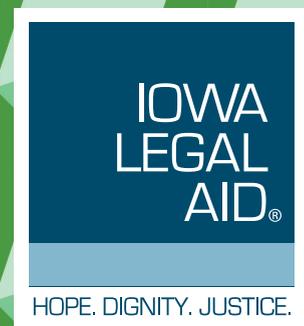


Elder Abuse and Financial Exploitation

Visit our website for more self-help resources:
iowalegalaid.org



Important Notice

Read this information before using any part of this publication.

This booklet is a general summary of the law. It is not meant to completely explain the subjects in this booklet. **It is not a substitute for legal advice.**

The information in this booklet was correct as of the date it was printed (see the back cover). The laws may have changed. **Do not assume that the information in this booklet is currently correct.**

You should see a lawyer to get complete, correct, and up-to-date legal advice. Do not rely on the general information in this booklet for your specific case.

If you need a lawyer but can't afford one, contact Iowa Legal Aid. You may be able to get free legal help. Call or write Iowa Legal Aid using the contact information on the back cover.

As you read this booklet, remember it is not a substitute for legal advice.

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General Information about Elder Abuse

What Is Elder Abuse?

Elder abuse includes the following kinds of abuse against older adults:

- Physical injury, unreasonable confinement, unreasonable punishment, or assault
- Sexual abuse
- Neglect
 - Deprivation of the minimum food, shelter, clothing, supervision, or physical/mental health care or other care necessary to maintain your life or health
- Financial exploitation

What Is Not Elder Abuse?

- The withholding or withdrawing of health care when you are terminally ill and you or your next of kin, attorney-in-fact, or guardian requests the withholding or withdrawing of health care
- The withholding or withdrawing of health care from you when your religion calls for reliance on spiritual means in place of medical treatment
- Good faith assistance by a family or household member or other person in managing your financial affairs at your request or the request of your family member, guardian, or conservator

What Common Difficulties May I Experience While Attempting to Stop Elder Abuse?

You may face many obstacles in stopping abuse, including:

- Not knowing who to contact for help
- Believing you may lose your independence if others find out you were abused or exploited
- Being shamed or not believed by other people
- Not wanting to incriminate or alienate an abusive caretaker, family member, or friend because you are lonely and isolated
- Not having anyone to help you report the abuse because the abuser is the only person in your life

How Do I Identify Elder Abuse?

You should know some of the warning signs of elder abuse so you can identify whether you or someone else is being abused, and in what way(s).

Physical Abuse

- Unexplained signs of injury
- Bruises, burns, welts, broken bones, sprains, or dislocations that cannot be explained
- Confinement or punishment
- Withdrawn, apathetic, or anxious behavior around certain people

Sexual Abuse

- Torn, stained, or bloody undergarments
- Unexplained bleeding around genitals
- Bruising around breasts

Neglect

- Unusual weight loss or malnutrition
- Bed sores or poor skin condition
- Poor personal hygiene or not bathing
- Unsanitary or unsafe living conditions
- Lack of medical care
- Oversedation
- Injuries improperly cared for

Financial Exploitation

- Discrepancies between income and standard of living
- Money or personal items missing without explanation
- Bills are not being paid
- Transferring property or large gifts
- Transferring money from the older lowan's account to another personal account
- Unusual ATM withdrawals
- Unnecessary services, goods, or subscriptions
- Sudden and unexplained changes to living arrangements, such as a younger relative or other person moving in to "care for" the person

Filing a Lawsuit to Stop Elder Abuse

Can I File a Lawsuit to Stop Elder Abuse Against Me?

Iowa's Elder Abuse Law is chapter 235F of the Code of Iowa. It allows you to seek relief from the courts if you are a vulnerable elder who is being abused or exploited. A vulnerable elder is a person 60 or older who is unable to protect himself or herself from elder abuse as a result of age or a mental or physical condition.

You can start the lawsuit by filing a Petition for Relief from Elder Abuse. You should file the petition in the district court of the county where you reside.

The petition form is available at the Court Rules and Forms section of www.iowaCourts.gov, or at your County Clerk of Court. There are no filing fees or service fees to file this petition. You may also contact Iowa Legal Aid or a private attorney to ask for help with filing the petition.

Can I File a Lawsuit to Stop Elder Abuse When It Is Happening to Another Person?

