

# **ADULT PROTECTION COORDINATING COUNCIL**

## **TRAINING MANUAL**



**FOR THE  
INVESTIGATION OF ABUSE, NEGLECT,  
AND EXPLOITATION  
OF THE ELDERLY  
AND  
OTHER VULNERABLE ADULTS  
IN SOUTH CAROLINA**

## NOTICE

This guide represents an attempt to condense a large amount of complex information into a useful training and reference tool. Although every effort has been made to ensure that the information presented is both correct and current, these materials should be used only as overviews and general guidance, not necessarily as a basis for making specific decisions in a particular case. The guide is not a legal document, nor is it intended to fully explain all of the provisions or exclusions of the relevant laws, regulations, and rulings that may impact cases involving abuse of the elderly or other vulnerable adults. The guide should not be viewed as rendering any legal, accounting, or other professional advice, nor does it necessarily reflect the policies or legal positions of any individual, agency, or other entity participating in its preparation or use.

**Note:** This training guide is also not intended as a replacement for any agency or entity's internal training regarding protection for vulnerable adults or any other conventional training. Each agency or entity has policies and procedures for handling these cases.

## ACKNOWLEDGMENTS

This training manual was developed by the Adult Protection Coordinating Council. Special thanks are due the following persons for their contributions to the final product: Marsha Stepp, for her very generous donation of time and enthusiasm to the task of formatting and shaping this manual from raw data given to her over the course of one year; to Paula Calhoun and Charlotte Thomas, for their commitment to review and edit the final product; and finally, to the members of the Training Committee for their diligence in developing and overseeing the important message each chapter seeks to convey.

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## PREFACE

The Adult Protection Coordinating Council has designed this training guide to incorporate techniques that are useful to law enforcement and social service agencies during the initial investigation of an allegation of abuse, neglect or exploitation of a vulnerable adult. All too often we lose sight of the fact that law enforcement is the only social service agency open 24 hours a day, has an immediate response capability and is easily accessible to every citizen. When considering the issue of vulnerable adult abuse, neglect, and exploitation, joint investigation and cooperation is the only way that effective action can be taken in most of these cases. While law enforcement may often be the first responder, it takes the efforts of every agency to correctly assess and intervene in these complex situations.

When one thinks of abuse, the tendency is to focus on child and spousal abuse. The problems of child and spousal abuse are well documented, and extensive efforts have been made by both social service agencies and law enforcement to combat these activities. Coming to the forefront, however, is the problem of vulnerable adult abuse. As demographics demonstrate, our population is aging and there is an increased focus on issues dealing with the elderly. Another rarely addressed aspect of abuse, neglect, and exploitation is that these crimes can be perpetrated on other high risk adults such as people with physical or mental disabilities. These vulnerable adults often go unnoticed in any discussion of abuse, neglect, and exploitation. Thus, this training guide is directed toward investigating abuse of the elderly and other high risk, vulnerable persons needing adult protection.

In the late 1970's, the problem of elder abuse began to surface as a national concern, and by the early 1980's, it had become a national issue through a series of hearings in the United States Congress (U.S. Congress, House Select Committee on Aging, 1981). This generated a response in many states that resulted in legislation addressing adult protective services.

There is no doubt that the population of the United States contains a larger segment of older persons than in the past. According to South Carolina's Mature Adults Count, the Census Bureau predicts the 65 and older population will grow from one in eight to one in six by the year 2020. South Carolina's mature adults as a group out-paced others with a 50% growth rate between 1980 and 1990.

Older South Carolinians are an important and powerful segment in our state. As such, they are able to bring their problems and needs to the attention of public service agencies. The problems of aging include such things as the expanding costs of health care, housing or appropriate placement for an individual's level of care, and tension between the generations over caregiver demands. One of the manifestations of this conflict is an increase in the abuse, neglect and exploitation of vulnerable adults.

The increasing aging population will have many implications for the law enforcement and social services fields. One significant impact will be an increase in the contacts between social services and law enforcement personnel with older and disabled persons making it necessary to be able to communicate clearly and effectively with these individuals. Understanding some general principles regarding the process of aging will help foster better communication. Stereotypes of the elderly and disabled as "inactive", "immobile", and "senile" are often inaccurate.

Once again, while the discussion has focused on the elderly, we must not lose sight of other vulnerable adults. While a number of elderly and disabled people are in institutions, more people with disabilities are staying in their local community with social services and medical supports. As of 2000, the total census count of persons age 18 and over was 3,002,371. The estimated number of individuals in our state with mental retardation and related disabilities is 3% of that total, or approximately 90,071 persons. In September 1998, the SC Department of Disabilities and Special Needs was serving 13,431 persons, age 18 and over, as follows: 1,213 in regional centers; 3,082 in community residential care; and, 9,136 at home or other.

It is estimated that 50,000 people in South Carolina suffer from severe long term mental illness. This does not include those who suffer from other emotional or acute disorders. In 1997, the SC Department of Mental Health served 90,077 clients in 17 community mental health centers throughout the state and 14,056 clients in inpatient facilities.

With increased placement of individuals with disabilities in communities comes an increased exposure to abuse, neglect and exploitation. As more people with disabilities are living and working in communities, exercising their independence, the risk of being victimized also increases. Individuals with disabilities want to fit in and be considered "one of the gang". They are susceptible to being used by others for criminal activity. They may be in wheelchairs and unable to adequately defend themselves from assaults. Persons with disabilities may have to rely on others to aid them with their finances, which sets up an opportunity for financial exploitation. Persons with disabilities may be nonverbal, and therefore unable to tell what has happened to them in a way that can be understood. It is important that those investigating cases learn appropriate techniques to communicate with persons with disabilities. Each person with a disability requires a unique set of techniques or approaches for communication.

The Adult Protection Coordinating Council hopes that this manual will be beneficial to you. Your dedication to the protection of the vulnerable citizens of our state is greatly appreciated.



## **CHAPTER 1 : THE PROBLEM OF VULNERABLE ADULT ABUSE, NEGLECT AND EXPLOITATION**

Before discussing data related to the increasing problem of abuse of the elderly and other vulnerable adults, it is important to discuss the statutory definitions of abuse, neglect and exploitation used in South Carolina. The Omnibus Adult Protection Act, found in SC Code § 43, Chapter 35-35-5 et seq., Code of Laws of South Carolina, 1976, annotated as amended, was signed into law June, 1993, with an effective date of September 11, 1993.

### **Definitions:**

The following definitions are found at § 43-35-10:

#### **Vulnerable Adult:**

"Vulnerable adult" means a person eighteen years of age or older who has a physical or mental condition which substantially impairs the person from adequately providing for his or her own care or protection. This includes a person who is impaired in the ability to adequately provide for the person's own care or protection because of the infirmities of aging including, but not limited to, organic brain damage, advanced age, and physical, mental, or emotional dysfunction. A resident of a facility is a vulnerable adult.

#### **Facility:**

"Facility" means a nursing care facility, community residential care facility, a psychiatric hospital, or a facility operated or contracted for operation by the State Department of Mental Health or the South Carolina Department of Disabilities and Special Needs.

#### **Abuse:**

"Abuse" means physical abuse or psychological abuse.

#### **Physical Abuse:**

"Physical abuse" means intentionally inflicting or allowing to be inflicted physical injury on a vulnerable adult by an act or failure to act. Physical abuse includes, but is not limited to, slapping, hitting, kicking, biting, choking, pinching, burning, actual or attempted sexual battery as defined in § 16-3-651, use of medication outside the standards of reasonable medical practice for the purpose of controlling behavior, and unreasonable confinement. Physical abuse also includes use of a restrictive or physically intrusive procedure to control behavior for the purpose of punishment; however, a therapeutic procedure prescribed by a licensed physician or other qualified professional or that is part of a written plan of care by a licensed physician or other qualified professional is not considered physical abuse. Physical abuse does not include altercations or acts of assault between vulnerable adults.

#### **Psychological Abuse:**

"Psychological abuse" means deliberately subjecting a vulnerable adult to threats or harassment or other forms of intimidating behavior causing fear, humiliation, degradation, agitation, confusion, or other forms of serious emotional distress.

#### **Exploitation:**

"Exploitation" means: (a) causing or requiring a vulnerable adult to engage in activity or

labor that is improper, illegal, or against the reasonable and rational wishes of the vulnerable adult. Exploitation does not include requiring a vulnerable adult to participate in an activity or labor which is a part of a written plan of care or which is prescribed or authorized by a licensed physician attending the patient; or (b) an improper, illegal, or unauthorized use of the funds, assets, property, power of attorney, guardianship, or conservatorship of a vulnerable adult by a person for the profit or advantage of that person or another person.

**Neglect:**

"Neglect" means the failure or omission of a caregiver to provide the care, goods, or services necessary to maintain the health or safety of a vulnerable adult including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services. Neglect may be repeated conduct or a single incident which has produced or can be proven to result in serious physical or psychological harm or substantial risk of death.

Noncompliance with regulatory standards alone does not constitute neglect. Neglect includes the inability of a vulnerable adult, in the absence of a caretaker, to provide for his or her own health or safety which produces or could reasonably be expected to produce serious physical or psychological harm or substantial risk of death.

**Statistics:**

The level of elder maltreatment has been extremely difficult to determine. However, a recently released report, *National Elder Abuse Incidence Study*, prepared by the National Center on Elder Abuse has provided some fresh figures for consideration. The difficulty in measuring the level of abuse and neglect and exploitation directed towards the elderly is complicated by a lack of uniform definitions and the fact that most cases are not reported. This is further complicated by the absence of a system that links reporting to adult protective services and responses by law enforcement. The study does provide some insight into the extent of the problem and some important areas of concern.

The study estimated that a total of 551,011 persons over 60 experienced some form of abuse or neglect. Of this total, 21 percent were reported to Adult Protective Services (APS); if correct, this indicates that a significant number of cases are never reported and largely go unnoticed. It should be noted that a good many of these unreported (to APS) cases are self-neglect. No matter how the numbers are viewed, it appears that elder abuse is a "hidden" problem.

Other findings of interest are:

**Types of Elder Maltreatment**

Of the cases substantiated by APS 48.7% involved neglect, 35.4% were psychological abuse, 30.2% were financial exploitation and 25.6% were physical abuse.

**Reporters**

The most frequent reporters of abuse and neglect, other than self-neglect, were family members (20%), followed by hospitals (17.3%), and then law enforcement (11.3%). The last two are somewhat surprising given anecdotal information that these groups are difficult to reach and need training in the recognition of elder abuse.

### **Victims**

Individuals over 80 were most likely to be victims with this age group accounting for 51.8% of the neglect reports, 48.0% of the exploitation reports, 43.7% of the physical abuse reports, and 41.3% of the psychological abuse reports. Women made up the majority of the victims when accounting for gender, and white victims were the majority when considering race. Most victims were unable to care for themselves and experienced some degree of confusion. These results match the typology found in most of the previous studies.

### **Perpetrators**

Overall, 53% of the perpetrators of abuse and neglect were men; however, women were more often the perpetrators in neglect cases. In regard to the perpetrator's relationship to the victim, 89.7% were family members. Of these family members, 47.3% were adult children, and 19.3% were spouses. This data certainly supports the conclusion that victims are at greatest risk of being abused by someone close to them and that spousal abuse is a problem among the elderly.

There are other interesting issues in this study that require additional attention. The study includes abandonment as a separate category and these cases represent 3.6% of the total. It is also interesting to note that almost all of the victims of abandonment (96.1%) had incomes under \$10,000. This income level also held for victims of financial exploitation (46.0%). It would appear that financial exploitation affects those with little income rather than the more wealthy segment of the older population.

There are no hard conclusions that can be drawn from this study. It seems to support some of what we already know; however, it does indicate that the problem may be more complex than we realize. Despite the increased reporting and attention, vulnerable adult abuse is still largely a hidden problem. While there are varied explanations for this "invisibility," the five most prominent according to Kosberg (1988), are as follows:

- The family is sacrosanct; interference with family life by outsiders is not tolerated;
- Because abuse occurs within the confines of a private dwelling, it is hidden from outside scrutiny. Unlike the circumstances of small children, there are no requirements or imperatives for elderly people which necessitate them leaving their dwellings and thus, being seen by non-family members.
- The elderly are reluctant to report abuse by relatives because they fear reprisals, are ashamed or embarrassed, fear institutionalization, or believe they are the cause of the problem.
- Elder or adult abuse may go undetected because of the failure of professionals to recognize cues of willful abuse and neglect. Explanations for bruises, abrasions, contusions, and malnutrition are related to the impairments of old age or other disabilities (such as lack of balance, dizziness, and poor memory) and are accepted without question.
- Professionals often fail to report the problem, even in states that have mandatory reporting legislation.

There are a number of theories that provide an explanation for abuse, neglect and exploitation of the elderly, and which may also explain the abuse of other vulnerable adults. However, valid theoretical constructs for institutional situations of abuse, neglect and exploitation are

difficult to determine. Much of the research has focused on family violence and does not address the abuse committed in institutional settings. Anecdotal information tends to support the theory that abuse of clients/patients stems from stress, lack of training, low job satisfaction, cultural differences and criminality. The dynamics of abuse, neglect, and exploitation are such that, while theory can assist in forming a framework for research, each case must be investigated on its merits. High-risk population groups may be as much victims of negative attitudes towards the disabled or handicapped and their own self-image as by other factors (Quinn and Tomita, 1986).

In conclusion, it is extremely difficult to determine the extent of the problem based upon available data. The South Carolina Adult Protection Coordinating Council is working with social service agencies and law enforcement regarding data collection systems that will allow them to determine the extent of abuse, neglect and exploitation of vulnerable adults, or the qualitative factors that would lead to a clear understanding of the problem. It appears to be under-reported and may be a totally hidden problem.

## CHAPTER 2 : PROFILES

### The Victim: Community and Institutional Cases

Current research has generated a great deal of literature outlining some of the characteristics that are exhibited by both the victim and the perpetrator. The existence of these characteristics, while not necessarily a guarantee, may indicate the actuality of abuse, neglect, and exploitation. However, they do serve as a frame of reference for the law enforcement officer, social service worker, or ombudsman when confronted with a situation where there is a possible case of abuse, neglect or exploitation.

No single group of vulnerable adults is immune to the possibility of abusive behavior. However, based on the experiences of service providers and research findings, the following characteristics of some vulnerable adults appear to make them more likely to suffer from abuse, neglect, and exploitation. (The typology presented below was developed in an excellent article by Jordan I. Kosberg, Ph.D., Dept. of Gerontology, Florida International University).

- **Female.** There are more abused older women simply because there are more older women than men. Life expectancy tables, by race and sex, clearly show that women, both white and black, are expected to live longer than men (Quinn and Tomita). Older women are also less likely to resist abusive behavior and are more vulnerable to sexual molestation.
- **Advanced age.** Physical and mental impairments and an inability to resist adversities are associated with a person as his/her age increases.
- **Problem drinker.** An older person who is an alcoholic or a problem drinker is susceptible to abusive behavior because of an inability to care or fend for him/herself. Additionally, an older problem drinker may live with an alcoholic spouse or adult child, either of whom may be the abuser (U.S. Congress, House Select Committee on Aging).
- **Intergenerational conflict.** Problems between a parent and adult do not decrease with the passage of time. Instead, they may become more intensified by an increasing dependency on the adult child by the parent.
- **Internalizes blame.** An older person who engages in self-blame may be especially vulnerable to abuse through self-deprecating behavior and failure to acknowledge that abuse is the fault of the abuser (Quinn and Tomita).
- **Excessive loyalty.** An older person who has a strong sense of loyalty to an abusive caregiver (whether a relative or not) will probably not seek to report the problem (Quinn and Tomita).
- **Stoicism.** Some persons accept their troubles without seeking relief possibly due to a personality trait or based on a philosophy of tolerance, resignation, or understanding. This can be used by the abuser for his/her benefit and protection (Lau and Kosberg, 1979).
- **Isolation.** Very often, due to physical impairments, it becomes very easy for the older person to become physically and socially isolated from contact with others besides the caregiver. This makes detection and intervention very difficult.
- **Impairment.** The extent and severity of the person's physical or mental impairments has been associated with abuse. Greater demands and responsibilities for the caregiver

can result in increased levels of stress and frustration and, in turn, lead to abuse of the dependent person.

- **Provocative behavior.** Some vulnerable elderly and disabled adults, like individuals in other groups, can sometimes be overly demanding, ungrateful, ingratiating, and generally unpleasant. Such persons who are also impaired and dependent can aggravate already stressed and overburdened caregivers, increasing the likelihood of abusive retaliation.

When dealing with institutional abuse, it should be understood that generally only those adults with severe impairments are in these settings. In the case of the elderly, it is generally the oldest and most frail who are often institutionalized. People with disabilities, mental illness or mental retardation are most likely the least able to prevent their victimization.

Once again, we have to establish generalities about the high-risk adult population based upon existing research. Little has been done in the area of institutional abuse, but the victim typology would apply in both community and institutional settings. In either case, it can be said that persons most at risk are the ones least able to protect themselves.

It is also important for those working in the area of abuse, neglect and exploitation of vulnerable adults to understand the difference between those who may have mental retardation or mental illness. The chart below, furnished by the South Carolina Department of Disabilities and Special Needs, illustrates some of these differences:

**CHARACTERISTICS OF MENTAL RETARDATION VS. MENTAL ILLNESS**

<b>MENTAL RETARDATION</b>	<b>MENTAL ILLNESS</b>
1. Refers to below average intellectual functioning.	Has nothing to do with IQ. A person with mental illness may be a genius or may be below average.
2. Refers to impairment in social adaptation.	May be very competent socially but may have a character disorder or other aberration.
3. Incidence: 3% of general population.	16-20% of general population.
4. Is present at birth or usually occurs during the period of development.	May have its onset at any age.
5. Impairment is permanent but can be aided through full development of the person's potential.	Is often temporary and in many instances is reversible. Seldom meets the definition of a developmental disability.
6. Person can usually be expected to behave rationally at his/her operational level.	Person may fluctuate between normal and irrational behavior.
7. Erratic and/or violent behavior are rarely noted in persons with mental retardation secondary to the cause of their retardation.	The presence of erratic behavior is a hallmark in some types of mental illness, and violence may be a characteristic of certain specific mental illnesses.
8. Symptoms of failure to adjust to societal demands are secondary to limited intelligence and social adaptive responses.	Symptoms are secondary to a break with reality and/or emotional interference with responses.
9. Person often has impaired communication skills.	Person may communicate in a very idiosyncratic manner.

10. Person can also have mental illness.	Person can also have impaired intellectual functioning as a result of the mental illness.
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### **The Perpetrator: Community Cases**

It is commonly assumed that, with the exception of abuse, neglect and exploitation in institutions, the perpetrator will be either a family member or a caregiver residing with the victim. In an attempt to provide the investigative entity with some clues regarding those most likely to abuse, neglect, or exploit vulnerable adults, characteristics for high-risk caregivers/perpetrators are listed below. Although not necessarily predictive of abusive behavior, these characteristics, defined by Jordan I. Kosberg, Ph.D., may be used as guidelines for identifying possible perpetrators.

#### **High-Risk Caregivers/Perpetrators:**

- **Problem drinker.** Under the influence of alcohol, a problem drinker is capable of acting out negative feelings.
- **Medication or drug abuser.** Substance abuse can result in distorted judgments and perceptions, and the abuser may be unaware of the consequences of poor care.
- **Senile dementia or confusion.** Caregivers who are themselves psychologically impaired, cannot provide needed care and do not understand the consequences of poor care or treatment.
- **Mental or emotional illness.** A caregiver with emotional problems is a risky individual to care for a dependent and frail older person.
- **Caregiving experience.** Individuals who do not have experience caring for the needs of others should not be assumed to be good caregivers, even if they are close to the person for whom they will provide care. Often, because of this inexperience, the caregivers do not fully realize what is totally involved and may be ineffective or hostile in their role of caring for a dependent elderly person.
- **Economically troubled.** Frustrations of unemployment have been found to be related to abuse of a family member. Caregivers should also be considered a high risk if they view the dependent person as a drain on limited financial resources.
- **Stressed.** Individuals who must deal with emotional, social, professional, or economic stresses may become depressed, frustrated, or distraught. Because this stress may be an antecedent of abuse, it is questionable whether an older person should be placed in the care of a stressed individual.
- **Unengaged outside the home.** A caregiver who does not have contacts such as family, friends, co-workers, organizations, or associations, may be isolated from others with whom caregiving problems can be discussed and receive support, emotional or otherwise.
- **Blamer.** Anger may be directed toward a person whom the caregiver blames for problems related to the pressures and burdens of providing care.
- **Unsympathetic.** A person who is unsympathetic to the needs of others may be callous and unable to care for dependent elderly persons.
- **Lacks understanding.** It is important that the caregiver fully understands the physical and emotional problems of the elderly person and their consequences. Otherwise, this lack of understanding may be translated into inappropriate care.
- **Unrealistic expectations.** If the caregiver holds unrealistic expectations about the

condition of the dependent person, the prognosis for change, and the care that will be needed, he/she may become disillusioned, angry or frustrated and, possibly abusive.

- **Economically dependent.** In some cases the caregiver may be economically dependent upon the older individual. The caregiver's reactions to this dependency may lead to abusive behavior resulting from greed, anger or resentment.
- **Hypercritical.** Individuals who are quite critical of others and become impatient easily are not good candidates as caregivers for ill and dependent elderly persons.

Another aspect that can contribute to abuse, neglect, and exploitation is the family system. Families range in size and complexity, and circumstances within the family system should also be assessed in evaluating their effects on abusive behavior. The following characteristics may prove helpful to investigators to further understand the dimensions of abuse, neglect, and exploitation of vulnerable adults:

### High-Risk Family Systems

- **Lack of family support.** Without other relatives available to assist in the care of an adult family member, or to provide periodic respite, the total burden of responsibility is placed on the shoulders of the caregiver. These unrelenting and constant demands may overload the caregiver and result in abusive or ineffective care.
- **Caregiver reluctance.** Reluctance or hesitancy to provide care for an older person or one with disabilities, can possibly predict poor care.
- **Overcrowding.** Overcrowding and lack of privacy have been found to lead to family conflict that could result in anger toward the person who is seen as the cause of the inconvenience.
- **Isolation.** Although isolation itself is not a cause of abusive behavior, a lack of interaction with others by the family places the vulnerable person in an invisible position and abusive behavior may go undetected and unabated.
- **Marital conflict.** The stress and anger from marital problems may spill over and result in abuse of an older or disabled relative, especially a mother-in-law or father-in-law.
- **Economic pressures.** Families already faced with economic problems may resent having to care for an older or dependent relative. Plus, care may necessitate that one of the wage earners quit work to care for the person. Therefore, the economic problems intensify and result in resentment and hostility.
- **Intra-family problems.** Some families already have problems (such as alcoholic father or a withdrawn or acting out adolescent).
- **Desire for institutionalization.** When the family seeks institutionalization rather than care within their home, the situation should be carefully assessed by practitioners before pushing for family care. The family may already be overburdened, or there may have been past intergenerational conflict that may result in abusive situations.
- **Disharmony in shared responsibility.** It has been suggested that disharmony between family caregivers can increase the stress on the major caregiver of an elderly person.

