

The law was intended to protect the due process rights of perpetrators but was not intended to label individuals as perpetrators simply because their attempts to help an older person fell short.

The perpetrator label was intended to be given only to those individuals whom the AAA had determined should have action taken against them. Those whom the AAA determined needed assistance rather than sanction were not intended to be labeled as perpetrators.

The previous policy for perpetrator designation and notification required that an individual be designated as a perpetrator when: a) he/she had been identified in a report of need for protective services, and b) it was determined that the alleged perpetrator did what he/she was alleged to have done to create a need for protective services.

The previous policy required that when allegations against a perpetrator identified in a report of need were substantiated, the perpetrator was to be notified and given a summary of the allegations made against him/her. Perpetrator notification could be postponed until the victim was no longer at risk of further abuse, neglect, exploitation, etc.

Throughout the more than ten years that the protective services program has been operating statewide, there have been numerous protective services appeals, legal opinions/interpretations and requests for case-specific technical assistance by Area Agencies on Aging (AAAs) concerning perpetrator designation and notification.

In response, the Department has determined that the policy governing designation and notification of perpetrators must be revised and clarified.

POLICY: Upon issuance of this APD, the AAAs will be required to conduct perpetrator designation and notification activities as described below.

Perpetrator Defined:

A perpetrator is an individual who, as a result of a protective services investigation resulting in substantiation, has been determined to be responsible for the abuse, neglect, exploitation or abandonment (ANEA) of an older adult **AND** has been either specifically designated as a perpetrator of ANEA in the official protective services case record or referred to a law enforcement agency, court or regulatory agency for the purpose of initiating action against the individual.

It is NOT necessary that an individual be identified in a report of need for protective services to be designated as a perpetrator. Perpetrators "discovered through investigation" are to be treated the same as those "identified in a report of need for protective services". A person identified as being associated with a need for protective services should not be designated as a perpetrator until an investigation has been conducted, his/her responsibility verified and the need for protective services substantiated.

The process must ensure that all officially designated perpetrators are notified that they have been officially designated as a perpetrator and that they have certain appeal rights.

On the other hand, the process should not label individuals attempting to help an older person as perpetrators when such things as human frailty, lack of knowledge or uncontrollable events cause their helping efforts to fall short of the older person's needs.

Not every individual involved in circumstances which result in the creation of a need for protective services is necessarily a perpetrator. Some may be people who are more appropriate for agency assistance than labeling as a perpetrator.

Guidelines for Required Perpetrator Designation:

When one or more of the following four actions are taken by the AAA against a substantiated perpetrator in a protective services case, then that individual must be afforded all rights provided by the OAPSA concerning perpetrator notification:

1. The individual is reported to law enforcement for the purpose of initiating action against him/her.
2. The individual is reported to a regulatory "agency" for the purpose of initiating action against him/her.
3. The individual is reported to a court for the purpose of initiating action against him/her.
4. Subsequent to substantiation of a case through investigation by the AAA, the individual is specifically labeled as a perpetrator of ANEA in the official protective services case record even though no referral has been made to law enforcement, court or a regulatory agency.

Perpetrator Notification:

Once an individual has been officially designated as a substantiated perpetrator of ANEA, a summary of the allegations and the right to appeal must be given to the perpetrator in a timely fashion.

The AAA must not disclose the name of the reporter or any other prohibited information to the perpetrator.

The perpetrator should be given sufficient information to understand that the AAA has determined that he/she is a perpetrator of ANEA without providing details which would violate the confidentiality provisions of the Older Adults Protective Services Act.

The existence of ongoing risk to an older adult in need of protective services may appropriately be used to determine the order and timing of case-specific activities.