



Rick Scott, Governor
Michael P. Carroll,
Interim Secretary

October 30, 2014
25th Annual NAPSA Conference

Its Not Just a Civil Matter Anymore:

***How APS, elder law attorneys, law
enforcement and prosecutors can
work together efficiently and
effectively to stop exploitation***

**Mission: Protect the Vulnerable, Promote Strong and Economically Self- Sufficient Families,
and Advance Personal and Family Recovery and Resiliency.**



Presentation Topics

- History of How the Law was Conceived and Developed
- Brief Overview of Florida's APS Exploitation Data and Involvement with Law Enforcement
- How the Law will Help Prosecutors
- How Civil Practitioners Can Assist APS, Prosecutors and Victims



2013 HB 253 Introduced

- Reduces minimum threshold of theft offenses to trigger a felony
- Replaces “elderly person” and “disabled adult” with “vulnerable adult”
- Deletes the definitions of “deception” and “intimidation” and adds the definition of “impaired”
- Addresses hearsay exceptions when the vulnerable adult is impaired



Task Force to Strengthen Florida Laws to Protect Vulnerable Adults

- **Legislator (sponsor), Law Enforcement, Elder law, Adult Protective Services**
 - LE Included Florida Police Chief Association and Florida Sheriff's Association, Office of State Attorney



Task Force Activities

ISSUE	PROPOSED LANGUAGE	COMMENTS
(1) <u>Should there be statutory hearsay exceptions for elderly/vulnerable adult victims? Child hearsay exceptions are made in Florida courts.</u>	TO BE DEVELOPED AT OUR SEPTEMBER 6, 2013 FACE TO FACE MEETING	8/23/13 UPDATE: CONSENSUS TO PURSUE LANGUAGE PAYING CLOSE ATTENTION TO CONSTITUTIONAL ISSUES (Crawford case) AND UTILIZING LANGUAGE GEARED TOWARDS WITNESS UNAVAILABILITY TO TESTIFY AND DELAYING OF PROCEEDINGS.
(2) <u>Do we want a broader definition for an “impaired” person or should we keep the current statutory requirement that person lacks capacity to consent?</u>	N/A	8/23/13 UPDATE: STATE ATTORNEYS DO NOT WANT CURRENT STATUTE CHANGED. THE TERM IMPAIRED SHOULD NOT BE ADDED TO CHAPTER 825.
(3) <u>Should an “asset freeze” provision be added in the statutes?</u>	If a person is charged with financial exploitation of an elderly person or a person with a disability that involves the taking or loss of property valued at more than \$5,000 and property belonging to the defendant is seized pursuant to a subpoena, the court shall hold an evidentiary hearing and determine whether the defendant unlawfully obtained the victim’s property. The court can order this property returned to the victim for restitution purposes prior to trial on the underlying offense. The burden of proof shall be by a preponderance of the evidence. This determination is inadmissible and shall not give rise to any inference that the defendant has committed elderly exploitation.	8/23/13 UPDATE: RICK SHERMAN OFFERS THE PROPOSED LANGUAGE TO THE LEFT. TO FINALIZE AT THE SEPTEMBER 6 MEETING.

