HOARDING IN CALIFORNIA: STOP OUR ELDERS FROM BEING BURIED ALIVE

I. INTRODUCTION

Is hoarding a form of entertainment? If you have ever seen the reality television show “Hoarding: Buried Alive,” your answer may be “yes.” With catchy episode titles like “Maggots in the Coffee Pot” and “Trash or Treasure,” the show is intriguing. Watching it has been described as a guilty pleasure – you feel better knowing that at least you do not have as much stuff as these people. While a typical episode may feature a son and his mother eating in a bedroom frequented by rodents or a woman who fights giving away an old bed where her dog died, you may wonder whether people really live like this. Or, you may wonder whether this show is just like other “reality television” where scripts and stages are used to ensure that drama-filled episodes will sell on DVD for $19.95. Regardless of whether this show features real people with real stuff, hoarding is not in fact entertainment, but rather a real and potentially life-threatening disorder.

It is estimated that there are up to two million people in this country who hoard. \(^8\) Hoarding is commonly defined as, “[T]he excessive collection and failure to discard objects of apparently little value, leading to clutter, distress, and disability.”\(^9\) Hoarding not only interferes with activities of daily living like cooking, cleaning and sleeping, but it also puts elderly people in particular at risk for falling, poor sanitation, and other health risks.\(^10\) In fact, seniors, more than any other segment of the population, are associated with serious hoarding problems.\(^11\) Because elderly people may have hoarded throughout their lifetimes, the problem may be exacerbated in part simply because the person has had a longer period of time to collect and store items.\(^12\)

An elderly person, as defined in California, is a person who is sixty-five years of age or older.\(^13\) Once described as a “hidden problem,”\(^14\) elder abuse continues to be a national epidemic of the mistreatment of seniors.\(^15\) California adopted the Elder Abuse and Dependent Adult Civil Protection Act (“Elder Abuse Act”)\(^16\) in 1991\(^17\) in an effort to combat elder abuse in the state.\(^18\) Neglect, including self-neglect, is a form of abuse according to the statute.\(^19\) Unlike other states’ elder abuse statutes, however, hoarding is not listed under the category of self-neglect,\(^20\) and as a result, there are no specific remedies to address hoarding when there is a finding of this type of elder abuse.\(^21\) Additionally, even if hoarding is a recognized problem and

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9. Pertusa et al., supra note 7, at 372.
10. Id.
12. See Pertusa et al., supra note 7, at 375.
17. Prior to 1991, California encouraged both the reporting of, and collecting statistics about, elder abuse. Id. § 15600 (West 1982). Then in 1991, the Elder Abuse and Dependent Adult Civil Protection Act was enacted to provide civil remedies for elder abuse. Id. § 15600, 15657 (West 1991).
18. Id. § 15600 (2011).
19. Id. § 15610.07.
21. See, e.g., WELF. & INST. § 15650.
threatens an elderly person’s health, safety, and well-being, she can refuse help or an intervention at any time. Thus, the elder is left to hoard, and the problem continues to worsen.

This Comment argues that California’s Elder Abuse Act must be amended so that hoarding is specified under the definition of elder neglect which will trigger protective services in order to mitigate the health and safety dangers associated with hoarding. Part II looks at hoarding specifically and its relation to elder neglect. Part III summarizes how California’s Elder Abuse Act currently functions. Part IV explains that the Elder Abuse Act must include hoarding under its definition of neglect so that a finding of hoarding can trigger assistive services for the elderly regardless of whether the elder consents. Although hoarding can be problematic for all ages, it is a behavior that is most dangerous for seniors with physical and mental impairments who have had time to collect and store items throughout their lifetimes. Hoarding, a potentially life-threatening disorder, is a type of elder abuse that must be recognized and addressed.

II. HOARDING: A FORM OF NEGLECT

Although hoarding has only recently received attention in academic studies, it is now understood as a form of self-neglect. Despite the limited data on the breadth of the problem, it is estimated that as many as one in twenty people may have serious hoarding problems. Hoarding entails collecting items that are usually of little value which clutter living spaces and interferes with normal use of rooms and daily activities. Additionally, seniors are associated with serious hoarding problems more than any other segment of the population. Thus, as hoarding is a type of self-neglect that is particularly harmful to seniors due to its significant

22. Id. § 15636(a).
24. See Pertusa et al., supra note 7, at 383.
25. See id. at 372.
27. Id.
29. Id.
30. Roman, supra note 11.
interference with day-to-day activities, \(^3\) intervention is necessary to avoid further health and safety dangers. Part A, below, describes hoarding in general and Part B details what types of things are typically hoarded. Part C explains the risks and effects of hoarding on the elderly. Especially in a society that values material goods and has access to inexpensive products, \(^3\) hoarding is not a problem likely to go away on its own anytime soon.

