



Center for Elders and the Courts  
[www.eldersandcourts.org](http://www.eldersandcourts.org)



# Elder Abuse & Neglect

## Module Three: Crafting Court Responses

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 Three Goal

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Judicial officers will learn how to craft court responses that effectively address elder abuse, neglect and exploitation in a variety of settings.



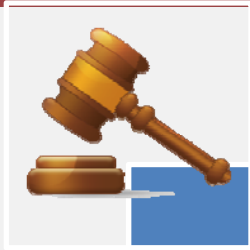
# Module Three Objectives

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

- ✓ State elder abuse reporting requirements
- ✓ The importance of judicial leadership
- ✓ Strategies to build community-based responses
- ✓ Information needed to address elder abuse in a variety of court settings



# Crafting Appropriate Court Responses



## Judicial Leadership

- ABA Code of Judicial Conduct
- State Code of Conduct



## Community Resources

- Task Forces
- Multi-Agency Responses

# Benchcard for Judges

- What is elder abuse?
- Is elder abuse a crime?
- What important concepts should I know about elder abuse cases?
- How can the court identify elder abuse and neglect?
- What are the court's reporting requirements?
- What tools are available to help the court respond to elder abuse?
- Where can I find more information?

#### ABOUT THIS BENCHMARK

Elder abuse is a hidden problem in the justice system and may be an underlying factor in a variety of court cases involving older persons. This guide offers resources that courts may use to identify elder abuse, suggests a variety of actions that strive to protect the elder victim of abuse, and encourages courts to engage in leadership opportunities in their local community.

#### WHAT IS ELDER ABUSE?

Elder abuse is generally defined to include abuse (physical, sexual, or emotional), financial exploitation, neglect, abandonment, and self-neglect. Every state has an adult protective services law with definitions and may have other relevant civil or criminal laws. Definitions vary from law to law and state to state.

#### IS ELDER ABUSE A CRIME?

Some states specifically criminalize "elder abuse." In every state, acts constituting elder abuse may violate criminal laws (e.g., murder, sexual assault, battery, theft, fraud). Some state laws enhance penalties based on age or vulnerability status of the victim.

#### WHAT IMPORTANT CONCEPTS SHOULD I KNOW ABOUT ELDER ABUSE CASES?

Elder persons can be more vulnerable to abuse if they have diminished capacity to make every day decisions, cannot give meaningful consent because they do not understand the significance of a transaction, or are subject to undue influence by trusted people in their lives.

- Capacity is the cluster of mental skills, such as memory and logic, and behavioral and physical functioning, that people use in everyday life; capacity can fluctuate over time, situations, and tasks.
- Consent requires individuals to be able to understand the transaction or activity, make judgments about it, and decide if it is something they choose.
- Undue influence is the misuse of one's role and power to exploit the trust, dependence, and fear of another to deceptively gain control over that person's decision making or assets.

#### HOW CAN THE COURT IDENTIFY ELDER ABUSE AND NEGLECT?


Elder abuse may be an underlying concern for cases heard in all divisions of the court. An elderly victim of abuse may appear before the court as a defendant, a plaintiff, a witness, a juror, a petitioner, a respondent, or a victim. Awareness of "red flags," such as the following, can help you identify possible cases of abuse.

- **Physical/Sexual Abuse** - Stip marks, unexplained fractures, bruises, welts, cuts, sores, burns, nonconsensual sexual contact
- **Emotional Abuse** - Withdrawal from normal activities, unexplained changes in alertness, or other unusual behavioral changes, aggressive or controlling caregiver
- **Financial Abuse/Exploitation** - Sudden change in finances and accounts, altered wills and trusts, unusual bank withdrawals, checks written as "loans" or "gifts," loss of property, improper use of power of attorney
- **Neglect** - Lack of basic hygiene, lack of medical aids (glasses, walker, hearing aid, medications, etc.), hoarding, incapacitated person left without care, pressure ulcers, malnutrition, or dehydration


#### WHAT ARE THE COURT'S REPORTING REQUIREMENTS?

If you suspect elder abuse and you are a mandated reporter, you or a member of your staff are required to report the abuse to your local Adult Protective Services (APS) agency or law enforcement agency. Know your state's mandatory reporting requirements and develop APS and law enforcement points of contact for the court. Assign court staff to collaborate on the creation of a reporting and investigation protocol between the courts, local justice agencies, APS, and, if applicable to your state, the Long-Term Care Ombudsman Program for cases involving individuals in nursing homes and other long-term care facilities.

