The Role of the Criminal Justice System in Addressing Elder Abuse Perpetrators

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- Some of the content of Ms. Heisler’s presentation is taken from NAPSA Core Competency 22 “Working with the Criminal Justice System” which Ms. Heisler wrote. It is available at https://theacademy.sdsu.edu/programs/apswi/core-competency-areas/working-with-the-criminal-justice-system-instructor-led-training/

Shelly L. Jackson

- The opinions, findings, and conclusions or recommendations expressed do not necessarily represent the official position or policies of the U.S. Department of Justice.

Karl Urban

- The opinions, findings, and conclusions or recommendations expressed do not necessarily represent the official position or policies of the Administration for Community Living.
Workshop Objectives

• Understand the roles and goals of the criminal justice system in cases of elder abuse
• Recognize the potential of perpetrator and interagency coordination data in guiding the criminal justice system in assessing cases
• Describe the importance and role of community partners in addressing the needs of perpetrators whose cases are referred to the criminal justice system
• Identify ways APS programs can use and improve data collection about perpetrators and interagency coordination
“The primary duty of the prosecutor is to seek justice within the bounds of the law, not merely to convict. The prosecutor serves the public interest and should act with integrity and balanced judgment to increase public safety both by pursuing appropriate criminal charges of appropriate severity, and by exercising discretion to not pursue criminal charges in appropriate circumstances…” (3-1.2)
The Prosecutor Is NOT

• The lawyer for APS
• The lawyer for law enforcement
• The lawyer for the victim
• The lawyer for the perpetrator

• The prosecutor’s duty is to the community
Proving Cases: APS vs. Prosecution

**Adult Protective Services**
- Investigate to determine eligibility, risk, and harm reduction
- Use (typically) preponderance standard*
  - Every element of definition of abuse
- Don’t have criminal admissibility standards for information/ evidence (e.g., hearsay, 4th, 5th Amendments to US Constitution)

*States may use higher standards for perpetrator registry

**Prosecution**
- Do not (typically) investigate
- Use beyond a reasonable doubt
  - Every element of the crime
- Evidence must be admissible under rules of evidence and US and State Constitutions, Tribal Codes
Prosecutor’s Decision to Proceed

Has a crime occurred and can I prove every element beyond a reasonable doubt

Factual and objective process
Legal standard—beyond a reasonable doubt
Analysis
• Is there sufficient admissible and credible evidence and witnesses to prove every element?
• What are the likely defenses? Does the available evidence refute those defenses?
If no, cannot proceed with case

If yes,

Considerable discretion to decide whether and what to charge
Assuming a Crime Can Be Proven…

- **Should the case be prosecuted?**
  - Even if charges can be filed, prosecutors **should** exercise sound discretion in charging decisions to assure that prosecution serves the interests of justice
    - What end does prosecution serve?

- **What is weighing process for the “Interests of justice”?**
  - Honoring the Victim’s voice -- Victim’s wishes, preferences, reasons
  - Perpetrator’s situation and relationship with victim
  - Nature of offense
  - Does abuser pose a danger to the community?
  - Does prosecution communicate a message of offender accountability to community and/or prevent other abuse?
Resolving the Case

If case should be filed, how should case be resolved? What meets…?

- Victim’s needs and wishes?
- Community’s needs and expectations?
- Defendant’s needs?

What are the options?
- Incarceration (jail, prison)
- Probation
- Community rehabilitation pgms
- Restitution before case is filed or before plea
- Mental health commitment or proceedings in lieu of prosecution such as guardianship
- Restorative justice programs
- Civil restraining order
- Specialized court
- Diversion
Thoughts for APS

• Follow law and policy in referring cases to criminal justice agencies
• Have realistic expectations about your goals and expectations
  • Prosecutor may have similar goals for a case but may have different approaches and tools to achieve those goals
• Meet with prosecutor in advance to discuss case and whether it can and should be filed
  • Value of case review process, such as an MDT
  • Benefits of relationships and communication with LE and prosecutors
• APS’s role is critical
Perpetrators in the Criminal Justice Context

Shelly L. Jackson
Criminalization of Elder Abuse
(Heisler, 2000; Kohn, 2012)

Abuser Psychopathology Theory
(Pillemer, 2005)
Victims (excludes elder abuse offenders)

Gerontology/Social Work

Offenders (excludes elder abuse offenders)

Criminology
Fig. 4. Distribution of intervention outcomes across categories.
Why are we interested in offenders?
Relationship
Abuse Intervention Model

Offender
Victim
Context

Mosqueda et al., 2016
ELDER ABUSE OFFENDER TYPOLOGIES

Anetzberger (1987)
• Hostiles
• Authoritarians
• Dependents

Ramsey-Klawsnik (2000)
• Overwhelmed
• Impaired
• Narcissistic
• Domineering/bullying
• Sadistic

DeLiema et al. (2017)
• Caregiver
• Temperamental
• Dependent caregivers
• Dangerous

Santos et al. (2019)
• Physical by children/grandchildren
• Physical IPV
• Physical and psychological by children
• Polyvictimization by others
• Physical abuse by others
• Physical and psychological IPV
Typology

- Physical and psychological IPV
- Verbal by Others
- Psychological by children/grandchildren
- Stolen by Others

Intervention

??

