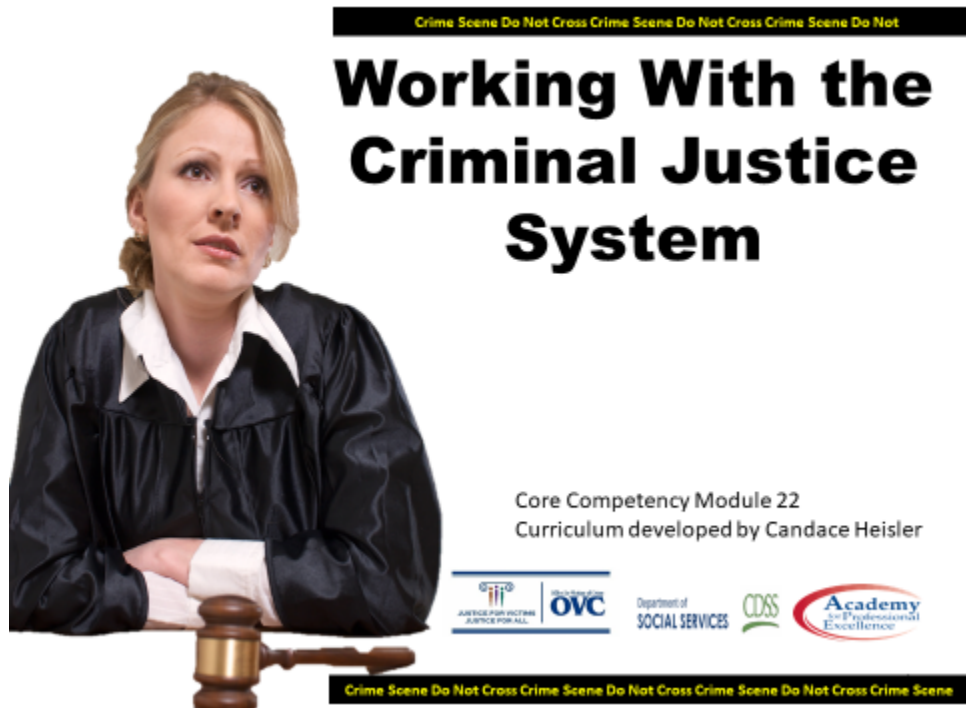


APS-Working with the Criminal Justice System

Participant Manual



APS- Working with the Criminal Justice System



This training (original version) was produced by the San Diego State University School of Social Work, Academy of Professional Excellence under grant #2009-SZ-B9-K008, awarded by the Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice. The opinions, findings, and conclusions or recommendations expressed in this training are those of the contributors and do not necessarily represent the official position or policies of the U.S. Department of Justice.

**Curriculum Developer 2013
Version 1.0
Candace Heisler, JD**



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**Curriculum Revision 2018
Version 2.0
Candace Heisler, JD**

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INTRODUCTION

ACADEMY FOR PROFESSIONAL EXCELLENCE

We are pleased to welcome you to the *APS- Working with the Criminal Justice System* Participant Manual, developed by MASTER, a program of the Academy for Professional Excellence under a grant from the California Department of Social Services, Adult Programs Division.

The **Academy for Professional Excellence**, a project of [San Diego State University School of Social Work](#), was established in 1996 to provide exceptional workforce development and organizational support to the health and human services community by providing training, technical assistance, organizational development, research, and evaluation. Serving over 20,000 people annually, the Academy continues to grow with new programs and a diversity of training focused on serving the health and human services community in Southern California and beyond.

The Academy is a project of San Diego State University School of Social Work (founded in 1963), which offers both a bachelor's and master's degree in Social Work. The School of Social Work at San Diego State University was founded in 1963 and has been continuously accredited by the Council of Social Work Education since 1966.

MASTER (Multi-disciplinary Adult Services Training and Evaluation for Results) is a program of the Academy for Professional Excellence. MASTER is designed to provide competency-based, multidisciplinary training to Adult Protective Services Workers and their partners. MASTER's overarching goal is the professionalization of Adult Protective Services workers to ensure that abused and vulnerable older adults and adults with disabilities receive high quality, effective interventions and services. In partnership with state and national organizations, MASTER has developed a nationally recognized Core Competency Training Curriculum for Adult Protective Services workers. This curriculum is reviewed and approved by experts in the elder and dependent adult abuse fields.

MASTER's partners include:

- National Adult Protective Services Association (NAPSA) Education Committee
- California Department of Social Services (CDSS), Adult Programs Division
- County Welfare Directors Association of California (CWDA), Protective Services Operations Committee (PSOC)

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Agencies

California Department of Social Services, Adult Programs Division
County of Los Angeles Workforce Development, Aging and Community
Services
Orange County Social Services Agency
Riverside County Department of Public Social Services
San Bernardino County Department of Aging and Adult Services
County of San Diego Aging & Independence Services

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Course Outline

Content	Materials	Time
<i>Activity 1: Terms and Their Meanings</i>	<i>Handout #1- Terms and Their Meanings</i>	
WELCOME, INTRODUCTIONS, COURSE OVERVIEW		15 minutes
LESSON 1: ROLE OF THE CRIMINAL JUSTICE SYSTEM AND INTERSECTION WITH APS		35 minutes
<i>Key Players</i>		
<i>Activity II: LE lens vs. APS Lens: Case of Mrs. Gask</i>	<i>Handout #2- Mrs. Gask Scenario</i>	
<i>Class Discussion: APS intersection with CJs</i>		
LESSON 2: UNDERSTANDING THE CRIMINAL JUSTICE SYSTEM 'RULES OF THE ROAD'		40 minutes
<i>Evidentiary Standards and Burden of Proof</i>		
<i>Class Discussion: Reasonable Suspicion</i>		
<i>Activity III: Mrs. Xander Part 1</i>		
<i>Activity IV: Mrs. Xander Part 2</i>	<i>Handout #3- Case File Mrs. Xander (Part 2-The Investigation)</i>	

<i>Shout Out: Beyond a Reasonable Doubt</i>		
LESSON 3: EVIDENCE		60 minutes
<i>Types of Evidence</i>		
<i>Class discussion: Victim-based Cases vs. Evidence-based Cases</i>		
<i>Class discussion: Corroborating Evidence</i>		
<i>Victim Testimony</i>		
<i><u>Activity V:</u> Victim-based vs Evidence-based comparison</i>	<i>Handout #3- Case File Mrs. Xander (Part 2- The Investigation)</i>	
<i>Class discussion: APS Role in the CJS Process</i>		
<i>Shout Out: What have you learned thus far?</i>		
LUNCH		60 minutes
LESSON 4: CASE BUILDING		125 minutes
<i>Types of Crimes</i>		
<i>Shout Out: Victims and Defendant's Rights</i>		

