

4-23-2017

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Recommended Citation

Natasa Glisic (2017) "Expanding the Slayer Rule in Florida: Why Elder Abuse Should Trigger Disinheritance," *Barry Law Review*: Vol. 22 : Iss. 1 , Article 6.

Available at: <https://lawpublications.barry.edu/barryrev/vol22/iss1/6>

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EXPANDING THE SLAYER RULE IN FLORIDA: WHY ELDER ABUSE SHOULD TRIGGER DISINHERITANCE

Natasa Glisic*

INTRODUCTION

Dorothy Berry could not have imagined that she would die due to the neglect inflicted upon her by her two children. The seventy-seven-year-old woman suffering from dementia was found at her house where she languished for weeks, covered in ulcers and bedsores.¹ She was malnourished and dehydrated.² The house, which she shared with her two adult children, was infested with cockroaches, gnats, flies, and smelled of urine and feces.³ Dorothy slept on a wooden bench and soiled pillows.⁴ Dorothy was brought to the hospital by an ambulance when she became unresponsive.⁵ She subsequently died in the hospital a couple of weeks later.⁶

Ramona Atkinson was lying deceased on her sofa when her neighbors found her.⁷ The evidence at the house showed that she was dragged back and forth to the bathroom and her wheelchair was missing.⁸ Her son and primary caregiver, Herbert Atkinson, was nowhere in sight for a significant amount of time prior to her death.⁹ However, Mr. Atkinson continued to use his mother's credit cards, bank accounts, and car, all with knowledge that she had passed away.¹⁰ Mr. Atkinson admitted that his mother passed away six months earlier.¹¹

An undefined eighty-one-year-old woman, living with her son and daughter-in-law, lost consciousness and woke up in a pool of her own blood, after not being taken to the hospital for treatment.¹² She claimed she fell, but deputies observed that her injuries were consistent with abuse and not a fall.¹³

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1. J.D. Gallop, *Merritt Island Siblings Fight Charges in Mom's Death*, FL TODAY (Sept. 10, 2015, 3:03 PM), <http://www.floridatoday.com/story/news/crime/2015/09/09/siblings-fighting-manslaughter-neglect-charges-moms-death/71940974/>.

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. Eryn Dion, *Elderly Abuse on Rise in Bay County*, PANAMA CITY NEWS HERALD (Jan. 3, 2016, 10:00 PM), <http://www.newsherald.com/article/20160103/news/160109951>.

8. *Id.*

9. *Id.*

10. *Id.*

11. *See id.*

12. *Florida Man and Goateed Wife Accused of Abusing Elder*, FIRST COAST NEWS (Oct. 13, 2015, 8:24 PM), <http://www.firstcoastnews.com/story/news/crime/2015/10/13/florida-man-and-goateed-wife-arrested-elder-abuse/73902144/>.

13. *Id.*

This is just a glimpse of elder abuse that is happening throughout Florida. There are many more cases that are not reported by the media. We do not know whether Dorothy or Ramona had their last will and testament prepared. If they had not, their abusers, as their children, are entitled to inherit their property according to the Florida intestacy laws. Even if they had a last will and testament, it might not have been updated for decades, leaving all of their property to their children. At the time of creating a will, a person does not know if their child or a family member will be abusive or neglectful later on in life. Once elders reach the age when they are vulnerable and dependent on their adult children, spouses, or other family members, it becomes much harder to change their last will and testament, the way their bank account is titled, or the way their real property is held. Considering the size of the elder population in Florida, the legislature must act now and not allow the selfish family members who abuse elders to profit from their wrongdoing.

This comment explains the impact that expanding the Slayer Rule will have on reducing the elder-abuse epidemic by supplementing the current elder-abuse statutes. Society and the legislature agree that a person should not benefit from his wrongdoing,¹⁴ so there is no reason to not expand the Slayer Rule in Florida at this time. Elder-abuse perpetrators are continuously reaping the benefits of their wrongdoing by inheriting from those they have abused.

Part I of this comment begins by looking at the current elder population and elder abuse types and trends. Part II examines Florida's elder-abuse statutes and the reasons they are not very effective. Part III glances at the history of the Slayer Rule and Florida's implementation of it. Part IV assesses the states that have already expanded their Slayer Rule to cover elder abuse; and Part V proposes a plan to expand Florida's Slayer Rule.

I. ELDER ABUSE AS AN EPIDEMIC

The elder population is growing as a whole throughout the entire United States, and Florida has the greatest proportion of the elder population.¹⁵ Out of Florida's eighteen million residents, nineteen percent are residents over the age of sixty-five.¹⁶ By 2050, the elder population in the United States is expected to increase by 135% and will constitute twenty percent of our total population.¹⁷ This means that the legislature will need to implement additional laws to effectively protect the interests of the elderly and deter elder abuse. Since Florida has a large proportion of the elderly, it is imperative that the Florida legislature tailor its laws to not only protect the interests of the elderly but also to deter those who could abuse the elderly.

14. See Kent Greenawalt, *Punishment*, ENCYCLOPEDIA.COM (Jun. 25, 2016), <http://www.encyclopedia.com/topic/Punishment.aspx>.

15. Emily Brandon, *65 and Older Population Soars*, U.S. NEWS & WORLD REP. (Jan. 9, 2012, 9:15 AM), <http://money.usnews.com/money/retirement/articles/2012/01/09/65-and-older-population-soars>.

16. *FL Quick Facts from the U.S. Census Bureau*, U.S. CENSUS BUREAU, <http://www.census.gov/quickfacts/table/PST045215/12,00> (last visited Jun. 15, 2016).

17. Joshua M. Wiener & Jane Tilly, *Population Ageing in the United States of America: Implication for Public Programmes*, 31 INT. J. OF EPIDEMIOLOGY 776, 776 (2002).