### A. What Is Hoarding?

Hoarding is generally described as, “[A] problematic form of behaviour [sic] in which the individual actively acquires a large number of possessions . . . does not discard or dispose of the ones not used, and keeps or stores them in a way that they interfere with daily living.” \(^3\) Hoarding is a disorder that usually begins early in life, but the symptoms increase with age along with the amount of items collected. \(^3\) Contrary to what was once believed, hoarding is not necessarily correlated with obsessive-compulsive disorder (“OCD”). \(^3\) Still, it is estimated that one in four people with OCD also hoard. \(^3\) One difference between the two disorders is that people with OCD have compulsions that they resist, which then causes anxiety. \(^3\) On the other hand, hoarders do not resist; \(^3\) in fact, eighty to ninety percent of those who hoard actively collect belongings. \(^3\) Hoarders often are not aware of the severity of their behavior, and rationalize collecting as necessary. \(^3\)

Hoarding has negative physical and psychological effects. \(^3\) Clutter threatens the safety of those who hoard by causing health problems, structural damage, risk of fire, and even death. \(^3\) People who hoard also have unusually strong positive feelings like joy or delight when getting new

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32. Roman, *supra* note 11.
35. See Pertusa et al., *supra* note 7, at 372.
38. See id.
40. See Pertusa et al., *supra* note 7, at 373.
41. See Bratiotis et al., *supra* note 28.
42. Id.
items, and strong negative feelings like anger and guilt when ridding of
items.43 Furthermore, hoarders may think of inanimate objects as having
feelings.44 An especially difficult obstacle to treating the disorder is that
many hoarders deny that it is a problem even when the clutter clearly
interferes with daily living.45 Because many hoarders resist attempts to
intervene,46 hoarding can quickly escalate into a real and potentially life-
threatening disorder.47

B. What Can Be Hoarded?

Although it is normal for people to collect and save some items, signs
of hoarding behavior appear when people’s possessions impair their ability
to move around in their homes or other spaces like storage units.48 Those
who hoard most often collect common things including paper, books,
clothing, and containers.49 Some hoarders also keep garbage or rotten
food.50 One woman was found, for example, living among stacks of
Tupperware containers, while another home was piled so high with trash
that “an adult could walk across the top of the garbage and drag his hands
along the ceiling.”51 Items collected can range from things that are valuable
but in excess of what can reasonably be used,52 to things that are valueless
like junk mail and newspapers.53

Although it occurs less often, people also hoard animals.54 Animal
hoarding is defined as the accumulation of a large number of animals, the
failure to minimally care for them and act once the animals become sick or
die, and the lack of awareness of the effect of these animals on the person’s
own well-being.55 One elderly man, for example, had as many as sixty-two
dogs, all in poor health, on his property at one time.56 Although this is

43. Id.
44. Id.
45. See id.
46. See Pertusa et al., supra note 7, at 373.
47. See id. at 383.
49. Id.
50. Id.
51. See Harpster, supra note 8.
52. Bratiotis et al., supra note 28.
53. See Span, supra note 34.
54. Bratiotis et al., supra note 28.
55. Pertusa et al., supra note 7, at 376.
56. Harpster, supra note 8.
dangerous to the animals’ health, it also poses significant health risks to the hoarder.57 Animal hoarding cases may involve significantly less sanitary conditions than hoarding cases without animals because the animals’ urine and feces often do not get cleaned up.58 When animal services intervened in the above example, it reported that “there were so many ticks that we had to spray ourselves down to enter. . . . We could only stand to be in there a short time because of the smell and lack of ventilation.”59 Hoarding of animals, therefore, may constitute both a form of animal cruelty60 and self-neglect on the part of the person who hoards the animals.61

C. Elders Who Hoard

Seniors, more than any other segment of the population, are associated with serious hoarding problems.62 Hoarding is unique in that it is not a type of dementia that is related to older age like Alzheimer’s disease,63 but rather it is a disorder that a person has struggled with for most of her life.64 Yet, the problem of hoarding is exacerbated with older age due to physical ailments, isolation, and mental impairment, in addition to the sheer amount of items that have been collected throughout the years.65 Hoarding constituted a physical threat, including a risk of falling, a fire hazard, and unsanitary conditions, to eighty-one percent of elders who hoarded, according to a recent study.66 Furthermore, only fifteen percent of elders who hoarded recognized the problems associated with this behavior, according to another study.67

There are many tragic cases of elders who are found, often living

57. See id.
58. See Pertusa, supra note 7, at 376.
59. See Harpster, supra note 8 (quoting Adam Leath, operations manager for Lee County Animal Services).
60. See CAL. PENAL CODE § 597f(a) (2010) (stating that owners who do not care for their animals are guilty of a misdemeanor).
61. Pertusa et al., supra note 7, at 376.
62. See Roman, supra note 11.
64. Bratiotis et al., supra note 28.
65. See Span, supra note 34.
67. See Frost et al., supra note 33, at 230.
alone, an eighty-one year old woman, as described in one report, was found wearing no clothes because she had none that were clean. There was barely room to walk in her home and yard, which was overrun with rats, roaches, flies, maggots, spiders, cats, a dog, and bird. She had bedsores, scabies, spider bites around her eyes, lice, and a rash all over her body. Conditions such as these can result from an elder’s dysfunctional attitude toward saving and collecting, in addition to a lack of physical ability to clean herself and her surroundings. Even living amongst such deplorable conditions, however, some elders still refuse any help.