In reviewing some of the risk factors associated with persons with disabilities, the following characteristics were noted (Marinelli and Dell Orto, 1984):

- The more severe the disability, the more negatively it is perceived.



- Families run out of energy.
- Inadequately organized families can lead to abuse or neglect.
- Families can be overwhelmed by the magnitude of the disability.

**Institutional Cases**

Establishing a typology for perpetrators within the institutional setting is much more complex. The lack of thorough background checks, training, job stress and low salaries may contribute to a climate of abuse, neglect and exploitation. Perpetrators within the institution do not fit a clearly defined category and relying on anecdotal data does not produce any clearer information. The Florida Department of Health and Rehabilitative Services, in their training literature, indicated that abuse of medication and passive abuse (allowing the resident to be mistreated by other residents or staff) were the most prevalent forms. Both are training and supervision problems and indicate professional (physicians and nurses) involvement in or acquiescence to the abuse, neglect, or exploitation.

Abuse in long term care facilities may occur in a variety of ways. Residents may abuse one another, facility staff may abuse residents or residents may be abusive toward staff. Abuse may be an act of violence such as physical or sexual assault, or it may be verbal abuse, medication errors or failure to provide proper assistance resulting in injuries.

There may be times when signs of abuse or neglect are observed, but the act itself was not actually witnessed. The tangible signs or indicators tend to be ones that can be detected by trained observers such as facility staff members or Long Term Care Ombudsmen. More difficult to detect or to determine are intimidation and mental anguish. Facility residents may fear retaliation if they speak up or complain about a family member, another resident, or a member of the facility staff.

Maine's Bureau of Elder and Adult Services has identified risk factors that can be related to facility employees, to conditions in the facility itself, or to residents. Listed in the table on the next page are some factors that increase the risk of abuse, neglect, and exploitation. The more of them that are present in a situation, the greater the risk. There are also other forces that can contribute to a problem such as the season, holidays, reactions to family visits, weather and time of day. Being aware of what to watch for and averting a build-up of such risk factors can help to prevent abusive behavior. Low risk in one or two columns can reduce the chance of abusive behavior even when the risk factors in a third column are high.

**Institutional Risk Factors: Chart**

<b>Employee Risk Factors</b>	<b>Facility Risk Factors</b>	<b>Resident Risk Factors</b>
Alcohol/drug abuse	Accepting residents whose needs cannot be met by facility	Argumentative
Chronic physical illness	Crowding/concentration of vulnerable adults	Assaultive
Excessive absenteeism	High personnel turnover; frequent "reorganizations"	Demanding
Family problems/history of family violence	High employee absenteeism; high overtime demands	History of multiple incidents

<b>Employee Risk Factors</b>	<b>Facility Risk Factors</b>	<b>Resident Risk Factors</b>
Financial problems	Inadequate managerial response to abuse	History of substance abuse
Insubordination/power conflicts/rivalry	Inconsistent and unclear expectations of staff	Hostile
Mental illness	Lack of staff training, which means that staff are not prepared to act wisely	Incompetent, organic brain syndrome (OBS), demented
Numerous disciplinary actions	Staff shortages (e.g., least experienced staff required to work holidays when staffing is skeletal and residents are agitated)	Incontinent
Poorly trained	Lack of clear role definition for staff	Intrusive
Role reversal, i.e., looking to resident to fulfill their needs	Inconsistently applied standards	Manipulative
Tardiness or disappearance from job site	Use of facility for detention of anti-social persons	Mute
Social isolation	Poor communication between administrators and staff	Hostile/passive aggressive

**CHAPTER 3 : THE INVESTIGATIVE PROCESS**

The key to successful intervention in any abuse, neglect or exploitation case is a thorough, timely and complete investigation. While it may appear that social service agencies have very different roles from that of law enforcement, both have broad complimentary and/or supportive goals that can serve the needs of the vulnerable adult victim. They are:

**Law Enforcement**

- Protect the victim
- Protect the crime scene
- Process the crime scene
- Develop probable cause and where appropriate, arrest the suspect, freeze assets, stop further criminal conduct
- Build a case for prosecution

**Adult Protective Services/Long Term Care Ombudsman**

- Protect the victim
- Meet the victim's immediate and long-term needs

**Law enforcement and social services share a desire to protect the victim and that sometimes requires the building of a quality criminal case.**

The conduct of an abuse, neglect, or exploitation investigation where criminal prosecution is likely or desired must meet the standard required for criminal court, "beyond a reasonable doubt." This standard places a burden upon any investigator but can be addressed by conducting a thorough investigation. The preferred approach to these investigations is to use a multidisciplinary (joint) approach that brings the expertise and perspectives of both law enforcement and social services.

Social services can bring the following benefits to any abuse investigation:

- Not bound by the same legal rules
- Better suited to meet the needs of the victim
- Experience in dealing with these types of victims
- Authority to obtain certain types of records without a search warrant
- Access to information the officer cannot obtain without legal process or consent
- Expertise in issues related to vulnerable adults

Law enforcement can bring the following benefits:

- The power to gain entry to a residence or facility
- Better trained to collect, preserve and process evidence
- Power of arrest
- Power to seize certain evidence

It is therefore important that law enforcement and social services develop a common framework for investigations.

### **Conducting The Investigation: Defining the Problem**

**(It is important to note that criminal abuse neglect or exploitation of the vulnerable adult always involves acts by others. Self-abuse/neglect is not a crime and is beyond the scope of this manual.)**

Every good criminal case consists of three components: physical evidence, confessions, and witnesses. Initial investigations should focus on what happened and how it happened and attempt to minimize any discussion of "why." Initial inclusion of "why" will often lead to tunnel vision if evidence does not fit the initial determination as to possible motive. An excellent example may be attributing neglect to "caregiver stress." The fundamental key to any good investigation is documentation. Documentation should focus on those items of information that support, substantiate or indicate the "what" and "how" of any case. Below are key indicators of physical and psychological abuse, financial exploitation and neglect:

#### **Physical Abuse**

Look for bruises or welts in places they would normally not be expected, in the shape of objects, or of various ages that cannot be explained satisfactorily, or bilateral/"wrap around" characteristics. Because of the complicated medical issues associated with aging, the investigator must always evaluate the evidence in light of any statements given by the suspect. Other factors to consider are the use of restraints or medication to control behavior and whether it is done beyond the bounds of accepted medical practice, and sexual assault. Investigators should become familiar with the use of body charts and medical assessment techniques when attempting to determine abuse versus legitimate medical conditions. The chart below is only to be used as a guide to differentiate between bruises which may have occurred at different times.

**THE DATING OF BRUISES CAN GENERALLY BE ESTABLISHED BY THE FOLLOWING:**

0-2 days	Swollen and tender
2-5 days	Red/blue
5-7 days	Green
7-10 days	Yellow
10-14 days	Brown
2-4 weeks	Clear

#### **Physical abuse indicators:**

- Bruises, welts, lacerations, broken bones
- Hemorrhaging below the scalp line
- Burn marks
- Untreated injuries
- Unexpected deterioration of health
- Repeated injuries, frequent need for medical care
- Bilateral injuries

Other indicators that an investigator should consider are:

- Repeated "accidental" injuries

- Doctor hopping
- Hospital visits with vague complaints, anxiety, depression
- Delay in seeking medical treatment
- Reference to family member's "anger" or temper
- Flee from home
- Minimize injuries
- Abuser prevents victim from follow-through on medical care

### **Psychological Abuse**

This may be the most difficult form of abuse to document; however, it most often accompanies other types of abuse. Particular attention must be paid to the behavior of the victim. Possible indicators are inappropriate confinement or restriction, depression, agitation or isolation. It may also include unusual weight gain or loss; loss of interest in self, activities, or environment; ambivalence toward caregivers; or withdrawal.

### **Financial Exploitation**

This is the most complicated form to investigate. This very broad category includes many different kinds of criminal acts, illegal schemes, and suspects both known and unknown to the victim. Illegal acts are often performed under the guise of "legality," such as the misuse of a power of attorney or guardianship. Rather than a single act, financial exploitation often occurs over a period of time as the suspect gains power and control over the victim and his/her assets. The resulting "paper trail" can be difficult to follow. In many cases, the suspect is dependent on the victim for financial support and may have a criminal history. Indicators include implausible explanations given by the suspect about the victim's financial status, transfers of funds or property to the suspect by the victim, excessive activity in the bank accounts or credit cards, isolation of the victim from other family members, non-payment of bills and changes in wills, powers of attorney or guardianship, and disparity between assets and living conditions.

### **Neglect**

Neglect was often the form of abuse was traditionally attributed to caregiver stress, lack of knowledge in caregiving duties, or lack of resources. Indicators can be decubiti, i.e., pressure sores (particularly stage III or IV which have a 50% mortality rate), untreated injuries, poor personal hygiene, malnutrition, dehydration and unsanitary living conditions. These cases will very often yield the most physical evidence and can be documented through photographs. Neglect can be the result of an intentional denial of food, liquids, and care; passive neglect is the result of unintentional denial of these things. Some of these activities are considered criminal; but some would not be criminal activity. Self-neglect, the most common form, is not criminal. Indicators may include:

- Untreated sores, unexplained rashes
- Odorous, lying in urine, feces, old food
- Untreated bedsores
- Hungry, gobbles food
- Inadequate or inappropriate clothing for the weather
- Death from exposure or septicemia
- Unkempt appearance, soiled clothes, unshaven

- Absence of food, water, heat, adequate shelter
- Malnutrition, dehydration, weight loss
- Caregiver does not allow access to health care

If the caregiver displays some or all of the behaviors listed below, this may be indicative of the existence of abuse, neglect, or exploitation:

- Will not allow you to talk to client alone
- Answers for the client before he or she can answer
- Is clean and well dressed while client is filthy
- Talks constantly about all the things they do for the client
- Talks about the pressure he or she is under and what a burden the client is
- Seems disinterested or withdrawn

### **Intake**

The initial stages of an investigation may not always provide clear indication of criminal activity. Most cases will involve more than one form of abuse/neglect and may have a victim who is less than an accurate "historian" as to what happened and how it happened. As in other forms of family violence, it is important that the investigator build a case that does not depend upon the victim. Whenever possible, the case should minimize the victim's involvement. Victims are very often ambivalent towards prosecution. They often feel protective towards the abuser, particularly if they are children. It should also be recognized that the victim may not survive prosecution, or may become incompetent, or may already be incompetent to testify. Building cases without the victim is possible, and should be the goal of any investigation. It should also be emphasized that joint investigations (law enforcement/adult protective services) are best. Both disciplines can bring their strengths to any case and better results are achieved. Building a prosecutable case can be done using the following procedures:

### **Evidence Collection and Preservation;**

#### **Physical Evidence**

**Photography:** Evidence collection should include photographs when appropriate. Photography serves as a pictorial representation of what was observed by the investigator and corroborates statements and incident reports:

- Photos give a clearer comprehension of the physical facts.
- Photos document physical evidence such as injuries, living conditions, location of assistive devices, and signs of physical neglect.
- Photos "humanize" a victim who may not be available for court.
- Photos capture a critical moment in time for the trier of fact.
- Photos reduce reliance on a person to describe how a person, injury, or location looked at a key moment.
- Video taping is also an effective way of documenting interviews and general crime scene documentation.
- Injuries should always be photographed over time (up to 7 days after initial assault). Photographs should be of injuries and areas where there are complaints of pain that will often become bruises later.

- When photographing living conditions, pictures should be taken from the four corners of any room. Living conditions/health and safety hazards should also be documented. Also photograph any restraints or instruments that may have caused injury.
- Any weapons

**Documents:** The following documents may provide critical evidence, particularly in financial exploitation cases:

- Power of Attorney
- Will
- Guardianship
- Bills and other records of the victim's expenses
- Bank records (checking, savings, trusts)
- Brokerage accounts
- Credit card records
- Insurance policies
- Deeds or titles to property
- Medical records and pharmacy records
- Law enforcement/adult protective services case files (previously reported incidents)

**Medication(s):** Investigators should record and, if possible, seize all medications. Medications can play a key role in abuse and neglect cases and must be documented. If the medications cannot be taken, then the prescription data, i.e., doctor, pharmacist, date, name, and strength of medication, directions for dosage, number prescribed, and number remaining, should be documented.

**Other Evidence:** Most criminal cases will present a large amount of physical evidence. In all cases, the investigator should document and/or seize any item that has potential value.

**Search Warrant:** This may be the most important, but under-utilized, tool in an abuse, neglect, and exploitation case. A search warrant can often provide critical evidence and should be used at every opportunity. Very often, a search warrant may be required in order to enter and to process a suspected crime scene, or obtain important documentary evidence. It is also important to note that adult protective services may be able to obtain documents without a search warrant; however, be cautious of the issue of "agency."

## Witnesses

### **Interviewing the Victim:**

Interviewing the victim can be a difficult task and must be approached with prior planning and an understanding of the victim's background to include relationship to the suspect, mental status and medical condition. Victim interviews should be conducted in a place that is familiar and comfortable for the victim outside the presence of the suspect. Coordinated, joint interviews should be done whenever possible and should always be a forensic interview. Videotape the interview if at all possible. Interview the victim whether or not the victim is legally competent. The following are good techniques to

consider when interviewing a victim:

- Tell the victim what to expect during the investigation
- Allow the victim to describe the incident in his or her own words
- Ask the victim about the history of the suspect (e.g., son, friend of family, etc.)
- Ask the victim if the suspect drinks, uses drugs, or has mental problems
- Be patient and reassuring; avoid unnecessary pressure
- Explore prior incidents (focus on last, first, worst)
- Keep it simple; phrase questions in clear, concise fashion
- Ask open-ended questions that encourage further discussion
- Even if the victim appears confused, do not discount the information
- Conclude the interview in such a manner that the victim feels comfortable contacting the investigator again
- Anticipate defenses. Viewing your case from the defense perspective will often disclose any investigative gaps and issues that must be addressed during the prosecution's case

### **Hearsay Exceptions**

- **Present Sense Impression.** A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.
- **Excited Utterance.** A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.
- **Then Existing Mental, Emotional, or Physical Condition.** A statement of the declarant's then existing state of mind, emotion, sensation or physical condition (such as intent, plan, motive, design, mental feeling, pain and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.
- **Statements for Purposes of Medical Diagnosis or Treatment.** Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause of external source thereof insofar as reasonably pertinent to diagnosis or treatment; provided, however, that the admissibility of statements made after commencement of the litigation is left to the court's discretion.

### **Interviewing Witnesses**

- Determine the witnesses' relationship to the victim and suspect
- Ask where and how they received their information
- Try to determine their motivation for offering information

### **Confessions/Admissions**

Admissions are an acknowledgment of involvement in an act. Confessions are statements that contain a sufficient amount of "admissions" as to warrant the conclusion that its maker is guilty of a criminal offense.



**Interviewing the Suspect**

- Advise of rights, if appropriate
- Note the suspect's attitude and demeanor
- Ask open-ended questions
- Determine the suspect's relationship(s) to victim and witnesses
- If the suspect provides care to the victim:
  - Get complete information regarding duties, pay and hours
  - How involved is the suspect in the care and what are the expectations of the victim
  - Is anyone else caring for the victim?
  - Is the suspect coping well with the caregiving duties?
- Document the inconsistencies between the suspect's statement and the evidence
- Do not be "judgmental" or "hostile"
- Inquire about potential defenses

**Documentation/Incident Reports**

Every allegation of a crime should be thoroughly documented. At a minimum, an incident report must be created and should include the following:

**Victim's account**

This is a detailed account of what the victim states regarding frequency or severity of the abuse as well as any prior incidents. Hearsay exceptions can become critical in future prosecution if correctly documented whether or not the victim is later unable to testify.

**Suspect information:**

This should include relationship to victim, level of cooperation, prior criminal history, and possible statements made by suspect.

**Evidence:**

Clearly document all physical evidence including photographs and items collected (chain of custody).

**Names of witnesses:**

Include how to reach them for further statements/information, persons who responded to the scene such as medical personnel or adult protective services workers, and family members and neighbors who may have knowledge of important facts.

**Other Investigative Considerations**

One of the most difficult cases to investigate is financial exploitation. It is becoming apparent that the number of these cases may exceed other forms of abuse and neglect. It is important to note that we do not include fraud and scams directed at the elderly and disabled by "strangers" as part of this problem. Listed below are some guidelines for investigating financial exploitation and an explanation of key legal documents and concepts:

**Guidelines for Investigating Financial Exploitation:**

- Determine relationship between parties: Is the suspect a member of the victim's family? Is he or she in a position of trust? Does he or she live with the victim?
- Determine the extent of the victim's estate/assets prior to the alleged exploitation, including real properties, bank accounts, certificates of deposit, stocks, home furnishings, personal belongings and vehicles.
- Find out who owns the victim's home, whose name is on the deed, who pays the rent, and who pays the taxes.
- Determine whether the victim is literate.
- Find out whose name(s) are on the bank accounts, investment accounts, and stocks.
- Find out who is the representative payee, attorney-in-fact or guardian.
- Find out who pays the bills.
- Find out how the victim's income (pension, social security, etc.) is received and deposited in the bank.
- Determine what documents signed by the victim may have transferred the estate/assets to the suspect's control.
- Secure samples of victim and suspect's signatures and writings.
- Get copies of all documents signed by victim or allegedly signed by victim.
- Determine spending patterns before suspect was in victim's life (or before suspect obtained copies of all documents of legal significance (Power of Attorney, trust agreements, joint bank accounts, etc.).
- Determine the victim's mental status: Is the victim capable of understanding documents, testifying or assisting in the investigation?
- If the person is incapacitated, or his or her capacity is questionable, contact family members, friends or service providers to obtain mental health observations, evaluations, and histories. These sources will assist in determining capacity at the time certain events took place.
- Secure the estate/assets.
- **Follow the money: who had it and who has it now!**

**Key Documents/Definitions:****Power of Attorney**

A "Power of Attorney" is a document that is used to give one person the legal authority to act on behalf of someone else (Attorney-in-fact). Note: Powers of Attorney require that the attorney-in-fact act on behalf of the victim and in the victim's interest rather than in the interest of the attorney-in-fact. There are two kinds of powers of attorney:

- **Durable Power of Attorney** - a type of power of attorney that "is not affected by physical disability or mental incompetence of the principal that renders the principal incapable of managing his or her own estate."
- **Springing Durable Power of Attorney** - a durable power of attorney that "becomes effective upon the physical disability or mental incompetence of the principal."

**Representative Payee**

A Representative Payee is the assignment of authority to someone to receive, sign and cash another person's public benefits check (SSI, Social Security, Veteran's Administration pensions, railroad pensions and civil service annuities).

**Guardianship**

Guardianship (sometimes called a conservatorship in other states) is a mechanism by which courts grant certain powers to institutions, relatives, friends or public guardians to control the affairs of individuals who are incapable of managing on their own.

**Capacity**

Capacity means an individual's ability to perform certain tasks. Mental capacity refers to the ability to perform mental tasks such as remembering, reasoning, and understanding the repercussions of one's action. In financial exploitation cases, several types of capacity are at issue: testamentary capacity, the capacity to contract and capacity to give legal consent. An investigator should always consult with the prosecutor regarding the facts in the case relative to these two issues.

**Consent**

To exercise consent, an individual must have knowledge of the true nature of an act or transaction. They must act freely and voluntarily and not under the influence of threats, force or duress. They must also possess sufficient mental capacity to make intelligent choices whether or not to do something that is proposed by another individual. Mere passivity does not amount to consent.

**Undue Influence**

Undue influence is the excessive pressure on, or persuasion by, a dominant person to someone who is vulnerable to pressure. If undue influence is found, there is no legal consent. Undue influence has been used with persons with and without capacity. Some factors to consider are:

- Discussion of the transaction at an unusual or inappropriate time
- Consummation of the transaction in an unusual place
- Insistent demand that the business be finished at once
- Extreme emphasis on untoward consequences of delay
- The use of multiple persuaders by the dominant side against the vulnerable party
- Absence of third-party advisers to the vulnerable party
- Person who engaged in these tactics benefited

Other indicators that need to be considered are: suspect's opportunity to influence the victim; victim's vulnerability allowing his/her will to be overborne or subjugated (e.g., feeble, lonely, isolated, distraught, ill, demented, dependent); active efforts by suspect to obtain a desired result (e.g., get a will executed in his favor); or, suspect unduly benefited from the transaction.

All of these factors could impact a financial exploitation case. Most often there will be a lack of major "red flags" leading to the "smoking gun." These cases rely heavily on the totality of

circumstances that would lead a reasonable person to believe it happened.

### **Prosecuting Cases of Abuse, Neglect, and Exploitation of Vulnerable Adults**

Prosecution of these cases presents difficult but not insurmountable problems. Faced with memory loss, poor memory or passage of time, the victim may not be the most credible witness. It should be emphasized that prosecution does not necessarily require the victim's involvement. Proper investigation and preparation overcome the need for victim involvement.

A key technique in preparing for prosecution is to look at your case from the defense perspective. It will often disclose areas that need additional investigative effort and allow for the development of a trial strategy that addresses these areas in a controlled manner.

Additional support can be gained from the use of "expert" witnesses that will provide the jury with information that assists in their understanding of issues involved in cases of abuse, neglect, and exploitation of vulnerable adults. The defense attorney will make every attempt to present the suspect in the best light possible and point out the inconsistencies in the prosecution's case. Individuals involved in the prosecution should always be professional, carefully prepare for testifying and never take the case personally. Some additional guidelines are:

- Do your homework
- Be truthful and professional
- Communicate to the jury
- Keep the jury interested
- Force the defense attorney to prove the case
- Maintain your professional composure
- Describe rather than conclude
- Refer to your notes or report, don't rely on memory

The courtroom is the true test of a quality investigation that protects the victim and punishes the offender. It is the place in which professional competence is demonstrated.

**CHAPTER 4 : THE LEGAL SYSTEM**

The legal system established to provide protection for vulnerable adults is complex and presents a challenge to those assigned to investigate abuse, neglect, and exploitation allegations. There are several agencies in South Carolina which investigate these allegations along with the concurrent law enforcement responsibility to investigate any suspected criminal violation. The following chart outlines the basic investigative actions required of these agencies when confronted with an allegation of abuse, neglect and/or exploitation of a vulnerable adult.

