

ELDER ABUSE PRESENTATION

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1) ELDER ABUSE STATUTES

- a) Penal Code Section 368(a)
 - i) The Legislature enacted this statute to afford elders greater protection.
 - ii) It sets forth guidelines with respect to the definition of elder abuse and the punishments for elder abuse.
- b) Elder Abuse and Dependent Adult Civil Protection Act - Welfare and Institutions Code § 15600 - 15601
 - i) The Legislature recognized that elders and dependent adults may be subjected to abuse, neglect or abandonment and this code section sets forth additional protections.
 - ii) Sets forth reporting requirements.
 - iii) Requires cross-reporting among agencies.
 - iv) Sets forth enhanced remedies.

2) SIGNS OF ELDER ABUSE

- a) Changes in the physical appearance, grooming or general behavior of the elder.
- b) Unusual banking activity.
- c) Sudden changes in estate planning or transfer of assets.
- d) A caregiver who expresses more concern about the elder's finances than about his or her physical and/or mental health.
- e) Isolation of the elder. The caregiver prevents the elder from interacting with friends or family members unless the caregiver is present.

3) TYPES OF ELDER ABUSE

- a) Financial Abuse - W&I Code § 15610.30
 - "Financial abuse" of an elder or dependent adult occurs when a person or entity does any of the following:
 - (1) Takes, secretes, appropriates, obtains, or retains real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.
 - (2) Assists in taking, secreting, appropriating, obtaining, or retaining real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.
 - (3) Takes, secretes, appropriates, obtains, or retains, or assists in taking, secreting, appropriating, obtaining, or retaining, real or personal property of an elder or dependent adult by undue

influence, as defined in Section 1575 of the Civil Code..."

- b) Abduction - W&I Code § 15610.06
- c) Physical Abuse - W&I Code § 15610.63
- d) Neglect - W&I Code § 15610.57
- e) Isolation - W&I Code § 15610.43

4) DOES THE ELDER HAVE CAPACITY?

- a) What is capacity?
 - i) Communication abilities - able to express needs and understand and appreciate risks, benefits and alternatives.
 - ii) Functional abilities - capacity to manage personal and financial affairs
- b) The presumption is that the individual has capacity. In order to find that the individual does not have capacity, this presumption must be rebutted.

5) HAS THE ELDER BEEN A VICTIM OF UNDUE INFLUENCE?

- a) California Civil Code § 1575
 - 1. In the use, by one in whom a confidence is reposed by another, or who holds a real or apparent authority over him, of such confidence or authority for the purpose of obtaining an unfair advantage over him;
 - 2. In taking an unfair advantage of another's weakness of mind; or,
 - 3. In taking a grossly oppressive and unfair advantage of another's necessities or distress.

6) AGENCY RESPONSE

- a) Adult Protective Services
- b) Police Department
- c) Ombudsman's Office
- d) Public Guardian's Office
- e) County Counsel
- f) District Attorney's Office
- g) F.A.S.T. Referral?

7) OTHER TYPES OF RESPONSES

- a) Private Mediation
- b) Collaborative Law

8) SOLUTIONS

- a) The goal is to find a solution which is the least restrictive alternative.

9) RESOURCES

- a) Adult Protective Services (408) 975-4900 or (800) 414-2002 (24 hour)
- b) Ombudsman Program (408) 944-0567 or (800) 231-4024 (24 hour)
- c) DA Janet Berry, Elder Fraud Unit (408) 792-2790
- d) DA Cherie Bourlard, Elder Fraud Unit (408) 792-2519
- e) DA Steven Dick, Physical Abuse Unit (408) 792-2652

- f) Victim Witness has a 5 year grant focusing on helping elder victims (408) 295-2656, ext. 329
- g) Senior Adults Legal Assistance (408) 295-5991
- h) Consumer Law Clinic, Alexander Community Law Center (408) 288-7030
- i) Consumer Mediation Unit (792-2880)
- j) California Advocates for Nursing Home Reform (CANHR), www.canhr.org