

Elder Abuse Protective Orders & Elder Abuse Prevention Strategies

---

ANGELABROUGHTON-ROMAIN & BARB EDMONDSON  
 LEGAL HOTLINE FOR OLDER IOWANS  
[ABROUGHTONROMAIN@IOWALAW.ORG](mailto:ABROUGHTONROMAIN@IOWALAW.ORG)  
[BEDMONDSON@IOWALAW.ORG](mailto:BEDMONDSON@IOWALAW.ORG)

1

---

---

---

---

---

---

---

---

LEGAL HOTLINE FOR OLDER IOWANS

- Iowa Legal Aid's statewide intake unit for callers 60+
- Advice & referrals (including to our 10 regional offices and volunteer lawyer programs) on a broad range of civil legal topics
- About 3,000 calls/year
- Current staffing: 4 attorneys, 3 part-time intake paralegals, an AmeriCorps members, several volunteer attorneys
- For intakes: 1-800-992-8161 (9 a.m. – 4 p.m.) or [www.iowalegalaid.org](http://www.iowalegalaid.org) (24/7)

2

---

---

---

---

---

---

---

---

**Iowa Code 235F**  
 Effective date: July 1, 2014

- Created a new remedy for elder abuse
- Primary relief: protective order
- Similar procedure to Chapter 236 domestic violence protective orders
- Fills gaps left by Chapters 235B and 235E

3

---

---

---

---

---

---

---

---

Pre-2014 Options to Address Elder Abuse

Chapter 235B Department of Human Services	Chapter 235E Department of Inspection & Appeals
<ul style="list-style-type: none"> <li>• <b>Prohibits “dependent adult abuse” by “caretakers”</b></li> <li>◦ <i>Dependent adult:</i> (1) 18 or over; (2) unable to protect her own interests or unable to perform or obtain services necessary to meet essential human needs; (3) because of physical or mental condition that requires assistance</li> <li>◦ <i>Caretaker:</i> person responsible for dependent adult, whether by choice, contract, employment or court-appointment</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Prohibits “dependent adult abuse” by “caretakers” in facilities and programs</b></li> <li>◦ <i>Dependent adult:</i> (1) 18 or over; (2) ability to perform activities of daily living OR to provide for one’s own care or protection is impaired</li> <li>◦ <i>Caretaker:</i> staff member of facility or program who provides care or services to a dependent adult</li> <li>◦ May be an appropriate referral to <i>State Long-Term Care Ombudsman’s Office</i></li> </ul>

4

---

---

---

---

---

---

---

---

---

---

Common Coverage Gaps under 235B & 235E

- **EXAMPLE:** What if a family member, who is not a “caretaker,” financially exploited a vulnerable Iowan?
  - Most common type of elder abuse call we receive at the Hotline
- **EXAMPLE:** What if a caretaker abused a vulnerable older Iowan at home, but the older Iowan does not technically require assistance with “essential human needs”?
- Before 235F, remedies primarily were limited to tort actions, referral to law enforcement

5

---

---

---

---

---

---

---

---

---

---

Definition of Elder Abuse Under 235F

- 1) Physical injury, unreasonable confinement, unreasonable punishment or assault of a vulnerable elder
- 2) Sexual abuse
- 3) Neglect: Deprivation of the minimum food, shelter, clothing, supervision, or physical/mental healthcare or other care necessary to maintain elder’s life or health *by a caretaker*
- 4) Financial exploitation

× Note that the definition of “abuse” under 235B and 235E is not identical, but similar to 235F

6

---

---

---

---

---

---

---

---

---

---

### Who is Protected Under 235F?

- **Vulnerable elder**
  - 60 years or older, and
  - Unable to protect himself or herself because of *age, mental or physical condition* or because of a *personal circumstance which results in an increased risk of harm to the person.* Iowa Code §235F.1(17) (2019)\* (amended)
- First Iowa Supreme Court case interpreting this language – Age alone can meet definition of “vulnerability” in some cases
  - *Chapman v. Wilkinson*, 890 N.W.2d 853 (Iowa 2017)

7

---

---

---

---

---

---

---

---

### Chapman – A Closer Look

Vulnerable Elder	Elder Abuse
<ul style="list-style-type: none"> <li>• Age 60 at time of property transfer; 69 during the appeal</li> <li>• “It’s just worrisome. I’m tired of having these eviction notices. And I’m just too old for it.”</li> <li>• Unemployed</li> <li>• <i>Pro Se</i> litigant before Iowa Supreme Court</li> </ul>	<ul style="list-style-type: none"> <li>• Posting of eviction notices</li> <li>• Demand for \$35,000</li> <li>• Defendant viewed as owner of remainder interest</li> </ul>

8

---

---

---

---

---

---

---

---

### Post-Chapman Cases

- **Riley v. Riley**, 808 N.W.2d 202 (Iowa 2017)
  - Depression following his wife’s death was a mental condition that made plaintiff a “vulnerable elder.” Court upheld finding of elder abuse based on financial exploitation. Court considered medical evidence of mental state.
- **Struve v. Struve**, 930 N.W.2d 368 (Iowa 2019)
  - Disagreed with *Chapman*’s “age alone approach” and rejected the idea that the statute could cover garden-variety legal claims involving persons >60.
  - Elder abuse claim failed because plaintiffs did not prove “vulnerable elder” element. Family dispute about valuable farm land. Court considered medical evidence of mental state.

