

## Factoring Dependent Adult Abuse Desk Aid

<p><b>SELF-DENIAL OF CRITICAL CARE</b></p> <p>1: The adult subject is a dependent adult. 2: As a result of acts or omissions by the dependent adult one of the following has occurred:</p> <ul style="list-style-type: none"> <li>a pattern of the dependent adult depriving self of the minimum food, shelter, clothing, supervision, physical or mental health care, or other care necessary for themselves; <b>or</b></li> <li>the occurrence of a significant event which resulted in deprivation of the dependent adult's minimum needs for food, shelter, clothing, supervision, physical or mental health care, or other care necessary to maintain life or health.</li> </ul> <p>3: The dependent adult is financially able to purchase services or been offered financial and other reasonable means to provide services.</p>	<p><b>Note:</b> An assault may be committed without causing any actual injury to the victim. However, a verbal threat alone is not an assault unless surrounding circumstances indicate the immediate intent to execute the act.</p> <p><b>Physical Abuse: Unreasonable Confinement or Punishment</b></p> <p>1: The adult subject is a dependent adult. 2: The alleged perpetrator is a caretaker. 3: The dependent adult was confined or punished without legal or medical authorization by one of the following:</p> <ul style="list-style-type: none"> <li>restriction of physical movement, locking up by binding, chaining, <b>or</b></li> <li>medical sedation, <b>or</b></li> <li>unwarranted, humiliating, or degrading acts toward the dependent adult.</li> </ul> <p>4: The dependent adult was confined or punished as a result of the acts or omissions of the caretaker.</p>	<p>4: <b>ANY OF THE FOLLOWING ARE ALSO TRUE:</b></p> <ul style="list-style-type: none"> <li>the caretaker displayed a deadly weapon in a threatening manner during commission of sex act; <b>or</b></li> <li>the caretaker used or threatened to use force which resulted in a serious injury or created a substantial risk to the life or health of the dependent adult; <b>or</b></li> <li>the caretaker aided or abetted others in committing a sex act <b>and</b> the sex act was committed by force or against the will of the dependent adult.</li> </ul> <p><b>Sexual Abuse in Third Degree</b></p> <p>1: The adult subject is a dependent adult. 2: The alleged perpetrator is a caretaker. 3: A sex act was committed as a result of the acts or omissions of the caretaker <b>AND ANY OF THE FOLLOWING ARE TRUE:</b></p> <ul style="list-style-type: none"> <li>a sex act done by force or against will of the dependent adult, whether or not the caretaker is the victim's spouse; <b>or</b></li> <li>a sex act between persons who are not cohabiting as spouses <b>AND ANY OF THE FOLLOWING ARE TRUE:</b> <ul style="list-style-type: none"> <li>the dependent adult is suffering from a mental defect or lacks capacity to give consent; <b>or</b></li> <li>the caretaker is a member of the same household as the dependent adult; <b>or</b></li> <li>the alleged perpetrator is related to the dependent adult by blood or affinity to the fourth degree.</li> </ul> </li> <li>a sex act is performed while the dependent adult is mental incapacitated, physically incapacitated or physically helpless; <b>or</b></li> <li>a sex act is performed while the dependent adult is under the influence of a controlled substance <b>AND ALL THE FOLLOWING ARE TRUE:</b> <ul style="list-style-type: none"> <li>the controlled substance prevents the dependent adult from consenting to the act.</li> <li>the caretaker knows or reasonably should have known the dependent adult was under the influence of the controlled substance.</li> </ul> </li> </ul> <p><b>Note:</b> Cohabiting is used as one factor to consider the intent, nature, and consent in</p>	<p>the marital relationship. Consent by the alleged victim cannot be inferred from cohabitation or marital status alone.</p> <p><b>Sexual Abuse: Assault with Intent to Commit Sexual Abuse</b></p> <p>1: The adult subject is a dependent adult. 2: The alleged perpetrator is a caretaker. 3: An act was committed as a result of the acts or omissions of the caretaker <b>AND ANY OF THE FOLLOWING ARE TRUE:</b></p> <ul style="list-style-type: none"> <li>the act was intended to cause pain or injury or intended to result in physical contact which would be insulting or offensive to the dependent adult, coupled with ability to execute act; <b>or</b></li> <li>the act was intended to place the dependent adult in fear of immediate physical contact which will be painful, injurious, or offensive coupled with ability to execute act; <b>or</b></li> <li>the caretaker intentionally pointed any firearm toward the dependent adult, or displayed any dangerous weapon toward the dependent adult in threatening manner; <b>or</b></li> <li>the caretaker intentionally points a laser emitting light beam at the dependent adult with the intent to cause pain or injury to the DA.