
Elder Abuse Victims' Access to Justice: Roles of the Civil, Criminal, and Judicial Systems in Preventing, Detecting, and Remediating Elder Abuse

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16.1 Introduction

Recent high-profile cases of elder abuse—including those involving New York City philanthropist Brooke Astor and entertainer Mickey Rooney—have drawn attention to the fact that the three components of the US justice system—civil, criminal, and judicial—have crucial roles in preventing, detecting, and remediating elder abuse, neglect, and exploitation (referred to generally as “elder abuse” unless otherwise indicated). Following this overview and comparison of the goals of the civil justice and criminal justice systems, the chapter focuses on impediments that victims may face in accessing the three system components and the ways in which lawyers, judges, and allied professionals can protect older persons from elder abuse, make victims whole, and hold perpetrators accountable. This chapter also addresses ideas and promising practices for improving the justice system’s response to elder abuse, and the potential benefits of involving justice system professionals in efforts to enhance the response of other systems that are relevant to elder abuse victims.

Elder abuse can occur in many forms. Categories, terminology, and definitions vary among State and Federal laws, but the National Center on Elder Abuse has developed seven general classifications: physical abuse, sexual abuse, psychological/emotional abuse, neglect, abandonment, self-neglect, and financial exploitation [1]. Elder abuse can occur in different settings, which are commonly grouped as domestic and institutional (the latter term generally referring to long-term care and residential care facilities) [1]. No matter the form or the setting of elder abuse, there is some

The author is not writing on behalf of her employer and the views expressed are her own and do not necessarily represent an official position of her employer unless otherwise indicated.

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purpose that one or more components of the justice system can serve.

All three systems have a role in preventing, detecting, and remediating elder abuse, but each has a different purpose and distinct goals. The civil justice system is both proactive and reactive, focused on individual victims and with the ability to prevent elder abuse and to remedy it when it does occur. The criminal justice system is reactive, focused on protecting society by punishing criminal conduct and preventing its reoccurrence. The judicial system also is reactive, focused on the parties in cases brought before the courts, with judges and juries making decisions primarily related to remedies or punishment for elder abuse.

Table 16.1 highlights key distinctions between the civil justice and criminal justice systems. The remainder of this chapter elaborates on these characteristics.

16.2 Elder Abuse Victims' Attitudes About the Justice System

In 1993, the State Justice Institute funded the American Bar Association Commission on Law and Aging (ABA Commission) to conduct a groundbreaking study of barriers to consideration of cases involving elder abuse by the state courts and develop recommended guidelines for overcoming those barriers. Nearly 300 professionals were involved in the project. They included judges, court administrators, private and publicly funded lawyers, prosecutors, staff of state Attorneys General Offices, Medicaid Fraud Control Unit staff, state legal services developers, Adult Protective Services (APS) administrators and staff, and other non-legal professionals [2].

Study participants identified practices and barriers that inhibited entry of cases involving elder abuse into the state courts. These fell into two categories: abuse victims’ attitudes about the courts and about the pursuit of legal remedies, and systemic practices in or related to the courts. The

Table 16.1 Key distinctions between the civil justice and criminal justice systems

Issue	Civil justice system	Criminal justice system
Key goals	<ul style="list-style-type: none"> • Protect the victim • Determine whether actions were lawful and undo those that were not, or order that certain actions be taken • Resolve disputes • Compensate the victim for harm caused 	<ul style="list-style-type: none"> • Protect society • Determine whether criminal laws were violated • Punish/hold accountable the perpetrator • Protect the victim • Order the perpetrator to provide restitution to the victim
Types of cases	<ul style="list-style-type: none"> • Civil rights • Contract disputes • Family matters such as divorce and adoption • Guardianship/conservatorship • Health care and insurance • Mental health commitments • Personal injury/medical malpractice • Protective orders • Real estate matters such as foreclosures, landlord/tenant disputes, and property disputes • Wills and estates 	<ul style="list-style-type: none"> • Criminal matters
Burden of proof	<ul style="list-style-type: none"> • “Preponderance of the evidence” • “Clear and convincing evidence” 	<ul style="list-style-type: none"> • “Beyond a reasonable doubt”
Victim’s role	<ul style="list-style-type: none"> • Subject of the legal proceeding • Usually has some control over the case • Has constitutional or statutory rights 	<ul style="list-style-type: none"> • Witness to the events that are the subject of the legal proceeding • Has no control over the case • Has constitutional or statutory rights

victims’ attitudinal barriers are listed below; the courts’ systemic barriers are discussed in Sect. 5.

- Older abused persons are commonly reluctant to press charges against abusive family members or caregivers because “they do not want to get that person in trouble.”
- Often, the abused person is dependent on the abuser for care or companionship, and, therefore, believes that he or she has “no choice” but to continue in the abusive relationship.
- Older persons also fear that involving APS or law enforcement in their problems will lead to their removal from their home and placement in a nursing home. They also fear that APS or court intervention will not prevent further abuse or retaliation.
- Older abused persons are sometimes so afraid of testifying in court or so ashamed to have their abusive situation aired in public that they are willing to forego pursuit of their legal rights.
- Older persons’ lack of knowledge about their rights and about the judicial system also inhibits their pursuit of appropriate legal remedies.
- Older abused persons may have no means of traveling to the courthouse for hearings or may have no one to assist

their care-dependent spouse, partner, or child while they are meeting with lawyers or testifying at trial.

- Older abused persons often are ignorant of the availability of APS and other services that may be able to help them correct an abusive situation. Additionally, even if they are aware of these services they may not think of themselves as abused and recognize that such services may benefit them [2].

16.3 Civil Justice System

Civil lawyers who advise and represent older persons or organizations that serve them have significant opportunity to prevent, detect, and remedy elder abuse. Civil lawyers also have valuable knowledge to share in system-improvement activities such as multidisciplinary initiatives, professional and public education, and legislative and policy development.

This section covers the roles of civil lawyers regarding elder abuse, the systemic barriers that may impede victims’ access to the civil justice system, and promising practices and other potential improvements to reduce those barriers.

16.3.1 Roles of Civil Lawyers

Civil lawyers, often assisted by paralegals under their supervision, work in a variety of settings. They may provide free legal services under the auspices of legal aid agencies or other programs to people who are over age 60 or who have low incomes, work in private law firms and charge for their services, work in the private sector, or work for Federal, State, or local government agencies. Regardless of their employment setting, civil lawyers can have myriad vital proactive and reactive roles in elder abuse.

To assist older persons directly in preventing or remedying elder abuse, civil lawyers can:

- Screen and assess whether an older person might already be experiencing elder abuse in some form;
- Counsel an older person about the forms and risks of elder abuse and about taking steps to prevent it, for example by including provisions in a power of attorney that limit the agent's opportunity to misuse his or her authority and commit financial exploitation;
- Advise a victim how to obtain a civil protection order against an abuser;
- Help an older client obtain appropriate housing and government benefits, which may enable the older person to avoid or escape from an abusive situation;
- Help an older client obtain Medicaid eligibility through a hardship exemption by demonstrating that the client did not make a "gift" to another person that would render the client ineligible, but rather was financially exploited; and
- Bring lawsuits in civil court on behalf of an elder abuse victim to terminate an abuser's control over the victim, evict an abuser from a shared home, seek financial compensation for physical harm caused by a caregiver intentionally or through neglect, terminate the legal authority of an agent or guardian who is exploiting the victim, or recover misappropriated assets.

Additionally, civil lawyers can indirectly prevent or remedy elder abuse by:

- Advising and representing public sector organizations (APS, long-term care ombudsman programs, law enforcement, or other government agencies) in fulfilling their legal responsibilities to elder abuse victims;
- Litigating civil lawsuits on behalf of government agencies against individuals or businesses to stop abusive or exploitative practices;
- Helping the private sector to interpret laws and regulations and to develop policies and protocols to facilitate prevention, detection, and reporting of elder abuse; and

- Participating in multidisciplinary teams, task forces, legislative study committees, and other collaborative efforts to develop and advocate for improved laws, regulations, and policies.

The discussion of barriers, promising practices, and potential improvements that follows is focused on the needs of victims and the role of civil lawyers in meeting those needs. It will not address further the role of civil lawyers in advising and representing public or private sector organizations regarding elder abuse.

16.3.2 Barriers of the Civil Justice System

The ability of the civil justice system to prevent, detect, and remedy elder abuse offers considerable benefits to older persons. Recent research on the impact of providing civil legal services to victims of domestic violence demonstrates that legal aid facilitates the independence of victims and also may indirectly benefit the government agencies and businesses that serve them [3, 4]. It seems likely that civil legal services for elder abuse victims would result in similar outcomes.

