

“Johnny Pushed Me and I Can’t Get Up . . . And I Can’t Get Help!”: The Intersection of Elder Abuse and Domestic Violence in South Carolina and Its Effect on Older Battered Women

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“JOHNNY PUSHED ME AND I CAN’T GET UP . . . AND I  
CAN’T GET HELP!”: THE INTERSECTION OF ELDER ABUSE  
AND DOMESTIC VIOLENCE IN SOUTH CAROLINA AND ITS  
EFFECT ON OLDER BATTERED WOMEN

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### INTRODUCTION

Peggy was a strong, self-sufficient woman. She raised two children, cared for her disabled husband, worked full-time, and bought a home. Through her hard work, she ensured that she could support herself throughout her retirement. Peggy's retirement, however, was very different from what she had envisioned.

As a devoted mother, Peggy allowed her unemployed son, Johnny, to move into her home. Johnny promised to seek gainful employment, help around the house, maintain the yard, and take care of Peggy in her old age. For a few weeks, Johnny did all he had promised. However, Johnny's alcoholism reared its ugly head and Peggy's situation quickly worsened. Over the next five years, Johnny physically and verbally abused Peggy, stole her sleep medication to get “high,” and isolated her from her friends and family. Johnny used Peggy's credit and debit cards without her consent. In the end, Johnny robbed Peggy of her social security payments, pension checks, and life savings.

The verbal and physical abuse proved equally devastating. One day, Johnny took Peggy by the hair and pulled her elderly body out of the front door, down the front steps, and then back into the home. Only when the physical abuse reached this critical level would Peggy go to her friends and family for help. Through their guidance, Peggy repeatedly began the process of evicting Johnny and obtaining a restraining order. However, the physical, verbal, and financial abuse would always subside and Peggy would abandon the court proceedings. Peggy's and Johnny's relationship quickly spiraled into the common domestic violence cycle.<sup>1</sup>

Law enforcement, who frequently responded to calls from Peggy's home, knew the pair on a first-name basis. Peggy's family and friends repeatedly sought help on her behalf from government agencies, including Adult Protective Services and Victim's Advocate.<sup>2</sup> Although

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1. See *infra* Section I.C (discussing the domestic abuse cycle and its relationship to older battered women).

2. Adult Protective Services is a governmental service authorized by South Carolina's Omnibus Adult Protection Act to protect “vulnerable adults” and is discussed

friends and family reported the abuse and South Carolina statutes required law enforcement to notify the appropriate agencies, nothing was ever done; no investigation occurred and the abuse continued. In the end, Peggy became increasingly isolated from her family and friends and spent her final years as a battered woman.

This Note addresses the common phenomenon of domestic elder abuse in South Carolina, specifically focusing on older women who are abused by their adult children or other relatives. Part I defines and provides a background of elder abuse and domestic elder abuse nationally and in South Carolina. This section also highlights the connection between domestic elder abuse and older battered women. Part II describes the current South Carolina law related to domestic elder abuse, specifically the Omnibus Adult Protection Act and the Protection from Domestic Abuse Act. Part III provides a normative analysis and contends that South Carolina has failed to ensure the safety of elderly women abused in domestic situations through insufficient laws and inadequate funding of government programs, specifically Adult Protective Services (APS). Finally, Part IV proposes ways in which South Carolina can better combat domestic elder abuse through reform and expansion of the current laws, specifically by mirroring the Wisconsin's elder abuse statute, and ensuring victims of domestic elder abuse receive the education and assistance needed through the proper funding of Adult Protective Services and other community programs.

## I. WHAT IS DOMESTIC ELDER ABUSE?

### A. *Elder Abuse: Background and Incidence*

Elder abuse is not a new problem. When Congress published the groundbreaking report *Elder Abuse: An Examination of a Hidden Problem* in 1981, elder abuse issues entered the mainstream.<sup>3</sup> Now, with baby boomers beginning to reach retirement age, the over-sixty-four population is dramatically increasing.<sup>4</sup> With this increase,

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throughout this Note. In South Carolina, Victim's Advocate is a division of local law enforcement and provides assistance to victims of crimes. See Victim Advocate, SUMMERVILLE POLICE.COM (2017), <http://www.summervillepolice.com/victimadvocate.html> [<http://perma.cc/R5SW58BD>].

3. Arthur Meirson, *Prosecuting Elder Abuse: Setting the Gold Standard in the Golden State*, 60 HASTINGS L.J. 431, 436 (2008).

4. Glenn Kessler, *Do 10,000 Baby Boomers Retire Every Day?*, WASH. POST (July 24, 2014), <https://www.washingtonpost.com/news/fact-checker/wp/2014/07/24/do-10000-baby-boomers-retire-every-day> [<http://perma.cc/LNS33XF2>].

the incidence of elder abuse will likely also experience a “boom” over the next twenty years.<sup>5</sup> It is estimated that persons age sixty-five and older will make up approximately 20 percent of the country’s population by 2030, which is a substantial increase from the reported 13 percent in 2010.<sup>6</sup> Because it has one of the nation’s fastest growing over-sixty-four populations, South Carolina will contribute substantially to this increase.<sup>7</sup> From 2003 to 2013, the number of South Carolina residents age sixty-five and older increased by 43.1 percent, the seventh largest increase in the United States.<sup>8</sup> In 2013, residents age sixty-five and older constituted approximately 15.2 percent of South Carolina’s population, and this number is expected to exceed 20 percent by 2030.<sup>9</sup>

The federal government currently defines elder abuse as “the abuse, neglect, and exploitation of an older individual.”<sup>10</sup> Now, every state and the District of Columbia has its own unique elder abuse statute designated to combat this problem.<sup>11</sup> Each of these statutes define elder abuse differently.<sup>12</sup> State elder abuse statutes usually encompass physical, psychological, and sexual abuse as well as

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5. *See id.*

6. Shelly L. Jackson & Thomas L. Hafemeister, *Understanding Elder Abuse: New Directions for Developing Theories of Elder Abuse Occurring in Domestic Settings*, NAT’L INST. OF JUSTICE 3 (June 2013), <https://www.ncjrs.gov/pdffiles1/nij/241731.pdf>.

7. Seanna Adcox, *DSS Director: Vulnerable Adults Receive Little Attention*, POST & COURIER (Aug. 29, 2015, 11:39 AM), <http://www.postandcourier.com/article/20150829/PC1603/150829240> [<http://perma.cc/P28W6UWL>].

8. A PROFILE OF OLDER AMERICANS: 2014, U.S. DEP’T OF HEALTH AND HUMAN SERV., ADMIN. ON AGING 6 (2014), [http://www.aoa.acl.gov/Aging\\_Statistics/Profile/2014/docs/2014-Profile.pdf](http://www.aoa.acl.gov/Aging_Statistics/Profile/2014/docs/2014-Profile.pdf) [hereinafter A PROFILE OF OLDER AMERICANS: 2014].

9. *Id.*; *Status of Population Projections Based on the 2010 Census Data*, S.C. REVENUE & FISCAL AFFAIRS OFFICE, <http://abstract.sc.gov/chapter14/pop5.html> [<http://perma.cc/KSM9BZHR>].

10. ALISON M. SMITH, CONG. RESEARCH SERV., RS21443, ELDER ABUSE 1 (2006). The first federal definition for elder abuse appeared in the 1987 Amendments to the Older Americans Act. *Frequently Asked Questions*, NAT’L CTR. ON ELDER ABUSE, <http://www.ncea.aoa.gov/faq/index.aspx> [<http://perma.cc/Y8T87CEJ>]. The Older American’s Act defines “elder abuse” as “abuse of an older individual,” where “‘abuse’ means the willful—(A) infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical harm or pain or mental anguish; or (B) deprivation by a caretaker of goods or services which are necessary to avoid physical harm, mental anguish, or mental illness.” Older Americans Act Amendments of 1987, Pub. L. No. 100-175, 101 Stat. 926 (1987). In the current authorization of the Older Americans Act, “[t]he term ‘abuse’ means the knowing infliction of physical or psychological harm or the knowing deprivation of goods or services that are necessary to meet essential needs or to avoid physical or psychological harm.” Older Americans Reauthorization Act Amendments of 2016, Pub. L. No. 114-144, 130 Stat. 334 (2016). The definition for “elder abuse” remains the same. *Id.*

11. *Frequently Asked Questions*, *supra* note 10.

12. Bonnie Brandl & Tess Meuer, *Domestic Abuse in Later Life*, 8 ELDER L.J. 298, 299 (2000).

financial exploitation, neglect, and abandonment,<sup>13</sup> which are defined as follows:

- Physical Abuse: the infliction of physical pain or bodily harm to a victim (e.g., hitting, pushing, and physically restraining).<sup>14</sup>
- Sexual Abuse: “[a]ny form of sexual contact or exposure [to sexual content] without consent” (e.g., rape, fondling, forced participation in unwanted sexual acts, and forced viewing of pornography).<sup>15</sup>
- Psychological/Emotional Abuse: “threatening, humiliating, intimidating, [or] isolating” the victim, causing the victim mental anguish.<sup>16</sup>
- Financial Exploitation: the “[i]llegal or improper exploitation of funds or other assets” (e.g., stealing money or property and using undue influence to commit fraud).<sup>17</sup>
- Neglect: intentional, or often negligent, “failure to fulfill caregiving obligations” owed to another person;<sup>18</sup> the act of “abandonment or isolation; denial of food, shelter, clothing, medical assistance, or personal needs; or the withholding of necessary medication or assistive devices (e.g., hearing aids, glasses, [and] false teeth).”<sup>19</sup>
- Abandonment: the “[d]esertion of an elderly person by a person who has assumed caregiving responsibility or physical custody of the elder (e.g., leaving the elder in [her] home unattended or dropping [the elder] at a hospital).” (Abandonment is commonly considered a form of neglect.)<sup>20</sup>

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13. *Id.* Self-neglect is also a common form of elder abuse. See Kaaren Boothroyd, *Elder Self-Neglect is a Growing and Largely Hidden Problem*, AM. SOC’Y ON AGING (Oct. 9, 2014), <http://www.asaging.org/blog/elder-self-neglect-growing-and-largely-hidden-problem> [<http://perma.cc/2ZYNQJUA>]. Self-neglect is defined as “[b]ehaviors of an elderly person that threaten the elder’s health or safety” (e.g., refusal to provide him/herself with adequate food, water, clothing, shelter, personal hygiene, medication). *Elder Abuse*, AM. PSYCHOLOGICAL ASS’N, <http://www.apa.org/pi/prevent-violence/resources/elder-abuse.aspx> [<http://perma.cc/A6W7FYPR>]; *Frequently Asked Questions*, *supra* note 10.

14. Brandl & Meuer, *supra* note 12, at 300.

15. *Id.* at 301.