</li> </ul> <p>4: The caretaker intended to do one of the following:</p> <ul style="list-style-type: none"> <li>a sex act by force or against the will of the dependent adult; <b>or</b></li> <li>a sex act to a dependent adult who either lacks mental capacity sufficient to give consent or who lacks mental capacity to know right and wrong of conduct in sexual matters.</li> </ul> <p><b>Note:</b> Motive/intent may be determined by credible or circumstantial evidence.</p> <p><b>Sexual Abuse: Incest</b></p> <p>1: The adult subject is a dependent adult. 2: The alleged perpetrator is a caretaker. 3: A sex act was committed as a result of the acts or omissions of the caretaker 4: The caretaker knew the dependent adult is related, legitimately or illegitimately, as an ancestor, descendant, brother or sister of whole or half blood, aunt, uncle, niece or nephew.</p> <p><b>Sexual Abuse: Indecent Exposure</b></p> <p>1: The adult subject is a dependent adult. 2: The alleged perpetrator is a caretaker. 3: One of the following acts occurred as a result of the acts or omissions of the caretaker:</p>	<ul style="list-style-type: none"> <li>the caretaker exposed pubes or genitals to the dependent adult; <b>or</b></li> <li>the caretaker committed a sex act in view of dependent adult.</li> </ul> <p>4: The act was done with the intent to arouse or satisfy the sexual desires of either the caretaker or the dependent adult <b>AND</b> the caretaker knows or reasonably should know the act was offensive to dependent adult.</p> <p>5: The caretaker and dependent adult not cohabiting as spouses.</p> <p><b>Invasion of Privacy – Nudity</b></p> <p>1: The adult subject is a dependent adult. 2: The alleged perpetrator is a caretaker. 3: The caretaker knowingly views, photographs or films the dependent adult or allows another to view, photograph or film the dependent adult for the purpose of arousing sexual desire of any person <b>AND ALL OF THE FOLLOWING ARE TRUE:</b></p> <ul style="list-style-type: none"> <li>the dependent adult does not consent or is unable to consent to being viewed, photographed or filmed; <b>and</b></li> <li>the dependent adult is in a state for full or partial nudity; <b>and</b></li> <li>the dependent adult has a reasonable expectation of privacy while in a state of full or partial nudity</li> </ul> <p><b>Sexual Abuse: Sexual Exploitation* by Counselor or Therapist</b></p> <p>1: The adult subject is a dependent adult. 2: The alleged perpetrator is or has been within the past year, a counselor or therapist providing mental health services to the dependent adult. 3: One of the following occurred between the dependent adult and the alleged perpetrator as a result of the acts or omissions of the alleged perpetrator:</p> <ul style="list-style-type: none"> <li>sexual conduct including but not limited to kissing, touching clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes or genitals; <b>or</b></li> <li>a sex act; <b>or</b></li> <li>pattern of practice or scheme by the alleged perpetrator to engage in sexual conduct with the dependent adult, including but not limited to kissing, touching clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes or genitals; <b>or</b></li> <li>pattern of practice or scheme by the alleged perpetrator to engage in a sex act with the dependent adult.</li> </ul>
<p><b>PHYSICAL ABUSE</b></p> <p>1: The adult subject is a dependent adult. 2: The alleged perpetrator is a caretaker. 3: The dependent adult suffered a <i>physical injury</i> requiring a healing process. 4: The dependent adult was injured by the acts or omissions of the caretaker. 5: The dependent adult's injury is nonaccidental or at variance with the history given.</p> <p><b>Physical Abuse: Assault</b></p> <p>1: The adult subject is a dependent adult. 2: The alleged perpetrator is a caretaker. 3: An assault occurred due to one of the following:</p> <ul style="list-style-type: none"> <li>the commission of an act intended to cause pain or injury or intended to result in physical contact which is insulting or offensive to the dependent adult, coupled <i>with ability to execute act</i>; <b>or</b></li> <li>the commission of an act intended to place the dependent adult in fear of immediate physical contact which will be painful, injurious, insulting or offensive, coupled <i>with ability to execute act</i>; <b>or</b></li> <li>intentionally pointed any firearm toward the dependent adult or displayed any dangerous weapon in a threatening manner toward the dependent adult.</li> </ul> <p>4: The assault occurred as a result of the acts of the caretaker</p>	<p><b>Sexual Abuse in First Degree</b></p> <p>1: The adult subject is a dependent adult. 2: The alleged perpetrator is a caretaker. 3: A sex act was committed as a result of the acts or omissions of the caretaker <b>AND ANY OF THE FOLLOWING ARE TRUE:</b></p> <ul style="list-style-type: none"> <li>the sex act was done by force or against the will of the dependent adult; <b>or</b></li> <li>the sex act was done to a dependent adult who either lacks mental capacity sufficient to give consent or who lacks mental capacity to know right or wrong conduct of sexual matters.</li> </ul> <p>4: The dependent adult suffered a serious injury as a result of the sex act.