



Improving California's Response to Elder Abuse, Neglect, and Exploitation

A BLUEPRINT



April 2011
California Elder Justice Workgroup

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California Elder Justice Workgroup (CEJW)

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For more information on CEJW and the Blueprint, visit the CEJW wiki site at <https://cejw.pbworks.com>

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Introduction

BACKGROUND and METHODOLOGY

This Blueprint reflects the work of the California Elder Justice Workgroup, which was launched in October 2009 by participants in the Archstone Foundation’s Elder Abuse and Neglect Initiative. The group formed to discuss challenges that require systemic change, make recommendations, and identify action steps. With an 18-month grant from the Archstone Foundation, the Workgroup’s 12-member Steering Committee planned and oversaw a statewide summit in April 2010, during which 92 professionals from diverse disciplines discussed problems, formulated recommendations, and made commitments to participate in follow-up activities. Other input to the Blueprint came from a Technical Advisory Group of experts, researchers, and advocates within and beyond California (see Appendices), an environmental scan of relevant literature, and discussions with individuals and advocacy organizations (see Appendices). Surveys were also conducted with Adult Protective Services workers (APS), Long Term Care Ombudsman program personnel (Ombudsmen) and law enforcement officials. The Blueprint identifies needs and gaps and sets forth recommendations in 11 areas. It further proposes the formation of an organization to implement the recommendations and respond to needs on an ongoing basis.

► Caveats

As is the case with any needs assessment, the Blueprint reflects the experiences and points of view of those involved in its creation. Decisions about whom to invite to the summit and groups to meet with were made by CEJW’s staff and Steering Committee in consultation with members of the Technical Advisory Group, the Archstone Foundation, and other participants in the Elder Abuse and Neglect Initiative. Priority was placed on including individuals who are deeply involved in elder abuse prevention or related work on a daily basis as advocates, service providers, educators, and participants on multidisciplinary teams. As a result, the Blueprint reflects a grassroots and practice-based view from the field.

The Blueprint further represents a snapshot in time, and several significant developments shaped the findings:

- California’s unprecedented financial crisis resulted in devastating cuts to such fundamental services as in-home support services, transportation, case management, and adult day care. A common theme in CEJW discussions was the impact of these cuts on seniors’ vulnerability to abuse, neglect, and exploitation. These developments further brought into sharp relief the interconnectedness of the elder protection and long-term care networks and the importance of preserving basic services as a key abuse prevention strategy.
- Two recently released reports exposed disturbing inadequacies in California’s response to abuse in long-term care facilities. These revelations came at a time when dramatic cuts to the state Ombudsman program, a sharp drop in facilities’ investigations, and the rapid proliferation of new facilities heightened the urgency of addressing abuse in facilities.
- An apparent epidemic of such complex forms of financial abuse as predatory lending and mass marketing fraud threaten the security of countless seniors. The lack of remedies, resources, or even a clear understanding of victims’ needs commanded attention.

Because the Blueprint was developed during a period of extraordinary circumstances, newly identified exigencies may eclipse other needs. The Blueprint, however, is a “living document” that will be supplemented and refined over time to reflect a balanced view. Special efforts will also be made to solicit input from disciplines and underserved communities whose needs or points of view are not reflected.

The scope of the Blueprint is broad and ambitious. Although the need to set priorities may seem evident, CEJW has not done so. Rather, agencies, policy makers, program developers, foundations, researchers, educators, advocates, practitioners, businesses, and others are encouraged to use the document to set priorities that reflect their unique needs, foci, interests, and resources.

► Next Steps

Although the original goal of this project was solely to develop a plan, the urgency of many of the needs identified and the enthusiasm of those involved prompted a wide range of activities. Actions that CEJW has undertaken in collaboration with summit delegates and other stakeholders include the following:

- Organized the APS/Ombudsman Jurisdictional Workgroup to improve coordination in the investigation of abuse reports. The group includes the State Long-Term Care Ombudsman and representatives from the Protective Services Operations Committee of the California County Welfare Directors Association; an area agency on aging; the University of California, San Francisco; WISE & Healthy Aging Long Term Care Ombudsman Program; and the Center of Excellence in Elder Abuse at the University of California, Irvine. The group conducted a statewide survey of Adult Protective Services (APS) and Long-Term Care Ombudsman Program staff to gain a clearer understanding of jurisdictional issues encountered across California;
- Collaborated with the California Commission on Aging in forming a group to explore sources of assistance and compensation for older adult victims of crime, including the Victims of Crime Act and California’s restitution fund;
- Created a wiki site, e-newsletter, and Google discussion group to keep stakeholders informed about the Blueprint, exchange information, and engage in discussion;
- Assisted in planning the California Association of Area Agencies on Aging’s annual conference with the goal of raising awareness about abuse and fostering relationships;
- Provided input on the needs of vulnerable and abused elders for the California State Plan on Aging 2009-2013 developed by the California Department of Aging;
- Contributed to the Mental Health Services Act planning process;
- Provided testimony to the Administration on Aging on the reauthorization of the Older Americans Act; and
- Developed *Mental Health Service Needs of Vulnerable Elders: A Fact Sheet* to help elder advocates understand the Mental Health Services Act and take advantage of the opportunities it provides to develop mental health services for elders.

All too often the implementation of plans is left to chance. This Blueprint was conceived as the first step in a process to create an ongoing advocacy organization that is described in Section 12. The goal is to mobilize advocates and create opportunities for them to work together to confront the challenges described in this Blueprint. CEJW further encourages policy makers, researchers, program developers, foundations, and others with an interest in elder abuse to use the Blueprint to guide their work. Opportunities for becoming involved in state-level activities will be posted on CEJW’s wiki site at cejw.pbworks.com

ISSUE 1:

California's Abuse Reporting and Response System



Under California's elder and dependent adult abuse reporting laws, certain individuals are legally mandated to report known or suspected elder abuse and neglect. Mandated reporters include physicians and medical professionals; mental health providers; clergy; regulatory agency staff; and employees of health care facilities such as hospitals, skilled nursing facilities, adult day care centers, and residential care facilities. Also included are people who have assumed full or intermittent responsibility for the care or custody of elders, regardless of whether or not they receive payment (for a complete list of mandated reporters, see Welfare and Institutions Code §§15610.17 and 15630). The law covers Californians over the age of 65 as well as younger adults, age 18 to 64, who are determined to be dependent as a result of physical or cognitive disabilities that interfere with their ability to protect themselves or manage their own affairs. Residents of long-term care facilities are covered regardless of their age or length of stay.


Multiple agencies are charged with investigating and responding to reports, the most common of which are Adult Protective Services (APS), local law enforcement, and local long-term care ombudsman programs (Ombudsmen). In addition, the California Department of Public Health Licensing and Certification Program and the Department of Social Services Community Care Licensing Division investigate (respectively) alleged abuse complaints and regulatory violations in skilled nursing facilities and residential care facilities for the elderly. Ombudsmen and local law enforcement are mandated to cross report to the California Attorney General's Bureau of Medi-Cal Fraud and Elder Abuse, which conducts investigations in long-term care facilities.

CHALLENGES and NEEDS

Although California's reporting and response system has clearly succeeded in identifying and helping abused and vulnerable seniors who would not otherwise have received help, persistent challenges have limited its effectiveness and efficiency. To achieve a clearer understanding of these problems, members of CEJW's Steering Committee asked APS workers to respond to a survey that used case examples to assess their understanding of their duties and explore differences in how they assessed abuse situations. These variations were further discussed at the summit. Following the summit, an APS/Ombudsman Jurisdictional Workgroup formed to continue to explore problems with the reporting system. The group, which includes

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members of CEJW’s Steering Committee, California’s Long Term Care Ombudsman, a researcher from the University of California, San Francisco, and the president of the Protective Services Operations Committee (PSOC) of the County Welfare Directors Association (CWDA), conducted a statewide survey of Ombudsmen and APS. Reports by the Senate Office of Oversight and Outcomes (2009) and Disability Rights California (2010) exposed additional deficiencies in California’s response to abuse in long-term care facilities.

► **Variation in how cases are handled**

Widespread variations exist across the state, and even within counties, in how agencies charged to respond to reports interpret their responsibilities, carry out investigations, and define eligibility for protective services. To a great extent, these variations can be attributed to a lack of clarity regarding definitions contained in the state’s laws. Examples of problematic terms and the questions they raise include:

- **Dependent adult:** This term refers to persons with physical, mental, psychological, or cognitive impairments that interfere with their ability to protect themselves or manage their own affairs. It is unclear however what criteria or level of disability should be used in evaluating dependence. Further, California extends coverage to all abused elders (persons 65 and older). This differs from most other states, which only offer special protections to elders who meet the “dependent” criteria. Including non-dependent elders in California’s law has led to claims of ageism or paternalism by some.
- **Self-neglect:** Variations exist with respect to what behaviors, conduct, and circumstances should be included in this category.

Other factors that contribute to variations across the state include:

- **Lack of standardized risk assessment tools.** Those responding to reports must assess the likelihood that abuse is occurring or will occur, the severity, and the urgency in deciding if elders are eligible for services. Lacking standardized tools, local APS programs have developed their own tools and techniques leading to variations in who is served and how cases are prioritized;
- **Lack of guidance and tools to assess capacity.** When responding to abuse reports, investigators often must assess clients’ capacity to make reasoned and voluntary decisions. Perhaps the most common and problematic judgment they must make is whether clients “have capacity” to stop investigations and refuse help as APS investigations and services are voluntary. Workers must also frequently decide when involuntary measures are needed; and
- **Lack of guidance from the state in interpreting mandates.** Cuts to state funding for Adult Protective Services have reduced the state’s ability to issue policy updates and interpretations and respond to questions and requests for guidance.

► Lack of a centralized point of intake

California is one of only a few states that does not have a statewide toll-free hotline to direct callers to appropriate local agencies that accept and investigate abuse reports regardless of where they are calling from. An 888 number was installed as part of the Attorney General's "Face it—It's a Crime" campaign in 2003 (see Section 10) but later discontinued.

► Jurisdiction

A lack of clarity exists with respect to what agency has responsibility for investigating and responding to abuse in certain circumstances, including:

- When residents of long-term care facilities are abused by outsiders, including family members; and
- Crimes like identity theft that are both state and federal violations.

► Coordination among reporting agencies

Agencies mandated to accept reports; including APS, Ombudsmen, and law enforcement; are required to cross-report to ensure that cases are handled by the most appropriate agency, prevent duplication of effort, facilitate information-sharing and evidence collection, and protect victims. In some cases, the ongoing involvement of more than one agency is needed. Other agencies that have important roles to play include state and federal regulatory and law enforcement agencies, coroners and medical examiners, and providers of mental health services. Lack of coordination among these entities poses a threat to victim safety and impedes efforts to hold perpetrators accountable. Specific problems include:

- Lack of clarity about the type of information about clients and case outcomes that can be shared by APS, police, district attorneys, and referring agencies. Mandated reporters are often dissatisfied with the lack of feedback they receive after making reports and believe that it interferes with safety planning for victims;
- Limited ability of APS, law enforcement, Ombudsmen, and mental health workers to exchange information on clients and case disposition;
- Federal prohibitions against Ombudsmen cross-reporting abuse to law enforcement or APS without victims' consent (See Section 5);
- Failure of Ombudsmen and local law enforcement to cross report to the California Attorney General's Bureau of Medi-Cal Fraud and Elder Abuse;
- Medical examiners and coroners lack protocols for investigating cases; and
- Law enforcement officers face barriers to accessing evidence from financial institutions.

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► The duty to report

To be effective, reporting laws must cover those who are most likely to observe abuse, and mandated reporters must understand their duties and comply with the law. They must further be assured that they will not be punished or retaliated against for doing so. Additionally, agencies that are mandated to accept reports must understand the law and their responsibilities. Shortcomings have been observed in the following areas:

SOME WHO ARE LIKELY TO OBSERVE ABUSE ARE NOT COVERED

Advocates have recommended that the mandate to report be extended to include:

- Federal employees; including postal workers, personnel from federal law enforcement and regulatory agencies, providers of federally subsidized housing, and Social Security employees;
- Notaries;
- Lawyers (some lawyers and others have identified specific circumstances in which lawyers may report without breaching client-attorney privilege);
- Insurance agents;
- Independent contractors; and
- Officers and employees of financial institutions (these groups have been covered since 2007 but their mandate is scheduled to sunset in 2013).

COMPLIANCE

Despite the fact that mandated reporters who fail to report elder abuse may be guilty of crimes, underreporting remains a concern.

WHISTLEBLOWER PROTECTIONS

Welfare and Institutions Code §15630(f) states that “The reporting duties under this section are individual and no supervisor or administrator shall impede or inhibit the reporting duties, and no person making the report shall be subject to any sanction for making the report.” However, instances of employees being terminated from their jobs or threatened with termination have been reported.

RESPONSE TO REPORTS

Some mandated reporters have experienced reluctance on the part of responding agencies to accept and investigate reports, or to provide follow-up. Of particular concern is the failure of some APS, local law enforcement, and district attorneys to accept reports of “mass marketing” fraud and abuse in long-term care facilities. Reasons that have been cited include lack of resources and training.

► Collecting and disseminating information on abuse reports

Widespread debate has ensued in California and nationally about the need for centralized databases to provide information on:

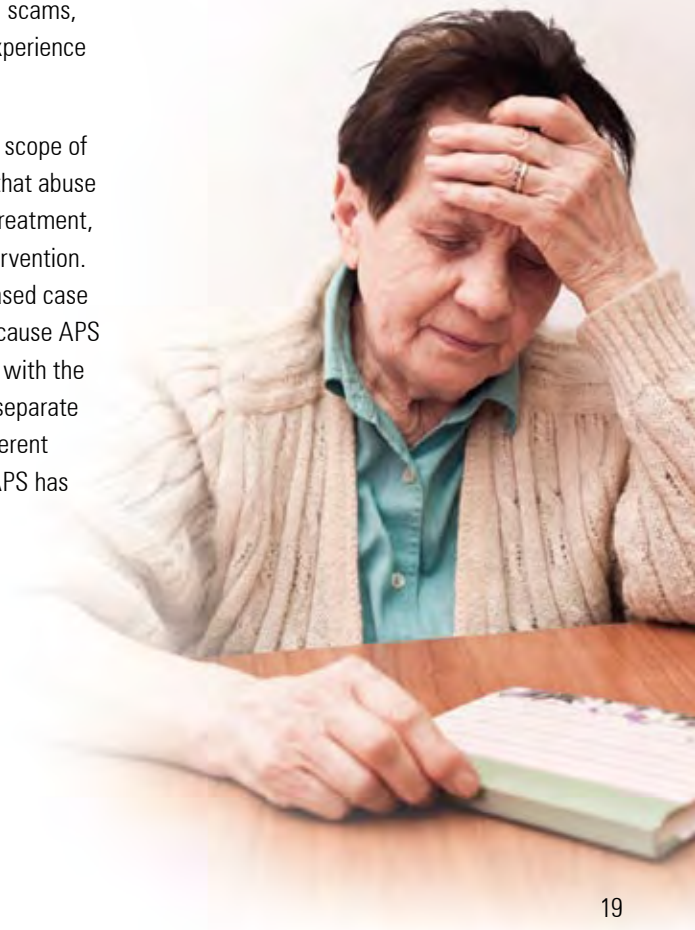
- **Abuse reports:** Policy makers and program developers need information about the extent of abuse, patterns, consequences, and the effectiveness of interventions to demonstrate needs and develop appropriate services and policy. California does not maintain a centralized database of aggregate information from the multiple agencies that respond to reports. Crimes against elders are believed to be particularly underreported; and
- **Perpetrators:** Many perpetrators of elder abuse are repeat offenders. These include scam artists who prey upon multiple victims, serial offenders who work in long-term care facilities, and home care workers with multiple clients. Information on past offenses can potentially help investigators build cases and prevent perpetrators from getting jobs that provide opportunities to re-offend.

► New challenges to Adult Protective Services

Responding to reports of abuse and neglect poses formidable challenges to Adult Protective Services programs (County Welfare Directors Association of California Protective Services Operations Committee, 2010). Not only are the number of reports on the rise, but the intensity and complexity of the abuse is escalating. Workers must address such complex problems as hoarding, mass-marketing fraud, financial scams, and multi-generational dysfunctional family dynamics. Victims are likely to experience depression, dependency, and isolation.

Addressing abuse often requires long-term interventions that are beyond the scope of APS, which is a short-term crisis intervention program. Among the services that abuse victims need are restraining orders and other legal remedies, mental health treatment, and prevention services, including support services, screening, and early intervention. To accommodate these needs, APS workers make referrals to community-based case management, mental health, legal assistance, and many other programs. Because APS clients include younger adults with disabilities, workers must also be familiar with the network of services for persons with disabilities, which are administered by separate government entities, employ different strategies, and are even guided by different principles and ideologies. In addition, as resources shrink, the services that APS has traditionally made referrals to are increasingly scarce.

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RECOMMENDATIONS for ISSUE 1: Ensure a comprehensive uniform response to abuse reports.

Assemble a workgroup of stakeholders, legal counsel, and policy analysts to review California’s reporting and response systems. Areas to explore include:

- The need for interpretations of or changes to definitions used in reporting laws including dependent adult and self-neglect;
- The need for a state-level entity to assume responsibility for interpreting laws and exploring policy needs related to California’s reporting and response system on an ongoing basis;
- Promising practices for improving collaboration and coordination among agencies involved in abuse reporting and response, including:
 - Standardized memoranda of understanding for agencies involved in reporting to clarify roles, responsibilities, relationships, and cross-reporting; and
 - Incorporating a law enforcement component into APS (e.g., assign police officers, sheriffs, or district attorney investigators to assist by securing search warrants and bank records, searching probation/parole records, and coordinating law enforcement resources);
- The need for a statewide telephone line to direct in-state and out-of-state callers to the appropriate county agency that can accept reports and conduct investigations as appropriate;
- The need to expand the range of mandated reporters to include groups not currently covered that are likely to observe abuse;
- The need for standardized capacity and risk assessment instruments. Model risk assessment tools to consider include those developed by the National Council on Crime and Delinquency (2010);
- Improvements to the collection and dissemination of information on abuse reports and offenders. Specific strategies to explore include:
 - A centralized repository of abuse statistics;
 - An abuser registry;
 - Mechanisms to ensure that reports are routinely compiled and disseminated; and
- The need for consistent enforcement of mandatory reporting laws and whistleblower protections. Promising approaches include advocating for the Attorney General’s office to prosecute mandatory reporters who fail to report and institutions that fire whistleblowers.