Hoarding, like other forms of elder abuse, can be described as a “hidden problem,” which occurs within the home, invisible to the outside world. Yet, elders’ hoarding behavior affects others as well. Tensions between a hoarder and her concerned family or friends may develop if attempted interventions are rejected. Children of hoarders worry about their elderly parents living in hazardous conditions that they cannot do anything to fix. One daughter, whose mother was found dead in her squalid home, said that her mother had refused any help and had avoided letting her in the house for over eight years. Hoarders may even threaten violence against family or friends who try to dispose of their belongings. Thus, frustrated family and friends may feel that any further attempts to assist the hoarder would be futile, and the elder is left to continue to hoard. Unless they are a mandated reporter under the Elder Abuse statute, those who are aware of an elders’ hoarding behavior are not obligated to report this form of self-neglect to Adult Protective Services.

68. See Bratiotis, supra note 28.
69. See, e.g., SUBCOMM. ON HEALTH & LONG-TERM CARE, SELECT COMM. ON AGING, supra note 14, at 21.
70. Id. at 18.
71. Id.
72. Id.
73. See Frost et al., supra note 33, at 230.
74. See, e.g., SUBCOMM. ON HEALTH & LONG-TERM CARE, SELECT COMM. ON AGING, supra note 14, at 21.
75. Span, supra note 34.
76. See Bratiotis et al., supra note 28.
77. See Tracy, Subject: My Mother Died in Squalor, Post to Tracy’s Story; CHILDREN OF HOARDERS (Apr. 13, 2006), www.childrenofhoarders.com/coh5.php.
78. Id.
79. Frost et al., supra note 33, at 230.
80. CAL. WELF. & INST. CODE § 15630(a) (West 2011) (listing health practitioners and clergy members, among others, as mandated reporters).
81. See Plaisance, supra note 15, at 255.
Still, hoarding cases may be reported by friends, neighbors, or other concerned community members. Neighbors may be affected by unsanitary conditions in an elder’s home as a result of hoarding, for example, by seeing or smelling rotting trash. Yet, unless a city or penal code is violated, for example, if the elder’s house lacks adequate sanitation to a point that it can be labeled as a public health concern, the problem goes unaddressed. Even if complaints to a local health department result in a one-time clean up, the elder will likely resume hoarding again within six months because hoarding is a chronic condition. Although hoarding is treatable, it is difficult to treat, and it is unlikely that a person who hoards will voluntarily seek help.

Hoarding, a form of self-neglect, will likely remain unaddressed unless some type of intervention can break this cycle of hoarding that affects both the elder’s mental and physical well-being. Although the disorder may seem under control earlier in an individual’s life, an elder who hoards various items or animals is at a significant risk for living in dangerous or unsanitary conditions. Hoarding not only poses health issues to the elder herself, but also to her family, friends, and neighbors. Thus, mandatory protective services are necessary to assist the elder in working toward treating this disorder. Although California’s Elder Abuse Act is designed to combat all types of elder abuse, it is inadequate to address this pervasive form of self-neglect.

III. ELDER ABUSE IN CALIFORNIA

California adopted its Elder Abuse Act almost twenty years ago to deal with what has been described as an “epidemic of elder abuse.” Although this statute lists different types of elder abuse and remedies such as traditional causes of action, it does not include hoarding as a type of abuse or specific remedies to address hoarding. Thus, as it is currently

82. See Roman, supra note 11.
83. See Frost et al., supra note 33, 231-33.
84. Harpster, supra note 8.
85. Span, supra note 34.
86. Pertusa et al., supra note 7, at 383.
87. Frost et al., supra note 33, at 230.
88. See Bratistis et al., supra note 28.
89. See Roman, supra note 11.
90. See id.
91. See CAL. WELF. & INST. CODE §§ 15600-75 (West 2011).
92. See Plaisance, supra note 15, at 246.
93. See WELF. & INST. §§ 15657-57.5.
written, the Elder Abuse Act is inadequate to protect elders in California from the dangers associated with hoarding. Part A shows why elder abuse is a continuing problem in California, and Part B describes the Elder Abuse Act. Elder abuse will not “simply go away;”\(^94\) therefore, there must be remedies in place that are tailored to address specific forms of abuse like hoarding.

### A. An Epidemic of Abuse

Elder abuse is a “hidden problem.”\(^95\) It is estimated that eighty-four percent of elder abuses go unreported,\(^96\) and elder abuse is less likely to be reported than child abuse.\(^97\) Various theories as to why elder abuse occurs include isolation, lack of close family ties, and lack of financial resources.\(^98\) Approximately 200,000 Californians are victims of elder abuse every year.\(^99\) Neglect, according to a 2004 survey, was the most common type of elder abuse.\(^100\)

Furthermore, elder abuse may be on the rise because California’s population is graying.\(^101\) An elderly person in California includes anyone who resides in the state and is sixty-five years of age or older.\(^102\) According to the 2000 United States Census, 10.6% of California’s population consisted of adults aged sixty-five and older.\(^103\) By 2030, 17.8% of Californians will be considered elderly.\(^104\) Such a significant increase in the number of elderly individuals in the state likely means that an increased

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94. See SUBCOMM. ON HEALTH & LONG-TERM CARE, SELECT COMM. ON AGING, supra note 14, at 75.
95. See id. at ix.
97. SUBCOMM. ON HEALTH & LONG-TERM CARE, SELECT COMM. ON AGING, supra note 14, at xi.
98. Id. at 31, 33.
102. CAL. WELF. & INST. CODE § 15610.27 (West 2011) (defining an “elder”).
103. U.S. ADMIN. ON AGING, supra note 101.
104. Id.
amount of elder abuse will occur, unless more is done to stop it.  

