

COURTS

Responding to Elder Abuse: A Self-Assessment Tool
for **Courts**



Responding to Elder Abuse: A Self-Assessment Tool for Courts



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Introduction and Process

The National Clearinghouse on Abuse in Later Life (NCALL) designed this Court self-assessment tool to help organizations evaluate strengths and areas of improvement in services for older victims of abuse. The goal of the self-assessment tool is to encourage your agency to candidly and thoughtfully assess your work and the processes you use. It will help identify existing practices and introduce new approaches which may strengthen the overall response of your agency when addressing elder abuse. The tool should facilitate and encourage discussion and raise questions about roles, response, coordination, and common purpose. Note: not every element included in the self-assessment tool will be in place in every community, nor is there an expectation that every element will be or can be implemented in every community.

How is elder abuse defined?

Elder abuse, according to the Elder Justice Roadmap, “includes physical, sexual or psychological abuse, as well as neglect, abandonment, and financial exploitation of an older person by another person or entity, that occurs in any setting (e.g., home, community, or facility), either in a relationship where there is an expectation of trust and/or when an older person is targeted based on age or disability.”

This is not a legal definition. Statutorily, there is wide variety in how elder abuse is defined from state to state and in criminal, protective, and civil law within a state. While elders can be victimized by strangers, most abuse experienced by older adults is perpetrated by non-strangers: i.e., intimate partners, adult children, other family members, fiduciaries, and caregivers. Abuse occurs in facilities as well as community settings.

How is abuse in later life defined?

Abuse in later life is defined by the Violence Against Women Act as neglect, abandonment, economic abuse, or willful harm of an adult aged 50 or older by an individual in an ongoing relationship of trust with the victim; or domestic violence, dating violence, sexual assault, or stalking of an adult aged 50 or older by any individual; and does not include self-neglect.

This document contains the following sections:

- Section 1: Self-Assessment Tool
 - The self-assessment addresses six dimensions to consider in evaluating your response to elder abuse and abuse in later life.
- Section 2: Action Plan for Change
 - Based on the results of the self-assessment, the Action Plan guides the user through a process to celebrate strengths and identify future actions, projects, and steps; identifies who will undertake what actions; and provides a timeline to track progress. Inter-agency action plans are an effective way to strengthen current community response to elder abuse and abuse in later life.
- Appendix: Abuse in Later Life Power and Control Wheel
 - In 2006, NCALL adapted the Power and Control Wheel, developed by Domestic Abuse Intervention Programs in Duluth, MN to create a graphic that represents abuse in later life. Various sections of this tool will refer back to the tactics on the wheel.

Who should be involved in completing the self-assessment?

The self-assessment process works best when completed using a team that involves your agency's leaders and staff, as well as policy makers. The tool is not intended to be completed by one or two individuals working in isolation. Effectively using this tool involves reflection and discussion that requires candid and thoughtful conversation among those with different experiences within the agency.

How can we use this tool in our Coordinated Community Response?

The Courts play a critical role in this inter-agency response; sharing information about court processes and court procedures, sharing information about the benefit of utilizing risk or lethality assessment tools as it relates to the predictability of violence, and the importance of trained victim advocates being utilized in elder abuse cases. At the same time, Court representatives can benefit from working with other agencies to improve response to abuse in later life by analyzing its policies, procedures and responses regarding cases involving older adults. Working through this Court tool may reveal gaps and deficiencies that would warrant immediate remediation and improvement to ensure better response to these cases. Courts can learn valuable information about community services and resources, and what specific services they provide, allowing the Court to make informed decisions about referrals, treatment options and placements.

Questions and feedback

If you have questions or want to provide NCALL staff with feedback about your experience using the tools, please email ncall@ncall.us .

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Section 1: Assessment Grid

Date:	Assessment grid completed by:
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Instructions: There are six dimensions included in the assessment. For each dimension, review each element and check whether or how often it applies, using the scale. In the notes section, record any comments that pertain to that dimension, such as specific accomplishments, barriers, or ideas for change. NOTE: This assessment tool draws heavily on *Enhancing Judicial Skills in Elder Abuse Cases – Curriculum Outline* developed by the National Judicial Institute on Domestic Violence (NJIDV), a partnership of Futures Without Violence, the National Council of Juvenile and Family Court Judges, and the U.S. Department of Justice, Office on Violence Against Women.

