



Effective Court Practice for Abused Elders

A REPORT TO THE
ARCHSTONE FOUNDATION

FEBRUARY 2008



JUDICIAL COUNCIL
OF CALIFORNIA

ADMINISTRATIVE OFFICE
OF THE COURTS

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About This Report

This report is the product of a two-year research grant awarded to the Administrative Office of the Courts, Center for Families, Children & the Courts, by the Archstone Foundation under its Elder Abuse and Neglect Initiative. The objectives of the study were to identify courts that have adopted a specialized response to elder abuse, document innovative and effective practices in handling elder abuse cases, and assess the needs of abused and neglected elders who come before the courts. The overall goal of the study was to gather and disseminate information to help courts improve the quality of justice for elderly victims who come before the courts.

Because elder abuse appears in the courts under the guise of many different case types, this study takes a broad view of elder abuse in the court context, examining issues and court programs related to probate conservatorship, restraining order (elder and dependent adult abuse, domestic violence, or civil harassment), family law, criminal, unlawful detainer, and other civil matters. Because the timing of this project coincided with information gathering and development of recommendations by the Judicial Council's Probate Conservatorship Task Force, the project team chose to place somewhat less emphasis on issues related to probate conservatorship, to both minimize redundancy in reports and avoid overburdening the courts with requests for information or study participation. The study also views the specialized response to elder abuse with a wide lens, exploring initiatives not directly court-related, but with a potential impact on the courts or highlighting a key partnership.

The research design called for the identification of four "study courts" that had implemented or were interested in implementing some kind of specialized response to elder abuse. The study courts were identified through publicizing the study and the opportunity to participate in Court News Update, review of Administrative Office of the Courts (AOC) project documents and discussions with AOC colleagues, and referrals from professional contacts. The four courts selected for participation in the study represent the following counties: Alameda, Orange, San Francisco, and Ventura. Site visits to those counties included semistructured interviews with a variety of court personnel and justice partners, observation and documentation of court and program operations, and court file reviews. To supplement the in-depth examination of initiatives in the four courts, the study included a statewide survey on the court response to elder abuse and incorporated other available and relevant statewide data.

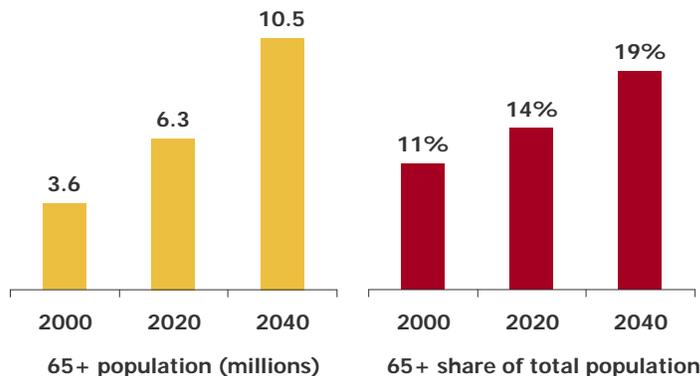
In addition to the following report, which includes an overview of elder abuse issues and highlights court programs and initiatives to address them, the other major product of this study was the development of a basic elder abuse curriculum for the courts, developed by Candace J. Heisler, J.D., a retired assistant district attorney with extensive expertise in domestic violence and elder abuse issues. The primary audience for this curriculum is judicial officers, but a variety of court staff will benefit from it, as well. **The curriculum is included in the PowerPoint presentation entitled *Elder Abuse: An Overview for the California Courts* on the enclosed CD.** The CD also contains report appendixes (more detailed write-ups of data collection efforts, statistical profiles for the study counties, and data collection instruments) and a list of key resources for the courts on elder abuse, including links to Web sites, where available.

Chapter 1 of this report provides an overview of the elderly population and elder abuse, including issues for the community as a whole and for the courts specifically. Chapter 2 reviews national, state, and local programs and initiatives developed in response to elder abuse, as well as trends that are likely to have an impact on agencies that serve abused elders. Chapter 3 highlights what is known about elder abuse in the courts at the state level, including a review of the results of the statewide survey on the court response to elder abuse. Chapter 4 describes the elder abuse initiatives adopted by the four study courts, highlights issues faced by the courts and community in serving elder abuse victims, and provides some background data on elders in the county and elder abuse in the court. Chapter 5 summarizes the types of specialized programs or initiatives in which courts could become involved to better respond to elder abuse; it draws on examples from the study courts as well as other significant national initiatives.

The Elderly Population

As California moves farther into the 21st century, persons ages 65 and older will increase both in absolute number and as a percentage of the total population (see Figure 1). In 2000, there were more than 3.6 million persons ages 65 and older living in California, representing 11 percent of the total population. As the baby boomer generation ages, that number is expected to increase to more than 6.3 million in 2020, or 14 percent of the total population. By 2040, elders¹ will number nearly 10.5 million and represent 19 percent of the population.

Figure 1. Growth of California's Elderly Population



Source: California Department of Finance

The total California population is expected to increase only 30 percent from 2000 to 2020 and 59 percent from 2000 to 2040; during those same time periods, the 65 and older population is expected to increase 75 percent and 189 percent, respectively.² Persons ages 80 and older represent the fastest-growing segment of the population.³

The increase in the elderly population over the next few decades is in part the result of a large generation of individuals—the baby boomers—growing older, and in part the result of people simply living longer. In 1950, the average American’s life expectancy was approximately 68 years; that increased to nearly 74 years by 1980 and is currently at nearly 78 years.⁴ Although much of the increased life expectancy can be attributed to advances in health care, it also carries an increased likelihood of living with chronic disease,⁵ Alzheimer’s,⁶ and other health problems associated with old age. It is estimated that 13 percent of people ages 65 and older, and nearly half of people 85 and older, have Alzheimer’s. The number of people with Alzheimer’s in California is expected to increase 9 percent (from 440,000 to 480,000) between 2000 and 2010.⁷ In 2000, more than 4 in 10 California elders (42 percent) reported having some kind of disability,⁸ the most common types being a physical disability (33 percent of all disabilities reported) and a “go-outside-home” disability (24 percent).⁹ According to the California State Plan on Aging, the rapid growth in the “oldest old”—persons 85 and older—is of particular concern “because this age group has a significantly higher rate of severe chronic health conditions and functional limitations, resulting in the need for more health and supportive

services.”¹⁰ These health problems and related needs, in turn, may make elders more vulnerable to abuse.

In the context of elder financial abuse specifically, it is important to highlight some other key characteristics of older adults. Nationally, people over the age of 50 own 70 percent of the nation’s private wealth, often in the form of savings or real estate. Adults ages 65 and older control 70 percent of the funds deposited in financial institutions.¹¹ In California, although elders represent only 11 percent of the population, they hold 23 percent of the aggregate value of owner-occupied housing units.¹²

Definitions and Types of Elder Abuse

Elder abuse encompasses a range of behaviors, intentional or unintentional, that involve the mistreatment or exploitation of an older adult. The abuse may involve acts of commission or acts of omission and may or may not constitute criminal conduct. Elder abuse cases often involve more than one type of abuse. The following is an overview of the different types of elder abuse, as described by the Office of the California Attorney General.¹³ These definitions are derived from California’s Elder Abuse and Dependent Adult Civil Protection Act (Welfare and Institutions Code § 15600 et seq.).

- **Physical abuse** includes assault, battery, assault with a deadly weapon, unreasonable physical constraint, prolonged or continual deprivation of food or water, sexual assault, and rape. [Although physical abuse as defined here encompasses sexual assault, in some of the literature sexual abuse is treated as its own distinct category and encompasses other acts such as inappropriate touching and forced viewing of pornographic materials.]
- **Psychological/mental abuse** includes fear, agitation, confusion, severe depression, and other forms of serious emotional distress that are brought about by threats, harassment, and intimidation.
- **Financial abuse** can result from taking, secreting, or appropriating money or property of an elder or dependent adult by a person who has the care or custody of or is in a position of trust to that elder.
- **Negligence** occurs if a caregiver fails to assist the elder or dependent adult in personal hygiene; to provide food, clothing or shelter; to protect from health and safety hazards; or to prevent malnutrition or dehydration.
- **Abduction** means the removal from the state and/or the restraint from returning to the state of any elder who does not have the capacity to consent to the removal from or restraint from returning to the state.
- **Abandonment** means the desertion or willful forsaking of an elder by anyone who has care or custody of that person under circumstances in which a reasonable person would continue to provide care and custody.
- **Isolation** means prevention from receiving phone calls or mail, false imprisonment, or physical restraint from meeting with visitors.
- **Neglect** means the negligent failure of any person, including the individual having the care or custody of an elder, to exercise the degree of care that a reasonable person, in a like position, would exercise. This includes failure to assist in personal hygiene; to supply food, clothing or shelter; to provide medical care; to protect from health and safety

hazards; and to prevent malnutrition or dehydration. [In much of the literature, negligence and neglect fall into a single category.]

Although not a form of abuse of others, another form of elder mistreatment handled by Adult Protective Services (APS) agencies and increasingly coming before law enforcement and the courts is self-neglect—the elder’s inability to provide for his or her basic needs for food, clothing, shelter, and medical care or to manage his or her financial affairs.¹⁴ Self-neglect cases may involve hoarding or cluttering behavior; increasingly, such cases have been coming to the attention of code enforcement officials and therefore may be more likely to enter the justice system. Self-neglect may also be a by-product of abuse or neglect by others.

Financial abuse can take many forms and may be perpetrated by family members, caregivers, or other people known to the elder, or by strangers. Just a few examples of the many (and growing) varieties of elder financial abuse, by perpetrator type, are outlined below:¹⁵

Financial Abuse by Family Members or Caregivers

- Simply taking the elder’s money/property;
- Borrowing money (sometimes repeatedly) and not paying it back;
- Denying services or medical care to conserve funds;
- Giving away or selling the elder’s possessions without permission;
- Signing or cashing pension or social security checks without permission; or
- Forcing the elder to part with resources or sign over property.

Financial Abuse by Strangers

- Prizes or sweepstakes: Victims are asked to send money to cover taxes, shipping, or processing fees. The prize may never arrive or if it does, it may be of little to no value;
- Investments: Elders are convinced to invest in nonexistent companies or worthless property;
- Home and automobile repairs: Elders are asked to put down advance deposits and the work may never be completed or may be substandard. In many cases, the repairs aren’t truly needed;
- Loans and mortgages: Elders may be victims of predatory lending or enter into reverse mortgages that do not benefit them;
- Lottery scams (e.g., Canadian lottery); or
- Telemarketing and mail fraud (often used as tools for identity theft).

Another form of financial elder abuse is the misuse of legal instruments such as powers of attorney, which may include such acts as falsification of records and using funds for personal benefit rather than the benefit of the elder. This is an unfortunate trend, as it casts an unfavorable light on what otherwise can be, if held by a responsible person, an effective tool for managing an elder’s affairs.¹⁶

For elder mistreatment occurring specifically in facilities, institutional neglect or substandard care includes failure to provide medical care for physical and mental health needs, failure to attend to hygiene, failure to provide adequate staffing, failure to prevent malnutrition and dehydration, and falsification of patient charts.¹⁷

Elder Abuse Statistics

Statistics related to the nature and prevalence of elder abuse are limited at best, for a number of reasons. Several different agencies receive reports of elder abuse. Some agencies serve more than just the elderly population, so whatever statistics they collect often cannot be broken out by the age of the individual receiving the service. For example, APS data may not distinguish between reports concerning elders (ages 65 and older) and dependent adults (ages 18 to 64). Among agencies that do collect data specifically on elders, there may be inconsistencies in the way data are reported or in the types of data that are tracked. Definitions of elder abuse or the different types of abuse may vary. Because of the inconsistent availability of uniform data, this report references both national and, where available, California statistics.

Another factor affecting the availability and quality of data on elder abuse is that some types of elder abuse are criminal matters and some are civil; therefore, not all instances of elder abuse will be reflected in crime statistics. Furthermore, despite the existence of Penal Code § 368, California's criminal elder abuse statute, official statistics report arrests for elder abuse in the same category as other crimes not involving elderly victims. Finally, elder abuse is severely underreported. The National Elder Abuse Incidence Study¹⁸ (NEAIS) used reports from "sentinels"—in this case, professionals who come into contact with the elderly population—to account for underreporting of elder abuse reflected in official statistics and combined them with official reports to paint a more comprehensive picture of elder abuse. This study found that 84 percent of elders who were abused or neglected did not have their cases reported to APS. A 1994 report of the House Select Committee on Aging¹⁹ reported that as few as 1 in 14 incidents of elder abuse is reported (compared with roughly 1 in 5 for the NEAIS).

According to the California Department of Justice, an estimated 1 in 20 elders is a victim of neglect or physical, psychological, or financial abuse.²⁰ The NEAIS found that individuals ages 80 and older are abused and neglected at two to three times their percentage of the elderly population. As the elderly population grows, and as segments of that population grow increasingly vulnerable, it is also likely that California will see an increase in the incidence of elder abuse, and there are indications that it is already underway. In 2000, APS agencies throughout the state received more than 53,000 reports of elder abuse; by 2006, reports had increased to more than 69,000.²¹

In 2006, California APS agencies had an average active (elder abuse) caseload of nearly 14,000 per month.²² Of elder abuse reports for which an investigation was completed, more than one-third (39 percent) were confirmed, nearly one-half (46 percent) were determined to be inconclusive, and 15 percent were unfounded.

Almost half (46 percent) of reports that were investigated and either confirmed or found inconclusive concerned self-neglect. Among reports involving abuse or neglect by others, allegations were most likely to be related to financial abuse (33 percent), psychological abuse (25 percent), or neglect (23 percent). Relative to its proportion of total allegations, psychological abuse was somewhat more likely to be confirmed, comprising 32 percent of confirmed allegations, while neglect was somewhat less likely to be confirmed, at 16 percent of confirmed allegations (see Table 1).

**Table 1. Adult Protective Services Reports:
Allegations of Abuse by Others**

Type of Abuse	Percentage of Total Allegations	Percentage of Confirmed Allegations
Financial	33%	32%
Psychological	25%	32%
Neglect	23%	16%
Physical	14%	16%
Isolation	3%	2%
Sexual	1%	1%
Abandonment	1%	1%
Abduction	<1%	<1%

Source: California Department of Social Services, Adult Protective Services and County Services Block Grant Monthly Statistical Reports, 2006. Note: Percentages may not sum to 100 due to rounding.

In terms of financial abuse specifically, the availability of statistics is even more limited, perhaps, in part, because many financial abuse schemes are relatively new. However, some limited studies have been conducted on specific forms of financial abuse. For example, an AARP study of telemarketing fraud found that Americans lose an estimated \$40 billion per year as a result of such fraud, and that more than half (56 percent) of those called by telemarketers are ages 50 and older.²³

Dynamics of Elder Abuse

Elder abuse is a complex issue “encompassing some of the dynamics seen in domestic violence or child abuse but also including other complicating issues such as capacity and medical condition.”²⁴ This complexity is due in part to the fact that there are many different forms of elder abuse, types of abusers, and settings in which abuse can occur. Furthermore, many elder abuse professionals compare the current status of elder abuse to the child abuse and domestic violence movements in their early stages (approximately 25 years ago). One parallel is the fact that cases are difficult to prove without a strong witness and solid physical evidence.²⁵ Other similarities include a lack of data on the prevalence of elder abuse, inconsistency in or disagreement on definitions, and a lack of consensus about the most effective interventions.²⁶ This section describes what is currently known about the nature of elder abuse and highlights some of the key issues and considerations surrounding elder abuse.

Victims of elder abuse. A national survey of APS²⁷ showed that nearly two-thirds (66 percent) of individuals ages 60 and over who were the subject of APS reports were female. This proportion is consistent with a one-day snapshot of California APS,²⁸ in which 63 percent of report subjects ages 65 and older were female. Another study showed that women were more likely than men to be victims of neglect or emotional, financial, or physical abuse, while men were more likely to be abandoned.²⁹ More than one-third (37 percent) of reports of both elder and dependent adult abuse concerned individuals more than 80 years of age, likely reflecting both the growth and the increasing vulnerability of this population.

Nearly two-thirds of California elders who were the subject of APS reports (64 percent) were characterized as having major medical issues, and more than half (54 percent) had some degree of cognitive impairment, dementia being the most common. Additionally, the NEAIS found that abused elders were more likely to be depressed than their nonabused counterparts (44 percent versus 15 percent). Overall, however, the population of victims of elder abuse was fairly diverse. In fact, some suggest that because of this diversity, examining abuser characteristics is more useful for understanding underlying causes of or risk factors for elder abuse, a topic that will be discussed in further detail below.

Perpetrators of elder abuse. Perpetrators of elder abuse were generally close to their victims in some way, whether as spouses, children, other family members, or caregivers. In the NEAIS, most alleged abusers were adult children (33 percent) or other family members (22 percent); spouses or intimate partners accounted for more than one in ten (11 percent) alleged perpetrators of elder abuse. The tendency for family or other persons in a position of trust with the elder to be abusers is further supported by California data, which show that 42 percent of alleged abusers were family members and 16 percent were caregivers. Overall, 22 percent of California cases involved family violence and 78 percent involved some other type of abuse.

The NEAIS sheds some additional light on the characteristics of perpetrators. Across all categories of abuse, more than one-half (53 percent) were male. Neglect was the only category in which the abuser was more likely to be female. Approximately two-thirds (66 percent) of abusers were under the age of 60, with most between 41 and 59. Perpetrators of financial abuse tended to be younger than those involved in other types of abuse.

Settings in which elder abuse occurs. Elder abuse is commonly thought of as occurring in facilities such as nursing homes; however, most elder abuse occurs in the elder's home or other domestic setting. In 89 percent of cases in the 2004 national survey of APS, the alleged abuse was reported to have occurred in a domestic setting; however, it is important to note that agencies other than APS may be designated to receive and respond to reports of abuse and neglect in institutional settings, so these statistics may not reflect the full range of settings in which elder abuse occurs. Nonetheless, several studies have also noted that high percentages of victims lived with their abusers,³⁰ again reinforcing the notion that abusers tend to be close to their victims in some way. With the increasing prevalence of financial scams and identity theft, the range of environments in which elder abuse occurs will become more diverse.

