

AMERICAN BAR ASSOCIATION
COMMISSION ON LAW AND AGING
SECTION ON REAL PROPERTY, TRUST AND ESTATE LAW
REPORT TO THE HOUSE OF DELEGATES
RESOLUTION

1 RESOLVED, That the American Bar Association urges state, territorial, tribal, and local courts
2 and community organizations to collaborate in establishing “court-focused elder abuse
3 initiatives” that serve victims or potential victims of elder abuse through either (1) a court or a
4 court-based program or (2) a program conducted in partnership with a court.

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6 FURTHER RESOLVED, That the American Bar Association urges such court-focused elder
7 abuse initiatives to, as appropriate for each initiative and each jurisdiction, implement the
8 following principles:

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10 (1) Foster improved handling of elder abuse cases by the court and enhancements in the criminal
11 justice response to elder abuse cases;
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13 (2) Have a positive impact on victims and a positive or neutral impact on the agencies involved;
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15 (3) Strengthen intra-court coordination of cases involving elder abuse;
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17 (4) Be vigilant in assessing and addressing conflicts of interest and other ethical issues;
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19 (5) Foster judicial leadership in the community’s response to elder abuse;
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21 (6) Create professional and public awareness of the initiative’s services and of elder abuse;
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23 (7) Strive to institutionalize the initiative within the court or community organization; and
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25 (8) Develop deliberate and proactive plans for collecting data for purposes of program
26 administration and evaluation, with the goal of analyzing their impact and outcomes on
27 courts, elder abuse victims, other organizations participating in the initiative, and other
28 community organizations or groups.

REPORT

I. REASONS FOR THIS RESOLUTION

A. STATEMENT OF THE ISSUE

This resolution is intended to expand ABA support for efforts to enhance access to justice for victims of elder abuse. The resolution is needed and timely because the older adult population is growing¹ and the incidence of elder abuse is expected to grow with it. The recent National Elder Mistreatment Study found that 11 percent of community-dwelling elders self-reported experiencing at least one form of abuse in the previous year, and yet this statistic understates the extent of the problem because highly vulnerable persons—who live in long-term care facilities, who lack telephones, or who have cognitive impairments—were not surveyed.² Public and professional awareness efforts that may uncover more incidents are developing rapidly.³ Simultaneously, state legislative action and growing emphasis on legal remedies for elder abuse are expanding the number of cases involving elder abuse in the state courts.⁴

“Elder abuse” is a generic term for a complex problem that may take many forms. Statutory definitions of elder abuse may include physical abuse, psychological or emotional abuse, sexual abuse, financial exploitation, neglect, abandonment, and/or self-neglect. As a result, judges may see elder abuse in a variety of contexts: criminal cases such as assault, battery, forgery, fraud, murder, rape, theft; civil fraud or conversion matters to regain misappropriated property; personal injury actions; guardianship or conservatorship; mental health commitment; special protective proceedings initiated through adult protective services (APS) agencies; cases involving health care decisions for an incapacitated patient; and criminal or civil cases regarding institutional care in nursing homes or other long-term care facilities.⁵ Increasingly, judges are

¹ Population Division, U.S. Census Bureau. *Table 1: Annual Estimates of the Population by Sex and Five-Year Age Groups for the United States: April 1, 2000 to July 1, 2005* (2006), <http://www.census.gov/popest/national/asrh/NC-EST2005/NC-EST2005-01.xls>.

² Ron Acierno, Melba Hernandez-Tejada, Wendy Muzzy, and Kenneth Steve, *Final Report: The National Elder Mistreatment Study*, U.S. Department of Justice, National Institute of Justice, NCJ 226456 (2009).

³ Pamela B. Teaster, Lisa Nerenberg, and Kim L. Stansbury, *A National Look at Elder Abuse Multidisciplinary Teams*, JOURNAL OF ELDER ABUSE AND NEGLECT 15(3/4) (2003), at 91.

⁴ Lori Stiegel, *The Changing Role of the Courts in Elder-Abuse Cases*, GENERATIONS Summer 2000, at 59; Candace J. Heisler and Lori A. Stiegel, *Enhancing the Justice System’s Response to Elder Abuse: Discussions and Recommendations of the “Improving Prosecution” Working Group of the National Policy Summit on Elder Abuse*, JOURNAL OF ELDER ABUSE AND NEGLECT 14(4) (2004), at 31.

⁵ LORI A. STIEGEL, RECOMMENDED GUIDELINES FOR STATE COURTS HANDLING CASES INVOLVING ELDER ABUSE, American Bar Association (1995).

hearing petitions for civil orders of protection from victims of elder abuse as states expand their statutory criteria to include more situations of elder abuse (e.g., physical violence committed by a family member other than a spouse or intimate partner) and as victims learn that such protection is available.