9

---

---

---

---

---

---

---

---

What Relationship is Necessary Under 235F? – Sexual Abuse

• **Sexual Abuse:**

The commission of a sexual offense under chapter 709 or section 726.2 with or against a vulnerable elder.

- Victim: "vulnerable elder"
- Abuser: literally anyone
  - Theoretically, that includes even caretakers in facilities and programs and a random stranger on the street

10

---

---

---

---

---

---

---

---

What Relationship Is Necessary Under 235F? – Physical Abuse

• **Physical Abuse:**

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 (Dependent Adult Abuse in Facilities and Programs)

- Victim: "vulnerable elder"
- Abuser: anyone who is not a caretaker in a facility or program
  - Theoretically, that could be a complete stranger on the street

11

---

---

---

---

---

---

---

---

What Relationship Is Necessary Under 235F? – Neglect

• **Neglect:**

Deprivation of the minimum food, shelter, clothing, supervision, or physical/mental healthcare or other care necessary to maintain a vulnerable elder's life or health by a caretaker.

- Victim: "vulnerable elder"
- Abuser: caretaker(s) – But recall that 235F defines caretakers to not include workers in "facilities and programs"

12

---

---

---

---

---

---

---

---

What Relationship is Necessary Under 235F – Financial Exploitation?

• **Financial Exploitation:**

- *When a person stands in a position of trust or confidence with a 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.*
  - » **Family, (non-facility) caretakers, including friends who accept responsibility, and fiduciaries (agents under powers of attorney, guardians, conservators)**

13

---

---

---

---

---

---

---

---

---

---

Elder Abuse Petition – 235F

- Can be filed by an alleged victim or third parties with knowledge of alleged elder abuse (“substitute petitioner”)
  - Petitioner is not required to have an attorney
  - If a substitute petitioner files on behalf of an alleged victim, the alleged victim still has rights to present evidence and have an attorney

14

---

---

---

---

---

---

---

---

---

---

**Petition Excerpt**

[www.iowacourts.gov](http://www.iowacourts.gov) -> "Court Rules and Forms" -> "Elder Abuse Form"

No filing or service fee

Hearing within 5 - 15 days

Rule 235 – Form 1 Petition for Relief from Elder Abuse, continued

Relationship of Elder and Defendant(s) at the time of the alleged elder abuse:

Check all that apply

A. <input type="checkbox"/> Married	F. <input type="checkbox"/> Relative or household member
B. <input type="checkbox"/> Separated	G. <input type="checkbox"/> Caretaker
C. <input type="checkbox"/> Divorced	H. <input type="checkbox"/> Fiduciary
D. <input type="checkbox"/> Living together	I. <input type="checkbox"/> Other: _____
E. <input type="checkbox"/> Intimate relationship	

Nature of the alleged elder abuse:

Check all that apply

A. <input type="checkbox"/> Physical injury	D. <input type="checkbox"/> Financial exploitation
B. <input type="checkbox"/> Sexual abuse	E. <input type="checkbox"/> Recently threatened
C. <input type="checkbox"/> Neglect	F. <input type="checkbox"/> Other: _____

Describe the alleged abuse or threats of abuse inflicted on the Elder. Identify who inflicted the alleged abuse or threats of abuse, and please include how the Elder was allegedly hurt or threatened, where it happened, when it happened, and the likelihood that the alleged abuse or threats will occur in the future.

15

---

---

---

---

---

---

---

---

---

---

### What Can the Court Do in a 235F Order?

- If elder abuse is proven, the court may:
  - Enter a protective order
    - Ex: The alleged abuser must cease contact with the vulnerable elder
  - Order defendant to move from the residence (if residence is shared with the vulnerable elder) or assist alleged victim in obtaining alternative housing (police escorts)
    - Ex: Alternative to eviction
  - Restrain defendant from exercising any power over the vulnerable elder
    - Ex: Defendant ordered to not use a power of attorney document
  - Order the defendant to return property of the vulnerable elder

16

---

---

---

---

---

---

---

---

### Legal Needs After 235F Order

- Referral to law enforcement
- Address decision-making options
  - Powers of attorney, guardianship, conservatorship?
- Report to credit-reporting agencies
  - Identity theft remedies
- Claims for damages
- Actions affecting real estate
  - A court cannot order that a real estate transaction be voided via an elder abuse petition