<p>(4) <u>Comment on chapter 825 “exploitation” statutes mirroring the chapter 812 “theft” statutes in terms of dollar guidelines for crimes.</u></p>	<p>TO BE DEVELOPED AT OUR SEPTEMBER 6, 2013 FACE TO FACE MEETING</p>	<p>8/23/13 UPDATE:</p> <p>CONSENSUS TO PURSUE LANGUAGE.</p>
<p>(5) Does Chapter 825 definition of disabled adults need to match the definition of vulnerable adult in Chapter 415?</p>	<p>825.01 (3) "Deception" means:</p> <p>(a) Misrepresenting or concealing a material fact relating</p> <p>1. Services rendered, disposition of property, or use of property, when such services or property are intended to benefit an elderly person or disabled adult;</p> <p>2. Terms of a contract or agreement entered into with an elderly person or disabled adult; or</p> <p>3. An existing or preexisting condition of any property involved in a contract or agreement entered into with an elderly person or disabled adult; or</p> <p>(b) Using any misrepresentation, false pretense, or false promise in order to induce, encourage, or solicit an elderly person or disabled adult to enter into a contract or agreement.</p> <p>825.101 (8) "Intimidation" means the communication by word or act to an elderly person or disabled adult that the elderly person or disabled adult will be deprived of food, nutrition, clothing, shelter, supervision, medicine, medical services, money, or financial support or will suffer physical violence.</p>	<p>8/23/13 UPDATE:</p> <p>STATE ATTORNEYS DO NOT SEE THE NEED TO ALIGN DEFINITIONS TO CHAPTER 415. CURRENT LAW IS SUFFICIENT.</p> <p>CONSENSUS AGREE TO DELETE EXISTING DEFINITIONS OF “DECEPTION” AND “INTIMIDATION” FROM CURENT CHAPTER 825.</p> <p>PROPOSE CHANGES:</p> <p>KEEP ALL CURRENT DEFINITIONS AND DELETE “DECEPTION” AND “INTIMIDATION”.</p>



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<p><u>Other Provisions Not Otherwise Specified</u></p>	<p><u>Amend 825.103(a) knowingly, obtaining or using, or endeavoring to obtain or use, an elderly person's or disabled adult's funds, assets or property with the intent to temporarily or permanently deprive the elderly person or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult by a person who:</u></p> <ol style="list-style-type: none"> <u>1. Stands in a position of trust and confidence with the elderly person or disabled adult; or</u> <u>2. Has a business relationship with the elderly person or disabled adult.</u> <p><u>Amend 825.103(c) Breach of a fiduciary duty to an elderly person or disabled adult by the person's guardian, trustee, or agent under a power of attorney which results in an unauthorized appropriation, sale, or transfer of property.</u></p> <p><u>Proposed 825.103 (d) obtaining, using, or endeavoring to obtain or use the funds of an elderly person or disabled adult in a joint account by a joint account holder where these funds are intended to provide for the elderly person or disabled adult and the joint account was created with the intent that the joint account holder assist in the management of the funds of the elderly person or disabled adult.</u></p>	<p><u>8/23/13 UPDATE:</u></p> <p>rick sherman offers the proposed language to the left. to finalize at the september 6 meeting.</p>
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Florida APS System

- Brief Overview
- Notifications to LE



Adult Protective Services

Budget (FY 13-14):

• Adult Protective Services	\$37,182,483
• Home Care for Disabled Adults	\$2,219,860
• Community Care for Disabled Adults	\$2,041,955
• Risk Management	\$373,882
• Temporary Emergency Shelter	\$203,527
TOTAL	\$42,021,707

