

ABOUT THIS BENCHCARD

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 older 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 or 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.

IDENTIFYING AND RESPONDING TO ELDER ABUSE

A BENCHCARD FOR JUDGES

WHAT IMPORTANT CONCEPTS SHOULD I KNOW ABOUT ELDER ABUSE CASES?

Older 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 or 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” can help you identify possible cases of abuse.

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.

RED FLAGS

PHYSICAL/SEXUAL ABUSE – *Slap 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, dehydration*

WHAT TOOLS CAN HELP THE COURT RESPOND TO ELDER ABUSE?

The tools available to you vary based on court and community resources, the nature of suspected abuse, and the type of case you are hearing. The following tools offer strategies in the areas of assessment, remediation, and case management.

ASSESSMENT TOOLS

- Use expert witnesses, professional evaluators, court investigators, or trained interdisciplinary teams to assess the older person's capacity. To identify assessment resources, assign court staff to collaborate with local agencies (including APS and the Long-Term Care Ombudsman's Program), organizations, and individuals to develop a community resource guide for elders. Resources may include:
 - Public health physicians and psychologists (medical and mental health assessments)
 - Adult protective services (see state laws on eligibility for APS screening and services)
 - Occupational therapists (functional capacity evaluation)
 - Fire department or code enforcement agency (home safety inspection)
- Consider temporary court intervention that prompts medical assistance to treat reversible conditions that impact capacity. Conduct periodic review hearings to determine if court intervention continues to be needed.

ELDER ABUSE TOOLS AVAILABLE FOR THE COURTS

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REMEDIATION TOOLS

- Issue a restraining or "no contact" order that is tailored to individual circumstances.
- Schedule review hearings to ensure compliance with court orders, including treatment programs and restitution if applicable.
- If appropriate, appoint a guardian ad litem to monitor the provision of services and compliance with protective orders.
- If the court employs mediation or other dispute resolution service, prioritize safety by being aware of imbalances between the parties.
- Ensure that plea agreements meet the needs of the older victim of abuse. Be creative in sentencing and the use of alternative sanctions.
- Encourage the use of victim/witness advocates throughout the judicial process. If advocates are not available, train court staff to guide older abused persons through the court process.
- Allow an opportunity for victims to provide impact statements at sentencing.

CASE MANAGEMENT TOOLS

- Ensure the courtroom is accessible and accommodates physical and/or cognitive impairments.
- Expedite cases in which elder abuse is an underlying factor, including avoiding unnecessary continuances and delays.
- If possible, consolidate ancillary cases involving the same family or victim to create a consistent, efficient and therapeutic outcome.
- Understand gradations of diminished capacity and calendar cases to accommodate medical needs and fluctuations in capacity and mental alertness.

- While preserving the defendant's right of confrontation, consider procedures that assure the older victim's testimony is memorialized, such as videotaped examinations and conditional exams.
- Consider creating an Elder Protection Court/Docket that addresses a variety of complex cases requiring expertise in elder law. The Court/Docket should be presided over by a specially trained judge.

RESOURCES

THE NATIONAL CENTER FOR STATE COURTS CENTER FOR ELDER AND THE COURTS (CEC)

www.eldersandcourts.org

THE ABA COMMISSION ON LAW AND AGING

www.abanet.org/aging

THE NATIONAL CENTER ON ELDER ABUSE

www.ncea.aoa.gov



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