These factors are creating a “perfect storm” of conditions to motivate state courts to improve the response of the criminal justice system and the overall administration of justice to victims and witnesses in elder abuse cases. With funding from the U.S. Department of Justice National Institute of Justice, the Commission on Law and Aging recently studied what were then the only five *court-focused elder abuse initiatives* in the country. As the initiatives varied in their purpose and structure, Commission staff coined that general term and defined it as: “A court-focused elder abuse initiative serves victims or potential victims of elder abuse through either (1) a court or a court-based program or (2) a program conducted in partnership with a court.”

Descriptions of the five initiatives, organized alphabetically by the county of their location, follow.

- The “Elder Protection Court” (EPC) in Alameda County, California, is a special civil and criminal docket for elder abuse cases, including elder abuse protection order cases, in the Superior Court of Alameda County. Akin to the family violence coordinating councils that many courts lead, the EPC convenes and leads an “Elder Access Committee,” drawing together representatives of various agencies and disciplines concerned about elder abuse. The committee meets quarterly over lunchtime at the courthouse and provides an opportunity for discussion about challenges, resources, training opportunities, collaboration, and much more.
- The “Elder Justice Center” (EJC) in Hillsborough County, Florida, is a program of the 13th Judicial Circuit Court that provides residents aged 60 and older with assistance—but not legal advice—in completing court documents such as applications for protective orders, referrals to legal and social services programs in the community, and case management services in guardianship matters. The EJC staff monitors guardianship cases. They also act as advocates for older crime victims and, if the victim desires, can help older criminal defendants by providing referrals to diversionary programs such as mental health or substance abuse treatment programs.
- The “In-Home Emergency Protective Order Initiative” (IEPOI) in Jefferson County, Kentucky, helps medically fragile/homebound victims of abuse aged 60 and older to obtain emergency protective orders and longer-term domestic violence orders by telephone without having to leave their home. The initiative is a partnership of several agencies: ElderServe, Inc., a nonprofit provider of aging services that administers the initiative; the Circuit Court Clerk’s office; the Family Court; the county’s APS office, and the Sheriff’s office.
- The “Elder Temporary Order of Protection” Initiative (ETOP) in Kings County, New York, is sponsored by the New York City Family Justice Center in Brooklyn. The initiative assists eligible victims of domestic violence who are 60 or older and unable to travel and appear in court personally or for whom it is a great hardship due to infirmity or disability in obtaining temporary orders of protection. Social workers

and lawyers from the New York City Department for the Aging and the Jewish Association for Services for the Aged Legal/Social Work Elder Abuse Program are available to provide emergency counseling, direct services, and other information regarding services for the elderly. The Family Court and its Clerk's Office also play significant roles in the initiative.

- The “Elder Justice Center” (EJC) in Palm Beach County, Florida, is a program of the Board of County Commissioners of Palm Beach County, Florida. It is housed in the main courthouse of the 15th Judicial Circuit Court. The EJC helps residents aged 60 and older who are arrested for certain crimes, are involved in guardianship proceedings, or who need other assistance with court-related matters. The program provides assistance—but not legal advice—in completing court documents such as applications for protective orders or other forms, guardianship investigations or monitoring upon request of the probate judge, referrals to legal and social services programs in the community, and accompaniment to civil and criminal hearings. In certain criminal cases, the EJC seeks to identify older criminal defendants who may have dementia or other cognitive problems and provide information to the court so that it can make informed decisions about diverting those defendants from jail into mental health or substance abuse treatment programs.

B. RELEVANCE TO EXISTING ABA POLICY

In 1993, the State Justice Institute funded the American Bar Association Commission on Legal Problems of the Elderly—now known as the Commission on Law and Aging (COLA)—to conduct a groundbreaking study and develop recommended guidelines to enhance the ability of the state courts to handle elder abuse cases. The project tapped the expertise of almost three hundred professionals, including judges; court administrators; private and publicly-funded lawyers; prosecutors and attorneys general; Medicaid Fraud Control Unit staff; state legal services developers; APS, aging and social services administrators and providers; state and local long-term care ombudsmen; advocates; law enforcement officers; health care providers; public guardians; victim services providers; researchers and academicians; and others. Study participants identified practices and barriers that inhibited entry of cases involving elder abuse into the state courts. These fell into two categories.

- (1) The abused person's attitudes about the courts and about the pursuit of legal remedies. Attitudinal barriers identified included:
 - Older abused persons are commonly reluctant to press charges against abusive family members or caregivers because “they do not want to get that person in trouble.”
 - Often, the abused person is dependent on the abuser for care or companionship, and, therefore, believes that he or she has “no choice” but to continue in the abusive relationship.
 - Older persons also fear that involving APS or law enforcement in their problems will lead to their removal from their home and placement in a nursing home. They also fear that APS or court intervention will not prevent further abuse or retaliation.