Elder abuse generally encompasses physical abuse, emotional abuse, sexual abuse, financial exploitation, and neglect.¹⁸ Physical abuse is generally defined as bodily harm or mental distress, which is the result of violent conduct.¹⁹ Emotional or psychological abuse involves name-calling, verbal abuse, ignoring the elder's wishes, and threatening the elder with placement in a nursing home.²⁰ Sexual abuse is self-explanatory, and may include unwanted touching, rape, sodomy, nudity, and pornography.²¹ Financial abuse may include undue influence in amending wills and trusts, theft, or conversion of the elder's valued possessions.²² Neglect, also known as passive abuse, is associated with withholding medication, medical treatment, food, and personal care.²³

About eleven percent of the elderly are abused.²⁴ In instances of abuse, nine out of ten times a family member is the abuser.²⁵ A victim's family member is a person related by blood or marriage.²⁶ Many cases of elder abuse are unreported because family members are usually perpetrators of elder abuse.²⁷ Only one out of twenty-three cases of elder abuse are reported to authorities.²⁸ "A senior who is being abused, neglected or exploited is generally totally reliant on their caregiver, usually family, despite the fact that family members are overwhelmingly more likely to be abusing them."²⁹

While elder abuse has been on the rise throughout United States, a recent study showed an alarming increase of elder abuse in one of Florida's counties.³⁰ During a twelve-month period, Bay County Adult Protective Services (APS) received 865 reports of maltreatment.³¹ APS can only collect evidence and submit the evidence to the police.³² The majority of the reports are dropped, as there is not enough evidence to be submitted for criminal charges.³³ Even when there is enough evidence of elder abuse to be submitted to the police, it does not guarantee a criminal conviction.³⁴ The elderly are left in the hands of their abusers.

18. See FLA. STAT. § 825.102 (2015).

19. See LAWRENCE A. FROLIK & ALISON MCCHRISTAL BARNES, *ELDER LAW: CASES AND MATERIALS* 505 (5th ed. 2011).

20. *Id.*

21. *Id.* at 506.

22. *Id.* at 505.

23. *Id.*

24. *Elder Abuse Fact Sheet*, (March 30, 2010), <http://www.iue.edu/area9/Elder-Abuse-Fact-Sheet.pdf>.

25. National Center on Elder Abuse, *National Elder Abuse Incidence Study: Final Report* (Sept. 1998), http://aoa.gov/AoA_Programs/Elder_Rights/Elder_Abuse/docs/AbuseReport_Full.pdf.

26. Lisa K. Kisabeth, *Opinion of the Connecticut Probate Court: Article: Slayer Statutes and Elder Abuse: Good Intentions, Right Results? Does Michigan's Amended Slayer Statute Do Enough to Protect the Elderly?*, 26 QUINN. PROB. L. J. 373, 378 (2013).

27. Dion, *supra* note 7.

28. *Research Resources*, U.S. DEP'T. OF JUSTICE, <http://www.justice.gov/elderjustice/research/> (last visited Jan. 13, 2016).

29. Dion, *supra* note 7.

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

The Perpetrator

Who are the perpetrators abusing elderly individuals? A 2014 study by the National Center of Elder Abuse found that sixty-six percent of perpetrators were the victim's children or spouse.³⁵ Sometimes a victim's children and family members become abusive due to the stress associated with taking care of an elderly family member who moved in.³⁶ Lifestyle adjustments, financial burdens, and overcrowded living quarters all contribute to elder abuse.³⁷

Caregiver stress is one of the more significant risk factors for elder abuse.³⁸ Caregivers, who are in many instances the victim's family, are usually not skilled in caring for an elder or in balancing the needs of the elderly person with their own needs.³⁹ This is particularly true when the elderly victim is reliant on his or her elderly spouse who is dealing with his or her own mental or physical anguish.⁴⁰ The imbalance leads to frustration, anger, and eventually, abusive behavior.⁴¹ This pattern is elevated when the caregiver is financially dependent on the elderly victim.⁴² The caregiver may become resentful and ultimately resort to elder abuse.⁴³

The Victim

The elderly are easy targets because they are too trusting of others.⁴⁴ An average victim of elder abuse is a seventy-seven-year-old female who is neglected by a spouse or a family member.⁴⁵ The elderly are manipulated to think that they will be worse off if the abuser leaves.⁴⁶ In some instances, they believe that the abuse is normal because they feel burdensome to the caretaker/abuser.⁴⁷ Moreover, if the abuser is the victim's child, the victim may feel too embarrassed to report the abuse because it will seem as if the victim has brought up her child a certain way, in a way that the abuse is deserved.⁴⁸

35. See 23 JENNIFER LEIBSON, *The Victims and Some Common Characteristics*, in KENTUCKY ELDER LAW § 15:2 (2015).

36. See *Elder Abuse & Neglect in Search of Solutions*, AMERICAN PSYCHOLOGICAL ASS'N, at 8–9 (2012), <http://www.apa.org/pi/aging/resources/guides/elder-abuse.pdf> [hereinafter *In Search of Solutions*].

37. *Id.* at 8.

38. *See id.*

39. *See id.* at 9–10.

40. *Spouse Most Likely Source of Elder Abuse*, HEALTHDAY (last updated Feb. 25, 2005), <http://consumer.healthday.com/senior-citizen-information-31/misc-aging-news-10/spouse-most-likely-source-of-elder-abuse-523924.html>.

41. *See id.*

42. *See In Search of Solutions*, *supra* note 36, at 10.

43. *See id.*

44. *See* LEIBSON, *supra* note 35.

45. *See id.*

46. Lisa C. Dumond, *The Undeserving Heir: Domestic Elder Abuser's Right to Inherit*, 23 QUINNIPIAC PROB. L.J. 214, 218 (2010).

47. *See id.*

48. *See id.*

As there are a variety of factors that lead up to elder abuse, all states have implemented some form of an elder-abuse statute at the current time, providing criminal or civil penalties for the perpetrators.⁴⁹

II. ELDER ABUSE LAW IN FLORIDA

It can be said that elder abuse is a relatively new concept that has been developing over the past couple of decades.⁵⁰ It has not been as fully developed as child-abuse and spousal-abuse statutes.⁵¹ While elder-abuse statutes have been undeveloped throughout the nation, Florida was one of the few states that addressed the issue in 1973 due to the significant population of elderly residents in the state.⁵² The Adult Protective Services Act was passed at that time and provided a private cause of action for vulnerable adults who have been abused, neglected, or exploited.⁵³ Next, Florida attempted to deter crimes against the elderly by imposing higher penalties on offenders by passing a law in 1989.⁵⁴ Finally, Florida enacted a mandatory reporting statute and criminalized elder abuse in 1995.⁵⁵

Current Elder Abuse Statutes

Florida provides a civil remedy through the Adult Protective Services Act for those adults who have been abused.⁵⁶ The civil remedy allows for actual and punitive damages for abuse, neglect or exploitation of a vulnerable adult.⁵⁷ “Vulnerable adult” is defined as

a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging.⁵⁸

The injured party or his or her representative, including the estate’s personal representative, may bring the civil action.⁵⁹ A potential problem with this statute is

49. *See id.*

50. *See* PATRICIA J. BROWNELL, FAMILY CRIMES AGAINST ELDERLY 20 (1st ed.1998).

