

CHAPTER 235F

ELDER ABUSE

Referred to in §13.2, §562A.27A, §562B.25A, §602.6306, §664A.1, §664A.2, §664A.5, §664A.7, §915.23, §915.50A

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235F.1 Definitions.

As used in [this chapter](#), unless the context otherwise requires:

1. “Attorney in fact” means an agent under a power of attorney pursuant to [chapter 633B](#) or an attorney in fact under a durable power of attorney for health care pursuant to [chapter 144B](#).

2. “Caretaker” means a related or nonrelated person who has the responsibility for the protection, care, or custody of a vulnerable elder as a result of assuming the responsibility voluntarily, by contract, through employment, or by order of the court. “Caretaker” does not include a caretaker as defined in [section 235E.1](#).

3. “Coercion” means communication or conduct which unduly compels a vulnerable elder to act or refrain from acting against the vulnerable elder’s will and against the vulnerable elder’s best interests.

4. “Conservator” means the same as defined in [section 633.3](#).

5. a. “Elder abuse” means any of the following:

(1) Physical injury to, or injury which is at a variance with the history given of the injury, or unreasonable confinement, unreasonable punishment, or assault of a vulnerable elder by a person not otherwise governed by [chapter 235E](#).

(2) The commission of a sexual offense under [chapter 709](#) or [section 726.2](#) with or against a vulnerable elder.

(3) Neglect which is the deprivation of the minimum food, shelter, clothing, supervision, or physical or mental health care, or other care necessary to maintain a vulnerable elder’s life or health by a caretaker.

(4) Financial exploitation.

b. “Elder abuse” does not include any of the following:

(1) Circumstances in which the vulnerable elder declines medical treatment if the vulnerable elder holds a belief or is an adherent of a religion whose tenets and practices call for reliance on spiritual means in place of reliance on medical treatment.

(2) Circumstances in which the vulnerable elder’s caretaker, acting in accordance with the vulnerable elder’s stated or implied consent, declines medical treatment if the vulnerable elder holds a belief or is an adherent of a religion whose tenets and practices call for reliance on spiritual means in place of reliance on medical treatment.

(3) The withholding or withdrawing of health care from a vulnerable elder who is terminally ill in the opinion of a licensed physician, when the withholding or withdrawing of health care is done at the request of the vulnerable elder or at the request of the vulnerable elder’s next of kin, attorney in fact, or guardian pursuant to the applicable procedures under [chapter 125](#), [144A](#), [144B](#), [222](#), [229](#), or [633](#).

(4) Good faith assistance by a family or household member or other person in managing the financial affairs of a vulnerable elder at the request of the vulnerable elder or at the request of a family member, guardian, or conservator of the vulnerable elder.

6. “Family or household member” means a spouse, a person cohabiting with the vulnerable elder, a parent, or a person related to the vulnerable elder by consanguinity or affinity, but does not include children of the vulnerable elder who are less than eighteen years of age.

7. “Fiduciary” means a person or entity with the legal responsibility to make decisions on

behalf of and for the benefit of a vulnerable elder and to act in good faith and with fairness. “Fiduciary” includes but is not limited to an attorney in fact, a guardian, or a conservator.

8. “Financial exploitation” relative to a vulnerable elder means when a person stands in a position of trust or confidence with the vulnerable elder and knowingly and by undue influence, deception, coercion, fraud, or extortion, obtains control over or otherwise uses or diverts the benefits, property, resources, belongings, or assets of the vulnerable elder.

9. “Guardian” means the same as defined in [section 633.3](#).

10. “Peace officer” means the same as defined in [section 801.4](#).

11. “Plaintiff” means a vulnerable elder who files a petition under this chapter and includes a substitute petitioner who files a petition on behalf of a vulnerable elder under [this chapter](#).

12. “Present danger of elder abuse” means a situation in which the defendant has recently threatened the vulnerable elder with initial or additional elder abuse, or the potential exists for misappropriation, misuse, or removal of the funds, benefits, property, resources, belongings, or assets of the vulnerable elder combined with reasonable grounds to believe that elder abuse is likely to occur.

13. “Pro se” means a person proceeding on the person’s own behalf without legal representation.