- Older abused persons are sometimes so afraid of testifying in court or so ashamed to have their abusive situation aired in public that they are willing to forego pursuit of their legal rights.
- Older persons' lack of knowledge about their rights and about the judicial system also inhibits their pursuit of appropriate legal remedies.
- Older abused persons may have no means of traveling to the courthouse for hearings or may have no one to provide care for their ill spouse, partner, or care-dependent adult child while they are meeting with lawyers or testifying at trial.
- Older abused persons often are ignorant of the availability of APS and other services that may be able to help them correct an abusive situation. Additionally, even if they are aware of these services they may not think of themselves as abused.

(2) Systemic practices in or related to the courts. These included:

- The lack of knowledge about and sensitivity to elder abuse by judges was seen as inhibiting prosecutors, civil lawyers, and abused persons from bringing cases into the courts.
- The failure of court staff to explain the judicial process to older abused persons, particularly to those who have a mental or cognitive disability or who may be intimidated or confused, was considered to be a barrier to the pursuit of legal remedies by abused persons.
- The courts' failure to recognize that older persons who are homebound or bedbound may be incapable of traveling to the courthouse even though they are capable of testifying was also considered to be a barrier to elder abuse cases.
- Court delays—typical or otherwise—were thought to be particularly onerous to older abused persons who are nearing the end of their life span, and who may be losing their capacity to remember the abuse and testify about it.
- Lack of knowledge about elder abuse among prosecutors, law enforcement officers, and civil lawyers was also viewed as a barrier by the participants.⁶

To address these attitudinal and systemic barriers the Commission promulgated 29 recommended guidelines for state courts. These guidelines were adopted as policy by the ABA House of Delegates in August 1996. The guidelines fell into three major categories, each of which had several subparts. Guidelines of particular relevance to the assessment of the five initiatives are provided below. These guidelines are organized under the three categories used in the Commission's project report. The guideline number is provided, and the wording is rephrased slightly for grammatical reasons.

(1) Ways in which the state courts can improve their handling of cases involving elder abuse:

- Have judges and other court staff obtain training on an array of topics related to elder abuse (ABA 1 and 2).

⁶ *Id.*

- Encourage and support the training of other relevant professionals, including prosecutors, law enforcement officers, civil lawyers, APS workers, and others about dynamics and issues of elder abuse and about the role of the courts in addressing that problem (ABA 3).
- Provide accommodations for older persons with physical or mental impairments, including holding hearings in elder abuse cases in the setting that best accommodates the older person's needs (ABA 4).
- Understand that capacity to participate in judicial proceedings may fluctuate depending on time of day, medications, or other issues, and being flexible in scheduling hearings to accommodate those challenges (ABA 5).
- Expedite elder abuse cases on the court's calendar (ABA 6).
- Use expert witnesses, evaluators, guardians *ad litem*, court investigators, court visitors, or interdisciplinary teams who are trained and knowledgeable about the problems of older persons to assess the older person's capacity (ABA 7).
- Understand gradations of diminished capacity in order to more effectively manage and adjudicate cases involving elder abuse (ABA 8).
- Consider that incapacity could increase the likelihood of abuse and, if necessary, ordering that an unbiased assessment of the older person's capacity be conducted by a qualified evaluator (ABA 9).
- Ensure that plea agreements meet the needs of the older abused person, including protection from further abuse, by being willing to be creative in negotiations and sentencing after exploration of the alternatives available to the older abused person (ABA 13).
- Consider the ramifications of courts taking steps when necessary to reduce the level of fear experienced by an older person who is testifying against his or her abuser such as allowing the hearing to be held in a less confrontational settings, allowing testimony and cross-examination of the older abused person by videotape or closed-circuit television, and closing the courtroom to the public (ABA 15).
- Develop ways of ensuring that judges become aware of cases involving older abused persons that might be underway simultaneously in different divisions of the court or that might previously have been heard and have some legally relevant bearing on a current case (ABA 17).
- Consider the concept of consolidating the courts handling cases involving elder abuse (ABA 18).
- Avoid or be cautious about the use of alternative dispute resolution in cases involving elder abuse (ABA 19).

(2) Ways of ensuring that cases involving elder abuse enter the court system:

- Train newly appointed guardians about their role and responsibilities as guardians, and about preventing, recognizing, and reporting elder abuse (ABA 20).
- Encourage and support the availability and involvement of victim services providers who are knowledgeable about elder abuse to assist older abused persons throughout the judicial process in both non-criminal and criminal court proceedings (ABA 21 and 22).

- Ensure that court staff are able and available to help explain and de-mystify the court process for older abused persons who may be intimidated, confused, or experiencing a mental or cognitive disability, particularly if there are no victim services providers available to provide such help (ABA 23).