<i>What makes a crime a crime?</i>	<i>Selected CA Statutes (provided in class)</i>	
<i><u>Activity VI: Identifying State Statutes</u></i>	<i>Handout #4- Crimes and their Elements</i>	
<i>Class Discussion: PC 368: Elder/Vulnerable Adult Abuse</i>	<i>Handout #5-Penal Code Section 368- Elder/Vulnerable Adult Abuse</i>	
<i><u>Activity VII: Fact Patterns</u></i>	<i>Handout #6- Case Scenarios</i>	
<i>Class discussion: Activity VII debrief</i>	<i>Handout #7-Case Building Framework</i>	
LESSON 5: YOUR DOCUMENTATION IN THE COURTROOM		35 minutes
<i>Importance of documentation and Cross Examination</i>		
<i><u>Activity VIII: Mock Courtroom- Cross Examination</u></i>	<i>Handout #8- Madison Gray's Direct Testimony</i>	
<i>Classroom discussion: Debrief of Mock Courtroom</i>		
CONCLUSION, ACTIVITY IX- TERMS AND THEIR MEANINGS, EVALUATIONS	<i>Handout #1- Terms and Their Meanings Evaluations</i>	20 minutes

EXECUTIVE SUMMARY

Course Title: *APS-Working with the Criminal Justice System*

In this interactive and thought provoking introductory training, participants learn how to identify crimes and the elements of crimes. They learn how to “build” a case that is more likely to be accepted for prosecution and how to support the victim if the case goes to court. They will also learn about their own role as a witness in court and develop an understanding of an appreciation for Law Enforcement and Prosecutors while remaining client focused. This is the Instructor Led Training for Core Curriculum Module 22.

The following instructional strategies are used: lecture segments; interactive activities/exercises (e.g. small group discussion, case studies); question/answer periods; PowerPoint slides; participant manual (encourages self-questioning and interaction with the content information); and transfer of learning activity to access knowledge and skill acquisition and how these translate into practice in the field.

Course Requirements:

It is suggested that participants have a basic understanding of their role as an Adult Protective Services professional prior to taking this course. If possible, this module should NOT be one of their first trainings.

Please note that training participants are expected to participate in a variety of in-class evaluation activities. These activities are designed to enhance the learning experience and reinforce the skill acquisition of training participants as well as determine the overall effectiveness of the trainings.

An executive summary of each training will be provided to training participants and their supervisors. Certificates of course completion will be awarded upon completion of ALL course activities.

Target Audience:

This course is designed for new APS professionals as well as Aging & Adult Service partners (e.g. In-Home Supportive Services, Long-Term Care Ombudsman). This course is also appropriate for experienced staff that could benefit from knowledge and/or skills review.

Training Goal:

Improve participant's ability to successfully work with the criminal justice system.

Outcome Objectives for Participants:

By the end of this training, participants will be able to:

- 1. Distinguish the role of Adult Protective Services from the role of Law Enforcement and Prosecution**
- 2. Identify factors that help make a case provable in the criminal justice system**
 - a. Able to name the 3 levels/burdens of proof**
 - b. Able to name the 3 categories of evidence used to build a criminal case**
 - c. Able to explain the difference between an evidence-based and a victim-based case and how that difference affects how a case is investigated and built**
- 3. Explain APS's role when a case is accepted for prosecution**
 - a. Can name at least 4 things that APS can do for abuse victims when the case has been accepted for prosecution**
- 4. Identify rights of victims and defendants**
- 5. Identify the elements of a crime when given the statute**
- 6. Explain the importance of APS documentation to enhance credibility when testifying in a criminal case**
- 7. Utilize a case scenario to develop 2 questions for cross examination**

TRANSFER OF LEARNING: *Ways supervisors can support the transfer of learning from the training room to on-the-job.*

AFTER the training, Supervisors can read the training executive summary and instructions for out-of- class transfer of learning (TOL) activity. Supervisor and training participant can then schedule a time to complete the activity together, preferably no more than 45 days after the in-person class.

At this point the trainees can share what specific skills they obtained from the training. It is intended to help the APS professional apply the elements structure of crimes to a real case the worker is handling.

If further staff involvement is available, trainees may present an overview of what was learned to other staff members to encourage collaboration and a culture of learning.

HANDOUT #1- TERMS AND THEIR MEANING

Terms and Their Meaning *Match the definition to the term*

Term	Definition
Felony	a. Court order requiring a person to appear as a witness in an action or to produce records
Misdemeanor	b. More evidence in favor of guilt than against it
Right of Allocution	c. Anything with a tendency in reason to make something in dispute more probable
Discovery	d. An out of court statement offered to prove the truth of what it contains
Restraining Order (may be called protection order, protective order, order of protection)	e. The right to speak and provide personal views at sentencing (may include victim impact statement)
Subpoena	f. Criminal defendant's constitutional right to cross examine witnesses called by the prosecution
Probable cause	g. The right to receive certain information from the other side in a criminal case
Hearsay	h. Ruling on an objection that requires the witness to answer the question that was asked

Arraignment	i. A crime punishable by no more than a year in county jail, a fine, or both
Direct examination	j. Civil order to provide specific protection such as stay away from specific persons or locations, no contact, or prohibiting certain behaviors
Defendant	k. Crime punishable by imprisonment in state prison or death
Right of confrontation	l. Burden of proof required of the prosecution in a criminal case
Beyond a reasonable doubt	m. The first court appearance in a criminal case
Evidence	n. Person charged with a crime
Overruled	o. Evidence from which an inference must be drawn to prove a fact or element that must be established
Circumstantial Evidence	p. Ordinarily the first testimony of a witness; usually asking of questions by the side with which the witness is naturally aligned

Slide #3

Introductions

- Instructor
- Participants
 - Name
 - Agency/assignment
 - Years of experience



Slide #4

Housekeeping

- Location of restrooms
- Set cell phones to silent or vibrate
- Please return promptly from breaks and help us keep to the schedule
- Materials
 - PowerPoint Slides
 - Participant Materials
 - Selected Statutes



4

Slide #5

Have You

- Worked with law enforcement?
- Worked with prosecutors?



Slide #6

Course Goal

Improve your ability to successfully work
with the criminal justice system



Slide #7

Learning Objectives

- Distinguish the role of Adult Protective Services from role of Law Enforcement and Prosecution
- Identify factors that help make a case provable in the criminal justice system
- Explain APS's role when a case is accepted for prosecution
- Identify the rights of victims and defendants



Slide #8

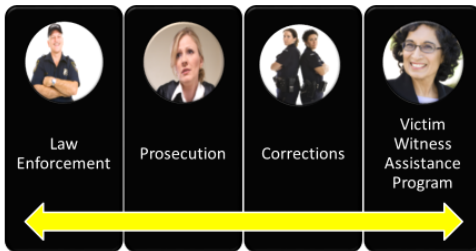
Learning Objectives-continued

- Identify the elements of a crime when given the statute
- Explain the importance of APS documentation to enhance credibility when testifying in a criminal case
- Develop at least 2 questions for cross examination in response to a scenario.



