

CRIMES AGAINST ELDERLY

ONLINE

PRESENTED BY:

DPS – Law Enforcement Academy
Santa Fe, New Mexico

Date: _____

GOALS

- Students will learn the purpose of the Resident Abuse and Neglect Act.
- Students will learn how vulnerable elderly citizens can be.
- Students will learn how they can intervene to protect the rights of elderly citizens.

OBJECTIVES

- Explain why a Resident Abuse and Neglect Act is needed.
- Explain why the Resident Abuse & Neglect Act protects elderly citizens.
- Know how to confront home abuse that occurs within the family.
- Know how to confront abuse by outsiders who take advantage of elderly victims.
- Explain the responsibilities of the Adult Protective Services.
- Describe how an officer can get information to help protect elderly citizens.

SOURCES

- New Mexico Criminal and Traffic Manual
- New Mexico Statutes Annotated.
- State and federal case law.

ESTIMATED TIME Included in a ten hour block on Criminal Law.
If taught separately, recommend two hours.

PREPARED BY

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INTRODUCTION

- Law enforcement officers take pride in protecting everyone. But when it comes to groups that can't protect themselves, that instinct becomes even more protective. The passion of police officers for victims of child abuse and animal abuse is well known.
- And yet there is another group, often overlooked: the elderly. We will look at the elderly, the abuse they suffer, and what we can do about it.

The tragedy of elder abuse and what police officers can do about it

- Throughout history, a family would take care of someone as they got older. Today, many elderly people are in nursing homes or assisted living homes (residential care facilities). When others ignore these people or take advantage of them, we have elder abuse.
- Some elder abuse still takes place in the home. Some of the offenders are family members and some are strangers who prey upon the elderly.
- And yet a tragic reality exists in New Mexico. The reality is that those who commit elder abuse are seldom arrested and almost never prosecuted.
- It is a tragic situation. Police officers, with awareness and training, can change this.

Elder Abuse as defined by Offender Categories

Each elder that is abused is a unique case. We are going to review elder abuse by looking at three major categories:

1. Residential care facility.
2. Home abuse within the family - often a caretaker.
3. Outsider who takes advantage of victim's status - often for financial gain.

But first, a look at different kinds of abuse challenging the elderly

Physical abuse

Physical abuse is usually obvious but may take a different form when applied to senior citizens. It may, for example, involve unnecessary use of physical restraints or force-feeding. An elder may also be deprived of medication or given needless repeat prescriptions.

Emotional or psychological abuse

More so than other groups, seniors are victims of emotional or psychological abuse. This

can include verbal assaults, insults, threats, intimidation, humiliation or harassment. It can also be found when an elderly person is treated like an infant or isolated from family, friends, or regular activities.

Some signs or symptoms of emotional and psychological abuse an officer should look for:

- The elderly person appears to be withdrawn or agitated and anxious.
- They (elderly persons) may be isolated in one room of the house.
- They are inappropriately and improperly dressed.

Neglect as a form of abuse

Neglect is the refusal or failure to fulfill a person's obligations or duties to an elder. It means the refusal or failure to provide an elderly person with such life necessities as food, water, clothing, shelter, personal hygiene, medicine, and other essentials.

Financial exploitation - Discussed more fully later.

RESIDENTIAL CARE FACILITY

- Many officers are not aware of the Resident Abuse and Neglect Act, found in Article 47 of the Criminal Code (Chapter 30). The laws in this section are similar to child abuse laws in that they provide extra protection for those who reside in care facilities. These laws are very useful for those of us who want to protect our senior citizens.

Things are not looking good . . .

News item: Are Nursing Homes Neglecting Mom and Dad?

- A government report found extensive problems in America's nursing homes. **"Nearly one in five of the nearly 15,000 nursing homes examined were cited for violations that put patients in immediate harm in 2007."** ABC News, September 30, 2008.

News item: Failed system

- Despite laws designed to protect the elderly, cases of neglect are not prosecuted. Policing of nursing homes in New Mexico is often lost in bureaucratic maze. Sunday Albuquerque Journal, front page, December 8, 2002.

We're talking about our parents, our grandparents, and someday it may be us as potential victims of elder abuse. An officer can do much to help senior citizens, especially if he or she is familiar with the Resident Abuse and Neglect Act.

