

# **“IT’S JUST A CIVIL MATTER”**

**USING CIVIL LEGAL SERVICES TO PREVENT, STOP, AND REMEDY ELDER ABUSE**

**1**



# WHO WE ARE

- **ALISON HIRSCHER, MICHIGAN ELDER JUSTICE INITIATIVE**
- **NICOLE SHANNON, MICHIGAN ELDER JUSTICE INITIATIVE**
- **EMILY MILLER, CRIME VICTIMS LEGAL ASSISTANCE PROJECT**

# WHAT YOU WILL LEARN

- **Difference between civil and criminal law**
- **How civil law can serve your clients**
- **How to address challenging issues for vulnerable clients**
- **How you can partner with your local legal services office**

# “JUST A CIVIL MATTER”

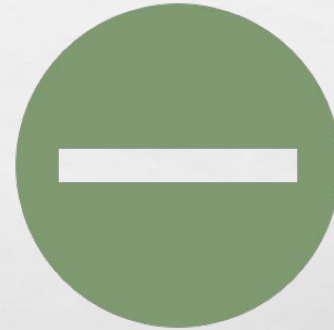
- Parasitic living situation
- Rogue guardian or power of attorney
- Emotional abuse
- Shady salesman
- New “best friends”

DEPARTMENT		ORI NO.		INTERNAL AFFAIRS CASE NO.	
<b>PERSON MAKING REPORT</b> (Complaints may be filed anonymously)					
NAME				ALIAS	
ADDRESS					
CITY		STATE		ZIP	PHONE
DOB		AGE	SEX	RACE (optional for statistical purposes only)	
EMPLOYER/SCHOOL				PHONE	
ADDRESS		CITY		STATE	ZIP
<b>INCIDENT</b>					
NATURE OF COMPLAINT					
COMPLAINT AGAINST (NAME(s))				BADGE NO(s)	
DATE	TIME	DATE/TIME REPORTED		HOW REPORTED	
INCIDENT LOCATION			DIST/AREA		BEAT
DESCRIPTION OF INCIDENT					

# **POLL: HAS LAW ENFORCEMENT REFUSED TO GET INVOLVED BECAUSE IT'S "JUST A CIVIL MATTER"?**



**YES**



**NO**



# **WE FEEL YOUR PAIN**

- **Our elder abuse and domestic violence clients are often told “it’s just a civil matter”**
- **This ignores criminality, minimizes abuse, and leaves clients feeling like there is no remedy**
- **Classic example: trespass in Michigan is a misdemeanor. We can’t get law enforcement to enforce a trespass notice for a private citizen**
- **Civil law can be an AMAZING tool when criminal law can’t—or won’t—address the issue**

# CRIMINAL V. CIVIL MATTERS

## CRIMINAL (STATE OF X V. PERSON)

- Focus on punishment and/or rehabilitation of perpetrator
- Law enforcement and prosecution represents “the people”
- Survivors have little control over the investigation or court case
- Perpetrator “gets in trouble” and pleas are at the discretion of the prosecutor

