

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

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*Session 708*

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Please write in the chat box your name and where you work



## Presenters

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# Disclaimers

Candace Heisler

- 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
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# Overview of Criminal Justice System and Prosecutor Function

Candace Heisler

# ABA Standards Related to the Prosecution Function

“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)

National Institute on the Prosecution of Elder Abuse

# 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, 4<sup>th</sup>, 5<sup>th</sup> 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)



# Offenders

(excludes elder abuse offenders)



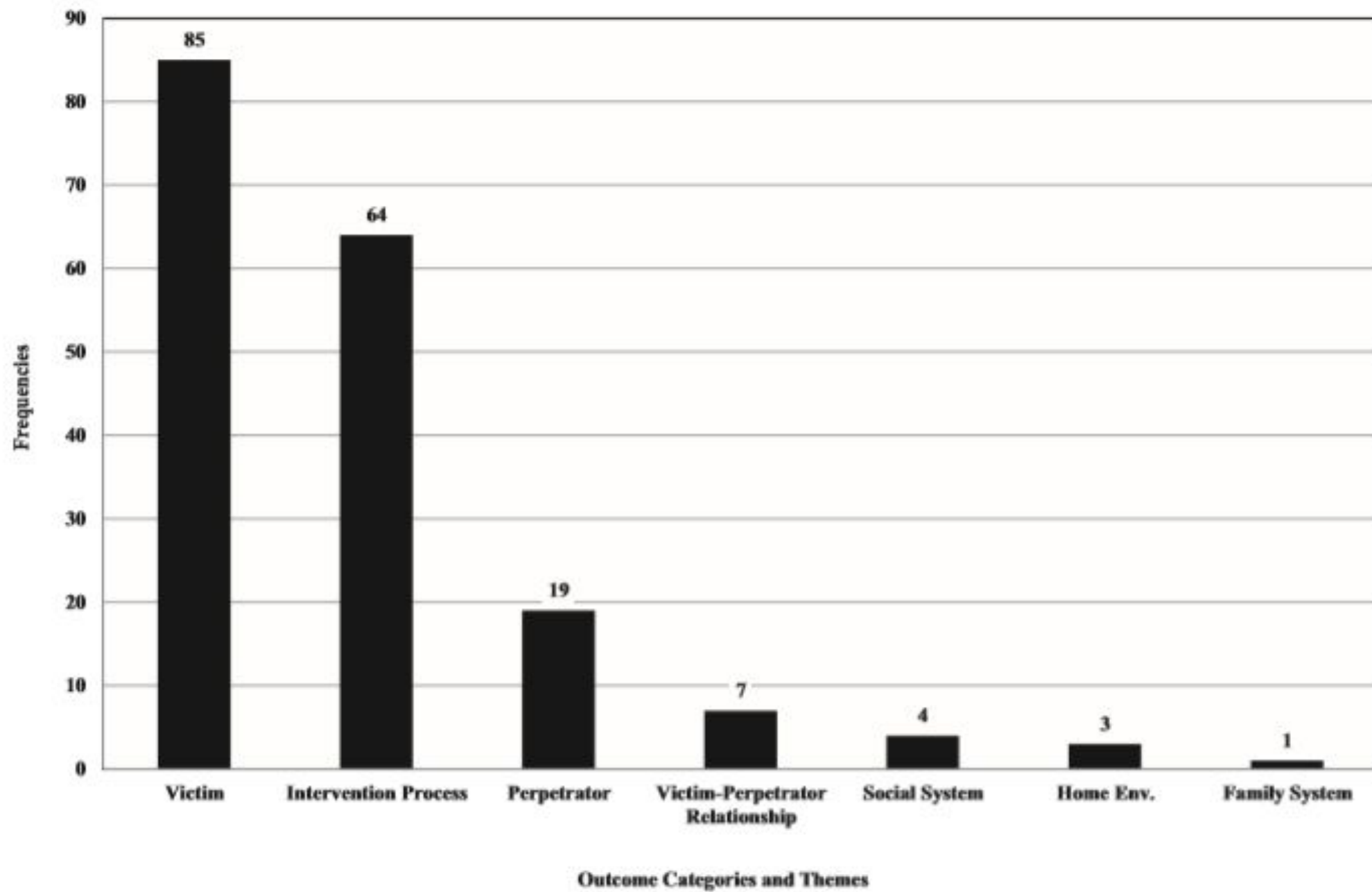


Fig. 4. Distribution of intervention outcomes all across categories.





Why are we interested  
in offenders?