51. *See id.*

52. *See* Geralyn M. Passaro, *Claims of Exploitation of the Elderly in the Sale of Financial Products*, 80 FLA. BAR J. 9, 81 (2006), <http://www.floridabar.org/DIVCOM/JN/JNJournal01.nsf/c0d731e03de9828d852574580042ae7a/af5024c8b038b78d852571f5005c2c10>.

53. *See id.*

54. *See* Act effective Oct. 1, 1989, ch. 89-327, 1989 Fla. Laws 2086 (codified as FLA. STAT. § 784.08) (an act relating to crimes against the elderly).

55. *See* Act effective July 1, 1995, ch. 95-158, 1995 Fla. Laws 1587 (codified as FLA. STAT. §§ 825.102 (relating to the abuse, neglect, and exploitation of elderly persons and disabled adults), 415.1034 (mandating report of abuse, neglect, or exploitation of vulnerable adults)).

56. *See* FLA. STAT. § 415.1111 (2015).

57. *See id.*

58. *Id.* § 415.102(28).

59. *Id.* § 415.1111.

that only the victim and personal representative can bring the action. What happens when the elderly victim is afraid to bring the action because he or she is dependent on the abuser? What happens when the personal representative is the one who was abusing the decedent? While the Adult Protective Services Act was the right step towards expanding the protections Florida provided to the elderly over forty years ago, Florida must broaden its laws to punish the abusers by expanding its Slayer Rule to conform with the current times.

Florida's elder-abuse statute, which covers physical and emotional abuse along with neglect, imposes criminal penalties on the abusers ranging from first- to third-degree penalties.⁶⁰ The statute provides protection for elderly persons or disabled adults.⁶¹ Florida defines an elderly person as

a person 60 years of age or older who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunctioning, to the extent that the ability of the person to provide adequately for the person's own care or protection is impaired.⁶²

It is implied from the Florida Statutes that an "elderly person" is also a "vulnerable adult."

Committing physical and psychological injuries, or actively encouraging a third party to commit those injuries, is sufficient for the statute to be triggered, and the person would be charged with a third-degree felony.⁶³ An abuser can also be charged with a first-degree felony if an aggravated battery occurs.⁶⁴ An aggravated battery may be willful torture, malicious punishment, unlawful caging, or knowledgeable abuse that causes great bodily harm or permanent disability.⁶⁵ Neglect of an elderly person may be a third-degree or second-degree felony.⁶⁶ Neglect consists of omission of care, supervision, and services necessary for one's life.⁶⁷ If neglect causes great bodily harm or permanent injury, it is a punishable second-degree felony.⁶⁸ However, if neglect does not cause great bodily harm or permanent disability, the punishment is lowered to a third-degree felony.⁶⁹

Sexual abuse is covered separately and is titled: "Lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person."⁷⁰ If the abuser commits a lewd or lascivious battery, it is a punishable felony of the second-degree; if the abuser molests an elderly person or commits a lewd or lascivious

60. See *id.* § 825.

61. See *generally id.* (addressing abuse, neglect, lewd acts, exploitation; punishment depends on the category).

62. See FLA. STAT. § 825.101(4) (2015).

63. See *id.* § 825.102(1).

64. See *id.* § 825.102(2)(c).

65. See *id.* § 825.102(2).

66. See *id.* §§ 825.102(3)(b)–(c).

67. See *id.* § 825.102(3)(a)(2).

68. See FLA. STAT. § 825.102(3)(b).

69. See *id.* § 825.102(3)(c).

70. See *id.* § 825.1025.

exhibition in the presence of an elderly or disabled person, then the felony is reduced to a third-degree felony.⁷¹

Finally, financial abuse is addressed and is titled: “Exploitation of an elderly person or disabled adult.”⁷² For the statute to apply, the abuser must be a person of trust and confidence with the elderly person or disabled adult or must have “a business relationship with the elderly person or disabled adult.”⁷³ The felonies are based on the amount the abuser exploited.⁷⁴ Where the funds, assets, or property involved in the exploitation is valued at \$50,000.00 or more, the abuser is charged with a first-degree felony.⁷⁵ If the value is between \$10,000.00 and \$50,000.00, the offense is punishable as a second-degree felony, and if the value is less than \$10,000.00 then the offense is punishable as a third-degree felony.⁷⁶

In addition to the above, Florida has a mandatory-reporting statute. Its extensive list applies to health professionals, state employees, and bank employees.⁷⁷ The statute provides that anyone “who knows, or has reasonable cause to suspect, that a vulnerable adult has been or is being abused, neglected, or exploited shall immediately report such knowledge or suspicion to the central abuse hotline.”⁷⁸ Failure to report abuse of a vulnerable adult amounts to a misdemeanor in the second-degree.⁷⁹ The mandatory reporting has not provided satisfactory results. Less than two percent of physicians reported elder abuse; the majority of surveyed physicians cited lack of understanding of reporting mechanisms as a reason for not reporting.⁸⁰

Difficulty of Enforcement

In analyzing the aforementioned elder-abuse statutes, it cannot be said that the statutes actively deter elder abuse. Elders are often isolated and shunned from society, making the mandatory-reporting laws useless, especially when a family member is the one who is abusing the elder.⁸¹ Criminal and civil sanctions are helpful when elder abuse is actually reported. However, in many instances the abused elder fails to report and prosecute elder abuse by family members.⁸² Once again, the wrongdoer goes unpunished.

Elder adults fear retaliation and guilt if they report their abusers.⁸³ They may also feel unsure of themselves and may fear that others will doubt that the abuse actually

71. *See id.* §§ 825.1025(2)(b), (3)(b).

72. *See id.* § 825.103.

73. *See id.* §§ 825.103(1)(a)(1), (2).

74. *See* FLA. STAT. § 825.103(3)(a).

75. *See id.* § 825.103(3)(b).