Elder abuse as a series of acts. In many cases, elder abuse is not a single act but “a series of actions or failures to act that cause harm to an elderly person.”³¹ Therefore, it is important to observe and document a case over time in order to establish normal patterns of behavior—including the elder's level of functioning—as well as deviations from those patterns. If it is not possible to document the case on an ongoing basis (for example, if the case was not brought to the attention of APS or law enforcement until after a serious event), it will be necessary to investigate not just the immediate situation but the past histories of the elder and his or her abuser—not only to conduct the fullest investigation possible, but also to direct the elder or abuser to the most appropriate services.

Elder abuse reporting. The national survey of APS showed that the most common sources of elder abuse reports were family members (17 percent), social services workers (11 percent), and friends and neighbors (8 percent). At least in California, the proportion of reports coming from financial institutions is expected to rise, given the recent enactment of a law making them mandated reporters of elder abuse.

As mentioned in the section on elder abuse statistics, elder abuse is severely underreported. There are several issues related to the dynamics of elder abuse that may be related to this lack of reporting.³² Since many abusers are family members, elders may be reluctant to press charges or otherwise report the abuse because they don't want to get a family member in trouble. Elders may also be dependent on their abusers—whether family members or caregivers—for care or companionship, so they may feel that they have no choice but to stay in the relationship. Elders may also fear that reporting the abuse will lead to them being placed in a nursing home, either as a form of punishment by the abuser or due to the arrest of the abuser. The fear of having an abusive situation made public may inhibit an elder from reporting abuse. Finally, an elder may simply not recognize, or may be in denial, that he or she is being abused.

One factor that may compound the underreporting of elder abuse is the fact that it may be difficult to identify or diagnose. In the context of physical abuse,³³ “[C]aregivers, Adult Protective Services agencies, and doctors are often not trained to distinguish between injuries caused by mistreatment and those that are the result of accident, illness, or aging.” Many elders suffer from conditions or even take medications that produce symptoms similar to those caused by abuse. To identify financial abuse, extensive collection and examination of records—and, in some cases, formal forensic accounting—along with an assessment of the elder’s capacity to enter into financial transactions, may be necessary.

Causes of and risk factors for elder abuse. There is no single theory on the cause(s) of elder abuse, and theories that have been proposed are supported by only limited research.³⁴ Furthermore, it has been difficult to apply these theories to the variety of different forms elder abuse takes. Historically, caregiver stress—the notion that a well-intentioned caregiver abuses an elder because the stress of caring for that person has pushed the caregiver to his or her limits—has been among the most popular theories to explain elder abuse. Elder abuse professionals point out several significant limitations of the caregiver stress theory, including the failure to acknowledge that some elder abuse victims require little or no care, the fact that services targeted to caregiver stress may not help to enhance the victim’s safety, the tendency for elder abuse in this context to be viewed as a social services issue and not a crime (so appropriate remedies are not pursued), and the appearance of placing blame on the victim for being difficult to care for. One theory that does hold some promise for understanding elder abuse and has been previously applied in the domestic violence arena, is that of power and control dynamics—the abuser’s use of a pattern of coercive acts to control, dominate, or punish the victim, coupled with the abuser’s feelings that his or her actions are justified and that he or she has a right to control the victim.³⁵

Many elder abuse professionals prefer to discuss risk factors for, rather than causes of abuse, because “[n]ot only are the research findings more clear about risk factors, but they are more useful for purposes of identifying victims of elder abuse and intervening to stop the abuse.”³⁶ Some of those risk factors are outlined below:³⁷

Victim

- Dependency on the abuser;
- Physical or mental frailty;
- Social isolation; and
- History of substance abuse or mental pathology.

Abuser

- Dependency on the victim;
- Disturbed psychological state;
- History of substance abuse or mental pathology; and
- Previous history of elder abuse in the caregiving context.

Impact of elder abuse. Although all victims of abuse experience negative consequences associated with their victimization, the impacts of abuse on elders may be particularly dramatic. One study showed that abused elders suffer from earlier mortality than nonabused elders, even after controlling for factors known to have an impact on mortality, suggesting that the interpersonal stress experienced as a result of victimization may place the victim at an even greater risk.³⁸ In terms of financial abuse specifically, an elder may not have the ability to recover lost funds because of the abuser's inability to make restitution or to replace lost funds through employment, savings, or investment.³⁹

Cultural issues. Further complicating the ability to define and identify elder abuse is the fact that an act that constitutes elder abuse in American culture may not be viewed as elder abuse by someone from another culture. For example, "[i]n families that customarily share assets, individuals may have difficulty understanding that financial exploitation could exist."⁴⁰ Certain cultural groups may not welcome the involvement of the authorities in what they consider to be family matters. Others may be reluctant to report abuse or cooperate with investigations or court proceedings because of family cohesion and the desire not to bring the family shame by making the abuse public. As the elderly population grows in number, it will also grow in racial and ethnic diversity, meaning that agencies serving the elderly population may need to modify their programming to most effectively intervene in elder abuse cases.⁴¹

Elder Abuse in the Court Context

Elders can come into contact with the court under various conditions that may or may not have to do with elder abuse. Consider that the largest category of cases referred to APS is self-neglect; victims of self-neglect can exhibit hoarding and animal-collecting behavior. After numerous complaints by neighbors to the landlord, an elder tenant may end up in court because of an eviction due to animal hoarding or basic disheveled living quarters. Closer examination could reveal that this elder tenant was self-neglecting and potentially worthy of a conservatorship because of an inability to care for him- or herself. Closer examination could also reveal that this person was already under the care of someone else (who was failing at the responsibility) and this elder litigant's self-neglect was a symptom of other types of abuse (financial, physical, or mental). When elder abuse comes to court, it may come through a different door under another set of conditions. Another example of elder abuse as an underlying factor is in foreclosure cases, which may involve elders who, as judges later discover, have been victims of predatory lending.⁴²

These types of situations may exist in criminal, civil, family, probate, juvenile, and traffic matters. Elder abuse cases can enter the court in the form of criminal cases, civil fraud and conversion, domestic violence, personal injury, unlawful detainer (for example, an elder trying to evict an adult child who is not paying rent, is stealing from the elder, or has a drug problem), lawsuits against facilities, adult adoptions (for example, someone convincing an elder to adopt him or her in order to get access to the elder's estate), probate conservatorship (many conservatorships are established in response to abuse), mental health commitment, APS-initiated proceedings, domestic relations, cases regarding health care decisions for incapacitated persons, and civil harassment. These cases require bench officers and court staff to be sensitive to elder needs and to recognize different forms of abuse or symptoms of abuse, notions that are reinforced in a national court curriculum on elder abuse:

Elder abuse issues can present many difficulties to the courts. These issues may arise in a wide assortment of cases and in different substantive contexts, so it is critical that many judges develop an understanding of elder abuse. Moreover, an abusive situation may be hidden behind other issues (such as guardianship or termination of life support) and not brought to light by counsel in the case. A judge who is able to recognize indicators of elder abuse and who understands its dynamics will, within the bounds of the fair and equitable administration of justice, play an important role in preventing further victimization of an abused older person.⁴³

Elder abuse cases can involve complex legal issues that don't surface in the case that has brought that elder to court. Elder litigants can have capacity or dementia issues that require the court to ascertain whether they are fit to represent themselves or whether there is a need for a conservatorship. Elder litigants may have issues with executive functioning—a constellation of mental processes related to the ability to think logically, rationally, and abstractly, including the ability to plan, organize, reason, and consider alternatives and consequences—which renders it difficult if not impossible for them to make legal decisions.

Courts should also note that often more than one form of abuse is present in elder abuse cases. It commonly takes one form of abuse to achieve a desired outcome, which in turn takes on another form of abuse. For example, a perpetrator of financial abuse may emotionally abuse an elder in an attempt to get him or her to give up assets. Therefore, courts and their justice partners should investigate extensively when one form of abuse has been detected.

Elder Abuse Issues for the Justice System and the Courts

Courts and their justice partners are likely to see an increasing number of elder abuse cases in the coming years, for several reasons including the following: the elderly population is simply growing in number; the expansion of elder abuse awareness campaigns and mandated reporting laws are likely to lead to greater recognition and reporting of elder abuse; specialized units in police and prosecutors' offices and elder abuse forensic centers are bringing more attention to and allowing for improved investigation of elder abuse cases; and new laws related to elder abuse often bring about new legal remedies.⁴⁴ As one scholar points out, however, "Although the demographics on aging in America will impel judicial systems to accommodate larger numbers

of older adults in the courthouse, it is the special needs of many elders that present the administrative challenge for court administrators or judges.”⁴⁵ Some of the challenges confronted by the justice system, as well as special considerations for handling elder abuse cases, are summarized below.

Identification of elder abuse cases. In a National Center for State Courts (NCSC) survey of court and judicial needs in the area of elder abuse,⁴⁶ three-quarters of respondents reported that the courts’ identification of elder abuse issues was either “fair” or “poor.” This may be in part attributable to the fact that elder abuse, while appearing in many forms in the court, is not a dedicated case type and cases may not be explicitly labeled as elder abuse cases. An article on future trends in the courts points out, “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.”⁴⁷ An NCSC white paper on the state courts and elder abuse went on to note that without screening mechanisms and training to detect elder abuse, the problem may remain hidden from the courts.⁴⁸

Respondents to the NCSC needs assessment survey were also asked what practices the courts might put in place to improve the identification of elder abuse cases. Those suggestions boiled down to five broad categories: training, case management, case assessment, monitoring conservatorships, and criminalizing elder abuse.⁴⁹

Barriers to initiating and prosecuting cases. An elder abuse case will not make it to court unless it is appropriately investigated and prosecuted. In a survey of social services professionals, the services that were reportedly the most difficult to obtain from the criminal justice system were, first, prosecution and, second, arrest.⁵⁰ From the law enforcement perspective, elder abuse may not be considered a high priority—in physical abuse cases because of the victim’s advanced age or in financial abuse cases because of the relatively small amount of the loss, among other reasons. In fact, individuals interviewed for this study noted that the passage of the criminal elder abuse statute did not seem to have the desired effect of increasing law enforcement attention to the issue; because elder abuse often involves family dynamics, law enforcement officers may see it as a civil, not a criminal, matter.

Moreover, elder abuse investigations are complex and if assigned to law enforcement officers who lack background or training in elder abuse, key facts or evidence may be missed.⁵¹ Some contend that district attorneys may not file elder abuse cases, particularly those involving financial abuse, because they don’t understand issues related to capacity and undue influence “and lack the drive or resources to learn the subject area and work the cases properly.”⁵² In a study conducted to assist the American Bar Association (ABA) in developing recommended guidelines for courts handling elder abuse cases, participants expressed concern that lack of sensitivity by judges inhibits attorneys and abused persons from bringing cases to court.⁵³

Other barriers to initiating and prosecuting cases are more closely related to the victim perspective. At a very basic level, many elders may not know about their legal rights and the court system, which inhibits them from pursuing available, appropriate legal remedies.⁵⁴ Additionally, some of the barriers to prosecuting elder abuse are the same as those to reporting elder abuse, such as the elder’s desire not to get a family member or caregiver in trouble or

shame for having been abused and having the situation made public. Another factor is the unlikelihood that victims will recover misappropriated property or be compensated for their losses (regardless of the merits of the case).⁵⁵

Barriers to accessing the courts. Beyond issues related to initiation and prosecution of cases, elder abuse victims may experience other barriers that prevent them from having their day in court. Transportation to the courthouse may be an issue, particularly for those whose declining health no longer allows them to drive and those living in rural areas not accessible by public transportation. The ABA's Recommended Guidelines for State Courts Handling Cases Involving Elder Abuse point out that "older persons who are homebound or bedbound may be incapable of traveling to the courthouse even though they are capable of testifying."⁵⁶ Elders may also be reluctant to come to court because in their absence there would be no one to care for their dependents or ill spouses.⁵⁷

Services to assist abused elders. Many abused elders have needs that go beyond their immediate legal issues and that, in some cases, are underlying factors related to their legal issues. Although many cases come to the attention of the courts through APS workers, who may already be providing services, the courts may nonetheless find themselves in a position to make service referrals for elderly litigants. As one scholar notes, "[O]lder persons in both civil and criminal courts may have health and social services needs, exacerbated by dementia, that challenge the typical judge's ability to respond in a meaningful and timely manner."⁵⁸

A major obstacle for the courts and the community as a whole is the limited availability of services for elders, especially in light of stagnant funding levels or recent funding cuts for social services programs. Furthermore, services that are available may not be linked to the courts or law enforcement⁵⁹ or may be fragmented, resulting in a lack of coordination and continuity of services. One elder abuse expert points out, "The fact that services to abused elders are partially funded by multiple federal programs makes it difficult for agencies to create comprehensive and seamless service systems, raising the risk that victims will fall between the cracks of the service delivery system."⁶⁰ Because abused elders are often served by multiple, disconnected agencies, the ability to track elder abuse cases throughout the process may be limited or nonexistent, which could ultimately impact the resolution of the case.⁶¹

Capacity and undue influence. A complex issue that could come into play in a variety of cases involving elder abuse is whether the elder had the capacity to, for example, care for him- or herself or manage his or her financial affairs. Capacity is, of course, a central issue in probate conservatorships. In a criminal case, capacity may be raised by the abuser as a defense or by the prosecutor as an indicator of the elder's vulnerability to abuse.⁶² A civil case may focus on whether an elder had the capacity to enter into a contract. Because many abused elders have Alzheimer's, other types of dementia, or other cognitive impairments, understanding the elder's capacity will be critical to understanding the context in which the alleged abuse took place.

One very important aspect of capacity for the courts and justice partners to bear in mind is that capacity is not an all-or-nothing issue: elders may have the capacity to do some kinds of things and not others, capacity may fluctuate with the time of day, and capacity issues are not necessarily permanent (they may wane as injuries heal or medications are changed). Therefore,

courts should request multiple assessments at different points in time or, if that is not possible, recognize that capacity assessments may be misleading if conducted at a time that is not representative of the elder's true level of functioning.⁶³

Another concept closely related to capacity that often comes into play in elder abuse cases is that of undue influence, defined as “the misuse of one’s role and power to exploit the trust, dependency, and fear of another to deceptively gain control over that person’s decision making.”⁶⁴ Undue influence is not in and of itself a form of abuse, but it can be used as a means to abuse an elderly person, particularly financially. Although a lack of capacity is not required for undue influence to occur (a person with capacity may also be susceptible to undue influence), capacity issues may make it easier for an abuser to assert his or her will on an elder.

Evidence and testimony. Elder abuse cases present particular challenges in terms of evidence and testimony. One challenge is related to the availability of the elder to testify in court. Many abused elders are in poor health, health that may be in further decline due to the abuse; in some cases, there may be concern about the elder dying before he or she is able to testify. In more extreme cases, defense counsel may request unnecessary continuances or otherwise create delays in an attempt to stall the case until the elder loses the ability to testify or dies.⁶⁵ The *Crawford v. Washington*⁶⁶ Supreme Court decision has had the effect of limiting the admissibility of videotaped testimony, which presents another challenge when a victim’s health is in sharp decline.

In other cases, a bedbound elder may be able to testify but may have difficulty getting to the courthouse. It may be determined that the elder does not have the capacity to testify, so prosecution must rely on physical evidence and expert testimony. However, in some cases courts may use their discretion to admit unsworn testimony if the court deems the witness intelligent enough to add important information to the hearing or trial.⁶⁷

Because elder abuse cases often involve a complex web of legal, medical, social, and other issues, understanding these cases may require the input of more and different types of experts than other case types. Related to the difficulties in identifying elder physical abuse—in particular distinguishing normal aging and disease processes from abuse—there may be a shortage of “qualified experts to testify to a reasonable medical certainty that the injuries were the result of abuse or neglect.”⁶⁸ Similarly, some communities may have few if any experts (such as geriatricians or neuropsychologists) who are truly qualified to testify to the issues of capacity and undue influence.

Lack of case law and precedent. In part because cases may not be explicitly labeled elder abuse cases, it may be difficult for attorneys and judicial officers to find relevant case law to guide their strategies or decisions. There may be no ready way to identify that elder abuse is an underlying issue in a case that is more broadly classified—for example, in the context of a fraud case⁶⁹ or a conservatorship. Case law is also lacking simply because so few elder abuse cases are even brought to the attention of the court.

Lack of court data related to elder abuse. As noted in the NCSC white paper, “The abuse of older Americans is poorly documented, particularly in the courts.”⁷⁰ In general, courts are unable

to accurately count the number of elder abuse cases that come before them or describe the characteristics of the abuse and the parties involved. The lack of data makes it difficult for courts to know the kinds of resources needed to respond to the problem and to justify related requests for funding, and it hinders the development and evaluation of programs or services designed to address elder abuse.⁷¹

¹ Although there are varying definitions of the term “elder,” for the purposes of this report an elder is defined as a person 65 years of age or older.

² All population figures are from the California Department of Finance tables, Population Projections by Race/Ethnicity, Gender and Age for California and Its Counties 2000–2050, available at <http://www.dof.ca.gov/html/DEMOGRAP/ReportsPapers/Projections/P3/documents/CALIFORNIA.XLS> (accessed December 19, 2007).

³ California Attorney General’s Crime and Violence Prevention Center, Elder Abuse Facts, <http://www.safestate.org/index.cfm?navId=58> (accessed August 7, 2006).

⁴ Centers for Disease Control. Life expectancy at birth, at 65 years of age, and at 75 years of age, by race and sex: United States, selected years 1900–2004, available at <http://www.cdc.gov/nchs/data/hus/06.pdf#027> (accessed January 10, 2008).

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¹⁵ Johnson, K. D. (2003). Financial Crimes Against the Elderly (Problem-Oriented Guides for Police, Problem-Specific Guides Series No. 20). Washington, DC: U.S. Department of Justice, Office of Community Oriented Policing Services.

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²² California Department of Social Services, Adult Protective Services and County Services Block Grant Monthly Statistical Reports, January–December 2006, http://www.dss.cahwnet.gov/research/SOC242-Adu_436.htm (accessed August 13, 2007).

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⁶³ NYC Elder Abuse Training Project.

⁶⁴ Brandl et al.

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⁶⁶ *Crawford v. Washington* (2004) 124 U.S. 1354.