ISSUE 2:

The Justice System's Response

2

California has led the nation in developing statutory and procedural innovations for strengthening the justice system's response to elder abuse. These include:

- California's criminal elder abuse statute (Penal Code §368) acknowledges that elders deserve special protection and consideration due to their vulnerability and carries penalty enhancements for crimes against elders;
- California's "Elder Abuse and Dependent Civil Protection Act" contains provisions for attorney fee awards as incentives for counsel to undertake elder abuse cases;
- Elder protection courts handle criminal, civil, and family law cases involving seniors. The courts expedite cases, accelerate restitution orders, and collaborate with providers of social, health, and mental health services for victims and offenders;
- Multidisciplinary teams provide opportunities for legal professionals to collaborate with health and social service providers in building cases. Specialized teams like financial abuse specialist teams, forensics teams, and death review teams are particularly likely to review cases that come to court;
- Specialized elder abuse units in police departments and prosecutors' offices; and
- Vertical prosecution in which a single attorney handles a case from beginning to end.

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CHALLENGES and NEEDS

The concerns and recommendations contained in this section were identified by individuals involved in the Archstone Foundation's Elder Abuse and Neglect Initiative, members of a small group of justice system professionals that met during the CEJW summit, interviews with experts, and a statewide survey of law enforcement officers that yielded responses from 46 police officers and sheriffs. Also reflected are findings from reports by the Judicial Council (2006, 2008) and the San Francisco Conservatorship Work Group (Quinn & Nerenberg, 2005).



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“...legal professionals ...need opportunities to explore common needs and concerns, including the need for forensics research and expert witnesses, concerns regarding confidentiality, inter-court communication, and the benefits of elder courts and other innovations.”



► Communication and coordination

Elder abuse cases that require legal intervention may be identified or addressed by police officers, sheriffs, court investigators, private attorneys, county counsel, legal aid programs, California’s statewide Senior Legal Hotline, Public Guardians, and many others. Cases may be heard in criminal, civil, family, and probate courts. Improved communication and coordination among these entities is needed to achieve a more seamless and holistic response. Specific areas of need include:

- Court personnel and legal professionals, and those who interact with the legal system, need opportunities to explore common needs and concerns, including the need for forensics research and expert witnesses, concerns regarding confidentiality, inter-court communication, and the benefits of elder courts and other innovations;
- Public Guardians, private attorneys, and other legal professionals who are often the first to discover criminal conduct need timely access to law enforcement and/or district attorneys and feedback on case disposition;
- District attorneys need opportunities to share information and discuss common areas of concern, including confidentiality;
- Improved coordination and communication among the Probate, LPS³, and criminal justice systems are needed to address such issues as:
 - The handling of cases involving older adult victims or abusers with mental illnesses who become involved in the criminal justice system;
 - The handling of cases involving older adult victims or abusers with dementias who become involved in the criminal justice system;
 - Misunderstanding about the systems; and
 - The need for better integration and coordination of legal services with other components of the service delivery system, including APS.

► Statutory needs

Some laws related to justice system responses to elder abuse that were enacted in California have never been implemented. Others have been implemented in some communities and not others. As a result, potentially promising approaches are not being used and little is known about their benefits and drawbacks.

FAILURE TO IMPLEMENT OR ENFORCE LAWS

Reasons cited for the failure to implement and enforce laws include lack of resources, information, and clarity about laws’ intent. Examples include:

- The Omnibus Conservatorship and Guardianship Reform Act. Disturbing accounts of abuses by conservators exposed by the *Los Angeles Times* in 2006 prompted California’s Chief Justice to appoint the Judicial Council Probate Conservatorship Task Force to recommend reform. After conducting public hearings, the Task

³ LPS stands for Lanterman, Petris & Short, the senators who spearheaded key mental health laws in California.

Force issued a report that offered 85 recommendations (Judicial Council Probate Conservatorship Task Force, 2006), many of which were incorporated into the Omnibus Act. Although passed, many key provisions of the Act were not implemented because the funds required to do so have not been forthcoming;

- California Probate Code §2952 authorizes “specially trained peace officers” to initiate a process to secure the assets of incapacitated victims during criminal investigations. It does not, however, specify the nature of the training required to qualify as a “specially trained peace officer” and training is not available. The intervention is rarely used in most counties;
- W&IC §§15703–15705.40 allow authorized state or local law enforcement officers or designated employees of county departments of social services or mental health units to take elders or dependent adults into “emergency protective custody” under certain conditions. County boards of supervisors must adopt resolutions to implement the provisions and few have done so, citing lack of appropriate placement facilities and funds, and concerns about due process protections;
- California Probate code §4236, which allows for court accountings of powers of attorney, is not widely used; and
- Under California’s Health and Safety Code, residential care facilities that meet certain specifications must be licensed by the Community Care Licensing division of the State Department of Social Services. The law further makes it a misdemeanor offense for employees of placement agencies to place people in unlicensed facilities and requires them to report violations. Many are unaware of these provisions, and they are rarely enforced.

CONTROVERSIES AND CONFUSION ABOUT LEGAL REMEDIES, TERMS, AND STATUTES

Controversies and/or uncertainties exist about legal interventions and remedies, including:

- The meaning of the term “confidential relationships” in the context of elder abuse and undue influence;
- Conservators of estate may be appointed for people who are “substantially unable to manage their own financial resources or resist fraud or undue influence.” Courts and others lack guidance in determining when elders are unable to resist fraud and undue influence;
- Contradictory case law exists regarding priorities for serving as conservators (e.g., families, Public Guardians);
- Lack of clarity about Public Guardians’ mandate and requirements for accepting referrals. In some counties, Public Guardians reportedly only accept cases when conservatees have a specified level of assets;
- Circumstances in which Elder or Dependent Adult Abuse Restraining Orders and Domestic Violence Restraining Orders can be used, and the advantages and drawbacks of each;

“ *Some laws related to justice system responses to elder abuse that were enacted in California have never been implemented....As a result, potentially promising approaches are not being used and little is known about their benefits and drawbacks.* ”





“Abuses of powers of attorney, trusts, and other legal documents are increasingly coming to light, highlighting the need for more stringent safeguards. Powers of attorney, in particular, have come under scrutiny.”



- Probate Code §21350 et seq creates a statutory presumption of fraud and undue influence that applies when a dependent adult makes a gift to that person’s “care custodian.” In 2006 the California Law Revision Commission was charged to review the statute. It concluded that the care custodian presumption was broader than it needed to be and proposed language narrowing the definition to “persons who provide services for remuneration.” As a result, amendments to §21350 were made that went into effect on January 1, 2011, which exclude family and voluntary caregivers, who are frequent abusers. Advocates have called for further examination of the definition; and
- Lack of clarity about what information multidisciplinary teams can share and how it can be used. Legal professionals and other team members have raised such concerns as whether information or documents discussed may be obtained through the civil discovery process. For more on teams and information sharing see Section 3 “Barriers to information sharing.”

➤ **Lack of oversight of legal instruments**

Abuses of powers of attorney, trusts, and other legal documents are increasingly coming to light, highlighting the need for more stringent safeguards. Powers of attorney, in particular, have come under scrutiny. California does not currently require powers of attorney to be recorded or lawyers to be involved in their drafting. Assessments of agents’ decision-making capacity are not required. Although notary publics must witness the signing of powers of attorney under some circumstances and their presence is recommended or required by some banks and financial institutions, many notaries see their responsibility as limited solely to ensuring that the parties involved are who they claim to be. They are not required to report. When abuses of powers of attorney occur, they are difficult to prove, and conservatorship may be the only option available to revoke powers, stop abuse, and reclaim misappropriated assets. California Probate code §4236, which provides for court accountings when misconduct is alleged, is rarely used.

➤ **Conservatorship**

Conservatorships can play a critical role in protecting elders who are deemed incapable of protecting their own interests. However, as described earlier, conservatorship has come under sharp criticism by advocates and the media for a wide range of abuses, leading to the Omnibus Conservatorship and Guardianship Reform Act of 2006. Specific issues that have been identified include:

LACK OF ADEQUATE OVERSIGHT

Advocates report that efforts at reform have failed to prevent such abuses as the inappropriate granting of temporary conservatorships on ex parte petitions, lack of proper oversight of accountings, abusive practices by private professional conservators (e.g., improper billings) lack of sufficient notice to conservatees and their families, and inadequate protections of the rights of conservatees.

CONCERNS RELATED TO COURT APPOINTED COUNSEL FOR PROSPECTIVE CONSERVATEES

Increasingly, courts are requiring that prospective conservatees be represented by their own independent counsel in conservatorship proceedings. Courts appoint counsel for those who are unable to afford their own and have developed various approaches to meeting this need, including:

- Appointing (and paying) non-profit legal assistance programs to represent low-income conservatees (Alameda);
- Appointing public defenders, county counsel, or other public employees to represent low-income conservatees (Napa); and
- Establishing panels of private attorneys and non-profit agencies (San Francisco).

A wide range of concerns associated with court appointed attorneys have been identified. They include:

- The role of court-appointed attorneys in conservatorship proceedings is not well defined and has been interpreted differently. Some appointees reportedly offer opinions regarding the necessity of conservatorships while others are committed to representing prospective conservatees' wishes. Some are unclear about their role when representing prospective conservatees who want to contest conservatorships but fail to understand the consequences of doing so; and
- Lack of standards and training. In some counties, public defenders with little or no training in elder abuse, dementias, or probate law have been appointed.

LACK OF CONSERVATORS FOR ELDERS WITH LIMITED ASSETS

Conservatorships are prohibitively expensive and options for those who lack assets, including non-profit organizations and private professional conservators who are willing to accept cases on a pro-bono fee basis, are limited. Public Guardians, considered by many as the option of last resort, have long waiting lists in many communities. The shortage of Public Guardians has become more severe as other community agencies experience retrenchments. For example, Public Guardians report that cutbacks to APS have resulted in their offices receiving cases that previously would have been managed using less restrictive means. Efforts to address the shortage include the creation of self-help clinics for family members and non-professionals who wish to serve.

LACK OF EDUCATION ABOUT CONSERVATORSHIP

Family members and friends of incapacitated elders lack information to help them decide when conservatorship is needed and direct them to assistance. Those who may be willing to serve are likely to be discouraged from doing so because they view the process as overly complicated or cumbersome.

“...court-appointed attorneys...are unclear about their role when representing prospective conservatees who want to contest conservatorships but fail to understand the consequences of doing so...”





“Among the challenges involved in crafting alternatives to conservatorship is instituting protections early enough to avoid problems without imposing unnecessary restrictions on freedom and autonomy.”

LACK OF FORUMS TO ADDRESS CONSERVATORSHIP CONCERNS

A wide range of local, state, and national advocacy organizations have called for conservatorship reform. These groups represent diverse constituencies, ranging from professional associations to grass-roots groups whose members have experienced abuses, with divergent points of view. Some lack information about court processes and avenues for addressing grievances. Opportunities for these groups to share information and perspectives and identify common concerns could potentially lead to collaboration in pursuing needed reform.

DELAYS IN CONSERVATOR APPOINTMENTS

Delays in conservatorship appointments have been attributed to factors ranging from shortages of Public Guardians and probate court investigators to lack of adequate courtrooms.

CAPACITY DECLARATIONS

Physicians, psychologists, and religious healing practitioners, who are authorized to fill out “capacity declarations”, have called for changes in the forms for the following reasons:

- The forms are cumbersome and confusing; and
- The forms need to be updated to reflect new research and heightened understanding of capacity and undue influence.⁴

LACK OF ALTERNATIVES TO CONSERVATORSHIP

Under California law, less restrictive alternatives to conservatorship must be considered. In reality, however, few options are available for elders who have lost capacity (some, like powers of attorney, must be executed while agents have decision-making capacity). Among the challenges involved in crafting alternatives to conservatorship is instituting protections early enough to avoid problems without imposing unnecessary restrictions on freedom and autonomy. San Francisco’s Conservatorship Task Force identified situations in which less restrictive alternatives may be warranted (Quinn & Nerenberg, 2005). These include situations in which a single decision or transaction (authorizing medical treatment or revoking a power of attorney) is needed. Existing options are not widely used for the following reasons:

- Those who stand to benefit do not know about available options;
- Less restrictive alternatives are believed to engender greater risk and require more monitoring;
- Concerns about liability if less restrictive alternatives fail to offer adequate protection;

⁴ A group of medical and legal professionals was organized by the California Medical Association to make recommendations for changes to the form.

- Less restrictive alternatives are not perceived as cost effective. For example, some Public Guardians routinely request general (as opposed to temporary) conservatorships even when the need is temporary to avoid having to file again if problems arise or if conservatees' situations change;
- Conflicts of interest. California Health and Safety Code §1418, which could offer a less restrictive option, addresses the need for surrogacy for "unbefriended" patients in long-term care facilities (patients who need treatment that requires consent but lack advance directives or decision-makers [AARP, 2009]). The statute authorizes Interdisciplinary Teams, which may include personnel from the facilities and "patient representatives," to make decisions for these patients. Ombudsman representatives often participate as patient representatives if there are no family members or close friends willing to participate. Facilities, however, have an inherent conflict of interest when it comes to authorizing patient care and Ombudsmen are prohibited from serving as surrogates under their federal mandate.

“ ... the promise of fees has failed to attract conservators, trustees, or lawyers to take cases involving victims with modest estates.”

2

► Ensuring protection for non-affluent elders

Among the goals of the Elder Abuse and Dependent Adult Civil Protection Act of 1991 was to encourage lawyers and conservators to bring cases of flagrant elder abuse, including those that involve small amounts in controversy. Although the Act has been successful in cases where the abuse involves defendants with substantial assets (e.g., doctors or residential care facilities), the promise of fees has failed to attract conservators, trustees, or lawyers to take cases involving victims with modest estates and these cases are rarely handled on a pro bono basis.

► Potential conflicts of interest

The Trial Court Delay Reduction Act allows for retired probate judges to decide civil disputes for litigants who pay them. This has raised concerns among some advocates that private judges could favor litigants who are potential future clients.

► The Criminal Justice System's Response

Despite significant progress in improving California's criminal justice response to elder abuse, the likelihood that cases will be prosecuted varies across the state.

Elder abuse cases pose a wide range of challenges to criminal justice professionals. General concerns are described below. (Cases involving financial abuse and abuse in long-term care facilities are described in separate sections: See Section 4: "Problems prosecutors face in handling financial abuse cases" and Section 5: "Barriers to the prosecution of abuse in facilities".)

- **Under-reporting:** Many cases of abuse are not reported to law enforcement;





“Owing to the complexity of cases, forensics experts are often critical to successful prosecution. Experts may be needed to present convincing research-based evidence and information in depositions and court proceedings.”



- **Failure of local law enforcement agencies to accept and/or investigate reports:** Many cases of abuse that are reported to law enforcement agencies are not investigated owing to lack of resources and training. Some report that law enforcement personnel view financial crimes as “civil matters” when they involve the misuse of instruments like powers of attorney;
- **Reluctance by prosecutors to take cases:** Reasons that have been cited include:
 - Abuse cases are difficult to prove because they often involve complicated medical and financial issues and prosecutors are likely to only take cases they believe will result in convictions;
 - Concerns about victims’ competency; “jury appeal”; availability to testify because of illness, decline, or death; and ability to withstand the stress or trauma of coming to court; and
 - Abuse cases are not seen as a priority by prosecutors’ offices.
- **Police, prosecutors, coroners and medical examiners, and judges lack training:** Although headway has been made in developing training for these groups, critical gaps continue to exist. In addition, the continual emergence of new information and high turnover within departments requires that training be ongoing. Specific training needs of these groups are described in Section 8;
- **Lack of forensics expertise and resources for developing cases:** Owing to the complexity of cases, forensics experts are often critical to successful prosecution. Experts may be needed to present convincing research-based evidence and information in depositions and court proceedings. Specific areas of need include:
 - Medical experts to review and interpret medical records, differentiate accidental from intentional injuries, and distinguish the signs of abuse and neglect from illness or age-related conditions;
 - Geriatric psychologists and psychiatrists to assess capacity and vulnerability to undue influence;
 - Experts who can assess clients’ capacity for specific legal decisions and their ability to resist undue influence;
 - Document examiners to assess questioned documents;
 - Accountants to review transactions, assess spending patterns and transactions, trace financial trails, establish net worth, and uncover hidden assets;
 - Experts in elder sexual assault;
 - Experts who can help determine whether professionals have operated at reasonable levels of competency; and
 - Tools to measure “cognitive vulnerability,” financial decision-making capacity, and undue influence.



► **Victims and perpetrators with dementias and mental illnesses**

Victims and perpetrators with dementias and mental illnesses pose special problems for criminal justice professionals. For example, when police are summoned to domestic disturbances, they may not realize that violent partners have dementias, or they may make arrests anyway to comply with domestic violence laws. As a result, these individuals may be held in custody with inappropriate care. Because dementias are often progressive, determining when people are no longer culpable for their actions may be difficult. Similarly, victims and perpetrators may have mental health problems that are not recognized by law enforcement officials, which may also result in inappropriate interventions.

► **Lack of information about legal case outcomes and impact**

Little is known about the number, nature, or outcome of legal cases (both civil and criminal) involving elder abuse in the state. This information could potentially provide valuable feedback to legal professionals and inform policy makers about policy needs.

► **Technical assistance needs**

Legal system professionals in California have identified the following needs for technical assistance:

- Practical, evidence-based information about the benefits, costs, administration, and outcomes of legal innovations including elder courts, forensics centers, and self-help clinics;
- Best practice models for collaboration among law schools, bar associations, the Attorney General, district attorneys, forensics centers, and other potential partners and resources;
- Technologies to reduce stress on victims, such as closed circuit television; and
- Tribal legal system professionals need technical assistance in developing elder abuse codes and response systems.

“Little is known about the number, nature, or outcome of legal cases... involving elder abuse in the state. This information could potentially provide valuable feedback to legal professionals and inform policy makers about policy needs.”

2

“Assemble a workgroup, committee, or task force of stakeholders...to explore and make recommendations...”



RECOMMENDATIONS for ISSUE 2: Ensure justice to California seniors

Assemble a workgroup, committee, or task force of stakeholders; including legal professionals from the civil and criminal justice systems, the Administrative Offices of the Court, the Attorney General’s Office, and law schools; to explore and make recommendations about the following:

- Promising approaches to information-sharing among legal professionals, including listservs⁵, forums, consensus panels, etc.;
- Elder protection courts to handle criminal, civil, domestic violence, and family law cases involving seniors over 65 and develop linkages with behavioral courts and the social service network;
- Specialized forensics centers (or expanding the capacity of existing forensics centers) to develop expertise in critical areas. Specialized centers that have been recommended include:
 - A forensics center for abuse in long-term care facilities (see Appendices);
 - A forensic center for financial abuse and exploitation (see Appendices); and
 - State or regional centers that can be accessed by multiple communities;
- The desirability of partnerships between the Attorney General’s Office and forensics centers, multidisciplinary teams, financial abuse specialist teams, and death review teams; and
- The need for new and improved policy related to legal interventions. Specific steps include:
 - Review abuse-related statutes and remedies to assess their benefits and drawbacks; and
 - Identify; through surveys, listservs, focus groups, and other means; variations in how statutes and remedies are interpreted and used across the state to identify the need for interpretations and reform;

Explore resources and avenues for policy interpretation and reform, including:

- The California Attorney General provides legal opinions to designated state and local public officials and government agencies;
- The California Law Revision Commission explores the need for changes to California’s existing laws;
- The California Administrative Offices of the Courts convenes ad hoc and ongoing committees and task forces to address policy needs;
- The American Law Institute, an association of legal scholars, investigates and responds to the need for model codes, restates existing law in a concise form for use by the courts and lawyers, and creates principles for laws; and

⁵ Although an active listserv currently exists for criminal justice professionals, it does not serve legal aid providers, court personnel, private attorneys, or other stakeholders.

