



White Paper

State Courts and Elder Abuse: Ensuring Justice for Older Americans

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...Elder abuse and financial exploitation will appear in increasing numbers on the civil and criminal dockets. ...Every court needs to take a close look at their preparedness, because the numbers are coming whether they're prepared or not.

—Sally Hurme, AARP

Objective

To issue a call to action to improve the state courts' capacity to identify, develop, and implement strategies that will enhance responses to elder abuse, neglect, and exploitation.

Introduction

Legal definitions of elder abuse vary across states, tribes, and territories. In general, elder abuse refers to the abuse, exploitation, and neglect of older persons. The National Center on Elder Abuse describes seven primary types of elder abuse: physical abuse, sexual abuse, emotional abuse, financial exploitation, neglect, abandonment, and self-neglect.¹ While damage inflicted by physical abuse may be obvious, the effects of emotional or psychological abuse—humiliation, intimidation, and fear—are much more difficult to detect.

The abuse of older Americans is poorly documented, particularly in the courts.² Yet evidence indicates an increase in elder abuse—a 2004 survey of Adult Protective Services (APS) investigations showed a twenty percent increase since 2000 in the combined total of reports of elder and vulnerable adult abuse and neglect.³ Indeed, at any point in time, between one and two million vulnerable elders may be experiencing mistreatment.⁴ Furthermore, current estimates suggest that there may be at least five million elderly victims of financial abuse each year.⁵ The overwhelming majority of elder abuse occurs in a domestic setting, and most alleged perpetrators are adult children, spouses or partners, or other family members. There is a continuing need for research on the incidence and prevalence of elder abuse.

Elder abuse will become more ubiquitous as a consequence of the changing demographics of the United States. In 2006, the first of the “baby boomers” (those born between 1946 and 1964) began turning sixty and are rapidly approaching retirement age. By 2030, the number of people older than sixty-five in the United States will exceed seventy-one million—double the number in the year 2000. In fact, the U.S.

¹ See the National Center on Elder Abuse, www.elderabusecenter.org, for more detailed definitions.

² For example, in 2005, only two courts were able to provide elder abuse data in the National Center for State Courts' annual collection of court data.

³ Pamela Teaster, et al., *The 2004 Survey of State Adult Protective Services: Abuse of Adults 60 Years of Age and Older*. Washington, DC: The National Center on Elder Abuse, 2006. The report, a follow-up to the 2000 survey, can be found at <http://www.elderabusecenter.org>.

⁴ *Elder Mistreatment: Abuse, Neglect and Exploitation in Aging America*. 2003. Washington, DC: National Research Council Panel to Review Risk and Prevalence of Elder Abuse and Neglect.

⁵ John F. Wasik, “The Fleecing of America’s Elderly,” 2000. *Consumers Digest* (March/April).

Census Bureau reports that the 85-plus group is the fastest-growing demographic, with projections that the number of people age 85 and older could quadruple by 2050.

Statement of Problem for the Courts

Elder abuse first came to the attention of national policy makers in 1978 when the U.S. House of Representatives heard testimony about “parent battering” at a subcommittee hearing on family violence.⁶ A year later, the U.S. House of Representatives Select Committee on Aging helped fuel elder abuse legislation at the state level by highlighting horrific cases of elder abuse. In 1988, the U.S. Administration on Aging funded the first national resource center on elder abuse, which would become the National Center on Elder Abuse four years later with the passage of Older Americans Act amendments. In 2001, the National Center on Elder Abuse convened the National Policy Summit on Elder Abuse in Washington, DC. Among the Summit’s recommendations: “an improved response to elder abuse and neglect by the justice system...” and “increasing awareness among the justice system.”⁷ In 2003, the Elder Justice Act was introduced in Congress—the Act was most recently reintroduced in March 2007.⁸ Ironically, while elder abuse will have a significant impact on court resources, the current draft of the Elder Justice Act does not provide any programs or funding specific to state courts.