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⁷¹ Uekert, B., Dancy, D., Peters, T., and Herman, M. (2006). Policy Paper: A Report from the First National Meeting of the Elder Abuse and the Courts Working Group Meeting. Williamsburg, VA: National Center for State Courts.

Chapter 2: Elder Abuse Programs, Initiatives, and Other Trends

This chapter provides an overview of programs and initiatives developed to address the problem of elder abuse, as well as other trends that are likely to impact or be of interest to agencies that serve abuse and neglected elders. Although by no means a comprehensive summary, it provides key examples to highlight the types of initiatives undertaken to address elder abuse in California and throughout the country.

General Elder Abuse Initiatives

Adult Protective Services (APS). Every county in California has an APS agency that investigates reports of abuse or neglect of elders or dependent adults who live in private residences or in hospitals or health clinics (when the abuser is not a staff member). APS workers evaluate cases of reported abuse or neglect and arrange for services such as advocacy, counseling, money management, out-of-home placement, and conservatorship. APS also provides information and referrals to other agencies, as well as public education regarding reporting requirements and responsibilities under the Elder and Dependent Adult Abuse Reporting laws.⁷²

Long-Term Care Ombudsman. The Long-Term Care Ombudsman program, authorized by the federal Older Americans Act and the companion Older Californians Act, receives, investigates, and attempts to resolve complaints in long-term care and residential care facilities for the elderly. Among their other responsibilities, ombudsmen are available to field questions or concerns related to quality of care, financial abuse, and suspected physical, mental, or emotional abuse of facility residents.⁷³

Area Agencies on Aging (AAA). Under contract with the California Department of Aging (CDA), AAAs manage a variety of federal and state-funded services that help elders find employment, support elders to live as independently as possible in the community, promote healthy aging and community involvement, and assist family caregivers.⁷⁴

Multipurpose Senior Services Program (MSSP). Local MSSP sites provide social and health care management services to frail elders who are eligible for nursing home placement but wish to remain in the community, with the ultimate goal of preventing or delaying institutional placement. The types of services that can be provided by MSSPs include adult daycare, housing assistance, chore and personal care assistance, protective supervision, care management, respite, transportation, meal services, social services, and communications services.⁷⁵

In-Home Supportive Services (IHSS). The IHSS program will pay for services to allow elders to remain safely in their own homes. Services permitted under IHSS include house cleaning, meal preparation, laundry, grocery shopping, personal care services, accompaniment to medical appointments, and protective supervision of the mentally impaired.⁷⁶

Multidisciplinary teams (MDTs). MDTs can be broadly described as “groups of professionals from diverse disciplines who come together to review [elder] abuse cases and address systemic problems.”⁷⁷ Functions of MDTs include, but are not limited to, providing expert consultation to

service providers; identifying service gaps and other systemic issues; updating members about new services, programs, and legislation; advocacy; and training.⁷⁸

MDTs and other collaborative approaches to addressing elder abuse are a growing trend for a number of reasons. As mentioned in the previous chapter, services to abused elders may be fragmented, so the establishment of multidisciplinary teams can enhance communication and collaboration among the different organizations, as well as allow them to become more familiar with one another's roles and functions. This improved collaboration may also lead to the development of case plans that are more responsive to the elder's needs.⁷⁹ Because the different agencies and service providers involved may each have a different piece of information or area of expertise related to the case, the activities of MDTs may result in improved evidence collection—which, in turn, could mean more and better developed cases coming before the courts. MDTs may also help to prevent cases from entering the court system unnecessarily by working to develop alternative case resolutions.⁸⁰

MDTs take a variety of forms and their membership varies according to the team's function. Common participants in MDTs include representatives of law enforcement, APS, mental health services, prosecutors' offices, aging service providers, public guardians, domestic violence advocates, and the medical community (nurses and physicians).⁸¹ Many teams are more general in nature, while others are more specialized. Selected specialized MDTs are described below:

Financial abuse specialist teams (FASTs). As the name suggests, these teams (sometimes called fiduciary abuse specialist teams) are focused on issues related to financial elder abuse, with a special emphasis on asset preservation. Their members include representatives of financial institutions, individuals with expertise in real estate or insurance fraud, financial planners, and fraud investigators. Representing a subset of FASTs are rapid response FASTs, designed to respond quickly to financial emergencies.⁸² The first FAST was established in Los Angeles County in 1993; a number of other California counties have since created FASTs.

Elder death review teams. These teams were established to distinguish accidental from nonaccidental deaths in elders and to explore factors leading to elders' deaths that will aid in developing prevention and intervention strategies. Their mission necessitates heavy involvement of medical expertise. Elder death review teams are similar to those in the child abuse and domestic violence arenas. Among the first such teams was Sacramento's Elder Death Investigation Review Team (EDIRT), formed in 2000.⁸³ Other counties that have established elder death review teams include Napa, Orange, San Diego, San Francisco, and Santa Barbara.

Elder abuse forensic centers. By bringing together professionals from the disparate systems often involved in elder abuse cases—primarily law, medicine, and social services—forensic centers facilitate the identification of elder abuse, prosecution (where appropriate), and development of the appropriate service responses, including legal actions.⁸⁴ The first elder abuse forensic center in the country was established in Orange County in 2003, and Los Angeles County is following in its footsteps.

Elder Abuse Initiatives Related to the Justice System and the Courts

New laws and increasing criminalization of elder abuse. According to one legal expert in elder abuse issues, “Elder abuse laws have begun to change significantly in the last few years, reflecting a growing understanding of the nature of elder abuse and a more legalistic approach (rather than just a social services approach) to the problem.”⁸⁵ Other experts also note that the criminalization of elder abuse is in part a response to acknowledging elder abuse as a form of family violence, which makes it easier to involve law enforcement and the criminal justice system.⁸⁶ Furthermore, interest in pursuing legal remedies for elder abuse is growing due not only to the availability of new legal options but also to the recognition that traditional protective services may not go far enough in addressing elder abuse.⁸⁷

Recent California laws related to elder abuse include the Elder Abuse and Dependent Adult Civil Protection Act⁸⁸ and the Financial Elder Abuse Reporting Act (SB 1018 (2005)), which makes financial institutions mandated reporters of financial abuse. Also of note is the Omnibus Conservatorship and Guardianship Reform Act of 2006, which includes provisions for more frequent monitoring of conservatorship cases, sets forth qualifications of and educational requirements for court investigators, and establishes a state department for licensure and regulation of professional fiduciaries. Although not a new law (enacted in the mid-1980s), Penal Code § 368, California’s criminal elder abuse statute, is noteworthy because it recognizes that elders deserve special protection and consideration due to their vulnerability and it carries penalty enhancements for crimes against elders. For more information on key laws related to elder abuse, see the document entitled *Recent Legislation Concerning Elders and Dependent Adults* on the CD enclosed with this report.

At the federal level, continuing efforts are underway to pass the Elder Justice Act (EJA), which has repeatedly failed attempts at passage and has been resurrected over the past several years; the current incarnation of the EJA, authored by Senator Orrin Hatch, is S. 1070. The EJA takes a comprehensive, multipronged approach to addressing elder abuse and includes the following provisions: elevating elder justice issues to national attention; improving the quality, quantity, and accessibility of information; increasing knowledge and supporting promising projects; developing forensic capacity; providing victim assistance, “safe havens,” and support for at-risk elders; increasing prosecution; training; developing special programs to support underserved populations including rural, minority, and Native American seniors; reviewing model state laws and practices; increasing security, collaboration, and consumer information in long-term care; and evaluating and monitoring elder abuse programs.⁸⁹

Efforts of the California Attorney General. Elder abuse is one of the focus areas for the California Attorney General’s Crime and Violence Prevention Center. The center developed *A Citizen’s Guide to Preventing and Reporting Elder Abuse*—a free 36-page guide that helps individuals detect signs of abuse and seek related services—and created the core curriculum to train staff of long-term care facilities on elder abuse reporting. In 2003, the attorney general’s office launched a three-year statewide education campaign on elder abuse. The attorney general’s office also includes the Bureau of Medi-Cal Fraud and Elder Abuse, which sponsors a biennial multidisciplinary training conference on elder abuse.

Legal services for elders. At the national level, Title III B of the Older Americans Act encourages the establishment of legal services for seniors. Additionally, Title VII provides funding for states to develop systems to protect the rights of vulnerable elders. Between 2001 and 2004, the CDA created statewide guidelines for the delivery of legal services and initiated a process to develop statewide uniform reporting standards to ensure consistency, quality, and rules of practice for legal services providers throughout California. In its 2005–2009 state plan on aging, CDA has built upon those efforts by making one of its seven focal areas to “[p]rotect the quality of life and rights of elders through education, legal services, and improved coordination with law enforcement.”⁹⁰

Specialized law enforcement and prosecution units. Consistent with the notion underlying the development of MDTs that handling elder abuse cases requires specialized knowledge, many law enforcement agencies and prosecutors’ offices have developed specialized units related to elder abuse. Some have units that focus exclusively on elder abuse, while others have elder abuse expertise within domestic or family violence units. Counties with specialized units in law enforcement and prosecution include but are not limited to Colusa, Fresno, Los Angeles, Napa, San Diego, San Francisco, and Ventura. District attorneys’ offices with elder abuse units sometimes have affiliated victim/witness programs that also specialize in elder abuse.

Recommended Guidelines for State Courts Handling Cases Involving Elder Abuse. In the mid-1990s, the ABA’s Commission on Legal Problems of the Elderly (now known as the Commission on Law and Aging), in conjunction with the State Justice Institute, undertook a then-groundbreaking study of court practices related to elder abuse. The study resulted in the development of 29 specific recommendations to enhance the ability of the courts to handle elder abuse cases. The recommended guidelines were the inspiration for much of the statewide survey on the court response to elder abuse and will be discussed further with the survey results in the next chapter.

Efforts of the National Center for State Courts (NCSC). With resolutions for support from the Conference of Chief Justices and the Conference of State Court Administrators, NCSC established the Elder Abuse and the Courts Working Group in 2005. Drawing members from the judiciary, criminal justice agencies, APS, advocacy and legal organizations, academia, and the government, the group’s focus is how the courts can improve their identification of and response to elder abuse, and its overall mission is to provide leadership to the courts in the area of elder abuse.⁹¹

In 2006, under the auspices of the working group, NCSC staff undertook a survey of court and judicial needs in the area of elder abuse. The survey found that the courts’ biggest challenges in addressing elder abuse and neglect centered on two major themes: time (it is difficult to give elder abuse cases needed attention, in part due to high caseloads and scarce resources) and training. Proposed ways to address those challenges included training judges and court staff, increasing access to the courts, developing coordinated responses, and improving case management (for example, through the use of information systems, case managers, or specialized dockets).⁹²

Building on the previous efforts, NCSC in June 2007 published a white paper entitled *State Courts and Elder Abuse: Ensuring Justice for Older Americans*, which issues a call to action “to improve the state courts’ capacity to identify, develop, and implement strategies that will enhance responses to elder abuse, neglect, and exploitation.” The white paper outlines four major issues that encumber the court response to elder abuse—the complexity of the problem, low levels of awareness among judges and court staff, access to the courts, and traditional court structures—and sets forth seven recommendations for improving the court response:

- Create a national resource for the courts on aging issues, elder abuse, and guardianship;
- Develop national and statewide model practices;
- Encourage local courts to examine current responses and develop innovative solutions to elder abuse;
- Ensure that both judicial and nonjudicial staff are trained on aging issues and elder abuse;
- Develop court performance standards and case management systems that improve documentation and oversight of cases involving older persons;
- Encourage judicial and court participation in multiagency partnerships to combat elder abuse; and
- Support local, state, and federal budgets and legislation that provide the court with the resources it needs to address elder abuse.⁹³

Curricula and training programs. Because awareness and identification of elder abuse are so critical to effectively responding to the problem, there have been numerous efforts to provide training to justice system professionals, some of which are highlighted below:

- In 1997, the ABA, State Justice Institute, and National Association of Women Judges released *Elder Abuse in the State Courts—Three Curricula for Judges and Court Staff*;
- Also in 1997, with the passage of Assembly Bill 870, all California law enforcement officers with field or investigative duties were required to complete an elder abuse training course;⁹⁴
- The 2000 Violence Against Women Act provided grants to train law enforcement, prosecutors, and court personnel on elder abuse;⁹⁵
- In 2005, the New York City Elder Abuse Training Project produced an extensive courts curriculum on elder abuse that complies with the ABA recommended guidelines;
- In 2007, AARP, under its National Legal Training Project, published *Enhancing Law Enforcement Response to Elderly Crime Victims*; and
- The Office on Violence Against Women funded the development of a workshop entitled *Enhancing Judicial Skills in Elder Abuse Cases*, which it piloted in October 2007. The workshop was developed under the auspices of the National Council of Juvenile and Family Court Judges and the Family Violence Prevention Fund.

In addition to these primarily national efforts, the AOC incorporates elder abuse issues into its trainings on domestic violence and probate conservatorship.

⁷² California Department of Social Services, <http://www.cdss.ca.gov/cdssweb/PG79.htm> (accessed January 14, 2008).

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- ⁷³ California Department of Aging, <http://www.aging.ca.gov/programs/ombudsman.html> (accessed January 14, 2008).
- ⁷⁴ California Department of Aging, <http://www.aging.ca.gov/aboutcda/aboutcda.html> (accessed January 14, 2008).
- ⁷⁵ California Department of Aging, <http://www.aging.ca.gov/programs/mssp.html> (accessed January 14, 2008).
- ⁷⁶ California Department of Social Services, <http://www.dss.cahwnet.gov/cdssweb/PG139.htm> (accessed January 12, 2008).
- ⁷⁷ Teaster, P., and Nerenberg, L. (2003). *A National Look at Elder Abuse Multidisciplinary Teams*. Washington, DC: National Center on Elder Abuse.
- ⁷⁸ Teaster and Nerenberg.
- ⁷⁹ Nerenberg, L. (2003). *Multidisciplinary Elder Abuse Prevention Teams: A New Generation*. Washington, DC: National Center on Elder Abuse.
- ⁸⁰ Stiegel, L. (1997). *Elder Abuse in the State Courts—Three Curricula for Judges and Court Staff*. Washington, DC: American Bar Association.
- ⁸¹ Teaster and Nerenberg.
- ⁸² Nerenberg (2003).
- ⁸³ *Ibid.*
- ⁸⁴ McNamee, C., and Mulford, C. (2007). *Innovations Assessment of the Elder Abuse Forensic Center of Orange County, California*. Washington, DC: National Institute of Justice.
- ⁸⁵ Stiegel (1997).
- ⁸⁶ Brandl et al.
- ⁸⁷ Stiegel, L. (1995). *Recommended Guidelines for State Courts Handling Cases Involving Elder Abuse*. Washington, DC: American Bar Association.
- ⁸⁸ Welfare and Institutions Code § 15600 et seq.
- ⁸⁹ Elder Justice Coalition, <http://www.elderjusticecoalition.com/legislation.htm> (accessed January 14, 2008).
- ⁹⁰ California Department of Aging (2005). *California State Plan on Aging 2005–2009*.
- ⁹¹ Uekert, B., Dancy, D., Peters, T., and Herman, M. (2006). *Policy Paper: A Report from the First National Meeting of the Elder Abuse and the Courts Working Group Meeting*. Williamsburg, VA: National Center for State Courts.
- ⁹² Uekert, B. (2006). *Results from a Needs Assessment Survey: Court and Judicial Needs in the Area of Elder Abuse*. Williamsburg, VA: National Center for State Courts.
- ⁹³ Uekert, B., and Dancy, D. (2007). *State Courts and Elder Abuse: Ensuring Justice for Older Americans*. Williamsburg, VA: National Center for State Courts.
- ⁹⁴ California Attorney General’s Crime and Violence Prevention Center, <http://www.safestate.org/index.cfm?navId=11> (accessed January 14, 2008).
- ⁹⁵ Brandl et al.

Chapter 3: Elder Abuse in the California Courts

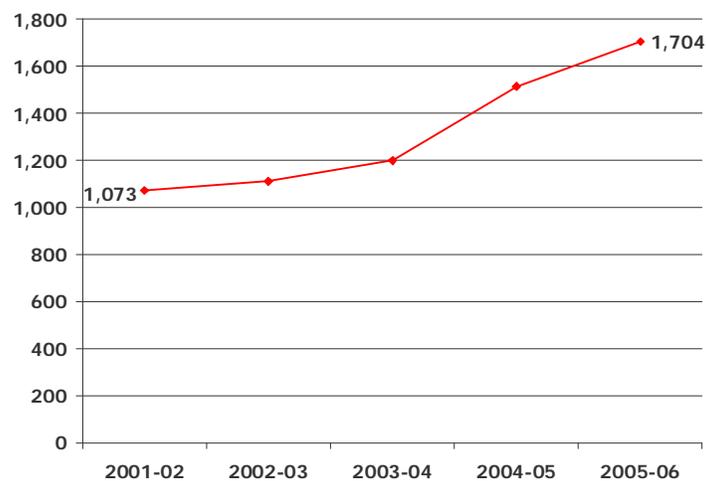
This chapter reviews what is currently known about the nature and extent of elder abuse in the California courts and highlights the results of a statewide survey on the court response to elder abuse.

Administrative Data

As discussed in Chapter 1, there is a dearth of information, particularly statistical data, on elder abuse in the courts; California is no exception. Some acts that constitute elder abuse also may be committed against younger people and it is not possible to break out court filings by victim age. Additionally, although there is a dedicated penal code section for elder abuse, criminal filings are not reported at a sufficient level of detail to identify those cases. Nonetheless, some limited data available is at least suggestive of the extent to which elder abuse is entering into the courts and the trends the courts will be seeing in the future.

The Elder Abuse and Dependent Adult Civil Protection Act set forth a provision for abused elders and dependent adults to obtain protective orders, resulting in the development of form EA-100, *Request for Orders to Stop Elder or Dependent Adult Abuse*. Because courts are reimbursed for the cost of processing these cases on a per filing basis, the AOC makes quarterly requests to the courts to report on the number of EA-100 petitions filed. Between fiscal years 2001–2002 and 2005–2006, the number of EA-100 filings statewide increased 59 percent (see Figure 2).

