

**Confusion on the Front Lines: The Response of Law Enforcement and
Prosecutors to Cases of Elder Abuse**

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I. Introduction

Having historically deemed most cases of elder abuse as “civil” or “family” matters, the criminal justice system is only now beginning to come to terms with the fact that crimes are being inflicted on the elderly at alarming rates, and that only a small fraction of those crimes are ever properly investigated and prosecuted. As a result, we are woefully ill-equipped to handle these cases, both in terms of knowledge and resources. Compounding the problem is the fact that, unlike the fields of domestic violence, sexual assault, and child abuse, elder abuse involves a wide array of crime types, including financial exploitation, neglect, physical and sexual assault. In my experience, the types of crimes that we struggle most with are those involving financial exploitation and neglect. In addition, we experience significant issues in properly responding to elder abuse cases where the victim suffers from some degree of cognitive impairment, or lives in a long-term care facility.

In this white paper, I will 1) explain why cases of elder abuse are so challenging for the criminal justice system and 2) make recommendations to the Elder Justice Coordinating Council for action that can be taken by federal agencies to begin to address the problem.¹

II. Why Elder Abuse Poses Such a Problem for the Criminal Justice System

a. Financial Exploitation cases

Unlike typical, younger-victim theft cases, elder financial exploitation cases are complex, often involving concepts such as powers of attorney, guardianships, fiduciary duty, trusts, wills, capacity, and undue influence. Knowledge of these concepts is essential to properly investigating and prosecuting them, yet they are rarely mentioned in police academies or in training for 911 dispatchers. While they may be taught in law school, they are usually not done

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so in criminal law courses, and are not part of the curriculum of most prosecutor training courses. Because victims of elder financial exploitation are so often isolated, their victimization often goes on for months and sometimes years before it is discovered. When it is discovered, the lack of training on these concepts at every level of the criminal justice system means that the likelihood of a door being closed in the face of the reporter is high. From the 911 dispatcher to the patrol officer to the detective to the prosecutor--if just one of these essential players fails to recognize a report as criminal, the case will likely end there, with the exploitation continuing until APS or the family intervenes civilly, or the elder's resources are gone.

Even when a report of elder financial exploitation does make it through the door and on the desk of a detective or prosecutor, other hurdles exist. In most of these cases, an essential part of the evidence is the complete financial records of the victim and suspect. Once these records are obtained, they must be entered into spreadsheets and analyzed. Most detectives do not have access to a forensic accountant and so are left to attempt to conduct this analysis on their own—an often daunting and unappealing task for a criminal investigator, particularly if he or she hasn't been trained on financial crimes. Adding to these difficulties are the often pressing needs of the victim, who may be suffering from dementia, health issues, physical disabilities, financial and legal issues, isolation and fear of loss of independence, need for housing, and lack of caregiver and social support and advocacy. While APS may be able to assist by locating services for the victim, APS does not provide those services, and is not an advocate for the victim. Because there is no advocacy available for victims of elder financial crimes in most communities, it is not at all unusual for the detective or prosecutor to be drawn into playing that role. Additionally, due to the current lack of coordination between the criminal justice system and civil legal services on these cases, many victims are never referred to civil attorneys to assist them in repairing their

credit and the other damage that has been done as a result of the exploitation. When the victim of elder financial exploitation is unlucky enough to be scammed by someone from another country, the chances of criminal justice involvement are even lower, due to lack of resources and coordination between local law enforcement and the federal agencies that are beginning to investigate and respond to these cases.

b. Neglect Cases

Elder neglect cases pose some similar problems. These cases are also chronically underreported due to the victim's isolation, as well as the common [mis]perception by social service and medical professionals that they aren't of interest to the criminal justice system. When they are reported, the investigations are almost always complex, requiring knowledge of certain medical concepts, obtaining medical records, conducting interviews of nurses and physicians, and, because establishing a financial motive is often essential in these cases, obtaining the victim's and perpetrator's financial records. Again, expert assistance is needed to analyze these records and often to help the detective and prosecutor determine whether a crime has occurred and how it should be charged. As in financial cases, most police agencies and prosecutor's offices do not have relationships with the appropriate medical experts who can assist them on these cases. In addition, in cases of elder deaths due to possible neglect, many medical examiners and coroners are untrained on the subject of neglect and when it might be criminal. Even if they are trained, many are loathe to conduct autopsies and make findings on cases of neglect, fearing that their already overburdened agencies will be unable to handle the onslaught of new cases that will ensue as a result.