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.* Neglect is the most common form of elder abuse. Toshio Tatara & Lisa M. Kuzmeskus, *Types of Elder Abuse in Domestic Settings*, NAT’L CTR. ON ELDER ABUSE 2, <http://ncea.acl.gov/resources/docs/archive/Factsheet-types-EA-Domestic-setting-1999.pdf> (updated Mar. 1999).

20. Brandl & Meuer, *supra* note 12, at 301.

Nationally, approximately 10 percent of persons age sixty and older are victims of elder abuse each year.<sup>21</sup> Shockingly, less than five percent of cases are reported to the appropriate authorities.<sup>22</sup> “Given that the vast majority (96.9 percent) of older Americans are residing in domestic settings, it is not surprising that the majority (89.3 percent) of elder abuse reported to [APS] occurs in domestic settings.”<sup>23</sup>

### *B. Domestic Elder Abuse: It’s More than Spousal Abuse*

Domestic elder abuse occurs when older individuals are physically, sexually, or emotionally abused, exploited, or neglected by someone “with whom they have an ongoing relationship.”<sup>24</sup> Domestic elder abuse occurs outside of facilities, “in a person’s own home, apartment, or other non-institutional living arrangement.”<sup>25</sup>

Approximately 97 percent of South Carolina residents age sixty-five and older reside in their own homes.<sup>26</sup> Furthermore, the population of over-sixty-four residents in facilities decreased by approximately 14 percent between 2000 and 2010.<sup>27</sup> In South Carolina, APS investigates reports of elder abuse outside of facilities or institutions.<sup>28</sup> Incidents of “vulnerable adult”<sup>29</sup> abuse reported to APS have drastically increased, with approximately 4,904 cases reported in 2014,<sup>30</sup> up from approximately 2,386 cases reported in 2012. Almost

21. *Elder Justice Initiative: Research & Related Resources*, U.S. DEPT OF JUSTICE, <http://www.justice.gov/elderjustice/research> [<http://perma.cc/FY4S2K5J>].

22. *Id.*

23. Jackson & Hafemeister, *supra* note 6, at 3 (internal citations omitted).

24. *Domestic Violence in Later Life: A Guide to the Aging Network for Domestic Violence and Victim Service Programs*, NCEA Issue Brief, NAT’L ASS’N OF STATE UNITS ON AGING, NAT’L CTR. ON ELDER ABUSE (Mar. 2006), [http://www.ncdsv.org/images/NCEA\\_DVInLaterLifeGuideAgingNetworkForDVandVictimServiceProviders\\_3-2006.pdf](http://www.ncdsv.org/images/NCEA_DVInLaterLifeGuideAgingNetworkForDVandVictimServiceProviders_3-2006.pdf) (quoting the National Clearinghouse on Abuse in Later Life).

25. Tatara & Kuzmeskus, *supra* note 19, at 1.

26. *Cf.* Loraine A. West et al., *65+ in the United States: 2010*, CENSUS.GOV 139 (June 2014), <https://www.census.gov/content/dam/Census/library/publications/2014/demo/p23-212.pdf>.

27. *See id.* at 135.

28. *See* S.C. CODE ANN. § 43-35-25 (2017).

29. “Vulnerable Adult” is defined in the Omnibus Adult Protect Act, discussed *infra* in Section II.A.1 and includes adults over the age of eighteen. *Id.* § 43-35-10(11).

30. ADULT PROTECTION COORDINATING COUNCIL ANNUAL REPORT 2015 S.C. DEPT OF HEALTH & HUMAN SERVS. 11 (2014), <http://www.scstatehouse.gov/reports/DHHS/2015%20APCC%20Annual%20Report.pdf>. The actual incidence of “vulnerable adult” and elder abuse in South Carolina is difficult to determine with various documents citing different figures for reported cases. *See, e.g.*, ADULT PROTECTION COORDINATING COUNCIL ANNUAL REPORT 2012, S.C. DEPT OF HEALTH & HUMAN SERVS. 14 (2012), <https://www.scdhhs.gov/sites/default/files/2012APCCANLRPT.pdf> (indicating 2,456 reported cases in 2012); ADULT PROTECTION COORDINATING COUNCIL ANNUAL REPORT 2013, S.C. DEPT

75 percent of reported cases involved an adult age sixty or older.<sup>31</sup> In addition, roughly 60 percent of “vulnerable adult” abuse reported to APS in 2013 involved a female victim.<sup>32</sup>

Nationally, more than 60 percent of domestic elder abuse victims are female.<sup>33</sup> This is not surprising because women over sixty-four outnumber their male counterparts by approximately 5.5 million.<sup>34</sup> It is likely that a significant portion of these women are currently or will become victims of domestic violence in later life and many may become “battered women.”

### C. Older Battered Women

The term “older battered woman” describes an older woman who has developed battered women’s syndrome (BWS) through a repeated cycle of abuse.<sup>35</sup> Dr. Lenore Walker, the pioneer researcher of BWS, describes the syndrome as an abusive relationship with “three distinct, cyclical phases: the tension building phase, the explosion or acute battering incident, and the calm, loving respite.”<sup>36</sup> Although BWS is most often discussed and applied to younger (those under the age of sixty-five) female victims of domestic violence, the

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OFHEALTH & HUMAN SERVS. 12, [https://www.scdhhs.gov/sites/default/files/2013APCCAN\\_LRPT.pdf](https://www.scdhhs.gov/sites/default/files/2013APCCAN_LRPT.pdf) (indicating 2,831 reported cases in 2013); Dennis Gmerek & Mildred Washington, *Adult Protective Services: What When and How*, S.C. DEPT OF SOC. SERVS., S.C. OFFICE ON AGING 20–22 (June 11, 2014), <http://aging.sc.gov/SiteCollectionDocuments/W/WEAAD%20%20A%20P%20S%20What%20When%20and%20How.pdf> (indicating 4,128 reported cases in fiscal year 2012–2013 and 2,685 in calendar year 2013).

31. Gmerek & Washington, *supra* note 30, at 21.

32. *Id.* at 22 (this number includes all “vulnerable adult” abuse, not only persons age sixty and over).

33. Toshio Tatara & Lisa M. Kuzmeskus, *Trends in Elder Abuse in Domestic Settings*, NAT’L CTR. ON ELDER ABUSE 2 (updated Nov. 1997), <https://ncea.acl.gov/resources/docs/archive/FactSheet-Trends-EA-Domestic-Settings-1999.pdf> (citing statistics from 1990 and 1996). A 2011 survey of Wisconsin elder abuse found that 62 percent of petitions for “elder adult at risk” protective orders, discussed *infra* Section IV.A, involved a female victim. Betsy J. Abramson et al., *Wisconsin’s Individual-at-Risk Restraining Order: An Analysis of the First Thirty Months*, 18 ELDER L.J. 247, 260 (2011).

34. A PROFILE OF OLDER AMERICANS: 2014, *supra* note 8, at 1.

35. For this Note, the terms “older” and “elder” include those persons age sixty-five and older. However, depending on the researcher, “older” may be defined in other increments, most commonly either age fifty and older or age sixty and older. *See, e.g.*, Bonnie S. Fisher & Saundra L. Regan, *The Extent and Frequency of Abuse in the Lives of Older Women and Their Relationship with Health Outcomes*, 46 GERONTOLOGIST 200, 200 (2006) (citing a study that included women age sixty and older); Bonnie Brandl & Loree Cook-Daniels, *Domestic Abuse in Later Life*, VAWNET.ORG (2002), [http://www.vawnet.org/applied-research-papers/print-document.php?doc\\_id=376](http://www.vawnet.org/applied-research-papers/print-document.php?doc_id=376) [<http://perma.cc/5RCT-S32M>] (defining abuse in later life by considering victims age fifty and older).

36. Ruth Jones, *Guardianship for Coercively Controlled Battered Women: Breaking the Control of the Abuser*, 88 GEO. L.J. 605, 615 (2000).



cyclical nature of BWS, typical tactics of perpetrators (e.g., isolation, threats, physical abuse, etc.), and emotional connections between the victim and the perpetrator (e.g., adult children, adult grandchildren, or other relatives, as compared to spousal/partner abuse) also occur in older battered women's relationships that lack an intimate/sexual component.<sup>37</sup>

In domestic violence cases, including domestic elder abuse cases, the goal of the abuser is to maintain control.<sup>38</sup> "Isolation is [the] standard tactic used by perpetrators of domestic violence."<sup>39</sup> Through isolation, abusers seclude the victim from family, friends, coworkers, and other persons who regularly come into contact with the victim.<sup>40</sup> Isolation forces "the victim to [focus] entirely on the abuser's needs" and prevents the victim from "develop[ing] sources of strength that could contribute to [the victim's] independence . . . ultimately enabl[ing] her to escape the abuser's control."<sup>41</sup> To achieve isolation, abusers use coercive tactics, such as physical abuse, financial exploitation, threats, intimidation, and manipulation.<sup>42</sup>

Although BWS primarily afflicts women abused by their spouses or partners, older battered women can likewise suffer the symptoms of BWS when abused in non-intimate relationships, such as those between an elderly woman and her adult child or grandchild, other relative, or caregiver.<sup>43</sup> In both younger and older battered women cases, the relationship is with someone the victim "knows, trusts or loves and with whom she has an ongoing relationship."<sup>44</sup> In addition, the typical responses to abuse by younger and older battered women are overwhelmingly similar.<sup>45</sup> Like younger battered women, older battered women tend to downplay the seriousness of the abuse and fail to seek help because they fear retaliation from the abuser, are embarrassed or ashamed, wish to maintain family privacy, believe the abuse is in some way their fault, or do not want to get their loved one in trouble.<sup>46</sup>

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37. Deb Spangler & Bonnie Brandl, *Golden Voices: Support Groups for Older Abused Women*, NAT'L CLEARINGHOUSE ON ABUSE IN LATER LIFE 23, 25 (2011), [http://www.ncall.us/sites/ncall.us/files/resources/GOLDEN%20VOICES%20REV%202011\\_0.pdf](http://www.ncall.us/sites/ncall.us/files/resources/GOLDEN%20VOICES%20REV%202011_0.pdf).

38. Betsy Abramson et al., *Isolation as a Domestic Violence Tactic in Later Life: What Attorneys Need to Know*, 3 NAT'L ACAD. OF ELDER L. ATTORNEYS J. 47, 48 (2007).

39. *Id.*

40. *Id.*

41. *Id.*

42. *See id.*

43. Spangler & Brandl, *supra* note 37, at 22–26.

44. Abramson et al., *supra* note 38, at 48.

45. *See id.*

46. *Id.* at 48, 50; *see also* Jones, *supra* note 36, at 615.