Figure 2: EA-100 Filings, FY 2001–02 to 2005–06



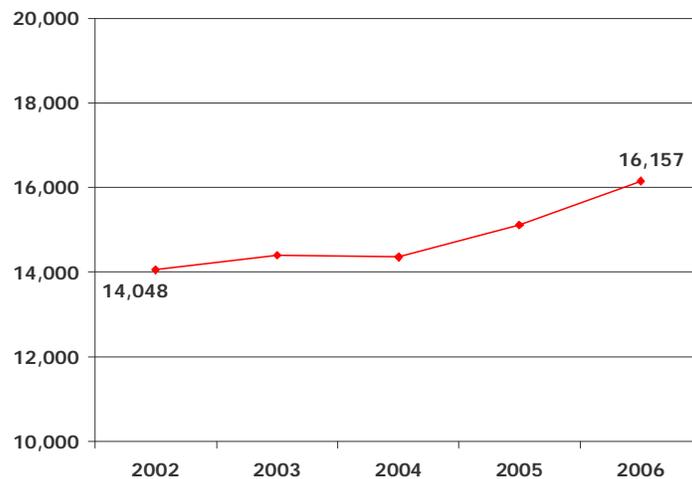
Source: Administrative Office of the Courts quarterly surveys

Although these figures are generally indicative of the courts seeing more cases of elder abuse over time, they must be interpreted with caution, for a few reasons. The numbers include petitions filed by dependent adults as well as by elders (although it is likely that the majority of these filings are made on behalf of elders). Not all courts responded to the AOC quarterly surveys; it is not known whether the lack of response was due to no EA-100 petitions having been filed or for some other reason. Therefore, it is possible that the survey data underestimated the number of elder abuse restraining orders filed.

It came to the attention of the research team in the course of site visits that some abused elders were filing regular domestic violence restraining orders (or, in some cases, civil harassment restraining orders), rather than elder abuse restraining orders. This may be the reason for the wide variation in the number of EA-100 filings; in fiscal year 2005–2006, no EA-100 petitions were filed in some counties, and as many as 300 or more were filed in other counties. This variation still exists, even taking into account the size of the county’s elderly population; the rate of filings per 10,000 residents ages 65 and older ranged from a low of zero to a high of more than 400, with the higher rates concentrated mostly in smaller counties. The overall EA-100 filing rate for the state was 5 per 10,000 elderly residents.

Because the probate court, by virtue of the population subject to its proceedings, tends to see the highest concentration of elder abuse cases (that is, elder abuse cases represent a higher proportion of probate court cases than cases heard in other departments), it is also informative to examine data related to probate conservatorships. Not all conservatorships involve abused elders; however, a court file review conducted as part of this study revealed that in nearly half of cases, the petition contained allegations of abuse or neglect of the proposed conservatee or the court investigator suspected abuse or neglect, and in an additional 20 to 25 percent of cases there was some other indication of abuse or neglect in the court file. Thus, the conservatorship data can provide at least a general sense of the potential for elder abuse to enter into the courts.

Figure 3: Conservatorships Under Court Control, 2002–2006



Source: Administrative Office of the Courts, Probate Conservatorship Task Force Survey. Note: Figures represent the 32 courts that were able to report data for all years.

To support the development of its report and recommendations, the Probate Conservatorship Task Force conducted a statewide survey asking the courts to provide data related to their conservatorship operations. Not all courts were able to provide data, particularly historical data, and in some cases they provided estimates rather than actual numbers. For fiscal year 2005–2006, a total of 53 courts reported 5,600 petitions filed for general (permanent) conservatorship. Among the 39 courts that reported data for all fiscal years between 2001–2002 and 2005–2006

(which accounted for 83 percent of all filings reported for 2005–2006), the number of petitions filed remained relatively stable across the five-year span. However, the number of conservatorships under court control (counted as of June 30 of each year) has seen a steady increase during the same time period. Among the 32 courts that were able to report data for all five years, there was a 15 percent increase in the number of conservatorships under court control (see Figure 3); these courts represented 42 percent of the nearly 39,000 conservatorships reported by 50 courts in 2006.

Court File Review Data

In order to better understand the characteristics and needs of abused and neglected elders who come before the court, as well as the challenges courts face in serving them, the research team conducted court file reviews in two of the study court sites. Because each study court's elder abuse initiative had a slightly different focus (to be more fully described in the next chapter), the subject of the file review differed by site. In Alameda County the review focused on elder and dependent adult abuse restraining orders, while in San Francisco County it focused on probate conservatorships. The conservatorship file review includes characteristics and case information for both abused and nonabused elders. Although the data are from only two counties and therefore cannot be considered representative of the state, they do provide a general indication of the types of litigants and cases the courts are likely to see—and in the absence of other available data, they represent an important step forward in better understanding this population. (For the full results of the court file reviews, see Appendix B.)

Characteristics of elderly litigants. In both Alameda and San Francisco counties, cases were more likely to involve women than men. In the restraining order cases, around three-quarters (74 percent) of petitioners were female; in the conservatorship cases, more than two-thirds (68 percent) of conservatees were female. These figures are consistent with the more general elder abuse data in the literature. In more than half of cases in both counties, the elders were more than 80 years of age (see Table 2), perhaps reflecting the growth, and growing vulnerability, of this population of the “oldest old.”

The vast majority of restraining order petitioners (81 percent) lived in their own homes; this finding is consistent with the general elder abuse literature, which posits that most abuse occurs in a domestic setting. Conservatees were most likely to live in their own homes as well, but compared to restraining order petitioners, a much larger proportion (45 percent) of them lived in a nursing home or assisted living facility, which is not surprising given that the reason for conservatorship is often related to the elder's frailty or lack of capacity. In both counties, elders living in private residences were more likely to live with others (for example, a family member or caregiver) than to live alone. Because isolation is considered a risk factor for elder abuse, it may be the case that abused elders who live alone do not have their cases reported to the appropriate authority and therefore never come before the court.

Table 2: Age of Elderly Litigants

	Alameda: Restraining Order Petitioners		San Francisco: Proposed Conservatees	
	N	%	N	%
64 or younger	3	5%	1	2%
65 to 69	6	11%	5	11%
70 to 74	9	16%	3	6%
75 to 79	9	16%	10	21%
80 to 84	14	25%	13	28%
85 to 89	7	12%	10	21%
90 or older	3	5%	5	11%
Unknown	6	11%	0	0%
TOTAL	57	100%	47	100%

Note: Percentages may not sum to 100 due to rounding.

Other information available in the court files is indicative of the needs and vulnerabilities of elders coming before the courts. In both restraining orders and conservatorships, more than three-quarters of cases had outside agency involvement, most often from APS or law enforcement. Many proposed conservatees needed to be conserved because they were at risk for undue influence or had a sudden physical impairment. Although the information was not systematically available in the restraining order files, it was not uncommon to see evidence of petitioners with physical disabilities, memory loss, or cognitive impairment.

Details of abuse. As previously mentioned, in nearly half of the conservatorship cases reviewed there were either allegations of abuse in the petition or suspicions of abuse by the court investigator. Taken together with other indicators of abuse available in the court file, as many as 70 percent of conservatees may have been abused or neglected. Obviously, abuse was alleged in all of the restraining order cases. What is known about the nature of the abuse or neglect is outlined below. To facilitate generalization and comparison between case types, discussion of self-neglect is excluded, as it was only explored in the context of conservatorships.

It was not uncommon—though much more likely in restraining order cases than in conservatorship cases—for abused elders to experience more than one type of abuse. Financial abuse was most likely to be an issue for proposed conservatees, while emotional abuse was predominant in restraining order cases. Overall, financial and emotional/psychological abuse were the most common allegations across case types. Physical abuse was alleged in one-third of restraining order petitions but in only a single petition for conservatorship. A hard-to-categorize phenomenon that occurred in a handful of restraining order cases was the presence or behavior of the alleged abuser in the elder’s home putting the elder at risk for eviction or other housing problems.

In both restraining order and conservatorship cases, family members, especially adult children, represented the vast majority of alleged abusers. Alleged abusers were more likely to be male

than female. Because a case manager provides assistance in elder abuse cases in Alameda County, some additional information on alleged abusers was available in the case files. In three out of five (60 percent) cases, there was evidence that the party to be restrained had some kind of social problem, most commonly substance abuse issues or a criminal history.

Other case characteristics. In the restraining order cases, around half (49 percent) of petitioners were self-represented at the time of filing. Counsel was appointed to represent more than half (57 percent) of proposed conservatees. In both Alameda and San Francisco counties, files were reviewed for evidence of the elder’s involvement in other case types. Overall, multiple cases were relatively uncommon, but because they may require coordination between different departments, they merit some attention. For one in six (16 percent) restraining order petitioners, there was involvement in other cases, most commonly criminal. Around one in ten (9 percent) proposed conservatees was involved in another case, most likely involving restraining orders (domestic violence or elder abuse).

Statewide Survey on Court Response to Elder Abuse

In order to supplement the in-depth examination of the four study courts’ specialized responses to elder abuse and to paint a picture of the extent to which practices for addressing elder abuse have been adopted by courts throughout California, the project included a statewide survey on the court response to elder abuse. Many of the questions on the survey were based on the ABA’s *Recommended Guidelines for State Courts Handling Cases Involving Elder Abuse* (ABA guidelines), which is somewhat of a seminal document in terms of laying out best or promising practices in the area of elder abuse and the court. All courts responded in some way to the survey request; however, two small courts requested not to complete the survey because they had encountered few, if any, elder abuse cases, and would not be in a position to respond meaningfully to the questions. The survey results below represent the responses of the 56 courts that were able to respond to the questions. (For the full results of the statewide survey, see Appendix C.)

Calendaring and case management. Direct calendaring—assigning a case to a single judicial officer from filing (or a stage very early in the case) to disposition—is viewed as beneficial in that it allows the court to become familiar with the details of the case and may result in a case moving more quickly through the system. Direct calendaring may be a useful practice in elder abuse cases, which tend to be complex and often need to be resolved quickly because of the elder victim’s declining health. Nearly two-thirds (64 percent) of responding courts reported having some direct calendaring of cases involving elder abuse. Those courts do direct calendaring in a variety of case types, of which probate conservatorship and restraining order cases are most common.

Under the category of Intra-Court Coordination, recommendation 18 of the ABA guidelines states, “Further study should be given to the concept of consolidation of the courts handling cases involving elder abuse....” Along those lines, a set of questions was included on the survey to assess how many courts had a specialized or consolidated calendar and, if so, what case types those calendars encompassed. Relatively few courts (16 percent) had some kind of specialized or dedicated calendar exclusively for cases involving elder abuse. Among the courts with specialized calendars, restraining order petitions were the most common matters heard. About

half of those courts also heard probate conservatorship cases involving elder abuse on their specialized calendars.

Also under the category of Intra-Court Coordination, recommendation 17 of the ABA guidelines states, “Courts must develop ways of ensuring that judges become aware of cases involving older abused persons that might be underway [sic] simultaneously in different divisions or that might previously have been heard and have some influence on a current case.” In the statewide survey, courts were asked whether they had a process in place to identify such related cases. Fewer than half (46 percent) of responding courts had some kind of process to identify whether elderly litigants were involved in any other related cases.

In the course of site visits to study counties and stakeholder interviews, the research team discovered that elder and dependent adult abuse restraining order petitions (form EA-100) were heard in different departments or on different court calendars. As a result, a question on the survey was designed to assess where these restraining order cases were most often heard. Most courts (70 percent) reported hearing EA-100 petitions primarily on one calendar, although one-quarter reported hearing them on a variety of calendars (not shown). EA-100 petitions were most commonly heard on domestic violence calendars (38 percent), followed by family law (27 percent) and probate (23 percent) (see Table 3).

Table 3. Calendars/Departments That Hear Elder Abuse Restraining Orders

	N	%
Domestic violence	21	38%
Family law	15	27%
Probate	13	23%
General civil	8	14%
General restraining order calendar	5	9%
Specialized elder abuse calendar	3	5%
Criminal	2	4%
Law and motion	2	4%
Other	2	4%
Missing	3	5%
TOTAL	56	100%

Note: Percentages do not sum to 100 because more than one calendar/department could be selected.

Services and accommodations. Elder abuse victims have unique needs—including but not limited to age-related health conditions—that may need to be addressed in the court setting. Courts were asked about the services or accommodations available to elders who must appear in court. ABA guidelines related to the services about which courts were asked are outlined below:

Category: Judicial Administration and Case Management

- *Recommendation 4.* Courts should provide accommodations for persons with physical and mental deficiencies and, if necessary, hold hearings in cases involving elder abuse in the setting that best accommodates the needs of the abused older person.
- *Recommendation 5.* Courts should recognize that the capacity of older persons may fluctuate with the time of day, medications, etc., and should be flexible in scheduling hearings to accommodate those individual variations.
- *Recommendation 6.* Courts should expedite cases involving elder abuse on the calendar.

Category: Implementation of Procedural Innovations

- *Recommendation 15.* Further analysis and study should be undertaken of the ramifications of courts taking steps when necessary to reduce the level of fear experienced by an older person who is testifying against his or her abuser, such as allowing the hearing to be held in a less confrontational setting, allowing testimony and cross-examination of the older abused person by videotape or closed-circuit television, and closing the courtroom to the public.

Most courts (89 percent) reported providing some kind of special service or accommodation. The most commonly provided services or accommodations were assistive listening devices (84 percent), foreign language or American Sign Language interpreters (75 percent), and allowing for telephonic appearances (68 percent). The provision of assistive listening devices was likely so common because such accommodations are covered under the Americans With Disabilities Act and California Rules of Court, rule 1.100, and are therefore more broadly applicable than just in elder abuse cases. Similarly, the provision of interpreters is mandatory in criminal and domestic violence cases, which make up a substantial portion of elder abuse cases, so it is not surprising that interpretation is such a commonly provided service.

Many courts also reported expediting elders' cases or giving priority to their cases on the calendar (41 percent), allowing elders to take frequent breaks during hearings (36 percent), expediting the process for obtaining temporary restraining orders (32 percent), and holding hearings at times of day when elders have the greatest capacity to participate, such as allowing for flexible scheduling or designating special calendar times for elders (23 percent). Some accommodations, like medical equipment or transportation to hearings, may be less common because outside organizations (for example, victim assistance programs) take responsibility for providing them.

Although not addressed by a specific recommendation in the ABA guidelines, a theme that cuts across recommendations is the need for services for self-represented litigants involved in elder abuse cases, including assistance with completion of court forms and other relevant documents and linkage to social services and other community organizations. Courts were asked what services were available to self-represented elders, as well as to family members or caregivers who may be assisting them. The question focused not on what services the courts provided specifically but on what services were generally available, regardless of the setting in which they were provided. At least one-quarter of courts reported the availability of all of the services listed on the survey. The most commonly available services were individual assistance in filing restraining order petitions (84 percent); written materials, such as forms instructions or

informational pamphlets (82 percent); referrals to community, legal, or social services (80 percent); and explanation of the court process or procedures (73 percent). Explanation of the court process is closely related to recommendation 23 of the ABA guidelines (under the category Assistance from Victim/Witness Advocates and Court Staff), which states that “court staff should help explain and demystify the court process for older abused persons who may be intimidated or confused, or who may have some type of mental or cognitive disability.” Less commonly available services included workshops or clinics on petitioning for conservatorship (25 percent), assistance from volunteer attorneys (30 percent), and in-court assistance and support (34 percent).

Although the ABA guidelines advise against the use of alternative dispute resolution (ADR) in cases involving elder abuse until it undergoes further study, interviews with the courts and their justice partners suggested that, given careful consideration of the underlying case issues and dynamics, there are some circumstances in which ADR may be beneficial. More than half (54 percent) of courts reported that when an elder abuse case involves underlying family disputes or family dysfunction, which is often the case, they will make referrals to mediation or other forms of ADR. Among courts that do so, referrals to ADR are most commonly made in probate conservatorship (67 percent), family law (50 percent), or elder abuse and domestic violence restraining order cases (47 percent each) (see Table 4). ADR is not as common in civil fraud or criminal cases, case types for which, on the surface, ADR may not seem appropriate.

Table 4. Referrals to Alternative Dispute Resolution (ADR)

	N	%
<i>In elder abuse cases involving family disputes, are parties referred to ADR?</i>		
Yes	30	54%
No	15	27%
Don't know	10	18%
Missing	1	2%
TOTAL	56	100%
<i>If yes, for which case types?</i>		
Probate conservatorship	20	67%
Family law	15	50%
Elder and dependent adult abuse restraining orders	14	47%
Domestic violence restraining orders	14	47%
Civil/financial abuse	4	13%
Criminal	2	7%
TOTAL	30	100%

Note: Percentages may not sum to 100 due to rounding.

The ABA guidelines promote the availability of victim/witness advocates to assist the elderly in court. Specific recommendations addressed by the statewide survey questions are outlined below:

- *Recommendation 21.* Victim/witness advocates should be available and involved in assisting older abused persons throughout the judicial process in both noncriminal and criminal court proceedings.
- *Recommendation 22.* All victim/witness advocates should be trained about the dynamics of elder abuse and about the APS system and other aging network services available to assist abused older persons. Additionally, there should be an elder abuse specialist at every victim/witness program.

In more than one-third (38 percent) of counties, courts reported that there were victim/witness advocates who specialize in elder abuse available to assist elderly litigants. It is important to note, however, that despite the lack of specialization in some counties, victim/witness advocates are nonetheless able to provide assistance to elders. In more than half of the counties where there is such specialization, the advocates assist elders in both criminal and noncriminal matters.

Because the dynamics of elder abuse cases can be complex, it may be beneficial to solicit outside expertise to assist the courts in understanding medical, social, psychological, and/or financial issues involved in a case. Most courts reported involving some type of outside expert in elder abuse cases, most commonly to perform capacity assessments (43 percent). This is closely related to recommendation 7 of the ABA guidelines, which states, “Courts should use expert witnesses, evaluators, guardians *ad litem*, court investigators, court visitors, or interdisciplinary teams who are trained and knowledgeable about the problems of older persons to assess the older person’s capacity.” Given the frequency with which capacity is an issue in probate conservatorship cases, it is not surprising that the courts most commonly use outside experts in this context.

Other common ways in which the courts involve experts are to provide medical opinions and to perform psychological evaluations (38 percent each). Assessing for undue influence (18 percent) and analyzing forensic evidence (13 percent) were less common roles for outside experts. Courts also mentioned using experts in cases involving financial issues—for example, to evaluate an investment portfolio. Additionally, one court reported involving outside experts not in individual elder abuse cases but as members of its advisory committee.