## CIVIL (PERSON V. PERSON)

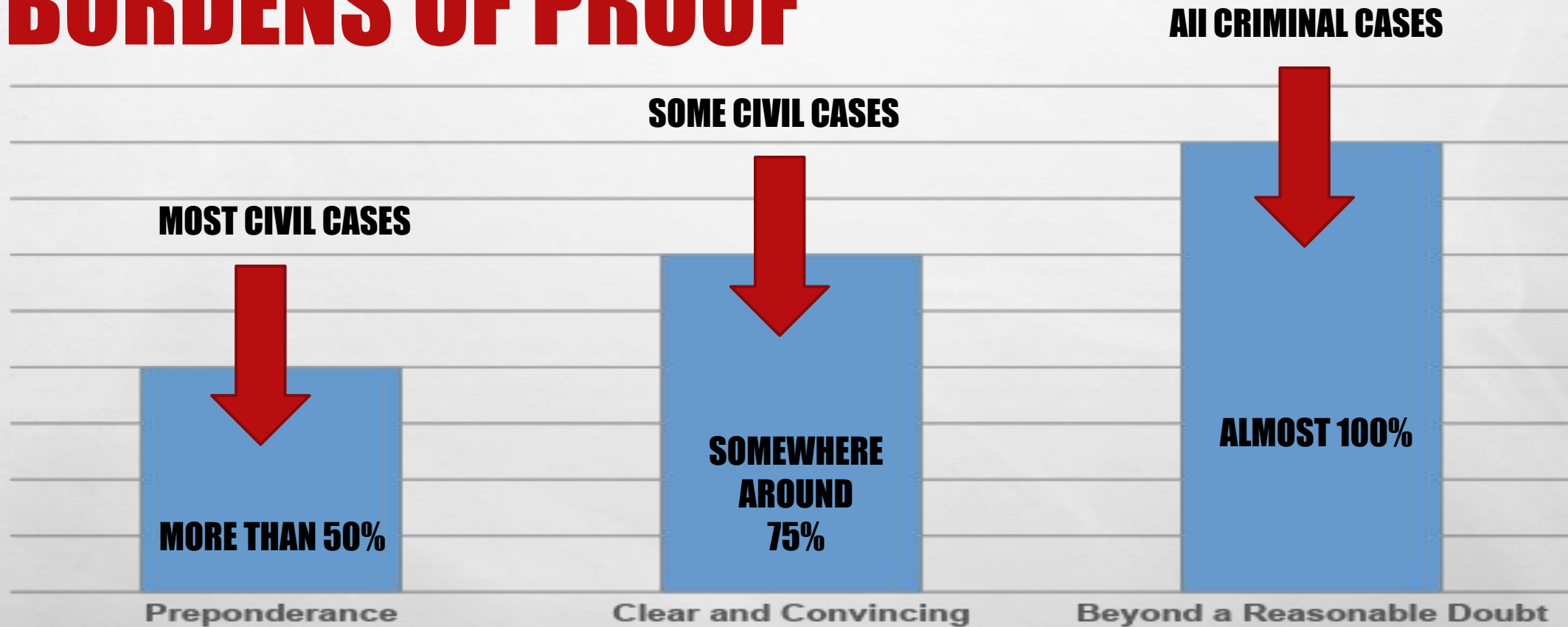
- Focus on regaining safety, security, property, dignity, and autonomy of vulnerable adult
- Individual is a party to the court case and is the plaintiff or petitioner
- Individual is in control of the litigation
- Mutual agreements can be reached

# **CIVIL LAW IS ACTUALLY AMAZING!**

- **Historically, criminal law was the primary legal response to elder abuse.**
- ***But*, many instances of elder abuse, neglect, and exploitation do not fit easily into criminal law definitions and provisions**
- **Civil law covers a broader array of situations**
- **Clients may be more open to pursuing civil remedies than criminal ones, especially if the perpetrator is a family member**
- **Obtaining relief in a civil case is easier because the burden of proof is lower (not “beyond a reasonable doubt”)**
- **And...civil law remedies focus on the person APS is designed to help...the client!**



# BURDENS OF PROOF



# SELF NEGLECT HAS CIVIL SOLUTIONS TOO

- **Criminal law is not a good fit for handling self-neglect cases**
- **Civil law + social work can team up in these situations to help individuals reach the best possible outcome and maximize their independence**
- **Legal options include: powers of attorney, eviction and foreclosure defense, increasing income through public benefits advocacy, connecting clients with home and community based services for health care, and more**
- **Example: developing relationship with legal aid lawyer to continue to help someone subject to repeated evictions can be critical for these individuals (because issues may not be resolved the first time)**



# OODLES OF OPTIONS IN CIVIL LAW

## SAFETY

- **Personal protection orders**
- **Civil restraining orders**
- **Request for exclusive use for home (typically in divorce)**
- **Eviction of parasitic/abusive occupant**
- **No trespass notice**

## PROPERTY & MONEY

- **Unauthorized use of accounts, conversion, and fraud (get the \$\$ back)**
- **Quiet title (get the house back)**
- **Eviction & foreclosure defense**
- **Representative payee appointment**
- **Accessing public benefits like food assistance and social security**
- **Conservatorship/protective orders**

# MR. JOE JONES

- **Mr. Joe Jones has been referred to APS by a social worker at the local hospital where he was recently admitted after experiencing a fall. He is confused, dehydrated and has concerning bruising on his body. The referral was made because abuse, neglect and exploitation are suspected.**
- **Mr. Jones is 78 years old, a veteran, widowed, has lived in his home for the past 50+ years.**
- **He has indicated that there are people living in his house and he is not supposed to go into certain rooms. He is only able to tell you the name of one person he lives with, Ms. Bow. He refers to the others as his “cousins” and does not know how many people total live with him. Mr. Jones says he met Ms. Bow at the grocery store a year ago and she offered to help him. His says he misses his wife.**
- **In visiting Mr. Jones’ home, you meet several people who are young, do not really want to talk to you and clearly know very little about Mr. Jones. They refer to you Ms. Bow, who “owns the house,” but is not home. You also notice that a lot of items from the house appear to have been removed.**
- **As you are leaving, the neighbor approaches you and says that she suspects that drugs are being sold out of the home. She asks where Mr. Jones is and indicates that she is very worried about him. She thinks the people in the house are using him for money.**

