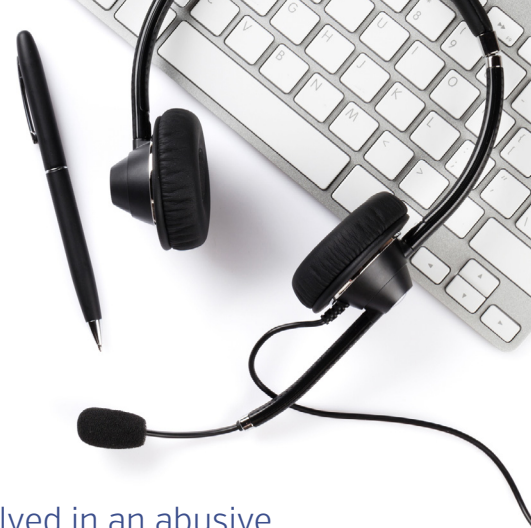


APS wouldn't take my report. Why?



It is very upsetting to have a family member, friend or client involved in an abusive situation and it's even more frustrating to reach out for help and to be told that the agency that you believe is tasked with remedying the situation is unable to take your report. But before you get angry at the Adult Protective Service (APS) worker on the other end of the phone, let's talk about why they might not be able to take your report and what else you can consider doing as next steps. This brief provides insight into what cases APS can accept and why.

APS staff understand that the differences in state regulations make it difficult for individuals experiencing negative life events, and those people supporting those individuals, to know whether or not a situation should be reported and whether APS will open an investigation. We hope this information will help you to determine if APS in your state is able to help you in a specific situation.

Because APS is a state (not federal) program, elder abuse and abuse of persons with a disability (referenced here as adult abuse) is defined by state statutes. Eligibility to services and which situations APS is able to investigate (i.e. APS jurisdiction) is also defined by the state. The resulting definitions can vary widely. This means that whether or not a person can receive services from APS is very state specific. A situation that is considered elder abuse in one state may be considered solely a law enforcement matter in another state.

To determine what APS can and cannot do in your state, **we recommend visiting your states' APS webpage** and looking for the following, each described in detail in this brief:



Your state's definition of a "client" or a person eligible for APS services



Your state' definition of APS' Jurisdiction



Other common situations that are reported to APS

RULE OF THUMB

Ask APS to explain what regulation informed their decision not to accept your report. In some cases, you may have additional information that could allow them to investigate.



Your state's definition of a "client" or a person eligible for APS services

APS programs, by definition, serve adults who are elderly and/or have a disability that puts them at risk. The APS webpage for your state should tell you whether there is an age requirement (generally starting at either 60 or 65) or a vulnerability requirement (meaning that the victim has a disability that puts them at risk of abuse, or they require a caregiver, or the victim is unable to advocacy for and/or protect themselves from harm). If there is a vulnerability requirement in your state, then it might be that **not ALL older persons or all persons with disabilities will be eligible to APS services.**

In addition, there are a few states where older adults and persons with disabilities are served by separate state agencies. In these states, it is important to make the report to the correct agency. This distinction is outlined on APS webpages for the related states.

We should note that there are many situations involving abuse of adults that do not fall within APS jurisdiction because the adult who is abused does not meet the definition of an APS client. The most notable group is younger, non-disabled battered men and women. These adults are served by domestic violence programs and not by APS. In addition, victims of crimes – unless targeted based on their age or vulnerability – are also generally not eligible for APS as they are served by law enforcement. An example of this would be an elderly person who is hurt during a bank robbery.

APS programs, by definition, do not provide services to children. Those services are provided by Child Protective Services (CPS) programs. However, in states that service individuals 18 and older with a disability you may find some overlap between APS and CPS. For instance, a 19 year old with a disability who has signed him or herself back into care and is being abused by their foster parent. Based on your state laws that case may need to be reported to both APS and CPS.

DEFINITIONS OF ABUSE

Definitions of abuse vary by state. The following are common definitions (National Adult Protective Services Association, 2021) and an explanation of how they may differ in some states.

- > **Physical Abuse** will normally include the actions we think of as assaults such as hitting, punching, and pushing, but in some states, it can also include actions you might not have considered such as over-medicating the adult to make him sleep or not allowing the adult to leave the home.
- > **Sexual Abuse** is often included under the category of physical abuse so when looking for your state's sexual abuse definition, you may need to check under physical abuse definitions. Sexual abuse is commonly known as sexual contact or penetration. Some states include photographing a victim nude or forcing them to watch pornography as sexual abuse. Others require physically touching the victim for an act to be considered sexual abuse. Forced prostitution is considered sexual abuse in some states. Standards for consent to sex may also be slightly different and will probably not be defined on the website. Moreover, some states require the alleged perpetrator to also have "custody" or "charge" of the adult who has allegedly been sexually abused.
- > **Caregiver Neglect** is generally defined as the failure of a caregiver to provide the care that a normal person would provide and is reasonably expected. This may include failing to provide for adequate nutrition, shelter, health care or supervision. State definitions of who is considered a caregiver may be confusing for reporters. For example, adult children may or may not be considered caregivers, even if they live in the home with their older parent. Your state may require caregiver to be paid, to have agreed to, or assumed the responsibility of providing care for the adult.