# Homework Exercise

 **NCSC**  
National Center for State Courts  
www.ncsconline.org

**IDENTIFYING AND RESPONDING TO ELDER ABUSE**  
A BENCHMARK FOR JUDGES

 **CEC**  
Center for Elders and the Courts

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*Adapting the benchmark for  
your jurisdiction*

# Interactive Exercise

Shawn Marshall, 20, is arrested for possession of heroin in the apartment complex where he lives with his 72 year old grandmother, Mrs. Marshall. His case is assigned to you. Shawn has no prior offenses and pleads guilty.

The Pretrial Services investigation includes an interview with Mrs. Marshall. She tells staff she has tried to keep Shawn out of trouble over the past few years. He used to borrow money occasionally, but lately he has been pushing her to write checks to him almost every week. He brings strangers into the apartment at all hours and she has become fearful of him and his friends.

Shawn Marshall is scheduled to appear before you for sentencing. You read the pretrial services report which describes Mrs. Marshall's concerns and fears about Shawn's behavior.

# What is going on?

What are the red flags?

What issues are raised?

What information do I need?

What should I do now?



# Reporting Requirements

**Mandated reporters who suspect elder abuse are required to report the abuse to the local APS or law enforcement agency.**



Know your state's mandatory reporting requirements



Develop APS and law enforcement points of contact for the court



Assign court staff to collaborate on the creation of a reporting and investigation protocol between the courts, local justice agencies & APS

# Reporting Requirements

Insert your state reporting requirements here

# Remediation Tools



**Tailored  
restraining or  
“no contact”  
orders**



**Review  
hearings**



**Appointment  
of guardian ad  
litem**



# Remediation Tools



**Encourage the  
use of  
victim/witness  
advocates**



**Provide  
opportunity for  
impact  
statement**



**Be creative in  
sentencing &  
use of  
alternative  
sanctions**



# Case Management Tools

Ensure  
accessibility

Expedite  
cases

Consolidate  
cases

# Case Management Tools

Calendar  
cases

Memorialize  
testimony

Create elder  
protection  
court or  
docket

# Small Group Exercise

Each group considers one of the following case scenarios:



Family  
Violence

Neglect

Financial  
Exploitation

Guardianship

# Small Group Exercise

**What issues does the scenario raise?**

**What information do you need?**

**How should you manage the case to maximize access to justice for the victim?**

**What remedies are likely to prioritize safety and well-being of the victim?**



# Family Violence

- Robert petitions for a family violence restraining order against his 66 year-old brother, John, on behalf of himself, his son and his 83 year-old mother.
- John is unemployed and has alcohol abuse issues.
- All of the parties live together in the mother's home.
- The petition alleges verbal abuse and threats and seeks to exclude John from the residence.
- The mother makes excuses for John's behavior and wants both her sons to reside in the home.

# Neglect

- Mr. Downing, an 85 year old veteran of the armed forces, is sentenced to probation for battery of an employee of a residential adult care facility where his wife resides.
- Mr. Downing takes his wife home because he thinks the cost of her care is too high.
- An ER physician had ordered Mrs. Downing's placement in the facility based on signs of dementia, abuse and neglect.
- APS reports serious self-neglect by Mr. Downing and extremely serious neglect of Mrs. Downing despite having adequate resources.
- Mr. Downing shows signs of dementia and his adult sons wish to be placed in charge of their father's financial affairs.

# Financial Exploitation

- Carolyn Smith is in poor physical and mental health; her son, Keith, has had a durable power of attorney the past two years.
- Keith has acquired two luxury cars and terminated overnight in-home care services for his mother against her wishes.
- Carolyn's grandson, Zack, an interested party under state law, suspects his Uncle Keith is misusing the POA and files a request for an accounting.
- An apparently incomplete accounting shows a large drop in Carolyn's bank accounts but lacks evidence of expenditures for her benefit.
- Zack files a motion to compel a full accounting, which you are scheduled to hear.

# Guardianship

- Bart is charged with domestic abuse against his 83 year old grandfather, John, with whom he lives.
- Bart's Aunt Martha claims that Bart physically abuses and financially exploits John.
- The court issues a no-contact order and refers Martha to APS.
- Bart pleads guilty and is placed on probation.
- Martha and her brother, Bart's father, file competing petitions for guardianship of their father.
- APS reports: (1) John wants Bart to stay, (2) Bart's father may condone Bart's actions, (3) John has poor health and limited ability to protect himself or make financial decisions.

# Final Thoughts

- Exercise judicial leadership
- Learn about and connect with your local community resources
- Adapt the benchcard to your state laws and local resources





**“It was once said that the moral test of government is how that government treats those who are in the dawn of life, the children; those who are in the twilight of life, the elderly; and those who are in the shadows of life, the sick, the needy and the handicapped.”**

**-Hubert H. Humphrey**

# Additional Resources

Visit the National Center for State Courts'  
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