B. Elder Abuse and Dependent Adult Civil Protection Act

The Elder Abuse Act was adopted in California to help deal with the problem of elder abuse.106 In drafting the elder abuse laws, the legislature used much of the same language from the state’s child abuse statutes.107 Types of abuse listed in the Act include: “(a) Physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering” or “(b) The deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering.”108 Specifically, one of the goals of the Act was to provide “heightened remedies” for abuse of the elderly.109 No new causes of actions were created; rather, the focus of the Elder Abuse Act shifted to “private, civil enforcement of laws against elder abuse and neglect.”110 A defendant, for example, who is found liable for elder abuse may lose inheritance granted in a will, trust or by intestate succession111 and a deceased elder’s estate can recover damages for pain, suffering, or disfigurement.112 

Mandated reporters of abuse, according to the Elder Abuse Act, include “[a]ny person who has assumed full or intermittent responsibility for the care or custody of an elder . . . [including any] health practitioner, clergy member, or employee of a county adult protective services agency or a local law enforcement agency.”113 If abuse is observed in the elder’s home, it must be reported to the adult protective services agency or the local law enforcement agency.114 Failure to report abuse is a misdemeanor, punishable by six months in county jail, a fine of not more than $1,000, or both.115 Thus, a family member who is an abuser, for example,116 is more

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110. Id. at 992.
111. CAL. PROB. CODE § 259(c) (West 2002).
112. WELF. & INST. § 15657(b).
113. Id. § 15630(a).
114. Id. § 15630(b)(1)(C).
115. Id. § 15630(b).
likely to be discovered and be held liable due to the enactment of the Elder Abuse Act.117

But what if the abuser is the elder individual herself? Although the Elder Abuse Act does not include a separate category of self-neglect, it is included within the second part of the definition of neglect and defined as “[t]he negligent failure of an elder or dependent adult to exercise that degree of self care that a reasonable person in a like position would exercise.”118

Neglect includes, but is not limited to, all of the following:

1. Failure to assist in personal hygiene, or in the provision of food, clothing, or shelter.
2. Failure to provide medical care for physical and mental health needs. No person shall be deemed neglected or abused for the sole reason that he or she voluntarily relies on treatment by spiritual means through prayer alone in lieu of medical treatment.
3. Failure to protect from health and safety hazards.
4. Failure to prevent malnutrition or dehydration.
5. Failure of an elder or dependent adult to satisfy the needs specified in paragraphs (1) to (4), inclusive, for himself or herself, as a result of poor cognitive functioning, mental limitation, substance abuse, or chronic poor health.119

The difference between neglect and self-neglect is the former is done by a third party like a caregiver,120 whereas the latter is abuse by the elder herself.121 Although it makes sense to prosecute a third party for neglecting an elderly individual, it does little good to prosecute an elderly person for neglecting herself especially because, in many cases, the neglect is involuntary, often a result of diminished mental or physical ability.122 Therefore, a finding of self-neglect allows the state through Adult Protective Services123 (“APS”) to intervene.124 Although APS may conduct

118. WELF. & INST. § 15610.57(a)(2).
119. Id. § 15610.57(b).
120. See Plaisance, supra note 15, at 251.
121. See SUBCOMM. ON HEALTH & LONG-TERM CARE, SELECT COMM. ON AGING, supra note 14, at 18.
122. See id.
123. WELF. & INST. § 15610.10 (“‘Adult protective services’ means those preventive and remedial activities performed on behalf of elders and dependent adults who are unable to protect their own interests, harmed or threatened with harm, caused physical or mental injury due to the action or inaction of another person or their own action as a result of ignorance, illiteracy, incompetence, mental limitation, substance abuse, or poor health, lacking in adequate food, shelter, or clothing, exploited or their income and resources, or deprived of entitlement due
an investigation of self-neglect at an elder individual’s home, the elder may refuse help at any time. According to the Elder Abuse Act, “[a]ny victim of elder . . . abuse may refuse or withdraw consent at any time to an investigation or the provision of protective services by an adult protective services agency. . . .” Thus, an elderly individual has the ability to refuse to allow APS to investigate and intervene into a case of her own self-neglect.

