


CEC
Center for Elders and the Courts
www.eldersandcourts.org




Elder Abuse & Neglect

Module Two: Identifying Elder Abuse & Neglect

The National Center for State Courts developed this curriculum in collaboration with the Center of Excellence on Elder Abuse and Neglect at the University of California, Irvine School of Medicine with support from the Retirement Research Foundation of Chicago (grant number 2008-056).

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Module Two Goal




Judicial officers will learn how to recognize elder abuse and neglect in a variety of court settings.

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Module Two Objectives

At the conclusion of Module Two, judges should be knowledgeable about

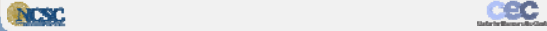
- ✓ General definitions of elder abuse, neglect, & exploitation
- ✓ State laws relevant to elder abuse
- ✓ Prevalence & incidence of elder abuse
- ✓ "Red flags" suggestive of elder abuse
- ✓ Capacity, consent, & undue influence




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General Definition

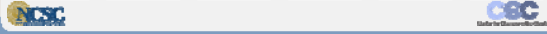
“Elder abuse” is a term referring to any knowing, intentional, or negligent act by a caregiver or any other person that causes harm or a serious risk of harm to a vulnerable adult.



Types of Elder Abuse




Physical Abuse Emotional Abuse Sexual Abuse Exploitation Neglect Abandonment



Elder Justice Act (EJA)

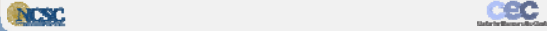
- EJA (S. 795) included in the health care reform bill, H.R. 3590 (signed into law in 2010)
 - Elder Justice Coordinating Council
 - Advisory Board on Elder Abuse, Neglect, and Exploitation
 - Funding for:
 - Adult Protective Services
 - Forensic Centers
 - Long-Term Care Ombudsman Program

For updates, visit the [Elder Justice Coalition](#).



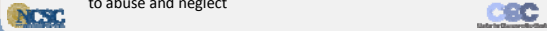
Relevant State Statutes

- Each state has an adult protective services law with definitions and may have other relevant civil or criminal laws.
- [Insert relevant state statutes; to be completed by state judicial educator]



Estimates of Prevalence

- Prevalence data on elder abuse is problematic
 - Different definitions, under-reporting, lack of reliable national data collection methods, research study limitations
- Estimates from the 2009 Elder Mistreatment Study:
 - 11 percent reported at least one form of mistreatment (excluding financial abuse) in the previous year (3.6 million)
 - 5 percent reported that they were being currently financially exploited by a family member (1.7 million)
 - Caveats
 - Study used a broad category of “mistreatment” and is based on self reports of persons aged 60 to 84. The study excluded those aged 85 and older and those with dementia, who are particularly vulnerable to abuse and neglect



Elder Abuse Incidence

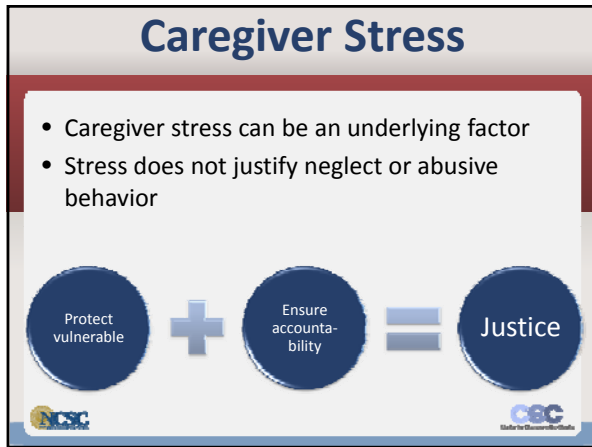
FOR EVERY REPORT OF ABUSE...



5 GO UNREPORTED







Recognizing Abuse and Neglect

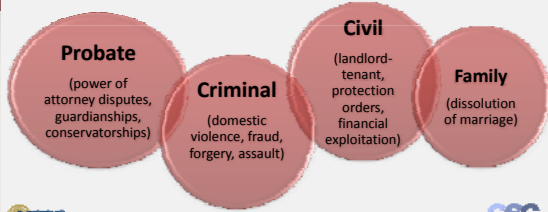
Elder abuse and neglect are hidden problems.

How will you recognize elder abuse?

The slide includes a photograph of an elderly woman's face on the left and a red oval containing the text "How will you recognize elder abuse?" on the right. The NCSA and CEC logos are at the bottom.

The Hidden Nature of Abuse

Elder abuse, neglect, and exploitation may be an underlying factor in a variety of court cases involving older persons.



“Red Flags”

Physical/Sexual Abuse

Slap marks

Unexplained fractures

Bruises, welts, cuts, sores, or burns

Nonconsensual sexual conduct

Physical Abuse: Bruising

Defenses	Research Findings
Older people just bruise easily. There's no way to distinguish if the bruise was accidental or inflicted.	<ul style="list-style-type: none"> • 90% of accidental bruises were on the extremities; whereas bruises caused by abuse tended to be located on the torso, neck, or head. • 90% of older adults with bruises who have been physically abused can tell you how they got their bruises, and this includes many older adults with memory problems and dementia. • Bruises indicative of abuse tend to be large (about 2 inches in diameter or larger).
The color of the bruise indicates it occurred at a time when the defendant was not in contact with the victim.	<ul style="list-style-type: none"> • In older persons, the color of a bruise does not indicate its age.
The bruise was caused by medications taken by the victim.	<ul style="list-style-type: none"> • Older adults taking medications that interfere with coagulation pathways were more likely to have multiple bruises, but the bruises did not last any longer than the bruises of those who didn't take these medications.