Dimension 1: Dynamics in Court Proceedings		This applies...			
		Always/Yes	Sometimes	Never/No	Need more info
1A	Framework				
1A-1	Our goals in elder abuse cases are to seek justice by: - Enhancing victim safety - Stopping the abuse - Holding perpetrators accountable - Preserving victims' dignity and autonomy				

Dimension 1: Dynamics in Court Proceedings		This applies...			
		Always/Yes	Sometimes	Never/No	Need more info
	- Ordering the least restrictive alternatives - Giving the victim a voice, ascertaining their wishes				
1A-2	We are alert to signs of elder abuse in all court settings, including: - Criminal cases of assault, battery, rape, theft, neglect - Civil fraud or asset conversion - Guardianship, conservatorship, or other probate matters - Special protective proceedings, such as commitment for mental health treatment - Health care decisions for an incapacitated adult - Domestic violence proceedings - Civil or criminal cases regarding care facilities				
1A-3	We expedite proceedings in elder abuse cases, recognizing the stress of extended proceedings, that older victims of abuse may have significant health concerns and that delays may exacerbate victims' availability to recall events and testify.				
1A-4	We utilize a specialized court or docket for elder abuse cases.				
1A-5	We determine whether there are any other cases against a defendant/respondent involving the same alleged victim/plaintiff, and join cases whenever appropriate. ¹				
1B	<i>Capacity and competency</i>				
1B-1	We scrutinize and weigh each piece of evidence according to applicable rules of evidence and do not place disproportionate weight on any one source.				

¹ Jean W. DiMotto, "Special Focus Issue – Elder Abuse: Accommodating the Elderly in Court," *Wisconsin Lawyer*, Vol. 73, No. 9, September 2000.

Dimension 1: Dynamics in Court Proceedings		This applies...			
		Always/Yes	Sometimes	Never/No	Need more info
1B-2	We utilize qualified physicians, psychologists, expert witnesses, and/or interdisciplinary teams who are trained and knowledgeable about aging and elder abuse to obtain opinions about a person's capacity.				
1B-3	Each capacity assessment includes determination of: ² • Medical condition (and whether the condition is temporary and reversible) • Cognition • Everyday functioning, capabilities • Values and preferences • Risk and level of supervision required • Accommodations that can enhance capacity and everyday functioning				
1C	<i>In the courtroom</i>				
1C-1	We utilize an elder abuse bench card or bench book guidelines				
1C-2	We are alert to a defendant's or respondent's use of intimidating tactics toward an elder victim or witness and will note such tactics on the record.				
1C-3	We are alert to the following <u>justifications that blame the victim</u> of elder abuse: • Accident ("she's clumsy") • Caregiver stress ("he's too hard to care for") • Victim's behavior ("she didn't stay where I told her to...she overreacted...he gave it to me...she consented...she's confused...he's forgetful") • Mutual abuse or self-defense ("she started it")				

² See *Assessment of Older Adults with Diminished Capacity: A Handbook for Lawyers*, authored by the American Bar Association Commission on Law and Aging and the American Psychological Association. 2nd Edition, <https://www.americanbar.org/products/inv/book/411701219/>

