

# Navigating the Criminal Justice System

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## Acknowledgements

- This material was initially developed for the course “Communicating Effectively with Law Enforcement and Prosecution” for California Adult Protective Services and other professionals
- Special thanks to Krista Brown of the APS Training Project/Bay Area Academy for organizing and overseeing this Spring 2009 Advanced Training Series program

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## Who Is Here

- APS
- Long Term Care Ombudsman
- IHSS
- Care Managers
- Public Guardian
- Social Workers
- Law Enforcement
- Prosecutors
- Other

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### Trends

- Increased awareness of elder abuse by criminal justice system
- New laws, crimes, and procedures
- What APS does with a case often directly affects what happens to a case that may involve criminal conduct
- Increased expectations by criminal justice system of cooperation with, assistance from APS

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### Goals

- Familiarize you with the criminal justice system
- Not to make you law enforcement or prosecutors
- Not to define agency policy or practice
- Better understand your role in cases that may involve criminal conduct while valuing your role as APS

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### The New Relationship

- Stay in your role
- Know and understand your role
  - It is critical for the victim's wellbeing
- Resist efforts to be law enforcement
- Recognize that criminal justice system response is only one of a variety of possible interventions in a case

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## What Distinguishes the CJS from Other Systems?

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### Differences

- Defendant faces loss of life and/or liberty, civil rights
- Defendant has an array of constitutional rights
  - Designed to level the playing field between the individual and State
- Formalized system with rigid rules and sanctions for violations
  - Burden of proof
  - Search and seizure
  - Obtaining confessions and admissions
- Victim does not decide what happens or if case will be filed
- APS does not control what happens to case

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### What is the Criminal Justice System (CJS)?

- Included Entities
  - Law Enforcement: investigates alleged criminal conduct and makes arrests
  - Prosecution: initiates and prosecutes criminal cases on behalf of the local, state, or federal government. May advise law enforcement and draft warrants
  - Corrections (Probation and Parole): state or county agencies charged with supervising convicted persons
  - Criminal Courts
    - Part of Judicial Branch of government

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### The CJS

- Traditionally an adversary system designed to “elicit the truth”
- Requires that the prosecution meet a high burden of proof
  - Duty to produce convincing evidence on every element of a charge
  - Evidence must be **admissible**
- Requires that evidence as to every element is proven beyond a reasonable doubt

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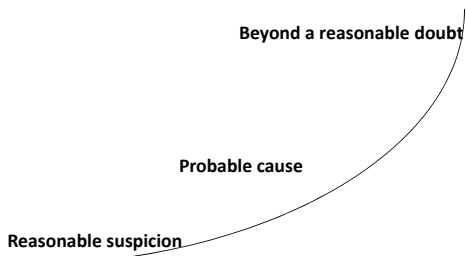
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### Burden of Proof



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### “Beyond a Reasonable Doubt”

- A defendant in a criminal case is presumed to be innocent. This presumption requires that the People prove a defendant guilty beyond a reasonable doubt (BRD)...
- Proof beyond a reasonable doubt is proof that leaves you with an abiding conviction that the charge is true. The evidence need not eliminate all possible doubt because everything in life is open to some possible or imaginary doubt.

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### “Beyond a Reasonable Doubt”

- “In deciding whether the People have proved their case BRD, you must impartially compare and consider all the evidence that was received throughout the trial. Unless the evidence proves the defendant is guilty BRD, s/he is entitled to an acquittal and you must find him/her not guilty.”
- CALCRIM 220

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### What Is the Defendant’s Burden?

- NOTHING!
- Cannot shift burden of proof to the defendant to explain away or disprove what the prosecution has shown or claimed
- Prosecution cannot call defendant as a witness to establish part of the case

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### Defendant’s Rights

- Right to
  - Silence
  - Against compulsory self incrimination
  - Confront witnesses against you
  - Call witnesses and secure their attendance
  - Be free of unlawful search and seizure
  - Counsel
  - Discovery
  - Reasonable bail
  - Jury trial

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### What Is Evidence?

- Anything used to support the existence of a fact or to make it more or less probable
- Types of evidence
  - Real -- physical, tangible, "the thing itself" (clothing victim wore; gun used)
  - Representative-- represents something else (x-ray of a broken bone; diagram, chart, photograph)
  - Documentary (writings, documents)
  - Testimonial (said by a witness, including the victim)
    - May be lay or expert witness

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### Are You a Collector of Evidence?

Are the rules by which you obtain evidence the same as those that govern law enforcement?

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### Realities

- **Bad People do NOT make good cases**
- **Not all bad things that people do are criminal**
- **You must have admissible evidence that specific crime occurred BRD in order to prosecute a case**

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### Evidence Must Be Admissible

- Relevant
  - Any tendency in reason to prove or make more probable a fact of consequence in the case
- Reliable
  - Trustworthy and dependable
    - Personal knowledge of a lay witness
    - Witness competency
    - Hearsay
    - Authentication of records , physical evidence, and documents
- Properly obtained
  - Search and seizure
  - Confession or admission

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### Group Activity

- What is the role of the victim?
  
