support.

In Singapore, elder abuse is on the rise. The MSF's Adult Protective Service investigated 77 cases in 2017, 126 cases in 2018 and 127 cases in 2019.⁴⁴ However, with Singapore's ageing population, the elderly population has also increased over this time period.

3.2 Criminalisation of elder abuse

Elder abuse becomes a crime when the act or omission constitutes an offence under the Penal Code. The Penal Code covers general instances of physical and financial abuse.

The Singapore Courts have ruled that cases involving elder abuse ought to be treated specially, with harsher punishments meted out to those who abuse the elderly. In *Public Prosecutor v Raffi bin Jelani*,⁴⁵ the court held that the law recognises the need to protect certain groups of vulnerable and defenseless persons, such as the handicapped, incapacitated, children and the elderly. An offender who commits an offence against such persons ought to be dealt with more severely by the court.

Additionally, in 2019, the Penal Code was amended to include a provision on enhanced penalties for offences against vulnerable persons, which includes the elderly. Pursuant to section 74A of the Penal Code, where a person is convicted of committing an offence against a vulnerable person, the Singapore Courts may sentence the offender to a punishment not exceeding twice the maximum punishment.⁴⁶

Physical abuse

The Penal Code⁴⁷ provides general protection to individuals where a perpetrator has caused "hurt" to a person. This includes situations where the elderly was wrongfully restrained or confined and situations where "criminal force" or "assaults" occurred. An example is section 319 of the Penal Code, which states that "whoever causes bodily pain, disease or infirmity to any person is said to cause hurt".

In *Purwanti Parji v Public Prosecutor*,⁴⁸ the accused strangled an elderly woman to death and was charged with culpable homicide not amounting to murder, punishable under section 304(a) of the Penal Code. The court reflected that the victim was:

"arguably an elderly victim, being 57 years old at the time of the attack. If not by virtue of age, the deceased was also vulnerable and defenceless in the circumstances in that the appellant caught her by surprise by sitting on her chest and strangling her while she was asleep".

⁴³ "Understanding Abuse and Neglect-Detecting and Helping", Second Edition, MCYS, 2004. This is not intended to be an exhaustive list. >

⁴⁴ <https://www.msf.gov.sg/research-and-data/Research-and-Statistics/Pages/adult-protection.aspx>

⁴⁵ [2004] SGHC 120 at [20]

⁴⁶ Section 74A(2) of the Penal Code.

⁴⁷ Penal Code (Cap 224, 2008 Rev Ed) <https://sso.agc.gov.sg/Act/PC1871>

⁴⁸ [2005] 2 SLR(R) 220.

In *Public Prosecutor v Sandar Aye*,⁴⁹ the accused forcefully pushed an elderly lady who had dementia, causing her to fall backwards and hit her head. The accused was charged with causing grievous hurt under section 325 of the Penal Code. The court reflected that:

*"The prosecution had highlighted two main aggravating factors that warranted a substantial uplift of one year's imprisonment. First, was the victim's vulnerability as an elderly person. The prosecution had characterized this as "elderly abuse". Second, the prosecution highlighted that the accused was hired to take care of the victim precisely because of her vulnerabilities, i.e. her dementia."*⁵⁰

Financial abuse

The Penal Code also offers certain protections against financial abuse of the elderly. While the Penal Code is meant to protect all of society, severe forms of elder financial abuse fall under the Penal Code if they amount to theft,⁵¹ fraud or cheating.⁵²

In *Public Prosecutor v Jumahri Bin Suriman*,⁵³ the accused created a scheme to cheat elderly residents in an old public housing estate to obtain cash. The accused was charged with 7 counts of cheating under section 420 of the Penal Code and 1 count of theft under section 380 of the Penal Code. The court reflected:

*"In determining the degree of punishment, I noted that the offences were significantly aggravated. First, the offences involved a deliberate calculated plan. The accused came up with a plan to cheat the poor and elderly residents in old public housing estates to obtain easy cash. He went around old public housing estates looking for victims and devised different scams to hoodwink them. Second, he callously targeted the vulnerable sector of our community, the elderly. He scouted for low-income, poorly educated elderly victims of his own ethnic group as they were most likely to fall prey to his deception. Simple-minded elderly need to be protected."*⁵⁴

3.3 Other legal consequences for committing elder abuse

Vulnerable Adults Act 2018

The VAA, which came into effect on 19 December 2018, is the closest Singapore has to legislation dealing solely with elder abuse. It is a piece of legislation which seeks to safeguard vulnerable adults from abuse, neglect or self-neglect and allows Singapore's social services to intervene and render assistance or protection as a last resort when family and community intervention fail. The VAA is focused on protecting and safeguarding against abuse and neglect. While it does not criminalise elder abuse per se, it has amended other legislation to enhance the penalties for offences committed against vulnerable adults.

There are various terms used in the VAA that are relevant to elder abuse. These include:

- Vulnerable adult, which is defined as an "individual who is 18 years of age or older and is, by reason of mental or physical infirmity, disability or incapacity, incapable of protecting himself or herself from abuse, neglect or self-neglect."⁵⁵
- Abuse, which is defined as "Physical abuse, emotional or psychological abuse, conduct or behaviour by an individual that in any other way controls or dominates another individual and causes the other individual to fear for his or her safety or well-being or conduct or behaviour by an individual that unreasonably deprives, or threatens to unreasonably deprive, another individual of that other

⁴⁹ [2020] SGDC 238.

⁵⁰ Ibid [30].

⁵¹ Sections 378 and 380 of the Penal Code.

⁵² Sections 415, 416 and 420 of the Penal Code.

⁵³ [2014] SGDC 358.

⁵⁴ Ibid [22]-[23].

⁵⁵ Section 2(1) of the VAA.

individual's liberty of movement or wellbeing."⁵⁶ The VAA provides further clarity as to what falls under abuse by defining "physical abuse"⁵⁷ and "emotional or psychological abuse".⁵⁸

- Neglect, which is defined as "the lack of provision to the individual of essential care (such as but not limited to food, clothing, medical aid, lodging and other necessities of life), to the extent of causing or being reasonably likely to cause personal injury or physical pain to, or injury to the mental or physical health of, the individual."⁵⁹
- Self-neglect, which is defined as "the failure of the individual to perform essential tasks of daily living (such as but not limited to eating, dressing and seeking medical aid) to care for himself or herself, resulting in the individual - living in grossly unsanitary or hazardous conditions; suffering from malnutrition or dehydration; or suffering from an untreated physical or mental illness or injury."⁶⁰

Although the VAA protects vulnerable adults aged 18 or older, the MSF has said that more than half of the vulnerable adults it has encountered are above 60 years old.⁶¹ Thus, it can be seen that one of the main beneficiaries of the VAA are the elderly.

Where a vulnerable adult is experiencing or is at risk of experiencing abuse, neglect or self-neglect (as those terms are defined in the VAA), the VAA empowers the State to intervene by allowing the Director-General or a protector to enter the premises where the vulnerable adult is residing,⁶² to obtain information and examine the records of the vulnerable adult⁶³ and to temporarily remove the vulnerable adult from the place where he/she is residing or staying.⁶⁴ The VAA also provides the court with the jurisdiction to make the orders set out in sections 14 and 15 of the Act. The VAA further provides powers to the Director-General and enforcement officers to investigate offences and determine if court orders made under the VAA are being complied with.⁶⁵ The VAA also enhanced penalties for offences committed against vulnerable adults as seen through the enactment of section 74A of the Penal Code.

As alluded to above, where the court is satisfied that a vulnerable adult has experienced, is experiencing or is at risk of abuse, neglect or self-neglect, the court may make one or more of the orders listed in section 14 of the VAA. These include an order committing the vulnerable adult to a place of temporary care and protection for a period not exceeding 6 months,⁶⁶ an order restraining the abuser from abusing or further abusing the vulnerable adult⁶⁷ and an order prohibiting a person from visiting or communicating with the vulnerable adult.⁶⁸

An example of such an order can be seen in *GCG v GCH*,⁶⁹ where the Family Justice Court granted an order restraining the Respondent from further abusing the 90-year-old vulnerable adult and excluded the Respondent from the residence of the vulnerable adult.

While the VAA clearly accords elderly protection against abuse so long as they fall within the definition of "vulnerable adult", it is important to note that the VAA alone is insufficient to deal with elder abuse. The VAA is just one part of the framework in place to protect the elderly. Other laws including the Penal Code, Women's Charter, POHA, MHCTA and MPA form other parts of the framework.

⁵⁶ Section 2(1) of the VAA.

⁵⁷ Section 2(1) of the VAA.

⁵⁸ Section 2(1) of the VAA.

⁵⁹ Section 2(1) of the VAA.

⁶⁰ Section 2(1) of the VAA.