76. *See id.* §§ 825.103 (3)(b)–(c).

77. *See id.* § 415.1034(1)(a).

78. *See id.* § 415.1034(1)(a).

79. *See id.* § 415.111(1).

80. *See Who Is Required to Report?*, STAN. SCH. MED., <http://elderabuse.stanford.edu/reporting/who.html> (last visited Feb. 28, 2016).

81. *See* Travis Hunt, Comment, *Disincentivizing Elder Abuse Through Disinheritance: Revamping California Probate Code §259 and Using It as a Model*, 2 BYU L. REV. 445, 453 (2014).

82. *See id.*

83. *See id.*

happened, due to memory and other health issues.⁸⁴ Even those who do seek protection and report their abuse “often die before they can be interviewed by law enforcement” or attend a trial “because abused elders have a higher mortality rate.”⁸⁵

Those cases that do make it to law enforcement or trial are difficult to prove.⁸⁶ Judges, attorneys, and jurors doubt the capabilities of seniors as credible witnesses.⁸⁷ Evidence of abuse may be covered up and blamed on the aging process.⁸⁸ In a 2005 California case, a ninety-year-old woman was neglected to the point of her death by her live-in son.⁸⁹ She was found with bedsores and her bed sheets contained traces of blood, feces, and vomit.⁹⁰ Ultimately, the jury was hung and could not determine whether the son knowingly ignored his mother’s health, or whether he was simply overwhelmed with taking care of her.⁹¹ A study involving a mock jury found that the jurors doubted a victim’s account of the abuse when the victim had a cognitive impairment.⁹² Cognitive impairment could be hard to avoid at an old age.⁹³ Even if the victim does not have a cognitive impairment, the elderly are generally perceived as having some form of a memory loss that comes with age.⁹⁴

While criminal punishment and civil penalties upon perpetrators appear to be satisfying remedies in theory, they are not very helpful to the elderly in actual practice because elder abuse is underreported. In order to successfully target and deter the perpetrators of elder abuse, Florida also needs to implement an elder-abuse statute mirroring its current “Slayer Rule” statute.

III. ORIGINAL SLAYER RULE

The Slayer Rule dates back to common law and prohibits the killer from benefiting from the decedent’s estate.⁹⁵ New York introduced this concept when its Court of Appeals barred a grandson from inheriting his grandfather’s estate, as he was the one who poisoned him.⁹⁶ The Slayer Rule was enacted as a statute in forty-eight states; the remaining states use the common law in enacting the Slayer Rule.⁹⁷ Although the Slayer Rule varies state by state, all propose “principles of equity,

84. *See id.*

85. *See* Priscilla Vargas Wrosch, *What More Can Congress Do About the Elder Abuse Epidemic?*, 23 TEMP. POL. & CIV. RTS. L. REV. 1, 7 (2013).

86. *See id.* at 8.

87. *See id.*

88. *See id.* at 10.

89. *See id.* at 10–11.

90. *Id.* at 11.

91. Wrosch, *supra* note 85, at 11.

92. *See* Jonathan M. Golding & Nesa E. Wasarhaley, *How Is Elder Abuse Perceived in the Courtroom?*, NAT’L L. RESOURCE CTR., http://nlrc.acl.gov/Legal_Issues/Elder_Abuse/docs/golding_art_elder_abuse_courtroom.pdf (last visited Mar. 3, 2016).

93. *See* Jane E. Brody, *When Lapses Are Not Just Signs of Aging*, N.Y. TIMES, Sept. 6, 2011, at D7.

94. *See* *Perception Trumps Reality When It Comes to Aging and Memory*, HUFFINGTON POST (Oct. 16, 2013, 2:15 PM), http://www.huffingtonpost.com/2013/10/16/aging-and-memory-loss_n_4108810.html.

95. *See* Jennifer Piel, *Expanding Slayer Statutes to Elder Abuse*, 43 J. AM. ACAD. PSYCH. L. 369, 369 (2015).

96. *See* Kisabeth, *supra* note 26, at 377.

97. *See id.*

morality, rational property transfer, and the public policy consideration of deterrence.”⁹⁸

Florida adopted the Uniform Probate Code’s version of the Slayer Rule in 1982, and provides that

an individual who feloniously and intentionally kills the decedent forfeits all benefits under this Article with respect to the decedent’s estate, including an intestate share, and elective share, an omitted spouse’s or child’s share, a homestead allowance, exempt property, and a family allowance. If the decedent died intestate, the decedent’s intestate estate passes as if the killer disclaimed his [or her] intestate share.⁹⁹

A criminal conviction will automatically apply the Slayer Rule to the decedent’s estate.¹⁰⁰ However, the Slayer Rule can also be applied absent a criminal conviction—the court may use the preponderance of evidence standard to determine whether the individual committed the killing.¹⁰¹ The process is relatively simple. An interested party files a petition to determine beneficiaries and asks the court to disinherit the beneficiary who killed the decedent.¹⁰² An “interested party” is statutorily defined as “any person who may reasonably be expected to be affected by the outcome of the particular proceeding involved. In any proceeding affecting the estate or the rights of a beneficiary in the estate, the personal representative of the estate shall be deemed to be an interested person.”¹⁰³ There is no right to a jury trial for this type of adversary proceeding.¹⁰⁴ Once the court determines the beneficiary killed the decedent by using a clear and convincing evidence standard,¹⁰⁵ the beneficiary’s interests in the estate or litigation automatically ceases and the killer is presumed to have predeceased the decedent for the purposes of probate proceedings.¹⁰⁶

It is important to note that the Slayer Rule also applies to joint tenancies and tenancies by the entirety.¹⁰⁷ There, if the killer is found to have killed the joint tenant, the killer’s interest is severed and the decedent’s property passes to other legal heirs; the killer is not entitled to the right of survivorship.¹⁰⁸ Florida’s legislative intent to prevent killers from benefiting from their wrongdoing also encompasses life insurance policies where the killer is a named beneficiary.¹⁰⁹

98. See *id.* at 378.

99. See FLA. STAT. § 732.802(1) (2015); *Felonious and Intentional Slaying*, 1-1 FLA. PROBATE CODE MANUAL § 1.11 (2015).

100. See FLA. STAT. § 732.802(5).

101. *Carter v. Carter*, 88 So. 2d 153, 159 (Fla. 1956).