"Red Flags"

Emotional Abuse


Withdrawal from normal activities	Unexplained changes in alertness or other unusual behavioral changes	Aggressive or controlling relationship
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Domestic Violence in Later Life

A person uses power and control to injure or harm an older person with whom they have an ongoing relationship	<u>Typical abusers</u> spouses, former spouses, partners, adult children, extended family, caretakers	Abusers use a pattern of coercive tactics, such as isolation, threats, intimidation, and violence to gain and maintain power over their victims
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Emotional Abuse

Mickey Rooney Testifies about Elder Abuse



- Often accompanied by physical abuse, neglect, and financial exploitation
- Creates an environment of "shame" and helplessness that plays a role in the hidden nature of abuse
- Can be gradual or sudden

Select Committee on Aging SD-106

CEC Center for Elder Care

“Red Flags”

Neglect

Lack of basic hygiene	Lack of medical aids (e.g., glasses, walker, hearing aid, medication)	Incapacitated person without care	Pressure ulcers (“bedsores”)	Malnutrition or dehydration
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Elder Neglect

The Case of Christopher Wise



Joey Anchondo / The Seattle Times

- Neglect versus honoring victim’s wishes
 - Victim’s cognitive impairment and history of seeking medical care must be considered
 - Defendant may have ulterior motives (e.g., relying on victim’s social security checks)
- Ability to provide adequate care may be an issue

“Red Flags”

Financial Exploitation

Sudden change in finances and accounts (including unusual withdrawals)	Altered wills and trusts	Checks written as “loans” or “gifts”	Loss of property	Improper use/forgery of power of attorney
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Financial Exploitation

The Case of Philanthropist Brooke Astor



- Financial exploitation alleged to be most common form of abuse
- Exploitation occurs within the family (children, grandchildren, and relatives)
- Defenses often based on the defendants' perceptions that they are entitled to funds or acting in victim's best interest



What do these cases have in common?



None of the cases came before the court identified as "elder abuse."



Key Legal Concepts

Capacity

Consent

Undue Influence



Capacity

Capacity is the cluster of mental skills that people use in everyday life. It fluctuates over time, situations & tasks.

memory logic behavioral
functioning physical
functioning

➔

Capacity

Legal Aspects of Capacity

Standards of capacity vary for different types of transactions. For example:

Testamentary capacity: at the time of executing a will, the person has the capacity to know the natural objects of his/her her bounty, to know the nature and extent of his/her property, and to integrate this knowledge to make a rational plan for disposing of the property.

Contractual capacity: the person can understand the nature and effect of making a contract and the business being transacted (less complicated transaction requires lower level of understanding)

Legal Aspects of Capacity

Determining capacity in older adults can be very difficult and often requires gathering information from many sources. Examples include:

- ✓ Family members
- ✓ Medical care professionals
 - ✓ Physician
 - ✓ Geriatrician
 - ✓ Neurologist
- ✓ Mental health care professionals
 - ✓ Geriatric Psychiatrist or Psychologist
 - ✓ Forensic Psychiatrist or Psychologist
- ✓ Adult protective services workers

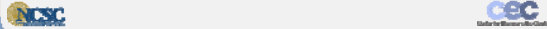
Consent

Consent requires an individual to be able to:

- Understand the transaction or activity
- Make judgments about it
- Decide if it is something he or she chooses to do

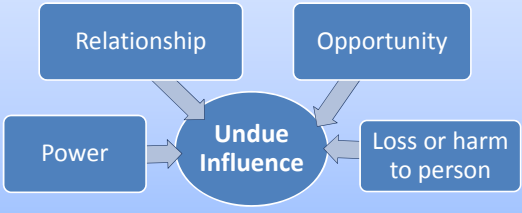
Consent is a significant factor in determining the legitimacy of a wide range of actions.

- An issue in determining whether a crime has been committed (especially intimate crimes)
- An important issue in legal transactions
- A fundamental issue for APS (capacity to consent)




Undue Influence

Undue influence is the misuse of one's role and power to exploit the trust, dependence, and/or fear of another to deceptively gain control over that person's decision making or assets.



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graph TD; R[Relationship] --> UI((Undue Influence)); O[Opportunity] --> UI; P[Power] --> UI; L[Loss or harm to person] --> UI;
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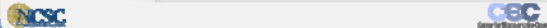
Undue Influence



Undue influence typically is not a crime; rather it is a means to commit a crime, such as exploitation and other forms of financial abuse.

Undue influence often is alleged in disputes over the validity of wills, conveyances of property, contracts and powers of attorney.

Undue influence is a factor in decisions about the need to protect a person through guardianship and/or conservatorship.



Implications for the Court

- The identification of elder abuse can be difficult.
- Elder abuse may be an underlying factor in a variety of court cases involving older persons.
- Transactions involving older persons may need additional scrutiny.
- More cases will involve complex issues of capacity and consent.





DVD Presentation

Responding to Elder Abuse
What Judges and Court
Personnel Should Know



Additional Resources

Visit the National Center for State Courts'
Center for Elders and the Courts at

www.eldersandcourts.org