Slide #9

The Criminal Justice System



Terminology Difference #1:
Client vs. Victim (reporting party or complaining party)

Terminology Difference #1

Client (APS) vs. Victim (LE)

Slide #10

Mrs. Gask



What is the role of APS?
What is the role of Law Enforcement?

Slide #11

Who's Focused on What?



Handout #2- Mrs. Gask Scenario

Mrs. Gask. is 72 and uses a walker to ambulate following 2 strokes. She is seen by her doctor for a broken wrist which she says she received when her son became angry after she refused to give her grocery money to him.

She says she was holding her purse when her son grabbed her wrist and twisted it until she released the purse. He then grabbed the cash out of her wallet and ran out of her home. She says this has happened before as her son has a drug problem and is always stealing her cash or debit card.

The doctor reports the incident in accordance with state law.

What is your role?

Slide #12

Class Discussion



Where do the roles of
APS and the criminal
justice system intersect?



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Slide #13

Intersecting Roles

- Well checks
- Safety backup for APS
- Advance information
- Involuntary mental health commitments
- Cross reporting
- Provide APS information to LE
- Testify in court as a witness
- Arrange Capacity Declaration
- Provide Services
- Provide info about suspect



Slide #14

Information Sharing



- Can APS share information with law enforcement?
- Is everything in the APS file provided to law enforcement

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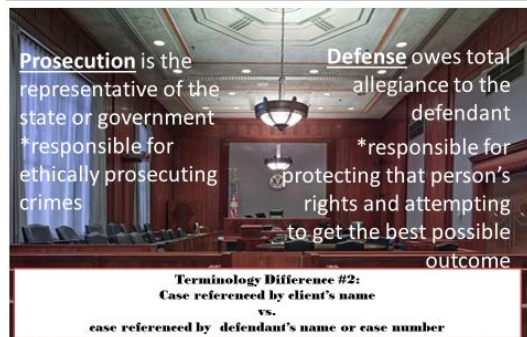
Slide #15

Understanding the Criminal Justice System 'Rules of the Road'



Slide #16

Two parties; different roles



Terminology Difference #2

Case referenced by Client's name (APS)

vs.

Case referenced by Suspect's/Defendants name or Case # (LE)

*Helpful hint: know the incident or case # when speaking to LE or Suspect's/Defendant's name when navigating the court system

Terminology Difference #3

Standard of Proof (APS)

vs.

Burden of proof (LE)

Slide #17

Burden of Proof/Standard of Evidence

Preponderance of Evidence

- More evidence in favor of a position than against it.
- 50% plus anything
- Civil cases
- Often the substantiation standard for an APS investigation.
- Same as probable cause and is evidence needed to make an arrest

Clear and Convincing Evidence

- Highly probable that the fact is true so that the fact finder has a firm conviction or belief that the cause is true



Terminology Difference #4

Preponderance of Evidence (APS)

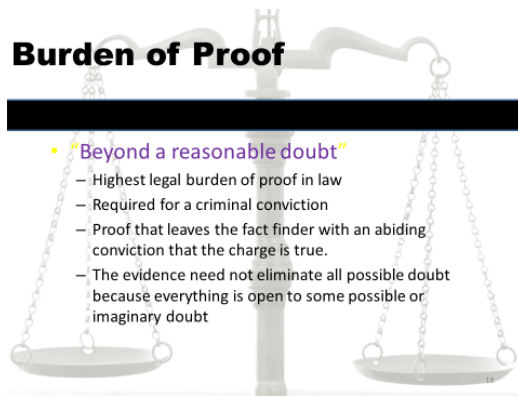
vs.

Probable Cause (LE)

*Helpful Hint: when speaking to LE, use probable cause

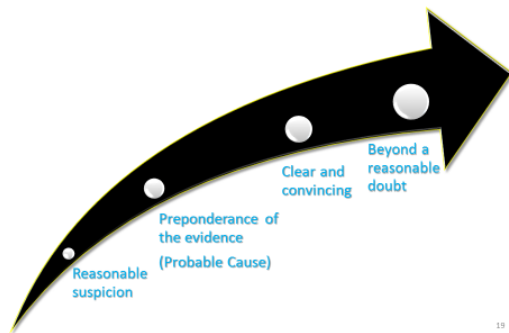
Slide #18

Burden of Proof



Slide #19

Burden of Proof



Slide #20

**Activity III: What Level of Proof
Do You Have?**



Part 1- The Report:

APS receives a report that Mrs. Xander is being neglected by her daughter. The Reporting Party (RP) states that Mrs. Xander had been very friendly and social and was always very clean and groomed. A year ago, her daughter Marianne moved in to help her as she was becoming very confused and had serious arthritis so she could no longer write checks or maintain her home. The RP stated that Mrs. Xander came to her door and was dirty and crying. She said she was hungry, cold, and alone.

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Slide #21

**What Can You Do With This
Level of Information?**



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Slide #22

Mrs. Xander, Part 2



22

Handout #3: Case File Mrs. Xander (Part 2- Investigation)

During the APS interview with Mrs. Xander, the professional:

- *Saw she was alone, dirty, and the house was cold (it is freezing outside).*
- *Noticed a large pile of mail addressed to Mrs. Xander which the client cannot describe.*
- *Observed photos in the home which showed art work and a large piano in the living room which are not currently in the home.*
- *Realized Mrs. Xander was unable to answer most of the questions but keeps calling her by her daughter's name, Marianne.*
- *The APS professional administered the MoCA screening tool and the client scored 18.*

The APS professional located Marianne a few days later.

- *Marianne stated she is doing "the best she can". Says her mother is demanding, refuses to do as directed, and yells at her. She periodically has to leave or she "will lose it".*
- *Marianne provided no explanation for the unpaid bills in the mail. Admitted selling off things in the home because her mother doesn't use them or need them and they need the money.*

The professional interviewed the reporting party who repeated info provided in her APS report. Also stated:

- *She gave Mrs. Xander food, wrapped her in a blanket, walked her home and found that she was alone. The house was messy.*
- *She and Mrs. Xander have been friends for 25 years and played bridge until Mrs. Xander could not remember game rules. She also occasionally wandered away.*
- *Lately Marianne has had many visitors coming and going at all hours.*
- *Marianne often leaves for hours or days.*

The professional checked with Mrs. Xander's bank and learned:

- *Mrs. Xander is a long-time client of the bank and has a checking and savings account.*
- *Mrs. Xander had \$32,000 in the savings account a year ago but now has \$8,000.*
- *The checking account which had never been overdrawn until 4 months ago, has been overdrawn 5 times since then. The current balance is \$2.32.*
- *Mrs. Xander's monthly social security and pension checks are direct-deposited into the savings account. They total \$2800 per month.*

The professional checked with Mrs. Xander's doctor who has not seen Mrs. Xander in a year and found out:.