- The Tribal Law and Policy Institute provides education, research, training, and technical assistance to Indian Nations and tribal justice systems.

Explore safeguards for conservatorships. Specific steps include:

- Review the Judicial Council’s recommendations for conservatorship reform to identify the status of implementation and on-going needs;
- Explore the need for an advocate to accept and investigate complaints involving conservatorships and provide advocacy and representation when needed. Promising approaches may include:
 - A state ombudsman; and
 - Provide funding to existing senior legal service providers to provide both individual and systems advocacy in conservatorships;
- Explore the need for performance standards to define and measure courts’ handling of conservatorships;
- A case-tracking system to monitor the performance of conservators, lawyers, and judges involved in conservatorships; and
- More stringent due process protections;

Explore alternatives to conservatorship, including temporary or limited powers.

Situations in which less restrictive alternatives may be warranted include:

- When consent is needed for single medical or legal decisions;
- When long-term care facilities require responsible parties for admission;
- To protect assets that are in immediate jeopardy; and
- To give consent on behalf of incapacitated elders for critical APS (and other) protective services;

Explore the need for added protections for legal documents including powers of attorney. Specific steps include:

- Identify circumstances in which existing law presumes documents are not valid;
- Explore why Probate code §4236 is not widely used; and
- Explore promising practices, including:
 - Requirement that documents (and revocations, proof of service) be recorded;
 - Requirement that independent attorneys witness the signing of documents and report abuses to law enforcement, APS, and/or others depending upon the circumstances (e.g., hospital risk managers, nursing home directors, or family members); and
 - Protocols for lawyers and others to use in determining whether elders have the requisite capacity to execute documents (e.g., require infirm individuals to explain, without coaching, the need for and ramifications of documents they sign);

“Explore the need for added protections for legal documents including powers of attorney.”





Explore the need for enhanced protections to elder and dependent adult restraining orders comparable to those contained in domestic violence restraining orders;

Explore ways to make courts more accessible to elders, including transportation to court hearings, reducing the time elders have to wait for court appearances, safe and comfortable waiting areas, frequent recesses, adapting courtrooms and courthouses for elders with mobility problems, assistance with restitution and victim impact statements, and referrals to community agencies for additional help;

Explore ways to increase prosecution rates. Examples include:

- Encourage district attorneys to flag abuse cases involving victims of elder abuse and charge Penal Code §368 when appropriate;
- Promote the development of dedicated elder abuse units in district attorneys offices and law enforcement agencies;
- Explore changes to trial procedures and evidentiary rules to accommodate the needs of elder abuse victims such as the use of closed circuit televisions; and
- Promote the use of vertical prosecution in abuse;

Develop a database of legal cases and resources, including information drawn from civil and criminal cases, to provide information about:

- How well courts are serving elders with limited assets and to what extent California’s Elder Abuse and Dependent Adult Civil Protection Act succeeded in encouraging private attorneys to take cases;
- The extent to which judges are ordering attorneys fees and damages;
- How cases are reaching the criminal and civil justice systems (who are the sources of referrals and what are the “triggers” that prompt reports?);
- What type of expertise and documentation are being used; and
- What forensics experts are testifying or consulting in cases;

Explore and respond to legal professionals’ technical assistance needs.

Specific steps include:

- Identify needs and resources through listservs, summits, and surveys;
- Enlist law students, volunteers, and others to explore promising practices within and beyond California;
- Conduct events to showcase promising practices; and
- Inform providers of technical assistance (e.g., the National Center on Elder Abuse, Office for Victims of Crime, Office for Violence Against Women) about technical assistance needs.

ISSUE 3: Meeting Service Needs

3

Victims and vulnerable adults may need services to reduce vulnerability, lower risk, stop abuse, treat its effects, and prevent future recurrences. A variety of factors dictate victims' service needs including their cognitive abilities, resources, and preferences; and the type of abuse and its severity. Others who may need services include family caregivers and perpetrators.

CHALLENGES and NEEDS

The demand for abuse prevention services exceeds the supply and the situation is getting worse as the result of recent cuts to public and private programs. Lack of coordination further reduces access and leads to inefficiencies. Other barriers include a lack of evidence-based practice on which to model new programs and support funding proposals.

► Service needs and gaps

The following service needs were identified by participants in the Archstone Foundation's Elder Abuse and Neglect Initiative, summit delegates, discussions with members of CEJW's Technical Advisory Group, Steering Committee members, and others.

CRISIS INTERVENTION AND EMERGENCY SERVICES

Victims of all forms of elder abuse may need emergency help, including:

- Emergency and temporary restraining orders;
- Temporary conservatorship;
- Emergency psychiatric evaluations and hospitalization;
- Emergency shelter; and
- Emergency funds for food or to avoid eviction and foreclosure.

COMPREHENSIVE MULTIDISCIPLINARY ASSESSMENTS

When APS workers and others respond to abuse reports, they typically assess the immediate needs of clients and their families. Comprehensive, multidisciplinary assessments to ensure that clients' ongoing needs are met are beyond the capacity of most APS programs. Multidisciplinary assessments are needed to identify:

“A variety of factors dictate victims' service needs including their cognitive abilities, resources, and preferences; and the type of abuse and its severity.”



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“Comprehensive, multidisciplinary assessments to ensure that clients’ ongoing needs are met are beyond the capacity of most APS programs.”

- Subtle or pronounced cognitive impairments that impede victims’ and family members’ ability to:
 - Give or deny consent for services;
 - Make financial decisions and manage finances;
 - Provide self care and live independently;
 - Screen, hire, and supervise caregivers and address problems; and
 - Withstand undue influence;
- Mental health issues and needs, including:
 - Problems that heighten the risk for abuse, neglect, and self-neglect; including depression, psychiatric disorders, short term memory loss, substance abuse, dementia, and co-occurring disorders; and
 - The mental health service needs of victims and family members, including treatment for substance abuse;
- Social risk factors, including:
 - Difficulty interacting with others or conflict with family members or friends; and
 - Inadequate or unreliable support systems;
- Family caregivers’:
 - Perspectives and attitudes about caregiving;
 - Health literacy;
 - Abilities and understanding about care;
 - Need for support and education; and
 - Risk factors for abuse and neglect, including:
 - Life stresses, mental health problems, or substance abuse;
 - Providing care for elders with dementias; and
 - Histories of interpersonal conflict prior to the onset of disabilities;
- Other factors/circumstances that warrant special attention include:
 - The needs of elders and their families prior to discharge from hospitals or facilities (skilled nursing and post-acute care); and
 - Risk factors for self-neglect including low health literacy, mental health problems, substance abuse, etc.

SERVICES TO PREVENT ABUSE

Experts agree that reducing vulnerability and intervening early can prevent trauma and loss, and reduce the need for costly treatment. Prevention services include:

- Support services to reduce or eliminate isolation and dependency such as:
 - Attendants to help with daily activities like meal preparation and medication management;

- Socialization programs, including friendly visitors, telephone reassurance, and senior peer counseling; and
- Transportation;
- Services for families and caregivers that can prevent abuse include:
 - Help with screening, hiring, and supervising long-term care workers;
 - Instruction in providing care and managing difficult behaviors; and
 - Support groups and respite;
- Services to prevent financial abuse include:
 - Daily money management;
 - Fraud prevention;
 - Benefits counseling; and
 - Estate planning that offers maximum protection;
- Education to reduce the risk of financial abuse, including:
 - Financial literacy;
 - The types of exploitation (e.g. cyber crime; investment, health care, and lottery scams; identity theft; and mortgage fraud) and techniques used by scammers (e.g., “sucker lists” and “phishing”); and
 - How to reduce the risk of future victimization;
- Services to prevent self-neglect include:
 - Treatment for depression, substance abuse, anxiety, and other mental health problems;
 - Motivational counseling;
 - Medication monitoring;
 - Health screening;
 - Harm reduction; and
 - Health literacy;
- Services to prevent domestic violence include:
 - Safety planning;
 - Shelters;
 - Support groups;
 - Victim advocacy; and
 - Legal assistance to obtain restraining orders, divorces, etc.

“Experts agree that reducing vulnerability and intervening early can prevent trauma and loss, and reduce the need for costly treatment.”





“Individuals with mental disabilities who are admitted to nursing facilities may need specialized services or facilities. Comprehensive evaluations are needed to identify these needs.”



MENTAL HEALTH SERVICE NEEDS

In addition to the need for mental health assessments and crisis intervention mentioned earlier, victims and vulnerable elders may benefit from:

- Counseling (individual, family, or group) to:
 - Address individual and interpersonal pathology and dysfunction;
 - Treat immediate and long-term trauma;
 - Explore dysfunctional patterns and relationships within families and caregiving relationships;
 - Lower the risk of abuse by caregivers; and
 - Help victims overcome counterproductive relationships and interdependencies with offenders, including counseling that focuses on issues of co-dependency;
- Mental health services for victims of financial abuse including:
 - Assessments to diagnose and treat the social and mental health consequences of financial abuse, including depression, anxiety, shame, divorce, estrangement, etc;
 - Suicide prevention, particularly for older white males, who have the highest risk for suicide of any age group; and
 - Counseling and support to “chronic” or “repeat” victims including:
 - Coaching in how to handle solicitations; and
 - Counseling, modeled after that used by domestic violence programs, that focuses on breaking cycles of victimization; and
- Mental health assessments and services for nursing home residents. Individuals with mental disabilities who are admitted to nursing facilities may need specialized services. Comprehensive evaluations are needed to identify these needs. The Nursing Home Reform Act, a part of the Omnibus Budget Reconciliation Act of 1987 (OBRA-87) created the Preadmission Screening and Resident Review (PASRR) program to ensure that pre-admission evaluations are provided. California’s Department of Mental Health contracts for independent evaluations. When evaluations identify individuals in need of specialized services, PASRR recommends services or transfers to acute psychiatric facilities or another type of placement. Follow-up is needed to explore how the PASRR program is implemented in California and its effectiveness.

LEGAL ASSISTANCE

Victims and vulnerable elders are likely to need legal assistance to:

- Sue for civil recoveries and compensation for injuries;
- Obtain restitution;

- Resolve consumer disputes;
- Mitigate the impact of financial abuse and exploitation by:
 - Identifying remaining assets after abuse and reorganizing finances;
 - Advocating with creditors; and
 - Disputing fraudulent information appearing on bank, credit, or other financial accounts;
- Create or revoke powers of attorney;
- Annul fraudulent marriages or adoptions;
- Secure restraining orders; and
- Other. Although the following legal services do not specifically address abuse, the need for them may become urgent in the aftermath of abuse or during the recovery process:
 - Counseling on Social Security, pensions, public benefits, taxes, enhancing income, reducing costs, negotiating with landlords, securing home loans, gaining access to health care, and creating and amending estate planning documents;
 - Review of documents, including loans, trusts, and powers of attorney;
 - Refinancing homes;
 - Volunteer conservatorship monitoring programs; and
 - Mediation, family conferences, and other restorative justice approaches to resolve conflicts, compensate victims for losses, and prevent abuse.

SHELTER AND HOUSING

Victims of elder abuse may need shelter and housing for various reasons:

- Protection from abusers (existing domestic violence shelters are not typically able to accommodate older adult women with age-related disabilities, or men);
- Their homes are uninhabitable as a result of neglect or self-neglect;
- They are homeless as a result of financial abuse; and
- Seniors with Section 8 vouchers may be evicted and rendered homeless as a result of abuse or age-related problems. Once evicted, they are no longer eligible for vouchers.

Shelter and housing options to accommodate these needs include:

- Secure shelters that can accommodate elders with disabilities, and men;
- Shelters that can address abused elders' mental health and legal needs; and
- Long-term care facilities that can accommodate elders with dementias who have behavior problems such as wandering, combativeness, or who refuse needed care.

“Seniors with Section 8 vouchers may be evicted and rendered homeless as a result of abuse or age-related problems. Once evicted, they are no longer eligible for vouchers.”

3





“Barriers to service range from lack of recognition of elders’ service needs by those entities that fund programs; to lack of coordination, which results in waste; and the absence of promising practices on which to model new services.”



SERVICES FOR ABUSERS

In some cases, abuse can be prevented by providing services to, or imposing restraints on, abusers. These include:

- Involuntary psychiatric assessments and placement of offenders who are a danger to themselves or others as a result of mental illness;
- Behavior management or secure facilities for elders with dementias who pose a threat to themselves or others;
- Pharmaceutical, behavioral, or psychotherapeutic treatment for offenders who have personality disorders, mental illnesses, or other mental health problems;
- Programs that focus on inhibiting abusive conduct, including impulse control;
- Treatment for domestic violence and substance abuse. These services may be provided in group or individual settings on an inpatient or outpatient basis; and
- Counseling, stress reduction strategies, and education for caregivers when abuse is related to the stresses of caregiving.

► Barriers to services for victims of abuse

Barriers to service range from lack of recognition of elders’ service needs by those entities that fund programs; to lack of coordination, which results in waste; and the absence of promising practices on which to model new services.

MANY STATE AND FEDERAL PROGRAMS DO NOT ADDRESS ELDERS’ NEEDS

Multiple state and federal programs that offer services for people of all ages do not address the special needs of elder abuse victims. Some give lower priority to elders and others have restrictions that limit access. Examples include:

- Violence Against Women Act (VAWA) programs have traditionally prioritized female victims of intimate partner violence. Many also prioritize women with young children. Although some VAWA programs serve victims whose abusers are not intimate partners, they do not typically serve men or victims whose abusers are not family members;
- Mental Health Services Act (MHSA). In 2004, California passed Proposition 63, which provides funds for mental health services. State and county “stakeholder workgroups” that plan MHSA activities and set priorities have not had significant representation by senior advocates; as a result, few programs for elders have been funded compared to other populations; and
- Victims of Crime Act (VOCA) compensation and assistance programs have historically prioritized victims of violence. Although federal VOCA regulations permit states to extend eligibility to financial crime victims, California has not adequately addressed the needs of these victims; and

- Many crime victims' rights, benefits, and services only apply in cases that result in prosecution, which excludes victims who are unable or unwilling to make reports to law enforcement (or situations in which law enforcement officials do not take reports).

OBSTACLES TO COORDINATION

The supply of services can be maximized when services are well coordinated to reduce waste and duplication of effort. Coordination can enhance victim safety, facilitate investigations, and preserve assets that are in jeopardy. The following impediments to coordination have been observed:

- **Barriers to information sharing**

Protecting victims and meeting their service needs often requires the involvement of multiple agencies, which typically requires the sharing of information. While agencies are free to share information if they have clients' consent, many clients are unwilling or unable to give consent; often, their ability to give consent is unclear. Certain professional groups operate under particularly stringent confidentiality restrictions including personnel from mental health programs, Veterans Administration programs, Ombudsmen, attorneys, and banks.

Multidisciplinary elder abuse teams, which are widely used across the state, provide forums for developing comprehensive service plans and sharing information and expertise. Team members have raised concerns regarding the exchange of information at meetings, ranging from protecting the privacy of clients whose cases are discussed, to protecting workers from liability for their conduct, to concerns that documents exchanged may be obtained through the civil discovery process in litigation. Specific areas of concern with respect to information sharing include:

- What information can be shared by multidisciplinary teams;
- What information can be shared under the Health Insurance Portability and Accountability Act (HIPAA); and
- What information can mental health service providers share with providers of protective services.

- **Administrative barriers**

Programs that offer services for victims may be administered through diverse programs including Title XX of the Social Security Act, the Older Americans Act, the Victims of Crime Act, and the Violence Against Women Act. Other services are provided through the Centers for Medicare & Medicaid Services, the Substance Abuse and Mental Health Services Administration, the Veterans Administration, the Bureau of Indian Affairs, and many others. Agencies that wish to offer a comprehensive and seamless array of services must piece together multiple grants and interact with diverse entities, each with its own administrative requirements, eligibility criteria, funding cycles, and bureaucracy.

“Coordination can enhance victim safety, facilitate investigations, and preserve assets that are in jeopardy.”





“Foundations, public programs, and other potential sources of support for programs are increasingly requiring fund seekers to demonstrate the likelihood of success.”

LACK OF EVIDENCE-BASED PRACTICE

Program developers need information on effective, cost-efficient services to guide them. Foundations, public programs, and other potential sources of support for programs are increasingly requiring fund seekers to demonstrate the likelihood of success. Research to meet these needs is extremely scarce (Ploeg, Fear, Hutchison, MacMillan, & Bolan, 2009) and conducting evaluations of new services is beyond the capacity and resources of most service programs. Few forums exist to promote exchange among researchers, practitioners, and program developers that could generate new practice focused research.

RECOMMENDATIONS for ISSUE 3:
 Develop a state plan for meeting service needs

Promote the development of a comprehensive state plan for elder abuse prevention services that sets goals and priorities for multiple agencies and networks. This Blueprint identifies current gaps and needs in services that can be prioritized by stakeholder groups. The development of a plan will require planning, coordination, and advocacy at the local, state, and national levels:

PLANNING

- Provide opportunities (e.g., workgroups, committees, or task forces to explore service needs and develop strategies for addressing them; including:
 - Develop a plan for California to address the needs of victims and vulnerable seniors, their caregivers, and abusers. The plan should:
 - Set goals for multiple agencies and programs including APS, Ombudsmen, legal assistance, mental health services, victim assistance, emergency services, and others;
 - Address critical areas of need including legal and mental health services, and underserved groups, including victims of financial crimes and exploitation;
 - Focus on restoring effective programs that have been cut; including legal assistance, APS, and long-term care programs; and improving access for elder abuse victims to mental health, victim assistance, and domestic violence services;
 - Emphasize prevention as well as treatment and sanctions;
 - Improve assessment and remove barriers to coordination; and
 - Build a resource base of information to add to knowledge of effective programs and practices, and promote the development of evidence-based practice.