⁶¹ <https://www.straitstimes.com/singapore/vulnerable-adults-get-greater-protection-now>

⁶² Section 8 of the VAA.

⁶³ Section 9 of the VAA.

⁶⁴ Section 10 of the VAA.

⁶⁵ Section 26 of the VAA.

⁶⁶ Section 14(1)(a) of the VAA.

⁶⁷ Section 14(1)(e) of the VAA.

⁶⁸ Section 14(1)(h) of the VAA..

⁶⁹ [2020] SGFC 19.

Mental Health (Care and Treatment) Act

The MHCTA was passed in 2008 as the successor to the Mental Disorders and Treatment Act 1965. It is intended to protect patients who are mentally ill and at a significant psychiatric risk but decline voluntary treatment. The MHCTA is also intended to regulate the involuntary detention of those who are mentally ill.

The MHCTA affords protections to those receiving psychiatric treatment from medical staff who ill-treat or neglect their patients, including elderly patients.

Section 22(2)(c) of the MHCTA defines “neglect” as including inflicting physical, emotional and other injury to health in the context of a patient in psychiatric care. Ill-treatment is in turn defined fairly widely in section 22(2) to include physical or sexual abuse, endangering the safety of the patient, any act, or neglect, which endangers the safety of the patient or any act, or neglect, which causes or is likely to cause:

- any unnecessary physical pain, suffering or injury;
- any emotional injury; or
- any injury to his health.

While the MHCTA has a wide scope for the types of ill-treatment that are protected, it only protects a very limited section of the elderly population. Protection is afforded to those who are receiving institutional psychiatric treatment. As such, elderly patients who are not receiving psychiatrist treatment remain vulnerable to abuse in institutional care.

Women’s Charter

The Women’s Charter⁷⁰ was enacted in 1961 and enshrined the protection of women in Singapore and defined the institution of family.⁷¹ Today, it also outlines provisions for the protection of family in situations of family violence. These provisions can provide the elderly with recourse against physical, emotional and psychological abuse where the abuser is a family member.

Part VII of the Women’s Charter sets out the recourse provisions. Under this Part, specifically section 65, where the court is satisfied on a balance of probabilities that family violence has been committed or is likely to be committed, the court may make a protection order restraining the person against whom the order is made from using family violence against the family member.

In the case of *Chu Yoke Chew v Liu Yan*,⁷² an application for a protection order under section 65 of the Women’s Charter was granted. The court found that the daughter-in-law’s actions against her elderly mother-in-law which consisted of verbal abuse and shaking her by her shoulders was family violence and thus, granted the elderly mother-in-law a protection order against her daughter-in-law.

The Women’s Charter does not criminalise the abuser or the person committing family violence against the elder. Instead, it protects the elder. Only in situations where a protection order or expedited order is contravened will the individual face criminal sanctions such as a fine, imprisonment or both.

Further, the Women’s Charter only protects victims from their family members and not caregivers who do not share a familial relationship with the victim.

Protection from Harassment Act

The POHA, which commenced on 15 November 2014, seeks to protect persons against harassment and unlawful stalking. The POHA is unique as it creates offences and provides civil remedies for incidents of harassment. POHA provides another avenue of protection for the elderly who are dealing with elder abuse, in particular emotional and psychological abuse as defined in the VAA.

⁷⁰ Women’s Charter (Cap 353, 2009 Rev Ed) <https://sso.agc.gov.sg/Act/WC1961>

⁷¹ <https://www.msf.gov.sg/policies/Women-Celebrating-Women/Legislation/Pages/default.aspx>

⁷² [2009] SGDC 334.

Part 2 of the Act sets out the various offences involving harassment. Further, from January 2020, where the offence relates to a victim who is a vulnerable person, the court may sentence the offender to punishment not exceeding twice the maximum punishment that the court could impose for the offence if at the time of committing the offence, the offender knew or ought to have reasonably known that the victim was a vulnerable person.⁷³ A vulnerable person is defined as “an individual who is, by reason of mental or physical infirmity, disability or incapacity, substantially unable to protect himself from abuse, neglect or self-neglect”. This definition is almost identical to the definition of “vulnerable adult” in the VAA except there is no minimum age imposed for vulnerable persons. Thus, it can be seen that POHA criminalises certain instances of elder abuse which fall within the narrow scope and limits of POHA.

In addition to criminalisation, POHA also offers victims civil remedies including protection orders against the aggressor. Pursuant to section 12 of POHA, a victim under sections 3, 4, 5, 6 or 7 may make an application to the District Court for a protection order. Elders who choose to seek recourse under POHA for harassment may also seek a protection order from the District Court.

Maintenance of Parents Act

Where the children of elderly persons commit elder abuse through financial neglect, the elder can apply for a maintenance order under the MPA. The MPA, which commenced on 24 November 1995, provides elderly persons who are unable to maintain themselves adequately with a channel to seek maintenance from their children who are capable of financially supporting them but are not doing so.

Under section 3(1) of the MPA, in order to be able to apply for maintenance, the elderly person has to be domiciled, a resident in Singapore and aged 60 or above. Where the elderly person meets these requirements, they may apply to the Tribunal for the Maintenance of Parents order enforcing one or more of their children to pay them a monthly allowance or any other periodical payment or a lump sum.

The Tribunal then has the power to make a maintenance order if it considers that it is just and equitable for the child to maintain the applicant and that the child is able to provide maintenance to the applicant after his own requirements and those of his spouse and his children have been supplied; and the applicant is unable, in spite of efforts on his part, to maintain himself through work or from his property or from any other source.⁷⁴

The MPA is legislation that offers yet another form of protection to the elderly. However, the protection offered is rather specific and limited.

Social policies

Singapore also has a multitude of policies in place which protects and empowers the elderly while also allowing them to be independent. The Housing and Development Board provides specific housing schemes for the elderly which enables them to live independently.⁷⁵ These schemes are targeted at elderly persons aged 65 years old and above.

3.4 Conclusion

In conclusion, Singapore uses several mechanisms, including but not limited to statute and codes, to closely monitor elder abuse. The increase in the ageing population in comparison to the small number of elder abuse investigations highlight the likelihood that some abuse is still going unpunished in Singapore's criminal and civil systems. This could be a result of the focus the Singaporean system has on prevention rather than prosecution.

⁷³ Section 8A of the POHA.

⁷⁴ Section 5(1) of the MPA

⁷⁵ Community Care Apartments and Short lease 2 room flexi flats <https://www.hdb.gov.sg/residential/living-in-an-hdb-flat/for-our-seniors/Buying-a-New-Flat/community-care-apartments>;
<https://www.hdb.gov.sg/cs/infoweb/residential/buying-a-flat/new/eligibility/2-room-flexi-flat>

Associate Professor Dr Muhammad Faishal Ibrahim from the 2019 Parliamentary Debate aptly puts it:

“the majority of both our child and elder abuse cases involve physical abuse or neglect. ... We look at it from a very serious perspective of how we can help the recovery stage and at the same time, we want to focus on prevention. So, family, community, they are the frontline, where we can help to prevent it from happening.... Our awareness campaigns, for example, MSF’s “Break The Silence” videos have been quite successful. We have more than 14.2 million views. As such, you see more and more people being aware, looking out for one another. And also, we have been training our stakeholders, our educators, healthcare professionals, counsellors, as well as social workers, to sharpen their tools and how they can respond and engage those who are affected by it. We also go beyond online platforms. We engage with community whereby we go down to the heartlands to engage heartlanders, residential homes, tertiary institutions and schools, to see how we can better engage them, equip them with the necessary tools to see how they can play a part”.⁷⁶

⁷⁶ Parliamentary Debates Singapore: Reported Cases of Child and Elder Abuse in Last Five Years, vol 94 (11 February 2019) (Senior Parliamentary Secretary to the Minister of Social and Family Development, Assoc Prof Dr Muhammad Faishal Ibrahim).

4. Middle East (United Arab Emirates)

4.1 Summary of Dubai's jurisdiction

The UAE was formed in 1971 as a federation of seven emirates, namely Abu Dhabi, Dubai, Ajman, Ras Al Khaimah, Fujairah, Sharjah and Umm Al Quwain. Abu Dhabi is the capital city of the UAE.

Each of the seven emirates may participate in the Federal Judiciary, or they can maintain their own local judicial system. The emirates of Sharjah, Ajman, Fujairah and Umm Al Quwain follow the federal judicial system.



At the local level, Abu Dhabi, Dubai and Ras Al Khaimah maintain independent judicial departments (respectively the Judicial Department in Abu Dhabi, the Dubai Courts, and the RAK Courts). These local emirate courts maintain jurisdiction over legal issues that have not been assigned to the Federal Judiciary in accordance with the UAE's Constitution.

