

ELDER ABUSE AND NEGLECT

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As the American population ages, the courts will see an increase in the number of elder abuse and neglect cases. Courts will face the challenge of identifying and documenting such cases and drafting appropriate responses.

Elder abuse may include physical, sexual, or emotional abuse; financial exploitation; neglect in providing material items like food, shelter, or clothing; and withholding medicine or transportation for medical appointments. While damage inflicted by physical abuse may be obvious, the effects of emotional or psychological abuse—humiliation, intimidation, and fear—may be less apparent. Elder abuse falls into the general categories of domestic elder abuse (occurring in a person's own home), institutional elder abuse, and self-neglect or self-abuse.

Estimates of the Problem

The need for national data on elder abuse is critical, and interest in collecting such data is growing. For example, in 2004, the National Center for State Courts added “elder abuse” as a case type to its *State Court Guide to Statistical Reporting*—yet only two courts were able to provide elder abuse data in the recent collection of annual court data.¹ Estimates of elder abuse are confounded by varying definitions and legal mandates to identify and report elder abuse. For instance, Jogerst et al. found that states that mandate reporting and tracking of domestic elder abuse reports have much higher investigation rates than states without these mandatory requirements.² In general, elder abuse laws tend to fall into four areas: adult protective services (APS), institutional abuse (in some states where APS law only covers individuals who reside in the community), long-term care ombudsman programs, and criminal statutes. In addition, other state laws may be relevant to elder abuse, such as code provisions addressing guardianships, durable powers of attorney, and domestic violence. Finally, in some states, such as Oregon, crimes against the elderly cannot be distinguished from crimes against the disabled because these crimes are reported in a single category.³

Although no comprehensive and timely national-level studies have been conducted, various surveys have found considerable consistency in the character of elder abuse. Among the most compelling findings, primarily gathered from the *National Elder Abuse Incidence Study*,⁴ are the following:

- A 2000 survey of APS investigations across the United States revealed a troubling 61 percent increase over 1996 in the number of elder abuse allegations nationally—and a staggering 300 percent increase since the first national survey in 1986.
- Female elders are abused at a higher rate than males, after accounting for their larger proportion in the aging population.
- Our oldest elders (80 years and over) are abused and neglected at two to three times their proportion of the elderly population.
- In almost 90 percent of the elder abuse and neglect incidents with a known perpetrator, the perpetrator is a family member, and two-thirds of the perpetrators are adult children or spouses.

These statistics are alarming. In 2001 the first National Summit on Elder Abuse called it “a crisis requiring full mobilization.” Two years later, the National Elder Justice Act was introduced in Congress.⁵

Systemic Responses to Elder Abuse

Two major intervention systems for elderly victims of domestic violence are APS and the justice system (civil and criminal). Unfortunately, many older victims do not seek services of any kind. When victims do seek assistance, they may be “helped” by professionals with little understanding of elder abuse, especially as it occurs in a domestic setting. For instance, APS caseworkers have focused mostly on frail elderly and incompetent victims, often defining the problem of domestic abuse as an overwhelmed family caregiver who simply needs help.⁶ The problem is compounded by the lack of professional training. A survey of 42 state APS administrators conducted in 2001 by the National Adult Protective Services Association (NAPSA) on behalf of the National Center on Elder Abuse found that the lack of funding for staff training was one of the most serious problems facing state APS programs.⁷



Criminal prosecution of elder abuse cases is particularly challenging. In a survey, APS workers cited a “lack of interest or cooperation from prosecutors in bringing cases of elder abuse to court.”⁸ In 2002 the American Prosecutors Research Institute conducted a national survey of prosecutors’ offices. According to the national survey, the most difficult challenges facing local prosecutors in elder abuse cases revolve around the victims’ physical and mental capacities, as well as the victims’ degree of cooperation in their cases.⁹ While a substantial number of elder abuse cases never reach the courts, the courts deal with elder abuse daily—often in the guise of other case types, such as adult guardianships, civil commitments, and domestic violence.¹⁰

The problem of elder abuse is becoming increasingly apparent to judges and court staff. In 1997 the first curriculum for judges and court staff was published by the American Bar Association.¹¹ 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 Judge Julie Conger of the Alameda County Superior Court (California) founded one of the nation’s first specialized dockets for elders—the Elder Protection Court Program, designed to improve and expedite access to the court for seniors needing protection and restraining orders. In 2004 the state of Louisiana provided elder abuse training for its entire bench at the annual judicial institute, and the American Judges Association offered its first seminar on elder abuse.

Views from the Bench

Two judges who have been particularly active in the area of elder abuse and neglect were asked to respond to two questions. **Julie Conger** is a judge in Alameda County, California, and founder of the Elder Protection Court Program. **John Kirkendall** is a judge of probate for Washtenaw County (Ann Arbor), Michigan.

What are the major challenges to the courts in identifying and responding to cases of elder abuse and neglect?