Also related to recommendation 7 of the ABA guidelines, courts were asked to what extent local community elder abuse multidisciplinary teams (MDTs) provided the expertise discussed above. More than one-third (38 percent) of courts reported that MDTs did not provide such expertise, and many other courts (21 percent) were unaware of whether MDTs provided it. Financial abuse specialist teams (FASTs) were most likely to provide expertise in elder abuse cases (see Table 5). Although APS is not an MDT, many courts nonetheless mentioned that APS does provide expertise in elder abuse cases. Overall, the results suggest that the courts may have limited awareness of multidisciplinary elder abuse teams in their communities.

Table 5. Types of Multidisciplinary Teams Providing Expertise

	N	%
MDTs do not provide expertise	21	38%
Types of MDTs providing expertise:		
Financial abuse specialist team (FAST)	12	21%
Vulnerable adult specialist team (VAST) or other team with a medical focus	6	11%
Elder death review team	4	7%
Elder abuse forensic center	1	2%
Other	7	13%
Don't know	12	21%
TOTAL	56	100%

Note: Percentages do not sum to 100 because more than one category could be selected.

Orders after hearing and compliance. Because the dynamics of elder abuse cases are unique, courts may need to consider special provisions when making orders in these cases. For criminal courts, the ABA guidelines (recommendation 13) propose, “Courts should ensure that plea agreements meet the needs of the older abused person, including protection from further abuse, and be willing to be creative in negotiations and sentencing, exploring the alternatives available to the abused older person.” Because courts ultimately will be making orders in elder abuse cases in civil as well as criminal contexts, the survey question was broadened to address considerations when making court orders in all case types.

Table 6. Special Provisions Considered When Making Orders in Elder Abuse Cases

	N	%
No special provisions	16	29%
Restitution or return of property	28	50%
Batterers' intervention program for abuser	26	46%
Substance abuse treatment for abuser	23	41%
Mental health treatment for abuser	20	36%
Supervised visitation for elder and abuser	16	29%
Specialized visitation schedule for elder and abuser	14	25%
Respite care for elder	3	5%
Other	5	9%
TOTAL	56	100%

Note: Percentages do not sum to 100 because more than one category could be selected.

Most courts (71 percent) reported considering at least some special provisions in elder abuse cases. The most common provision was restitution or return of property (50 percent), which is not surprising, as that is a common practice for many case types (especially criminal), not just for elder abuse cases. Courts were also very likely to consider a range of counseling or treatment

options for the abuser, including batterer's intervention programs (46 percent), substance abuse treatment (41 percent), and mental health treatment (36 percent). One-quarter or more of courts made orders with respect to visitation between the elder and the abuser, specifically supervised visitation and specialized visitation schedules (see Table 6).

In terms of monitoring or following up on elder abuse cases, by far the most commonly employed method was review hearings (57 percent). Many courts also reported monitoring compliance with conditions of probation or restraining orders (30 percent) or monitoring restitution (20 percent). Other types of monitoring volunteered by the courts included monitoring conservatorships, supervising probation, and requesting reports from court-appointed counsel. Somewhat surprisingly, nearly one-third (32 percent) of courts reported not employing any type of monitoring or case follow-up.

Community agencies and partnerships. Because elder abuse cases often involve not just legal problems but a complex web of health, social, and other issues, it may be beneficial for the courts to coordinate with justice partners and community agencies that deal with elder abuse and aging to most effectively address the range of issues that these cases present. The ABA guidelines include a set of recommendations pertaining to court coordination with other community resources. Recommendation 24 proposes that courts or the judicial branch as a whole encourage and support the development and operation of elder abuse task forces or coordinating councils, lend support to any existing task forces or coordinating councils, and encourage existing domestic or family violence task forces or coordinating councils to incorporate elder abuse into their agendas or include elder abuse advocates in their membership. The statewide survey included a set of questions to assess the extent to which courts are involved in these types of initiatives and other coordinated efforts with justice partners and community agencies.

Half of courts were not involved in any community partnerships or other activities related to elder abuse. Among those courts that were involved in such activities, community education and outreach on court services for elders (21 percent) was the most common, followed by participation on multidisciplinary teams (20 percent). Other court-community activities mentioned by the courts included partnerships with legal services, the establishment of an elder law center, and involvement in a Zero Tolerance for Domestic Violence initiative.

The agencies or service providers to which courts most frequently made referrals in cases involving elder abuse were the public guardian (63 percent), legal services (52 percent), and domestic violence shelters or programs (41 percent). Because these type of programs have the most concrete linkages with the court, it is not surprising that they received referrals so frequently. Other types of agencies or service providers to which courts made referrals included APS, regional centers, fair housing, and consumer watchdog groups. In a separate question, courts were asked whether their personnel made referrals to APS, law enforcement, or the Long-Term Care Ombudsman if elder abuse was suspected. Three-quarters of courts reported doing so.

Overall, courts received referrals *from* outside agencies less often than they made referrals *to* outside agencies. The agencies that most often received referrals from the court were generally the same as the agencies that most often made referrals to the court. Other types of agencies or

service providers not listed on the survey that made referrals to the courts included victim/witness advocates, fair housing, and consumer watchdog groups.

Training. Because elder abuse awareness is fairly low overall and because it is something of an emerging issue for the courts, it will be important for judges and court staff to receive training to recognize and appropriately respond to elder abuse. The first two recommendations in the ABA guidelines relate to the need to provide training to both judges and court personnel on issues related to elder abuse. Courts were asked about the elder abuse–related topics for which there was the greatest need for training. Separate questions were asked of judicial officers and court staff because training needs may vary by court function. It is important to note that one court representative responded on behalf of all judicial officers and court staff, so responses represented general court needs, rather than needs expressed by specific individuals.

For judges, by far the greatest area of need for training was on state laws concerning elder abuse (46 percent). Other common topics of interest included capacity issues (30 percent), community resources (29 percent), and crafting restraining orders and sentencing options (29 percent). For court staff, the most needed areas of training were communicating with individuals with capacity issues (57 percent), types of cases involving elder abuse (55 percent), and case management and procedural innovations (43 percent). Despite the complex dynamics of elder abuse and aging in general, not as many courts were interested in training on undue influence and the physiological and social aspects of aging.

Other court practices in elder abuse cases. At the end of the survey, courts were asked a very general, open-ended question about whether they had adopted any other practices or were participating in any other initiative related to elder abuse and elder needs. Some of those practices are highlighted below:

Calendaring and Case Management

- Domestic violence restraining orders for persons over 70 heard in probate court;
- Mandatory settlement conferences for all contested conservatorship cases; and
- Special stamp for complaints generated by child and elder abuse unit in district attorney’s office.

Services and Accommodations

- Elder clinic offered in the courthouse three days a week;
- Development of outreach program to assist elders in navigating the court system; and
- Pro bono mediation program.

Community Agencies and Partnerships

- Court participation on real estate fraud advisory team (elders vulnerable to refinancing schemes and improper reverse mortgages); and
- Court coordination of continuing legal education for pro bono attorneys in areas including elder abuse, real estate law, and homeowner association law.

Conclusion. The results of the statewide survey on the court response to elder abuse indicate that California courts have made some important strides in addressing the needs of abused and

neglected elders who come before the courts but also that there is room for improvement in and expansion of these efforts. Overall, the positive steps courts have taken reflect more general trends in the courts—for example, direct calendaring and including special provisions in court orders that are tailored to the circumstances of the case. Courts also seem to be performing well in the area of services for self-represented litigants, in part because that has become a big priority for the judicial branch. The expansion of self-help services beyond the family law arena holds promise for addressing elder abuse and related issues.

Some of the areas in which the courts could improve tend to be more related to the specific, unique dynamics of elder abuse cases and the parties involved. Courts are not often involved in collaborations or community partnerships with other agencies that encounter elder abuse, and their awareness of and coordination with MDTs is limited. Other areas in which the courts could enhance their response to elder abuse, such as case monitoring and follow-up activities and specialized calendars, are likely affected by limited resources in the courts. As noted in the results of the NCSC needs assessment survey, courts may simply not have the luxury of devoting time and attention to a particular case type, especially when it may not represent a large proportion of the court's caseload.

Chapter 4: Study County Profiles

In addition to gathering statewide information on the court response to elder abuse, another part of the study focused on four courts that had adopted, were otherwise involved in, or expressed an interest in developing some kind of specialized program, service, or other court practice to address elder abuse. Their participation in the study allowed for an in-depth examination of the development and operation of court-based or -related initiatives, which will provide other California courts with models for replication and highlight considerations for program development.

The research team made site visits to each of the four study counties—Alameda, Orange, San Francisco, and Ventura—to conduct interviews with judicial officers, court staff, justice partners, and other key stakeholders; observe court and program operations; and review court files. For each of the four study counties this chapter provides the following.

- Background information on the court and the community, including key statistics related to the elderly population and elder abuse (See Appendix D for complete statistical profiles for each county);
- A description of the elder abuse program or initiative in which the court is involved, as well as any notable specialized practices that may be independent of an overall program; and
- An overview of key issues or trends impacting the court or the community.

Alameda County

Background. According to the 2000 U.S. Census, Alameda County elders made up about 10 percent of the total county population.⁹⁶ Alameda County’s elder population is projected to grow significantly, more than 72 percent by 2020.⁹⁷

Census figures showed that about 26 percent of elders lived alone in a nonfamily household arrangement. Nearly half (43 percent) of the county’s elders reported having at least one disability⁹⁸, with physical disabilities representing about one-third of all reported disabilities.⁹⁹ Having a disability makes elders dependent upon others for daily care, and at the same time it makes them potential targets for abuse. There were 2,187 conservatorships under court control in Alameda County in 2006, according to a survey conducted by the Probate Conservatorship Task Force at AOC. According to AOC records, in fiscal year 2004–2005, there were 264 EA-100 petitions filed, the highest in the state.

In 2006, APS handled an average of 449 active cases per month.¹⁰⁰ According to the 2000 U.S. Census, 22 percent of owner-occupied housing in Alameda County was occupied by elders.¹⁰¹ However, at the same time, 8 percent of elders lived below the poverty level.¹⁰² In this “house rich, cash poor” county, with high property values, 38 percent of reported abuse was financial, according to APS.¹⁰³

Overview of elder abuse initiatives. In September 2003, Judge Julie Conger instituted an initiative aimed at addressing the needs of abused elders in Alameda County. With a seed grant of approximately \$135,000 provided by AOC, Judge Conger instituted a variety of innovative

components in her courtroom, including case management, community partnerships, community program referrals, and outreach services. The program expanded after the grant ended, and the Elder Protection Court (EPC) was created in four separate court locations in Alameda County (in the cities of Oakland, Hayward, Pleasanton, and Fremont). Judge Conger hears elder abuse cases on a criminal calendar in Oakland. Commissioner Tom Nixon hears elder protection court cases in Fremont, Judge Henry Needham, Jr., in Hayward, and Commissioner Elizabeth Hendrickson in Pleasanton.

The EPC in Alameda County consists of a variety of creative court initiatives that successfully address the needs of abused elderly litigants. They include the following:

- Collaboration with system partners that provide legal and social services related to elder abuse;
- Development of procedures to identify, track, investigate, manage, and refer cases involving elder abuse, and provision of elder abuse case management to those cases flagged for potential elder abuse;
- Improvement in access to the court and court filing procedures for senior adults involved in elder abuse cases; and
- Creation of a service referral system through the case manager (service providers communicate with the court and vice versa).

Collaboration with system partners. At its inception, the EPC established vital relationships with other system partners, including APS, the victim/witness program at the Alameda County District Attorney's office, and Legal Assistance for Seniors (LAS). The EPC established protocols on how criminal information would be shared among the system partners.

At the district attorney's office, there are two deputy district attorneys in the Real Estate Fraud Unit who work closely with the EPC. According to the deputy district attorneys in that unit, approximately 50 percent of victims of real estate fraud in Alameda County are elderly. The units in the district attorney's office have vertical assignments, meaning that one person is assigned to a case (and is responsible for it) from the initial filing through prosecution and case closure, which also allows for charging discretion and for the sense of continuity, which is comforting to elders. The partnership established between the EPC and units in the district attorney's office has resulted in greater access to appropriate information, increased prosecution of large-scale scam and fraud criminals, and restitution possibilities that did not exist for elder litigants before the EPC.

A senior elder abuse consultant works for the victim/witness program at the district attorney's office; there are only four other positions like it in the nation. The senior elder abuse consultant is responsible for addressing the immediate needs of elder litigants by providing interpreters, orientation to the criminal justice system, notification of friends and others, transportation (to and from court and/or hospital), and necessary resources (such as emergency housing needs, food banks, shelters, and house cleaning services). The consultant receives case referrals from APS, the district attorney's office, the court, and LAS.

LAS serves Alameda County as well as other counties on a limited basis. The court usually appoints an LAS attorney when a public defender has a conflict of interest and no other options are available. LAS attorneys receive cases from the EPC case manager (in the form of a restraining order petition) as well as from APS. The restraining order cases usually involve a variety of complicated issues, such as Housing and Urban Development (HUD) violations, mental health issues, and substance-abusing children (who feel entitled to their parents' property or assets). HUD cases typically involve an adult child who visits his or her parent at HUD senior housing and will not leave. This threatens the senior's housing opportunity since HUD senior housing is limited only to the elderly and does not allow occupancy by other tenants. These cases require immediate action to obtain restraining orders to protect the elder litigants. Cases with adult children who are the offenders usually require specialized services, such as supervised visitation or treatment services, since parents don't want to lose a relationship with their children. LAS attorneys work with the EPC case manager to help litigants obtain these services.

According to an LAS attorney, the EPC has reduced the duplication of work (for attorneys and investigators), has allowed confidentiality issues to be addressed (since everyone is clear on which information can be shared), has reduced the number of victim appearances, and is sensitive to elder victims.

Having all system partners, like APS and the victim/witness program, in a single court has been helpful to LAS, as well. The LAS office that Alameda collaborates with consists of two attorneys who take on approximately 225 elder abuse cases per year. The cases consist of referrals from APS and the EPC. They experience an increase in referrals around holidays, for example, Thanksgiving and Christmas. Some elder abuse cases never make it to court because they are settled outside of the court.

An Elder Access Committee meets quarterly and includes judicial officers, other court divisions, agency partners, and the legal community. Specifically, the other court divisions include the probate court investigator's office, the family violence team, the family law facilitator, the director of the mental health division (who also oversees family law), and the court interpreter's office. Some of the legal community members include Bay Area Legal Aid, Alameda County Family Violence Council, Alameda County Public Defender's Office, and volunteer legal services.

Development of procedures to identify, track, investigate, manage, and refer cases involving elder abuse and provision of case management to those cases flagged for potential elder abuse. There are five courts in Alameda County that can originate elder abuse cases. When a felony criminal case involving an elder is charged in the county, it is sent to Judge Conger, who handles all such cases. She notes that the networking facilitated by the EPC, in linking justice partners involved in the civil and criminal aspects of elder abuse, allows for a review of civil, probate, and protective order cases to determine whether criminal prosecution is appropriate.

Originally, two case managers were assigned; one was dedicated to elder abuse and the other to domestic violence cases. Since the domestic violence workload was substantially larger than the elder abuse caseload, the case managers were cross-trained and now work interchangeably. They are assigned to all of the court locations and manage both domestic violence and elder abuse

cases. The case managers facilitate the management of the domestic violence and elder abuse calendars. They conduct investigations and background checks on all incoming cases. After reviewing the pleadings, they create a cover sheet that summarizes the orders associated with that case (if any exist). They look at procedural history and proof of service, review criminal history, and provide all of this information to each corresponding judicial officer.

Case managers attend the court calendars to inform bench officers about criminal history and allegations appearing in the pleadings and to summarize orders. When a criminal charge is involved in the case, the case managers check for criminal protective orders. If orders exist, they are printed and brought to court.

One of the case managers' most important functions is the assistance they offer litigants through service referrals and help with court documents. Case managers maintain a list of services to which they refer clients. The list includes services such as self-help, legal agencies, batterer's intervention programs, and shelters. Case managers help litigants with paperwork, regardless of whether or not they are representing themselves in court. Like mediators, case managers are neutral. Since many elder abuse cases involve families, it is often helpful to have a neutral party, such as the case manager, explain issues to each party.

The establishment of the EPC led to specialized calendars, which allow elder abuse cases to be heard at times that are sensitive to the elder litigants, around 11 a.m. Late mornings are usually more accommodating to elders' fluctuations in capacity. Elder abuse temporary restraining orders are issued immediately and are entered into the California Law Enforcement Technology System (CLETS). When an elder comes in for a temporary restraining order, a clerk gives the paperwork to Judge Conger, who reviews it immediately to determine whether the elder will leave with the restraining order in hand.

Three weeks prior to hearing the case, the case managers review cases to find whether there has been an APS report or other telling issues. Specifically, they investigate for:

- Parties' relationship;
- Contact services;
- Criminal background;
- Victim's age; and
- Lethality assessment

Most of the restraining orders have specific provisions, which may be a reason that people do not come back for future modifications; the initial orders are tailored to individual situations. They may include monitored visitation to allow parents limited yet critical contact with their adult children. This, in turn, saves the court money since resources aren't applied to the same individuals returning to court to modify their orders.

Improvement in access to the court and court filing procedures. If a restraining order is filed and it contains an allegation of domestic violence or civil harassment and the alleged victim is over the age of 60, the case goes to the case managers. Since there is no probate restraining order, any case with the need for a restraining order in probate court is sent to the case managers in the

EPC. Bench officers in the probate court often confer with bench officers in the EPC to determine whether cases would benefit from being heard there.

The work of the Elder Access Committee allows stakeholders to confer about how to transition cases from other departments (such as family law and probate) to the EPC when necessary. Cases do not have to be filed as elder abuse in order to be heard in the EPC. Court personnel have been trained to recognize elder abuse issues, and protocols have been developed to transfer the case to the EPC when necessary. The committee confers on more systemic issues, as well. It has investigated financial and trust seminars offered to seniors to ascertain whether they could potentially be fraud scams.

