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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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2. Id.
3. Id.
4. Id.
5. Id.
6. Id.
8. Id.
9. Id.
10. Id.
11. See id.
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.

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

About eleven percent of the elderly are abused. In instances of abuse, nine out of ten times a family member is the abuser. A victim’s family member is a person related by blood or marriage. Many cases of elder abuse are unreported because family members are usually perpetrators of elder abuse. Only one out of twenty-three cases of elder abuse are reported to authorities. “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.”

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. During a twelve-month period, Bay County Adult Protective Services (APS) received 865 reports of maltreatment. APS can only collect evidence and submit the evidence to the police. The majority of the reports are dropped, as there is not enough evidence to be submitted for criminal charges. Even when there is enough evidence of elder abuse to be submitted to the police, it does not guarantee a criminal conviction. The elderly are left in the hands of their abusers.

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20. Id.
21. Id. at 506.
22. Id. at 505.
23. Id.
27. Dion, supra note 7.
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

37. Id. at 8.
38. See id.
39. See id. at 9–10.
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.
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.\footnote{See id.}

\section*{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.\footnote{See \textit{Patricia J. Brownell, Family Crimes Against Elderly} 20 (1st ed.1998).} It has not been as fully developed as child-abuse and spousal-abuse statutes.\footnote{See id.} 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.\footnote{See \textit{Geralyn M. Passaro, Claims of Exploitation of the Elderly in the Sale of Financial Products}, 80 FLA. BAR J. 9, 81 (2006), \url{http://www.floridabar.org/DIVCOM/JN/JNJournal01.nsf/c0d731e03de9828d852574580042ae7a/af5024c8b038b78d852571f5005c2e10}.} 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.\footnote{See id.} Next, Florida attempted to deter crimes against the elderly by imposing higher penalties on offenders by passing a law in 1989.\footnote{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).} Finally, Florida enacted a mandatory reporting statute and criminalized elder abuse in 1995.\footnote{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)).}

\subsection*{Current Elder Abuse Statutes}

Florida provides a civil remedy through the Adult Protective Services Act for those adults who have been abused.\footnote{See FLA. STAT. § 415.1111 (2015).} The civil remedy allows for actual and punitive damages for abuse, neglect or exploitation of a vulnerable adult.\footnote{See id.} “Vulnerable adult” is defined as

\begin{quote}

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.\footnote{Id. § 415.102(28).}
\end{quote}

The injured party or his or her representative, including the estate’s personal representative, may bring the civil action.\footnote{Id. § 415.1111.} A potential problem with this statute is...
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. The statute provides protection for elderly persons or disabled adults. 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.

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. An abuser can also be charged with a first-degree felony if an aggravated battery occurs. An aggravated battery may be willful torture, malicious punishment, unlawful caging, or knowledgeable abuse that causes great bodily harm or permanent disability. Neglect of an elderly person may be a third-degree or second-degree felony. Neglect consists of omission of care, supervision, and services necessary for one’s life. If neglect causes great bodily harm or permanent injury, it is a punishable second-degree felony. However, if neglect does not cause great bodily harm or permanent disability, the punishment is lowered to a third-degree felony.

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.” 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).
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.\footnote{\textsuperscript{71}}

Finally, financial abuse is addressed and is titled: “Exploitation of an elderly person or disabled adult.”\footnote{\textsuperscript{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.”\footnote{\textsuperscript{73}} The felonies are based on the amount the abuser exploited.\footnote{\textsuperscript{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.\footnote{\textsuperscript{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.\footnote{\textsuperscript{76}}

In addition to the above, Florida has a mandatory-reporting statute. Its extensive list applies to health professionals, state employees, and bank employees.\footnote{\textsuperscript{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.” Failure to report abuse of a vulnerable adult amounts to a misdemeanor in the second-degree.\footnote{\textsuperscript{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.\footnote{\textsuperscript{80}}

\section*{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.\footnote{\textsuperscript{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.\footnote{\textsuperscript{82}} Once again, the wrongdoer goes unpunished.