- *Mrs. Xander should be taking medication for high blood pressure but has no current prescriptions. The doctor's office has called her home repeatedly to have her come in so they can update her prescriptions. They have left messages but have not been able to reach Mrs. Xander.*

Slide #23

Discussion

- What level of proof do you have?
- For what allegation?
- As an APS worker, what can you do with this level of proof?
- Do you have reasonable suspicion that any other form of abuse may be occurring?



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Slide #24

Class Discussion

What more is needed to prove this case beyond a reasonable doubt?



Slide #25

Beyond a Reasonable Doubt

- Statements by Marianne
- Confirm Marianne to provide care /pay bills
- Bank records
- Proof of unpaid bills
- Ongoing drug investigation
- Medical providers re: Mrs. Xander's condition
- Doctors' statements to Marianne
- Statement by Mrs. Xander



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Slide #26

Collaborative Relationships

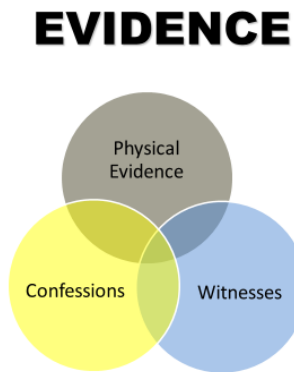


LE and APS should negotiate/agree who should do what and who should obtain these items.

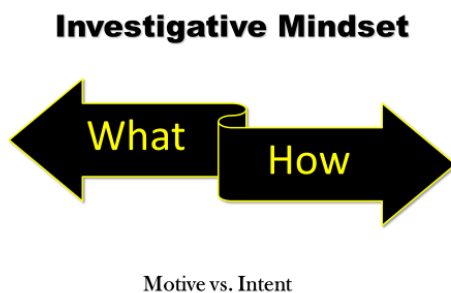
Consider the value of developing MOUs and interagency protocols and cross training.

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Slide #27



Slide #28



Slide #29

Victim-Based vs. Evidence-Based



Slide #30

Why do APS workers need to understand the importance of evidence based cases and build your own cases accordingly?



Slide #31

Importance:

The criminal justice system often cannot proceed with a case built exclusively on the victim's information

- Insufficient evidence
- Series of events
- Mortality of victim
- Cognitive issues
- Victim recantation



Slide #32

Corroborating Evidence

- Your observations
- A/P statements against interest or admissions
- Spontaneous Statements
- Business Records
- Medical Records
- Statements for Medical Care
 - Diagnosis and Treatment
 - Discharge Planning
- Chance overheard remarks
- Statements to non governmental agents
 - Friends and Family
 - Who have you talked to about this?
 - Who else knows?



Slide #33

Victim Testimony

- Defendant has constitutional right to face and confront all witnesses called against them
 - Crawford v. Washington (2004)
- If victim is competent to testify likely they will be called as a witness
- Can taking of testimony be expedited?
 - Conditional examination, deposition



Slide #34

Conditional Examination

- Early memorialization of victim testimony with full cross examination
- Can be taken at victim's location if victim cannot travel
- Can be videotaped
- Can be used if victim unavailable to testify at trial
- Penal Code §§1335-1345



Slide #35

Activity V



- How can this case be proven if the victim does not testify?
- If the victim were able to testify, how could that testimony be corroborated?
- Select a spokesperson to report back

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Slide #36

APS Role in the CJS Process

- Once a case is charged is your involvement over?
- What is your role?
- How can you advocate with the prosecution for your client?



36

Slide #37

Role of APS

- Work with and through victim witness program advocates
- Arrange for transportation to follow up interviews, court appearances, forensic examinations if required
- Arrange for emergency or transitional housing as needed
- Develop longer term resources for victim
- Serve as witness
- Identify other witnesses developed through your own investigation



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Slide #38

Lessons Learned

- What are 2 things you have learned so far that you can apply to your job?
- Note these in your Participant Workbook



Slide #39

LUNCH BREAK



Slide #40

Rights



Victim's Rights



Defendant's Rights

Slide #41

Categories of Crimes

Infraction



Misdemeanor



Felony



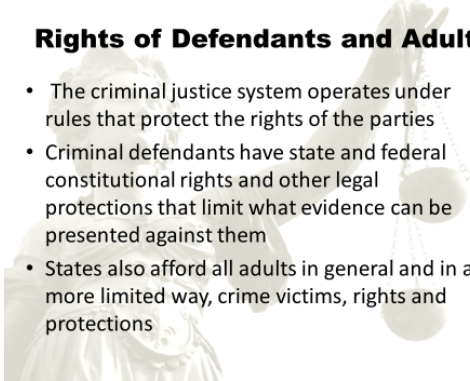
Terminology Difference #5

Alleged Perpetrator or Suspected Abuser (APS) vs.
Suspect (during an investigation) and Defendant (once charged and in the CJS (LE))

Slide #42

Rights of Defendants and Adults

- The criminal justice system operates under rules that protect the rights of the parties
- Criminal defendants have state and federal constitutional rights and other legal protections that limit what evidence can be presented against them
- States also afford all adults in general and in a more limited way, crime victims, rights and protections



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Slide #43

Rights of Crime Victims

- To protection
- To notice of court proceedings
- To be heard
- To confer with the state's attorney
- To restitution
- To proceedings free from unreasonable delay.
- To be treated with fairness and with respect for the victim's dignity and privacy.



Slide #44

Rights of the Accused

- What are the legal rights of those accused of a crime?



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Slide #45

Rights of the Accused include:

- Counsel
- Jury (or other) trial
- Against compulsory self-incrimination (be required to testify against themselves)
- Call witnesses
- Confront accusers
- Be free of unlawful search and seizure
- Bail
- Presumption of innocence



Slide #46

Why Do APS Workers Need This Information?

- Educate clients
- Understand own role and reasons why must testify
- Prepare clients who are possible witnesses or whose cases may be reviewed by the criminal justice system



Slide #47

What Makes a Crime a Crime?



Slide #48

Overview of Crimes

- Crimes are composed of elements
- Must prove each element
- APS must recognize common crimes
- APS must know their elements



Slide #49

Finding the Elements

- Most criminal laws are in the **California Penal Code** available at <https://leginfo.legislature.ca.gov/>
- To determine the elements of a crime, read the crime's definition.
- The elements of a crime are also in the jury instruction books (**CALCRIM** available online at <http://www.courts.ca.gov/partners/312.htm>)



Slide #50

Example

- CA Penal Code Section 273.5
- Any person who willfully inflicts corporal injury resulting in a traumatic condition upon the offender's spouse or former spouse; cohabitant or former cohabitant; fiancé or fiancée, or someone with whom the offender has, or previously had, an engagement or dating relationship; or the mother or father of the offender's child.

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Slide #51

Elements

- The suspect willfully inflicted corporal injury resulting in a traumatic condition
 - Traumatic condition is a condition of the body, such as a wound, or external or internal injury, including, but not limited to, injury as a result of strangulation or suffocation, whether of a minor or serious nature, caused by a physical force.
- On a person in one of these relationships
 - Spouse or former spouse;
 - Cohabitant or former cohabitant;
 - Fiancé or fiancée;
 - Someone with whom the offender has, or previously had, an engagement or dating relationship; or
 - The mother or father of the offender's child.