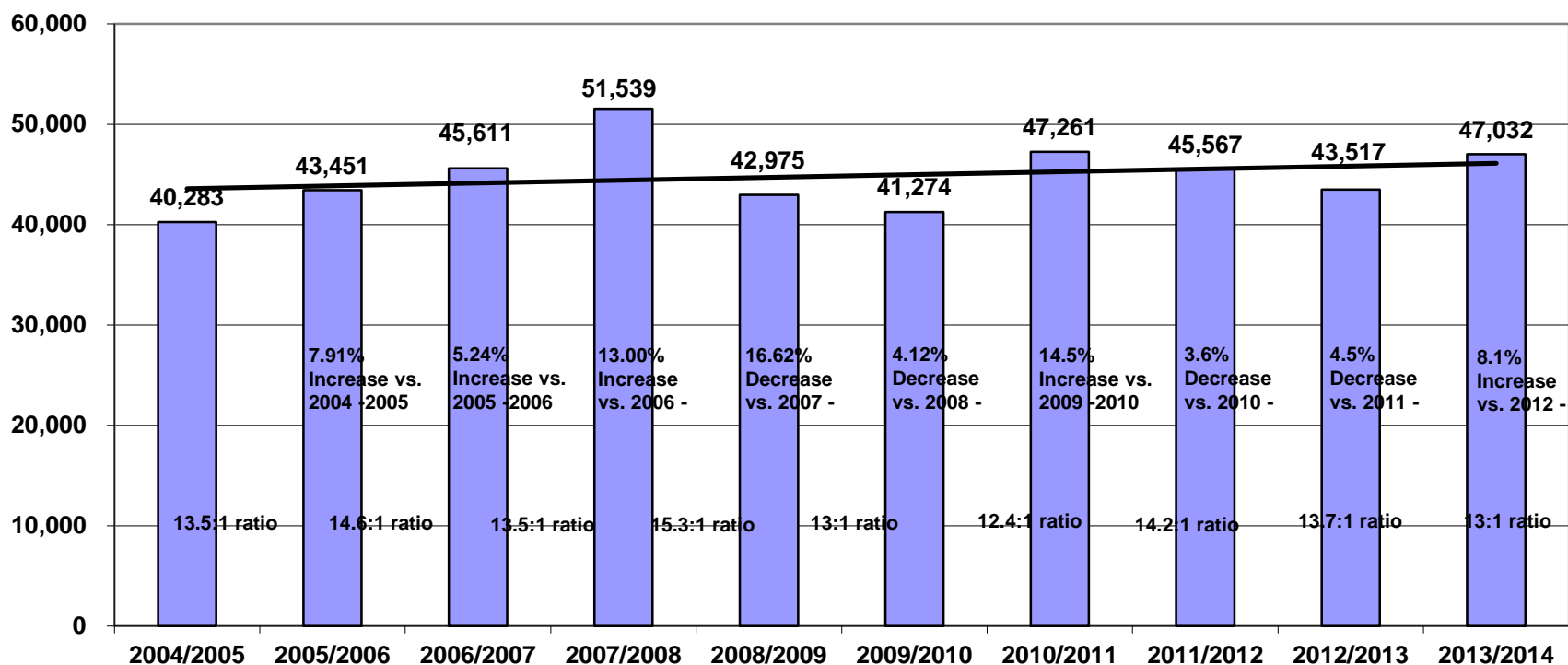
• Staffing:

- 606.5 FTE
- 125 Program Management/Support
- 128 Services
- 353.5 Investigative



