NATIONAL DISTRICT ATTORNEYS ASSOCIATION
POLICY POSITIONS ON ELDER ABUSE, NEGLECT
AND FINANCIAL EXPLOITATION

WHEREAS, the National District Attorneys Association, representing America’s local prosecutors, recognizes that elder abuse is a serious crime and public health issue with far reaching consequences for both the victims and society; and

WHEREAS, the National District Attorneys Association has, since 1986, called for the vigorous prosecution of cases of elder abuse, neglect and financial exploitation.

THEREFORE BE IT RESOLVED, that the National District Attorneys Association adopts the attached “POLICY POSITIONS ON ELDER ABUSE, NEGLECT AND FINANCIAL EXPLOITATION.”

Adopted by the Board of Directors, March 22, 2003 (New Orleans, LA)
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NATIONAL DISTRICT ATTORNEYS ASSOCIATION

POLICY POSITIONS ON THE
PROSECUTION OF ELDER ABUSE,
NEGLECT, AND FINANCIAL
EXPLOITATION

Adopted: March 22, 2003 by the Board of Directors in New Orleans, Louisiana

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NATIONAL DISTRICT ATTORNEYS ASSOCIATION

POLICY POSITIONS
ON
THE PROSECUTION OF ELDER ABUSE, NEGLECT, AND FINANCIAL
EXPLOITATION

Introduction:

Since May of 1986, the National District Attorneys Association has become increasingly concerned about the growing problem of elder abuse and its impact on elder victims and society as a whole. For too long, vast numbers of our country's elders have silently endured physical trauma, financial devastation, and emotional distress because they have been victimized by anonymous criminals--or perhaps worse--by once trusted caretakers, or family members. Just as the criminal justice system has rightly recognized that child abuse and domestic violence can be curbed by the enactment of new laws and the use of special procedures, so too should the system be amenable to changes on behalf of our growing elder population.

MAGNITUDE OF ELDER ABUSE

Policy:

The National District Attorneys Association recognizes that elder abuse is a serious crime and public health issue with far reaching consequences for both the victims and society. The National District Attorneys Association endorses the vigorous prosecution of cases of elder abuse, neglect, and financial exploitation.

Commentary:

While instances of elder abuse, elder neglect, and financial exploitation of elders are underreported and often times ignored, they are fast becoming pressing

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2 For purposes of this document "elder abuse" includes "physical, sexual, and psychological abuse". The National Center on Elder Abuse defines "physical abuse" as "the infliction of physical force that may result in bodily injury, physical pain, or impairment." "Sexual abuse" is defined as "non-consensual sexual contact of any kind with an elderly person." "Psychological abuse" is defined as "the infliction of anguish, pain, or distress through verbal or nonverbal acts." "The Basics, What is Elder Abuse," The National Center on Elder Abuse available at http://www.elderabusecenter.org/
3 The National Center on Elder Abuse defines "neglect" as "the refusal or failure to fulfill any part of a person's obligations or duties to an elder. Neglect may also include failure of a person who has fiduciary
national concerns. "Victims of elder abuse are not only subject to injury from mistreatment and neglect, they are also 3.1 times at greater risk of dying."\(^6\) Not only do elders suffer greatly because of abuse, neglect, and exploitation, but society also bears the increased cost of health care and diminished public resources.

The significant elder population that exists today, the large number of individuals in institutional settings, and the current reported levels of elder abuse in domestic and institutional settings help to illustrate the current magnitude of the elder abuse problem in this country. In 2001, only 41.6% of prosecutors surveyed had handled elder abuse cases.\(^7\) With the projected dramatic increase in the elder population, the rate of crime against elders will inevitably rise as well. Prosecutors should be aware of this increase and the impact that it will have on their communities and their resources.

**Current Elder Population**\(^8\)

The issue of elder abuse is by no means a small-scale matter given the number of elders in this country and the numbers projected for the very near future. "In 2000, there [were] an estimated 35 million people, age 65 or older, in the United States, accounting for almost 13 percent of the total population. In 2000, an estimated 2 percent of the population [was] age 85 and older. There [were] about 65,000 people age 100 or older in 2000."\(^9\)
Projected Increase in the Elder Population

Even more important than the number of elders is the projected growth of this population. The number of persons 65 years and over has increased substantially "from 3.1 million in 1900 to 33.2 million in 1994. Under the Census Bureau's middle series projections, the number of persons 65 years and over [will] more than double by the middle of the next century to 80 million. About 1 in 8 Americans were elderly in 1994, but about 1 in 5 could be elderly by the year 2030."  