- How do we reduce reliance on the testimony of the elder abuse victim?

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### Building Cases Without the Victim

- Document
  - Casual or off-handed remarks or informal comments
  - Excited utterances (to anyone)
  - Business records
  - Statements made to non-governmental agents or individuals
  - Medical records
  - Statements made to doctors, nurses, hospital social workers for medical diagnosis

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### Building Cases Without the Victim

- Suspect statements
- Statements to family and friends
  - Who have you told? (victim and suspect)
- Prior investigations by APS
- Prior calls to law enforcement
- Court Filings (restraining order declarations)

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### Case Building

- Elements
  - What are the building blocks of a crime?
    - Statutes
    - Jury Instructions
    - Case Law
- Burden of proof
  - Beyond a reasonable doubt
- Facts

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### Case Building

- Who will say it?
- What evidence will prove it?
- Is the information corroborated?
- Alternative interpretations of the evidence
- Defenses
- See Framework in Materials, Appendix D

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### Case Building

- It is not personal!
- Not based on emotions, but on the convincing force of the evidence

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### Framework for Investigations



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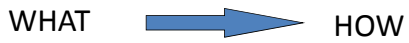
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### Investigative Goals



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### Who Reviews Your Report

- Working with those nearby you, **make the longest possible written list of persons or entities who/that may review an APS report**
- **You have 2 minutes!**

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### Kinds of Crimes

- Felony
  - Punishable by term in state prison or death
- Misdemeanor
  - Punishable by no more than a year (or 6 months) in county jail
- “Wobbler”
  - Can be charged as either a felony or misdemeanor
  - Punishment determines if a felony or a misdemeanor
- Infraction
  - Punishable by fine only

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### Life of A Case

- When are you likely to be involved in a criminal case?
- In what role?

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### Your Role as a Witness

- Get prepared: review your file carefully
- Contact and meet with prosecutor before trial
- Ask for likely question areas
- Ask for likely areas on cross
- Ask if court has excluded any subject matter and abide by ruling
- Examine all evidence likely to be used in your testimony
- Can review file or notes during testimony to refresh memory
- Can attend sentencing

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### Getting Your Case Into the Criminal Justice System

- CJS "Speak"
  - Victim, not client
  - Suspect or defendant, not A/P
  - Witnesses, not collaterals
  - Assault not physical abuse, elder abuse or mistreatment
  - Forgery or theft not financial abuse or exploitation
- Talk about elements and crimes
- Avoid discussing emotions

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### The Life of a Case

- Varies from state to state
- Referral from LE
  - Probable cause determination by a court officer
- Charging Decision
  - Probable cause determination by a court officer
- Arraignment or First Court Appearance
  - Entry of plea
  - Appointment of counsel
  - Bail and other release evaluation

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### The Life of a Case

- Probable Cause Hearing
  - Preliminary Hearing
  - Grand Jury
  - Other
- Pre Trial Hearing(s)
  - Case setting
  - Search and seizure
  - Change of plea

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### The Life of a Case

- Trial
  - Motions\*
  - Jury Selection
  - Opening Statement(s)
  - Case in Chief\*
    - Direct
    - Cross

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### The Life of a Criminal Case

- Defendant's Case in Chief\*
- Rebuttal\*
- Jury Instruction
- Argument
- Deliberation and Verdict

\* May be called as witness

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### “The Next Life of a Criminal Case”

- Sentencing
  - Restitution Hearing
  - You can make a difference at this point
  - Victim Impact Statements
- Probation Violation
- Motion to set aside or modify a court order (or recall a no-contact order)
- Appeals

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### Working with the CJS

- Challenges?
- What have you seen that is effective in overcoming challenges?

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### Engaging Law Enforcement and Prosecutors

- Legal Updates
- Crimes and their elements
- Criminal procedures
- Ways to memorialize elder’s testimony
- Court orders
- Firearms limitations

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### Maintaining Perspective

- Not all or even most APS cases are criminal
- CJS is only tool; you have many others that may also be needed or may be preferable
- Realistic expectations are needed by all
  - If case is not filed, you still need to do your job to assess the situation and attempt to improve the situation
  - Even if case is filed, still need to consider what else is needed to protect the elder
    - Civil remedies
    - Conservatorship

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### Maintaining Perspective

- Working with the CJS is a process
  - Everyone is new at this
  - Be patient and keep working with the CJS
  - Over time, trust and experience working together will grow
  - You have the capacity to teach the criminal justice system important lessons
  - You can change CJS Practice

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### Questions?

- Thank You!
  
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