(3) Coordination of the state judicial system with other community resources:

- Encourage and support the development and continuing operation of a state or local task force or coordinating council on elder abuse issues (ABA 24).
- Support existing task forces or coordinating councils on elder abuse (ABA 24).
- Encourage evolving or existing task forces or coordinating councils on family violence or domestic violence to incorporate elder abuse advocates into their membership and elder abuse issues into their agenda (ABA 24).
- Include APS and aging services providers on court advisory council or developing other mechanisms for establishing linkages with those organizations and others that address elder abuse (ABA 25).
- Encourage and support the development and continued operation of elder abuse multidisciplinary teams (ABA 26).
- Encourage and support the development of protocols or memoranda of understanding between various entities involved in elder abuse cases (ABA 27).
- Ensure that judges and court personnel are familiar with APS, aging, and other social services providers in their community and have brochures or other materials from those agencies so that they can direct an older abused person to appropriate service providers (ABA 28).
- Encourage and support the development of a “court social worker” or “court ombudsman” program to help older, disabled, incapacitated, or other individuals by giving them information about social services and other community organizations, linking them to social services and other community organizations, assisting them with the completion of pro se documents, and helping them understand the court process (ABA 29).⁷

Just as these recommended guidelines built upon the National Probate Court Standards, subsequent developments built, in part, on the ABA COLA work. In March 2006 the Center on Aging at Florida International University (FIU) produced recommendations for adapting the U.S. Department of Justice Bureau of Justice Assistance’s *Trial Court Performance Standards with Commentary* to an aging society in three contexts: guardianship, self-service, and criminal cases involving elder abuse and domestic violence. The FIU recommendations of particular relevance to the assessment of the five initiatives, as well as the trial court performance standards (TCPS) from which they were derived, are provided unchanged below. These standards and recommendations are organized under the five categories used in both the TCPS and the FIU recommendations.

⁷ STIEGEL, *supra* note 5.

A. Access to justice:

- Court facilities are safe, accessible, and convenient to use (TCPS 1.2).
 - Escort assistance is readily available to help older court users locate the appropriate destination quickly and efficiently (FIU 1.2.A).
- All who appear before the court are given the opportunity to participate effectively without undue hardship or inconvenience (TCPS 1.3).
 - If it has not happened in the previous 30 days, the court orders a standardized full medical and mental health assessment of the older adult criminal defendant by the date of First Appearance. Where First Appearance must occur within 24 hours of incarceration, an alternative is to implement a standardized “mini assessment” that can be administered in a short time period and used as an indication of the need for a more thorough assessment. Measurement of dementia, other cognitive impairment, and mental health is included in the assessment of elder defendants’ competence to stand trial. Thoroughness of assessments and instruments used for data collection are consistent across all older defendant in the jurisdiction (FIU 1.3.F).
- Judges and other trial court personnel are courteous and responsive to the public and accord respect to all with whom they come into contact (TCPS 1.4).
 - All court staff, including judges and court-appointed counsel, are familiar with physical and psychosocial issues of aging based on a standardized curricula (for the jurisdiction) that is updated as needed to reflect changes in relevant statutes and case law (FIU 1.4.A).

B. Expedition and timeliness:

- The trial court establishes and complies with recognized guidelines for timely case processing while, at the same time, keeping current with its incoming caseload (TCPS 2.1).
 - The court maintains a policy of bringing multiple cases with the same older litigant into a single court, e.g., family court, to the greatest degree possible, consistent with such litigant’s safety, privacy, and well-being. If a jurisdiction cannot accomplish this, the court designates a staff member to coordinate oversight of all cases involving one elder so that all judges assigned to those cases are fully advised and aware of all pending, related cases (FIU 2.1.A).

C. Equality, fairness, and integrity:

- Trial court procedures faithfully adhere to relevant laws, procedural rules, and established policies (TCPS 3.1).
 - The court supports an approach to diminished capacity determination that is based on professional standards regarding medical, psychosocial, and functional ability statuses, with assessment performed within the (alleged incapacitated person’s) familiar environment. Specifically, the court works with appropriate professional communities to develop criteria for the process of determining diminished capacity (FIU 3.1.C).

- In contested guardianship cases, whenever appropriate, the court makes mediation available as an alternative method of resolution. Mediation may not be appropriate in situations involving abuse or domestic violence issues, particularly where a criminal case is pending (FIU 3.1.F).
- The court recognizes and accommodates the fact that older adults may need more time during testimony, more frequent breaks during hearings or trials, more flexible scheduling of court events, and shorter court days, while also recognizing the need to minimize the number of continuances by scheduling ongoing cases across consecutive days when needed (FIU 3.1.H).
- The trial court takes appropriate responsibility for the enforcement of its orders (TCPS 3.5).
 - The court recognizes the need to assure that timely submission and substance of guardianship reports are monitored by the appropriate court staff in 100 percent of cases and that the court is notified about non-compliance. When notified of non-compliance, the court takes appropriate action as specified by statute (FIU 3.5.A—Guardianship Specific).
 - The court initiates investigation and/or civil/criminal action when a report contains evidence of mistreatment of a ward’s person or property (FIU 3.5.C).
 - At first appointment, all guardians (including family, private, and public) receive jurisdiction-specific information about their roles and responsibilities as guardians and about preventing, recognizing, and reporting elder abuse. Thereafter, as needed, all guardians receive additional information regarding recent advances in knowledge about aging and older persons, as well as changes in statutes and case law relevant to their guardianship responsibilities (FIU 3.5.D).
- Records of all relevant court decisions and actions are accurate and properly preserved (TCPS 3.6).
 - The court assures funding and maintenance of an electronic information system with the capacity (hardware, software, staff) to track motions, to compile reports, to review open cases, and to provide demographic profiles of older court users (FIU 3.6B).