# Relationship

Abuse Intervention Model



# ELDER ABUSE OFFENDER TYPOLOGIES

## Anetzberger (1987)

- Hostiles
- Authoritarians
- Dependents

## Ramsey-Klawnsnik (2000)

- Overwhelmed
- Impaired
- Narcissistic
- Domineering/bullying
- Sadistic

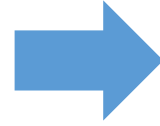
## DeLiema et al. (2017)

- 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



Intervention

Physical and  
psychological IPV

Verbal by Others

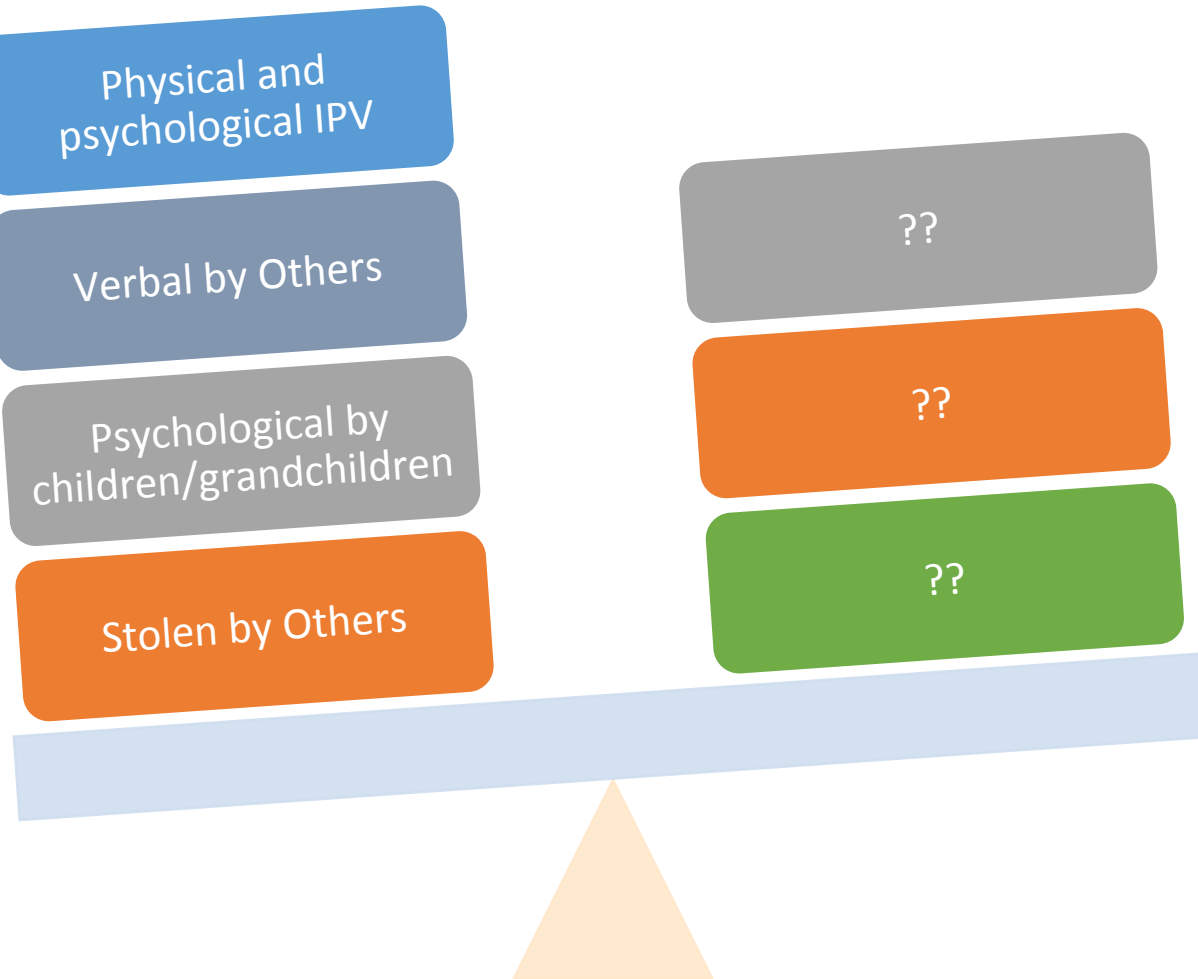
Psychological by  
children/grandchildren