The problem of elder abuse is becoming increasingly apparent to judges and court staff. In 1997, the American Bar Association published the first curriculum for judges and court staff, based on the *ABA Recommended Guidelines for State Courts Handling Cases Involving Elder Abuse*.⁹ In 1999, Florida’s 13th Judicial Circuit Court established the first Elder Justice Center to assist the elderly with issues related to guardianship, criminal, family, or other civil matters. In 2002, the Alameda County Superior Court in California created the nation’s first specialized dockets for elders—the Elder Protection Court program, which provides civil remedies for elders and hears felony elder and dependent adult abuse cases. In 2004, the state of Louisiana provided elder abuse training for its entire bench at their annual judicial institute, and the American Judges Association offered its first seminar on elder abuse. In 2005, the National Center for State Courts created the Elder Abuse and the Courts Working Group, a multidisciplinary group of experts and practitioners whose mission is to improve court identification of and response to elder abuse. The Working Group, which addresses elder abuse in all court contexts, held its first national meeting in Williamsburg, Virginia, in April 2006.¹⁰

⁶ Rosalie S. Wolf. 2000. “The Nature and Scope of Elder Abuse,” *Generations* 24 (2): 6-12.

⁷ *The National Policy Summit on Elder Abuse: Creating the Action Agenda*. 2001. The National Center on Elder Abuse, pp. 3-4.

⁸ Congress has held over twenty hearings on elder abuse, neglect, and exploitation. In 2003, Senators John Breaux (D-LA) and Orrin Hatch (R-UT) introduced the Elder Justice Act, the bulk of which has not yet been enacted.

⁹ Lori A. Stiegel, *Elder Abuse in the State Courts—Three Curricula for Judges and Court Staff*. Washington, DC: American Bar Association, 1997.

¹⁰ The full report of the meeting can be found at the National Center for State Courts’ website at www.ncsconline.org.

The accomplishments of the 2006 meeting of the Elder Abuse and the Courts Working Group included the development of a strategic action plan, recommendations, and an invigorated national network of key individuals who are moving the agenda forward. In addition to outlining ten key components of an effective court response and documenting training needs, members of the Working Group expressed their concerns around four issues that encumber court responses: the complexity of the problem, low levels of awareness among judges and court staff, access to the courts, and traditional court structures.

The Complexity of the Problem

Elder abuse is a complex civil and criminal issue. Definitions of elder abuse vary from state to state, compounded by varying legal classifications of types of mistreatment. Some of the risk factors, particularly social isolation and mental impairment, make it difficult for the justice system and professionals to initially identify the problem and to follow up with appropriate remedies. Additionally, cases of financial abuse that target the elderly specifically (e.g., consumer scams, telemarketing fraud) often cross traditional legal jurisdictions, creating challenges for limited jurisdiction courts in states that lack unified court systems. Solutions require innovative approaches, such as coordinated responses across agencies and jurisdictions.

Low Levels of Awareness among Judges and Court Staff

Older persons appear in court every day as victims, defendants, petitioners, jurists, and witnesses. Yet very few older persons will demonstrate obvious signs of physical, financial, and emotional abuse. Rather, elder abuse is subtle—abusers often rely on the vulnerability of an individual and the court's reluctance to address questions of mental capacity, consent, and undue influence. While elder abuse is a growing problem, few cases ever come to the attention of the authorities.¹¹ From a criminal standpoint, elder abuse cases are challenging to prosecute; a survey of prosecutors found that the most difficult aspects of prosecuting elder abuse cases are diminished mental capacity and/or physical health of the victim, cooperation by the victim, proving undue influence, and witness intimidation.¹² Consequently, the courts hear a relatively small number of cases that are identified as elder abuse, and without screening mechanisms and training to detect the more subtle nature of abuse and neglect that may be present in a variety of cases, the problem remains hidden from the view of the courts.

Access to the Courts

Access to justice is a basic American right. Accessibility includes courtroom modifications that provide maximum access to elders and people with disabilities. To date, few courthouses have been retrofitted to accommodate the growing number of older persons. The Eleazer Courtroom at Stetson University College of Law is the only

¹¹ Data on elder abuse in domestic settings suggest that one in fourteen incidents, excluding acts of self-neglect, come to the attention of authorities (Karl Pillemer and David Finkelhor. 1988. "The Prevalence of Elder Abuse: A Random Survey," *The Gerontologist*, 28: 51-57).