102. See *Felonious and Intentional Slaying*, *supra* note 99.

103. See FLA. STAT. § 731.201(23).

104. See *In re Estate of Howard*, 542 So. 2d 395, 399 (Fla. 1st DCA 1989).

105. See *Carter*, 88 So. 2d at 159.

106. See *Felonious and Intentional Slaying*, *supra* note 99.

107. See FLA. STAT. § 732.802(2).

108. See *id.*

109. See *Felonious and Intentional Slaying*, *supra* note 99.

IV. EXPANSION OF THE SLAYER RULE TO ELDER ABUSE

As elder abuse is on the rise, the states have realized that something more needs to be done to combat it. There are currently eight states that have expanded their Slayer Rule statutes to include perpetrators of elder abuse.¹¹⁰ Just like the original Slayer Rule disinherits the heir or beneficiary who has killed the decedent, the elder-abuse Slayer Rule disinherits the heir or beneficiary who has abused the decedent.¹¹¹ The public policy behind expanding the Slayer Rule is to prevent perpetrators of elder abuse from profiting from their wrongdoing.¹¹² The perpetrator will be deemed as to have predeceased the decedent or to have disclaimed his or her interest in the decedent's estate.¹¹³ As previously mentioned, family members are usually the perpetrators of elder abuse and the expansion of the Slayer Rule will work effectively to penalize abusers. The expansion is effective because family members are the ones to inherit under a state's intestacy laws and in many instances are beneficiaries under the decedent's last will and testament.¹¹⁴ Some perpetrators are motivated to commit financial abuse in order to purposefully modify the victim's estate plan.¹¹⁵ Others purposefully engage in abuse in order to speed up the victim's death so they can inherit.¹¹⁶ As the Slayer Rule is applied to cases of elder abuse, the wrongdoer is accordingly punished while the future abuser is deterred from committing elder abuse.

Out of the eight states that expanded the Slayer Rule to cover elder abuse, six require a criminal conviction of elder abuse and two use the clear and convincing standard as evidence of abuse.¹¹⁷ By requiring a criminal conviction, there is a disincentive to litigate because of the high standard—proof beyond reasonable doubt.¹¹⁸ While states that require criminal convictions do so because of frivolous lawsuits, there are other alternatives to distinguish between frivolous and non-frivolous elder-abuse claims.¹¹⁹ Many judges have their own court rules regarding elder-abuse claims, which helps with extinguishing frivolous lawsuits.¹²⁰

Criminal Conviction Optional

California was the pioneer in expanding its Slayer Rule.¹²¹ Its abuse statute does not require a criminal conviction and it covers physical abuse, neglect, false

110. See Piel, *supra* note 95, at 372.

111. *Id.* at 369.

112. *Id.* at 370.

113. *Id.*

114. *Id.*

115. *Id.*

116. Deborah Yetter, *Preying on Seniors: Relatives Abuse, but Still Inherit*, COURIER J. (Dec. 20, 2010), <http://www.estateofdenial.com/2010/12/20/ky-paper-features-preying-on-seniors-series/>.

117. See Piel, *supra* note 95, at 371 (AZ, CA, IL, KY, MD, MI, OR, WA cover elder abuse; CA & WA require clear and convincing evidence—remaining six require criminal conviction).

118. See Hunt, *supra* note 81, at 464–65.

119. See *id.* at 465.

120. See *id.*

121. See Kisabeth, *supra* note 26, at 379.

imprisonment, or financial abuse of an elder or a dependent adult.¹²² Despite California's attempt to create a statute that covers all forms of elder abuse and sets a lower burden of proof, its statute is nonetheless faulty. If a person is found to be guilty of elder abuse in California, the only civil ramification is the reduction of his or her share of inheritance.¹²³ The abuser's share is reduced by the amount of the judgment entered against him or her for the harm caused by elder abuse.¹²⁴ In California, the abuser is not completely disinherited.

Washington also does not require a criminal conviction as it uses a clear and convincing evidence standard that can be presented in the probate court.¹²⁵ However, Washington's statute is faulty because it only covers financial elder abuse.¹²⁶ Financial abuse entails using an elder's assets without his or her consent and for the benefit of others.¹²⁷ While financial abuse is common, other forms of abuse should also be included in disinheritance statutes. The abuser may act to speed up the victim's death or may abuse in order to alter the victim's estate plan; Washington's statute would not be applicable to him or her.

Criminal Conviction Required

Arizona and Maryland are the two states that require a criminal conviction and only target elder financial abuse.¹²⁸ The two states differ because Maryland does not have a separate Slayer Statute—it is incorporated in its criminal statute and prevents inheritance by a convicted elder abuser.¹²⁹ On the other hand, Arizona's law specifically targets family members who financially abuse an elderly person, and it reads as follows:

A person who is in a position of trust and confidence to a vulnerable adult shall use the vulnerable adult's assets solely for the benefit of the vulnerable adult and not for the benefit of the person who is in the position of trust and confidence to the vulnerable adult or the person's relatives.¹³⁰

Illinois, Kentucky, Michigan, and Oregon apply their Slayer Rules to physical abuse and neglect only, but all four require a criminal conviction.¹³¹

122. See Piel, *supra* note 95, at 371, 373.

123. See Hunt, *supra* note 81, at 469.

124. See *id.*

125. See Piel, *supra* note 95, at 371.

126. See *id.* at 370.

127. See Hunt, *supra* note 81, at 470.

128. See *id.* at 447.

129. See Kisabeth, *supra* note 26, at 378.

130. Piel, *supra* note 95, at 372.

131. See *id.* at 371.

Recent Developments

The states that have already expanded their Slayer Rule to elder abuse took action after their residents were victims of appalling elder-abuse cases. Washington, Kentucky, and Michigan were the most recent states to expand the Slayer Rule.