D. Independence and accountability:

- A trial court maintains its institutional integrity and observes the principle of comity in its governmental relations (TCPS 4.1).
 - The court establishes and maintains appropriate regular communication with APS, the aging services network, and the health and mental health networks in its jurisdiction with regard to older adult cases (FIU 4.1.A).
- The trial court informs the community of its programs (TCPS 4.4).
 - The court partners with appropriate community agencies to offer an active public education program targeting potential older court users. That program covers topics specifically relevant and important to elder citizens who may need court services. Elder-specific community training curricula regarding the court and legal system are updated as needed to reflect the most current relevant statutes, case law, and court policy (FIU 4.4.A).

- The court’s active public education program regarding older adults targets community agencies that interact frequently with the court. Elder-specific community training curricula regarding the court and legal system are updated as needed to reflect the most current knowledge regarding older persons as well as statutes, case law, and court policy (FIU 4.4.B).

E. Public trust and confidence:

- The public has trust and confidence that the basic trial court functions are conducted expeditiously and fairly and that its decisions have integrity (TCPS 5.2).
 - In order to monitor its own compliance with self-imposed standards, each court maintains court-defined key demographic and case outcome data on all older defendants, litigants, wards, and self-service center users for use in annual summary reports regarding elder participants (FIU 5.2.A).⁸

The ABA guidelines and the FIU standards were relevant to the court-focused elder abuse initiatives for two reasons. First, the five initiatives were implemented to address some of the barriers identified by the Commission’s project in 1995. Second, the guidelines and standards contributed to the theoretical foundation of the study, as discussed below.

II. RESULTS OF THE STUDY

A. The Initiatives Foster Improved Handling of Elder Abuse Cases and Enhancements in the Criminal Justice Response to Elder Abuse

Overall, the five initiatives accomplished 87.5% of the relevant ABA recommended guidelines (21/24) and 100% of the FIU standards (15/15) provided and discussed earlier.

Data collected demonstrated that, overall, the initiatives have fostered:

- greater access to justice and better court outcomes for elder abuse victims because of such factors as court accommodations, increased knowledge about elder abuse among judges and other professionals, and the provision of emotional support in facing the court process;
- an array of efforts—with something at each initiative and including monitoring of guardianship cases for abuse, helping older persons (homebound or not) to obtain orders of protection, referring or linking victims to other services—that help enhance victim safety and prevent further abuse;

⁸ Bureau of Justice Assistance, *Trial Court Performance Standards with Commentary*, NCJ 161570, (1997), <http://www.ncjrs.org/pdffiles1/161570.pdf>; Max B. Rothman, Burton D. Dunlop, and Laura R. Seff, *Adapting Trial Court Performance Standards to an Aging Society: Guardianship, Self-Service, and Criminal Cases Involving Elder Mistreatment and Domestic Violence*, (2006), <http://www.fiu.edu/~coa/downloads/elder%20justice/SJI4-03-06.pdf>.

- improved linkages between the courts, prosecutors, law enforcement, and other service providers in the community that helps those entities to better handle their elder abuse cases and that help ensure that victims are referred to other services that may help prevent future court cases;
- an array of efforts—with something at each initiative and including monitoring of guardianship cases for abuse and helping older persons (homebound or not) to obtain orders of protection—that may facilitate prosecution of cases involving elder abuse;
- more efficient handling of and fewer delays in cases involving elder abuse victims; and
- enhanced professional and public awareness of the problem of elder abuse.

The three victims interviewed for the study spoke glowingly about the help they had received and the initiative staff who had provided it. They reported that the intervention had made them feel safer, had provided beneficial emotional support, and had linked them to other useful services.

B. The Initiatives Have a Positive Impact on Victims and a Positive or Neutral Impact on the Agencies Involved

In response to questions about the impact of the initiative on their agency, professional stakeholders reached near unanimity in expressing either positive impact on victims and on their agencies, or positive impact on victims and neutral impact on their agencies. For example, most if not all of the judges (including the chief judges) said that their initiative made “the court look good” to the community, which always benefits the court, even if it increased their caseload. Other stakeholders, such as the prosecutors and public defenders, opined that although their initiative had led to an increase in their workload, the better outcomes for victims and smoother processes for everyone involved caused them to think that the benefits far outweighed the costs.