The UAE's double legal system therefore comprises of both federal courts and local courts; also known as the UAE's 'onshore' courts. However, many of the international businesses operating in the UAE will be registered and licensed in 'offshore' financial free zones, such as the Abu Dhabi Global Market (**ADGM**) or the Dubai International Finance Centre (**DIFC**). Both the ADGM and the DIFC have their own 'offshore' courts. The 'offshore' courts only deal with civil and commercial issues, and are not relevant to criminal law or the protection of the elderly.

Putting aside the 'offshore' courts, which rely on English common law, the UAE is a civil law jurisdiction; with roots in Islamic Sharia. Whilst the principles of the UAE's laws are drawn from Islamic Sharia, the codified legislation of the UAE draws largely from Egyptian and French civil law. In the UAE there is federal law in place to protect the rights of elderly citizens.

4.2 Criminalisation of elder abuse

There is a legal framework in place to protect the vulnerable in society, which is discussed below, along with non-legal mechanisms that have been put in place in order to achieve the government's aim of protecting the vulnerable whilst strengthening family and community ties.

Article 349 of the UAE Penal Code

The Penal Code provides the general legal framework of the UAE which safeguard the rights of all people. Article 349 of the Penal Code established a custodial sentence of up to two years where a vulnerable person, who should be cared for, is neglected or otherwise exposed to danger. In this context a vulnerable person may include a child, someone who is physically or mentally unwell, or the elderly.

Family Courts and the UAE Criminal Procedure Law

The UAE has specialised family courts, which confidentially deal with sensitive issues such as domestic violence

The UAE Criminal Procedure Law provides for an opportunity for amicable settlement where a criminal case is brought against a family member. The aim of this procedure is to reduce episodes of domestic violence, prevent behaviours that are harmful to families, women and children, and enhance cohesion of the family.

The Domestic Violence Law

In 2019, the UAE enacted Federal Law No. 10 of 2019 concerning Protection from Domestic Violence (**Domestic Violence Law**). This law provides protection against family violence, which could include violence against the elderly of both UAE citizens and non-citizens alike.

The Domestic Violence Law defines ‘domestic violence’ broadly, including:

- **Physical abuse** as causing any injury or trauma to the victim by way of bodily contact, even if no marks are left.
- **Emotional abuse** as any act or verbal abuse causing emotional distress to the victim.
- **Sexual abuse** as any act which constitutes a sexual assault or harassment to the victim, or his/her exploitation by whatever means.
- **Economic abuse** as any act which prevents the victim from his/her right or freedom to dispose of his/her property with the intent to cause him/her harm.

Should an individual be convicted of a domestic violence crime under this law, they are punishable by up to six months in prison and a fine of up to AED 5,000, or both.

The Senior Emiratis Law

In 2019 the UAE passed Federal Law No. 9 of 2019 on the Rights of Senior Emiratis (**Senior Emiratis Law**). The Senior Emiratis Law was enacted to govern the rights of senior citizens, and to safeguard their welfare.

Under the UAE’s ‘National Policy for Senior Emiratis’, the elderly of the UAE will be referred to as ‘Senior Emiratis’ in recognition of their experience, giving, dedication and sincerity to the UAE. ‘Senior Emiratis’ is defined as Emirate citizens over the age of 60.

(a) What is it?

In accordance with the National Policy for Senior Emiratis, the Senior Emiratis Law defines Senior Emiratis as UAE nationals over the age of 60, and it guarantees Senior Emiratis the following rights:

- Article 4 – the right to independence and privacy;
- Article 5 – the right to protection from violence and abuse;
- Article 6 – the right to an enabling environment, housing, education and work;
- Article 7 – the right to social care including the provision of elderly community centres and social clubs;
- Article 8 - the right to medical care including preventive health services, medical insurance, mobile nursing units and supportive medical devices;
- Article 9 – the right of confidentiality of information pertaining to them; and
- Article 10 – the right to preferential treatment with respect to government transactions, facilities, social aid and medical services.

(b) Who does it cover?

Whilst the Senior Emiratis Law protects the rights and welfare of elderly Emiratis, it is important to note that this law is only applicable to UAE citizens, and not to expatriates living in the UAE.

This may seem unusual, but to put it in context, the population of the UAE in 2021 is around 9.5 million people, with about 8.5 million of those being expats. To put that another way, only about 10% of the population in the UAE are citizens, with about 90% being expats. The vast majority of the UAE population falls within the age group of 25 - 54 years, which is indicative of the fact that the majority of the UAE population are expats who have immigrated to the UAE for work. Almost of all these foreign workers will leave the UAE when they come to retire (if not before), therefore the UAE government has not legislated for the protection of elderly foreigners.

(c) Legal protections

The Senior Emiratis Law gives a wide definition for an offence under the law, including “any form of degrading treatment of the Senior Emiratis such as discrimination, abandonment, neglect, abuse, extortion or psychological abuse”. The law also widely defines violence as “any intentional verbal abuse or use of force against Senior Emiratis”.

The law creates legal obligations on family members, service providers (including domestic workers), and “Elderly Foundations” to safeguard elderly welfare. “Elderly Foundation” are establishments licenced to provide care, shelter or services for Senior Emiratis. Interestingly, if a person becomes aware of any violence or abuse committed against a Senior Emirati, the Senior Emirati Law establishes a legal obligation on that person to report the crime to an appropriate authority.

In order to protect the rights and welfare of the elderly, the Senior Emiratis Law criminalises those who would abuse the elderly, as well as those who allow abuse to occur. The law establishes punishments, including custodial sentences, fines or both, for care providers who abuse or neglect their duties towards Senior Emiratis, and to elderly care institutions that violate provisions of the law.

The Senior Emirates Law imposes severe sanctions on individuals who commit offences under the law, including:

- If a care provider of a vulnerable senior citizen neglects their duties, causes injury to a Senior Emirati or is abusive, they can be punished by imprisonment, a fine of between AED 10,000 and AED 50,000, or both.
- For anyone else who commits an act of violence or abuse towards senior citizens who cannot care for themselves, they can be imprisoned for up to two years, or fined between AED 10,000 and AED 50,000, or both.
- Where an individual fails to report elderly abuse that they have become aware of, they can be imprisoned for up to one year and fined between AED 10,000 and 50,000.
- Where Elderly Foundations are found to have violated the provisions of the Senior Emiratis Law, the founders and managers of such institutions can be imprisoned and fined between AED 100,000 and AED 1,000,000.

4.3 Other legal consequences for committing elder abuse*The UAE’s Family Protection Policy*

In 2019 the UAE launched the Family Protection Policy (**Family Policy**), with the aim of strengthening social ties within families and communities in the UAE. As part of this strategy, the Family Policy includes mechanisms for the protection of various groups including the elderly. The Family Policy identifies family or domestic violence as any abuse, violence or threatening behaviour committed by one family member against another, in excess of any guardianship, jurisdiction, authority or responsibility, that causes physical or psychological harm.

The Family Policy includes mechanisms for the protection of family members, such as the development of legislation and laws, i.e. the Domestic Violence Law and the Senior Emiratis Law. It also aims to establish procedures to enable preventative action, intervention where necessary, and steps to raise community awareness about domestic violence. Furthermore, under the Family Policy, training programmes for specialist workers who support families will be established, as well as research programmes regarding social issues that families face.

A number of other initiatives will be launched under the Family Policy, including the establishment of a unified database linking institutions dealing with family protection at the federal level, the introduction of university disciplines in the field of family protection, and standardising the system for reporting and receiving complaints at the federal level.

Community Support

In addition to the enactment of specific federal law, individual Emirates are also taking steps to enhance the protection and safety of elderly citizens. For example, in September 2020, Dubai's Community Development Authority (CDA) set up a 24/7 hotline for elderly support and protection. At any time of the night or day, bilingual teams will be available to take calls from the elderly or their caregivers, and process all reports and enquiries in regard to social care and protection of the elderly. It is intended that this hotline will help to protect the elderly, and facilitate early intervention in the event of abuse, neglect or mistreatment. Furthermore, the CDA is collating a database on Dubai's senior citizens, including details such as their health condition, social situation and their residence. It is intended that the database will enable the CDA to identify and address the needs of the elderly.

4.4 Conclusion

The UAE's National Policy for Senior Emiratis is conceived as an integrated care system to ensure that senior citizens remain active and have access to government services they need. The policy seeks to protect the rights of senior citizens, ensuring for example that they have health insurance and proper social inclusion. An important element of this policy is safeguarding the elderly from violence, abuse and negligence. The Senior Emiratis Law corresponds with this element of the National Policy for Senior Emiratis, protecting their rights through legislation.

The Senior Emiratis Law is drafted broadly, creating obligations on family members, caregivers, and elderly institutions, as well as on anyone who witnesses any abuse or neglect. The substantial fines and potential custodial sentences for those who commit offences under the law act as deterrents, and also indicates that the federal government takes such crimes seriously.