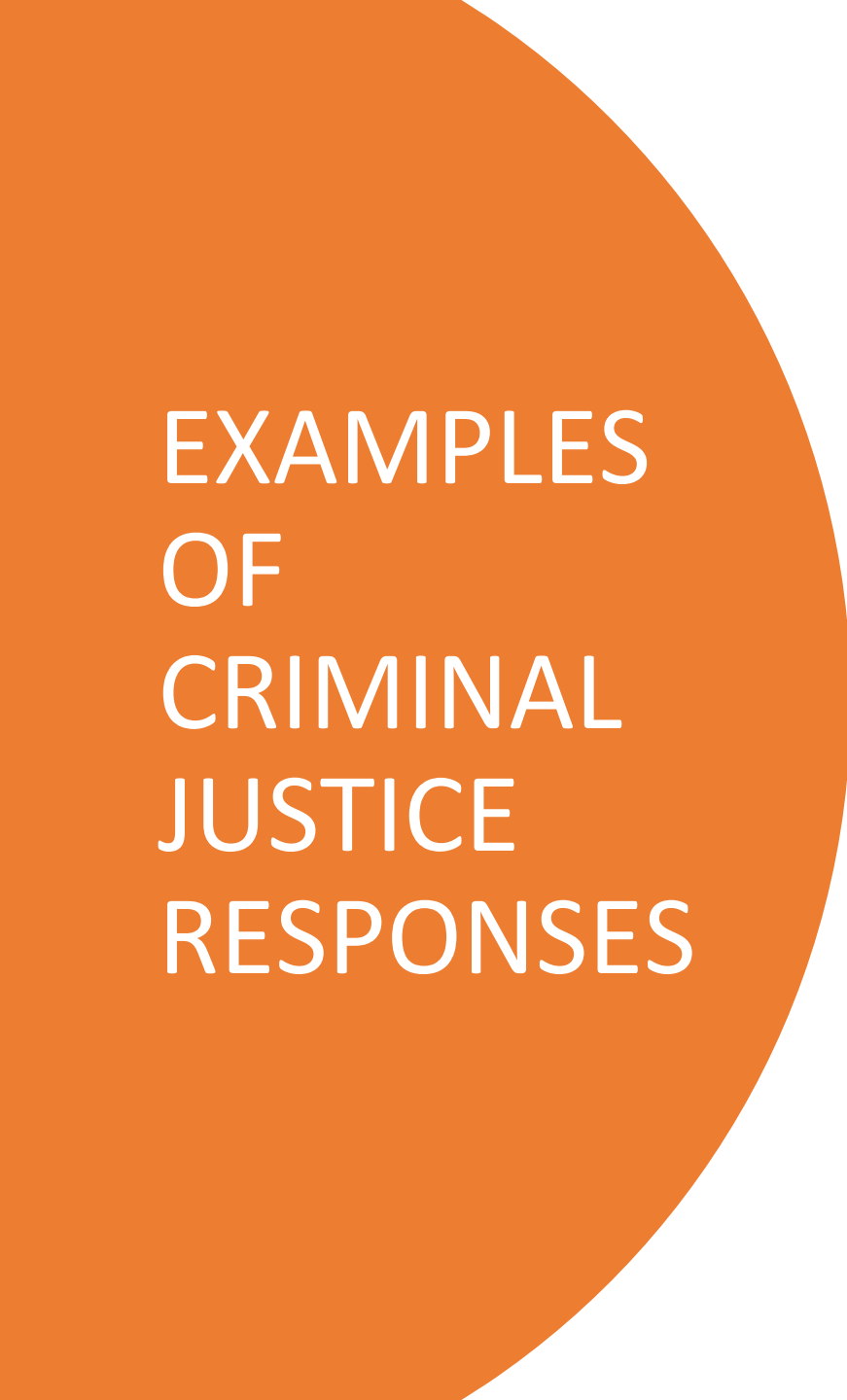
Stolen by Others

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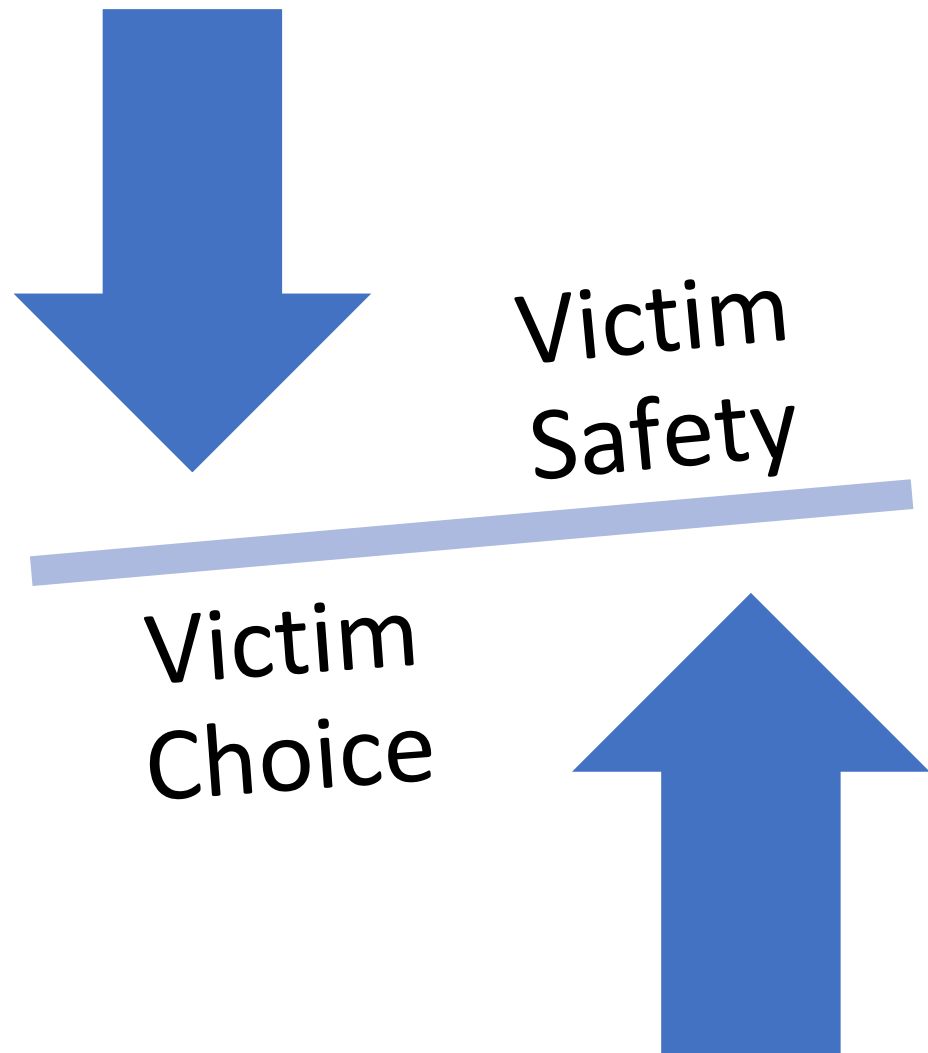
# EXAMPLES OF CRIMINAL JUSTICE RESPONSES