There are substantial barriers to using the civil justice system, however. Many older persons face significant challenges in obtaining civil legal help because they:

- Lack information about what elder abuse is, that it raises legal issues, and that civil lawyers can help to prevent or rectify it;
- Lack information about how to find legal help;
- Have difficulty finding civil lawyers who are knowledgeable about elder abuse; or
- Are unable to obtain free legal services or pay for a private lawyer.

Additionally, even if legal problems are recognized and capable civil legal help can be obtained, existing civil laws may be inadequate to prevent or stop elder abuse.

Inadequate data collection about the civil justice system also poses an impediment, by making it difficult to obtain needed funding and other resources to overcome the barriers that directly affect victims.

These obstacles, promising practices that address them, and other potential improvements are discussed next.

16.3.2.1 Lack of Public Awareness

The public lacks awareness of elder abuse *and what to do about it* (emphasis added) [5]. Compounding this problem, anecdotal data about elder abuse victims indicates that even

when they do recognize they are being victimized, they often fail to realize that their problems may have legal solutions.

Efforts to enhance public awareness about elder abuse and what to do about it must furnish information about the role of civil legal services and how to access them, including the possibility that free or reduced-cost legal assistance may be available to elder abuse victims.

16.3.2.2 Professionals' Lack of Awareness of the Role of the Civil Justice System

Professionals and other service providers, agencies, and businesses interacting with older persons also often lack awareness that elder abuse raises civil legal issues and that civil lawyers can help prevent or remedy the problem. Referring victims or their caring family members and friends to a legal aid program or to a lawyer referral service is equally important as a referral or report to APS, aging and disability services, the long-term care ombudsman program, law enforcement, prosecutors, regulators, and other services that may prove useful. Each system has different resources and goals, and no one system can holistically meet all of a victim's needs [6].

Raising the awareness of non-legal professionals about the availability and importance of civil legal services is necessary. Accomplishing that requires regular cross-training with civil lawyers, as well as the development and dissemination of routinely updated materials to help allied professionals understand the role of civil legal services and to identify situations in which a referral to civil legal services is appropriate. Many professionals who interact with older persons are mandated by state law to report suspected elder abuse to APS, law enforcement, another government agency, or some combination thereof, so there are excellent opportunities to include information about the role of civil legal services in broader trainings about recognizing and reporting elder abuse [6, 7].

16.3.2.3 Civil Lawyers' Lack of Knowledge About Elder Abuse

Efforts to raise awareness among the public and non-legal professionals about the civil justice system's role in preventing, detecting, and remedying elder abuse have limited impact if older persons are unable to find civil lawyers who are knowledgeable about the complex and multi-faceted problem. A civil lawyer's ability to provide competent advice and representation regarding elder abuse may require knowledge of an array of substantive legal topics including banking and securities law; contract law; decision-making capacity; domestic violence; family law; guardianship and conservatorship, as well as their alternatives such as financial

and health care powers of attorney; laws governing health care, long-term care, and residential care facilities; public benefits eligibility; real property, trust and estate law; and undue influence [8–10].

Awareness of the law is necessary but not sufficient. To effectively advise clients about options and remedies, assess the merits of cases, and determine what evidence is available or needed, civil lawyers also must have knowledge about:

- the indicators and consequences of all forms of elder abuse [11];
- the availability and effectiveness of an array of elder abuse interventions, which might include APS; alternative dispute resolution; appointment and monitoring of substitute decision makers such as guardians, conservators, agents under a power of attorney, or representative payees; housing options including emergency options such as elder abuse or domestic violence shelters as well as longer-term options; and long-term care ombudsman programs [8, 11]; and
- the growing body of scientific research about decision-making capacity and susceptibility to exploitation and undue influence [10].

Currently, lawyers are rarely exposed to the problem of elder abuse in law school. Aging issues are generally not incorporated into traditional doctrinal law school courses, such as contracts, criminal law, evidence, real property, torts, trusts and estates [12]. Nearly half of all law schools do not offer a doctrinal class on elder law [12], and elder law classes survey an array of issues and do not place much emphasis on elder abuse. Yet Kohn and Spurgeon's survey of elder law practitioners and professors indicated that respondents most often listed elder abuse and ethics as the subjects necessitating additional legal education.

Clinical elder law courses are even less common than doctrinal elder law classes. Clinical students may assist older clients on an array of matters including elder abuse, but the only known clinical program devoted to elder abuse is the University of Illinois College of Law Elder Financial Justice Clinic [13].

Continuing legal education (CLE) on elder abuse shares the same limitations as law school education. Aging issues in general and elder abuse in particular are not usually incorporated into relevant topics such as planning for incapacity, estate planning, torts (with the exception of long-term care facility abuse and neglect cases), family law, domestic violence, and other substantive issues. Elder law CLE programs usually either survey several issues or focus on Medicaid planning, planning for incapacity, and guardianship and

conservatorship; no matter which approach is used, relatively little time is spent on the topic of elder abuse.

Improving legal education and continuing legal education about elder abuse would increase lawyers' awareness of elder abuse and how to prevent or remedy it. Content on elder abuse in CLE and other on-the-job training programs is becoming more common. Additionally, there are two recent national training efforts that deserve mention.

- The Legal Services Corporation (LSC), which funds free legal services to low-income individuals, collaborated with the US Department of Justice through its Elder Justice Initiative, Office for Access to Justice, and Office for Victims of Crime to develop free, online training for LSC grantees' staff. Four hours of free online training are available at <https://www.ovcttac.gov/views/dspLegalAssistance.cfm?tab=1#onlinetraining>. The four modules are titled: What Every Legal Services Lawyer Needs to Know About Elder Abuse, Practical and Ethical Strategies, Domestic Violence and Sexual Assault, and Financial Exploitation.
- Another initiative to educate civil lawyers is the Elder Investment Fraud and Financial Exploitation Prevention Program—Legal, a collaboration of the ABA Commission on Law and Aging and the Investor Protection Trust (IPT) and Investor Protection Institute (IPI). Working with state securities regulators and state or local bar associations, the ABA Commission, IPT, and IPI are developing, testing, and then implementing a national model curriculum for civil lawyers on detecting elder investment fraud and financial exploitation and what to do about it [14].

These two education initiatives are promising, but much more needs to be done to reach other civil lawyers, to expand the range of topics covered, and to provide more advanced training.

In addition to law school education and CLE programs on elder abuse, civil lawyers could benefit greatly from other resources to help them provide high-quality, cost-effective civil legal services. These resources could include case analyses, brief banks, case consultations and mentoring, more opportunities for communication and networking, information about finding qualified expert witnesses, and statutory analyses [10]. Congress appropriates millions of dollars for providing similar training and resources to civil lawyers who represent victims of child abuse and of domestic violence, but only a small amount of funding to inform civil lawyers representing older persons—and those funds are not earmarked for education about elder abuse.

16.3.2.4 Lack of Access to Civil Legal Assistance

Enhancing awareness that elder abuse raises civil legal issues and expanding lawyer education about elder abuse will be hollow victories if older persons or their caring family members or friends who are trying to prevent or remedy victimization cannot afford a private lawyer or obtain free legal services.

The challenges that low- or middle-income individuals face in access to the civil justice system are not unique to elder abuse. National studies of unmet legal needs of low-income persons and state-specific studies of unmet legal needs of older persons have demonstrated clearly that Legal Services Corporation- and Older Americans Act-funded free civil legal aid programs are unable to serve a substantial majority of persons who need help [15–17].

So serious is the problem that almost every state, plus the District of Columbia and Puerto Rico, has established an access to justice commission or initiative [18]. The Conference of Chief Judges and Conference of State Court Administrators have reported that the growing numbers of litigants who are not represented by civil lawyers have negative consequences on the courts as well as the parties involved in a case [19]. President Obama also has recognized the critical importance of civil legal services in American society, first by establishing the Office for Access to Justice within the Department of Justice and then by creating the White House Legal Aid Interagency Roundtable to bring together relevant Federal agencies to address the problem of access to justice and how it impacts programs administered by those agencies [20].

Older persons with limited incomes who need preventive or remedial assistance related to elder abuse do face additional challenges in obtaining civil legal services from providers of free legal aid and from private lawyers, however.