Another symptom of BWS commonly found in both younger and older battered women is “learned helplessness.”<sup>47</sup> Learned helplessness occurs when a woman, who is repeatedly the victim of abuse, becomes depressed and loses the ability or will to extricate themselves from their abusers.<sup>48</sup> This “helplessness” allows the domestic abuse cycle to continue, and the battered woman often becomes incapable of seeking help.<sup>49</sup> Because of symptoms like “learned helplessness,” and other non-legal barriers hindering older battered women from seeking help, it is crucial that state law and funding adequately protect these elderly victims.

## II. “VULNERABLE ADULTS” AND “HOUSEHOLD MEMBERS”: THE CURRENT STATE OF SOUTH CAROLINA LAW

South Carolina has enacted laws to protect older women abused by their children. These laws include the Omnibus Adult Protection Act, the Protection from Domestic Abuse Act, and general criminal offense statutes.<sup>50</sup> Unfortunately, however, these statutes offer only minimal protection to women who are abused in domestic situations. Specifically, they do not adequately protect older women abused in domestic settings by their adult children or other relatives; consequently, they allow women, like Peggy, to slip through the cracks.

### A. *The Omnibus Adult Protection Act*

#### 1. *Protecting “Vulnerable Adults”*

The South Carolina General Assembly enacted the Omnibus Adult Protection Act (OAPA) in 1993 to “provide a system of adult protection” that would “address [the] continuing needs of vulnerable adults” and “provide civil and criminal penalties for abuse, neglect, and exploitation [of vulnerable adults]” in South Carolina.<sup>51</sup> The OAPA defines “vulnerable adult” as:

[A] person eighteen years of age or older who has a physical or mental condition which substantially impairs the person from

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47. Carol Seaver, *Muted Lives: Older Battered Women*, 8 J. ELDER ABUSE & NEGLECT 3, 19 (1997); Jones, *supra* note 36, at 616.

48. Jones, *supra* note 36, at 615–16.

49. *See id.*

50. Although general criminal offense statutes are available to older battered women, this Note does not discuss these statutes because the South Carolina legislature has recognized that more specialized laws are needed to protect elder women abused in domestic situations, as shown through the enactments of the Omnibus Adult Protection Act and the Protection from Domestic Abuse Act.

51. S.C. CODE ANN. §§ 43-35-5 (1), (4), (9) editor’s note (2017).

adequately providing for his or her own care or protection. This includes a person who is impaired in the ability to adequately provide for the person's own care or protection because of the infirmities of aging including, but not limited to, organic brain damage, advanced age, and physical, mental, or emotional dysfunction. A resident of a facility is a vulnerable adult.<sup>52</sup>

The Act was intended to provide "vulnerable adults" protection from physical and psychological abuse, financial exploitation, and neglect.<sup>53</sup> Under the OAPA, certain persons with ethical duties to a "vulnerable adult" are required to report suspected prohibited activity occurring outside of a facility to APS within twenty-four hours of learning of the prohibited activity.<sup>54</sup> In addition, anyone can voluntarily report suspected abuse to APS.<sup>55</sup> APS must review any mandatory or voluntary report "within two working days" and report to local law enforcement or the South Carolina Law Enforcement Division (SLED) any suspected criminal conduct "within one working day of completing the review."<sup>56</sup> Thus, the total turnaround time from a person reporting the abuse, APS reviewing the report, and APS reporting any criminal activity should not exceed five business days.<sup>57</sup>

## 2. *Protective Custody, Not Protective Orders*

The OAPA provides abused adults relief through protective services, but not through protective or restraining orders that specifically require an abuser to avoid contact with the victim.<sup>58</sup> The OAPA authorizes APS to petition the court for an order allowing APS to remove the "vulnerable adult" from their residence and place them in protective custody.<sup>59</sup> In emergency situations, where the "vulnerable adult" is at risk of great bodily injury or death, APS may "seek ex parte relief"<sup>60</sup> or, in the case of law enforcement, may take the "vulnerable adult" into protective custody without a court order.<sup>61</sup> Protective custody may be imposed without the consent of the "vulnerable adult," even if the "vulnerable adult" is capable of providing

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52. *Id.* § 43-35-10(11).

53. *Id.* §§ 43-35-10(3), (6), (8), (10), (11).

54. *Id.* § 43-35-25.

55. *Id.* § 43-35-25(B).

56. *Id.* § 43-35-40(2).

57. *See* S.C. CODE ANN. § 43-35-40 (2017).

58. *Id.* § 43-35-45 (protective or restraining orders are not a form of relief offered to victims).

59. *Id.*

60. *Id.*

61. *Id.* § 43-35-55(A).

consent.<sup>62</sup> This leads law enforcement to remove many older women from their homes and place them with other relatives or, in some circumstances, in long-term care facilities.<sup>63</sup>

### 3. Penalizing Violators and Perpetrators

Depending on the OAPA crime in question, courts may find violators guilty of either a misdemeanor or a felony.<sup>64</sup> A mandatory reporter “who knowingly and willfully fails to report abuse, neglect, or exploitation is guilty of a misdemeanor and, upon conviction, must be fined not more than [\$2,500] or imprisoned not more than one year.”<sup>65</sup> The OAPA also outlines felony offenses for abusers.<sup>66</sup> Specifically, the OAPA requires imprisonment for perpetrators who “knowingly and willfully” abuse or neglect “vulnerable adults,” a felony offense.<sup>67</sup> However, the OAPA does not include any minimum prison sentences.<sup>68</sup> Maximum prison sentences, on the other hand, range from five to thirty years depending on the severity of the crime.<sup>69</sup>

## B. The Protection from Domestic Abuse Act

### 1. Who’s Protected and from What

The South Carolina General Assembly enacted the Protection from Domestic Abuse Act (PDAA) in 1984 and has amended the PDAA various times over the past thirty years.<sup>70</sup> The PDAA specifically

62. *Id.* §§ 43-35-45(B), 55(A).

63. *See* S.C. CODE ANN. § 43-35-45(F).

64. *Id.* § 43-35-85.

65. *Id.* § 43-35-85(A).

66. *Id.* § 43-35-85.

67. *Id.* §§ 43-35-85(B)–(C), (E)–(F).

68. S.C. CODE ANN. § 43-35-85 (2017). Financial exploitation and intimidation of vulnerable adults carry nominal punishments. Although financial exploitation is a felony offense, the punishment only requires a perpetrator to pay a fine of “not more than [\$5,000]” and/or “be imprisoned not more than five years.” *Id.* § 43-35-85(D). The court may also require the perpetrator to pay restitution. *Id.* Intimidation is a misdemeanor punishable by either a fine of “not more than [\$5,000] or imprison[ment] for not more than three years.” *Id.* §§ 43-35-85(D), (G).

69. S.C. CODE ANN. §§ 43-35-85(B)–(F) (2017) (“[A] person who knowingly and willfully abuses a vulnerable adult . . . must be imprisoned not more than five years. . . . [A] person who knowingly and willfully neglects a vulnerable adult . . . must be imprisoned not more than five years.”). If the abuse or neglect results in great bodily injury to the vulnerable adult, the person “must be imprisoned not more than fifteen years.” *Id.* Finally, if the abuse or neglect results in the vulnerable adult’s death, the person “must be imprisoned not more than thirty years.” *Id.*

70. *See id.* §§ 16-25-10, 20, 20-4-10 (codifying the PDAA in Titles 16 and 20 of the South Carolina Code).

protects certain “household members” from physical abuse or attempted physical abuse in domestic settings.<sup>71</sup> “Household member” is defined as “(1) a spouse; (2) a former spouse; (3) persons who have a child in common; or (4) a male and female who are cohabiting or formerly have cohabited.”<sup>72</sup> Based on this definition, South Carolina has specifically limited domestic violence to victims and abusers who are currently or were previously involved in a sexually intimate relationship.<sup>73</sup>

### 2. Orders of Protection

The PDAA provides that “[a] petition for relief [from domestic violence] may be made by any household members in need of protection or by any household members on behalf of minor household members.”<sup>74</sup> In petitioning the court, the victim must supply specific details of the alleged abuse and this abuse must be verified.<sup>75</sup> In addition, the alleged abuser has the right to seek legal counsel and respond to the allegations contained in the order of protection.<sup>76</sup> Once granted, orders of protection are effective for at least six months, but not more than one year.<sup>77</sup> The order may enjoin the abuser from (1) abusing or threatening to abuse the victim and/or (2) “communicating or attempting to communicate with the petitioner in a way which would violate the [PDAA]” and “entering or attempting to enter the petitioner’s place of residence, employment, education, or other location as the court may order.”<sup>78</sup> Violations of orders of protection are “criminal offense[s] punishable by thirty days in jail or a fine of [\$200] or may constitute contempt of court punishable by up to one year in jail and/or a fine not to exceed [\$1,500].”<sup>79</sup>

### 3. Warrantless Arrest

Warrantless arrest statutes are common throughout the United States.<sup>80</sup> As part of the PDAA, the South Carolina General Assembly

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71. *Id.* § 16-25-20.

72. *Id.* §§ 16-25-10(3), 20-4-20(b) (numbering altered from originals).

73. See discussion *infra* Section III.C (discussing the 2003 amendment, which changed the definition of “household member” to exclude domestic relationships that do not involve sexual intimacy).

74. S.C. CODE ANN. § 20-4-40(a) (2017).

75. *Id.* § 20-4-40(b).

76. See *id.* § 20-4-40(c).

77. *Id.* § 20-4-70(A).

78. *Id.* § 20-4-60(A).

79. *Id.* § 20-4-60(B)(1).

80. See *Domestic Violence Arrest Policies*, ABA (Mar. 2014), [http://www.americanbar.org/content/dam/aba/administrative/domestic\\_violence1/Resources/statutorysummary](http://www.americanbar.org/content/dam/aba/administrative/domestic_violence1/Resources/statutorysummary)

included a provision allowing law enforcement to arrest alleged perpetrators of domestic violence with or without a warrant.<sup>81</sup> The officer must have “probable cause to believe that the person is committing or has freshly committed” an act of domestic violence.<sup>82</sup> If physical injuries are present on the victim, law enforcement may arrest the perpetrator, with or without a warrant.<sup>83</sup>

#### 4. Penalties for Perpetrators

Like the OAPA, the PDAA imposes minimal penalties on perpetrators.<sup>84</sup> For the first offense, abusers are subject to a fine of \$1,000 to \$2,500, imprisonment for not more than ninety days, or satisfactory completion of a treatment program for batterers.<sup>85</sup> For the second offense, penalties include a fine of \$2,500 to \$5,000 and imprisonment for thirty days or up to three years.<sup>86</sup> The court may suspend penalties for second offenders upon the satisfactory completion of a treatment program for batterers.<sup>87</sup> For all offenses beyond the second, the PDAA requires perpetrators be imprisoned for a maximum of ten years.<sup>88</sup>

### III. WHY CAN'T PEGGY GET HELP?: LEGAL AND NON-LEGAL BARRIERS HINDERING REPORTING AND PREVENTING ASSISTANCE

#### A. Non-Legal Barriers to Reporting Abuse

Typically, victims of domestic elder abuse, particularly older women suffering from BWS, are reluctant to seek community assistance or pursue legal remedies for the same reasons as younger domestic violence victims.<sup>89</sup> Some common reasons include isolation, the fear of retaliation from the abuser, embarrassment and shame, concern for privacy, the belief that they are at fault for the abuse, and, as in the case of family members, the fear that their loved one will get in trouble.<sup>90</sup>

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charts/2014%20Domestic%20Violence%20Arrest%20Policy%20Chart.authcheckdam.pdf (citing the ABA's compilation of domestic violence arrest statutes by state).