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Slide #52

Activity VI: Identifying State Statutes

Working with your assigned statute

- Review the crime and on chart paper list
 - The name of the crime
 - The statute number
 - The elements
- Post your list on the wall

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Handout #4- Crimes and Their Elements (1)

Penal Code Section 243(e)(1) (Domestic Battery)

When a battery is committed against a spouse, a person with whom the defendant is cohabiting, a person who is the parent of the defendant's child, former spouse, fiancé, or fiancée, or a person with whom the defendant currently has, or has previously had, a dating or engagement relationship, the battery is punishable by a fine not exceeding two thousand dollars (\$2,000), or by imprisonment in a county jail for a period of not more than one year, or by both that fine and imprisonment.

"Dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement independent of financial considerations.

A battery is any willful and unlawful use of force or violence upon the person of another. (Penal Code Section 242).

Handout #4- Crimes and Their Elements (2)

Penal Code Section 243.4 (Sexual Battery)

(a) Any person who touches an intimate part of another person while that person is unlawfully restrained by the accused or an accomplice, and if the touching is against the will of the person touched and is for the purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of sexual battery. A violation of this subdivision is punishable by imprisonment in a county jail for not more than one year, and by a fine not exceeding two thousand dollars (\$2,000); or by imprisonment in the state prison for two, three, or four years, and by a fine not exceeding ten thousand dollars (\$10,000).

As used in this subdivision, "touches" means either:

- physical contact with another person, whether accomplished directly, through the clothing of the person committing the offense, or through the clothing of the victim; or
- physical contact with the skin of another person whether accomplished directly or through the clothing of the person committing the offense.

"Intimate part" means the sexual organ, anus, groin, or buttocks of any person, and the breast of a female.

Handout #4- Crimes and Their Elements (3)

Penal Code Section 368 (Neglect)

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, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not to exceed six thousand dollars (\$6,000), or by both that fine and imprisonment, or by imprisonment in the state prison for two, three, or four years.

“Elder” means any person who is 65 years of age or older.

Handout #4- Crimes and Their Elements (4)

Penal Code Section 211 (Robbery)

Robbery is the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear.

Fear may be either:

1. The fear of an unlawful injury to the person or property of the person robbed, or of any relative of his or member of his family; or,
2. The fear of an immediate and unlawful injury to the person or property of anyone in the company of the person robbed at the time of the robbery.

Handout #4- Crimes and Their Elements (5)

Penal Code Section 487 (Larceny (theft))

Every person who shall feloniously steal, take, carry, lead, or drive away the personal property of another, or who shall fraudulently appropriate property which has been entrusted to him or her, or who shall knowingly and designedly, by any false or fraudulent representation or pretense, defraud any other person of money, labor or real or personal property...is guilty of theft.

It is Grand Theft when the money, labor, or real or personal property taken is of a value exceeding nine hundred fifty dollars (\$950), except...

- Certain crops or livestock
- When the property is taken from the person of another.
- When the property taken is an automobile or a firearm.

The crime is petit theft if the value is less than nine hundred and fifty dollars and not livestock or crops, an automobile, or a firearm.

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Penal Code §368



HANDOUT #6

- Elders— person 65 years or older
- Dependent adults—
 - 18 to 64
 - has physical or mental limitations which restrict his or her ability to carry out normal activities or to protect his or her rights,
 - including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age.
 - Persons admitted as an inpatient to a 24-hour health facility

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Crimes in Penal Code §368

“Caretaker”++

- Neglect
- Caretaker financial abuse

++Must prove suspect was a caretaker—had the care, custody, or control of, or who stands in a position of trust with, an elder or a dependent adult.

“Any Person”**

- Infliction of physical pain
- Infliction of mental suffering
- Financial abuse
- False imprisonment

**Must prove perpetrator knew or reasonably should have known the victim was an elder or a dependent adult

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Handout #5- Penal Code Section 368-Elder/Vulnerable Adult Abuse

Penal Code Section 368—Included Conduct

Any person ...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, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not to exceed six thousand dollars (\$6,000), or by both that fine and imprisonment, or by imprisonment in the state prison for two, three, or four years.

“Elder” means any person who is 65 years of age or older.

Willful Infliction of Unjustified Physical Pain or Mental Suffering (368(b))

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, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not to exceed six thousand dollars (\$6,000), or by both that fine and imprisonment, or by imprisonment in the state prison for two, three, or four years.

“Elder” means any person who is 65 years of age or older.

“Mental Suffering” means fear, agitation, confusion, other serious emotional distress brought about by intimidating behavior, threats, harassment, or deceptive acts, or false or misleading statements made with malicious intent to agitate, confuse, frighten, or cause severe depression or serious emotional distress.... (WIC 15610.53)

Financial Abuse (368(d))

Any person who is not a caretaker who violates any provision of law proscribing theft, embezzlement, forgery, fraud, or identity theft, with respect to the property or personal identifying information of an elder or a dependent adult, and who knows or reasonably should know that the victim is an elder or a dependent adult, is punishable ...

Felony if taking is more than \$950.00; misdemeanor if taking is less than \$950.00.

“Elder” means any person who is 65 years of age or older.

Financial Exploitation by a Caretaker (368(e))

Any caretaker of an elder or a dependent adult who violates any provision of law proscribing theft, embezzlement, forgery, fraud, or identity theft, with respect to the property or personal identifying information of that elder or dependent adult, is punishable ...

Felony if taking is more than \$950.00; misdemeanor if taking is less than \$950.00.

“Elder” means any person who is 65 years of age or older.

“Caretaker” means any person who has the care, custody, or control of, or who stands in a position of trust with, an elder or a dependent adult.

False Imprisonment of an Elder (368(f))

Any person who commits the false imprisonment of an elder or a dependent adult by the use of violence, menace, fraud, or deceit is punishable ...

“False imprisonment is the unlawful violation of the personal liberty of another.” (Penal Code 236)

Slide #55

Activity VII: Fact Patterns

- Working with your assigned scenario
 - Identify the applicable crimes in Penal Code 368
 - Pick 1 crime in Penal Code 368
 - List the elements
 - List the evidence and witnesses available to prove each element
 - Determine if there are questions that need to be asked to clarify any of the elements
- Document your findings on chart paper



Handout #6 Case Scenarios: Case 1

Mrs. Phillips is 72, a retired teacher, has difficulty moving around. She has diabetes and hypertension but controls them with medication and diet. Six months ago her son Douglas moved in with her to help her out and after he lost his job and his marriage broke down.

In the last 3 months Douglas has repeatedly asked Mrs. Phillips for money. First it was small amounts. More recently he has demanded greater and greater sums. Last month when Mrs. Phillips' received her pension check Douglas demanded that she sign it over to him. When she refused he twisted her arm up behind her back until it snapped. Three days later a neighbor came by to visit and discovered Mrs. Phillips' condition.