- Facilitate the development of comprehensive assessment tools to ensure that abused and high-risk elders are referred to appropriate services: Specific approaches include:
 - Provide opportunities for researchers, program developers, and service providers to develop comprehensive assessment instruments for use in diverse settings and by diverse user groups, including case management programs, senior centers, transportation programs, and family caregiver programs; and
 - Advocate for aging and long-term care programs to use the assessment tools.
- Explore how the Pre-Admission Screening and Resident Review (PASRR) program is implemented in California and its effectiveness in evaluating residents at the point of admission and periodically to identify new mental health issues.
- Explore promising models to assess their costs, benefits, impact, and suitability for replication. For example, a plan to expand the supply of legal assistance may include:
 - Enlisting private attorneys to help on a pro bono, reduced fee, or contingency basis. This may be accomplished through the development or expansion of legal panels such as that operated by California Advocates for Nursing Home Reform;
 - Explore the feasibility and desirability of promoting self-help clinics for restraining orders and conservatorships;
 - Strengthen and/or expand California’s statewide Senior Legal Hotline;
 - Promote greater coordination with Older Americans Act Legal Services Providers;
 - Promote the development of law clinics associated with state or local bar associations and law schools;
 - Advocate for California to require attorneys to provide a minimum number of hours of pro bono service annually; and
 - Raise awareness about seniors’ legal service needs among lawyers and law schools. A critical area of need is services for victims of financial crimes. A promising approach is a financial abuse victims center that provides a comprehensive array of legal, mental health, and advocacy services.
- Promising practices for expanding services include:
 - Identify third-party reimbursement for services, including the use of victim compensation funds for mental health and legal assistance services, and the use of Medicare and MediCal funds;
 - Establish relationships with professional schools to develop internships and practicum programs; and
 - Encourage domestic violence, victim assistance, mental health, and other service programs to ensure parity and equal access for elders. Doing so may require changes to eligibility requirements, training to staff, and reassessing priorities.

“The development of a plan will require planning, coordination, and advocacy at the local, state, and national levels.”





“Advocacy includes educating policy makers and the public, exploring promising approaches to policy, building coalitions, and other efforts aimed at improving public institutions’ response to elder abuse.”



COORDINATION

Explore ways to improve service coordination to maximize efficiency and effectiveness. Options to consider include:

- Develop model memoranda of understanding and protocols for service coordination at the local, state, and national levels;
- Advocate for service delivery models that focus on coordination and the provision of comprehensive services. Promising models include “navigator” programs, and services for veterans’ families as authorized by the Caregivers and Veterans Omnibus Health Services Act of 2010; and
- Clarify what information can be shared by service providers.

ADVOCACY

Advocacy includes educating policy makers and the public, exploring promising approaches to policy, building coalitions, and other efforts aimed at improving public institutions’ response to elder abuse. Specific actions include:

- Advise state and national policy makers and advocates about unmet service needs and priorities;
- Urge state and federal policy makers to preserve and build upon existing services when possible to maximize efficiency and capitalize on experience and expertise;
- Educate private citizens, service providers, and policy makers about the need for funding for the Elder Justice Act and solicit their support;
- Urge planning boards that set priorities for services to include advocates for elder abuse victims;
- Encourage the state and the federal government to extend victims’ rights, benefits, and services to victims of elder abuse who report crimes to police *or* APS. Benefits should begin after reports are made rather than requiring victims to wait for prosecution. Services should further be tailored to victims’ specific needs as opposed to the type of crime they experienced;
- Increase state and federal funding for victims’ services through the enhanced collection of fines and penalties that are used to support these services;
- Explore how other states have used state and federal victim compensation funds for mental health and legal services to victims of crime (e.g., New Jersey’s Victims of Crime Compensation Office offers up to \$1,000 dollars to crime victims to cover the fees of victims’ rights attorneys) and the feasibility of doing so in California;
- Monitor federal activity regarding elder abuse and support measures that enhance California’s response; and
- Promote the development of evidence-based practice. For more on research needs, see Section 9.

ISSUE 4:

Financial Abuse and Exploitation



Elder financial abuse ranges from simple theft, forgery, and the misuse of legal documents to complex schemes or fraud involving reverse mortgages, annuities, identity theft, health care fraud, telemarketing scams, affinity crimes, and predatory lending. Residents of long-term care facilities may be exploited by family members or trusted others who deplete their bank accounts and appropriate assets, resulting in involuntary discharge for nonpayment. These forms of abuse may have catastrophic consequences, including the loss of homes, life savings, and independence.

CHALLENGES and NEEDS

Elder financial exploitation is believed to be rampant in California. APS workers, law enforcement officials, and others rank financial abuse and exploitation among their most challenging cases. The following challenges to prevention were identified by participants in the Archstone Foundation's Elder Abuse and Neglect Initiative, members of a small group at the CEJW summit, interviews with individual experts, and coordinators of financial abuse specialist teams (FASTs) who participated in special sessions to provide input.

► Perpetrators adapt to changing environments

Perpetrators of fraud, financial abuse, and exploitation have demonstrated remarkable agility in changing practices in response to new laws, regulations, and market forces. As a result, laws created to respond to specific forms of abuse often quickly become obsolete. For example, as a result of the collapse of the sub-prime housing market, predators began seeking new avenues of exploitation, including the sale of worthless or overvalued financial products.

► Need for broader definitions

The current definition of financial elder abuse used in statutes, policy, regulation, and service programs is too limited and fails to include common practices that may have devastating consequences. These include withholding critical care in order to preserve estates, defying advance directives, playing upon vulnerabilities, and exercising undue influence.

“Elder financial abuse ranges from simple theft, forgery, and the misuse of legal documents to complex schemes or fraud involving reverse mortgages, annuities, identity theft, health care fraud, telemarketing scams, affinity crimes, and predatory lending.”



4

“An investigation by the Securities and Exchange Commission (2007) of 110 senior financial seminars found that 100% were actually sales presentations.”



► Service programs inadvertently facilitate abuse

Some aging service programs fail to adequately screen employees, volunteers, or persons they permit to make presentations. Of particular concern is financial predators who claim to be objective financial advisors making presentations at senior centers. Common topics include living trusts, Medi-Cal planning, long-term care, annuities, reverse mortgages, veterans pensions, and tax planning. The underlying purpose of these seminars is to sell products, often worthless or overpriced ones, to participants, many of whom mistakenly believe that speakers have been vetted. An investigation by the Securities and Exchange Commission (2007) of 110 senior financial seminars found that 100% were actually sales presentations.

► Financial crimes and exploitation are viewed as less serious

Pervasive views that financial crimes are less serious than violent crimes have resulted in lax enforcement, less serious consequences for offenders, and less attention to victims.

► Lack of appropriate services for victims

The consequences of financial abuse may include the loss of homes, life savings, pensions, and inheritances (Deem, Nerenberg, & Titus, 2007). Victims may go into debt, declare bankruptcy, and have bank accounts frozen or closed so that they can no longer pay bills and conduct business. Some are pursued by collection agencies, sued, or even charged criminally for unknowingly depositing and drawing on counterfeit checks. The social effects of financial abuse and exploitation may include divorce, estrangement from families, dependency, withdrawal from daily life, isolation, and placement in long-term care facilities. The impact on victims' mental health may include depression, anger, guilt, anxiety, substance abuse, and suicide.

Little research has been conducted on the effectiveness of services and interventions to prevent financial abuse and recover assets, including daily money management, financial literacy programs, fraud alerts and education, mediation, restitution recovery, services to mitigate the impact of abuse, and legal counseling. Program developers need information about the potential benefits, costs, and limitations of these services.

► Jurisdiction

Financial crimes may be handled by a variety of agencies, including local police and sheriffs, state regulatory agencies, the Federal Bureau of Investigation, the Federal Trade Commission, the Securities and Exchange Commission, postal inspectors, the Secret Service, the Internal Revenue Service, international organizations, and others, leading to confusion about what agencies have jurisdiction and to whom reports should be made.

► Reluctance by some law enforcement personnel to take reports

Victims and advocates have reported instances in which law enforcement personnel have failed to accept or investigate reports of financial abuse, citing lack of resources, jurisdiction, criminal options, leads, or because the losses do not meet minimum thresholds. Cases are also less likely to be investigated when perpetrators do not live in the same areas as their victims, which is often the case. The failure of law enforcement to take reports not only reduces the likelihood that perpetrators are brought to justice but may prevent victims from accessing victim compensation and services. Many local law enforcement officers also fail to enter complaints in national databases such as the Federal Trade Commission's Consumer Sentinel, which inhibits efforts to track crime and bring perpetrators to justice.

► Problems prosecutors face in handling financial abuse cases

Prosecutors cite the following challenges in handling financial crimes:

- Building financial crime cases frequently requires familiarity with such diverse topics as contract law, real estate, conservatorship, and mental capacity. Prosecutors may need to decipher civil contracts and financial documents, prove what victims did and did not understand (often at earlier points in time), and determine what defendants knew or reasonably should have known about victims' levels of understanding. They may also need to demonstrate that perpetrators had special relationships with their victims, which can be difficult. Few have received training in these areas;
- Prosecutors with expertise in financial abuse are likely to be inundated with cases; in response, some prioritize those that involve large losses;
- Many victims do not make good witnesses for the same reasons that they are vulnerable (e.g., dementias and intimate or confidential relationships with their abusers);
- Most prosecutors' offices lack adequate resources for handling complex cases, including funds to hire experts in gero-psychiatry, forensics accountants to examine questioned documents, etc. Some attribute the lack of resources to the low priority placed on elder abuse cases;
- Prosecutors depend on local police and sheriffs to bring cases. Lack of police resources and training is therefore believed to be a barrier; and
- Potential sources of referrals for financial abuse cases include legal assistance programs, private attorneys, and probate court investigators. Representatives from these entities have expressed the need for a more direct link to prosecutors.

“Victims and advocates have reported instances in which law enforcement personnel have failed to accept or investigate reports of financial abuse, citing lack of resources, jurisdiction, criminal options, leads, or because the losses do not meet minimum thresholds.”

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“A 2005 U.S. General Accountability Office report...revealed that only 7% of the victims surveyed had received court ordered restitution despite the fact that the defendants had reported significant wealth prior to the judgments.”



► **Problems law enforcement officials face in handling financial crimes**

Law enforcement personnel have cited the following difficulties in handling financial crimes against older adults:

- Problems and delays in getting records from financial institutions and the Social Security Administration;
- The volume and complexity of documents that must be reviewed;
- Lack of training and guidance in how to evaluate victims' capacity and vulnerability to fraud and undue influence;
- Lack of forensics experts to evaluate capacity, review financial documents, etc.; and
- Lack of effective means for quickly stopping assets from being depleted while investigations are in progress.

► **Many victims do not receive restitution or compensation**

Despite the fact that restitution is highly valued by victims, few receive it. Those who are awarded restitution often only collect a fraction of what they are owed. The 2005 U.S. General Accountability Office report *Criminal Debt: Court Ordered Restitution Amounts Far Exceed Likely Collections For the Crime Victims in Selected Financial Fraud Cases* revealed that only 7% of the victims surveyed had received court ordered restitution despite the fact that the defendants had reported significant wealth prior to the judgments.

Perhaps the most commonly cited barrier to restitution is the fact that perpetrators are assumed to have spent the money, placed assets in the names of others, or hidden them. Problems associated with recovery include the fact that most restitution payments begin after defendants serve their sentences, which may be years following their crimes. It is also often unclear who has responsibility for assessing victims' losses and enforcing restitution orders. Although restitution can be enforced with civil judgments, the process for doing so is expensive and complicated.

► **Negative stereotypes and stigmas related to financial abuse victims**

Victims of financial abuse and exploitation are viewed by some as gullible, greedy, naïve, or complicit in their victimization. These characterizations belie the fact that perpetrators are often highly skilled manipulators who use coercion and intimidation against victims. Some have ties to organized crime. These negative images discourage some victims from seeking help and some responders from taking appropriate action.

RECOMMENDATIONS for ISSUE 4: Improve California’s response to financial abuse

Provide opportunities (e.g., workgroups, committees, or task forces) to explore strategies for addressing the following needs:

- Stronger state and federal protections against financial abuse, including:
 - “Firewall” policies that are broad enough to apply to diverse situations such as requiring sellers of financial products to exercise a fiduciary duty to put clients’ interests first or requiring certain vendors to make determinations that products are suitable for customers;
 - Policies that block access to seniors by predators, such as requiring providers of senior services to adopt policies for screening persons making presentations or display clear signage about the intent of seminars;
 - Broader definitions of financial abuse and exploitation that include such common practices as undue influence, withholding care for financial gain, and defying advance directives to gain access to seniors assets;
 - Lower California’s threshold for prosecuting elder financial abuse as a felony from the current \$950 to \$400, which was the threshold in the past;
 - Create a special Elder Abuse Unit in the Attorney General’s Office to prosecute cases involving multi-jurisdictional consumer fraud, mortgage fraud, scams, transient family crimes, predatory lending, Internet lures, and fraud by contractors;
 - Urge the federal government to prohibit tax preparers from selling annuities and mortgages, or requiring them to be licensed; and
 - Direct the Federal Communications Commission (FCC) to take steps to stop cross-boarder fraud;
- Services to prevent financial abuse (See Section 3). A promising approach is a financial abuse victims center that provides a comprehensive array of legal, mental health, and advocacy services;
- Financial forensics research, instruments, technical assistance, experts, and resources. Promising approaches include:
 - A forensic tool to assess financial decision-making capacity;
 - A Forensic Center on Elder Financial Abuse and Exploitation (see Appendices);
 - Enlist the financial services industry to help develop techniques for enhanced investigations (e.g., develop software programs to detect abuse before assets have been depleted);
 - Promote the development and continuation of FAST teams and expand their membership to include experts in addressing new forms of financial crimes, experts in restitution recovery, financial auditors, and others;

“A promising approach is a financial abuse victims center that provides a comprehensive array of legal, mental health, and advocacy services.”

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- Provide training in how to provide expert testimony in legal cases involving elder financial abuse;
- Encourage Attorney General Bureau of Medi-Cal Fraud and Elder Abuse investigators to participate on FASTs; and
- Create databases of forensics experts;
- Improved restitution recovery. Promising approaches include:
 - Encourage prosecutors and judges to place increased pressure on offenders to pay off restitution and fines prior to sentencing as part of plea agreements;
 - Use collections investigators to track down perpetrators' assets; and
 - Explore promising practices used in California and other states such as:
 - In Vermont, victims are paid restitution from a government fund generated by a surcharge on criminal and traffic court fines. The Vermont Center for Crime Victims Services assumes the debt and employs professional collections investigators to collect from offenders; and
 - The U.S. Attorney's Office in San Francisco employed a special "asset investigator" as part of a pilot project to increase the recovery rates of court-ordered restitution and fines. The investigator worked alongside probation officials and U.S. attorneys who were investigating investment and telemarketing fraud;

ic education about financial abuse and exploitation. Recommended approaches to preventing financial abuse include campaigns that:

Counter damaging stigmas and stereotypes about victims;

Demonstrate specific techniques that scammers and predators use;

Instruct targeted seniors in how to block access by predators through telephone blocking systems and "do not call" lists;

Link elders who have been targeted by predators to programs that can provide follow-up counseling and peer support;

Link targeted or abused elders to legal, mental health, and protective services;

Engage victims or targeted elders in crime fighting by urging them to report predatory practices to law enforcement agencies and databases; and

Highlight the seriousness of financial crimes and the dangerousness of perpetrators by informing the public about links between crimes like telemarketing fraud and organized crime.



ISSUE 5:

Abuse and Neglect in Long-Term Care Facilities

5

California's system for investigating and responding to complaints of abuse and neglect in long-term care facilities⁶ is complex. Ombudsmen, who play a lead role, operate under two mandates: under the state's mandatory reporting law, they investigate initial reports of abuse; under the federal Older Americans Act, they serve as resident advocates and investigate a wide range of complaints that includes abuse and neglect. In addition, nursing homes must be licensed and meet standards set by the California Department of Public Health. Those that participate in the Medicare and Medi-Cal programs (which includes most California nursing homes) must further be certified and meet federal standards. Residential care homes for the elderly are regulated by the state under the California Department of Social Services (but not the federal government).

Ombudsmen and local law enforcement are required to cross report to the California Attorney General's Bureau of Medi-Cal Fraud and Elder Abuse. Operation Guardians, which the Bureau started in 1999, conducts unannounced 6-8 hour investigations by teams that include doctors and nurses who meet with patients, review charts, etc. The team issues reports to facilities requesting that they make recommended changes and may refer cases to other departments within the Attorney General's office for prosecution or civil injunctions, or report misconduct to professional boards (e.g., Certified Nursing Association). The program has been significantly scaled back in recent years.

“Operation Guardians... conducts unannounced 6-8 hour investigations... The program has been significantly scaled back in recent years.”

CHALLENGES and NEEDS

California's ability to effectively address abuse in long-term care facilities has come under intense scrutiny in recent years. The challenges and needs described in this section were identified by participants at the Elder Abuse summit, the APS/Ombudsman Jurisdictional Workgroup, and discussions with representatives from the California Attorney General's Bureau of Medi-Cal Fraud and Elder Abuse, the California Department on Aging, and local Ombudsmen. It further draws from two reports: *Victimized Twice: Abuse of Nursing Home Residents; No Criminal Accountability for Perpetrators* (Disability Rights California, 2010) and *California Elder Abuse Investigators: Ombudsmen Shackled by Conflicting Laws and Duties* (California Senate Office of Oversight and Outcomes, 2009).

⁶ Long-term care facilities include skilled nursing facilities (also called nursing homes) and residential care facilities for the elderly (also called assisted living facilities, rest homes, and board and care homes).





“Investigating and prosecuting abuse in facilities pose formidable challenges. They requires highly specialized skills...”



➤ Reduced funding for investigations

In 2008, California’s general fund support for local Ombudsman programs was eliminated. A 2009 study by the Senate Office of Oversight and Outcomes revealed that California’s approximately 1,000 Ombudsmen staff and volunteers in 35 local programs had made far fewer reports to agencies with the power to punish offenders that year. In one example, the state unit that licenses nursing homes saw a 44 percent drop in referrals from Ombudsmen.

➤ Barriers to investigating abuse in facilities

Under their Older Americans Act mandate, Ombudsmen are prohibited from cross reporting to law enforcement without the consent of the residents involved or their legal representatives. The Welfare and Institutions Code recognizes the conflict and affirms that Ombudsmen can only cross report with the consent of the resident (§ 15640 [d]), further stating that “ If a victim or potential victim of the neglect withholds consent to being identified in that report, the report shall contain circumstantial information about the neglect but shall not identify that victim or potential victim and the bureau and the reporting agency shall maintain the confidentiality of the report until the report becomes a matter of public record.”

Many advocates contend that California Ombudsmen’s dual roles—as “objective finders of fact” under state law and resident advocates under federal law are incompatible and that the Older Americans Act never intended Ombudsmen to perform the investigative role. California is in fact one of only a few states in which they do so.

Ombudsmen’s inability to report without victim consent has further led to tensions with the law enforcement community and concerns that criminal conduct in facilities goes unchecked. California’s reporting law also requires local law enforcement responders to cross-report to the Attorney General’s Office of Medi-Cal Fraud and Elder Abuse but many responders do not know about the requirement. In addition, few law enforcement officers have received training in how to conduct investigations in long-term care facilities. A bill to address the issue, AB 40, was introduced in the state Assembly in 2011. It would require mandated reporters to report crimes in facilities to both Ombudsmen and law enforcement.

