



## Bridging the Divide: When APS and Criminal Investigations Intersect

### Part I

Candace Heisler, Presenter

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## Acknowledgements

Some of the materials used in this session were drawn from NAPSA Core Curriculum, Working with the Criminal Justice System, developed by the presenter, and available at <http://theacademy.sdsu.edu/mastercurriculum/working-with-the-criminal-justice-system-instructor-led-training/> and presentations developed by Candace Heisler and Holly Ramsey-Klawnsnik, Ph.D. for the NAPSA Annual Conference (2015) and Texas Annual Conference (2014) and by Candace Heisler for the Illinois APS Conference in 2016.

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## Session in Two Parts

- Part I: Roles of APS and Law Enforcement; Criminal Justice and Case Building Concepts
- Part II: Building a Case for the Criminal Justice System; Elements of Crimes; Applying Elements to Cases

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### In Your Jurisdiction...

- Increasing number of cases being identified as including criminal conduct
- EA increasingly being criminalized
- More cross over cases between APS and Criminal Justice System (CJS)
- What APS does in its case often affects what happens in the CJS

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### What Is the Criminal Justice System?



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### Role of Law Enforcement/CJS

- Investigate to determine if a crime occurred and if so, who is responsible
- Interview witnesses, including victim
- Attempt to interview suspect
- Collect evidence for use in prosecution
- Make an arrest if sufficient evidence
- Cross report to APS

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### Role of APS

- Determine eligibility
- Investigate allegation, interview client, collaterals, A/P
- Assess risk
- Increase safety and welfare
- Offer services
- Cross report to LE

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### Different Focus

- Criminal Justice System
  - Offender focused
- APS
  - Client focused
- **Importance of staying in role**
  - If not you, then who?

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### Class Discussion

Where do the roles of APS and the criminal justice system intersect?



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### Intersecting Roles

- Well being checks
- Safety backup for APS
- Advance information
- Involuntary mental health commitments
- Cross reporting
- Provide APS information to LE
- Testify in court as a witness
- Arrange capacity assessment
- Provide services
- Provide info about suspect




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### Value of Collaboration

- Avoid loss or contamination of evidence; preserve chain of custody
- Protect client while protecting criminal case
- Coordinate interview with A/P
- Reduce duplication of effort
- Draw on one another's strengths, resources, and expertise
- Avoid having client repeat disclosures
  - Reasonable doubt from minor changes
  - Re-victimizing and re-traumatizing

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### Are There Potential Conflicts?

- Ethics and principles of APS
- Outcomes not what client desires
  - Balancing legal responsibilities with ethical principles
- Rules of the CJS
  - Social work vs. LE approach to case
- Turf disputes—who “owns the case”
- May take longer and require more work by APS

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## The Criminal Justice System

- Adversarial system designed to “elicit the truth”.



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## Role of the Prosecutor

- Gatekeeper
- Discretion to file or decline to file
- Few are expert in EA/VAA
- Representative of the community, state, or “Government”, not the victim
- **Not the victim’s attorney**
- Considerations not just what the victim wants to see happen

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## Rules of the Road

- Burden of Proof
- Framework for Investigations
- Importance of Language
- Role of Victim/Client



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### Proof Terminology

- CJS - “burden of proof”
- APS – “standard of evidence”
- **The terms mean the same thing**

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### “Reasonable Suspicion”

- In APS, reason to accept abuse report and to screen in for investigation
- In CJS, allows officer/deputy to investigate

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### “Preponderance of Evidence”



- Barely more than 50%
- Standard in civil cases
- APS legal standard to substantiate, to offer services
- CJS: called “probable or reasonable cause” and is standard to make an arrest

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## “Clear and Convincing”

- Highly probable that the fact is true so that the fact finder has a firm conviction or belief that the cause is true
- Often the standard for placing abuser on central registry

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## “Beyond a Reasonable Doubt”



- Highest burden of proof in law
- Required for a criminal conviction
- Proof that leaves fact finder with abiding conviction that the charge is true
- Evidence need not eliminate all possible doubt
- Unless evidence proves defendant guilty BRD, must be found not guilty