Creation of a service referral system. The court managers have lists of services— such as anger management, supervised visitation, and mental health—to which they can refer litigants. Aside from providing the information, the case managers sometimes meet with the service providers to learn more about the program and about any changes to it. Information about litigants’ progress with the referrals is sometimes captured on the case summary cover sheets, facilitating the judge’s ability to make informed decisions.

Issues and trends affecting the court and community partners. Currently the Superior Court of Alameda County is exploring a variety of methods for improving how resources are allocated since many divisions compete for the same court-related services. Some of the issues that are being considered are:

- Suggesting that the district attorney’s office allocate funds from the victim/witness program for elder abuse;
- Exploring mediation for elder abuse since often elder abuse is not simply violence but a feud between siblings annoyed at a perceived advantage involving money. This deems it more of a family systems issue and might be best resolved through mediation; and
- Exploring and addressing the increase in the number of power of attorney (POA) cases in the probate court. POAs may protect elders, but they may also grant sufficient authority to render an elder vulnerable to abuse. These cases need more attention and additional training in detecting potential elder abuse.

Orange County

Background. According to the *Conditions of Older Adults 2003 Report*, the Orange County elder population is undergoing significant growth. Between 1990 and 2000, the 65 and older population increased 15 percent in California as a whole, compared with 27 percent in Orange County. In addition, some of the county’s fastest-growing cities have higher-than-average percentages of older adults.

Other indicators suggest that many elders in Orange County are vulnerable to or have risk factors for abuse. Between 33 and 40 percent of Orange County seniors overall, and half of those ages 85 and older, live alone. More than one-third (38 percent) of seniors reported having at least one disability that limited their capacity to work or perform normal daily activities. More than one-quarter (27 percent) reported experiencing seven or more stressful events in the course of a year, which increases the chances for depression. Within the next 50 years, the number of Alzheimer’s

cases in Orange County is expected to grow 250 percent. A justice partner interviewed for the study noted an increasing number of elders who are “house rich and cash poor,” with little available income but a lot of equity in their homes, especially with the increase in property values in California.

APS received an average of 285 reports per month in fiscal year 1997–1998; by 2001–2002, the number of reports had reached 436 per month. (In an interview with APS in 2006, a program manager noted that they were receiving more than 500 reports a month.) The increase is attributed to “an aging population, increased community awareness, and the expansion of the types of abuse which must be reported.”¹⁰⁴ The number of crimes against elders and dependent adults prosecuted by the district attorney’s office increased as well; 64 cases were prosecuted in 2005 and 96 in 2006.¹⁰⁵

The court executive officer (CEO) in Orange County noted that these demographics and trends were what prompted the court and its partners to examine how they were serving the elderly population. This seems to be part of a larger movement to address the needs of the county’s elders. The Orange County government has recognized elders as a significant constituency. There is good support from community leaders. Senior communities have established advocacy groups, including legal advocacy. The CEO also noted that the county is fortunate to have well-supported community resource programs, and that the court and the community are very collaborative in general, as they see the benefit of connecting resources with service needs. In developing its response to elder abuse, the court has built upon a foundation of other collaborative court initiatives, including domestic violence courts, mental health courts, drug and DUI courts, and teen courts.

Overview of elder abuse initiatives. Highlighted below are key programs or practices adopted by the Superior Court of Orange County to address elder abuse. Also included are selected programs involving justice partners and community agencies that may be of interest to the court, in terms of their potential impact on cases coming before the court or their ability to provide expertise in elder abuse cases.

Model Program for the Unbefriended Elderly. The Orange County Public Guardian is underfunded and understaffed, and therefore unable to handle all referrals. Some elders do not have family members or others willing or able to act as conservator. Especially for elders with small estates or of otherwise limited means, it is often difficult to find someone to act as conservator or an attorney to represent the proposed conservatee. As a result, the supervising probate judge, in conjunction with several community partners, established the Model Program for the Unbefriended Elderly in 2004. Operating under the auspices of the Public Law Center, the program teams a volunteer attorney with a law student and an experienced private professional conservator (PPC) with a recent graduate of a PPC-credentialing program to handle cases pro bono.

The program accepts referrals only from APS or the ombudsman, and handles only uncontested conservatorships involving conservatees of limited means with minimal assets. Petitions handled by the program are flagged so the court is aware of the potential need to waive or defer filing and investigation fees. The teams assigned to cases attend training developed by the supervising

probate judge and a local elder law attorney with the Council on Aging, who also accepts referrals for and screens cases for entry into the program. Program stakeholders note that cases handled by the program get through the court process much more quickly than those handled by the public guardian.

Aside from the Public Law Center and the Council on Aging, the program involves several key community partnerships. The volunteer attorneys acting as mentors are from the Orange County Bar Association; law students working under them are from Chapman University School of Law. The conservators acting as mentors are from the Professional Fiduciary Association of California (PFAC), while their apprentices are graduates of the fiduciary credentialing program at California State University at Fullerton.

Probate court practices. The probate court has two judges assigned to probate and mental health cases, no commissioners, and three court-employed probate attorneys who act as temporary judges. The court also utilizes temporary judges from outside the court to handle settlement conferences. The judges preside over the trials and trial-setting conferences in conservatorship, as well as mental health cases. The probate court has a special calendar for cases involving the public administrator or public guardian; it also has a calendar specifically for appointments.

In an office of 150, there is one attorney in the public defender's office who is assigned to conservatorship cases. The public defender is appointed only if the proposed conservator is seeking exclusive medical authority with dementia powers and the proposed conservatee does not have his or her own private attorney. The public defender may be appointed in cases involving very wealthy conservatees; because of the potential for undue influence given competition for access to conservatee's assets or estate, an objective perspective is required. The public defender is assigned to cases involving financial abuse by children, in order to get funds back into the conservatorship estate, or to cases in which the public defender is also acting as counsel in a criminal case.

Some conservatorship cases involve disputes among family members who may have filed competing petitions for conservatorship. In these types of cases the court may appoint county counsel to be a neutral party to the case. According to the public guardian, in some cases more time is spent dealing with family dysfunction than with the conservatee. (Coincidentally, two of the court's probate attorneys also noted that they tend to see more family dysfunction than elder abuse.) The public guardian estimates that it receives 40 to 50 referrals per year from the court; many concern threats to the conservators, so they involve county counsel more than the public guardian.

The court sometimes appoints guardians *ad litem* to conservatees. It also obtains the input of experts to investigate issues in conservatorship cases, using its authority under Evidence Code § 730. One source of such expertise is the Orange County Elder Abuse Forensic Center; it provides HAPS reports (HAPS is an acronym for Health Assessment Program for Seniors), which can assess elders for capacity, undue influence, or the potential for fraud.

The public guardian and county counsel both note that recently they have seen more collaboration with respect to probate proceedings than in the past. They note that it saves time to

have everyone in the same place, information sharing is easier, agencies know whom to call for help, and in general, operations are more efficient.

Elder abuse restraining order case processing. Hearings on elder abuse restraining orders are heard on a family law calendar. All of these cases are heard by a single judicial officer. Presiding over a family law calendar, this commissioner saw elder abuse cases “dribbling” into the court and noticed that other judges were uncertain about how to handle the cases; therefore, he offered to take on all of the elder abuse cases. These cases usually come to the attention of the court by the police or APS. The commissioner estimates that three-quarters of the elderly he sees are self-represented. Coincidentally, he also has experience presiding over a self-represented litigants calendar and believes it provided him with guidance for dealing with elder abuse cases because of the overlapping issues.

The commissioner who presides over the elder abuse cases may appoint attorneys as guardians *ad litem* or Evidence Code § 730 experts, most often when there are competency issues. He may also appoint a guardian *ad litem* for the respondent, especially if that person is mentally ill; he will try to get the respondent linked to services. Like a probate judge, he also occasionally orders HAPS reports from the forensic center.

Elder abuse cases are given priority on the calendar so elders do not have to wait unnecessarily in the courtroom. In addition, the commissioner will make other special accommodations for elders. He offers the option of making a telephonic appearance, though no one had opted to do so as of the time of the study. He will also travel to the elder, something that happens less often than he anticipated. If the purpose of the hearing is for the petitioner to request a reissuance of the temporary restraining order due to inability to serve the respondent, he advises the petitioner to send someone else, such as a family member or social worker, to court on his or her behalf.

Elder Abuse Forensic Center. The Elder Abuse Forensic Center of Orange County implements a collaborative intervention and investigation process, involving several agencies that are colocated and meet once a week at APS offices. Their objective is to promote collaboration to respond effectively to elder abuse, including identifying appropriate services and courses of legal actions on cases and, where appropriate, facilitating prosecution.¹⁰⁶ The forensic center developed as an extension of the Vulnerable Adult Specialist Team, which consisted mainly of physicians and psychologists when it began. Over time, different stakeholders including APS and the ombudsman were added. Because the team confronted problems in the field that they were unable to address, they brought in law enforcement and obtained a grant to set up the forensic center. The forensic center is also involved in providing Police Officer Standards Training on elder abuse, and its director has provided training to the Washington state judiciary on elder abuse issues.

Participants in the forensic center include Older Adult Services, law enforcement, the district attorney, the public guardian, APS, the ombudsman, domestic violence advocates, and other community service providers, as well the University of California, Irvine School of Medicine’s Program in Geriatrics. APS, law enforcement, or the ombudsman can bring cases for presentation at the meetings, which include discussions of the elder’s service needs; medical conditions and possible diagnoses and avenues for treatment; and pursuit of legal options, where

appropriate. Meetings start with a review of existing cases and then move on to new cases. Cases are scheduled for discussion at the next meeting if they require additional follow-up.

A rise in cases reviewed by the district attorney's office coincided with the establishment of the forensic center.¹⁰⁷ The district attorney believes that a major benefit of the forensic center is to have experts available to explain the behavior of a witness—for example, why his or his testimony may be reliable in spite of memory lapses. In a National Institute of Justice assessment of the forensic center, the district attorney's office noted that its involvement in the center has helped it to better understand what a prosecution requires and the medical or forensic issues to be considered in elder abuse cases. Victim advocates believed that being affiliated with the forensic center gave them more credibility in dealing with elder abuse cases. The judiciary reported increased awareness of elder abuse cases.¹⁰⁸

District attorney's office. The district attorney's office has a Family Protection Unit that houses one deputy assigned exclusively to elder abuse cases. The elder abuse deputy, who handles physical, sexual, and financial abuse cases, noted that most of his current caseload involved family violence, whereas financial abuse seemed more prevalent in previous years. The deputy is responsible for cases from start to finish, a process known as vertical prosecution. The office has two victim advocates, one who works directly with the elder abuse deputy. Although there is an elder abuse specialist, several other units may become involved in elder abuse cases, including the financial crime, homicide, and sexual assault units. The unit that ultimately handles the case often depends on the type of expertise needed and the charges that can be proved. Nonetheless, the elder abuse deputy will still file charges if another unit takes the case. In elder abuse cases, the district attorney's office has around a 90 percent conviction rate.¹⁰⁹

Issues and trends affecting the court and community partners. Outlined below are selected issues and trends raised by the court and other stakeholders during the course of site visits that will in some way impact their ability to respond to cases involving elder abuse. Issues raised fell into three broad categories: awareness of and sensitivity to elder abuse, services and other resources, and challenges to court access and prosecution.

Awareness of and Sensitivity to Elder Abuse

- An APS manager commented that elder abuse is where family violence and child abuse were 15 years ago; a lot of education and outreach are needed; and
- A physician reported that some judges seem to think capacity is an all-or-nothing issue; there's a need to understand the gradations of capacity and the fact that capacity deficits may be temporary or reversible.

Service and Resource Issues: Availability, Scope, and Funding

- The fact that probate attorneys have to handle hearings while the judge handles trials points out that more resources are needed in the probate court;
- Legal aid cannot provide a lot of the services APS workers are seeking for their clients (though APS did not specify the types of services that were lacking);
- The public guardian anticipates a large increase in the number of investigations it is asked to perform as a result of financial institutions becoming mandated reporters of elder abuse. It fears it will be inundated with a caseload it is unequipped to handle; and

- Mental illness among the adult children of abused elders is a big challenge in the district attorney's caseload.

Challenges for Court Access and Prosecution

- Some elder abuse perpetrators, especially adult children of abused elders, are homeless, which makes it difficult to serve them with orders to show cause and temporary restraining orders. Cases may be continued as many as three or four times to allow for the respondent to be served;
- Prosecution is difficult when the abuser holds a power of attorney or some other type of authority over the elder because often there is a gray area between a bad decision on behalf of the elder and a criminal act; and
- Domestic violence and elder and dependent adult abuse restraining orders have different burdens of proof and make different remedies available, so it may be difficult to determine which type of restraining order petition to file. Although the elder abuse statutes provide for a lower standard of egregious conduct to issue protective orders, there is the impression that judicial officers do not have as much discretion to order the respondent to counseling and treatment under elder abuse restraining orders as under domestic violence restraining orders.

San Francisco County

Background. According to the 2000 U.S. Census, San Francisco County's elder population makes up almost 14 percent of the total county population, higher than the statewide average of less than 11 percent.¹¹⁰ San Francisco County's elder population is projected to increase by 43 percent by 2020.¹¹¹

In San Francisco County, about 30 percent of elders reported living alone in a nonfamily household, higher than the statewide average of around 25 percent.¹¹² Like Alameda County, San Francisco County has a high percentage—44 percent—of elders reporting at least one disability.¹¹³ Of those who were disabled, 30 percent had a physical disability, the most common type.¹¹⁴ San Francisco County had 11 percent of its elder population living below the poverty level.¹¹⁵ Another noteworthy point about San Francisco County was its lower-than-average proportion of married elders (41 percent married with spouse present compared with California's average of 50 percent) and higher-than-average proportion of never-married elders (12 percent compared with California's average of 4 percent).¹¹⁶ The 2000 U.S. Census also pointed out an interesting fact about San Francisco County in that elders held more than 30 percent of the aggregate housing value for the county compared with the state's average of 23 percent.¹¹⁷

The San Francisco APS handles an average number of 838 active elder cases per month, California's fourth highest number of cases and the highest in Northern California. APS statistics also indicate that the most commonly reported type of elder abuse was psychological/mental, accounting for 41 percent of confirmed abuse, and financial abuse the second most common type, making up 31 percent of cases of confirmed abuse.¹¹⁸

Overview of elder abuse initiatives. In September 2002, the Superior Court of San Francisco County launched an initiative aimed at improving access by elders to the Probate and Unified Family Courts. With a seed grant provided by AOC, Mary Joy Quinn, Director of the Probate Division, led an initiative that consisted of multiple innovative strategies. To assess critical

issues and to identify solutions, Ms. Quinn launched a variety of efforts: an assessment and inventory of what the court offered to the public; a review of all conservatorship cases, as well as a review of protective orders to determine the frequency and circumstances involving elders; individual and group interviews with court and community stakeholders; and a review of best practices. To foster relationships with the court community and to reach out to the public, she developed professional and public education campaigns, developed protocols designed to make appropriate referrals to private professional conservators, revised San Francisco's conservator resource directory, developed an abuse reporting system, enhanced the probate court section of the Superior Court of San Francisco County Web site, and developed a self-help clinic for conservators that provides information and court document assistance.

The needs assessment and public awareness campaign led to incredible initiatives aimed at addressing elder abuse. The Superior Court of San Francisco County was selected as a study court because of the successful mechanisms it has implemented to address elder litigant needs. The staff consists of six examiners, six investigators, two bench officers (one judge and one commissioner) and four or five clerical staff. The initiative's components include the following:

- Relationships with system partners—including APS, Legal Assistance for the Elderly (LAE), Jewish Family and Children's Services, the public defender's office, the district attorney's office, probate investigators and examiners, and the public guardian—as a means of education and outreach;
- Free and mandatory conservatorship classes offered to the public;
- Self-help clinic for conservators and senior litigants filing for restraining orders; and
- Special calendaring and case management.

Relationships with system partners. The court has a variety of system partners with which it has collaborated or communicated in varying manners. These relationships were established early and remain vital in appropriately addressing the needs of abused elders.

San Francisco County District Attorney's office. Although the district attorney's office does not have a direct connection with the court's probate division, it receives many elder abuse cases that are referred from APS and the San Francisco Police Department. In order to take on an elder abuse case, the district attorney's office uses the following criteria: the perpetrator must have known that the victim was elderly and targeted the victim because of his or her vulnerability. The assistant district attorneys assigned to elder abuse chair the elder death review team, which meets once every two months to discuss cases. Other participants in the elder death review team include the Institute on Aging, the ombudsman, the police department, the medical examiner, San Francisco General Hospital, the fire department's paramedics unit, and the public health department. The district attorney's office is also involved in a financial abuse specialist team (FAST), which meets every two weeks. APS sets the agenda for those meetings, whose participants include the county counsel, the public guardian, APS, and the public defender's office.

One way that the district attorney's office crosses paths with the courts is through the conditional exams, the stage right after a crime is charged and before the trial begins. The conditional exam documents the preliminary hearing where the court establishes what crime occurred, who

committed it, and where it happened. Conditional exams are documented in case the elder dies before trial. Assistant district attorneys work with judges to accommodate the needs of elders testifying in cases. When the situation arises, the victim/witness program at the district attorney's office contacts LAE.

Adult Protective Services (APS). According to APS staff in San Francisco, approximately half of their clients are victims of self-neglect. Sometimes self-neglect involves abuse by others because someone is responsible for the person neglecting him- or herself. Perpetrators of elder abuse tend to be family members; the exception is financial abuse. Many perpetrators of financial abuse are caretakers who have managed to get themselves named in a will or estate.

APS receives referrals from a variety of sources including financial institutions (which became mandated reporters in January 2007), in-home supportive services, hospitals, police departments, LAE and the court (in a very limited fashion). APS estimates that approximately one-quarter to one-third of its cases have some court involvement. Court-related issues typically involve eviction enforcements.

APS is also involved in a citywide multidisciplinary team (MDT). Sometimes APS may open a case for the child of an abused elder if he or she is in need of services, such as anger management. Mary Joy Quinn has been asked to participate in partnerships between APS and the MDT, but she has refused because of the need for the courts to remain impartial.

Legal Assistance for the Elderly (LAE). Funded through the Older Americans Act, the City of San Francisco, and other grants, LAE has four attorneys, not including the director. Its paralegal is a retired attorney with significant knowledge of elder abuse. Divisions in LAE include public benefits, housing, and SSI; housing and eviction defense; and health law. The organization works with cases that are referred through APS, the district attorney's office, and public conservators.