81. S.C. CODE ANN. § 16-25-70 (2017).

82. *Id.*

83. *Id.* § 16-25-70(B).

84. Compare S.C. CODE ANN. § 43-35-85 (2017), with S.C. CODE ANN. § 16-25-70(B) (2017).

85. S.C. CODE ANN. § 16-25-20 (2017).

86. *Id.*

87. *Id.*

88. *Id.*

89. Abramson et al., *supra* note 33, at 249–50.

90. *Id.* at 249.

Furthermore, some victims of domestic elder abuse fail to seek help and legal remedies because they fear,<sup>91</sup> potentially rightly, that involving APS or law enforcement will lead to involuntary services, such as the “appointment of a surrogate decision-maker” or the removal from their home and placement in an institutional setting.<sup>92</sup>

Because of the numerous barriers hindering abused older women from seeking help, it is crucial that the government, through laws like the Omnibus Adult Protection Act and the Protection from Domestic Abuse Act, and social programs, like APS, provide victims the education, assistance, and support they need to overcome abuse in domestic settings.

*B. The Omnibus Adult Protection Act: Many Abused Elders Not “Vulnerable Adults”*

*1. “Vulnerable Adults”: Excluding Elderly Domestic Violence Victims*

The Omnibus Adult Protection Act currently defines “vulnerable adult” as “a person eighteen years of age or older who has a physical or mental condition which substantially impairs the person from adequately providing for his or her own care or protection.”<sup>93</sup> In order to provide protection to the elderly, the South Carolina General Assembly included “the infirmities of aging including, but not limited to, organic brain damage, advanced age, and physical, mental, or emotional dysfunction” as a qualifying impairment.<sup>94</sup> In 2014, the Supreme Court of South Carolina interpreted the definition of “vulnerable adult” for the first time in *Jane Doe v. S.C. Department of Social Services*.<sup>95</sup> In *Jane Doe*, the plaintiff sought reversal of an order of involuntary protective custody and return to her home after the police found her “in an unsanitary and deplorable condition” of self-neglect, placed her in protective custody, and the family court subsequently placed her in a facility.<sup>96</sup> The court used the “well-established rules of statutory construction” to determine the legislature’s purpose and meaning behind “vulnerable adult,” finding:

By its clear terms, the infirmities of aging must “substantially impair” the person’s ability to adequately provide for his or her own care or protection. Because the [OAPA] does not define

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91. *Id.*

92. *Id.* at 249–50.

93. S.C. CODE ANN. § 43-35-10(11) (2017).

94. *Id.*

95. *Jane Doe v. S.C. Dep’t of Soc. Servs.*, 757 S.E.2d 711, 718–19 (S.C. 2014).

96. *Id.* at 713–14.

“impair,” we have looked to the ordinary meaning of the word. “Impair” means “to make worse by or as if by diminishing in some material respect.” *Merriam-Webster’s New Collegiate Dictionary* 569 (8th ed. 1981). In disability law, “severe impairment” is defined as “a physical or mental impairment that greatly restricts a person’s ability to perform ordinary, necessary tasks of daily life.” *Black’s Law Dictionary* 819 (9th ed. 2009). Thus, we hold for a person to be deemed a vulnerable adult under the [OAPA] the person’s *physical or mental condition, including advanced age, must cause a diminished ability to adequately provide for self-care or protection.*<sup>97</sup>

To support this finding, the court looked to other jurisdictions in the United States.<sup>98</sup> Although the court found no cases “directly on point,” they did find “cases in analogous contexts that support this interpretation of a vulnerable adult.”<sup>99</sup> These cases included “the appointment of a conservatorship,<sup>100</sup> the basis of a civil suit for the exploitation of a vulnerable adult,<sup>101</sup> and the basis of a criminal charge for the abuse or exploitation of a vulnerable adult.”<sup>102</sup> The South Carolina Supreme Court (S.C. Supreme Court) found that proof of a “physical or mental condition, including advanced age” resulting in a “diminished ability to adequately provide for self-care or protection” is required to qualify as a “vulnerable adult” under the OAPA.<sup>103</sup> In *Jane Doe*, although the police found the victim in a “deplorable condition” of self-neglect, the court found “no evidence

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97. *Id.* at 717–18 (emphasis added).

98. *Id.* at 718.

99. *Id.*

100. *Id.* (citing *In re the Conservatorship of Townsend*, 809 N.W.2d 424, 429 (Mich. Ct. App. 2011) (finding petitioner’s mother not to be a “vulnerable adult” due to the lack of evidence that the mother had a “mental, physical, or advanced-age related impairment” that made her unable to make her own decisions regarding her property)); *see also In re Conservatorship of Goodman*, 766 P.2d 1010, 1011 (Okla. Civ. App. 1988) (finding a conservatorship was not constitutionally warranted without a finding of mental incompetence for the 86-year-old woman); *Endicott v. Saul*, 176 P.3d 560, 572 (Wash. Ct. App. 2008) (finding that an eighty-year-old woman was a “vulnerable adult” under Washington’s Abuse of Vulnerable Adults Act where there was evidence that she “could not independently manage her finances or take care of herself”).

101. *Jane Doe*, 757 S.E.2d at 718 (citing *Davis v. Zlatos*, 123 P.3d 1156, 1163 (Ariz. Ct. App. 2005) (finding the elderly victim a “vulnerable adult” because she was physically impaired and “her ability to care for herself was plainly lessened”)).

102. *Id.* at 718–19 (citing *Decker v. State*, 66 So. 3d 654, 658 (Miss. 2011) (interpreting the definition of “vulnerable adult” to include “a person with completely normal mental capacity, but whose ability to perform the normal activities of daily living impaired because of a physical limitation, such as blindness or inability to walk” (emphasis in original)); *State v. Stubbs*, 555 N.W.2d 55, 62 (Neb. Ct. App. 1996) (finding that mental aging without “substantial functional impairment which left [elder] incapable of caring for himself or living independently” does not constitute a “vulnerable adult”).

103. *Id.* at 718.



that Doe's advanced age substantially impaired her ability to adequately provide for her own care and protection. Specifically, there [was] no evidence of *physical* or *mental* infirmities that would prohibit Doe from living independently."<sup>104</sup>

This decision will likely be life-altering and life-threatening to many older women abused in domestic settings in South Carolina. Specifically, based on this interpretation, many women will not qualify for protection under the OAPA, including Peggy. Under *Jane Doe*, lower courts likely would categorize Peggy as a "vulnerable adult" because she does not suffer any physical or mental infirmity that prevents her from living independently or providing for her self-care or protection. Peggy is able to care for and support herself. However, she is unable to distance herself from her abusive son.

Because Peggy is not a "vulnerable adult" as defined by the OAPA and the S.C. Supreme Court, she is left solely with the assistance of the general criminal statutes which are not appropriately tailored to domestic elder abuse situations like Peggy's. Furthermore, Peggy is left without the critical education and outreach that is (or should be) provided by community programs under the OAPA, specifically APS.

## 2. *Protective Custody Inadequate*

Protective custody authorized under the OAPA is a double-edged sword for the legislature. Adapted from typical child abuse statutes, law enforcement commonly uses protective custody to remove an abused child from the custody of their alleged abuser, usually a parent or guardian.<sup>105</sup> However, unlike child abuse victims, who are presumed incompetent and unable to make legal decisions for themselves until the age of maturity (usually age eighteen), victims of elder abuse are presumed to have self-determination and are competent to make legal, health, and other personal decisions for themselves.<sup>106</sup> In addition, although children are usually unable to care for and protect themselves, the law presumes older adults are capable of providing self-care and protection.<sup>107</sup>

Although protective custody is sometimes necessary to protect an elderly victim, particularly from neglect, self-neglect, and abandonment, it is often not appropriate in cases of physical, emotional, or financial abuse. These forms of abuse are common in domestic

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104. *Id.* at 719–20 (emphasis added).

105. See S.C. CODE ANN. §§ 63-7-610, -620 (2017).

106. See Joseph W. Barber, Note, *The Kids Aren't All Right: The Failure of Child Abuse Statutes as a Model for Elder Abuse Statutes*, 16 ELDER L.J. 107, 122–23 (2008).

107. Abramson et al., *supra* note 33, at 264.

elder abuse situations and are often the types of abuse used by the perpetrators to gain and maintain control of elderly victims.<sup>108</sup> In addition, removing the elderly adult from their home in these latter situations could result in constitutional violations if doing so results in the deprivation of liberty or property without due process.<sup>109</sup> Most importantly, the elderly woman may see the removal from her home and placement into protective custody as a personal punishment to her and, subsequently, as a reward to her abuser.

Although protective custody and orders of protection are used in abuse situations to separate the victim and the perpetrator, orders of protection require the abuser to cease interaction with the victim and force the abuser, instead of the victim, to leave the home. Because of the self-determination and competence of older women, orders of protection are more appropriate in the domestic elder abuse setting. However, as discussed above, orders of protection in domestic abuse situations are only available under the PDAA and are not a legal remedy authorized by the OAPA.<sup>110</sup> This poses a problem, as many elderly women abused in domestic settings do not qualify as “household members” protected under the Protection from Domestic Abuse Act.

### *C. The Protection from Domestic Abuse Act: Who Is Not a “Household Member”*

In 2003, the South Carolina General Assembly amended the definition of “household member” as outlined in the Protection from Domestic Abuse Act to its current form.<sup>111</sup> With the amendment, the Legislature intentionally restricted the application of the PDAA to

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108. See discussion *supra* Sections I.C and III.A.