Adult Investigations Reports Received 2004-2014

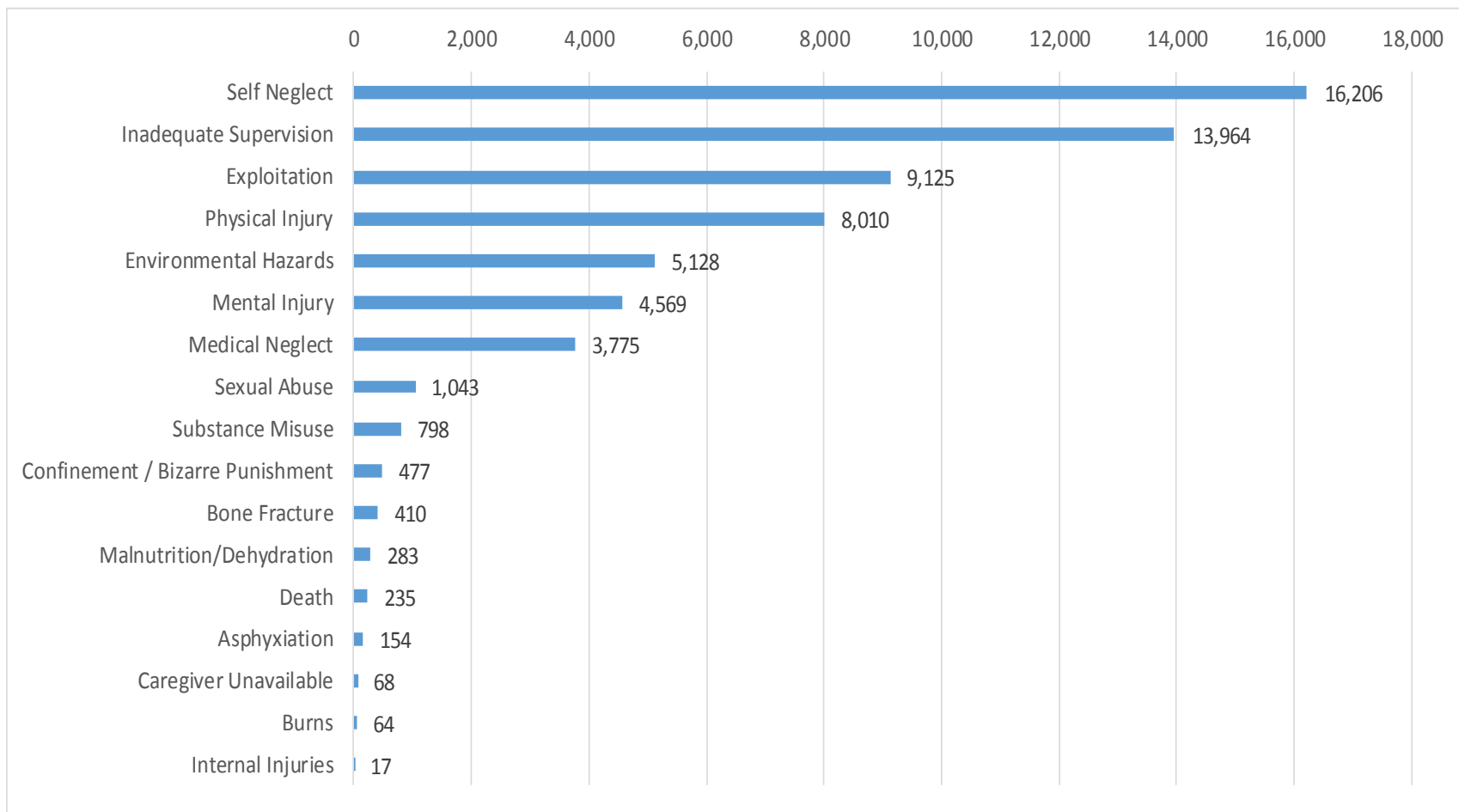
Statewide Totals - Adult Investigations Reports Received