17

---

---

---

---

---

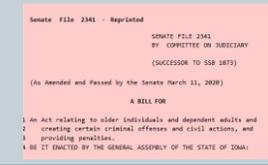
---

---

---

### Proposed New Iowa Elder Abuse Criminal Statute

- Senate File 2341 – Introduced February 2020
- Would create criminal penalties for specific types of elder abuse (assault)
- Did not pass



18

---

---

---

---

---

---

---

---

## Elder Abuse Case Examples (Criminal)

19

---

---

---

---

---

---

---

---

### State of Iowa v. Rodney Lee “Joe” Bean

- **Elder Abuse**
  - Financial Exploitation
  - Dependent Adult Abuse Causing Death (Reckless and Intentional)
- Other charges:
  - Involuntary Manslaughter
  - Theft in the First Degree
  - Neglect of a Dependent Person

20

---

---

---

---

---

---

---

---

### State v. Rodney Lee “Joe” Bean

- **Joye Gentzler and Bill Robuck**
  - Brother and sister
  - Joye had a son, but they were not close
  - Private, independent people
  - Joye had worked as a nurse’s aide in a nursing home for many years
  - Bill and Joye farmed their family farm (~76 acres)
- Neighbors to Stanley Bean and his family—one of his sons is Rodney Lee “Joe” Bean

21

---

---

---

---

---

---

---

---

State v. Rodney Lee "Joe" Bean

- Financial Exploitation
- Sale of the Farm
- POAs/Wills
- Control of Social Security
- Control of Finances
- Promissory Note

22

---

---

---

---

---

---

---

---

State v. Rodney Lee "Joe" Bean

- Dependent Adult Abuse
- No medical care
- No prescriptions
- Broken Arm
- Broken Ribs
- Dehydration and Malnutrition
- In 14 months, Joye went from a weight of 134 pounds to 69 pounds at death

23

---

---

---

---

---

---

---

---

State v. Rodney Lee "Joe" Bean

- Issues:
- **"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. Iowa Code section 235B.2(1)
- **"Dependent Adult Abuse"** Any of the following as a result of the **willful or negligent acts or omissions of a caretaker:**
  - Physical injury
  - Financial exploitation
  - Deprivation of necessary food, clothing or shelter (Iowa Code section 235B.2(5))

24

---

---

---

---

---

---

---

---

State v. Rodney Lee "Joe" Bean

- Issues:
- Cause of death
- Proving causation
- Proving financial exploitation

25

---

---

---

---

---

---

---

---

State v. Rodney Lee "Joe" Bean

- "Acts or Omissions"
- Law generally does not criminalize a "failure to act" or "omission"
- Distinguishing between criminal acts and "good intentions" or "best efforts."
  
- The Court of Appeals found that Joe affirmatively did the following:
  - Moved Joye to his home
  - Took over her finances
  - Joye did not own a car or know how to drive; the Beans lived in a rural area, many miles from the nearest town
  - Joye was completely dependent on the Beans, and Joe "recklessly neglected to provide sufficient medical care or food to keep her alive."

26

---

---

---

---

---

---

---

---

State v. Rodney Lee "Joe" Bean

- Heroes in the case:
  - Neighbors
  - Social workers
  - Local medical professionals (doctor, nurse practitioner)
  - County medical examiner investigator
  - Funeral home director

27

---

---

---

---

---

---

---

---

State v. Rodney Lee "Joe" Bean

- Outcome: Guilty on all counts
- Joe: 17 years in prison (paroled in summer of 2019)
- Lori: 5 years, all suspended

28

---

---

---

---

---

---

---

---

**Elder Abuse Prevention Strategies**

THREE EXAMPLES

29

---

---

---

---

---

---

---

---

Elder Abuse Prevention Strategies

- Combat isolation through connection to community resources

<https://www.iowaaging.gov/area-agencies-aging/find-your-local-area-agency-aging>

Find Your Local Area Agency on Aging

To connect with the Area Agency on Aging that serves you, click on your county of residence on the map:



30

---

---

---

---

---

---

---

---

### Elder Abuse Prevention Strategies

- **Sound legal planning – *proceed with caution***
  - General & Health Care Powers of Attorney
    - <https://www.iowalegalaid.org/resource/iowa-uniform-power-of-attorney-act-1?ref=NEo27>
    - <https://www.iowalegalaid.org/resource/what-is-a-durable-health-care-power-of-attom?ref=OogvY>
  - Social Security Representative Payee
    - <https://www.ssa.gov/payee/>
  - Guardianship/Conservatorship
    - <https://www.iowalegalaid.org/files/A3ED30CF-AFFE-7431-9310-0D521E4312AF/attachments/8BC4B829-4B28-4075-AA06-8DA2225094BF/2020-guardianship-and-conservatorship.pdf>

31

---

---

---

---

---

---

---

---

---

---

### Elder Abuse Prevention Strategies

- **Limit solicitation calls (emails, written offers) to the extent possible**
  - <https://www.donotcall.gov/>



32

---

---

---

---

---

---

---

---

---

---

### Questions?



33

---

---

---

---

---

---

---

---

---

---