

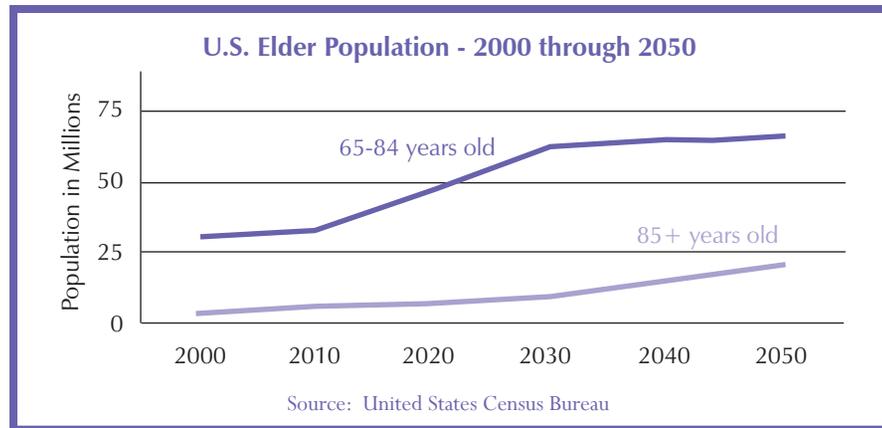
## THE IMPACT OF AN AGING SOCIETY ON STATE COURTS

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*As the American population ages, the courts will be stressed to educate staff, develop innovative strategies to address elder abuse, and reform guardianship policies and practices.*

According to the U.S. Census Bureau, the number of people older than 65 will more than double between 2000 and 2050, and the population over age 85 will quadruple. What does this trend mean for the courts?



### Court Training on Issues Related to Aging Will Become Paramount

Rothman and Dunlop, writing in *Court Review*, noted that “there has been little effort to examine the implications of aging in America on judicial administration, access to the courts, and resolution of the underlying issues that often precipitate court involvement for older adults.”<sup>1</sup> Given the dearth of research in this area, it remains unknown how negative stereotypes of older adults affect court proceedings and the effective administration of justice. As the demographics of America shift and greater awareness of ageism builds, training for judges, judicial officers, court administrators, and staff will become commonplace.

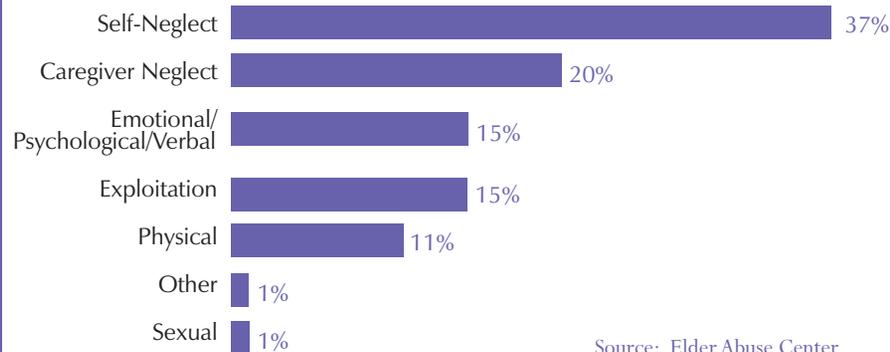
Current justice system training on elder issues tends to focus on elder abuse and neglect. For example, the University of Miami School of Medicine, Center on Aging and Disabilities, has a training project called *Take a Closer Look (A Training Curriculum on Abuse and Domestic Violence Against Elders and Vulnerable Adults for Professionals in the Justice System)*.<sup>2</sup> The curriculum includes modules on applicable laws and definitions, crime and people with disabilities, vulnerabilities that come with the aging process, abuse and neglect, domestic violence, exploitation of vulnerable adults, and professional responses. In addition, the Office on Violence Against Women is developing national curricula that will be used to train law enforcement, prosecution, and the judiciary on domestic violence against older individuals.