109. U.S. CONST. amend. XIV, § 1 (“[N]or shall any State deprive any person of life, liberty, or property, without due process of law.”). The South Carolina Constitution also contains this provision. S.C. CONST. art. I, § 3. In addition to depriving the elderly victim of their liberty and the use of their property, the Omnibus Adult Protection Act also authorizes the court to order the elderly victim to reimburse the South Carolina Department of Social Services for costs incurred through the use of protective custody, potentially further depriving victims of their property without due process. See S.C. CODE ANN. § 43-35-45(I) (2017). To help protect a vulnerable adult’s constitutional rights under the U.S. and South Carolina Constitutions, in *Jane Doe*, the S.C. Supreme Court concluded that a clear and convincing evidence standard is necessary. *Jane Doe*, 757 S.E.2d at 719.

110. Compare S.C. CODE ANN. § 43-35-45 (2017) (protective custody), with S.C. CODE ANN. § 20-4-40(a) (2017) (orders of protection).

111. S.C. CODE ANN. § 16-25-10 (2003) (“[H]ousehold member” means spouses, former spouses, “persons who have a child in common,” and “a male and female who are cohabiting or formerly have cohabited.”). The current state of the statute is a mere re-stylization that in no way affects the content or application of the statute. The current stylization is discussed *supra* Section II.B.1.

parties who are or were previously engaged in a romantic relationship.<sup>112</sup> This restriction becomes apparent when contrasted with the 2002, pre-amended statute, which stated: “[H]ousehold member’ means, spouses, former spouses, *parents and children, persons related by consanguinity or affinity within the second degree*, persons who have a child in common, and a male and female who are cohabiting or formerly have cohabited.”<sup>113</sup> This change restricted the application of the PDAA to elderly women who fell victim to domestic abuse by parties other than their spouses or partners, specifically excluding abuse at the hands of their children, grandchildren, and other close relatives.

Some may argue that, by its plain meaning, the current statute would still apply in Peggy’s and Johnny’s situation through the portion of the Code that states “a male and female who are cohabiting or formerly have cohabited.”<sup>114</sup> A deeper look into South Carolina law and the meaning of “cohabit,” however, clarifies that Peggy and Johnny are likely not considered “household member[s]” as defined in S.C. Code Ann. § 16-25-10, leaving Peggy without the legal remedies available under the PDAA.

In *Boozer v. Boozer*, the S.C. Supreme Court interpreted the legal definition of “cohabitation.”<sup>115</sup> The court was tasked with determining whether a wife had deserted her husband through a “cessation of cohabitation” for the statutory period required for divorce.<sup>116</sup> During the period at issue, the husband visited their children at the wife’s home and the wife periodically visited their children at the husband’s residence, sometimes staying overnight.<sup>117</sup> One party stipulated that at no time during these visits did they participate in marital (sexual) relations with one another.<sup>118</sup> The court had to determine if the visits, absent sexual relations, constituted a “cessation of cohabitation” between the parties.<sup>119</sup> The court stated: “The word “separation,” as applied to the legal status of a husband and wife, . . . means “[a] cessation of cohabitation of husband and wife.” Cohabit . . . means: “[t]o live together as man and wife; usually, though not necessarily, implying sexual intercourse.””<sup>120</sup> The court also considered the third edition of *Black’s Law Dictionary*,

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112. See discussion *supra* Section II.B.1.

113. S.C. CODE ANN. § 16-25-10 (2002) (emphasis added) (citing removed language).

114. S.C. CODE ANN. §§ 16-25-10(3)(d), (4) (2017).

115. *Boozer v. Boozer*, 130 S.E.2d 903, 905 (S.C. 1963).

116. *Id.*

117. *Id.* at 904.

118. *Id.*

119. *Id.* at 905.

120. *Id.*

which defined cohabitation as “[l]iving together, living together as man and wife; sexual intercourse.”<sup>121</sup>

The current edition of *Black’s Law Dictionary* defines cohabitation as “[t]he fact, state, or condition of living together, esp[ecially] as partners in life, usu[ally] with the suggestion of sexual relations.”<sup>122</sup> Furthermore, a quick Google search of “cohabitation” results in page after page of websites relating to marriage, premarital cohabitation, parenting while cohabiting, and more. Cohabiting means more than strictly residing together and, because of this, in South Carolina, elderly women abused in domestic settings by their adult children or other relatives receive no assistance through the PDAA, specifically the ability to obtain an order of protection or the benefit of warrantless arrest of the perpetrator.

#### *D. No Money, More Problems: Inadequate Funding of Adult Protective Services*

Based on the current state of “household member” under the PDAA and the inadequate definition of “vulnerable adult” included in the OAPA and interpreted by the S.C. Supreme Court in *Jane Doe*, shockingly, victims like Peggy would not qualify for protection under the OAPA or the PDAA. However, even if victims like Peggy did qualify for assistance under the OAPA, it is still unlikely that these victims would receive adequate assistance due to the substantial lack of funding of OAPA programs, specifically APS.

Adequate funding is crucial for the OAPA’s effectiveness. APS receives funding from multiple sources, including federal and state funding.<sup>123</sup> The Older Americans Act (OAA) and the Elder Justice Act (EJA) are federal statutes that provide funding for states to combat elder abuse and provide social services for the elderly.<sup>124</sup> Congress enacted the OAA in 1965 in response to a lack of community services for older persons and provides state grants to help remedy this problem.<sup>125</sup> The OAA authorizes the appropriation of

121. *Boozar*, 130 S.E.2d at 905.

122. *Cohabitation*, BLACK’S LAW DICTIONARY (10th ed. 2014).

123. See *Extension Request Form: Restructuring & Seven-Year Plan Report*, S.C. DEPT OF SOC. SERVS., SCSTATEHOUSE.GOV, <http://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/2015AgencyRestructuringandSevenYearPlanReports/2015%20Department%20of%20Social%20Services.pdf> [hereinafter *Extension Request Form*].

124. See *Administration of Aging (AOA): Older Americans Act Reauthorization Act of 2016*, ADMIN. FOR COMMUNITY LIVING (Jan. 12, 2017), [https://aoa.acl.gov/AoA\\_Programs/OAA/Reauthorization/2016/Index.aspx](https://aoa.acl.gov/AoA_Programs/OAA/Reauthorization/2016/Index.aspx) [<http://perma.cc/3QY9M3DW>] [hereinafter *Reauthorization*]; see also *Public Policy: Federal Laws*, NAT’L CTR. ON ELDER ABUSE, <https://ncea.acl.gov/whatwedo/policy/federal.html> [<http://perma.cc/27MEQWNE>].

125. *Administration on Aging (AOA): Older Americans Act*, ADMIN. FOR COMMUNITY LIVING, [http://www.aoa.gov/AOA\\_programs/OAA](http://www.aoa.gov/AOA_programs/OAA) [<http://perma.cc/2CCP6ZUQ>].

federal funding to specific elderly services and is typically reauthorized by Congress every three to five years.<sup>126</sup> However, Congress failed to reauthorize the OAA for five years after the 2006 reauthorization expired in 2011.<sup>127</sup>

Forty-five years later, in 2010, the EJA was enacted as part of the Patient Protection and Affordable Care Act.<sup>128</sup> The EJA was the first federal bill passed to provide federal funding specifically for combating “elder abuse, neglect and exploitation.”<sup>129</sup> Congress authorized the funding to support state-level social services, specifically APS.<sup>130</sup> Like the OAA, Congress is required to reauthorize the EJA.<sup>131</sup> Congress failed to reauthorize the EJA in a timely manner as well when the EJA’s authorization expired in 2014.<sup>132</sup>

In fiscal year 2013–2014, federal funds compromised almost 63 percent (\$1,848,756) of the South Carolina APS budget.<sup>133</sup> The remaining \$1,099,796 consisted of state funding.<sup>134</sup> However, funding for APS services in South Carolina makes up a dismal .6 percent (\$2,948,552) of the South Carolina Department of Social Services (S.C. DSS) annual budget, which totaled over half a billion dollars (approximately \$515,849,367) in fiscal year 2013–2014.<sup>135</sup>

In 2011, the then Director of APS, Mildred Washington,<sup>136</sup> indicated “[f]unding for the APS Program” and “[s]taff turnover or lack of staff” were the top two “biggest challenges facing APS” in South

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126. *See Reauthorization*, *supra* note 124.

127. *Senate Health Committee Passes Bipartisan Legislation to Support Social and Nutrition Services for Nearly 12 Million U.S. Seniors*, SENATE.GOV (Jan. 28, 2015), <http://www.help.senate.gov/chair/newsroom/press/senate-health-committee-passes-bipartisan-legislation-to-support-social-and-nutrition-services-for-nearly-12-million-us-seniors> [http://perma.cc/3ZZ8PDTZ] (stating the OAA “has been due for reauthorization since 2011”).

128. *Public Policy: Federal Laws*, *supra* note 124.

129. *Id.*

130. *Id.*

131. *The Elder Justice Act: Addressing Elder Abuse, Neglect, and Exploitation*, NAT’L HEALTH POL’Y F. 5–6 (2010), [https://www.nhpf.org/library/the-basics/Basics\\_ElderJustice\\_11-30-10.pdf](https://www.nhpf.org/library/the-basics/Basics_ElderJustice_11-30-10.pdf) (detailing the funding authorized by the EJA for the fiscal years 2011–2014).

132. Elder Justice Reauthorization Act, H.R. 988, 114th Cong. (as introduced in the House, Feb. 13, 2015), <https://www.congress.gov/bill/114th-congress/house-bill/988> [http://perma.cc/75DPGPSM] (Congress’s most recent attempt to reauthorize the EJA).

133. *Extension Request Form*, *supra* note 123.

134. *Id.*

135. *Id.*

136. Mildred Washington retired as the Director of APS in 2016. Mildred Washington, LINKEDIN, <https://www.linkedin.com/in/mildred-washington-270415112>. The new Director of Adult Advocacy is Kelly Cordell. Mary Katherine Wildeman, *South Carolina’s Adult Protective Services Is Underfunded at Critical Time for Aging Population*, POST & COURIER (Feb. 19, 2017), [http://www.postandcourier.com/features/south-carolina-s-adult-protective-services-is-underfunded-at-critical/article\\_98157ae4-f542-11e6-953f-7f26750b123c.html](http://www.postandcourier.com/features/south-carolina-s-adult-protective-services-is-underfunded-at-critical/article_98157ae4-f542-11e6-953f-7f26750b123c.html) [http://perma.cc/C6YALJGE].