In 2009, Washington made its Slayer Rule applicable to elder abuse.¹³² The new law was passed after two brothers withheld food and water from their eighty-six-year-old father because they were afraid of spending all of his money and ending up without their inheritance.¹³³ As a result of their greediness and lack of compassion, their father was found with his feet rotting and leaving a bloody trail as he walked.¹³⁴ The doctors suggested the neglected father might have to have his feet amputated, but he ended up dying two weeks later.¹³⁵

In Kentucky, it was the death of eighty-one-year-old Harriet Robbins that spurred the state legislators to expand its Slayer Rule.¹³⁶ The eighty-one-year-old retired church bookkeeper, suffering from dementia, was found in filthy conditions with no heat or power.¹³⁷ John Jackson Robbins Jr., her son and caregiver, pled guilty to charges of neglect, abuse, and stealing money from his mother.¹³⁸ He was sentenced to prison, but he became a wealthy man when he inherited the \$1.1 million estate after his mother's death.¹³⁹ After that happened, Democratic representative Joni Jenkins filed a bill that banned those convicted of abusing, neglecting, or exploiting an elderly adult from receiving any inheritance or insurance proceeds they were entitled to.¹⁴⁰ Kentucky Governor Beshear officially signed the bill into law on March 23, 2011.¹⁴¹

Michigan began heavily investigating elder abuse in 2005 when its elder-abuse statistics drastically rose.¹⁴² Michigan's Governor Snyder signed the state's modified Slayer Rule statute into law in June 2012.¹⁴³ The modified law was part of a package of proposed Michigan laws targeting elder abuse.¹⁴⁴

Washington and Kentucky both had appalling cases of elder abuse, which prompted the legislature to expand the Slayer Rule in order to decrease instances of elder abuse.¹⁴⁵ Florida also has terrifying cases of elder abuse, such as the cases of Dorothy Berry, Ramona Atkinson, and the unidentified eighty-one-year-old woman abused by her son and his wife. There are many more cases of elder abuse in Florida

132. See Kisabeth, *supra* note 26, at 374.

133. See *id.* at 375.

134. See *id.*

135. See *id.*

136. See Yetter, *supra* note 116.

137. See *id.*

138. See *id.*

139. See *id.*

140. See *id.*

141. Thomas McAdam, *Kentucky Governor Signs Laws to Protect Seniors from Abuse*, EXAMINER (Mar. 23, 2011), <http://www.examiner.com/article/kentucky-governor-signs-laws-to-protect-seniors-from-abuse>.

142. See Kisabeth, *supra* note 26, at 387.

143. Doug Chalgian, *Elder Abuse Bill Passed and Pending*, CHALGIAN & TRIPP (Dec. 19, 2012), <https://mielderlaw.com/elder-abuse-bills-passed-and-pending/>.

144. *Id.*

145. See Yetter, *supra* note 116; see also Kisabeth, *supra* note 26, at 374

that do not reach the media. Yet Florida is failing to protect the elderly and adequately punish those who abuse them. Florida takes a chance by allowing abusers to inherit from those they abuse.

For example, a recent case in Florida involved a man who tried to electrocute his father in order to inherit the father's estate.¹⁴⁶ Knudsen was an unemployed man living with his father.¹⁴⁷ When his father told him to find a job, they got into a heated argument; Knudsen's plan to kill his father and inherit his father's estate was unsuccessful.¹⁴⁸ Knudsen was charged with attempted first-degree murder, aggravated abuse of an elderly person, and aggravated battery of a person aged sixty-five or older.¹⁴⁹ Under the current Florida law, Knudsen is still able to inherit if his father does not remove him from the will or if his father dies intestate.¹⁵⁰ If Knudsen's father has a memory problem or is afraid of his son, he may not remove Knudsen from his will. It just does not seem fair to not have laws to punish the wrongdoers when frail elders are not able to address the issue themselves.

Florida's Inheritance Statute

States that have not expanded the Slayer Rule are likely relying on the elderly to make their own choices as to who will inherit their property and who will be disinherited by executing a last will and testament. However, the harsh reality is that the majority of Americans do not have a last will and testament.¹⁵¹ In a 2006 nationwide survey, sixty-eight percent of respondents lacked a will.¹⁵² This means any and all assets they own at the time of their death will pass via the intestacy statute of the state where they reside.

Intestacy

In Florida, the intestate estate is distributed to the heirs in the following order: surviving spouse, descendants, parents, siblings or their descendants, descendants of parents, grandparents, and uncles and aunts and their descendants.¹⁵³ If none of the listed heirs are alive, then the estate is distributed to the kindred of the last deceased spouse.¹⁵⁴ The intestacy laws reflect the legislature's presumption that individuals prefer the property to pass to blood relatives.¹⁵⁵ Although this intent represents the wishes of a significant portion of the population, it does not adequately represent the

^{146.} Alfred Ng, *Unemployed Florida Man Tries Electrocuting Father for Inheritance Money After He Was Told to Get a Job*, N.Y. DAILY NEWS (Dec. 1, 2015), <http://www.nydailynews.com/news/crime/unemployed-florida-man-shocking-father-death-article-1.2452237>.

^{147.} *Id.*

^{148.} *Id.*

^{149.} *Id.*

^{150.} See FLA. STAT. § 732.103 (2015); see also *id.* § 732.802.

^{151.} See Reid Kress Weisbord, *Wills for Everyone: Helping Individuals Opt Out of Intestacy*, 53 B.C. L. REV. 877, 878 (2012).

^{152.} See *id.* at 888.

^{153.} See FLA. STAT. § 732.103.

^{154.} See *id.*

^{155.} See Weisbord, *supra* note 151, at 891.

intent of an elder person who is abused by his or her blood relatives and descendants. For example, a husband who neglects his elderly wife is entitled to all of her estate if she did not have a will, provided they had children together.¹⁵⁶ Even in a case where the deceased victim had her own children, who were not lineal descendants of the surviving spouse, the surviving spouse is entitled to one-half of the estate.¹⁵⁷ It is highly unlikely the victim's children or society would be pleased with the outcome where the abuser inherits from a victim's death.

Last Will and Testament in Florida

In cases where abused elders do have a last will and testament, the question becomes whether the last will and testament actually reflects their intent. Manipulative family members can easily persuade elders, especially those who are abused, to tailor the victim's estate plan to benefit the abusive family member. Once the victim passes away, the abuser inherits under the will.

Challenging a will on undue influence, a difficult ground to prove, may cause the will not to be admitted to the court.¹⁵⁸ For undue influence to exist, a person's "mind must be so controlled or affected by persuasion or pressure, artful or fraudulent contrivances, or by the insidious influences of persons in close confidential relations with him, that he is not left to act intelligently, understandingly, and voluntarily, but subject to the will or purpose of another."¹⁵⁹ After the elderly victim passes away, beneficiaries and heirs may challenge the last will and testament and possibly prevail. But what happens then? Even if undue influence is proven, the will is thrown out and the victim's estate is divided among the heirs under Florida's intestacy statute.¹⁶⁰ This means the abuser, who is generally a spouse, child, or a family member of the victim, will be able to inherit despite the fact that he or she abused the elderly victim and the will was thrown out based on undue influence. The abuser might not get the large share he or she was hoping for, but will still be entitled to a portion under the intestacy statute.