# IDEAS FOR MR. JONES

1

**Evict the unwanted occupants and/or obtain a civil restraining order**

2

**File suit to recover the missing belongings & stolen house**

3

**Connect Mr. Jones with home and community based services**



# OODLES OF ADDITIONAL OPTIONS IN CIVIL LAW

## HEALTH AND CAREGIVING

- **Health care power of attorney (aka patient advocate designation aka health care proxy)**
- **Eligibility for home and community based services**
- **Appeal of nursing home involuntary discharge (eviction)**
- **Appealing denials/reductions in services**

## AUTONOMY AND INDEPENDENCE

- **Divorce (and order for alimony)**
- **Friends and family (supported decision-making)**
- **Accessing public benefits (waiver programs, medicaid services, other home and community based services)**
- **Termination/modification of guardianship/conservatorship**

# MS. CLARA MONTGOMERY

- **CLARA, AGE 84, HAS LIMITED INCOME AND MOBILITY, AND NO INFORMAL SUPPORTS. HER HEALTH HAS DECLINED SINCE HER MEDICAID COVERAGE WAS TERMINATED AND, BECAUSE SHE COULD NOT AFFORD CO-PAYS, SHE STOPPED SEEKING MEDICAL CARE.**
- **HER HOUSE HAS A LEAKY ROOF AND FAULTY WIRING. SHE IS AWARE OF A CITY PROGRAM TO REPAIR HOMES FOR LOW INCOME OLDER ADULTS BUT CANNOT PROVE SHE OWNS THE HOME AFTER INHERITING IT DECADES AGO FROM HER FATHER.**
- **CLARA IS NO LONGER ABLE TO MAINTAIN THE HOUSE PROPERLY AND IT HAS BECOME DIRTY AND CLUTTERED.**
- **CLARA RELIED ON A NEIGHBOR TO PICK UP GROCERIES FOR HER BUT, WHEN THE NEIGHBOR MOVED, CLARA ATE ONLY THE LIMITED KINDS OF FOOD SHE COULD CARRY HOME FROM THE SMALL CORNER STORE.**
- **BECAUSE SHE WAS PAYING NEIGHBORS FOR CHORES INCLUDING SHOVELING SNOW TO AVOID A CITATION, CLARA HAS NOT PAID PROPERTY TAXES IN SEVERAL YEARS. SHE IS WORRIED ABOUT TAX FORECLOSURE AND ALSO HAS AN UNPAID ELECTRIC BILL.**

**1**

**Reinstate Medicaid**

**2**

**File suit for title to  
the home**

**3**

**Represent in  
foreclosure**

**4**

**Connect with home  
and community  
based services and  
utility shutoff  
assistance**

**IDEAS FOR MS. MONTGOMERY**

**POLL: WHAT TYPES OF CIVIL LAW  
HAVE BEEN MOST HELPFUL TO  
YOU IN YOUR WORK?**





**AND THERE'S  
MORE!**





# WHAT IS LEGAL AID?

- **Every state in the U.S. has legal aid offices**
- **We are law firms - but unlike private firms we provide free legal assistance**
- **Clients must qualify based on low income (with some exceptions); many offices have Older Americans Act funding or other funding that does not have income caps but prioritizes those with greatest need**
- **Staff attorneys specialize in poverty law**
- **Legal aid handles only civil cases (no criminal) - we are like the public defenders of the civil universe (but we are not appointed by judges)**
- **We receive federal, state and local funding and those funding sources set our priorities\***
- **Some law schools also have free legal aid clinics that may also serve APS clients. Call your local law schools!**

# LEGAL AID IS YOUR FRIEND?

## ASSISTING CLIENTS

- **Attorneys help clients for free (and can often pay litigation expenses too)**
- **Attorneys provide a range of assistance to clients that fall into 3 categories**
  - **Advice**
  - **Brief services**
  - **Full representation**

## COMMUNITY PARTNERSHIPS

- **“Pro se” or self-representation clinics**
- **Serving on local task forces and collaborative councils**
- **Trainings for community partners**
- **Websites that provide “guides to legal help”**
- **Mutual referrals for wraparound services**

# PRIMARY FUNDING AND ELIGIBILITY

## OLDER AMERICANS ACT (TITLE III-B)

### LSC

- **200% of the federal poverty level is the cap**
- **Must be a us citizen, permanent resident, or meet exception criteria**

- **No income cap (but must prioritize those with greatest need)**
- **Can help with things like income, long term care, health care, nutrition, housing, utilities, guardianship, abuse and neglect, protective services, age discrimination**

### VOCA

- **Serves victims of crime**
- **Police report, charge, or conviction may not be necessary**
- **There also may not be income or asset tests (but often low income clients are prioritized)**

