



Abusive Guardianship is a form of Institutional Elder Abuse and Human Trafficking

A White Paper by Americans Against Abusive Probate Guardianship

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“Their common thread is a willingness to exploit other human beings for profit.”

Legislative efforts to deal with the well documented growth in abusive guardianships that have been clearly identified over the last 35 years have largely been unsuccessful. The numbers of guardians and guardianships in the State of Florida are at record highs and the growth rate is expected to continue. In the case of the “For-Profit Guardianship System”, the perfect storm of an aging baby-boom population, the influx of retirees to Florida, the increasing prevalence of various forms of dementia in Florida’s population, and a sizable minority of Florida bar attorneys who are as described by top leaders of the Florida bar as “bad apples”, have created a breeding ground for the industry to illegitimately profit from and subvert the intent of the protections intended by statute 744.

Although guardianship laws originated with the intent to protect vulnerable, poor seniors from exploitation, and increasing number of guardianships awarded in Florida’s Probate Courts and ruled by that statute have been clearly abusive, criminal and egregious. These particular guardianships usually involve large estates which are typically drained of their assets over the course of a guardianships lifetime in outrageous legal fees, Guardian fees and endless litigation.

The failure of Legislative attempts to stem this growing crisis have largely been the result of legislation passed without funding so implementation and prosecution would be highly unlikely . Attempts to nibble around the edges of the problem without a clear-cut recognition that guardianship for the poor is a different animal than guardianship of the vulnerable wealthy inevitably result in failure because the industry adapts itself to any changes in statute that would deter them from their goal of maximum profits from vulnerable elderly.

The National Council on Elder Abuse and The Administration on Aging define “Institutional Elder Abuse as:

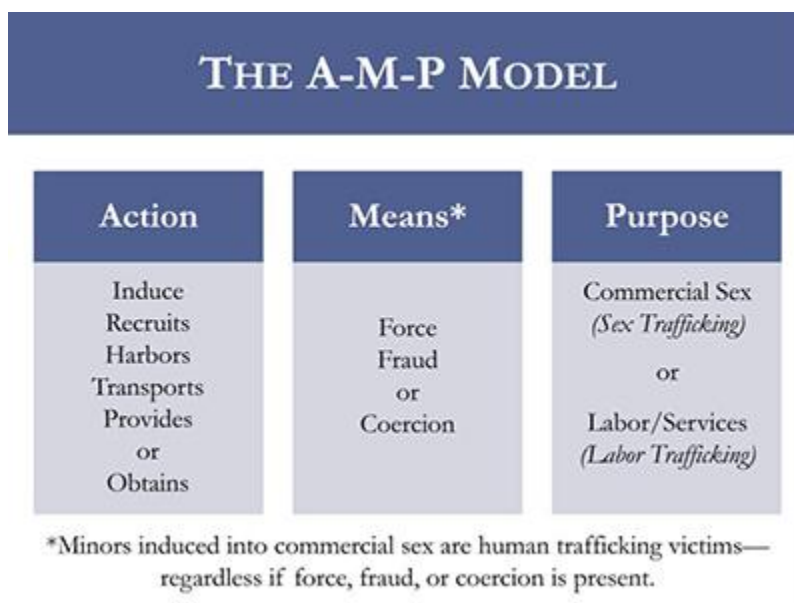
- **Physical Abuse**—Inflicting, or threatening to inflict, physical pain or injury on a vulnerable elder, or depriving them of a basic need.

- **Emotional Abuse**—inflicting mental pain, anguish, or distress on an elder person through verbal or nonverbal acts.
- **Sexual Abuse**—Non-consensual sexual contact of any kind, coercing an elder to witness sexual behaviors.
- **Exploitation**—Illegal taking, misuse, or concealment of funds, property, or assets of a vulnerable elder.
- **Neglect**—Refusal or failure by those responsible to provide food, shelter, health care or protection for a vulnerable elder.
- **Abandonment**—The desertion of a vulnerable elder by anyone who has assumed the responsibility for care or custody of that person.