➤ Barriers to the prosecution of abuse in facilities

Investigating and prosecuting abuse in facilities pose formidable challenges. They require highly specialized skills like evaluating patients’ medical status and records; collecting and evaluating aggregate data on facilities’ performance and rates of accidents, injuries, deaths, and pressure ulcers; auditing financial records to establish patterns of fraud; and assessing management practices. Other challenges include:

- Determining who is culpable (e.g., individual workers, managers, directors, boards);
- Lack of forensic expertise;
- Lack of training on abuse in long-term care facilities for law enforcement and other investigators; and
- Lack of clarity with respect to the definition of neglect in Penal Code §368 as it applies in cases of abuse in facilities.

► **Rapid growth and inadequate regulation for residential care facilities**

Monthly reports compiled by the Department of Social Services indicate that the Department receives 100-140 requests for licenses for new residential care facilities every month in California. Unlike skilled nursing facilities, these facilities are largely unregulated. The following violations are common:

- Failure to become licensed. Facilities that meet certain requirements must be licensed, but many are not;
- Residents who require higher levels of care than facilities are licensed to provide are admitted; and
- Restrictions against referring elders to unlicensed facilities are not enforced and violations are not reported.

► **Barriers to advocacy by Ombudsmen**

Section 1, “California’s Abuse Reporting and Response System,” described how conflicting mandates, lack of guidance, and other factors have compromised Long-Term Care Ombudsman Programs’ ability to respond to reports of abuse. Other barriers affect their ability to advocate on behalf of residents and for systems change. Examples of these barriers include:

- **Lack of guidance in advocating for “unbefriended residents”**
The role of Ombudsmen in advocating on behalf of “unbefriended” or “unrepresented” residents is unclear. For example, the Older Americans Act allows Ombudsmen to access the medical records of unrepresented residents who lack capacity; however the Act prevents them from disclosing this information without consent to agencies that can respond or provide relief, including regulatory or law enforcement agencies, Public Guardians, court investigators, or social service providers. Further, the Act does not give direction to Ombudsman representatives who have accessed records on next steps that can be taken when record reviews reveal problems for residents.
- **Conflicts of interest**
Under the Older Americans Act, Ombudsmen are mandated to speak out on issues that affect residents in long-term care facilities, including the failure of regulatory and licensing agencies to conduct timely investigations. The Ombudsman’s office in California is configured within state government, which has led to concerns about conflicts of interest. Some advocates have called for the establishment of an independent office.

► **Lack of training for employees of long-term care facilities**

Employees of long-term care facilities face enormous challenges ranging from high rates of violence and aggression by residents with dementias to unrealistic workloads. Few facilities offer adequate training to assist workers and little is known about the impact of training programs on improving residents’ care.

“...the Older Americans Act allows Ombudsmen to access the medical records of unrepresented residents who lack capacity; however the Act prevents them from disclosing this information without consent to agencies that can respond or provide relief...”



5

“Long-term care facilities are increasingly mixing younger mentally ill residents with residents who have dementias and failing to provide necessary supervision.”



► Long-term care facilities are admitting residents with behavioral problems

Long-term care facilities are increasingly mixing younger mentally ill residents with residents who have dementias and failing to provide necessary supervision. National advocacy organizations and the media have also reported accounts of sexual offenders being admitted although the extent of the practice in California is not known.

RECOMMENDATIONS for ISSUE 5: Improve California’s response to abuse in long-term care facilities

Provide opportunities (e.g., workgroups, committees, or task forces) to address the following needs:

- Barriers to abuse reporting in facilities, including:
 - Conflicts of interest resulting from Ombudsmen’s state and federal mandates; and
 - Ensuring that crimes against residents are reported and investigated, regardless of whether victims are able or willing to give consent (e.g., AB 40);
- Call for a review of Penal Code §368 and jury instructions with respect to the definition of neglect as it applies to long-term care facilities;
- Enhanced training to Ombudsmen, law enforcement, prosecutors, and others involved in facilities’ investigations and facilities’ employees (see Section 9 for specific training needs);
- Ensure that the State Ombudsman can carry out the mandates of the Older Americans Act with respect to engaging in systemic advocacy;
- Stronger laws and regulation to protect residents. Specific needs include:
 - Stronger enforcement of state laws related to residential care facilities; and
 - Federal regulation of facilities;
- The need for forensics expertise specific to facilities. Promising approaches include:
 - Promote the development of a Forensics Center for long-term care facilities (see Appendices); and
 - Encourage Attorney General Bureau of Medi-Cal Fraud and Elder Abuse investigators to participate in Forensic Center team meetings.

ISSUE 6:

Safeguarding the Community-Based Long-Term Care Network

6

The community-based long-term care network was designed to enable people with chronic disabling conditions to remain in their homes through the provision of attendant care, transportation, home delivered meals, support for caregivers, discharge planning for elders transitioning from facilities, adult day care centers, and other services.

Elder justice advocates recognize the importance of these services in preventing vulnerability and abuse. The largest national prevalence study on abuse conducted to date in fact found that low social support is a major risk factor for almost all types of abuse (Acierno, Hernandez-Tejada, Muzzy, & Steve, 2009). Safeguarding the community-based long-term care network is therefore a key abuse prevention strategy.

“The largest national prevalence study on abuse conducted to date...found that low social support is a major risk factor for almost all types of abuse.”

CHALLENGES and NEEDS

A confluence of factors and developments has placed serious strains on California’s community-based long-term care network. These include devastating cuts to services for elders and caregivers, pressures to serve increasingly frail elders in the community, a critical shortage of workers, and impediments to monitoring workers.

► Cuts in community-based long-term care services

Severe cuts in services have radically reduced the supply of protective and supportive services, including such core services as in-home support services, adult day care programs, hospital discharge planners, and family caregiver programs (Wallace et al., 2010).



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“The 1999 Olmstead v LC Supreme Court decision⁷...has led to increased numbers of frail elders being discharged or diverted from facilities.”

► **More and increasingly frail elders live in the community**

The 1999 Olmstead v LC Supreme Court decision⁷ asserted that the right to live in the community with reasonable accommodation was protected under the Americans with Disabilities Act (ADA). The decision has led to frail elders being discharged or diverted from facilities. The decision further gave rise to the “consumer choice” movement, which seeks to enhance the role of consumers in choosing, controlling, and directing their own care. This includes permitting beneficiaries of the publicly funded In-Home Support Services program to hire their own caregivers, including family members.

These developments have raised concerns about the ability of frail individuals to protect themselves against abuse and the need for increased surveillance and protective services. Advocates have further raised concerns about frail consumers’ ability to function effectively in the long-term care “marketplace” (Kapp, 2001). Impediments include an inadequate pool of in-home support service workers, lack of screening and oversight, and uncertainties about frail individuals’ ability to direct their own care.

⁷ A Supreme Court case brought by two Georgia women who were living in state-run institutions even though professionals had determined that they could be appropriately served in community settings. The plaintiffs charged that continued institutionalization was a violation of their rights under the Americans with Disabilities Act (ADA). The court ruled in their favor, affirming that unjustified isolation constitutes discrimination based on disability. In response, the Department of Health and Human Services directed states to increase their efforts to enable people with disabilities to live in the community and provide them with more opportunities to exercise informed choice.



► Biases toward institutional care by federal programs

Despite the Olmstead decision and the fact that most seniors want to stay in their homes and communities for as long as possible; Medicaid (called Medi-Cal in California), a major provider of long-term care, has a bias for institutional care. This bias, which has been attributed to the powerful nursing home lobby, is demonstrated by Medicaid's preference for providing care in facilities as opposed to home-based, less costly options.

► Long-term care workforce issues

Many frail elders who live in the community depend on paid employees to assist them with their daily activities. For elders to live independently in the community, they must have access to affordable, trustworthy, and well-trained workers. The following factors pose barriers to access:

SHORTAGE OF COMMUNITY-BASED LONG-TERM CARE WORKERS

The supply of screened and trained workers in California is inadequate to meet the need. To a great extent, this shortage is attributed to poor compensation and the fact that workers are not assured of basic protections. Medicaid and Medicare finance the majority of the long-term care provided in the U.S. (49% and 21% respectively) and reimbursements are so low that even full-time workers do not earn a living wage (PHI, 2010). Workers also lack basic protections and rights.

LACK OF EFFECTIVE SYSTEMS FOR SCREENING AND MONITORING WORKERS

Revelations that a significant number of community-based long-term care workers have criminal records have generated calls for more stringent screening and monitoring (Lewin Group, 2006). Much of the attention has focused on criminal background checks. Inadequacies in the system include:

- Existing requirements for criminal background checks are limited to state checks, which do not detect disqualifying persons who have moved from state to state; and
- Lack of cross-reporting among licensing and regulatory agencies enable abusive workers to move from one system of care to another (California Senate Office of Oversight and Outcomes, 2010).

CONSUMERS NEED GUIDANCE IN SCREENING AND HIRING WORKERS

Persons who hire workers need guidance in how to check references, establish realistic agreements and expectations, evaluate the risks involved in hiring caregivers with criminal records, and what to do when problems arise.



“Medicaid and Medicare finance the majority of the long-term care provided in the U.S. (49% and 21% respectively) and reimbursements are so low that even full-time workers do not earn a living wage.”



“Community-based long-term care providers are likely to observe deteriorating or high-risk situations that could be improved through risk reduction or early intervention.”

RESEARCH IS NEEDED TO GUIDE SCREENING AND HIRING DECISIONS

Little is known about the relationship between past criminal conduct and the future risk of abuse by workers. This information is needed by employers to inform hiring decisions and policy makers to help them develop safe and fair criteria for disqualifying workers. Specifically, information is needed on recidivism rates among workers with criminal histories to determine what crimes should disqualify workers, mitigating factors such as length of time since offenses were committed, and whether different criteria should be used when consumers choose to hire family members as their workers. According to a 2009 report by the AARP Public Policy Institute, “There has been no robust scholarship on the relationship between general criminal behavior and elder mistreatment” (AARP Public Policy Institute, 2009).

➤ **Lack of coordination between the protective service and long-term care networks**

Forums that address California’s community-based long-term care needs have not consistently included representatives from the APS and elder abuse prevention networks. As a result, groups that advise policy makers about long-term care (e.g., the Olmstead Advisory Committee) fail to adequately address the protective service needs of frail elders in the community, including the need for surrogate decision-makers, Public Guardians, APS, legal and court services, and advocacy.

Philosophical differences may play a role. Many elder abuse advocates have called for more stringent controls over workers who are paid through publicly funded programs like In-Home Support Services. In contrast, advocates for adults with disabilities call for less control, asserting the right of long-term care consumers to make hiring decisions with as little interference as possible.

➤ **Inadequate discharge plans**

Many older adult patients are discharged from hospitals or long-term care facilities without adequate plans for care. The same is often true for people released from facilities into the community under “Olmstead programs.”

➤ **Care providers need training to help them identify clients at risk**

Community-based long-term care providers are likely to observe deteriorating or high-risk situations that could be improved through risk reduction or early intervention. Many, however, lack training in how to identify and respond to high-risk clients or situations. Those risk factors that are most likely to be observed vary depending on the setting and populations served. For example, risk factors specific to caregiver abuse include histories of conflict prior to the onset of the disabling condition (including domestic violence) and aggression by care receivers. High-risk elders include those with dementias who are verbally or physically aggressive (Wiglesworth et al.; 2010). See Section 8 for more on the training needs of community-based long-term care providers.

► Family caregivers need support, assistance, and training

Family caregivers need the following to meet their responsibilities:

- Caregiver support, respite, and counseling;
- Guidance in screening and hiring workers;
- Information about legal issues, including families' legal obligation to provide care;
- Assistance in crafting advance directives; and
- Training (See Section 9 for more on the training needs of family caregivers).

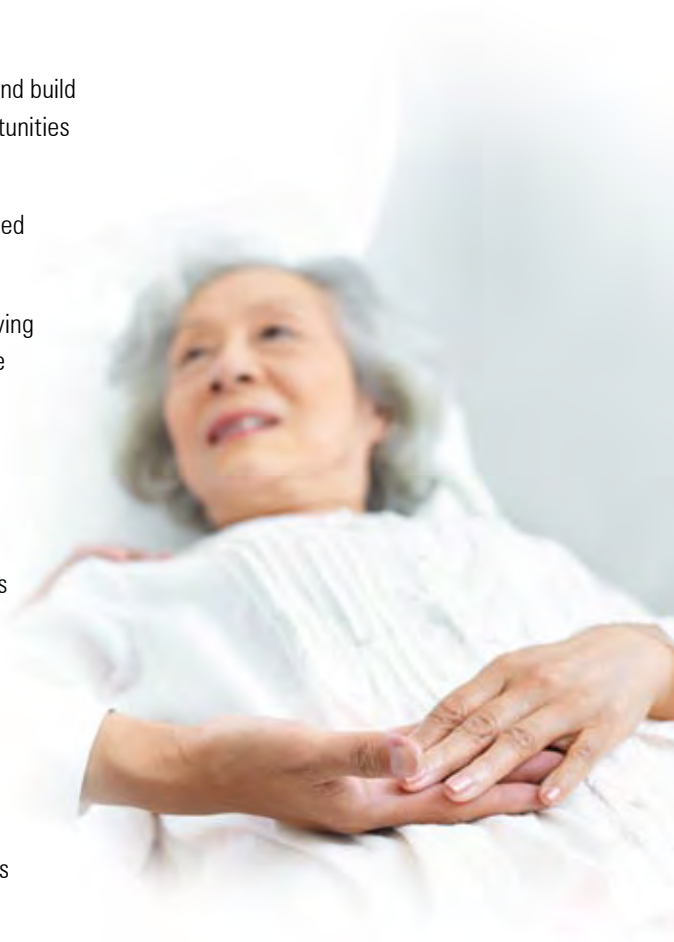
RECOMMENDATIONS for ISSUE 6: Strengthen and safeguard the community-based long-term care network

Promote exchange between the elder abuse and long-term care networks to explore common needs, potential collaboration, and concerns for balancing long-term care consumers' rights with society's obligation to protect the vulnerable. Areas to address include:

- Increase local, state, and national resources for community-based care and build in added safeguards. The federal Affordable Care Act creates new opportunities to do so;
- Promote the use of risk assessment tools by providers of community-based long-term care;
- Expand the community-based long-term care workforce by providing a living wage, training, rights, and opportunities for workers (e.g., the Direct Care Workforce Empowerment Act);
- Promote the development of a state task force to develop a plan for screening and monitoring workers that:
 - Provides for coordination and information sharing among state departments with oversight responsibilities for multiple care systems and programs;
 - Includes, but does not rely exclusively on criminal background checks. Other promising approaches include systems to flag disqualifying offenses committed after hiring and cross-reporting by oversight and regulatory agencies to prevent abusers from moving between systems of care;
 - Allows capable elders to exercise their right to hire family members or others with disqualifying offenses or assume other risks; and

“Promote exchange between the elder abuse and long-term care networks to explore common needs, potential collaboration, and concerns for balancing long-term care consumers' rights with society's obligation to protect the vulnerable.”

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“Discharge planning should focus on the needs of both patients and family caregivers...”

- Is research-based to reflect current understanding of criminal conduct and recidivism;
- Promote the development of research on abuse by caregivers that can be used to guide hiring practices (See Section 9);
- Explore ways to improve discharges and transitions between acute care facilities, long-term care facilities, and community-based services. Discharge planning should focus on the needs of both patients and family caregivers; and
- Explore ways to ensure on-going collaboration between the elder abuse prevention and community-based long-term care provider networks. Promising approaches include:
 - Appointment of a protective services representative to the California Olmstead Advisory Committee;
 - Community-based long-term care providers’ participation on multidisciplinary elder abuse teams; and
 - Continued collaboration among the California Department on Aging, the California Association of Area Agencies on Aging, and the County Welfare Directors Association.



ISSUE 7:

Ensuring Access and Parity

7

Advocates for elder justice recognize that older adult members of groups that have historically been deprived of opportunities or are faced with the challenges of life in a new culture face health and economic disparities that heighten their risk of elder abuse and neglect. With high numbers of minority seniors in California (about one in four elders in California are foreign born, and more than 27% of the nation's Hispanic elders and 44% of its Asian members live in California), access and parity issues are of critical concern (He, Sengupta, Velkoff, & DeBarros, 2005).

CHALLENGES and NEEDS

The limited research on elder abuse in underserved communities suggests differences in vulnerabilities to abuse and incidence rates, as well as barriers that elders and their families face in accessing help (Tatara, 1997).

As a result of political decisions by the federal government (including relocation programs aimed at assimilation in the 1950's and 1960's), California has the highest population of Indians of any state. Although little is known about the needs of abused and vulnerable Indian seniors in California, interest in addressing this gap is emerging. During a recent conference to address family violence sponsored by the Tribal Law and Policy Institute in collaboration with the Administrative Offices of the Court, participants identified the need for information about Indian elders and elder abuse among their top priorities.

► Risk factors

Underserved and minority older adults are at heightened risk for certain types of abuse and at lesser risk for others. For example:

- Latinos have a longer life expectancy than the general population but higher rates of major chronic illnesses that tend to disable them in old age (Torres-Gil, 2010);
- American Indians experience chronic health problems, including heart disease, malignant neoplasms, cardiovascular diseases, diabetes, pneumonia, and influenza at an earlier age than Whites (McCabe, 2001);

“...older adult members of groups that have historically been deprived of opportunities or are faced with the challenges of life in a new culture face health and economic disparities that heighten their risk of elder abuse and neglect.”



7 “Blacks and Latinos were more than 70% more likely than whites to lose their homes to foreclosure between 2007 and 2009.”

- Lesbian, gay, bisexual, and transgender elders are more likely to live in poverty, face social and community isolation, and lack appropriate health care and long-term care (SAGE, 2010);
- Heightened demands on African-American and Indian caregivers, exacerbated by multigenerational caregiving (including grandparents caring for grandchildren), lack of resources, and urban migration are further believed to contribute to risk; and
- Older homeowners who are members of minority groups have limited access to traditional approved lenders and have to rely on less legitimate sources, which leaves them vulnerable to predatory lending practices. For example, the growth in sub prime refinance loans from 1993-2000 was greater among African-American and Latino homeowners than it was among whites (Hill & Kozup, 2007).

► **Heightened rates of abuse**

Research has revealed dramatic differences in incidence rates for elder abuse within minority communities. Examples include:

- African-American seniors are twice as likely as non-African-American seniors to experience psychological mistreatment. They may be up to five times more susceptible to being cheated financially (Beach, S. R.; Schulz, R.; Castle, N. G.; & Rosen, J.; 2010);
- Elderly Hispanics are more likely to live in inferior nursing homes than their white counterparts (Fennell, M., Feng, Z., Clark, M., & Mor, V.; 2010); and
- Blacks and Latinos were more than 70% more likely than whites to lose their homes to foreclosure between 2007 and 2009 (Bocian, Ernst, & Li, 2008).