The neighbor drove her to the hospital where she was treated for a spiral fracture. Mrs. Phillips told her neighbor what had happened but begged her not to tell anyone. Mrs. Phillips told medical staff she had fallen on the stairs.

Earlier this month the neighbor went to visit Mrs. Phillips. She saw that the house was a mess, an unusual condition, and that Mrs. Phillips was having problems catching her breath. Mrs. Phillips whispered to her that Douglas had tried to take her check again and had strangled her until she fainted. She said that Douglas has taken all the money she had in the house and she has not eaten anything except candy bars and crackers for 3 days. She says that she cannot find her medications and believes that her son has hidden them.

Crime:

Element 1:

Evidence to support element:

Witnesses:

Missing Information/Clarifying information needed:

Element 2:

Evidence to support element:

Witness:

Missing Information/Clarifying information needed:

Handout #6 Case Scenarios: Case 2

A bank teller reports to APS that the bank has recently cashed several large checks for \$29,950.00 payable to “Melinda Johnson” from the account of longtime customer Frank Mathews, who is 84 years of age. The bank is concerned because these are unusually large checks for Mr. Mathews to write and the checks seem to have been written by two different people. The bank teller is particularly concerned because Mr. Mathews lives alone in his longtime home and was widowed 9 months ago. The teller says Mr. Mathews was not doing very well while his wife was alive but since her death has been very lonely. He recently came to the bank with a much younger woman he introduced as his daughter, Melinda. The bank teller says she was surprised as Mr. Mathews had repeatedly told her that he and his wife had 3 sons who all lived in another state. She also said that Mr. Mathews seemed really confused and agitated on that visit.

APS contacted Mr. Mathews and found that he has vision problems sufficiently serious that he cannot read his mail or fill out his checks. When asked about Melinda Johnson”, he says she is his daughter. He says she suddenly came back into his life “a while ago.” He is obviously confused about the date, his address, and the name of his late wife. He says he has one child and that is Melinda. He says he has never had a son, let alone 3. He says Melinda does not live with him but visits him “pretty much every day.”

With his permission, APS located and reviewed Mr. Mathews’ checkbook. There are no copies or register entries. He says he has plenty of money though he cannot say how much. A bank statement reflects a balance of less than \$10,000. A statement from a year ago showed a balance of \$125,000. There are numerous unpaid bills around the house and notices of threatened shutdown of utilities due to nonpayment of bills. Mr. Mathews is unaware of these and is very confused.

The APS worker had Mr. Mathews’ financial decision making capacity evaluated. The doctor determined that Mr. Mathews has a dementing illness and is incapable of managing his affairs or living independently. The doctor concluded the condition has existed for several years and is apparent to anyone who spends time with him. The dementia is accompanied by depression. A petition for guardianship/conservatorship has been filed and is pending in Probate Court.

The bank provides account information and ATM photos and bank video showing a young woman presenting and cashing checks from Mr. Mathews’ account. The teller identifies the woman as the person introduced to her as Melinda Johnson. Police have identified Melinda Johnson as a suspect in a similar incident committed against another older widower, Bill Nelson. There is an ongoing investigation in that case.

Crime:

Element 1:

Evidence to support element:

Witnesses:

Missing Information/Clarifying information needed:

Element 2:

Evidence to support element:

Witness:

Missing Information/Clarifying information needed:

Handout #6 Case Scenarios: Case 3

Marie Baker is an 82 year old woman who is married to Harry who is 80. She recently broke her hip in a fall and is now recovering from surgery in a skilled nursing facility (SNF) after being transferred there from the hospital. During a visit at the SNF a staff member saw Harry yell at his wife to get up and stop playing sick. Harry then called Marie a “failure as a human being” and “a useless witch”, struck her in the hip area where she had recently had surgery, and punched her in the chest. Harry told her to get up and come home or he would not be responsible to what might happen to her cat. Marie became visibly upset, grabbed her chest, and cried out in pain. The staff member tried to intervene and told Harry to leave. Harry laughed and said he’d go, but next time he would be back with his gun. The staff member told his supervisor but is now afraid to return to Marie’s room.

Staff attempted to talk with Marie. She said she did not want to discuss it and to leave her alone.

The next day the care nurse entered Marie’s room and found the curtain around the bed drawn. She heard a sound and on drawing back the curtain found Harry having nonconsensual sex with Marie. Marie was crying. Her hands were held down by Harry who had forced his penis in her mouth. As he stood up Harry told Marie to shut up and not say a word. He quickly departed saying “can’t a man have time with his wife.”

Police were called after Marie told the nurse Harry had forced himself on her. Marie required medical treatment for injuries to her mouth and pain medication for her hip. Marie was interviewed and told the detective that she had been married to Harry for 60 years and had been beaten and abused by him for most of that time. She expressed concern for her cat that Harry constantly threatens to harm. She said that the hip surgery came after Harry pushed her down a flight of stairs. She is terrified of Harry who has guns at home. Last month he became angry with her and threatened to shoot her. He actually pointed a gun at her and said it would be easy to pull the trigger. He stopped when she fainted.

She acknowledged the incident the prior day and said that Harry had called her names, punched her in her hip where the surgery had been performed, and then punched her in the chest. A bruise was visible at the time of the interview and it was photographed.

Crime:

Element 1:

Evidence to support element:

Witnesses:

Missing Information/Clarifying information needed:

Element 2:

Evidence to support element:

Witness:

Missing Information/Clarifying information needed:

Handout #6 Case Scenarios: Case 4

Doris Miller, 79 years of age, hired a caregiver, Sandra, to care for her husband Marcus who had end stage cancer. Sandra provided good care to Marcus and also became a companion and friend to Doris who herself had vision and hearing problems, and could not drive. When Marcus died Doris found herself overwhelmed by all the responsibilities of running the house and dealing with the finances. She was bewildered by all the financial decisions and matters that Marcus has always handled.

Sandra realized that Doris continued to need help with her care and driving and offered to stay on. Doris was relieved as Sandra, who had become the daughter she never had, was a great help and a trusted friend. Sandra wrote out the monthly checks and Doris signed them. Sandra drove her to appointments and took her to movies and other outings. Sandra introduced Doris to her favorite hobby, gambling at a nearby casino. Sandra also intercepted the mail and told Doris' sons not to call. She told them that their calls upset their mother. Doris was unaware of Sandra's actions.

Doris suffered a serious stroke which left her paralyzed. While in the hospital Sandra convinced Doris that her financial affairs needed attention. Sandra agreed to take care of them if Doris gave her a power of attorney. Doris was confused but agreed to do it "because Sandra asked her." Doris could not read the form but signed where Sandra placed her hand. The next day Sandra closed Doris' bank accounts and opened new ones with only Sandra's name on them. She wrote numerous checks totaling nearly \$50,000.00 to herself, her boyfriend, the casino to pay her debts, and to her other creditors. She also contacted the stockbroker who had managed Doris and Marcus' stock account for years. She tried to liquidate everything in them (worth over \$250,000.00) but was told she did not have authority. The brokerage said the POA was not on their forms. Meanwhile, the firm contacted Doris' two sons who lived in other states and local authorities.