**Investigative Actions Chart**

<b>AGENCY</b>	<b>INVESTIGATIVE ACTIONS</b>
Department of Social Services: Adult Protective Services	Initiate investigation upon information alleging abuse, neglect, or exploitation in all settings other than facilities.  Contact law enforcement if criminal violation is suspected.  Initiate protective measures either through Ex Parte order or Emergency Protective Custody (requires law enforcement participation).  Conduct complete investigation.
Department of Health and Human Services: Long Term Care Ombudsman	Initiate investigation of suspected abuse, neglect or exploitation occurring in facilities.  Contact law enforcement if criminal violation is suspected.  Conduct complete investigation and if substantiated, notification sent to appropriate agencies (e.g. DHEC, Board of Examiners, Solicitor, etc).
Department of Mental Health	Initiate investigation and protective actions in cases of alleged abuse, as defined in Departmental guidelines.  Notify DMH Office of Public Safety and appropriate supervisory personnel.  Notify physician and complete Unusual Occurrence Form as well as appropriate assessment.  Office of Public Safety conducts an investigation to be concluded no later than 10 work days.
Protection and Advocacy for People with Disabilities	Initiate investigation upon request of the disabled victim or in his behalf.  Conduct investigation to include staff interviews and records inspection.  Contact appropriate law enforcement agency or Ombudsman as necessary.

<b>AGENCY</b>	<b>INVESTIGATIVE ACTIONS</b>
Department of Disabilities and Special Needs	<p>Initiate internal investigation/management review of suspected cases of abuse.</p> <p>Report suspected abuse to outside agencies in accordance with state laws.</p> <p>May contact appropriate law enforcement agency in the following cases:</p> <ul style="list-style-type: none"> <li>a) sexual assault between staff and clients</li> <li>b) cases involving serious injury</li> <li>c) cases where more than one individual is involved</li> <li>d) cases of serious abuse an employee intentionally covered up or failed to report</li> </ul>
Law Enforcement	<p>Initiate investigation of abuse, neglect or exploitation and contact appropriate social service agency if required (e.g. DSS, Ombudsman Office).</p> <p>Complete incident report.</p> <p>Initiate emergency protective custody (EPC) if required.</p> <p>Conduct complete investigation and, if substantiated and probable cause can be established, prosecute or forward for prosecution.</p> <p>Assist other investigative agencies as necessary.</p>
Attorney General - Medicaid Fraud Control Unit	<p>Initiate investigation of abuse, neglect or exploitation in Medicaid facilities after incident referral from DHEC, LTC Ombudsman, or Law Enforcement.</p> <p>Conduct complete investigation and, if substantiated and probable cause can be established, prosecute or forward for prosecution.</p> <p>Notify appropriate agency of outcome of investigation (e.g. DHEC, Ombudsman, Law Enforcement).</p> <p>Assist other investigative agencies as necessary.</p>
Attorney General - Elder Abuse and Adult Protection	<p>Work with DSS and other agencies when a case of abuse, neglect, or exploitation in a private home is substantiated.</p> <p>If probable cause can be established, prosecute or forward for prosecution.</p> <p>Notify appropriate agency of outcome of prosecution (e.g. DSS, Law Enforcement).</p> <p>Assist other investigative agencies as necessary.</p>

It is beyond the scope of this manual to present detailed information regarding the legal aspects of each agency's policies and procedures and there will be no attempt to discuss regulatory actions that can be taken by such agencies as the Department of Health and

## Environmental Control.

The key issue is to provide a basis for successful criminal prosecution of those abuse, neglect and exploitation cases that are violations or require state intervention to protect a vulnerable adult. Every allegation must be approached as if it will eventually result in a court proceeding. As stated earlier, each investigation should strive for the exacting standard of proof required for criminal court.

### **The South Carolina Omnibus Adult Protection Act**

The South Carolina Omnibus Adult Protection Act, Section 43, Chapter 35-35-5 et seq., Code of Laws of South Carolina, 1976, annotated as amended, provides a comprehensive framework for the investigation of vulnerable adult abuse. Major provisions of this statute are as follows:

#### **To whom does the Act apply?**

- **Vulnerable adults:** Persons over the age of 18 who have a physical or mental condition that prevents them from providing for their own care or protection. This includes persons who have organic brain damage, mental retardation or advanced age. § 43-5-10(11)
- **Persons who are residents of facilities** are vulnerable adults. § 43-35-10(11)
- **Caregiver:** A person who provides care to a vulnerable adult with or without pay, on a temporary or permanent part-time or full-time basis. Can be a relative, household member, day care personnel or personnel of a public or private institution or facility. § 43-5-10(2)

#### **Types of abuse, neglect, and exploitation**

- **Physical Abuse:** Includes slapping, hitting, over-medicating, biting, kicking, choking, pinching, burning or other types of physical injury. This is either an intentional act of the caregiver or a failure to act by the caregiver to protect the vulnerable adult from abuse. § 43-5-10(8)
- **Sexual Abuse:** Assaults ranging from fondling to criminal sexual assault. § 43-5-10(8)
- **Psychological Abuse:** Threatening, harassing or subjecting the vulnerable adult to intimidating behavior that causes the vulnerable adult fear, humiliation, or emotional distress. § 43-5-10(10)
- **Neglect:** By self or by others is the failure to provide the necessities of life such as food, care, clothing, medical care or shelter. § 43-35-10(6) **Note:** It is not neglect if the person is being treated by spiritual means through prayer that are practiced in accordance with the vulnerable adult's religion. § 43-5-13
- **Exploitation:**
  - **Physical:** Making the vulnerable adult work or do some activity that is illegal or against the wishes of the person. § 43-5-10(3)(a)
  - **Financial:** Misuse of the money or assets of a vulnerable adult for the profit or advantage of the person or another person. § 43-5-10(3)(b)

**Who can investigate reports of abuse, neglect, or exploitation?**

- The Long Term Care Ombudsman's Office investigates complaints in facilities. § 43-5-15(A)
- Facilities mean nursing care facilities, community residential care facilities, psychiatric hospitals, or facilities operated by the Department of Mental Health or Department of Disabilities and Special Needs. § 43-35-10(4)
- Department of Social Services (DSS) investigates in settings other than facilities, like private homes. § 43-5-15(B)

**Who must report abuse, neglect, or exploitation**

- Mandated reporters are those who must make reports. § 43-5-25(C)
- They are under an affirmative duty to report if they have reason to believe that a vulnerable adult is being abused, exploited, or neglected.
- Mandated reporters are: Medical personnel, physicians, nurses, Christian Science practitioners, and religious healers, law enforcement officers, those in school settings such as teachers and counselors, mental health counselors and mental retardation specialists, social workers and public assistance workers, adult day care staff at either a facility or center, caregivers and also volunteers. § 43-5-25(A)

**Who must report suspicious cause of death?**

- Mandated reporters must also report cases involving death due to abuse or neglect to the coroner or medical examiner who must then investigate the cause of death and may perform an autopsy. § 43-35-35
- Are there penalties for a mandated reporter's failure to report?
- If a mandated reporter has actual knowledge that abuse, neglect or exploitation has occurred, and knowingly and willingly fails to make a report, he or she can be convicted of a misdemeanor, fined not more than \$2500, or imprisoned not more than a year. § 43-35-85(A)
- If a mandated reporter has reason to believe that abuse, neglect or exploitation has occurred, and knowingly and willingly fails to make a report, he or she is subject to disciplinary action as may be determined by the appropriate licensing board.

**What protection does a person who makes a report have?**

- If a report is made in good faith, then the reporter is immune from civil and criminal liability resulting from making a report. The same applies to anyone participating in an investigation or judicial proceeding resulting from a report. § 43-35-75(A)
- It is presumed that the report is made in good faith. § 43-35-75(A)
- An employee's status should not change as a result of making a report or cooperating with an investigation or action taken under this statute. § 43-35-75(B)

**Where are reports of abuse, neglect, or exploitation made?**

- Incidents occurring in facilities are reported to the Long Term Care Ombudsman's Office. § 43-35-25(D)
- Incidents in other settings are reported to the Adult Protective Services Program at the county DSS. § 43-35-25(D)



- If the report is made to the wrong office, it is the duty of that office to make sure the report is forwarded to the appropriate office. § 43-35-25(D)
- Reports can always be made to law enforcement. § 43-35-25(F)

**When to make the report?**

- Mandated reporters must make the report within 24 hours or the next business day after discovery of the abuse, neglect, or exploitation. § 43-35-25(D)
- Other reporters are not under any time frame to report, but the sooner the better to protect the vulnerable adult and to preserve any evidence. § 43-35-25(B)

**What are the powers of the investigative entities?**

The investigative entities have statutory authority to do the following:

- Access facilities in order to conduct the investigations.
- Access all records necessary to complete the investigation including hospital records upon written request.
- Issue administrative subpoenas.
- Start court proceedings.
- Have all persons including family members and facility staff cooperate with the investigation.
- Have all state officials, departments, agencies and political subdivisions cooperate with the court and the investigative entity.
- Conduct studies, compile data, issue reports and recommendations on the abuse, neglect, and exploitation of vulnerable adults. § 43-35-20
- Investigative entities, unless otherwise protected by law, should share information. However, the information should not be disclosed publicly. § 43-35-60

**What must the investigative entities report?**

- The investigative entity must report alleged incidents of abuse, neglect, or exploitation against a healthcare professional to the appropriate licensing board. § 43-35-70

**How is the investigation started?**

- The investigation must be started promptly. Within two business days of receiving the report, it must be reviewed to determine whether a referral to law enforcement is required. Then within one business day of the review, the report must be made to law enforcement if a referral is needed. § 43-35-40
- Law enforcement shall file an incident report and if requested, give one to the investigative agency. § 43-35-40

**What is an inspection warrant?**

- If the investigative entity cannot obtain access to the vulnerable adult or the premises where the vulnerable adult is residing, then the Family Court may be petitioned for an inspection warrant. The court must be shown that there exists probable cause that the vulnerable adult is at risk of abuse, neglect, or exploitation or has been abused, neglected, or exploited. § 43-35-45(A)
- The inspection warrant allows the investigative entity to enter and inspect the

premises, and to photograph the adult and the premises. § 43-35-45(A)

**Who may take emergency protective custody (EPC)?**

- Law enforcement, if:
- There is probable cause to believe that because of abuse, neglect, or exploitation there is imminent danger to a vulnerable adult's life or physical safety;
- The vulnerable adult does not consent to protective custody;
- **AND** there is no time to apply to the court for an ex parte order. § 43-35-55(A)
- Protective custody does not mean the vulnerable adult is under arrest. The vulnerable adult is placed in the custody of DSS until the hearing on probable cause. § 43-35-55(C)
- Law enforcement is responsible for transporting the vulnerable adult to a place of safety. The adult cannot be taken to a jail or other type of detention center. § 43-35-55(B)
- Law enforcement must notify DSS immediately of the protective custody and the location of the vulnerable adult. § 43-35-55(D)
- The notification to DSS can be written or oral, but must include:
  - The name of the vulnerable adult or physical description if the name is not known;
  - The address from which the vulnerable adult was removed;
  - The name of the caregiver or person who was exercising custody or control over the vulnerable adult;
  - The address of the place to which the vulnerable adult was transported; and
  - The facts surrounding the emergency removal.
- Upon receipt of the notification from law enforcement, DSS shall initiate an investigation. § 43-35-55(D)

**Can Family Court order emergency protective custody (EPC)?**

- The family court may issue an ex parte order requiring a vulnerable adult be taken into protective custody or that protective services be offered if there is probable cause to believe that because of abuse, neglect, or exploitation there exists imminent danger to the vulnerable adult's life or physical safety. § 43-35-45(B)
- If such an order is granted, then the other provisions of EPC apply and DSS must file requesting a hearing within 72 hours to determine if there actually did exist probable cause at the time of the ex parte order. § 43-35-55(F)

**What is an emergency protective custody hearing?**

- DSS must file the petition seeking protective custody within one business day of receiving notification from law enforcement. § 43-35-55(E)
- The hearing must be held in Family Court within 72 hours of filing the petition to determine if the emergency removal was proper. The 72 hours excludes Saturdays, Sundays and holidays. § 43-35-55(F)

**What is the “merits hearing” or “forty day hearing?”**

- After the issuance of an ex parte order or after the filing of a petition, there must

be a hearing on the merits of the allegations contained in the petition. For example, did the abuse, neglect or exploitation occur and who was the perpetrator of the abuse, neglect or exploitation? § 43-35-45(E)

- The vulnerable adult must be appointed a guardian ad litem within ten days after the filing of the petition. The guardian ad litem acts in the best interests of the vulnerable adult. § 43-35-45(C)

### **What is the comprehensive evaluation?**

Prior to the hearing on the merits, DSS must conduct a comprehensive evaluation of the vulnerable adult which must include, but is not limited to, the following:

- the current address and with whom the vulnerable adult was residing
- a list of all agencies providing services to the vulnerable adult
- a summary of the services being provided by DSS
- if needed, a medical, psychological, social, vocational or educational evaluation, and
- recommendations for protective services to be provided in the best interests of the vulnerable adult § 43-35-45(D)
- This evaluation must be provided to the court, the guardian ad litem and the attorney for the vulnerable adult five working days before the hearing. § 43-35-45(D)

### **What must Family Court find at the merits hearing?**

Protective services may be ordered by the court if it finds that:

- the vulnerable adult is at substantial risk of being or has been neglected, abused, or exploited and the vulnerable adult cannot protect him or herself; and
- protective services are necessary to protect the vulnerable adult from the risk of harm or from abuse, neglect, or exploitation § 43-35-45(E)
- The court may order payment for the protective services by the vulnerable adult if he or she has the means to pay. § 43-35-45(I)
- If exploitation is alleged, the court may order the financial records of the vulnerable adult be made available for inspection by the parties. § 43-35-45(J)
- Any interested party may file, on behalf of the vulnerable adult, a motion seeking review of the court order. § 43-35-45(G)

### **How often must the case go back to court?**

- Six months from the date of the court order, if protective services were ordered, and every six months thereafter, DSS must provide the court and other parties with a written report on whether or not there is a continuing need for protective services. § 43-35-45(H)

### **What are the criminal penalties for abuse, neglect, and exploitation?**

- Willfully and knowingly abusing a vulnerable adult is a felony and the perpetrator must be imprisoned for not more than five years in prison, if convicted. § 43-35-85(B)
- Willfully and knowingly neglecting a vulnerable adult is a felony and the perpetrator must be imprisoned for not more than five years in prison, if convicted. § 43-35-85(C)

- Willfully and knowingly exploiting a vulnerable adult is a felony and the perpetrator is subject to a fine of not more than \$5,000 or five years in prison, or both, if convicted. Also can be required to make restitution. § 43-35-85(D)
- Willfully and knowingly abuses or neglects a vulnerable adult resulting in great bodily injury is a felony and the perpetrator must be imprisoned not more than fifteen years if convicted. § 43-35-85(E)
- Willfully and knowingly abuses or neglects a vulnerable adult resulting in death is a felony and the perpetrator must be imprisoned not more than thirty years if convicted. § 43-35-85(F)
- Threatening, intimidating or attempting to intimidate a vulnerable adult subject of a report, a witness or any other person cooperating with an investigation under this statute is guilty of a misdemeanor and the perpetrator must be imprisoned for no more than 3 years and fined no more than \$5,000, if convicted. § 43-35-85(G)
- Willfully and knowingly obstructs or impedes an investigation under this statute is guilty of a misdemeanor and the perpetrator must be imprisoned for no more than 3 years and fined not more than \$5,000, if convicted. § 43-35-85(H)

There are, of course, some issues relative to individual incidents, particularly in self-neglect cases, that can be debated. However, there is an obligation to afford protection even in self-neglect. In all cases, the probable cause for EPC must be clearly documented and if a caregiver is involved, then a criminal investigation should be initiated. In cases where the circumstances do not support EPC, a protective case can be initiated. However, law enforcement involvement may not be necessary unless criminal intent is present.

Another legal issue addresses the exploitation of an individual through misuse of a guardianship or conservatorship or power of attorney. Investigators who will be working in the area of abuse, neglect, and exploitation of vulnerable adults must become knowledgeable in these areas, or have access to legal personnel who can assist in these investigations, which can be complicated. Criminal intent is extremely difficult to establish.

The legal complexities of investigations of abuse, neglect, and exploitation of vulnerable adults, both in the community and in institutions, are significant. It is obvious that this chapter only explores a small segment of this arena. It is important that investigators, both law enforcement and others, engage in joint investigations whenever possible. Each group brings complimentary skills to the problem and this joint effort can lead to increased prosecution and greater protection for vulnerable adults.

The following table outlines those provisions of the South Carolina criminal code that might apply in cases of abuse, neglect and exploitation of vulnerable adults, if they go beyond the scope of those offenses outlined in § 43-35-5, SC Code of Laws

OFFENSE	SOURCE	ELEMENTS
Murder	16-3-10	1. Unlawful killing of another person; 2. Malice aforethought.
Voluntary Manslaughter	16-3-501	1. Unlawful killing of another person; 2. In sudden heat of passion; 3. Upon sufficient legal provocation.

OFFENSE	SOURCE	ELEMENTS
Involuntary Manslaughter	16-3-50, 16-3-60	<ol style="list-style-type: none"> <li>1. Unlawful killing of another person;</li> <li>2. Without malice aforethought;</li> <li>3. Killing unintentional;</li> <li>4. Resulted from criminal negligence.</li> </ol>
Assault and Battery with Intent to Kill (ABIK)	16-3-620 (penalty)	<ol style="list-style-type: none"> <li>1. Assault and battery;</li> <li>2. With intent to kill (specific intent proved by evidence or inferred from the use of a deadly weapon).</li> </ol>
Assault and Battery of a High and Aggravated Nature (ABHAN)	Common Law	<ol style="list-style-type: none"> <li>1. Assault and Battery plus</li> <li>2. * deadly weapon or                             <ul style="list-style-type: none"> <li>* serious bodily injury or</li> <li>* intent to commit a felony or</li> <li>* great disparity in age and physical condition or</li> <li>* difference in sexes or</li> <li>* indecent liberties or familiarities with a female</li> </ul>                             or                             <ul style="list-style-type: none"> <li>* purposeful infliction of shame or disgrace or</li> <li>* resistance to lawful authority.</li> </ul> </li> </ol>
Criminal Sexual Conduct	16-3-652 16-3-653 16-3-654 16-3-651	<p>(First degree)</p> <p>(Second degree)</p> <p>(Third degree)</p> <p><u>First degree (Definition):</u></p> <ol style="list-style-type: none"> <li>1. Sexual battery without consent;</li> <li>2. Using aggravated force; or</li> <li>3. Victim is also victim of forcible confinement, kidnapping, robbery, extortion, or similar offense.</li> </ol> <p><u>Second degree</u></p> <ol style="list-style-type: none"> <li>1. Sexual battery without consent;</li> <li>2. Using aggravated coercion.</li> </ol> <p><u>Third degree</u></p> <ol style="list-style-type: none"> <li>1. Sexual battery without consent;</li> <li>2. Using force or coercion.</li> </ol> <p>OR</p> <ol style="list-style-type: none"> <li>1. Sexual battery</li> <li>2. The actor knows, or should know that the victim is:                             <ul style="list-style-type: none"> <li>* mentally defective,</li> <li>* mentally incapacitated, or</li> <li>* physically helpless.</li> </ul> </li> <li>3. Aggravated force or aggravated coercion was not used.</li> </ol>
Breach of Trust with Fraudulent Intent	16-13-230	<ol style="list-style-type: none"> <li>1. Property of another,</li> <li>2. Placed in possession,</li> <li>3. In trust,</li> <li>4. Converted the property,</li> </ol>

OFFENSE	SOURCE	ELEMENTS
		5. With fraudulent intent, (also covers anyone who hires or counsels another to commit the offense).

Copies of the statutes can be obtained from the Internet ([www.lpitr.state.sc.us](http://www.lpitr.state.sc.us)).

Investigators should carefully review their case to determine if those elements of a particular criminal offense are present and, if so, then criminal prosecution may be possible. This process can best be done in conjunction with law enforcement and the prosecutor, and reinforces the need for joint investigations. It should also be pointed out that this is not a complete list as there may be other criminal offenses within the code such as Criminal Domestic Violence that should apply in certain circumstances.

The burden will be upon the investigator to substantiate each element of a particular offense through a thorough investigation. It is also obvious that proper evidence preservation and collection is an essential part of this process. If the investigator is able to establish probable cause in a particular incident, then a warrant can be obtained for the suspect. There is, however, a need to understand that establishing probable cause is much easier than substantiating a case "beyond a reasonable doubt." Even if an investigator is able to obtain a warrant, there may still be much left to do before entering the courtroom for a trial.

### **Standards of Proof**

In every case, the moving party, the Plaintiff, must establish the facts of his/her case by sufficient evidence in order to prevail. This is often called meeting the burden of proof. In civil cases, once the plaintiff proves his/her facts, the burden shifts to the defendant. If the plaintiff fails to meet the burden of proof in presenting his/her case, the defendant can ask the judge to dismiss the case. There are three standards of proof:

#### **Proof Beyond a Reasonable Doubt**

This is the hardest or highest standard that must be met. This burden of proof is only applicable in criminal cases. This burden of proof requires the State to prove its case to a jury or a judge to the extent that there remains no reasonable doubt that the defendant is guilty of the crime with which he/she is charged.

#### **Clear and Convincing Evidence**

This standard requires a lessor showing by the plaintiff than proof beyond a reasonable doubt. The plaintiff is required to prove the facts of his/her case by evidence, that to the trier of fact, clearly and convincingly leads to the result the plaintiff was seeking. Clear and convincing evidence is the standard for proving fraud cases.

#### **Preponderance of the Evidence**

This standard carries the least burden. It requires the plaintiff to prove the facts of his/her case as being more likely than not to have occurred. This standard of proof is used in adult abuse, neglect, or exploitation cases.

It is important to remember that the moving party, the plaintiff in civil cases, must meet its burden of proof before the defendant has to present any defense. In criminal cases, the State has the sole burden of proof because the defendant is not required to present any evidence or

defenses. Failure by the plaintiff in a civil suit or the State in a criminal case to meet the burden of proof established for that case will result in the case being dismissed.

## **CHAPTER 5 : PREPARATION FOR COURT**

In reality, criminal charges most likely will result in a plea. A quality investigation most often leads to the defendant pleading to lesser charges rather than risking a trial that could result in the maximum sentence. However, there will be those times when an investigator must go to family court and testify in a case of abuse, neglect or exploitation of a vulnerable adult. There are several factors that support your credibility as a witness. These are:

- Preparation
- Courtroom Demeanor
- Testimony

### **How to Be a Good Witness**

As a worker in your agency/entity, you may often appear in court, either as an ordinary witness or as an expert. You will probably be nervous, but anxiety is normal. Here's help on some matters which might give you concern.