It bears mentioning that the UAE is a place where the vast majority of professional caregivers, for example in Elderly Foundations, will be expatriate workers who have moved to the UAE for jobs. Similarly, many families also rely on domestic workers to assist with childcare and care of the elderly at home. There have been concerns in the UAE over the level of care given to the elderly by caregivers and domestic workers, both in institutions and in the home. To some extent, the UAE government brought in the Senior Emiratis Law in response to concerns about the treatment of elderly citizens by caregivers and domestic workers, and this is arguably one of the reasons the Senior Emiratis Law criminalises abuse of the elderly and attaches severe penalties for offences.

However, the UAE does not regularly publish crime statistics, so there is no reliable statistics on elderly abuse, which makes it difficult to assess the scale of the issue. Equally, it is not possible to assess the frequency with which prosecutions are brought under the new law, or to analyse whether the law has taken effect as a deterrent of elderly abuse.

5. United Kingdom

5.1 Summary of the UK's jurisdiction

There is no statutory definition of crimes against elderly people under English law, although elder abuse may fall under various categories of offences in connection with the neglect of those lacking mental capacity or those with mental health disorders, or may be caught by offences addressing domestic abuse. English law contains a number of criminal offences which relate to the abuse committed by care workers and the sentencing provisions are relevant for offences committed against elders.



5.2 Criminalisation of elder abuse

Upon review of the legislation and case law addressing the issue of elder abuse in English law, a conclusion can be drawn that there are no specific laws providing for an express definition of 'elder abuse'. Accordingly, there is no specific criminalisation of the abuse of older adults. However, if certain criteria is met, those who abuse older adults may be committing a number of general offences. For instance, if there is evidence that the elderly victim has a mental disorder such as Alzheimer's or dementia, and the victim lacked capacity, the victim has access to a remedy under section 44 of the *Mental Capacity Act 2005 (MCA)*, which makes it a criminal offence to wilfully neglect or cause ill treatment to a person lacking mental capacity under someone's care.

There can be many circumstances giving rise to a finding of neglect and ill-treatment, and the MCA Code of Practice (**Code**) provides that abusive treatment may be anything that goes against a person's human and civil rights. This includes sexual, physical, verbal, financial and emotional abuse. Under the Code, abuse can be a single act, a series of repeated acts, a failure to provide necessary care or neglect.⁷⁷ The wide definition of abuse means that victims lacking capacity are protected in a variety of forms. This protection is however limited to victims who lack capacity, resulting in older victims that are deemed to have capacity will not be covered under the MCA. Nevertheless, there are a number of further legal avenues that may protect a victim of elder abuse.

Section 127 of the *Mental Health Act 1983 (MHA)* prohibits the ill-treatment or wilful neglect of mentally disordered patients within hospitals or nursing homes or otherwise in a person's custody or care. A mental disorder is defined under the MHA as any disorder or disability of the mind. Therefore, if a victim does not lack capacity, but has a mental health disorder, he or she may have a remedy under the MHA. This section extends the protection afforded to older victims who lack capacity to victims who are deemed to have capacity, but still suffer from a mental disorder.

The *Domestic Violence, Crime and Victims Act 2004 (DVCV)* makes it an offence to cause the death of a vulnerable adult. A vulnerable adult is defined as someone aged 16 or over whose ability to protect himself or herself from violence, abuse or neglect is significantly impaired through physical or mental disability, illness, old age or otherwise.⁷⁸ A person will be guilty of this offence if they are either a member of the victim's household or have frequent contact with the victim and have caused the victim's death (either by their acts or omissions). Therefore, members of an elderly person's household are incentivised to take positive steps to protect older, vulnerable adults. However, many older people only live with their partner or live alone. Therefore, the protection afforded under DVCV will cover only a small number of victims. Further, the DVCV only applies specifically to vulnerable adults in circumstances where the victim is killed as a result of the abuse. Acts of abuse that do not result in a victim's death will not be covered by this legislation.

⁷⁷ MCA 2005 Code of Practice: <http://www.publicguardian.gov.uk/mca/code-of-practice.htm>, and <http://www.opsi.gov.uk/acts/acts2005a>

⁷⁸ *Domestic Violence, Crime and Victims Act 2004*, (U.K.), 2004, c. 28, online: http://www.opsi.gov.uk/acts/acts2004/ukpga_20040028_en_1.

A wider form of protection is available under *Serious Crime Act 2015 (SCA)* where the commission of an offence is not conditional on the death of the elderly person. The SCA protects the elderly from suffering abuse at the hands of people they have close relationships with.⁷⁹ Under section 76 of the SCA, it is an offence for the abused person to be subjected to repeated, continuous, coercive or controlling behaviour which has a serious effect on that person. One of the requirements of the offence is for the abused and the abuser to live together and be members of the same family. The behaviour is said to have a serious effect if it causes the abused to fear, at least twice, that violence will be used against them. Alternatively, it must cause them serious alarm or distress which affects their day-to-day activities. However, for the purposes of the offence, the behaviour must be repeated or continuous which means that one-off offences will not be covered.

5.3 Other legal consequences for committing elder abuse

Care Worker/Provider Offences

While there is no specific legislation in England and Wales addressing elder abuse, legislation provides guidance regarding how social services departments can help protect vulnerable adults at risk of abuse.⁸⁰ The *Care Standards Act 2000 (CSA 2000)* introduced the Protection of Vulnerable Adults Scheme, which aims to ensure no one is allowed to work in the care sector if they have ever abused, neglected, or otherwise harmed vulnerable adults in their care or placed them at risk. Section 23(1) of the CSA 2000 defines elder abuse as a single or repeated act or lack of appropriate action occurring within any relationship where there is an expectation of trust, which causes harm or distress to an older person through physical, emotional, verbal, financial, sexual or racial abuse, neglect or abuse through the misapplication of drugs. Although this is a broad definition, it offers only limited protection as CSA 2000 only applies in relation to care homes.

The *Criminal Justice and Courts Act 2015 (CJCA)* additionally provides limited protection to elderly persons in the UK. Section 20 of the CJCA focuses on the duties owed by care workers to individuals in their care. Care workers falling under the scope of CJCA include those who provide health or social care for adults. Care workers who abuse elderly persons will be liable on conviction to imprisonment for up to 5 years on indictment or on summary conviction, a term not exceeding 12 months. In addition, fines can be imposed. However, for the legislation to apply, the abuse must be committed through ill-treatment or neglect.

In contrast to the CSA 2000 which only applies in relation to care provided in care homes, CJCA extends the scope of the offences to those who provide care in contexts outside of care homes.⁸¹ Care providers are defined as individuals who provide care and employ or make arrangements with others to assist them with this. A body corporate or unincorporated association can also be a care provider if they provide or manage for the provision of health or social care of an adult. An individual or a body corporate will commit an offence under section 21 of the CJCA if as part of the care-providing arrangements, he or she ill-treats or wilfully neglects the person under their care⁸² and the care providers' activities are managed or organised in a way which amounts to a gross breach of the relevant duty of care,⁸³ and in the absence of a breach the ill-treatment or neglect would not have occurred.⁸⁴

⁷⁹ Note that section 76 states the people are personally connected if they have an intimate personal relationship, or they live together and are members of the same family/have previously been in an intimate personal relationship with each other.

⁸⁰ Department of Health Policy Document, 2000, *No Secrets*, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/194272/No_secrets_guidance_on_developing_and_implementing_multi-agency_policies_and_procedures_to_protect_vulnerable_adults_from_abuse.pdf

⁸¹ CJCA s 21

⁸² CJCA s 21(1)(a)

⁸³ CJCA s 21(1)(b)

⁸⁴ CJCA s 21(1)(c)

Sentencing

Since there is no legislation in England and Wales specifically targeting elder abuse, there is no specific statutory sentence for hostility based on age. Although age is recognised as a protected characteristic under the *Equalities Act 2010 (EA)*, aggravation due to the age of the victim does not result in an increase in sentencing under the *Criminal Justice Act 2003* unlike other protected characteristics. If there is evidence that the older victim has a disability, such as Alzheimer's, diabetes or loss of vision or hearing, the case may still be covered by section 146 of the EA and increased sentencing may apply. However, evidence that an older victim was targeted intentionally due to their vulnerability will increase the seriousness of the offence for sentencing purposes, even in circumstances where the Criminal Justice Act does not apply. Under the Sentencing Guidelines, if a victim is particularly vulnerable, this will usually increase the seriousness of the crime, and a court will usually in these circumstances impose a higher sentence.⁸⁵

In certain circumstances, a specific offence may be charged which carries with it its own sentence. For example, a carer or care provider may be charged with ill-treatment or wilful neglect under sections 20 and 21 of the CJCA or section 44 of the MCA if the victim lacked capacity, with both provisions carrying a sentence of up to five years on indictment.⁸⁶ If the abuser was a member of the victim's family, section 76 of the SCA Controlling and Coercive Behaviour in an Intimate or Family Relationship may apply, which also carries a sentence of up to five years.⁸⁷ While there is no specific legal consequence for elder abuse, the case may fall into a specific offence depending on whether certain criteria are met. Regardless of the offence imposed on the perpetrator of abuse, the court will continue to consider the vulnerability of the older victim as an aggravating factor, leading to crimes committed against older victims carrying longer sentences, despite there being no specific statutory sentence.