- Innovative (new) responses
  - Incarceration (& Parole)
  - Restraining Order
  - Probation
  - Specialty Courts
  - Diversion Programs
  - Batterer Intervention Programs
  - Restorative Justice
  - Referral to Community Partners
- 
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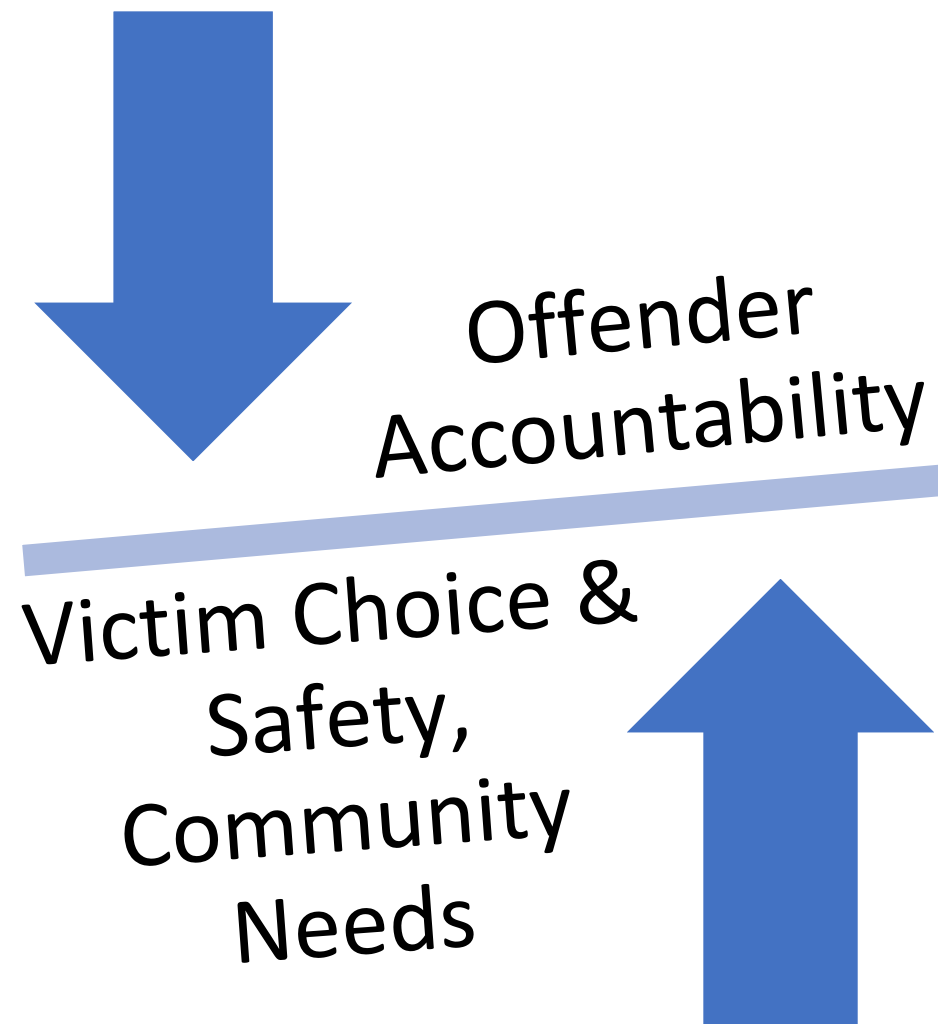
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## Adult Protective Services