</p> <p><b>Sexual Abuse in Second Degree</b></p> <p>1: The adult subject is a dependent adult. 2: The alleged perpetrator is a caretaker. 3: A sex act was committed as a result of the acts or omissions of the caretaker <b>AND ANY OF THE FOLLOWING ARE TRUE:</b></p> <ul style="list-style-type: none"> <li>the sex act was done by force or against the will of the dependent adult; <b>or</b></li> <li>the sex act was done to a dependent adult who either lacks mental capacity sufficient to give consent or who lacks mental capacity to know right or wrong conduct of sexual matters.</li> </ul>	<p><b>Note:</b> Cohabiting is used as one factor to consider the intent, nature, and consent in</p>	<p>the marital relationship. Consent by the alleged victim cannot be inferred from cohabitation or marital status alone.</p> <p><b>Sexual Abuse: Assault with Intent to Commit Sexual Abuse</b></p> <p>1: The adult subject is a dependent adult. 2: The alleged perpetrator is a caretaker. 3: An act was committed as a result of the acts or omissions of the caretaker <b>AND ANY OF THE FOLLOWING ARE TRUE:</b></p> <ul style="list-style-type: none"> <li>the act was intended to cause pain or injury or intended to result in physical contact which would be insulting or offensive to the dependent adult, coupled with ability to execute act; <b>or</b></li> <li>the act was intended to place the dependent adult in fear of immediate physical contact which will be painful, injurious, or offensive coupled with ability to execute act; <b>or</b></li> <li>the caretaker intentionally pointed any firearm toward the dependent adult, or displayed any dangerous weapon toward the dependent adult in threatening manner; <b>or</b></li> <li>the caretaker intentionally points a laser emitting light beam at the dependent adult with the intent to cause pain or injury to the DA.</li> </ul> <p>4: The caretaker intended to do one of the following:</p> <ul style="list-style-type: none"> <li>a sex act by force or against the will of the dependent adult; <b>or</b></li> <li>a sex act to a dependent adult who either lacks mental capacity sufficient to give consent or who lacks mental capacity to know right and wrong of conduct in sexual matters.</li> </ul> <p><b>Note:</b> Motive/intent may be determined by credible or circumstantial evidence.</p> <p><b>Sexual Abuse: Incest</b></p> <p>1: The adult subject is a dependent adult. 2: The alleged perpetrator is a caretaker. 3: A sex act was committed as a result of the acts or omissions of the caretaker 4: The caretaker knew the dependent adult is related, legitimately or illegitimately, as an ancestor, descendant, brother or sister of whole or half blood, aunt, uncle, niece or nephew.</p> <p><b>Sexual Abuse: Indecent Exposure</b></p> <p>1: The adult subject is a dependent adult. 2: The alleged perpetrator is a caretaker. 3: One of the following acts occurred as a result of the acts or omissions of the caretaker:</p>	<ul style="list-style-type: none"> <li>the caretaker exposed pubes or genitals to the dependent adult; <b>or</b></li> <li>the caretaker committed a sex act in view of dependent adult.</li> </ul> <p>4: The act was done with the intent to arouse or satisfy the sexual desires of either the caretaker or the dependent adult <b>AND</b> the caretaker knows or reasonably should know the act was offensive to dependent adult.</p> <p>5: The caretaker and dependent adult not cohabiting as spouses.</p> <p><b>Invasion of Privacy – Nudity</b></p> <p>1: The adult subject is a dependent adult. 2: The alleged perpetrator is a caretaker. 3: The caretaker knowingly views, photographs or films the dependent adult or allows another to view, photograph or film the dependent adult for the purpose of arousing sexual desire of any person <b>AND ALL OF THE FOLLOWING ARE TRUE:</b></p> <ul style="list-style-type: none"> <li>the dependent adult does not consent or is unable to consent to being viewed, photographed or filmed; <b>and</b></li> <li>the dependent adult is in a state for full or partial nudity; <b>and</b></li> <li>the dependent adult has a reasonable expectation of privacy while in a state of full or partial nudity</li> </ul> <p><b>Sexual Abuse: Sexual Exploitation* by Counselor or Therapist</b></p> <p>1: The adult subject is a dependent adult. 2: The alleged perpetrator is or has been within the past year, a counselor or therapist providing mental health services to the dependent adult. 3: One of the following occurred between the dependent adult and the alleged perpetrator as a result of the acts or omissions of the alleged perpetrator:</p> <ul style="list-style-type: none"> <li>sexual conduct including but not limited to kissing, touching clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes or genitals; <b>or</b></li> <li>a sex act; <b>or</b></li> <li>pattern of practice or scheme by the alleged perpetrator to engage in sexual conduct with the dependent adult, including but not limited to kissing, touching clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes or genitals; <b>or</b></li> <li>pattern of practice or scheme by the alleged perpetrator to engage in a sex act with the dependent adult.</li> </ul>