#### **Dress Appropriately**

You are a professional person representing an important agency/entity. You should dress in business attire rather than casual clothes.

- Dress appropriately and dress neatly. Your credibility as a witness depends on so many little factors as viewed by the judge and/or jury that you should not detract by wearing loud or flamboyant clothes. Look competent, but not severe.
- Present a professional appearance and attitude at all times. Look like a super witness. Even pay attention to how you sit at the counsel table.

#### **Preparation**

Preparation is vital to much of what you do as a witness. Good preparation does much to alleviate nervousness while in the courtroom, and is important to your own performance.

- If you are going to testify about a case file, become totally familiar with that file. Know everything there is to know about the case. Read it over a few times and make your own notes about dates, test results, and your personal perceptions of the victim. Become familiar with the location of every document in your file. Cross-reference notes to pages in your file so you can find them if necessary.
- You can testify from either the file or from notes. Handwritten notes are preferred, because whatever you use on the witness stand can be examined by the attorney for the other side, and you can be cross-examined from the those documents. Take notes verbatim from your case record.
- Do not ever try to memorize your testimony or any part of it. It will not work. The questions will not come in the order you might expect, and it will be a disaster.
- If you are ready to testify about something that happened a long time ago, go back to the scene, close your eyes and think about it. Talk to your co-workers about it.
- If you know that you are going to be qualified as an expert witness, prepare your vitae to present to the court. List your qualifications and training. Keep it up-to-date by adding to it as you attend more training.



### **Your Day in Court**

If you receive a subpoena to testify, take it with you when you go to Court. It will prove helpful to you in finding the correct room once you are inside the courthouse. If you do

not know the attorney that subpoenaed you, seek him/her out when you arrive at the courtroom and introduce yourself.

If a hearing is in progress inside the courtroom, wait outside until you are called to testify.

Expect to feel anxious and nervous as you enter the courtroom, because everyone does.

The nervousness will greatly increase when you sit down in the witness chair. There are some common symptoms of this unique courtroom nervousness:

- Perceptual problems, especially sight and hearing.
- You will have a tendency to lower your voice and to speak rapidly.
- You will have a tendency to slump down in your chair.
- You may have problems recognizing people already in the courtroom.

To help overcome these symptoms you might take the following steps:

- Avoid perceptual problems by looking around the room, first at the walls and windows, then at the furniture, and then at the other people present.
- Concentrate on speaking and strive to speak a little slower and a little louder than you usually do.
- Sit up on the front edge of the chair, and make an effort to keep your back straight.
- Watch body language. Do not squirm. Be confident, strong and dignified.

### **How to Answer The Questions**

While on the witness stand you are sworn to tell the truth. **ALWAYS TELL THE TRUTH. NEVER LIE. NEVER MISLEAD.** Try, as hard as you can, to remain unbiased in the case. You must tell the truth even if it hurts your case.

- Listen to the whole question before you attempt to answer; think it through before responding.
- If you do not understand the question, tell that to the questioner, and ask him/her to repeat the question.
- Speak to the examiner frankly and openly as you would to a friend or neighbor. Be sincere and dignified, but warm and friendly. Do not get emotional. Do not cry.
- Never try to be humorous or flippant with an answer. The image you want to project is one of sincerity or dignified warmth.
- You must give a spoken answer; nodding your head, gesturing and other non-verbal responses are not acceptable. Speak clearly and distinctly. Do not mumble. The Court Reporter must be able to record your testimony. Speak slower than normal.
- Be alert to the kind of responses desired by the question. Your answer should always be in response to the question. You are never required to limit your answer to a "yes" or "no" response; you are always permitted to explain why your answer happens to be "yes" or "no." Do not be afraid to admit anything. You always have the right to explain why you did what you did.
- The English language does not change just because it is spoken in a courtroom. Look at the plain meaning of the words in a question. Use ordinary English in your

- answers. Do not use slang or words with double meaning. Use your own words.
- If you do not know the answer to the question, say so. Do not guess. Do not speculate. Never answer with "I don't know" or "I don't recall," just to avoid answering a difficult or indelicate question. Only use those responses when you really don't know.
  - Answer only the question that was asked. Answer your lawyer fully with all of the details.
  - If there is an objection, stop talking and let the judge rule. If the objection is overruled, answer the question; if it is sustained, wait for the next question. Do not worry about objections. This is a game for attorneys to play.
  - Do not make your testimony conform to other testimony you may have heard. They could be just as wrong as you are correct.
  - Stick to the facts of your own knowledge. Answer in facts. For example, say that you arrived at 12:30, rather than around noon. Testify to your five senses.
  - Always look directly at the person asking the question. You may look at the judge or jury while involved in presenting a long and discussion-type answer.
  - Do not exclude testimony from notes just because you think it may be hearsay. Lawyers spend months in law school learning all the ways to beat the hearsay rule.
  - When asked upon what you based your opinion, remember to state it is based on training, investigation and professional experience.

### **Surviving Cross-examination**

- Be prepared for the defense attorney to ask you some personal questions to try and make you uncomfortable, i.e., "Are you married?" "How many kids do you have?" "Do you drink?" Answer these readily without wariness and you will start to feel better. The judge will not let the defense attorney go too far with them.
- State only what you know to be true, or what you actually remembered. Do not allow the cross-examiner to force you to accept facts or details in his questions that you know to be false or incorrect.
- If a question has two parts, each requiring a different response, answer it in two parts.
- Make sure you understand the question. If you do not understand the question, ask that it be repeated. Do not be rushed into an answer. You may take your time and think your answer through.
- Let the defense attorney develop your testimony. Do not volunteer any information that goes beyond the scope of his/her question. You do not become a better or more believable witness because of your super memory for details that you were not asked about.
- Acquire the habit of always responding in a positive manner. Avoid prefacing your answer with qualifiers, such as, "I think," "I believe," "to the best of my recollection," or "I guess." You can be forthright and direct about the important things without remembering all of the little details.
- Admit your beliefs or sympathies honestly, as you will always have an opportunity to explain your reasons.
- An honest admission of favoritism will never discredit a witness.
- Always be polite, even when the attorney who is examining you is grossly impolite. Never lose your cool. Do not argue with him/her or give a sarcastic response. Never

get angry with the lawyer. That is what he/she wants you to do. He/she wants to show that the agency is angry with, and dislikes, his/her client (and you are the agency).

- Testify to distance by pointing to objects in the courtroom. Do not try to estimate feet and yards. Do not let him/her coerce you into taking a stab at it.
- Always aim your face and testimony to the judge (even if it means you must turn your head after listening to the lawyer's question). It will do much to assist you from becoming argumentative with the lawyer. Do not look to your lawyer for answers. He/she cannot help you.
- Look out for trick questions: If asked "Who told you to say that?", your best response would be "I was only told to tell the truth." "Have you talked to anyone about this case?" Chances are you have talked to many people, and there is nothing wrong or improper in doing that. You certainly talked to the lawyer, maybe both lawyers, parents, teachers, the client and your colleagues.
- The honest and candid witness has nothing to fear on cross-examination. The better your testimony on direct examination by your lawyer, the less likelihood that opposing counsel will cross-examine you strenuously.
- Testifying for long periods of time is tiring, and can cause fatigue, irritability, nervousness, anger, carelessness, and a willingness to say anything in order to get off the witness stand. If you feel any of these symptoms, feel free to ask the judge for a five minute break to allow you to go to the bathroom or to have a glass of water.

## **CHAPTER 6 : THE COURT SYSTEM**

The court system in South Carolina consists of several different types of courts, which have distinct functions. This outline will introduce the courts and discuss the applicable jurisdiction.

### **The Supreme Court**

The Supreme Court is a court of appeals, a court of last resort in the state for parties to a case who are not satisfied with the judgment of the lower courts. There are five categories of appeals which must be heard by the Supreme Court: death penalty cases; cases involving elections; cases challenging the constitutionality of statutes; appeals from regulatory commissions; and cases involving the bonded debt of the state and its political subdivisions.

In other appeals, the Supreme Court may either refer the case to the Court of Appeals or choose to hear the appeal itself. The Supreme Court reviews decisions of the Court of Appeals on a discretionary basis that is called review by Writ of Certiorari. In the case of Writ of Certiorari, the Supreme Court is directing the Court of Appeals to forward a particular case for its review.

Cases are presented to the Supreme Court through written briefs and oral arguments by the attorneys. Decisions made by the Supreme Court enter in case law, which means they can be used as precedents for other cases.

### **The Court of Appeals**

The Court of Appeals, as does the Supreme Court, hears cases on appeal from the lower courts as assigned by the Supreme Court. The cases are presented by written briefs and oral arguments of the attorneys. Decisions of the Court of Appeals enter into case law, as do the decisions of the Supreme Court, and can be used as precedents for other cases. Parties may appeal an unfavorable decision to the Supreme Court.

### **Circuit Courts**

Circuit Courts are the courts of broadest jurisdiction. Judges are responsible for hearing all cases not specifically limited to other courts, including appeals from magistrate, municipal and probate courts. The Circuit Court is divided into two sides: a criminal side known as the Court of General Sessions and a civil side known as the Court of Common Pleas.

A judge in the Court of General Sessions is responsible for hearing cases involving the violation of the state criminal statutes or the commission of crimes under the common law of South Carolina. The defendant has a right to be tried by a 12-member jury, if he or she so chooses, or he or she can have his or her case heard and decided by the judge alone. The jury will decide if the defendant is guilty or not guilty. The judge will set the sentence. However, in death penalty cases, the jury decides both the guilt of the defendant and the sentence. Common Pleas handles civil cases where monetary compensation is sought. Other cases deal with injunctive relief when one party tries to prevent or force another party into doing or refraining from doing some act. The plaintiff, or moving party, can demand a trial by jury in civil cases.

**Magistrate Court**

Magistrate Courts have jurisdiction over criminal offenses that carry a maximum fine of \$500 or thirty (30) days imprisonment or both. In addition, the magistrate may order restitution not to exceed \$5,000. In civil cases, magistrates can hear causes of action where the amount involved does not exceed \$5,000. The court also has exclusive jurisdiction over landlord and tenant cases. Juries in Magistrate Courts consist of six (6) members who can hear either a civil or criminal matter.

**Municipal Court**

Municipal Courts have jurisdiction over criminal offenses which carry a maximum possible fine of \$500 or 30 days imprisonment or both and which occur within the geographical boundaries of the cities or towns they serve. In addition, the magistrate may order restitution not to exceed \$5,000. Municipal Courts have no civil jurisdiction. In Municipal Court, the jury consists of six (6) persons and hears only criminal cases.

**Probate Court**

Probate Court has limited jurisdiction and can only hear and decide the following types of cases: wills; estates; appointments of conservators and guardians; and, commitments to the South Carolina Department of Mental Health and the South Carolina Department of Disabilities and Special Needs.

There are no jury trials in Probate Court. The judge hears the case, weighs the evidence, determines the credibility of the witnesses, applies the law to determine the ruling, and issues an order.

**Family Court**

Family Courts in South Carolina have limited jurisdiction and can only hear cases involving the following: divorce; annulment; child support; alimony; adoption of children; child maltreatment; protection of vulnerable adults; termination of parental rights; questions concerning the validity of marriages; custody; juvenile delinquency; paternity; and, domestic abuse.

There are no jury trials in Family Court. The judge hears the case, weighs the evidence, determines the credibility of the witnesses, applies the law to determine the ruling, and issues a written order.

**CHAPTER 7 : CONCLUSION**

The purpose of this manual is to provide the investigator with basic information that, hopefully, will lead to improved investigations of abuse, neglect and exploitation of vulnerable adults and greater protection for the victim. It is certainly not all inclusive and we have chosen not to address the important areas of prevention and social services. It should also be pointed out that although much of the emphasis has been on the elderly, it is only because there is very little in the way of research or statistics on the abuse of other high-risk adults. It should be noted, however, that abuse cases, irrespective of the age or condition of the victim, have the same critical factors relative to investigation. The major differences arise in victim profiles although the factors that apply to high-risk families and perpetrator profiles are, for the most part, the same.

Individuals charged with the responsibility of investigating the abuse, neglect, or exploitation of vulnerable adults should understand that much can be gained from experience and communication between various agencies. Multidisciplinary teams have proven to be of great value in the investigation of both child and vulnerable adult abuse allegations; that approach should be given strong consideration in this area as well.

In order for this system to begin to provide greater protection to the victims, it must become aggressive in prosecuting those cases that have merit. This can only happen if every level of the system, from the initial reporter to the prosecutor, understands not only the dynamics of abuse, but the critical need to sanction those who intentionally cause harm. This can only come about through a common understanding of the requirements for quality investigations and the cross-reporting that supports those investigations.

As awareness of this problem grows, additional research and study is needed. It is much easier to develop programs and policies that will have an impact on abuse, neglect and exploitation if they are firmly grounded in empirical study and not anecdotal material.

In conclusion, it is important to remember that all of us could become a victim of the abuse, neglect, or exploitation of the vulnerable adult, and most of us will face the problems associated with aging or disability. These victims deserve our best efforts.

**CHAPTER 8 : REFERENCES**

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**CHAPTER 9 : APPENDICES**

APPENDIX A: CODE OF LAWS - SC OMNIBUS ADULT PROTECTION ACT

APPENDIX B: SEARCH WARRANT AFFIDAVIT

APPENDIX C: VULNERABLE ADULT PROTOCOL

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    Law Enforcement Referral Matrix

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APPENDIX F: SUSPECTED VULNERABLE ADULT ABUSE INCIDENT REPORT

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APPENDIX H: ADMINISTRATIVE SUBPOENA

APPENDIX I: ADULT PROTECTIVE SERVICES ATTORNEY'S GUIDE (CUSTODY)

APPENDIX J: ADULT PROTECTION COORDINATING COUNCIL MEMBERS

**NOTE: The forms reproduced in these appendices have been reformatted to become illustrations for this manual. They are not meant to be reproducible outside of the manual itself.**

**APPENDIX A: OMNIBUS ADULT PROTECTION ACT  
CODE OF LAWS OF SOUTH CAROLINA 1976 - OMNIBUS ADULT PROTECTION  
ACT (ANNOTATED) TITLE 43. SOCIAL SERVICES**

**CHAPTER 35. ADULT PROTECTION**

[Current through End of 1999 Reg. Sess.]

**ARTICLE 1. DUTIES AND PROCEDURES OF INVESTIGATIVE ENTITIES**

**43-35-5. Short title.**

This chapter may be cited as the Omnibus Adult Protection Act.

HISTORY: 1993 Act No. 110, 1, eff three months after June 11, 1993.

EDITOR'S NOTE —

The preamble to 1993 Act No. 110, eff three month after June 11, 1993, provides as follows:

"Whereas, the General Assembly finds it necessary:

- (1) to provide a system of adult protection in South Carolina;
- (2) to clarify the roles and responsibilities of agencies involved in the system;
- (3) to provide a mechanism for problem resolution and interagency coordination;
- (4) to address continuing needs of vulnerable adults;
- (5) to uniformly define abuse, neglect, and exploitation for vulnerable adults in all settings;
- (6) to clarify reporting procedures for allegations of abuse, neglect, and exploitation;
- (7) to provide procedures for emergency protective custody;
- (8) to define the role of the court in the adult protection system;
- (9) to provide civil and criminal penalties for abuse, neglect, and exploitation;
- (10) to provide services in the least restrictive setting possible

Now, therefore,"

CROSS REFERENCES -

Allegations of abuse or neglect of a child in custody of health facility licensed by the Department of Health and Environmental Control or operated by the Department of Mental Health must be investigated by the ombudsman of the office of the governor pursuant to this section, see § 20-7-670.

CASE NOTES -

A hospital had standing to bring suit under the Protective Services for Developmentally Disabled and Senile Persons Act, § 43-29-10 et seq., against a patient's husband, seeking to have the court order the husband to accept responsibility for the wife; the hospital was an interested party since it was concerned with the welfare of the protected person. Amisub of S. Carolina v. Passmore (1994, SC) 447 SE2d 207

§ 43-29-10(7) of the Protective Services for Developmentally Disabled and Senile Persons Act, § 43-29-10 et seq., does not require that the Department of Social Services assume financial obligations regarding the care of a protected person. Amisub of S. Carolina v. Passmore (1994, SC) 447 SE2d 207.

A hospital had standing to bring suit under the Protective Services for Developmentally Disabled and Senile Persons Act, § 43-29-10 et seq., against a patient's husband, seeking to have the court order the husband to accept responsibility for the wife; the hospital was an interested party since it was concerned with the welfare of the protected person. Amisub of S. Carolina v. Passmore (1994, SC) 447 SE2d 207.

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### **43-35-10. Definitions.**

As used in this chapter:

- (1) "Abuse" means physical abuse or psychological abuse.
- (2) "Caregiver" means a person who provides care to a vulnerable adult, with or without compensation, on a temporary or permanent or full or part-time basis and includes, but is not limited to, a relative, household member, day care personnel, adult foster home sponsor, and personnel of a public or private institution or facility.
- (3) "Exploitation" means:
  - (a) causing or requiring a vulnerable adult to engage in activity or labor which is improper, illegal, or against the reasonable and rational wishes of the vulnerable adult. Exploitation does not include requiring a vulnerable adult to participate in an activity or labor which is a part of a written plan of care or which is prescribed or authorized by a licensed physician attending the patient; or
  - (b) an improper, illegal, or unauthorized use of the funds, assets, property, power of attorney, guardianship, or conservatorship of a vulnerable adult by a person for the profit or advantage of that person or another person.
- (4) "Facility" means a nursing care facility, community residential care facility, a psychiatric hospital, or a facility operated or contracted for operation by the State Department of Mental Health or the South Carolina Department of Mental Retardation.
- (5) "Investigative entity" means the Long Term Care Ombudsman Program or the Adult Protective Services Program.
- (6) "Neglect" means the failure or omission of a caregiver to provide the care, goods, or services necessary to maintain the health or safety of a vulnerable adult including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services. Neglect may be repeated conduct or a single incident that has produced or can be proven to result in serious physical or psychological harm or substantial risk of death. Noncompliance with regulatory standards alone does not constitute neglect. Neglect includes the inability of a vulnerable adult, in the absence of a caretaker, to provide for his or her own health or safety which produces or could reasonably be expected to

produce serious physical or psychological harm or substantial risk of death.

(7) "Occupational licensing board" means a health professional licensing board which is a state agency that licenses and regulates health care providers and includes, but is not limited to, the Board of Long Term Health Care Administrators, State Board of Nursing for South Carolina, State Board of Medical Examiners, State Board of Social Work Examiners, and the State Board of Dentistry.

(8) "Physical abuse" means intentionally inflicting or allowing to be inflicted physical injury on a vulnerable adult by an act or failure to act. Physical abuse includes, but is not limited to, slapping, hitting, kicking, biting, choking, pinching, burning, actual or attempted sexual battery as defined in § 16-3-651, use of medication outside the standards of reasonable medical practice for the purpose of controlling behavior, and unreasonable confinement. Physical abuse also includes the use of a restrictive or physically intrusive procedure to control behavior for the purpose of punishment except that a therapeutic procedure prescribed by a licensed physician or other qualified professional or that is part of a written plan of care by a licensed physician or other qualified professional is not considered physical abuse. Physical abuse does not include altercations or acts of assault between vulnerable adults.

(9) "Protective services" means those services whose objective is to protect a vulnerable adult from harm caused by the vulnerable adult or another. These services include, but are not limited to, evaluating the need for protective services, securing and coordinating existing services, arranging for living quarters, obtaining financial benefits to which a vulnerable adult is entitled, and securing medical services, supplies, and legal services.

(10) "Psychological abuse" means deliberately subjecting a vulnerable adult to threats or harassment or other forms of intimidating behavior causing fear, humiliation, degradation, agitation, confusion, or other forms of serious emotional distress.

(11) "Vulnerable adult" means a person eighteen years of age or older who has a physical or mental condition which substantially impairs the person from adequately providing for his or her own care or protection. This includes a person who is impaired in the ability to adequately provide for the person's own care or protection because of the infirmities of aging including, but not limited to, organic brain damage, advanced age, and physical, mental, or emotional dysfunction. A resident of a facility is a vulnerable adult. EDITOR'S NOTE: The 1999 revisions to the Omnibus Adult Protection Act define "great bodily injury" as bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ. [See S.C. Code 43-35-85] HISTORY: 1993 Act No. 110, 1, eff three months after June 11, 1993.

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**43-35-13. Nonmedical remedial treatment by spiritual means is not abuse or neglect of vulnerable adult.**

No vulnerable adult may be considered to be abused or neglected for the sole reason that, in lieu of medical treatment, the vulnerable adult is being furnished nonmedical remedial treatment by spiritual means through prayer alone which the vulnerable adult

has practiced freely in accordance with his religion.

HISTORY: 1995 Act No. 87, 1, eff June 12, 1995.

**43-35-15. Long Term Care Ombudsman Program; Adult Protective Services Program; responsibilities**

(A) The Long Term Care Ombudsman Program shall investigate or cause to be investigated reports of alleged abuse, neglect, and exploitation of vulnerable adults occurring in facilities. The Long Term Care Ombudsman Program may develop policies, procedures, and memoranda of agreement to be used in reporting these incidents and in furthering its investigations.

(B) The Adult Protective Services Program shall investigate or cause to be investigated reports of alleged abuse, neglect, and exploitation of vulnerable adults occurring in all settings other than facilities and where appropriate, provide protective services. The Adult Protective Services Program may promulgate regulations and develop policies, procedures, and memoranda of agreement to be used in reporting these incidents, in furthering its investigations, and in providing protective services.

HISTORY: 1993 Act No. 110, 1, eff. three months after June 11, 1993.

**CROSS REFERENCES --**

Allegations of abuse or neglect of a child in custody of health facility licensed by the Department of Health and Environmental Control or operated by the Department of Mental Health must be investigated by the ombudsman of the office of the governor pursuant to this section, § 20-7-670.