► **Risk and incidence of abuse in Indian country**

Critical areas of concern related to the risk and incidence of abuse in Indian country were identified by tribal leaders and service providers, personnel from the Tribal Law and Policy Institute, and two national needs assessments (Nerenberg, Baldrige, & Benson, 2003; Jackson, 2005). They include:

- Many Indians who were relocated away from their traditional homes are now seniors who live separated from their tribes;
- Fewer Indians are reportedly getting married, which has disrupted traditional patterns of family responsibility, including husbands' duty toward their wives' parents;
- Traditional patterns of family support, including transportation to social and religious events that ensured that elders were never in need, have eroded as younger people face the modern issues of substance abuse, unemployment, and poverty;

- Over 63% of Indian senior citizens live at or below the poverty level, which is nearly six times the national average for seniors;
- Increases in sexual assaults have been reported. It is not known whether these increases are the result of increased incidence or increased awareness; and
- Gang violence is spreading on reservations. Gangs and substance abusers have reportedly broken into elders' homes, resulting in elders being afraid to go out for fear of losing their homes.

► **Barriers to access**

The barriers that minority older adults face in accessing services include:

- Lack of culturally and linguistically competent service providers (Approximately 21% of older Californians have limited English proficiency) (Wallace, Pourat, Enriquez-Haass, & Sripipatana, 2003);
- Discriminatory practices;
- Distrust of the criminal justice system. Members of marginalized communities may see the justice system as insensitive or believe that they or their abusers will not be treated fairly. Victims who come from countries where police brutality or corruption is common may also have negative attitudes about law enforcement; and
- Fear of deportation. Undocumented immigrants may not contact police or social service agencies for fear of being deported. Some victims do not want to see their abusers deported if doing so exposes the abusers to danger.

► **Barriers to meeting the needs of abused and vulnerable Indian elders**

Challenges to meeting the needs of Indian elders include:

- **Low rates of service utilization.** According to the National Society for American Indian Elderly, only 5% of eligible American Indian elders in the U.S. receive services. Underutilization has been attributed to a variety of factors including reluctance to provide personal information. Some who qualify for in-home support services, for example, fail to apply because they do not want to go through the assessment process owing to lack of trust in government programs. Many belong to a generation that did not complete high school, and those who cannot read or write well are often reluctant to let strangers know.
- **Need for technical assistance and information.** Tribes lack information on the scope of abuse and promising approaches for addressing it.
- **Lack of support from some tribal leaders.** Developing tribal programs and policy for abused and vulnerable elders requires the support and involvement of tribal leadership, which has proven to be problematic for some tribes.

“Over 63% of Indian senior citizens live at or below the poverty level, which is nearly six times the national average for seniors.”



7 “According to the National Society for American Indian Elderly, only 5% of eligible American Indian senior citizens in the U.S. receive services.”

- **Lack of coordination among various entities.** Health and social services, court services, and police protection are provided by tribal, federal, state, and county organizations. As a result, service delivery in some parts of Indian country is fragmented and characterized by gaps in services and jurisdiction, and a lack of coordination.
- **Lack of federal funding to address abuse in Indian Country.** Although Subtitle B of Title VII of the Older Americans Act authorizes a program for tribes, funds were not appropriated.

RECOMMENDATIONS for ISSUE 7: Ensure that all California seniors have access to justice and protective services

Provide opportunities (e.g., workgroups, committees, or task forces) to address the following needs:

- Promote studies to identify differences among racial and ethnic minorities with respect to rates of abuse, risk factors, and access to services;
- Form alliances with advocacy organizations committed to parity, access, and non-discriminatory practices. Examples include:
 - Out of Many One/Campaign for the Elimination of Racial and Ethnic Disparities, a coalition devoted to achieving health parity for ethnic minority groups; and
 - The Center for Responsible Lending, which seeks to create ownership and economic opportunities in underserved communities through responsible loans and financial services;
- Promote the development of local and state initiatives to ensure access, parity, and non-discriminatory practices;
- Call for federal agencies with regulatory and oversight authority to hold financial institutions accountable for complying with anti-discrimination consumer laws including the Community Reinvestment Act, the Fair Housing Act, and the Equal Credit Opportunity Act;
- Promote the development of outreach campaigns, training, and service programs that address abuse in underserved communities. Promising approaches include:
 - The Asian Pacific Islander (API) Elder Abuse Task Force, hosted by API Legal Outreach in the San Francisco Bay Area, brings together consumers, social service providers, and government agencies to address abuse in the Asian Pacific Islander community; and

- Collaboration with journalists and media outlets that focus on issues of parity, equal access, and non discriminatory practices, including the New America Media, which produces the *Generations Beat Online* e-newsletter and maintains an ethnic media directory.

Specific strategies for improving the response to elder abuse in Indian country include the following:

- Conduct tribe-specific needs assessments to:
 - Measure the extent of elder abuse on reservations and in urban areas;
 - Determine how abuse is defined;
 - Explore variations among tribes; and
 - Explore the interplay of factors that contribute to risk including poverty, access to services (including distance from basic services like police and telephones in rural areas), the link between Alzheimer’s disease and elder abuse, and how chronic conditions like diabetes heighten demands on caregivers;
- Support promising approaches to data collection:
 - Explore existing databases and ways to combine data; and
 - Employ culturally appropriate approaches, including informal community conversations and one-on-one conversations;

“Promote the development of outreach campaigns, training, and services programs that address abuse in underserved communities.”





- Explore promising practices by tribes within and beyond California, including tribal elder protection codes, elder protection teams, and penalties and restitution imposed by Tribal courts;
- Develop pilot projects to explore promising approaches. Pilot projects should:
 - Build on existing and successful approaches like training “cultural mentors”;
 - Allow for flexibility (multiple small grants to test various approaches in both urban and rural areas); and
 - Develop training and technical assistance for those working with elders. In particular, technical assistance and training are needed to assist tribes:
 - Develop simple methods to assess their own service needs, track abuse, and evaluate the success of programs that are implemented, including elder protection teams;
 - Educate tribal leadership on how to address the needs of older adult members; and
 - Advocate on behalf of victims of all forms of abuse. Specific areas of need for advocacy include: restitution advocacy; protocols for advocating on behalf of older adult Indian women; issues of informed consent when victims have cognitive impairments; and advocacy for persons with disabilities;
- Promising approaches to technical assistance in Indian country include:
 - Work with existing state and national advocacy organizations, including the Tribal Law and Policy Institute and the Minnesota Indian Women’s Sexual Assault Coalition that have developed culturally specific training, curricula, model policies, protocols, and technical assistance to help tribes address other forms of family violence; and
 - Technical assistance “tool-kits” and workbooks.

ISSUE 8: Training

8

California is a leader in developing innovative approaches to training for a wide range of professionals. Trainers in California have explored and piloted:

- Interactive on-line courses;
- Adult learning techniques that are interactive and practice-based; and
- Dynamic partnerships among experts in elder abuse, professional trainers, employers, and representatives from targeted groups.

KEY ACCOMPLISHMENTS

The Archstone Foundation, as part of its Elder Abuse and Neglect Initiative, supported the development of customized training for mandated reporters, some of which serve as state and national models. They include:

- The Academy for Professional Excellence, in collaboration with the Bay Area Academy and the UC Irvine Center of Excellence on Elder Abuse and Neglect, is developing curricula for 23 “core competencies” identified by the National Adult Protective Services Association (NAPSA) in conjunction with the National Center on Elder Abuse, researchers, state and regional representatives, and panels of subject matter experts.⁸ The two academies are leading a collaborative effort to create APS training academies in California using the curricula;
- The University of California, Los Angeles developed a curriculum for dental students, a screening tool, and reporting protocol for clinical faculty and students that can also be adapted for use in private practice;
- City College of San Francisco developed customized training for Emergency Medical Services providers, health care interpreters, and community health workers. Content has been integrated into courses and made available to other community colleges across the state. An on-line class in elder abuse is taught every semester through the school’s Health Education Department;

“California is a leader in developing innovative approaches to training for a wide range of professionals.”



⁸ Competencies, which are clusters of related knowledge, skills, and attitudes that are essential to job performance, are the hallmark of the competency-based approach to vocational education and training.



“All professionals, paraprofessional, volunteers, caregivers, and others who have contact with elders need training to help them recognize and report abuse.”

- The state Attorney General’s Bureau of Medi-Cal Fraud and Elder Abuse for several years conducted annual conferences featuring state-of-the-art training on abuse investigations in long-term care facilities; and
- The UC Irvine Center of Excellence on Elder Abuse and Neglect has developed innovative and customized training for a wide range of professionals including coroners and medical examiners, judges, and police investigators. Among the innovative techniques they use are simulated investigations in long-term care facilities.

CHALLENGES and NEEDS

Despite these accomplishments, critical gaps in training persist. New approaches are needed to ensure that content is accurate, up-to-date, and consistent across the state; that training and education is “institutionalized” within academic and training institutions to ensure sustainability; and that content is relevant and appropriate to educational levels, language competency, and the settings in which trainees work. Training should also reflect trainees’ needs with respect to career advancement (e.g., provide for continuing education credits, meet academic standards and needs, etc.). Trainers, advocates, and service providers in California have identified the following concerns and areas of need:

► The need for standardized “core” and customized content

All professionals, paraprofessional, volunteers, caregivers, and others who have contact with elders need training to help them recognize and report abuse. This “core” content includes risk factors, indicators, how to gather information, and how to make reports.

Training also needs to reflect specific job settings, the types of abuse that trainees are likely to observe, their roles, and their levels of education and experience. The following needs for specialized training were identified by stakeholders who contributed to the development of this Blueprint:

LAW ENFORCEMENT

CEJW conducted a survey of police officers and sheriffs in the state to understand their training needs. Respondents were provided with a list of training needs and asked to check topics that they need training in. Forty-six individuals responded. The highest ranked topics and the percentage of respondents who checked them are;

- Specialized training for complex financial scam cases (73%)
- Probate Code §2952 (pertains to the securing of assets during investigations of financial crimes) (66%)
- Capacity and how it relates to specific decisions (61%)
- Undue influence (59%)

- Conservatorship (59%)
- Identification of wounds/injuries including suspicious bruising, pressure ulcers (51%)
- Investigations of abuse in nursing homes (42%)
- Appropriate use of elder abuse restraining orders (42%)

Others involved in the development of the Blueprint (including both law enforcement personnel and other stakeholders) added additional input on law enforcement training needs. They identified the following priorities:

- The investigation of financial crimes including:
 - Mass marketing crimes;
 - Consumer protection;
 - “Sweetheart scams”;
 - Financial abuse in long-term care facilities;
 - Predatory and repetitive crimes; and
 - Reporting financial crimes to federal authorities and databases.
- Investigating crimes in long term-care facilities, including:
 - Statutes pertaining to unlicensed long-term care facilities;
 - Sexual abuse and homicides in long-term care facilities;
 - Violent or abusive conduct by residents against other residents (including conduct that results from dementia); and
 - Cross-reporting to the office of the Attorney General.
- Investigative procedures and preserving forensic evidence;
- Recognizing criminal conduct when abuse involves misuse of authority by surrogate decision makers such as attorneys in fact, conservators, and trustees;
- Suffocation and strangulation in later life;
- Neglect;
- Capacity and its role in abuse and investigations;
- Elders as witnesses;
- Interviewing older persons;
- The importance of taking reports (even when arrests are not made) to ensure that victims receive needed resources (compensation) and to document patterns;
- Variations in civil restraining orders; and
- Working with victims or abusers with cognitive impairments or who are believed to be susceptible to undue influence.

“Others involved in the development of the Blueprint (including both law enforcement personnel and other stakeholders) added additional input on law enforcement training needs.”





Recommended approaches to law enforcement training include:

- Training to new recruits should be updated routinely to reflect new and changing needs;
- Training for detectives should be mandated;
- Cross-training with prosecutors is needed to help prosecutors understand the difficulties police and sheriffs have with respect to mental capacity issues and getting financial information, and to help police and sheriffs understand what they need to do to get cases filed; and
- Emphasize the “demographic imperative” of training (how the growing older adult population will affect law enforcement).

PROSECUTORS

Training for prosecutors should include:

- Common physical, communication, and cognitive impairments;
- Victims’ fears and reluctance to appear in court or see perpetrators punished;
- Abuse in long-term care facilities;
- The importance of restitution for victims; and
- Community resources for elders.

MANDATED REPORTERS

Training for mandated reporters should include:

- Types of abuse that must be reported and to whom;
- Under what circumstances abuse must (or should) be reported;
- What level of certainty (that abuse occurred or who committed it) is needed to make reports;
- What happens when reports are made (who responds and how);
- What happens if reports turn out to be unfounded;
- Protections for confidentiality; and
- Whistleblower protections.

LONG-TERM CARE OMBUDSMEN

Training for Ombudsman staff and volunteers should cover:

- How to work with APS and law enforcement, including how to recognize and report cases involving criminal conduct and civil liability;
- Violent or abusive conduct by residents against other residents (including conduct that results from dementia);

- Handling situations in which residents with dementias sign documents they do not understand that benefit others (e.g., staff witness visitors asking residents with dementias to sign checks, powers of attorneys, wills, etc.); and
- How to identify residents' mental health needs and advocate for services.

ADULT PROTECTIVE SERVICES WORKERS

As the primary first responders to abuse reports in California, APS workers need extensive, up-to-date training on a regular basis. As described earlier, experts defined 23 "core competencies" for APS workers, which are currently being developed.⁹ The Academy for Professional Excellence and the Bay Area Academy are leading a collaborative effort to create APS training academies in California.

Members of the County Welfare Directors Association of California, Protective Services Operations Committee added the following training needs:

- Public benefits programs including those available to elders, adults with disabilities, and veterans;
- Hoarding; and
- Assessing capacity for various functions and decisions.

VICTIM ADVOCATES

Training for victim advocates in public and private agencies at the local, state, and national levels should include:

- The special needs of victims of elder abuse, including courtroom accommodations and transportation to court;
- Elder abuse restraining orders, emergency protective orders, and domestic violence restraining orders;
- Criminal codes pertaining to abuse;
- Resources available to victims of elder abuse, including compensation;
- Working with law enforcement in elder abuse cases (a recommended approach is to arrange for ride-alongs with law enforcement officers);
- Consumer protection;
- Resources for elders; and
- The importance of restitution for victims of elder abuse and resources available to help them with collection.

⁹ APS core competencies are listed on the Web sites of the Academy for Professional Excellence (http://theacademy.sdsu.edu/programs/Project_Master/core.html) and the Bay Area Academy (<http://www.baa-aps.org/article.php?id=534>)

“As the primary first responders to abuse reports in California, APS workers need extensive, up-to-date training on a regular basis...The Academy for Professional Excellence and the Bay Area Academy are leading a collaborative effort to create APS training academies in California.”





“Training for advocates in domestic violence programs that serve victims of all ages...should include...effective strategies for working with elder abuse victims...”

HEALTH AND MENTAL HEALTH CARE PROFESSIONALS

Training for health and mental health care professionals should include:

- Interpersonal violence and sexual assault, including indicators and age-related changes that may impact the detection of sexual abuse;
- Working with elders with physical and mental limitations;
- Enhanced medical-legal assessments;
- Characteristics of traumatized elders with and without dementia;
- Health Insurance Portability and Accountability Act (HIPAA) privacy provisions;
- How to fill out capacity declarations (for physicians, psychologists, and religious healing practitioners); and
- The importance of assessing health literacy and how to help patients understand diagnoses, treatment plans, medication use, etc.

DOMESTIC VIOLENCE ADVOCATES

Training for advocates in domestic violence programs that serve victims of all ages, as well as those in specialized programs for elder abuse victims, should include:

- Patterns of domestic violence in later life;
- Effective strategies for working with elder abuse victims;
- Distinguishing domestic violence from violence related to dementias (including violence associated with delusions, hallucinations, delirium, impulse control, etc.) or violence that is motivated by financial gain;
- Appropriate interventions;
- The use of elder and dependent adult abuse restraining orders, how they differ from other restraining orders, and when each is appropriate; and
- Planning for and providing disability-appropriate shelter for elders.

JUDGES AND COURT PERSONNEL

Training for judges and court personnel should include:

- The importance of restitution for elder abuse victims;
- Promising practices for improving restitution recovery;
- Capacity and undue influence;
- Distinctions among different restraining orders;
- Consumer protection;

- Mental health resources that may be needed by, and available to, victims and offenders; and
- Mandatory reporting.

TRAINING FOR CIVIL ATTORNEYS

Training for civil attorneys in private practice and non-profit programs should include:

- Preventing financial abuse and exploitation by family members, personal care providers, “new friends,” telemarketers, con artists, and others;
- “Safe” estate planning, including plans that offer maximum protection against abuse and counseling to families in how to avoid future conflicts over estates;
- Alternatives to conservatorship;
- Situations and circumstances in which they may report abuse;
- Predatory lending and foreclosure prevention;
- How the legal requirements for civil remedies compare to those of criminal prosecution;
- Victims’ rights and services, including information about restitution and compensation;
- When mediation is appropriate in abuse cases and what resources exist;
- Domestic violence; and
- Distinctions among different restraining orders.

WORKERS IN LONG-TERM CARE FACILITIES

Training for frontline workers, supervisors, and administrators should include:

- How to report abuse and neglect;
- Working with violent and aggressive residents;
- How to respond to abuse by guests and employees;
- Handling resident-on-resident abuse;
- Whistleblower protections; and
- Creating a culture of change.



8

“*Training on abuse is provided in diverse settings by trainers with varying levels of expertise. As a result, the content and quality vary.*”



COMMUNITY-BASED LONG-TERM CARE WORKERS

Training to in-home support service workers, certified nursing assistants, and other direct-care workers should be provided to both direct care workers and their supervisors, and workers should be provided with incentives and/or stipends to attend. Training should include:

- Handling difficult patient behaviors;
- Negotiating agreements and resolving problems with clients;
- Understanding and addressing “quality of life”;
- Protections against false accusations of abuse and neglect such as documenting financial transactions made for clients; and
- Workers’ rights and recourse when their rights are violated.

FAMILY AND OTHER INFORMAL CAREGIVERS

Family members and friends who provide care can benefit from training in the following:

- Community services, including caregiver support services, respite, legal, and mental health services (what they do and how to access them);
- How to hire helpers;
- Techniques to avoid pressure ulcers; and
- When conservatorship, powers of attorney, advance directives for health care, and other legal instruments may be needed and where to go for help.

■ Challenges to providing training

Responding to California’s elder abuse training needs poses the following challenges:

- Variations across the state in how APS, Ombudsmen, and law enforcement respond to abuse reports make it difficult to develop standardized statewide content;
- “Institutionalizing” elder abuse in academic institutions, a potentially effective strategy for reaching large numbers of students in key professions, is complicated and time-consuming. It may, for example, require identifying faculty champions, meeting with curriculum committees and other administrators, and ensuring that courses meet institutional standards, graduation requirements, etc.
- Some mandated reporters work in settings with high rates of turnover (long-term care facilities). In the case of law enforcement agencies, there may be frequent transfers between departments. These changes require that training be conducted repeatedly; and
- Lack of consistency and quality control. Training on abuse is provided in diverse settings by trainers with varying levels of expertise. As a result, the content and quality vary.