Dimension 1: Dynamics in Court Proceedings		This applies...			
		Always/Yes	Sometimes	Never/No	Need more info
	Mental Health, Substance Abuse				
1C-4	We are alert to the following <u>justifications that excuse the perpetrator</u> of elder abuse: - Anger problem (“I have a bad temper, short fuse”) - Substance abuse (“I was drunk or high”) - Physical or mental health (“I have Alzheimer’s”) - Learned behavior (“I was abused as a child by my parent”) - Normal caregiver activity (“I was just washing him”)				
1D	<i>Disposition</i>				
1D-1	We tailor relief with the understanding that victims who have the capacity to understand their circumstances have the right to refuse services, regardless of the level of risk.				
1D-2	We utilize a variety of pretrial release conditions to protect victims of elder abuse from harm and intimidation.				
1D-3	We review and discuss plea agreements to ensure that they meet the needs of the older victim and establish protections against further abuse.				
1D-4	We conduct compliance review hearings of elder abuse cases, including probationary sentences and deferred judgments.				
1E	<i>Attention to victims</i>				
1E-1	We develop and promote fair court practices and procedures that address the physical, financial, and emotional safety of victims of elder abuse.				
1E-2	Victim/witness specialists are available to elder abuse victims in <i>criminal</i> court proceedings and are trained regarding risk and lethality assessment tools.				
1E-3	Victim/witness specialists are available to elder abuse victims in <i>non-criminal</i> court proceedings and are trained regarding risk and lethality assessment tools.				

Dimension 1: Dynamics in Court Proceedings		This applies...			
		Always/Yes	Sometimes	Never/No	Need more info
1E-4	In the absence of or in addition to victim/witness specialists, court staff is prepared to explain and demystify the court process for elder abuse victims.				
1E-5	We consider the needs and preferences of the victim in each case and involve service providers (including victim advocates) and the community to facilitate effective intervention.				

Dimension 1: Dynamics in Court Proceedings

Notes: Accomplishments?

Notes: Barriers?

Notes: Ideas for Change?

Dimension 2: Safety		This applies...			
		Always/Yes	Sometimes	Never/No	Need more info
2A	Framework				
2A-1	We conduct risk, lethality and dangerousness assessments regardless of a perpetrator's or victim's age.				
2A-2	We look for approaches and tools specific to the type of elder abuse involved in assessing the level and immediacy of danger and related safety needs. ³				
2B	Process and components				
2B-1	We take steps to ensure victim safety in the courtroom and courthouse, including such measures as: • Providing a separate, secure waiting room for elder victims and witnesses • Minimizing contact in the courtroom • Permitting a victim/witness specialist or victim advocate to accompany and sit near the victim • Being aware of tactics an abuser might use to intimidate or instill fear in a victim • Ensure that a victim has the required equipment, such as glasses, oxygen, wheelchair, and medication.				

³ Vol. 13 (2), 2001, *Journal of Elder Abuse and Neglect*, carries several articles by Georgia J. Anetzberger and others that provide an overview of issues related to screening tools in elder abuse, as well as an illustration of one approach that was designed to address the shortcomings in many tools: poor distinction of the types, signs, and risk factors of elder abuse; failure to distinguish domestic abuse in later life as a significant and perhaps most common type of elder abuse; and little clear attention to state laws and specific community services. Visit <https://www.tandfonline.com/journals/wean20> to learn more about subscribing and purchasing options. A 2000 NCEA research brief by Rosalie Wolf reviews risk assessment instruments and reports on an adaptation of the Hwalek-Sengstock Elder Abuse Screening Test that centers on six questions: (1) Are you afraid of anyone in your family? (2) Has anyone close to you tried to hurt or harm you recently? (3) Has anyone close to you called you names or put you down or made you feel bad recently? (4) Does someone in your family make you stay in bed or tell you you're sick when you know you aren't? (5) Has anyone forced you to do things you didn't want to do? (6) Has anyone taken things that belong to you without your OK?

Dimension 2: Safety		This applies...			
		Always/Yes	Sometimes	Never/No	Need more info
2B-2	We inquire about and pay particular attention to factors that may signal increased danger to a victim, such as: ⁴ • Weapons or firearms in the house • Threats to harm or kill victim, family, pets and victim's perception of the danger • Forced sex • Increase in frequency and severity of violence				
2B-3	We consider attacks and mistreatment of an older adult's animal as a form of elder abuse.				
2B-4	We remove firearms and weapons from perpetrators of elder abuse, as permitted by law.				
2C	<i>Community connections</i>				
2C-1	We facilitate access to qualified, trained advocates who can assist victims with safety planning and utilize risk/lethality assessment tools.				
2C-2	We utilize a variety of agencies and resources.				