## Prosecutors

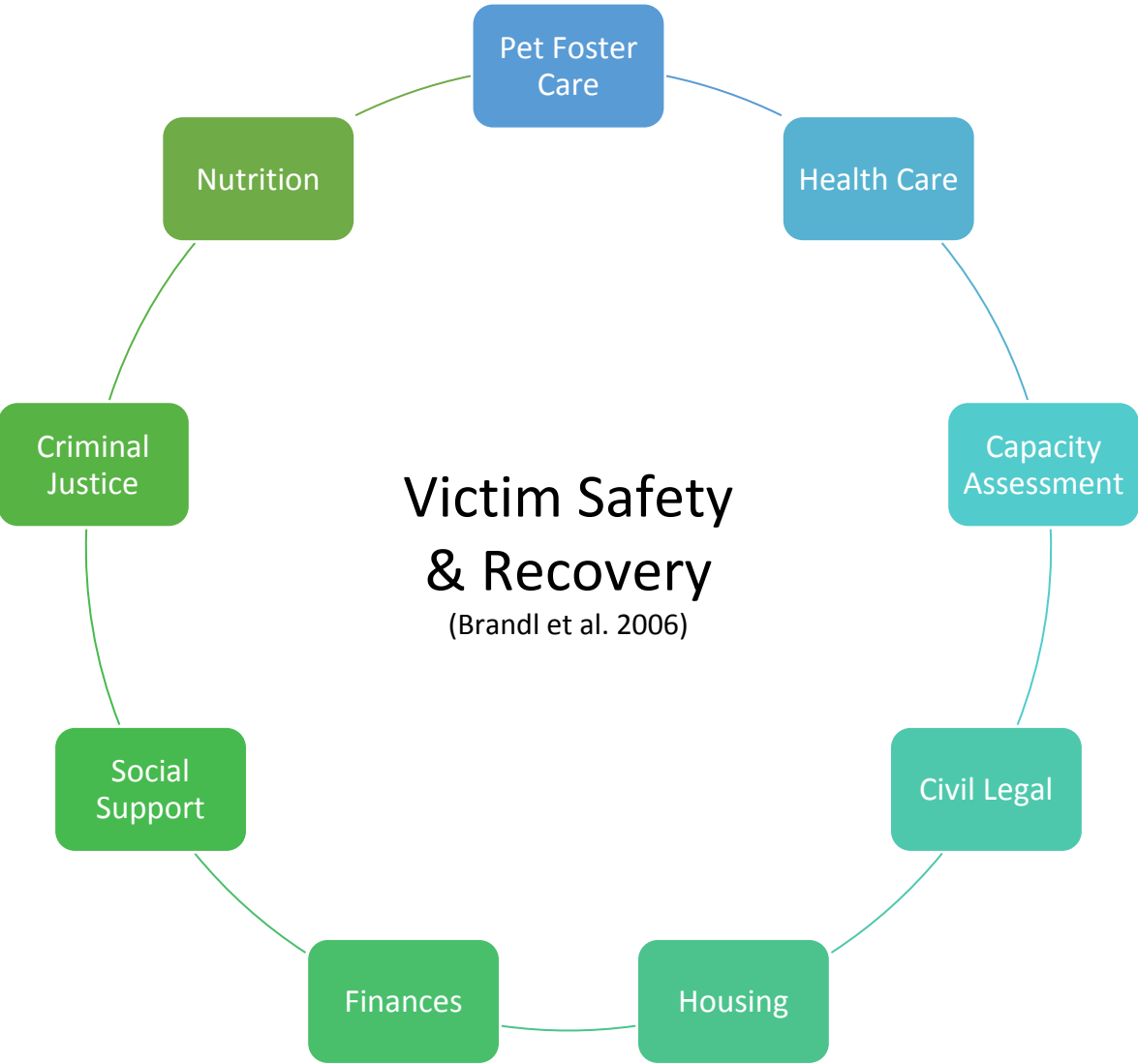


# Multidisciplinary Teams





# Adult Protective Services



# Criminal Justice System



# Relationship

Abuse Intervention Model



MDT technical assistance  
at your fingertips



1 2 3 4 5 ||

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.



### MDT TAC

Learn more about the mission, services, and resources available through the MDT TAC



### Network Locator Map

Request to be included in the Elder Justice Networks Locator Map



### MDT Resources

Strengthen your team with resources for multiple disciplines



### MDT Webinars

Keep up with MDT TAC activities.



### MDT Guide & Toolkit

Start or grow a local elder abuse case review MDT with this research and resource rich toolkit



### MDT Peer Support Listserv Community

Connect with and learn from other elder abuse MDTs

# elderjustice.gov

## Contact

Call or email your requests for materials or to schedule an appointment.

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[elderjustice.gov/mdt](https://elderjustice.gov/mdt)