RECOMMENDATIONS for ISSUE 8:

Ensure that all professionals, paraprofessionals, and caregivers in California receive training to help them recognize and respond appropriately to elder abuse.

Assemble a training/education committee, composed of educators, trainers, representatives from professional associations, experts in elder abuse, and others to:

- Develop evidence-based, up-to-date core elder abuse content that can be used by multiple user groups;
- Promote the development of training for diverse groups through the following:
 - Convene workgroups to assess needs and oversee the development of curricula, content, and competencies;
 - Disseminate information about training and education grants and resources;
 - Advocate for public and private funding for training;
 - Provide technical assistance to groups that develop/conduct training;
 - Advocate for adding elder abuse competencies into training programs for social workers, health care professionals, legal professionals, and others who are likely to encounter elder abuse;
 - Advocate for state APS (and other) training academies or institutes to ensure consistency and optimize resources;
 - Promote the development of clearinghouses and libraries to make training resources widely available across the state. Materials to include are Power Point slides, exercises, quizzes, handouts, and reading material;
 - Urge academic institutions, including community colleges, to develop elder abuse courses and/or infuse elder abuse content into existing courses for key professionals and paraprofessionals, and
 - Advocate for the inclusion of elder abuse training in licensure and continuing education requirements for key groups.
- Promote promising practices, including:
 - Training should be ongoing and routinely updated to reflect the continual emergence of new information and high turnover rates within settings;
 - Standardized curricula are needed for both new and advanced workers, supervisors, and managers;
 - Training should be multidisciplinary;
 - “Cafeteria” or modularized training resources are needed to allow flexibility in meeting the schedules, formats, settings, and other needs of specific groups;
 - Training should be designed that can be delivered by trainers with varying degrees of expertise;

“Assemble a training/education committee, composed of educators, trainers, representatives from professional associations, experts in elder abuse, and others to... develop evidence-based, up-to-date core elder abuse content that can be used by multiple user groups.”

8

8

“Community colleges credential 80% of the state’s firefighters, law enforcement officers, and emergency medical technicians.”

- Training should be developed in collaboration with existing training programs, licensing boards, academic institutions, professional associations, and other trusted sources to:
 - Consolidate resources;
 - Ensure the training content, approaches, and techniques are consistent with those currently in use;
 - Ensure that training reflects learners’ needs with respect to education pathways, graduation requirements, preferred approaches, etc; and
 - Benefit from their expertise and relationships with target groups.
- Potential partners and resources include:
 - Academic institutions including universities, state colleges, and community colleges. Community colleges can play an important role in reaching front-line service providers, adapting training for California’s diverse workforce, and forging partnerships with employers, unions, and professional and paraprofessional associations (community colleges credential 80% of the state’s firefighters, law enforcement officers, and emergency medical technicians);
 - Police Officers Standards and Training (POST);
 - Professional associations; and
 - Health Resources and Services Administration (HRSA) grants to states for direct care workers.



ISSUE 9: Policy-Focused Research

9

The need for research to inform policy was a common theme in stakeholders' discussions. They called for studies to guide policy development, understand service needs, identify promising approaches, and justify requests for resources. Program developers voiced frustration at the recurrent demand by funding sources for evidence-based approaches when few abuse prevention programs or services have been tested. They further agreed on the need for policy makers, program developers, service providers, and researchers to work together in designing studies. The importance of collaboration among researchers and practitioners was echoed in a report by the Cornell Institute for Translational Research on Aging (Pillemer et al, in press) which states "Several attempts have been made to create research agendas for elder mistreatment. . .What has been lacking in such efforts, however, has been the voice of the practice community."

“Several attempts have been made to create research agendas for elder mistreatment... What has been lacking in such efforts, however, has been the voice of the practice community.”

CHALLENGES and NEEDS

Policy makers, program developers, service providers, and advocates need credible information to guide policy and practice and justify requests for resources. Specific areas of need for research identified by participants in the Blueprint development process include:

- Prevalence studies to guide practice. Special areas of need include:
 - The extent of mass marketing crime and its impact on victims;
 - The nature and scope of abuse in communities of color; and
 - Suicides related to catastrophic financial losses;
- Studies of risk factors associated with abuse, including:
 - Validated risk assessment tools that can be used by APS and others to ensure consistency across the state in how cases are responded to; help policy makers assess resource needs and craft policy and regulations; and guide trainers;



- Specific risks that warrant consideration include “cognitive vulnerability,” financial decision-making capacity, and the inability to resist undue influence;
 - The impact of social factors, including social support, on risk; and
 - Studies to identify clusters of behavioral and physical risk factors that constitute an “elder abuse syndrome”;
- The impact of services and interventions, including:
 - Cost-benefit analyses to demonstrate the value of preventive interventions and “up-front” expenditures in reducing long-term costs;
 - Studies to identify services that are most effective with specific populations (e.g., young-old versus old-old, disabled versus nondisabled) so that interventions can be better targeted;
 - The benefits and limitations of less restrictive alternatives to conservatorship (e.g., daily money management);
 - Promising techniques for working with repeat or “chronic” victims” (those who are exploited repeatedly by the same or different persons yet fail to take steps to end their victimization);
 - The use of mediation and other restorative justice approaches;
 - The impact of teams and other multidisciplinary approaches; and
 - The impact of public awareness campaigns;



- Studies to guide public policy, including:
 - Surveys to determine what laws have been enacted but not implemented, barriers to their implementation, and the outcomes and unintended consequences of laws;
 - Surveys to identify model laws and promising practices for reporting and response;
 - Studies to explore how changes in the definitions used in California’s reporting laws would affect the demand for services, the nature of the services that are needed, and the costs involved; and
 - Studies to assess the impact of cuts in long-term care services on rates of institutionalization and elder abuse by family caregivers; and
- Studies to provide guidance to those making hiring decisions about long-term care workers, including:
 - Studies to compare methods for hiring and tracking workers, including criminal background checks and databases of disciplinary actions taken by administrative entities;
 - Surveys to explore relationships between past and future criminal conduct, including studies on recidivism and actuarial risk assessments; and
 - Studies to determine how background checks would affect the supply of long-term workers.

“Elder abuse research is conducted by researchers from diverse disciplines...Each discipline has its own definitions, theoretical frameworks, and methods, which make comparisons and collaboration difficult.”

► **Barriers to policy-focused research**

Researchers in California and other states have identified the following barriers to research:

- Lack of opportunities for researchers, service providers, program developers, and policy makers to discuss needs, share insights, generate hypotheses, and identify research subjects;
- Elder abuse research is conducted by researchers from diverse disciplines, including public health, sociology, criminology, domestic violence, and others. Each discipline has its own definitions, theoretical frameworks, and methods, which make comparisons and collaboration difficult;
- Support for research comes from multiple entities including the National Institutes of Justice, Aging, Science, and Health; the Centers for Medicare & Medicaid Services; the Center for Disease Control and Prevention; and others, which also creates barriers to collaboration;
- Abused and vulnerable elders are likely to refuse to participate in studies unless they can be assured that the information they provide will be held confidential. This may be a problem when mandated reporters are involved in studies, which they often are; and
- Researchers lack access to victims as a result of safety and privacy concerns and complex human subjects approval issues.

9

“Alert researchers and other stakeholders about funding opportunities for policy and practice-focused research...”

RECOMMENDATIONS for **ISSUE 9:** Promote research that informs policy and practice.

The need for policy and practice-focused research to inform policy in California can be met through the following:

- Provide opportunities and mechanisms for researchers, program developers, service providers, and policy makers to explore needs, generate hypotheses, develop research strategies, and identify resources and research subjects;
- Provide a clearinghouse for research ideas and promising approaches;
- Alert researchers and other stakeholders about funding opportunities for policy and practice-focused research, opportunities to inform research institutions about needs, and the progress and findings of research projects;
- Provide input to state and national research institutes, academic institutions, and others about needs, and
- Promote the development of tools to assist service programs institute simple measures to demonstrate impact.



ISSUE 10: Public Awareness

10

An informed public is key to elder abuse prevention, and California is a leader in developing research based professional public awareness campaigns. In early 2003, the California Attorney General launched the three-year “Face it—It’s a Crime” campaign, which used focus groups, an “attitudes and awareness” survey to measure the public’s knowledge about abuse, and a “risk development index” to assess needs and select target demonstration counties. Strategies included paid electronic and print media placements, a toll-free hotline to receive reports and requests for information generated by the campaign, billboards, flyers, and community forums and events.

The initial impact of the campaign, which was measured by tracking the number of calls to the hotline and referrals, reports, and requests for information received by APS, was high. However, the heightened level of activity gradually leveled off to near pre-campaign levels. The evaluation activities further revealed wide discrepancies statewide in how counties respond to calls.

“An informed public is key to elder abuse prevention, and California is a leader in developing research based professional public awareness campaigns.”

CHALLENGES and NEEDS

California’s experiences and expertise with community awareness highlight some of the complexities, needs, and challenges that warrant further exploration:

Lack of consensus on what “message” outreach campaigns should convey. Options that have been employed in the past range from California’s message that elder abuse is a crime to approaches that focus on fostering respect for older adults or countering ageism; and

Lack of information on outcomes. The scant research on outreach reveals puzzling findings. For example, a study to analyze the impact of a twelve-month experimental outreach program in New York that included community meetings, posters, and leaflets describing abuse and available services found that new incidents of abuse were more frequent among households that had received the information, suggesting that the interventions had not suppressed abuse but may have actually accelerated it (Davis, & Medina-Ariza, 2001).

RECOMMENDATIONS for ISSUE 10: Raise public awareness about abuse

Assemble an outreach committee of media specialists, advocates, content experts, and others to:





“...a study to analyze the impact of a twelve-month experimental outreach program in New York...found that new incidents of abuse were more frequent among households that had received the information, suggesting that the interventions had not suppressed abuse but may have actually accelerated it.”



- Explore the need for and goals for outreach. Promising approaches and messages to explore include:
 - Encouraging victims, witnesses, or others to report abuse and instructions for doing so, including:
 - How to report and steps to take if abuse is discovered;
 - What will happen when they make reports;
 - Provisions for confidentiality;
 - Whistleblower protections; and
 - The level of certainty required to make reports;
 - Countering ageist attitudes and promoting intergenerational respect;
 - Countering damaging stereotypes and misconceptions that may prevent victims from seeking help and third parties from reporting. The following misconceptions should be addressed:
 - Victims of financial abuse are gullible, greedy, or complicit in their victimization;
 - Self-neglect is a life-style choice; and
 - Those who have suffered abuse over extended periods, including victims of domestic violence, will not seek help;
 - Preventing financial abuse (see Section 4);
 - Educating the public about high-risk situations and what to do to lower risk. In particular, the public can benefit from information about:
 - Common tactics used by abusers;
 - How to hire helpers;
 - Choosing trustworthy surrogates;
 - Avoiding scams;
 - Resources for caregivers; and
 - Legal advice and assistance, including: when conservatorship, powers of attorney, advance directives for health care, alternatives to conservatorship, and other legal instruments may be needed; executing safe legal instruments; and where to find legal help;
- Recommend promising approaches to raising awareness, including campaigns that:
 - Engage the private sector in public awareness efforts;
 - Take a “strength based” approach aimed at prevention;
 - Address caregiving as a public health issue;
 - Use advanced technology, including social networking, to reach target groups;
 - Examples of promising approaches include:
 - The Educating Seniors Project of the Trusts and Estates Section, State Bar Association, has trained 1200 speakers to provide education on elder abuse and financial scams to seniors. They are expanding the project to rural areas, translating materials into various languages, and plan to launch a website; and
 - Sacramento’s Elder Death Review Team, after discovering a high number of deaths by pressure ulcers, recommended that a Public Service Announcement (PSA) be created to help the public understand pressure ulcers and direct the public to medical providers for more information.

ISSUE 11: National Needs

Many of the challenges and needs identified by advocates in California call for action at the national level. This section explains these needs and proposes a role for the federal government in coordinating services, enhancing protections, providing guidance to state and local programs, heightening understanding about the problem and solutions, and ensuring a more comprehensive, coordinated, and uniform response nationally. It further calls for the development of a national plan for abuse prevention. The historic passage of the Elder Justice Act may provide opportunities to implement such a plan.

“Many of the challenges and needs identified by advocates in California call for action at the national level.”

CHALLENGES and NEEDS

Participants in the Blueprint development process identified the following challenges and needs that require federal action:

► **Ensure coordination among federal agencies**

Myriad federal programs play a role in elder abuse prevention. Some provide direct services to victims and their families, some offer guidance and resources to professionals, some enforce laws and regulations, and others support research. They include the Social Security Administration, Administration on Aging, National Institutes of Aging and Justice, Office of Violence Against Women, Office for Victims of Crimes, Centers for Medicare & Medicaid Services, Federal Bureau of Investigation, Federal Trade Commission, United States Attorneys, Postal Service, Immigration and Customs Enforcement, consumer protection agencies, Veterans Administration, Bureau of Indian Affairs, Indian Health Service, Center for Disease Control and Prevention, and many others. No federal entity coordinates the abuse prevention activities of these agencies.

Coordination among federal agencies involved in abuse prevention is needed to:

- Ensure that federal programs are comprehensive and coordinated, and that they reflect current knowledge of abuse and national priorities;
- Promote consistency across the country in how abuse is responded to;
- Support research and demonstration projects that have a national impact;
- Provide model state laws and policies; and
- Enhance coordination at the state and local levels by providing guidance and leadership.



“Multiple federal programs provide training and technical assistance in abuse prevention or related areas... As the field evolves new areas of need have arisen.”



► Ensure protection against abuse

Federal laws, regulation, and oversight are needed to provide adequate protection to abused and vulnerable seniors. Participants in the Blueprint development process identified multiple areas of need for new federal laws or stricter enforcement of existing laws. For example, federal leadership is needed to:

- Regulate residential care facilities. Whereas the federal government regulates skilled nursing facilities, oversight of residential care facilities is left to states. This has resulted in inconsistencies and variations in quality of care. Federal law is needed to ensure that residents everywhere receive adequate care and have recourse when standards are not met;
- Mandate federal employees to report abuse. Many federal employees are likely to encounter elder abuse. These include federal regulatory and law enforcement officials and victim advocates, postal workers, Social Security Administration employees, employees of federally funded housing, and employees of Veterans Administration Programs. Federal law is needed to require these and other federal employees to report;

Direct federal agencies to develop policies, priorities, regulations, and procedures that enhance protections; and

Explore and respond to the need for policy reform or enhancements in the following areas:

- Consumer protection;
- Victim rights;
- Anti-discrimination laws;
- Workers’ rights; and
- Criminal background checks for workers.

Provide guidance, training, and technical assistance to local, state, and tribal programs

As federal programs provide training and technical assistance in abuse prevention and related areas. Past programs have focused on multidisciplinary team development, training, building, improving the criminal justice system’s response to abuse, testing models for conducting background checks, public awareness campaigns, and specialized training for various groups of professionals.

As the field evolves, new areas of need have arisen. These include:

Provide guidance and assistance to states to help them respond to new opportunities and challenges presented by the passage of the Elder Justice Act, such as developing state level elder justice programs; and

Provide guidance to state and local service providers to help them fulfill federal mandates and balance federal and state responsibilities.


► Support and coordinate research

Addressing the critical practice-focused research needs described in Section 9 is beyond the capacity of state and local programs. Federal agencies that have played a leading role in research on elder abuse include the Administration on Aging; Department of Justice; the Center for Disease Control and Prevention; the Centers for Medicare & Medicaid Services; the Office for Victims of Crime, the Office of Violence Against Women, and the National Institutes of Aging, Health, and Justice. Federal leadership is needed to promote coordination and collaboration among these groups, set priorities, identify and respond to new research needs, and address barriers.

► Support services and practice

Federal agencies and policy makers can play an important role in ensuring that victims, families, and abusers have services to prevent abuse, treat or mitigate its effects, and rehabilitate offenders through the following:

- Assess existing APS, Ombudsman, legal assistance, victim assistance, mental health, and other services;
- Identify gaps;
- Establish goals and benchmarks;
- Provide support for key services;
- Support the development of promising services; and
- Increase access to federally funded services by abused elders.



“Federal leadership is needed to promote coordination and collaboration among [federal agencies], set priorities, identify and respond to new research needs, and address barriers.”

RECOMMENDATIONS for ISSUE 11:

Develop a national plan for elder abuse prevention

A national plan for elder abuse prevention is needed to elevate elder abuse to national prominence, establish priorities for multiple federal programs; strengthen protections; promote consistency and coordination nationwide; provide for the coordination of research, technical assistance, and training across departments; and provide leadership and guidance to state and local programs. Specifically, it should:

- Establish mechanisms to promote coordination at the national level, including interdepartmental panels, workforces, or advisory groups;
- Promote coordination at the state level through the following:
 - Federal program officials can urge the state and local programs they administer to collaborate and coordinate activities;
 - Require states to develop elder justice oversight advisory groups;
 - Require state and local program developers to consult with elder justice oversight advisory groups in developing proposals for elder justice and abuse prevention projects; and
 - Provide model memoranda of understanding and protocols.




