#### **Elder Abuse Prosecution**



Elder Abuse Unit
Jefferson County District Attorney's
Office

# Demographics

- By 2030 national elderly population: >70 million
  - Jefferson County population 2000: 535,837
  - Jefferson County elderly population (65+):
    - **2000: 51,131 (10%)**
    - **2010**: 69,129 (12.5%)
    - **2020: 119,110 (20%)**
    - **2030: 164,761 (24.6%)**

(source: Jefferson County Planning and Zoning)

#### Extent of the Problem

 Between one and two million Americans age 65 or older have been injured, exploited or mistreated by a caregiver.

(Source: 2003 National Research Council Panel to Review Risk and Prevalence of Elder Abuse and Neglect.)

 Only one in twenty five cases of financial exploitation of the elderly are reported.

(Source: Consumer's Digest, 2000)

 92% of nursing homes have employee with criminal conviction.

(Source: March, 2011 Report of Inspector General Department of Health and Human Services)

#### Extent of the Problem

# National Committee for the Prevention of Elder Abuse (NCPEA):

- Annual financial loss by elderly victims of financial abuse estimated at \$2.9 billion.
- Women are twice as likely to be victims of elder financial abuse than men.
- Most victims were between ages of 80 and 89
- 60% of perpetrators were male.

"Crimes of Occasion, Desperation, and Predation Against America's Elders", June, 2011

### Special Concerns

- How have these cases been handled in the past?
  - By law enforcement?
  - By DA's?
- Our prosecution philosophy:
  - Caregivers
  - Family
  - Those who prey on elders
- Collaboration (law enforcement, APS, nonprofits and care providers).

#### What is elder abuse?

- Crime that is an exploitation of age or where impact is more severe due to age.
- Age 60 and above
  - Physical abuse
    - Assaults, harassment
  - Physical neglect
    - Neglect that leads to risk of injury or actual injury
  - Sexual abuse
  - Financial exploitation

# Legal Tools

#### Wrongs to At-Risk Adults, §18-6.5-101

- "...at-risk adults... are more vulnerable to and disproportionately damaged by crime in general... because they are less able to protect themselves against offenders, a number of whom are in positions of trust..."
- "The general assembly therefore finds that penalties for specified crimes committed against at-risk adults . . . should be more severe. . ."

#### At-Risk Adults

"At-risk adult" means any person who is sixty years of age or older or any person who is eighteen years of age or older and is a person with a disability. . . "

\*(Different definition than that which appears in Human Services Code)

"neglect" occurs when adequate food, clothing, shelter, psychological care, physical care, medical care, or supervision is not secured for the at-risk adult or is not provided by a caretaker in a timely manner . . .

26-3.1-101, C.R.S.

- Negligent injury §18-6.5-103(1) and (2)
- Assaults §18-6.5-103(3)
- Robbery §18-6.5-103(4)
- Sex Assault §18-6.5-103(7)

 All other crimes (ID theft, forgery, etc.) still apply to elderly but there is no enhanced penalty

# Profile of Typical Abuser

- Son in late 30's to late 40's
- Living at home with mother
- Divorced/returns home or single and unmotivated or just out of jail
- Lazy and unemployed
- Drugs, alcohol, gambling
- History of mental illness

(source: Paul Greenwood)

# Physical Abuse

# Warning signs

- Warning signs physical abuse:
  - Unexplained bruises, scratches, burns
  - Broken bones
  - Pinches, pulls hair
  - slaps
  - non-medically prescribed restraints
- Excuses:
  - "she bruises easily"
  - "she fell"

 Any person who knowingly neglects an at-risk adult or knowingly acts in a manner likely to be injurious to the physical or mental welfare of an at-risk adult. (M1)

- "Neglect" occurs when adequate food, clothing, shelter, psychological care, physical care, medical care, or supervision is not secured for the at-risk adult or is not provided by a caretaker in a timely manner and with the degree of care that a reasonable person in the same situation would exercise. Section 26-3.1-101(4), C.R.S.
- "caretaker" can be one who assumes responsibility for the care of an at-risk adult.
   (Not need legal relationship). Section 26-3.1-101(2), C.R.S.

- Relevant inquiries:
  - Clutter
  - Food on hand
  - Irregular meals
  - Last time bathed
  - Observations of uncleanliness
  - Condition of home in relation to disabilities or special care needs
  - Medical care
  - Financial relationships in household
  - Isolation / withholding access to family and friends
- Red Flags:
  - New person in life
  - New person doing all of the talking

# Sexual Abuse

#### Sexual Abuse

- Statutes are the same as for adults except enhanced penalties
- If dealing with incompetent victim have:
  - Victim incapable of appraising nature of V conduct, 18-3-404(b), C.R.S.
  - Victim is physically helpless and victim has not consented, 18-3-404(c), C.R.S.
  - "consent": means cooperation in act or attitude pursuant to an exercise of free will and with knowledge of the act. 18-3-401(1.5), C.R.S.
- In many cases must rely on physical indicators rather than victim
- My biggest caution is don't think it doesn't happen.

# Financial Exploitation

## Financial Exploitation

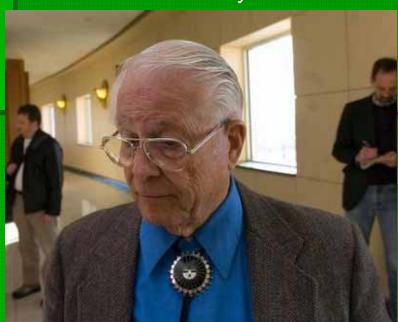
- Theft (jewelry, checkbook, credit cards)
- Document fraud
  - Power of attorney
  - Quitclaim deeds
  - New will
- Contractor fraud
- Telemarketing scams
- Lottery Scams

- Theft is our mainstay crime for financial exploitation.
- Theft generally:
  - 1 offender knowingly
  - 2. obtains or exercises control over
  - 3. thing of value of victim
  - 4. without authorization or by deception, and
  - 5. intends to permanently deprive the victim of the item's use or benefit.