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**43-35-20. Additional powers of investigative entities.**

In addition to all other powers and duties that an investigative entity is given in this article, the investigative entity may:

- (1) have access to facilities for the purpose of conducting investigations;
- (2) request and receive written statements, documents, exhibits, and other items pertinent to an investigation including, but not limited to, hospital records of a vulnerable adult which the hospital is authorized to release upon written request of the investigative entity without obtaining patient authorization;
- (3) issue, through its director, administrative subpoenas for the purpose of gathering information and documents;
- (4) institute proceedings in a court of competent jurisdiction to seek relief necessary to carry out the provisions of this chapter;
- (5) require all persons, including family members of a vulnerable adult and facility

staff members, to cooperate with the investigative entity in carrying out its duties under this chapter including, but not limited to, conducting investigations and providing protective services;

(6) require all officials, agencies, departments, and political subdivisions of the State to assist and cooperate within their jurisdictional power with the court and the investigative entity in furthering the purposes of this chapter;

(7) conduct studies and compile data regarding abuse, neglect, and exploitation;

(8) issue reports and recommendations.

HISTORY: 1993 Act No. 110, 1, eff three months after June 11, 1993.

#### CROSS REFERENCES -

Allegations of abuse or neglect of a child in custody of health facility licensed by the Department of Health and Environmental Control or operated by the Department of Mental Health must be investigated by the ombudsman of the office of the governor pursuant to this section, see § 20-7-670.

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### **43-35-25. Persons required to report abuse**

(A) A physician, nurse, dentist, optometrist, medical examiner, coroner, other medical, mental health or allied health professional, Christian Science practitioner, religious healer, school teacher, counselor, psychologist, mental health or mental retardation specialist, social or public assistance worker, caregiver, staff or volunteer of an adult day care center or of a facility, or law enforcement officer having reason to believe that a vulnerable adult has been or is likely to be abused, neglected, or exploited shall report the incident in accordance with this section. Any other person who has actual knowledge that a vulnerable adult has been abused, neglected, or exploited shall report the incident in accordance with this section.

(B) Except as provided in subsection (A), any other person who has reason to believe that a vulnerable adult has been or may be abused, neglected, or exploited may report the incident.

(C) A person required to report pursuant to this section is personally responsible for making the report; however, a state agency may make a report on behalf of an agency employee if the procedure the agency uses for reporting has been approved by the investigative entity to which the report is to be made.

(D) A person required to report under this section must report the incident within twenty-four hours or the next business day. A report must be made in writing or orally by telephone or otherwise to the Long Term Care Ombudsman Program for incidents occurring in facilities and to the Adult Protective Services Program for incidents occurring in all other settings. In the event an investigative entity receives a report which is not within its investigative jurisdiction, it shall forward the report to the appropriate entity not later than the next business day.

(E) No facility may develop policies or procedures that interfere with the reporting requirements of this section.

(F) Provided the mandatory reporting requirements of this section are met, nothing in this section precludes a person from also reporting directly to law enforcement, and in cases of an emergency, law enforcement must also be contacted.

HISTORY: 1993 Act No. 110, 1, eff three months after June 11, 1993.

CROSS REFERENCES -

Allegations of abuse or neglect of a child in custody of health facility licensed by the Department of Health and Environmental Control or operated by the Department of Mental Health must be investigated by the ombudsman of the office of the governor pursuant to this section, see § 20-7-670.

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**43-35-30.      Photographing of visible trauma on abused adult**

A person required to report pursuant to this article or a person investigating a report may take or cause to be taken color photographs of the trauma visible on the vulnerable adult who is the subject of a report. A person required to report under this chapter as a member of the staff of a medical facility, public or private institution, school, facility, or agency immediately shall notify the person in charge or the designated agent of the person in charge who shall take or cause to be taken color photographs of visible trauma. The investigative entity or law enforcement, if indicated, may cause to be performed a radiological examination or medical examination of the vulnerable adult without consent. All photographs, x-rays, and results of medical examinations and tests must be provided to law enforcement or to the investigative entity upon request.

HISTORY: 1993 Act No. 110, 1, eff three months after June 11, 1993.

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**45-35-25.      Reports of deaths believed result of abuse or neglect of adult**

A person required to report or investigate cases under this chapter who has probable cause to believe that a vulnerable adult died as a result of abuse or neglect shall report the death and suspected cause of death to the coroner or medical examiner. The coroner or medical examiner shall conduct an investigation and may conduct or order an autopsy. The coroner or medical examiner must report the investigative findings to law enforcement and the circuit solicitor in the appropriate jurisdiction.

HISTORY: 1993 Act No. 110, 1, eff three months after June 11, 1993.

CROSS REFERENCES -

Allegations of abuse or neglect of a child in custody of health facility licensed by the

Department of Health and Environmental Control or operated by the Department of Mental Health must be investigated by the ombudsman of the office of the governor pursuant to this section, see 20-7-670.

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#### **43-35-40. Initiation of investigation; reports to law enforcement**

Upon receiving a report the investigative entity promptly shall initiate an investigation and within two business days of receiving the report must review the report for the purpose of reporting to law enforcement those cases requiring involvement of law enforcement. A report to law enforcement must be made within one business day of completing the review. The law enforcement agency shall initiate an incident report and provide upon request a copy to an entity conducting an investigation pursuant to this chapter or any other provision of state or federal law.

HISTORY: 1993 Act No. 110, 1, eff three months after June 11, 1993.

#### **CROSS REFERENCES -**

Allegations of abuse or neglect of a child in custody of health facility licensed by the Department of Health and Environmental Control or operated by the Department of Mental Health must be investigated by the ombudsman of the office of the governor pursuant to this section, see 20-7-670.

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#### **43-35-45. Warrant from family court to permit investigation of report; order for protective services; appointment of guardian and attorney; evaluation; hearing; review; semi-annual re-evaluation; payment for services**

(A) In investigating a report if consent cannot be obtained for access to the vulnerable adult or the premises, the investigative entity may seek a warrant from the family court to enter and inspect and photograph the premises and the condition of the vulnerable adult. The court shall issue a warrant upon a showing of probable cause that the vulnerable adult has been abused, neglected, or exploited or is at risk of abuse, neglect, or exploitation.

(B) At any time during or subsequent to an investigation where a vulnerable adult is at substantial risk to be or has been abused, neglected, or exploited and consent to provide services cannot be obtained, the Adult Protective Services Program may petition the family court for an order to provide protective services. In those cases requiring emergency protective services or emergency removal of the vulnerable adult from the place the adult is located or residing, the Adult Protective Services Program may seek ex parte relief. The court may expedite the ex parte proceeding to any extent necessary to protect the vulnerable adult. The family court may order ex parte that the vulnerable adult be taken into emergency protective custody without the consent of the vulnerable adult or the guardian or others exercising temporary or permanent control over the vulnerable adult, if the court determines there is probable cause to believe that by reason of abuse or neglect there exists an imminent danger to the vulnerable adult's



life or physical safety. The court also may order emergency services or other relief as necessary to protect the vulnerable adult.

(C) Within ten days following the filing of a petition pursuant to this section the court must appoint a guardian ad litem and an attorney for the vulnerable adult; and within forty days of the petition being filed the court shall hold a hearing on the merits.

(D) Before the hearing on the merits the Adult Protective Services Program must conduct a comprehensive evaluation of the vulnerable adult. The evaluation must include, but is not limited to:

- (1) the vulnerable adult's current address and with whom the vulnerable adult is residing;
- (2) a list of all persons or agencies currently providing services to the vulnerable adult and the nature of these services;
- (3) a summary of services, if any, provided to the vulnerable adult by the Adult Protective Services Program;
- (4) if needed, a medical, psychological, social, vocational, or educational evaluation;
- (5) recommendations for protective services which would serve the best interests of the vulnerable adult; however, when these services are to be provided by another state agency, these recommendations must be developed in consultation with the other agency.

A copy of the evaluation must be provided to the court, the guardian ad litem, and the attorney at least five working days before the hearing on the merits. Reasonable expenses incurred for evaluations required by this subsection must be paid by the Adult Protective Services Program which must seek reimbursement for these evaluations, where possible.

(E) At the hearing on the merits, the court may order the Adult Protective Services Program to provide protective services if it finds that:

- (1) the vulnerable adult is at substantial risk of being or has been abused, neglected, or exploited and the vulnerable adult is unable to protect herself or himself; and
- (2) protective services are necessary to protect the vulnerable adult from the substantial risk of or from abuse, neglect, or exploitation.

(F) Protective services ordered pursuant to this section must be provided in the least restrictive setting available and appropriate for the vulnerable adult and noninstitutional placement must be used whenever possible. Subsequently, if commitment to a treatment facility is required, the Adult Protective Services Program may initiate commitment proceedings.

(G) Any interested person, on behalf of the vulnerable adult, may file a motion for review of the court order issued pursuant to this section.

(H) Following a court order from the merits hearing to provide protective services to a

vulnerable adult, the Adult Protective Services Program, at least every six months, must evaluate the vulnerable adult and submit a written report to the court, and any other parties required by the court, regarding the vulnerable adult's need for continued protective services as defined in this chapter.

(I) If the court determines that the vulnerable adult is financially capable of paying for services ordered pursuant to this section, then payment by or from the financial resources of the vulnerable adult may be ordered.

(J) In an action for exploitation or in which payment for protective services is in issue, upon its own motion or a motion of any party, the court may order that the vulnerable adult's financial records be made available on a certain day and time for inspection by the parties.

(K) Expenses incurred by the Adult Protective Services Program on behalf of a vulnerable adult that have not been reimbursed at the time of the vulnerable adult's death become a claim against the estate of the vulnerable adult.

(L) Payments for which a vulnerable adult is responsible or for which the Adult Protective Services Program is to be reimbursed only include payments to third parties and do not include personnel or operating expenses of the Adult Protective Services Program.

HISTORY: 1993 Act No. 110, 1, eff three months after June 11, 1993.

#### CROSS REFERENCES -

Allegations of abuse or neglect of a child in custody of health facility licensed by the Department of Health and Environmental Control or operated by the Department of Mental Health must be investigated by the ombudsman of the office of the governor pursuant to this section, see § 20-7-670.

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### **43-35-50. Abrogation of privilege for certain communications**

The privileged quality of communication between husband and wife or between a professional person and the person's patient or client, except that between attorney and client or priest and penitent, are abrogated and do not constitute grounds for failing to report or for the exclusion of evidence in any civil or criminal proceeding resulting from a report made pursuant to this chapter.

HISTORY: 1993 Act No. 110, 1, eff three months after June 11, 1993.

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### **43-35-55. Protective custody by law enforcement officer**

(A) A law enforcement officer may take a vulnerable adult in a life-threatening situation into protective custody if:

- (1) there is probable cause to believe that by reason of abuse, neglect, or exploitation

- there exists an imminent danger to the vulnerable adult's life or physical safety;
- (2) the vulnerable adult or caregiver does not consent to protective custody; and
- (3) there is not time to apply for a court order.

(B) When a law enforcement officer takes protective custody of a vulnerable adult, the officer must transport the vulnerable adult to a place of safety that must not be a facility for the detention of criminal offenders or of persons accused of crimes. The Adult Protective Services Program has custody of the vulnerable adult pending the family court hearing to determine if there is probable cause for protective custody.

(C) A vulnerable adult who is taken into protective custody by a law enforcement officer, may not be considered to have been arrested.

(D) When a law enforcement officer takes protective custody of a vulnerable adult under this section, the law enforcement officer must immediately notify the Adult Protective Services Program and the Department of Social Services in the county where the vulnerable adult was situated at the time of being taken into protective custody. This notification must be made in writing or orally by telephone or otherwise and must include the following information:

- (1) the name of the vulnerable adult, if known, or a physical description of the adult, if the name is unknown;
- (2) the address of the place from which the vulnerable adult was removed by the officer;
- (3) the name and the address, if known, of any person who was exercising temporary or permanent custody of or control over or who was the caregiver of the vulnerable adult at the time the adult was taken into protective custody;
- (4) the address of the place to which the vulnerable adult was transported by the officer;
- (5) a description of the facts and circumstances resulting in the officer taking the vulnerable adult into protective custody.

(E) The Department of Social Services is responsible for filing a petition for protective custody within one business day of receiving the notification required by subsection (D).

(F) The family court shall hold a hearing to determine whether there is probable cause for the protective custody within seventy-two hours of the Department of Social Services filing the petition, excluding Saturdays, Sundays, and legal holidays.

(G) Upon receiving notification that a vulnerable adult has been taken into protective custody the Adult Protective Services Program shall commence an investigation. After the hearing required by subsection (F), the Adult Protective Services Program may initiate or cause to be initiated a petition for services pursuant to Section 43-35-45.

HISTORY: 1993 Act No. 110, 1, eff three months after June 11, 1993; 1994 Act No. 393, 1, May 17, 1994.

#### HISTORICAL NOTES

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**EFFECT OF AMENDMENT --**

The 1994 amendment, in subsection (D), transferred the duties from the circuit solicitor to the Department of Social Services.

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**43-35-60. Sharing of report confidentiality information by investigative entities; public**

Unless otherwise prohibited by law, a state agency, an investigative entity, and law enforcement may share information related to an investigation conducted as a result of a report made under this chapter. Information in these investigative records must not be disclosed publicly.

HISTORY: 1993 Act No. 110, 1, eff three months after June 11, 1993.

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**43-35-65. Notices to be displayed at facilities**

A facility as defined in § 43-35-10 shall prominently display notices stating the duties of its personnel under this chapter, the text of which must be provided by the Long Term Care Ombudsman Program. The notices must also include the addresses and telephone numbers of the Long Term Care Ombudsman Program and local law enforcement.

HISTORY: 1993 Act No. 110, 1, eff three months after June 11, 1993.

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**43-35-70. Reports to occupational licensing boards**

The investigative entity shall report an alleged incident of abuse, neglect, or exploitation against a health care professional to the occupational licensing board by whom that person is licensed.

HISTORY: 1993 Act No. 110, 1, eff three months after June 11, 1993.

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**43-35-75. Immunity of person making report or participating in investigation in good faith.**

(A) A person who, acting in good faith, reports pursuant to this chapter or who participates in an investigation or judicial proceeding resulting from a report is immune from civil and criminal liability which may otherwise result by reason of this action. In a civil or criminal proceeding good faith is rebuttable presumption.

(B) It is against the public policy of South Carolina to change an employee's status solely because the employee reports or cooperates with an investigation or action taken under this chapter.

HISTORY: 1993 Act No. 110, 1, eff three months after June 11, 1993.

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**43-35-80. Action by Attorney General**

(A) Notwithstanding any regulatory or administrative penalty that may be assessed and in addition to a private civil cause of action that may be brought against a person or facility based on an action or failure to act that otherwise constitutes abuse, neglect, or exploitation under this chapter, the Attorney General, upon referral from the Long Term Care Ombudsman Program, may bring an action against a person who fails through pattern or practice to exercise reasonable care in hiring, training, or supervising facility personnel or in staffing or operating a facility and this failure results in the commission of abuse, neglect, exploitation, or any other crime against a vulnerable adult in a facility. A person or facility which verifies good standing of the employee with the appropriate licensure or accrediting entity is rebuttably presumed to have acted reasonably regarding the hiring.

(B) In granting relief under this section, the court may assess a civil fine of not more than thirty thousand dollars or order injunctive relief, or both, and may order other relief as the court considers appropriate.

(C) Nothing in this section may be construed to create a private cause of action against one who fails through pattern or practice to exercise reasonable care as provided for in subsection (A).

(D) For the purposes of this section 'person' means any natural person, corporation, joint venture, partnership, unincorporated association, or other business entity.

(E) To the extent fines collected pursuant to this section exceed the cost of litigation; these fines must be credited to the Adult Protective Services Emergency Fund and may be carried forward from one fiscal year to the next.

HISTORY: 1993 Act No. 110, 1, eff three months after June 11, 1993.

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**43-35-95. Penalties**

(A) A person required to report under this chapter who has actual knowledge that abuse, neglect, or exploitation has occurred and who knowingly and willfully fails to report the abuse, neglect, or exploitation is guilty of a misdemeanor and, upon conviction, must be fined not more than twenty-five hundred dollars or imprisoned not more than one year. A person required to report under this chapter who has reason to believe that abuse, neglect, or exploitation has occurred or is likely to occur and who knowingly and willfully fails to report the abuse, neglect, or exploitation is subject to disciplinary action as may be determined necessary by the appropriate licensing board.

(B) Except as otherwise provided in subsections (E) and (F), a person who knowingly and willfully abuses a vulnerable adult is guilty of a felony and, upon conviction, must be imprisoned not more than five years.

(C) Except as otherwise provided in subsections (E) and (F), a person who knowingly and willfully neglects a vulnerable adult is guilty of a felony and, upon conviction, must be

imprisoned not more than five years.

(D) A person who knowingly and willfully exploits a vulnerable adult is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years, or both, and may be required by the court to make restitution.

(E) A person who knowingly and willfully abuses or neglects a vulnerable adult resulting in great bodily injury is guilty of a felony and, upon conviction, must be imprisoned not more than fifteen years.

(F) A person who knowingly and willfully abuses or neglects a vulnerable adult resulting in death is guilty of a felony and, upon conviction, must be imprisoned not more than thirty years.

(G) A person who threatens, intimidates, or attempts to intimidate a vulnerable adult subject of a report, a witness, or any other person cooperating with an investigation conducted pursuant to this chapter is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than three years.

(H) A person who willfully and knowingly obstructs or in any way impedes an investigation conducted pursuant to this chapter, upon conviction, is guilty of a misdemeanor and must be fined not more than five thousand dollars or imprisoned for not more than three years.

As used in this section, “great bodily injury” means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

HISTORY: 1993 Act No. 110, 1, eff three months after June 11, 1993. 1999 Act No. xxx, eff June 2, 1999.

EFFECT DATE OF 1999 AMENDMENTS: Added paragraphs (E) and (F); added definition “great bodily injury;” upgraded criminal penalties for violation. Also incorporated criminal aspects of the Omnibus Adult Protection Act into Title 16 (Crimes and Offenses) of the SC Code. See 16-1-90 and 16-3-1050.

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**43-35-90. Article not to affect authority of agencies.**

This article is not intended to affect in any way the authority of any agency to act under state or federal law.

HISTORY: 1993 Act No. 110, 1, eff three months after June 11, 1993.

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**ARTICLE 3. ADULT PROTECTION COORDINATING COUNCIL****43-35-310. Council created**

(A) There is created the Adult Protection Coordinating Council under the auspices of the State Health and Human Services Finance Commission and is comprised of:

- (1) one member from the institutional care service provision system or a family member of a consumer of that system and one member from the home and community-based service provision system or a family member of a consumer of that system, both of whom must be appointed by the Governor for terms of two years; and
- (2) these members who shall serve ex officio:
  - (a) Attorney General or a designee;
  - (b) Board of Long Term Health Care Administrators, Executive Director, or a designee;
  - (c) State Board of Nursing for South Carolina, Executive Director, or a designee;
  - (d) Commission on Aging, Executive Director, or a designee;
  - (e) Criminal Justice Academy, Executive Director, or a designee;
  - (f) South Carolina Department of Health and Environmental Control, Commissioner, or a designee;
  - (g) State Department of Mental Health, Commissioner, or a designee;
  - (h) South Carolina Department of Mental Retardation, Commissioner, or a designee;
  - (i) Adult Protective Services Program, Director, or a designee;
  - (j) Department of Health and Human Services, Director, or a designee;
  - (k) Joint Legislative Committee on Aging, Chair, or a designee;
  - (l) Police Chiefs' Association, President, or a designee;
  - (m) Prosecution Coordination Commission, Executive Director, or a designee;
  - (n) South Carolina Protection and Advocacy System for the Handicapped, Inc., Executive Director, or a designee;
  - (o) South Carolina Sheriff's Association, Executive Director, or a designee;
  - (p) South Carolina Law Enforcement Division, Chief, or a designee;
  - (q) Long Term Care Ombudsman or a designee;
  - (r) South Carolina Medical Association, Executive Director, or a designee;
  - (s) South Carolina Health Care Association, Executive Director, or a designee;
  - (t) South Carolina Home Care Association, Executive Director, or a designee.

(B) Vacancies on the council must be filled in the same manner as the initial appointment.

HISTORY: 1993 Act No. 110, 1, eff three months after June 11, 1993.

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**43-35-320. Responsibilities of Council**

The Adult Protection Coordinating Council shall coordinate the planning and implementation efforts of the entities involved in the adult protection system. Members shall facilitate

problem resolution and develop action plans to overcome problems identified within the system. The council shall develop methods of addressing the ongoing needs of vulnerable adults, including increasing public awareness of adult abuse, neglect, and exploitation. The council shall remain abreast of new trends in adult protection from national clearinghouses and other appropriate entities. The Adult Protection Coordinating Council has no authority to direct or require implementing action from any member or entity.

HISTORY: 1993 Act No. 110, 1, eff three months after June 11, 1993.

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### **43-35-330. Duties of Council**

(A) Duties of the council are to:

- (1) provide oversight in adult protection and to recommend changes in the system;
- (2) identify and promote training on critical issues in adult protection;
- (3) facilitate arrangements for continuing education seminars and credits, when appropriate;
- (4) coordinate agency training when possible to avoid duplication;
- (5) coordinate data collection and conduct analyses including periodic monitoring and evaluation of the incidence and prevalence of adult abuse, neglect, and exploitation;
- (6) determine and target problem areas for training based on the analysis of the data;
- (7) promote resource development;
- (8) assist with problem resolution and facilitate interagency coordination of efforts;
- (9) promote and enhance public awareness;
- (10) promote prevention and intervention activities to ensure quality of care for vulnerable adults and their families;
- (11) provide technical assistance for developing memoranda of agreement among involved entities;
- (12) promote coordination and communication among groups and associations which may be affected by the Adult Protection Coordinating Council's actions through the use of memoranda of agreement.

(B) Duties of the council are subject to the appropriation of funding and allocation of personnel sufficient to carry out the functions of the council.

HISTORY: 1993 Act No. 110, 1, eff three months after June 11, 1993.

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### **43-35-340. Officers; terms of office; quorum**

The chair of the council must be elected by a majority of the council membership for one two-year term. Other officers may be elected as needed in the same manner as the chair. A majority of the membership of the council constitutes a quorum for official business to be conducted.

HISTORY: 1993 Act No. 110, 1, eff three months after June 11, 1993.

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**43-35-350. Meetings.**

Meetings of the council must be held at least quarterly at the call of the chair or may be called by a petition of two-thirds of the council membership.

HISTORY: 1993 Act No. 110, 1, eff three months after June 11, 1993.

STATE OF SOUTH CAROLINA

APPENDIX B: SEARCH WARRANT AFFIDAVIT

COUNTY of Richland )

Personally appeared before me, one Randolph W. Thomas who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

Prescriptions, prescription bottles, medications, including over-the-counter drugs, bindings and items to which bindings are attached, locks and keys for interior house locks. Mail addressed to Walt showing unpaid bills and requests for payment. Checkbook, bank statements, canceled checks in the name of Walt and/or Augie Hooks showing payments for Walt's bills. Walt's spending pattern between 1996 and present, changes in account holders, and authorized signatures, and payments to, or on behalf of, Augie Hooks. Assistive devices and dentures used by Walt. Foods required for Walt's medical needs. Authority to photograph and diagram the interior of Walt's home. Handwriting exemplars of Augie Hooks. Agreement as to the relationship between Augie Hooks and Walt Thomas.