Iowa's Elder Abuse Law also allows a "substitute petitioner" to file a Petition for Relief from Elder Abuse. The substitute petitioner can be a family or household member; guardian or conservator; attorney-in-fact or guardian ad litem; or any other interested person. You can file the Petition for Relief from Elder Abuse on a vulnerable elder's behalf if the vulnerable elder is unable to or unwilling to file.

You should file the petition in the district court of the county where you reside, or where the victim resides.

Who Can I Sue to Stop Elder Abuse?

It depends on what type of abuse is occurring and by whom.

Physical Abuse

With one exception discussed below, you can sue anyone who causes you physical injury, unreasonable confinement, unreasonable punishment, or assault. That could include, but is not limited to, caretakers, family members, neighbors, or friends.

Sexual

You can sue anyone who sexually abuses you.

Neglect

With one exception discussed below, you can sue your caretaker who neglects you. A caretaker is a related or nonrelated person who has some responsibility for your protection, care, or custody as a result of assuming the responsibility voluntarily, by contract, through employment, or by order of the court.

Financial Exploitation

If the abuse is financial exploitation, you can file the petition against your caretaker(s), family members by blood or marriage, and people with whom you have a confidential relationship other than certain banking and insurance relationships. One exception discussed below applies.

Exception

Except in cases of sexual abuse, you cannot file the Petition for Relief from Elder Abuse against caretakers providing care, protection, or services to you in a facility or program. You can only file the petition against caretakers who are not providing services as part of a facility or program. For more information, see the section on abuse in facilities and programs on page 7.

What Is the Difference Between Caretakers in Facilities and Programs and Other Caretakers?

Caretakers in a facility include people providing care, protection, or services in the following places:

- Health care facility
- Hospital
- Residential care facility
- Nursing facility
- Intermediate care facility for persons with mental illness
- Intermediate care facility for persons with an intellectual disability

Caretakers in a program include people providing care, protection, or services in the following places:

- Elder group home
- Assisted living program
- Adult day services

Caretakers outside of a facility or program are:

Related or nonrelated people who have the responsibility for the protection, care, or custody of you as a result of assuming the responsibility voluntarily, by contract, through employment, or by order of the court outside of facilities and programs.

How Do I Draft the Petition for Relief from Elder Abuse?

It is always best to have a lawyer help you with legal matters. If you are unable to get a lawyer to help, you can still file the Petition for Relief from Elder Abuse. You simply need to fill in the required information on the petition form and notarize your signature before filing. You can get the form Petition for Relief from Elder Abuse from your County Clerk of Court, or online in the Court Rules and Forms section of www.iowaCourts.gov.

The petition includes numbered prompts (“paragraphs”) requiring certain information about your case. The information you need to fill in includes whether you are filing as the plaintiff or the substitute petitioner, whether the defendant is 17 years of age or younger, the nature of the alleged abuse, and other things. You should review this entire guide to make sure it is possible to ask the judge for the relief you want based on the facts of your case. You should speak to a lawyer if you are not sure whether you can get what you want from the judge by filing the petition.

It is important to fully answer every numbered paragraph of the petition that is applicable to you as accurately as possible. Some information is extra important. Remember to write your year of birth in the correct paragraph to show that you are over 60 years of age. You should write the defendant's address as accurately as possible so the sheriff can serve the legal papers on the defendant before your hearing. Do not forget to check all of the boxes that apply to your relationship with the abuser, and all of the things you request the judge to do.

How Do I File the Petition for the Lawsuit to Stop Elder Abuse?

Every court in Iowa uses the Electronic Document Management System, or EDMS. You can use EDMS from any computer. You should open an account on EDMS so that you can file documents with the court. You can open an EDMS account and access your account at: <https://www.iowacourts.state.ia.us/Efile/> The Clerk of Court can also help you sign up for EDMS. Every clerk's office has a public computer that you can use to file any court forms you need to file. You can use EDMS to file the petition electronically. You will receive notices about your case through e-mail if you use EDMS to file the petition, so you should check your email regularly.

If you do not have access to a computer or the Internet, or you do not have email or computer skills, you can still file the petition. The Clerk of Court may allow you to file a paper copy. Otherwise, you must ask for an exemption from using EDMS and receive permission to file paper forms instead. Many clerk's offices have a form that you can fill out to ask for permission. If you get permission to use paper files, you will be notified about your case through regular mail.

Process of the Lawsuit to Stop Elder Abuse

What Happens after the Petition Is Filed?