#### Problems:

- 1. Thefts of little value
- 2. Breach of trust

Russel Mayer



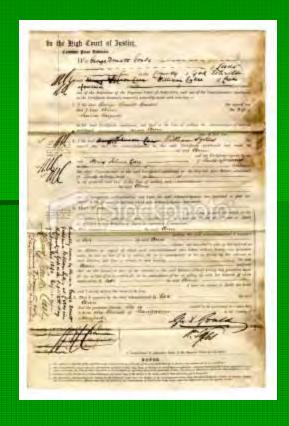


**Ebony Butler** 



- Theft from an at-risk adult:
  - THEFT and:
    - 1. Commits any element or portion of offense in the presence of the victim, or
    - 2. Theft committed by one in position of trust
  - F3 if >\$500
  - F5 if <\$500
  - F4 if theft from person

# Uniform Power of Attorney Act



## Power of Attorney Abuse

- Most common type of financial crime I am seeing
- POA is an incredibly powerful document
- Reality is most scams on elderly are sophisticated enough to avoid easy detection or prosecution
- Preprinted POA's are readily available and easy to execute

# Uniform Power of Attorney Act

- New set of rules in place: Uniform Power of Attorney Act (UPOA)
- Took effect 1/1/10
- National recognition of gaps in effectiveness and abuse of POA's
- Primarily creates default provisions
- Provides some extra protections for banks and other financial institutions
- Primarily affects civil law but some criminal applications.

# Power of Attorney Abuse

Two common types of situations:

- 1. Family members abuse power of attorney
- 2. Stranger or acquaintance insinuates self into life of elder and obtains POA

Common reaction: "that is civil, we can't do anything about it."

# Power of Attorney Abuse

#### Turkish Immigrant case:

- Helps son buy home
- After difficulties wants off mortgage
- She signs document believing gets her off mortgage
   in reality it is POA
- Drains bank account
- Quitclaims properties
- Opens new credit accounts
- Perceived problems: voluntary agreement, intra-family relations, possible recantation

# Uniform Power of Attorney Act

 Reasonable compensation of an agent is permissible. §15-14-712, C.R.S.

# Uniform Power of Attorney Act

- Duties of an Agent. §15-14-714, C.R.S.
  - Act in accordance with principal's expectations
  - Avoid conflicts of interest
  - Act with care, competence and diligence
  - Act in good faith
  - Act within scope of POA
  - Act loyally
  - Keep a record of all receipts, disbursements, and transactions
  - Preserve estate plan of principal

# POA – specific grants of authority

- §15-14-724, C.R.S. "Hot powers" agent must have a specific grant of authority from principal for the following transactions:
  - Create, amend, revoke a trust
  - Make a gift
  - Create or change beneficiary designations
  - Non-family member cannot create an interest in the principal's property for self or others.

# POA - suggestions

- These are not all civil. We can prosecute many of these crimes.
- We cannot do anything unless they are reported
- Neglect and exploitation go hand in hand.
- Legal protections for reports made in good faith

#### Joint Account Fraud

- Problem: offender has joint access to bank account of elderly person.
- A jointly held account is subject to a presumption that money held in the account belongs to, and can be accessed equally, by all account holders.

Bryant v. Community Choice Credit Union, 160 P.3d 266 (Colo.App. 2007).

- However, if bank has direct knowledge the transfers are inconsistent with directives of account holder then may be liability.
- Difficult, but not impossible, to prove.
- Same suggestions as for POA.

# Caretaker Exploitation

- Home caretaker exploits role:
  - Nurse or house cleaner
  - Gets access to finances (most without POA)
  - May open credit cards or write checks
  - Begins as legitimate. Escalates to small "loans" and then outright thefts.
- Suggestions: get family involved, get consent for bank records, show extent of harm.

#### Contractor Fraud

- Under or unqualified contractor
- Performs work at highly inflated price
- Performs substandard work

#### Contractor Fraud

#### When we prosecute:

- Have they been sanctioned by any licensing authority?
- What other complaints made? BBB.
- What verbal or written inducements made to get contract?
- Intimidation?
- Stringing behavior?

# Common Myths of Financial Elder Abuse

- Elderly refusal to cooperate / recantation (Elder abuse is where DV and child abuse was 30 years ago.)
  - §16-3-201, C.R.S.
- 2. If elderly person gave money voluntarily then not crime (undue influence)
- 3. Should be left to family to resolve
- 4. Victim dies before discovery of crime
- 5. Financial cases must be civil
- 6. More important cases to prosecute

# Reporting of Elder Abuse and Financial Exploitation

- Colorado is one of three states that does not have elder abuse mandatory reporting.
  - We are trying to change that
- Professionals are strongly urged to report known or suspected abuse, neglect or financial exploitation of adults. §26-3.1-104(1).

#### Timeliness

- Time may be critical on these cases
  - Statute of limitations
  - Speedy trial
- Need to preserve testimony
  - depositions
- Need to collect evidence before it is destroyed
- Need to "stop the bleeding"

# Lastly . . .

#### "PowerPoint makes us stupid"

General James N. Mattis
United States Marine Corps
Joint Forces Commander