The LSC is an independent, non-profit agency that funds and regulates free civil legal aid programs across the country. It is the largest source of funding for free civil legal services; the amount of financial support provided to LSC grantees is set by Congressional appropriations. LSC-funded programs provide services to clients who have incomes below 125 % of the poverty level and have limited resources [21]. LSC collects case data on “juvenile neglected/abused/dependent” and “domestic abuse,” but does not have a case data code specifically for elder abuse [22]. The fact that elder abuse is not a case category for which grantees are required to report service data indicates that it is not a priority issue for the LSC. Nonetheless, LSC-funded programs do represent lower-income older persons in case categories related to elder abuse, including consumer fraud, domestic violence, evictions, home foreclosure, other housing matters, and public benefits.

Title III-B of the federal Older Americans Act (OAA) authorizes funding for programs providing free legal aid for persons over age 60 regardless of income and assets. While OAA legal assistance programs do not apply an income and assets test to determine eligibility for services as LSC grantees do, OAA programs must be targeted towards individuals in greatest social and economic need. Title VII of the OAA funds other elder rights activities relevant to elder abuse prevention and redress, including some state Senior Legal Helplines whose staff telephonically provides advice, some brief services, referrals to aging services or other government agencies, and referrals to legal aid programs for more intensive services including representation in court.

The OAA is administered by the Administration for Community Living (ACL), part of the US Department of Health and Human Services. Federal OAA monies flow to state units on aging, and then (in most states) to area agencies on aging (AAAs), which select and fund local providers of free legal assistance. The OAA states that the AAAs are supposed to give priority to legal assistance on an array of fundamental problems including abuse, neglect, and income (which would include financial exploitation).

Some of the OAA-supported legal assistance providers also receive LSC funding, some are non-profit agencies but are not LSC grantees, and some are attorneys in private practice who receive small contracts to provide a limited array of free services. Funding of these programs varies widely, from six figures to a few thousand dollars. Accordingly, the array and nature of services offered, including efforts related to elder abuse, also vary widely. Some service providers prioritize elder abuse and make concerted efforts to raise public awareness, provide preventive legal advice and brief services, and seek remedies in court [23]. Other grantees have such limited funding that they simply provide advice and assistance with planning for incapacity.

Many lawyers volunteer to provide free legal services (known as *pro bono*) to individuals with low incomes, but their efforts are usually administered by LSC-funded programs and subject to the same eligibility criteria for income and assets. Lawyers also may charge a reduced fee (now being called “low bono”) to certain categories of clients, including older persons, but even a reduced fee may be too expensive for a victim of elder abuse, especially one who has suffered financial exploitation. Lawyers providing *pro bono* and low bono services may lack expertise in elder abuse, and the challenging elder abuse cases that most legal aid programs lack resources to take may prove too burdensome for volunteers or lawyers accepting reduced fees.

Some law schools have elder law or other types of clinics (for example, on consumer issues) that educate students by providing free services to older persons, including advice

and counseling, preparation of legal documents, and representation in court. All clinical programs face challenges in providing services due to lack of expertise, student vacation and examination schedules, and turnover when the courses end. For these reasons, clinical programs are unlikely to be able to represent elder abuse victims in complex cases requiring litigation.

In elder abuse lawsuits brought against defendants with financial resources or insurance—particularly health care providers, hospitals, long-term and residential care facilities, financial institutions, and other businesses—private lawyers are often willing to accept payment on a contingency fee basis. This means the lawyers take a percentage of damages awarded by the judge or jury to the victim, and bear the financial risk if those lawsuits are not successful.

In contrast, older persons or their concerned family members and friends carry the financial burden if they need legal advice about ways of preventing elder abuse. They also shoulder the burden of paying for legal representation if they wish to sue individuals or businesses without extensive resources or insurance, such as family members, caregivers, “sweetheart scammers” and “new best friends,” or substitute decision-makers named by the victim, a government agency, or a court (e.g., agents under a power of attorney, representative payees, guardians, or conservators). Lawyers generally will not take cases on a contingency fee basis if there is a low chance of winning the case or of collecting financial assets from the abuser after winning the case. Obviously elder abuse victims who are not wealthy will face significant challenges in paying for the services of a private civil lawyer, as will wealthier individuals who have lost control over their assets due to decision-making incapacity or financial exploitation [24].

The unmet need for free legal assistance and the challenges of paying for a civil lawyer in private practice demonstrate that increased funding for LSC and OAA grantees is imperative.

Having recognized the importance of civil legal services in preventing and remedying elder abuse, the ACL is striving to improve the ability of OAA-funded legal assistance programs to recognize and address legal issues related to elder abuse. It is doing this by supporting the development or enhancement of state systems that provide training and technical assistance, as well as facilitate multidisciplinary coordination, about the problem. Increased funding would allow the ACL to expand these efforts—known as Model Approaches Phase II—more rapidly, and to continue to support these important initiatives after the initial funding period ends.

Multidisciplinary collaboration between legal aid programs and APS programs may be a promising practice that can help overcome the fact that both systems are woefully

underfunded. A recent evaluation of the Jewish Association Serving the Aging Legal/Social Work Elder Abuse Prevention Program in New York City demonstrated that its legal and social work services resulted in reduced elder abuse risk at the time cases were closed [25].

16.3.2.5 Inadequate Civil Laws

Inadequate civil laws add to the challenges that victims and concerned family members or friends face in accessing civil legal representation and in obtaining civil remedies that protect older persons, recover assets, or provide financial remuneration for physical or financial harm. To avoid repetition, specific examples of impediments and of statutory provisions that might address them are discussed below.

Private practitioners could be encouraged to provide representation in civil elder abuse cases if laws provided clear civil remedies for physical or sexual abuse, neglect, or financial exploitation; allowed lawsuits to continue if the victim died prior to verdict; required judges to award punitive or treble damages to victims if statutory conditions were met; and required judges to order defendants who lose elder abuse cases to pay the victim's attorney's fees and costs [9, 13, 24]. Some states have enacted one or more of these useful statutory provisions; they include Arizona, California, Florida, Illinois, Minnesota, Oregon, Utah, and Washington [9, 13, 24].

Laws governing civil protection orders could be expanded to include more situations commonly experienced by victims of elder abuse. Examples include adding financial exploitation, physical abuse by a caregiver, or physical abuse by a family member who is not an intimate partner to the reasons why a person could obtain a protection order [26].

Enacting statutory presumptions of fraud or undue influence when real estate or other assets are transferred in certain circumstances (e.g., without the older person having independent legal advice, to caregivers or fiduciaries) commonly seen in elder financial exploitation cases could facilitate civil lawsuits. These presumptions would either render the transaction void or transfer the burden of proving the transfer's legitimacy from the victim to the defendant. States with statutory presumptions like these include California, Illinois, Maine, and Nevada [27, 28].

Expanding "slayer statutes"—civil laws that prohibit a murderer from inheriting from his or her victim—to include perpetrators of elder abuse could reduce motivation to harm an older person. As of 2013, seven states had amended their laws to include such provisions: California, Illinois, Kentucky, Maryland, Michigan, Oregon, and Washington [29].

Strengthening guardianship and conservatorship laws, as well as practices, to enhance court monitoring of guardians and conservators could help prevent, detect, and redress abuse, neglect, and exploitation. The handful of states and

territories that have not yet enacted the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGGPJA) should do so because the UAGPPJA reduces the jurisdictional barriers that can impede attempts to redress elder abuse cases that cross state lines [9, 30]. Excellent information about the intersection of elder abuse with the guardianship system is provided in Chap. 17.

The states and territories that have not yet adopted the Uniform Power of Attorney Act (UPOAA) should do so. The UPOAA clarifies the responsibilities and duties of an agent under a power of attorney and contains numerous other provisions that protect against or redress power of attorney abuse, which is a common form of financial exploitation [31].

16.3.2.6 Insufficient Data Collection

The lack of data about civil legal services for elder abuse victims stymies efforts to obtain additional funding for legal aid programs and pro bono services, to enhance training of allied professionals about the importance of the civil justice system to elder abuse victims, to expand law school education and CLE programming, and to advocate for better laws. As discussed earlier, the LSC does not include elder abuse in its case categories for data collection [22]. OAA-funded legal assistance programs are required to report basic, combined output, but those data do not even indicate the legal issues addressed [32]. Law school clinic programs appear to collect some data for internal decision-making and fundraising purposes, or if they receive funding from government agencies or private foundations. Civil lawyers in private practice generally do not share data about the cases they handle.

