

Vulnerable Adults

Definitions and Causes of Action using the
Criminal Code and Vulnerable Adults Act
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Definitions

- Caregiver

- someone (an individual or facility) who has the responsibility to care for another person (i.e. a vulnerable adult)
- this position is created by a family member relationship or when someone accepts the duty to care for another person
 - this duty can arise through an agreement or contract

- Facility

- this includes hospitals, nursing homes, home care providers, residential/nonresidential care centers, or persons/organizations that provide personal care as a part of the medical assistance program
- statutory licensing requirements
 - hospitals: §§ 144.50 to 144.58
 - nursing homes: § 144A.02
 - home care providers: § 144A.46
 - care centers: §§ 245A.01 to 245A.16
 - persons/organizations: §§ 256B.04 (16), 256.0625 (19a), 256B.0627 (16)
- when discussing home care providers or personal care attendants, the term is used when referring to the provider, person, or organization that provides the care (it does not refer to the location where the care is provided; i.e. the patient's home)

- Immediately

- generally means as soon as possible
- there is a time limit of 24 hours from the time of initial knowledge that the incident occurred

- Legal Authority

- this includes a fiduciary obligation (i.e. from a conservatorship), pertinent statutes that may apply, an obligation that may come from a contract entered into, or written consent from a mentally competent person
- this is not an exhaustive list (a court can create other sources)

- Maltreatment

- abuse (defined in § 609.2325)
- neglect (defined in § 609.233)

- financial exploitation (defined in § 609.2335)
- *the VAA references the above three, but defines them very differently*
 - *abuse (defined in § 626.5572 subd. 2)*
 - *neglect (defined in § 626.5572 subd. 17)*
 - *financial exploitation (defined in § 626.5572 subd. 9)*

- Operator

- the person or group whose activities demonstrate that they have control over the administration, authority, and decision-making of or by a facility
- *the VAA has similar terms in their definition*
 - *controlling person (§ 144A.01 (4))*
 - *controlling individual (§ 245A.02 (5A))*

- Person

- an individual, corporation, firm, partnership, or an incorporated or unincorporated association
- also could be any legal, professional, or commercial entity

- Report

- a statement addressing the circumstances surrounding the alleged or suspected maltreatment of a vulnerable adult
- the facts within the report are those the reporter knows at the time the report is made/issued
- *the VAA definition is the same, but the civil definition of maltreatment gives rise to the failure to report crime*

- Therapeutic Conduct

- providing program services, health care, or other personal care services in good faith for the benefit of the vulnerable adult
- potentially provided by:
 - an individual, facility, or employee
 - a person within a facility under the rights, privileges, and responsibilities of state license, certification, or registration
 - a caregiver

- Vulnerable Adult

- any person 18 years of age or older who:
 - is a resident inpatient of a facility OR
 - receives outpatient services OR
 - receives services from a home care provider or from a person/organization that offers personal care assistant services under medical assistance OR
 - has a mental or physical infirmity that prevents them from providing for their own care (food, shelter, clothing, health care) and has the inability to protect themselves from maltreatment

- this is regardless of whether or not the individual receives care of any type in any place

- For the full legal definitions, see Minn. Stat. § 609.232 or the pertinent sections of the Vulnerable Adults Act

Causes of Action (Crimes)

- Criminal Abuse

- required elements
 - the actor is a caregiver
 - the actor must intend to cause physical or mental pain or injury to the vulnerable adult
 - the actor subjects the vulnerable adult to:
 - an aversive or deprivation procedure OR
 - unreasonable confinement OR
 - involuntary seclusion
- exemptions
 - therapeutic conduct
 - specified health care decision
- penalties
 - if the vulnerable adult dies, then up to fifteen years in prison and/or \$30,000 in fines
 - if the vulnerable adult sustains great bodily harm, then up to ten years in prison and/or \$20,000 in fines
 - if the vulnerable adult sustains substantial bodily harm, then up to five years in prison and/or \$10,000 in fines
 - if the vulnerable adult sustains less than substantial bodily harm, then up to one year in prison and/or \$3,000 in fines
- see Minn. Stat. § 609.2325 subd. 1(a)

- Criminal Sexual Conduct (Sexual Abuse)