c. Other Issues

In all forms of elder abuse—neglect, financial exploitation, sexual and physical

abuse—victims who suffer from dementia pose issues with which the criminal justice system is unfamiliar. In the majority of cases that my elder abuse unit sees, the victim has some degree of cognitive impairment. In cases of financial exploitation, sexual assault, and neglect, the defense raised most often is that the victim consented to the act at issue: to give the perpetrator his/her assets; to the sexual act; or to the lack of medical care provided. In order to refute this claim of consent in a victim with cognitive impairment, we must obtain an evaluation of him or her by a geriatric psychologist or psychiatrist. Many police agencies have no connections to such an expert, and/or lack the funding to pay for such an evaluation. Adult Protective Services may be able to assist with such an evaluation; however, in many cases APS relies instead on the Folstein Mini-Mental State Exam (MMSE), a tool that on its own is not adequate to assess incapacity for purposes of a criminal case.

When a victim resides in a long-term care facility, law enforcement experiences yet another set of problems: unfamiliarity with the facility's organizational structure; difficulty obtaining records; state investigation and licensing agencies that are often reluctant to report or cooperate; and systemic failures that make finding and charging individual suspects challenging if not impossible.

III. What Can Be Done: Three First Steps

The common ingredient that I have seen in communities whose criminal justice systems are beginning to respond properly to elder abuse is specialized prosecutors, detectives, and advocates. When these professionals have been trained on the many complex concepts involved in these cases, and when they are not faced with competing cases involving younger victims, elder abuse reports get investigated, charges get filed, and victim's needs are addressed. Further, these professionals are much more likely to be active and committed participants in their

community's elder abuse Multi-Disciplinary Team. In addition, medical and social service providers, APS, and the public have an identified person to call when they come across an elder abuse case that is serious enough that it may warrant a criminal response. Once the community begins to believe that the justice system will take action on these cases, reporting, documentation, and investigations across disciplines improve.

But creation of these positions alone isn't sufficient. In order for professionals placed in these specialized positions to succeed, they need technical assistance, information, and resources. In addition, we need to vastly increase our understanding of what cases are being referred to prosecutors and why, what cases are being filed and why, and their outcomes.

My recommendation as to three important first steps that should be taken is as follows:

1. Fund, pilot test, and collect data on the impact of specialized elder abuse detectives, prosecutors and victim advocates in a few jurisdictions;
2. Create and fund a National Resource Center for the Investigation and Prosecution of Elder Abuse with experienced prosecutors and detectives on staff to provide advice, case consultation and technical assistance; incorporate the website that DOJ is developing to include a database of:
 - a. Local and national geriatric medical experts to consult and testify on neglect cases;
 - b. Local and national geriatric psychiatrists and psychologists to review medical records, conduct capacity evaluations of victims, and testify;
 - c. Forensic accountants to analyze and financial records and testify in financial exploitation cases and cases where financial exploitation is co-occurring;
 - d. Trial transcripts of exemplary elder abuse trials;

- e. Sample legal briefs and motions;
 - f. Sample voir dire questions addressing specific issues including consent, dementia, undue influence, and jury nullification;
 - g. Model direct examinations of State's expert witnesses; model cross-examinations of defense experts;
 - h. Protocols for the investigation of cases of neglect and financial exploitation, of those involving victims with possible dementia, and of those occurring in long-term care facilities;
 - i. On-line training courses and seminars for prosecutors.
3. Enhanced data collection expanding the current project of the King County Prosecutor's Office and the Bureau of Justice Statistics to other sites, to track and evaluate what types of elder abuse cases law enforcement and prosecutors are seeing, which ones they pursue and why, where cases originate, what types of referrals, reporting, and investigations make for successful prosecutions, the impact of prosecution on victims, and how the prosecution response is affected by issues such as capacity, lack of a living victim or victims who cannot or choose not to cooperate, lack of prosecutors and/or detectives who specialize in elder abuse cases, the impact of the presence or absence of APS involvement, MDT involvement, use of experts, and the availability of victim advocacy.