A foreseeable outcome of training programs is greater awareness of the physical limitations often caused by aging. Consequently, an area of future growth may be the renovation of courtroom facilities to accommodate an aging population. Examples of modifications that can be made to courtrooms to improve access include the use of amplification devices, nonglare lighting, and unobstructed pathways to the counsel table, witness box, and jury box.<sup>3</sup> In 2005 Stetson College of Law built the nation’s first model courtroom for the elderly and disabled. The courtroom features touch screens, electronic gates that open automatically, hearing amplification devices, flat-panel monitors, and other features specifically designed for people with reduced vision, limited hearing, or other physical disabilities.<sup>4</sup>

### Greater Awareness of Elder Abuse, Neglect, and Exploitation Will Encourage Innovative Strategies and Community Collaboration

An increasing number of states are passing laws that provide explicit criminal penalties for various forms of elder abuse.<sup>5</sup> Additionally, a number of legislatures have enacted enhanced penalties for certain crimes against older persons. Laws specific to fraud and financial exploitation of older persons have become widespread. For instance, in June 2006, Alaska governor Murkowski signed a bill to create a new Office of Elder Fraud and Abuse to investigate complaints relating to fraud involving older Alaskans who are not otherwise able to bring a complaint without assistance and to provide assistance to vulnerable older victims. In California, Governor Schwarzenegger signed a bill that will require banks to report suspected cases of financial elder abuse to authorities.

### 2004 Survey of State Adult Protective Services: Abuse Categories-Adults 60 Years of Age and Older



Collaboration and coordination among courts, law enforcement, prosecution, social-service agencies, the defense bar, aging services, and financial institutions are the wave of the future in addressing elder abuse, neglect, and exploitation. For instance, coordination was a key theme at the first national meeting of the Elder Abuse and the Courts Working Group, sponsored by the National Center for State Courts. The meeting, held in Williamsburg, Virginia, in April 2006, brought together some of the nation’s leading experts from a variety of disciplines.<sup>6</sup> The Working Group ranked the development of coordinated community responses among the top-ten key components of an effective court response to elder abuse.

At the local level, several courts are leading the way toward addressing elder abuse, neglect, and exploitation.

- Florida’s 13th Judicial Circuit Court in Hillsborough County features an Elder Justice Center (EJC). The mission of the EJC is “to remove barriers and enhance the linkages between seniors and the court system, as well as social and legal services.”<sup>7</sup> The center, in addition to providing a designated facility for elders, offers public education, coordinates access to service agencies, advocates for victims, and manages guardianship cases.
- The Superior Court of California, Alameda County, under Judge Julie Conger, established an Elder Protection Court. The specialized calendar

initially addressed civil remedies involving older or dependent adults and provided specialized case management that included vigorous court-community collaboration.<sup>8</sup> In January 2006, the specialized court also began hearing felony elder and dependent-adult abuse cases occurring in Alameda County, thus coordinating civil and criminal elder-abuse cases in a single department. The Elder Abuse Protection Court is the first of its kind in the country.

In sum, the nation’s courts will need to promote coordination, outreach, victim-centered approaches, and problem-solving strategies to judiciously address the complex problem of elder abuse, neglect, and exploitation.

### Increased Need for Adult Guardianships Will Lead to Reform of Current Laws and Practices

Americans are living longer than ever. As the demographics shift, more and more older persons will require some assistance in making personal and financial decisions. Guardianship is a relationship in which a court gives one person (the guardian) the duty and power to make personal or property decisions for another (the incapacitated person or ward).<sup>9</sup> States use a variety of terms to distinguish types of public and private guardianships. For instance, fiduciaries and conservators are the terms used in a number of states to refer to those who have financial control of a person’s estate.

The national status of guardianships is plagued by poor data. In a 2005 survey of state court administrator offices, the American Bar Association Commission on Law and Aging found that there is no state-level guardianship data for the majority of reporting states, and there is almost no data on elder abuse as a distinct case type.<sup>10</sup> The poor collection of data and lack of performance standards result in a nationwide crisis that impacts the abilities of states to effectively monitor guardians, gauge the extent of abuse by guardians, and shape public policy.