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EXAMPLES OF CRIMINAL JUSTICE RESPONSES

- Innovative (new) responses
- Incarceration (& Parole)
- Restraining Order
- Probation
- Specialty Courts
- Diversion Programs
- Batterer Intervention Programs
- Restorative Justice
- Referral to Community Partners
Assuming a Crime Can Be Proven…

- **Should the case be prosecuted?**
  - Even if charges can be filed, prosecutors **should** exercise sound discretion in charging decisions to assure that prosecution serves the interests of justice
    - What end does prosecution serve?
- **What is weighing process for the “Interests of justice”?**
  - Honoring the Victim’s voice -- Victim’s wishes, preferences, reasons
  - Perpetrator’s situation and relationship with victim
  - Nature of offense
  - Does abuser pose a danger to the community?
  - Does prosecution communicate a message of offender accountability to community and/or prevent other abuse?
Adult Protective Services

Victim Choice

Victim Safety

Prosecutors

Offender Accountability

Victim Choice & Safety, Community Needs
Multidisciplinary Teams
Adult Protective Services

Victim Safety & Recovery
(Brandl et al. 2006)

Social Support
Pet Foster Care
Health Care
Capacity Assessment

Nutrition
Criminal Justice
Civil Legal
Finances
Housing

Criminal Justice System

Offender Accountability & Services

Mental Health
Substance Abuse
Probation
Incarceration
Job Training
Housing
Social Support
Respite Care
Health Care

Criminal Justice

Adult Protective Services

Criminal Justice System

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Victim Safety & Recovery
(Brandl et al. 2006)

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Housing
Social Support
Respite Care
Health Care

Criminal Justice

Relationship
Abuse Intervention Model

Mosqueda et al., 2016
The Multidisciplinary Team Technical Assistance Center (MDT TAC) has chosen to focus on elder abuse case review MDTs due to their direct impact on the lives of abuse victims. Case review MDTs work collaboratively to investigate and prosecute cases, and to ensure victims receive the services they need to recover from abuse. Through regular, face-to-face meetings, MDT case review teams discuss cases, share information, and develop a plan for moving each case forward.
NAMRS Perpetrator and Law Enforcement Referral Data

Karl Urban
Data Overview and Limitations

Data Source: FFY 2019 National Adult Maltreatment Reporting System (NAMRS) collects data on perpetrators and on law enforcement referrals.

Data Lens: NAMRS collects data from state APS programs on APS cases. The lens for NAMRS data is APS not Criminal Justice.

Data Completeness: NAMRS has gaps in perpetrator and especially law enforcement referral data.

- We only included data for perpetrators which was complete enough for analysis.
- Data for law enforcement referrals is a small sample so it should not be considered representative of all APS programs.
# NAMRS Perpetrator Completeness of Data

<table>
<thead>
<tr>
<th>Data Element</th>
<th>Completeness of Data</th>
</tr>
</thead>
<tbody>
<tr>
<td>Age</td>
<td>Good</td>
</tr>
<tr>
<td>Gender Identity</td>
<td>Good</td>
</tr>
<tr>
<td>Disabilities</td>
<td>Poor</td>
</tr>
<tr>
<td>Behavioral health conditions</td>
<td>Poor</td>
</tr>
<tr>
<td>Kinship</td>
<td>Fair</td>
</tr>
<tr>
<td>Type of Caregiver</td>
<td>Poor</td>
</tr>
<tr>
<td>Cohabitation</td>
<td>Poor</td>
</tr>
<tr>
<td>Substitute Decision-Maker</td>
<td>Poor</td>
</tr>
<tr>
<td>Legal Remedies Sought</td>
<td>Poor</td>
</tr>
</tbody>
</table>
Perpetrator Demographic Information

Source: NAMRS, 2019. Based on case component data from 28 states.
Perpetrator Demographic Information

Source: NAMRS, 2019. Based on case component data from 28 states.
# National Perpetrator Kinship Relationship by Maltreatment Type: % Known Cases