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

\begin{itemize}
\item See id. §§ 825.1025(2)(b), (3)(b).
\item See id. § 825.103.
\item See id. §§ 825.103(1)(a)(1), (2).
\item See FLA. STAT. § 825.103(3)(a).
\item See id. § 825.103(3)(b).
\item See id. §§ 825.103 (3)(b)–(c).
\item See id. § 415.1034(1)(a).
\item See id. § 415.1034(1)(a).
\item See id. § 415.111(1).
\item See id.
\item See id.
happened, due to memory and other health issues. 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.”

Those cases that do make it to law enforcement or trial are difficult to prove. Judges, attorneys, and jurors doubt the capabilities of seniors as credible witnesses. Evidence of abuse may be covered up and blamed on the aging process. In a 2005 California case, a ninety-year-old woman was neglected to the point of her death by her live-in son. She was found with bedsores and her bed sheets contained traces of blood, feces, and vomit. 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. 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. Cognitive impairment could be hard to avoid at an old age. 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.

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 benefitting from the decedent’s estate. 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. The Slayer Rule was enacted as a statute in forty-eight states; the remaining states use the common law in enacting the Slayer Rule. Although the Slayer Rule varies state by state, all propose “principles of equity,
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.
100. See FLA. STAT. § 732.802(5).
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...
imprisonment, or financial abuse of an elder or a dependent adult.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{125} However, Washington’s statute is faulty because it only covers financial elder abuse.\textsuperscript{126} Financial abuse entails using an elder’s assets without his or her consent and for the benefit of others.\textsuperscript{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.

\textbf{Criminal Conviction Required}

Arizona and Maryland are the two states that require a criminal conviction and only target elder financial abuse.\textsuperscript{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.\textsuperscript{129} On the other hand, Arizona’s law specifically targets family members who financially abuse an elderly person, and it reads as follows:

\begin{quote}
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.\textsuperscript{130}
\end{quote}

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

\begin{flushright}
\textsuperscript{122} See Piel, supra note 95, at 371, 373.
\textsuperscript{123} See Hunt, supra note 81, at 469.
\textsuperscript{124} See \textit{id.}
\textsuperscript{125} See Piel, supra note 95, at 371.
\textsuperscript{126} See \textit{id. at 370.}
\textsuperscript{127} See Hunt, supra note 81, at 470.
\textsuperscript{128} See \textit{id. at 447.}
\textsuperscript{129} See Kisabeth, supra note 26, at 378.
\textsuperscript{130} Piel, supra note 95, at 372.
\textsuperscript{131} See \textit{id. at 371.}
\end{flushright}
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.
142. See Kisabeth, supra note 26, at 387.
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. Knudsen was an unemployed man living with his father. 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. 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. 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. 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. In a 2006 nationwide survey, sixty-eight percent of respondents lacked a will. 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. If none of the listed heirs are alive, then the estate is distributed to the kindred of the last deceased spouse. The intestacy laws reflect the legislature’s presumption that individuals prefer the property to pass to blood relatives. Although this intent represents the wishes of a significant portion of the population, it does not adequately represent the

147. Id.
148. Id.
149. Id.
150. See FLA. STAT. § 732.103 (2015); see also id. § 732.802.
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. 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. 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. 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.” 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. 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. 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. The elective share consists of the probate estate, joint bank accounts, joint properties, trusts, pension plans, life insurance, and

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156. See FLA. STAT. § 732.102(2).
157. See id.
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/0/a24a03de9828d852574800942e7a1d51842ded2e78525b80e5d1e1d (citing Peacock v. Dubois, 105 So. 321, 322 (Fla. 1925)).
161. See FLA. STAT. § 732.201.
162. See id. § 732.2065.
transfers made within one year of death. 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. 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.

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. 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 disinher
tance.

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. 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
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 statue 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...
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. 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 . . . .” 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. 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. 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. A cause of death
must be listed on the death certificate, but the attending physician is simply providing
a medical hypothesis on it. 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

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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).
182. See id.
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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.