14. “Stands in a position of trust or confidence” means the person has any of the following relationships relative to the vulnerable elder:

a. Is a parent, spouse, adult child, or other relative by consanguinity or affinity of the vulnerable elder.

b. Is a caretaker for the vulnerable elder.

c. Is a person who is in a confidential relationship with the vulnerable elder. For the purposes of this paragraph “c”, a confidential relationship does not include a legal, fiduciary, or ordinary commercial or transactional relationship the vulnerable elder may have with a bank incorporated under the provisions of any state or federal law, any savings and loan association or savings bank incorporated under the provisions of any state or federal law, any credit union organized under the provisions of any state or federal law, any attorney licensed to practice law in this state, or any agent, agency, or company regulated under [chapter 505, 508, 515, or 543B](#).

15. “Substitute petitioner” means a family or household member, guardian, conservator, attorney in fact, or guardian ad litem for a vulnerable elder, or other interested person who files a petition under [this chapter](#).

16. “Undue influence” means taking advantage of a person’s role, relationship, or authority to improperly change or obtain control over the actions or decision making of a vulnerable elder against the vulnerable elder’s best interests.

17. “Vulnerable elder” means a person sixty years of age or older who is unable to protect himself or herself from elder abuse as a result of age or a mental or physical condition.

[2014 Acts, ch 1107, §1; 2015 Acts, ch 30, §81](#)

Referred to in [§135B.7, §598.7, §598.16, §611.23](#)

Subsection 12 amended

235F.2 Commencement of actions — waiver to juvenile court.

1. A vulnerable elder or a substitute petitioner may seek relief from elder abuse by filing a verified petition in the district court. Venue shall lie where either party resides. The petition shall state all of the following:

a. The name of the vulnerable elder and the name and address of the vulnerable elder’s attorney, if any. If the vulnerable elder is proceeding pro se, the petition shall state a mailing address for the vulnerable elder.

b. The name of the substitute petitioner if the petition is being filed on behalf of a vulnerable elder, and the name and address of the attorney of the substitute petitioner. If the substitute petitioner is proceeding pro se, the petition shall state a mailing address for the substitute petitioner.

c. The name and address, if known, of the defendant.

d. The relationship of the vulnerable elder to the defendant.

- e. The nature of the alleged elder abuse.
 - f. The name and age of any other individual whose welfare may be affected.
 - g. The desired relief, including a request for temporary or emergency orders.
2. A temporary or emergency order may be based on a showing of a prima facie case of elder abuse. If the factual basis for the alleged elder abuse is contested, the court shall issue a protective order based upon a finding of elder abuse by a preponderance of the evidence.
3. a. The filing fee and court costs for an order for protection and in a contempt action resulting from an order granted under [this chapter](#) or [chapter 664A](#) shall be waived for the plaintiff.
- b. The clerk of court, the sheriff of any county in this state, and other law enforcement and corrections officers shall perform their duties relating to service of process without charge to the plaintiff.
- c. When a permanent order for protection is entered by the court, the court may direct the defendant to pay to the clerk of court the fees for the filing of the petition and reasonable costs of service of process if the court determines the defendant has the ability to pay the plaintiff's fees and costs.
- d. In lieu of personal service of an order for protection issued pursuant to [this section](#), the sheriff of any county in the state, and any other law enforcement and corrections officers may serve a defendant with a short-form notification pursuant to [section 664A.4A](#).
4. If the person against whom relief from elder abuse is being sought is seventeen years of age or younger, the district court shall waive its jurisdiction over the action to the juvenile court.
5. If a substitute petitioner files a petition under [this section](#) on behalf of a vulnerable elder, the vulnerable elder shall retain the right to all of the following:
- a. To contact and retain counsel.
 - b. To have access to personal records.
 - c. To file objections to the protective order.
 - d. To request a hearing on the petition.
 - e. To present evidence and cross-examine witnesses at the hearing.

[2014 Acts, ch 1107, §2](#)
 Referred to in [§235F.7, §598.16](#)

235F.3 Plaintiffs proceeding pro se — provision of forms and assistance.

1. By July 1, 2015, the judicial branch shall prescribe standard forms to be used by vulnerable elders or substitute petitioners seeking protective orders by proceeding pro se in actions under [this chapter](#). Beginning July 1, 2015, the standard forms prescribed by the judicial branch shall be the exclusive forms used by plaintiffs proceeding pro se under [this chapter](#). The judicial branch shall distribute the forms to the clerks of the district courts.

2. The clerk of the district court shall furnish the required forms to persons seeking protective orders through pro se proceedings pursuant to [this chapter](#).

[2014 Acts, ch 1107, §3](#)

235F.4 Appointment of guardian ad litem.

The court may on its own motion or on the motion of a party appoint a guardian ad litem for a vulnerable elder if justice requires. The vulnerable elder's attorney shall not also serve as the guardian ad litem.

