

Improving Coordination Between Adult Protective Services and Law Enforcement in Sonoma County

GARY FONTENOT

EXECUTIVE SUMMARY

In many ways, elder and dependent adult abuse investigation is in its infancy when compared with the more developed systems in the world of child abuse investigation. As a result, many counties in California struggle to develop a coordinated system where law enforcement, Adult Protective Services (APS), and other community agencies coordinate their efforts closely in order to substantially impact the lives of vulnerable elders and dependent adults.

The first challenge in creating proactive coordination between APS and law enforcement is understanding the basis for each agency's mandate. By clarifying the legal mandate from which each operates, an understanding will be developed that will enable both agencies to better utilize each other to accomplish their mandates of elder protection and criminal prosecution. The second challenge is the complexity of elder abuse and the need to create a common understanding and lexicon surrounding these complexities. While Adult Protective Services social workers are trained to identify the complexities of mental ca-

capacity, undue influence, and consent, these issues can be very daunting to law enforcement during their very brief contact with elder abuse victims.

Lastly, better understanding of the roles of (APS) and law enforcement could create increased opportunities for both to more effectively accomplish their respective goals.

Recommendations to increase coordination between APS and law enforcement include:

- 1 Establishing a monthly forensic elder abuse team consisting of all key stakeholders in elder abuse investigations with staff to administer the meeting;
- 2 Identifying funding sources in collaboration with the DA's office to establish an on-going comprehensive elder abuse training for law enforcement in Sonoma County; and
- 3 Covering and annual mini-conference including APS, DA and law enforcement on elder abuse issues aimed at providing community education.

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Introduction

In many ways, elder and dependent adult abuse investigation is in its infancy when compared with the more developed systems in the world of child abuse investigation. As a result, many counties in California struggle to develop a coordinated system where law enforcement, Adult Protective Services (APS), and other community agencies must coordinate their efforts closely in order to substantially impact the lives of vulnerable elders and dependent adults.

This paper will examine the issues that face Adult Protective Services program relationships with law enforcement in Sonoma County, California. The issues include: (1) differences in the definitions of elder abuse used by APS vs. law enforcement; (2) the complexities of assessing an elder's cognitive capacity while respecting their civil rights; and (3) lack of coordination and mutual education between law enforcement and (APS).

While there is no simple solution to these issues, this case study author will define the issues and include recommendations to improve the relationship and communication between Adult Protective Services and law enforcement agencies in Sonoma County.

Definitions of Elder Abuse

In order to understand the communication issues between APS and law enforcement, it is important to evaluate the differences in the statute from which each entity operates. The APS program is governed by the California Welfare and Institutions Code. This code describes elder abuse in a very broad manner and requires APS to investigate and subsequently

find the allegation as "confirmed", "inconclusive", or "unfounded."

In the State of California, Welfare and Institutions (W&I) Code 15610.07 states that abuse of an elder or dependent adult means either (a) Physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or suffering; (b) The deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering.

While the above W&I code definition seems fairly comprehensive, it does not directly translate to the penal code section that is used to prosecute the perpetrators of elder abuse. The penal code is more specific in that it defines elder abuse from the vantage point of criminal law and thus requires law enforcement to its involvement in a given case on whether or not prosecution is likely given the quality of evidence available.

State of California Penal Code Section 368 (b)(1) states that physical elder abuse is committed when: Any person who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to

be injured, or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health is endangered.

Undue Influence, Consent and Capacity

Mental capacity is the term used to describe the set of mental skills that people use in their everyday lives. It includes memory, logic, the ability to calculate, and the “flexibility” to turn one’s attention from one task to another. **Consent** is when someone accepts or agrees to something that somebody else proposes. For consent to be legal and proper, the person consenting needs to have sufficient mental capacity to understand the implications and ramifications of his or her actions. **Undue influence** is when an individual who is stronger or more powerful gets a weaker individual to do something that the weaker person would not have done otherwise. The stronger person uses various techniques or manipulations over time to gain power and compliance. They may isolate the weaker person, promote dependency, or induce fear and distrust of others. Because undue influence, like mental capacity, raises the question of whether an individual is acting freely, the two concepts are often confused.

Evaluating alleged elder abuse often involves determining what an older person understands or understood in the past. Inducing someone to sign a legal document or give a gift, for example, may constitute abuse if the person does not fully understand the transaction, appreciate the value of what they are giving away, or comprehend the implications of what they are doing. One of the first questions often raised in abuse investigations is “did this person understand what he or she was doing when he gave a gift or transferred property? Was coercion, trickery, or undue influence employed?”

Unlike child abuse investigations where the child is defined as dependent by law, elder and dependent adult abuse investigations requires both Adult Protective Services and law enforcement to have a common understanding of these very complex and nuanced issues.

What Is Adult Protective Services (APS)?

Adult Protective Services (APS) is a program mandated in every county in the State of California. In Sonoma County, it is operated within the Adult and Aging Division of the Human Services Department. APS has the important responsibility of identifying, evaluating and assisting vulnerable county residents who are at risk for abuse or neglect. APS social workers provide services to clients in their homes as well as coordinate with a large number of community agencies with the goal of keeping clients safe and able to live as independently as possible.