The sons were unaware that their mother had suffered a stroke. Both immediately came to the hospital. Sandra refused to let them see Doris without being present. They contacted Doris' bank and were told that Doris' accounts were closed by Sandra who had a power of attorney. The sons went to Doris' home and found that most of her jewelry was missing. They discovered that Sandra had pawned 32 pieces at a local pawn shop over the previous 9 months and had signed the pawn slips with Doris' name. They also discovered that a person using Doris' name had recently purchased a BMW with a check for the total amount. The registration was in Sandra's name. Police learned that the transaction was completed by Sandra who said her name was Doris. Sandra had completed the check and signed it with Doris' name.

Sandra has said that Doris gave her the jewelry and says the bank transactions were legal under the POA. She says she bought the car to drive Doris around. Doris owns a 3 year old car in good working order.

Crime:

Element 1:

Evidence to support element:

Witnesses:

Missing Information/Clarifying information needed:

Element 2:

Evidence to support element:

Witness:

Missing Information/Clarifying information needed:

Handout #6 Case Scenarios: Case 5

Millie Graham, aged 89 years, receives weekly visits from a visiting nurse. Millie lives in her home with her son Philip. Philip is paid to take care of Millie, keep the home in order, and make sure that Millie eats properly for her medical condition and takes her medications. On a regular visit to check on Millie's diabetes and to treat the ulcers on her legs the nurse was unable to get anyone to answer the door. She became concerned as this is her regular time to visit and Millie has never missed a session. Her calls to the home were unanswered.

The nurse looked in a side bedroom window and saw Millie sitting beside a heavy dresser. Millie raised her arm in response to the nurse's tap on the window but could not get up. She appeared dirty and disheveled. It was a cold day but all Millie had on was a thin house dress.

The nurse summoned a neighbor and friend the nurse knew had a spare key to the house. The two entered the home. Philip was not there. When they entered the bedroom they discovered that Millie was tied to the dresser. The house was very cold though the house has a working heating system. Millie's house dress was filthy and caked with feces and urine stains. The bedroom was filthy and the stench was overwhelming.

Millie was confused and drifted in and out of consciousness. She was immediately taken to the hospital and admitted. Hospital staff found she had elevated blood pressure, her diabetes was out of control, and she was near death. An examination revealed several Stage 3 and 4 pressure sores over her shoulder and tailbone.

The neighbor reported that he saw Philip leave home 3 days earlier carrying a suitcase. He entered a cab. Cab records indicate Philip went to the airport. The neighbor called Philip on his cell phone and learned that he was visiting friends in another state

Crime:

Element 1:

Evidence to support element:

Witnesses:

Missing Information/Clarifying information needed:

Element 2:

Evidence to support element:

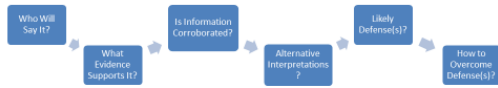
Witness:

Missing Information/Clarifying information needed:

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Case Building Framework

- The Crime is:
 - The Legal Elements are:
 - For each element, what facts will prove that element...
 - Then for each fact...



Remember APS vs LE/CJS lens?

HANDOUT #7- Case Building Framework

The Crime is:

The Legal Elements are:

Element 1:

What facts will prove that element (list facts)?

- a. Who will say that fact?
- b. What evidence proves that fact?
- c. Is the information corroborated?
- d. Is the information/evidence supportive of any other interpretation?
- e. What is/are the likely defense(s)?
- f. How can the defense(s) be overcome?

Element 2:

What facts will prove that element (list facts)?

- a. Who will say that fact?
- b. What evidence proves that fact?
- c. Is the information corroborated?
- d. Is the information/evidence supportive of any other interpretation?
- e. What is/are the likely defense(s)?
- f. How can the defense(s) be overcome?

Fact 1:

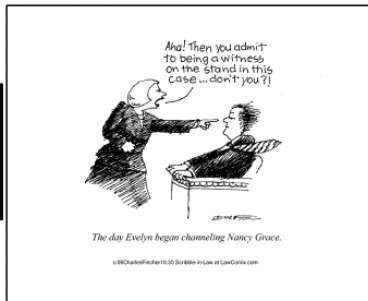
Who Will Say It	What Evidence Supports It	Is information corroborated	Alternative interpretations	Likely Defense(s)	How Overcome Defense (s)

Fact 2:

Who Will Say It	What Evidence Supports It	Is information corroborated	Alternative interpretations	Likely Defense(s)	How Overcome Defense (s)

Slide #57

Your Documentation and the Courtroom



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Slide #58

"If it wasn't written down, it didn't happen."



.... and you won't be credible.

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Slide #59

**Direct and Cross Examination:
Your Documentation in Court**

Direct Examination

- Questions asked of you by the attorney who has called you to testify
- Usually **non leading questions** that ask you to describe what you saw, heard or did

Cross Examination

- Questions that follow direct examination intended to advance the other side's case theory or to challenge the information (or you as a witness) provided on direct examination
- **Leading questions** are usually asked

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**Activity VIII:
Mock Courtroom-Cross
Examination**

Madison Gray



Handout #8- Madison Gray's Direct Testimony

Madison Gray has testified on direct as follows:

Background

- Is an APS profesional who was assigned the investigation of the matter of Mrs. Xander and her daughter Marianne
- Has a college degree in social work from the State University
- Has been an APS professional for 3 years and has received training in APS investigations, APS principles, and documentation
- Has conducted about 80 prior investigations of suspected neglect, self-neglect, physical abuse and financial exploitation
- Has had 5 case investigations referred to local law enforcement
- This is the first to proceed to trial

Received Case

- Received report of suspected neglect of Mrs. Xander by her daughter Marianne
- Spoke to neighbor Nancy who said
 - She and Mrs. Xander have been friends for 25 years and always used to play bridge until Mrs. Xander grew increasingly confused and could not remember the game rules. Mrs. Xander occasionally would wander away.
 - She had seen a major change in Mrs. Xander's appearance.
 - About a year earlier Mrs. Xander's daughter Marianne moved in to help her
 - Mrs. Xander was becoming very confused and had serious arthritis so she could no longer write check or maintain her home.
 - Mrs. Xander came to Nancy's door and was dirty and crying. She said she was hungry, cold, and alone. Nancy gave Mrs. Xander food and wrapped her in a blanket.
 - She walked Mrs. Xander home and found that she was alone. The house was messy
 - Lately Marianne has had a lot of visitors who come and go at all hours of the day. Marianne often leaves for hours or days.