Free and mandatory conservatorship classes offered to the public. The probate department offers conservatorship education classes for conservators who are friends and family (nonprofessional). The classes are open to people seeking to be appointed and those already appointed conservators. A person must complete a course within six months of being appointed conservator. The classes are typically held four times a year and consist of two three-hour courses; one course is on the conservator of the person and the other on the conservator of the estate. They are taught on a volunteer basis by private professional conservators from the Professional Fiduciary Association of California (PFAC) who are highly experienced in the field.

Self-help clinic for conservators and senior litigants filing for restraining orders. At the Superior Court of San Francisco County, any person over the age of 65 seeking a domestic violence temporary restraining order is referred to the family law self-help center (FLSHC). The FLSHC receives referrals from LAE and, when appropriate and necessary, makes referrals to LAE. If the petitioner is female and does not want to file an elder abuse restraining order, the self-help center will refer her to the Cooperative Restraining Order Clinic (CROC). When an elder litigant comes to the FLSHC, he or she can file a domestic violence restraining order or an elder abuse restraining order. Restraining orders filed before 10 a.m. are prepared the same day at 2 p.m.

Restraining orders filed later are available the following day. The FLSHC also assists parties with responses to restraining order petitions and requests for modifications of restraining orders.

When litigants come to the FLSHC, clerks walk them through the process of filing a domestic violence temporary restraining order. If the matter seems criminal, the FLSHC staff may refer the case to APS. If legal questions arise, an attorney is available at the center to provide procedural information but does not represent FLSHC customers. Services are available in English, Spanish, and Cantonese. When a party has special needs, SHC will contact LAE to alert it that a litigant is coming.

Special calendaring and case management. To avoid having elderly litigants wait for their hearings, bench officers hear elder abuse cases first. Since there aren't enough cases to have a dedicated elder abuse calendar, elder abuse cases are scheduled on the domestic violence calendar. This arrangement is helpful to elders since domestic violence staff are sensitive to their needs, as they are to parties in domestic violence cases. The expertise of the bench officers who hear domestic violence cases can easily translate to cases involving elder abuse. Telephonic appearances are available and are used primarily in family law (they are seldom used on the restraining order calendar). The bailiffs are skilled at anticipating problems; there are always at least two of them in the courtroom for the domestic violence calendar so that one can stay in the courtroom and the other can escort someone, if needed.

Probate case monitoring minimizes the opportunities for elder abuse to occur. The court is active in scheduling status hearings, ensuring that conservators are fully bonded and weeding out professional conservators who are inappropriate, and also in tailoring conservatorships in terms of the conservatee's limitations (whether the conservatorship should be temporary or conditional, or whether it should be of the estate and/or person).

Issues and trends affecting the court and community partners. Considering that San Francisco historically has embraced liberal policy and attracted people with nontraditional lifestyles, notably those in same-sex relationships, the aging population in this city includes people who never married and who choose to live alone and who value their independence." Also a place of great ethnic diversity, San Francisco is home to a significant number elderly immigrants. Resources and services need to be sensitive to the needs of these populations; they are different from the traditional elder population, which consists of largely White, married couples or widowed people often with children or grandchildren who live nearby.

The Superior Court of San Francisco County had considered an APS-court collaboration to connect people with needed services. Ideally, it would also like to extend the services of supervised visitation providers to adults, but funding is a major restriction. During site visits, multiple partner agencies expressed the need for more mental health services, especially free services, for parties involved in elder abuse cases. This need also has been consistently expressed by all court divisions (family, juvenile, probate, and criminal).

An issue that may be unique to San Francisco is the number of elderly immigrants letting people stay in their homes. They struggle when they want their tenants to vacate and the tenants refuse. In some cases, an elder's tenancy in public housing is threatened by the presence of relatives or

friends in the home. Elderly immigrants typically speak limited or no English, don't know their rights, and hesitate to reach out for help.

APS mentioned that there is a need to train judicial officers on hoarding and cluttering, in regard to evictions. Little to no discussion has developed around this dynamic and how the court and system partners could respond more appropriately to it. Hoarders need more than simply medication (posteviction); they need a treatment plan with a timeline that moves them into a manageable lifestyle.

A trend that APS staff have seen is an increase in workload, which may be attributable to the new legislation on mandatory reporting and to publicity campaigns to raise awareness about elder abuse. They have also witnessed an increase in younger mentally ill and substance-abusing (dual-diagnosis) individuals.

Ventura County

Background. Like Orange County, Ventura County anticipates the “graying” of its population in the coming years, a factor that the CEO cites as an issue underlying the court’s exploration of elder law issues. Between 2000 and 2020, the population of Ventura County residents 65 and older is expected to more than double.¹¹⁹ Currently one in ten Ventura County residents (10 percent) is 65 or older,¹²⁰ and more than one in five households (22 percent) has at least one elderly resident.¹²¹ Relative to the statewide average, Hispanic or Latino individuals represent a significant proportion of the elderly population.¹²²

According to the Ventura County Area Agency on Aging (VCAAA) master plan for senior services, “Much of Ventura’s topography has created small, relatively isolated communities with limited inter-regional mobility,”¹²³ which can create particular challenges for elders who need to access services not available in their own immediate communities and whose mobility issues may be exacerbated by physical disabilities or other impairments. In fact, two in five Ventura elders (40 percent) have a disability,¹²⁴ most commonly a physical disability.¹²⁵ The theme of limited mobility was echoed by stakeholders, who noted that elders involved in court proceedings had transportation issues in getting to court, and supported by U.S. Census data indicating that “go-outside-home” disabilities are the second most common type of disability among Ventura seniors.¹²⁶

Recent developments indicate growing attention to the issues of elder abuse and elder justice in Ventura County. In 2004, elder abuse was featured multiple times in the Ventura County Bar Association’s newsletter. The VCAAA master plan identified four areas in which there was a need for improvement or expansion of existing services, two of which were related to legal issues: legal assistance in noncriminal matters and preservation of legal rights and benefits, including programs for elder abuse prevention. Abused, neglected, or exploited elders were listed as one of the target populations to which VCAAA plans to target its services.¹²⁷ Every year the VCAAA holds a Senior Congress, an event that is free of charge and very well attended; the theme for the 2008 conference is “Seniors: How Safe Are You?” and will address, among other topics, current frauds and scams.¹²⁸

APS handles more than 1,200 reports a year concerning elder abuse and neglect and has an average of 250 active cases per month. APS statistics also indicate that the most commonly

encountered type of elder abuse was financial (37 percent of allegations in confirmed reports), followed by psychological abuse (26 percent), and physical abuse (17 percent).¹²⁹ The 2003–2004 Ventura County Grand Jury compiled a report on the incidence of elder abuse in Ventura County. Among its findings were some of particular relevance to the justice system. APS and the district attorney’s victim assistance program are members of the Elder and Dependent Adult Abuse Council, where they make joint presentations on elder abuse to the public and other agencies. The report also makes reference to the promise of the financial abuse specialist team (FAST).¹³⁰

Overview of elder abuse initiatives. Highlighted below are key programs or practices adopted by the Superior Court of Ventura County to address elder abuse, as well as programs involving justice partners and community agencies that may be of interest to the court.

Court participation on FAST. The coordinator of the court’s Self-Help Legal Access Center (SHLAC) and the manager of family court services (FCS), the unit responsible for conducting probate investigations, are members of the local FAST. The FCS manager noted that part of his role on the team is to educate stakeholders on procedural issues through discussions of hypothetical cases; he also educates stakeholders on the procedures of court investigators, which may provoke stakeholders to think about how to approach their cases. The FAST coordinator felt these have been invaluable contributions to the team. In turn, the FCS manager noted he has benefited from his participation on the FAST; it has educated him on a number of topics, including financial abuse, law enforcement, APS philosophy and operations, financial scams, and undue influence.

The SHLAC coordinator has an important public education role on the FAST. At a FAST meeting attended by the project team, the SHLAC coordinator gave a presentation on the services available to elders in the courts and handed out several of the court’s informational pamphlets. The discussion included contexts in which elders may come into contact with the courts. Because the SHLAC tries to connect people with resources to address the social issues related to their legal problems, one of the pamphlets distributed was on community resources for seniors. The SHLAC coordinator asked FAST members to provide her with any updates to the information in the pamphlet to ensure that the most current information is available to litigants, demonstrating the reciprocal benefits to the court in making such presentations.

Services for self-represented litigants. In addition to the SHLAC located in the main courthouse in Ventura, there is a center located in a multipurpose service center in a Hispanic community in Oxnard that provides Spanish-speaking services. Both self-help centers handle a lot of landlord-tenant issues; some involve elderly landlords who may not be able to find an attorney because they are trying to evict an at-will, or non-rent-paying, tenant (often a drug-addicted adult child) or are themselves at risk for eviction due to the child’s presence in their homes. Staff will call APS if there is any suspected abuse, which will often result in the adult child moving out. Financial abuse cases seen by the self-help centers include elders putting their children on titles to avoid probate and being either forced out of their own houses or unable to sell them because of the second name on the title; children tricking their parents into cosigning loans, not making payments, and causing their parents to be sued; and caretaker fraud. The centers also provide assistance with conservatorships, but of the person only; the SHLAC coordinator believes that

the complexities of conservatorship of the estate do not lend themselves to self-help, so she has staff make referrals to attorneys and explain why an attorney is needed.

In addition to the SHLAC coordinator's participation on the FAST, the self-help centers are involved in other public education and outreach activities, including training police cadets on unlawful detainer and community public education. Self-help center staff are also involved in other partnerships such as the district attorney's real estate fraud advisory team. The self-help centers distribute a booklet for relative caregivers developed by a local senior organization, a resource highly regarded by stakeholders. Other key resources available in the courts are the Blue Book, a community referral guide for health and human services, and a 211 phone line, which connects users to a service directory. Staff may also make referrals to APS, the housing authority, counseling on home refinancing, or other needed services.

The SHLAC coordinator noted that the court receives a lot of assistance from the local bar association and from private attorneys who do pro bono work, including developing and reviewing self-help center materials. The attorneys who volunteer at SHLAC and are exposed to elder abuse issues report seeing more financial than physical abuse.

Probate court practices. On average, the probate judge handles 30 cases a day, including nonconservatorship probate cases; he believes that the conservatorship calendar has been growing. He noted that probate represents the biggest nexus with elder abuse in the courthouse, and speculated that he sees more elder abuse in his assignment than any other judicial officer. He also sees a lot of family dysfunction and noted that it is challenging to assess whether some family dynamics constitute abuse. An obstacle to effectively addressing these cases is the strain in the institutions designed to respond to these problems as the number of cases increases. The probate judge established a conservatorship calendar for self-represented litigants the first Wednesday of every month. Volunteer attorneys are available to provide assistance in the courtroom.

FCS staff are responsible for conducting probate investigations. The FCS manager—who has a degree in gerontology—notes that because his staff are both mediators and investigators, they may also act in their dispute resolution capacity in the context of probate investigations. Issues that FCS staff confront in the course of their investigations include longstanding family dynamics, insensitivity to caregivers, and power sharing (which broadly includes defining roles and responsibilities). Abuse rarely appears as an issue in probate investigations, but when it is an issue, it's more neglect than physical abuse. They also see financial issues that may or not be related to abuse, including poor accountings and inaccurate records.

The research attorneys assigned to probate cases also tend to see more financial than other types of abuse, and abuse is seen more commonly when a case first comes into court than when the conservatorship has already been established. Conservatorships sometimes involve competing petitions and cross-allegations between family members, which may prompt a referral to mediation. If a conservatee has multiple active cases, it is not unusual for civil and probate cases involving the conservatee to be consolidated or heard by the same judge; dissolution matters may be involved, as well.

The probate court has a volunteer auditor program through which business executives, certified public accountants, and retired probate attorneys donate time to review accountings, much in the way a probate examiner would. FCS provides the volunteers with a template for the reviews, and then the research attorneys review the cases and prepare them for the calendar. The research attorneys are very appreciative of the volunteer auditor program, as they are no longer struggling with reconciling numbers, which is not an area of expertise for them. In some cases, the availability of volunteer auditors has helped them avoid the need for a special master on a case with a forensic accounting.

There is one public defender appointed to conservatorship cases (another handles LPS cases), whose assignment does not rotate. The current public defender notes that conservatorship has been her primary assignment for six years. This stability was cited as a positive aspect of local practice in Ventura County, as it helps to ensure consistency and subject matter expertise. She is appointed to represent the conservatees' interests in statutorily mandated situations, as well as when there are allegations that the conservatee is bedridden and cannot appear in court. She believes that a large proportion of her cases involve elder abuse, usually financial (as physical abuse tends to show up in the criminal court) and perpetrated by a family member. Overall, her cases seem to be getting more complicated, involving more family dysfunction and litigation. She is a member of the FAST and believes that such partnerships provide important education on how to deal with the issues in financial abuse cases.

District attorney's office and victim advocates. The district attorney's office, located in the courthouse, has an elder abuse unit, including a full-time prosecutor, two investigators, two investigative assistants, and two full-time elder and dependent adult abuse victim advocates.¹³¹ Its services for elders are based on an age threshold of 65. The victim assistance program worked with the presiding judge to establish an office adjacent to the courtroom where the victim can wait and observe court without having to be in the courtroom. The office also has a separate elder waiting room. The elder abuse victim assistance program began in 1999; since then, the number of elderly victims served has more than doubled, in part because of expanded outreach efforts.

The victim advocates reported seeing more physical than financial abuse cases, as well as financial abuse cases involving abusers with substance abuse issues. They serve an elder regardless of whether or what charges are filed. In elder abuse cases, an advocate makes contact with the victim within 72 hours. The advocate triages the case to determine whether and what types of restraining orders may be needed. The order of priority for the different types of restraining orders is to consider domestic violence orders first, then elder and dependent adult abuse, and finally civil harassment. (This prioritization may be related to the variation in filing rates for elder abuse restraining orders.) The advocate then assesses the victim's ability to attend a restraining order clinic, which is held at the office two times a week in a dedicated classroom. If the victim is not well suited for a clinic, the advocate provides one-on-one assistance.

In addition to helping victims file for restraining orders, the advocate explains service of process (and recommends using the sheriff's office), assists victims with notice, and accompanies victims to court. Other services offered to elderly victims include crisis intervention, emergency financial assistance, orientation to the criminal justice system, restitution assistance, and

application for crime victims' compensation. The elder abuse team also includes a geriatric psychiatrist, whose expertise may be required if a victim needs to be assessed for potential conservatorship.

Elder Law Coordinating Council (ELCC). In a new development for the court and community, the Superior Court of Ventura County launched the ELCC in October 2007. The mission of the project is “[T]o ensure that older adults in this court are accorded a fair and reasonable voice in, and access to, the courts; and referrals between medical, social and legal services.” ELCC is chaired by a commissioner who had been active in the court’s self-help efforts and presided over a civil domestic violence calendar that also handles elder abuse cases. The group is coordinated by the FCS manager and supported by other court staff. The CEO noted that the ELCC is following the tradition of other court/community partnerships and has applied the domestic violence task force guidelines to its development. Members are expected to meet monthly, at least in the initial stages of the project’s development.

Part of the impetus for the project was the availability of funding for the expansion of services for self-represented litigants to areas other than child support and family law. Given the aging of the population and other county issues, the court believed that expanding its self-help services to elder law issues was a natural choice. One stakeholder noted that seniors need more help than currently afforded by the self-help centers. A self-help center staff person pointed out that elders are often the least able to compete for the self-help centers’ limited services. In addition to demographic and other trends, factors like these support the court’s efforts to expand self-help services to elder law issues.

Membership of the ELCC includes representatives of the court, the district attorney’s office, the victim assistance program, the public defender, law enforcement, APS, In-Home Supportive Services (IHSS), the ombudsman, Area Agency on Aging (AAA), and other social, medical, and legal services providers. More than 25 individuals representing nearly as many agencies attended the initial meeting. Issues raised by meeting participants included public education and outreach, informing sharing among agencies, barriers to court access, court facilities and locations, current court practices, and the establishment of a “one-stop shop” legal resource center for elders.

In addition to identifying service gaps and becoming more familiar with one another’s services, community partners noted that they appreciated current court practices such as giving elder cases priority for preliminary exams and the judge getting off the bench to speak with elders. Participants also discussed developing a resource book providing information on one another’s services and contact information, linking to one another’s Web sites, and possibly conducting a legal needs survey of Ventura seniors. Based on the issues raised during the initial meeting, the ELCC plans to proceed by organizing into subcommittees that will address the following themes: providers of older adult services and court-community issues; court-agency partnerships; older adult legal self-help centers; courtroom facilities, courtroom protocol, and calendaring; and education.

Issues and trends impacting the court and community partners. Outlined below are selected issues and trends raised by the court and other stakeholders during the course of site visits that will in some way impact their ability to respond to cases involving elder abuse. Issues raised fell

into three broad categories: awareness of and sensitivity to elder abuse, services and other resources, and challenges to court access and prosecution.

Awareness of and Sensitivity to Elder Abuse

- One stakeholder expressed concern that police tend not get involved in enforcing restraining orders filed on behalf of conservatees. There is a need for greater education around this issue, as restraining orders have no “teeth” without police backup;
- Another stakeholder noted that some judges may not be aware of the fact that doctors and hospitals can be held liable for neglect in the same way as nursing facilities; and
- Another stakeholder feared that elder abuse may not be taken as seriously as other issues by judges—either because the amount of money involved is relatively small or because the victim’s health was already in decline—or recognized as a quality of life issue in terms of its impact. This attitude may affect whether a crime is charged as a felony or a misdemeanor, and the issue is also relevant to challenges for prosecution, further discussed below.