Parallel to this social function, the APS social worker must act as an abuse/neglect investigator. While many of the cases reported to APS are self-neglect and do not involve an outside perpetrator, many of the cases involve a suspected perpetrator. In these cases, the APS social worker must coordinate closely with law enforcement to ensure that a criminal investigation is completed while the health and well-being of the victim is protected.

What Is the Role of Law Enforcement in Elder Abuse Investigation?

The role of law enforcement in an elder abuse investigation is to conduct a criminal investigation regarding the suspected crime which constitutes elder abuse. Law enforcement’s role is to collect evidence in order to support eventual prosecution of the crime.

Since the victim, an elder or dependent adult, is often reliant on the perpetrator (often a caregiver or family member) to meet their day to day needs, the interview with the victim can frequently lead to denials of abuse or neglect. If the officer investigating the crime is unfamiliar with the issues of undue influence, capacity assessment, and the role of Adult Protective Services, the investigation frequently stops without further communication to either the reporting party or (APS).

Ideally, law enforcement would utilize the knowledge and resources of Adult Protective Services to strengthen its investigation. With increased coordination, the two agencies could assist one another to realize their mutual goals of protecting the

victim and obtaining sufficient evidence to lead to prosecution of the perpetrator.

Marin County

Marin County Area Agency on Aging (AAA) recently received a grant from the Office on Violence Against Women to train its local law enforcement on the complexities of elder abuse investigations. The training is provided by local law enforcement, APS, Ombudsman, District Attorney, AAA, and community providers over a two day period. The training is a very comprehensive and interactive model requiring the participants to actively engage the issues of elder abuse. For example, in one exercise, the participants are required to take on the role of an elder abuse victim and make decisions throughout the course of a typical scenario involving physical abuse.

The training emphasizes the unique aspects of elder abuse in order to differentiate it from domestic violence or child abuse. Also, the training addresses the personal discomfort that many officers feel in discussing some aspects of elder abuse. For example, the issue of sexual abuse of an elder is uncomfortable for many people to discuss. The training creates a setting that is comfortable for law enforcement officers to discuss past investigations they've worked on and share their experiences with the rest of the class.

In addition to the on-going training offered to law enforcement in Marin County, the Marin County Adult Protective Services program coordinates a monthly Multi-Disciplinary Team (MDT) meeting. The meeting has excellent attendance from local law enforcement, District Attorney, Ombudsman, APS, Probation, Victim Assistance, and other key stakeholders in elder abuse investigation in Marin County. This meeting serves to provide on-going dialogue between those key stakeholders. Also, the meeting provides a forum for these agencies to discuss the challenges and opportunities in meeting the needs of elder abuse victims in Marin County.

Sonoma County

While Sonoma County has some significant differences from Marin County in terms of geography,

number of law enforcement jurisdictions, and crime trends, there are some ideas that can be gleaned from the Marin County experience.

Sonoma County APS has facilitated an MDT meeting for the purposes of case-conferencing elder and dependent adult abuse cases since 1999. When the State of California created the mandated reporter laws in 1999, Adult Protective Services funding increased substantially. At that time, Sonoma County law enforcement regularly attended MDT's and a relationship developed between APS and some of the law enforcement jurisdictions. Additionally, the Santa Rosa Police Department had a grant-funded elder abuse advocate on staff for a couple of years.

In the past several years, the Sonoma County MDT has transformed into a community meeting with primary attendance from APS, Ombudsman, hospitals, and local non-profits that serve the elderly. While there has been occasional attendance from law enforcement and the DA's office when requested by APS, there is no regular attendance.

The consequence of this lack of coordination is that APS frequently realizes that law enforcement officers do not understand the complex nature of APS cases and have no established protocols for investigating these cases. Also, they have little understanding of the role of APS and as a result do not conduct investigations in a manner that is tailored to these cases.

Conclusion

While the issues facing APS and law enforcement in Sonoma County are complex, there are steps that can be taken to improve understanding of their respective roles and responsibilities in elder abuse investigations. Some proposed steps are included in the following recommendations. Through ongoing relationships with each law enforcement jurisdiction, Sonoma County Adult Protective Service can serve as a resource for law enforcement jurisdictions with limited resources; and, conversely, law enforcement can enhance the elder abuse investigation, by APS resulting in more timely protection of the victim.

Recommendations

- 1 APS, Sonoma County DA, and key law enforcement jurisdictions should create a monthly elder abuse investigation meeting modeled on the Marin County MDT. (Staffed by a Planner/Analyst for 10 hours/month funded by Title VIIB)
- 2 APS and the Sonoma County District Attorney's office should work collaboratively to identify funding sources to provide comprehensive elder abuse training to law enforcement to Sonoma County.
- 3 Human Services and the DA should host an annual mini-conference on the issue of elder abuse with presenters from law enforcement jurisdictions.

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