Statewide Totals

Adult Maltreatments, Statewide

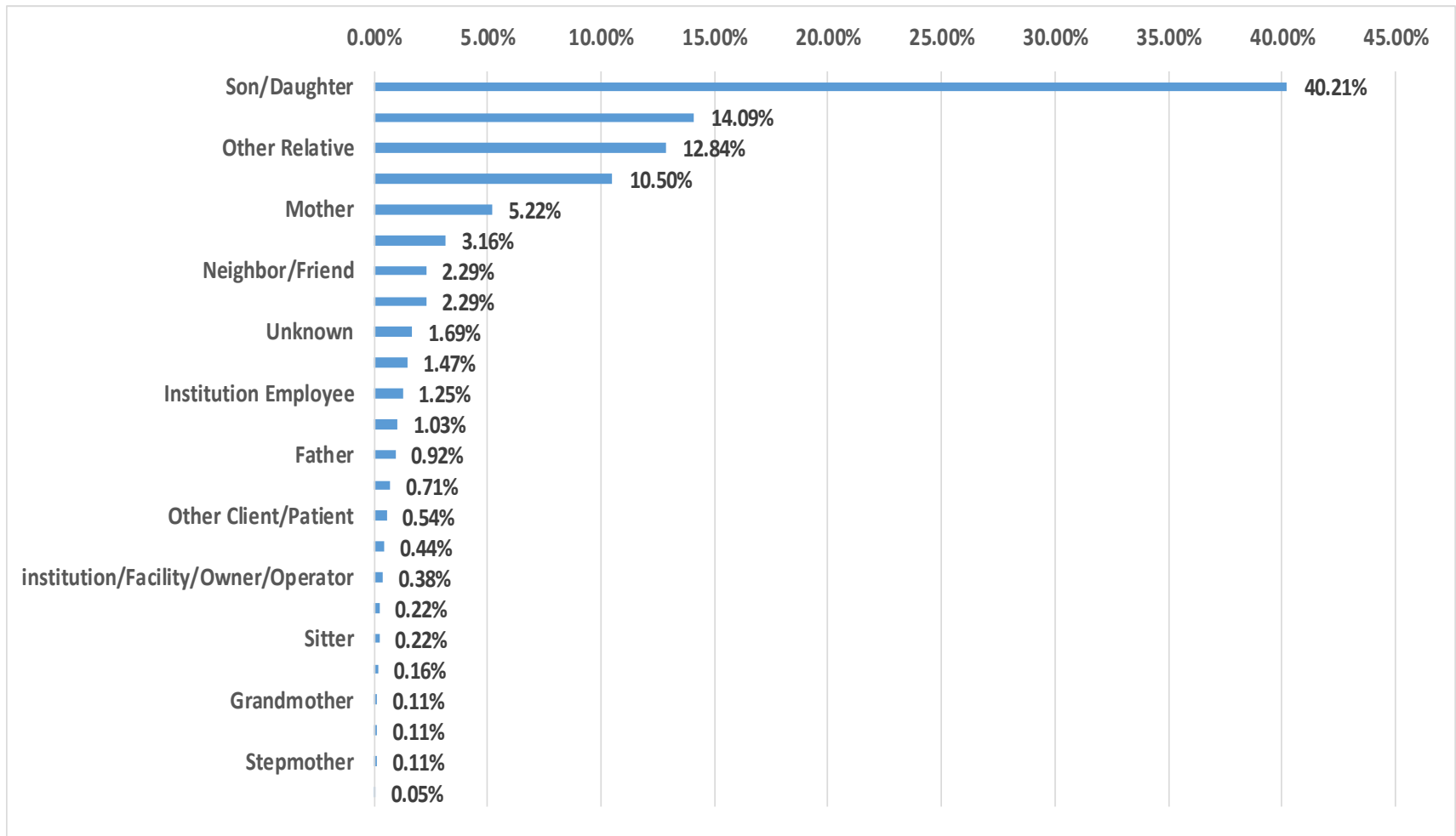
(Fiscal Year 2013-2014)





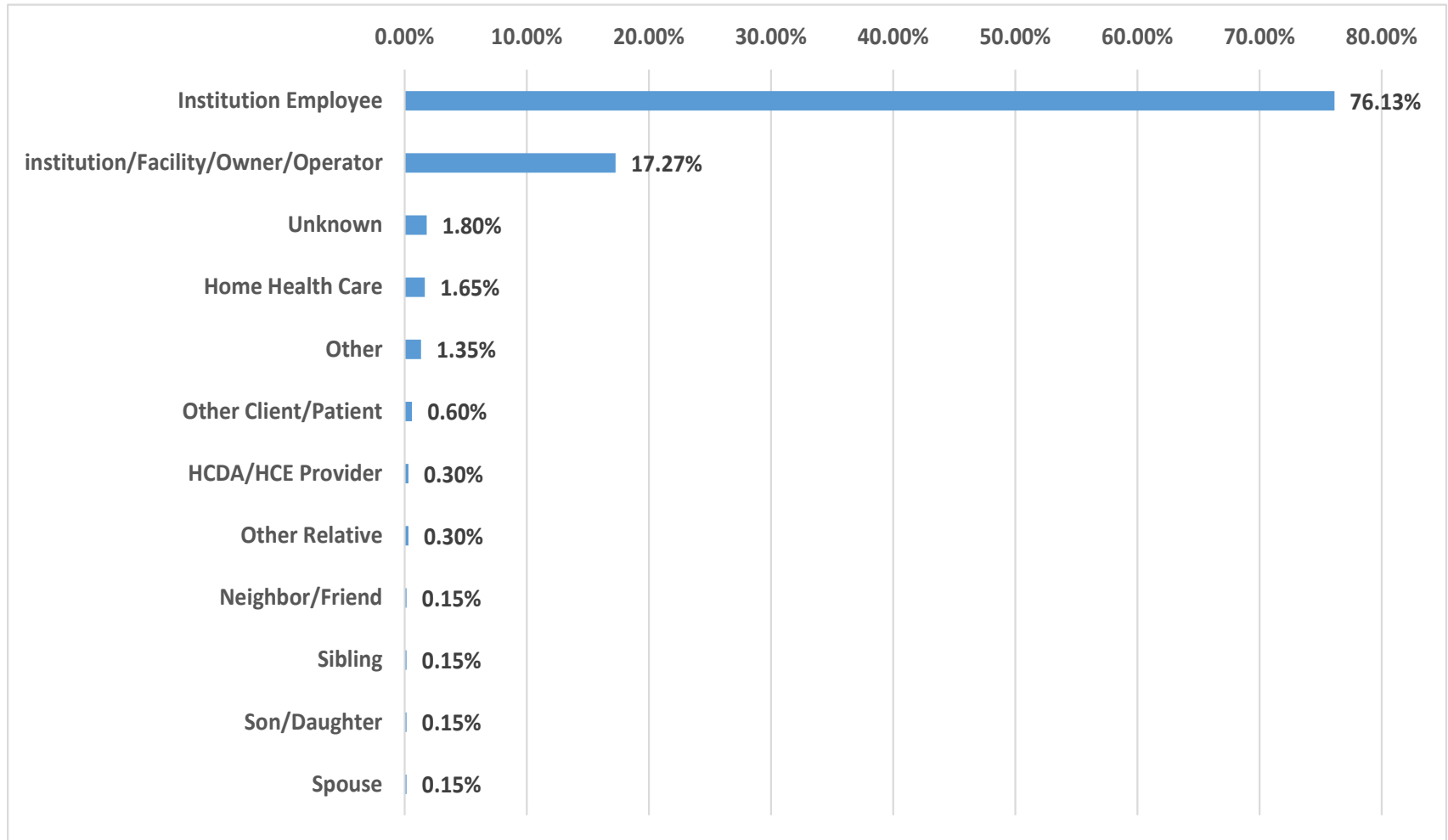
Who Are the Abusers?