Public Bodies, Agencies and Independent Regulators

In addition to the criminal legal framework, various public bodies, agencies and independent regulators also deal with elder abuse in the UK.

(a) Safeguarding older people - the government and local councils

The *Care Act 2014 (CA)* sets out clear duties for local councils to protect the rights of those at risk by preventing or stopping the abuse and neglect of adults with care and support needs. Section 1 of the CA requires local authority to promote individual wellbeing including "protection from abuse and neglect". Under the CA, local authorities are the lead safeguarding agencies and are generally the first point of contact for raising concerns (unless the police need to take the lead).⁸⁸ Every local authority must have a Safeguarding Adults Board that includes a range of local organisations.

There are three specific legal duties under the EA:

- A local authority has a duty to "make enquiries" where there is "reasonable cause" to suspect an adult with care and support needs is being abused or neglected or is at risk of being abused or neglected;⁸⁹
- Each local authority must set up a "Safeguarding Adults Board", which is a multi-agency body that helps and protects adults in its area;⁹⁰ and
- Safeguarding Adult Boards have a duty to arrange case reviews where there has been a serious safeguarding incident.⁹¹

⁸⁵ <https://www.sentencingcouncil.org.uk/>

⁸⁶ *Mental Capacity Act 2005*, (U.K.), 2005, c. 9, online: <http://www.opsi.gov.uk/acts/acts2005a>

⁸⁷ Section 21 *Serious Crime Act 2015*.

⁸⁸ https://www.ageuk.org.uk/globalassets/ageni/documents/factsheets/fs78_safeguarding_older_people_from_abuse_fcs.pdf

⁸⁹ EA s 42.

⁹⁰ EA s 43.

⁹¹ EA s 44.

(b) The Crown Prosecution Service

The Crown Prosecution Service (**CPS**) prosecutes criminal cases that have been investigated by the police and other investigative organisations in England and Wales. The CPS has published policy guidance on the prosecution of crimes against older people, which recognises that “older people are often targeted because of their age and a perception that they are vulnerable”.⁹² The CPS acknowledges that there is no statutory definition of crimes against older people, nor legislation allowing for a sentence uplift to be applied such as in hate crime cases. However, it is “committed to ensuring that justice is delivered for older people” and has regard to the fact that where an offence was motivated by any form of prejudice, it is more likely that prosecution will be required. The guidance explains that the CPS recognises the vulnerability of older victims and it outlines the extra support it provides to elderly victims.

The CPS also applies an electronic ‘flag’ to crimes against older people on their case management system to monitor the case throughout the prosecution process. The CPS also monitors and reviews such cases as part of the enhanced checks conducted in accordance with their national hate crime assurance regime.

(c) The Care Quality Commission

The Care Quality Commission (**CQC**) is the independent regulator of health and adult social care in England.⁹³ As provided for by the *Health and Social Care Act 2008 (HSCA)*, in England at a national level, CQC is the primary enforcement body for ensuring that people using health and adult social care services receive safe services of the right quality.

The CQC has wide powers that allow it to protect the public and hold registered providers and managers to account.⁹⁴ It enforces the requirements set out by the HSCA, the *Health and Social Care Act 2008 (Regulated Activities) Regulations 2014*, and the *Care Quality Commission (Registration) Regulations 2009*. CQC is also responsible for monitoring and reporting on the use of the MHA.

The CQC has a range of enforcement powers, up to and including de-registering a care provider who fails to meet appropriate standards - the effect being that the provider can no longer legally provide services to members of the public.⁹⁵

(d) The Disclosure and Barring Service

The Disclosure and Barring Service (**DBS**) is an executive non-departmental public body sponsored by the Home Office. The role of the DBS is to help employers in England and Wales make safer recruitment decisions and prevent unsuitable people from working with vulnerable groups. It does so by processing and issuing DBS checks for England, Wales, the Channel Islands and the Isle of Man and maintaining Barred Lists.⁹⁶ The DBS checks cover those employed in a ‘regulated activity’, which includes the provision of health and/or social care in the form of personal care, and other care such as domestic help to adults who need it because of age, illness or disability.

(e) Other Forms of Support

The UK government provides some guidance on reporting the abuse of an older person.⁹⁷

⁹² See also the CPS’s Policy guidance on the prosecution of crimes against older people:

<https://www.cps.gov.uk/publication/policy-guidance-prosecution-crimes-against-older-people-0>

⁹³ <https://www.cqc.org.uk/guidance-providers/notifications/allegations-abuse-safeguarding-notification-form>

⁹⁴ <https://www.cqc.org.uk/guidance-providers/regulations-enforcement/enforcement-policy>

⁹⁵ <https://www.cps.gov.uk/legal-guidance/older-people-prosecuting-crimes-against>

⁹⁶ <https://www.gov.uk/government/organisations/disclosure-and-barring-service>

⁹⁷ <https://www.gov.uk/report-abuse-of-older-person>

The Metropolitan Police have published advice and information regarding adult and elder abuse. It provides information on reporting any such abuse and also explains that it works with multi-agency partners to protect adults from abuse and neglect.⁹⁸ The Citizens Advice Bureau gives free confidential information and advice to assist people with problems, including elder abuse.⁹⁹

Other charities, including those that provide support for domestic violence, may be able to provide support to some older people experiencing abuse.

5.4 Conclusion

There is no statutory definition or direct criminalisation of elder abuse under English law. However, elder abuse may fall under other offences relating to abuse and neglect. Therefore, although elder abuse is not directly criminalised under English law, there are many other offences that could, in theory, apply to elderly people. As detailed above, these offences can include abuse or neglect of someone lacking mental capacity, offences against a vulnerable adult, or physical, emotional, verbal, financial, and sexual abuse. These offences apply regardless of the age of the victim.

Is criminalisation required?

It is possible to argue that direct criminalisation of elder abuse is not required because the offences detailed above apply regardless of the age of the victim. Further, the existence of different categories of offences provide CPS flexibility during the prosecution stage. Since CPS provides extra support to elderly victims and applies a heightened process of review and monitoring for crimes against older people, there is a view that the current system provides adequate infrastructure for the treatment of elder abuse.

However, given that the above offences require certain criteria be met (often with high burdens of proof), some instances of elder abuse are likely to circumvent criminal liability. This includes the fact that offences relating to the abuse of someone lacking mental capacity will not cover the abuse of an elder person deemed to have full capacity. In addition, crimes against a vulnerable adult require the accused to live with the elderly victim, something which may be less common in modern times, thereby decreasing the likelihood of prosecution under the current legislation. Finally, the widest form of protection under the SCA requires the abusive behaviour be repeated which may fall short of ensuring that one-off abusers are prosecuted.

These missed cases could be caught in the future with the creation of an umbrella offence for elder abuse that encompasses all offences detailed in this paper, as well as the general mistreatment, exploitation, and manipulation of elderly people. In addition to this, the creation of a standalone offence of elder abuse may act as a deterrent as any form of abuse of an elderly person would fall under the offence.

There are too many gaps in the current legislative instruments which opens the possibility of abuse going unpunished and justice not being served for the victim. An umbrella offence would cover far more instances of abuse and reduce confusion surrounding the prosecution of elder abuse.

It is also likely that further support and recognition is required for elderly people who are victims of abuse, including creating more refuge centres for elderly people who have been abused, increased use and availability of helplines and the provision of further free legal support for elderly people who are victims of abuse with cases heard in the criminal courts. Furthermore, adding elderly people to the list of protected groups under the EA may cause cases of abuse that were previously missed, due to gaps in the legislation, to be caught and prosecuted.

⁹⁸ <https://www.met.police.uk/advice/advice-and-information/ap/adult-elder-abuse/>

⁹⁹ <https://www.citizensadvice.org.uk/>

6. United States of America



6.1 Summary of USA's jurisdiction

The United States has federal and state laws that "protect older adults from physical abuse, neglect, financial exploitation, psychological abuse, sexual abuse, and abandonment".¹⁰⁰ In the United States, elder abuse is a prevalent issue with wider repercussions for the community, with "approximately one in 10 Americans aged 60+ hav[ing] experienced some form of elder abuse"¹⁰¹ and up to five million elder Americans experiencing abuse every year.¹⁰² In the majority of elder abuse cases, the perpetrator of the abuse was an adult child or spouse of the victim.