There are opportunities to collect valuable output and outcome data from legal aid programs supported by the LSC and the OAA. In a 2006 white paper prepared for the National Center on Elder Abuse, Wood opined that LSC grantees and OAA-funded legal assistance programs and senior legal hotlines (now known as helplines) could become sources of data on incidence and prevalence of elder abuse [22]. Additionally, requiring LSC and OAA legal assistance grantees to capture and report data about outcomes in addition to outputs could provide extremely useful data about the effectiveness of civil legal interventions and about the financial costs of elder abuse to victims, their families, businesses, and governments. Examples of such outcome data might be the value of financial accounts or homes that are recovered from an exploiter and the resulting savings to banks that do not have to absorb the losses or to a state's Medicaid program, for which a victim impoverished due to exploitation would become eligible. Recent studies conducted by Utah's and Wyoming's APS programs of the costs of financial exploitation demonstrate that this can be done [33, 34]. A recent study demonstrated that the provision of

civil legal assistance to victims of domestic violence reduces the incidence of that problem and results in costs savings to the criminal justice, medical, and mental health systems [4]. Effective in 2016, the LSC started requiring its programs to provide outcome data [35]. Some states require their OAA-funded legal assistance providers to report more data than is required by the Administration for Community Living, but of those states fewer than half require outcome data and generally those states do not require specific data about elder abuse cases [32].

16.3.3 Involving Civil Lawyers in Efforts to Strengthen Laws, Policies, and Practices

Civil lawyers who represent older persons and the government agencies and private sector businesses that serve older persons can and should be involved in local, State, and Federal initiatives to strengthen laws, policies, and practices related to elder abuse. Their knowledge is crucial to efforts to study the problems and implement the solutions described earlier. Civil lawyers also need to be involved in identifying new challenges and developing new ideas as our understanding of elder abuse and of civil legal remedies for it evolve.

Civil lawyers have ethical limitations in their ability to share information about their cases and clients, so their ability to participate in multidisciplinary teams that focus on finding solutions for difficult cases may pose issues that need to be addressed. They are not, however, precluded from participating in multidisciplinary or other initiatives concerned with legislative reform and policy development, and can bring their knowledge of civil law and its impact on elder abuse victims to the table. They also can educate other lawyers and non-legal professionals about preventing and remedying elder abuse through civil law.

16.4 Criminal Justice System

The many actors of the criminal justice system play critical roles in detecting and stopping elder abuse that constitutes criminal conduct, and by punishing perpetrators to protect society, as well as individual victims, from further harm. The system's involvement also serves to communicate to society that elder abuse will not be tolerated [8].

After briefly describing the criminal justice agencies and professionals most involved in cases involving elder abuse, this section covers the systemic barriers that limit the system's response to elder abuse victims, as well as promising practices and other improvements that might lessen those obstacles.

16.4.1 Roles of Criminal Justice Professionals

The criminal justice system involves an array of participants who work to protect society and individual victims in a variety of government agencies. Brief descriptions of the agencies' and participants' roles in relation to victims are provided. The roles of two types of agencies that are focused on defendants (those who have been charged with crimes) or offenders (those who have been found guilty of or pled guilty to crimes) are also reviewed. Coroners and medical examiners, who have a different relationship to victims, are not discussed in this chapter; their role is addressed in Chap. 18.

- Law enforcement agencies, which may be local or regional police departments and sheriffs' offices, or state or federal law enforcement agencies. These agencies receive reports of and otherwise detect alleged criminal behavior, conduct investigations, and, if warranted, take steps to protect the victim and to hold the alleged perpetrator accountable [6]. Some local law enforcement agencies also conduct "welfare" or "wellness" checks on an older or vulnerable person about whose safety someone (for example, a relative, neighbor, or a postal worker) has expressed concern [6]. Often there are multiple local law enforcement agencies within a jurisdiction; more than one agency may have authority to become involved in a case [6]. If violations of both state and federal laws are suspected, state and federal agencies may investigate the alleged perpetrator(s).
- Prosecutors' offices, which employ investigators and prosecutors and which may be local or state agencies (where they may be known as district attorneys, state's attorneys, commonwealth attorneys, or county attorneys) or federal agencies (known as the US Attorney's Office, there is one or more in each state). Every state except North Dakota also has a Medicaid Fraud Control Unit (MFCU), which is responsible for prosecuting fraud and abuse by providers, including long-term care facilities and home health care agencies [36]. Most MFCUs are housed in the state attorney general's office [37]. Additionally, state attorneys general sometimes have authority to bring criminal proceedings or to assist local prosecutors with prosecutions. If both state and federal laws are violated, multiple state and federal agencies may have authority to prosecute the alleged perpetrator.
- Community corrections agencies, which provide pre-trial, probation, parole, and community-based corrections services. Community corrections officials have the potential to detect and prevent elder abuse in several ways. They can discourage criminal defendants and offenders from finding employment in settings that are

frequented by or home to vulnerable elders, or supervise more carefully defendants and offenders who work in such settings. Also, they may supervise offenders who live with older family members or in close proximity to older individuals who are not family [38].

- Corrections agencies, which administer jails and prisons. Professionals who are concerned about elder abuse victims should be aware of policy initiatives to reduce the prison population by eliminating or shortening sentences for non-violent offenders, as well as more specific initiatives supporting early release of older offenders who require extensive, expensive health care.
- Victim services agencies, which may be system-based (meaning that they are part of law enforcement agencies or prosecutors' offices) or community-based (meaning that they are or are a part of a private community organization) [6]. Providers of victim services may be known as victim advocates, victim services professionals, victim-witness coordinators, or victim assistance (or services) providers. No matter their title, these professionals help crime victims navigate the criminal justice process by providing services including information, emotional support, notification of hearings or other key events such as the release of the offender from jail or prison, transportation to and/or accompaniment at court hearings, referrals to other services (including civil legal services), help preparing applications for protective orders, guidance in writing victim impact statements, and assistance in claiming victims' compensation funds. In all states, victims' compensation may be used to help eligible crime victims pay for costs associated with experiencing physical crimes (e.g., recouping money paid for medical care, mental health treatment, funeral costs; recouping lost wages; paying the costs of changing door locks or even relocating) [6]. Some states have chosen, as they are allowed to do by federal regulation, to allow victims of financial crimes to receive victims' compensation for financial losses.

16.4.2 Barriers of the Criminal Justice System

Some states and communities have made substantial progress during the past 10–15 years in strengthening the criminal justice system's response to elder abuse. Improvements are scattered and often fleeting, however. Victims and non-criminal justice professionals face challenges in seeking help from criminal justice professionals, and those professionals face systemic obstacles in their work on elder abuse cases.

- Victims lack information about what elder abuse is, that it raises legal issues, and that criminal justice professionals can help protect them and punish offenders.
- Non-criminal justice professionals lack information about the criminal justice system.
- Criminal justice system professionals lack knowledge about elder abuse and how it often violates criminal laws.
- Lack of resources and other systemic barriers impede the ability of criminal justice professionals to handle elder abuse cases.
- Existing criminal laws may be inadequate.

As with the civil justice system, inadequate data collection raises hurdles to funding and other system improvements.

These obstacles, promising practices that address them, and other potential improvements are discussed next.

16.4.2.1 Lack of Public Awareness

The public's lack of awareness [5] about elder abuse extends to the fact that it is usually also criminal conduct and that abusers should be held accountable by the criminal justice system to protect society as well as individual victims.

Public education campaigns need to inform the public on that issue, and also should recognize and address the concerns and misconceptions that older people have about seeking help from the criminal justice system.

Criminal justice professionals, civil lawyers, and allied professionals including APS continue to report that elder abuse victims are reluctant to contact law enforcement agencies. The attitudinal barriers discussed earlier, derived from the results of the early-1990s ABA Commission study about whether elder abuse cases were being heard in the judicial system [2], remain relevant. Professionals' anecdotes indicate that victims commonly explain their reticence by saying that although they want the abuse to stop, they do not want their abuser to get in trouble or go to jail. Professionals also indicate that many older persons, especially those from cultural, ethnic, or racial minority groups, distrust the criminal justice system [6]. Others want to keep their personal problems private. Some may fear that the process will endanger their health and independence, or that of a loved one for whom they provide care.

