



Ventura County District Attorney's Office

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Kellie Tyndall, Senior Victim Advocate

1

**Thank you to Santa Clara County
Deputy District Attorney Cherie Boutilard**

2

District Attorney's Office Overview

Approximately 106 Prosecutors

Approximately 50+ District Attorney
Investigators

34 Victim Advocates

Various Units

3

Elder and Dependent Adult Abuse Unit

- Vertical Unit
- Review, filing & prosecution of all crimes involving elder and dependent adult victims
 - Elder = 65+
 - Eg: fraud (identity theft, theft, forgery, embezzlement), physical abuse, RO violations, vandalism, robbery, burglary, dissuading, conspiracy, attempt murder

4

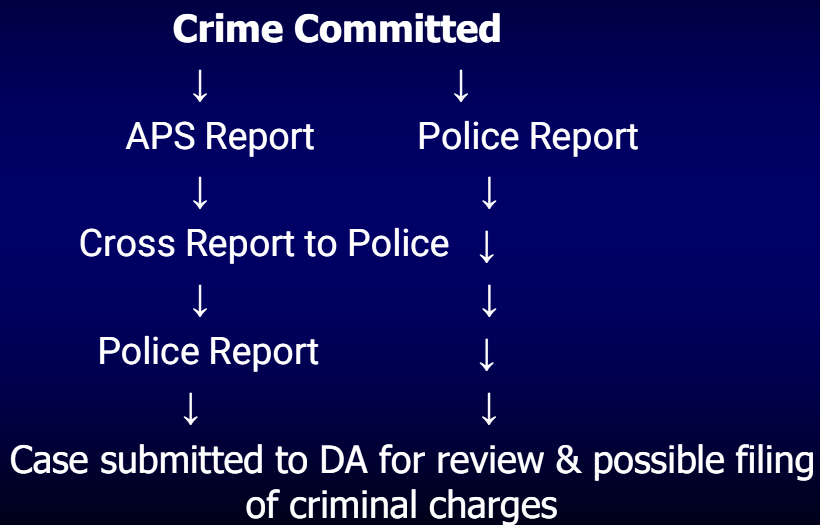
HOW DO CRIMINAL CASES GET FILED?



First step- Crime Report

5

Procedural Flowchart



6

Mandated Reporters of *Suspected* Financial Abuse of Elders W&IC §15630 et. seq.

- Care Custodians
- Health Practitioners
- County Welfare Departments
- Employees of Law Enforcement Agencies
- Employees of Fire Departments
- Employees of humane societies and animal control agencies
- Employees of environmental health and building code enforcement
- Clergy members
- Any other protective, public, sectarian, mental health, private assistance, or advocacy agency, or person providing health services or social services to elders or dependent adults (APS Social Workers)
- Any Person who has assumed full or intermittent responsibility for care or custody of an elder or dependent adult
- Financial Institutions

7

Procedural Flowchart

- Note- DA's Office cannot take crime reports.
- Local LE agency must take crime report and thoroughly investigate the case before DA's office considers filing criminal charges
 - Procedure:
 - Call local LE agency →
 - Report suspected criminal conduct to patrol officer →
 - Fraud Detective may conduct follow-up investigation before submitting case to DA's office for review

8

When can the DA's Office assist before a case is filed?

- WAS A POLICE REPORT FILED?
 - If so, Victim Advocates and Family Justice Center may be able to assist
 - Assistance may be available even if the case is rejected and criminal charges will not be filed.

9

Crime Victims' Assistance Unit



10

Victim Advocates' Role

Crime Victims' Assistance Unit

Elder and Dependent Adult cases

Outreach and Community Presentations

How to access services

Family Justice Center

11

Primary Goals of The Crime Victims' Assistance Unit

To reduce trauma and ensure the sensitive treatment of crime victims.

Provide victims with faster, more complete recovery from the effects of crime through crisis intervention and related support.

To assure that crime victims are part of the case in which they are involved.

To ensure that the victims' rights are being met.

12

Victims' Assistance Unit

- Court Support**
- Criminal Protective Orders and Restraining Orders**
- Referrals to other agencies: (APS, AAA, VCBH, TriCounties)**

13

Ventura County District Attorney's Office Newest Advocates



Comet

Starr

Trakr

14

Working with the Elderly population

- **Assess their basic needs from the start (remembering in most cases the abuser is their family or caregiver).**
- **Providing grant funded services like in-home care, transportation, food, funding basic needs bills.**
- **Assessing competency at every meeting or call.**
- **Helping the elderly victim apply for CalVCB**
- **And most importantly getting the elderly victim connected with a mental health counselor or therapist.**

15



Help Us Stop the Financial Abuse of Older Adults and Adults with Development Disabilities

The District Attorney's Office, the Human Services Agency and FAST (Financial Abuse Specialist Team) are working together to share information about how to protect populations who are often targets of financial abuse, exploitation and fraud. To schedule a presentation on Financial Abuse, Exploitation and Fraud, please contact FJC.FASToutreach@gmail.com.