An elderly victim may intentionally omit his or her abusive spouse from the will, but Florida does not allow a victim's wishes to be fulfilled.¹⁶¹ Under Florida's elective-share statute, the spouse is entitled to thirty percent of the decedent's elective share if the spouse was omitted from the will or if the spouse is dissatisfied with his or her share under the will.¹⁶² The elective share consists of the probate estate, joint bank accounts, joint properties, trusts, pension plans, life insurance, and

156. See FLA. STAT. § 732.102(2).

157. See *id.*

158. See Lawrence A. Frolik, *The Biological Roots of the Undue Influence Doctrine: What's Love Got to Do With It?*, 57 U. PITT. L. REV. 841, 847 (1996).

159. Steven G. Nilson, *Florida's New Statutory Presumption of Undue Influence—Does It Change the Law or Merely Clarify?*, 77 FLA. BAR. J. 2, 20 (2003), <http://www.floridabar.org/divcom/jn/jnjournal01.nsf/c0d731e03de9828d852574580042ae7a/1d5184ea2dded2e785256cb8005d1e1d> (citing *Peacock v. Dubois*, 105 So. 321, 322 (Fla. 1925)).

160. See Frolik, *supra* note 158, at 844, 847.

161. See FLA. STAT. § 732.201.

162. See *id.* § 732.2065.

transfers made within one year of death.¹⁶³ The elective-share provision is a determinative way for a spouse who abused his or her elderly spouse to profit from the death even if the abused spouse did not want the abuser spouse to inherit.

It is unfair and unethical to allow elder abusers to profit from their wrongful conduct by allowing them to benefit from the victim's estate. Elderly citizens have been working and accumulating wealth throughout their lives, so why should a greedy spouse, child, or a family member inherit it after they abused the hardworking elderly citizen? A recent survey of households in the United States showed that those over the age of sixty-five hold around one-third of the nation's wealth.¹⁶⁴ Even those seniors that do not hold a significant portion of wealth have their homes and automobiles, which family members will inherit under the intestacy laws after victim's death.¹⁶⁵

Expanding the Slayer Rule will not only be beneficial for public policy and let our elderly population know that the law is on their side, but it will also deter potential abusers. As many forms of elder abuse are fueled by the abuser's greediness and possibility of inheritance, the abuser's knowledge of the repercussions barring inheritance will reduce his or her incentive to abuse.¹⁶⁶ For example, a caretaker-child will be less likely to refuse to provide his or her aging parent with decent living conditions because he does not want to spend his or her would-be inheritance money when he knows he could be completely barred from inheriting if found guilty or liable for elder abuse. Elder abuse caused by monetary incentives will be reduced because the abuser will be deterred by the possibility of statutory disinheritance.

Florida's inclusion of elder abuse in its Slayer Rule could possibly serve as a model for the states that have not expanded their Slayer Rule. It would be a hybrid statute, which includes portions of statutes already in place in other states.¹⁶⁷ In learning from other states' mistakes, Florida must implement a statute which addresses the problems other states failed to address, such as using the clear and convincing evidence standard and also including physical, emotional, and financial abuse along with neglect as well as completely disinheriting the abuser.

V. PROPOSED ELDER ABUSE SLAYER RULE STATUTE

Florida should model its new law targeting elder abusers after its original Slayer Rule Statute as follows:

Abuser not entitled to receive property or other benefits by reason of victim's death.

- (1) A surviving person who unlawfully and intentionally abuses or participates in abusing the elder decedent (including physical

163. See generally *id.* § 732.2035 (listing assets subject to elective share).

164. Jesse Bricker et. al., *Changes in U.S. Family Finances from 2007 to 2010: Evidence from the Survey of Consumer Finances*, F. RESERVE BULLETIN (2012), <http://www.federalreserve.gov/pubs/bulletin/2012/pdf/scf12.pdf>.

165. See FLA. STAT. § 732.103 (2015).

166. See Hunt, *supra* note 81, at 458–59.

167. See generally *id.* (similarly commenting how California can become a model for other States).

abuse, psychological abuse, neglect, or financial abuse) is not entitled to any benefits under the will or under the Florida Probate Code, and the estate of the decedent passes as if the abuser had predeceased the decedent. Property appointed by the will of the decedent to or for the benefit of the abuser passes as if the abuser had predeceased the decedent.

(2) Any joint tenant who unlawfully and intentionally abuses another joint tenant thereby effects a severance of the interest of the decedent so that the share of the decedent passes as the decedent's property and the abuser has no rights by survivorship. This provision applies to joint tenancies with right of survivorship and tenancies by the entirety in real and personal property; joint and multiple-party accounts in banks, savings and loan associations, credit unions, and other institutions; and any other form of coownership with survivorship incidents.

(3) A named beneficiary of a bond, life insurance policy, or other contractual arrangement who unlawfully and intentionally abuses the principal obligee or the person upon whose life the policy is issued is not entitled to any benefit under the bond, policy, or other contractual arrangement; and it becomes payable as though the abuser had predeceased the decedent.

(4) Any other acquisition of property or interest by the abuser, including a life estate in homestead property, shall be treated in accordance with the principles of this section.

(5) A final judgment of conviction of elder abuse is conclusive for purposes of this section. In the absence of a conviction of elder abuse, the court may determine if it has been proven by clear and convincing evidence that the person is liable for physical abuse, psychological abuse, neglect, or financial exploitation of the decedent, who was an elder or disabled adult.