(Relationship of Perpetrator to the Victim in Verified Reports –
IN-HOME Reports - Fiscal Year 2013-2014)



Who Are the Abusers?

(Relationship of Perpetrator to the Victim in Verified Reports –
INSTITUTIONAL Reports - Fiscal Year 2013-2014)





Chapter 415

Notification Requirements

- 415.104 (1) ...”If, during the course of the investigation, the department has reason to believe that the abuse, neglect, or exploitation is perpetrated by a second party, the appropriate law enforcement agency and state attorney shall be orally notified. The department and the law enforcement agency shall cooperate to allow the criminal investigation to proceed concurrently with, and not be hindered by, the protective investigation. The department shall make a preliminary written report to the law enforcement agencies within 5 working days after the oral report...”



The Task Force's Impact on Florida's Prosecutors

- How the Law will help Prosecutors

Laura Moody

Division Chief Elder & Economic Crimes Unit

Office of the State Attorney

18th Judicial Circuit, Viera, Florida



APS Notifications

- APS investigated 45,567 reports of abuse, neglect, or exploitation in FY 2011-2012.
- 29,251 involved second party abuse or neglect
- APS made notifications to Law Enforcement in 14,037 investigations
- APS made notifications to the State Attorney's Office in 7,813 investigations



The Common Case

- Bill is 85 years of age and recently moved in a 40 year-old female friend.
- Bill's new female companion writes herself a \$1,000 check each day and convinces him after 1 month that they should get married.
- He quit claim deeds the house to her shortly before dying just 3 months into their marriage.



Another Common Case

- Aging parent needs assistance managing finances
- Adult child convinces aging parent to put them on bank account
- Adult child becomes joint account holder and agent under POA
- Adult child spends all of the funds contrary to the best interest of the aging parent



Discussion Topics

- How do you differentiate the roles of a DCF protective investigator and a law enforcement investigator?
- What evidence does the DCF investigator need to provide law enforcement to open the door to a criminal investigation?
- For Investigations that are closed as “Not Substantiated,” do you refer those to law enforcement or the SAO?
- How can civil practitioners assist the DCF protective investigator and/or the law enforcement investigator?