⁴ While cutting across all adult age groups, research into intimate partner homicides, such as that conducted by Jacquelyn C. Campbell and by Carolyn Rebecca Block, suggests avenues of inquiry important to investigations of abuse in later life and elder abuse overall. Of particular importance in attempting to gauge the degree of danger someone faces is attention to past violent incidents, recent abuse, strangulation or choking, controlling daily activities, and threats or assaults with a gun. Block notes that help-seeking in itself can signal a more serious situation. A summary of key research can be found in *NIJ Journal*, National Institute of Justice, Issue 250, November 2003, available at <https://nij.ojp.gov/library/publications/nij-journal-issue-no-250>.

Dimension 2: Safety

Notes: Accomplishments?

Notes: Barriers?

Notes: Ideas for Change?

Note: This dimension addresses access in two forms: (1) disability-related access and (2) generational accessibility.

Dimension 3: Access		This applies...			
		Always/Yes	Sometimes	Never/No	Need more info
3A	<i>Framework</i>				
3A-1	We facilitate the creation or enhancement of physical, legal, and attitudinal accessibility for older persons in court.				
3A-2	We invite representatives of a range of groups, including older adults and people with disabilities to conduct an accessibility assessment, including a tour of facilities and review of courtroom environment and procedures.				
3A-3	We invite representatives from a range of communities to review the courtroom environment and procedures.				
3A-4	We attend and participate in professional development training on issues of aging, ageism and disability-related issues.				
3A-5	We provide agency-wide training on responding to elder abuse in ways that best recognize and account for people's various backgrounds.				
3A-6	We attend and participate in professional development training on recognizing and accounting for people's various backgrounds.				
3A-7	We regularly conduct an agency-wide self-assessment of our disability accessibility policies and practices. ⁵				
3B	<i>Process and components</i>				

⁵ Issues related to disability access: [OPENING THE COURTHOUSE DOOR: AN ADA ACCESS GUIDE FOR STATE COURTS | Office of Justice Programs](#) and [Serving people with disabilities and Title II of the ADA | National Center for State Courts](#)

Dimension 3: Access		This applies...			
		Always/Yes	Sometimes	Never/No	Need more info
3B-1	We have a protocol to guide court staff in responding to a victim's specific disability, medical, and other accommodation needs.				
3B-2	We collaborate with specialists working with people with disabilities, including blind/low vision, Deaf/hard of hearing, physical disabilities, diminished cognition, psychiatric, and others when the situation requires additional skills and knowledge.				
3B-3	We collaborate with social service organizations and other community resources when a situation requires additional knowledge and understanding.				
3B-4	Consistent with state law and the type of case (i.e., civil or criminal), we adapt the environment of the court to meet victims' unique needs with such measures as: • Considering whether it is safe for the victim to be in the courtroom • Guarding against assumptions that a perpetrator or victim's age makes a specific perpetrator or case less dangerous • Using certified interpreters appropriate to the case (i.e., fluent in the person's language; excluding family members and anyone with a stake in the case) • Providing any needed accommodations • Utilizing alternative proceedings, such as closed-circuit television, telephonic hearings, or taking the court to the victim's location • Avoiding assumptions about English proficiency, capacity, mobility, disability				
3B-5	We permit support persons to accompany elder victims into court and to the witness stand.				
3B-6	We account for ways in which aspects of an older adult's background might influence her or his decision-making and response, such as:				

Dimension 3: Access		This applies...			
		Always/Yes	Sometimes	Never/No	Need more info
	• Mistrusting information provided by law enforcement, prosecution, health care, or social services • Seeing information provided by law enforcement, prosecution, health care, or social services as contrary to religious beliefs • Deferring to other relatives or adult children, or when family decision-making is the norm • Misunderstanding because of language barriers or limited English proficiency⁶				
3B-7	We take steps to make the courtroom and proceedings more “user friendly” and less intimidating, including: • Clear signage and directions to the Court • Minimizing waiting time • Comfortable chairs • Wheelchair, cane and walker accessibility • Sound systems that are clear, amplification, and hearing devices • Forms and other publications in large font • Flexible scheduling to accommodate medical needs, and to avoid sundowning • Frequent breaks during long proceedings • Speaking slowly and directly				

⁶ These recommendations reflect the work of Dr. Georgia J. Anetzberger in adult protective services investigation and assessment training prepared for the Ohio Department of Job and Family Services.