4: The sexual conduct was committed for the purpose of arousing or satisfying the sexual desires of the counselor or therapist or the dependent adult.

5: The sexual conduct was not necessary as part of an examination or treatment to the dependent adult within the scope of practice or employment of counselor or therapist.

**Note:** This definition includes staff in residential facilities who have the title of "counselor," "treatment worker," "therapist," "cottage parent," or other terms designating a position of authority over, and responsibility for, treatment services to dependent adults who are residing in the setting even if these persons do not have professional degrees/training.

#### Sexual Exploitation by Caretaker

- 1: The adult subject is a dependent adult.
- 2: The alleged perpetrator is a caretaker.
- 3: As a result of the acts or omissions of the caretaker any of the following have occurred:
  - any consensual or nonconsensual sexual conduct, including but not limited to kissing, touching clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes or genitals; **or**
  - a sex act; **or**
  - any transmission, display, or taking of electronic images of the unclothed breast, groin, buttock, anus, pubes, or genitals of the dependent adult by the caretaker for a purpose not related to treatment or diagnosis or as part of ongoing assessment, evaluation or investigation.

#### EXPLOITATION

- 1: The adult subject is a dependent adult.
- 2: The alleged perpetrator is a caretaker.
- 3: The caretaker engaged in the act or process of taking unfair advantage of the dependent adult's physical or financial resources or allowed another individual to take unfair advantage of the dependent adult by one or more of the following:
  - Theft; **or**
  - Undue influence; **or**
  - Harassment; **or**
  - Under duress; **or**
  - Deception; **or**
  - False representation; **or**
  - False pretenses.
- 4: The dependent adult **did not give informed consent** to the use of the dependent adult's physical or financial resources or to the transaction when taken advantage of by perpetrator.
- 5: If the most recent incident of exploitation occurred on or before June 30, 2019,

the transaction was for personal or pecuniary profit of perpetrator.

#### Failure to Provide Adequate Food

- 1: The adult subject is a dependent adult.
- 2: The alleged perpetrator is a caretaker.
- 3: The dependent adult does not have adequate food.
- 4: The dependent adult is in immediate or potential danger to health or safety which could result in injury or death.
- 5: The denial of critical care occurred as a result of the acts or omissions of the caretaker.
- 6: The dependent adult or caretaker has financial means or has been offered financial means to provide food.

#### Failure to Provide Adequate Shelter

- 1: The adult subject is a dependent adult.
- 2: The alleged perpetrator is a caretaker.
- 3: The dependent adult lacks adequate shelter.
- 4: The dependent adult is in immediate or potential danger to health or safety which could result in injury or death.
- 5: The denial of critical care occurred as a result of the acts or omissions of the caretaker.
- 6: The dependent adult or caretaker has financial means or has been offered financial means to provide shelter.

#### Failure to Provide Adequate Clothing

- 1: The adult subject is a dependent adult.
- 2: The alleged perpetrator is a caretaker.
- 3: The dependent adult lacks adequate clothing necessary for dependent adult's health and welfare.
- 4: The dependent adult is in immediate or potential danger to health or safety which could result in injury or death.
- 5: The denial of critical care occurred as a result of the acts or omissions of the caretaker.
- 6: The dependent adult or caretaker has financial means or has been offered financial means to provide clothing.