Number of Individuals in Nursing Homes

In addition, a significant number of individuals are currently living in institutional settings. "Approximately 1.6 million people live in approximately 17,000 licensed nursing homes and an estimated 90,000 to 1 million persons live in approximately 45,000 residential care facilities, variously known as personal care homes, adult congregate living facilities, domiciliary care homes, homes for the aged, and assisted living facilities." Significant portions of those individuals in institutional settings are elders. "In 1995 about 4% of persons age 65 or older, or 1.4 million, resided in nursing homes or other long-term care facilities. Persons age 65 or older made up 89% of all persons in nursing homes in 1995."

Elder Abuse in Domestic Settings

Because elder abuse is so often unreported, it is difficult to develop accurate statistics on the number of crimes of elder abuse that occur in this country every year. The National Center on Elder Abuse indicates that in 1991, for cases of domestic setting abuse, "researchers estimated that 2.5 million people were victims of various forms of elder abuse. This figure was adjusted in 1996, based on state reporting data, to suggest that there were between 820,000 and 1,860,000 abused elders in the country" in domestic settings.

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10 See note 8.
12 See note 8.
15 National Center on Elder Abuse, Elder Abuse Information Series No.1,"Types of Elder Abuse in Domestic Settings" available at http://www.elderabusecenter.org/basic/fact1.pdf citing Tatara, Toshio and
The Administration on Aging reports that the National Elder Abuse Incidence Study, done in 1996, found:

- "555,011 persons, aged 60 and over, experienced abuse, neglect, and/or self neglect in a one-year period;
- Almost four times as many new incidents of abuse, neglect, and/or self-neglect were not reported as those that were reported to and substantiated by adult protective services agencies;
- Persons, aged 80 years and older, suffered abuse and neglect two to three times their proportion of the older population; and
- Among known perpetrators of abuse and neglect, the perpetrator was a family member in 90 percent of cases. Two-thirds of the perpetrators were adult children or spouses."16

**Elder Abuse in Institutional Settings:**

In July 2001, a report prepared by the Special Investigations Division, Committee on Government Reform, U.S. House of Representatives, revealed several major findings regarding abuse in institutional settings:

- "Over thirty percent of nursing homes in the United States--5,283 nursing homes--were cited for an abuse violation that had the potential to cause harm between January 1999 and January 2001. These nursing homes were cited for almost 9,000 abuse violations during this two-year period.
- Over 2500 of the abuse violations in the last two years were serious enough to cause harm to residents or to place residents in immediate jeopardy of death or serious injury. In total, nearly 10% of the nursing homes in the United States--1,601 nursing homes--were cited for abuse violations that caused actual harm to residents or worse.

Lisa Kuzmeskus, *Summaries of Statistical Data on Elder Abuse in Domestic Settings for FY 95 and FY 96* (Washington, DC: National Center on Elder Abuse, 1997).

The percentage of nursing homes cited for abuse violations has increased every year since 1996. In 2000, over twice as many nursing homes were cited for abuse violations during annual inspections than were cited in 1996.\(^\text{17}\)

According to some theories, residents of nursing homes are becoming increasingly more aggressive due to the increased incidence of dementia and the use of psychotropic medications among nursing home elders.\(^\text{18}\) As a result, one area of institutional abuse that appears to be growing is elder abuse at the hands of fellow nursing home residents. "Nationwide, more than 3,000 complaints about resident-on-resident abuse were lodged with state long-term care ombudsman programs in 2000, up from around 2,500 complaints in 1996."\(^\text{19}\)

ELDER ABUSE AND THE PROSECUTOR'S OFFICE

Office Organization

Policy:

Due to the difficult issues that arise in elder abuse cases, the National District Attorneys Association endorses, whenever practical, the creation of special elder abuse units within the prosecutor's office or the designation of a specially trained prosecutor to handle elder abuse cases. When the establishment of a designated elder abuse unit is not feasible, prosecutors should still receive training on an individual basis in the identification, investigation, and prosecution of elder abuse, neglect, and financial exploitation.

Commentary:

Just as in the cases of child abuse and domestic violence, elder abuse cases are of a complex nature and necessitate expertise for effective prosecution. Based on the complexity and predicted increase in cases of elder abuse, a separate unit, specializing in elder abuse cases, should be established within the prosecutor's office, whenever practical. According to a recent survey, not all prosecutors have specialized elder abuse

\(^{17}\) "Abuse of Residents Is A Major Problem in U.S. Nursing Homes," Minority Staff, Special Investigations Division, Committee on government Reform, U.S. House of Representatives, July 30, 2001 available at http://www.heaton.org/nursinghomesabuse.pdf (The report includes information about resident on resident abuse and abuse by employees of nursing homes.)