Numerous professional stakeholders who were not directly involved in the initiative’s services said that their workload either had not been affected or had been affected very little (sometimes not as much as they had hoped for), and perceived that the initiatives had benefited older victims. The few expressions of discontent came from some stakeholders in Palm Beach County who expressed strong opinions that they would prefer to see that EJC devote its resources more toward helping victims of elder abuse than to helping older criminal defendants (although they recognized that the EJC was doing some work that benefited victims).

C. Each Initiative Could Strengthen Intra-Court Coordination of Cases Involving Elder Abuse

Each of the five jurisdictions we studied could enhance their intra-court coordination for cases involving elder abuse. While this finding is most relevant to the EPC in Alameda because it is a court division, the courts involved in the other initiatives could also benefit from, at the least, informal communication and coordination with other courts, particularly probate and criminal courts.

D. The Initiatives Need to Be Vigilant About Addressing Conflicts of Interest and Other Ethical Issues

Each of the initiatives faced conflicts of interest or other ethical issues when they were initiated or later in their development. None of these concerns were perceived as insurmountable or as problems that should preclude replication of these initiatives, but they are important issues that are best considered in the early stages of an initiative's development and then continually reassessed later in time.

E. Four of the Communities Studied Could Benefit from Judicial Leadership in the Community's Response to Elder Abuse

In Hillsborough, Jefferson, Kings, and Palm Beach counties, the court played an important role in the initiative but did not serve in the same leadership role in the community's overall response to elder abuse as the EPC did in Alameda County. The juxtaposition in stakeholder support between the EPC and the other initiatives seems to demonstrate that judicial leadership or at least a strong relationship between the court and the elder abuse stakeholders is essential to an initiative's success.

F. Each Initiative Could Strengthen Its Efforts to Create Professional and Public Awareness of Initiative Services and of Elder Abuse

Each of the initiatives had made worthy efforts to make professionals and the general public in its community aware of the initiative and more informed about the problem of elder abuse. Several had received recognition and media coverage that boosted awareness. Nonetheless, stakeholders at each initiative reported that outreach efforts had been diminished due to budget cuts. Even if that were not the situation, the need for professional and public awareness efforts is constant and never-ending. The initiatives should assess whether there are low-cost, less time-intensive ways of promoting professional and public awareness.

G. Institutionalizing the Initiative is a Critical Consideration Upon Its Initiation and Thereafter

Key stakeholders in each community shared valuable suggestions for institutionalizing an initiative to withstand the inevitable events that can put an initiative at risk, such as changes in leadership, staffing, or funding. Their ideas, set forth previously, may seem obvious with the perspective of hindsight or of an outsider, but too often the people responsible for creating initiatives don't think strategically about the long-term survival or expansion of the project. Communities interested in replicating these initiatives can benefit from the wisdom expressed by the key stakeholders of the initiatives we studied.

H. The Initiatives Should Strengthen Evaluation and Data Collection Efforts

The initiatives were doing almost nothing to self-assess their impact and outcomes. Only two of the initiatives had developed a client satisfaction survey, and they received very few responses to it. None of the initiatives were making any formal attempt to obtain feedback from

their professional stakeholders. The two elder justice centers and the EPC had previously undergone some review of or consultation on processes by researchers who worked in their state, but none had experienced a formal assessment. For most of the initiatives, however, stakeholders had informal opportunities to raise problems as they collaborated or through networking opportunities including meetings of the EPC-sponsored Elder Access Committee in Alameda County and the Elder Abuse Coordinating Council in Jefferson County.

In response to questions about whether evaluation activities were or had been conducted, the researchers often were told “you are doing that.” In Alameda County and Hillsborough County, where the initiatives were administered by the courts, several stakeholders expressed opinions along the lines of “that’s not the business of the court.” Some stakeholders in those counties also raised concerns that the results of evaluations conducted by the court might be biased, and that there might be resistance from judges to what might (mistakenly) be perceived as judicial evaluation polls. Additionally, various stakeholders in all five initiatives expressed opinions that any evaluation that just looked at numbers would not be useful, reflecting their belief that simply measuring the number of cases handled would not reflect the initiative’s outcomes or impact. Finally, several stakeholders commented that they were struggling to fund initiative services and could not devote funds for evaluation.

Court case files in all five study sites contained very little information about the victims and perpetrators beyond the most basic demographic-type data. In other words, there was very little information about the circumstances and outcomes of the case that would be needed for an evaluation of an initiative. Indeed, the researchers usually found that the most important information—if it existed at all—was contained either in sealed records in the court file (which were only reviewed if a court order authorized that) or in pre-trial/probation reports. Compounding the problem, the three initiatives that maintained their own case files (Jefferson County, Kings County, and Palm Beach County, which are not administered by the courts) did not have relevant information in their files either.