# 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.

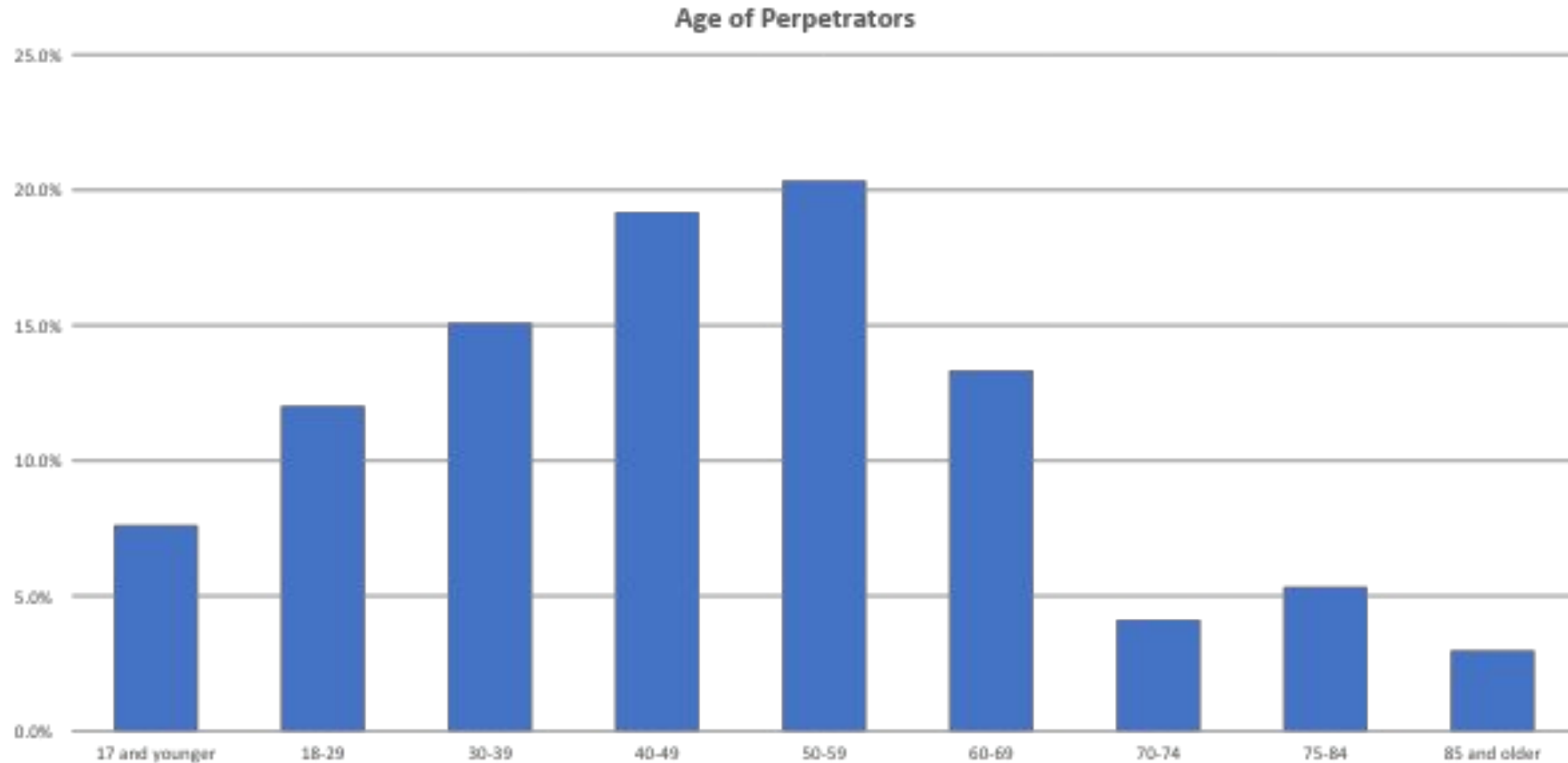
**Data Completeness:** NAMRS has gaps in perpetrator and especially law enforcement referral data.

- 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

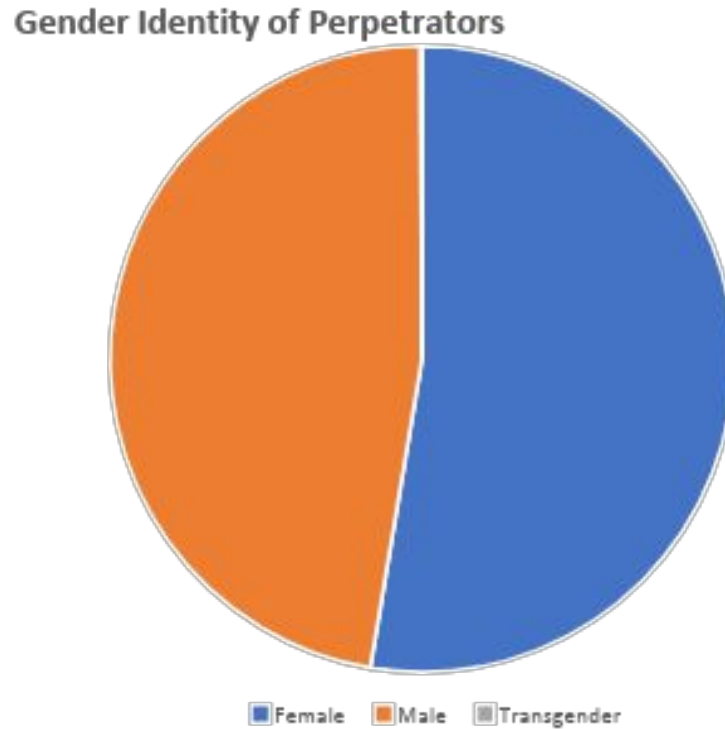
Data Element	Completeness of Data
Age	Good
Gender Identity	Good
Disabilities	Poor
Behavioral health conditions	Poor
Kinship	Fair
Type of Caregiver	Poor
Cohabitation	Poor
Substitute Decision-Maker	Poor
Legal Remedies Sought	Poor

# 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

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

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?