Laws protecting elder abuse exist predominantly at the state level. Similar to other jurisdictions, statute does not exist to protect the elderly in isolation but rather provides protection to a wider class of people including elderly persons. The classification of a "victim" varies between states with no conclusive definition. For example, in some states, victims are classified as persons aged eighteen years or older with some mental or developmental disability or some other diminished capacity. In comparison, other states define victims as persons over the age of 60 or 65.

Alabama, California, Florida, New York, North Carolina, Texas and Washington all have criminal and civil laws in place to protect against elder abuse, however the definition of 'elders' under each state can differ. This means there are inconsistencies in how elder abuse is dealt with across these jurisdictions.

6.2 Criminalisation of elder abuse

Alabama

In Alabama, the *Protecting Alabama's Elders Act* (2013) (**Alabama Elders Act**) protects persons over the age of 60 years, whether or not they have mental competency. The protection extends to emotional, physical, sexual and financial abuse as well as neglect. In Alabama, the criminal penalty for committing abuse against elderly people is proportional to the degree of harm. For example, Class A felonies, including intentionally committing abuse or neglect of any elderly person or committing abuse or neglect which causes serious physical injury to the elderly person, is punishable by a life sentence of ten to ninety years imprisonment. In contrast, a Class B felony, which includes if a person intentionally, recklessly or neglectfully abuses an elderly person such that it causes serious physical injury to them, is punishable for two to twenty years imprisonment.

Florida

Florida, which has one of the largest elderly populations in the United States, protects its elderly population from abuse through the *Abuse, Neglect, and Exploitation of Elderly Persons and Disabled Adults Act* (2019) (**Florida Elders Act**). The statute provides protection for disabled adults aged 18 years or older who suffer from physical or mental incapacity as well as elderly persons aged 60 years or older suffering from the infirmities of aging or physical, mental or emotional dysfunction to the extent they are unable to adequately provide for their own care or protection.

In contrast with Alabama Elders Act, the Florida statute does not protect all persons over the age of 60 years, but rather only those suffering from some impairment.

Similarly to the Alabama legislation, the greater the severity of abuse perpetrated against an elderly person, the greater the criminal punishment. For example, "aggravated abuse" of an elderly person or disabled adult includes committing aggravated battery, wilful torture, malicious punishment, wilful and

¹⁰⁰ *State Elder Abuse Statutes*, U.S. DEP'T OF JUST., <https://www.justice.gov/elderjustice/elder-justice-statutes-0> (last visited 23 Mar. 2021).

¹⁰¹ *Get the Facts on Elder Abuse*, NAT'L COUNCIL ON AGING (23 Feb. 2021), <https://www.ncoa.org/article/get-the-facts-on-elder-abuse>

¹⁰² *Ibid.*

unlawful caging or knowingly or wilfully abuse causing great bodily harm, permanent disability or permanent disfigurement and persons who commit "aggravated abuse" of an elderly person or disabled person commits a felony in the first degree, which is an offence punishable by up to thirty years in prison or a US\$10,000 fine. In contrast, second degree felonies are punishable by a term of up to fifteen years and a US\$10,000 fine, if the person commits neglect against an elder person or lewd offences upon or in the presence of an elderly person. Additionally, if a person commits a third degree felony by abusing an elderly person or disabled adult but such abuse does not inflict great bodily harm, permanent disability, or disfigurement, which is punishable up to five years in prison and a US\$5,000 fine.

New York

In New York, elder abuse is criminalised in the state's Penal Code. The New York Penal Code protects a "vulnerable elderly person", being a person 60 or older who is suffering from a disease or infirmity associated with advanced age and manifested by demonstrable physical, mental or emotional dysfunction to the extent that the person is incapable of adequately providing for his or her own health or personal care.

An example of an offence under this code is "endangering the welfare of a vulnerable elderly person" which can occur in the first degree or second degree. The first degree occurs when a person intends to cause physical injury and does so or recklessly causes serious physical injury to such person. This is punishable as a Class D Felony in which a person may serve a prison term of up to 2-7 years. Endangering the welfare of a vulnerable elderly person in the second degree is a Class E Felony. In New York, a Class E Felony may be punishable by a 2-5 year prison term. A person is guilty of endangering the welfare of a vulnerable elderly person when the perpetrator has intent to cause physical injury and does so, recklessly causes physical injury to such person, causes physical injury with criminal negligence by deadly weapon or dangerous instrument, or subjects such person to sexual contact without consent.

North Carolina

In North Carolina's Penal Code, there are criminal penalties for those guilty of elder abuse. A specific example of this is the law regarding exploitation of an older or disabled adult. For the purposes of the North Carolina Penal Code, a disabled adult is a person 18 years or older who is physically or mentally incapacitated and an older adult is a person 65 years of age or older. In North Carolina it is unlawful for a person who stands in a position of trust and confidence or who has a business relationship with an older or disabled adult to knowingly, by deception or intimidation, obtain or use, or endeavour to obtain or use, an older or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the older adult or disabled adult of the use, benefit, or possession of the such property, or to benefit someone other than the older adult or disabled adult.

As the value of the property above increases, the severity the punishment becomes greater. Additionally, it is also unlawful for a regular person without the relationship described above to carry out such actions, or to conspire with another to carry out such actions.

Washington

In Washington, there are multiple criminal offences for actions taken against "frail elders or vulnerable adults", which are contained within the state's Penal Code. A frail elder or vulnerable adult is defined to include a person 60 years or older who has a functional, mental or physical inability to care for himself or herself. All of Washington's criminal offences outlined below apply to frail elders or vulnerable adults.

There is also an offence of criminal mistreatment against dependent persons, who because of extreme advanced age, are dependent upon another person to provide the basic necessities of life (i.e. a resident of a nursing home or of an adult family home). A frail elder or vulnerable adult is included within this definition of a dependent person.¹⁰³ This offence encompasses a broader group compared to other offences which use a definition with a wider scope.

¹⁰³ *Rev. Code Wash. § 9A.42.010* (2020).

The criminal offences in Washington include:

- **Criminal Mistreatment** – a person who has assumed responsibility or has been employed to provide the necessities of life to a dependent person is guilty in the first degree if he/she is criminally negligent and causes great bodily harm to the dependent person by withholding the basic necessities of life.¹⁰⁴ This offence in the first degree is a class B felony.¹⁰⁵
- **Indecent Liberties** – a person is guilty when he or she knowingly causes another person who is not his or her spouse to have sexual contact with him or her or another when the victim is a frail elder or vulnerable adult and the perpetrator is a person who is not married to the victim and who has a significant relationship with the victim,¹⁰⁶ or was providing transportation, within the course of his or her employment, to the victim at the time of the offense. This offence is a class B felony.¹⁰⁷
- **Rape** – a person is guilty of rape in the second degree when, under circumstances not constituting rape in the first degree, the person engages in sexual intercourse with another person when the victim is a frail elder or vulnerable adult and the perpetrator is a person who is not married to the victim and who has a significant relationship with the victim, or was providing transportation, within the course of his or her employment, to the victim at the time of the offense. Rape in the second degree is a class A felony.¹⁰⁸
- **Theft in the first degree** – theft from a vulnerable adult in the first degree is when a person commits theft of property or services that exceeds \$5000 in value, other than a firearm, of a vulnerable adult. The defendant must have known or should have known that the victim was a vulnerable adult. This offence in the first degree is a class B felony.¹⁰⁹
- **Theft in the second degree** – theft from a vulnerable adult in the second degree is when a person commits theft of property or services that exceed(s) \$750 in value but does not exceed \$5000 in value, other than a firearm or a motor vehicle, of a vulnerable adult. The defendant must have known or should have known that the victim was a vulnerable adult. This offence in the second degree is a class C felony.¹¹⁰

California

California has a range of criminal offences contained within the state's Penal Code for crimes commitment against "elders and dependent adults". An elder is defined as any person who is 65 years of age or older, and dependent adult is defined to include any person between 18 and 64 years old, who has physical or mental limitations which restrict their ability to carry out normal activities or protect their rights, including people whose physical or mental abilities have diminished because of age. This definition has one of the widest scopes discussed in this paper, as the definition of an elder does not include the need to prove any ailment or need for care.

The code specifically declares that crimes against elders and dependent adults are deserving of special consideration and protection, not unlike the special protections provided for minor children, because elders and dependent adults may be confused, on various medications, mentally or physically impaired, or incompetent, and therefore less able to protect themselves, to understand or report criminal conduct, or to testify in court proceedings on their own behalf.¹¹¹

¹⁰⁴ *Rev. Code Wash.* § 9A.42.020 (2017).