\(^{19}\) Id.
units within their offices. Where they exist, the specialized units should have the following characteristics:

1. Staff members should be specifically assigned to the unit, on a full-time basis, if possible;

2. Upon assignment to the unit, all members of the legal staff should receive formal training and be required to attend courses in that specialty at least once each year.

Since a primary justification for the establishment of a separate office unit is the need for special expertise in the area of elder abuse, staff should be assigned on a full-time basis, where appropriate (or if possible). These staff members should receive special training upon assignment to the unit and should be required to continue to be educated in the area of elder abuse. In addition, staff should include a specially trained, in-house investigator as a key component of the elder abuse unit. The investigator should serve only as an adjunct to and not a substitute for local law enforcement officers who are also trained in investigating cases of elder abuse. To make full use of the division's expertise, policies should be implemented within the office that mandate the referral of all developing cases to the elder abuse division.

The NDAA recognizes that it is not always practical for prosecutors to establish elder abuse units within their offices. Limitations on the creation of these specialized units exist in offices with both small and large staff numbers. In small offices, prosecutors are often handling cases from a large geographical area with limited resources. Large offices are often dealing with staff sizes that simply prohibit the designation of an additional specialized unit. However, the goal for prosecutors should be to provide specialized training in the identification, investigation, and prosecution of elder abuse, neglect, and financial exploitation to all prosecutors in their offices. An additional goal should be for prosecutors to provide for specially designated advocates to assist with elder victims.

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20 Mark Miller, "Assessment of Prosecutors Response to Crimes Against the Elderly," Office of Research and Evaluation, American Prosecutors Research Institute (2002)-Summary of Elder Abuse Survey, Question 13-"Does your office have an elder abuse unit or other type of unit solely dedicated to the prosecution of crimes in which the elderly are the victims?"-Yes: 28 %, No.: 72%. The survey was a nationally representative stratified random sample of over 300 local prosecutors. The total number of prosecutor responding was 140. Please note that the survey results have been received and analyzed, however, the final official report has not been completed.

21 See NATIONAL PROSECUTION STANDARDS, (2nd ed. 1991), Standard 11.1, p. 42.

Training

Policy:

As a result of the many types of crimes against elders that occur, the complexity of many of these crimes, and the unique needs of elder abuse victims, the National District Attorneys Association recognizes that there must be specialized training for prosecutors in dealing with matters of elder abuse.

Policy:

The National District Attorneys Association supports the formation of a National Center for the Prosecution of Elder Abuse, Neglect, and Exploitation within the American Prosecutors Research Institute.

Commentary:

Training to Understand Crimes Against Elders

While there are countless types of abuses that elders may endure, there are essentially three categories of abuse designated by the National Center on Elder Abuse:

- Domestic abuse
- Institutional abuse
- Self-neglect or self-abuse

The National Center on Elder Abuse further identifies seven types of abuse that may occur in either the domestic or institutional setting:

- Physical abuse
- Sexual abuse
- Emotional or psychological abuse
- Neglect
- Abandonment
- Financial or material exploitation
- Self-neglect

23 National Center on Elder Abuse, “The Basics, What is Elder Abuse?” available at http://www.elderabusecenter.org/basic/index.html. The National Center on Elder Abuse defines "self-neglect" as "the behavior of an elderly person that threatens his/her own health or safety. Self-neglect generally manifests itself in an older person as a refusal or failure to provide himself/herself with adequate food, water, clothing, shelter, personal hygiene, medication, and safety precautions."

24 Id. Note: Self-neglect is not an issue with which prosecutors must deal. However, like many evolving theories of liability, there may be a time when certain individuals (guardians or conservators) are held criminally responsible for permitting the self-neglect of an elder person by virtue of their relationship with the victim.
Each of the types of abuse listed above comes in a myriad of different forms, often complex in nature, that are inflicted on elders by strangers, caretakers, and most often family members.\textsuperscript{25} In addition, there are also a number of crimes that are committed against elders that do not fit neatly into the above categories of elder abuse in domestic settings or elder abuse in institutional settings. These crimes are generally committed against elders because of their age, vulnerability, and their willingness to trust other individuals. These crimes include residential burglaries, home invasions (type of burglary where one offender creates a diversion while another offender enters the home of the elder person looking for items to steal), armed and unarmed robberies (muggings and purse snatchings), home repair scams,\textsuperscript{26} and election fraud. It is vital to the safety of this country's elders that prosecutors are adequately trained to identify, investigate, and prosecute these crimes. According to a recent survey, at most, 34.5\% of responding prosecutors indicated that they offered specialized training for handling elder abuse cases.\textsuperscript{27}

Perhaps the most complex crimes against elders are those within the financial or material exploitation category. These crimes include investment scams, telemarketing fraud, mail fraud, home improvement scams (roofing and driveway paving), identity fraud, credit card fraud, forgery, work-at-home scams, magazine sales, prizes and sweepstakes scams, medicare fraud, abuse and misuse of legal authority (powers of attorney, trusts, guardianships, and conservatorships), and real estate/mortgage fraud.\textsuperscript{28} Financial experts, such as accountants and document examiners, may be needed to analyze and interpret financial records, assist in filing decisions, appear as expert witnesses during trials, and conduct training for prosecutors on pertinent accounting/financial issues.