Barriers to Successful Prosecution

- What does the State Attorney's Office consider "solid evidence?"
- What steps should investigators take when investigating these cases?
- What percentage of these cases are prosecuted and does the victim need to have mental capacity in order for the SAO to pursue it?
- What about misuse of Powers of Attorney?
- Most common "road blocks"
- Myths regarding civil liability vs. criminal liability and family squabbles vs. criminal acts.



2014-200, Laws of Florida

Offenses Against Vulnerable Persons

October 1, 2014

Main Provisions

- Decreases the property threshold values for exploitation of vulnerable adult offenses.
- Creates a permissive presumption that specified property transfers are the result of exploitation.
- Provides for criminal penalties for those who exploit elderly or disabled through joint accounts that were intended for convenience.
- Provides a method of introducing reliable hearsay statements in the event of an elder victim's death or memory loss thus holding offenders accountable.
- The State Attorney no longer needs to show that the perpetrator used deception or intimidation as a means to obtain or use the victim's funds, assets, or property.

THEFT FROM AN ELDER = EXPLOITATION



2014-200, Laws of Florida Elder Hearsay Exception

PREVIOUS 90.803(24)(A)

An out-of-court statement made by an elderly person describing any act of abuse, neglect, exploitation, battery, assault, sexual battery, or violent act is admissible if 1.; and the elderly person testifies or is unavailable

NEW 90.803(24)(A)

An out-of-court statement made by an elderly person describing any act of abuse, neglect, exploitation, battery, assault, sexual battery, or violent act is admissible if 1.; and the elderly person ~~testifies or~~ is unavailable



2014-200, Laws of Florida Exploitation (Position of Trust)

PREVIOUS 825.103(1)(A)

Exploitation means knowingly, by deception or intimidation, obtaining or using, or endeavoring to obtain or use, an elderly person's funds, assets, or property with the intent to temporarily or permanently deprive

NEW 825.103(1)(A)

Exploitation means knowingly, ~~by deception or intimidation,~~ obtaining or using, or endeavoring to obtain or use, an elderly person's funds, assets, or property with the intent to temporarily or permanently deprive



2014-200, Laws of Florida Exploitation (Lacking Capacity)

PREVIOUS 825.103(1)(B).

Exploitation means obtaining or using, or endeavoring to obtain or use, an elderly person's funds, assets, or property by a person who ***knows or reasonably should know the elderly person lacks capacity to consent***

NEW 825.103(1)(B)

No Change Under new bill



2014-200, Laws of Florida

Exploitation (Breach of Fiduciary Duty)

PREVIOUS 825.103(1)(C)

Breach of fiduciary duty to elderly person by the person's guardian or agent under POA

NEW 825.103(1)(C)

Breach of fiduciary duty to elderly person by the person's guardian, **trustee who is an individual,** or agent under POA



2014-200, Laws of Florida

Exploitation (Breach of Fiduciary Duty)

PREVIOUS 825.103(1)(C)

Did Not Exist

NEW 825.103(1)(C)

An unauthorized appropriation occurs when the elderly person does not receive the reasonably equivalent financial value in goods or services, or when the fiduciary violates any of these duties:



2014-200, Laws of Florida Exploitation (Breach of Fiduciary Duty)

1. For ***agents*** appointed under Ch. 709:
 - A. Committing fraud in obtaining their appointments;
 - B. Abusing their powers;
 - C. Wasting, embezzling, or intentionally mismanaging the assets of the principal or beneficiary; or
 - D. Acting contrary to the principal's sole benefit or best interest



2014-200, Laws of Florida Exploitation (Breach of Fiduciary Duty)

2. For *guardians and trustees who are individuals* appointed under Ch. 736 or 744:

- A. Committing fraud in obtaining their appointments;
- B. Abusing their powers; or
- C. Wasting, embezzling, or intentionally mismanaging the assets of the ward or beneficiary of the trust



2014-200, Laws of Florida Exploitation (Joint Accounts)

PREVIOUS 825.103(1) (D)

Did not exist.