- Report Suspected Abuse, Fraud or Exploitation to Ventura County Adult Protective Services: 805-654-3200. You can remain anonymous.
- Contact Senior Victim Advocate Kellie Tyndall for victim services at 805-826-4056
- Concerned you have been scammed and need resources and additional support? National Elder Fraud Hotline: 1-833-372-8311



16

Outreach and Topics

- **Outreach within the community**
 - Eg: Kiwanis, Rotary clubs, Veteran's Center, Ombudsmen, APS, Senior Centers, Care providers, Nursing facilities
- **Topics include:**
 - Preventing Financial abuse and fraud
 - How to report abuse
 - Tips for staying safe on the internet & social media
 - How to access services
- **Each presentation is unique based on the needs of that organization.**

17

Helping the
victim apply for
compensation.

1-800-777-9229



18

Family Justice Center

HOW TO REACH AND CONNECT

 Call 805-652-7655

 Email vcfjc.coop@ventura.org

 Text 805-947-7981

 Visit by Appointment
M – F 8:00 a.m. to 5:00 p.m.

 Follow us   

SERVICES PROVIDED

 EMERGENCY ASSISTANCE	 SAFETY SERVICES	 SHELTER AND HOUSING ASSISTANCE	 CIVIL LEGAL SERVICES	 MENTAL HEALTH SERVICES
 FINANCIAL COUNSELING	 EDUCATION	 CHILD DEVELOPMENT	 SURVIVOR ADVOCACY	

19

If you or someone you know 60+ has been a victim of fraud, call the National Elder Fraud Hotline



**NATIONAL ELDER
FRAUD HOTLINE**

1-833-FRAUD-11

1-833-372-8311



20

Reporting & Investigating Cases

- Before the DA's Office can file a case, the crime must be thoroughly investigated by a local law enforcement agency
- DAs cannot interview Ws or collect evidence from Ws
- The DA's Office does not handle civil cases (ie: probate/conservatorship matters)

21

Case Investigation: Is it Criminal? -->	Urgent: Are there Assets to Seize <u>NOW</u> ? Draft & Serve Search Warrants	Police submits case DA reviews & case is filed with court -->
Def is arrested on AW or earlier on-view arrest	Def attempts to post bail, but cannot be from felonious source -->	Def is Arraigned, Def Atty is appointed or hired
Criminal Protective Order -->	Case conferences / Pretrial motions / possible resolution	Any Restitution to obtain upfront? Can Def pay it back? -->
If not plead guilty, then Preliminary Hearing, then Jury Trial -->	Perhaps Conditional Exam 1st to preserve testimony	Upon Conviction: Probation Dept prepares a Sentencing Report -->
Sentencing Hearing: Punishment + Restitution Order	Restitution Hearing / Review Hearings -->	Possible Violation of Probation if restitution not paid/ not complying with other terms

22

Civil Proceedings

1. Civil Atty files suit to pursue defendant via a civil cause of action
 - Civil Elder Abuse Statutes:
 - Eg: W&IC 15610.30- Financial Abuse
 - Provides for punitive damages / treble damages / attorney's fees
2. Conservatorship: Private or Public
 - V lacks capacity & has an Estate to Preserve
 - V can't resist undue influence or being taken advantage of

23

Civil Burden of Proof

- Burden of Proof is by Preponderance of Evidence (ie 51%) or Clear and Convincing evidence
- Civil Atty/County Counsel can subpoena and depose a civil defendant
- Once a prima facie showing has been made, the burden of proof SHIFTS to the respondent to prove entitlement/innocence

24

Criminal Burden of Proof

- Prosecution has Burden of Proof- Beyond a Reasonable Doubt
 - Burden never shifts to D to prove innocence
- D may invoke 5th Amendment right to remain silent, may never give a statement, cannot be compelled to testify
 - 6th Amendment generally requires V's testimony
 - Unless V lacks capacity... this may lead to provability issues
- Can only recover **restitution**
 - i.e. restoring V to position he/she was in before crime occurred

25

Criminal Burden of Proof

- CALCRIMS
 - Crime specific Jury instructions providing elements prosecutors must prove for each crime
 - Jury Instructions for defenses

Egs:

- CALCRIM 1807: Theft from Elder/Dependent Adult
- CALCRIM 1905: Forgery
- CALCRIM 3406: Mistake of Fact

26

Criminal Burden of Proof

- CALCRIM 224: CIRCUMSTANTIAL EVIDENCE: SUFFICIENCY OF EVIDENCE
- "... If you can draw two or more reasonable conclusions from the circumstantial evidence, and one of those reasonable conclusions points to innocence and another to guilt, you must accept the one that points to innocence..."