Dimension 3: Access

Notes: Accomplishments?

Notes: Barriers?

Notes: Ideas for Change?

Dimension 4: Policy and Procedure		This applies...			
		Always/Yes	Sometimes	Never/No	Need more info
4A	Framework				
4A-1	Our court's policies and procedures specifically address elder abuse.				
4A-2	By policy, there is coordination and information sharing across all courts (e.g., protection order, criminal, civil, probate, guardianship) to identify elder abuse cases of all types.				
4A-3	We encourage and support developing protocols or memoranda of understanding that outline roles and relationships between agencies intervening in elder abuse cases.				
4B	Content				
	We have policy guidance on:				
4B-1	Assessing capacity				
4B-2	Appointing trained guardians and ensuring their accountability				
4B-3	Working with substitute decision makers trained regarding elder abuse issues				
4B-4	Defining all types of elder abuse cases: - Physical abuse - Sexual abuse - Emotional/psychological abuse - Neglect - Financial exploitation and undue influence				
4B-5	Setting appropriate conditions of pretrial release that promote victim safety and perpetrator accountability				

Dimension 4: Policy and Procedure		This applies...			
		Always/Yes	Sometimes	Never/No	Need more info
4B-6	Issuing sentences and orders that are specific, detailed, promote victim safety and perpetrator accountability				
4B-7	Ordering and monitoring conditions of probation and deferred judgments in elder abuse cases				
4B-8	Permitting support persons to accompany elder victims into court and onto the witness stand				
4B-9	By policy, the court avoids issuing bench warrants on victims who do not appear in court.				

Dimension 4: Policy and Procedure

Notes: Accomplishments?

Notes: Barriers?

Notes: Ideas for Change?

Dimension 5: Training		This applies...			
		Always/Yes	Sometimes	Never/No	Need more info
5A	Framework				
5A-1	We provide or have access to training and opportunities to practice how to recognize elder abuse and establish the type and degree of danger involved.				
5A-2	We have established and routinely update a library of resource materials and professional literature on elder abuse and court response.				
5A-3	Training on elder abuse includes judges, court staff, guardians ad litem, prosecutors, victim advocates, social workers, law enforcement.				
5A-4	All training related to elder abuse addresses attitudes, misconceptions, and myths about aging and the resulting barriers to effective response.				
5B	Content				
	Training for judges and court staff (and aforementioned personnel) addresses:				
5B-1	How to identify types and impacts of elder abuse: ⁷ - Physical abuse - Sexual abuse - Emotional abuse - Neglect - Financial exploitation and undue influence				
5B-2	Medical aspects of aging				

⁷ Elements 5B-1 through 5B-3 reflect priorities suggested by the National Center for State Courts' Elder Abuse and the Courts Working Group, acknowledging that most judicial training currently available includes only a brief introduction to elder abuse. For further reference, see *Elder Abuse Cases: Proposed Performance Measures for Courts*, available at https://www.eldersandcourts.org/_data/assets/pdf_file/0024/5559/ea-court-performance.pdf and *Court Guide to Effective Collaboration on Elder Abuse* at <https://bja.ojp.gov/sites/g/files/xyckuh186/files/Publications/NCSC-Court-Guide-to-Effective-Collaboration-on-Elder-Abuse.pdf>.