[2014 Acts, ch 1107, §4](#)

235F.5 Hearings — temporary orders.

1. Not less than five and not more than fifteen days after commencing a proceeding and upon notice to the other party, a hearing shall be held at which the plaintiff must prove the allegation of elder abuse by a preponderance of the evidence.

2. The court may enter any temporary order it deems necessary to protect the vulnerable elder from elder abuse prior to the hearing, upon good cause shown in an ex parte proceeding. Present danger of elder abuse constitutes good cause for purposes of [this subsection](#).

3. If a hearing is continued, the court may make or extend any temporary order under [subsection 2](#) that it deems necessary.

4. Upon application of a party, the court shall issue subpoenas requiring attendance and testimony of witnesses and production of papers.

5. The court shall advise the defendant of a right to be represented by counsel of the defendant's choosing and to have a continuance to secure counsel.

6. At the hearing, the allegation of elder abuse may be proven as required under [subsection 1](#) by but is not limited to the testimony from any of the following:

- a. The vulnerable elder.
- b. The guardian, conservator, attorney in fact, or guardian ad litem of the vulnerable elder.
- c. Witnesses to the elder abuse.
- d. Adult protective services workers who have conducted an investigation.

7. The court shall exercise its discretion in a manner that protects the vulnerable elder from traumatic confrontation with the defendant.

8. Hearings shall be recorded.

[2014 Acts, ch 1107, §5; 2015 Acts, ch 30, §82](#)

Referred to in [§235E.7](#)

Subsection 6, unnumbered paragraph 1 amended

235F.6 Disposition.

1. Upon a finding that the defendant has engaged in elder abuse, the court may, if requested by the plaintiff, order any of the following:

a. That the defendant be required to move from the residence of the vulnerable elder if both the vulnerable elder and the defendant are titleholders or contract holders of record of the real property, are named as tenants in the rental agreement concerning the use and occupancy of the dwelling unit, are living in the same residence, or are married to each other.

b. That the defendant provide suitable alternative housing for the vulnerable elder.

c. That a peace officer accompany the party who is leaving or has left the party's residence to remove essential personal effects of the party.

d. That the defendant be restrained from abusing, harassing, intimidating, molesting, interfering with, or menacing the vulnerable elder, or attempting to abuse, harass, intimidate, molest, interfere with, or menace the vulnerable elder.

e. That the defendant be restrained from entering or attempting to enter on any premises when it appears to the court that such restraint is necessary to prevent the defendant from abusing, harassing, intimidating, molesting, interfering with, or menacing the vulnerable elder.

f. That the defendant be restrained from exercising any powers on behalf of the vulnerable elder through a court-appointed guardian, conservator, or guardian ad litem, an attorney in fact, or another third party.

g. In addition to the relief provided in [subsection 2](#), other relief that the court considers necessary to provide for the safety and welfare of the vulnerable elder.

2. If the court finds that the vulnerable elder has been the victim of financial exploitation, the court may order the relief the court considers necessary to prevent or remedy the financial exploitation, including but not limited to any of the following:

a. Directing the defendant to refrain from exercising control over the funds, benefits, property, resources, belongings, or assets of the vulnerable elder.

b. Requiring the defendant to return custody or control of the funds, benefits, property, resources, belongings, or assets to the vulnerable elder.

c. Requiring the defendant to follow the instructions of the guardian, conservator, or attorney in fact of the vulnerable elder.

d. Prohibiting the defendant from transferring the funds, benefits, property, resources, belongings, or assets of the vulnerable elder to any person other than the vulnerable elder.

3. The court shall not issue an order under [this section](#) that does any of the following:

a. Allows any person other than the vulnerable elder to assume responsibility for the funds, benefits, property, resources, belongings, or assets of the vulnerable elder.

b. Grants relief that is more appropriately obtained in a protective proceeding filed under

chapter 633 including but not limited to giving control and management of the funds, benefits, property, resources, belongings, or assets of the vulnerable elder to a guardian, conservator, or attorney in fact for any purpose other than the relief granted under subsection 2.