Carolina.<sup>137</sup> However, state officials cannot be surprised by the lack of funding. Since 2000, APS has watched its funding dwindle from \$5,744,530 in 2006<sup>138</sup> to its current budget of approximately \$3 million.<sup>139</sup> This reduction was partially brought on by the previous S.C. DSS State Director Lillian Koller's continual insistence that the Department "needed no additional money or staff."<sup>140</sup>

Inadequate funding has led to a lack of caseworkers and heavy caseworker turnover. In 2012, APS had approximately eighty-five caseworkers on staff,<sup>141</sup> with an average caseload of twenty-five to sixty cases per caseworker, and a salary of approximately \$25,000.<sup>142</sup> In South Carolina, a caseworker's time is split between APS and Child Protective Services (CPS).<sup>143</sup> The combination of divided caseworker time and the ill-proportioned allocation of funding between

137. *State of Adult Protective Services Baseline Assessment—2012*, NAT'L ADULT PROTECTIVE SERVS. ASS'N (2012), <http://www.napsa-now.org/wp-content/uploads/2013/02/APS-Report-SC.pdf> [hereinafter *Baseline Assessment*].

138. H. 4810, § 13, 2006 Leg., 116th Sess. (S.C. 2006) (enacted), [http://www.scstatehouse.gov/sess116\\_2005-2006/appropriations2006/tas13.htm](http://www.scstatehouse.gov/sess116_2005-2006/appropriations2006/tas13.htm) [<http://perma.cc/23YCNGFV>].

139. Funding has remained at approximately \$3 million since fiscal year 2011–2012. *See, e.g.*, H. 3700, § 26, 2011 Leg., 119th Sess. (S.C. 2011) (enacted), [http://www.scstatehouse.gov/sess119\\_2011-2012/appropriations2011/tas26.htm](http://www.scstatehouse.gov/sess119_2011-2012/appropriations2011/tas26.htm) [<http://perma.cc/X3NU7RPW>] (indicating an allocation of \$2,951,338 to APS for fiscal year 2011–2012); H. 3701, § 38, 2015 Leg., 121st Sess. (S.C. 2015) (enacted), [http://www.scstatehouse.gov/sess121\\_2015-2016/appropriations2015/tas38.htm](http://www.scstatehouse.gov/sess121_2015-2016/appropriations2015/tas38.htm) [<http://perma.cc/NB958D9Y>] (indicating an allocation of \$3,379,951 to APS for fiscal year 2014–2015); H. 5001, § 38, 2016 Leg., 121st Sess. (S.C. 2016) (enacted), [http://www.scstatehouse.gov/sess121\\_2015-2016/appropriations2016/tap1a.htm#s38](http://www.scstatehouse.gov/sess121_2015-2016/appropriations2016/tap1a.htm#s38) [<http://perma.cc/4NZYDDY3>] (indicating a lower appropriation of \$2,937,235 to APS for fiscal year 2016–2017).

140. Adcox, *supra* note 7. The S.C. Senate began an investigation into S.C. DSS in January 2014. Former S.C. DSS Director Lillian Koller resigned in June 2014, shortly before a S.C. Senate no-confidence vote. The investigation remains open, with the last DSS Oversight Subcommittee meeting occurring on February 7, 2017. However, the committee meetings have focused mainly on child-related services (e.g., child protective services, foster care, etc.), with only minor discussion relating to APS in the August 24, 2015 and February 7, 2017 meetings. South Carolina Legislature Video Archives, *Senate General Committee—Senate General DSS Oversight Subcommittee*, SCSTATEHOUSE.GOV (Feb. 7, 2017), <http://scstatehouse.gov/video/videofeed.php> [<http://perma.cc/5EZW539N>].

141. *Baseline Assessment*, *supra* note 137, at 1. In their Exit Surveys, 29 percent of caseworkers indicated "higher pay" as being their reason for departing.

142. *ADULT PROTECTIVE SERVICES IN 2012: INCREASINGLY VULNERABLE*, NAT'L ADULT PROTECTIVE SERVS. ASS'N 35 (2012) [hereinafter *INCREASINGLY VULNERABLE*], <http://www.napsa-now.org/wp-content/uploads/2012/06/BaselineSurveyFinal.pdf>; *see also Extension Request Form*, *supra* note 123. The average annual salary of a S.C. Caseworker is \$25,513. This number is based on S.C. DSS's budget request for fiscal year 2016–2017, in which they requested \$892,956 in funding for 35 new caseworkers. S.C. DEPT OF SOC. SERVS. FY 2016–17 BUDGET PRESENTATION, SCSTATEHOUSE.GOV Tab 3, 2, <http://www.scstatehouse.gov/Archives/CommitteeInfo/Ways&MeansHealthcareBudgetSubcommittee/January202016/Department%20of%20Social%20Services%20FY%202016-2017%20Budget%20Request%20Presentation.pdf>.

143. *INCREASINGLY VULNERABLE*, *supra* note 142, at 3.

adult and children's services has detrimentally affected elderly victims' access to services in South Carolina.<sup>144</sup> On August 24, 2015, in a hearing with the South Carolina Senate's DSS Oversight Subcommittee, newly appointed DSS State Director V. Susan Alford stated that APS "tends to be an area that we just look at as an afterthought . . . . There's been very little attention paid to this area. . . . because we've spread ourselves so thin across the department."<sup>145</sup>

#### IV. REFORMING, REDEFINING, AND REAPPROPRIATING: HOW SOUTH CAROLINA CAN BETTER COMBAT DOMESTIC ELDER ABUSE

##### *A. Reforming the Omnibus Adult Protection Act: Learning from Wisconsin*

Since the 1990s, Wisconsin, like South Carolina, has taken significant steps to address elder abuse.<sup>146</sup> However, Wisconsin has established itself "as a leader in working with older victims of family violence."<sup>147</sup> In 2001, with Wisconsin's elder abuse statute reaching its twentieth anniversary,<sup>148</sup> the Wisconsin Department of Health and Family Services sought to reform the state's APS system.<sup>149</sup> Through its research, the department identified specific problems hindering APS's ability to assist abused elders, including (1) a narrow definition of "vulnerable adult;" (2) "limitations in the relationship or living arrangement required between victim and abuser" for the victim to obtain a restraining order against the perpetrator; (3) "restrictions on who could petition for [a] restraining order;" and (4) "the remedies available" to victims.<sup>150</sup> In an attempt to remedy these problems, the Wisconsin legislature amended its elder abuse statute in 2006 and enacted legislation providing an "individual at risk" restraining order.<sup>151</sup> The first step in combating domestic elder abuse in South Carolina is for South Carolina to reform the Omnibus Adult Protection Act to more closely mirror Wisconsin's elder abuse statute.

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144. See *Baseline Assessment*, *supra* note 137, at 1.

145. Adcox, *supra* note 7.

146. Abramson et al., *supra* note 33, at 250.

147. *Id.*

148. WIS. STAT. § 46.90 (2017) (original enactment in 1983).

149. Abramson et al., *supra* note 33, at 253.

150. *Id.* The department also identified "limitations in the abusive behaviors that could be restrained" as a problem. At that time, the statute did not include "financial exploitation, emotional abuse, and mistreatment of animals" as restrainable behaviors. Abramson et al., *supra* note 33, at 253. This Note does not specifically address this issue.

151. *Id.* at 256.

1. *“Individuals at Risk” v. “Vulnerable Adults”*

Like South Carolina’s statute, Wisconsin’s original elder abuse statute also applied solely to “vulnerable adults.”<sup>152</sup> The statute defined “vulnerable adult” as:

[A]ny person 18 years of age or older who either is a developmentally disabled person or has infirmities of aging, mental illness or other like incapacities and who is:  
 (1) [S]ubstantially mentally incapable of providing for his or her needs for food, shelter, clothing or personal or health care;  
 or (2) Unable to report cruel maltreatment without assistance.<sup>153</sup>

If one compares the South Carolina and Wisconsin definitions of “vulnerable adult,” the two are almost indistinguishable.<sup>154</sup>

However, like Wisconsin in 2001, South Carolina is currently experiencing problems with the effectiveness of its elder abuse statute and APS program in combating domestic elder abuse within the state. Specifically, the stringent requirements of the “vulnerable adult” definition under S.C. Code Ann. § 43-35-10(11) and *Jane Doe v. S.C. Department of Social Services* have narrowed the population of elderly women in South Carolina who are protected under the OAPA.<sup>155</sup> To remedy this problem, the Wisconsin legislature removed the term “vulnerable adult” from the elder abuse statute, replacing it with the classification “elder adult at risk.”<sup>156</sup> An “elder adult at risk” is “any person age 60 or older who has experienced, is currently experiencing, or is at risk of experiencing abuse, neglect, self-neglect, or financial exploitation.”<sup>157</sup> In addition, Wisconsin also replaced its “vulnerable adult” definition for persons age eighteen to fifty-nine with the classification “adult at risk,” which is defined as “any adult who has a physical or mental condition that substantially impairs his or her ability to care for his or her needs and who has experienced, is currently experiencing, or is at risk of experiencing abuse, neglect, self-neglect, or financial exploitation.”<sup>158</sup> Ultimately, this change distinguished between the disabled adult population and the elderly population who both require assistance from APS.

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152. See WIS. STAT. § 940.285(1)(e) (2001) (repealed 2006).

153. *Id.*

154. Compare *id.*, with S.C. CODE ANN. § 43-35-10(11) (2017).

155. See *Jane Doe* 757 S.E.2d 711, 718–19 (S.C. 2014) (citing S.C. CODE ANN. § 43-35-10(11) (Supp. 2013)); see also Abramson et al., *supra* note 33, at 253–54 (discussing Wisconsin’s similar problem of restricting elders from receiving assistance due to the strict “vulnerable adult” definition).

156. See WIS. STAT. § 46.90(1)(br) (2017).

157. *Id.*

158. *Id.* § 55.01(1)(e).



As in Wisconsin, this distinction is crucial to the effectiveness of the OAPA and APS. Persons who fall under each of the classifications will likely have different physical and mental capabilities and needs. Specifically, “vulnerable adults” ages eighteen to fifty-nine are persons suffering from the “physical or mental condition[s] which substantially impair[] [said] person from adequately providing for his or her own care or protection,” as outlined in the OAPA.<sup>159</sup> These “vulnerable adults” may require placement in an institutional setting to ensure they have adequate care and protection. However, elderly victims like Peggy, who are able to care for themselves, yet unable to protect themselves from abusive loved ones, are not as likely to suffer from the mental or physical ailments outlined in the OAPA and *Jane Doe*. Unlike “vulnerable adults,” who require institutionalized care, many elderly victims of domestic abuse do not require placement in an institutional setting. Instead, elderly victims require protective orders removing the abusers from their homes and preventing further contact and, likely, counseling to learn how to cope with the abuse inflicted by and subsequent separation from their loved ones.

Incorporating the “elder adult at risk” definition under the statute acknowledges that elder abuse is a widespread, yet under-reported, problem often hidden from the public eye and allows for persons ages sixty and older to easily fall under the protections of the statute. Like Wisconsin in 2001, it is time for South Carolina to reevaluate the OAPA and the APS program to better combat domestic elder abuse. Through this reform, the South Carolina General Assembly should develop a two-part definition (“adult at risk” and “elder adult at risk”), in which all “individuals at risk,” particularly elderly domestic abuse victims not currently considered “vulnerable adults,” will gain the statutory protections of the OAPA.