\textsuperscript{25} "In almost 90 percent of the elder abuse and neglect incidents with a known perpetrator, the perpetrator is a family member, and two-thirds of the perpetrators are adult children or spouses." The Administration on Aging, "The National Elder Abuse Incidence Study: Final Report," September 1998 available at http://www.aoa.dhhs.gov/abuse/report/.

\textsuperscript{26}Edward Hazewski, "Investigating Allegation of Financial Exploitation, A Guide for Law Enforcement and Social Service Professionals" State of Delaware, Department of Justice. See also U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, Crimes against Persons Age 65 or Older, 1992-97 (January 2000, NCJ 176352, Revised 2/7/00)- Between 1992 and 1997, persons age 65 and older, were the victims of "2.5 million property crimes (household burglary, motor vehicle theft, and household theft); 46,000 purse snatchings or pocket pickings; 165,000 nonlethal violent crimes (rape, robbery, and aggravated and simple assault); and 1,000 murders."

\textsuperscript{27}Mark Miller, "Assessment of Prosecutors Response to Crimes Against the Elderly," Office of Research and Evaluation, American Prosecutors Research Institute (2002)-Summary of Elder Abuse Survey, Question 8 "Does your office offer specialized training for handling elder abuse cases?" Yes: 34.5\%, No: 65.5\%. Please note that the survey did not ask specifically to whom the office offered specialized training. The survey was a nationally representative stratified random sample of over 300 local prosecutors. The total number of prosecutors responding was 140. Please note that the survey results have been received and analyzed, however, the final official report has not been completed.

In particular, certain cases of physical/sexual abuse and neglect may also be equally complicated to prove. Such cases often involve complex forensic issues, specific to elders, which will require the participation of medical professionals. Medical professionals may be needed to interpret medical records, assist in filing decisions, appear as expert witnesses during trials, and conduct training for prosecutors on pertinent medical issues. It follows that prosecutors will need to receive additional funding in order to provide for this necessary additional training.

**Training to Understand the Elder Victim**

Just as the types of abuses inflicted upon elders are varied and complex so too are the characteristics and needs of elders as victims. Elder victims are unique insomuch as they may have impairments or disabilities that may interfere with their ability to report the crime, to testify in court, to remember essential details of the offense, or to realize that they have been victimized. Cognitive impairments as a result of stroke or dementia, including Alzheimer's, may place significant limitations on the elder victim's capacity to remember and describe the crime. Speech disabilities may make speaking difficult and may even render the victim incapable of communicating. These are all issues which prosecutors must be trained to identify and address in order to adequately interview the witness prior to trial and to prepare the witness for testifying at trial.

Aside from communicative and cognitive difficulties, elder victims have a whole host of special needs that generally do not present themselves in other cases. For example, many elders require specialized medical equipment to function, require medications administered on a regular basis, experience fatigue easily and often have hearing and vision impairments. Prosecutors must receive specialized training so that they are adept at identifying an elder victim's special needs and making the necessary provisions for those needs during the filing, interview, and trial stages.

Lastly, the elder victim may come forward with a number of reluctances and fears. An elder victim of financial exploitation may be very embarrassed over losing money in one of the many perpetrated scams and, therefore, reluctant to participate in the prosecution. The perpetrator of the abuse, neglect, or exploitation may be a family member. As a result, the elder victim may be either fearful due to threats by the family member or reluctant to prosecute because of feelings of compassion towards the relative. Lastly, elder victims may feel that they may be viewed as vulnerable and will in some way lose their autonomy if they participate in the prosecution of the matter. Prosecutors should be trained to recognize these fears and reluctances and their causes. Prosecutors should also be trained how to address these concerns with the elder victim so that the case can be successfully prosecuted.
Victim's Services

Policy:

As a result of the unique needs of elder abuse victims and the many types of abuse inflicted on them, it is recognized that prosecutors should develop policies and procedures for providing specialized victim services to this population. Prosecutors should ensure that the victim assistance/services program within the staffing structure of their offices provide such services.29

Commentary:

To the extent that it is practical for the prosecutor and taking into account the special needs of the individual elder victim, some of the victims' services that may be provided include the following:

a. Assistance in obtaining the return of property held in evidence;
b. Assistance in obtaining restitution orders at the sentencing;
c. Assistance with transportation and lodging arrangements for court hearings;
d. Assistance in reducing the time the victim has to wait for any court appearance to a minimum;
e. Assistance in reducing overall inconvenience whenever possible and appropriate (See National Prosecution Standards 26.3);30
f. Assistance in obtaining frequent recesses while in court for purpose of administering medications or reducing victim fatigue;
g. Assistance in accessing the courthouse/courtroom;
h. Assistance with vision/hearing impairments;
i. Assistance with medical equipment in the courtroom;
j. Assistance with orientations of the criminal justice process to the extent feasible and when it is deemed appropriate by the prosecutor;31
k. Assistance with conferring with prosecutors about the case;
l. Assistance with referrals to community services for daily living needs, therapy and civil legal counsel;
m. Assistance with victim impact statement preparation; and
n. Safe, comfortable waiting areas in court.

Prosecutors should develop policies and procedures for their offices that address the special needs of elder victims. First and foremost, the prosecutor should ensure that the overall inconvenience to the elder victim during the investigation and prosecution of the case is minimized. Because of the increased risk of memory loss, illness, and even death, all necessary steps should be taken to expedite the filing, trying, and sentencing of

29 NATIONAL PROSECUTION STANDARDS, (2nd ed. 1991), Standard 26.7, p. 94.
elder abuse cases. In addition, due to the increased risk of memory loss and death in these cases, the prosecutor should consider arranging for the videotaped deposition of the elder victim, where allowed by law. Particular attention should be paid to the fact that elder victims become fatigued easily. The prosecutor should make sure that the overall time spent waiting in court is reduced to a minimum. If possible, requests should be made of the court for a time certain for the victim to testify. If that is not possible, the prosecutor should ensure that frequent recesses are taken. Because many elders are on medications that may need to be taken during the trial, frequent recesses will also ensure that medicines can be administered at appropriate times.

Because elder victims may present with special health issues or concerns, it is important to keep them apprised of developments in their case. They will often need to make special arrangements in order to be available to testify and may need assistance with travel and lodging. Prosecutors should be sensitive to the fact that elder victims are often unfamiliar with the terminology, procedures, and even location of the courts. Prosecutors should arrange for a special orientation program to be made available to elder victims. Prosecutors should also explain charging and plea-bargaining decisions, including the rationale used to reach their decisions. Elder victims should be treated with respect throughout the process. Victims of financial exploitation are often extremely embarrassed and ashamed that they have allowed someone to take their assets. Victims of physical and sexual abuse and neglect have lost their self-respect at the hands of caretakers or family members. Some of these victims may be afraid of their abusers, particularly if they think they will be returned to their care. Others may feel that they love their abusers and do not want to do anything that will negatively impact them. Many of these victims will be reluctant to testify and some will simply refuse to testify.

While the Americans With Disabilities Act of 1990 requires state and local governments to make certain accommodations in both the courthouse and courtroom for elders with disabilities, prosecutors should be mindful that not all elders are "qualified individuals with disabilities" as defined by the Act. As a result, prosecutors should

34 42 USCS § 12101 (2002)
35 42 USCS § 12132 (2002) provides: "Subject to the provisions of this title, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 28 CFR 35.160 (b) requires that "a public entity shall furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity conducted by a public entity." 28 CFR 35.149 states: "no qualified individual with a disability shall, because a public entity's facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity." See also, ADA Home page available at http://www.usdoj.gov/crt/ada/adahom1.htm
36 42 USCS § 12131 (2)(2002) defines "qualified individual with a disability" as "an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity." 42 USCS § 12102 (2002) defines "disability" as "a physical or
remember that elder victims might have physical limitations with which the prosecutor, if practical, should assist to ensure that the elder victim is able to effectively participate in the trial process. The elder victim might have hearing and sight impairments that could create difficulties for them while testifying in court. Provisions for a microphone or large print exhibits will alleviate some of those problems. Some elders may need to bring specialized medical equipment with them to court and provisions should be made for such equipment in the courtroom. The elder victim may also need assistance with the equipment while in the courtroom. Also, while an elder victim may be ambulatory, he/she, because of physical limitations, may still need some type of assistance in getting to both the courtroom and the witness stand.