It is unclear, however, when an elderly individual has the capacity to consent to an investigation by APS in the first place. The Elder Abuse Act does not define what it means to have capacity or lack of capacity to consent in order for APS to determine whether the elder can refuse its investigation. Other states, like Florida, Washington, and Wyoming, do however, have a “capacity to consent” definition. For example, Wyoming’s definition of “capacity to consent” is: “[T]he ability to understand and appreciate the nature and consequences of making decisions concerning one’s person, including, provisions for health or mental health care, food, shelter, clothing, safety or financial affairs. This determination may be based on assessment or investigative findings, observation or medical or mental health evaluations.” Thus, if an elder does not have the capacity to consent in Wyoming, she could not refuse an investigation by APS into her potential self-neglect. On the other hand, if the elder was found to have the capacity to consent, then she could refuse an APS investigation. Even with a definition like the one in Wyoming, however, whether someone “appreciates” or “understands” the consequences of affairs is still an imprecise test to determine if an elderly individual can give
consent because of its vague definition and potentially subjective conclusions. Moreover, the implication of needing consent prior to an investigation in the first place is that without an elder’s consent, situations that may be dangerous to the elder’s physical or psychological health may remain unresolved and continue to worsen.

Because almost one in five adults in California will soon be elderly, elder abuse is a problem that cannot be ignored. Although the Elder Abuse Act was enacted to encourage civil suits and prosecute abusers, it does not help elders who abuse themselves. Neglect, the most common type of elder abuse, when done by the elder to herself, can remain completely unaddressed if the elder does not consent to an investigation by APS. As it is currently written, the Elder Abuse Act is inadequate to protect elders in California from the dangers associated with hoarding. Thus, the Elder Abuse Act must be amended to acknowledge and address hoarding as a form of self-neglect.

IV. AMEND CALIFORNIA’S ELDER ABUSE AND DEPENDENT ADULT CIVIL PROTECTION ACT TO INCLUDE AND ADDRESS HOARDING

California’s Elder Abuse Act must be amended to include and address hoarding as a form of self-neglect. Part A proposes that hoarding should be listed under the Elder Abuse Act’s definition of self-neglect. Part B explains why mandatory protective services are necessary to conduct a preliminary investigation to address problems associated with hoarding. Part C proposes a comprehensive approach that the state could implement to specifically treat this disorder. In order to prevent future cases of elder abuse in California, the most populous state in the nation, there must be adequate measures in place to address and remedy all forms of abuse, including hoarding as a form of self-neglect.

A. Add Hoarding to the Definition of Neglect

Hoarding should be specified and defined in California’s Elder Abuse Act under the description of self-neglect, which is defined in section two

134. Teaster, supra note 100, at 5-6, 10, 19, 22.
under the category of neglect. The definition should be similar to the definition of compulsive hoarding in Illinois’ Elder Abuse and Neglect Act (“Act”). Included under the category of self-neglect in Illinois’ Act, compulsive hoarding is “characterized by the acquisition of, and retention of large quantities of items and materials that produce an extensively cluttered living space, which significantly impairs the performance of essential self-care tasks or otherwise substantially threatens life or safety.” The addition of hoarding under Illinois’ Act recently took effect on January 1, 2010, and it was proposed in response to concerns over what the state could do to address seniors’ hoarding problems. In one letter to (then) Senator Obama, a senior advocate stressed that by not addressing this form of elder self-neglect, the state itself was engaged in “governmental neglect.” Like Illinois, California should include hoarding in its Elder Abuse Act, so that the amended definition of self-neglect would read:

(2) The negligent failure of an elder or dependent adult to exercise that degree of self care that a reasonable person in a like position would exercise. The Term includes compulsive hoarding, which is characterized by the acquisition of, and retention of large quantities of items and materials that produce an extensively cluttered living space, which significantly impairs the performance of essential self-care tasks or otherwise substantially threatens life or safety.

The definition above would ensure that hoarding is treated as a form of

136. See CAL. WELF. & INST. CODE § 15610.57 (West 2011); see also supra Part III.B.
137. “Compulsive hoarding” is another term commonly used to describe hoarding. See Pertusa et al., supra note 7, at 372.
139. Id. (defining self-neglect under the Act as “a condition that is the result of an eligible adult’s inability, due to physical or mental impairments, or both, or a diminished capacity, to perform essential self-care tasks that substantially threaten his or her own health, including: providing essential food, clothing shelter, and health care; and obtaining goods and services necessary to maintain physical health, mental health, emotional well-being, and general safety”).
140. Id.
143. See id.
144. In other words, California’s amended elder abuse statute would include the definition of hoarding that is included in Illinois’ Act. Compare CAL. WELF. & INST. CODE § 15657(a)(2) (2001) with Elder Abuse and Neglect Act, 320 ILL. COMP. STAT. ANN. 20/2 (i-5) (West Supp. 2011) (italics added to show proposed additions to California Code based on Illinois’ Act).
self-neglect under California’s Elder Abuse Act. Although courts or agencies could also construe the current definition of neglect to include hoarding, without a specific definition, it is more difficult to determine whether particular situations qualify under this unique form of abuse. Hoarding does not neatly fit within one of the examples of neglect as currently described in the statute. Furthermore, the definition of abuse is described as a “key factor” in the rate at which elder abuse is investigated and addressed. States with elder abuse statutes that contain vague definitions of abuse have been found to have a lower rate of investigation of abuse than states that have more specific definitions of what constitutes abuse. Therefore, a specific definition of hoarding as a form of self-neglect should lead to a higher investigation rate. Additionally, a finding of hoarding under this definition should trigger specific remedies, as described in Part C.