¹² Mark L. Miller and James L. Johnson. *Protecting America's Senior Citizens: What Local Prosecutors Are Doing to Fight Elder Abuse*, Washington, DC: American Prosecutors Research Institute, 2003.

courtroom in the country designed specifically with the needs of elderly parties in mind.¹³ Accessibility also calls for docket management that takes into account the age and health of the parties involved—cases can be sped up to ensure that justice is served during an older person's lifetime. Similarly, cases involving older victims can be scheduled around physical impairments or limitations that impact cognitive ability during certain hours of the day. The American Bar Association's *Recommended Guidelines for State Courts Handling Cases Involving Elder Abuse* lays out specific case management strategies that can be used in cases where the older persons' capacity is at issue.¹⁴

Traditional Court Structures

The traditional court structure compartmentalizes cases by type—criminal, civil, family, probate. Yet cases with an underlying element of elder abuse often occur in a variety of guises within the court. While each type of court addresses the specific complaint, there is no systemic coordination to ensure that the courts' actions are consistent, or that the remedies are followed. A problem-solving approach that incorporates input from local community-based victim services organizations to provide holistic remedies and links to resources is ideally suited to providing recourse to victims of elder abuse. With few exceptions, courts have yet to embrace practices geared toward the aging community.

While impediments and challenges remain, there are solutions that can help courts improve the identification of and response to elder abuse. Judicial and court staff awareness is the first step toward recognizing ways in which elder abuse may be impacting cases in front of the court. Innovation, communication, and outreach can be used to create processes and partnerships that serve the interests of older persons. Above all, leadership is instrumental for the courts to address the problem of elder abuse and take concrete actions that signal more balanced and appropriate justice.

Call to action

Elder abuse is a national problem with far reaching consequences for individuals, families, communities, and institutions. The state courts must play a critical role in addressing the needs of victims of elder abuse. The court's ability to assist older persons essentially determines whether individuals live their remaining years with respect and dignity, or are further alienated from the justice system with personal safety jeopardized. Therefore:

We Call To Action:

Policy makers, judges, judicial officials, court administrators, court managers, court clerks, attorneys, community based organizations, adult protective service providers, elder care specialists, and all individuals who support the rights of older Americans:

¹³ For more information, see www.law.stetson.edu/Elleazercourtroom/.

¹⁴ Lori Stiegel, *Recommended Guidelines for State Courts Handling Cases Involving Elder Abuse*. 1996. Washington, DC: American Bar Association.

- *To encourage judicial leaders to prioritize court improvement in the areas of elder abuse detection and response.*
- *To increase judicial and court awareness of aging issues and elder abuse.*
- *To increase the availability of training for judges and court staff on elder issues at the state level.*
- *To improve court documentation of cases involving older persons (especially elder abuse, domestic and family violence, and guardianships).*
- *To encourage funding agencies to provide adequate resources to enable the courts to identify and respond to elder abuse.*

The capacity of the state courts to provide services and remedies must be bolstered to meet the growing numbers and needs of older adults. The range, efficacy, and quality of services that abused, neglected, and exploited older persons receive from the courts is a matter of public trust and confidence that must be addressed.

Recommendations

The following recommendations strive to improve court capacity to identify and respond to elder abuse, neglect, and exploitation.

Recommendation 1: *Create a national resource for the courts on aging issues, elder abuse, and guardianship.*

A centralized clearinghouse – Center for Elders and the Courts (CEAC) – should be created to provide resources, training, research, and technical assistance to state courts. The CEAC will be guided by a steering committee of judicial, court, and academic experts to create the foundation and mission of the organization. In addition, the CEAC will work closely with an advisory board representing multiple disciplines (e.g., judiciary, court staff, attorneys, adult protective services, elder rights advocates, law enforcement, academia) to enhance cross-agency collaborative efforts. The Center for Elders and the Courts will initially focus on aging issues, elder abuse, and guardianship. We recommend the following actions.