Judge Conger: One of the major challenges is the lack of coordination within the court system itself, so that elder abuse cases are filed in numerous different locations within the court, such as probate, criminal, family law, restraining orders, and civil filings. Additionally, the red tape and bureaucracy of the court can be a daunting barrier to elder access to the courts and should be streamlined or

eliminated. Training of both guardians ad litem and judicial officers to recognize signs and symptoms of elder abuse remains a major challenge to most courts. Finally, the recent case of *Crawford v. Washington*, 124 S. Ct. 1354 (2004), has eliminated the viability of statutes, which provide an exception to the hearsay rule in cases of elder abuse. Thus, it is critical that the statutory preference for criminal cases with elderly victims be enforced strictly. Furthermore, there will be an increase in the need for judicial staff to handle alternative procedures for ensuring testimony, such as conditional examinations of elderly, potentially terminal witnesses.

Judge Kirkendall: All courts know they are operating in a financial and resource atmosphere of diminishing support. This has implications, of course, for identifying and responding to cases of elder abuse. To identify such cases, those guardians ad litem appointed by the court to investigate guardianship applications should be trained to identify abuse. Such training tools are not generally available to courts. Such development and dissemination is critical to elder abuse reduction or elimination.

What strategies can the court take to improve responses to elder abuse and neglect?

Judge Conger: The name of the game is outreach, outreach, outreach! Some of the strategies we have employed include (1) forming an Elder Access Committee, which includes all segments of the community that deal with elders’ needs¹²; (2) visiting senior centers to give presentations on elder abuse and distribute literature; (3) creating liaisons with each law-enforcement agency to highlight and facilitate reporting of elder abuse; (4) conducting a symposium for elder-care providers to receive suggestions on how the court can better respond to elder abuse; (5) creating a specialized calendar for seniors with simplified procedures for getting cases on the calendar so that seniors have easier access to the court; and (6) creating the position of Elder Case Manager and hiring knowledgeable and competent staff for that position.

Judge Kirkendall: Responding to elder abuse cases, once discovered, is even more complicated. The abuse is often being perpetrated by a trusted loved one. To jump at once to prosecution for an admittedly known crime may result in the removal of the elder’s most beloved and important resource. The challenge to the

justice system is to retain as much integrity and support for the elder as possible while at the same time reducing the likelihood of preying on the elder, even by their closest relatives. How exactly this can be accomplished is a challenge to the Elder Abuse and the Courts Working Group, which was recently created by the National Center for State Courts.

Looking Toward the Future

The National Center on Elder Abuse (<http://www.elderabusecenter.org/>) is an excellent online resource with special sections on laws and legislation; national action agenda; statistics, research and resources; outreach to special populations; and promising practices. The Web site is funded by the U.S. Administration on Aging.

The National Center for State Courts is bringing a multidisciplinary group of experts together through its Elder Abuse and the Courts Working Group. The goal of the Working Group is to help courts identify elder abuse and neglect and to improve court responses. Updates can be found at NCSC's Center for Family Violence and the Courts (<http://www.ncsconline.org/famviol/index.html>), which also houses a Resource Guide on Elder Abuse.

ENDNOTES

¹ The guide can be found at http://www.ncsconline.org/D_Research/csp/2003_Files/CompleteGuide11_02_04.pdf.

² G. J. Jogerst, J. M. Daly, M. F. Brinig, J. D. Dawson, G. A. Schmuck, and J. G. Ingram, "Domestic Elder Abuse and the Law," *American Journal of Public Health* 93 (2003): 2131-136.

³ See Elderly and Disabled Person Abuse Prevention Act (ORS 124.005-040).

⁴ The National Elder Abuse Incidence Study (September 1998) was based on a survey conducted in 1996 by the National Center on Elder Abuse at the American Public Human Services Association, in collaboration with Westat, Inc., for the Administration for Children and Families and the Administration on Aging in the U.S. Department of Health and Human Services.

⁵ Congress has held over 20 hearings on elder abuse, neglect, and exploitation. In 2003 Senators John Breaux (D-LA) and Orrin Hatch (R-UT) introduced the Elder Justice Act, which has not yet been enacted.

⁶ Bonnie Brandl and Loree Cook-Daniels, "Domestic Abuse in Later Life," Applied Research Forum, National Electronic Network on Violence Against Women, December 2002.

⁷ Joanne Otto and Susan Castano, "Report on State Adult Protective Services Training Programs," report prepared for the National Center on Elder Abuse, Washington, D.C., March 2002.

⁸ B. E. Blakely and R. Dolan, "Perceptions of Adult Protective Services Workers of the Support Provided by Criminal Justice Professionals in a Case of Elder Abuse," *Journal of Elder Abuse and Neglect* 12 (2000): 87.

⁹ Mark L. Miller and James L. Johnson, *Protecting America's Senior Citizens: What Local Prosecutors Are Doing to Fight Elder Abuse* (Alexandria, VA: American Prosecutors Research Institute, 2003).

¹⁰ See United States Government Accountability Office (GAO), *Guardianships: Collaboration Needed to Protect Incapacitated Elderly People* (Washington, DC: GAO, 2004).

¹¹ Lori A. Stiegel, *Elder Abuse in the State Courts—Three Curricula for Judges and Court Staff* (Washington, DC: American Bar Association, 1997).

¹² The Elder Access Committee includes APS, service providers, government officials, bar representatives, law enforcement, public defenders, district attorneys, agencies dealing with the elderly, and Legal Aid to Seniors.