#### Failure to Provide Adequate Necessary Mental Health Care

- 1: The adult subject is a dependent adult.
- 2: The alleged perpetrator is a caretaker.
- 3: The dependent adult has a serious mental health condition.
- 4: The caretaker refuses to obtain a mental health evaluation or treatment for the dependent adult.
- 5: The dependent adult or caretaker has financial means or has been offered other means to provide adequate mental health care.

#### Failure to Provide Proper Supervision

- 1: The adult subject is a dependent adult.
- 2: The alleged perpetrator is a caretaker.

3: The dependent adult not provided adequate supervision a reasonable and prudent person would provide in similar circumstances.

- 4: The dependent adult is in immediate or potential danger to health or safety which could result in injury or death.
- 5: The denial of critical care occurred as a result of the acts or omissions of the caretaker.
- 6: The dependent adult or caretaker has financial means or has been offered financial means to provide adequate supervision.

#### Failure to Provide Adequate Physical Care

- 1: The adult subject is a dependent adult.
- 2: The alleged perpetrator is a caretaker.
- 3: The dependent adult lacks adequate physical care.
- 4: The dependent adult is in immediate or potential danger to health or safety which could result in injury or death.
- 5: The denial of critical care occurred as a result of the acts or omissions of the caretaker.
- 6: The dependent adult or caretaker has financial means or has been offered financial means to provide adequate physical care.

#### PERSONAL DEGRADATION

- 1: The adult subject is a dependent adult.
  - 2: The alleged perpetrator is a caretaker.
  - 3: One of the following occurred:
    - the caretaker committed a willful act or made a statement intended to shame, degrade, humiliate, or otherwise harm the personal dignity of a dependent adult; **or**
    - the caretaker knew or reasonably should have known the act or statement would cause shame, degradation, humiliation, or harm to the personal dignity of a reasonable person; **or**
- the caretaker did not have permission, or the dependent adult did not have the capacity to consent, to transmission or display of a recording or image AND where the caretaker reasonably should have known the act would cause shame, degradation, humiliation, or harm when viewed by a reasonable person.

#### CONFIRMED PHYSICAL ABUSE, DENIAL OF CRITICAL CARE, OR PERSONAL DEGRADATION; NOT REGISTERED

The factors for Physical Abuse, DCC, or Personal Degradation have been met with a preponderance of evidence AND the

incident is minor, isolated, and unlikely to reoccur.

All categories of physical abuse and all categories of DCC are eligible for a confirmed, not registered finding.

"Minor" physical injuries may include injuries such as red marks and faint bruising, taking into account the frailty of the dependent adult and the size and location of the injury.

"Minor DCC may include:

- The denied care was of short duration.
- The dependent adult did not die or have an injury as a result of the denied care. The dependent adult's medical condition was stable and not acute.

#### Endnotes:

- \* **Mentally incapacitated:** A person temporarily incapable of apprising or controlling the person's own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance.
  - \* **Physically helpless:** A person unable to communicate unwillingness to act because the person is unconscious, asleep, or is otherwise physically limited.
  - \* **Physically incapacitated:** A person has a bodily impairment or handicap that substantially limits the person's ability to resist or flee.
  - \* **Sexual exploitation does not include:**
    - Touching which is part of necessary examination, treatment or care by caretaker acting within scope of practice or employment.
    - Exchange of brief touch or hug between dependent adult and caretaker for purpose of reassurance, comfort, or casual friendship.
    - Touching between spouses.
- Dependent Adult Abuse does not include:**
- Circumstances in which the dependent adult declines medical treatment if the dependent adult holds a belief or is an adherent of a religion whose tenets and practices call for reliance on spiritual means in place of reliance on medical treatment.
  - Circumstances in which the dependent adult's caretaker, acting in accordance with the dependent adult's stated or implied consent, declines medical treatment if the dependent adult holds a belief or is an adherent of a religion whose tenets and practices call for reliance on spiritual means in place of reliance on medical treatment.
  - The withholding or withdrawing of health care from a dependent adult who is terminally ill in the opinion of a licensed physician, when the withholding or withdrawing of health care is done at the request of the dependent adult or at the request of the dependent adult's next of kin, attorney in fact, or guardian pursuant to the applicable procedures under chapter 125, 144A, 144B, 222, 229, or 633.