The elder victim of financial exploitation can be in dire financial straits by the time their case reaches the trial level. These particular victims may have lost their homes and/or their entire retirement accounts as a result of these crimes. Many elder victims are on fixed incomes and with little time to replace their savings, the consequences of financial exploitation could be devastating to them. As a result, it is extremely important that the victim be made whole as quickly as possible. The prosecutor should always consider filing motions to expedite the trial date along with the charging papers. Upon conviction or upon a guilty plea, a prosecutor should also always request restitution. A date certain by which restitution must be paid should be requested so that the court, in the event of non-payment, can sanction the offender. In cases where the victim has suffered property loss, the prosecutor should request prompt return of the property held by the police in order to give the victim some sense of well-being.

Addressing the special needs of elder victims should be a cooperative effort. While prosecutors will need to identify the special needs of their elder victims, there will be times when the prosecutor simply will not have the ability to deal with them alone. For instance, prosecutors should consider involving non-offending family members as an additional source of support for the elder victim.

A recent survey indicates "the presence of victim advocates who focus on [elders] is associated with some positive aspects of the operations of the prosecutor's office. Having victim advocates who focus on [elders] is correlated with:

- Keeping statistics on elder crimes;
- Being involved in public education efforts; and
- Offering specialized training in elder abuse."39

mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment." 28 CFR 35.104 defines "major life activities" as "functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working."

37 "Hang Up On Fraud" SAFE Seminar materials sponsored by State of Delaware, Department of Justice, pp. 9-10.
39 Mark Miller, "Assessment of Prosecutors Response to Crimes Against the Elderly," Office of Research and Evaluation, American Prosecutors Research Institute (2002)-Summary of Elder Abuse Survey, Quantitative Results Number 28. Please note that the survey results have been received and analyzed, however, the final official report has not been completed.
As a result, it is extremely important that special victims assistance/services units be funded, created, and staffed with victim advocates specially trained in the area of elder abuse in order to assist prosecutors in addressing the needs of the elder victim.

**FUNDING**

*Policy:*

_The National District Attorneys Association endorses the increased allocation of resources and additional funding for the specialized training of prosecutors in the area of elder abuse, neglect and exploitation._

*Policy:*

_The National District Attorneys Association endorses the increased allocation of resources and additional funding for the maintenance of a victim assistance/services unit within the staffing structure of the prosecutor's office to provide specialized services to address the needs of the elder victim._

*Commentary:*

At the present time, few resources are being allocated to deal with the issue of elder abuse. According to the National Criminal Justice Association, Justice Assistance Appropriations in the 107th Congress, for fiscal year 2002 only 5 million dollars were set aside under the "Violence Against Women (VAWA) Programs" for elder abuse, neglect and exploitation. For fiscal year 2002, only 1.99 million dollars was appropriated for "Senior Citizens Against Marketing Scams." The "[f]ederal government spends only 153.5 million, including grants to states, on programs addressing issues of elder abuse, neglect and exploitation, with funds spread thinly across the myriad of agencies and programs responsible for protecting older Americans." 

Little can happen in the way of system improvements in general, and in the prosecutor's office in particular, without adequate funding. It is imperative that persons who abuse elders be held accountable for their crimes. It is equally important that the safety of elders, one of this nation's most valuable assets, be protected. Without the specialized training from forensic financial experts prosecutors will be at a disadvantage in detecting, investigating and prosecuting abuses of elders. Without the consultation, assistance, and training provided by medical experts, prosecutors will be similarly disadvantaged in their ability to detect, investigate, and prosecute cases of physical and

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40 A total of $390.6 million dollars was appropriated for Violence Against Women Act (VAWA) Programs. National Criminal Justice Association, Justice Assistance Appropriations in the 107th Congress available at http://www.ncja.org/
42 News from the United States Senate, Special Committee on Aging, Senator John Breaux, Chairman, May 20, 2002.
sexual abuse, and neglect. Without victim assistance units or provisions for victim's services, the extensive and specialized needs of elders will not be accommodated making the ability to prosecute these cases even more difficult.\textsuperscript{43}

\textbf{MULTIDISCIPLINARY APPROACH}

\textit{Policy:}

\textit{Given the numerous agencies and individuals that are involved with elders on a daily basis, the National District Attorneys Association recognizes that a multidisciplinary approach to prosecuting elder abuse cases should be considered. Individuals and agencies from the medical and financial fields, public health, service providers and law enforcement should be involved, as appropriate, in a team effort to investigate, prevent, and prosecute elder abuse crimes. In order for the multi-disciplinary approach to be successful, prosecutors must take a leadership role in these teams.}