An older victim's concerns may be perfectly valid. Nevertheless, it is important to educate older victims about the criminal justice system so they can make informed decisions about the consequences, both good and bad, of contacting law enforcement. Older persons should be made aware of the assistance that may be available from victim services professionals and of the possibility of obtaining victim compensation for physical or, in some states, financial

harm. They should be educated that imprisonment is not the only outcome for an abuser. Judges usually have discretion to order that offenders receive needed treatment for substance abuse or mental health problems in lieu of incarceration, and community corrections officials can supervise offenders and take further action against offenders who do not comply with judicial orders.

16.4.2.2 Professionals' Lack of Awareness of the Role of the Criminal Justice System

Non-criminal justice professionals who engage with older persons also lack awareness that elder abuse often violates criminal laws. They also lack an understanding of the duties of criminal justice system professionals, how those professionals do their jobs, and how to communicate with those professionals. This limits the ability of allied professionals to know when referrals or reports to law enforcement are appropriate or, in some instances depending on the type of professional or the type of harm that has occurred, required by state law. Lack of awareness hinders counseling an older person about the protections and services that may be available through the criminal justice system to either the victim or the offender. Moreover, failure to recognize that a crime has occurred may result in the loss of evidence needed to build a criminal case and further harm to a victim [39].

It also is very important for these allied professionals to learn how to communicate effectively with criminal justice professionals [39]. Once professionals acquire that skill they should counsel older victims or victims' concerned family members and friends on how to do the same. Using civil legal or social work lingo such as "the victim experienced financial exploitation through power of attorney abuse" or "the victim lacked cognitive capacity to engage in sexual behavior" when reporting suspected elder abuse will have less impact than using criminal justice terminology such as "the victim's adult child stole her money and her house through fraud" or "the victim could not consent to sex and was raped."

Additionally, allied professionals, victims, and victims' concerned family members and friends need to understand that victims do not have to "press charges" against an alleged perpetrator for law enforcement or prosecutors to act. In the United States, crimes are committed against society, as embodied by the State or Federal government, and the victim is regarded as a witness to the crime. (This explains why prosecutors are known as district attorneys or state's attorneys or US attorneys.) A victim's refusal or inability to provide physical evidence or verbal information and testimony may prevent law enforcement officers from investigating a case and prosecutors from proving beyond a reasonable doubt that a crime occurred. But elder abuse prosecutors say that if victims had to press charges and

testify, homicides could never be investigated and prosecuted. If an elder abuse victim will not or cannot participate, law enforcement officers and prosecutors need to try to build a case through other sources of evidence just as they have been taught to do in cases of child abuse and domestic violence [39, 40].

Training by law enforcement professionals about their duties and responsibilities is the first step to raising the awareness of allied professionals. Resource materials that help allied professionals understand the terminology used by law enforcement officers and prosecutors can be very useful. Building rapport, as well as knowledge, through multidisciplinary initiatives—whether general case review teams, financial (or fiduciary) abuse specialist teams (FAST), elder abuse fatality or death review teams, forensic centers—are widely believed to be of enormous benefit to all professionals directly involved, and indirectly to their colleagues as well (Chaps. 18 and 19).

16.4.2.3 Criminal Justice System Professionals' Lack of Knowledge About Elder Abuse

Lack of knowledge about elder abuse greatly impedes the ability of criminal justice system professionals to protect victims and society, and to hold perpetrators accountable [39]. As discussed previously regarding civil lawyers, prosecutors are unlikely to learn about elder abuse in law school or in CLE programs about criminal law [41]. Law enforcement officers also are unlikely to get much, if any, education about this problem in the law enforcement academy curriculum [39, 41, 42].

To competently detect, investigate, analyze, and pursue elder abuse cases, law enforcement officers, other investigators, and prosecutors require information about the different types of elder abuse; how elder abuse relates to criminal conduct; risk factors and indicators; the role of APS in assisting victims as well as in being a potential source of evidence; whether they are mandated to report to or receive reports from APS; whether mandatory reporters commit a crime if they fail to fulfill their reporting duty; how to work with older victims and witnesses who may have physical or cognitive impairments or other challenges; and special skills for investigating and prosecuting elder abuse cases. Additionally, they will need some familiarity with an array of substantive civil law concepts, documents, and tools including banking and securities law; consent, capacity, and undue influence; contract law; deeds and life estates; domestic/family violence; the duties of guardians, conservators, agents under financial or health care powers of attorney, representative payees, trustees, and Veterans' Administration fiduciaries; long-term care and residential care facilities; public benefits eligibility and Medicaid planning; reverse mortgages; and wills [6, 41, 42].

Due to their different roles and responsibilities, community corrections officials also need to know whether offenders under their supervision are allowed by state law to work with or live near older persons, and they need to consider whether offenders' living and employment situations necessitate enhanced or otherwise different supervision [38].

Through a variety of means and with funding from an array of sources, states and localities have implemented training programs and developed training materials. Agencies that are part of the US Department of Justice have supported some of those efforts, as well as national initiatives to train criminal justice system professionals about domestic violence in later life and elder abuse; to train community corrections officials about elder abuse; and to develop and disseminate a pocket guide and a desk guide for law enforcement about legal issues related to elder abuse. The Department's Elder Justice Initiative has developed a website that, among other things, provides extensive information of use to CJS professionals; that website is found at <https://www.justice.gov/elderjustice/>.

16.4.2.4 Systemic Impediments to Elder Abuse Cases

Resources are needed to support the work of law enforcement, prosecutors, and community corrections officials in these cases. Absent public and professional awareness resulting in reports and cases, however, it can be difficult to obtain resources when there are so many competing priorities.

Nonetheless, some communities across the nation have devoted substantial resources to training, detection, investigation, and prosecution of elder abuse despite the lack of Federal resources that have made a significant difference in the criminal justice response to other problems such as child abuse and domestic violence [39]. Often these efforts have been led by an individual who was inspired by a terrible case outcome or a situation in his or her own family. Experience has demonstrated that these important efforts are often not institutionalized, however, and they evaporate if the leader is moved into another position in the agency or leaves the agency.

Professionals who handle elder abuse cases say that they are often very difficult to investigate and prosecute, requiring more time and resources to pursue than many other crimes. Investigators and prosecutors will need to develop proficiency and at times will also need to retain consultants and expert witnesses to analyze complex financial transactions, provide medical expertise, or assess whether a victim had decision-making capacity when an event occurred [41]. This is not simply a funding issue. Supervisors and policymakers need to recognize that professionals working on elder abuse

cases may need smaller caseloads or longer timeframes for case-handling than their colleagues who are handling less complex and time-consuming matters. Supervisors also may need to adopt different standards of determining success in these cases for purposes of personnel evaluation and promotions, so that professionals who handle elder abuse matters do not experience—or perceive that they will experience—limitations in their career advancement as a result [39].

In addition to training, resources, and agency support for work on elder abuse, criminal justice system professionals, particularly prosecutors who have litigated elder abuse cases, have indicated that several practices are meritorious. The ABA has policy calling for implementation of these practices.

- Specialization in elder abuse by individual law enforcement officers, prosecutors, and victim assistance professionals, or the establishment of specialized units on elder abuse within a law enforcement agency or prosecutor's office [6, 39, 41, 43].
- Use of "vertical prosecution" in the absence of a specialized prosecutor or unit, so the victim works with only one prosecutor through all phases of the prosecution to minimize trauma to the victim and to maximize evidence-development by the prosecutor [6, 39, 43].
- Multidisciplinary, collaborative investigations in either domestic or institutional settings can benefit both victims and professionals. Examples include joint investigations by law enforcement and APS, or collaborative unannounced visits to long-term care facilities by law enforcement, regulatory, and victim advocacy agencies (Operation Spot Check in Florida and Operation Guardian in California are examples of the latter); and the US Department of Justice's ten new, regional Elder Justice Task Forces that will take collaborative action against providers of substandard nursing home care. Combining different professional perspectives at an investigation can enhance evidence detection and preservation; eliminate the need for cross-referrals and multiple investigations; minimize trauma to victims; and facilitate immediate efforts to meet victims' needs [6, 39, 43, 44].
- Meaningful support for professionals' active participation in multidisciplinary teams and other initiatives is crucial. Although team meetings are time-consuming, participants indicate that benefits outweigh costs because they learn more about the responsibilities of other professionals, educate those professionals how to make more timely, appropriate, and information-filled referrals; and learn who to call when they need the assistance of another professional [6, 39, 43, 45]. A recent evaluation of the Los Angeles County Elder Abuse Forensic Center demonstrated that cases examined by the Forensic Center

were more likely to be sent to the prosecutor's office for review than cases handled only by APS [46, 47].