## 2. *Providing Restraining Orders*

When Wisconsin lawmakers decided to reform the state’s elder abuse statute, they found that, like South Carolina, their “then-existing domestic abuse restraining order law” severely limited “the relationship or living arrangement required between victim and abuser.”<sup>160</sup> Like South Carolina’s Protection from Domestic Abuse Act, Wisconsin’s domestic abuse restraining order only applied to “abusers in an intimate relationship with the victim,” specifically

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159. S.C. CODE ANN. § 43-35-10(11) (2017).

160. Abramson et al., *supra* note 33, at 253–54.

those who currently or previously resided with the victim or those who shared a child with the victim.<sup>161</sup>

Although a “vulnerable adult” restraining order existed at the time, it was merely a “non-interference” order, used to prevent “someone from interfering with the county’s investigation or delivery of protective services.”<sup>162</sup> By contrast, the domestic violence restraining order also included a “no-contact (stay away)” provision.<sup>163</sup> During the reform process, Wisconsin lawmakers concluded that restraining orders containing no-contact provisions were needed in both domestic violence and elder abuse situations and enacted the “individual at risk” restraining order.<sup>164</sup>

The “individual at risk” restraining order protects both “adults at risk” and “elder adults at risk.”<sup>165</sup> The law retains the non-interference provision, but also allows victims to obtain a “true no-contact” restraining order.<sup>166</sup> Most importantly, the “individual at risk” restraining order is available to victims of “actions or threats . . . [of] physical abuse, sexual abuse, or emotional abuse, . . . financial exploitation, neglect, harassment, [and] stalking.”<sup>167</sup> In her 2011 study of the first thirty months of the “individual at risk” restraining order, Betsy Abramson and her colleagues found the restraining order most commonly used in helping to protect “individuals at risk”<sup>168</sup> from financial exploitation, emotional abuse, and physical abuse.<sup>169</sup>

With over thirty percent of abuse cases reported to South Carolina APS in 2013 consisting of physical, psychological/emotional, and financial abuse, it is likely that South Carolina’s elderly, like Wisconsin’s elderly, would benefit from the availability of a no-contact

161. *Id.* at 254, 254 n.32 (stating that in 2007, the domestic violence restraining order was expanded to include caregivers).

162. *Id.* at 255–56.

163. *Id.* (noting that prior to the reform, Wisconsin had four restraining order laws in effect: (1) child abuse, (2) harassment, (3) domestic abuse, and (4) vulnerable adults. All but the vulnerable adult restraining order included a “no-contact (stay away)” provision).

164. *Id.* at 256.

165. Abramson et al., *supra* note 33, at 252.

166. *Id.* at 256.

167. *Id.*

168. *Id.* Unfortunately, the data collected in Abramson’s study did not allow for an analysis of the age of the “individuals at risk.” However, her article primarily includes case examples for elderly women, thus indicating that a majority of the petitions for an “individual at risk” restraining order were likely on behalf of “elder adults at risk.” *Id.* at 263–68.

169. *Id.* at 263. Of the 116 court cases reviewed in the study, financial, emotional, and physical abuse were alleged in the following percentages: 60 percent (financial), 57 percent (emotional), and 28 percent (physical). Abramson et al., *supra* note 33, at 263. Prior to the enactment of the “individual at risk” restraining order, financial abuse and emotional abuse were not grounds for obtaining a restraining order. *Id.*

restraining order.<sup>170</sup> In addition, allowing elderly victims to obtain a restraining order will likely lead to a reduction in the use of protective custody by law enforcement and APS in non-neglect situations. In fact, Abramson found that, as an initial response to reports, Wisconsin county workers used the “individual at risk” restraining order to “remove [the alleged] abuser from the home of [the] individual at risk.”<sup>171</sup> This remedy protects elderly women who are self-determined, competent, and able to provide their own self-care and protection from removal from their homes and placement with family or in an institutional setting. Furthermore, the availability of a restraining order will allow competent elderly victims to make legal and personal decisions for themselves, supporting personal autonomy.

Unfortunately, if the abuse suffered by the elderly woman has rendered her unable, unwilling, or reluctant to seek help or to pursue available legal remedies, assistance from a third party may be crucial to stopping the abuse.

### *3. A Voice of Reason: Allowing Third-Party Petitions for Restraining Orders*

Although the Wisconsin legislature allowed third parties to petition for the “vulnerable adult” restraining order prior to the reform, the previous statute limited these third parties to the vulnerable adult’s court-appointed guardian or APS.<sup>172</sup> The workgroup tasked with providing research for the reform found that “individuals at risk” would benefit from expanding the availability of potential third-party petitioners, specifically because many “individuals at risk did not realize that abuse was occurring, or [an] individual did not or could not seek a restraining order due to isolation, diminished competency,” or other non-legal barriers.<sup>173</sup>

As discussed previously, elderly persons are presumed competent to make their own legal and personal decisions.<sup>174</sup> As a consequence, Wisconsin lawmakers appropriately drafted the “individual at risk” restraining order to “ensure the rights of an individual at risk,” allowing the “individual at risk” to object to the third-party request for a restraining order.<sup>175</sup> To achieve this protection, the Wisconsin legislature included the following provisions within the

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170. Gmerek & Washington, *supra* note 30, at 21. Self-neglect cases reported to APS were not included in this calculation.

171. Abramson et al., *supra* note 33, at 259.

172. *Id.* at 254–55.

173. *Id.* at 255.

174. See discussion *supra* Section III.B.2.

175. Abramson et al., *supra* note 33, at 255.

“individual at risk” restraining order specifically related to third-party petitions:

- (1) the petitioner must provide notice of the petition to the individual at risk, and
- (2) the court must appoint a guardian ad litem to investigate the situation and report to the court as to whether issuance of the restraining order would be in the best interests of the individual at risk.<sup>176</sup>

In her study, Abramson found that the actual “individual at risk” sought approximately half of petitions filed with the court.<sup>177</sup> The remainder consisted of filings on behalf of an “individual at risk” by a third party, typically a relative (22 percent) or county staff member (19 percent).<sup>178</sup> Of the 321 court filings reviewed, 284 (88 percent) of the petitions resulted in a temporary restraining order.<sup>179</sup> Subsequently, the court issued permanent injunctions (orders of protection) in over half of these cases.<sup>180</sup> Important to this analysis, Abramson found that approximately 50 percent of “petitions filed by an individual at risk or by a relative resulted in an injunction.”<sup>181</sup>

Like elderly victims of domestic abuse in Wisconsin, South Carolina’s elderly victims likely also suffer from the common non-legal barriers hindering victims from seeking help and legal assistance. Given the overwhelming success of the “individual at risk” restraining order and third-party-petition provision of the Wisconsin statute, it is highly likely that South Carolina’s elderly women abused in domestic situations would also benefit from the enactment of an “individual at risk” restraining order, which provides for third-party petitions on behalf of abuse victims.

South Carolina’s first step in accomplishing this would be for the General Assembly to amend or replace the definition of “vulnerable adult” in the Omnibus Adult Protection Act to more closely mirror Wisconsin’s “individual at risk” and “elder adult at risk” definitions. With this change, the South Carolina General Assembly should also enact a restraining order, much like the order of protection found in

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176. *Id.* (internal citation omitted).

177. *Id.* at 259.

178. *Id.*

179. *Id.* at 258–59. Approximately 12 percent (39) of petitions for an “individual at risk” restraining order were filed by someone other than the “individual at risk,” a relative, or county staff. Further supporting the need for third-party petitioners, of these petitions, approximately 92 percent resulted in a temporary restraining order and 58 percent ultimately resulted in a permanent injunction. *Id.*

180. *Id.*

181. Abramson et al., *supra* note 33, at 259.

the Protection from Domestic Abuse Act, but which also includes a provision allowing for third parties to petition on behalf of abuse victims. Mirroring the Wisconsin elder abuse statute would positively impact the lives of South Carolina's elderly women abused in domestic settings and allow the state to better combat elder abuse in general.

*B. Some Elder Abuse Is Domestic Abuse: Redefining "Household Member" in the Protection from Domestic Abuse Act*

The process of changing a law can be difficult and prolonged. Primarily, the South Carolina General Assembly should first focus its efforts on amending and expanding the Omnibus Adult Protection Act to better mirror Wisconsin's elder abuse statute. Secondly, expanding the definition of "household member" in the Protection from Domestic Abuse Act would provide additional legal remedies for elderly victims of domestic abuse and would further assist South Carolina in combating elder abuse. The easiest way to accomplish this is to redefine "household member" in the PDAA, either by incorporating additional relationships or reinstating the 2002 definition.

South Carolina lawmakers must realize that domestic abuse is not confined to sexually intimate relationships.<sup>182</sup> Although elder abuse was originally believed to be caused by caregiver stress, researchers have found that "in most cases of elder abuse the dynamics [between the perpetrator and victim] are more similar to traditional domestic violence than to caregiver stress."<sup>183</sup> The caregiver stress theory suggests that overburdened caregivers abuse when they lose control while under significant pressure.<sup>184</sup> However, more recent studies show that many older women are abused through a "pattern of coercive tactics" used by perpetrators to gain power and control

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182. Domestic violence is defined as

[v]iolence between members of a household, usu[ally] spouses; an assault or other violent act committed by one member of a household against another. . . . 2. The infliction of physical injury, or the creation of a reasonable fear that physical injury or harm will be inflicted, by a parent or a member or former member of a child's household, against a child or against another member of the household.—Also termed *domestic abuse*; *family violence*.

*Domestic Violence*, BLACK'S LAW DICTIONARY (10th ed. 2014).

183. Brandl & Meuer, *supra* note 12, at 305 (discussing the common belief that caregiver stress is the primary cause of elder abuse and occurs when "caregivers occasionally snap, become abusive, and say or do things they would not normally do").

184. *Id.*; Bonnie Brandl & Julie Rozwadowski, *Responding to Domestic Abuse in Later Life*, 5 MARQ. ELDER'S ADVISOR 108, 110 (2003).

over them.<sup>185</sup> As discussed above, elder abuse in domestic settings often features the same types of victim-abuser dynamic and abuse cycle that is common to other forms of domestic violence, specifically intimate partner violence.<sup>186</sup>

In addition, expanding the definition of “household member” will protect not only elderly women abused in domestic settings, but also other household members who suffer domestic abuse. In today’s world, the “traditional” nuclear family is disappearing, and the structure and composition of households in the United States have become more varied.<sup>187</sup> In 2010, the U.S. Census Bureau found that 28.4 million households in the United States are considered “doubled-up households.”<sup>188</sup> A doubled-up household is a household with at least one person who is not the householder’s spouse, partner, or child under the age of twenty-one.<sup>189</sup> In addition, between 2003 and 2009, the number of doubled-up households grew faster than the total number of households, traditional and doubled-up, in the United States, with “a 7.5-percent increase compared with the 5.6-percent increase in the total number of households.”<sup>190</sup> The most common form of a doubled-up household was one that included an adult child living with his or her parent.<sup>191</sup> This scenario is common in elder households and likely correlates with statistics that show that domestic elder abuse is most frequently committed by the elder’s adult children.<sup>192</sup> Expanding the definition of “household member” to be more inclusive of the changing composition of U.S. households and to include additional potential perpetrators and victims than those in intimate or sexual relationships, would provide added protection and legal remedies for elderly women and other household members abused in domestic settings.