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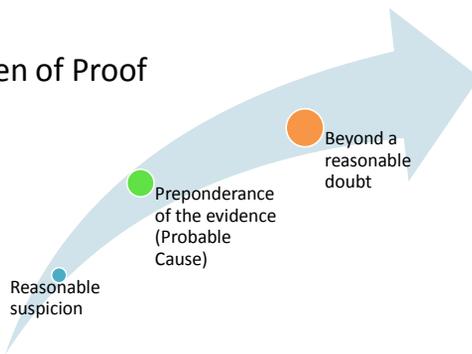
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## Burden of Proof




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### What Level of Proof Do You Have?

APS receives a report that Mrs. X is being neglected by her daughter. The report says:

- Mrs. X had been very friendly and social and was always very clean and groomed.
- A year ago her daughter Marianne moved in to help her as she was becoming very confused and had serious arthritis so she could no longer write checks or maintain her home.
- The reporter stated that Mrs. X came to her door and was dirty and crying.
- Ms. X told the reporter that she was hungry, cold, and alone.

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### What Can You Do With This Information?



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### APS Investigation Findings -1

- APS Worker went to Mrs. X's home and:
  - Saw she was alone, dirty, and the house was cold (it is 40 degrees outside)
  - The worker noticed a large pile of mail addressed to Mrs. X which the client cannot describe.
  - Observed photos in the home which showed art work and a large piano in the living room which are not in the home.
  - Mrs. X was unable to answer most of the worker's questions but keeps calling her by her daughter's name, Marianne.

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### APS Investigation Findings - 2

- The APS worker located Marianne a few days later
  - Marianne stated she is doing “the best she can”. Says her mother is demanding, refuses to do as directed, and yells at her. She periodically has to leave or she “will lose it”.
  - Marianne provided no explanation for the unpaid bills in the mail. Admitted selling off things in the home because her mother doesn’t use them or need them and they need the money.

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### APS Investigation Findings - 3

- The worker interviewed the reporter who repeated info provided in her APS report. Also stated:
  - She gave Mrs. X food, wrapped her in a blanket, walked her home and found that she was alone. The house was messy.
  - She and Mrs. X have been friends for 25 years and played bridge until Mrs. X could not remember game rules. At that time she occasionally wandered away.
  - Lately Marianne has had many visitors coming and going at all hours.
  - Marianne often leaves for hours or days.

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### Evidence Standard

- Does the evidence meet the “preponderance” standard for substantiating caregiver neglect?
- Do you have proof of any other abuse form?
  - If so, what level is that proof?
- Do you have a duty to notify law enforcement?

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## Discussion

What more is needed to prove this case beyond a reasonable doubt?



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## Beyond a Reasonable Doubt

- Statements/admissions by Marianne
- Confirm Marianne to provide care /pay bills
- Bank records
- Proof of unpaid bills
- Ongoing drug investigation
- Medical providers re: Mrs. X's condition
- Doctors' statements to Marianne
- Statement by Mrs. X

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## Framework for Investigations



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### Investigative Goals

A diagram consisting of two large black arrows pointing in opposite directions. The left arrow points left and contains the word "What" in yellow. The right arrow points right and contains the word "How" in yellow. The two arrows are connected at their inner ends by a small black ribbon-like shape.

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### Speak the Same Language!

<b>APS</b>	<b>CJS</b>
<ul style="list-style-type: none"><li>• Client</li><li>• A/P</li><li>• Collaterals</li><li>• Allegation</li><li>• Physical abuse, mistreatment, psychological abuse</li></ul>	<ul style="list-style-type: none"><li>• Victim</li><li>• Suspect, Defendant</li><li>• Witnesses</li><li>• Crime</li><li>• Assault, battery, aggravated assault; abuse of an elder/vulnerable adult; stalking, threats, animal abuse</li></ul>

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### Role of the Client/Victim

A diagram with two photographs. On the left is a photograph of an elderly woman, with a large black arrow pointing right from it containing the text "Victim Based" in yellow. On the right is a photograph of a man in a dark suit holding a white object, with a large black arrow pointing left from it containing the text "Evidence Based" in yellow. The two arrows point towards each other.