16.4.2.5 Inadequate Criminal Laws

Acts of elder abuse that constitute criminal conduct can be charged and prosecuted as violations of numerous criminal laws. For example, physical abuse might be charged as assault, battery, manslaughter, or murder; psychological abuse might be charged as stalking; sexual abuse might be charged as rape or sexual assault; and financial exploitation might be charged as embezzlement, forgery, fraud, larceny, or theft [6, 9, 48]. Although some states have statutes that explicitly criminalize elder abuse [2], such laws are generally unnecessary for prosecutions to occur; the exception is criminal elder neglect, for which prosecutors indicate a specific statute is often needed.

It may be valuable to enact tougher penalties for elder abuse by classifying crimes as felonies rather than as misdemeanors or by enhancing penalties for physical or financial crimes of older persons because their age or vulnerability is deemed to be an aggravating factor [39]. Measures of productivity and success within criminal justice agencies often motivate professionals to place priority on cases that can generate tougher penalties. Thus, tougher penalties may result in more elder abuse prosecutions, which in turn may generate more public and professional awareness, more funding, and more messages to perpetrators that they may not get away with their actions.

Another benefit of prosecutions is that information about convictions may become available when criminal background checks are conducted, thus potentially preventing elder abuse by caregivers in domestic or institutional settings, by non-caregiving staff in institutional settings, and even by other residents in institutional settings [7].

Criminal justice system professionals also have expressed support for criminal laws that encourage or require their involvement in multidisciplinary teams and other collaborative efforts; that allow financial institutions to temporarily freeze and protect the assets of an alleged victim of financial exploitation while an investigation is conducted; and that authorize or require judges to allow prosecutors special latitude in questioning or preserving the testimony of an older victim [2, 6, 39, 41, 43].

16.4.2.6 Insufficient Data Collection

Although the ability to prosecute most acts of elder abuse using traditional criminal laws means that specific laws creating the crime of elder abuse or exploitation are not necessary, there are negative consequences for state data collection about criminal cases involving elder abuse [39].

Collecting elder abuse crime data across states also is hampered by differences in definitions and categories. Moreover, the federal government's three methods for

collecting and combining state crime data—the FBI's Uniform Crime Reports, the FBI's National Incident-Based Reporting System, and the National Crime Victim Survey—largely or completely fail to capture elder abuse data [22, 49].

The lack of data impedes criminal justice professionals from demonstrating to policymakers the need for funding, training, and resources to pursue elder abuse cases and provide assistance to victims. It also limits the ability of researchers to evaluate the efficacy of interventions, which is especially problematic given the increased focus in the criminal justice field on supporting evidence-based practices. State laws criminalizing elder abuse, neglect, or exploitation might alleviate the data problem but would not eliminate the issues of comparability and collection. Policymakers, practitioners, and researchers should consider whether existing data can be analyzed in new ways or whether relatively minor revisions to the categories of data collected might facilitate new information about elder abuse.

16.4.3 Involving Criminal Justice Professionals in Efforts to Strengthen Laws, Policies, and Practices

Criminal justice professionals, like civil lawyers, have ethical and legal restrictions that affect their ability to disclose case information, and these challenges must be considered and addressed thoughtfully. But the growing number of multidisciplinary teams with members from criminal justice agencies indicates that the challenges are not insurmountable, and the study of the Los Angeles County Elder Abuse Forensic Center demonstrates that their participation is beneficial [46, 47]. Criminal justice professionals bring critical knowledge to efforts intended to protect individual victims, to enhance the safety of other service providers, and to improve laws, policies, practices, and procedures [6, 39, 41, 42].

16.5 Judicial System

Elder abuse may involve civil laws, criminal laws, or both. It may be appropriate for an elder abuse case to be heard by a judge in a civil court, a criminal court, or in both types of courts. As discussed previously and illustrated in Table 16.1, the civil and criminal justice systems have distinct goals and purposes. They hear different types of cases (lawyers refer to this as "jurisdiction"), the burdens of proof are dissimilar, and the victim's role in each type of court varies significantly.

This delineation between civil and criminal courts is fundamental yet simplistic. State court systems are structured in divergent ways and a wide array of names or descriptors are

used for their courts. Many communities—particularly those in less populated or rural areas—have courts of general jurisdiction that hear both civil and criminal cases. Other communities have separate civil courts and criminal courts. Moreover, there exist specialty courts that fall under the rubric of either the civil or criminal court systems. Many communities have probate courts that commonly handle civil matters such as guardianship/conservatorship, mental health commitments, protective proceedings, and wills and estates cases. Some communities have family courts that hear civil matters including divorce, custody, visitation, paternity, adoption, and domestic and family violence. Sometimes specialty courts handle both civil and criminal cases. For example, a growing number of communities have one or more problem-solving courts that hear both criminal and civil matters related to a certain problem or population group; these may be domestic violence, drug, elder, housing, or veterans courts. The goal of problem-solving courts, as the name suggests, is to bring together legal services, social services, and other resources to address the underlying problem that is causing or contributing to an individual's legal problem(s).

Federal courts also hear cases involving elder abuse. The US District Courts, which are the frontline trial courts in the Federal judicial system, handle both civil and criminal matters. The similarities and differences outlined in Table 16.1 also apply to the federal courts. Bankruptcy proceedings, which may be a consequence of elder financial exploitation, are governed by a distinct law and heard by bankruptcy divisions within the US District Courts.

16.5.1 Roles of Judges

Growth of the older population, increasing detection and/or incidence of elder abuse, training of lawyers and allied professionals about civil remedies and criminal prosecution, and state legislative action have expanded emphasis on the use of the legal system to redress elder abuse and thus also the role of the judicial system in addressing the problem [24, 39].

As highlighted in the Introduction, judges handle elder abuse cases—whether they occur in domestic or institutional settings—in both civil and criminal courts, including specialty courts that hear matters including guardianship and conservatorship, family issues, domestic violence, and elder protection. Elder abuse cases may arise in numerous contexts:

- criminal cases such as assault, battery, elder abuse/neglect/exploitation, forgery, fraud, manslaughter, murder, rape, sexual assault, or theft (some of which may carry enhanced penalties when committed against an older person);

- civil fraud or conversion matters to regain misappropriated property;
- personal injury actions;
- guardianship or conservatorship;
- mental health commitment;
- special protective proceedings initiated through APS agencies;
- cases involving health care decisions for an incapacitated patient; and
- criminal or civil cases regarding institutional care in nursing homes or other long-term care facilities [2].

Increasingly, judges are hearing petitions for civil orders of protection from victims of elder abuse as victims learn that such protection is available and as states expand their statutory criteria to include more situations of elder abuse (e.g., physical violence committed by a family member other than a spouse or intimate partner).

16.5.2 Barriers of the Judicial System

As previously discussed, the ABA Commission's early-1990s study of cases involving elder abuse in the state courts indicated that there were two categories of practices and barriers that inhibited entry of cases: the abused person's attitudes about the courts and about the pursuit of legal remedies, and systemic practices in or related to the courts. As the attitudinal barriers related to the civil justice, criminal justice, and judicial systems, they were provided earlier in this chapter. Study participants identified systemic practices connected with the judicial system.

- The lack of knowledge about and sensitivity to elder abuse by judges was seen as inhibiting prosecutors, civil lawyers, and abused persons from bringing cases into the courts.
- The failure of court staff to explain the judicial process to older abused persons, particularly to those who have a mental or cognitive disability or who may be intimidated or confused, was considered to be a barrier to the pursuit of legal remedies by abused persons.
- The courts' failure to recognize that older persons who are homebound or bedbound may be incapable of traveling to the courthouse even though they are capable of testifying was also considered to be a barrier to elder abuse cases.
- Court delays—typical or otherwise—were thought to be particularly onerous to older abused persons who are nearing the end of their life span, and who may be losing their capacity to remember the abuse and testify about it.

- Lack of knowledge about elder abuse among prosecutors, law enforcement officers, and civil lawyers was also viewed as a barrier by the participants [2].

To address both categories of barriers, the ABA Commission promulgated 29 recommended guidelines for state courts. The recommended guidelines were subsequently adopted as ABA policy by its House of Delegates in August 1996 [50]. As the guidelines remain timely and relevant 20 years later, they are provided in their entirety.