For example, consider the definition of “abuse” which is given a broad interpretation:

- any act or failure to act performed intentionally, knowingly or recklessly that causes or is likely to cause harm to a resident including:
- physical contact that harms or is likely to harm a resident of a care facility;
- inappropriate use of a physical restraint, isolation or medication that harms or is likely to harm a resident;
- inappropriate use of a physical or chemical restraint, medication or isolation as punishment or in conflict with a physician’s order;
- medically inappropriate conduct that causes or is likely to cause physical harm to a resident;
- medically inappropriate conduct that causes or is likely to cause great psychological harm to a resident;
- an unlawful act, a threat or menacing conduct directed toward a resident that results and might reasonably be expected to result in fear or emotional or mental distress to a resident.
- A “care facility” includes a hospital; nursing home, care facility for mentally retarded; psychiatric facility; rehabilitation facility; group home and private residences. NMSA 1978, Section 30-47-3.

What is the purpose of the Resident Abuse and Neglect Act?

The purpose of the Resident Abuse and Neglect Act is to provide meaningful deterrents and remedies for the abuse, neglect or exploitation of care facility residents and to provide an effective system for reporting instances of abuse, neglect or exploitation. NMSA 1978, Section 30-47-2.

- Can someone be guilty of a petty misdemeanor if he/she commits **abuse** of a care facility resident even if it results in no harm to the resident? NMSA 1978, Section 30-47-4 (A). (yes)
- Can someone be guilty of a petty misdemeanor if he/she commits **neglect** of a resident even if it results in no harm to the resident? NMSA 1978, Section 30-47-5 (A). (yes)
- Suppose someone commits neglect of a resident that results in great psychological harm to the resident. Is this a crime? (Yes) What is the penalty? (fourth degree

felony) NMSA 1978, Section 30-47-5.

- Any person paid in whole or part for providing to a resident any treatment, care, good, service or medication who has reasonable cause to believe that the resident has been abused, neglected or exploited **shall report** the abuse, neglect or exploitation. Is this a crime? (Yes) What is the penalty? (misdemeanor) NMSA 1978, Section 30-47-9.

HOME ABUSE

- Here, we're talking about an elder who lives at home or with a caretaker.

Facts:

In San Juan County, a mother took care of her severely disabled adult son. The son wasn't elderly. He was totally dependent upon her for eating, bathing, going to the bathroom or getting dressed. But something happened, something changed, and she became grossly negligent. And, under horrific circumstances, he died.

One possible charge was Involuntary Manslaughter, a fourth degree felony (18 months). More serious is the Resident Abuse and Neglect Act. Neglect of a resident resulting in death, for example, is a second degree felony (fifteen years). NMSA 1978, Section 30-47-4. Defendant argued the Act didn't apply because her home wasn't a care facility nor was her son a resident.

Can the mother be charged under the Resident Abuse and Neglect Act? (yes)

Answer:

Court of Appeals held the Resident Abuse and Neglect Act includes people in a private residence who take on the responsibility of caregivers to care for severely disabled adults. Jury conviction for a second degree felony was upheld. State v. Greenwood (2011).

THE MEDICAL AND SOCIAL FACTORS THAT PROMOTE ABUSE

There are certain factors that seem to promote abuse within the family:

from the standpoint of an elderly victim

- When an elderly person has an illness, especially one which may affect performance of intellect or memory or impose severe limitations on mobility. Examples include senile dementia, Parkinson's disease or Alzheimer's disease.
- When an elderly person has difficulty communicating: for example, deafness, blindness, difficulty with speech, poor memory or concentration.

- Major changes in personality: for example, aggression, wandering, repeatedly asking the same questions of family members.

from the standpoint of an abuser

- An understanding of why a once caring caregiver becomes an abuser may help us when we find ourselves in a situation to do something about it.
- The caretaker may feel alone, that there is no relief, and that their role is secondary in importance to the elderly person. They may feel the situation is beyond their control.
- A sense of anger, frustration or despair.
- A feeling of being socially isolated, having given up work
- Grieving for lost personal ambitions.

ACTION WHEN POSSIBLE ABUSE HAS OCCURRED

Interview the elderly person alone.

- Tell the caretaker of your concerns and that you wish to help.
- Inform the caretaker that a referral will be made to Social Services and that a social worker will visit and try to find help which will benefit everyone.
- Contact Adult Protective Services. This is a good idea, if only to follow up on the incident. The caseworker will help you if further action needs to be taken.

NOTE: Not all situations result in criminal action. Some explanations you hear, however, may indicate the need to do more investigation.

INVESTIGATING ABUSE: SOME EXPLANATIONS YOU MIGHT HEAR

- “The injury was an accident.”
- “The victim fell.”
- “There was no abuse - she bruises easily.”
- “It was a gift.”
- “She owed me the money.”