B. Mandatory Protective Services

Adult Protective Services should have the ability to intervene in hoarding situations, regardless of whether the elderly individual consents to an investigation. What APS should do when it intervenes is further explored in Part C. As the Elder Abuse Act is currently written, an elder who hoards may refuse an investigation by APS at any time. California’s Elder Abuse Act should be amended to mirror Alaska’s provision regarding adult protective services. In Alaska, the Protective Services Department will administer support services if consented to by the elderly person or the elderly person’s designated guardian. The Alaska Protective Service Department may also, however, intervene in an “emergency situation” regardless of whether the elderly person consents. In other words, if the Protective Services Department determines that an emergency situation exists, it may provide the necessary protective services “regardless of whether the vulnerable adult or any other person has consented to the

145. See WELF. & INST. § 15610.57(b) (defining “neglect,” but not including “hoarding” within the definition).
146. See id.
148. Id. at 253-54.
149. WELF. & INST. § 15636(a).
150. See ALASKA STAT. § 47.24.017(b) (2010).
151. Id. § 47.24.017(a).
152. Id. § 47.24.017(b).
receipt of the services.”

Hoarding should additionally be specified in California’s Elder Abuse Act as a type of emergency situation in order for APS to intervene regardless of consent. Especially because elder individuals who hoard deny that there is a problem and often will not even let their family members intervene, APS cannot rely on obtaining their consent in order to perform an investigation. Otherwise, few investigations will occur and the dangers associated with hoarding will continue and likely worsen. If consent is not needed, then, this will solve the ambiguity currently in California’s statute regarding whether an elder has the capacity to consent to an investigation of hoarding in the first place. Thus, California’s Elder Abuse Act should be amended so that the section regarding a victim’s consent reads:

(a) Any victim of elder or dependent adult abuse may refuse or withdraw consent at any time to an investigation or the provision of protective services by an adult protective services agency or long-term care ombudsman program. . . .

(b) Notwithstanding (a) of this section, if the protective services agency or long-term care ombudsman program determines that an emergency situation exists that necessitates provision of protective services to a vulnerable adult, the department may provide the necessary protective services in a manner determined by the department to be the most appropriate in light of the emergency situation, regardless of whether the vulnerable adult or any other person has consented to receipt of the services. An emergency situation includes, but is not limited to, cases of self-neglect, including hoarding as defined under Section 15610.57(a)(2).

Although APS would have the ability to intervene regardless of consent according to the amended provision above, it would be up to APS to assess the specific hoarding situation and provide certain remedies as needed, as described in Part C. In other words, just because APS can intervene without the elder’s consent, it does not necessarily mean that they will. Rather, this provision provides APS the flexibility to investigate cases of

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153. Id.
154. See Frost et al., supra note 33, at 230, 234.
155. California’s Welfare and Institutions Code does not include a statutory definition for “capacity to consent.” See Stiegel & Klem, Chart, supra note 128; see also CAL. WELF. & INST. CODE §§ 15610-610.65 (2011).
156. Thus, subsection (a) of 15636 of California’s Elder Abuse Act would remain the same, but would then be subject to a new subsection (b), which includes the wording under Alaska’s statute in addition to specifying hoarding as a type of emergency. See ALASKA STAT. § 47.24.017(b) (2010). The current subsection (b) of California’s Elder Abuse Act would then be re-lettered subsection (c), which was omitted here. See WELF. & INST. § 15636(b).
self-neglect so that an elder has the opportunity to receive help. Seniors, like adults under sixty-five, have the right to make choices about what they collect and how they live.\textsuperscript{157} When hoarding, however, gets to the point of interfering with daily activities and endangering the senior’s health and well-being, APS must have the ability to, at the least, conduct a preliminary investigation in an attempt to assist the elderly person. Especially because seniors are at a heightened risk of living in unsanitary and unsafe conditions as a result of hoarding,\textsuperscript{158} the state should not passively allow this type of elder self-neglect to continue.

Removing the barrier of consent prior to an investigation enables APS to act quickly in addressing hoarding situations. This approach is preferable to an alternative proposal, that APS needs consent to investigate, but presumes that an elder who hoards does not have the capacity to consent. This would make it easier than the current practice in California for APS to conduct an investigation into hoarding, yet it would likely slow down the investigation process if the elder contests that she does in fact have the capacity to consent. Under this alternative proposal, in other words, a rebuttable presumption is created that the elder hoarder cannot consent, but the elder has the burden to prove otherwise. California would need a definition of “capacity to consent” under this approach, which would probably be similar to that under Wyoming’s Elder Abuse statute.\textsuperscript{159} Although this proposal would give elder individuals the opportunity to prove that they can consent, and can thereby withdraw consent to an investigation by APS, it would hamper APS’ ability to efficiently address hoarding cases. An intervention by APS should occur to protect elders from health and safety dangers associated with hoarding.\textsuperscript{160} Because many hoarders do not recognize that their behavior is a problem,\textsuperscript{161} it is in their best interest for APS to investigate their self-neglect. Thus, APS should have the ability to assist an elder in treating her hoarding disorder without first needing the elder’s consent to a preliminary investigation.