1. Judges should receive training about elder abuse. Topics should include: dynamics of elder abuse and family violence; types of cases involving elder abuse; capacity issues; State laws concerning elder abuse; the APS system and aging services; case management issues and procedural innovations; and crafting effective orders in elder abuse cases. Training should be designed and presented with the input and involvement of advocates, APS, prosecutors, law enforcement, and aging services providers and should include coverage of their roles and resources.
2. Court staff should receive training about elder abuse. Topics should include: dynamics of elder abuse and family violence; types of cases involving elder abuse; capacity issues; APS system; aging network and other social services; case management issues and procedural innovations; and data collection about elder abuse cases. Training should be designed and presented with the input and involvement of advocates, APS, prosecutors, law enforcement, and aging services providers and should include coverage of their roles and resources.
3. Courts should ensure that prosecutors, investigators, lawyers, law enforcement officers, APS workers, social workers, bank and financial institution officials, health care providers, and any other professionals appearing before them in cases involving elder abuse are familiar with the dynamics and issues of elder abuse and with the role of the courts in addressing elder abuse. To achieve that objective, courts should encourage and support the development and implementation of cross-training for victim/witness programs, APS staff, aging services providers, lawyers, prosecutors, law enforcement, banking officials, health care providers, and any other relevant professionals about the resources and assistance offered by each of them to older abused persons and about the ways in which they need to coordinate those efforts.
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.
5. Courts should recognize that the capacity of older persons may fluctuate with time of day, medications, etc. and should be flexible in scheduling hearings to accommodate those individual variations.
6. Courts should expedite cases involving elder abuse on the calendar.
7. 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.
8. Courts should understand gradations of diminished capacity in order to more effectively manage and adjudicate cases involving elder abuse.
9. Courts should consider that incapacity could increase the likelihood of abuse and, if necessary, order a qualified evaluator to conduct an unbiased assessment of the older person's capacity.
10. Courts should understand and use limited guardianship and other alternatives to guardianship appropriately.
11. When counsel for the older person is required to be appointed, or is otherwise appointed, the appointment should be at the earliest possible stage of the proceedings.
12. Courts should allow prosecutors special latitude in questioning older abused persons and in offering additional witnesses and corroborating evidence.
13. 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 older abused person.
14. Further analysis and study should be undertaken of the ramifications of courts more readily allowing an older abused person's testimony to be videotaped before capacity is lost or the individual dies.
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.
16. Further analysis and study should be undertaken of the ramifications of courts more readily allowing admission of evidence from collateral sources if the older abused person's capacity is at issue, as has been done by the

Department of Justice regarding child witnesses and child abuse cases.

17. Courts must develop ways of ensuring that judges become aware of cases involving older abused persons that might be underway simultaneously in different divisions or that might previously have been heard and have some influence on a current case.
18. Further study should be given to the concept of consolidation of the courts handling cases involving elder abuse, for example into a "family court."
19. The use of alternative dispute resolution (ADR) in cases involving elder abuse is not recommended at this time. The possible use of ADR should be studied further.
20. Newly appointed guardians should receive training about their role and responsibilities as guardians, and about preventing, recognizing and reporting elder abuse.
21. Victim/witness advocates should be available and involved in assisting older abused persons throughout the judicial process in both non-criminal and criminal court proceedings.
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 older abused persons. Additionally, there should be an elder abuse specialist at every victim/witness program.
23. Especially if there are no victim/witness advocates available to help an older abused person, court staff should help explain and de-mystify the court process for older abused persons who may be intimidated or confused, or who may have some type of mental or cognitive disability.
24. Courts should: encourage and support the development and continuing operation of a state or local task force or coordinating council on elder abuse issues; lend their support to existing task forces or coordinating councils on elder abuse; or encourage evolving or existing task forces or coordinating councils on family violence or domestic violence to incorporate elder abuse advocates into their membership and elder abuse issues into their agenda. Task force or coordinating council members should include judges and court personnel, representatives of the Attorney General, representatives of the Medicaid Fraud Control Unit, public and private lawyers, law enforcement officers, APS administrators or workers, social services providers, health care providers, banking and financial institution officials, victim/witness advocates, representatives of the long term care ombudsman program, and other relevant professionals. In addition to addressing systemic problems faced by the courts and the council members in preventing and responding to elder abuse, these task forces or coordinating councils should develop materials that explain their roles and their relationships to each other and the court system, and disseminate those materials to each other, the courts, and the public.
25. Courts should include APS and aging services on court advisory councils or develop other mechanisms for establishing linkages with those organizations and others that address elder abuse.
26. Courts should encourage and support the development and continued operation of multidisciplinary teams on elder abuse.
27. Courts should encourage and support the development of protocols or memoranda of understanding between various entities involved in elder abuse cases as to their roles and relationships.
28. Judges and court personnel should have familiarity with APS, aging, and social services providers in their community or brochures or other materials from those agencies so that they can direct an older abused person to appropriate service providers.
29. Courts should encourage and support the development of a "court social worker" or "court ombudsman" program using trained volunteers to help older, disabled, incapacitated or other individuals by giving them information about social services and other community organizations; linking, rather than just referring, them to social services and other community organizations; assisting them with the completion of *pro se* documents; and helping them to understand the nature of the court process [2].

In March 2006 the Center on Aging at Florida International University (FIU) produced recommendations for adapting the US Department of Justice Bureau of Justice Assistance's *Trial Court Performance Standards with Commentary* [51] to an aging society in three contexts: guardianship, self-service, and criminal cases involving elder abuse and domestic violence [52].

The FIU recommendations were organized into the five categories used in the Trial Court Performance Standards. A synopsis by category of the FIU recommendations most pertinent to elder abuse cases follows; the FIU recommendation numbers are provided.

1. Access to justice: older court users receive escort assistance (1.2.A); older criminal defendants receive a standardized medical and mental health assessment (including dementia and cognitive impairment) unless they have had one in the past 30 days (1.3.F); judges, court-appointed counsel, and all other court staff receive standardized, current training on physical and psychosocial issues related to aging (1.4.A).
2. Expedition and timeliness: multiple cases involving the same older person should be heard by a single court if

possible, and if impossible then court staff should ensure that the judges involved are aware of all related cases (2.1.A).

3. Equality, fairness, and integrity: determinations of diminished capacity of an older litigant are made in accord with professional standards and with input from appropriate professionals (3.1.C); capacity assessments are performed in the alleged incapacitated person's home or other familiar environment (3.1.C); courts are cautious about recommending or requiring mediation in cases involving elder abuse or domestic violence (3.1.F); the court balances the goal of minimizing delays in cases involving older persons with the need to provide accommodations to litigants whose ability to participate necessitates that proceedings move at a slower pace than normal (e.g., more breaks, later start or earlier end to a court day) (3.1.H); guardianship and conservatorship cases are monitored by court staff, the judge is notified if reporting requirements are not met, and the judge initiates an investigation or appropriate legal proceedings for non-compliance or reports that evidence malfeasance (3.5.A and 3.5.C); all newly-appointed guardians and conservators are provided with jurisdiction-specific information about their roles and duties, including preventing, detecting, and reporting elder abuse, and subsequently updated about any legal changes in their duties (3.5.D); and the court maintains an electronic information system and staff capable of monitoring and compiling case data including litigant demographics (3.6.B).
4. Independence and accountability: the court cultivates and continues relationships with aging, health, and mental health service providers in its jurisdiction, including APS (4.1.A); and in partnership with those service providers, the court conducts and updates education programs for older persons and for those service providers about court services and relevant substantive topics (4.4.A and 4.4.B)
5. Public trust and confidence: courts create and then comply with standards about data collection and maintenance, including case-outcome data and demographic data about older court users, and issue annual reports summarizing that data (5.2.A) [51, 52].

16.5.2.1 Lack of Knowledge of Elder Abuse Among Judges and Court Personnel

Judges need training and technical assistance on addressing systemic barriers and on substantive legal issues and scientific knowledge about decision-making capacity, physical abuse, exploitation, and neglect. Judges and court administrators do not have access to or time to read lengthy journal articles about research and therefore could benefit from simple, practical tools about research findings. They need to learn about developments in scientific research about

decision-making capacity, physical abuse, and neglect to inform their judgments in many civil and criminal cases, and about any research on the effectiveness of interventions that may occur in the future [53].

The State Justice Institute funded the ABA Commission to develop curricula on elder abuse for judges and courts personnel in the late 1990s [2]. The US Department of Justice Office on Violence Against Women has provided judicial training through its Enhanced Training and Services to End Abuse in Later Life Program. The National Center for State Courts has, with a combination of Federal and foundation funding, established the Center for Elders and the Courts, developed new resources and made training available online. Other judicial organizations, such as the National College of Probate Judges and the National Council of Juvenile and Family Court Judges, have offered training to their members about elder abuse. State judicial education programs have addressed the problem as well. Ongoing technical assistance and the development and dissemination of additional practical materials for judges and court staff are necessary, however.