The judge may issue a temporary protective order before the hearing on the petition to protect you from the defendant. The temporary order can prohibit the defendant from having contact with you until the hearing. The judge can even order that the defendant leave your residence if you share it with the abuser. You may request these orders by "checking" certain boxes on the petition.

A court hearing will be scheduled 5 to 15 days after the petition is filed and the defendant is served. You should get the most accurate address for the defendant as possible because the court clerk will instruct the sheriff to serve legal papers for the hearing on the defendant. You will not have to pay upfront for the sheriff to serve these papers.

You must watch closely for the order setting the hearing so you do not miss it. If you do not attend the hearing, the petition may be dismissed.

What Happens at the Hearing on the Petition for Relief from Elder Abuse?

You must tell the judge about the elder abuse and prove it. You should bring witnesses and evidence to the hearing to convince the judge that a permanent protective order is necessary. Your evidence might include witness testimony, financial documents, and pictures of injuries. The burden of proof requires you to prove by a preponderance of the evidence that abuse occurred.

You typically present evidence and witnesses to the judge first. The defendant will have the opportunity to "cross examine" your witnesses. This means the defendant can ask certain questions of the witnesses. After you are done submitting evidence, the defendant has the opportunity to submit evidence. You are able to ask questions of the defense witnesses. You can also ask questions of the defendant.

The judge may or may not decide the case immediately after all of the evidence is heard. If the judge decides immediately, he or she will tell the parties what relief will be ordered. The judge may want to take the case "under advisement." This means that the judge may spend more time thinking about the evidence, and later give a written decision, which will be served upon the parties or their attorneys.

How Can the Judge Help Me?

What Can I Ask the Judge to Do about the Abuse?

At the end of the court hearing, the judge may grant a permanent protective order that will be in effect for up to one year. The judge could enter the following:

- A no-contact protective order against the defendant, ordering the defendant to keep away from you and to stop the abuse, harassment, exploitation, or intimidation
- An order removing the defendant from your home if you share a residence, and requiring a peace officer to accompany the defendant to remove essential personal items
- An order requiring the defendant to return funds or property or prohibiting the transfer of your funds and property
- An order directing the defendant to stop exercising control over your funds, benefits, property, resources, or assets

The protective order may be extended beyond one year if you file for an extension. The filing of a request for an extension **must occur before the order expires**. The number of extensions that can be granted is unlimited.

What Are the Penalties If the Defendant Does Not Follow the Order?

If the defendant violates the protective order, you can bring the violation to the judge's attention by beginning contempt proceedings. The defendant may be jailed and/or fined by the judge if the judge finds that a defendant violated the protective order.

The final protective order must indicate whether the defendant should be taken into custody immediately for violation of the order. Law enforcement may use every reasonable means to enforce the protective order, and may detain the defendant for violating the order if the order allows.

Stopping Financial Exploitation

Can I Use the Elder Abuse Petition to Stop Financial Exploitation?

Much of the elder abuse occurring in Iowa is financial exploitation by family members, which can be more complicated to prove in court than physical abuse. The Elder Abuse Law provides "vulnerable elders" with useful tools to stop financial exploitation.

You can file the Petition for Relief from Elder Abuse against family members who exploit you, so that your property can be returned and the exploitation stopped. The law is helpful because it allows you to sue family members for exploitation, even if the family members are not caretakers.

What Is Financial Exploitation?

Financial exploitation occurs when a person stands in a position of trust or confidence with you and knowingly and by undue influence, deception, coercion, fraud, or extortion obtains control over or otherwise uses or diverts your benefits, property, resources, belongings, or assets.

It is not always easy figuring out whether the definition of financial exploitation fits what is occurring in the real world. You should contact an attorney to find out if what has happened meets the legal requirements for "financial exploitation."

Though it is always best to obtain an attorney for help, four questions can assist you in determining whether or not a certain situation is "financial exploitation."

1) Is the defendant an "exploiter" under the law?

- Does the alleged exploiter "stand in a position of trust or confidence" with you? In other words, is the alleged exploiter:
 - A caretaker?
 - Someone who has some responsibility for your custody, care, or protection, whether family or non-family
 - A family member?
 - Parent, spouse, adult child or other relative by blood or marriage

- In a “confidential relationship” with you, such as an attorney-in-fact, guardian, or conservator?