\textsuperscript{157} See Bratiotis et al., \textit{supra} note 28.
\textsuperscript{158} See Roman, \textit{supra} note 11.
\textsuperscript{160} See WELF. & INST. § 15600(i) (declaring the Legislature’s intent for APS to act upon reports of suspected elder endangerment in order to “protect the elder or dependent adult and correct the situation and ensure the individual’s safety”).
\textsuperscript{161} See Frost et al., \textit{supra} note 33, at 230.
C. Protective Services for Hoarding Specifically

California should amend its Elder Abuse Act to ensure that APS coordinates with regional hoarding task forces, if available, and that specific remedies will be provided to seniors to address this form of self-neglect. As the statute is currently written, APS is not required to ensure that specific remedies are afforded to elder hoarders.\footnote{See WELF. & INST. § 15610.07 (failing to include “hoarding” within the definition of “abuse of an elder or a dependent adult”); id. § 15610.57 (omitting “hoarding” from the definition of “neglect”).} Illinois recently amended its Elder Abuse and Neglect Act to provide several services for elders who hoard, which included temporary housing, counseling, and caseworker services.\footnote{Elder Abuse and Neglect Act, 320 ILL. COMP. STAT. ANN. 20/3 § 3(a) (West Supp. 2011).} It is not surprising that a one-time clean-up is insufficient to treat this disorder because collecting and saving possessions has likely been part of that elderly individual’s everyday behavior for many years.\footnote{See Roman, supra note 11.}

Furthermore, according to one Internet study, eighty-five percent of participants said they would seek therapy for their hoarding if it were available, which suggests that counseling is necessary to address this disorder.\footnote{Pertusa et al., supra note 7, at 373.} Many cities in California have already created a hoarding task force,\footnote{Task Force List, INT’L EXCHANGE ON HOARDING, http://www.hoardingtaskforce.org/taskforcelist (last visited Sept. 11, 2011).} which is comprised of a variety of service providers who provide a managed response to hoarding cases, interventions, and training, in addition to familial support to address the problem.\footnote{Hoarding Task Force Defined, INT’L EXCHANGE ON HOARDING, http://www.hoardingtaskforce.org/hoarding-task-force-defined/ (last visited Sept. 11, 2011).} This sort of comprehensive approach can better address the various causes and effects of an elder’s hoarding disorder. The Orange County Task Force, for example, is comprised of senior service providers, fire department and housing representatives, and professional organizers, among others.\footnote{See Orange County Task Force on Hoarding, A Collaborative Effort to Effectively Impact Hoarding, MENTAL HEALTH ASS’N OF ORANGE COUNTY, http://www.mhaoec.org/hoarding (last visited Sept. 11, 2011).} While the fire department deals with the structural damage to a house, for example, social workers can arrange for counseling and support services to work with the elder individual to address her hoarding behavior.\footnote{See id.}
Ideally, a temporary and long-term approach could be put in place to immediately address the problem, and to prevent future occurrences of hoarding. Thus, after a preliminary hoarding investigation, APS must be required to work with regional hoarding task forces that are already established and specialized to address hoarding. If no hoarding task forces exist where the elder resides, however, then APS must still be responsible for coordinating with local agencies to ensure that elders who hoard will receive temporary housing, counseling, and caseworker services. This type of comprehensive approach is a necessary first step in treating the elder’s hoarding disorder. Therefore, California’s section on investigation of reports of known or suspected abuse of its Elder Abuse Act should be amended to read:

(e) Each county adult protective services agency shall maintain an inventory of all public and private service agencies available to assist victims of abuse, as defined by Section 15610.07. This inventory shall be used to refer victims in the event that the county adult protective services agency cannot resolve the immediate needs of the victim, and to serve the victim on a long-term, followup basis. Adult protective services agency shall contract with or fund, or contract with and fund regional provider agencies or task forces, if available. For persons 65 years of age or older who need to be removed from, or assistance in, cleaning or repairing their residences, as determined by adult protective services, the following services will include: temporary housing, counseling; and caseworker services to try to ensure that the conditions necessitating the intervention do not reoccur. The intent of this section is to acknowledge that limited funds are available to resolve all suspected cases of abuse reported to a county adult protective services agency.170

This proposed amended section will ensure that APS works with regional hoarding task forces that are specialized in addressing this disorder, and furthermore guarantees that elderly hoarders who need it will receive specific services in an effort to treat this form of elder self-neglect.