APS Investigation

- Went to Mrs. Xander's home with Nancy, the neighbor
- Introduced to Mrs. Xander
- Observations:
 - Mrs. Xander is dirty
 - She was not dressed appropriately for the weather
 - It was a cold day
 - The house is cold and messy.
 - There were photos on a bookcase which showed Mrs. Xander looking dressed up in a coat, hat, and gloves and standing beside a piano in the living room of her home; other pictures showing the living room looking well furnished with paintings hanging on the wall and photos of family members gathered in the dining room for a meal. The hutch in that photo was not in the home.
 - There was a big pile of mail addressed to Mrs. Xander on the dining room table which you believed had to be at least several months old.
- Conversation with Mrs. Xander
 - Mrs. Xander is unable to answer most of your questions
 - Mrs. Xander continually addresses you by her adult daughter's name, Marianne
 - She does not know how long Marianne has been gone
 - She does not know how to contact Marianne
 - She scores 18 on the MoCA screening assessment
- Actions
 - Arranged for Mrs. Xander to be medically examined
 - Arranged for Mrs. Xander to have a temporary caregiver
 - Contacted the court to appoint a temporary guardian/conservator

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**Mock Courtroom Debrief:
Lessons Learned**



- Importance of complete documentation to enhance memory and credibility as a witness
- You must talk from your documentation

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Please refer back to Handout #1- Terms and Their Meanings

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**Wrap Up: Review Terms and
Their Meanings**



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Slide #63

Transfer of Learning (TOL)



Build this into your Supervision time, applying skills you've gained from today!

Slide #64

“What two things will you do to enhance your effectiveness when working with the Criminal Justice System?”



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Slide #65

Please Complete Evaluations



**THANK YOU FOR THE
WORK THAT YOU DO!**

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Module 22

APS-Working with the Criminal Justice System

Transfer of Learning (TOL) Activity

-Candace Heisler

The Topic: The Criminal Justice System and Adult Protective Services have different scopes of work and obligations. When there is an understanding of each party's role, it makes for a positive collaboration and outcome for the client. During the instructor-led course, participants uncovered the rules of the road within the criminal justice system and explored where their role as an APS Professional intersects. The training goal is to improve APS's ability to work with the criminal justice system and to help build cases that are more likely to be accepted for prosecution.

Training Learning Objectives:

- 1. Distinguish the role of Adult Protective Services from the role of Law Enforcement and Prosecution**
- 2. Identify factors that make a provable case to take to the criminal justice system.**
- 3. Explain APS's role when a case is accepted for prosecution**
- 4. Identify rights of victims and defendants**
- 5. Identify the elements of a crime when given the statute**
- 6. Explain the importance of APS documentation to enhance credibility when testifying in a criminal case**
- 7. Utilize a case scenario to develop 2 questions for cross examination**



Overview of TOL Activity:

This activity should be completed after participation in the “APS-Working with the Criminal Justice” Core Competency, **preferably no more than 45 days after the in-person class**. It is intended to help the APS professional apply the elements structure of crimes to a real case the worker is handling.

The activity has 2 parts.

Part 1 is done by the APS Professional and consists of identifying a case the worker is handling and believes should be presented to the criminal justice system for prosecution followed by the worker's review of the legal elements of the crime of elder or vulnerable adult abuse, as defined by applicable law. The worker identifies the facts and witnesses available to establish each element of the crime. The “APS Professional Case Building Template”, included with the activity, will assist the professional in linking the case information to the crime's elements.



Part 2 is completed by the APS Professional with their supervisor either during a unit meeting, one-on-one consultation with the supervisor, or at a multidisciplinary team meeting. The professional presents a brief overview of the case (not to exceed one minute unless case is very complex) which is then followed by a short presentation demonstrating that the elements of the case are provable beyond a reasonable doubt. The entire presentation by the APS Professional should not exceed five minutes (unless the case is unusually complex).

The supervisor or team is free to ask clarifying questions as needed. The supervisor or team should ensure that the presentation focuses only on establishing that a prosecutable case exists. Extraneous information such as the client's psycho-social history, support system, or care needs should **NOT** be included and the supervisor or team should promptly identify such information and refocus the worker on what is needed for the criminal justice system.

Directions for APS Professional:

1. Select a case you are handling or recently have handled that you believe is prosecutable under your criminal statutes related to elder or vulnerable adult abuse.
2. Select one or more crime(s) under your statutes that you think are provable beyond a reasonable doubt.
3. As to each crime, list the elements.
4. As to each elements, list the witnesses and evidence that proves that element.
5. Complete the "APS Professional Case Building Template" included in this activity for each crime.
6. At a meeting with a supervisor, unit, or team present a one-minute synopsis of the key aspects of the case. Focus only on the crime and supportive facts. Think of this as a snapshot of the case and is also your opportunity to urge that your case be prosecuted.
7. After the one minute (or less) statement, briefly review each element of the charge and describe the witnesses and evidence that proves each element. Your case building framework chart will be helpful with this step. The entire case presentation should not exceed five minutes.
8. Identify any potential case weaknesses or problems with the criminal case; e.g.: some evidence might be interpreted in ways that do not point to guilt; alleged perpetrator has made statements which contradict the evidence you have collected; a critical witness is not likely to be available to testify; capacity issues of both your client and the alleged perpetrator, etc.
9. Your presentation should be **objective, reasoned, and balanced.**
10. Your supervisor, colleagues, or team may have some clarifying questions. You will have the opportunity to respond briefly to these.



APS Professional Case Building Framework Template

Reminder: this presentation is focused only on building a case for prosecution. You will have collected information about your client, living situation, and the alleged perpetrator which is important for other aspects of your work as an APS Professional. This information is not likely to be relevant to the criminal case. Therefore, the task here is to focus only on the items that you have learned from your APS investigation that is needed to prove a criminal case.

Review of Case of _____

Date of Presentation _____

Case Building Framework

The crime is: _____

The legal elements of the crime are:

Element 1: (List that element)

1. What facts will establish that element?
2. What witnesses will establish each of the facts?
3. What corroborating information exists for that fact?
4. What evidence supports that fact?
5. Are the facts supportive of any other interpretation from the one you have adopted?
6. Are there any weaknesses as to these facts or this element?

Element 2: (List that element)

1. What facts will establish that element?
2. What witnesses will establish each of the facts?
3. What corroborating information exists for that fact?
4. What evidence supports that fact?
5. Are the facts supportive of any other interpretation from the one you have adopted?
6. Are there any weaknesses as to these facts or this element?

Element 3 onward (same questions)

Directions for the APS Supervisor or others participating in the activity

1. You are an observer and a reviewer, **not** an advocate for or against sending the case to the criminal justice system. Please remain focused only on the criminal justice system aspects of the case.
2. If the presenter is unclear, you may need to ask clarifying questions. If the presenter offers information not relevant to the criminal justice case, please interrupt and redirect the presenter.
3. Please keep track of time, as the entire presentation should not exceed 5 minutes (unless case is especially complex).
4. Offer helpful comments for how the case and presentation might be strengthened and what was done well.