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### Ethical Issues for APS

- Client’s right to self determination
- Autonomy
- Least restrictive alternative
- “Client-driven
- APS “do no harm”

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### Addressing Ethical Concerns

- Does Your Client Understand Your Reporting Duties?
  - Ethical communication, when you explain who you are and your role, educate client about your legal reporting duties and what happens when a report is made
  - Allow client to decide what to disclose to you
  - Attempt to get client to report him/herself with your help
  - If you do not have a duty to cross report and LE needed or indicated, ask client for permission to contact
  - Determine basis for client’s wishes. Is some based in misinformation, threats, manipulation, other factors. Can they be addressed?

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### Addressing Ethical Concerns

- If case is reported to CJS--your job is not over because CJS is now involved in case
  - Can you support your client by offering to accompany him/her to interviews
  - With client consent, advocate with CJS
  - Impact of continuances on client and client’s health
  - Sentencing—restitution, no contact order, treatment needs

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## Addressing Ethical Concerns

- If charges are brought
  - Inform client what will occur
  - Have a procedure to link client with victim-witness/advocate
  - Make sure client knows her/his rights, including right to speak at bail hearing, for/against protective order
  - Help client speak with the prosecutor or if consent, speak on client’s behalf
  - Victim impact statement, right to speak at sentence and to probation officer preparing report

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## Addressing Ethical Concerns

- Become knowledgeable about CJS rules and procedures, including victim-witness program
- Longer term
  - Importance of CCRs, MDTs, MOUs
  - Involve prosecutor and LE in case management team
  - Develop relationship with prosecutors and law enforcement officers who are likely to handle your cases
  - Cross training is critical

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## Bridging the Divide: When APS and Criminal Investigations Intersect

### Part II

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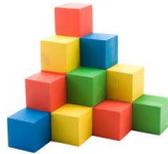
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## Crimes

- Crimes are composed of elements
- Must prove each element
- APS must recognize common crimes
- APS must know their elements
- Collaboration and cross training



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## Finding the Elements



- Most crimes are in a state's criminal statutes, Penal Code, or Revised Laws
- To determine the elements of a crime, read the crime's definition.

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## Finding the Elements-2

- The elements of a crime are also in the state jury instructions usually available online.

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### Example of Elements of a Crime CA Penal Code §273.5

“Any person who willfully inflicts corporal injury resulting in a traumatic condition upon the offender's spouse or former spouse; cohabitant or former cohabitant; fiancé or fiancée, or someone with whom the offender has, or previously had, an engagement or dating relationship; or the mother or father of the offender's child.”

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### CA Penal Code §273.5 Elements

- Willfully
- Injury
- Relationship

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### Elements

- The suspect willfully inflicted corporal injury resulting in a traumatic condition
  - Traumatic condition is a condition of the body, such as a wound, or external or internal injury, including, but not limited to, injury as a result of strangulation or suffocation, whether of a minor or serious nature, caused by a physical force.

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## Elements

- On a person in one of these relationships
  - Spouse or former spouse;
  - Cohabitant or former cohabitant;
  - Fiancé or fiancée;
  - Someone with whom the offender has, or previously had, an engagement or dating relationship; or
  - The mother or father of the offender's child.

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## Penal Code §368 (Caregiver Neglect)

- Any person having the care or custody of any elder, willfully causes or permits the person or health of the elder to be injured, or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health is endangered, is punishable by ...
- "Elder" is a person 65 years of age or older.

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## Summary Points



- While the CJS is adversarial, the interactions between APS and the CJS do not have to be.
- Better insight into building a case that will work in the CJS
  - **Better outcomes for clients**
  - Improved understanding of systemic differences, rules and principles
  - Less conflict across systems and more cooperation

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## Questions?

Thank You for the Critical Work You Do Serving  
Elderly and Vulnerable Adults in Your  
Communities

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