- > **Self-Neglect** involves older adults or adults with disabilities “who fail to meet their own essential physical, psychological or social needs, which threatens their health, safety and well-being. This includes failure to provide adequate food, clothing, shelter and health care for one’s own needs.” If the individual meets your state’s definition of a client, then your APS program will generally take the report. However, reports that “nothing was done” to correct the unsafe situation even when the report was accepted. This happens because, unless the client lacks decision making capacity or abilities, he or she has the right to refuse APS services. It is important to remember that adults have the right to make decisions that may seem poor to the average person. A key factor is whether the adult possesses understanding related to the consequences of their decisions.

APS often gets multiple reports about the same person over time. They may have gone to the person’s home numerous times to investigate, and the person has refused assistance each time. If you make a new report that is basically the same as the previous reports, in some states APS may tell you that there is nothing they can do to remedy the situation. However, if the situation continues to worsen you should continue to make reports even if risk mitigation is not apparent. Continued reports may allow the APS worker to gain rapport and advance incremental change.

Due to confidentiality regulations, APS cannot tell you the details of the case or whether the person has declined some or all services in the past, but this is likely the reason that it appears nothing has been done.

- > **Financial or material exploitation** is generally defined as the misuse, mishandling or exploitation of property, possessions or assets of adults. The definition may also include using another’s assets without consent, under false pretense, or through coercion and/or manipulation.

Where states most often differ is whether the alleged perpetrator is required to be a “person in a position of trust” in order for APS to investigate. If there is language in your state’s definition of financial abuse requiring such a trusted relationship between the victim and the alleged perpetrator, then scams and frauds are probably not going to qualify for an APS investigation. It also means that theft by a stranger or acquaintance will not be investigated by APS. So, for example, if there is cash missing from the victim’s desk, both APS and law enforcement can investigate if the victim’s son stole the money. In some states the report would only be made to law enforcement if it was a contractor who used a ruse to steal the money in states that require a relationship of trust. Many states have cross reporting between agencies, so don’t get hung up on who to report it to, rather focus on reporting somewhere.

It should be noted that, in some cases, the resulting inability of scam victims and/or victims of thefts to meet their own needs may allow APS to open a self-neglect case for the person. So, for example, if a scam victim is unable to afford groceries as the result of the losses, APS might open a self-neglect case.

- > **Emotional or Psychological Abuse, Isolation, Abandonment and Exploitation of the Person** are types of abuse that may or may not be included in the definitions of abuse in your state. In some cases, these abuse types may be subsumed under a different abuse type. So, for example abandonment of a person who needs care could potentially fall under caregiver neglect. Or isolation might be considered physical abuse if the person is restrained from leaving the residence. Exploitation of the person could potentially fall under financial abuse if the alleged perpetrator is withholding the person’s income in a human trafficking or benefit’s trafficking situation.



Your state' definition of APS' Jurisdiction

APS programs have responsibility for adults who experience abuse in some settings, defined by their state's regulations, but not others. The most common settings include:

- > **Client's living in their own homes – not a residential facility.** Many states only investigate abuse of persons living in private residences in the community. This can include those individuals living with family members, living with roommates, and living in room and board situations. It may even include the homeless man living under a freeway overpass. In most cases this does not include adults living in board and care facilities if they are licensed. However, it probably would include *unlicensed* board and care homes. Adult foster homes may or may not be included in the definition of a private residence.

There are some situations where it can be difficult to determine whether a setting is a private home or a facility. So, for example, individual apartments within a continuum of care residential community may be considered private residences for the purposes of APS while the community as a whole is considered a facility and covered by a licensing agency. This is the case in some California counties.

- > **Clients living in facilities.** If your state APS program also investigates abuse in licensed facilities, you will need to know that, as a general rule, not all facilities are included. So, for example, prisons and jails are congregate facilities, but abuse in those settings is investigated by the criminal justice system. Institutional settings for the mentally ill may not be included. Skilled nursing beds within a hospital may also be excluded. These are just a few examples. Who the perpetrator is may also determine if APS can investigate abuse. Abuse perpetrated by an employee of a facility may not be under APS jurisdiction, while abuse perpetrated by a family member or friend who is not associated with the facility will. The list of which facilities and situations that may or may not be included under APS jurisdiction in your state is too long to list here. Your state's APS website or APS regulations should include a definition of their jurisdiction.