Dimension 5: Training		This applies...			
		Always/Yes	Sometimes	Never/No	Need more info
5B-3	Attitudes and myths about aging and the resulting barriers to effective response				
5B-4	Common justifications that abusers present, including caregiver stress				
5B-5	The complex circumstances that victims face in making decisions about whether to leave or return to live with an abuser, who may also be their caregiver (fear of losing their independence, home or being forced into a nursing home).				
5B-6	Issues and procedures related to accurately assessing competency, capacity, functioning, capabilities, or abilities.				
5B-7	Issues and procedures related to accurately distinguishing consent from undue influence				
5B-8	Application of <i>Crawford v. Washington</i> to elder abuse cases				
5B-9	How to issue conditions of release and bail that support victim and community safety in elder abuse cases				
5B-10	Sentencing issues and options in elder abuse cases that provide victim safety and perpetrator accountability				
5B-11	Annual updates on state and federal laws and specific elder law issues				
5C	<i>Methods</i>				
5C-1	Training includes opportunities to practice how to recognize abuse, the potential for abuse, and establish the type and degree of danger involved.				
5C-2	Judges are primary trainers to other judges.				
5C-3	Training is conducted in collaboration with other interveners, such as prosecutors, adult protective services (APS) case workers, victim advocates, elder law attorneys, and aging network specialists				
5D	<i>Community connections</i>				

Dimension 5: Training		This applies...			
		Always/Yes	Sometimes	Never/No	Need more info
5D-1	We participate in and support education about elder abuse to: • Guardians and guardians ad litem • Court staff • Clergy, Faith-based organizations • Law enforcement • Prosecutors • Healthcare, nursing, rehabilitation facilities and staff • Financial institutions, banking • Elder Services • Victim advocates in domestic violence and sexual assault services agencies • Community at large, including senior organizations and community groups				
5D-2	We encourage and support cross-training for adult protective services, law enforcement, prosecutors, victim/witness specialists, aging services providers, attorneys, domestic violence victim advocates, sexual assault victim advocates, health care providers, bank employees, and others who may come in contact with victims of elder abuse.				

Dimension 5: Training

Notes: Accomplishments?

Notes: Barriers?

Notes: Ideas for Change?

Dimension 6: Community Collaboration		This applies...			
		Always/Yes	Sometimes	Never/No	Need more info
6A	<i>Framework</i>				
6A-1	We promote development and enhancement of community programs to serve older adults.				
6A-2	We provide leadership in developing a coordinated community response to elder abuse (consistent with our state code of judicial ethics). ⁸				
6A-3	We promote creation of a multidisciplinary response to elder abuse cases.				
6B	<i>Systems change</i>				
6B-1	We take an active role in public education campaigns and efforts to change attitudes about and responses to elder abuse.				
6B-2	We promote and support programs to provide pro bono or low cost representation to elders seeking legal assistance.				

⁸ For example, see the discussion in *Court Guide to Effective Collaboration on Elder Abuse*, National Center for State Courts.

Dimension 6: Community Collaboration

Notes: Accomplishments?

Notes: Barriers?

Notes: Ideas for Change?

Section 2: Action Plan for Change

Now that you have completed the self-assessment tool, you have the foundation for creating a plan for change for any concerns you may have identified during this process. Following is a template to aid in designing this plan for change. Note this template includes space for indicating those concerns about your current response to elder abuse but also space for highlighting your strengths and what is going well.

Step 1: Recognize your strengths and accomplishments while identifying what needs to change in your response to abuse in later life.

- Review each area of the assessment grid and note where you checked “sometimes” and “never.”
- Identify what is missing in your response and where you need more information.
- Identify strengths and accomplishments in the current response to abuse in later life.

Step 2: Set priorities and next steps for the changes you would like to make. Keep in mind:

- New or revised policies and/or procedures
- Better connections and communication
- New or expanded training
- Stronger collaborations

Step 3: Assign tasks and set timelines.

Step 4: Track your progress by reviewing this Action Plan at selected intervals, such as every six months.

Action Plan: Strengthening Our Response to Abuse in Later Life

Dimension	Strengths and Accomplish-ments	Concerns	Priorities and next steps:	Assigned to:	Due By:	Progress/Updates
1) Dynamics in Court Proceedings						
2) Safety						
3) Access						

Action Plan: Strengthening Our Response to Abuse in Later Life

Dimension	Strengths and Accomplishments	Concerns	Priorities and next steps:	Assigned to:	Due By:	Progress/Updates
4) Policy & Procedure						
5) Training						
6) Community collaboration						

Appendix: Abuse in Later Life Wheel

In 2006, NCALL adapted the Power and Control Wheel, developed by the Domestic Abuse Intervention Project, Duluth, MN to create this wheel.