- elements
 - the actor is a caregiver, facility staff person, or a person providing services in a facility
 - the actor engages in sexual conduct or penetration (but such conduct does not fit other criminal sexual conduct crimes)
 - the victim is a resident, patient, or client of the facility
- exemptions
 - a vulnerable adult may consent, as long as that vulnerable adult is not impaired in judgment or mental capacity by mental or emotional dysfunction or undue influence
 - the vulnerable adult was engaged in the consensual sexual personal relationship with the actor before the care-giving relationship began

- the actor, a caregiver, functions as a personal care attendant
- penalties
 - up to one year in prison and/or \$3,000 in fines
- see Minn. Stat. § 609.2325 subd. 1(b)

- Criminal Neglect

- elements
 - the actor is a caregiver or operator
 - the actor intentionally fails to provide a vulnerable adult with necessary food, clothing, shelter, health care, or supervision (neglect) OR
 - the actor knowingly permits conditions to exist which result in abuse or neglect of the vulnerable adult
 - the victim is a vulnerable adult
- exemptions
 - specified health care decision
 - consensual sexual contact under certain conditions
- penalties
 - up to one year in prison and/or \$3,000 in fines
- see Minn. Stat. § 609.233

**- Criminal Financial Exploitation (of a non-Vulnerable Adult)
(Theft by Swindle, Theft by False Representation, Corporate Theft)**

- elements
 - the actor breaches his/her fiduciary obligation
 - the actor intentionally fails to use financial resources of the vulnerable adult to provide food, clothing, shelter, health care, or therapeutic conduct or supervision for the vulnerable adult
- penalties
 - if the exploitation is greater than \$35,000, then up to twenty years in prison and/or \$100,000 in fines
 - if the exploitation is greater than \$2,500, then up to ten years in prison and/or \$20,000 in fines
 - if the exploitation is greater than \$500, then up to five years in prison and/or \$10,000 in fines
 - if the exploitation is greater than \$200, then up to one year in prison and/or \$3,000
 - if the exploitation is \$200 or less, then up to ninety (90) days in prison and/or \$700 in fines
- see Minn. Stat. § 609.52 subd. 3(1)

- Criminal Financial Exploitation

- elements
 - occurs in the absence of legal authority

- the actor forces, compels, coerces, or entices a vulnerable adult against that person's will to perform services for the profit or advantage of the another person
- penalties
 - up to one year in prison and/or \$3,000 in fines
- see Minn. Stat. § 609.2335 subd. 1(2)(ii) (1995)

- Criminal Failure to Report

- elements
 - the actor is a mandated reporter
 - the actor knows or has reason to believe that a vulnerable adult is being or has been maltreated
 - the actor intentionally fails to make a report OR
 - the actor knowingly provides false, deceptive, or misleading information OR
 - the actor intentionally fails to provide all material circumstances surrounding the suspected incident which the actor knows
- penalties
 - up to 90 days in prison and/or \$700 in fines
- see Minn. Stat. § 609.234 subd. 1

- Criminal Failure to Report

- elements
 - the actor is a mandated reporter
 - the actor knows or has reason to believe that a vulnerable adult is being or has been maltreated
 - the actor intentionally fails to make a report AND
 - the actor knows the maltreatment caused or contributed to the death or great bodily harm of the vulnerable adult AND
 - the actor's failure to report causes or contributes to the death or great bodily harm of the vulnerable adult OR
 - the actor intentionally failed to report to protect his/her own interests
- penalties
 - up to one year in prison and/or \$3,000 in fines
- see Minn. Stat. § 609.234 subd. 2

- Assault in the Fifth Degree

- elements
 - a caregiver commits an act with intent to cause fear in the vulnerable adult of immediate bodily harm or death OR
 - the caregiver intentionally inflicts or attempts to inflict bodily harm upon a vulnerable adult
- penalties
 - up to one year in prison and/or \$3,000 in fines
- see Minn. Stat. § 609.224 subd. 2(c)

- Disorderly Conduct

- elements
 - the actor is a caregiver
 - the actor knows or has reasonable ground to know that their conduct will alarm or tend to alarm, anger, or disturb others or provoke an assault or breach of the peace AND
 - the actor engages in brawling or fighting OR
 - the actor disturbs an assembly or meeting OR
 - the actor engages in offensive, obscene, abusive, boisterous, or noisy conduct OR
 - the actor engages in offensive, obscene, or abusive language tending treasonably to arouse alarm, anger or resentment in others
 - the victim is a vulnerable adult
- penalties
 - up to one year in prison and/or \$3,000 in fines
- see Minn. Stat. § 609.72 subd. 3