4. The court may approve a consent agreement between the parties entered into to bring about the cessation of elder abuse. A consent agreement approved under this section shall not contain any of the following:

a. A provision that prohibits any party to the action from contacting or cooperating with any government agency including the department of human services, the department of inspections and appeals, the department on aging, the department of justice, law enforcement, and the office of long-term care ombudsman; a licensing or regulatory agency that has jurisdiction over any license or certification held by the defendant; a protection and advocacy agency recognized in section 135C.2; or the defendant's current employer if the defendant's professional responsibilities include contact with vulnerable elders, dependent adults, or minors, if the party contacting or cooperating has a good-faith belief that the information is relevant to the duties or responsibilities of the entity.

b. A provision that prohibits any party to the action from filing a complaint with or reporting a violation of law to any government agency including the department of human services, the department of inspections and appeals, the department on aging, the department of justice, law enforcement, and the office of long-term care ombudsman; a licensing or regulatory agency that has jurisdiction over any license or certification held by the defendant; a protection and advocacy agency recognized in section 135C.2; or the defendant's current employer.

c. A provision that requires any party to the action to withdraw a complaint filed with or a violation reported to any government agency including the department of human services, the department of inspections and appeals, the department on aging, the department of justice, law enforcement, and the office of long-term care ombudsman; a licensing or regulatory agency that has jurisdiction over any license or certification held by the defendant; a protection and advocacy agency recognized in section 135C.2; or the defendant's current employer.

5. A protective order or approved consent agreement shall be for a fixed period of time not to exceed one year. The court may amend or extend its order or a consent agreement at any time upon a petition filed by either party and after notice and hearing. The court may extend the order if the court, after hearing at which the defendant has the opportunity to be heard, finds that the defendant continues to pose a threat to the safety of the vulnerable elder, persons residing with the vulnerable elder, or members of the vulnerable elder's immediate family, or continues to present a risk of financial exploitation of the vulnerable elder. The number of extensions that may be granted by the court is not limited.

6. The order shall state whether a person is to be taken into custody by a peace officer for a violation of the terms stated in the order.

7. The court may order that the defendant pay the attorney fees and court costs of the vulnerable elder or substitute petitioner.

8. An order or approved consent agreement under this section shall not affect title to real property.

9. A copy of any order or approved consent agreement shall be issued to the plaintiff, the defendant, the county sheriff of the county in which the order or consent decree is initially entered, and the twenty-four-hour dispatcher for the county sheriff. Any subsequent amendment or revocation of an order or consent agreement shall be forwarded by the clerk to all individuals previously notified.

10. The clerk shall notify the county sheriff and the twenty-four-hour dispatcher for the county sheriff in writing so that the county sheriff and the county sheriff's dispatcher receive written notice within six hours of filing the order, approved consent agreement, amendment, or revocation. The clerk may fulfill this requirement by sending the notice by facsimile or other electronic transmission which reproduces the notice in writing within six hours of filing the order.

11. The county sheriff's dispatcher shall notify all law enforcement agencies having

jurisdiction over the matter and the twenty-four-hour dispatcher for the law enforcement agencies upon notification by the clerk.

2014 Acts, ch 1107, §6; 2015 Acts, ch 29, §37; 2015 Acts, ch 30, §83

Referred to in §235F.7, §331.424, §598.16, §598.42, §664A.4

Subsection 3 amended

Subsection 4, unnumbered paragraph 1 amended

235F.7 Emergency orders.

1. When the court is unavailable from the close of business at the end of the day or week to the resumption of business at the beginning of the day or week, a petition may be filed before a district judge, or district associate judge designated by the chief judge of the judicial district, who may grant emergency relief in accordance with [section 235F.6, subsection 1 or 2](#), if the district judge or district associate judge deems it necessary to protect the vulnerable elder from elder abuse, upon good cause shown in an ex parte proceeding. Present danger of elder abuse constitutes good cause for purposes of [this subsection](#).

2. An emergency order issued under [subsection 1](#) shall expire seventy-two hours after issuance. When the order expires, the plaintiff may seek a temporary order from the court pursuant to [section 235F.5](#).

3. A petition filed and emergency order issued under [this section](#) and any documentation in support of the petition and order shall be immediately certified to the court. The certification shall commence a proceeding for purposes of [section 235F.2](#).

2014 Acts, ch 1107, §7

Referred to in §598.16

235F.8 Procedure.

1. A proceeding under [this chapter](#) shall be held in accordance with the rules of civil procedure, except as otherwise set forth in [this chapter](#) and in [chapter 664A](#), and is in addition to any other civil or criminal remedy.

2. The plaintiff's right to relief under [this chapter](#) is not affected by the vulnerable elder leaving the vulnerable elder's home to avoid elder abuse.

2014 Acts, ch 1107, §8; 2015 Acts, ch 30, §84

Subsection 2 amended