¹⁰⁵ *Rev. Code Wash.* § 9A.20.021 (2015) (provides maximum sentences for felonies in Washington, including jail time and fines).

¹⁰⁶ "Significant relationship" means a situation in which the perpetrator is a person who provides welfare, health or residential assistance, personal care, or organized recreational activities to **frail elders or vulnerable adults**, including a provider, employee, temporary employee, volunteer, or independent contractor who supplies services to long-term care facilities. It does not include a consenting sexual partner - *Rev. Code Wash.* § 9A.44.010 (2007).

¹⁰⁷ *Rev. Code Wash.* § 9A.44.100 (2013).

¹⁰⁸ *Rev. Code Wash.* § 9A.44.050 (2007).

¹⁰⁹ *Rev. Code Wash.* § 9A.56.400 (2017).

¹¹⁰ *Ibid.*

¹¹¹ *Cal. Penal Code* § 13-368 (2021).

(a) Bodily harm or death

One such example is the offence for bodily harm or death. This offence outlines that a person¹¹² who, under circumstances or conditions will likely produce great bodily harm or death, wilfully causes or permits any elder or dependent adult:

- to suffer;
- inflicts thereon unjustifiable physical pain or mental suffering;
- having the care or custody of any elder or dependent adult, wilfully causes or permits the person or health of the elder or dependent adult to be injured; or
- wilfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health is endangered,

is guilty of an offence. This offence is punishable by imprisonment in a county jail for up to one year, or by a fine not to exceed \$6,000, or by both that fine and imprisonment, or by imprisonment in the state prison for two, three, or four years. There are further sentences that can be imposed on top of this sentence if the actions cause great bodily injury or death.¹¹³ There is also an alternative sentence where the harm outlined above does not produce great bodily harm or death, which would result in the person being guilty of a misdemeanor.¹¹⁴

(b) Theft, forgery or fraud

The offence for theft, embezzlement, forgery, fraud or identify theft of an elder or a dependent adult, makes a distinction between a caretaker and a non-caretaker.¹¹⁵ The distinction is that a non-caretaker must know or reasonably ought to know that the victim is an elder or dependent adult. Both offences have the same punishment which is by fine or imprisonment or both, depending on the value of money, labour, goods, services, real or personal property taken.

(c) Other offences

The offence of false imprisonment of an elder or a dependent adult by the use of violence, menace, fraud, or deceit is punishable by imprisonment pursuant to Penal Code for two, three, or four years.

Upon conviction for a violation of the above offences, the sentencing court shall also consider issuing an order restraining the defendant from any contact with the victim, which may be valid for up to 10 years, as determined by the court.

(d) Case law example

In comparison to the states of Alabama, New York, Florida and North Carolina who have limited and outdated case law which do not reflect the new elder abuse statutes, California has over 750 cases interpreting its Crimes Against Elder or Dependent Adults statute.¹¹⁶

¹¹² The person must know or reasonably should know that a person is an **elder or dependent adult**

¹¹³ If the victim suffers great bodily injury, the defendant shall receive an addition term in the state prison of three years (if victim is under 70 years old) or five years (if the victim is 70 years old or older). If the defendant proximately causes the death of the victim, the defendant shall receive an additional term in the state prison for five years (if victim is under 70 years old) or seven years (if victim is 70 years old or older).

¹¹⁴ if they have a second or subsequent violation of this subdivision, it is punishable by a fine not to exceed \$2,000, or by imprisonment in a county jail for up to one year, or by both that fine and imprisonment.

¹¹⁵ A "caretaker" means any person who has the care, custody, or control of, or who stands in a position of trust with, an **elder or a dependent adult**.

¹¹⁶ *Cal. Penal Code § 13-368*.

Bodily harm or death

On its face, the California Penal Code appears to be extremely wide reaching. Section 368(b) makes it a felony for any person to wilfully permit the infliction of pain or suffering on an elder. However, California courts have interpreted the statute in such a way that does not impose a blanket duty of liability “on everyone to prevent the abuse of elders”.¹¹⁷ Instead, “[u]nder such a statutory construction, in order for criminal liability to arise for permitting an elder to suffer unjustifiable pain or suffering, a defendant must stand in a special relationship to the individual inflicting the abuse on the elder such that the defendant is under an existing duty to supervise and control that individual's conduct.”¹¹⁸ In *People v. Heitzman*¹¹⁹ there was no criminal liability under the statute when there was no evidence that the defendant had a legal duty to control either of her brothers who had wilfully permitted their elderly father to suffer physical pain and mental suffering.

The statute imposes felony criminal liability on a wide range of abusive situations, which includes active, assaultive conduct as well as passive forms of abuse such as extreme neglect.¹²⁰

(e) Theft and forgery

Under California Penal Code section 368(d), theft from an elder may be a misdemeanor or felony. The violation is a felony if the value taken exceeds \$950. California courts have also concluded that the \$950 threshold applies to a felony violation of section 368(d) based on identity theft.¹²¹ California courts have convicted individuals of elder abuse based on forgery under subsection (d) as well.¹²²

Texas

Texas has multiple criminal offences for conduct carried out against "elderly individuals". An elderly individual means a person 65 years of age or older.¹²³ These offences include theft, exploitation and bodily injury.

Under the Texas Penal Code, theft involves appropriation of property with the intent to deprive the owner of the property, which is unlawful if done without the owners effective consent. Such consent cannot be given by a person with advanced age who is known to the perpetrator to have diminished capacity to make informed and rational decisions about the disposition of property.¹²⁴ Exploitation is where a person intentionally, knowingly, or recklessly causes the exploitation¹²⁵ of an elderly individual. An offense under this section is a felony of the third degree.¹²⁶

Bodily injury can be carried out by an individual or by an owner, operator or employee of a group home, nursing facility or another similar facility. The offence includes intentionally, knowingly, recklessly, or with criminal negligence, by act or omission,¹²⁷ causing an elderly individual (if applicable, the elderly individual is a resident of that group home or facility):

- serious bodily injury;
- serious mental deficiency, impairment, or injury; or
- bodily injury.

¹¹⁷ *People v. Heitzman*, 9 Cal. 4th 189, 200, 886 P.2d 1229 (1994)

¹¹⁸ *Ibid* at 212.

¹¹⁹ *Ibid*.

¹²⁰ *Heitzman*, 9 Cal. 4th at 197.

¹²¹ *People v. Baratang*, 56 Cal. App. 5th 252, 261, 270 Cal. Rptr. 3d 280 (2020).

¹²² see *People v. Eastburn*, 189 Cal. App. 4th 1501, 117 Cal. Rptr. 3d 787 (2010), where a conviction was upheld when the defendant exploited his position of trust by forging checks and looting the bank account that contained the life savings of his 83-year old employer.

¹²³ *Tex. Penal Code Ann. § 22.04* (2019).

¹²⁴ *Tex. Penal Code Ann § 31.03(3)* (2015); *Tex. Penal Code Ann § 31.01* (2015).

¹²⁵ "Exploitation" means the illegal or improper use of an **elderly individual** or the resources of an elderly individual for monetary or personal benefit, profit, or gain.

¹²⁶ *Tex. Penal Code Ann § 32.53* (2015).

¹²⁷ If by omission then the actor must have a legal or statutory duty to act or the actor has assumed care, custody, or control of an **elderly individual** - *Tex. Penal Code Ann. § 22.04* (2019). An individual is deemed to have assumed care, custody, or control if he has by act, words, or course of conduct acted so as to cause a reasonable person to conclude that he has accepted responsibility for protection, food, shelter, and medical care for an **elderly individual**.

The punishment for this offence differs based on the actions taken by the perpetrator. For example:

- it is a state jail felony if:
 - an individual carries out the offence above with criminal negligence;
 - an owner, operator or employee of a group home or other similar facility acts with criminal negligence and by omission; or
 - the conduct is reckless and causes bodily injury.
- it is a first degree offence if the conduct is committed intentionally or knowingly, and it causes serious bodily injury or serious mental deficiency, impairment or injury.
- it is a second degree offence if:
 - the conduct is reckless and causes serious bodily injury or serious mental deficiency, impairment or injury; or
 - the employee of a specific centre or facility whose employment involves direct care for a disabled victim residing in the centre or facility, and the employee causes bodily injury intentionally or knowingly.
- it is a third degree offence if the conduct is committed intentionally or knowingly and it causes bodily injury.

6.3 Other legal consequences for committing elder abuse

Alabama

Pursuant to the Alabama Elders Act, certain personnel are required to report elder abuse. For example, a member of the Department of Senior Services must report any suspected abuse, neglect, or exploitation to the Department of Human Resources. Additionally, all physicians, practitioners of the healing arts, or any caregiver that has reasonable cause to believe that a protected person has been subject to abuse, neglect, exploitation, sexual abuse, or emotional abuse must report or cause a report to be made. In addition to the Alabama Elders Act, there are also civil protections under the *Protection of Aged Adults and Adults with Disability Act (2006)*. This act protects adults that are either mentally or physically incapable of caring for themselves without serious consequences to themselves or others. This statute is designed to establish care services to persons in need of them.