While sexual abuse is relatively uncommon among the elderly **each of these definitions applies perfectly to what occurs in every abusive guardianship.**

Human trafficking and elder abuse are underreported

- The most recent major studies on incidence reported that 7.6%–10% of study participants experienced abuse in the prior year. The study that found an incidence of 1 in 10 adults experiencing abuse did not include financial abuse.
- Available data from state Adult Protective Services (APS) agencies show an increasing trend in the reporting of elder abuse.
- Despite the accessibility of APS in all 50 states (whose programs are quite different), as well as mandatory reporting laws for elder abuse in most states, an overwhelming number of cases of abuse, neglect, and exploitation go undetected and untreated each year.
- One study estimated that only 1 in 14 cases of elder abuse ever comes to the attention of authorities. The New York State Elder Abuse Prevalence Study found that for every case known to programs and agencies, 24 were unknown.
- Major financial exploitation was self-reported at a rate of 41 per 1,000 surveyed, which was higher than self-reported rates of emotional, physical, and sexual abuse or neglect.



Human trafficking occurs when a trafficker takes any one of the enumerated **actions**, and then employs the **means** of force, fraud or coercion for the **purpose** of compelling the victim to provide the trafficker his profits. At a minimum, one element from each column must be present to establish a potential situation of human trafficking. The presence of force, fraud or coercion indicates that the victim (in our case the Ward or his family) has not consented of his or her own free will.

In Institutional Abusive Guardianship the action of instituting guardianship by fraud for the purpose of illegitimate profit for lawyers, guardians and other stakeholders in the process satisfies all criteria for Human Trafficking.

Every year, human traffickers generate [billions of dollars in profits](#) by victimizing millions of people in the United States and around the world. Traffickers are estimated to exploit [20.9 million victims](#), with an estimated 1.5 million victims in North America alone. Despite growing awareness about this crime, human trafficking continues to go underreported due to its covert nature, misconceptions about its definition, and a lack of awareness about its indicators.

Why Elder Trafficking Exists

Human trafficking does not exist solely because many seniors are vulnerable to exploitation. Instead, human trafficking is fueled by a demand for “easy money”. Human traffickers employ force, fraud, or coercion to victimize others in their desire to profit from the assets of others.

Trafficking of vulnerable U.S. citizens persists and thrives for a number of reasons, including:

1. **Low Risk:** Human traffickers (the guardianship industry) perceive there to be little risk or deterrence to affect their criminal operations. Investigations, prosecutions and penalties have not increased throughout recent years, so many traffickers still believe the high profit margin to be worth the risk of detection, which historically has been nil. Factors that add to low risk from the court or law enforcement include: lack of government and law enforcement training, low community awareness, ineffective or unused laws, lack of law enforcement investigation, scarce resources for victim recovery services, and social blaming of victims and their families-- which is particularly egregious and widespread in the Abusive Probate Guardianship industry.
2. **High Profits:** When individuals are willing to commit fraud in Probate Court and engage in court sanctioned Institutional Elder Abuse, they profit handsomely from the life's accumulation of assets of a vulnerable senior, the temptation to abuse and exploit them is an easy choice.

Left unchecked Human Trafficking via Institutional Elder Abuse will continue to flourish in environments where traffickers can reap substantial monetary gains with low risk of getting caught, punished or indicted. For those reasons our group proposes an elegant simple and effective solution to the crisis in for-profit guardianship. The Florida statute on human trafficking which has been championed by Atty. Gen. Pam Bondi has been very effective in reducing rates of certain types human trafficking in Florida

We propose that the **legislature** add the category of Institutional Elder and Guardianship Abuse to the existing two categories of Human Trafficking namely sexual abuse and worker abuse.

It will be our honor to provide testimony and documentation of these cases of abuse in support of our recommendation it.

Respectfully submitted

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