(6) This section does not affect the rights of any person who, before rights under this section have been adjudicated, purchases from the abuser for value and without notice property which the abuser would have acquired except for this section, but the abuser is liable for the amount of the proceeds or the value of the property. Any insurance company, bank, or other obligor making payment according to the terms of its policy or obligation is not liable by reason of this section unless prior to payment it has received at its

home office or principal address written notice of a claim under this section.¹⁶⁸

Standing

Enacting the statute is the first step our legislature must take to disinherit the undeserving beneficiaries who abuse the elderly. The next question is: Who has standing to bring this action in a probate proceeding? In a similar but distinguishable proceeding to contest a will, Florida Statutes provide that “[a]ny interested person, including a beneficiary under a prior will . . . may commence the proceeding before final discharge of the personal representative.”¹⁶⁹ An interested person is “any person who may reasonably be expected to be affected by the outcome of the particular proceeding involved. . . . The term does not include a beneficiary who has received complete distribution.”¹⁷⁰

Like in the Florida probate proceeding to contest a will, an interested person has standing in a proceeding to disinherit a person who abused the elderly.¹⁷¹ This would mean anyone named in the will, and more importantly anyone that would have inherited *but for* the will, would have standing. Family members and friends who know they have their inheritance at stake will likely be more incentivized to bring a lawsuit to disinherit the abuser.

As mentioned earlier, the court does not consider beneficiaries who received complete distribution as interested persons.¹⁷² For example, in a California case, two grandsons were pecuniary beneficiaries under a decedent’s trust and contingent beneficiaries only if decedent’s son and granddaughter predeceased the decedent; their father was the trustee.¹⁷³ The grandsons alleged their father committed elder abuse upon the decedent but the court found they had no standing.¹⁷⁴ First, the grandsons were paid \$10,000 each per the terms of the trust.¹⁷⁵ Second, the court determined the grandsons did not have a contingent interest because their father and sisters were alive and their contingent interest came before the grandsons’ successor contingent interest.¹⁷⁶ By limiting who may bring a lawsuit, the court effectively reduced the number of frivolous lawsuits.

The Participant

The proposed statute will also disinherit participants in elder abuse. Participants are active and passive. The active participation is obvious—it is the perpetrator of

168. FLA. STAT. § 732.802 (2015) (proposed statute’s context mimics Slayer Rule statute, with appropriate changes reflecting elder abuse).

169. *See id.* § 733.109(1).

170. *See id.* § 731.201(23).

171. *See id.* § 733.109(1).

172. *See id.* § 731.201(23).

173. *See Lickter v. Lickter*, 118 Cal. Rptr. 3d 123, 127 (Cal. Ct. App. 2010).

174. *See id.* at 132.

175. *See id.* at 139.

176. *See id.* at 140.

elder abuse. However, what do we do about those who know about elder abuse but do nothing to stop it? For example, what happens to the daughter that knew her brother was abusing their elderly parent but did not report this abuse? Should she be allowed to inherit her parent's estate? The short answer to this question is: no.

Florida imposes criminal liability upon those who fail to report abuse.¹⁷⁷ The statute provides that a "person who knowingly and willfully fails to report a case of known or suspected abuse, neglect, or exploitation of a vulnerable adult, or who knowingly and willfully prevents another person from doing so, commits a misdemeanor of the second degree"¹⁷⁸ The Slayer Rule is part of Florida's criminal law but is used as a foundation for imposing civil liability in the probate court when it comes to disinheriting those who abuse the elderly.¹⁷⁹ Similarly, Florida's statute imposing criminal liability on those who fail to report abuse could be used as a foundation to define participants of elder abuse to include persons who knew of the abuse but chose not to prevent or report it.

Cause of Death

It must be emphasized that the death certificates may be used as evidence of elder abuse.¹⁸⁰ In cases of elder abuse, elder abuse could be the underlying cause of the health condition, which accelerated death, but the attending physician signing the death certificate would not be able to list elder abuse as the main cause of death. The attending physician who signs the death certificate is a physician who has treated the decedent in the past and knows the decedent's medical history.¹⁸¹ A cause of death must be listed on the death certificate, but the attending physician is simply providing a medical hypothesis on it.¹⁸² For instance, a victim of elder abuse might have died of heart failure, but starvation and dehydration from neglect are factors that contributed to the heart failure. Nonetheless, the attending physician may be a witness and explain how elder abuse contributed to the cause of death, especially because the attending physician treated the victim in the past. The attending physician may list elder abuse as another significant condition contributing to death but not related to cause of death. Ultimately, it is up to the court to determine if elder abuse has occurred.

Statute in Motion

If Florida had expanded the Slayer Rule to elder abuse, we would have different outcomes in the cases mentioned in the beginning of this article. Using Dorothy Berry's case as an example, an interested person such as a beneficiary under her last will and testament (other than the two children) would be able to file a petition

177. See FLA. STAT. § 415.111(1) (2015).

178. See *id.*

179. See *id.* § 732.802.

180. See *id.* § 406.11 (listing when a medical examination to determine cause of death is required).

181. See *Attending Physician Duties*, OFFICE OF MEDICAL EXAMINER, <http://www.medex.sjcfl.us/physician.aspx> (last visited March 5, 2016).

182. See *id.*

alleging the elder abuse occurred.¹⁸³ The judge would then determine whether elder abuse occurred using the less stringent clear and convincing evidence standard.¹⁸⁴ Even if one child claims he or she did not actively participate in the abuse, the child could still be liable because he or she knew of the abuse and failed to stop or report it. Once it has been determined the children were abusing Dorothy Berry, they are disinherited from her estate and whoever is next in line under the will or the intestacy statute will be the beneficiary of Dorothy's estate. Also, if Dorothy owned any accounts or property jointly with the children that abused her, those children would not be entitled to Dorothy's portion of property once she passed away. Expanding the Slayer Rule to elder abuse will effectively punish those who abuse and deter future abusers.

CONCLUSION

While elder abuse cannot be completely eradicated, it can be significantly reduced for future elder generations. We will also become a future generation of the elderly. The current elder abuse laws impose criminal and civil liabilities that only punish the wrongdoer if the abuse is reported and if there is significant evidence for the case.¹⁸⁵ The wrongdoers are still able to inherit from their victim's estate. As previously discussed, elder abuse is difficult to detect when it is happening in a private home where the elder person lives with family. Florida was at the forefront of battling elder abuse and Florida should not fall behind in this movement. Considering the large elderly population in Florida, which is continuously rising, Florida must expand its Slayer Statute to elder abuse.

183. See Gallop, *supra* note 1.

184. See *Felonious and Intentional Slaying*, *supra* note 99.

185. See FLA. STAT. § 825.102 (2015); see also Hunt, *supra* note 81, at 453.