27

Penal Code 368

- **Legislative intent: 368(a)**
 - **The Legislature finds & declares that**
 - (1) elders,
 - (2) adults whose physical or mental disabilities or other limitations restrict their ability to carry out normal activities or to protect their rights, &
 - (3) adults admitted as inpatients to a 24-hour facility
 - **deserve special consideration and protection**

28

Penal Code 368

- 368(b): Elder abuse likely to cause GBI
- 368(c): Elder abuse (physical or mental) not likely to cause GBI
- **368(d): Fraud**
- **368(e): Fraud by caretaker**
- 368(f): False imprisonment (PC 237(b))

29

Financial Abuse: Penal Code 368(d)/(e)

CRIMINAL

- Any person / caretaker who commits:
 - Larceny
 - Theft by False Pretense
 - Embezzlement
 - Forgery
 - Identity Theft
- Elder or Dependent Adult
- Felony: Loss of \$950 or more*
- Misdemeanor: <\$950

30

Is there a Provable Crime?

- Was there a loss? (Not always required)
- Was there consent?
 - If there was consent, was there deceit/false pretenses?
 - If there was no deceit/false pretenses, was there capacity to consent?
 - Is there enough evidence to show that D knew about V's lack of capacity?
- AND
- Did D have requisite Specific Intent?

31

Common Issues

- Cannot prove specific intent beyond a reasonable doubt
- Cannot prove that V did not consent beyond a reasonable doubt
 - ... but what if V lacked capacity to consent?
- Can we prove D knew or reasonably should have known at the time beyond a reasonable doubt?
 - D may have a mistake of fact defense
 - Remember, the burden of proof is entirely on the prosecution

32

New Challenges in Elder Cases (COVID related)

- Ds less likely to held in lieu of bail
 - Especially older Ds
- Everything slowed down, case backlog
- Elders lack of comfort coming into courthouse

33

New Challenges in Elder Cases (COVID related)

- New legislation:
 - Mental Health Diversion
 - Judicial Diversion
 - PC 1370.01

34

New Challenges in Elder Cases

- Probation on all theft crimes reduced to 1, 2 or 3 years.
 - 3 years if:
 - DV relationship (PC 1203.097)
 - Theft from an employer (PC 487(b)(3))
 - Felony, no relationship- 2 years
 - Misd, no relationship- 1 year
- Most fraud-related felony sentences served in local jail
- Most sentences are 1/2 of stated sentence

35

Old Challenges

- Vs uncooperative due to guilt, embarrassment, or shame
- Difficulty proving V lacked capacity and D knew / should have known
- Difficulty of proving V did not consent or "voluntarily" give D money

36

Case Examples

- Elder lives in assisted living facility or senior nursing facility
- Elder or family member claims Jewelry was stolen
- Claim is filed with facility
- Facility Notifies Ombudsman
- **What do you do?**

37

To do...

- Report to APS
 - If "founded" APS will cross-report to law enforcement
- AND
- Report to Law Enforcement
 - Mention names of ALL witnesses and responsible persons
 - Gather personal inventory & insurance documents

38

...continued

- Police, not the DA, should conduct the criminal investigation.
 - Interview Ws, obtain surveillance footage, serve search warrants, gather doc.s, etc.
 - Prosecutor cannot interview Ws
- If unable to prove or detect who committed crime, police will close the case. If able to prove a loss, and prove who did it, they will then present the case to the DA's Office
 - DA then decides if there is enough evidence to obtain a conviction and will have the case filed and the officer will obtain an Arrest Warrant.