Florida

In addition to the Florida Elders Act, Florida has the *Adult Protective Services Act*. The intent of the act is to provide for the detection of abuse, neglect, and exploitation through social services and criminal investigations. The statute requires certain personnel (including financial institutions) to be mandatory reporters when they know, or have reasonable cause to suspect, that a vulnerable adult has been or is being abused, neglected, or exploited. They must immediately report such knowledge or suspicion to a central abuse hotline.

New York

In New York, statutes require the establishment of an elder abuse education and outreach program. Pursuant to New York law, an elder abuse education and outreach program is to be established with the purpose of providing education and outreach to the general public, including elderly persons and their families and caregivers, to identify and prevent elderly abuse, neglect, and exploitation. Additionally, there is a New York State committee for the coordination of police services to elderly persons. In performing its functions, the committee must attempt to engage a range of police representatives.¹²⁸ Lastly, there are obligations regarding mandatory reports of elder abuse. A mandatory reporter includes a custodian or human services professional, but shall not include a service recipient (an individual who resides or is an inpatient in a residential facility or who receives services from a facility or provider agency).

¹²⁸ This includes retired law enforcement, the representative of the commissioner and the superintendent of the state police, who shall serve as co-chairpersons of the committee.

North Carolina

North Carolina has enacted the *Protection of the Abused, Neglected, or Exploited Disabled Adult Act*. This statute protects persons eighteen years or older with some form of incapacity. Like other states, the statute requires any person having reasonable cause to believe the disabled adult is in need of protective services provided by the State to report such information to the Director of the County of Social Services, who in turn determines whether such person needs protective services. Protective services include services provided by the State or other government or private organisations or individuals, which are necessary to protect the disabled adult from abuse, neglect, or exploitation. They shall consist of evaluation of the need for service and mobilisation of essential services on behalf of the disabled adult. However, if a report is made and a determination is made by the Director of the County of Social Services that a disabled adult needs protective services, the disabled adult must consent to the provision of protective services.

Washington

The overarching civil protection in Washington relates to where reasonable cause is to believe that abandonment, abuse, financial exploitation or neglect of a vulnerable adult has occurred. Where this is the case, mandated reporters shall immediately report to the department.¹²⁹ Vulnerable adults include a person 60 years or older who has the functional, mental or physical inability to care for himself or herself.¹³⁰

Each of the actions described above has its own meaning:

- Abandonment is described to be action or inaction by a person or entity with a duty of care for a vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.
- Abuse is defined to include sexual abuse, physical abuse, mental abuse, personal exploitation and the improper use of restraint and each type of abuse has specific examples as to what would constitute that form of abuse.¹³¹
- Financial exploitation means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage. The code gives specific examples of what is included in the scope of financial exploitation, which includes misusing a power of attorney or obtaining property without lawful authority.¹³²
- Neglect includes a pattern of conduct or inaction by a person with a specific duty of care to a vulnerable adult or it can also include an act or omission by a person with a specific duty of care to a vulnerable adult which demonstrates serious disregard to the consequences which constitute a clear and present danger to the vulnerable adult's health, welfare, or safety.

California

California affords civil protection to elders under the *Elder Abuse and Dependent Adult Civil Protection Act*. In this statute, a dependent adult is someone between the ages of 18 and 64 who has physical or mental limitations which restricts their ability to carry out normal activities or protect their rights.¹³³ Furthermore, an elder is any person who is 65 years or older.¹³⁴ This act creates mandatory reporting requirements for certain carers of elder or dependent adults who observe or have knowledge of an incident that reasonably appears to be physical abuse, abandonment, abduction, isolation, financial abuse or neglect.

¹²⁹ *Rev. Code Wash. § 74.34.035* (2020).

¹³⁰ *Rev. Code Wash. § 74.34.020* (2020).

¹³¹ *Rev. Code Wash. § 74.34.020* (2020).

¹³² *Rev. Code Wash. § 74.34.020* (2020).

¹³³ *Cal. Wel. & Inst. Code § 15610.23* (2019).

¹³⁴ *Cal. Wel. & Inst. Code § 15610.27* (2019).

The types of actions that require mandatory reporting are defined within the act:

- physical abuse means assault (on its own or with a deadly weapon or force likely to produce great bodily injury), battery, unreasonable physical constraint, prolonged or continual deprivation of food or water, sexual assault, use of physical or chemical restraint or psychotropic medication for punishment or a period beyond that required by a medical professional or in a manner which is not authorised by a medical professional.¹³⁵
- Abandonment means the desertion or wilful forsaking of an elder or a dependent adult by anyone having care or custody of that person under circumstances in which a reasonable person would continue to provide care and custody.¹³⁶
- Abduction means the removal from this state and/or the restraint from returning to this state, of any elder or dependent adult who does not have the capacity to consent to the removal from this state and/or the restraint from returning to this state.¹³⁷
- Financial abuse occurs when a person or entity assists in or takes real or personal property of an elder or dependent adult for wrongful use, with intent to defraud or by undue influence. The person should know or ought to have known that this conduct was likely to be harmful to the elder or dependent adult. The financial abuse is applicable even if the property is held by a representative of the elder or dependent adult (i.e. a trustee or attorney-in-fact).¹³⁸
- Neglect includes failure to provide medical care, protect from health and safety hazards, prevention from malnutrition or dehydration or to assist in personal hygiene and provide food, clothing or shelter. The person neglecting the elder would need to negligently fail to exercise a degree of care that a reasonable person in a similar position would exercise.¹³⁹

Texas

In Texas, there are a number of civil provisions connected with the care and services of elderly persons. An elderly person is defined as a person who is 65 years of age or older.¹⁴⁰ If a person, during the scope of their employment or professional communications (which are generally confidential i.e. an attorney or medical practitioner), has cause to believe that an elderly person is in a state of abuse, neglect or exploitation then that person must report it immediately to the department.¹⁴¹ Abuse, exploitation and neglect are all defined within the code, in similar ways to the above states, including taking into account these actions in situations with ongoing relationships or persons acting in a caregiving capacity.

Federal

The *Elder Justice Act*, enacted as part of the *Patient Protection and Affordable Care Act* was the first piece of federal legislation passed to authorise a specific source of federal funds to address elder abuse, neglect, and exploitation. The law authorised programs and initiatives to better coordinate the federal response to elder abuse, promote elder justice research, and support the state Adult Protective Service systems. The law authorises grants to support training for Adult Protective Service programs, Ombudsman, federal and state surveyors of nursing facilities and grants for forensic centres to develop expertise on elder abuse and exploitations. However, the majority of the elder justice programs and activities are yet to receive funding through the Congressional apportionment process thereby limiting the effectiveness of the act. Additionally, the authorisations for apportioning the budget that did occur under the act which expired on 30 September 2014.

¹³⁵ *Cal. Wel. & Inst. Code* § 15610.63 (2017). Terms in this statute are defined in California's Penal Code.

¹³⁶ *Cal. Wel. & Inst. Code* § 15610.05 (2017).

¹³⁷ *Cal. Wel. & Inst. Code* § 15610.06 (2017).

¹³⁸ *Cal. Wel. & Inst. Code* § 15610.30 (2014).

¹³⁹ *Cal. Wel. & Inst. Code* § 15610.57 (2017).

¹⁴⁰ *Tex. Hum. Res. Code* § 48.002 (2015).

¹⁴¹ *Tex. Hum. Res. Code* § 48.051 (2015).

In the U.S., there is the National Adult Maltreatment Reporting System (**NAMRS**). NAMRS collects data of Adult Protective Services policies, practice, and the outcomes of investigations into the abuse of older adults and adults with disabilities. NAMRS asks states to voluntarily provide data regarding their Adult Protective Services Programs. NAMRS is still in its infancy with the first reporting year being in 2015.

6.4 Conclusion

Criminalisation of elder abuse in the U.S. is an appropriate remedy, and the states discussed above arguably go further than any other jurisdiction within this paper to criminalise elder abuse. However, criminalisation should form part of a multi-disciplinary approach to elder abuse. Elder abuse includes not just physical or verbal abuse but financial exploitation as well. Criminalising financial exploitation, in all cases, may not aid an elder to recoup their financial losses. Thus, in dealing with financial exploitation, there is not only need for investigations and prosecution related to the exploitation but exploitation identification systems in place as well. Furthermore, as a large majority of these elder abuse laws have not been tested in court, the true effect that these laws have remains inconclusive.

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