16.5.2.2 Data Collection and Evaluation by the Judicial System

Understanding the extent, nature, and outcomes of the judicial system's role in elder abuse cases is critical. It is also quite challenging. The failure to place a high priority on evaluation, lack of resources, varying practices among local jurisdictions and states, and engagement with multiple definitions and relevant laws make it difficult to consistently categorize cases and allow meaningful comparison statewide or nationally.

In 2006, ABA Commission research demonstrated that only three state courts systems (Kansas, Vermont, and Wisconsin) had elder abuse as a distinct case type reported by trial courts to the state courts' administrative office [22]. Three years later the Conference of Chief Justices and the Conference of State Court Administrators supported a policy resolution urging state court systems to collect data on elder abuse [54].

Stiegel and Teaster's assessment [45] of the five court-focused elder abuse initiatives discussed in the following section indicated that each was doing very little to collect data on their impact and outcomes. Only two of the initiatives had developed a client satisfaction survey, and they had received very few responses. None of the initiatives were making any formal attempt to obtain feedback from their professional stakeholders. Moreover, court case files in all five study sites contained very little information about the victims and perpetrators beyond the most basic demographic-type data. There was very little information about the circumstances and outcomes of the case that would be needed for an evaluation. Indeed, in four of the five study

sites it was usually impossible to tell from the court's data cover sheet that a case involved elder abuse, and that is the data reported to and by the state court administrative offices. In other words, these cases are not "counted" as elder abuse cases. Clearly these limitations have significant policy and practice implications.

16.5.3 Involving Judges and Court Personnel in Efforts to Strengthen Policies and Practices

Fueled by the ABA Commission's recommended guidelines or the same problems that those guidelines addressed, between 1999 and 2006 five jurisdictions established court-focused elder abuse initiatives, defined as "an initiative that serves victims or potential victims of elder abuse through either a court or a court-based program, or a program conducted in partnership with a court" [45].

With funding from the National Institute of Justice, which is the research agency of the US Department of Justice, researchers from the ABA Commission and the University of Kentucky College of Public Health/Department of Gerontology assessed those five initiatives. Descriptions of their activities at the time of the research project follow, organized alphabetically by county of location.

- The "Elder Protection Court" (EPC) in Alameda County, California, offered a special civil and criminal docket for elder abuse cases, including elder abuse protection order cases, in the Superior Court of Alameda County. It was the first specialized elder court.
- The "Elder Justice Center" (EJC) in Hillsborough County, Florida, a program of the 13th Judicial Circuit Court, provided residents aged 60 and older with assistance—but not legal advice—in completing court documents, such as applications for protective orders, referrals to legal and social services programs, and case management services in guardianship matters. The EJC staff monitored guardianship cases. Additionally, staff advocated for older crime victims and, if the victim desired, could help older criminal defendants by providing referrals to diversionary programs such as mental health or substance abuse treatment programs.
- The "In-Home Emergency Protective Order Initiative" (IEPOI) in Jefferson County, Kentucky, helped medically fragile/homebound victims of abuse aged 60 and older to obtain emergency protective orders and longer-term domestic violence orders by telephone. Initiative partners included: ElderServe, Inc., an aging services non-profit that managed the IEPOI, the Circuit Court Clerk's office, the Family Court, APS, and the sheriff's office.

- The "Elder Temporary Order of Protection" Initiative (ETOP) in Kings County, New York, was sponsored by the New York City Family Justice Center in Brooklyn. The ETOP assisted eligible victims of domestic violence (aged 60 or older and unable to appear in court because infirmity or disability made it impossible or a great hardship to travel) obtain temporary orders of protection. Social workers and lawyers from the New York City Department for the Aging and the Jewish Association for Services for the Aged Legal/Social Work Elder Abuse Program were available to provide emergency counseling, direct services, and other information regarding services for the elderly. The Family Court and its Clerk's Office also had significant roles in the initiative.
- The "Elder Justice Center" (EJC) in Palm Beach County, Florida, a program of the Board of County Commissioners in collaboration with the 15th Judicial Circuit Court. The EJC helped residents aged 60 and older who were arrested for certain crimes, involved in guardianship proceedings, or in need of other court-related help. The program provided assistance—but not legal advice—to older persons in completing court documents such as applications for protective orders, referrals to legal and social services programs, and accompaniment to civil and criminal hearings. Staff also monitored and investigated guardians at the probate judge's request. In certain cases the EJC identified older criminal defendants who might have dementia or other cognitive problems, and arranged assessments that helped judges decide whether to divert the defendants from jail into mental health or substance abuse treatment programs [45].

Interviews with initiative participants, other professionals in the community, and three older persons who had been helped demonstrated that the initiatives improved handling of elder abuse cases and enhanced the criminal justice response to elder abuse by:

- Facilitating greater access to justice and better court outcomes for victims through court accommodations, increasing judges' and other professionals' knowledge about elder abuse, and providing emotional support throughout the court process;
- Providing services to courts or to victims that enhance victim safety and prevent further abuse;
- Connecting victims with services that may help address underlying problems and prevent future court cases;
- Providing services to courts or to victims that may facilitate prosecution of elder abuse cases; and
- Handling elder abuse cases more efficiently and with fewer delays [45].

Other elder protection courts were established in Contra Costa and Ventura counties in California. One is under development in Charleston, South Carolina. Other communities have expressed interest in the concept. The Elder and Miscellaneous Remedies Division (ELMRD) of the Circuit Court of Cook County in Chicago, Illinois, combined the elder protection court concept with the elder justice center concept; it also hosts a law school clinical program. The ELMRD is the largest and most ambitious CFEAI to date, implemented after several years of multidisciplinary input into its planning. It hears both civil and criminal cases, involves law students in its activities, enhances public and professional awareness of elder abuse and legal problems affecting older persons, continues to be advised by a multidisciplinary task force, and is collaborating with researchers to ensure that data about the effectiveness of the ELMRD's services are collected and analyzed [55, 56].

Aware of the impending impact on the courts of the burgeoning population of older persons, the Supreme Courts of three states—Alaska, Pennsylvania, and South Carolina—have established task forces to examine the judicial system's response to elder abuse and other elder law issues. Judges also participate in and often serve as leaders of state and local task forces or multidisciplinary collaborations that have not been established by a state's highest court.

The Conference of Chief Justices and the Conference of State Court Administrators have adopted resolutions supporting development of problem-solving courts, widespread implementation of the principles driving those courts, and development and promotion of state judicial leadership on efforts to improve courts' recognition of and response to elder abuse [57–59]. The ABA also has policy urging state, territorial, tribal, and local courts to address the problems referenced earlier by applying principles based on the practices implemented by the five CFEAI assessed by Stiegel and Teaster [45] and by subsequent initiatives [60].

16.6 Conclusion/Overarching Policy and Research Issues/Recommendations

This chapter has discussed numerous promising practices and suggestions that should be developed and institutionalized throughout the country. Therefore, this conclusion will focus on five overarching recommendations that would benefit all three components of the justice system and the elder abuse victims who interact with them.

1. While some states and communities are doing important and exciting work with very few resources, substantial funding for Federal, State, and local agencies, for training and education, for resource development and technical assistance, and to support data collection is essential to enhance access to justice for elder abuse victims.
2. Assessment and elimination of barriers other than lack of funding—such as laws, regulations, policies, and practices—that inhibit victims' access to justice and the ability of justice system professionals to meet victims' needs.
3. Implementation of existing recommendations about data collection to obtain prevalence or incidence data or data about the financial costs of elder abuse and to establish a stronger foundation for research and evaluation of the justice system's role in preventing, detecting, and remedying elder abuse.
4. Research on the outcomes of justice system interventions, including whether they are what victims want, making victims safer, preventing further victimization, reducing costs to businesses and government agencies, etc. Assess whether different cultural groups have greater difficulties accessing the justice system and whether they are disparately impacted by it. Consider justice system interventions or approaches that are used in other countries or cultures and whether they might have merit in the United States.
5. Research about decision-making capacity—particularly financial capacity—and susceptibility to undue influence, and about markers and consequences of neglect. The results of this research must be made accessible and understandable to civil lawyers, criminal justice professionals, and judges, as well as adult protective services, financial institutions, health care providers, and myriad other professionals and providers of services to older persons.

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