- “She gave me permission to have/use/borrow it.”
- “I was going to give it back.”
- “She refuses to eat anything.”
- “She refuses services.”

ADULT PROTECTIVE SERVICES

An officer who knows what adult protective services does will have an advantage over an officer an officer who doesn't.

Responsibilities of Adult Protective Services

- The New Mexico Adult Protective Services Act requires the Human Services Department to investigate abuse, neglect and exploitation of incapacitated adults 18 years of age and over.
- “adult” means a person eighteen years or older. NMSA 1978, Section 27-7-16 (c).
- “Incapacitated adult” means any adult with a mental, physical or developmental condition that substantially impairs the adult’s ability to provide adequately for the adult’s own care or protection. NMSA 1978, Section 27-7-16 (L).
- Adult Protective Services shall coordinate protective services for incapacitated or protected adults who have been abused, neglected or exploited. Anyone willfully interfering with an investigation of adult abuse, neglect or exploitation, pursuant to this section, is guilty of a misdemeanor. NMSA 1978, Section 27-7-17 (E).
- Adult Protective Services shall assess an adult’s situation to determine what immediate protective services or placement may be required. The department shall conduct an investigation to determine if the report or referral of abuse, neglect or exploitation is substantiated and develop a plan with an adult for protective services. NMSA 1978, Section 27-7-19.
- Any person, including financial institutions, having reasonable cause to believe that an incapacitated adult is being abused, neglected or exploited, shall immediately report that information to Adult Protective Services. Any person failing or refusing to report . . . is guilty of a misdemeanor (this is similar to the failure to report child abuse statute). NMSA 1978, Section 27-7-30.

REMOVING A SUSPECT FROM A RESIDENCE

Certain considerations must be taken into account before removing the suspect - especially if the suspect provides care for the victim. The removal of a suspect from the victim's home could potentially result in the victim being forced into an institution. Officers must exercise professional judgment.

REMOVING A VICTIM FROM A RESIDENCE OR CARE FACILITY

- In case of severe neglect, physical abuse or any life threatening situation, it may be necessary to remove an individual from the location.
- The authority to do this comes from NMSA 1978, Section 27.7-25.1: Emergency protective placement by a law enforcement officer without a court order.
- “When, from personal observation of a law enforcement officer, it appears probable that an incapacitated adult will suffer immediate and irreparable physical injury or death if not immediately placed in a facility, . . . the law enforcement officer making that observation may transport the adult to a facility.”
- The officer who transports an incapacitated adult to a facility shall immediately notify Adult Protective Services of the placement. NMSA 1978, Section 27.7-25.1

SITUATIONS THAT MIGHT CALL FOR EMERGENCY REMOVAL OF THE VICTIM

Examples include:

- When the victim is in need of hospitalization as a result of serious illness, neglect, or injury.
- When the condition of the house poses a serious health or safety risk.
- When the victim is in danger of retaliation or further criminal acts.
- When the victim is too debilitated to care for himself/herself and there is nobody available to provide care in the home.

WHERE AN OFFICER CAN GET MORE HELP

- Guardians, Conservators, or Lawyers - Some elderly people with mental impairments have been placed under guardianship or conservatorship. This involves a court process in which a Judge appoints another individual or agency to assume responsibility for the individual's financial or personal care. The

conservator or guardian (assuming he/she is not the alleged abuser) may be able to:

- Freeze bank accounts to secure the victim's assets.
- Provide access to the victim's financial records and transactions.

OUTSIDE PREDATORS

Financial exploitation

- The primary exploitation of senior citizens is financial exploitation. This involves the illegal or improper use of an elder's funds, property, or assets.
- Some of the crimes associated with financial abuse include larceny, worthless checks, fraud, embezzlement, and forgery.
- An example could be coercing or deceiving an older person into signing a document. It could be an improper use of guardianship or power of attorney.
- Another example: an ad is placed in the newspaper for someone to assist a senior citizen who has memory problems. In a moment of weakness, the person has the senior citizen sign a form giving him or her access to the bank account.
- There are people – predators – eager to exploit the weaknesses of our seniors. As officers, we can bring assistance and hope to those most in need.

CONCLUSION

- It is a disgrace that so many of our senior citizens are victims of a crime.
- The fact that these cases are seldom investigated or prosecuted is a tragedy.
- But you, as police officers, can do something about it. You can make a difference.
- Take the knowledge gained from this class with you. If you see elder abuse, don't hesitate – investigate!