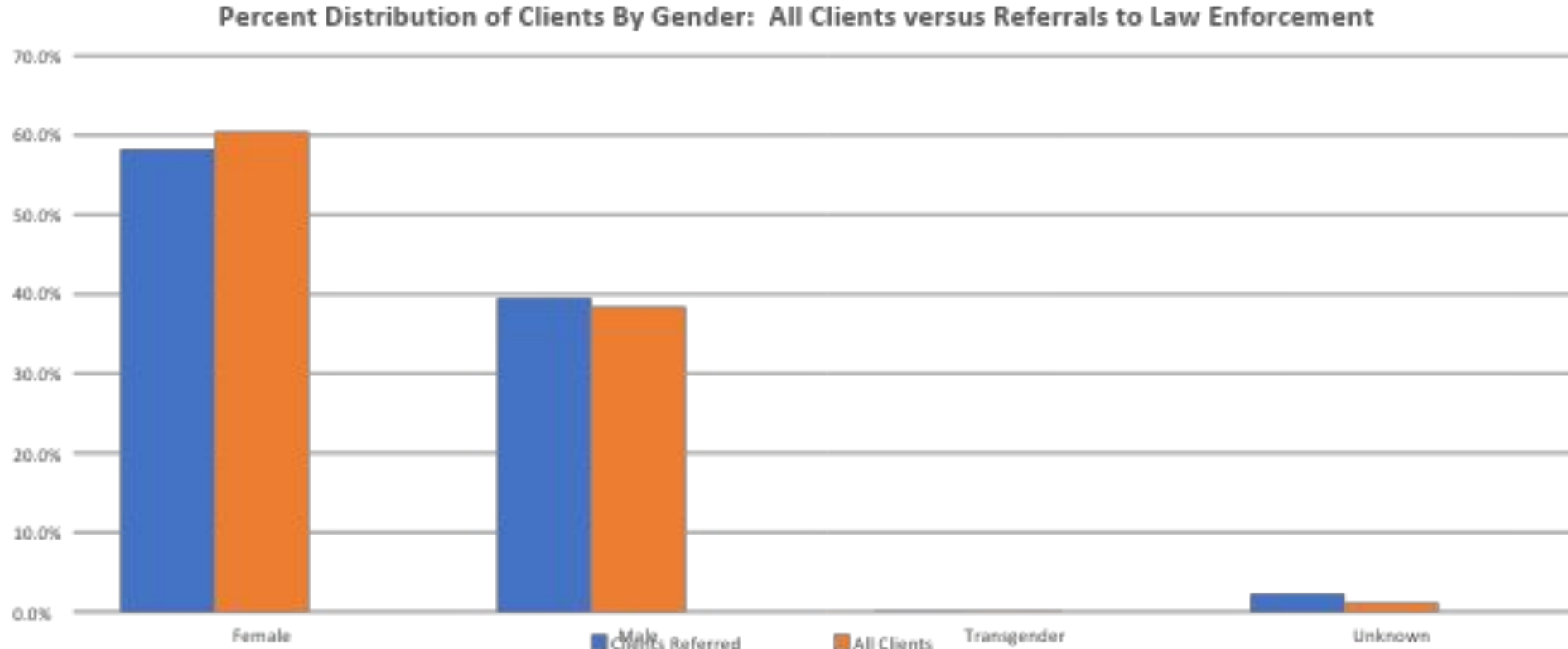
- 0 – 10%
- 10 – 50%
- 50 – 75%
- 75 – 100%



# Law Enforcement Referral Data Overview

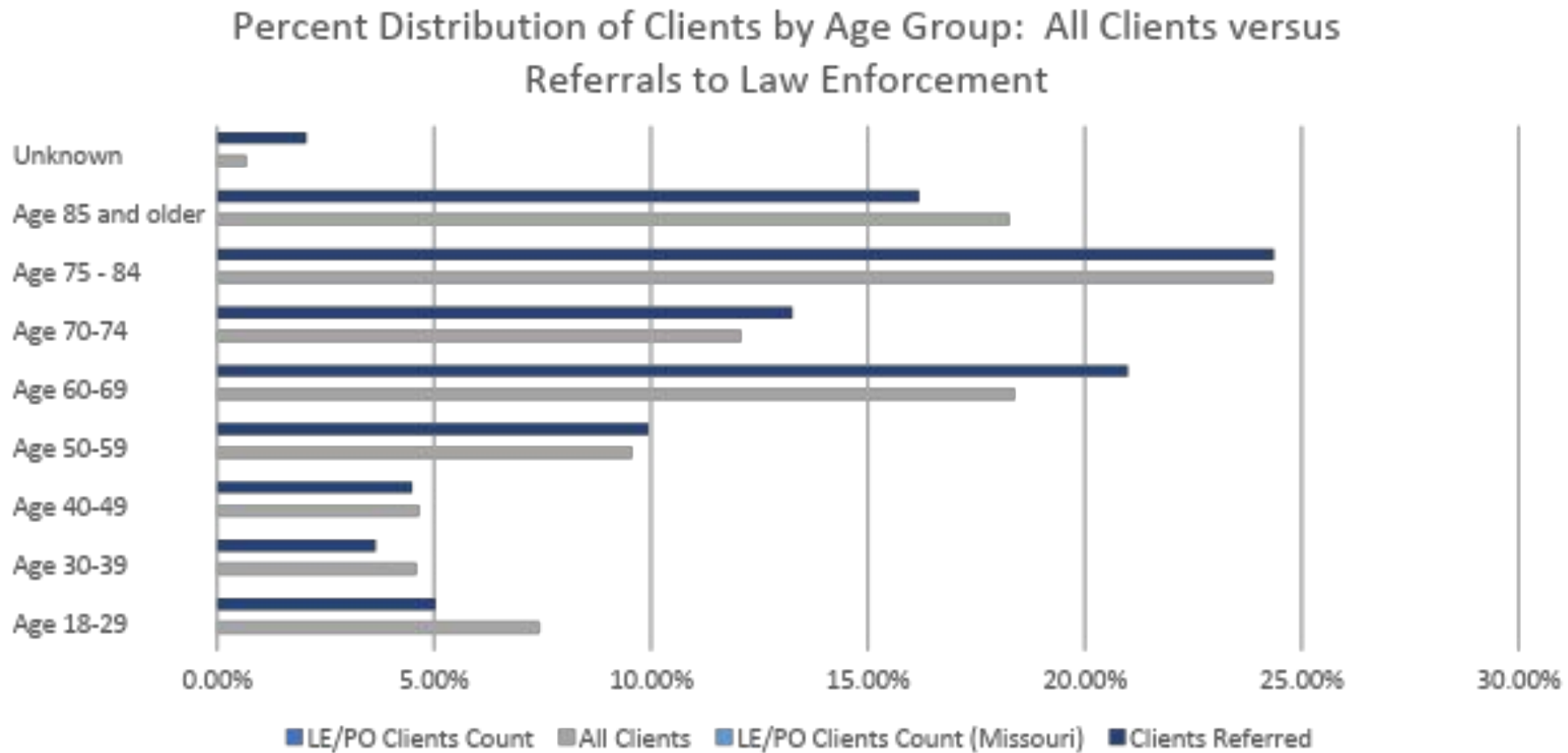
- NAMRS collects data on “Interagency Coordination” for referrals to law enforcement or prosecutorial offices (referred to as law enforcement referrals), protection and advocacy programs, long-term care ombudsman, among others
- Interagency coordination was provided to 50% of clients, although specific 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