Action 1A: A steering committee of judicial, court, and academic experts will convene to create the foundation and mission of the Center for Elders and the Courts. The steering committee will help recruit experts from the courts and a variety of disciplines to act as a resource pool for courts nationwide.

Action 1B: The Center, at its inception, will include a website devoted to court issues that impact the aging population. In addition to resources, the website will offer opportunities for the exchange of ideas through a listserv, regular networking conference calls, a newsletter of resources, and a compilation of promising practices for the courts.

Action 1C: The Center for Elders and the Courts will develop a practical toolkit for the courts, to include the following: benchcards, benchbooks, performance standards with measurements, training manuals, references to educational resources, and online trainings.

Action 1D: The Center for Elders and the Courts will collaborate with leading national organizations to ensure consistency and integrity of products and to provide the highest quality services to the court community based on organizational expertise.

Recommendation 2: *Develop national and statewide model practices.*

National model practices pertaining to matters such as case screening, judicial and court staff training, community coordination, and court responses must be researched, implemented, evaluated, and documented. Using the national model practices, state courts should develop models that will guide courts in responding to cases involving elder abuse. State model responses will be specific to the laws and court systems operating in each state. We recommend the following actions:

Action 2A: Identify, develop, and promote model court practices at the national level, with guidance from an interdisciplinary team of experts led by the judiciary.

Action 2B: Encourage state courts to establish a pilot court program to refine practices based on national guidelines. The model court will act as a statewide resource for other courts within their state.

Action 2C: Encourage judges and court staff to visit and learn from courts that have recognized promising practices.

Recommendation 3: *Encourage local courts to examine current responses and develop innovative solutions to elder abuse.*

Each court should examine its current response to elder abuse as it appears in criminal, civil, family, and probate cases. This examination will include, at minimum, an analysis of how cases enter the court, ways in which elder abuse are identified, and issues that routinely affect these types of cases. Courts will develop strategic action plans that include input from a variety of disciplines and agencies with expertise on the local aging population and court statistics that are currently collected on elder abuse cases. Courts must be innovative in creating solutions such as specialized dockets, vertical case management, case screening, judicial training, and community partnerships. We recommend the following actions:

Action 3A: Convene local and state advisory boards to review current practices and policies. Work to identify the extent of elder abuse and the court's response—examine both actual and suspected cases of elder abuse and opportunities for the court to intervene.

- Action 3B:** Conduct surveys and interviews to gain an understanding of the issues and challenges in identifying and responding to elder abuse in the court's jurisdiction. Identify barriers that are likely to impact older persons in particular.
- Action 3C:** Develop a plan of action, based on the analysis, personal interviews, and best practices that will improve local court responses to elder abuse. The plans should consider case screening and management, problem-solving approaches, court-community partnerships, docket management, and outreach.
- Action 3D:** Create appropriate and timely court responses by engaging specially trained staff, including the use of a cadre of experienced and professional court investigators who help determine the need for guardianship and actively monitor guardianships once they have been granted.
- Action 3E:** Consider specialized vertically-integrated courts that incorporate compliance reviews and problem-solving approaches.

Recommendation 4: *Ensure that both judicial and non-judicial staff are trained on aging issues and elder abuse.*

Court systems should recommend that judicial and non-judicial staff be regularly trained and updated on both aging issues and elder abuse. At minimum, training should include a discussion of the physiological and sociological aspects of aging, the definition and social costs of elder abuse, neglect, and exploitation, and how elder abuse affects courts in terms of access, efficiency, case management, equal protection, and community coordination. We recommend the following actions.

- Action 4A:** Encourage state court systems and judicial educators to develop and implement courses that address aging issues and elder abuse on a routine basis.
- Action 4B:** Ensure the availability of distance-learning options by creating an online course on aging issues and elder abuse. The online curriculum will be developed in collaboration with national experts.
- Action 4C:** Include elder issue seminars and roundtables at annual judicial and court management conferences whenever possible.
- Action 4D:** Regularly update the Center for Elders and the Courts website to notify readers of national, regional, and local training events and opportunities in the areas of aging issues, elder abuse, and guardianship.