DESCRIPTION OF PREMISES TO BE SEARCHED (PERSON, PLACE OR THING)

- 1. The Residence of Walt Thomas, located at 17732 River Oaks Road, consisting of the residence, garage, outbuildings, trash and storage areas.
2. The person of Augie Hooks.
3. City Bank, 123 Main Street, Columbia, South Carolina

REASON FOR AFFIANT'S BELIEF THAT THE PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

See attached affidavit

Sworn to and Subscribed before me )
this [Day] of [Month], 20[Year (00)] )

Signature of Judge (L. S.) )

Affiant

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## AFFIDAVIT

Your affiant is a police officer, employed by the Columbia Police Department, and assigned to the Crimes Against Persons Investigations Unit. Affiant has been assigned the investigation of the suspected elder abuse and financial exploitation of Walt Thomas, 78 years old with some dementia and physical mobility problems relating to walking. The investigation bears agency report number 98051001.

Your affiant has been an officer for 20 years. He was initially trained in the State Police Training Academy and for the last 10 years plus has received advanced officer training relating to investigation of crimes against persons every two years. He has been an investigator for 15 years, the last 10 with the Crimes Against Persons Investigations Unit. In the last 10 years affiant has investigated over 1000 cases of assault, false imprisonment, murder, robbery and domestic abuse. In at least 150 cases, the primary victim was over the age of 65. In his 3 years before being assigned to Crimes Against Persons, affiant was assigned to the Crimes Against Property Unit. There he investigated burglaries, thefts, forgery, credit card fraud and receiving stolen goods. He investigated at least 250 property crimes.

In addition to Academy and Advanced Officers training, affiant has received training from more senior officers in the 2 Units in which he worked. He also interviewed thousands of victims and witnesses of crimes and hundreds of suspected perpetrators, many of whom have taught affiant how they committed a variety of criminal acts. Affiant also teaches at the Police Academy, instructing new officers in the investigation of crimes against persons. Affiant has instructed for the last 5 years.

Affiant has attended a 40 hour training course on domestic violence investigation. Some 4 hours addressed abuse of the elderly. He also consulted with Larry Blase, an expert in crimes against the elderly on this, and 3 other cases.

Affiant received this case 4 days ago. He was asked to assist APS after APS received an anonymous report that Walt Thomas “was having some problems with his nephew”. Affiant, along with APS Worker Sally Martin, went to Walt Thomas’ residence at 17732 River Oak Road, in Richland County. We arrived at 11:15 a.m. and knocked on the door. A male, about 35 years old, answered the door. He identified himself as Augie Hooks, Walt Thomas’ nephew. He lives with Walt Thomas and for the last year or so, has taken care of Walt. He said Walt is getting old, and has “pretty bad arthritis in his hip” which makes it hard for Walt to move around.

Ms. Martin asked to see Walt. Augie said that Walt wasn’t home. Ms. Martin asked Walt’s whereabouts and when he’d return home. Augie became evasive and vague. Then he said Walt was asleep. He became angry and then told us to leave unless we wanted “trouble”. I explained to Augie that we just needed to make sure Walt was ok and that we would leave as soon as we saw him. I also explained that, if necessary, we’d get a court order to enter. After 15 or 20 minutes, Augie said we could see Walt and led us to a back room.

As we walked to the back of the house, I smelled the strong odor of urine. As we entered Walt’s room, the odor became unbearable. We found Walt sitting in a chair. His clothes were dirty, 2 shirt buttons were missing. The chair was wet, and smelled of urine. Walt’s trousers were also wet. Walt was watching television. The TV was very loud. Walt did not hear us call his name or enter the room. He only appeared to notice us when we stood in front of him. It was obvious that he was having hearing problems. He also had a bruise on his cheek.

Walt looked thin. Ms. Martin asked how he was - he said he was hungry but didn't know where his dentures were. He seemed very slow and groggy.

Ms. Martin asked Walt if he could stand up. He said he could with help. She and I helped him up but realized he could not stand without being supported. He said he needed his walker but did not know where it was. When he tried to move he cried out with pain.

Ms. Martin asked Walt a series of questions which she described to me as a mini-mental health assessment. She said it showed Walt was confused. She asked Walt if she could take him to the doctor to be sure he was ok. Augie said it wasn't necessary, he'd take Walt to the doctor if she (Ms. Martin) wanted. Ms. Martin convinced Walt and Augie that they could both go with her to the doctor.

I asked Augie for Walt's Medicare card and Augie led me to the kitchen table. As Augie got Walt's medical card I saw at least 10 unopened envelopes, including a utility bill, and a checkbook in the name of Walt and Augie. I saw a number of beer cans and pizza containers all over the kitchen counters and a sink full of dirty dishes which had obviously been there a while.

We returned to the bedroom. As Walt was put in the ambulance, Augie closed Walt's bedroom door. I noticed a lock and key on the outside of that door. I asked Augie about Walt's dentures, he said he (Augie) took them away after Walt refused to eat food that Augie made. I asked Augie when that was, he said he could not remember. He gave Ms. Martin Walt's dentures as we prepared to leave for the hospital.

Walt was taken to County Hospital. Once there, he was seen by Dr. James Phillips in the emergency department. Dr. Phillips told me that he found Walt to be confused and found bruises on Walt's back, arms, wrist and cheek. He also found that Walt had a fractured right hip. Walt was admitted to the hospital.

I spoke with Dr. Phillips 2 days after Walt's admission. He said that Walt was "wolfing" food and liquids and was a little confused. He opined that Walt was much more confused at admission and that well have been due to lack of proper foods, liquids and too much or too little medication.

He also told me that he believed that Walt's bruises and fracture were of different ages. He said the bruises on the back and arms were at different stages of healing. He said the fracture was 3-6 days old and the cheek bruise was very recent. He said the wrist bruises were in the shape of some kind of binding. He said he believed that Walt was abused.

Dr. Phillips told me he had talked to Walt's doctor, Dr. Billy Loggins. Dr. Loggins said he had not seen Walt in 8 months. He said he has prescribed soft foods and a low sodium diet for Walt to deal with his medical problems. He says Walt was doing ok for a man his age, but was getting pretty forgetful when he saw him last. He said Augie had been taking care of Walt. Dr. Loggins said Walt weighed 180 lbs during the examination. Dr. Loggins said he prescribed Lipitor for Walt, to be taken once each day.

Dr. Phillips told me that Walt weighed 145 lbs. at admission. He said the initial drug toxicology screen of Walt at admission showed no presence of Lipitor but did show the presence of Valium and Diazepam.

After talking with Dr. Phillips, I asked Augie to come to my office for an interview. I told him that I was concerned about Walt and what had been happening for the last year or so. I told Augie that I appreciated him coming to the station for an interview and he was free to leave at any point, was free to refuse to answer any question, and could have a lawyer present if he wanted. I told him I wanted his side of what had been going on. Augie said he was willing to answer my questions. I tape recorded the conversation.

Augie told me that he moved in with Walt a year ago after he lost his job at the Corner Grocery. He is unmarried, dropped out of school at age 16, and has never been good at holding a job. He says that Walt was getting older and needed help so he agreed to work for Walt doing whatever was needed.

At first he opened the mail and went over it with Walt. Walt doesn't see very well, but Walt still paid the bills. Over time, Walt asked Augie to pay the bills so Augie wrote the checks and signed them. The bank gave him trouble about signing the checks so he added his name to the account. He said he was told by Walt to write himself a paycheck - \$200 a week, too. He said Walt receives a pension from the school district where he worked for 43 years, and social security. Augie had himself declared the representative payee to help Walt out.

He says Walt is often cranky and hard to live with. Walt refuses to eat what Augie cooks. Augie especially likes to cook beef and ham and eggs. He also loses his balance a lot and falls down. He said that is how Walt got those bruises on his arms and back and hurt his hip. He says Walt now refuses to walk to the bathroom so Augie yells and screams so he has to lock him in his room so the neighbors aren't alarmed.

I talked to City Bank. They confirmed that Walt has an account with them. They could not find an account for Augie.

Based on my investigation as described, I believed that Walt is the victim of several crimes: assault, false imprisonment, and elder abuse, in violation of the following code sections:

I believe that evidence proving those crimes and the identity of the perpetrator will be found at Walt's home, located at 17732 River Oak Road, in Richland County, and at City Bank, located at 123 Main Street, Richland County, and on the person of Augie Hooks.

I seek to search the residence and the person of Augie Hooks for prescription medications, including over the counter drugs; bindings and items to which bindings are attached; locks and keys for interior locks used to prevent Walt from moving about freely; mail, bills, and requests for payment addressed to Walt; unpaid bills, checkbooks, canceled checks and bank statements showing what has occurred with Walt's money, and in the name of Walt Thomas or Augie Hooks; records showing Walt Thomas' spending patterns between 1996 and the present; changes in account holders and authorized signatures of Walt Thomas' account(s); and payments by, on the behalf of Walt Thomas, foods appropriate to Walt's dietary needs; notations and writings showing any relationship between Walt and Augie, including agreements to care for Walt; assistive devices and dentures used by Walt; authority to photograph and diagram the premises; and writings and handwriting exemplars of Augie Hooks. I specifically request authority to obtain, without force, handwriting exemplars of Augie.

I seek to search the City Bank for account holder information, signature cards, bank account statements, and canceled checks for Walt Thomas and Augie Hooks for the period 1996 to the present.

The City Bank is a commercial building located on Main Street between 1<sup>st</sup> and 2<sup>nd</sup> Streets, in Richland County. The name "City Bank" appears on the door.

I have visited Walt Thomas' home at 17732 River Oak Road, in Richland County, and observed it to be a brick 1 story building. The front door has "17732" on it and is painted grey. The garage is behind the house and there are 1 or more outbuildings on the property. County records reflect that Walt Thomas is the owner and tax payer.

Augie Hooks is a white male, with a date of birth of 12-5-58. He has a driver's license which shows this date of birth and an address in 1997 of 17732 River Oak Road.

**APPENDIX C: VULNERABLE ADULT PROTOCOL**

**STATE OF SOUTH CAROLINA  
OFFICE OF THE GOVERNOR  
DIVISION OF VICTIM ASSISTANCE**

**MEDICAL EXAMINATION RELEASE FORM**

Name of Patient

In the Matter of:

\_\_\_\_\_  
Patient

\_\_\_\_\_  
Name of Health Care Provider

\_\_\_\_\_  
Social Security Number

\_\_\_\_\_  
Federal Tax Number

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

\_\_\_\_\_  
City State Zip

\_\_\_\_\_  
City State Zip

In accordance with the South Carolina Victims and Witnesses Bill of Rights, signed into law on June 22, 1984, I hereby voluntarily consent and authorize the South Carolina Governor's Office, Division of Victim Assistance, and its authorized agents, to receive my medical records and to pay directly such medical expenses allowed by law to health care providers for routine medical tests and examinations for evidentiary purposes as prescribed by South Carolina Law Enforcement Division.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_\_\_\_,  
at \_\_\_\_\_, South Carolina.

\_\_\_\_\_  
Signature of Patient/guardian/Responsible Adult

\_\_\_\_\_  
Signature of Law Enforcement Officer

\_\_\_\_\_  
Signature of Health Care Officials

\_\_\_\_\_  
Name of Law Enforcement Officer

\_\_\_\_\_  
Name of Law Enforcement Agency

**Health care provider must attach a completed medical examination report, narrative, and billing to this Release Form for payment and forward to:**

**Office of the Governor  
Division of Victim Assistance  
1205 Pendleton Street, Room 401  
Columbia, SC 29201  
(803) 734-1713**

**MEDICAL RELEASE**Stamp Plate or  
Name of Patient

I, \_\_\_\_\_

(Patient), or, in my capacity as caregiver for the patient, consent to and voluntarily request

\_\_\_\_\_ (physician),

\_\_\_\_\_ (other medical provider),

nursing assistants and associates, conduct an examination to collect evidence concerning allegations or suspicions of maltreatment and provide treatment if necessary. This procedure has been fully explained to me and I understand that this examination may include tests for sexual assault and venereal disease, as well as clinical observation for physical evidence of sexual assault or physical assault or both. In addition, I consent to radiologic and/or photo documentation of any significant findings. I do consent to use of these photographs or radiographics by this agency, or its agents, for medical, educational, and/or legal purposes.

I fully understand the nature of the examination and medical information gathered by this means may be used as evidence in a court of law or in connection with the enforcement of public health rules and laws.

I do authorize this agency, and its agents, to release the laboratory specimens, medical records and related information pertinent to this incident, including any photographs and/or radiographs authorized above, to the appropriate law enforcement officials and/or the Department of Social Services and/or the Long Term Care Ombudsman; and, herewith, release and hold harmless this agency, and its agents, from any and all liability and claims of injury whatsoever which may in any manner result from the release of such information.

I do consent to HIV antibody testing if deemed necessary by the above named medical provider. I understand if HIV testing is done that I will talk to the medical provider about the HIV blood test (the AIDS virus antibody test.) I understand a positive or negative test may need to be confirmed or repeated at a later date.

Adult's Name : \_\_\_\_\_

Date of Birth: \_\_\_\_\_ Age: \_\_\_\_\_

Social Security Number, If Known: \_\_\_\_\_

Signature of Patient

Date

Signature of Caregiver

Date



**DEMOGRAPHIC INFORMATION:**

**FOR VULNERABLE ADULTS  
AGE 18 OR OVER**

Date of Visit:        /        /        Time:		
Source of Intake Information:		
Relation: <input type="checkbox"/> Adult Protective Services <input type="checkbox"/> Medical Provider <input type="checkbox"/> Law Enforcement <input type="checkbox"/> Long Term Care Ombudsman <input type="checkbox"/> Caregiver <input type="checkbox"/> Other:		
Maltreatment Assessment: Emergency Protective Custody - <input type="checkbox"/> Yes <input type="checkbox"/> No        Date:		
Site:		
Provider Name Group:		
DEMOGRAPHIC INFORMATION Photocopy of Agency Demographic Information May Be Substituted		
Patient Name:		Sex: <input type="checkbox"/> Female <input type="checkbox"/> Male
DOB:	Age:	SSN:
Race: <input type="checkbox"/> White <input type="checkbox"/> Black <input type="checkbox"/> American Indian <input type="checkbox"/> Oriental <input type="checkbox"/> Bi-Racial <input type="checkbox"/> Other		Migrant: <input type="checkbox"/> Yes <input type="checkbox"/> No
Residence: <input type="checkbox"/> Lives Independently <input type="checkbox"/> Residential Home <input type="checkbox"/> Family Residence Under Care of:		
Mailing Address:		
Street Address:		
Phone:	County of Residence:	
Emergency Contact Name:		Contact Phone:
Legal Custodian/Relation:		
Accompanying Guardian/Relation:		
Payment Source:	Policy #:	
INVOLVED AGENCIES		
Law Enforcement:	County:	<input type="checkbox"/> Police Dept: <input type="checkbox"/> Sheriff's Dept.
Officer:	Badge #:	Phone:
Report Date:	Phone:	Ext.
Address:		
Other Agency(cies): _____ _____ _____		
Signature of Recorder:	Print Name:	Date:

**WHITE - HOSPITAL**

**PINK - LAW ENFORCEMENT**

**GREEN - VICTIM COMPENSATION**

**INCIDENT INFORMATION**

Previous Exam Suspicious for Maltreatment/Neglect: <input type="checkbox"/> No <input type="checkbox"/> Unknown <input type="checkbox"/> Yes - Date: _____	
Previous Report Made: <input type="checkbox"/> No <input type="checkbox"/> Unknown <input type="checkbox"/> Yes - Give Agency/Dates/Results: _____ _____ _____	
Initial Indicator of Risk: <input type="checkbox"/> Victim Verbal <input type="checkbox"/> Behavioral Changes <input type="checkbox"/> Injuries/Medical Problems	
Witness: <input type="checkbox"/> No <input type="checkbox"/> Unknown <input type="checkbox"/> Yes	
Brief History of Allegations/Reason for Referral/Summary of Maltreatment/Description of Neglect: _____ _____ _____ _____ _____	
Identity of Alleged Offender if known:	
Age: _____ Sex: <input type="checkbox"/> Female <input type="checkbox"/> Male Relationship to Adult: _____	
Dates of first alleged maltreatment/neglect: _____ Most Recent: _____ County of Occurrence: _____	
Other dates/places: _____	
Date of last contact: _____	
Access to this vulnerable adult: <input type="checkbox"/> Yes <input type="checkbox"/> No Access to other vulnerable adults: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown	
Narrative of Concerns and Observations	
Interviewer: _____ _____ _____	
Affect of Support Person: <input type="checkbox"/> Cooperative <input type="checkbox"/> uncooperative <input type="checkbox"/> Supportive <input type="checkbox"/> Hostile <input type="checkbox"/> Flat <input type="checkbox"/> Ambivalent	
Examiner's Signature: _____ Date: _____	

**WHITE - HOSPITAL**

**PINK - LAW ENFORCEMENT**  
Page 2 of 8

**GREEN - VICTIM COMPENSATION**

**PATIENT INFORMATION**

Accompanying Adult(s)/Relationship(s):	
Patient's Communication Ability: <input type="checkbox"/> Normal <input type="checkbox"/> Impaired <input type="checkbox"/> Non-Communicative	
Personal Physician's Name:	Phone:
City/Address:	
Current Medications:	
_____	
_____	
_____	
Medical History	
Allergies: <input type="checkbox"/> N/A <input type="checkbox"/> No <input type="checkbox"/> Yes - Drug(s):	
Medical Problems:	
_____	
_____	
_____	
Major Hospitalizations:	
_____	
_____	
Surgeries:	
_____	
_____	
Trauma/Injuries: <input type="checkbox"/> Head Injuries <input type="checkbox"/> Fractures <input type="checkbox"/> Burns	
Gynecological History, if Applicable	
<input type="checkbox"/> LMP:	Contraception: <input type="checkbox"/> OCs <input type="checkbox"/> Injectable <input type="checkbox"/> Tubal Ligation <input type="checkbox"/> Other -
Menopausal <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown	Hormonal Replacement <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown
Sexually Active Voluntarily <input type="checkbox"/> No <input type="checkbox"/> Unknown <input type="checkbox"/> Yes - Last Voluntary Intercourse:	
Substance Use	
Alcohol <input type="checkbox"/> No <input type="checkbox"/> Unknown <input type="checkbox"/> Yes - Amount:	
Tobacco <input type="checkbox"/> No <input type="checkbox"/> Unknown <input type="checkbox"/> Yes - Amount:	
Drugs <input type="checkbox"/> No <input type="checkbox"/> Unknown <input type="checkbox"/> Yes - Amount:	
Family History	
<input type="checkbox"/> Bleeding Disorders <input type="checkbox"/> Bone disease <input type="checkbox"/> Neurological Disease <input type="checkbox"/> Substance Abuse <input type="checkbox"/> Violence <input type="checkbox"/> Mental health	
Comments:	
_____	
_____	
Examiners's Signaure:	Date:

**WHITE - HOSPITAL**

**PINK - LAW ENFORCEMENT**

**GREEN - VICTIM COMPENSATION**

**PHYSICAL EXAMINATION RECORD**

Examiner: _____		Date: _____		
Person(s) Present: <input type="checkbox"/> No <input type="checkbox"/> Yes - Give Name(s): _____				
Other Person(s) Present - Give Names: _____				
Behaviors Observed During Exam: <input type="checkbox"/> Appropriate <input type="checkbox"/> Mental Status Exam <input type="checkbox"/> Other - Describe Below: _____ _____				
Physical Exam: Height:        %        Weight:    %        H.C.:        %				
	WNL	ABN	N/A	EXPLAIN
General Appearance				
CN II - XII				
Motor Strength/Tone				
Deep Tendon Reflexes				
Ears/TMs				
Eyes/Fundi				
Nose				
Mouth/Oropharynx				
Teeth: upper				
Teeth: lower				
Neck				
Breasts				
Chest				
Back				
Lungs				
CV				
Abdomen				
Hair/Scalp				
Skeletal				
Balance/Gait				
Sensory Exam				
Comments: _____ _____				
Examiner's Signature: _____		Date: _____		

WHITE - HOSPITAL

PINK - LAW ENFORCEMENT  
Page 5 of 8

GREEN - VICTIM COMPENSATION

**PHYSICAL EXAMINATION RECORD, CONT**

Skin findings (Describe color, configuration, measurements, and any remarks by the adult as to the etiology for each lesion. See body diagrams.)
Photos Taken: <input type="checkbox"/> No <input type="checkbox"/> Yes - Number Taken: Forensic Dentistry Consult: <input type="checkbox"/> Yes <input type="checkbox"/> No Lesions Consistent with Bite Marks: <input type="checkbox"/> Yes <input type="checkbox"/> No
_____ _____

_____ _____
----------------

Male Genital Exam	WNL	ABN	Describe
Inguinal Adenopathy			
Medial Thighs			
Perineum			
Penis			
Urethral Meatus			
Circumcised	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
Scrotum			
Testes			
Female Genital Exam	WNL	ABN	Describe
Inguinal Adenopathy			
Medial Thighs			
Perineum			
External Genitalia			
Vagina			
Cervix			
Uterus			
Male/Female Exam			
Buttocks			
Anus			
Anal Tone			
Stool Incontinence			
Rectal Exam:			Stool Occult Blood Test <input type="checkbox"/> Positive <input type="checkbox"/> Negative
Examiner's Signature:	Date:		

WHITE - HOSPITAL

PINK - LAW ENFORCEMENT

GREEN - VICTIM COMPENSATION

**LAB SUMMARY**

<p><b>Laboratory Specimens</b> (Check specimens collected)</p> <p>Date:</p>
---

GC/Chlamydia Culture	<input type="checkbox"/> Throat	<input type="checkbox"/> Vaginal	<input type="checkbox"/> Urethral	<input type="checkbox"/> Rectal
Wet Prep	<input type="checkbox"/> No	<input type="checkbox"/> Yes -		
bHCG	<input type="checkbox"/> No	<input type="checkbox"/> Yes -		
Urinalysis	<input type="checkbox"/> No	<input type="checkbox"/> Yes -		
Culture	<input type="checkbox"/> Throat	<input type="checkbox"/> Vaginal	<input type="checkbox"/> Urethral	<input type="checkbox"/> Rectal
	<input type="checkbox"/> Urine	<input type="checkbox"/> Wound	<input type="checkbox"/> Blood	<input type="checkbox"/> Other -
RPR/VDRL	<input type="checkbox"/> No	<input type="checkbox"/> Yes -		
HIV	<input type="checkbox"/> No	<input type="checkbox"/> Yes -		
CBC	<input type="checkbox"/> No	<input type="checkbox"/> Yes -		
Coags	<input type="checkbox"/> No	<input type="checkbox"/> Yes -		
Chemistry Panel	<input type="checkbox"/> No	<input type="checkbox"/> Yes -		
Other:				
Treatment:				
PHYSICIAN SUMMARY				
<hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>				
Recommendation for Follow-Up				
Medical:				
Mental Health:				
Other:				
Examiner's Signature:				