The alleged exploiter must fit **at least one** of the three relationship categories for it to be possible to file the Petition for Relief from Elder Abuse to stop financial exploitation.

2) Are you a “vulnerable elder”?

- 60 years or older; and
- Unable to protect yourself because of age, mental, or physical condition

You must be over 60, and must be unable to protect yourself because of age, or a physical condition, or a mental condition. As of the time this guide was printed, the Iowa Supreme Court held that age alone could make the victim a “vulnerable elder,” and that a mental and/or physical condition is not necessary for purposes of filing the Petition for Relief from Elder Abuse. See *Petition of Chapman*, 890 N.W.2d 853 (Iowa 2017).

3) How did the exploiter get your money or property?

- Undue influence
 - Taking advantage of a person’s role, relationship, or authority to improperly change or obtain control over your actions or decision making against your best interests
- Deception
- Coercion
 - Communication or conduct which unduly compels you to act or refrain from acting against your will and best interests
- Fraud
- Extortion

The alleged exploiter should have used **at least one** of these means to take property from you for it to be possible to file the Petition for Relief from Elder Abuse to stop financial exploitation.

4) What did the exploiter take from you?

- Benefits?
- Property?
- Resources?
- Belongings?
- Assets?

The property the exploiter took from you must fit **at least one** of these categories for it to be possible to file the Petition for Relief from Elder Abuse to stop financial exploitation. Note that the Petition for Relief from Elder Abuse cannot be used to “affect title to real property.”

What Common Examples of Financial Exploitation Could I Encounter?

- Your agent uses his financial power of attorney document to enrich himself at your expense by:
 - Withdrawing money from your bank account and using it for himself.
 - Opening credit cards in your name and using the cards for himself.
 - Obtaining a loan with your property as collateral, and using the loan proceeds for himself.
- A family member or caretaker uses his or her position of power and influence to coerce you to to “give” away money and property.
- A family member or “caretaker” coerces you into letting him or her live with you, using your water, electricity, food, or other resources without paying any rent, and refuses to leave.
- A family member or caretaker forces you to sign a power of attorney, deed, will, or other document.

Other Help Available for Elder Abuse

Who Should I Contact about Elder Abuse in Iowa?

The Police

In an emergency, you should call 911. The police may also investigate “non-emergency” elder abuse, such as financial exploitation of a vulnerable older Iowan by family members, caretakers, and others that occurred in the past. Financial exploitation of vulnerable Iowans can be a crime and should be reported to the police.

Department of Inspections and Appeals – Abuse in Facilities and Programs

You should report alleged abuse of a “dependent adult” by a caretaker that happens inside of a “program or facility” to the Iowa Department of Inspections and Appeals.

- Iowa Department of Inspections and Appeals: 1-877-686-0027
- Victims and concerned allies might also contact the Iowa Long-Term Care Ombudsman: 1-866-236-1430

Remember, a “program” includes the following:

- Elder group home
- Assisted living program
- Adult day services

A “facility” includes the following:

- Health care facility
- Hospital
- Residential care facility
- Nursing facility
- Intermediate care facility for persons with mental illness
- Intermediate care facility for persons with an intellectual disability

Department of Human Services – Abuse outside Facilities and Programs

You should report alleged abuse of a “dependent adult” by a caretaker that happens outside of a “facility or program” to the Iowa Department of Human Services (DHS). DHS gets involved in abuse cases only when the abuser is a “caretaker” of the dependent adult, or when a dependent adult is engaged in “self neglect.”

- Iowa Department of Human Services: 1-800-362-2178

Iowa Legal Aid

Iowa Legal Aid assists victims of elder abuse.

- To apply for help from Iowa Legal Aid, call: 800-532-1275.
- Iowans age 60 and over call: 800-992-8161 (in Des Moines call 282-8161)
- Apply online at: www.iowalegalaid.org

Area Agencies on Aging

Six Area Agencies on Aging (AAAs) across Iowa provide information and referrals to older adults. Every Iowa county has an Area Agency on Aging serving residents. AAA Elder Rights Specialists may be able to help victims of elder abuse.

- Call: 800-532-3213

Private Attorney

If Iowa Legal Aid cannot help, look for an attorney through “Find-A-Lawyer” on the Iowa State Bar Association website: <http://www.iowafindalawyer.com>. A private attorney may talk with you for only \$25 or less for the first 30 minutes of the consultation.

What If I Want to Report Abuse, But I Am Confused about Who to Call First?