Moreover, other than in Alameda County where it was obvious that an EPC case involved elder abuse, it was almost always impossible to tell from a court’s records that a case involved elder abuse. In other words, in four of the study sites it was possible to understand the context surrounding each case only by reading the contents of the file. This situation is not peculiar to these initiatives or these courts. It reflects the limitations of a court’s interest in data collection for purposes of evaluation (see above: “that’s not the business of the court”). Additionally, however, it reflects the fact that most court cases involving elder abuse are handled under laws that are not specifically about elder abuse (e.g., murder, theft, sexual assault, guardianship, orders of protection) and thus are not “counted” as elder abuse cases. These limitations have significant policy and practice implications for the field of elder abuse.

III. IMPLICATIONS FOR POLICY AND PRACTICE

There were issues and challenges at each initiative that they should address and that communities interested in replicating or adapting these ideas should consider, but the researchers were convinced that each initiative does far more to effectuate the goals of those guidelines and standards than do courts and communities without court-focused elder abuse initiatives.

The initiatives, to varying degrees, do improve courts' handling of cases involving elder abuse. They do, directly or indirectly, foster improvements in the criminal justice response to elder abuse. Each of them enhances access to justice for elder abuse victims and helps to protect their safety and prevent additional harm. Given the extent of elder abuse now, its anticipated growth, and the devastating effects on victims, these are clearly worthy goals. Judges, court administrators, service providers, policymakers, and funders in other communities should give serious consideration to supporting implementation of similar efforts, even in these times of limited resources. The five initiatives already demonstrate that these endeavors can be accomplished successfully with limited financial support, although it is obvious that they could accomplish much more if they had adequate resources.

The dearth of evaluation and the significant weaknesses in data collection set forth in the preceding section pose real challenges to efforts to continue the existing initiatives and to replicate them in other communities. Policymakers and funders increasingly demand evidence that programs work and that money will be well invested. Especially in difficult economic climates, programs that are unable to provide such evidence or to demonstrate that they will be able to provide data for an evaluation of outcomes and impact may face great risk of funding cuts or elimination.

When implementing a new program, the focus is typically on structure and process. If program innovations are funded at all, the creation of a program and its development is usually the thrust of the initiative and the extent of the funding. Assessment beyond counting (e.g., clients served, pathways of service, dollars expended) is not conducted, and the groundwork for collecting information that goes beyond outputs and that may be needed in the future may never occur. Without forethought—preferably on the front end of a project—it may prove difficult to conduct a meaningful evaluation later. It is imperative that programs consider that such information, though not directly in the purview of the courts or the court-focused initiatives, is critical to their sustainability and long-term success. Also, arguments for replication are difficult to make without the underlying evaluative data (collected over time) to support them.

This lack of an evaluation gestalt indicates that the existing initiatives and the courts with which they partner, as well as communities that replicate any of these initiatives, need to change their mindset about the need for data collection that will enable program evaluation. Technical assistance, training, and other support could help existing and developing initiatives understand the need for data and evaluation and create plans to facilitate those things.

Respectfully submitted,

Jeffrey J. Snell, Chair
Commission on Law and Aging
August 2012

EXECUTIVE SUMMARY

1. Summary of the Resolution.

This recommendation urges state, territorial, tribal, and local courts and community organizations to collaborate in establishing court-focused elder abuse initiatives that, as appropriate for each initiative and each jurisdiction, implement eight principles that mirror the findings of a study conducted by the Commission on Law and Aging with funding from the U.S. Department of Justice. Court-focused elder abuse initiatives serve victims or potential victims of elder abuse through either (1) a court or a court-based program or (2) a program conducted in partnership with a court.

2. Summary of the Issue that the Resolution Addresses.

The older adult population is growing and the incidence of elder abuse is rising. State legislative action and growing emphasis on legal remedies are expanding the number of elder abuse cases in the state courts. The Commission on Law and Aging recently studied what were then the only five court-focused elder abuse initiatives in the country and concluded that these initiatives are beneficial and should be replicated.

3. Please Explain How the Proposed Policy Position will Address the Issue

This policy supports the development of court-focused elder abuse initiatives that improve the justice system's response to victims of elder abuse. These initiatives have a positive impact on victims and either a positive or neutral impact on the courts and other agencies involved in them.

4. Summary of Minority Views

No minority views have been identified.

GENERAL INFORMATION FORM

Submitting Entity: **Commission on Law and Aging**

Submitted By: **Jeffrey J. Snell, Chair**

1. Summary of Recommendation(s).

This resolution expands ABA support for efforts to enhance access to justice for victims of elder abuse. The resolution is needed and timely for two reasons. First, the older adult population is growing and the incidence of elder abuse is rising. The recent National Elder Mistreatment Study found that 11 percent of community-dwelling elders self-reported experiencing at least one form of abuse in the previous year. This number was surprisingly high, but it actually understates prevalence because highly vulnerable persons—those who live in long-term care facilities, lack telephones, or have cognitive impairments—were not surveyed. Second, state legislative action and growing emphasis on legal remedies are expanding the number of elder abuse cases in the state courts.