WHITE - HOSPITAL

PINK - LAW ENFORCEMENT

GREEN - VICTIM COMPENSATION

**SEXUAL ABUSE/ASSAULT INFORMATION**

(Optional Supplement to Interview)

Stamp Plate or  
Name of Patient

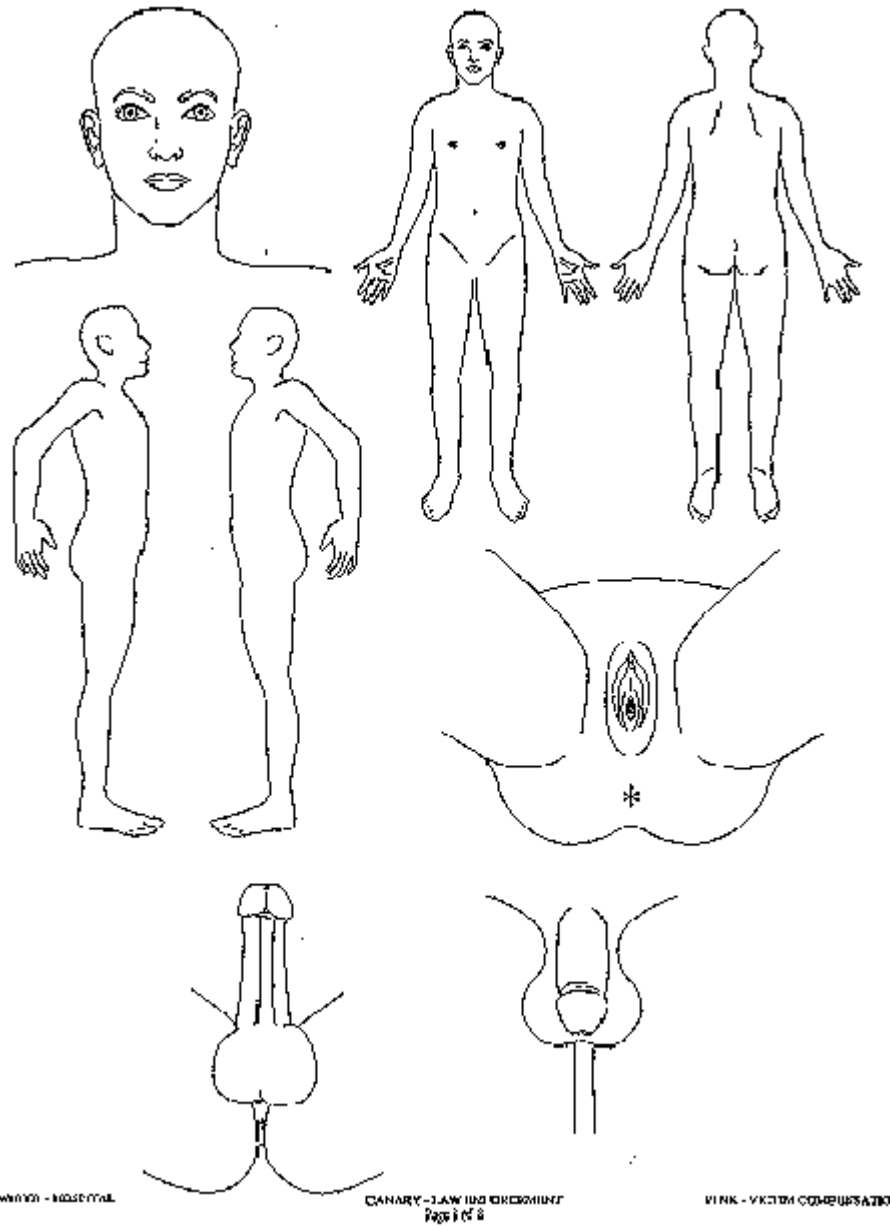
Patient Interviewed in the Presence of:
---

	Described by Patient			Comments
	Y	N	U	
<b>Vaginal Contact</b>				
Penis				
Finger				
Foreign Object (Describe)				
<b>Anal Contact</b>				
Penis				
Finger				
Foreign Object (Describe)				
<b>Oral Copulation of Genitals</b>				
of Victim by Assailant				
of Assailant by Victim				
<b>Oral Copulation by Anus</b>				
of Victim by Assailant				
of Assailant by Victim				
<b>Masturbation</b>				
of Victim by Assailant				
of Assailant by Victim				
Did Ejaculation Occur? If yes, write adult's description.				
Describe location(s) on body:				
Where did ejaculate go?				
Describe assailant's genitals:				
Condom used				
Foam, jelly, or lubricant used (circle)				
Fondling, licking, kissing or biting (circle)				
Describe the location on the body:				
Examiner's Signature:				Date:

WHITE - HOSPITAL

PINK - LAW ENFORCEMENT

GREEN - VICTIM COMPENSATION



**VULNERABLE ADULT PROTOCOL**

**BODY DIAGRAM**

WHITE - HOSPITAL

CANARY - LAW ENFORCEMENT

PINK - VICTIM COMPENSATION



**PAYMENT RESPONSIBILITY NOTICE****ATTENTION:**

The patient is not responsible for this bill!

To ensure payment, please provide the following to the Division of Victim Assistance, 1205 Pendleton Street, Room 401, Columbia, SC 29201:

- 1) An itemized bill with breakdown of charges.
- 2) A completed copy of the medico-legal information and examination form with law enforcement information included.
- 3) A completed copy of the DOVA medical examination release form.

---

**ATTENTION: PATIENT**

You are not responsible for the cost of this evidence collection exam. Please tear off and retain this stub. If you are billed for these services, please return this stub along with the bill to the medical provider.

## **APPENDIX D: USER'S GUIDE**

### **Vulnerable Adult Protocol**

**Purpose:** The **Vulnerable Adult Protocol** should be used by medical providers when examining **vulnerable** adults age 18 and over who have been suspected of being sexually abused more than 72 hours before the exam or of being physically abused/assaulted. The Acute Adult Sexual Assault Evidence Collection Kit should be used when an adult is suspected of being sexually abused/assaulted within 72 hours of the physical examination.

**A vulnerable adult is defined in the Omnibus Adult Protection Act, § 43-35-10, as follows: Vulnerable adult means a person eighteen years of age or older who has a physical or mental condition which substantially impairs the person from adequately providing for his or her own care or protection. This includes a person who is impaired in the ability to adequately provide for the person's own care or protection because of the infirmities of aging including, but not limited to, organic brain damage, advanced age, and physical, mental, or emotional dysfunction. A resident of a facility is a vulnerable adult.**

Pages 1 through 3 of the protocol may be completed by personnel other than the medical provider. Pages 4 through 8 must be completed by the medical provider. However, as with any medical record, the physician is responsible for ensuring the proper completion of the entire protocol.

**Stamp Plate:** If a stamp plate is available, it may be used in the corner of each page instead of repeatedly filling out the information. However, it must be legible and all requested identifying data must be provided.

A signed **Medical Examination Release Form** must be obtained and forwarded with the completed protocol to DOVA for possible reimbursement.

The **Medical Release** form should be signed by the patient or caregiver prior to the physical exam.

**PAGE 1:** Many medical facilities have their own **intake** forms which capture most of the information requested on Page 1. A copy of the facility's intake form may accompany this page to prevent duplication. Any other information requested on Page 1 which is not on the facility's intake form must be provided on this page. A triage or intake worker may fill out this page. Be sure that all involved investigating agencies are listed. When possible, list the law enforcement case or OCA number.

**PAGE 2: Incident Information** obtained from the person requesting the physical examination is recorded here. The purpose of Page 2 is to find out if the vulnerable adult has previously been examined for maltreatment, a brief history of the allegations, and the last suspected abuse. This will help the triage or intake worker determine if an exam is necessary and which protocol to use.

**PAGE 3: Patient Information** is provided to record family, medical, gynecologic and substance abuse histories and current medications. It is important to ask personal questions about substance abuse and domestic violence. Some medical providers may be reluctant to ask for this information, but it can be vitally important to the safety and well-being of the vulnerable adult. Ask the questions without hesitation and in a forthright manner. When possible, obtain the information from the patient. If the patient is unable to provide the information, the primary caregiver may be a good source; however, keep in mind that the caregiver may be the perpetrator.

**PAGE 4:** The first part of the **Physical Examination Record** is provided for the general observations and physical exam.

**PAGE 5:** The second part of the **Physical Examination Record** is used to provide a record of significant skin findings. It is **IMPERATIVE** that the medical provider be specific. Number the lesion and describe the color, configuration, and measurement. Also, record any remarks the vulnerable adult gives as to the etiology. The numbers should be drawn on Page 8 to record the location. If possible, photographs, including a straight measuring device with color grid, should be taken of each lesion. Additional pages may be needed to record skin findings.

The male or female genital exam and the male or female anal exam is also recorded on this page. Again, the medical provider must be SPECIFIC in recording these findings. If the medical provider is unsure how to describe the findings, they may be drawn on Page 8. When available, the exam should be photo documented and a magnifying aid such as a colposcope used. Avoid using flash photography.

**PAGE 6:** The **Lab/Summary** page provides space to record the specimens taken, any treatment provided and follow-up needed.

The **Physician Summary** is of utmost importance. Record the significance of the medical findings.

**PAGE 7: The Sexual Abuse/Assault Information** is optional for providing additional information regarding the allegations. This does not replace a narrative of the vulnerable adult's interview. All pages must be reviewed and signed by the medical provider.

**PAGE 8:** Record the location of all skin findings on the appropriate **body diagram**. This is especially important if instant photo documentation is unavailable.

**DISTRIBUTION:** The original of the Vulnerable Adult Protocol must be kept by the medical facility. Send copies to DOVA, law enforcement, and DSS (when involved).

### **Special Instructions:**

**Photography:** In cases of suspected vulnerable adult abuse, when it would appear that reports to authorities will be made, the following steps should be taken regarding photographs to document the visible injuries:

- The physician should take overall photographs of the victim's body and close-up photographs of the specific injuries utilizing photo scale. Never attempt to take pictures closer than three feet from camera to subject.
- Once the photographs are taken, place the photographs or the film into kit envelope and seal with evidence tape provided. Sign the chain of custody sheet and turn over to the law enforcement officer.
- § 43-35-30 of the Omnibus Adult Protection Act authorizes photographs to be taken without the consent of the vulnerable adult.

**NOTE: A SLED Photographer is available 24 hours a day for technical assistance or photographs. Please notify SLED when bitemark photographs are necessary. Call 803-737-9000.**

**Bite or Suck Marks** - Using one (1) swab per collection site, moisten swab(s) with a saline solution. Then thoroughly swab the area. Allow swab(s) to thoroughly air dry, then return swab(s) to an envelope. Seal and write victim's name on envelope. Place the envelope containing the swab(s) in the original envelope and seal with evidence tape provided. Sign the chain of custody sheet and turn over to the law enforcement officer.

**Outer Clothing** - If clothes appear to be stained with possible blood, place the items of clothing in a paper (grocery type) bag. Wet or damp clothing should be air dried before packaging. If this is not possible, notify the police officer that the clothes are wet and should be taken directly to SLED or air dried at his law enforcement agency.

**If you have questions regarding evidence collection, call SLED at 803-737-9000.**

---

**APPENDIX E: OMNIBUS ADULT PROTECTION ACT DOCUMENTS****Law Enforcement Referral Matrix****I. *INCIDENTS THAT WILL BE REFERRED TO LAW ENFORCEMENT IMMEDIATELY:***

*DEATHS:* All deaths where circumstances indicate possible abuse or neglect.

*SEXUAL BATTERY:* Sexual battery as defined in SC Code is sexual intercourse, or any intrusion, however slight, of any part of a person's body or of any object into the genital or canal openings of another person's body.

*AGGRAVATED ASSAULTS:* Assaults where the victim requires medical attention or involved weapons/objects.

*EMERGENCY/EX PARTE CUSTODY CASES*

*CASES INVOLVING TIME SENSITIVE EVIDENCE*

**II. *INCIDENTS THAT WILL BE REFERRED TO LAW ENFORCEMENT WITHIN THE PROVISIONS OF § 43-35-40:***

*EXPLOITATION*

*NEGLECT:* Incidents where serious harm is indicated.

*PHYSICAL ABUSE:* Incidents where there is sufficient evidence to determine suspect.

*POTENTIAL AGENCY CONFLICT IN THE CONDUCT OF THE INVESTIGATION*

**III. *ALL OTHER INCIDENTS SHOULD BE REFERRED TO LAW ENFORCEMENT WHEN IT HAS BEEN DETERMINED THAT A LAW ENFORCEMENT INVESTIGATION WOULD ASSIST IN BRINGING CRIMINAL CHARGES.***

**NOTE: This information has been provided as a guide to referring cases to law enforcement. They are not intended to replace the provisions of the Omnibus Adult Protection Act or internal agency policy. All cases should be reported to law enforcement if the victim or victim's family requests that it be done.**

**NOTIFICATION TO LAW ENFORCEMENT**

**DATE:** \_\_\_\_\_

**TO:** \_\_\_\_\_ **FROM:** \_\_\_\_\_  
\_\_\_\_\_

**CASE NAME:** (Last Name First) \_\_\_\_\_ **CASE NUMBER:** \_\_\_\_\_

\_\_\_\_\_ **LAW ENFORCEMENT #:** \_\_\_\_\_

As required by § 43-35-40 of the South Carolina Code of Laws, the following information is being reported:

**VICTIM INFORMATION:**

**DOB:** \_\_\_\_\_ **SEX:** \_\_\_\_\_ **RACE:** \_\_\_\_\_ **PHONE:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

It was reported that this person is a vulnerable adult and he/she was **abused** \_\_\_\_\_ **neglected** \_\_\_\_\_, **exploited** \_\_\_\_\_

**INFORMANT/COMPLAINANT:** (Reporter information may be obtained from the caseworker)

**NAME:** \_\_\_\_\_ **PHONE:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

**PERPETRATOR INFORMATION:**

**NAME:** \_\_\_\_\_

**RELATIONSHIP:** \_\_\_\_\_ **RACE:** \_\_\_\_\_ **SEX:** \_\_\_\_\_ **AGE:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

**INCIDENT INFORMATION:**

**DATE OCCURRED:** \_\_\_\_\_ **TIME:** \_\_\_\_\_ **VISIBLE INJURY:** \_\_\_ YES \_\_\_ NO

**AT ADDRESS:** \_\_\_\_\_

**DESCRIPTION OF INJURY:** I have visited the above and observed: \_\_\_\_\_

**WITNESS INFORMATION:**

**NAME:** \_\_\_\_\_ **PHONE:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

**STATUS:** \_\_\_\_\_

1. This notification is being made on the basis of an intake only \_\_\_\_  
Signature: \_\_\_\_\_ Title \_\_\_\_\_
2. The report is still under investigation \_\_\_\_ .
3. The report has been substantiated. \_\_\_\_ . Phone Number: \_\_\_\_\_  
Pictures Taken: \_\_\_ Yes \_\_\_ No  
Name of Contact Person in Absence of Caseworker: \_\_\_\_\_  
\_\_\_\_ Criminal. Please send a copy of the incident report.  
\_\_\_\_ Non-criminal

**APPENDIX F: SUSPECTED VULNERABLE ADULT INCIDENT REPORT**

	AGENCY NAME OR	CASE NUMBER
SC		
DATE OF CRIME	INCIDENT TYPE	

	RACE	SEX	AGE	RELATIONSHIP TO SUBJECT	WEAPON, IF ANY
VICTIM:					

Statute No. 43-35-10: "Vulnerable adult" means a person eighteen years of age or older who has physical or mental condition which substantially impairs the person from adequately providing for his or her own care or protection. This includes a person who is impaired to adequately provide for the person's own care or protection because of the infirmities of aging including, but not limited to , organic brain damage, advanced age, and physical, mental, or emotional dysfunction. A resident of a facility is a vulnerable adult.

**VULNERABLE ADULT VICTIMIZATION (CHECK ONE EACH)**

Reason Vulnerable:

- advanced age
- mental/emotional impairment
- physical impairment
- resident of a facility

Residing:

- in a facility
- alone
- with a spouse
- with a relative
- other (please specify): \_\_\_\_\_

Referred By:

- Department of Social Services
- Long Term Care Ombudsman
- Other (Please specify): \_\_\_\_\_

Comments (if any): \_\_\_\_\_

Reporting Officer:	Reviewing Officer:
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**APPENDIX G: SLED REPORTING CRITERIA**

The following criteria was developed as a guide for local law enforcement when reporting incidents to SLED involving vulnerable adults:

1. The vulnerable adult is the primary target of the crime. This criteria would be applied in the same manner in which hate or bias crimes are reported. With hate crimes, the victim is targeted because of bias against a race, religion, etc., and a hate crime report is submitted to SLED. For vulnerable adults, the Vulnerable Adult Incident Report Form would be completed and submitted to SLED for crimes in which the victim is targeted because the victim is a vulnerable adult. This criteria would eliminate reporting of situations in which the vulnerable adult was “in the wrong place at the wrong time”.
2. The perpetrator could have been charged under the Omnibus Adult Protection Act (OAPA); however, law enforcement may choose to bring charges under another statute. Often, criminal charges are brought under statutes, such as Title 16, which carry a greater penalty than the OAPA.
3. A paper copy of the Vulnerable Adult Incident Report Form will be submitted to SLED UCR even though an agency’s normal data submission may be by tape or diskette.

**APPENDIX H: ADMINISTRATIVE SUBPOENA**

**SUBPOENA**

**SOUTH CAROLINA DEPARTMENT OF SOCIAL SERVICES**

1. STATE OF SOUTH CAROLINA COUNTY OF _____  IN THE INTEREST OF:  _____ A VULNERABLE ADULT	2. COUNTY ADDRESS: _____ 3. CASE NUMBER: _____ 4. SUBPOENA FOR: <input type="checkbox"/> PERSON <input type="checkbox"/> DOCUMENTS or OBJECT(S)
5. TO:	
6. <input type="checkbox"/> <b>YOU ARE HEREBY COMMANDED to appear at the place, date and time specified below to provide information on the above named case.</b>	
7. PLACE:	8. ROOM:  9. DATE AND TIME:
10. <input type="checkbox"/> <b>YOU ARE COMMANDED to bring the following document(s) or object(s) to the above named place at the specified date and time.</b>	
11. LIST DOCUMENT(S) OR OBJECTS:	
<b>THIS SUBPOENA IS ISSUED PURSUANT TO S.C. CODE § 43-35-2093) AND SHALL REMAIN IN EFFECT UNTIL YOU ARE GRANTED LEAVE TO DEPART.</b>	
12.	
_____ DIVISION DIRECTOR, ADULT PROTECTIVE SERVICES	_____ DATE

DSS FORM 1504 (Aug 93) AS



**APPENDIX I: ADULT PROTECTIVE SERVICES ATTORNEY'S GUIDE (CUSTODY)**

STATUTES

PROCEDURES

HEARING REQUESTS

NOTICE OF HEARING

AFFIDAVIT IN SUPPORT OF EX PARTE ORDER OF REMOVAL

AFFIDAVIT IN SUPPORT OF INSPECTION WARRANT

COMPLAINT

EX PARTE ORDER

INSPECTION WARRANT

SEVENTY-TWO HOUR ORDER

FINAL ORDER

**ADULT PROTECTIVE SERVICES ATTORNEY'S GUIDE**

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**ADULT PROTECTIVE SERVICES****CUSTODY STATUTES**

The following statutes set out how a vulnerable adult can be placed in the custody of DSS and how to obtain court-ordered protective services:

1. Protective custody S.C. Code Ann. § 43-35-55 (Supp. 1994)
2. Ex parte order S.C. Code Ann. § 43-35-45 (B)
3. Full Hearing S.C. Code Ann. § 43-35-45 (E)

## ADULT PROTECTIVE SERVICES ATTORNEY'S GUIDE

## ADULT PROTECTIVE SERVICES

## CUSTODY SITUATIONS

The following are ways by which a vulnerable adult may come into the custody of DSS:

1. **PROTECTIVE CUSTODY** - § 43-35-55

Law enforcement officer believes that the adult is a vulnerable adult in imminent danger due to abuse, neglect, or exploitation. The adult or caregiver will not consent to services or removal **and there is not time to get a court order.** DSS may have requested law enforcement to take emergency protective custody or law enforcement may have taken its own initiative; the final decision whether to take protective custody belongs to law enforcement. Law enforcement officer places the vulnerable adult into protective custody and custody belongs to DSS. A probable cause hearing must be held within **72 hours** of DSS' filing the complaint. A merits hearing must be held within **40 days**.

2. **EX PARTE** - § 43-35-45 (B)

Emergency Protective Services or emergency removal is needed due to abuse, neglect, or exploitation **and there is imminent danger** to the adult's life. The adult or the caregiver will not consent to services of placement. An ex parte complaint and order are prepared. Within **10 days** of the complaint, an attorney and guardian ad litem will be appointed for the adult. A merits hearing will be held within **40 days** of the ex parte complaint. § 43-35-45 (C)

3. **FULL HEARING** - § 43-35-45 (E)

The vulnerable adult is at substantial risk of being abused, neglected, or exploited or has been abused, neglected, or exploited **and** protective services are necessary.

At the hearing on the merits, the court may order the Adult Protective Services Program to provide protective services if it finds that:

(1) the vulnerable adult is at substantial risk of being or has been abused, neglected, or exploited and the vulnerable adult is unable to protect herself or himself; and,

(2) protective services are necessary to protect the vulnerable adult from the substantial risk of or from abuse, neglect, or exploitation.

These situations are usually ones where DSS has been working with the client and caregiver, and it appears that the problem is not going to be solved by the caseworker with the resources in the community. Within **10 days** of the complaint, an attorney and guardian ad litem are appointed for the adult. A hearing will be held within **40 days** of the complaint.

4. **§ 43-35-45 (C)**

Within **10 days** following the filing of a petition to this section, **the court must appoint a guardian ad litem and an attorney for the vulnerable adult**; and within **40 days** of the filing of the petition, the court shall hold a hearing on the merits.