- Strengthen federal protections for vulnerable elders. Examples include:
 - Regulate residential care facilities;
 - Require federal employees, including federal regulatory and law enforcement officials, victim advocates, postal workers, Social Security Administration employees, employees of federally funded housing, and others, to report elder abuse;
 - Strengthen protections against fraudulent and predatory practices and provide safe alternatives. Examples include:
 - Restrict tax preparers from selling annuities and mortgages;
 - Ensure that reasonably priced and fairly structured reverse mortgages and loans are available; and
 - Hold financial institutions accountable for complying with anti-discrimination consumer laws, including the Community Reinvestment Act, the Fair Housing Act, and the Equal Credit Opportunity Act;
 - Encourage the Department of Housing and Urban Development to:
 - Develop policy to ensure that elder abuse victims are not evicted and lose Section 8 vouchers as a result of abuse;
 - Encourage or require HUD-subsidized programs to prioritize seniors who need housing as a result of abuse; and
 - Create more stringent standards for training to seniors in reverse mortgages; and
 - Direct the Federal Communications Commission to take steps to stop cross-border fraud such as authorizing phone and Internet carriers to block international calls to vulnerable people at their request;
- Strengthen and safeguard the community-based long-term care network. Examples include policies to:
 - Ensure a living wage to direct care workers, protect workers' rights, and offer opportunities for job advancement (e.g., the Direct Care Workforce Empowerment Act); and
 - Ensure that as the Affordable Care Act is implemented and contains safeguards such as screening and monitoring health care workers;
- Ensure that elder abuse victims' rights are enforced and their needs are addressed. Policy is needed to:
 - Increase funds for victim assistance and compensation programs through strict enforcement of fines and penalties for federal crimes;
 - Ensure parity for elder abuse victims, including victims of financial crimes;
 - Extend victims' rights, benefits, and services to elder abuse victims who report crimes to police *or* APS (as opposed to only providing them to victims whose cases are successfully prosecuted); and

- Provide US Attorney’s Offices, federal courts, and probation and investigative agencies with the resources and authority they need to enforce restitution orders both during the pre-sentencing period and at offenders’ release from prison (federal restitution orders are enforceable for 20 years following incarceration), and explore the potential role of the IRS in restitution recovery;
- Clarify federal policy and address conflicts. Examples include:
 - Multidisciplinary teams and others need guidance in interpreting Health Insurance Portability and Accountability Act (HIPAA) provisions as they pertain to information sharing;
 - Ombudsmen need guidance in the following areas:
 - The role of Ombudsmen vis-à-vis local, state, and federal law enforcement and regulatory entities in responding to abuse in long-term care facilities to ensure that crimes against residents are reported and investigated regardless of whether victims are able or willing to give consent;
 - Organizational conflicts of interest. Many state Ombudsman Programs are located in agencies that have responsibility for regulating facilities and/or providing adult protective services, raising potential conflicts of interest. These conflicts need to be resolved and communication channels clearly defined; and
 - How to advocate on behalf of “unbefriended” or “unrepresented” residents (see Section 5).
- Expand the role of federally-funded programs in preventing abuse prevention through such means as:
 - Directing Older Americans Act, mental health and substance abuse, Medicaid waiver, domestic violence, victim assistance, and other federal programs to adopt measures to prevent abuse. They can, for example:
 - Incorporate “red flags” into existing assessment tools and operations manuals to identify clients at risk. “Universal screening” (all clients are screened) is recommended to avoid stigmatizing clients or reflecting biases;
 - Include abuse, neglect, or imminent risk among their criteria for eligibility; and remove restrictions that prevent abused and vulnerable elders from accessing services;
 - Develop mechanisms (e.g., memoranda of understanding) for coordinating services and sharing information; and
 - Provide information on abuse to clients, including alerts about scams; and
 - Provide direction to programs in how to block perpetrators’ access to their clients by adequately screening employees, volunteers, and speakers;

“ Many state Ombudsman Programs are located in agencies that have responsibility for regulating facilities and/or providing adult protective services, raising potential conflicts of interest. These conflicts need to be resolved and communication channels clearly defined.”





“Priority should be placed on restoring funding to effective programs that have been downsized or retrenched as a result of the recession...”

- Fill critical service gaps through the following actions:
 - Provide support for new and expanded services. Priority should be placed on restoring funding to effective programs that have been downsized or retrenched as a result of the recession, and on services to prevent abuse as well as those that treat its effects; and
 - Fully implement and strengthen abuse prevention provisions and programs authorized by the Older Americans Act and restore funds to programs that have sustained damaging cuts. Critical areas of need include:
 - Legal assistance, legal developer, and state legal senior hotline programs;
 - Title VII, Subtitle B, which provides for programming for Native Americans;
 - Ensure that adequate legal counsel is provided for Ombudsman programs; and
 - Convene forums to set priorities and develop strategies for meeting service needs;
- Provide guidance, training, and technical assistance. The federal government can:
 - Sponsor demonstration projects to explore promising approaches to training, policy, and program development;
 - Showcase promising practices in training, interventions, and programs;
 - Disseminate information on new research findings, federal policy, and other developments and their implications for service development and training;
 - Provide and coordinate training and technical assistance, including replication manuals, model policies, and sample training curricula. Specific areas of need include:
 - Model state elder abuse reporting laws, policies, regulations, and programs;
 - Models for administering and/or coordinating services;
 - Assistance in establishing state-level elder justice programs;
 - Best practice standards for conducting investigations and substantiating abuse;
 - Risk assessment tools;
 - Assistance and best practice models for data collection and analysis;
 - Protocols for interagency responses, including interstate compacts to address abuse across state lines;
 - Information systems;
 - Training (see Section 8 for specific training needs); and
 - Customized technical assistance for APS, justice system professionals, and employees in long term care facilities. The specific needs of these groups are described (respectively) in Sections 1, 2, and 5; and
- Develop a national research agenda that responds to national needs for information. Critical areas of need include evidence-based practice models. Research needs are described in greater detail in Section 9.

ISSUE 12:

Next Steps: A Plan for California



The California Elder Justice Workgroup's Steering Committee recognizes that plans alone are not enough to affect change. Rather, sustained and proactive efforts are needed. The Workgroup therefore plans to create a broad-based, non-partisan, autonomous, multidisciplinary, and inclusive organization that includes agencies, coalitions, professional associations, individual professionals, retirees, students, volunteers, and consumers to oversee the implementation of this Blueprint. In the coming months it will develop an organizational structure and strategic plan.

Objectives for an advocacy organization, rationales, and action steps are described below.

► Promote coordination among state and local agencies

No single state entity is responsible for planning, administering, and coordinating elder abuse prevention programs in California. Those with a direct role in abuse reporting include the California Department of Aging, the Department of Social Services, the Office of the Attorney General, and the Department of Public Health. Other state entities provide compensation and assistance to victims, health and mental health services, advocacy, legal assistance, and long term care. Lack of coordination among these groups has created barriers to protecting and serving victims and responding to systemic problems. It has further resulted in missed opportunities for securing state and federal resources. Local programs need state-level support and leadership to forge partnerships, coordinate services, and resolve problems and barriers.

ACTION STEPS

- Recommend that state agencies, including the Department on Aging, the Department of Social Services, the Department of Public Health, the Department of Mental Health, the Attorney General's Office, the Administrative Offices of the Courts, and others assign staff members as point persons for elder justice.
- Encourage state agencies to meet on a regular or ad hoc basis to engage in collaborative planning and information sharing, review progress, and respond to opportunities to respond to federal requests for proposals.

“The California Elder Justice Workgroup's Steering Committee recognizes that plans alone are not enough to affect change. Rather, sustained and proactive efforts are needed.”



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“Mechanisms are needed to ensure that the “voice” of the elder abuse prevention network, in all its complexity and multiplicity of perspectives, is reflected in policy development.”

► **Represent stakeholders in state and federal policy development**

No single person, organization, or network can adequately represent the complex and diverse needs of abused and vulnerable seniors and those who serve them. Doing so requires the involvement, perspectives, insights, and resources of advocates from a wide range of disciplines. Mechanisms are needed to ensure that the “voice” of the elder abuse prevention network, in all its complexity and multiplicity of perspectives, is reflected in policy development. Forums are needed to explore areas of agreement and dissent, build consensus, formulate policy papers, and provide policy makers and stakeholders with information that is comprehensive and balanced.

ACTION STEPS

- Represent California’s elder justice needs at state and national forums, including policy hearings and planning events.

► **Promote greater uniformity in response across the state**

As a result of California’s decentralized approach to elder abuse, widespread variations exist in counties’ responses. These differences create barriers to statewide training and advocacy, confuse the public, and result in gaps and disparities in service. This situation is likely to become more critical if the state implements proposed “realignment.” State policy and leadership is needed to ensure that elders in California have equal access to services.

ACTION STEPS

- Assemble a workgroup of stakeholders, legal counsel, and policy analysts to review California’s reporting and response systems.
- Request that the Department of Social Services respond to requests for clarification and interpretation of laws and regulations by APS programs pertaining to their mandatory reporting duties on an ongoing basis.

► **Advocate for state and federal policy that offers adequate protection**

New and improved policy is needed to reflect current understanding of abuse, developments in the field, and changing needs. Once enacted, new laws must be implemented and enforced and those affected must be informed and provided with resources and assistance to meet new responsibilities. State agencies play an important role in disseminating information about new policy, crafting regulations and protocols, and responding to questions and problem.

ACTION STEPS

- Identify and respond to the need for new and improved laws. This can be accomplished by:

- Exploring policy needs described in this Blueprint and new needs as they are identified;
- Exploring promising policy in other states; and
- Working with advocacy groups and policy makers to enact needed policy.
- Promote consistency in the application and enforcement of existing laws. Specific actions include:
 - Exploring what specific laws have been implemented, their benefits, barriers to implementation, impact, and the need for change or reform. This can be done through surveys, interviews, focus groups, etc.
- Advocate for federal laws, including:
 - Support the Elder Justice Act and work with the Elder Justice Coalition to provide input into its implementation; and
 - Support other federal legislation that ensures a more comprehensive federal response to elder abuse, including the Elder Abuse Victims Act, the National Silver Alert Bill, the Senior Financial Empowerment Act, the Preventing Affinity Scams on Seniors (PASS) Act, Title VII of the Older Americans Act, the 'later in life' provisions in the Violence Against Women Act, and many others.

► **Promote and facilitate the development of new services**

Ensuring that abused and vulnerable seniors, their caregivers, and abusers receive the services they need during a period of fiscal crisis is daunting. As agencies experience cuts, there is a tendency to focus on preserving crisis interventions as opposed to less costly approaches that can potentially reduce loss and suffering. A plan for service delivery in California should balance crisis, treatment, and remedial approaches with prevention and early intervention. It should further be informed by demonstrated successes within and beyond the state.

ACTION STEPS

- Develop a plan for meeting the service needs of abused and vulnerable elders, their caregivers, and abusers. See Section 3 for the elements of a service plan;
- Make recommendations to policy-makers, advocacy organizations, professional associations, foundations, academic institutions, and other stakeholders;
- Serve in an advisory capacity to programs that are planning or launching new services; and
- Identify and disseminate information about funding opportunities, needs assessments, planning sessions, or other opportunities to develop new services.

“As agencies experience cuts, there is a tendency to focus on preserving crisis interventions as opposed to less costly approaches that can potentially reduce loss and suffering. A plan for service delivery in California should balance crisis, treatment, and remedial approaches with prevention and early intervention.”





“Service and policy development in California should be guided by research and, when possible, the findings of rigorous evaluation.”



➤ **Promote research that informs policy and practice**

Service and policy development in California should be guided by research and, when available, the findings of rigorous program evaluations. However, it must be noted that little research on the impact of programs or policy is currently available. Strong emphasis is therefore needed on incorporating evaluation components into new programs. Also needed are opportunities for collaboration among researchers, practitioners, and policy makers.

ACTION STEPS

- Identify and respond to the need for policy-focused research. Specific research needs are described in Section 9;
- Alert researchers and service providers to opportunities for conducting policy/practice-focused research;
- Provide opportunities for researchers and service providers to explore needs, generate hypotheses, develop research strategies, and identify samples; and
- Serve as a clearinghouse for research that informs policy and practice.

➤ **Build leadership and promote participation in elder justice advocacy**

Addressing the formidable challenges that California faces in ensuring justice requires the active participation and perspectives of diverse groups. Mechanisms are needed to provide opportunities for concerned citizens and service providers to become engaged in advocacy.

ACTION STEPS

- Create opportunities for advocates, service providers, students, and volunteers to learn about elder justice and abuse prevention, develop skills in advocacy, and collaborate with others; and
- Provide mentors and champions for students interested in elder justice policy through fieldwork, internships, and fellowships opportunities. This can be done in collaboration with academic institutions.

➤ **Build alliances among stakeholders**

Each year, multiple legislative bills that impact abused and vulnerable elders are proposed. Because there is a little exchange or coordination among sponsors and stakeholders within and beyond the elder abuse prevention network, proposals are often opposed or undermined by groups whose concerns could potentially be addressed through negotiation or constructive debate. Opportunities are needed for like-minded as well as opposing parties to identify common areas of concern, explore areas of agreement and divergence, build consensus, and form alliances.

ACTION STEPS

- Identify or create opportunities for advocates, researchers, and service providers from diverse disciplines to explore policy needs and formulate recommendations. Examples include:
 - Establish liaisons among advocacy groups; and
 - Organize committees, workgroups, summits, consensus panels, and events.

► **Create databases and repositories of policy-related information**

The field of elder abuse prevention is growing rapidly with new policies, research findings, and legal developments emerging almost daily. The lack of effective communication systems to collect, evaluate, and disseminate critical information has resulted in missed opportunities for collective advocacy and policies being enacted in the absence of relevant information or input from key stakeholders.

ACTION STEPS


- Create centralized repositories for publications, reports, articles, and information on best practices;
- Disseminate new information and resources through Web sites, forums, or other dissemination mechanisms; and
- Create mechanisms to review, evaluate and discuss the implications of new materials for practice and policy. Examples include face-to-face or electronic forums, conferences, and publications.

► **Explore diverse approaches to affecting change**

Elder justice advocates have relied extensively on enacting new laws to affect change. Each year dozens of bills related to elder abuse are introduced in the state assembly, the majority of which do not pass or are vetoed. A wide range of other approaches, opportunities, and mechanisms exist that warrant consideration. These include appealing to administrative entities that set priorities for public programs, seeking representation on policy-setting commissions and boards, and responding to needs assessments. Entities that oversee or develop policy for aging and adult service programs, law enforcement, adult protective services, victims' rights, domestic violence, consumer protection, caregiving programs, and courts should be considered.

ACTION STEPS

- Organize task forces, study groups, or projects for students or volunteers to explore avenues for affecting change; and
- Respond to opportunities to provide input into state and national needs assessments, strategic plans, reports, studies, and legislative hearings.



“Elder justice advocates have relied extensively on enacting new laws to affect change. Each year dozens of bills related to elder abuse are introduced to the state assembly, the overwhelming majority of which do not pass or are vetoed. A wide range of other approaches, opportunities, and mechanisms exist that warrant consideration.”

“*In light of the current economic crisis, advocates need to explore ways to fill critical service gaps in the most cost effective ways possible.*”

► **Promote and facilitate the development of new services**

In light of the current economic crisis, advocates need to explore ways to fill critical service gaps in the most cost effective ways possible. Emphasis should be placed on restoring funds to retrenched programs that have been shown to be effective and efficient, improve coordination to avoid waste, use volunteers, build alliances with the private sector, and advocate for program evaluations to demonstrate impact.

ACTION STEPS

- Facilitate service development by:
 - Disseminating information about funding opportunities, needs assessments, planning sessions, and other opportunities to develop new services;
 - Facilitating partnerships among stakeholders and assisting in identifying lead agencies, advisors, and resources (e.g., studies to substantiate needs or justify approaches);
 - Hosting planning sessions; and
 - Serving as, or facilitating the development of, advisory committees or oversight boards for demonstration projects and evaluations.



A low-angle photograph of a palm tree against a bright, hazy sky. The sun is positioned behind the tree, creating a strong lens flare and a warm, golden glow. The palm fronds are silhouetted against the light sky. A semi-transparent white horizontal band is overlaid across the middle of the image, containing the text.

Appendices

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PLAN FOR A FORENSIC CENTER ON ABUSE IN LONG-TERM CARE FACILITIES

► Goal

To develop forensic expertise that can be used by investigators, advocates, criminal and civil justice professionals, courts, policy makers, geriatric health care professionals, educators, and others to build legal cases; design best practice models and standards; design training programs for long-term care employees, regulators, and investigators; provide therapeutic interventions to victims; and shape public policy.

► Members

Potential participants and partners in a forensics center for long-term care facilities may include representatives from the following organizations, disciplines, and entities:

- Long Term Care Ombudsmen;
- Local police and sheriffs;
- Bureau of Medi-Cal Fraud and Abuse;
- Department of Public Health;
- Department of Social Services;
- APS workers;
- Researchers in long-term care;
- Advocates for nursing home reform and long-term care consumers;
- Medical professionals, including geriatric physicians, neuro-psychiatrists, forensics nurses, etc;
- Forensics examiners who specialize in fraud by long-term care facilities;
- Public Guardians;
- Probate investigators;
- Advocates for long-term care employees;
- Quality assurance officers;
- Long-term care industry experts who can help determine whether professionals have operated at reasonable levels of competency;
- Human resource professionals; and
- City attorneys.

► Tasks

- Review cases of elder abuse and neglect referred by agencies that investigate and prosecute cases.
- Train investigators and forensics experts.
- Promote coordination among medical, long-term care, and legal service providers.
- Establish partnerships and collaborations with law enforcement, the long-term care industry, advocates, and other stakeholders.
- Explore and respond to the need for new and improved state and federal laws, regulations, policies, and actions. Examples of areas that warrant consideration include:
 - The need for changes to civil and criminal statutes that address neglect; and
 - The needs of “unbefriended” and “unrepresented” residents.
- Report on forensic work to federal and state governmental entities.
- Develop and implement policies and procedures for screening, hiring, and monitoring personnel.
- Collect, review, and disseminate information on promising practices.
- Identify the need for forensics research.
- Promote and assist in the development of training for long-term care facility personnel.
- Develop and provide training on the detection of abuse in facilities.
- Promote and assist academic institutions develop competencies related to the provision of long-term care.

PLAN FOR A FORENSIC CENTER ON FINANCIAL ABUSE AND EXPLOITATION

► Goal

To develop forensic expertise that can be used by investigators, advocates, criminal and civil justice professionals, courts, policy makers, geriatric health care professionals, educators, and others to build legal cases, recover assets and property, develop service plans, design training and prevention programs, and shape public policy.

► Members

Potential participants and partners in a forensics center for financial abuse and exploitation may include:

- Local police and sheriffs;
- Prosecutors;
- Representatives from federal law enforcement and regulatory agencies that have jurisdiction in financial abuse and exploitation cases, including the Federal Bureau of Investigation, the Federal Trade Commission, U.S. Attorneys, and others;
- Representatives from financial institutions;
- Forensic auditors and document examiners;
- APS workers;
- Long Term Care Ombudsmen;
- Geriatric physicians;
- Public Guardians;
- Probate investigators;
- City attorneys;
- Experts in mental capacity and undue influence, including neuro-psychiatrists and psychologists;
- Financial industry experts who can help determine whether professionals have operated at reasonable levels of competency; and
- Accountants to review transactions, assess spending patterns and transactions, trace financial trails, establish net worth, and uncover hidden assets.

► Tasks

- Review cases of elder financial abuse and exploitation referred by APS, law enforcement, Ombudsmen, Public Guardians, and others;
- Develop protocols that establish roles and relationships among state and federal law enforcement agencies and provide for cross-reporting;

- Promote coordination among legal service providers;
- Train investigators, including APS, police, sheriffs, District Attorney investigators, etc.;
- Train expert witnesses;
- Develop policies and procedures related to financial forensic practices;
- Collect, review, and disseminate information on promising practices;
- Provide technical assistance to APS, law enforcement, and others regarding financial forensic accounting techniques, financial capacity assessment, etc.;
- Develop and provide training on the detection of financial exploitation;
- Establish collaborations with law enforcement, the banking industry, and others in positions to recognize and report exploitation of vulnerable adults;
- Analyze, comment on, and monitor the development and implementation of federal, state, and local laws, regulations, policies, and actions related to financial abuse;
- Explore and respond to the need for new definitions, remedies, statutory authority, and causes of action with respect to financial abuse and exploitation; and
- Report on forensic work to federal and state governmental entities.



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Contributors to this Blueprint include members of CEJW’s staff, Steering Committee, and Technical Advisory Group. Recommendations were also based on discussions at the Elder Abuse Summit. A list of summit attendees and guests is included in this section. Several additional individuals (also listed in this section) were also consulted.

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