## **ADDITIONAL FUNDING AND ELIGIBILITY**

- **YOUR LOCAL LEGAL SERVICES OFFICE OR ITS AFFILIATED PROGRAMS MAY HAVE OTHER FUNDING WITH FEWER RESTRICTIONS**
- **CHECK WITH YOUR LOCAL PROGRAM TO LEARN ABOUT SPECIAL SERVICES AND ELIGIBILITY GUIDELINES.**

## **EXAMPLES:**

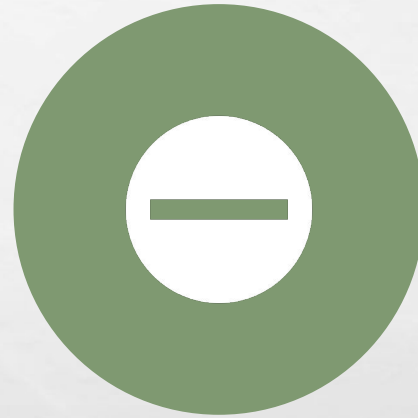
- **Foreclosure prevention with no income limit**
- **Representation for anyone 60+ with no income limit**
- **Representation for veterans facing homelessness with no income limit**
- **Representation for clients who are undocumented**
- **Representation for clients facing eviction with a higher income limit**



# **POLL: DO YOU HAVE A WORKING RELATIONSHIP WITH SOMEONE AT LEGAL AID?**



**YES**



**NO**



**FIND US &  
BEFRIEND US**



What is Legal Aid | About LSC

Home

What is Legal Aid

The Unmet Need for Legal Aid

How We Work

Find Legal Aid

Civil Legal Aid Data

Client Success Stories

Maps

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Translation Note

## Find Legal Aid

LSC is an independent nonprofit established by Congress in 1974 to provide financial support for civil legal aid to low-income Americans. The Corporation currently provides funding to 132 independent nonprofit legal aid organizations in every state, the District of Columbia, and U.S. Territories.

If you are looking for help with a civil legal problem, enter an address or city below to find an LSC-funded legal aid organization near you.

You can also visit [LawHelp.org](http://LawHelp.org) to look up information about your legal questions and find free legal forms.

Search for places or addresses



1) google "LSC"

3) type in your zip code

2) go to the "FIND LEGAL AID" page

# REFERRALS: GETTING IN THE DOOR

- **WE NEED AS MUCH INFORMATION AS POSSIBLE ABOUT THE CASE TO PROPERLY ASSESS IT**
- **WE NEED GOOD CONTACT INFORMATION FOR THE CLIENT TO FOLLOW UP WITH HIM/HER (PHONE, EMAIL, ADDRESS, ETC)**
- **WE MAY NEED INCOME AND CITIZENSHIP INFORMATION (BUT GIVE US THE BEST INFO YOU HAVE EVEN IF YOU DON'T HAVE EVERYTHING!)**
- **WE WANT TO HEAR FROM THE CLIENT DIRECTLY (OR THEIR LEGAL REPRESENTATIVE) (MORE ON THE FOLLOWING SLIDE)**





# REFERRALS: GETTING IN THE DOOR

- **Legal services programs generally require that the client himself or herself contact the program for assistance or the contact is made by someone with legal authority for the client (guardian or agent under a power of attorney) if necessary. Programs may be able to accept direct referrals from APS, however, and can accept referrals from long term care and other ombudsmen. Let's be creative to help vulnerable adults in need of legal assistance!**
- **If you are struggling to get your clients in the door, have a conversation with your local office to see what the barriers are. The three of us would be happy to talk to any of you about these challenges. It's something we're working through in our own program right now.**

# REFERRALS: CASE ACCEPTANCE

**IS THERE A LEGAL ISSUE ? (even if there isn't we might be able to make a referral)**

**IS THIS A "PRIORITY CASE"?:** Legal services offices often have limited resources and prioritize certain types of cases

**DOES THE CLIENT HAVE "CAPACITY" to do what is required in the case? If they don't have capacity, we have legal options to assist.**

**Bottom line: *when in doubt, please refer.* We will figure out if we can represent.**



# REFERRALS: WORKING THE CASE

- **CONFIDENTIALITY:** we may not be able to keep you updated because of confidentiality restrictions. Even if we can't talk, we are always happy to listen. You have the inside scoop.
- **CLIENT CONSENT:** we are client directed. We need client consent (or consent from a legal representative) to represent. We are not “best interests” organizations.
- **FAMILY FEUDS:** keeping in mind these first two points, there are often family feuds that make representation challenging. We want to hear your thoughts on the dynamics in the cases.

# **APS + LEGAL SERVICES = SUCCESS**

**Maximum  
Independence  
and Autonomy**

**Freedom from  
Abuse, Neglect,  
and Exploitation**

**Health Services**

**Financial  
Security**

# QUESTIONS