Recommendation 5: *Develop court performance standards and case management systems that improve documentation and oversight of cases involving older persons.*

National performance standards specific to elder abuse and guardianship cases must be developed to guide the collection and evaluation of court-level data. Courts should evaluate their case management systems and coding schemes to ensure elder abuse and guardianship cases are well-documented. In addition, courts should collect information on the age of parties to improve their identification of cases that are more likely to involve older persons. Technology that enables staff to access automated reports and assists in the oversight of cases (such as guardianship reporting requirements) should be explored. We recommend the following actions.

- Action 5A:** Conduct a national-scope research project to document elder abuse and adult guardianship caseloads. National research will be carried out using a representative sample that will provide a snapshot of current court practices and challenges.
- Action 5B:** Create core performance standards for elder abuse and adult guardianship cases, with standards modeled after the NCSC's court performance standards and limited to ten working measurements for each case type.¹⁵
- Action 5C:** Explore ways in which technology can streamline the process as well as produce standard reports for cases involving older persons. Courts that already have technology to document case activity will share their experiences and advice with others who are interested in technological solutions.
- Action 5D:** Use technology and court monitoring techniques to enhance the timeliness and completeness of guardianship and conservatorship reports and accounts, and improve regular, timely oversight of these types of cases on a regular basis.

Recommendation 6: *Encourage judicial and court participation in multi-agency partnerships to combat elder abuse.*

Judges and court staff will be active participants in multidisciplinary efforts that address elder abuse in their communities. Court rules will be examined and modified where appropriate to ensure that judges can collaborate with non-judicial partners in a manner that is consistent with the judicial role. Chief justices and presiding judges will lend credibility to this effort through their leadership and support. Courts will consider

¹⁵ For an additional resource, see Max Rothman, B. D. Dunlop, and L. R. Seff. 2006. *Adapting Trial Court Performance Standards to an Aging Society: Guardianship, Self-Service, and Criminal Cases Involving Elder Mistreatment and Domestic Violence*. North Miami, Florida: The Center on Aging.

therapeutic jurisprudence as a way to involve agencies in a problem-solving approach. We recommend the following actions.

- Action 6A:** Judges and court administrators in leadership positions will explicitly identify ways in which judges and staff can take a proactive role in multidisciplinary efforts to address elder abuse.
- Action 6B:** Courts will explore the possibility of establishing specialized courts or dockets to handle sensitive matters involving older persons. A “model court” program will be established to document promising practices that can be implemented in other courts.
- Action 6C:** National judicial and court organizations and associations will partner with other national organizations to develop a successful framework for collaboration.
- Action 6D:** Judges and court administrators, working with local service agencies, will improve outreach efforts to senior centers and organizations that focus on elder issues.

Recommendation 7: Support local, state, and federal budgets and legislation that provides the court with the resources it needs to address elder abuse.

The judicial system supports proposed budgets and laws that provide resources for the courts that enable them to develop practices and responses to a host of issues impacting the older population, especially elder abuse. Additional court resources will become critical as the courts experience an increase in cases involving elder abuse and an aging population as a result of the demographic shift in American society. We recommend the following actions.

- Action 7A:** Judicial and court associations will request that state and federal legislation, especially the Elder Justice Act, include funding mechanisms for the courts.
- Action 7B:** Courts will team with local agencies and community-based organizations to educate legislators and other relevant government officials on the growing needs of older persons, the impact of elder abuse, and the role of the courts.

Conclusion

State courts are uniquely positioned to create programs and policies that will improve court responses to the growing problem of elder abuse. Problem-solving tools can be adapted and modified to build elder-friendly programs. The time for strong judicial leadership that will hasten innovative solutions to the millions of older persons who experience abuse, neglect, and exploitation is now. The National Center for State Courts seeks the support of the Conference of Chief Justices and the Conference of

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