In 1987 the Associated Press examined 2,200 randomly selected guardianship court files and found that half of the files were missing at least one annual accounting, and 13 percent of the files were empty, except for the opening of the guardianship. The report contended that “overworked and understaffed court systems frequently break down, abandoning those incapable of caring for themselves,” and that courts “routinely take the word of guardians and attorneys without independent checking

or full hearings.” In short, it claimed that, sometimes, the courts responsible for overseeing guardianship cases “ignore their wards.”<sup>11</sup>

Nearly 20 years later, the *Los Angeles Times* ran a series of articles on professional conservators after reviewing more than 2,400 cases handled in southern California.<sup>12</sup> The *Times* found the system to be “deeply flawed,” with little state regulation of conservators and court oversight that is “erratic and superficial.” The series led to the creation of a Probate Conservatorship Task Force, public hearings, and a push for legal reform. A variety of bills under consideration on state ballots in September 2006 include:

- A bill that would double the frequency with which court investigators visit seniors or dependent adults under conservatorship (AB 1363)
- A bill that would make it more difficult for a conservator to sell a client’s home (SB 1116)
- A bill that would require the Department of Consumer Affairs to license and regulate conservators (SB 155)
- A bill that would allow courts to investigate complaints about conservators without a formal request (SB 716)

The California experience is not unique. A tidal wave of guardianship reform can be expected in the coming years, as state courts and legislatures grapple with a system that has been overwhelmed and neglected for decades.

## ENDNOTES

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<sup>1</sup> M. B. Rothman and B. D. Dunlop, “Judicial Responses to an Aging America,” *Court Review* 42, no. 1 (2005): 9.

<sup>2</sup> For more information, go to <http://cad.med.miami.edu/>. Click on “CAD Recent Projects.”

<sup>3</sup> See W. E. Adams, Jr., “Elders in the Courtroom,” in *Elders, Crime, and the Criminal Justice System: Myth, Perceptions, and Reality in the 21st Century*, M. B. Rothman, B. D. Dunlop, and P. Entzel, eds. (New York: Springer Publishing Company, Inc., 2000).

<sup>4</sup> For more information, see [www.law.stetson.edu/Elazer courtroom/](http://www.law.stetson.edu/Elazer courtroom/).

<sup>5</sup> See “Information About Laws Related to Elder Abuse,” American Bar Association Commission on Law and Aging, prepared for the National Center on Elder Abuse (2005) at [www.elderabusecenter.org](http://www.elderabusecenter.org).

<sup>6</sup> *Policy Paper: A Report from the First National Meeting of the Elder Abuse and the Courts Working Group Meeting* can be found at <http://www.ncsconline.org/famviol/elderabuse/pdf/MeetingReportFINAL.pdf>.

<sup>7</sup> For more information, visit the 13th Judicial Circuit Web site at [222.fljud13.org/ejc.htm](http://222.fljud13.org/ejc.htm).

<sup>8</sup> California AB 56 created a civil remedy to prevent the recurrence of elder abuse, giving senior adults aged 65-plus and dependent adults the ability to obtain restraining orders, stay-away orders, and residence exclusions against any person who is abusing them emotionally, physically, or financially.

<sup>9</sup> See the National Center on Elder Abuse for additional information ([www.elderabusecenter.org](http://www.elderabusecenter.org)).

<sup>10</sup> Erica F. Wood, *State-Level Adult Guardianship Data: An Exploratory Study* (Washington DC: American Bar Association Commission on Law and Aging, for the National Center on Elder Abuse, 2006).

<sup>11</sup> Cited in S. B. Hurme and E. Wood, “Guardian Accountability Then and Now: Tracing Tenets for an Active Court Role,” *Stetson Law Review* 31 (2002): 868-69.

<sup>12</sup> Robin Fields, Evelyn Larrubia, and Jack Leonard, “When a Family Matter Turns into a Business” (part one of a four-part series), *Los Angeles Times* (November 13, 2005).