Service and Resource Issues: Availability, Scope, and Funding

- In a letter responding to the Ventura County Grand Jury report on elder abuse, the district attorney noted that resources are needed to allow outreach to adult-only communities, homebound elders, mobile home parks, and seniors living in facilities. These elders may be less active in the community and therefore more vulnerable to victimization;¹³²
- The background check for caregivers needs to be improved; many are not properly screened. The district attorney’s office reports that they often prosecute financial abuse cases involving an IHSS worker and find out that the worker had a criminal history;
- There is a need for more mental health services for elders, especially in light of the depression they experience following victimization;
- Elders and their families may not have the funds to pay for caregivers and geriatric assessments recommended by their attorneys;
- It is difficult to find enough private professional conservators (PPCs) to accept cases, especially those involving small estates. While PPCs in general do good work, the demand for their services outstrips the supply. One reason may be the high cost of entry for PPCs, in that there is a long lag time between accepting a case and being reimbursed for services. Conservatees may also be difficult to work with or their families may threaten the conservator; and
- There are no local universities with high numbers of graduates of marriage and family therapy and licensed clinical social work programs, so FCS tends to have a small pool of potential mediators and investigators from which to hire.

Challenges for Court Access and Prosecution

- According to a SHLAC volunteer attorney, some individuals may be “scared off” by conservatorship fees. Conservatorship is paper-intensive and paperwork errors can delay the court process, which may especially be a risk for family members petitioning for conservatorship. Families tend to have more difficulty with the forms than attorneys or other professionals. This situation may worsen with the new monitoring and reporting requirements under the Omnibus Conservatorship Reform Act;

- Although the district attorney’s office is very sensitive to elder abuse cases, historically law enforcement in Ventura County has not aggressively investigated elder abuse cases. Law enforcement officers may see elder abuse as more of a civil than criminal issue, which makes it a lower priority for investigation and may hinder prosecution; and
- A victim advocate noted that grant opportunities for vertical prosecution have fallen by the wayside, an issue that also pertains to availability of resources, a topic further discussed above.

⁹⁶ U.S. Census Bureau, Table P12. Sex by Age: 2000, available at <http://factfinder.census.gov> (accessed September 20, 2006).

⁹⁷ California Department of Finance (2004). Race/Ethnicity Population Projections, May 2004, available at <http://www.aging.ca.gov/html/stats/CensusTables/T121-2010-2050.pdf> (accessed August 7, 2007).

⁹⁸ U.S. Census Bureau, Table P42. Sex by Age by Disability Status by Employment Status for the Civilian Noninstitutionalized Population 5 Years and Over: 2000, available at <http://factfinder.census.gov> (accessed August 7, 2007).

⁹⁹ U.S. Census Bureau, Table P41. Age by Types of Disability for the Civilian Noninstitutionalized Population 5 Years and Over With Disabilities: 2000, available at <http://factfinder.census.gov> (accessed August 7, 2007).

¹⁰⁰ U.S. Census Bureau, Table P89. Poverty Status in 1999 by Age by Household Type: 2000, available at <http://factfinder.census.gov> (accessed August 7, 2007).

¹⁰¹ U.S. Census Bureau, Table H17. Tenure by Household Type (Including Living Alone) by Age of Householder: 2000, available at <http://factfinder.census.gov> (accessed August 7, 2007).

¹⁰² U.S. Census Bureau, Table P89. Poverty Status in 1999 by Age by Household Type: 2000, available at <http://factfinder.census.gov> (accessed August 7, 2007).

¹⁰³ U.S. Census Bureau, Table P89. Poverty Status in 1999 by Age by Household Type: 2000, available at <http://factfinder.census.gov> (accessed August 7, 2007).

¹⁰⁴ Orange County Interagency Committee on Aging (2003). Condition of Older Adults: 2003 Report.

¹⁰⁵ Cabrera, Y. (2007, February 8). Warnings of abuse of the disabled ignored. *Orange County Register*, online edition, <http://www.ocregister.com> (accessed February 8, 2007).

¹⁰⁶ McNamee, C., and Mulford, C. (2007). Innovations Assessment of the Elder Abuse Forensic Center of Orange County, California. Washington, DC: National Institute of Justice.

¹⁰⁷ Gross, J. (2006, September 27). Forensic skills seek to uncover elder abuse. *The New York Times*, online edition, <http://www.nytimes.com> (accessed October 2, 2006).

¹⁰⁸ McNamee and Murphy.

¹⁰⁹ Gross, J. (2006).

¹¹⁰ U.S. Census Bureau, Table P12. Sex by Age: 2000, available at <http://factfinder.census.gov> (accessed September 20, 2006).

¹¹¹ California Department of Finance (2004). Race/Ethnicity Population Projections, May 2004, available at www.aging.ca.gov/html/stats/CensusTables/T121-2010-2050.pdf (accessed August 7, 2007).

¹¹² U.S. Census Bureau, Table P30. Relationship by Household Type (Including Living Alone) for the Population 65 Years and Over: 2000, available at <http://factfinder.census.gov> (accessed August 7, 2007).

¹¹³ U.S. Census Bureau, Table P42. Sex by Age by Disability Status by Employment Status for the Civilian Noninstitutionalized Population 5 Years and Over: 2000, available at <http://factfinder.census.gov> (accessed August 7, 2007).

¹¹⁴ U.S. Census Bureau, Table P41. Age by Types of Disability for the Civilian Noninstitutionalized Population 5 Years and Over With Disabilities: 2000, available at <http://factfinder.census.gov> (accessed August 7, 2007).

¹¹⁵ U.S. Census Bureau, Table P89. Poverty Status in 1999 by Age by Household Type: 2000, available at <http://factfinder.census.gov> (accessed August 7, 2007).

¹¹⁶ U.S. Census Bureau, Table PCT7. Sex by Marital Status by Age for the Population 15 Years and Over: 2000, available at <http://factfinder.census.gov> (accessed August 7, 2007).

¹¹⁷ U.S. Census Bureau, Table H78. Aggregate Value (Dollars) for Specified Owner-Occupied Housing Units by Age of Householder: 2000, available at <http://factfinder.census.gov> (accessed August 7, 2007).

¹¹⁸ U.S. Census Bureau, Table P89. Poverty Status in 1999 by Age by Household Type: 2000, available at <http://factfinder.census.gov> (accessed August 7, 2007).

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- ¹³² Letter responding to Ventura County Grand Jury report on elder abuse from Gregory D. Totten, District Attorney, to Honorable Bruce A. Clark, Presiding Judge of the Superior Court, County of Ventura, dated July 14, 2004, available at http://grandjury.countyofventura.org/Reports/Interim%20Reports/Response_ElderAbuse_da.pdf (accessed January 18, 2007).

Chapter 5: Innovations and Promising Practices for Addressing Elder Abuse and Elder Needs

This chapter summarizes the different types of initiatives in which courts may wish to become involved to improve their response to elder abuse and elder needs, drawing on practices adopted by the study courts, national examples, and recommendations in the literature. Rather than proposing an overall elder abuse program, this chapter offers a menu of options from which courts can select depending on their individual resources and needs.

Specialized Courts

The primary goal of a specialty court, sometimes referred to as a “problem-solving” or “problem-oriented” court, is to address a specific problem, behavior, and related issues. Examples of specialty courts include mental health court, homeless court, teen court, and juvenile drug court. Each of these courts connects litigants to therapeutic and rehabilitative outcomes, which deviates from the traditional criminal justice punitive approach. A specialty court requires agency partner collaborations, judicial monitoring, trained court personnel, and a common goal to achieve therapeutic outcomes. Specialty courts represent a move toward a model of justice that recognizes that behavioral and environmental factors contribute to the offending and the judicial system’s capacity to deal with these problems.¹³³

Because both elderly victims and their abusers tend to have health and social problems related to the abuse, the aspect of specialty courts that involves coordination with service providers may be particularly appealing. The element of judicial monitoring is key because in many cases the abuser is the elder’s family member and the elder may wish to maintain a relationship with the abuser (provided it can be done safely). One study court stakeholder noted that judicial monitoring spills over into the elder abuse arena, so developing specialized courts around the issue seems logical.

Examples of specialty courts are highlighted below:

- The Superior Court of Alameda County has demonstrated the advantages of developing an Elder Protection Court (EPC). It has gained national and international recognition for its efforts to address this specialized population in a holistic approach. The EPC offers special accommodations to elder litigants who need it (specific time frames that are accommodating to the elderly and telephonic appearance options), drafts customized orders (that maintain appropriate and safe familial contacts), works with external agencies, and provides referrals to services that may be required by a victim or perpetrator.
- In Florida, courts have gone beyond the concept of the specialty court to establish special court facilities. Elder Justice Centers have been established in two judicial districts, with the overall goals of removing barriers to court access and enhancing linkages among elders, the court system, and legal and social services providers. The services and accommodations of the centers include a dedicated court facility with colocation of agencies that provide services to elderly court users, a resource library, and the availability of enhanced communication devices and large-font pleading; public education on elder abuse; coordination of referrals with other service providers; victim advocacy; and guardianship (Florida’s term for conservatorship) case management. One scholar noted that the

specialized staff in the Elder Justice Centers allow the courts to “consider the totality of the circumstances, not just the criminal behavior.”¹³⁴

Calendaring Practices

Another type of court initiative closely related to the specialty court is the specialized or consolidated calendar, which involves hearing all of a particular case type or subtype at a regular, specified time and place. In general, specialty calendars also involve direct calendaring, the process of assigning a single judicial officer to a case from filing (or a stage very early in the case) to disposition. This allows the judicial officer to become familiar with the details of the case, ensures greater consistency and continuity in handling cases, and may result in cases moving more quickly through the system. Direct calendaring may be a useful practice in elder abuse cases due to their complexity and often the need to resolve a case quickly because of the elder victim’s declining health. Direct calendaring is beneficial to senior litigants in that a single judicial officer provides a sense of continuity that may ease senior litigants attending multiple hearings.

Specialized calendars are also beneficial if attorneys or service providers need to be in court for particular types of cases; the consolidation facilitates their appearance by not requiring them to wait through other case types on a mixed calendar. In a California Senate hearing on court access for elders, one participant suggested that “establishing a Conservatorship-Elder Abuse Court would increase attention given to these cases, instead of diffusing them through the large court.”¹³⁵

Examples of special calendaring practices are highlighted below:

- The Superior Court of Ventura County has established a conservatorship calendar for self-represented litigants. Volunteer attorneys are available to litigants in the courtroom;
- Elder abuse cases (if they involve charges under Penal Code § 368) are all heard by the same judge in the Family Violence Court in Ventura County;
- In San Francisco County, elder and dependent adult abuse restraining orders are heard on the domestic violence restraining order calendar. Cases involving elders are called first; and
- In Orange County, a single judicial officer hears all of the elder abuse restraining order cases.

Crafting Orders and Sentencing

Because the dynamics of elder abuse cases are unique, courts may need to consider special provisions when making orders in these cases. Some considerations for crafting effective orders include the following:

- Protecting the abused person (encouraging or helping him or her to prepare a safety plan, issuing restraining orders);
- Protecting the abused person’s assets (issuing restraining orders or injunctions, requesting accountings, terminating powers of attorney, initiating conservatorships);
- Maintaining the independence of the abused person;
- Maintaining the relationship between the victim and the abuser, if desired and appropriate (may involve ordering counseling or visitation);

- Linking the abused person to appropriate services (APS, aging network, domestic violence program or shelter, victim assistance program, or other community services);
- Protecting other individuals from the abuser; and
- Making the victim whole (restitution and return of property).^{136,137}

According to the ABA guidelines for state courts handling cases involving elder abuse, plea agreements may be a useful tool in prosecuting elder abuse cases, especially those involving family or caregiver abuse, in which elders may be reluctant to press charges; however, it is important to ensure that plea agreements in fact protect the elder and do not place him or her in further harm.¹³⁸

A key feature of Alameda County's EPC is its practice of tailoring orders to the circumstances of the case. Abusers, especially adult children and other family members, may be ordered to counseling or treatment. If the elder wishes to maintain contact with an abusive family member, orders may include a special visitation schedule or provision for supervised visitation.

Services and Accommodations

Elder abuse victims have unique needs, including but not limited to age-related health conditions, that may need to be addressed in the court setting, whether provided by the court itself or community partners. In the ABA guidelines, many recommendations address the need for services and accommodations for the elderly.

Examples of special services or accommodations for elderly court users are highlighted below:

- In Alameda County, allowing elder litigants to appear first on a given calendar may reduce the anxiety of waiting for their cases to be heard. The EPC calendar is usually heard in midmorning, allowing seniors time to get to court and recognizing that seniors' energy or alertness may wane later in the day. The use of telephonic appearances in Alameda County may reduce the burden of transporting to court elder litigants with physical limitations;
- In Ventura County, the probate judge employs several techniques to accommodate the needs of conservatees. He steps down from the bench if he detects a compromise in the conservatee's hearing, shakes the conservatee's hand, speaks to him or her using plain language, and overall tries to minimize the conservatee's anxiety and "humanize" his or her contact with the court;
- The Stetson University College of Law established the Eleazer Courtroom, designed to be user-friendly for the elderly and disabled. (For more information on the Eleazer Courtroom, see www.law.stetson.edu/Elazercourtroom/.) Its features include colors selected to enhance the vision of elders; a floor-level witness box for easier access; use of technology to enhance accessibility, including flat panels in the gallery, hearing amplification devices, and software to convert conversations into typed words; and nonglare, nonbuzz lighting; and

Most of the above services are focused on elders whose cases have already made it to court; however, another significant issue for elders may be accessing the court. Self-help centers play a key role in removing the barriers to court access; thus their services may be valuable in cases involving elder abuse.

Examples of self-help services for or related to elders in the courts are highlighted below:

- The Superior Court of San Francisco County offers a conservatorship clinic that instructs proposed conservators on filling out court forms and the court process. A volunteer attorney in Ventura County noted the difficulty of the forms for family members filing for conservatorship, supporting the need for such a program;
- The Self-Help Legal Access Center in Ventura County partnered with a local senior services organization to offer a packet of informational materials for caregivers of older adults who visit the center;
- The Superior Court of Ventura County is planning to expand its self-help services into the elder law arena; and
- The Legal Aid Society of Orange County, which did a presentation for the Orange County MDT, developed an I-CAN! module for advanced health care directives. It also receives grants to do outreach to seniors.

Training

Because elder abuse awareness is fairly low overall and because it is something of an emerging issue for the courts, it will be important for judges and court staff to receive training to recognize and appropriately respond to elder abuse. Almost all respondents to a National Center for State Courts needs assessment believed there was either a “great need” or “some need” for training for judges. Suggested training topics fell into eight broad areas: physiological and social aspects of aging; mental capacity; undue influence and consent; conservatorships; laws and agency authority; types of abuse and neglect; domestic and family violence dynamics in later life; and community resources. Counties that have received training, such as the Archstone Phase I study counties, have demonstrated the ability to effectively address elder issues in the court. Training leads to awareness, cultural sensitivity and strategic responses to situations that may arise. In addition to receiving education on elder abuse, courts may have a need for or interest in providing education, as well.

Examples of court-related training programs are highlighted below:

- Alameda County’s EPC engages in educational outreach, including presentations at senior centers and a public radio program called “Your Legal Rights”;
- The San Francisco probate court mandates training for nonprofessional conservators. The training is conducted by volunteers from the Professional Fiduciary Association of California (PFAC) and includes two three-hour sessions: one on conservatorship of the person and one on conservatorship of the estate; and
- Staff of the Superior Court of San Francisco County receive training on reporting suspected elder abuse.

Volunteer and Pro Bono Programs

Because of scarce resources for the courts in general and the frequent need for specialized knowledge in cases involving elder abuse, courts may find it beneficial or necessary to recruit the assistance of pro bono attorneys and other volunteers to help them respond to elder abuse cases. Volunteers may help in a variety of capacities.

Examples of volunteer programs are highlighted below:

- The Superior Court of Orange County, in conjunction with several other community partners, established the Model Program for the Unbefriended Elderly, in which volunteer attorneys and fiduciaries accept appointment to cases in which there is no one available to act as conservator;
- The Superior Court of Ventura County has a volunteer auditor program, through which business executives, certified public accountants, and retired probate attorneys donate time to review accountings in conservatorship cases;
- In Ventura County, volunteer attorneys are available to provide assistance to parties on the conservatorship calendar for self-represented litigants; and
- In San Francisco County, volunteers from PFAC teach conservatorship classes for nonprofessional conservators.

Another type of volunteer program recommended in the literature is the development of a court ombudsman program using trained volunteers to assist elders.¹³⁹ This notion was reinforced by a volunteer attorney in Ventura County who mentioned the need for an advocate to assist people in interfacing with the court system.

Community Partnerships and Multidisciplinary Teams

Because elder abuse cases often involve multiple issues that go beyond an elder's immediate legal problem, it may be beneficial for the courts to coordinate with justice partners and community agencies to most effectively respond to the needs of the involved parties. In terms of multidisciplinary teams that discuss individual cases, it may be a conflict of interest for judges to participate; however, other court staff may be able to join the teams, and judges may still have a role in encouraging their development.¹⁴⁰

Examples of court-community partnerships related to elder abuse are highlighted below:

- The operations of Alameda County's EPC are highly dependent on a network of agencies and service providers—including the court, the district attorney's office and victim/witness program, APS, LAS, and law enforcement—working together;
- The Superior Court of Alameda County also spearheads an Elder Access Committee, which looks at more systemic issues around elders in the courts;
- The Superior Court of Ventura County has taken the leadership in creating an Elder Law Coordinating Council; and
- In Ventura County, the manager of family court services, which conducts probate investigations, and the self-help center coordinator are members of the FAST. Their participation centers around providing information related to court procedures and available court services.

¹³³ Freiberg, A. (2001). Problem-Oriented Courts: Innovative Solutions to Intractable Problems. *Journal of Judicial Administration*, 11, 1, 8–27.

¹³⁴ Rothman, M. (2004). Judicial Responses to the Growing Incidence of Crime Among Elders With Dementia and Mental Illness. Statement for the U.S. Senate Special Committee on Aging.

¹³⁵ California Senate Subcommittee on Aging and Long-Term Care (2003). Less-than-Affluent Elderly and Access to the Courts, minutes of meeting held on November 19, 2003.

¹³⁶ Stiegel, L. (1997). *Elder Abuse in the State Courts—Three Curricula for Judges and Court Staff*. Washington, DC: American Bar Association.

¹³⁷ Stiegel, L. (1996). *Recommended Guidelines for State Courts Handling Cases Involving Elder Abuse*. Washington, DC: American Bar Association.

¹³⁸ *Ibid.*

¹³⁹ Stiegel, L. (1997).

¹⁴⁰ *Ibid.*