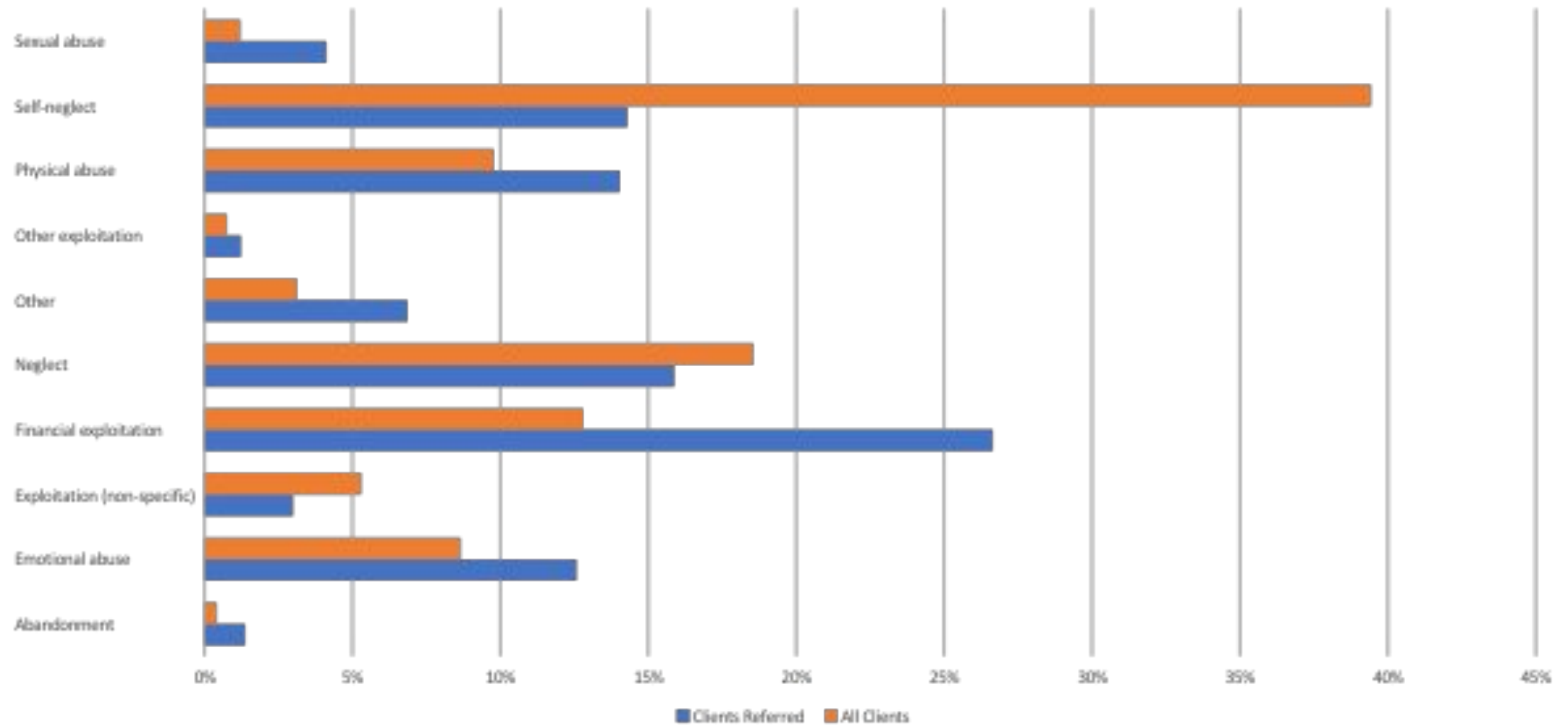
Source: NAMRS, 2019. Based on case component data from 20 states.

# 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.

# FUTURE DIRECTIONS AND RESEARCH

- 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



## KEY TAKEAWAYS

# Chat Question

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



# Feedback & Questions

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