39

Proving the Case in Court

- Elder cases are problematic
 - Court is stressful for elderly
 - Many elders do not want to come to court
 - Delay in adjudication of case may lead to provability issues
- D has 6th Amendment Right to confront and cross examine accusers in court
 - Out of court statements are inadmissible hearsay
 - V needs to testify "my jewelry", "no permission to take it",
 - There are some exceptions. Eg: Excited Utterances
- DA may request conditional exam once case is filed

40

Goal: Conviction/ Punishment/ Restitution

- If we can prove the value of jewelry is over \$950, then Felony, otherwise Misdemeanor
- Conviction for PC 368(d)/(e):
 - Probation w/ Conditions: Jail/ NOT Prison/ Community Service, Restitution Order, Can't be Caregiver, CPO
 - May not be able to enforce restitution order in criminal court if D unable to pay
- Dept of Public Health may revoke nursing credential
- Logged into the DOJ fingerprint system

41

2nd Case Example

- Elder is convalescing in senior nursing facility after stroke
- Care giver becomes "chummy"
- Elder is "smitten"
- Elder changes his trust for caregiver to become POA and/or Trustee, and Beneficiary
- **Is there a crime?**

42

So Far.....

- No loss, yet, thus no crime
- But: Civil Suspected Financial Abuse
 - * Report "Suspected Financial Abuse" to APS
 - APS may refer to the Public Guardian's Office for possible conservatorship evaluation or
 - If V conserved, County Counsel can sue caregiver to remove her as Trustee / Beneficiary
 - Family may sue caregiver to remove her as Trustee / Beneficiary

43

Now Assume....

- Elder passed away, & caregiver inherited
 - Now there is a Loss, but to the **Estate**
 - No mandated cross-report, since elder is deceased
 - APS / Public Guardian will not get involved
- To do:
 - Report to the Police
 - Provide names & contact info of all possible Ws and all related legal documents
 - Suggest family hire Civil Atty too
 - Note: Family will want DA to prosecute because civil attorney is expensive
 - Possible Vs: deceased, the trust itself, potential beneficiaries

44

Difficult case to prove criminally:

- Law Enforcement has to investigate the case before submitting the case to DA to review
- DA has to prove that:
 - (1) Deceased lacked mental capacity when new trust was made (which is often done in the presence of an "unsuspecting?" civil atty;) AND
 - (2)(a) Caretaker reasonably should have known the deceased lacked mental capacity to create new trust; OR
 - (2)(b) Deceased was coerced or tricked into creating new trust
 - Difficult to prove when V is deceased
 - Rely on W statements & legal documents

45

Fraud and Technology Crimes Unit (FTCU)

- **Dominic Kardum-Supervising Attorney**
 - Dominic.Kardum@ventura.org
 - 805.662.1702
 - Receives all referrals
- **Howard Wise-Sr. DDA**
 - Howard.wise@ventura.org
- **Marc Leventhal-Sr. DDA**
 - Marc.Leventhal@ventura.org

46

Fraud and Technology Crimes Unit (FTCU)

- **Handle Major Fraud cases and Computer Crimes cases.**
- **More than 60 years of experience handling fraud cases**
- **Have access to forensic accountant**
 - **Software to help enter bank records**

47

Major Fraud Guidelines

- **More than \$100,000 in losses, or**
- **Sophistication/technology**
 - **Multijurisdictional ID thefts**
 - **Securities fraud**
- **Provable beyond a reasonable doubt to a factfinder in light of *reasonably anticipated defenses***

48

Advantages of FTCU

- **Networked into other experienced prosecutors.**
 - **Recent case**
- **Extensive library of fraud documents**
- **Smaller caseload than Felony Unit**
- **Ability to freeze and forfeit defendant's assets under PC 186.11**

49

New Challenges in Elder Cases (Criminal justice Reform)

- **Probation on all theft crimes reduced from 5 years to 3 or even 2 years.**
 - **Will take some craftsmanship in charging.**
- **Sentences are now 1/3 of stated sentences for state prison.**

50

Old Challenges

- **Difficulty of proving victim did not “voluntarily” give D money.**
- **Elders have a right to give their money to whomever they choose.**
 - **Caretaker proximity to Victims in later years.**
 - **Distribution of medication requires others or assisted living**
- **Elders fear of losing autonomy.**

51

Old Challenges

- **Discovery obligations re: Inconsistent statement.**
- **Will the Elder be competent to testify.**
 - **Trial prep**
 - **When/why is the Elder functioning best?**
 - **What happens if Elder found incompetent**
- **Whether to preserve in conditional exam**

52

Contact Information

- **Howard Wise- FRAUD AND TECHNOLOGY CRIMES UNIT**
 - **Howard.Wise@ventura.org**
 - **805-662-1736**
- **Alexa Leibl- ELDER & DEPENDENT ADULT ABUSE UNIT**
 - **Alexa.Leibl@ventura.org**
 - **805-654-2513**
- **Kellie Tyndall- CRIME VICTIMS' ASSISTANCE UNIT**
 - **Kellie.Tyndall@ventura.org**
 - **805-654-3622**