<table>
<thead>
<tr>
<th>Maltreatment Type</th>
<th>Child</th>
<th>Domestic partner</th>
<th>Grandchild</th>
<th>Grandparent</th>
<th>Parent</th>
<th>Sibling</th>
<th>Spouse</th>
<th>Other relative</th>
<th>Yes (not specific)</th>
<th>No Kinship</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abandonment</td>
<td>9.8%</td>
<td>0.0%</td>
<td>0.8%</td>
<td>0.0%</td>
<td>4.7%</td>
<td>1.8%</td>
<td>3.8%</td>
<td>3.4%</td>
<td>0.0%</td>
<td>75.7%</td>
</tr>
<tr>
<td>Emotional abuse</td>
<td>30.4%</td>
<td>0.8%</td>
<td>5.2%</td>
<td>0.0%</td>
<td>4.6%</td>
<td>2.3%</td>
<td>14.5%</td>
<td>15.3%</td>
<td>3.7%</td>
<td>23.2%</td>
</tr>
<tr>
<td>Financial exploitation</td>
<td>30.0%</td>
<td>0.3%</td>
<td>6.4%</td>
<td>0.1%</td>
<td>2.6%</td>
<td>2.3%</td>
<td>2.3%</td>
<td>14.1%</td>
<td>9.3%</td>
<td>32.6%</td>
</tr>
<tr>
<td>Neglect</td>
<td>25.6%</td>
<td>0.7%</td>
<td>2.2%</td>
<td>0.1%</td>
<td>8.5%</td>
<td>2.7%</td>
<td>13.2%</td>
<td>9.4%</td>
<td>3.8%</td>
<td>33.7%</td>
</tr>
<tr>
<td>Physical abuse</td>
<td>27.4%</td>
<td>1.6%</td>
<td>6.2%</td>
<td>0.1%</td>
<td>4.9%</td>
<td>3.2%</td>
<td>17.0%</td>
<td>10.0%</td>
<td>3.5%</td>
<td>26.1%</td>
</tr>
<tr>
<td>Sexual abuse</td>
<td>3.6%</td>
<td>1.2%</td>
<td>0.7%</td>
<td>0.2%</td>
<td>9.0%</td>
<td>2.4%</td>
<td>7.6%</td>
<td>9.5%</td>
<td>5.5%</td>
<td>60.3%</td>
</tr>
</tbody>
</table>

Notes: NAMRS, 2019. Based on case component data from 25 states. Perpetrators with unknown relationships (missing data), which were 10% of submitted data, were excluded from this table.
Poll Question

What percent of APS cases across the country do you think are referred to law enforcement or prosecutorial offices?

• 0 – 10%
• 10 – 50%
• 50 – 75%
• 75 – 100%
Law Enforcement Referral Data Overview

- NAMRS collects data on “Interagency Coordination” for referrals to law enforcement or prosecutorial offices (referred to as law enforcement referrals), protection and advocacy programs, long-term care ombudsman, among others.
- Interagency coordination was provided to 50% of clients, although specific agency not identified for 66% of clients.
- Overall, the percent of clients referred to law enforcement was 7.5% nationally and the highest state was 55%.
Demographic Data of Clients Referred to Law Enforcement

Source: NAMRS, 2019. Based on case component data from 20 states.
Demographic Data of Clients Referred to Law Enforcement

Source: NAMRS, 2019. Based on case component data from 20 states.
Percent Distribution of Clients by Maltreatment Type: All Clients versus Law Enforcement Referrals

Source: NAMRS, 2019. Based on case component data from 20 states.
• Improve NAMRS Perpetrator and Interagency Coordination Data

• Complement NAMRS Data (CDC, 2016; Dion et al., 2020; Burnes et al., 2020)
  • Description of cases (Rosen et al., 2019)
  • Analysis of different time periods (Morgan et al., 2017; Daly et al., 2017)
  • Comparison of jurisdictions (Dion et al., 2019)
  • Impact of the CJS on offenders (and victims)
  • Develop innovative (new) responses
  • Offender services
  • Deterrence theory
  • Recidivism
  • Accountability
So What?

Everyone
• It is important for APS to understand how prosecutors analyze cases for charging and resolution

• In seeking justice, prosecutors are guided by victim needs and preferences, community needs, and offender accountability

• APS and the criminal justice system are natural allies and have complementary roles that can ensure well-being of APS clients

• To address APS client safety and other concerns, it may be necessary to address offender needs

• MDTs are valuable and powerful resources for both systems for meeting victim, community, and offender needs

• NAMRS can provide valuable information but we need to work together to address data gaps to improve the value of the data
Chat Question

What are the implications of what we have discussed for your work?
Feedback & Questions

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