IV. Other Recommendations

The needs of the criminal justice system extend well beyond the first steps I have articulated above. Below is a list of other recommendations that would, over the long term, make a tremendous difference in how we respond to these cases:

- Funding for the creation of multi-disciplinary forensic centers within states so that victims have access to a coordinated response from APS, law enforcement (both federal, state and city), medical professionals, financial institutions, and local aging agencies;
- Guidelines for participation of prosecutors and law enforcement in MDTs, including Elder Fatality Review Teams, specifically addressing concerns about confidentiality of victim information and non-disclosure protocols that bind those in law enforcement and prosecution;
- Expansion of OVW's Abuse in Later Life Grant Program to train more law enforcement, prosecutors, judges, and direct service providers, and so that it can include training for 911 dispatchers, medical first responders, and medical providers to improve their recognition, reporting, and documentation of elder abuse cases;
- Enhanced victim services to assist victims, provide advocacy, and connect them with services and civil legal assistance;
- Research—specifically on causation and development of pressure ulcers and other forensic markers of elder abuse, the connection between dementia and refusal of care/intervention (often hindering law enforcement intervention and successful prosecution), and prevalence so that law enforcement and prosecution offices can better understand the nature and extent of the problem;
- Improved reporting and referral systems so that suspected or confirmed elder abuse cases are directed to the right entity to protect victims, stop wrongdoing, prevent future victimization, recompense losses, and if appropriate, prosecute wrongdoers. Entities including law enforcement, prosecution, APS, state agencies that license long-term care facilities, social services, financial services, and health care providers, should become

- more aware about criteria for prioritization of response, standardized referral methods, and criteria to determine which cases should be referred to which agency;
- Strengthening of the civil legal response to cases of elder abuse, including assisting victims with protection orders, powers of attorney and guardianships, recovering stolen assets, and restoring credit after financial exploitation has occurred, regardless of whether the case is appropriate for criminal action;
 - Development and funding of forfeiture units or positions within prosecutors' offices so that the stolen assets and funds of older victims can be recovered without the expense and hardship of a civil law suit;
 - Legislation/guidelines to assist state prosecutors in obtaining copies of federal tax returns, which will improve our ability to build a financial exploitation case, especially in cases where the perpetrator invokes the "gift" defense;
 - Funding/support for the creation of investigative/law enforcement positions at the federal level, focused on cons and scams of elder victims so that federal and local prosecutors are better equipped to address this billion dollar industry;
 - Legislation/training to improve reporting of elder abuse by financial institutions when they have reason to believe their client is the victim of a financial crime;
 - Legislation/training to improve reporting by health care providers of all forms of elder abuse;
 - Improved training and funding for medical examiners and coroners to improve their recognition and assumption of jurisdiction of potential elder neglect deaths;
 - Funding for data collection for medical examiners for the review of elder deaths and participation in Elder Fatality Review Teams;

- Legislation/regulations to improve reporting by state agencies who license and investigate abuse and neglect in long-term care facilities to law enforcement;
- Data collection on the impact of mandatory reporting on elder abuse victim safety.

DISCLAIMER:

This White Paper reflects the opinions and thoughts of the author as submitted to the Elder Justice Coordinating Council. It does not represent the interests or positions of the Elder Justice Coordinating Council nor any of the federal agencies that are members of the Council. The Council has reviewed this White Paper and has taken its contents under advisement, but does not endorse nor adopt it wholly or in part as representing the policies or positions of the federal government.