\textit{Commentary:}

Frequently, a multidisciplinary team approach may be a more effective means of prosecuting elder abuse cases, holding offenders accountable, protecting victims, and preventing future abuses. The successful prosecution of elder abuse, neglect, and exploitation requires the collaboration of specially trained individuals from multiple agencies and organizations within the community. These agencies and organizations should include, but not be limited to, the medical, legal and social services fields. All agencies and individuals involved in the collaborative effort should work together to promote the prevention, detection, investigation, and prosecution of elder abuse, neglect and exploitation. Through the combination of the resources and expertise of multidisciplinary teams, offenders can be held more accountable; the safety of the victim can be better protected; and the special needs of the victim can be better met. Depending upon the nature of the case, the prosecutor may consider using the following individuals and/or agencies as part of the multidisciplinary approach:

i. Prosecutors;
ii. Law Enforcement Agencies;
iii. Adult Protective Services workers and members of social service agencies that provide resources and referrals to the senior population;
iv. Members of the medical/health care profession including physicians (geriatricians, family physicians, internists, emergency physicians, forensic pathologists, medical examiners and psychiatrists); nurses and nurse's aides (including geriatric nurse practitioners and Sexual Abuse Nurse Examiners (SANE) nurses); public health and safety professionals (including emergency medical services

\textsuperscript{43} See NATIONAL PROSECUTION STANDARDS, (2\textsuperscript{nd} ed. 1991), p. 11.
professionals); therapists (including creative arts, occupational, speech and physical therapists); and mental health providers for elders;

v. Individuals who work with the public, including bank personnel, utility workers, providers of home-delivered meals; real estate professionals, clergy, AARP representatives and others who may work with elders on a routine basis;

vi. Guardians ad litem, groups providing legal services or pro bono attorneys;

vii. Long Term Care Ombudsmen and state nursing home surveyors; and

viii. Financial experts, including auditors, accountants, financial institution personnel, document examiners, and stockbrokers.

Because each of the above individuals will deal with the elder victim at a different level, it is vital that these individuals/agencies communicate with one another on a routine basis as a multidisciplinary team. It is equally important that they be able to draw from one another's resources in order to successfully combat and treat the problem of elder abuse.

It is vitally important that the prosecutor provide the leadership for the multidisciplinary team. The prosecutor should determine which particular individuals and agencies should be members of the team. The prosecutor should be responsible for coordinating all members of the team and providing for routine communications and meetings among the members. Lastly, the prosecutor should develop procedures and protocols for communication and interaction among the various members of the multidisciplinary team. It is imperative to the safety of the nation's elders that the multidisciplinary team's activities be conducted in a coordinated fashion in order to effectively handle the detection, investigation and prosecution of elder abuse, neglect and exploitation.

**PUBLIC AWARENESS**

**Policy:**

_The National District Attorneys Association endorses the prosecutor's role in forming and encouraging the growth of community-based and professional organizations that are interested in the issue of elder abuse prevention._

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44 See NATIONAL PROSECUTION STANDARDS (2nd ed. 1991), Standard 37.1, p. 112.
Policy:

The National District Attorneys Association encourages the use of all available resources by prosecutors to educate the public about elder abuse, specifically, the warning signs and how to become more involved in reporting and preventing abuse.\textsuperscript{45}

Commentary:

In addition to providing the leadership for the multidisciplinary team, it is equally important that the prosecutor educate the general public, especially elders, about elder abuse, neglect and exploitation. In particular, public awareness should be raised regarding the numerous financial schemes that target elders. In addition, the community should be educated about the prevalence of elder abuse in our society, the types of abuses that occur, the warning signs of abuse, the steps to take if an individual suspects elder abuse, neglect, or exploitation has occurred, and how individual citizens can aid in the prevention of such abuse.\textsuperscript{46} Prosecutors should support outreach activities in order to provide this information to the community. The distribution of brochures, ads, and posters which detail the types of elder abuse, symptoms, prevention, and reporting steps are effective means of outreach. In addition, lectures at senior centers, nursing homes, assisted living facilities, community centers, universities and colleges, and faith communities or organizations are also an invaluable means of disseminating this crucial information. Such information can also be disseminated through the use of local television and radio in addition to the prosecutor’s participation on elder abuse task forces and in conferences and seminars on the subject. As part of their outreach activities, prosecutors should also request that elders who have been victimized in the past participate in mentoring programs for elders who are currently involved in the court system.

Because of the significant problem that exists with regard to the underreporting of elder abuse, prosecutors should, whenever possible, also participate in the education of mandatory reporters about their reporting obligations. Specifically, mandatory reporters should be trained on the types of abuse and neglect that they must report, the procedures for reporting the abuse, and the time requirements within which they must make their report. Training of mandatory reporters should occur on a yearly basis so that mandatory reporters are apprised of the changes in the law.