With funding from the U.S. Department of Justice National Institute of Justice, the Commission on Law and Aging recently studied what were then the only five *court-focused elder abuse initiatives* in the country. These initiatives serve victims or potential victims of elder abuse through either (1) a court or a court-based program or (2) a program conducted in partnership with a court. The initiatives studied included the “Elder Protection Court” in Alameda County, California; the “Elder Justice Center” in Hillsborough County, Florida; the “In-Home Emergency Protective Order Initiative” in Jefferson County, Kentucky; the “Elder Temporary Order of Protection” Initiative in Kings County, New York; and the “Elder Justice Center” in Palm Beach County, Florida.

Using the guidelines for state courts handling cases involving elder abuse developed by the Commission in 1995 and adopted as ABA policy in 1996, as well as the Department of Justice’s *Trial Court Performance Standards with Commentary* and recommended adaptations to those standards for elder abuse cases developed by researchers at Florida International University, the Commission assessed the initiatives and determined that:

- (1) The initiatives foster improved handling of elder abuse cases and enhancements in the criminal justice response to elder abuse;
- (2) The initiatives have a positive impact on victims and a positive or neutral impact on the agencies involved;
- (3) Each initiative could strengthen intra-court coordination of cases involving elder abuse;
- (4) The initiatives need to be vigilant about addressing conflicts of interest and other ethical issues;
- (5) Four of the communities studied could benefit from judicial leadership in the community’s response to elder abuse;
- (6) Each initiative could strengthen its efforts to create professional and public awareness of initiative services and of elder abuse;

- (7) Institutionalizing the initiative is a critical consideration upon its initiation and thereafter; and
- (8) The initiatives should strengthen evaluation and data collection efforts.

This recommendation urges state, territorial, tribal, and local courts and community organizations to collaborate in establishing court-focused elder abuse initiatives that, as appropriate for each initiative and each jurisdiction, implement eight principles that mirror the study's findings.

2. Approval by Submitting Entity.

The Commission on Law and Aging approved this recommendation on April 20, 2012.

3. Has this or a similar recommendation been submitted to the House or Board previously?

No.

4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?

This recommendation is consistent with but does not duplicate or change existing policy. The Association has adopted three policies on elder abuse: (a) supporting implementation of the "Recommended Guidelines for State Courts Handling Cases Involving Elder Abuse" (August 1996); (b) supporting efforts to improve the response of the federal, state, territorial and local governments and of the criminal and civil justice systems to elder abuse, neglect and exploitation and urging implementation of recommendations adopted by the National Policy Summit on Elder Abuse in December 2001 (August 2002); and (c) calling for federal, state, local, tribal, and territorial governments to vigorously prosecute cases of elder abuse, neglect, and financial exploitation and to provide specialized victim services to the elder population (February 2008). Additionally, the Association has policy supporting efforts to make the judicial system more responsive to the court-related needs of older persons and persons with disabilities in guardianship and other types of proceedings (August 1987, August 1991).

The Association also has adopted an array of policies on problem-solving courts, but those policies do not specifically address elder abuse. Moreover, the proposed recommendation is not focused solely on problem-solving courts; indeed, only one of the initiatives assessed by the Commission was a problem-solving court.

5. What urgency exists which requires action at this meeting of the House?

Efforts to disseminate the findings of the Commission's study, enhance knowledge about the existing initiatives, and promote development of new initiatives are underway. By establishing this policy at the 2012 Annual Meeting, the Association can play a key role in urging their implementation at the state, territorial, tribal, and local levels.

6. Status of Legislation. (If applicable.)

Not applicable

7. Cost to the Association. (Both direct and indirect costs.)

None

8. Disclosure of Interest. (If applicable.)

None

9. Referrals.

Simultaneously with this submission, referral is being made to:

Standing Committee on the Delivery of Legal Services
Standing Committee on Government Affairs
Standing Committee on Legal Aid and Indigent Defendants
Standing Committee on Medical Professional Liability
Special Committee on Bioethics and the Law
Commission on Domestic and Sexual Violence
Commission on Homelessness and Poverty
Center on Human Rights
Commission on Disability Rights
Center for Human Rights
Government and Public Sector Lawyers Division
Section of Administrative Law and Regulatory Practice
Section of Criminal Law
Section of Dispute Resolution
Section of Family Law
Section of General Practice, Solo and Small Firm
Government and Public Sector Lawyers Division
Section of Health Law
Section of Individual Rights and Responsibilities
The Judicial Division
Section of Litigation
Section of Real Property, Probate, and Trust Law
Section of Science and Technology Law
Senior Lawyers Division

Section of State and Local Government Law
Section of Tort, Trial and Insurance Practice
Young Lawyers Division
Conference of Chief Justices
National Association of Bar Executives
National Legal Aid & Defender Association
National Conference of Bar Presidents
National Association of Attorneys General
National District Attorneys Association

10. Contact Person. (Prior to the meeting.)

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11. Contact Person. (Who will present the report to the House.)

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