Other common situations that are reported to APS

There are some common situations that regularly get reported to APS that APS is unable to address due to either their regulations and/or areas of responsibility:

- > **Domestic Violence** situations *where the victim does not meet the definition of an APS client*. These are clearly abuse cases, and often especially dangerous situations, but they are not APS cases. Such cases need to be referred to law enforcement and domestic violence services providers.
- > **Crimes** where the person was not specifically targeted due to his age or vulnerability. These should also be referred to law enforcement.
- > **Landlord Tenant Disputes** are also frequently referred to APS. If the dispute is the only reason for the report, these do not fall under APS jurisdiction and are better addressed by Legal Aid organizations. Additionally, local housing authorities or the US Department of Housing and Urban Development (HUD) may assist with public housing issues.
- > **Customer Service Complaints** are not "abuse" and should be referred to such entities as the Better Business Bureau. When such complaints are about an actual scam, then an APS referral may be appropriate. But bad service is not abuse. Scams can also be reported to the Federal Trade Commission.

- > **Family Dynamics** are not a problem that APS is able to fix. The situation must have devolved into a clear instance of abuse before APS can get involved. For example, APS offices often get calls from siblings with each pointing the finger at the other as being abusive. The sibling who is the caregiver says the sibling who is the power of attorney never provides care [i.e., “neglects mom” but is not actually the caregiver]. And the sibling who is the power of attorney says that the caregiver sibling spends too much of their mother’s money [i.e., “financially abuses” mom by letting mom spend too much each month]. Often these calls are really about who mom loves best and APS cannot correct this issue. So, before calling APS, consider whether there is a clear action you would want APS to take to stop a specific type of abuse. APS workers are not family counselors and cannot resolve long standing dysfunctional family dynamics.
- > **APS does not investigate Disability Rights Issues.** For example, if you believe an individual with a disability was the best candidate for a position, but didn’t get the job, this is a legal issue. If you feel an individual has been discriminated against, your best resource is your state’s Protection and Advocacy Agency.
- > **Need for general assistance.** APS cannot provide non-abuse related assistance. These needs should be referred to another agency such as your state’s social services agency, the Area Agency on Aging (AAA) or a disability organization such as The ARC. For example, your state’s Medicaid program may provide in-home aid services for low-income clients. AAA addresses the needs and concerns of older adults. If an older adult needs assistance with light housing keeping, medication management or something similar, these referrals can be made directly to the AAA. For younger persons with disabilities, there are a variety of service providers who may be able to help. These are all appropriate referrals if there is no abuse allegation.

APS didn’t take my report – Now what?

If APS is not able to take your report, there are some next steps you should consider.

- 1 Ask the APS worker to clearly explain why he/she is unable to take your report.** In some cases, you may know additional information that would change this determination. For example, you may have told APS that the victim was elderly, but not clearly communicated that he has a significant health problem that makes him vulnerable to abuse. Or you may be trying to report one kind of “abuse” (client was scammed) that APS can’t investigate in your state, but you also know additional information (now the client can’t afford groceries or his medication) which APS might be able to investigate as a different form of abuse (self-neglect).
- 2 Consider making a referral to another resource that can help assist the adult.** Perhaps they are well connected with a faith community that can assist with a friendly home visitor if isolation or yard/trash cleanup is a factor. Perhaps they lack transportation and just need a ride to the grocery store. If so, their local Area Agency on Aging or Disability Organization may have a transportation program to help.
- 3 Contact the adult’s family or medical provider to express your concerns.** There are times where the adult is estranged from family or hasn’t been to the doctor for quite some time. Loved ones and providers may not know the adult’s needs have changed and he/she needs more assistance. This can be especially true if family members live at a distance. APS regulations generally do not allow APS workers to contact other people in the adult’s life without expressed permission unless he or she lacks capacity. You may not be operating under the same restrictions.

- 4 Contact your local city or county government.** Most elected officials have staff who know the local resources and can help put you in touch with those agencies that can provide help. If they don't know an agency that can help, you will have made them aware of a need in their community.

APS took my report but won't tell me anything.

One of the most common concerns that APS hears; "APS did take my report, but won't tell me anything". It is very frustrating to make a report to APS and then hear nothing. APS understands that and often wishes they could tell you more about the situation. However, APS operates under confidentiality regulations that are remarkably similar to the HIPAA laws we all know from visiting our doctors. Just as your doctor cannot tell anyone about your symptoms or your diagnosis or your treatment without a release of information, APS staff cannot tell you whether they opened an investigation, the results of that investigation or whether the client accepted or refused services. In almost every state, the only person who can release that information is the adult who is experiencing the abuse. There are often exceptions in state laws for agencies directly involved in service plans for the individual or multidisciplinary teams involved in case consultations, but not for the reporting party.

CONCLUSION

We hope that the information provided here gives you a better understanding of how APS operates and why APS might not be able to open an investigation when you call. But, more importantly, we hope this understanding encourages you to keep making reports. We need you to alert APS to situations where an investigation can be opened, and the abuse can be remedied. You are the eyes and ears of APS in the community. It is an important role and we thank you for doing it.



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