Unfortunately, awareness about the problem of elder abuse is also lacking among law enforcement and other first responders (fire personnel, emergency medical technicians and adult protective services workers). Often times, serious cases of neglect are not investigated because officers and other first responders have not had the requisite training to identify the signs of neglect and to respond appropriately. Cases of financial exploitation are also not investigated because there is a prevalent sentiment that such matters are civil in nature. In addition, many first responders have not had the necessary

\textsuperscript{45} See NATIONAL PROSECUTION STANDARDS (2nd ed. 1991), Standard 37.3, p. 113.
\textsuperscript{46} See NATIONAL PROSECUTION STANDARDS, (2nd ed. 1991), Standard 37.3, p. 113.
training to detect when a situation is, in fact, financial exploitation. Whenever possible, prosecutors should also participate in the education and training of law enforcement and other first responders on the detection of elder abuse, neglect and exploitation and the proper investigation of these types of cases. Lastly, whenever practical, prosecutors should also participate in the training of the financial community regarding financial exploitation of elders. Specifically, they should be trained in the warning signs and how their input can assist law enforcement in the investigation of these crimes.

**STATE LEGISLATION**

**State Criminal Laws**

*Policy:*

_The National District Attorneys Association recognizes the need for updated state criminal statutes dealing specifically with the physical abuse, sexual assault, neglect and financial exploitation of elders. The National District Attorneys Association further recognizes the need for state criminal laws to take into account the special nature of elder victims and the types of crimes committed against them._

*Commentary:*

While the _Older Americans Act Amendments of 2000_ (42 USCS §3001 _et seq_) does provide definitions of abuse, elder abuse, exploitation, and neglect and provides some funding for the prevention of elder abuse, it does not adequately address the many issues surrounding elder abuse, neglect and exploitation. Just as the criminal justice system has correctly recognized that child abuse and domestic violence can be curbed by the enactment of new laws, so too should the justice system be amenable to changes on behalf of our growing elder population. As a deterrent to future offenders and as a means of protecting elders against abuse, neglect, and exploitation, prosecutors should encourage the enactment of state legislation that creates a separate criminal offense for the physical abuse, sexual assault, neglect, and financial exploitation of elders in both domestic and institutional settings. In addition, enhanced criminal penalties should be adopted where the elder abuse offense is incorporated into a generalized criminal statute. Lastly, prosecutors should lobby for the enactment of laws that award restitution in cases of financial exploitation through a victims' compensation fund.
State Mandatory Reporting Laws

Policy:

The National District Attorneys Association recognizes the need for mandatory reporting of elder abuse to adult protective services and law enforcement agencies nationwide.

Commentary:

Instances of elder abuse, neglect, and exploitation are, currently, significantly underreported. Underreporting can only serve to exacerbate the increasing elder abuse problem in this country. It is imperative that instances of abuse, neglect, and exploitation be brought to the attention of both adult protective services and law enforcement in a timely fashion. Prosecutors, as the leaders in the fight against elder abuse, should encourage the adoption of state laws which require the mandatory reporting of elder abuse, neglect and exploitation. Mandatory reporters should include, but not necessarily be limited to, primary care physicians and nurses, emergency room physicians and nurses, social services workers, mental health providers, nursing home employees, pharmacists, law enforcement members, senior center workers, and home health care providers. Mandatory reporting laws should also specify the manner in which reporting should be handled and the time period in which reporting must occur. Time periods in which to report abuse must be minimal in order to preserve critical evidence and to secure the safety of the elder victim. Lastly, reporting laws should contain criminal penalties for non-reporting and failures to report within the mandated time period.

Special Trial Procedures and Evidentiary Rules

Policy:

The National District Attorneys Association recognizes the need for special trial procedures and evidentiary rules in matters of elder abuse based on the special needs of the victims.

Commentary:

The uniqueness and the special needs of the elder victim require that certain changes occur within both the rules of evidence and trial procedure in order to effectively prosecute these matters. There will often be a significant lapse of time between the investigation of the elder abuse and the actual trial. While the victim may initially have

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been able to relate the details of the crime to the authorities there may be intervening factors such as severe illness, stroke, dementia, and even death that prevent the victim from being able to testify at trial. Such circumstances demand that an elder hearsay exception be adopted.

Just as in matters of child abuse and domestic violence, the elder victim may be fragile and traumatized at the prospect of appearing in court and testifying about the abusive incident. In matters such as this, it is important that trial procedure and evidentiary rules provide for the use of closed circuit television to reduce the amount of stress on the victim. It is also important that the rules of evidence provide for the admission into evidence of an elder's videotaped deposition and statements to the police.

Just as in cases of domestic abuse, there will often be a history of abuse between the victim and offender. In these instances, evidence of the prior acts of abuse should be admissible as evidence for the purpose of establishing that the offender had a propensity for committing elder abuse.