Funding is obviously a potential obstacle to implementing this proposal. Although APS would ultimately have more responsibility in overseeing hoarding cases, by delegating responsibilities to regional agencies, however, APS would not endure significant additional costs. This, in turn, may shift the burden to local agencies. Some hoarding task forces, like the one in Orange County for example, are voluntary groups

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170. This proposed addition is an amended version of a section of Illinois’ Elder Abuse and Neglect Act relating to the responsibilities of the state’s elder protective services agency. Compare CAL. WELF. & INST. CODE § 15650(e) (2001) with Elder Abuse & Neglect Act, 320 ILL. COMP. STAT. ANN. 20/3(a) (West Supp. 2010) (italics added to show proposed additions to the California Code).
who donate their services. Of course, this does not mean that hoarding task forces should be expected to work for free, but ultimately the cities that create these task forces determine their funding sources. Practicality, these remedies by APS, hoarding task forces, and other regional agencies, will not treat all cases of elder hoarding. Seniors may resist assistance and will understandably react differently to these proposed remedies. Relapses may also occur. Still, although hoarding is difficult to treat, it is treatable and certainly worth trying to treat. California’s Elder Abuse Act must provide remedies for all forms of elder abuse, including hoarding, a form of self-neglect, where the victim is the abuser.

California’s Elder Abuse Act must be amended to include and address hoarding as a form of self-neglect. First, hoarding must be defined under the statute as a form of self-neglect to make clear that it is a form of abuse, and a finding of which will trigger specific services. Second, APS must have the ability to conduct a preliminary hoarding investigation, regardless of whether consent is given. This allows APS to act quickly and assess what, if any, additional services are needed. Finally, if it determined that the hoarding behavior is a threat to the elder’s health and safety, APS will work with applicable hoarding task forces or other regional agencies to ensure that temporary housing, counseling, and caseworker services are made available to both treat and prevent hoarding from reoccurring in the future. Thus, according to this proposed amended statute, once there is a suspected case of hoarding, there is a comprehensive approach outlined to specifically address this form of self-neglect. At a time when many Californians are becoming “elderly,” it is more important than ever to take action because elder abuse will not simply go away.

IV. CONCLUSION

Hoarding threatens the health and safety of seniors. Although many individuals begin to hoard at a young age, as they grow older, their

171. See Orange County Task Force on Hoarding, supra note 168.
172. See Bratiotis et al., supra note 28.
173. See Pertusa et al., supra note 7, at 383.
175. See U.S. Admin. on Aging, Dep’t of Health & Human Servs., supra note 101.
176. See Subcomm. on Health & Long-Term Care, Select Comm. on Aging, supra note 14, at 75.
177. See Frost, et al. supra note 33, at 229.
178. See Roman, supra note 11.
behavior poses a heightened risk of falling, \textsuperscript{179} living in unsanitary conditions, \textsuperscript{180} and even death. \textsuperscript{181} Because over ten percent of Californians are sixty-five and older and the population is graying, \textsuperscript{182} elder abuse continues to be a disturbing problem. Hoarding is a form of self-neglect, \textsuperscript{183} where the victim is the abuser. \textsuperscript{184} Although California’s Elder Abuse Act focuses on civil suits to enforce elder abuse laws, it is inadequate to remedy situations where the abuser is the elderly individual herself, and the form of abuse is a potentially life-threatening disorder. \textsuperscript{185}

California’s Elder Abuse and Dependent Adult Civil Protection Act must be amended to acknowledge and address hoarding as a form of self-neglect. Few elders recognize the health and safety dangers associated with hoarding, \textsuperscript{186} and as a result, will not voluntarily seek help. \textsuperscript{187} Thus, hoarding must be defined as a form of self-neglect under the Elder Abuse Act, and Adult Protective Services should have the ability to conduct an investigation in hoarding cases, without needing consent. A finding of hoarding should trigger specific services to assist elderly individuals in addressing the immediate problem in addition to preventing future hoarding behavior. APS must work with regional hoarding task forces, if available, and ensure that seniors who need it receive temporary housing, counseling, and caseworker services. Hoarding is treatable, \textsuperscript{188} and elderly individuals deserve an opportunity to live safely and healthily. Contrary to reality television’s portrayal of hoarding as entertainment, it is a form of self-neglect. \textsuperscript{189} Hoarding must be recognized and addressed in California to stop our elders from being buried alive.

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\begin{footnotesize}
\textsuperscript{179} See Frost et al., supra note 33, at 229.
\textsuperscript{180} NAT’L CTR. ON ELDER ABUSE, U.S. ADMIN. ON AGING, supra note 26.
\textsuperscript{181} See Bratiotis, supra note 28.
\textsuperscript{182} See U.S. ADMIN. ON AGING, DEP’T OF HEALTH & HUMAN SERVS., supra note 101.
\textsuperscript{183} See NAT’L CTR. ON ELDER ABUSE, U.S. ADMIN. ON AGING, supra note 26.
\textsuperscript{184} See Gunnarsson, supra note 174, at 647.
\textsuperscript{185} See Frost et al., supra note 33, at 234.
\textsuperscript{186} See id. at 230.
\textsuperscript{187} See id.
\textsuperscript{188} Bratiotis et al., supra note 28.
\textsuperscript{189} See Nat’l Ctr. on Elder Abuse, U.S. Admin. on Aging, supra note 26.
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