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185. Brandl & Rozwadowski, *supra* note 184, at 110–11.

186. *See* discussion *supra* Section I.C.

187. *See* Sandra Timmerman & Debra Caruso, *The Disappearing Nuclear Family and the Shift to Non-Traditional Households Has Serious Financial Implications for Growing Numbers of Americans*, HUFFINGTON POST, [http://www.huffingtonpost.com/debra-caruso/retirement-plan-the-disappearing-nuclear-family\\_b\\_2534622.html](http://www.huffingtonpost.com/debra-caruso/retirement-plan-the-disappearing-nuclear-family_b_2534622.html) (last updated Mar. 27, 2013) [<http://perma.cc/UVJ8B9ML>].

188. Frederick J. Eggers & Fouad Moumen, ANALYSIS OF TRENDS IN HOUSEHOLD COMPOSITION USING AMERICAN HOUSING SURVEY DATA, U.S. DEPT OF HOUSING & URBAN DEV. vi–vii (Dec. 2013), [https://www.huduser.gov/publications/pdf/ahs\\_householdcomposition\\_v2.pdf](https://www.huduser.gov/publications/pdf/ahs_householdcomposition_v2.pdf) (finding an estimated 26.5 million doubled-up households in the U.S. in 2009).

189. *Id.* at 2.

190. *Id.* at 8.

191. *Id.* at 2.

192. Tatara & Kuzmeskus, *supra* note 33, at 2 (reporting that, in 1996, 36.7 percent of adult children were the abusers, up from 30.1 percent in 1990).

*C. More Money, More Help: Properly Funding Adult Protective Services*

“Elder abuse is a long way from achieving the political or budgetary recognition of child abuse or domestic violence.”<sup>193</sup> As discussed above, insufficient funding leads to massive shortfalls in the assistance available to elderly women abused in domestic settings, including a lack of caseworkers, caseworkers who are overworked and underpaid, the inability to adequately educate victims of the community about the legal services available to them, as well as the inability to adequately provide said community with legal services.<sup>194</sup>

Congress attempted to combat these problems by enacting the OAA and EJA. However, Congress has failed America’s elderly by refusing to reauthorize these Acts in a timely manner. Although Congress reauthorized the OAA in 2016, it did so five years after the previous reauthorization expired.<sup>195</sup> In addition, Congress has yet to reauthorize the EJA, which was due for reauthorization in 2014.<sup>196</sup> Reauthorization within the time frames provided in the respective Acts would allow Congress to update and improve the Acts, as well as reevaluate and provide additional funding for the OAA’s and EJA’s programs and services.

On the state level, South Carolina must reevaluate the proportion of funding allocated to elderly services (versus children’s services) and increase this funding, specifically for APS. Currently, less than 1 percent of S.C. DSS funding is allocated to APS, while at least 46 percent of its funds are devoted to children’s services, including the CPS, Foster Care, Adoptions, and Child Care programs.<sup>197</sup> With the percentage of children under the age of eighteen dropping in the United States and the percentage of persons sixty-five and older on the rise,<sup>198</sup> this misallocation of funds cannot continue.

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193. Rita Beamish, *Elder Abuse a ‘Huge, Expensive and Lethal’ Problem for States*, PEWTRUSTS:STATELINE (May 26, 2015), <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2015/5/26/elder-abuse-a-huge-expensive-and-lethal-problem-for-states> [<http://perma.cc/49UAUUCE>].

194. See discussion *supra* Section III.D.

195. See *supra* text accompanying notes 126–27.

196. See Elder Justice Reauthorization Act, *supra* note 132.

197. *Extension Request Form*, *supra* note 123 (CPS budget equals \$35,519,794 (6.9 percent); Foster Care budget is 76,026,214 (14.7 percent); Adoptions budget is \$33,436,360 (6.5 percent); Child Support Enforcement budget is \$27,278,441 (5.3 percent); and Child Care budget is 62,876,884 (12.2 percent), for a total of \$235,137,693 (45.6 percent)).

198. *The United States of Education: The Changing Demographics of the United States and Their Schools*, CTR. FOR PUB. EDUC. (2012) [hereinafter *Changing Demographics*], <http://www.centerforpubliceducation.org/You-May-Also-Be-Interested-In-landing-page-level/Organizing-a-School-YMABI/The-United-States-of-education-The-changing-demo>

Of course, budgets for elder services and child-related services should not be equal. Although the percentages of South Carolina's over-sixty-four population and under-eighteen population will likely mirror each other in the coming years,<sup>199</sup> the incidence of child abuse reported to CPS is ten times higher than the incidence of elder abuse reported to APS.<sup>200</sup> However, the South Carolina General Assembly should at least double the current APS budget. A doubling of the current budget would provide APS with annual resources of \$5,874,470,<sup>201</sup> which could be used to hire APS-dedicated caseworkers, increase caseworker salaries, and provide more educational and assistance outreach to victims. The South Carolina General Assembly could accomplish this increase by reappropriating funds, potentially within the S.C. DSS or from the Lieutenant Governor's Office on Aging.<sup>202</sup>

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graphics-of-the-United-States-and-their-schools.html [http://perma.cc/775YKJ7N] (noting that although the percentage of persons sixty-five years of age and older is increasing, the percentage of children under the age of eighteen has decreased in the United States since 2000, dropping from 25.7 percent to 24 percent in 2010); *see also Quickfacts*, CENSUS.GOV, <http://www.census.gov/quickfacts/table/PST045215/00,45> [http://perma.cc/W2YX6DVQ] (stating that as of 2015, persons age sixty-five and older constituted roughly 16.2 percent of the South Carolina population, whereas children under the age of eighteen constituted 22.3 percent, less than the national average).

199. Persons age sixty-five and older are expected to constitute 19.3 percent of the U.S. population by 2030, while the percentage of children under the age of 18 is expected to fall to 23.6 percent by 2030. *See Jackson & Hafemeister, supra* note 6; *Changing Demographics, supra* note 198.

200. *Compare Decisions for CPS Referrals Received Between July 1, 2014 and June 30, 2015*, S.C. DEPT OF HEALTH & HUMAN SERVS. (2015), <https://dss.sc.gov/content/library/statistics/cw/2014-1-CPSIntakeDecisionsforFY.xlsx> [http://perma.cc/8B6L2QSE] (indicating that 35,068 cases were reported to CPS between July 1, 2014 and June 30, 2015), *with Gmerek & Washington, supra* note 30, at 20–21 (noting 3,697 APS cases reported in 2014).

201. H. 5001, § 38, 2016 Leg., 121th Sess. (S.C. 2016) (enacted). During the February 7, 2017 South Carolina Senate's DSS Oversight Subcommittee, the newly appointed DSS State Director V. Susan Alford stated, "[W]e are asking for money for Adult Protective Services as well. This request has not been part of DSS's request for many, many years." South Carolina Legislature Video Archives, *supra* note 140. In fact, Director Alford is requesting an additional \$3,203,964 in appropriations for fiscal year 2017–2018 specifically for APS. *Fiscal Year 2017–2018 Annual Budget Plan*, S.C. DEPT OF ADMIN. B-13 (Sept. 30, 2016), <http://www.admin.sc.gov/files/L040%20-%20Department%20of%20Social%20Services.pdf>. If granted by the South Carolina General Assembly, this would in fact double APS's funding as suggested.

202. The Lieutenant Governor's Office on Aging . . . administers federal funds received through the Older Americans Act. . . [and] is the statewide leader for advocating, planning and developing resources in partnership with individuals and communities to meet the present and future needs of over 717,000 older South Carolinians and their caregivers; to develop and coordinate a comprehensive continuum of care system; and to promote education, research and training in the field of gerontology.

*Mission and Vision*, S.C. LIEUTENANT GOVERNOR'S OFFICE ON AGING, <http://aging.sc.gov/ooa/Pages/MissionandVision.aspx> [http://perma.cc/H5F5QQ69]. For fiscal year 2016–2017, the Lieutenant Governor's Office on Aging had an annual budget of \$51,108,180. H.



On a federal level, Congress could address this lack of funding by increasing federal funds through future reauthorizations of the OAA and EJA. Although reevaluating and expanding the Omnibus Adult Protection Act and Protection from Domestic Abuse Act are crucial steps in protecting elderly women abused in domestic settings, these steps are practically pointless without the additional funding needed for enforcement.

### CONCLUSION

Elder abuse is a serious and widespread problem in the United States and South Carolina, and is specifically harmful to elderly women. With more baby boomers reaching retirement age in South Carolina, it is likely that the prevalence of elder abuse in the state will increase significantly. In addition, because more elderly women are choosing to remain in their homes, often with adult children or other relatives caring for them, it is crucial that the South Carolina General Assembly reform the Omnibus Adult Protection Act and the Protection from Domestic Abuse Act to be more inclusive of elderly women abused in domestic settings. Looking to Wisconsin's elder abuse statute is a promising start for this reform. However, reforming the relevant statutes is not enough. The South Carolina General Assembly must allocate more funding to APS and other community programs to ensure that elderly women receive the outreach and assistance needed to combat domestic abuse. Maybe then, when Johnny pushes Peggy, someone will be there to help her up.

MARY D. ANTLEY\*

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5001, § 95, 2016 Leg., 121th Sess. (S.C. 2016) (enacted), [http://www.scstatehouse.gov/sess121\\_2015-2016/appropriations2016/tap1a.htm](http://www.scstatehouse.gov/sess121_2015-2016/appropriations2016/tap1a.htm) [<http://perma.cc/9SKU7DY8>].

\* JD Candidate, William & Mary Law School, May 2017. BS, The College of Charleston, 2008. This Note is dedicated to my grandmother, lovingly known to all as Peggy. She is the strongest woman I have ever known, and yet a hidden victim of domestic elder abuse. She left me great shoes to fill. I would also like to thank Professor Nancy Amoury Combs and Jane M. Brittan for their invaluable feedback throughout the writing process, as well as my husband, Sean Herpolsheimer, for his constant love and support.