It is easy to get confused about whether you should contact the Department of Inspections and Appeals (DIA) or the Department of Human Services (DHS), hire a lawyer, call Legal Aid, or call the police first. If you are in immediate physical danger, call the police first.

If you are confused about who to contact in a non-emergency situation, make your best guess and contact either the Department of Inspections and Appeals (DIA) or Department of Human Services (DHS) to file a report of alleged dependent adult abuse. The complaint will be passed on to the right place, even if you call the wrong office at first.

You can also call Iowa Legal Aid for guidance and assistance.

IOWA LEGAL AID

1111 9th Street, Suite 230, Des Moines, Iowa 50314-2527

Toll-Free Phone: 1-(800)-532-1275 or call (515)-243-2151

Visit Iowa Legal Aid's Website for More Self-Help Resources:

iowalegalaid.org

Iowa Legal Aid office hours are Monday through Friday from 8:30 a.m. to 4:30 p.m. Offices are closed on holidays. To apply for help, call Iowa Legal Aid during intake hours: 9:00 a.m. to 11:00 a.m. and 1:30 p.m. to 3:30 p.m., except Thursday afternoon. Emergencies are taken during regular office hours. You may also apply online at iowalegalaid.org. You may come to the regional office listed below serving your county, but it is helpful to first call for an appointment.

CEDAR RAPIDS REGIONAL OFFICE

317 7th Avenue SE, Suite 404
Cedar Rapids, Iowa 52401-1407

Serving:

Benton, Iowa, Linn, Marshall, Poweshiek and Tama counties

SOUTHWEST IOWA REGIONAL OFFICE

532 1st Avenue, Suite 300
Council Bluffs, Iowa 51503-0803

Serving:

Adams, Audubon, Carroll, Cass, Crawford, Fremont, Harrison, Mills, Montgomery, Page, Pottawattamie, Ringgold, Shelby and Taylor counties

HELP REGIONAL OFFICE

736 Federal Street, Suite 2309
Davenport, Iowa 52803-5723
(563) 322-6216

Serving:

Scott and Clinton counties

CENTRAL IOWA REGIONAL OFFICE

1111 9th Street, Suite 230
Des Moines, Iowa 50314-2527

Serving:

Adair, Boone, Clarke, Dallas, Greene, Guthrie, Hamilton, Jasper, Madison, Polk, Story, Union, Warren and Webster counties

NORTHEAST IOWA REGIONAL OFFICE

799 Main Street, Suite 280
Dubuque, Iowa 52001-6825

Serving:

Allamakee, Clayton, Delaware, Dubuque, Fayette, Jackson, Jones and Winneshiek counties

IOWA CITY REGIONAL OFFICE

1700 South 1st Avenue, Suite 10
Iowa City, Iowa 52240-1810

Serving:

Cedar, Des Moines, Henry, Johnson, Louisa, Muscatine and Washington counties

NORTH CENTRAL IOWA REGIONAL OFFICE

22 North Georgia, Suite 2
Mason City, Iowa 50401-2947

Serving:

Calhoun, Cerro Gordo, Emmet, Floyd, Franklin, Hancock, Humboldt, Kossuth, Mitchell, Palo Alto, Pocahontas, Winnebago, Worth and Wright counties

SOUTHEAST IOWA REGIONAL OFFICE

112 East 3rd Street
Ottumwa, Iowa 52501-2903

Serving:

Appanoose, Davis, Decatur, Jefferson, Keokuk, Lee, Lucas, Mahaska, Marion, Monroe, Van Buren, Wapello and Wayne counties

NORTHWEST IOWA REGIONAL OFFICE

520 Nebraska Street, Suite 337
Sioux City, Iowa 51101-1315

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Buena Vista, Cherokee, Clay, Dickinson, Ida, Lyon, Monona, O'Brien, Osceola, Plymouth, Sac, Sioux and Woodbury counties

WATERLOO REGIONAL OFFICE

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Waterloo, Iowa 50703-4799

Serving:

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by

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1111 9th Street, Suite 230 Des Moines, Iowa 50314-2527

1-(800)-532-1275

(515) 243-2151

Visit Iowa Legal Aid on the Web at iowalegalaid.org

Interpreters Provided ● Se proporcionan intérpretes ● Pružamo prevodioca ● 提供翻译 ● 提供翻譯 ● يو عطا مترجمين

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