5. **§ 43-35-45 (H)**

Following a court order from the merits hearing to provide protective services to a vulnerable adult, the **Adult Protective Services Program**, at least **every 6 months**, must evaluate the vulnerable adult and **submit a written report to the court** and to any other parties required by the court, regarding the vulnerable adult's need for protective services.

**ADULT PROTECTIVE SERVICES ATTORNEY'S GUIDE**

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**PROCEDURE****ADULT TAKEN into EMERGENCY PROTECTIVE CUSTODY in a COUNTY OTHER than ADULT'S RESIDENCE**

The procedure is that the DSS attorney in the county where the removal occurs will hold the 72 hour hearing (EPC hearing) and ask that the court order a change in venue to the county of the adult's residence, if the adult is returning to that county. The assigned caseworker, usually from the adult's county of residence, will assist both the DSS attorney who does the EPC hearing and the attorney assigned to the merits hearing.

This procedure should be followed in most cases.

**ADULT PROTECTIVE SERVICES ATTORNEY'S GUIDE**

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**PLEADINGS NEEDED PURSUANT TO § 43-35-45**

1. Affidavit and Inspection Warrant (if necessary)
2. Affidavit and Petition for Ex Parte Order (if necessary)
3. Complaint (for court-ordered protective services and/or custody)
4. Order

**PLEADINGS NEEDED PURSUANT TO § 43-35-55**

1. Complaint for Protective Custody and/or Protective Services
2. 72-Hour Order
3. Final Order/40-Day Order

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**ADULT PROTECTIVE SERVICES ATTORNEY'S GUIDE**

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**PROCEDURE****TRANSITION of FOSTER CHILDREN with PHYSICAL or MENTAL IMPAIRMENTS into ADULT PROTECTIVE SERVICES**

When a child in foster care has a condition that supports a belief that upon reaching his majority, he would meet the definition of "vulnerable adult," S. C. Code Ann. § 43-35-10 (11) (Supp. 1995), the foster care worker/supervisor will staff the case with the adult protective service worker/supervisor. The staffing should take place well in advance of the child's eighteenth (18<sup>th</sup>) birthday so that adult protective services can determine the child's needs as an adult and develop an appropriate case plan.

If adult protective services staff determine that custody will be necessary when the child who has reached majority or is about to reach majority into adult protective services through proceedings brought under the Children's Code, the adult protective services staff will consider this report of abuse, neglect, neglect, or exploitation. An investigation will be completed and action initiated in the family court to secure a custody order under the Omnibus Adult Protective Act, an order that will find that custody is not necessary and/or an order that authorizes other adult protective services.

ADULT PROTECTIVE SERVICES ATTORNEY'S GUIDE

REQUEST for ADULT PROTECTIVE SERVICES HEARING

STATE OF SOUTH CAROLINA ) IN THE FAMILY COURT
COUNTY OF ) JUDICIAL CIRCUIT
9-DR- -
South Carolina Department of Social Services, )
Plaintiff, )
Vs. ) REQUEST for ADULT PROTECTIVE SERVICES HEARING
Defendant. )
In the interests of: )
A vulnerable adult. )

ATTORNEY FOR PLAINTIFF:

TELEPHONE #: FAX #:

ATTORNEY FOR THE DEFENDANT(S):

Table with 3 columns: TYPE OF CASE, TIME NEEDED, NEED HEARING BY. Rows include 72 Hour, 40-Day Merits Hearing, and OTHER.

CONTESTED: ( ) YES ( ) NO ( ) UNKNOWN AT THIS TIME

GUARDIAN AD LITEM:

DARES AND TIMES UNAVAILABLE: \_\_\_\_\_

Hearing set for \_\_\_\_\_, 200\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_m. before Judge \_\_\_\_\_ Courtroom \_\_\_\_\_

HEARING REQUESTED BY: \_\_\_\_\_

Name
Attorney for Plaintiff
Address
Phone
Fax

DATE: \_\_\_\_\_

ADULT PROTECTIVE SERVICES ATTORNEY'S GUIDE

**NOTICE of HEARING**

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT
	)	
COUNTY OF	)	JUDICIAL CIRCUIT
	)	9-DR- -
South Carolina Department	)	
of Social Services,	)	
	)	
Plaintiff,	)	
	)	
Vs.	)	<b>NOTICE of HEARING</b>
	)	(Adult Protective Services)
Defendant.	)	
	)	
In the interests of:	)	
	)	
A vulnerable adult.	)	
_____	)	

TO:

YOU ARE HEREBY notified that a hearing on this case will be held on \_\_\_\_\_, 200\_\_, at \_\_\_\_\_ o'clock \_\_\_\_.m. in the family court for \_\_\_\_\_ County, located at \_\_\_\_\_, \_\_\_\_\_ South Carolina.

\_\_\_\_\_ 72-Hour Hearing for Emergency Adult Protective Custody

\_\_\_\_\_ 40-Day Merits Hearing for Adult Protective Custody

Name  
Attorney for Plaintiff  
Address  
Phone  
Fax

\_\_\_\_\_, South Carolina

\_\_\_\_\_, 200\_



ADULT PROTECTIVE SERVICES ATTORNEY'S GUIDE

**AFFIDAVIT in SUPPORT of EX PARTE ORDER of REMOVAL**

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT
	)	
COUNTY OF	)	JUDICIAL CIRCUIT
	)	9-DR- -
South Carolina Department	)	
of Social Services,	)	
	)	
Plaintiff,	)	
	)	<b>AFFIDAVIT in SUPPORT of</b>
Vs.	)	<b>EX PARTE ORDER of REMOVAL</b>
	)	(Adult Protective Services)
Defendant.	)	
	)	
In the interests of:	)	
	)	
A vulnerable adult.	)	
_____	)	

Affiant, and employee of the South Carolina Department of Social Services (SCDSS), the agency charged by law to investigate reports of abuse, neglect, and exploitation of vulnerable adults as defined in S.C. Code Ann § 43-35-10, et seq., after being duly sworn, does state the following is true, according to his/her own knowledge:

1. On or about \_\_\_\_\_, 200\_\_\_, I received a report alleging the following:
  
2. There is further information to corroborate this report as follows:
  
3. On or about \_\_\_\_\_, 200\_\_\_, pursuant to those duties imposed under S.C. Code Ann. § 43-35-15 (B), I began an investigation to determine if the subject were a vulnerable adult in need of protection or removal. I have determined that the subject is in need of protection or removal because:
  
4. The vulnerable adult is located at:

ADULT PROTECTIVE SERVICES ATTORNEY'S GUIDE

Affidavit - Ex Parte Order of Removal  
Case Number:

- 5. This affidavit is in support of plaintiff's ex parte complaint seeking custody of this vulnerable adult.
- 6. Further, affiant sayeth not.

By: \_\_\_\_\_  
 NAME  
 Adult Protective Services Case Worker  
 South Carolina Department of Social Services

Sworn to before me this  
 \_\_\_\_\_ day of \_\_\_\_\_, 200 \_\_\_\_

\_\_\_\_\_  
 Notary Public for South Carolina  
 My Commission Expires \_\_\_\_\_

ADULT PROTECTIVE SERVICES ATTORNEY'S GUIDE

INSPECTION WARRANT AFFIDAVIT

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT
	)	
COUNTY OF	)	JUDICIAL CIRCUIT
	)	9-DR- -
South Carolina Department	)	
of Social Services,	)	
	)	
Plaintiff,	)	
	)	<b>AFFIDAVIT in SUPPORT of</b>
Vs.	)	<b>INSPECTION WARRANT</b>
	)	(Adult Protective Services)
Defendant.	)	
	)	
In the interests of:	)	
	)	
A vulnerable adult.	)	
_____	)	

Affiant, and employee of the South Carolina Department of Social Services (SCDSS), the agency charged by law to investigate reports of abuse, neglect, and exploitation of vulnerable adults as defined in S.C. Code Ann § 43-35-10, et seq., after being duly sworn, does state the following is true, according to his/her own knowledge:

1. On or about \_\_\_\_\_, 200\_\_, I received a report alleging the following:
  
2. There is further information to corroborate this report as follows:
  
3. On or about \_\_\_\_\_, 200\_\_, pursuant to those duties imposed under S.C. Code Ann. § 43-35-15 (B), I began an investigation to determine if the subject were a vulnerable adult in need of protection or removal. I have determined that the subject is in need of protection or removal because:
  
4. The vulnerable adult is located at:

ADULT PROTECTIVE SERVICES ATTORNEY'S GUIDE

Affidavit - Ex Parte Order of Removal

Case Number:

- 5. In attempting to interview the vulnerable adult and inspect the premises at \_\_\_\_\_, the location of the adult, I was prevented from doing so because:
  
- 6. A private interview with the vulnerable adult, inspection of the premises, and photographs of the adult and premises are necessary to determine if the adult is a vulnerable adult in need of protection or removal.
  
- 7. A duly authorized law enforcement officer will accompany me during the inspection.

Further, affiant sayeth not.

By: \_\_\_\_\_  
 NAME  
 Adult Protective Services Case Worker  
 South Carolina Department of Social Services

Sworn to before me this

\_\_\_\_\_ day of \_\_\_\_\_, 200 \_\_\_\_

\_\_\_\_\_  
 Notary Public for South Carolina  
 My Commission Expires \_\_\_\_\_

ADULT PROTECTIVE SERVICES ATTORNEY’S GUIDE

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT
	)	
COUNTY OF	)	JUDICIAL CIRCUIT
	)	9-DR- -
South Carolina Department	)	
of Social Services,	)	
	)	
Plaintiff,	)	
	)	<b>COMPLAINT</b>
Vs.	)	<b>(for § 43-35-45 or § 43-35-55)</b>
	)	<b>(Adult Protective Services)</b>
Defendant.	)	
	)	
In the interests of:	)	
	)	
A vulnerable adult.	)	
_____	)	

Plaintiff alleges as follows:

1. Plaintiff is the agency charged with the duty of providing for the protection of vulnerable adults, as defined in S.C. Code Ann. § 43-35-10, et seq.
2. The adult is a resident and citizen of this county and is in need of protective services and/or protective custody as follows:
3. Plaintiff is informed and believes that the adult is a vulnerable adult as defined by S.C. Code Ann. § 43-35-10, (11) because of \_\_\_\_\_ and \_\_\_\_\_ is in substantial danger of abuse, neglect, or exploitation.
4. By reason of abuse, neglect, or exploitation, there is a substantial risk to the vulnerable adult’s life or physical safety, and the vulnerable adult is unable to protect him/herself. Consent cannot be obtained to provide protective services or placement, and protective services are necessary to protect the vulnerable adult from substantial risk of abuse, neglect, or exploitation.

ADULT PROTECTIVE SERVICES ATTORNEY'S GUIDE

Affidavit - Ex Parte Order of Removal

Case Number:

- 5. Plaintiff requests the right to provide for and to authorize such routine and/or emergency medical care as may be required, should protective be ordered and/or custody be granted to the plaintiff.
- 6. Plaintiff asks to be granted access to any and all records concerning the vulnerable adult as may be necessary, supplemental to those already authorized by S.C. Code Ann. § 43-35-20.

WHEREFORE, plaintiff prays that this court inquire into those matters alleged in this complaint and issue an order, finding as follows:

- 1. The adult is a vulnerable adult and by reason of abuse, neglect, or exploitation, there exists substantial risk to the vulnerable adult, and protective services and/or custody are necessary, pursuant to S.C. Code Ann. § 43-35-45.
- 2. {CHOOSE ONE OR BOTH} (1) SCDSS is authorized to provide protective services [or] (2) Protective custody of the adult should be granted to the South Carolina Department of Social Services.
- 3. Plaintiff has the right to provide such protection, assistance, and placement as may be required, and plaintiff should have access to all necessary records.
- 4. A hearing on the merits shall be held within forty days of the filing of this complaint with the court.
- 5. Any further relief the court may deem just and proper.

By: \_\_\_\_\_  
 Name  
 Attorney for the Plaintiff  
 Address  
 Phone  
 Fax

Sworn to before me this

\_\_\_\_\_ day of \_\_\_\_\_, 200 \_\_\_\_

\_\_\_\_\_  
 Notary Public for South Carolina  
 My Commission Expires \_\_\_\_\_

ADULT PROTECTIVE SERVICES ATTORNEY'S GUIDE

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT
	)	
COUNTY OF	)	JUDICIAL CIRCUIT
	)	9-DR- -
South Carolina Department	)	
of Social Services,	)	
	)	
Plaintiff,	)	
	)	<b>EX PARTE ORDER</b>
Vs.	)	(Adult Protective Services)
	)	
Defendant.	)	
	)	
In the interests of:	)	
	)	
A vulnerable adult.	)	
	)	

TRIAL JUDGE:

DATE OF HEARING:

PLAINTIFF'S ATTORNEY:

DEFENDANT'S ATTORNEY:

DEFENDANTS' ATTORNEY:

GUARDIAN AD LITEM:

GAL'S ATTORNEY:

COURT REPORTER:

This matter is before me pursuant to a complaint and affidavit seeking an ex parte order for [CHOOSE ONE] (1) protective custody or (2) emergency services to protect the vulnerable adult.

The above-listed persons were present; also present were \_\_\_\_\_

This court has jurisdiction over the parties and the subject matter.

ADULT PROTECTIVE SERVICES ATTORNEY'S GUIDE

Ex Parte Order

Case Number:

After review of the complaint and supporting affidavit(s), I make the following findings of fact and conclusions of law:

1. [TYPE HERE NAME OF ADULT] is a vulnerable adult as defined in S. C. Code Ann. § 43-35-10 (11) because of [TYPE IN INFORMATION] which substantially impairs him/her from adequately providing for his/her own care and protection and the vulnerable adult and/or guardian ad litem and/or others exercising temporary or permanent control over the vulnerable adult consent to this [CHOOSE ONE] (1) offer of protective services [or] (2) protective custody.
2. There is probable cause to believe that by reason of abuse, neglect, [or] exploitation, there exists imminent danger to this vulnerable adult's life and physical safety because:

(SET OUT FACTS HERE)

**THEREFORE IT IS ORDERED** that:

1. The South Carolina Department of Social Services (SCDSS) shall provide protective services to the adult
- [or]
1. The adult is placed into emergency custody with SCDSS's having the right to provide such protection, assistance, and placement as may be required. SCDSS shall have the right to provide such routine and emergency medical care as may be required and right of access to all necessary records.
  2. SCDSS may request and have assistance from any and all law enforcement officers and agencies, which assistance shall then be provided to aid plaintiff in providing such services.

**IT IS SO ORDERED**

The Honorable  
Presiding Judge

\_\_\_\_\_, South Carolina

\_\_\_\_\_, 200 \_\_\_\_



ADULT PROTECTIVE SERVICES ATTORNEY'S GUIDE

INSPECTION WARRANT

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT
	)	
COUNTY OF	)	JUDICIAL CIRCUIT
	)	9-DR- -
South Carolina Department of Social Services,	)	
	)	
Plaintiff,	)	
	)	<b>INSPECTION WARRANT</b>
Vs.	)	(Adult Protective Services)
	)	
Defendant.	)	
	)	
In the interests of:	)	
	)	
A vulnerable adult.	)	
_____	)	

IT APPEARS by affidavit now before me that the South Carolina Department of Social Services (SCDSS) is charged with investigating reports of alleged vulnerable adults who reportedly are abused, neglected, of exploited.. It further appears that on or about \_\_\_\_\_, the SCDSS received a report alleging as follows:

It appears that in the course of its investigation of the report, SCDSS has been prevented from pursuing and completing its investigation because of the following:

It appears that inspection of the premises at \_\_\_\_\_ and the condition of \_\_\_\_\_ is necessary to determine if the adult is a vulnerable adult in need of protection.

Based on the above, I find that there is probable cause to believe that the adult may be a vulnerable adult [CHOOSE ONE] has been abused, neglected, [or] exploited or is at risk of abuse, neglect, or exploitation.

THEREFORE, IT IS ORDERED that a caseworker from the SCDSS, in the company of a law enforcement officer, shall be permitted to inspect the person of \_\_\_\_\_, to interview this person privately, to inspect the premises at \_\_\_\_\_, to take photographs of the adult for the purpose of determining if the adult is a vulnerable adult in need of protection.

IT IS SO ORDERED.

\_\_\_\_\_

\_\_\_\_\_, South Carolina

\_\_\_\_\_, 200\_\_

The Honorable  
Presiding Judge

ADULT PROTECTIVE SERVICES ATTORNEY'S GUIDE

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT
	)	
COUNTY OF	)	JUDICIAL CIRCUIT
	)	9-DR- -
South Carolina Department of Social Services,	)	
	)	
	)	
Plaintiff,	)	
	)	
Vs.	)	<b>SEVENTY-TWO HOUR ORDER</b>
	)	(Adult Protective Services)
	)	
Defendant.	)	
	)	
In the interests of:	)	
	)	
A vulnerable adult.	)	
_____	)	

TRIAL JUDGE:

DATE OF HEARING:

PLAINTIFF'S ATTORNEY:

DEFENDANT'S ATTORNEY:

DEFENDANTS' ATTORNEY:

GUARDIAN AD LITEM:

GAL'S ATTORNEY:

This matter came before me for a hearing pursuant to a complaint submitted under S. C. Code Ann. § 43-35-55 by which the adult was placed into emergency custody by law enforcement.

The above-listed persons were present; also present were \_\_\_\_\_.  
This court has jurisdiction over the parties and the subject matter.

ADULT PROTECTIVE SERVICES ATTORNEY'S GUIDE

**72-Hour Order - APS**

Case Number:

Based on the evidence presented, a review of the file, and the recommendations of the guardian ad litem, I make the following findings of fact and conclusions of law:

1. This proceeding is proper, and this court has jurisdiction over the parties and the subject matter.
2. The adult was in a life-threatening situation because **[INSERT FACTS TO SUPPORT THIS CONCLUSION]** and there was probable cause for law enforcement to believe that by reason of abuse, neglect, or exploitation, there existed imminent danger to the vulnerable adult's life or physical safety. Law enforcement acted properly in taking protective custody of this adult.

**THEREFORE, IT IS ORDERED** that:

1. A hearing on the merits will be held on \_\_\_\_\_.
2. Plaintiff may request assistance from any and all law enforcement officers and agencies, which assistance shall then be provided to aid plaintiff's in providing such services.
3. SCDCSS shall have the right to provide such routine and emergency medical care as may be required, right of access to all necessary records, and for such other and further relief as the court may deem just and proper for a period of forty (40) days.
4. A guardian ad litem and an attorney shall be appointed for the adult.

**IT IS SO ORDERED.**

\_\_\_\_\_  
 The Honorable  
 Presiding Judge

\_\_\_\_\_, South Carolina

\_\_\_\_\_, 200\_\_

ADULT PROTECTIVE SERVICES ATTORNEY'S GUIDE

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT
	)	
COUNTY OF	)	JUDICIAL CIRCUIT
	)	9-DR- -
South Carolina Department of Social Services,	)	
Plaintiff,	)	
	)	<b>FINAL ORDER</b>
Vs.	)	(Adult Protective Services)
	)	
Defendant.	)	
	)	
In the interests of:	)	
	)	
A vulnerable adult.	)	
_____	)	

TRIAL JUDGE:

DATE OF HEARING:

PLAINTIFF'S ATTORNEY:

DEFENDANT'S ATTORNEY:

DEFENDANTS' ATTORNEY:

GUARDIAN AD LITEM:

GAL'S ATTORNEY:

The matter is before me pursuant to a complaint submitted under S.C. Code Ann. § 43-35-45 (Supp. 1994) wherein the plaintiff sought court-ordered protective services/custody of the vulnerable adult.

The above-listed persons were present; also present were \_\_\_\_\_. This court has jurisdiction over the parties and the subject matter.

Based on the evidence presented, a review of the file, and the recommendations of the guardian ad litem, I make the following findings of fact and conclusions of law:

1. Defendant [TYPE NAME] did abuse, neglect, or exploit [TYPE HERE NAME OF ADULT], a vulnerable adult, [STATE FACTS SUFFICIENT TO UPHOLD FINDING HERE.] [SEE § 43-35-45 (E) FOR NECESSARY FINDINGS FOR PROTECTIVE SERVICES.]
- 2.
- 3.

ADULT PROTECTIVE SERVICES ATTORNEY'S GUIDE

Final Order - APS

Case Number:

4.

5.

6. The guardian ad litem for the vulnerable adult [TYPE HERE NAME OF ADULT] recommended that: \_\_\_\_\_.

THEREFORE, I ORDER that:

1.

2.

3.

4.

5.

IT IS SO ORDERED.

\_\_\_\_\_  
The Honorable  
Presiding Judge

\_\_\_\_\_, South Carolina

\_\_\_\_\_, 200 \_\_\_\_

**APPENDIX J: ADULT PROTECTION COORDINATING COUNCIL MEMBERS****ADULT PROTECTION COORDINATING COUNCIL  
2002 MEMBERS/DESIGNEES**

**Mr. Wilson Dillard, Chairperson**, SC Health Care Association

**Mr. Charles W. Gambrell, Esq., Vice-Chairperson**, Assistant Deputy Attorney General, Office of the Attorney General

Mr. Tim Cash, Director, Division of Adult Services and Casemanagement, Department of Social Services

Honorable Denny W. Neilson, Joint Legislative Committee on Aging

Chief Robin Morse, SC Police Chiefs' Association

Mr. William Bilton, Esq., Executive Director, SC Commission on Prosecution Coordination

Ms. Gloria Prevost, Director, SC Protection & Advocacy for People with Disabilities, Inc.

Mr. Jeff Moore, Executive Director, SC Sheriffs' Association

Ms. Dana Welborn, Executive Dir., Board of Long Term Health Care Administrators, Dep't of Labor, Licensing and Regulation

Mr. Donald W. Hayden, RN, State Board of Nursing, Department of Labor, Licensing and Regulation

Ms. Dale Watson, Coordinator, SC Department of Health and Human Services

Mr. Randy Thomas, Instructor, Criminal Justice Academy, Department of Public Safety

Ms. Karen Price, RN, Director, Bureau of Certification, Department of Health and Environmental Control

Mr. Doug Cochran, J.D., Director, Client Advocacy, SC Department of Mental Health

Lt. Theresa Woods, State Law Enforcement Division

Ms. Kelly Danias, SC Medical Association

Mr. Wayne Phillips, SC Home Care Association

Ms. Jean Rice, RN, SC Department Health and Human Services

Mr. Jon Cook, State Long Term Care Ombudsman, SC Department of Health and Human Services

Mr. Jim R. Hill, Jr., Esq., General Counsel, SC Department of Disabilities and Special Needs

Two Gubernatorial Appointees (Vacant)