NEW 825.103(1)(D)

Misappropriating, misusing, or transferring without authorization money belonging to an elderly person from an account in which the elderly person placed the funds, owned the funds, and was the sole contributor or payee of the funds



2014-200, Laws of Florida Exploitation (Joint Accounts)

PREVIOUS 825.103(1) (D)

Did not exist.

NEW 825.103(1)(D)

Only applies to:

- **Personal accounts;**
- **Joint accounts created with the intent that only the elderly person enjoys all the rights, interest, and claims to moneys deposited into such account;**
- **Convenience accounts created in accordance with s. 655.80**



2014-200, Laws of Florida Exploitation (Waste or Misuse)

PREVIOUS 825.103(1) (E)

Did not exist.

NEW 825.103(1)(E)

Intentionally or negligently failing to effectively use an elderly person's income and assets for the necessities required for that person's support and maintenance, by caregiver or person in position of trust



2014-200, Laws of Florida Exploitation (Presumption)

PREVIOUS 825.103(2)

Did not exist.

NEW 825.103(2)

Any *inter vivos* transfer of money or property valued over \$10,000 by a person 65 or older to a non-relative whom the transferor knew for fewer than 2 years before the first transfer and for which the transferor did not receive the reasonably equivalent financial value in goods or services



2014-200, Laws of Florida Exploitation (Presumption)

PREVIOUS 825.103(2)

Did not exist.

NEW 825.103(2)

(a) subsection applies regardless of whether the transfer is denoted as a gift or loan, except that it does not apply to a valid loan evidenced in writing that includes definite repayment dates. However, if the repayment is in default for more than 65 days, presumption applies



2014-200, Laws of Florida Exploitation (Presumption)

PREVIOUS 825.103(2)

Did not exist.

NEW 825.103(2)

(b) subsection does not apply to:

- **Persons in business of making loans**
- **Bona fide charitable donations to nonprofit organizations**

(c) In jury trial, jurors shall be instructed that they may, but are not required to draw an inference of exploitation



2014-200, Laws of Florida Exploitation (Degree of Crime)

PREVIOUS 825.103(2)

\$100,000 or more = F1

\$20,000-\$100,000 = F2

<\$20,000 = F3

NEW 825.103(3)

\$50,000 or more = F1

\$10,000 - \$50,000 = F2

<\$10,000 = F3



2014-200, Laws of Florida

Asset Seizure

NEW 825.103 (4):

- **If a person is charged with financial exploitation that involves taking of or loss of property valued at more than \$5,000 and property belonging to a victim is seized from the defendant pursuant to a search warrant, the court shall hold an evidentiary hearing and determine, by a preponderance of the evidence, whether the defendant unlawfully obtained the victim's property.**
- **If the court finds the property was unlawfully obtained, the court may order it returned to the victim for restitution purposes before trial.**



The Task Force's Impact on Civil Elder Law Attorneys

- How Civil Practitioners Can Assist APS and Prosecutors
- How Civil Practitioners Can Protect Victims

Shannon M. Miller, B.C.S.

Florida Bar Board Certified Elder Law Attorney



How Civil Practitioners Can Assist APS and Prosecutors

- Elder Law Exploitation Resource Committees: Volunteer resources and Probono service
- Contacting civil/guardianship/probate practitioners who may be pursuing the matter on the civil side to obtain a one-way flow of information related to your case.



How Civil Practitioners Can Protect Victims

- Emergency proceedings can be conducted as quickly as five (5) days to establish guardianships, remove Incapacitated Wards from Exploiter's access.
- In cases where the victim's assets are at risk, civil/guardianship/probate attorneys can recover or freeze assets as quickly as five (5) days.
- Notice to Exploiters can often be avoided.



Contact Information

Robert Anderson, APS State Director

Phone (850) 488-2881

Email: robert_anderson@dcf.state.fl.us

Laura Moody, Assistant State Attorney

(321) 617-7510

Email: lmoody@sa18.org

Shannon Miller, Miller & Brasington, P.L

(352) 379-1900

Email: shannon@millerelderlawfirm.com